

**Maine Revised Statute Title 26, Chapter 16:  
AGRICULTURAL EMPLOYEES LABOR RELATIONS ACT**

**Table of Contents**

**Section 1321. PURPOSE..... 3**

**Section 1322. DEFINITIONS..... 3**

**Section 1323. RIGHTS OF AGRICULTURAL EMPLOYEES; ORGANIZATION,  
COLLECTIVE BARGAINING..... 4**

**Section 1324. PROHIBITED ACTS OF AGRICULTURAL EMPLOYERS,  
AGRICULTURAL EMPLOYEES AND AGRICULTURAL EMPLOYEE  
ORGANIZATIONS..... 4**

**Section 1325. OBLIGATION TO BARGAIN..... 6**

**Section 1326. BARGAINING UNIT; HOW DETERMINED..... 8**

**Section 1327. DETERMINATION OF BARGAINING AGENT..... 9**

**Section 1328. MAINE LABOR RELATIONS BOARD; RULE-MAKING PROCEDURE  
AND REVIEW..... 11**

**Section 1329. PREVENTION OF PROHIBITED ACTS..... 11**

**Section 1330. HEARINGS..... 13**

**Section 1331. BINDING CONTRACT ARBITRATION..... 13**

**Section 1332. SUITS BY AND AGAINST UNINCORPORATED EMPLOYEE  
ORGANIZATIONS..... 14**

**Section 1333. REVIEW..... 14**

**Section 1334. FEDERAL PRECEDENTS..... 14**



## 26 §1321. PURPOSE

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between agricultural employers and their employees by providing a uniform basis for recognizing the right of agricultural employees to join labor organizations of their own choosing and to be represented by those organizations in collective bargaining for terms and conditions of employment. It is also the public policy of this State and the purpose of this chapter, by encouraging voluntary agreements between agricultural employers, employees and their organizations, to limit industrial strife, promote stability in the farm labor force and improve the economic status of workers and businesses. [1997, c. 472, §1 (NEW) .]

### SECTION HISTORY

1997, c. 472, §1 (NEW) .

## 26 §1322. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

**2. Agricultural employee.** "Agricultural employee" or "employee" means a person engaged in agriculture; however, this subsection may not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to the Labor Management Relations Act, 29 United States Code, Section 152, subsection 3. "Agricultural employee" includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any prohibited labor practice. "Agricultural employee" includes supervisors but does not include any higher level managers or those employees whose duties necessarily imply a confidential relationship to the employer.

[ 1997, c. 472, §1 (NEW) .]

**3. Agricultural employer.** "Agricultural employer" or "employer" means a person or entity who directly or indirectly engages the services or suffers or permits the work of an agricultural employee, and includes any person acting on behalf of an employer directly or indirectly and any person or entity exercising control over the terms and conditions of employment. "Agricultural employer" is limited to a person or entity operating an egg processing facility that has over 500,000 laying birds and that employs more than 100 agricultural employees as defined in subsection 2.

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

#### SECTION HISTORY

1997, c. 472, §1 (NEW).

## 26 §1323. RIGHTS OF AGRICULTURAL EMPLOYEES; ORGANIZATION, COLLECTIVE BARGAINING

Agricultural employees have the right to self-organize; to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Agricultural employees also have the right to refrain from such activities except to the extent that this right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 1324, subsection 1, paragraph B. [1997, c. 472, §1 (NEW).]

#### SECTION HISTORY

1997, c. 472, §1 (NEW).

## 26 §1324. PROHIBITED ACTS OF AGRICULTURAL EMPLOYERS, AGRICULTURAL EMPLOYEES AND AGRICULTURAL EMPLOYEE ORGANIZATIONS

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

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1323; [1997, c. 472, §1 (NEW).]

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment. This chapter, or any other provision of law, may not preclude an agricultural employer from making an agreement with a labor organization not established, maintained or assisted by any action defined in this section as a prohibited practice to require as a condition of employment membership in that labor organization on or after the 5th day following the beginning of employment or the effective date of the agreement, whichever is later, if the labor organization is the representative of the agricultural employees as provided in section 1327 in the appropriate collective-bargaining unit covered by the agreement; [1997, c. 472, §1 (NEW) .]

C. Dominating or interfering with the formation, existence or administration of any employee organization; [1997, c. 472, §1 (NEW) .]

D. Discharging or otherwise discriminating against an agricultural employee because the employee has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; [1997, c. 472, §1 (NEW).]

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 1325; [1997, c. 472, §1 (NEW).]

F. Locking out their employees; and [1997, c. 472, §1 (NEW).]

G. Blacklisting any employee organization or its members for the purpose of denying employment. [1997, c. 472, §1 (NEW).]

[ 1997, c. 472, §1 (NEW) .]

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

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1323 or an employer in the selection of the employer's representative for purposes of collective bargaining or the adjustment of grievances. This paragraph does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership in that organization; [1997, c. 472, §1 (NEW).]

B. Causing or attempting to cause an employer to discriminate against an employee in violation of subsection 1, paragraph B or to discriminate against an employee with respect to whom membership in the organization has been denied or terminated on grounds other than failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; [1997, c. 472, §1 (NEW).]

C. Refusing to bargain collectively with an employer as required by section 1325; [1997, c. 472, §1 (NEW).]

D. Requiring employees covered by an agreement authorized under subsection 1, paragraph B to pay, as a condition to becoming a member of an agricultural employee organization, a fee in an amount the board finds excessive or discriminatory under the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the agriculture industry and the wages currently paid to the employees affected; [1997, c. 472, §1 (NEW).]

E. Causing or attempting to cause an agricultural employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services not performed or not to be performed; and [1997, c. 472, §1 (NEW).]

F. Causing or attempting to cause or participating in a strike against their employer. [1997, c. 472, §1 (NEW).]

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

#### SECTION HISTORY

1997, c. 472, §1 (NEW).

## 26 §1325. OBLIGATION TO BARGAIN

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

- A. To meet at reasonable times; [1997, c. 472, §1 (NEW).]
- B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided the parties have not otherwise agreed in a prior written contract; [1997, c. 472, §1 (NEW).]
- C. To confer and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, except that, by the mutual obligation, neither party may be compelled to agree to a proposal or be required to make a concession; [1997, c. 472, §1 (NEW).]
- D. To execute in writing any agreements arrived at, the terms of which are subject to negotiation; and [1997, c. 472, §1 (NEW).]
- E. To participate in good faith in the mediation and arbitration procedures required by this section. [1997, c. 472, §1 (NEW).]

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

[ 1997, c. 472, §1 (NEW) .]

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

- A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between employers and employees or their representatives and other disputes subject to settlement through mediation. [1997, c. 472, §1 (NEW).]
- B. Mediation procedures, as provided by section 965, subsection 2, must be followed when either party to a controversy requests mediation services prior to arbitration or upon motion of the board or the executive director. [1997, c. 472, §1 (NEW).]
- C. The employer, labor organization or employees involved in collective bargaining shall notify the executive director, in writing, at least 30 days prior to the expiration of a contract or at least 30 days prior to entering into negotiations for a first contract between the employer and the employees, or when a dispute arises between the parties threatening interruption of work. [1997, c. 472, §1 (NEW).]
- D. Any information disclosed by either party to a dispute to the Panel of Mediators, established pursuant to section 965, subsection 2, or any of its members in the performance of this subsection is privileged. [1997, c. 472, §1 (NEW).]

[ 1997, c. 472, §1 (NEW) .]

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

- A. Upon receipt of the petition, the executive director shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties have not selected an arbitrator or an arbitration panel within 5 days after the issuance of the order, the board shall order each party to select

one arbitrator within 5 days and, if the 2 arbitrators can not select a 3rd neutral arbitrator within 5 days, the board shall submit a list within 5 days from which the parties may alternately strike names until a single name is left, who the board shall appoint as arbitrator. The arbitration panel shall call a hearing to be held within 10 days after the date of appointment. In reaching a decision under this paragraph, the arbitration panel shall consider the following factors:

- (1) A comparison between the wages, hours and working conditions of the employees involved in the arbitration proceeding with those of other employees who perform similar services in private employment in other jurisdictions competing in the same labor market and who are covered by a collective bargaining agreement with their employer;
- (2) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and any other benefits received;
- (3) The overall compensation presently received by the nonbargaining unit employees of the employer and the employer's overall financial condition, including but not limited to sales, income and assets;
- (4) Any other factors not included in subparagraphs (1) to (3) that are normally and traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining, mediation arbitration or otherwise between the parties, or in private employment, including the average Consumer Price Index; and
- (5) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities and the goal of promoting stability in the labor force and farm labor relations. [1997, c. 472, §1 (NEW).]

B. The determination by the arbitration panel on all issues is final and binding on the parties. [1997, c. 472, §1 (NEW).]

C. A hearing held pursuant to this subsection must be informal and the rules of evidence for judicial proceedings are not binding. Any documentary evidence and other information determined to be relevant by the arbitration panel may be received in evidence. The arbitration panel may administer oaths and require by subpoena attendance and testimony of witnesses and production of books, records and other evidence relating to the issues presented. The hearing must be concluded within 20 days of the date of commencement. [1997, c. 472, §1 (NEW).]

D. The arbitration panel shall submit the panel's report to the parties and the board within 30 days after the conclusion of the hearing, unless that time limitation is extended by the executive director. [1997, c. 472, §1 (NEW).]

[ 1997, c. 472, §1 (NEW) . ]

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

[ 1997, c. 472, §1 (NEW) . ]

**5. Arbitration administration.** The cost for services rendered and expenses incurred by the State Board of Arbitration and Conciliation, as established in section 931, and any state cost allocation program charges are shared equally by the parties to the proceedings and paid into a nonlapsing special fund administered by the board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs are paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect these costs

before providing the services. The executive director shall bill or reimburse the parties for any difference between the estimated costs that were collected and the actual costs of providing the services. When one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party that has not paid the estimated or actual cost of providing services within 60 days of the date the invoice for those costs was issued is, in the absence of good cause shown, liable for the amount of the invoice and a penalty of 25% of the amount of the invoice. Any penalty amount collected pursuant to this subsection remains in the special fund administered by the board. The executive director is authorized to collect any sums due and payable pursuant to this subsection through civil action. In such an action, the court must allow litigation costs, including court costs and reasonable attorney's fees, to be deposited into the General Fund if the executive director is the prevailing party in the action.

[ 1997, c. 472, §1 (NEW) .]

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

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

- (1) Serves written notice upon the other party to the contract of the proposed termination or modification not less than 60 days before the expiration date of the contract or, if the contract contains no expiration date, 60 days before the time it is proposed to make the termination or modification;
- (2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;
- (3) Notifies the board within 30 days after notice of existence of a dispute, provided no agreement has been reached by that time; and
- (4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract, for a period of 60 days after the notice is given or until the expiration of the contract, whichever occurs later. [1997, c. 472, §1 (NEW) .]

B. The duties imposed upon agricultural employers and labor organizations by paragraph A, subparagraphs (2) to (4) become inapplicable upon an intervening certification of the board that the labor organization or individual that is a party to the contract has been superseded as, or has ceased to be, the representative of the employees, subject to sections 1326 and 1327, and the duties so imposed may not be construed to require either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if the modification is to become effective before the terms and conditions can be reopened under the provisions of the contract. Any agricultural employee who engages in a strike within the 60-day period specified in this section loses status as an agricultural employee of the agricultural employer engaged in the particular labor dispute, for the purposes of sections 1324 and 1326 to 1329, but loss of status for that employee terminates if and when that employee is reemployed by the employer. [1997, c. 472, §1 (NEW) .]

[ 1997, c. 472, §1 (NEW) .]

#### SECTION HISTORY

1997, c. 472, §1 (NEW) .

## 26 §1326. BARGAINING UNIT; HOW DETERMINED

**1. Unit determination.** If there is a dispute between the agricultural employer and an employee or employees over the appropriateness of a bargaining unit for purposes of collective bargaining or between the agricultural employer and an employee or employees over whether a supervisory or other position is

included in the bargaining unit, the executive director or the executive director's designee shall make the determination, except that anyone excepted from the definition of agricultural employee under section 1322 may not be included in a bargaining unit. The executive director or the executive director's designee conducting bargaining unit determination proceedings may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues represented.

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

**4. Bargaining unit clarification.** If there is a certified or currently recognized bargaining agent and the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, the agricultural employer or any recognized or certified bargaining agent may file with the executive director a petition for a unit clarification, when the parties are unable to agree on appropriate modifications and there is no question concerning representation.

[ 1997, c. 472, §1 (NEW) .]

#### SECTION HISTORY

1997, c. 472, §1 (NEW).

## 26 §1327. DETERMINATION OF BARGAINING AGENT

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

[ 1997, c. 472, §1 (NEW) .]

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

A. The election may be conducted at suitable work locations or through the United States mail and the procedures adopted and employed must ensure that neither the employee organizations nor the management representatives involved in the election have access to information that identifies a voter. [1997, c. 472, §1 (NEW).]

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

If more than one organization is on the ballot and none of the 3 or more choices receives a majority vote of the agricultural employees voting, a run-off election must be held. The run-off ballot must contain the 2 choices that received the largest and next largest number of votes. [1997, c. 472, §1 (NEW).]

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

**5. Questions concerning representation.** A question concerning representation may not be raised within one year of a certification or attempted certification. When a valid collective bargaining agreement is in effect, a question concerning unit or representation may not be raised except during the period neither more than 90 days nor less than 60 days prior to either the expiration date of the agreement or its anniversary date if the agreement contains no expiration date. Matters of unit clarification may be raised at any time.

[ 1997, c. 472, §1 (NEW) .]

**6. Representation of employees within unit regardless of membership.** The bargaining agent certified by the executive director as the exclusive bargaining agent is required to represent all the agricultural employees within the unit without regard to membership in the organization certified as bargaining agent, and an agricultural employee at any time may present the employee's grievance to the agricultural employer and have such a grievance adjusted without the intervention of the bargaining agent, if the adjustment is not

inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of the grievance.

[ 1997, c. 472, §1 (NEW) . ]

SECTION HISTORY

1997, c. 472, §1 (NEW).

## **26 §1328. MAINE LABOR RELATIONS BOARD; RULE-MAKING PROCEDURE AND REVIEW**

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

[ 1997, c. 472, §1 (NEW) . ]

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

[ 1997, c. 472, §1 (NEW) . ]

SECTION HISTORY

1997, c. 472, §1 (NEW).

## **26 §1329. PREVENTION OF PROHIBITED ACTS**

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

[ 1997, c. 472, §1 (NEW) . ]

**2. Complaints.** An agricultural employer, an agricultural employee, an agricultural employee organization or a bargaining agent that believes that a person, an agricultural employer, an agricultural employee, an agricultural employee organization or a bargaining agent has engaged in or is engaging in a prohibited practice may file a complaint with the executive director stating the charges. The complaint may not be filed with the executive director until the complaining party has served a copy of it upon the party named in the complaint. Upon receipt of a complaint, the executive director or the executive director's designee must review the charge to determine whether the facts as alleged constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge must be dismissed by the executive director, subject to review by the board. If the executive director or the board determines that a formal hearing is necessary, the executive director must serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board. The notice must include the time

and place of hearing for the prehearing conference or the hearing, as appropriate. A hearing may not be held based upon an alleged prohibited practice occurring more than 6 months before the filing of the complaint with the executive director. The party named in the complaint has the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. Through the discretion of the board, any other person or organization may be allowed to intervene in the proceeding and to present testimony. This subsection does not restrict the right of the board to require the executive director or the executive director's designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and to take an action, including dismissal, to attempt to resolve disagreements between the parties or to recommend an order to the board, when the executive director determines appropriate, subject to review by the board.

[ 1997, c. 472, §1 (NEW) . ]

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

[ 1997, c. 472, §1 (NEW) . ]

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

[ 1997, c. 472, §1 (NEW) . ]

**5. Enforcement action; scope of review; consolidation of actions.** If, after the issuance of an order by the board requiring a party to cease and desist or to take any other affirmative action, the party fails to comply with the order of the board, the party in whose favor the order operates or the board may file a civil action in Superior Court to compel compliance with the order of the board. Upon application of a party in interest or the board, the court may grant temporary relief or a restraining order and may impose terms and conditions as determined just and proper. The board's decision may not be stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. In an action to compel compliance, the Superior Court may not review the action of the board other than to determine whether the board has acted in excess of its jurisdiction. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is filed later, the 2 actions must be consolidated.

[ 1997, c. 472, §1 (NEW) . ]

**6. Review.** Either party may seek a review by the Superior Court of a decision or order of the board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall schedule the hearing at the earliest possible time and notify all interested parties and the board. Pending review and upon application of an interested party, the court may grant temporary relief or a restraining order and impose terms and conditions that the court determines just and proper, except

that the board's decision is not stayed unless it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall immediately file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, which must be held not less than 7 days after notice, the court may enforce, modify, enforce as modified or set aside in whole or in part the decision of the board, except that the findings of the board on questions of fact are final unless shown to be clearly erroneous. An appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

#### SECTION HISTORY

1997, c. 472, §1 (NEW).

## 26 §1330. HEARINGS

**1. Hearings; rules of evidence; evidence.** Hearings conducted by the board must be informal and the rules of evidence prevailing in judicial proceedings are not binding. Any documentary evidence and other evidence determined to be relevant by the board may be received.

[ 1997, c. 472, §1 (NEW) .]

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

[ 1997, c. 472, §1 (NEW) .]

#### SECTION HISTORY

1997, c. 472, §1 (NEW).

## 26 §1331. BINDING CONTRACT ARBITRATION

A collective bargaining agreement between an agricultural employer and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure. An arbitrator with the power to make binding decisions pursuant to any such provision has no authority to add to, subtract from or modify the collective bargaining agreement. [1997, c. 472, §1 (NEW).]

#### SECTION HISTORY

1997, c. 472, §1 (NEW).

## **26 §1332. SUITS BY AND AGAINST UNINCORPORATED EMPLOYEE ORGANIZATIONS**

In any judicial proceeding brought under this chapter or to enforce the rights guaranteed by this chapter, an unincorporated employee organization may sue or be sued in the name by which it is known. [1997, c. 472, §1 (NEW).]

### SECTION HISTORY

1997, c. 472, §1 (NEW).

## **26 §1333. REVIEW**

Either party may seek a review of a binding determination by an arbitration panel or arbitrator pursuant to the Uniform Arbitration Act, Title 14, Chapter 706. [1997, c. 472, §1 (NEW).]

### SECTION HISTORY

1997, c. 472, §1 (NEW).

## **26 §1334. FEDERAL PRECEDENTS**

The board must consult precedents under the National Labor Relations Act, 29 United States Code, Sections 151, et. seq., as amended, as appropriate. [1997, c. 472, §1 (NEW).]

### SECTION HISTORY

1997, c. 472, §1 (NEW).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 124th Legislature, and is current through December 31, 2009, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.
--