

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 790

S. P. 282

In Senate, February 11, 1981

Referred to the Committee on Labor. Sent down forthwith for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Dutremble of York.

Cosponsors: Representative Tuttle of Sanford, Representative Hayden of Durham, Representative Baker of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Provide Workers and Communities with Reasonable Notice and Compensation upon Certain Plant Closings.

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

26 MRSA c. 7, sub-c. X is enacted to read:

SUBCHAPTER X

PLANT CLOSING NOTIFICATION AND ASSISTANCE

§ 875. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Average weekly wage. "Average weekly wage" means the amount obtained by dividing an individual's total remuneration received from an establishment during the 52-week period preceding his becoming an eligible employee by the number of weeks during that period that the individual was employed by the employer.

2. Director. "Director" means the Director of the Bureau of Labor.

3. Eligible employee. "Eligible employee" means any employee who has

been employed at the affected establishment for at least a year whose employment is terminated as part of a mass separation or who, after receiving a notice under section 876, voluntarily leaves an affected establishment for other employment at less than 60% of his average weekly wage at the affected establishment.

4. **Employee organization.** "Employee organization" means any labor union, association or other employee organization which represents any of the employees of an affected establishment for purposes of collective bargaining or other labor management relations.

5. **Employer.** "Employer" means any person, corporation, business or other entity which has operated in this State for at least the 2 preceding years either directly or through any corporation which either owns more than 50% of the subject corporation, is more than 50% owned by the subject corporation or is more than 50% owned by the corporation which also owns more than 50% of the subject corporation. It shall have employed at least 100 persons at one time for 3 months or longer during the last 2 years; provided that an "employer" does not include the State, or any of its political subdivisions, or any other organization which is exempt from taxation under the United States Internal Revenue Code, Section 501, and further provided that a corporation which acquires the business of an employer shall be deemed to have operated within the State during such period as the acquired employer operated within the State.

6. **Establishment.** "Establishment" means any single manufacturing mechanical or mercantile establishment, factory, workshop or other place of employment of an employer, which has been in existence for more than 2 years; provided that "establishment" does not include a temporary construction site.

7. **Mass separation.** "Mass separation" means any of the following:

A. The termination of operations at any establishment which results or can reasonably be expected to result in a majority of the employees at that establishment becoming eligible employees, except that such term does not include the closing of an establishment whenever the closing results from seasonal factors and is customary in the industry of which the establishment is a part;

B. The transfer of a part of an establishment's operation from one location to another, located 25 or more miles distant from the first as measured along ordinary commuter routes and which results in at least a 20% reduction in the number of employees at the first establishment; or

C. Any action taken by an employer that would reduce the number of employees at one establishment or the total number of employees at all establishments of the employer within the State by 15% or more for a period exceeding 3 months, except that such term does not include a reduction at any establishment or establishments when that reduction results from seasonal factors and is customary in the industry of which the establishment is a part.

§ 876. Notice

1. **Procedure.** Every employer shall notify, in writing, the director, all employees who will be eligible, each affected municipality and each affected employee organization at least 12 months prior to the commencement of any mass separation of employees. The director may approve a shorter period of notification upon request of the employer if it is shown by clear and convincing evidence that the mass separation of employees could not have been foreseen by him. Approval of a shorter period of notice shall not be granted until after a public hearing is held in each affected municipality.

2. **Minimum information required.** Notification shall include the following information:

A. The reasons for the intended mass separation;

B. The number of eligible employees affected, including the amount of wages and other compensation paid to them during the preceding 12 months;

C. The names and addresses of all employees who will or are likely to suffer an employment or wage loss;

D. The amount of state and local taxes paid by the employer during the preceding year and the anticipated impact of the mass separation on those tax payments for the next 2 tax years;

E. The economic circumstances of the employer, including the level of profitability of operations and any plans for future investment, employment and production either in the affected municipality or at another location; and

F. Other such information as the director may by rule require.

3. **Collective bargaining agreement; precedence.** Provisions of any collective bargaining agreement which require greater advance notification than provided by this section shall take precedence over the requirements of this section.

§ 877. Severance pay

1. **Payments to eligible employees.** An employer shall pay to each of its eligible employees in a lump sum, at the time the employee becomes eligible, an amount equal to twice his average weekly wage multiplied by the number of years and fractions thereof that he has worked for the establishment, with a minimum of 5 times his average weekly wage to be paid.

2. **Continuation of health coverage.** An employer shall maintain previously existing health benefit coverage for each eligible employee for a one-year period from the date the employee becomes eligible or until the employee is employed in a position which provides substantially equivalent coverage, whichever occurs first.

3. **Collective bargaining agreements; precedence.** Provisions of collective bargaining agreements which require the payment of severance benefits to

eligible employees in the event of a mass separation and in which the severance benefits are greater than those required by this section shall supersede the requirements of this section if they are in fact paid or partially paid in an amount equal to or exceeding the payments required under section 877, subsection 1. Vacation pay, accrued wages and other types of payments made for any reason other than as compensation for discharge or layoff shall not be considered severance benefits and shall not be considered to satisfy the requirements of this section.

§ 878. Plant Closing Assistance Fund

1. **Creation.** There is created a Plant Closing Assistance Fund that shall be administered by the director and shall be used for the payments authorized in this subchapter.

2. **Employer payments.** Whenever a mass separation occurs, the employer shall pay into the Plant Closing Assistance Fund an amount equal to 15% of the total wages for the previous 12 months of all eligible employees.

3. **Interest earned.** Any interest earned by money held in the Plant Closing Assistance Fund shall be maintained in that fund.

4. **Waiver.** The director may waive in whole or in part payments required by this section upon request of the employer, if it is shown by clear and convincing evidence that the granting of such a waiver will:

- A. Prevent the depletion of assets necessary for the employer to make severance payments to eligible employees as required by section 877;
- B. Prevent the depletion of assets necessary for the employer to continue health payments as required by section 877; or
- C. Preserve employment within the State.

No waiver may be granted until after a public hearing has been held in each affected municipality. All waivers shall be made in writing, with reasons stated, and must be made available to each eligible employee, employee organization and affected municipality.

5. **Authorization for grants.** The director may authorize payments from the Plant Closing Assistance Fund for the following purposes:

- A. To provide emergency tax relief for the purpose of continuing public employment where an affected municipality or other political subdivision faces substantial loss of tax receipts from a mass separation;
- B. To provide technical assistance in conjunction with the State Development Office or any other appropriate public or private agency, including assistance in securing grants and loans to organizations for planning, starting organizations and the arrangement of long-term financing for purchase and continued operation of affected establishments; and

C. To assist in the costs of administering this section.

§ 879. Mitigation of liability

There shall be no liability for severance pay to an eligible employee as required by section 877, nor shall there be any liability for payment to the Plant Closing Assistance Fund required by section 878 if the mass separation at an affected establishment is necessitated by a physical calamity, such as fire, flood or other natural disaster.

§ 880. Other obligation of affected establishments

1. Offers of sale. In the event of an intended plant closure, the owner of an affected establishment shall make good faith offers of sale at fair market value for plant, equipment and inventory to any interested employee organization, private business concern or government-owned or jointly-owned business.

2. No discrimination. No employer may discriminate against any employee in the terms and conditions of employment as a result of the employee having reported information concerning possible or actual violations of this subchapter to the director.

§ 880-A. Power of director

In administering his responsibilities under this subchapter, the director may in addition to all other powers granted by law:

1. Rules and regulations. Make rules and regulations necessary for the purposes of this subchapter; and
2. Witnesses and documents. Compel the attendance of witnesses and the production of any book, paper or document.

§ 880-B. Suits by employees; community residents; directors

1. Civil actions by employees; community residents; employee organizations. Any employee, resident of the community or employee organization affected by the failure of the employer to comply with this subchapter or a rule or order of the director may bring a civil action in the court of competent jurisdiction of the county in which the affected community is located to enforce the provisions of this subchapter. Administrative procedures need not be exhausted before this cause of action may be utilized. If a court finds an employer has failed to properly notify parties of its intended mass separation, the court may enjoin the employer from carrying out the mass separation until the employer has given proper notification in accordance with section 876 and has otherwise complied with this subchapter. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow reasonable attorneys' fees and costs to be paid by the defendant.

2. Suits by the director. The director may supervise the payment of the unpaid severance pay owed to any employee under this section and payments due

to the Plant Closing Assistance Fund. The director may bring an action in any court of competent jurisdiction to recover the amount of any unpaid severance pay or payments due to the Plant Closing Assistance Fund. The right provided by subsection 1 to bring an action by or on behalf of any employee, and of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the director in an action under this subsection, unless the action is dismissed without prejudice by the director. Any sums recovered by the director on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the director, directly to the employee affected. Any sums thus recovered not paid to an employee, because of inability to do so within a period of 3 years, shall be paid to the Plant Closing Assistance Fund.

3. **Violation.** Any person who knowingly makes any false statement of a material fact or knowingly fails to disclose a material fact in an attempt to influence any action or proceeding under this subchapter is guilty of a Class D crime.

STATEMENT OF FACT

Over the last 30 years, many Maine communities have been hard hit by plant closings. In the 1950's the textile industry, and in the 1960's and 1970's the shoe industry left many thousands of Maine workers without jobs. The 1980's have already been marked by the closure of Viner Brothers in Bangor, the Lily-Tulip Corporation in Old Town, Snow's Tire Outlets throughout the State, and Maremont's proposed reduction of its muffler division in Saco.

The purpose of this bill is to lessen the impact of plant closings and major layoffs. It provides for notice, compensation and technical assistance to both workers and communities in an effort to minimize the economic and social consequences of plant closures.

NOTICE

The bill requires an employer to give a one-year notice of intended closure or mass layoff to all affected workers and communities. This will allow those affected to find alternate employment and otherwise prepare for the upcoming economic disruption.

SEVERANCE PAY

The bill requires employers to pay severance benefits to affected workers equal to 2 weeks' pay for each year of employment and to continue health care benefits for up to one year after termination.

PLANT CLOSING AND ASSISTANCE FUND

The bill requires the employer to pay a sum equal to 15% of the yearly wages of terminated employees into a fund to be administered by the Director of the Bureau of Labor.

The fund will be used to supply technical assistance to business, labor or community organizations for the purpose of keeping the plant open under old or new management. The fund can also be used to reimburse communities for tax loss due to plant closures.

GOOD FAITH OFFER OF SALE

In the past, factories have closed and moved refusing other concerns and organizations the opportunity to purchase and re-open the factory. This bill requires the owner of a plant planning to shut down to make a good faith offer of sale to any private business concern, employer or community organization.

Plant closings and mass layoffs create major economic, social and health problems causing great loss to individuals, communities and the State. Changes of operations at business concerns cause unemployment to increase drastically in local areas. This bill is necessary to provide economic planning and assistance, avert dislocation of employment opportunities and to insure that private investment decisions conform more closely to the needs of citizens and communities.