

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1282

S.P. 413

In Senate, March 11, 2003

An Act To Amend the Laws Governing Agricultural Marketing and Bargaining

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Senator BENNETT of Oxford, Representative SMITH of Van Buren and Senator: STANLEY of Penobscot, Representatives: BENNETT of Caribou, FISCHER of Presque Isle, JACKSON of Fort Kent, JOY of Crystal.

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

2
4 **Sec. 1. 7 MRSA §1091**, as amended by PL 1987, c. 384, §1, is further amended to read:

6 **§1091. Dues and fair share fees**

8 For purposes of this section, "fair share fee" means the fee deducted by a dealer or processor from a nonmember producer. The fair share fee must be used to defray the costs incurred by a recognized collective bargaining unit in fulfilling its duty to represent producers in their relations with the dealer or processor. The fair share fee may not exceed the standard initiation fee, membership dues and general assessments of the collective bargaining unit.

16 If a member of an association as defined in Title 13, section 1774, subsection 3 makes a written assignment of dues to that association, those dues shall must be paid out of funds due or to become due to that member for any farm product produced or to be produced by that member, or for any services performed or to be performed by that member in the production of farm products. Any person who accepts or receives the product or services from the member is bound by that assignment after receiving written notice from the association or from the member, and that person shall withhold the assigned dues from amounts payable by ~~him~~ that person to the member thereafter during the period of the assessment.

30 Nonmember producers who supply farm products to dealers or processors who are subject to collective bargaining must be assessed an association fair share fee of 75% of the amount charged to members as dues. This assessment must be collected in the same manner as member dues.

36 **Sec. 2. 7 MRSA §1092**, as amended by PL 1987, c. 384, §2, is further amended to read:

38 **§1092. Assignment**

40 No provision ~~which~~ that is inserted in any contract or other instrument that is prepared by a dealer or processor ~~which~~ that makes an assignment of the dues or fair share fees described in section 1091 ineffective is valid.

46 An assignment of dues or fair share fees may not exceed 1% of the total value of the product or services delivered by the member to the dealer or processor.

2 **Sec. 3. 7 MRSA §1093**, as repealed and replaced by PL 1987, c.
384, §3, is amended to read:

4 **§1093. Remittance of dues and fair share fees; accounting**

6 **1. Sale of farm products.** Subject to subsection 3, a
dealer or processor shall, on or before the 15th day of each
8 month, pay to an association all dues and fair share fees
assigned to the association pursuant to section 1091 with respect
10 to farm products received from members and nonmembers by the
dealer or processor during the preceding calendar month. At the
12 time of each monthly payment of dues and fair share fees, the
dealer or processor shall provide to the association a summary
14 statement showing, for each member and nonmember, the quantity of
farm products received, the payment due to the member and
16 nonmember for those farm products prior to the deduction of dues
or fair share fees and the amount of dues or fair share fees
18 deducted therefrom pursuant to the assignment.

20 **2. Performance of farm services.** Subject to subsection 3,
a dealer or processor shall, on or before the 15th day of each
22 month, pay to an association all dues and fair share fees
assigned to the association pursuant to section 1091 with respect
24 to services performed by members and nonmembers in the production
of farm products ~~which~~ that were received by the dealer or
26 processor during the preceding calendar month. At the time of
each monthly payment of dues and fair share fees, the dealer or
28 processor shall provide to the association a summary statement
showing, for each member and nonmember, the quantity of farm
30 products for which services were performed and the amount of dues
or fair share fees deducted therefrom pursuant to the assignment.

32 **3. Flat rate dues and fair share fees deductions.** In the
34 event that the dues and fair share fees assigned to the
association pursuant to section 1091 are not calculated on the
36 quantity of farm products sold or tendered by members and
nonmembers to the dealer or processor, the dealer or processor
38 shall pay the dues and fair share fees to the association
according to the payment schedule contained in the assignment.
40 No payment schedule may require the payment of assigned dues and
fair share fees more frequently than once a month.

42 **Sec. 4. 13 MRSA §1958-B, sub-§2**, as enacted by PL 1987, c.
44 155, §15, is amended to read:

46 **2. Required mediation.** Any matters remaining in dispute
between the handler and a qualified association 30 days prior to
48 the contract date, as defined in subsection 4, shall must be
submitted by the parties to required mediation. No later than 30
50 days prior to the contract date, the parties shall must have

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

22
24 **Sec. 5. 13 MRSA §1958-B, sub-§5, ¶¶A and D,** as repealed and
replaced by PL 1989, c. 703, §2, are amended to read:

26 A. For all matters submitted to arbitration, the arbitrator
shall ~~choose between~~ issue a decision that resolves the
28 matter or matters in a manner that is equal to or within the
parameters of either of the final offers of the parties. If
30 the parties reach an agreement on the matters under
arbitration before the arbitrator issues a decision, they
32 may submit a joint final offer that the arbitrator shall
accept and render as the decision. The arbitrator may hold
34 hearings and administer oaths, examine witnesses and
documents, take testimony and receive evidence, and issue
36 subpoenas to compel the attendance of witnesses and the
production of records. A person who fails to obey the
38 subpoena of an arbitrator may be punished for contempt of
court on application by the arbitrator to the Superior Court
40 for the county in which the failure occurs. The arbitrator
may utilize other information in addition to that provided
42 by or elicited from the parties. The arbitrator shall issue
a decision within 10 days of the commencement of arbitration
44 and that decision shall ~~be~~ is binding on the parties. If
the parties reach an agreement on the matters in the
46 arbitrator's decision prior to signing the contract, they
may submit a joint final offer to the arbitrator. The
48 arbitrator shall rescind the previous decision and accept
and render the joint final offer as the decision.

50

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 the specific
6 pending arbitration and have expressed a willingness to
7 serve. The parties shall alternately strike names from the
8 list until a single name is left, who ~~shall be~~ will serve as
9 the arbitrator. The order of striking names must be
10 determined by chance.

12 SUMMARY

14 This bill makes the following changes to the laws governing
15 agricultural marketing and bargaining.

16 1. It specifies that mediation of disputes between the
17 handler and the qualified association may not continue for more
18 than 3 consecutive days for annual crops.

20 2. It requires that, for matters submitted to arbitration,
21 the arbitrator issue a decision that resolves the matter in a
22 manner that is equal to either one of the final offers of the
23 parties or within the parameters of either one of the final
24 offers of the parties.

26 3. It requires that the list of arbitrators submitted
27 contain the names of only those arbitrators who are available for
28 the specific pending arbitration and have expressed a willingness
29 to serve.

32 4. It assesses on nonmember producers an association fair
33 share fee of 75% of the amount charged to members as fees.
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