

# MAINE STATE LEGISLATURE

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L.D. 316

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DATE: 5/24/95

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MINORITY  
LABOR

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
117TH LEGISLATURE  
FIRST REGULAR SESSION

18

20 COMMITTEE AMENDMENT "A" to H.P. 236, L.D. 316, Bill, "An  
Act to Forbid an Employer from Hiring Replacement Workers during  
a Strike"

22

24 Amend the bill by striking out the title and substituting  
the following:

26

'An Act Concerning Contracts between Employers and Replacement  
Workers'

28

30 Further amend the bill by striking out everything after the  
enacting clause and before the statement of fact and inserting in  
its place the following:

32

34 'Sec. 1. 26 MRSA §595, as enacted by PL 1987, c. 558, §1, is  
amended to read:

36

§595. Deterrence of violence during a labor dispute

38

1. Legislative findings. The Legislature finds that:

40

42 ~~A. The practice of receiving applicants for employment,~~  
conducting interviews of job applicants or performing  
44 medical examinations of job applicants at the worksite of an  
employer who is currently engaged in a labor dispute with  
his employees tends to incite violence by bringing  
46 individuals who may be considered as replacements for  
workers to the physical focus of the labor dispute and by  
encouraging a direct confrontation between these individuals  
48 and the prior employees; and

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2 B. The presence of persons carrying dangerous weapons near  
 4 sites where applications for positions with an employer  
 6 involved in a labor dispute are being accepted or where  
 8 interviews of those job applicants are being conducted or  
 10 medical examinations of those applicants are being performed  
 12 creates an unacceptable risk of violence; and

14 C. The public safety requires the regulation of these  
 16 practices to reduce the likelihood of violence.

18 **2. Purpose.** The purpose of this section is to reduce the  
 20 potential for violence during labor disputes by prohibiting  
 22 certain provocative acts and imposing penalties for failure to  
 24 obey this section.

26 ~~3. -- Receiving job applicants at worksite prohibited. -- No  
 28 employer may perform any of the following acts at any of that  
 30 employer's plants, facilities, places of business or worksites  
 32 where a labor dispute, strike or lockout involving the employees  
 34 of that employer is in progress:~~

36 ~~A. -- Receiving persons for the purpose of soliciting or  
 38 receiving applications for employment with the employer;~~

40 ~~B. -- Conducting or having conducted interviews of applicants  
 42 for employment with the employer; or~~

44 ~~C. -- Performing or having performed medical examinations of  
 46 applicants for employment with the employer.~~

48 ~~Any employer who violates this subsection is subject to a civil  
 50 penalty not to exceed \$10,000 for each day the violation  
 52 continues, payable to the State, to be recovered in a civil  
 54 action. Upon request, any court of competent jurisdiction shall  
 56 also enjoin the violation under section 5.~~

58 ~~The Attorney General, the Commissioner of Labor or any employee,  
 60 employees or bargaining agent of employees involved in the labor  
 62 dispute may file a civil action to enforce this subsection.~~

64 ~~4. -- Hiring off-site permitted. -- An employer involved in a  
 66 labor dispute, strike or lockout may perform hiring activities  
 68 prohibited under subsection 3 at any site other than his  
 70 customary plants, facilities, places of business or worksites  
 72 where a labor dispute, strike or lockout involving the employees  
 74 of that employer is in progress.~~

76 ~~A. -- The employer must notify the law enforcement agencies of  
 78 the county and municipality in which these activities will~~

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~~be conducted at least 10 days before commencing hiring activities.~~

~~B. No employee of the employer conducting hiring activities under this subsection and who is involved in the labor dispute, strike or lockout may picket, congregate or in any way protest the hiring activity of the employer within 200 feet of the building or structure at which such activities are taking place. Violation of this paragraph is a Class E crime.~~

**5. Dangerous weapons prohibited.** It is a Class D crime for any person, including, but not limited to, security guards and persons involved in a labor dispute, strike or lockout, to be armed with a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, at a site where applications for employment with an employer involved in a labor dispute, strike or lockout are being received or where interviews of those job applicants are being conducted or where medical examinations of those job applicants are being performed.

A. A person holding a valid permit to carry a concealed firearm is not exempt from this subsection.

B. A security guard is exempt from this subsection to the extent that federal laws or rules required the security guard to be armed with a dangerous weapon at such a site.

C. A public law enforcement officer is exempt from this subsection while on active duty in the public service.

D. A security guard employed by an employer involved in a labor dispute, strike or lockout may be present at the location where applications for employment with the employer will be accepted, interviews of those applicants conducted or medical examinations of those applicants performed to the extent permitted under Title 32, chapter 93. Nothing in this section may be construed to extend or limit in any way the restrictions placed upon the location of private security guards under Title 32, chapter 93.

**Sec. 2. 26 MRSA §595-A** is enacted to read:

**§595-A. Contracts between employers and replacement workers**

If any business operating in this State enters into an agreement with individuals or groups of employees by which they are to replace lawfully striking employees who regularly perform the majority of their work in this State, the agreement must provide that when the strike is settled or if the striking

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2 employees offer unconditionally to return to work, those  
4 replacement workers will not be retained by the business in  
6 preference to the strikers. The replacement workers may only be  
8 given post-strike rights that do not detract from the claims of  
the striking employees to return to their previous positions.  
Any agreement, written or oral, express or implied, inconsistent  
with this section is not binding to the extent that it differs  
from this section.'

10 Further amend the bill by inserting at the end before the  
12 statement of fact the following:

14 **FISCAL NOTE**

16 This bill may reduce prosecutions for Class E crimes. If  
18 jail sentences are reduced, the savings to the counties are  
20 estimated to be \$83.22 per day per prisoner. These savings do  
22 not affect reimbursement by the State. The reduction in the  
number of prosecutions that would have resulted in a jail  
sentence and the resulting savings to the county jail system are  
expected to be insignificant.

24 The Judicial Department may realize some minor savings from  
26 reductions of workload and administrative costs associated with  
28 the minimal number of cases that will no longer be filed in the  
court system. Reductions in the collection of fines may decrease  
General Fund revenue by minor amounts.'

30 **STATEMENT OF FACT**

32 This amendment replaces the original bill with provisions  
34 that address certain legal issues related to hiring replacement  
36 workers during a labor dispute. The amendment repeals the  
provisions in current law that attempted to restrict an  
employer's right to hire replacement workers during a labor  
dispute. Superior Court Chief Justice Morton A. Brody declared  
38 those provisions preempted by the National Labor Relations Act in  
40 1989. The amendment retains only those provisions that relate  
directly to deterrence of violence during a labor dispute.

42 The amendment also adds a new provision affecting a contract  
44 between an employer and replacement workers. That contract must  
provide that when the strike is settled or if the employees offer  
unconditionally to return to work, the replacement workers will  
46 not be retained in preference to the strikers. The amendment  
also adds a fiscal note to the bill.

**COMMITTEE AMENDMENT**