

# MAINE STATE LEGISLATURE

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E I G H T Y - N I N T H   L E G I S L A T U R E

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**Legislative Document**

**No. 829**

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S. P. 387

In Senate, February 14, 1939.

Referred to Committee on Labor. Sent down for concurrence and 1000 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Chase of Washington by request.

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S T A T E   O F   M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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**AN ACT to Diminish Labor Disputes Affecting the Public Welfare; and  
to Create a Labor Relations Commission.**

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

**Sec. 1. Findings and policy.** Under prevailing economic conditions individual employees do not possess full freedom of association or actual liberty of contract. Employers in many instances organized in corporate or other forms of ownership associations with the aid of government authority have superior economic power in bargaining with employees. This growing inequality of bargaining power substantially and adversely affects the general welfare of the state by creating variations and instability in competitive wage rates and working conditions within and between industries and by depressing the purchasing power of wage earners, thus

- (a) creating sweat shops with their attendant dangers to the health, peace, and morals of the people,
- (b) increasing the disparity between production and consumption, and
- (c) tending to produce and aggravate recurrent business depressions.

The denial by some employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining tend to lead to strikes, lockouts and other forms of industrial strife and

unrest, which are inimical to the public safety and welfare and frequently endanger the public health.

Experience has proved that protection by law of the right of employees to organize and bargain collectively removes certain recognized sources of industrial strife and unrest, encourages practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and tends to restore equality of bargaining power between employers and employees.

In the interpretation and application of this act, and otherwise, it is hereby declared to be the public policy of the state to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers.

All the provisions of this act shall be liberally construed for the accomplishment of this purpose.

This act shall be deemed an exercise of the police power of the state of Maine for the protection of the public welfare, prosperity, health and peace of the people of the state.

**Sec. 2. Definitions.** When used in this act—

(1) The term “person” includes 1 or more individuals, partnerships, associations, corporations, legal representatives, trustees in bankruptcy, or receivers.

(2) The term “employer” includes any person, other than the United States, or any person subject to the National Labor Relations Act or the Railway Labor Act, as they both may be amended from time to time, acting directly or indirectly on behalf of or in the interest of an employer, with or without the employer’s knowledge, but a labor organization shall be considered an employer only with respect to individuals employed by such organizations.

(3) The term “employee” shall include any employee and shall not be limited to the employees of a particular employer, unless the act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse or in the domestic service of any person in his home or any individual employed as an agricultural laborer; provided, however,

that a supervisory employee who is a member of a labor organization and urges other employees to join said labor organization or any affiliate thereof shall not, in said activities, be considered an employer.

(4) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and a labor organization serving as a representative need not be limited in membership to employees of, the employer whose employees are represented.

(5) The term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein.

(6) The term "company union" means any committee, employee representation plan, organization, agency, or association of employees which exists in whole or in part for the purpose of dealing with an employer or employers concerning grievances or terms or conditions of employment, membership in which is limited to the employees of one particular employer or which the employer has initiated or created or whose initiation, creation, existence or administration he has suggested, participated in, dominated, interfered with, or supervised, or which the employer maintains, finances, controls, dominates, or assists in maintaining or financing, or to which the employer donates free services, equipment, materials, office, meeting space or anything else of value for the use thereof, provided, however, that the term "company union" shall not be construed to include any labor organization or branch thereof which is affiliated with an association of labor organizations of more than 10 trades or crafts which association has been in existence for a period of 3 years prior to the adoption of this act.

(7) The term "supervisory employees" means foremen and those employees of higher rank. By "foremen" is meant employees who are regularly employed in supervising the work of others in a manner similar to that performed by foremen in similar factories, plants, or business establishments, and who are empowered to "hire" or "fire".

(8) The terms "collective bargaining" or "bargain collectively" include but are not restricted to the process of negotiating terms and conditions of employment conducted by employers and employees through their representatives, for the purpose of embodying the results of such negotiations in an agreement for a period of time.

(9) The term "unfair labor practice" means any unfair labor practices listed in section 8 of this act.

(10) The term "labor dispute" includes, but is not restricted to, any

controversy between employers and employees or their representatives as above defined, concerning

- (a) terms, tenure or conditions of employment or concerning
- (b) the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to negotiate, fix, maintain or change terms or conditions of employment, or concerning
- (c) the violation of any of the rights granted or affirmed by this act, regardless of whether the disputants stand in the proximate relations of employer and employee, and regardless of whether the employees of the disputing employer are on strike.

(11) The term "commission" shall mean the Labor Relations Commission of the state of Maine as created by section 3 of this act.

(12) The term "policies of this act" means the policies set forth in section 1 of this act.

**Sec. 3. Labor Relations Commission.** (a) There is hereby created an independent administrative agency in the executive branch of the government to be known as the "Maine Labor Relations Commission", hereinafter referred to as the "commission," which shall be composed of 3 members who shall be appointed by the governor with the advice and consent of the council. Each member of the commission at the time of his appointment shall be a citizen of the United States and a resident of the state of Maine, and shall have been a qualified elector in the state for a period of at least 1 year next preceding his appointment. No member during his period of service shall hold any other office under the law of this state or of the United States.

1 of the original members shall be appointed for a term of 1 year, 1 for a term of 2 years and 1 for a term of 3 years, but their successors shall be appointed for a term of 3 years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he is to succeed. The governor shall designate 1 of the members to be chairman of the commission and not more than 2 members of the commission shall be members of the same political party. Any member of the commission may be removed by the governor, with the advice and consent of the council, for neglect of duty, misconduct or malfeasance in office, and for no other cause, after being given a copy of the charges and an opportunity to be publicly heard in person or by council.

(b) A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission, and 2 members of the commission shall, at all times, constitute a quorum. The

commission shall have an official seal of which courts shall take judicial notice.

(c) The commission shall at the end of each fiscal year make a report in writing to the governor, stating in detail the work it has done in hearing and deciding cases and otherwise, and it shall sign and report in full an opinion in every case decided by it.

**Sec. 4. Salaries; officers and employees.** Each member of the commission shall receive a salary of \$12.50 for each day of actual service. The commission shall appoint an executive secretary and such attorneys trial examiners and directors for local areas and such other employees as it may from time to time find necessary for a proper performance of its duties in carrying out the provisions of this act. The reasonable and necessary travelling and other expenses of the members of the commission and other officers and employees of the commission, while actually engaged in the performance of their duties, shall be paid from the state treasury upon the audit and warrant of the controller, upon vouchers approved by the chairman. Attorneys appointed under this section may, at the direction of the commission, appear for and represent the commission in any case in court. The board may establish or utilize such regional, local, or other agencies and utilize such voluntary and uncompensated services, as may from time to time be needed.

All employees of the commission with the exception of its executive secretary, directors for local areas, attorneys, and trial examiners shall be appointed by the commission from eligible lists promulgated by the state personnel board. The commission may dismiss any employee for delinquencies or misconduct in his or her duties. No employee of the commission, except attorneys, trial examiners, regional directors, executive secretary and experts, shall be suspended, dismissed, or furloughed without a public hearing upon due notice. The laws of the state regarding the compensation of officers and employees of the state shall apply. Practical training and experience, education, and character shall be a determining factor in the decision of the commission as to the eligibility of any person seeking appointment or promotion and no political test or endorsement of any such person shall be given or sought by the commission.

Nothing in this act shall be construed to authorize the commission to appoint individuals for the purpose of conciliation obtained from the department of labor and industry, or other departments.

**Sec. 5. Principal offices; inquiries elsewhere.** The principal office of the commission shall be in the city of Augusta, but it may meet and exercise any or all of its powers at any other place within the state. The commis-

sion may, by 1 or more of its members or by such agents or agencies as it may designate, conduct in any part of this state any proceedings, hearing, investigation, inquiry, or election necessary to the performance of its functions. A member who participates in any such proceedings shall not be disqualified from subsequently participating in a decision of the commission in the same case.

**Sec. 6. Rules and regulations.** (a) The commission shall have authority from time to time to make, amend, rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the commission shall prescribe.

(b) The commission or any of its agents or employees shall not engage in any effort to mediate, conciliate, or arbitrate any labor dispute.

**Sec. 7. Rights of employees.** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection; providing that nothing in this act or in the public policy of this state shall preclude an employer from making an agreement with a labor organization requiring as a condition of employment membership therein of all employees eligible to such membership.

**Sec. 8. Unfair labor practices.** It shall be an unfair labor practice for an employer—

(1) To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of employees or their representatives in the exercise of any right created or affirmed by this act.

(2) To discriminate in regard to hire or tenure or any term or condition of employment

(a) in order to prevent or hinder the exercise of any right created or affirmed by this act, or

(b) because an employer has filed charges, given testimony or aided in the initiation or prosecution of any proceeding or inquiry under the provision of this act; provided, that nothing in this act, or in any other law of the state, shall preclude an employer from making an agreement with an organization which is not a company union which requires as a condition of employment membership therein, if such organization is a labor organization as defined in section 2 (5) and is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(3) To create, maintain, recognize for the purpose of collective bargaining, or bargain with any company union.

(4) To support a labor organization by

(a) financing it, or

(b) compensating anyone for services performed in its behalf, or

(c) contributing to it money, services, materials, or anything else of value; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(5) To require an employee or a prospective employee, as a condition of employment, to join any company union or to refrain from farming, joining, or assisting a labor organization of his own choosing; provided, that nothing in this act shall render illegal a check-off by an employer of union dues pursuant to an agreement with a labor organization.

(6) To refuse to bargain collectively with the representative designated by a majority of the employees in an appropriate collective bargaining unit, as exclusive representatives of all the employees in such unit, or to refuse to put into writing and sign an agreement when reached, with such representative, or to refuse to discuss grievances with such representatives of employees; provided that nothing in this act shall prevent a labor organization or any representative designated by less than a majority of employees in a unit appropriate for collective bargaining from exercising any right created or affirmed by this act, or from bargaining collectively with an employer, so long as no other labor organization or other representative has been designated by a majority of the employees in such appropriate unit.

(7) By any other act to interfere with, restrain or coerce employees in the exercise of any right created or affirmed by this act.

**Sec. 9. Representatives and elections.** (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting at an election conducted pursuant to this section, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer; and provided further, that where no representatives have been designated as exclusive representatives for all employees as provided in this section, the employer shall have the duty to bargain collectively and to discuss grievances with representatives of his employees for and in behalf of the employees they actually represent.



(b) The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or any other unit, provided that when a craft exists, composed of 1 or more employees, then such craft shall constitute a unit appropriate for the purpose of collective bargaining for such employee or employees; a majority of such craft employees may designate a representative for such unit; and provided further, that an appropriate unit shall not embrace employees of more than 1 employer. Two or more such units may, by voluntary consent, bargain through the same agent or agents with an employer or employers, their agent or agents.

(c) If at an election conducted pursuant to this section, 3 or more nominees for exclusive bargaining representatives appear on the ballot and no one of them receives a majority of the votes cast at the election, the 2 nominees who receive the highest number of votes shall appear on the ballot of a 2nd election to be conducted under the provisions of this section, and the one receiving a majority of the votes cast at the 2nd election shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

(d) Those nominated as the representative of employees shall be listed by name on the ballots authorized by section 9 (c): provided, that the commission may determine that no representatives established, maintained or assisted by any action defined in this act as an unfair labor practice shall be placed upon a ballot, certified or otherwise recognized as eligible to be the representative of employees under this act. Should any charge be made by any labor organization involved that 1 of the labor organizations claiming to be the representative of employees is a company union, the commission shall investigate such charge, and upon completion of its investigation inform the persons interested of its determination, in writing, at least 5 days before the holding of the election. Any person or organization aggrieved by said determination shall have the right to apply to the superior court to take testimony and to determine the question whether or not said charge is sustained, and whether or not said labor organization shall be listed upon the ballot.

(e) The commission shall have power to determine who may participate in the election and to establish the rules governing any such election; provided, that no election shall be directed by the commission unless requested by an employee or employees or his or their representative not prompted thereto by their employer, nor shall any individuals employed only for

the duration of a strike or lockout be eligible to vote in such election, nor shall such election be conducted on the employer's property, during working hours, or with his participation, assistance or supervision.

(f) Whenever it is alleged by a labor organization that there is a question or controversy concerning the representation of employees, the commission shall investigate such question or controversy and certify in writing to all persons entitled thereto the name or names of the representatives that the commission has found to be designated or selected. In any investigation under this subsection, the commission shall provide for an appropriate hearing upon due notice to all known interested parties, either in conjunction with a proceeding under section 10 or otherwise, and may conduct an election by secret ballot of employees, or utilize any other suitable method to ascertain such representatives (either before or after the aforesaid hearing), provided, however, that the commission shall not have jurisdiction for any purpose whatsoever to investigate any question or controversy between individuals or groups within the same labor organization or between labor organizations affiliated with the same parent labor organization.

(g) The hearing for certification pursuant to section 9 (c) shall commence within 20 days unless the commission shall postpone the same for a period of not to exceed 15 days for good cause to which the commission shall certify giving the reasons therefor and shall give notice thereof to all known interested parties.

Certification shall be made or refused within 10 days after the close of the hearing, unless an election by secret ballot is ordered. An election, when ordered, shall be held within 20 days after the close of the hearing, and certification shall be made within 10 days thereafter. Failure by the commission to act as herein provided shall constitute a denial of certification. Election by secret ballot shall be ordered whenever it is requested by any labor organization (which is a party to the proceeding) within 10 days after the receipt of notice of hearing. When an election by secret ballot is ordered, certification thereafter can be based only on the result thereof. No company union shall be permitted a place on any ballot for any purpose. Supervisory employees shall not join or be considered in the selection of a bargaining agent, provided that nothing herein shall restrict supervisory employees from joining or becoming members of labor organizations.

(h) Nothing in this act shall prevent any superior court for any county wherein a question concerning representation has arisen, or wherein an alleged unfair labor practice has occurred, or wherein the person allegedly committing such unfair labor practice resides or transacts business, from

exercising jurisdiction to issue appropriate writs to compel the commission, or any agency or agent thereof, to perform its functions and duties. Such proceeding shall be directed to the commission and in the name of the commission, and shall operate as against the members of the commission, and any agency or agent thereof.

(i) Whenever an order of the commission made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (g) or 10 (h), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the commission shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript. In any proceeding under section 9 which is not incidental to a proceeding under section 10, certification or denial thereof, or dismissal of the request for certification within the time specified shall constitute a final order and shall be reviewable upon the petition of any labor organization aggrieved by such action. Such review may include all issues presented to the commission for determination in the same manner as is provided for review in section 10. When the request for certification is denied or dismissed the commission shall state its reasons for such action.

**Sec. 10. Prevention of unfair labor practices.** (a) The commission is empowered and directed, as hereinafter provided, to prevent any employer from engaging in any unfair labor practice, and shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by agreement, law or otherwise.

(b) When charges have been preferred with the commission that any person has engaged in or is engaging in any unfair labor practice, the commission or any agent or agency designated by the commission for such purposes, shall issue and cause to be served upon such person a complaint within 60 days from the filing of such charges, or shall enter an order denying the issuance of a complaint within said time and giving reasons therefor. An order of denial shall constitute a final order, and shall be reviewable in the same manner as is provided in section 10 of this act. Such complaint shall state the charges concerning any such unfair labor practices, and shall contain a notice of hearing before the commission or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than 15 days after the serving of said complaint. Any such

complaint may be amended by the member, agent, or agency conducting the hearing or the commission in its discretion at any time prior to the issuance of an order based thereon. The commission shall serve a copy of such complaint and notice of hearing upon all persons whose interests might be adversely affected by any proceedings contemplated by such complaint. The commission shall not adjudicate respecting any agreement unless due notice has been given to all parties to such agreement and unless such persons have been given a reasonable opportunity to appear and present evidence in the case. The person so complained of, and all other persons required to be served as herein provided, shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. Any labor organization having an interest in the proceedings shall be permitted to intervene and thereupon have all the rights of any other parties to the proceedings. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the commission shall be reduced to writing and filed with the commission. Thereafter, in its discretion, the commission upon notice may take further testimony or hear argument. Within 15 days after the close of the hearing, unless good cause exists for delay, whereupon, within an additional 15 days, such member, agent or agency or the commission shall file with the commission written recommendations, setting forth proposed findings of fact and proposed conclusions of law, and a copy of such written recommendations shall be served upon each of the parties to the proceedings. Any party may, within 10 days after service of a copy of such written recommendations, file with the commission written exceptions to such written recommendations, and the commission shall grant to the parties an opportunity to file written briefs and make oral arguments with respect to such exceptions. Such oral arguments shall be heard within 30 days after the filing of exceptions. If upon all the testimony taken the commission shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the commission shall within 60 days after the period of time in which exceptions can be filed and oral argument heard shall have elapsed, state its findings of fact and conclusions of law and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including, but not limited to

(1) withdrawal of recognition from and refraining from bargaining collectively with any company union;

(2) awarding of back pay ;

(3) reinstatement with or without back pay of any employee discriminated against or maintenance of a preferential list from which such employees shall be returned to work ;

(4) reinstatement with or without back pay of all employees whose work has ceased or whose return to work has been delayed or prevented as the result of the aforementioned or any other unfair labor practice in respect to any employee or employees or maintenance of a preferential list from which such employees shall be returned to work,

as will effectuate the policies of this act. A copy of such findings of fact, conclusions of law and order shall be served upon all parties to the proceedings. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the commission shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the commission shall state its findings of fact and conclusions of law and shall issue an order dismissing the said complaint.

(d) Nothing in this act shall be construed to vest jurisdiction in the commission to make any decision or order which has the effect of impairing or nullifying an agreement between an employer and the representative of any of his employees, unless such agreement either

(1) is with a company union, or

(2) requires as a condition of employment membership in a labor organization which, at the date of the execution thereof, is not the exclusive bargaining agent of the employees covered thereby, or

(3) which by its terms deprives the representative designated by a majority in an appropriate unit of the right exclusively to bargain for the employees in such unit.

(e) Change of membership in or of affiliation with or withdrawal from a labor organization shall not impair the rights conferred by this act on such exclusive bargaining agent until either

(1) the term of any written contract made by it with an employer has expired or

(2) one year from the date of execution of such a contract (where the contract extends beyond 1 year) has elapsed, whichever is first reached. Such labor organization shall have an interest in its own right in said contract for said period.

(f) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the commission may at any time, upon rea-

sonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(g) The commission shall have power to petition the superior court of any county wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, or if the superior court to which application may be made is in vacation, to any justice of the supreme judicial court in equity, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the commission. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission. The findings of the commission as to the facts, if supported by substantial and credible evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the commission, its member, agent, or agency, and to be made a part of the transcript. The commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by substantial and credible evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review upon appeal to the next law term of the supreme judicial court.

(h) Any person aggrieved by any final order of the commission under this act granting or denying in whole or in part the relief sought may obtain a review of such order in the superior court for the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition praying that the order of the commission be modified or set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission shall file in the court a transcript of the entire proceeding, certified by the commission, including the

pleading and testimony upon which the order complained of was entered and the findings and order of the commission. In all cases of review to a superior court under this act the petitioner may print a transcript containing an abridgment of the record in narrative form so far as necessary to present the questions for decision. Upon such filing, the court shall proceed in the same manner as in the case of an application by the commission under subsection (g), and shall have the same exclusive jurisdiction to grant to the commission such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission; and the findings of the commission as to the facts, if supported by substantial and credible evidence, shall in like manner be conclusive.

(i) The commencement of proceedings under subsection (g) or (h) of this section shall not, unless specifically ordered by the court, operate as a stay of the commission's order.

(j) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified or setting aside in whole or in part an order of the commission, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by acts pertaining to equity jurisdiction of courts.

(k) Petitions filed under this act shall be heard expeditiously, and if possible within 10 days after they have been docketed.

**Sec. 11. Investigatory powers.** For the purpose of all hearings and investigations, which, in the opinion of the commission, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10.

(a) The commission, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the commission, or agent or agency thereof, shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the commission, its member, agent, or agency, conducting the hearing or investigation. In any such investigation or proceeding any party to such proceeding shall have the right to apply for a subpoena or subpoenas, requiring the attendance of witnesses and the production of any evidence that relates to any matter under investigation or in question, by making written application to the commission, or a member thereof or examiner conducting the investigation or proceeding,

setting forth that the testimony or evidence is competent and material. In the event such application shall be refused (and failure to grant same within 10 days shall constitute a refusal) the superior court of the county within the jurisdiction of which the investigation or proceeding is being carried on, or any justice of the supreme judicial court, shall have jurisdiction to issue such subpoena or subpoenas upon written application and notice thereof to the commission. Any member of the commission, or any agent or agency designated by the commission for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the state, at any designated place of hearing.

(b) If any witness resides outside of the state, or through illness or other cause is unable to testify before the commission or its member, agent, or agency conducting the hearing or investigation his or her testimony or deposition may be taken within or without this state, in such manner and in such form as the commission or its member, agent or agency conducting the hearing may, by special order or general rule prescribe.

(c) In case of contumacy or refusal to obey a subpoena issued to any person, the superior court within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, or, if it is during a vacation of such court, any justice of the supreme judicial court, upon application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony taking the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(d) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(e) Complaints, orders, and other process and papers of the commission, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the prin-



cipal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the commission, its member, agent, or agency shall be paid the same fees and mileage that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this state.

(f) All process of any court to which application may be made under this act may be served in the county wherein the defendant or other person required to be served resides or may be found.

(g) The several departments, commissions, divisions, authorities, boards, bureaus, agencies and offices of the state or any political subdivision or agency thereof, shall furnish the commission upon its request, all records, papers, and information in their possession relating to any matter before the commission.

**Sec. 12. Records to be public.** Formal charges, petitions, complaints, orders and testimony relating to a proceeding before the commission under sections 9 and 10 of this act shall be made public records and be made available for inspection and copying. Subject to reasonable rules and regulations of the commission, parties to a proceeding may examine the files in such proceeding. All proceedings pursuant to this act shall be open to the public.

**Sec. 13. Conduct of examiners.** Examiners and other agents, whose functions are to conduct hearings shall be selected and assigned with due regard for their impartiality, disinterestedness, and judicial temperament. In the conduct of proceedings, any member of the commission, examiner or other agents shall at all times maintain an impartial, unbiased and judicial attitude toward the parties, witnesses and issues involved in any proceedings. If in any proceeding under section 9 and section 10 of this act, any party thereto shall file with the commission a sworn statement charging that a member of the commission, examiner or other agent designated to conduct the hearing is believed to be biased, or partial, in the proceeding, such examiner shall be disqualified, and another member of the commission, examiner or agent shall be designated to conduct such proceeding. Only two such affidavits shall be permitted to any party. At least 7 days preceding any hearing, the commission shall notify all parties to a proceeding the name of the member, examiner or agent designated to conduct

such hearing. Such affidavit of prejudice shall be filed with the chairman of the commission within 3 days of the receipt of notice by the party of the name of such member of the commission, examiner or agent. The mailing of such affidavit by registered mail to the chairman of the commission within 3 days of the receipt of such notice shall constitute proper service on the commission.

**Sec. 14. Penalties.** Any person who shall wilfully resist, prevent, impede, or interfere with any member of the commission or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than \$5000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

**Sec. 15. Limitations.** Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike or engage in other concerted activities, or to deprive any party to a labor dispute of the rights, benefits and protection contained in the provisions of any other act, general or special, or of any local law.

**Sec. 16. Appropriations.** A sum of \$10,000 is hereby appropriated to pay any and all expenses which may be incurred in the administration and enforcement of the provisions of this act during each year of the 1st biennium after this act goes into effect. Thereafter, the chairman of the commission, with the approval of the other members, is hereby authorized to submit to the advisory committee on the budget biennially an estimate of the necessary expenditure for the ensuing biennium.

**Sec. 17. Validating provisions.** If any clause, sentence, paragraph, or part of this act or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, and the application thereof, or of such clause, sentence, paragraph, or part to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved.

**Sec. 18. Constitutionality of act.** If any section, subsection, sentence, clause, or phrase of this act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

**Sec. 19. Short title.** This act shall be known as and may be cited as the "Maine Labor Relations Act."

**Sec. 20. Amendatory provisions.** Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, or of any local law, the provisions of this act shall be controlling.