

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 912

H.P. 679 House of Representatives, March 24, 1987
Reference to the Committee on Agriculture suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative LISNIK of Presque Isle.
Cosponsored by Speaker MARTIN of Eagle Lake,
Representative MAHANY of Easton, and President PRAY of
Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT Regarding the Maine
Agricultural Marketing and Bargaining
Act of 1973.

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

Sec. 1. 5 MRSA §12004, sub-§3, ¶A, sub-¶(4), as
amended by PL 1985, c. 785, Pt. B, §39, is further
amended to read:

(4) Maine Agricultural \$50 \$75/Day 13 MRSA §1956
Bargaining Board

Sec. 2. 13 MRSA §1956, sub-§2, as amended by PL
1977, c. 564, §§67 and 68, is repealed and the fol-
lowing enacted in its place:

1 2. Membership. The Maine Agricultural Bargain-
2 ing Board established by Title 5, section 12004, sub-
3 section 3, shall consist of 5 members and 2 alter-
4 nates, who shall be appointed by the Governor. One
5 member and one alternate shall be appointed from a
6 list of names submitted by agricultural producer or-
7 ganizations organized under this subchapter and chap-
8 ter 81. One member and one alternate shall be ap-
9 pointed from a list of names submitted by processors
10 of agricultural products. In appointing these mem-
11 bers and alternates, the Governor shall seek to
12 represent as many different agricultural products as
13 possible and a member and the alternate for that mem-
14 ber shall not be associated with the same agricultur-
15 al product, unless suitable persons cannot otherwise
16 be appointed. An alternate shall serve when for any
17 reason the respective member is unable to serve.
18 Three members shall be representatives of the public.

19 A. The term of office for all members and alter-
20 nates shall be 3 years. Members selected from
21 lists submitted by agricultural producer organi-
22 zations and by processors of agricultural
23 products may serve no more than 2 terms in suc-
24 cession, not to include the current term of a
25 member serving at the time this section becomes
26 effective. The limitation to 2 successive terms
27 shall not apply to the public members or to al-
28 ternates.

29 B. Board members serving at the time this sec-
30 tion becomes effective shall continue as members
31 for the duration of their present terms. The
32 Governor shall appoint 2 alternate members in ac-
33 cordance with this subsection. The initial terms
34 of these alternates shall expire at the same time
35 as that of the current respective members. The
36 Governor shall designate one of the public mem-
37 bers to be the board's chairman. In the event of
38 a vacancy, the Governor shall, within one month,
39 appoint a successor to fill the unexpired term.
40 All appointments to the board shall be made in
41 conformity with the foregoing plan. Members
42 shall take the oath of office prescribed for
43 state officers.

44 Sec. 3. 13 MRSA §1956, sub-§3, as amended by PL

1 1979, c. 731, §19, is further amended to read:

2 3. Removal. Members of the board shall be re-
3 moved by the Commissioner of Agriculture, Food and
4 Rural Resources upon notice and hearing for neglect
5 of duty or malfeasance in office but for no other
6 cause. If a member is absent from 3 successive meet-
7 ings of the board and if the board finds the member's
8 reasons for the absence to be without merit, that
9 member's conduct shall be considered to be neglect of
10 duty.

11 Sec. 4. 13 MRSA §1956, sub-§5, as amended by PL
12 1983, c. 812, §96, is further amended to read:

13 5. Expenses. Members and alternate members of
14 the board shall be compensated according to the pro-
15 visions of Title 5, chapter 379 and shall receive
16 necessary expenses.

17 Sec. 5. 13 MRSA §1956, sub-§6, as amended by PL
18 1977, c. 694, §277, is further amended to read:

19 6. Rules. The board shall have authority from
20 time to time to adopt, amend and repeal, in the man-
21 ner prescribed by the Maine Administrative Procedure
22 Act, such rules and regulations as may be necessary
23 or appropriate to carry out this Article. The board
24 shall act as expeditiously as possible to adopt in-
25 terpretive and procedural rules for carrying out the
26 purposes of this article.

27 Sec. 6. 13 MRSA §1956, sub-§7 is enacted to
28 read:

29 7. Board's staff and attorney. In hearings un-
30 der sections 1958 and 1965, neither the board's staff
31 nor its attorney shall function as an advocate for
32 any party.

33 Sec. 7. 13 MRSA §1957, sub-§3, ¶¶B and D, as en-
34 acted by PL 1973, c. 621, §1, are amended to read:

35 B. The association has contracts with its mem-
36 bers that are binding under state law membership
37 agreements signed by each of its members which
38 authorize the association to represent the member

1 for the purposes of this article;

2 D. The association represents 51% of the produc-
3 ers and or produced at least 1/2 of the volume of
4 a particular agricultural product for the specif-
5 ic handler involved with those producers and that
6 agricultural product during the previous 12
7 months, not including any volume produced by the
8 handler, its subsidiaries, agents or employees or
9 procured by the handler from sources other than
10 producers; if the board has reasonable cause to
11 question such representation, the board shall re-
12 quire a secret ballot election to certify the
13 percentage of representation; and

14 Sec. 8. 13 MRSA §1957, sub-§4, as amended by PL
15 1977, c. 694, §279, is further amended to read:

16 4. Refiling of petition. If after said the hear-
17 ing, the board does not deem an association quali-
18 fied, it shall, in a manner consistent with the Maine
19 Administrative Procedure Act, Title 5, chapter 375,
20 clearly specify the reasons for such failure to qual-
21 ify in its decision and, upon the refiling of said
22 the petition, shall reconsider its decision within 30
23 days after the date on which said the petition was
24 filed. An association seeking reconsideration shall
25 refile its petition within 30 days of receipt of the
26 board's initial decision.

27 Sec. 9. 13 MRSA §1957, sub-§8 is enacted to
28 read:

29 8. Confidentiality. Information provided to the
30 board by an association regarding the identification
31 of its members and information provided to the board
32 by a handler regarding its volume of purchases of ag-
33 ricultural products and the identification of produc-
34 ers from whom it purchased those products shall be
35 treated by the board as confidential information not
36 to be disclosed to the adverse party or any other
37 person without the consent of the association or the
38 handler, respectively, until the board has rendered
39 its final decision as to the qualification of the as-
40 sociation. After a final decision has been rendered,
41 the information is no longer confidential informa-
42 tion, but its disclosure shall be governed by Title

1 1, section 402, subsection 3, paragraph B.

2 **Sec. 10.** 13 MRSA §1958, sub-§1, as enacted by PL
3 1973, c. 621, §1, is amended to read:

4 1. Definition. As used in this ~~Article~~ article,
5 "bargaining" is the mutual obligation of a handler
6 and a qualified association to meet at reasonable
7 times and negotiate in good faith with respect to the
8 price, terms of sale, compensation for commodities
9 produced or sold, or both, under contract and other
10 contract provisions relative to the commodities that
11 such qualified association represents and the execu-
12 tion of a written contract incorporating any agree-
13 ment reached if requested by either party. Such obli-
14 gation on the part of any handler shall extend only
15 to a qualified association that represents producers
16 with whom such handler has had a prior course of
17 dealing. Such obligation does not require either par-
18 ty to agree to a proposal or to make a concession.
19 The obligation to bargain continues until the com-
20 mencement of required mediation, as provided in sec-
21 tion 1958-B, subsection 2. After the commencement of
22 required mediation, the handler and the qualified as-
23 sociation shall not bargain with each other except as
24 provided in section 1958-B, subsection 2.

25 **Sec. 11.** 13 MRSA §1958, sub-§4, as enacted by PL
26 1973, c. 621, §1, is repealed.

27 **Sec. 12.** 13 MRSA §1958, sub-§6, as repealed and
28 replaced by PL 1977, c. 694, §281, is amended to
29 read:

30 6. Notice; opportunity for hearing. Whenever it
31 is charged that a qualified association or handler
32 refuses to bargain, as that term is defined in sub-
33 section 1, ~~the board shall investigate the charges.~~
34 ~~If, upon investigation, the board considers that~~
35 ~~there is reasonable cause to believe that the person~~
36 ~~charged has refused to bargain in violation of this~~
37 ~~Article,~~ the board shall provide that person with no-
38 tice and opportunity to be heard, in a manner con-
39 sistent with the Maine Administrative Procedure Act,
40 Title 5, chapter 375, as to adjudicatory hearings.

41 **Sec. 13.** 13 MRSA §1958, sub-§8, as enacted by PL

1 1973, c. 621, §1, is amended to read:

2 8. Findings. If, upon a preponderance of the ev-
3 idence, the board determines that the person com-
4 plained of has refused to bargain, in violation of
5 this ~~Article~~ article, it shall state its findings of
6 fact and shall ~~issue and cause to be served on such~~
7 person an order requiring him to bargain as that term
8 is defined in subsection 1 and shall order such fur-
9 ther affirmative action, excluding an award of dam-
10 ages, as will effectuate the policies of this ~~Article~~
11 article. Failure to comply with such an order is a
12 violation of this article. If the board determines
13 that the person complained of has not refused to bar-
14 gain, it shall state its findings of fact and shall
15 issue an order dismissing the charges.

16 Sec. 14. 13 MRSA §1958-A, as amended by PL
17 1985, c. 578, §§3 and 4, is repealed.

18 Sec. 15. 13 MRSA §1958-B is enacted to read:

19 §1958-B. Dispute resolution

20 1. Voluntary mediation. At any time prior to
21 the commencement of required mediation under subsec-
22 tion 2, a handler and a qualified association may mu-
23 tually agree to obtain or may unilaterally obtain the
24 services of a mediator. Regardless whether mediation
25 is sought mutually or unilaterally, both parties
26 shall participate in mediation in good faith. For
27 such mediation, the parties shall use the services of
28 the State's Panel of Mediators. Voluntary mediation
29 shall last for no more than 3 days.

30 2. Required mediation. Any matters remaining in
31 dispute between the handler and a qualified associa-
32 tion 30 days prior to the contract date, as defined
33 in subsection 4, shall be submitted by the parties to
34 required mediation. No later than 30 days prior to
35 the contract date, the parties shall have mutually
36 agreed on a mediator and on sharing the costs of me-
37 diation or shall have notified the board that the
38 services of the State's Panel of Mediators will be
39 needed. If services of the State's Panel of Media-
40 tors are used, the parties shall share all costs of
41 mediation equally. Mediation shall continue for no

1 more than 3 days, unless the mediator earlier de-
2 clares that resolution by mediation is not possible.
3 At the end of the 3 days or upon the mediator's ear-
4 lier declaration, the mediator shall promptly prepare
5 a report specifying all agreements reached in media-
6 tion and recommending that the parties either resume
7 bargaining as to all matters remaining in dispute for
8 a period of time not to exceed 2 days or that the
9 parties submit all matters remaining in dispute to
10 arbitration. The parties shall proceed according to
11 the mediator's recommendation. If the parties are to
12 resume bargaining, that bargaining shall commence on
13 the day after the day on which the mediator makes his
14 recommendation. Any matters remaining in dispute at
15 the end of the specified bargaining period shall be
16 submitted to arbitration.

17 3. Different contract date. Once a contract
18 date has been established as provided in subsection
19 2, the parties may mutually agree to a different con-
20 tract date, provided that they do so no less than 45
21 days prior to the contract date established as pro-
22 vided in subsection 4.

23 4. Definition. The term "contract date" as used
24 in subsection 2, shall have the following meaning.

25 A. Where, on the effective date of this section,
26 there is no contract under this article in exis-
27 tence between the parties, the contract date
28 shall be the date set by the board, in consulta-
29 tion with the parties, as the date by which a
30 contract must be signed by both parties. After
31 that date, as between those parties, the contract
32 date shall be the anniversary of the date set by
33 the board initially.

34 B. Where, on the effective date of this section,
35 a contract under this article exists between the
36 parties, the contract date shall be the anniver-
37 sary of the date upon which that contract was
38 signed by both parties.

39 5. Commencement of arbitration. At the com-
40 mencement of required mediation, the parties shall so
41 notify the board and the commissioner and an arbitra-
42 tor shall be selected as provided in paragraph D.

1 One day after the mediator recommends arbitration or
2 one day after the conclusion of the period of further
3 bargaining, as provided in subsection 2, each party
4 shall submit to the arbitrator its final offer, in
5 which it shall identify all matters as to which the
6 parties agree, with contractual language setting
7 forth these agreements, and all matters as to which
8 the parties do not agree, with contractual language
9 setting forth the party's final offer for resolution
10 of those disagreements.

11 A. As to all matters submitted to arbitration,
12 the arbitrator shall choose between the final of-
13 fers of the parties and is not authorized to re-
14 solve disputes in any other manner. The arbitra-
15 tor may hold hearings and administer oaths, exam-
16 ine witnesses and documents, take testimony and
17 receive evidence and issue subpoenas to compel
18 the attendance of witnesses and the production of
19 records. A person who fails to obey the subpoena
20 of an arbitrator may be punished as for contempt
21 of court on application by the arbitrator to the
22 Superior Court for the county in which the fail-
23 ure occurs. The arbitrator may utilize other in-
24 formation in addition to that provided by or
25 elicited from the parties. The arbitrator shall
26 issue a decision within 10 days of the commence-
27 ment or arbitration and that decision shall be
28 binding on the parties.

29 B. Within 2 days of the arbitrator's decision,
30 the board shall prepare a contract which shall
31 include all terms agreed to by the parties in
32 bargaining or settled by voluntary or required
33 mediation or by arbitration and shall present the
34 contract to the parties, who shall sign the con-
35 tract within 2 days of its presentation.

36 C. The commissioner, in consultation with the
37 board, shall establish a panel of arbitrators,
38 who shall be qualified by education, training or
39 experience to carry out the responsibilities of
40 an arbitrator under this article.

41 D. Upon notification by the parties as provided
42 in this subsection, the commissioner shall submit
43 to the parties a list containing an odd number of

1 names of members of the panel of arbitrators who
2 are available for arbitration. The parties shall
3 alternately strike names from the list until a
4 single name is left, who shall be the arbitrator.
5 The order of striking names shall be determined
6 by chance.

7 E. All costs of arbitration shall be borne
8 equally by the parties. The arbitrator shall
9 submit a statement of charges and expenses to the
10 parties and to the board. Each party shall pay
11 the arbitrator directly.

12 6. Violation. Failure by a party to comply with
13 any of the requirements of this section is a viola-
14 tion of this article.

15 Sec. 16. 13 MRSA §1959, sub-§1, as enacted by PL
16 1973, c. 621, §1, is amended to read:

17 1. Complaint. The board shall have power to com-
18 plain to the Superior Court for the enforcement of
19 its orders made under section sections 1958 and 1965
20 and for appropriate temporary relief or restraining
21 order, and shall file in the court the original or
22 certified copy of the entire record in the proceed-
23 ing, and shall cause notice of such complaint to be
24 served upon such person, and said court shall there-
25 upon have jurisdiction of the proceeding and of the
26 question determined therein, and shall have power to
27 grant such temporary relief or restraining order as
28 it deems just and proper, and to make and enter a
29 judgment enforcing, modifying and enforcing as so
30 modified, or setting aside in whole or in part, the
31 order of the board. No objection that has not been
32 urged before the board shall may be considered by the
33 court, unless the failure or neglect to urge such ob-
34 jection shall be excused because of extraordinary
35 circumstances. The findings of the board with respect
36 to questions of fact, if supported by substantial evi-
37 dence on the record considered as a whole, shall be
38 conclusive. If either party shall apply to the court
39 for leave to adduce additional evidence and shall
40 show to the satisfaction of the court that such addi-
41 tional evidence is material and that there were rea-
42 sonable grounds for the failure to adduce such evi-
43 dence in the hearing before the board, the court may

1 order such additional evidence to be taken before the
2 board and to be made a part of the record. The board
3 may modify its findings as to the facts, or make new
4 findings, by reason of additional evidence so taken
5 and filed, and it shall file such modified or new
6 findings, which findings with respect to questions of
7 fact if supported by substantial evidence on the
8 record considered as a whole shall be conclusive, and
9 shall file its recommendations, if any, for the modi-
10 fication or setting aside of its original order.

11 Sec. 17. 13 MRSA §1959, sub-§3, as amended by PL
12 1977, c. 694, §285, is further amended to read:

13 3. Stay. The commencement of proceedings for ju-
14 dicial review shall not stay enforcement of the
15 board's decision, but the reviewing court may order a
16 stay upon such terms as it deems proper. The provi-
17 sions of Title 5, section 11004, shall govern with
18 respect to any application for a stay of an order of
19 the board.

20 Sec. 18. 13 MRSA §1959, sub-§5 is enacted to
21 read:

22 5. Penalties. In an action to enforce an order
23 or in a separate action, the board may seek civil
24 penalties for violation of this article. In any such
25 action, a violation shall be punishable by a civil
26 penalty of not more than \$10,000. When the violation
27 is a refusal to bargain under section 1958 or an un-
28 fair practice under section 1965, each day that such
29 conduct occurred shall constitute a separate viola-
30 tion. If a qualified association is found to have
31 committed a violation under sections 1965 and 1985,
32 and if a civil penalty is imposed, and if the court
33 finds that the association is unable to pay the civil
34 penalty, the court shall instead issue an order sus-
35 pending for one year the association's rights as a
36 qualified association under this article.

37 Sec. 19. 13 MRSA §1960, as enacted by PL 1973,
38 c. 621, §1, is repealed.

39 Sec. 20. 13 MRSA §1961, as enacted by PL 1973,
40 c. 621, §1, is repealed.

1 Sec. 21. 13 MRSA §1962, as enacted by PL 1973,
2 c. 621, §1, is repealed.

3 Sec. 22. 13 MRSA §1963, first ¶, as enacted by
4 PL 1973, c. 621, §1, is amended to read:

5 In any proceeding before the board under this Act
6 article, the board may issue subpoenas for the at-
7 tendance of witnesses, or for the production of docu-
8 ments and may examine witnesses under oath provided
9 that:

10 Sec. 23. 13 MRSA §1965, sub-§1, ¶¶A and B, as
11 enacted by PL 1973, c. 621, §1, is amended to read:

12 A. To coerce a producer in the exercise of his
13 right to join and belong to or to refrain from
14 joining or belonging to an association or to
15 refuse to deal with a producer because of the ex-
16 ercise of his right to join and belong to an as-
17 sociation except as provided in section 1958,
18 subsections-4-and subsection 5;

19 B. To discriminate against a producer with re-
20 spect to price, quantity, quality or other terms
21 of purchase, acquisition or other handling of ag-
22 ricultural products ~~because of his membership in~~
23 ~~or contract with an association~~;

24 Sec. 24. 13 MRSA §1965, sub-§§3 to 6 are enacted
25 to read:

26 3. Notice; opportunity for hearing. Whenever it
27 is charged that a qualified association or a handler
28 has committed an unfair practice under this section,
29 the board shall provide that person with notice and
30 opportunity to be heard, in a manner consistent with
31 the Maine Administrative Procedure Act, Title 5,
32 chapter 375, as to adjudicatory hearings.

33 4. Hearing. Hearings held pursuant to subsec-
34 tion 3 shall be held in a manner consistent with the
35 Maine Administrative Procedure Act, Title 5, chapter
36 375, as to adjudicatory hearings. The board shall
37 request that the Attorney General or any attorney in
38 his department designated by the Attorney General, be
39 present at these hearings and shall advise the board

1 on procedure and on the admissibility of any evi-
2 dence.

3 5. Findings. If, upon a preponderance of the
4 evidence, the board determines that the person com-
5 plained of has committed an unfair practice, in vio-
6 lation of this article, it shall state its findings
7 of fact and shall issue an order requiring the person
8 to cease and desist from such conduct and shall order
9 such further affirmative action, excluding an award
10 of damages, as will effectuate the policies of this
11 article. Failure to comply with such an order is a
12 violation of this article. If the board determines
13 that the person complained of has not committed an
14 unfair practice, it shall state its findings of fact
15 and shall issue an order dismissing the charges.

16 6. Frivolous charges. If the board determines
17 that a charge of unfair practice is frivolous, it
18 shall state its findings of fact and may issue a rep-
19 rimand to the person making the charge. Where the
20 board determines that a person who made a charge
21 which was determined to be frivolous did so knowing
22 the charge to be frivolous, it shall state its find-
23 ings of fact and shall issue an order requiring that
24 person to pay the reasonable attorneys fees and dou-
25 ble the amount of other reasonable costs incurred by
26 the person against whom the charge was made in de-
27 fending against the charge before the board. Where
28 it is disputed, reasonableness shall be determined by
29 the board. The order shall also require that person
30 to reimburse the State for the per diem payments made
31 to board members for their attendance at the hearing
32 on the charge. Failure to comply with such an order
33 is a violation of this article.

1

STATEMENT OF FACT

2 In 1973, the Legislature enacted the Agricultural
3 Marketing and Bargaining Act to provide for the orga-
4 nization of agricultural producers into associations
5 for the purpose of bargaining with handlers for the
6 purchase and sale of commodities produced by an asso-
7 ciation's members. In recent years, the law has been
8 increasingly used by agricultural producers. Quali-
9 fied associations now represent producers of potatoes
10 and peas used for processing and producers of poul-
11 try. There is interest among producers of other com-
12 modities in organizing to make use of the law.

13 Experience has demonstrated the need for changes
14 in the law to make it more workable and effective.
15 At the request of the Joint Standing Committee on Ag-
16 riculture of the 112th Legislature, the Department of
17 Agriculture, Food and Rural Resources agreed to form
18 a working group with representatives of all of the
19 interests affected by the law to discuss the issues
20 of concern, with the hope of reaching agreement on
21 the changes to the law. The working group met month-
22 ly throughout the summer and fall, discussed all of
23 the issues and reached agreement on many, but was not
24 able to reach agreement on some of the most signifi-
25 cant issues.

26 Another factor in considering changes to the
27 present law is a decision recently reached by the Su-
28 preme Court which found one provision of the present
29 law unconstitutional. This provision played a sig-
30 nificant part in the operation of the present law.
31 Its removal makes the law less capable of achieving
32 its intended end.

33 This bill includes all of the changes to the
34 present law on which the working group, as of its fi-
35 nal meeting, had reached agreement. In addition, it
36 includes provisions covering all of the matters on
37 which the group was not able to agree. The following
38 provisions of this bill are matters on which the
39 working group agreed:

40 Section 1 increases board members' per diem from
41 \$50 to \$75 per day.

1 Section 2 provides for the appointment of members
2 and alternates and the distribution of representation
3 among different commodity groups. This section fur-
4 ther limits the respective producer and processor or-
5 ganizations' representatives to 2 successive terms of
6 3 years.

7 Section 3 provides that absence without good rea-
8 son from 3 successive meetings is grounds for remov-
9 al.

10 Section 4 provides that members shall receive re-
11 imbursement for expenses.

12 Section 5 instructs the board to adopt rules ex-
13 peditiously.

14 Section 6 provides that in hearings the board's
15 staff and council shall not advocate for any party.

16 Section 7 clarifies the requirement that an asso-
17 ciation have membership agreements which authorize
18 the association to represent its members for purposes
19 of the Act, and specifies that in determining the
20 proportion of a handler's needs which is produced by
21 an association's members, any volume produced by the
22 handler itself or obtained by the handler from
23 sources other than producers is not to be considered.

24 Section 8 specifies that an association wanting
25 reconsideration following denial of its petition for
26 qualification must refile within 30 days.

27 Section 9 provides for confidentiality of infor-
28 mation submitted to the board by associations and
29 handlers.

30 Section 10 provides that the obligation to bar-
31 gain ceases after the commencement of required media-
32 tion.

33 Section 11 repeals the Maine Revised Statutes,
34 Title 13, section 1958, subsection 4, which was found
35 to be unconstitutional by the Supreme Court.

36 Section 12 eliminates requirement that an allega-
37 tion of refusal to bargain be investigated prior to

1 hearing, as the hearing itself is the best method of
2 investigation.

3 Section 13 directs the board to issue written
4 findings and an order of dismissal when it finds that
5 a refusal to bargain has not occurred and removes
6 confusing language regarding service of an order on a
7 party.

8 Section 14 repeals Title 13, section 1958-A, be-
9 cause it is no longer necessary.

10 Section 15 replaces the present nonbinding arbi-
11 tration with provisions for voluntary mediation, re-
12 quired mediation and binding arbitration. In order
13 to operate effectively, the Agricultural Marketing
14 and Bargaining Law seeks to establish parties of
15 equal bargaining power and to encourage those parties
16 to reach negotiated resolutions of all matters at is-
17 sue in the contract between them. The present law
18 contains provisions for nonbinding arbitration which
19 were intended to encourage negotiated resolutions and
20 also to provide a mechanism for resolution of issues
21 which negotiations fail to resolve. However, these
22 nonbinding arbitration provisions have been less than
23 effective in achieving these 2 goals. These new pro-
24 visions for dispute resolution are intended to
25 achieve the same ends, to encourage the parties to
26 reach negotiated resolutions and to provide a mecha-
27 nism for resolution, by mediation or arbitration,
28 when negotiations fail. Experience from other
29 states, notably Michigan, indicates that the type of
30 dispute resolution process provided in this bill is
31 particularly effective in encouraging the parties to
32 reach a negotiated resolution of their differences.

33 Section 16 makes technical changes which correct
34 inconsistencies with the present law.

35 Section 17 replaces the previous stay provisions
36 with the procedures of the Maine Administrative Pro-
37 cedure Act, Title 5, chapter 375.

38 Section 18 provides for penalties for violations.
39 The present law is incomplete and unclear, so that
40 its enforcement is more difficult.

Sections 19, 20 and 21 repeal sections 1960 and 1961 as no longer necessary, and section 1962 which relates to procedures now governed by the Administrative Procedure Act.

Section 22 corrects a technical inconsistency.

Section 23 further restricts handlers from discriminating against a producer, regardless of his membership in an association.

Section 24 provides for board hearings on allegations of unfair practices and for issuance of findings and orders when the board makes its determination on such an allegation, for a reprimand when the board finds that the allegation was frivolous and for payment of costs when the board finds that a person making an allegation found to be frivolous did so knowing that it was frivolous.

1015030687