

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1654

H.P. 1177

House of Representatives, March 25, 1997

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### An Act to Allow Agricultural Workers to Bargain Collectively.

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Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SAMSON of Jay.  
Cosponsored by Representatives: BERRY of Livermore, CAMERON of Rumford, CLARK of Millinocket, HATCH of Skowhegan, LEMAIRE of Lewiston, RINES of Wiscasset, Senators: CATHCART of Penobscot, TREAT of Kennebec.

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

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Sec. 1. 26 MRSA c. 16 is enacted to read:

CHAPTER 16

AGRICULTURAL EMPLOYEES LABOR RELATIONS ACT

§1321. Purpose

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between agricultural employers and their employees by providing a uniform basis for recognizing the right of agricultural employees to join labor organizations of their own choosing and to be represented by those organizations in collective bargaining for terms and conditions of employment. It is also the public policy of this State and the purpose of this chapter, by encouraging voluntary agreements between agricultural employers, employees and their organizations, to limit industrial strife, promote stability in the farm labor force and improve the economic status of workers and businesses.

§1322. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agriculture. "Agriculture" means farming in all its branches and includes but is not limited to the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in 12 United States Code, Section 1141j(g); the raising of livestock, bees, furbearing animals or poultry; and any practices, including any forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market and delivery to storage, to market or to carriers for transportation to market.

2. Agricultural employee. "Agricultural employee" or "employee" means a person engaged in agriculture; however, this subsection may not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to the Labor Management Relations Act, 29 United States Code, Section 152, subsection 3. "Agricultural employee" includes any individual whose work has ceased as a consequence of, or in

2 connection with, any current labor dispute or because of any  
3 prohibited labor practice.

4 **3. Agricultural employer.** "Agricultural employer" or  
5 "employer" means a person or entity who directly or indirectly  
6 engages the services or suffers or permits the work of an  
7 agricultural employee, and includes any person acting on behalf  
8 of an employer directly or indirectly and any person or entity  
9 exercising control over the terms and conditions of employment.  
10 "Agricultural employer" is limited to those employers with more  
11 than 75 agricultural employees for at least 180 days in the  
12 preceding calendar year or those employers with any agricultural  
13 employee on a farm with more than 1,000 hogs.

14 **4. Bargaining agent.** "Bargaining agent" means a lawful  
15 organization or association, or an individual representative of  
16 an organization or association, that has as its primary purpose  
17 the representation of employees in their employment relations  
18 with employers, and that has been determined by the employer or  
19 the executive director to be the choice of the majority of the  
20 bargaining unit, referred to in this chapter as the "unit," as  
21 its representative.

22 **5. Board.** "Board" means the Maine Labor Relations Board.

23 **6. Executive director.** "Executive director" means the  
24 Executive Director of the Maine Labor Relations Board.

25 **§1323. Rights of agricultural employees; organization,**  
26 **collective bargaining**

27 Agricultural employees have the right to self-organize; to  
28 form, join or assist labor organizations; to bargain collectively  
29 through representatives of their own choosing; and to engage in  
30 other concerted activities for the purpose of collective  
31 bargaining or other mutual aid or protection. Agricultural  
32 employees also have the right to refrain from such activities  
33 except to the extent that this right may be affected by an  
34 agreement requiring membership in a labor organization as a  
35 condition of employment as authorized in section 1324, subsection  
36 1, paragraph B.

37 **§1324. Prohibited acts of agricultural employers, agricultural**  
38 **employees and agricultural employee organizations**

39 **1. Agricultural employer prohibitions.** Agricultural  
40 employers and their representatives and agents are prohibited  
41 from:

2 A. Interfering with, restraining or coercing employees in  
3 the exercise of the rights guaranteed in section 1323;

4 B. Encouraging or discouraging membership in any employee  
5 organization by discrimination in regard to hire or tenure  
6 of employment or any term or condition of employment. This  
7 chapter, or any other provision of law, may not preclude an  
8 agricultural employer from making an agreement with a labor  
9 organization not established, maintained or assisted by any  
10 action defined in this section as a prohibited practice to  
11 require as a condition of employment membership in that  
12 labor organization on or after the 5th day following the  
13 beginning of employment or the effective date of the  
14 agreement, whichever is later, if the labor organization is  
15 the representative of the agricultural employees as provided  
16 in section 1327 in the appropriate collective-bargaining  
17 unit covered by the agreement;

18 C. Dominating or interfering with the formation, existence  
19 or administration of any employee organization;

22 D. Discharging or otherwise discriminating against an  
23 agricultural employee because the employee has signed or  
24 filed any affidavit, petition or complaint or given any  
25 information or testimony under this chapter;

26 E. Refusing to bargain collectively with the bargaining  
27 agent of its employees as required by section 1325;

30 F. Refusing to return striking employees or locked out  
31 employees to their previous positions when the strike or  
32 labor dispute is settled or when striking employees offer  
33 unconditionally to return to work even if their previous  
34 positions have been filled by replacement workers; and

36 G. Blacklisting any employee organization or its members  
37 for the purpose of denying employment.

38 **2. Agricultural employee prohibitions.** Agricultural  
39 employees and agricultural employee organizations and their  
40 agents, members and bargaining agents are prohibited from:

41 A. Interfering with, restraining or coercing employees in  
42 the exercise of the rights guaranteed in section 1323 or an  
43 employer in the selection of the employer's representative  
44 for purposes of collective bargaining or the adjustment of  
45 grievances. This paragraph does not impair the right of a  
46 labor organization to prescribe its own rules with respect  
47 to the acquisition or retention of membership in that  
48 organization;  
49 organization;

2 B. Causing or attempting to cause an employer to  
4 discriminate against an employee in violation of subsection  
6 1, paragraph B or to discriminate against an employee with  
8 respect to whom membership in the organization has been  
denied or terminated on grounds other than failure to tender  
the periodic dues and the initiation fees uniformly required  
as a condition of acquiring or retaining membership;

10 C. Refusing to bargain collectively with an employer as  
12 required by section 1325;

14 D. Requiring employees covered by an agreement authorized  
16 under subsection 1, paragraph B to pay, as a condition to  
18 becoming a member of an agricultural employee organization,  
20 a fee in an amount the board finds excessive or  
22 discriminatory under the circumstances. In making such a  
finding, the board shall consider, among other relevant  
factors, the practices and customs of labor organizations in  
the agriculture industry and the wages currently paid to the  
employees affected; and

24 E. Causing or attempting to cause an agricultural employer  
26 to pay or deliver, or agree to pay or deliver, any money or  
other thing of value, in the nature of an exaction, for  
services not performed or not to be performed.

28 3. Violations. The board shall process violations of this  
30 section in the manner provided in section 1329.

32 §1325. Obligation to bargain

34 1. Negotiations. It is the obligation of the agricultural  
36 employer and the bargaining agent to bargain collectively.  
"Collective bargaining" means, for the purposes of this chapter,  
the mutual obligation of the agricultural employer and the  
bargaining agent:

38 A. To meet at reasonable times;

40 B. To meet within 10 days after receipt of written notice  
42 from the other party requesting a meeting for collective  
44 bargaining purposes, provided the parties have not otherwise  
agreed in a prior written contract;

46 C. To confer and negotiate in good faith with respect to  
48 wages, hours and other terms and conditions of employment,  
except that, by the mutual obligation, neither party may be  
50 compelled to agree to a proposal or be required to make a  
concession;

2 D. To execute in writing any agreements arrived at, the  
4 terms of which are subject to negotiation; and

6 E. To participate in good faith in the mediation and  
8 arbitration procedures required by this section.

10 Upon the filing by any person of a petition not earlier than the  
12 90th day nor later than the 60th day preceding the expiration of  
14 the 12-month period following initial certification, the board  
16 shall determine whether an employer has bargained in good faith  
18 with the currently certified labor organization. If the board  
20 finds that the employer has not bargained in good faith, it may  
22 extend the certification for up to one additional year, effective  
24 immediately upon the expiration of the previous 12-month period  
26 following initial certification.

28 **2. Mediation.** This subsection governs the mediation of  
30 disputes between agricultural employers and agricultural  
32 employees.

34 A. It is the declared policy of the State to provide full  
36 and adequate facilities for the settlement of disputes  
38 between employers and employees or their representatives and  
40 other disputes subject to settlement through mediation.

42 B. Mediation procedures, as provided by section 965,  
44 subsection 2, must be followed when either party to a  
46 controversy requests mediation services prior to arbitration  
48 or upon motion of the board or the executive director.

50 C. The employer, labor organization or employees involved  
in collective bargaining shall notify the executive  
director, in writing, at least 30 days prior to the  
expiration of a contract or at least 30 days prior to  
entering into negotiations for a first contract between the  
employer and the employees, or when a dispute arises between  
the parties threatening interruption of work.

D. Any information disclosed by either party to a dispute  
to the Panel of Mediators, established pursuant to section  
965, subsection 2, or any of its members in the performance  
of this subsection is privileged.

**3. Arbitration.** When the parties are unable to reach an  
agreement on a contract, within 90 days from and including the  
date of their first meeting, either party may petition the board  
to initiate final and binding arbitration regarding all  
unresolved issues.

2           A. Upon receipt of the petition, the executive director  
4           shall issue an order requiring arbitration and requesting  
6           the parties to select one or more arbitrators. If the  
8           parties have not selected an arbitrator or an arbitration  
10           panel within 5 days after the issuance of the order, the  
12           board shall order each party to select one arbitrator within  
14           5 days and, if the 2 arbitrators can not select a 3rd  
              neutral arbitrator within 5 days, the board shall submit a  
              list within 5 days from which the parties may alternately  
              strike names until a single name is left, who the board  
              shall appoint as arbitrator. The arbitration panel shall  
              call a hearing to be held within 10 days after the date of  
              appointment. In reaching a decision under this paragraph,  
              the arbitration panel shall consider the following factors:

16                   (1) A comparison between the wages, hours and working  
18                   conditions of the employees involved in the arbitration  
20                   proceeding with those of other employees who perform  
22                   similar services in private employment in other  
                      jurisdictions competing in the same labor market and  
                      who are covered by a collective bargaining agreement  
                      with their employer;

24                   (2) The overall compensation presently received by the  
26                   employees, including direct wage compensation,  
28                   vacation, holidays and excused time, insurance and  
                      pensions, medical and hospitalization benefits, the  
                      continuity and stability of employment and any other  
                      benefits received;

30                   (3) The overall compensation presently received by the  
32                   nonbargaining unit employees of the employer and the  
34                   employer's overall financial condition, including but  
                      not limited to sales, income and assets;

36                   (4) Any other factors not included in subparagraphs  
38                   (1) to (3) that are normally and traditionally taken  
40                   into consideration in the determination of wages, hours  
42                   and working conditions through voluntary collective  
                      bargaining, mediation arbitration or otherwise between  
                      the parties, or in private employment, including the  
                      average Consumer Price Index; and

44                   (5) The need to establish fair and reasonable  
46                   conditions in relation to job qualifications and  
48                   responsibilities and the goal of promoting stability in  
                      the labor force and farm labor relations.

50           B. The determination by the arbitration panel on all issues  
              is final and binding on the parties.



2           C. A hearing held pursuant to this subsection must be  
4           informal and the rules of evidence for judicial proceedings  
6           are not binding. Any documentary evidence and other  
8           information determined to be relevant by the arbitration  
10           panel may be received in evidence. The arbitration panel  
          may administer oaths and require by subpoena attendance and  
          testimony of witnesses and production of books, records and  
          other evidence relating to the issues presented. The  
          hearing must be concluded within 20 days of the date of  
          commencement.

12           D. The arbitration panel shall submit the panel's report to  
14           the parties and the board within 30 days after the  
16           conclusion of the hearing, unless that time limitation is  
          extended by the executive director.

18           4. Costs. The costs for the services of the mediator and  
20           of the neutral arbitrator including per diem expenses, actual and  
22           necessary travel and subsistence expenses and the costs of hiring  
24           the premises where any mediation or arbitration proceedings are  
26           conducted must be shared equally by the parties to the  
          proceedings provided that any party that intentionally and  
          unreasonably prolongs the proceedings or causes excessive costs  
          or expenses is responsible for excessive costs or expenses. All  
          other costs are assumed by the party incurring them.

28           5. Arbitration administration. The cost for services  
30           rendered and expenses incurred by the State Board of Arbitration  
32           and Conciliation, as established in section 931, and any state  
34           cost allocation program charges are shared equally by the parties  
36           to the proceedings and paid into a nonlapsing special fund  
38           administered by the board. Authorization for services rendered  
40           and expenditures incurred by members of the State Board of  
42           Arbitration and Conciliation is the responsibility of the  
44           executive director. All costs are paid from that special fund.  
46           The executive director may estimate costs upon receipt of a  
48           request for services and collect these costs before providing the  
50           services. The executive director shall bill or reimburse the  
          parties for any difference between the estimated costs that were  
          collected and the actual costs of providing the services. When  
          one party has paid its share of the estimated cost of providing  
          the service, the matter is scheduled for hearing. A party that  
          has not paid the estimated or actual cost of providing services  
          within 60 days of the date the invoice for those costs was issued  
          is, in the absence of good cause shown, liable for the amount of  
          the invoice and a penalty of 25% of the amount of the invoice.  
          Any penalty amount collected pursuant to this subsection remains  
          in the special fund administered by the board. The executive  
          director is authorized to collect any sums due and payable

2 pursuant to this subsection through civil action. In such an  
3 action, the court must allow litigation costs, including court  
4 costs and reasonable attorney's fees, to be deposited into the  
5 General Fund if the executive director is the prevailing party in  
6 the action.

7 6. Termination and modification. This subsection governs  
8 termination and modification of collective-bargaining contracts  
9 between agricultural employers and agricultural employees.

10 A. When a collective-bargaining contract is in effect  
11 covering agricultural employees, the duty to bargain  
12 collectively also means that a party to the contract may not  
13 terminate or modify the contract unless the party desiring  
14 termination or modification:

15 (1) Serves written notice upon the other party to the  
16 contract of the proposed termination or modification  
17 not less than 60 days before the expiration date of the  
18 contract or, if the contract contains no expiration  
19 date, 60 days before the time it is proposed to make  
20 the termination or modification;

21 (2) Offers to meet and confer with the other party for  
22 the purpose of negotiating a new contract or a contract  
23 containing the proposed modifications;

24 (3) Notifies the board within 30 days after notice of  
25 existence of a dispute, provided no agreement has been  
26 reached by that time; and

27 (4) Continues in full force and effect, without  
28 resorting to strike or lockout, all the terms and  
29 conditions of the existing contract, for a period of 60  
30 days after the notice is given or until the expiration  
31 of the contract, whichever occurs later.

32 B. The duties imposed upon agricultural employers and labor  
33 organizations by paragraph A, subparagraphs (2) to (4)  
34 become inapplicable upon an intervening certification of the  
35 board that the labor organization or individual that is a  
36 party to the contract has been superseded as, or has ceased  
37 to be, the representative of the employees, subject to  
38 sections 1326 and 1327, and the duties so imposed may not be  
39 construed to require either party to discuss or agree to any  
40 modification of the terms and conditions contained in a  
41 contract for a fixed period, if the modification is to  
42 become effective before the terms and conditions can be  
43 reopened under the provisions of the contract. Any  
44 agricultural employee who engages in a strike within the  
45 contract term is subject to the provisions of the contract.  
46 Any agricultural employee who engages in a strike within the  
47 contract term is subject to the provisions of the contract.  
48 Any agricultural employee who engages in a strike within the  
49 contract term is subject to the provisions of the contract.  
50 Any agricultural employee who engages in a strike within the

2 60-day period specified in this section loses status as an  
4 agricultural employee of the agricultural employer engaged  
6 in the particular labor dispute, for the purposes of  
8 sections 1324 and 1326 to 1329, but loss of status for that  
10 employee terminates if and when that employee is reemployed  
12 by the employer.

### 8 **§1326. Bargaining unit; how determined**

10 **1. Unit determination.** If there is a dispute between the  
12 agricultural employer and an employee or employees over the  
14 appropriateness of a bargaining unit for purposes of collective  
16 bargaining or between the agricultural employer and an employee  
18 or employees over whether a supervisory or other position is  
20 included in the bargaining unit, the executive director or the  
22 executive director's designee shall make the determination,  
24 except that anyone excepted from the definition of agricultural  
26 employee under section 1322 may not be included in a bargaining  
28 unit. The executive director or the executive director's  
30 designee conducting bargaining unit determination proceedings may  
32 administer oaths and require by subpoena the attendance and  
34 testimony of witnesses and the production of books, records and  
36 other evidence relative or pertinent to the issues represented.

26 **2. Criteria.** In determining whether a supervisory position  
28 should be excluded from the proposed bargaining unit, the  
30 executive director or the executive director's designee shall  
32 consider, among other criteria, if the principal functions of the  
34 position are characterized by performing management control  
36 duties such as scheduling, assigning, overseeing and reviewing  
38 the work of subordinate employees or performing duties that are  
40 distinct and dissimilar from those performed by the employees  
42 supervised or exercising judgment in adjusting grievances,  
44 applying other established personnel policies and procedures and  
46 enforcing a collective bargaining agreement or establishing or  
48 participating in the establishment of performance standards for  
50 employees and taking corrective measures to implement those  
standards.

40 **3. Determination of bargaining unit appropriateness.** In  
42 determining the bargaining unit that is appropriate for purposes  
44 of collective bargaining, the executive director or the executive  
46 director's designee shall ensure that employees have the fullest  
48 freedom in exercising the rights guaranteed by this chapter and  
50 ensure a clear and identifiable community of interest among  
employees, and avoid excessive fragmentation among bargaining  
units.

50 **4. Bargaining unit clarification.** If there is a certified  
or currently recognized bargaining agent and the circumstances  
surrounding the formation of an existing bargaining unit are

2 alleged to have changed sufficiently to warrant modification in  
4 the composition of that bargaining unit, the agricultural  
6 employer or any recognized or certified bargaining agent may file  
8 with the executive director a petition for a unit clarification,  
10 when the parties are unable to agree on appropriate modifications  
12 and there is no question concerning representation.

8 **§1327. Determination of bargaining agent**

10 **1. Voluntary recognition.** An agricultural employee  
12 organization may file a request with an agricultural employer  
14 alleging that a majority of the agricultural employees in an  
16 appropriate bargaining unit wish to be represented for the  
18 purpose of collective bargaining between the agricultural  
20 employer and the employees' organization. The request must  
22 describe the grouping of jobs or positions that constitute the  
unit considered appropriate and include a demonstration of  
majority support. The request for recognition must be granted by  
the agricultural employer, unless the agricultural employer  
requests an election to determine whether the organization  
represents a majority of the members in the bargaining unit.

24 **2. Elections.** The executive director, or a designee, upon  
26 signed request of an agricultural employer alleging that one or  
28 more agricultural employees or agricultural employee  
30 organizations have presented to the agricultural employer a claim  
32 to be recognized as the representative of a bargaining unit of  
agricultural employees or upon signed petition of at least 30% of  
a bargaining unit of agricultural employees that they desire to  
be represented by an organization shall conduct a secret ballot  
election to determine whether the organization represents a  
majority of the members in the bargaining unit.

34 **A.** The election may be conducted at suitable work locations  
36 or through the United States mail and the procedures adopted  
38 and employed must ensure that neither the employee  
40 organizations nor the management representatives involved in  
the election have access to information that identifies a  
voter.

42 **B.** The ballot must contain the name of the organization and  
44 that of any other organization showing written proof of at  
46 least 10% representation of the agricultural employees  
within the unit, together with a choice for an agricultural  
employee to designate that the employee does not desire to  
be represented by a bargaining agent.

48 If more than one organization is on the ballot and none of  
50 the 3 or more choices receives a majority vote of the  
agricultural employees voting, a run-off election must be

2           held. The run-off ballot must contain the 2 choices that  
3           received the largest and next largest number of votes.

4           3. Bargaining agent certified. When an organization  
5           receives the majority of votes of those voting, the executive  
6           director shall certify that organization as the bargaining  
7           agent. The agricultural employer shall recognize the bargaining  
8           agent certified as representing a bargaining unit as the sole and  
9           exclusive bargaining agent for all of the employees in the  
10           bargaining unit unless and until a decertification election by  
11           secret ballot is held and the bargaining agent declared by the  
12           executive director as not representing a majority of the unit.

14           4. Decertification. When 30% of the employees in a  
15           certified bargaining unit petition for a bargaining agent to be  
16           decertified, the procedures for conducting an election on the  
17           question are the same as for representation as a bargaining agent  
18           set forth in this section.

20           5. Questions concerning representation. A question  
21           concerning representation may not be raised within one year of a  
22           certification or attempted certification. When a valid  
23           collective bargaining agreement is in effect, a question  
24           concerning unit or representation may not be raised except during  
25           the period neither more than 90 days nor less than 60 days prior  
26           to the expiration date of the agreement. Matters of unit  
27           clarification may be raised at any time.

28           6. Representation of employees within unit regardless of  
29           membership. The bargaining agent certified by the executive  
30           director as the exclusive bargaining agent is required to  
31           represent all the agricultural employees within the unit without  
32           regard to membership in the organization certified as bargaining  
33           agent, and an agricultural employee at any time may present the  
34           employee's grievance to the agricultural employer and have such a  
35           grievance adjusted without the intervention of the bargaining  
36           agent, if the adjustment is not inconsistent with the terms of a  
37           collective bargaining agreement then in effect and if the  
38           bargaining agent's representative has been given reasonable  
39           opportunity to be present at any meeting of the parties called  
40           for the resolution of the grievance.

41           §1328. Maine Labor Relations Board; rule-making procedure and  
42           review

43           1. Rule-making procedure. Proceedings conducted under this  
44           chapter are subject to the rules and procedures of the board  
45           under section 968, subsection 3.  
46

2           2. Review of representation proceedings. Any person  
3           aggrieved by any ruling or determination of the executive  
4           director under sections 1326 and 1327 may appeal to the board,  
5           within 15 days of the announcement of the ruling or  
6           determination, except that in the instance of objections to the  
7           conduct of an election or challenged ballots the time period is 5  
8           working days. Upon receipt of an appeal, the board shall hold a  
9           hearing, within a reasonable time having given notice in writing  
10          7 days in advance of the time and place of that hearing to the  
11          aggrieved party, the labor organizations or the bargaining agent  
12          and the agricultural employer. The hearings must be in  
13          accordance with section 968. Decisions of the board made pursuant  
14          to this subsection are subject to review by the Superior Court  
15          under the Maine Rules of Civil Procedure, Rule 80C, in accordance  
16          with the standards specified in section 1292, if the complaint is  
17          filed within 15 days of the date of issuance of the decision.  
18          The complaint must be served upon the board and all parties to  
19          the board proceedings by certified mail, return receipt requested.

20           **§1329. Prevention of prohibited acts**

21           1. Prevention of prohibited acts; board powers. The board  
22           may prevent a person, an agricultural employer, an agricultural  
23           employee, an agricultural employee organization or a bargaining  
24           agent from engaging in a prohibited act under section 1324. This  
25           subsection is not affected by any other adjustment or prevention  
26           that has been or may be established by agreement, law or  
27           otherwise.  
28

29           2. Complaints. An agricultural employer, an agricultural  
30           employee, an agricultural employee organization or a bargaining  
31           agent that believes that a person, an agricultural employer, an  
32           agricultural employee, an agricultural employee organization or a  
33           bargaining agent has engaged in or is engaging in a prohibited  
34           practice may file a complaint with the executive director stating  
35           the charges. The complaint may not be filed with the executive  
36           director until the complaining party has served a copy of it upon  
37           the party named in the complaint. Upon receipt of a complaint,  
38           the executive director or the executive director's designee must  
39           review the charge to determine whether the facts as alleged  
40           constitute a prohibited act. If it is determined that the facts  
41           do not, as a matter of law, constitute a violation, the charge  
42           must be dismissed by the executive director, subject to review by  
43           the board. If the executive director or the board determines  
44           that a formal hearing is necessary, the executive director must  
45           serve upon the parties to the complaint a notice of the  
46           prehearing conference and of the hearing before the board. The  
47           notice must include the time and place of hearing for the  
48           prehearing conference or the hearing, as appropriate. A hearing  
49           may not be held based upon an alleged prohibited practice  
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2 occurring more than 6 months before the filing of the complaint  
3 with the executive director. The party named in the complaint  
4 has the right to file a written answer to the complaint and to  
5 appear in person or otherwise and give testimony at the place and  
6 time fixed for the hearing. Through the discretion of the board,  
7 any other person or organization may be allowed to intervene in  
8 the proceeding and to present testimony. This subsection does  
9 not restrict the right of the board to require the executive  
10 director or the executive director's designee to hold a  
11 prehearing conference on any prohibited practice complaint prior  
12 to the hearing before the board and to take an action, including  
13 dismissal, to attempt to resolve disagreements between the  
14 parties or to recommend an order to the board, when the executive  
15 director determines appropriate, subject to review by the board.

16 **3. Cease and desist order.** After hearing and argument if,  
17 upon a preponderance of the evidence received, the board is of  
18 the opinion that a party named in the complaint has engaged in or  
19 is engaging in a prohibited practice, the board must state in  
20 writing its findings of fact and the reasons for its conclusions  
21 and issue and cause to be served upon that party an order  
22 requiring the party to cease and desist from the prohibited  
23 practice and to take affirmative action, including reinstatement  
24 of employees with or without back pay, and making employees  
25 whole, when the board considers relief appropriate, for the loss  
26 of pay resulting from the employer's refusal to bargain and to  
27 provide other relief, including payment of attorney's fees and  
28 costs. An order of the board may not require the reinstatement  
29 of an individual as an employee who has been suspended or  
30 discharged or the payment to the employee of any back pay if the  
31 individual was suspended or discharged for cause.

32 **4. Dismissal of complaint.** After hearing and argument if,  
33 upon a preponderance of the evidence received, the board is not  
34 of the opinion that the party named in the complaint has engaged  
35 in or is engaging in any prohibited practice, the board shall  
36 state in writing its findings of fact and the reasons for its  
37 conclusions and issue an order dismissing the complaint.

40 **5. Enforcement action; scope of review; consolidation of**  
41 **actions.** If, after the issuance of an order by the board  
42 requiring a party to cease and desist or to take any other  
43 affirmative action, the party fails to comply with the order of  
44 the board, the party in whose favor the order operates or the  
45 board may file a civil action in Superior Court to compel  
46 compliance with the order of the board. Upon application of a  
47 party in interest or the board, the court may grant temporary  
48 relief or a restraining order and may impose terms and conditions  
49 as determined just and proper. The board's decision may not be  
50 stayed except when it is clearly shown to the satisfaction of the

2 court that substantial and irreparable injury will be sustained  
3 or that there is a substantial risk of danger to the public  
4 health or safety. In an action to compel compliance, the  
5 Superior Court may not review the action of the board other than  
6 to determine whether the board has acted in excess of its  
7 jurisdiction. If an action to review the decision of the board  
8 is pending at the time of the commencement of an action for  
9 enforcement pursuant to this subsection or is filed later, the 2  
10 actions must be consolidated.

11 **6. Review.** Either party may seek a review by the Superior  
12 Court of a decision or order of the board by filing a complaint  
13 in accordance with the Maine Rules of Civil Procedure, Rule 80C,  
14 if the complaint is filed within 15 days of the date of issuance  
15 of the decision. The complaint must be served upon the board and  
16 all parties to the board proceeding by certified mail, return  
17 receipt requested. Upon the filing of the complaint, the court  
18 shall schedule the hearing at the earliest possible time and  
19 notify all interested parties and the board. Pending review and  
20 upon application of an interested party, the court may grant  
21 temporary relief or a restraining order and impose terms and  
22 conditions that the court determines just and proper, except that  
23 the board's decision is not stayed unless it is clearly shown to  
24 the satisfaction of the court that substantial and irreparable  
25 injury will be sustained or that there is a substantial risk of  
26 danger to the public health or safety. The executive director  
27 shall immediately file in the court the record in the proceeding  
28 certified by the executive director or a member of the board. The  
29 record must include all documents filed in the proceeding and the  
30 transcript, if any. After hearing, which must be held not less  
31 than 7 days after notice, the court may enforce, modify, enforce  
32 as modified or set aside in whole or in part the decision of the  
33 board, except that the findings of the board on questions of fact  
34 are final unless shown to be clearly erroneous. An appeal to the  
35 Law Court must be the same as an appeal from an interlocutory  
36 order under section 6.

37 **7. Privileges seeking injunctive relief.** In a judicial  
38 proceeding authorized by this section in which injunctive relief  
39 is sought, sections 5 and 6 apply, except that neither an  
40 allegation nor proof of unavoidable substantial and irreparable  
41 injury to the complainant's property is required to obtain a  
42 temporary restraining order or injunction.

#### 43 **§1330. Hearings**

44  
45 **1. Hearings; rules of evidence; evidence.** Hearings  
46 conducted by the board must be informal and the rules of evidence  
47 prevailing in judicial proceedings are not binding. Any  
48



documentary evidence and other evidence determined to be relevant by the board may be received.

**2. Subpoenas; evidence; witness fees.** The chair may administer oaths and require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board are allowed the same fees paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, must be paid by the Treasurer of State on warrants drawn by the State Controller.

**§1331. Binding contract arbitration**

A collective bargaining agreement between an agricultural employer and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure. An arbitrator with the power to make binding decisions pursuant to any such provision has no authority to add to, subtract from or modify the collective bargaining agreement.

**§1332. Suits by and against unincorporated employee organizations**

In any judicial proceeding brought under this chapter or to enforce the rights guaranteed by this chapter, an unincorporated employee organization may sue or be sued in the name by which it is known.

**§1333. Review**

Either party may seek a review of a binding determination by an arbitration panel or arbitrator pursuant to the Uniform Arbitration Act, Title 14, Chapter 706.

**§1334. Federal precedents**

The board must consult precedents under the National Labor Relations Act, 29 United States Code, Sections 151, et. seq., as amended, as appropriate.

**SUMMARY**

This bill accomplishes the following:

1. It gives employees of agricultural employers the right to bargain collectively;

2. It specifies the parties' mutual obligation to bargain;

2           3. It creates procedures for determining bargaining units  
and bargaining agents, including procedures for appeal of such  
4 determinations; and

6           4. It prohibits specified acts of agricultural employers  
and agricultural labor organizations and provides for enforcement  
8 of those prohibitions by the Maine Labor Relations Board and  
subsequently through civil action in Superior Court.