

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2181

H.P. 1574

House of Representatives, January 10, 1990

Reported by Representative TARDY from the Joint Standing Committee on Agriculture.

Reference to the Joint Standing Committee on Agriculture suggested and printing ordered under Joint Rule 19.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Amend the Maine Agricultural Marketing and Bargaining
Act of 1973.**



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

2 **Sec. 1. 13 MRSA §1956, sub-§2, as amended by PL 1989, c. 503,**
4 Pt. B, §70, is further amended to read:

6 **2. Membership.** The Maine Agricultural Bargaining Board
8 established by Title 5, section 12004-B, subsection 7, shall
10 consist of 5 members and 2 alternates, who shall be appointed by
12 the Governor. One member and one alternate shall be appointed
14 from a list of names submitted by agricultural producer
16 organizations organized under this subchapter and chapter 81.
18 One member and one alternate shall be appointed from a list of
20 names submitted by processors of agricultural products. In
22 appointing these members and alternates, the Governor shall seek
24 to represent as many different agricultural products as possible
and a member and the alternate for that member shall may not be
associated with the same agricultural product, unless suitable
persons cannot otherwise be appointed. An alternate shall serve
when for any reason the respective member is unable to serve.
Three members shall be representatives of the public. A public
member may not hold any interest or stock or securities in any
producer, dealer, processor or other person whose activities are
subject to the jurisdiction of the board.

26 A. The term of office for all members and alternates shall
28 be 3 years. Members selected from lists submitted by
30 agricultural producer organizations and by processors of
32 agricultural products may serve no more than 2 terms in
succession, not to include the current term of a member
serving at the time this section becomes effective. The
limitation to 2 successive terms shall may not apply to the
public members or to alternates.

34 B. Board members serving at the time this section becomes
36 effective shall continue as members for the duration of
38 their present terms. The Governor shall appoint 2 alternate
40 members in accordance with this subsection. The initial
42 terms of these alternates shall expire at the same time as
44 that of the current respective members. The Governor shall
46 designate one of the public members to be the board's
chair. In the event of a vacancy, the Governor shall,
within one month, appoint a successor to fill the unexpired
term. All appointments to the board shall must be made in
conformity with the foregoing plan. Members shall take the
oath of office prescribed for state officers.

48 **Sec. 2. 13 MRSA §1958-B, sub-§2, as enacted by PL 1987, c.**
50 155, §15, is amended to read:

52 **2. Required mediation.** Any matters remaining in dispute
between the handler and a qualified association 30 days prior to
the contract date, as defined in subsection 4, shall must be

submitted by the parties to required mediation. No later than 30
2 days prior to the contract date, the parties shall have mutually
4 agreed on a mediator and on sharing the costs of mediation or
6 shall have notified the board that the services of the State's
8 Panel of Mediators will be needed. If services of the State's
10 Panel of Mediators are used, the parties shall share all costs of
12 mediation equally. Mediation shall may continue for no more than
14 3 days for annual crops; all other commodities shall may last no
16 more than 5 days, unless the mediator earlier declares that
18 resolution by mediation is not possible. Mediation may be
20 extended by mutual agreement by of the bargaining parties. At
22 the end of the mediation period or upon the mediator's earlier
24 declaration, the mediator shall ~~promptly prepare a report~~
~~specifying all agreements reached in mediation and recommending~~
~~that the parties either resume bargaining as to all matters~~
~~remaining in dispute for a period of time not to exceed 2 days or~~
~~that the parties submit all matters remaining in dispute to~~
~~arbitration~~ has 3 days to prepare a written report. The parties
shall proceed according to the mediator's recommendation. ~~If the~~
~~parties are to resume bargaining, that bargaining shall commence~~
~~on the day after the day on which the mediator makes his~~
~~recommendation. Any matters remaining in dispute at the end of~~
~~the specified bargaining period shall be submitted to arbitration.~~

Prior to issuing a report, the mediator shall determine by mutual
agreement of the parties those issues which are no longer in
dispute and need not be submitted to arbitration. The mediator's
report must also specify those issues that continue to be in
dispute. In specifying the remaining disputed issues, the report
may include the mediator's opinion as to the position of each of
the parties. The report may include the mediator's opinion that
one or more of the parties were not bargaining in good faith, or
that one or more of the parties consistently maintained
unreasonable positions on one or more issues.

The mediator's report may recommend the parties resume bargaining
on all matters remaining in dispute for a period not to exceed 2
days or that the parties submit all matters remaining in dispute
to arbitration. The parties shall proceed according to the
mediator's recommendation. Any resumption of bargaining must
occur on the day following the mediator's recommendation to
resume bargaining. Any matters remaining in dispute at the end
of the specified bargaining period must be submitted to
arbitration.

The mediator shall provide a copy of the report to each of the
parties at least one day before issuing the report to the
arbitrator and the board.

50 **Sec. 3. 13 MRSA §1958-B, sub-§5, as amended by PL 1989, c.**
52 201, §§1 and 2, is repealed and the following enacted in its
place:

2 5. Arbitration. The parties shall notify the board and the
3 Commissioner of Agriculture, Food and Rural Resources at the
4 commencement of required mediation and an arbitrator must be
5 selected as provided in paragraph D. One day after the mediator
6 recommends arbitration or one day after the conclusion of the
7 period of further bargaining, as provided in subsection 2, each
8 party shall submit to the arbitrator its final offer in which it
9 shall identify all matters as to which the parties agree with
10 contractual language setting forth these agreements, and all
11 matters as to which the parties do not agree with contractual
12 language setting forth the party's final offer for resolution of
13 those disagreements.

14
15 A. For all matters submitted to arbitration, the arbitrator
16 shall choose between the final offers of the parties. The
17 arbitrator shall use the mediator's report, prepared
18 pursuant to subsection 2, to resolve any question as to
19 whether a matter has been submitted to arbitration. If the
20 parties reach an agreement on the matters under arbitration
21 before the arbitrator issues a decision, they may submit a
22 joint final offer that the arbitrator shall accept and
23 render as the decision. The arbitrator may hold hearings and
24 administer oaths, examine witnesses and documents, take
25 testimony and receive evidence, and issue subpoenas to
26 compel the attendance of witnesses and the production of
27 records. A person who fails to obey the subpoena of an
28 arbitrator may be punished for contempt of court on
29 application by the arbitrator to the Superior Court for the
30 county in which the failure occurs. The arbitrator may
31 utilize other information in addition to that provided by or
32 elicited from the parties. The arbitrator shall issue a
33 decision within 10 days of the commencement of arbitration
34 and that decision shall be binding on the parties. If the
35 parties reach an agreement on the matters in the
36 arbitrator's decision prior to signing the contract, they
37 may submit a joint final offer to the arbitrator. The
38 arbitrator shall rescind the previous decision and accept
39 and render the joint final offer as the decision.

40
41 B. Within 5 days of the arbitrator's decision, the board
42 shall prepare a contract which must include all terms agreed
43 to by the parties in bargaining or settled by voluntary or
44 required mediation or by arbitration and must present the
45 contract to the parties who shall sign the contract within 2
46 days of its presentation.

47 C. The commissioner, in consultation with the board, shall
48 establish a panel of arbitrators, who must be qualified by
49 education, training or experience to carry out the
50 responsibilities of an arbitrator under this article.
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2 D. Upon notification by the parties as provided in this
3 subsection, the commissioner shall submit to the parties a
4 list containing an odd number of names of members of the
5 panel of arbitrators who are available for arbitration. The
6 parties shall alternately strike names from the list until a
7 single name is left, who shall be the arbitrator. The order
8 of striking names must be determined by chance.

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

14 **Sec. 4. 13 MRSA §1958-B, sub-§5-A is enacted to read:**

15
16 5-A. Criteria for arbitrator decisions. The arbitrator
17 shall consider the following factors in making a decision
18 pursuant to subsection 5:

19
20 A. Prices or projected prices for the agricultural
21 commodity paid by competing handlers in the market area or
22 competing market areas;

23
24 B. The quantity of the commodity produced or projections of
25 production in the production area or competing market areas;

26
27 C. The relationship between the quantity produced and the
28 quantity handled by the handler;

29
30 D. The producer's costs of production including the cost
31 that would be involved in paying farm labor a fair wage rate;

32
33 E. The average consumer prices for goods and services,
34 commonly known as the cost of living;

35
36 F. The impact of the award on the competitive position of
37 the handler in the market area or competing market areas;

38
39 G. The impact of the award on the competitive position of
40 the agricultural commodity in relationship to competing
41 commodities;

42
43 H. A fair return on investment;

44
45 I. The kind, quality or grade of the commodity involved;

46
47 J. Prior agreements of the parties; and

48
49 K. Other factors which are normally or traditionally taken
50 into consideration in determining prices, quality, quantity
51 and the costs of other services involved.
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STATEMENT OF FACT

This bill is the result of a study on the Agricultural Marketing and Bargaining Act of 1973, authorized by the Legislative Council. The bill accomplishes the following.

The bill clarifies that a public member of the Maine Agricultural Bargaining Board may not have conflicting interests while serving on the board.

The bill adds a requirement that mediators issue a written report at the end of a mediation period that includes, when appropriate, a list of any unresolved issues that should go to arbitration.

The bill repeals and replaces existing language governing the arbitration process that was amended by Public Law 1989, chapter 201. This action will serve to clarify some confusion created by an automatic repeal provision of Public Law 1989, chapter 201 and a provision is added to establish the mediator's report as the final word on whether a matter is submitted to arbitration.

The bill enacts criteria for arbitrators to use in making their decisions on unresolved matters.