

# MAINE STATE LEGISLATURE

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# NINETY-SEVENTH LEGISLATURE

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**Legislative Document**

**No. 630**

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H. P. 625

House of Representatives, February 10, 1955

Referred to the Committee on Labor. Sent up for concurrence and 1,000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Cote of Madison.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FIFTY-FIVE

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### AN ACT Relating to a State Labor Relations Law.

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

**Sec. 1. R. S., c. 30-A, additional.** The revised statutes are hereby amended by adding thereto a new chapter to be numbered 30-A, to read as follows:

#### Chapter 30-A.

#### Labor Relations.

**Sec. 1. Labor Relations Commission; membership; salary; duties.** There shall be in the Department of Labor and Industry, but in no respect subject to the jurisdiction thereof, a Commission to be known as the Labor Relations Commission, hereinafter in this chapter called the "Commission." It shall be composed of 3 members who shall be appointed by the Governor with the advice and consent of the Council. One member shall be a member of the political party which cast the second highest number of votes in the last gubernatorial election. One member shall be appointed by the Governor to serve as chairman of the Commission. The term of office of the chairman shall be 5 years and the term of office of each of the other members shall be 3 years. Any vacancies shall be filled by appointment of the Governor with the advice and consent of the Council for the unexpired term. Any member of the Commission may be removed by the Governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. 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 which shall be judicially noticed.

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 or officers in the employ or under the supervision of the Commission, and an account of all moneys it has disbursed.

The chairman of the Commission shall receive a salary of \$6,500 a year, and the other members of the Commission shall receive a salary of \$6,000 a year. Each member of the Commission shall be eligible for reappointment, and shall not engage in any other business, vocation or employment. The Commission shall, subject to the provisions of the personnel law, appoint an executive secretary, and such attorneys, examiners and regional directors and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by the Legislature.

The Commission may establish or utilize such regional or local agency and utilize such voluntary 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 chapter 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.

The principal office of the Commission shall be in the city of Augusta, but it may meet or exercise any or all of its powers at any other place. The Commission may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the State. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Commission in the same case.

The Commission shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this chapter. Such rules and regulations shall be effective upon publication in the manner in which the Commission shall prescribe.

Sec. 2. Policy. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing industry and trade by impairing the efficiency, safety or operation of the instrumentalities of industry and trade; occurring in the current of industry and trade; materially affecting, restraining or controlling the flow of raw materials or manufactured or processed goods, or the prices of such materials or goods; or causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for such goods in industry or trade.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association sub-

stantially burdens and affects industry and trade, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards industry and trade from injury, impairment or interruption, and promotes the flow of industry and trade by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the State to eliminate the causes of certain substantial obstructions to the free flow of industry and trade and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting 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.

Sec. 3. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following words shall have the following meanings:

“Commission” means the Labor Relations Commission.

“Employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter 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.

“Employer” includes any person acting in the interest of an employer, directly or indirectly, but shall not include the State or political subdivision thereof, or any labor organization, other than when acting as an employer; or any one acting in the capacity of officer or agent of such labor organization.

“Labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

“Labor dispute” includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee.

“Person” includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

“Representatives” includes any individual or labor organization.

“Unfair labor practice” means any unfair labor practice listed in section 5.

Sec. 4. Right to self-organization. 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.

Sec. 5. Unfair labor practices.

I. It shall be an unfair labor practice for an employer:

A. To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 4;

B. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;

C. By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization; provided that nothing in this chapter shall preclude an employer from making and carrying out or enforcing an agreement with a labor organization, which is the representative of the employees as provided in section 6 in the appropriate collective bargaining unit covered by such agreement when made, to require as a condition of employment membership therein; except, however, that no such agreement shall be deemed to apply to any employee who:

1. is not eligible for full membership and voting rights in such labor organization; or

2. though eligible, has been unreasonably denied admission to membership in such labor organization; or

3. has been suspended or expelled from membership in such labor organization, for reasons other than malfeasance in office or nonpayment of regular initiation fees, dues or assessments, and such suspension or expulsion,

a. was imposed by the labor organization in violation of its constitution or by-laws; or

b. was imposed by the labor organization without adequate hearing and opportunity to defend; or

c. constituted excessive discipline unwarranted by the nature of the offense committed by the employee.

D. To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter;

E. To refuse to bargain collectively with the representative of his employees, subject to the provisions of section 6;

F. To refuse, or fail, to comply with the provisions of an agreement with a labor organization requiring membership therein as a condition of employment, if such agreement has been made in conformity with the provisions of paragraph C, and is applicable to the employee, or employees involved, as set forth in paragraph C.

II. It shall be an unfair labor practice for any person or labor organization:

A. To seize or occupy unlawfully private property as a means of forcing a settlement of a labor dispute; or

B. To authorize or engage in any strike, slowdown, boycott or other concerted cessation of work or withholding of patronage for the purpose of

1. bringing about, directly or indirectly the commission of any unfair labor practice as herein defined; or

2. interfering with, restraining or coercing employees in their choice or rejection of representatives for the purpose of collective bargaining after the Commission has determined in a proceeding under section 6 that such employees do not desire to be represented by such labor organization.

C. To cause or attempt to cause an employer to discriminate against any employee in violation of paragraph C of subsection I.

III. It shall be an unfair practice for a labor organization to refuse to bargain collectively with an employer who has recognized it as the exclusive representative of employees in a unit appropriate for the purpose of collective bargaining.

Sec. 6. Units of collective bargaining; investigations.

I. Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, 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 group of employees shall have the right at any time to present grievances to their employer.

II. The Commission 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 chapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, plant unit, craft unit or subdivision thereof; provided, that, in any case where the majority of employees of a particular craft shall so decide, the Commission shall designate such craft as a unit appropriate for the purpose of collective bargaining.

III. Whenever a question affecting industry and trade arises concerning the representation of employees, the Commission may investigate such con-

troversy and certify to the parties, in writing, the name or names of the representatives who have been designated or selected. In any such investigation, the Commission shall provide for an appropriate hearing upon due notice either in conjunction with a proceeding under section 7 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

The Commission may establish such rules or regulations as it deems appropriate to effectuate the policies of this chapter for the filing of petitions for investigation and certification by employers or employees or their representatives.

IV. Whenever an order of the Commission made pursuant to section 7 is based in whole or in part upon facts certified following an investigation pursuant to subsection III, 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 subsection V or subsection VI of section 7 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.

#### Sec. 7. Complaints; procedure; appeal.

I. The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice listed in section 5 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.

II. 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 not be controlling.

III. The testimony taken by such members, 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 chapter. Such order may further require such person to make reports from time to time showing the extent to which he 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.

IV. Until a transcript of the record in a case shall have been filed in 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.

V. The Commission shall have power to petition the Superior Court in any county wherein the unfair labor practice in question occurred or wherein the person, employer or labor organization committing the unfair labor practice 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, employer or labor organization, 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. No objection that has not been urged before the Commission, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission as to the facts, if supported by 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. The jurisdiction of the court shall be exclusive and its judgment or decree shall be final, except that the same shall be subject to review by the Supreme Judicial Court of the State, by the same procedure and in the same manner as in cases in equity.



VI. Any person or labor organization 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 or labor organization 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 pleadings 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 V, and shall have the same exclusive jurisdiction to grant to the Commission such temporary relief or restraining order as the court 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; and the judgment or decree shall be subject to review by the Supreme Judicial Court of the State, by the same procedure and in the same manner as in cases in equity.

VII. The commencement of proceedings under subsection V or VI of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

VIII. Petitions filed under this chapter shall be heard expeditiously, and if possible within 10 days after they have been docketed.

Sec. 8. Examination; subpoena; service. 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 sections 6 and 7.

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.

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.

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 principal 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 service 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 civil cases before 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.

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

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. 9. Penalty.** Any person who shall willfully 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 chapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

**Sec. 10. Construction.** Nothing in this chapter, except as provided in section 5, shall be construed so as to interfere with or impede or diminish in any way the right to strike.

**Sec. 11. Application.** Wherever the application of the provisions of any other law of this State conflicts with the application of the provision of this chapter, this chapter shall prevail.

This chapter shall not be deemed applicable to any unfair labor practice involving employees who are subject to and protected by the Federal Railway Labor Act, or to any unfair labor practice governed exclusively by the national labor relations act or other federal statute or regulations issued pursuant thereto, unless the federal agency administering such act, statute or regulation has declined to assert jurisdiction thereof, or except where such federal agency has conceded to the Commission jurisdiction over any such case or proceedings.

**Sec. 12. Title.** This chapter may be cited as the "State Labor Relations Law."

**Sec. 2. R. S., c. 30, § 15, amended.** Section 15 of chapter 30 of the revised statutes is hereby amended to read as follows:

**Sec. 15. Appointment and qualification of Board; salaries and expenses; duties; rules; report.** The State Board of Arbitration and Conciliation, as here-

tofore established, shall consist of 3 members appointed by the Governor, with the advice and consent of the Council, from time to time upon the expiration of the terms of the several members, for terms of 3 years. One member shall be an employer of labor or selected from some association representing employers of labor, and another shall be an employee or an employee selected from some bona fide trade or labor union and not an employer of labor. The 3rd member shall be chairman of the Board and shall represent the public interests of the State. Vacancies occurring during a term shall be filled for the unexpired term. The Board shall hold a meeting on the 3rd Wednesday of September in each year and shall organize by choosing from its members a secretary. Members of the Board shall each receive \$20 a day, for their services, for the time actually employed in the discharge of their official duties; they shall also receive their traveling and all other necessary expenses. ~~Workers shall have 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 interference, restraint or coercion by their employers or other persons, and it~~ It shall be the duty of the Board to endeavor to settle disputes, strikes and lockouts between employers and employees. The Board shall from time to time make such rules of procedure as it deems necessary, and shall annually, on or before the 1st day of July, make a report to the Governor and Council, which shall be incorporated in and printed with the biennial report of the Department of Labor and Industry.'