

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1037
6

7 H.P. 728

House of Representatives, March 13, 1985

8 On motion of Representative Beaulieu of Portland, referred to the
9 Committee on Labor. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Beaulieu of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT Providing for a Maine Labor Relations
18 Law.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 26 MRSA c. 16 is enacted to read:

23 CHAPTER 16

24 MAINE LABOR RELATIONS ACT

25 §1321. Purpose

26 It is declared to be the public policy of this
27 State and it is the purpose of this chapter to render
28 the bargaining position of certain private employees
29 more equal to private employers and to promote the
30 improvement of the relationship between private em-
31 ployers and their employees by providing a uniform
32 basis for recognizing the right of private employees
33 to join labor organizations of their own choosing and

1 to be represented by the organizations in collective
2 bargaining for terms and conditions of employment.

3 §1322. Use of United States National Labor Relations
4 Act precedents

5 Relevant precedents under the United States Na-
6 tional Labor Relations Act, as amended, apply to all
7 actions under this chapter.

8 §1323. Definitions

9 As used in this chapter, unless the context indi-
10 cates otherwise, the following terms have the follow-
11 ing meanings.

12 1. Bargaining agent. "Bargaining agent" means
13 any lawful organization, association or individual
14 representative of the organization or association
15 which exists, in whole or in part, for the purpose of
16 the representation of employees in their employment
17 relations with employers and which has been deter-
18 mined by the employer or by the executive director of
19 the board to be the choice of the majority of the
20 unit as their representative.

21 2. Board. "Board" means the Maine Labor Rela-
22 tions Board, as defined in section 968, subsection 1.

23 3. Employee. "Employee" means every person who
24 may be permitted, required or directed by any employ-
25 er in consideration of direct or indirect gain or
26 profit to engage in any employment and:

27 A. Is not limited to the employees of a particu-
28 lar employer, unless this chapter explicitly
29 states otherwise;

30 B. Includes any individual whose work has ceased
31 as a consequence of, or in connection with, any
32 current labor dispute or because of any unfair
33 labor practice; and

34 C. Does not include any individual who is:

35 (1) Employed in the domestic service of any
36 family or person at his house;

- 1 (2) Employed by his parent or spouse;
2 (3) Employed as a supervisor or independent
3 contractor;
4 (4) Covered under the Municipal Public Em-
5 ployees Labor Relations Law, chapter 9-A;
6 (5) Covered under the State Employees Labor
7 Relations Act, chapter 9-B;
8 (6) Covered under the University of Maine
9 Labor Relations Act, chapter 12;
10 (7) Covered under the Judicial Employees
11 Labor Relations Act, chapter 14; and
12 (8) Employed in agriculture, as defined in
13 the Employment Security Law, except when
14 that individual performs services for em-
15 ployers covered under the Maine minimum wage
16 law, or services for employers managing, op-
17 erating, controlling or having ownership in-
18 terest in over 4,000 acres of land.

19 4. Employer. "Employer" shall be liberally con-
20 strued and means any entity exercising control over
21 the terms and conditions of employment of 8 or more
22 employees, but does not include any entity:

23 A. Over which the National Labor Relations Board
24 has jurisdiction; or

25 B. Which is covered by the United States Railway
26 Labor Act.

27 5. Executive director. "Executive director"
28 means the Executive Director of the Maine Labor Rela-
29 tions Board.

30 6. Labor organization. "Labor organization"
31 means any organization of any kind, or any agency or
32 employee representation committee or plan, in which
33 employees participate and which exists, in whole or
34 in part, for the purpose of dealing with employees
35 concerning grievances, labor disputes, wages, rates
36 of pay, hours of employment or conditions of work for
37 employees.

1 7. Professional employee. "Professional employ-
2 ee" means any employee engaged in work which:

3 A. Is predominantly intellectual and varied in
4 character, as opposed to routine mental, manual
5 or physical work;

6 B. Involves the consistent exercise of discre-
7 tion and judgment in its performance;

8 C. Is of such character that the output produced
9 or the result accomplished cannot be standardized
10 in relation to a given period of time; and

11 D. Requires knowledge of an advanced type in a
12 field of science or learning customarily acquired
13 by a prolonged course of specialized intellectual
14 instruction and study in an institution of higher
15 learning or a hospital, as distinguished from a
16 general academic education or an apprenticeship
17 or from training in the performance of routine
18 mental, manual or physical processes.

19 8. Supervisor. "Supervisor" means supervisor as
20 defined in the United States Labor Management Rela-
21 tions Act of 1947.

22 §1324. Rights of employees

23 Employees have the right to self-organization, to
24 form, join or assist labor organizations, bargain
25 collectively through representatives of their own
26 choosing and engage in other concerted activities for
27 the purpose of collective bargaining or other mutual
28 aid or protection. Employees also have the right to
29 refrain from any or all activities, except to the ex-
30 tent that the right may be affected by an agreement
31 requiring membership in a labor organization as a
32 condition of employment.

33 §1325. Prohibited acts of the employer

34 It is an unfair labor practice for an employer to
35 do any of the following:

36 1. Interference with employees' rights. To in-
37 terfere with, restrain or coerce employees in the ex-
38 ercise of the rights guaranteed in section 1324;

1 2. Interference with labor organization. To
2 dominate or interfere with the formation or adminis-
3 tration of any labor organization or contribute fi-
4 nancial or other support to it. Subject to any rules
5 made and published by the board under section 1332,
6 subsection 1, an employer is not prohibited from per-
7 mitting employees to confer with him during working
8 hours without loss of time or pay;

9 3. Discrimination in hiring or tenure. To en-
10 courage or discourage membership in any labor organi-
11 zation by discrimination in regard to hiring or ten-
12 ure of employment or any term or condition of employ-
13 ment. Nothing in this chapter or in any other law of
14 this State may preclude an employer from making an
15 agreement with a labor organization to require, as a
16 condition of employment, membership in that organiza-
17 tion on or after the 30th day following the beginning
18 of that employment, or the effective day of the
19 agreement, whichever is later:

20 A. If the labor organization is the representa-
21 tive of the employees, as provided in this chap-
22 ter, in the appropriate collective bargaining
23 unit covered by that agreement; and

24 B. Unless, following an election held under sec-
25 tion 1330, the board has certified that at least
26 a majority of employees eligible to vote have
27 voted to rescind the authority of the labor orga-
28 nization to make such an agreement;

29 4. Discrimination against employees filing affi-
30 davit or petition. To discharge or otherwise dis-
31 criminate against an employee because he has signed
32 or filed an affidavit or petition, or filed charges
33 or given testimony under this chapter;

34 5. Refusal to bargain. To refuse to bargain
35 collectively in good faith with a labor organization
36 and their representatives who have been recognized or
37 certified;

38 6. Recognize collective bargaining agreement.
39 To recognize, bargain with or sign a collective bar-
40 gaining agreement with any labor organization not
41 certified or demonstrating majority status, if none
42 has been certified;

1 7. Solicitation. To solicit persons to replace
2 employees or fill positions made vacant because of a
3 strike, lockout or other labor dispute, by means of
4 advertisement, posters, oral or other communication,
5 or otherwise, unless the solicitations state plainly
6 and specifically that a strike, lockout or other la-
7 bor dispute exists; or

8 8. Blacklisting. To blacklist any employee or
9 organization or its members for the purpose of deny-
10 ing them employment.

11 §1326. Prohibited acts of employees and employee or-
12 ganizations

13 It is an unfair labor practice for a labor orga-
14 nization or its agents to do the following:

15 1. Restraint on employees' rights or employer's
16 selection of representative. To restrain or coerce:

17 A. Employees in the exercise of the rights guar-
18 anteed in section 1324, provided that this sub-
19 section does not impair the right of a labor or-
20 ganization to prescribe its own rules with re-
21 spect to the acquisition or retention of member-
22 ship in that labor organization; or

23 B. An employer in the selection of his represen-
24 tative for the purposes of collective bargaining
25 or the adjustment of grievances;

26 2. Causing employers to discriminate against em-
27 ployees. To cause or attempt to cause an employer to
28 discriminate against an employee in violation of sec-
29 tion 1325, subsection 3, or to discriminate against
30 an employee who has been denied membership in the la-
31 bor organization or whose membership has been termi-
32 nated on some ground other than his failure to tender
33 the periodic dues and the initiation fees uniformly
34 required as a condition of acquiring or retaining
35 membership;

36 3. Refusal to bargain. To refuse to bargain
37 collectively in good faith with an employer, if the
38 bargaining agent is the representative of his employ-
39 ees, within the meaning of this chapter;

1 4. Strike or work stoppage. To engage in a
2 strike or refuse in the course of employment to per-
3 form any services where the object of the strike or
4 refusal is:

5 A. To force or to require the employer to recog-
6 nize or bargain with a labor organization, unless
7 that labor organization has been certified or
8 recognized as the representative of the employe-
9 es; or

10 B. To force or require any employer to assign
11 particular work to employees in a particular la-
12 bor organization or in a particular trade, craft
13 or class, unless that employer is failing to con-
14 form to an order or certification of the board
15 determining the bargaining representative for em-
16 ployees performing that work;

17 5. Featherbedding. To cause or attempt to cause
18 an employer to pay or deliver, or agree to pay or de-
19 liver, any money or other thing of value, in the na-
20 ture of an exaction, for services which are not per-
21 formed or not to be performed;

22 6. Picketing. To picket, or to have picketed,
23 any employer where an object of the picketing is ei-
24 ther forcing or requiring an employer to recognize or
25 bargain with the labor organization as a representa-
26 tive of his employees, or forcing or requiring the
27 employees of the employer to accept or select that
28 labor organization as their collective bargaining
29 representative, unless that labor organization is
30 currently certified as the collective bargaining rep-
31 resentative of the employees:

32 A. When the employer has lawfully recognized in
33 accordance with this chapter any other labor or-
34 ganization and a question concerning representa-
35 tion may not appropriately be raised under this
36 chapter;

37 B. When a valid election under this chapter has
38 been conducted within the preceding 12 months; or

39 C. When the picketing has been conducted without
40 a petition under this chapter being filed within

1 a reasonable time, which may not exceed 30 days
2 from the commencement of picketing;

3 7. Secondary boycott. To engage in a secondary
4 boycott or to hinder or prevent, by threats, intimi-
5 ation, force, coercion or sabotage, the obtaining,
6 use or disposition of materials, equipment or ser-
7 vices, provided that nothing in this subsection shall
8 prevent sympathetic strikes in support of those in
9 similar occupations working for other employers in
10 the same craft;

11 8. Notice of agricultural employees' strike. To
12 fail to give the board at least 10 days' notice of
13 intention to strike, to be forwarded to the employer,
14 where the exercise of the right to strike by agricul-
15 tural employees of any employer in the State would
16 tend to cause the destruction or serious deteriora-
17 tion of the agricultural product; or

18 9. Construction; not to limit lawful concerted
19 activity. Except as specifically provided in this
20 chapter, in the United States Constitution, the Con-
21 stitution of Maine or the National Labor Relations
22 Act, nothing in this chapter may be construed to lim-
23 it or impair the right to engage in a strike, lock-
24 out, boycott, picket line or any other lawful con-
25 certed activity.

26 §1327. Hot cargo agreements

27 It is an unfair labor practice for any labor or-
28 ganization which represents the employees of an em-
29 ployer and that employer to enter into any contract
30 or agreement, express or implied, under which the em-
31 ployer ceases or refrains, or agrees to cease or re-
32 frain, from handling, using, selling, transporting or
33 otherwise dealing in any of the products of any other
34 employer, or to cease doing business with any other
35 person. Any contract or agreement entered into con-
36 taining such an agreement is, to that extent, unen-
37 forceable and void, except that this section does not
38 apply to an agreement between a labor organization
39 representing agricultural employees and their employ-
40 er, relating to the contracting or subcontracting of
41 work to be done at the site of the farm and related
42 operations.

1 §1328. Freedom of expression

2 The expression or distribution of any views, ar-
3 gument or opinion, whether in written, printed,
4 graphic, oral or visual form shall not constitute or
5 be evidence of an unfair labor practice under this
6 chapter, if the expression contains no threat of re-
7 prisal or force, or promise of benefit.

8 §1329. Obligation to bargain

9 1. Good faith bargaining. It is the obligation
10 of the employer and bargaining agent to bargain col-
11 lectively in good faith, to meet at reasonable times
12 and confer in good faith with respect to wages, hours
13 and other terms and conditions of employment, or the
14 negotiation of an agreement or any questions arising
15 under an agreement, and the execution of a written
16 contract incorporating any agreement reached if re-
17 quested by either party, but the obligation does not
18 compel either party to agree to a proposal or require
19 the making of a concession, provided that, where a
20 collective bargaining contract is in effect, the duty
21 to bargain collectively also means that no party to
22 that contract may terminate or modify that contract,
23 unless the party desiring the termination or modifi-
24 cation:

25 A. Serves a written notice upon the other party
26 to the contract of proposed termination or modi-
27 fication 60 days before the expiration of the
28 contract or, if that contract contains no expira-
29 tion date, 60 days before the time it is proposed
30 to make the termination or modification;

31 B. Offers to meet and confer with the party for
32 the purpose of negotiating a new contract or a
33 contract containing the proposed modifications;

34 C. Notifies the board that a dispute exists
35 within 15 days of the written notice, if no
36 agreement has been reached by that time; and

37 D. Continues in full force and effect all the
38 terms and conditions of the existing contract for
39 a period of 60 days after the written notice is
40 given or until the expiration date of the con-
41 tract, whichever occurs later.

1 2. Engaging in strike. Any employee who engages
2 in a strike within the 60-day period specified in
3 subsection 1 loses his status as an employee for the
4 employer engaged in a particular labor dispute, for
5 the purposes of this chapter, but this loss of em-
6 ployee status terminates if the employee is reem-
7 ployed by the employer.

8 3. Length of contract. No contract entered into
9 between the employer and the bargaining agent may
10 continue in force and effect for more than 3 years.

11 4. Services of panel of mediators. The services
12 of the panel of mediators is made available in any
13 dispute upon the request of a party, or at any time
14 on motion of the Maine Labor Relations Board or its
15 executive director, if the board or executive direc-
16 tor finds that the dispute is subject to settlement
17 through mediation and that it is in the public inter-
18 est to mediate.

19 §1330. Determination of bargaining agent

20 Except as modified in subsections 1, 2 and 3, the
21 applicable provisions of sections 966 and 967 shall
22 cover determinations and elections under this chap-
23 ter. The provisions of section 968, subsection 4,
24 shall cover the review of representative proceedings.

25 1. Guards' units. An individual employed as a
26 guard to enforce against others rules to protect the
27 property of an employer or the safety of persons on
28 the premises shall not be placed in a unit with other
29 employees, and no organization may be certified as
30 the bargaining agent of a unit of guards if it is af-
31 filiated, directly or indirectly, with an organiza-
32 tion which admits employees other than guards to mem-
33 bership.

34 2. Seasonal occupations. Nothing in this sec-
35 tion may be construed as limiting the provisions for
36 unit determinations, elections and representations
37 concerning seasonal occupations under section 1332 or
38 rules adopted by the board under that section.

39 3. Union security deauthorization. When 30% or
40 more of the employees in a bargaining unit covered by

1 an agreement between their employer and a labor organiza-
2 tion requiring membership in that labor organiza-
3 tion as a condition of employment file a petition al-
4 leging that they desire that the authority of the la-
5 bor organization to make such an agreement be re-
6 scinded, the board shall take a secret ballot of the
7 employees in that unit and certify the results of
8 that election, in writing, to the labor organization
9 and to the employer. No election may be conducted in
10 a bargaining unit or a subdivision within which a
11 valid election has been held in the preceding 12
12 months.

13 §1331. Prevention of unfair labor practices; hear-
14 ings; relief

15 1. Prevention of unfair labor practices. The
16 board may prevent any person, employer, employee, em-
17 ployee organization or bargaining agent from engaging
18 in any of the unfair labor practices described in
19 sections 1325 and 1326. This power shall not be af-
20 ected by any other means of adjustment or prevention
21 that has been or may be established by agreement, law
22 or otherwise. Section 968, subsections 5, 6 and 7,
23 apply to any person, employer, employee, employee or-
24 ganization or bargaining agent and this chapter to
25 the same extent and in the same manner the section
26 and paragraphs apply to persons, public employers,
27 public employees, public employee organizations and
28 bargaining agents under chapter 9-A.

29 2. Hearing on unfair labor practices; limita-
30 tions. The board shall hold no hearing based upon
31 any alleged unfair labor practice which occurred more
32 than 12 months before the complaint is filed with the
33 executive director.

34 3. Relief. If, after hearing and argument, upon
35 the preponderance of the evidence received, the board
36 believes that any party named in the complaint has
37 engaged or is engaging in an unfair labor practice,
38 the board in its cease and desist order may make the
39 employees whole for the loss of pay resulting from
40 the employer's refusal to bargain and to provide such
41 other relief as will effectuate the policies of this
42 chapter.

1 §1332. Rules; election; seasonal occupations

2 1. Rules. The board shall enact rules under the
3 Maine Administrative Procedure Act, Title 5, chapter
4 375, and section 968, which are necessary to carry
5 out the purposes of this chapter, including, but not
6 limited to:

7 A. The resolution of unit questions in seasonal
8 occupations;

9 B. Union security deauthorization; and

10 C. Reasonable rights of access to employer
11 premises by nonemployee organizers to solicit the
12 support of agricultural employees.

13 The board may adopt any regulation previously promul-
14 gated under the Municipal Public Employees Labor Re-
15 lations Law, if that regulation is sufficient to car-
16 ry out the purposes of this chapter.

17 2. Provisions. The board's rules shall include
18 provisions insuring that, in any given industry, an
19 opportunity is afforded for an adequate election to
20 be held and that, in seasonal occupations:

21 A. Supervisory, clerical, domestic, technical,
22 executive and professional employees and guards
23 are excluded from an agricultural employee bar-
24 gaining unit;

25 B. All elections are held during the seasonal
26 employment period and as closely as practicable
27 to the peak employment period;

28 C. The secret ballot elections shall be con-
29 ducted no more than 15 days after the filing of
30 the petition of the employees announcing that
31 they desire to be represented by an organization;

32 D. If, at the time the petition is filed, a ma-
33 jority of the employees in a bargaining unit are
34 engaged in a strike, or it appears to the execu-
35 tive director that such a strike is threatened,
36 the executive director shall, with all due dili-
37 gence, attempt to hold a secret ballot election
38 within 48 hours of the filing of the petition;

1 E. The holding of elections under strike circum-
2 stances shall take precedence over the holding of
3 other secret ballot elections if considered nec-
4 essary;

5 F. Unless the executive director determines that
6 there are sufficient grounds to deny certifica-
7 tion under this chapter or under the board's
8 rules, he shall certify the election immediately;
9 and

10 G. Within 5 days of the election, any interested
11 party may file a petition with the board review-
12 ing the executive director's decision to certify
13 or not to certify the election on the basis of
14 the conduct of the election or conduct affecting
15 the result of the election or the determination
16 of the bargaining unit.

17 (1) The board shall immediately upon due
18 notice hold a hearing to determine if it
19 will affirm, reverse or modify its decision
20 to certify or not to certify the election.

21 (2) The executive director's initial deci-
22 sion to certify or not to certify the elec-
23 tion shall remain in full force and effect
24 pending a final decision of the board at the
25 review hearing.

26 (3) The board shall issue a decision no la-
27 ter than 15 days following the certification
28 or denial of certification. The actions of
29 the executive director, under this section,
30 are not subject to review, except upon peti-
31 tion to the board following certification or
32 denial of certification.

33 §1333. Reports of labor organizations; governance;
34 financial reports

35 1. List of labor organizations. The board shall
36 maintain a list of labor organizations representing
37 employees under this chapter. To be recognized as a
38 labor organization and to be included in the list, an
39 organization must file a statement with the board in-
40 cluding:

1 A. The name of the organization;

2 B. The name and address of its secretary or oth-
3 er officer to whom notices may be sent;

4 C. The date of its organization;

5 D. Its affiliations, if any, with other organi-
6 zations; and

7 E. A copy of its articles, bylaws or governing
8 rules which must provide that the organization
9 will:

10 (1) Establish and maintain standards of
11 conduct providing for the maintenance of
12 democratic procedures and practices, includ-
13 ing the fair and equal treatment of all mem-
14 bers;

15 (2) Completely disclose in advance the pur-
16 pose of all assessments and collections;

17 (3) Have a secret ballot election of all
18 officers not less frequently than every 4
19 years; and

20 (4) Prohibit all business and financial in-
21 terests by officers which conflict with
22 their fiduciary responsibilities.

23 No other qualifications for inclusion shall be re-
24 quired, but every labor organization shall notify the
25 board promptly of any changes in any of the informa-
26 tion filed with the board as required by this subsec-
27 tion.

28 2. Financial reports to employees. Every person
29 acting as the representative of employees for collec-
30 tive bargaining under this chapter shall keep an ade-
31 quate record of his financial transactions and shall
32 present a detailed written financial report annually
33 to all employees who are members of the association
34 with which the representative is connected. This re-
35 port, in the form of a balance sheet and an operating
36 statement, must be presented to these employees with-
37 in 60 days after the end of the representative's fis-

1 cal year. If a representative fails to comply with
2 this section, any employee entitled to receive the
3 report may petition the board for an order compelling
4 compliance. An order of the board on such a petition
5 shall be enforceable in the same manner as other or-
6 ders of the board under this chapter.

7 STATEMENT OF FACT

8 The purpose of this bill is to render the bar-
9 gaining position of certain private employees more
10 equal to private employers and to promote the im-
11 provement of the relationship between private employ-
12 ers and their employees by providing a uniform basis
13 for recognizing the right of private employees to
14 join labor organizations of their choosing and to be
15 represented by the organization in the collective
16 bargaining process.

17 The bill is modeled on the National Labor Rela-
18 tions Act and other states' private employee acts.
19 It would cover only those employees who work for cer-
20 tain private employers who are not covered by the na-
21 tional act because the National Labor Relations Board
22 has declined to exercise jurisdiction.

23

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