

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 83

H.P. 74

House of Representatives, January 9, 2001

An Act to Ban Permanent Replacement Workers in a Labor Dispute.

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative PINEAU of Jay.
Cosponsored by Senator EDMONDS of Cumberland and
Representatives: BRYANT of Dixfield, DUNLAP of Old Town, DUPLESSIE of Westbrook,
HATCH of Skowhegan, MATTHEWS of Winslow, PATRICK of Rumford, STANLEY of
Medway.

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

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

6 **§595. Deterrence of violence during a labor dispute**

8 **1. Legislative findings.** The Legislature finds that:

10 A. ~~The practice of receiving applicants for employment,~~
12 ~~conducting interviews of job applicants or performing~~
14 ~~medical examinations of job applicants at the worksite of an~~
16 ~~employer who is currently engaged in a labor dispute with~~
18 ~~his employees tends to incite violence by bringing~~
~~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~~
~~and the prior employees; and~~

20 B. The presence of persons carrying dangerous weapons near
22 sites where applications for positions with an employer
24 involved in a labor dispute are being accepted or where
26 interviews of those job applicants are being conducted or
28 medical examinations of those applicants are being performed
creates an unacceptable risk of violence; and

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

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

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

40 A. ~~Receiving persons for the purpose of soliciting or~~
42 ~~receiving applications for employment with the employer;~~

44 B. ~~Conducting or having conducted interviews of applicants~~
46 ~~for employment with the employer; or~~

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

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

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

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

18 A. -- The employer must notify the law enforcement agencies of
the county and municipality in which these activities will
20 be conducted at least 10 days before commencing hiring
activities.

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

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

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

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

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

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

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

22 **§595-A. Contracts between employers and replacement workers**

24 If any business operating in this State enters into an
26 agreement with individuals or groups of employees by which they
28 are to replace lawfully striking employees who regularly perform
30 the majority of their work in this State, the agreement must
32 provide that when the strike is settled or if the striking
34 employees offer unconditionally to return to work, those
36 replacement workers will not be retained by the business in
38 preference to the strikers. The replacement workers may be given
40 only post-strike rights that do not detract from the claims of
42 the striking employees to return to their previous positions.
44 Any agreement, written or oral, express or implied, inconsistent
with this section is not binding to the extent that it differs
from this section.

30 **SUMMARY**

32 This bill repeals the provisions in current law that attempt
34 to restrict an employer's right to hire replacement workers
36 during a labor dispute. Superior Court Chief Justice Morton A.
38 Brody declared those provisions were preempted by the National
Labor Relations Act in 1989. The bill retains only those
provisions that relate directly to deterrence of violence during
a labor dispute.

40 The bill also requires that a contract between an employer
42 and replacement workers must provide that when the strike is
44 settled or if the employees offer unconditionally to return to
work the replacement workers will not be retained in preference
to the strikers.