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26 M.R.S.A. § 50
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August 12, 1976

Harold S. Noddin, Director
S. Kirk Studstrup, Assistant

Bureau of Labor
Attorney General

Authority to enforce 26 M.R.S.A. § 50

We have reviewed your memorandum of August 2, 1976, concerning the application of 26 M.R.S.A. § 50. That section prohibits any person from discharging or discriminating against an employee because the employee has filed a complaint about or is going to testify concerning alleged violations of occupational safety or health standards. Your question is what procedure should be followed if it comes to the attention of the Bureau that this provision has been violated. The answer is that it would be up to the individual who has been discharged or discriminated against to attempt to obtain his own relief.

Title 26 M.R.S.A. § 50 is a statutory prohibition of certain acts. Any employee who has been adversely affected by acts committed in violation of this section would be able to rely upon this section in order to obtain appropriate relief, such as reinstatement in his job or injunctive remedies. Unlike other sections of Title 26, such as § 84, § 126, § 143, § 274, § 442, § 624, § 671 or § 738, there are no statutory penalties which attach to violation of the statute. It is therefore not a "penal" type of statute. In addition, there is no direct statutory authority to allow the Bureau to bring an action on behalf of the employee, similar to the authority which is found in §§ 625-A, 12 or 626-A. Therefore, there is no authority for a criminal prosecution or civil penalty in these cases or for bringing an action on behalf of the individual employee.

The Director of the Bureau of Labor does have a responsibility to insure that "all laws enacted for the protection of the working classes" are enforced. 26 M.R.S.A. § 42. However, we do not believe that this general statement of duties is sufficient to allow the Bureau to prosecute a violation of § 50 on behalf of an individual employee, in the absence of expressed statutory authority for such representation. Therefore, the answer to your question is that an employee who believes that he has been the subject of a violation of § 50 should be advised that he may individually pursue his employment rights. The procedure which is used in any particular case would depend upon various conditions relating to the employment. For example, the question of improper dismissal or discrimination may be subject to other statutory or contractual requirements, such as arbitration or grievance procedures. This possible variety of procedures is another reason why the individual employee should pursue his rights on his own behalf.

S. KIRK STUDSTRUP
Assistant Attorney General

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