

MAINE STATE LEGISLATURE

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



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

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

Legislative Document

No. 993

S. P. 447

In Senate, February 28, 1939.

Referred to Committee on Labor. Sent down for concurrence and 500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Hill of Cumberland by request.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT Relating to Labor Relations.

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

Sec. 1. Declaration of policy. Recognizing that certain economic conditions within the state have tended to create sweat-shop conditions and their attendant dangers to health, peace and morals of the people, it is declared to be the public policy of the state of Maine to establish and protect an equality of bargaining power between employer and employee.

This act shall be deemed to establish, preserve, and protect the right of employees to self-organization, to practice the procedure of collective bargaining through representatives of their own choosing, full freedom from interference, restraint, or coercion by their employers. This act shall be deemed to have been passed under 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 one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person other than a labor organization, an employer subject to the National Labor Relations Act, or a public utility operating, managing or controlling a railroad or a rail-

way express which is subject to the provisions of the Railway Labor Act, acting on behalf of or in the interest of an employer, directly or indirectly, with or without his knowledge; 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.

(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, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individuals employed only for the duration of a labor dispute.

(4) The term "representatives" includes a labor organization or an individual whether or not employed by the employer of those whom such organization or individual represents.

(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 contributes financial or other support, 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 "unfair labor practice" means any unfair labor practice listed in section 8 of this act.

(8) The term "labor dispute" includes, but is not restricted to, any controversy between one or more employers and employees or their representatives as defined in this section concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, changing, or seeking to negotiate, fix, maintain or change terms or conditions of employment, or the representation, organization or unionization of employees, or concerning the violation of any of the rights granted or affirmed by this act, regardless of whether the employees of the disputing employer are on strike.

(9) The term "commission" means the labor relations commission of the state of Maine created by section 3 (a) of this act.

(10) 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 as an independent agency in the executive branch of the government a commission 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 one year next preceding his appointment.

One member of the commission at the time of his appointment shall be an industrial employer of labor, or a person employed in an executive capacity by an industrial employer of labor; another member shall be a member of, associated with, and had practical experience in a bona fide labor organization; the third member, who shall be the chairman, shall be neither an industrial employer nor an executive of an industrial employer of labor, nor an employee or representative of an association of employees or laborers.

One of the original members shall be appointed for a term of 1 year, 1 for a term of 3 years and 1 for a term of 5 years, but their successors shall be appointed for terms of 5 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. Any member of the commission may be removed by the governor with the advice and consent of the council, upon notice and public hearing, for inefficiency, neglect of duty, misconduct or malfeasance in office.

(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 the courts shall take judicial notice.

(c) The commission shall at the close of each fiscal year make a report in writing to the governor and council stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the commission, and an account of all moneys it has disbursed.

Sec. 4. Salaries; officers and employees. Each member of the commission shall receive a salary of \$12.50 for each day of actual service, and necessary expenses when in the exercise of his duty. The commission shall appoint an executive secretary, and such attorneys, examiners and other employees as necessary for the carrying out of the purposes of this act, subject to the approval of the governor and council. The existing laws regarding the employment and compensation of officers and employees of the state shall apply, provided that practical training and experience shall be a determining factor in deciding the eligibility of an applicant for the job. The commission 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. Attorneys appointed under this section may, at the direction of the commission, appear for and represent the commission in any case in court. Nothing in this act shall be construed to authorize the commission to appoint individuals for the purpose of conciliation or mediation or for statistical work, where such service may be 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 of Maine. The commission may, by one or more of its members or by such 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 proceeding 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 of 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, free from interference, restraint, or coercion of employers, provided 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. (a) 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 the rights guaranteed by section 5.

(2) To deal with or recognize or have any relations with a company union, provided that an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of pay.

(3) To require an employee or one seeking employment, as a condition of employment, to join any company union or to refrain from forming, or joining or assisting a labor organization of his own choosing, and 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.

(4) To encourage membership in any company union or discourage membership in any labor organization, by discrimination in regard to hire, tenure or any term or condition of employment ; provided, 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.

(5) To refuse to bargain collectively with the representatives of employees, subject to the provisions of section 9, or to refuse to put into writing and sign an agreement, when reached, with said representatives.

(6) To discharge or otherwise discriminate against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this act.

(b) It shall be an unfair labor practice for a labor organization (1) To seize or occupy unlawfully private property as a means of forcing settlement of a labor dispute; (2) To break any contract with an employer or employers concerning the terms and conditions of employment.

Sec. 9. Representatives and elections. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees eligible to vote in a unit appropriate for such purposes or by the majority of the employees voting in 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.

(b) The commission may 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 if the majority of any craft within a plant or employer unit signify their wish for the craft unit, the commission shall designate the craft unit as the appropriate unit for the purpose of collective bargaining, and such decision shall be controlling and mandatory upon the commission.

(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 second election to be conducted under the provisions of this section, and the one receiving a majority of the votes cast at the second 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) Whenever it is alleged by an employee or his representative 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 concerned the name or names of the representatives who have been designated or selected. Such certification, once made, shall remain in effect for the period of at least one year, unless it shall have been made to appear that the same was procured through fraud, or unless it shall be set aside by the court. Whenever it is alleged by an employer or his representative that there is a question or controversy concerning the representation of employees the commission may investigate

such question or controversy. In any such investigation the commission shall provide for an appropriate hearing upon due notice, and may, subject to the provisions of subsection (e) hereof, conduct an election by secret ballot of employees, or use any other suitable method to ascertain such representatives; provided, however, that the commission shall not have authority to investigate any question or controversy between labor organizations affiliated with the same parent labor organization.

(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) A labor organization nominated as the representative of employees shall be listed by name on the ballots authorized by section 7 (c); provided, that no committee, employee representation plan or association of employees found by the commission to be a company union shall be so listed on the ballots, 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 one 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.

Sec. 10. Prevention of unfair labor practices. (a) The commission is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice listed in section 8 affecting industry and trade. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) If the labor relations commission shall find that any labor organization has committed any unfair labor practice under sections 8 (b) 1, 2, it shall cease to be a labor organization under section 2 (5) of this act, and it shall lose all the rights and privileges provided for in this act for a period of 6 months.

(c) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the commission, or any agent or agency designated by the commission for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing 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 5 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 person so complained of 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. In the discretion of the member, agent or agency conducting the hearing or the commission, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall be controlling.

(d) 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. 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 state its findings of fact 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 reinstatement of employees with or without back pay, as will effectuate the policies of this act. 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 shall issue an order dismissing the said complaint.

(e) 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 reasonable 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.

(f) The commission shall have power to petition the superior court in any county wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, 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 a preponderance of the 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, the court may order such additional evidence to be taken 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 evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

(g) Any person aggrieved by a final order of the commission 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 aggrieved party shall file in the court a transcript of the entire record in the 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. Upon such filing, the court shall proceed in the same manner as in the case of an application by the commission under subsection (f), 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 evidence, shall in like manner be conclusive.

(h) 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 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. 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) 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, 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 touching 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.

(c) 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.

(d) 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 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 the state, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the state.

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

(f) The several departments and agencies of the state, when directed by the governor, shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.

Sec. 12. 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 both.

Sec. 13. Right to strike. Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Sec. 14. Conflict with other laws. (a) Wherever the application of the provisions of any other law of this state conflicts with the application of the provisions of this act, this act shall prevail.

(b) This act shall not be deemed applicable to any unfair labor practice subject to the national labor relations act.

Sec. 15. Separability. If any provision of this act shall be held invalid, the remainder shall not be affected thereby.

Sec. 16. Short title. This act may be cited as the "State Labor Relations Act."