

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Fourteenth Legislature
OF THE
State Of Maine

VOLUME II

FIRST REGULAR SESSION

May 10, 1989 to June 14, 1989

McKeen, McPherson, Melendy, Merrill, Michaud, Mills, Mitchell, Murphy, Paradis, J.; Pendleton, Plourde, Rand, Rolde, Rotondi, Seavey, Sheltra, Sherburne, Skoglund, Stevens, P.; Tammaro, Wentworth.

ABSENT - Boutilier, Burke, Carroll, D.; Carter, Dore, Foster, Hanley, Higgins, Marston, O'Dea, Oliver, Ruhlín, Small, Strout, B.; Tupper, The Speaker.

Yes, 85; No, 49; Absent, 16; Vacant, 1; Paired, 0; Excused, 0.

85 having voted in the affirmative and 49 in the negative with 16 being absent and 1 vacant, the motion to accept the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

Divided Report

Majority Report of the Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-409) on Bill "An Act to Strengthen Maine's Restaurant Smoking Law" (H.P. 966) (L.D. 1344)

Signed:

Senators: GAUVREAU of Androscoggin
TITCOMB of Cumberland
RANDALL of Washington

Representatives: MANNING of Portland
ROLDE of York
BOUTILIER of Lewiston
CLARK of Brunswick
BURKE of Vassalboro
CATHCART of Orono
PEDERSON of Bangor
DELLERT of Gardiner
PENDLETON of Scarborough

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Representative: HEPBURN of Skowhegan

Reports were read.

On motion of Representative Manning of Portland, the House accepted the Majority "Ought to Pass" Report, the Bill read once.

Committee Amendment "A" (H-409) was read by the Clerk and adopted and the Bill assigned for second reading, Friday, June 9, 1989.

Divided Report

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-410) on Bill "An Act to Enhance the Management of the Fish and Game Resources of the State of Maine" (H.P. 16) (L.D. 8)

Signed:

Senators: PERKINS of Hancock
PEARSON of Penobscot
BRANNIGAN of Cumberland

Representatives: LISNIK of Presque Isle
McGOWAN of Canaan
CHONKO of Topsham
RIDLEY of Shapleigh
CARROLL of Gray
CARTER of Winslow
FOSS of Yarmouth
POULIOT of Lewiston
HIGGINS of Scarborough

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Representative: FOSTER of Ellsworth

Reports were read.

On motion of Representative Carter of Winslow, the House accepted the Majority "Ought to Pass" Report, the Bill read once.

Committee Amendment "A" (H-410) was read by the Clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

Divided Report

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-411) on Bill "An Act to Increase Funding of Legal Services for the Elderly" (H.P. 888) (L.D. 1232)

Signed:

Senators: PERKINS of Hancock
BRANNIGAN of Cumberland

Representatives: HIGGINS of Scarborough
McGOWAN of Canaan
FOSTER of Ellsworth
LISNIK of Presque Isle
POULIOT of Lewiston
CHONKO of Topsham
CARTER of Winslow
CARROLL of Gray
FOSS of Yarmouth

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: PEARSON of Penobscot

Representative: RIDLEY of Shapleigh

Reports were read.

On motion of Representative Carter of Winslow, the House accepted the Majority "Ought to Pass" Report, the Bill read once.

Committee Amendment "A" (H-411) was read by the Clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

Divided Report

Majority Report of the Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (H-417) on Bill "An Act to Reduce the Potential for Violence During Labor Disputes" (H.P. 292) (L.D. 404)

Signed:

Senators: ESTY of Cumberland
MATTHEWS of Kennebec

Representatives: LUTHER of Mexico
McKEEN of Windham
McHENRY of Madawaska
TAMMARO of Baileyville
PINEAU of Jay
RUHLIN of Brewer
RAND of Portland

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: WHITMORE of Androscoggin

Representatives: BUTLAND of Cumberland
REED of Falmouth
McCORMICK of Rockport

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry. Representative McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I move acceptance of the Majority "Ought to Pass" Report.

This is another strikebreaker bill, it also has a referendum. The whole idea behind the strikebreaker bill is to prevent violence during a strike. What is happening is that we have professional strikebreakers that come into the State of Maine, we are wide open

to them. We have a "Welcome to Maine-Strikebreakers" sign right out in the State of Maine presently because, for the past few years, we have seen what has happened.

When you replace people who are on strike, when you replace them with professional strikebreakers, you have a large number of people who come in and it is a great potential for violence. The law enforcement officers of that municipality where the corporation is located do not have the proper enforcement to take care of violence, the potential violence that can be rough. It is costly to the State of Maine as well as to that municipality.

The whole idea behind this bill is to narrow it down and it is very, very narrow. It says that a professional strikebreaking corporation is one that has supplied three times (within the last five years) at least 100 or more employees to a firm that has had a strike or a lock-out.

Ladies and gentlemen, that is not very many corporations that would be included. We allow people who do regular maintenance to come in, it does not prohibit a company from hiring regular people. It does not prohibit people from providing the regular maintenance they used to provide. It just prohibits these professionals who come in and replace the regular working force. Most of the time, those people are not familiar with that plant and they can cause, as you have seen in Jay, spills, they can cause hazardous waste, they can cause maybe the death of several people in the town by accident because they are not familiar as to how and where the lines are. The chlorine spill that they had in Jay can tell you pretty much what could have happened had the wind been in the right direction. These are the things that we are trying to stop. If that mill had started gradually, had hired people gradually, they would have been familiar with the equipment, they would have known what they were doing but they chose to hire professionals. They had people who weren't qualified to do the job. That is plain and simple, they had people there who just were not qualified to do the job.

What we are focusing on really is the health and safety of our community. I assure you if I were a person living in Jay, I would have been scared for the life of my family and myself, day in and day out, because it is not a very nice place, it is not a very nice situation to be in, not knowing what is going to happen. This, my friends, has cost the State of Maine a lot of money. It has cost this legislature a lot of time, a lot of debate, a lot of work. Why should we be protecting people who are up there and don't seem to give a hoot about the health and welfare of the citizens of the State of Maine. They come into this state, they use and abuse our resources, not all of them, but quite a few of them.

I would hope that we would send this out to referendum and let the people decide but I would be more than willing to strip the referendum clause off if the people here in this House want to deal with this. We have tried and we have tried but we have always had the same answer from the second floor, hopefully this time it will be different.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: Much has been said in this chamber about this subject and I believe it will be neither prudent nor productive to speak at length to it so I will not do so.

However, I do wish to take just a moment to bring to your attention the concerns of the minority signers of this matter. We share the concerns of the

proponents to this bill for the safety of a community that may be burdened by a protracted labor dispute. We do, however, believe that this vehicle is not the appropriate way to address those.

Our first, and in fact our major concern, is that this bill may well be preempted by federal law. The National Labor Relations Act provides a struck employer with the legal right to hire replacement workers and the Commerce and Supremacy Clause of the United States Constitution enforces that right by prohibiting states from enacting laws that infringe upon it. In the event that the Law Court would not uphold this bill, we do believe that the safety of the strike burdened community could be bolstered by more stringent enforcement of existing laws. For example, the diligent enforcement of at least eight of the public order statutes of the Maine Criminal Code could deter picket line violence and strict enforcement of state and federal regulatory statutes could ward off in-plant accidents.

Our second concern is that the scope of this bill is overly broad. First, because the bill seeks to prevent potential violence, this bill would enable a court to enjoin an employer whose replacement hirings have not necessarily contributed to nor proximately caused the violence in the community. Yet, the United States Supreme Court has recognized that, as compelling as the interest in preventing potential violence is, injunctions should be issued only when there is an actual violence or an imminent threat to violence, not just the potential for violence.

Thirdly, the regulations in this bill exceed the needs posed by the targeted problem. The Statement of Fact indicates that the potential harm sought to be avoided arises from the sudden and mass hirings of untrained replacements. The bill, however, does not regulate the rate at which replacements may be hired, does not regulate the number nor their skill level. The bill simply regulates hiring on the quantity and nature of the replacements for employment.

In conclusion, the minority signers believe that there are other avenues that would achieve the goal of this bill which are much more likely to succeed and for that reason, I would urge you to defeat the pending motion.

Mr. Speaker, when the vote is taken, I respectfully request a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: We talk about our bringing in replacement workers and whatever and we talk about violence -- what creates any more violence than bringing in replacement workers and then leave it up to the collective bargaining process. Back when I used to negotiate contracts, we left it up to the unions and management to work out a deal on collective bargaining. The last thing on our mind was bringing in replacement workers. That is the last thing we ought to think about today is bringing in replacement workers.

Most of our workers in these plants are very qualified people that do a good job, a good job. The last thing I want to see is opening up the door to bring in replacement workers. It takes away a little

bit of the effect of collective bargaining. When you go to the table, the thing you have on your mind is knowing that you are going to lose your job if you do elect to strike and knowing that out on the street there are replacement workers that are going to be taking your job. It takes away the bargaining process.

I hope today when you vote you will vote with the good Representative from Madawaska on this bill.

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: The bill before you is an important one. Those of you who were here last time saw measures like it. Since January, all I have heard is, we don't want another Jay. Well, I beg to differ, Jay is a good community that was taken advantage of.

I am not going to talk about the multibillion dollar corporation strategy of taking Maine workers and throwing them in the street. I am not going to talk to you about the Maine workers who won't talk to their brothers or the fathers who won't talk to their sons because of a strategy.

What I am going to talk to you about is what we discussed in the Labor Committee on other issues. The people on the coast, the people up in the county, the people in southern Maine, the Mainer's who paid for International Paper's decision to throw Mainer's in the street. The administration's own Department of Labor has a figure of over \$423,000 which had to be put in for retraining the Maine workers of Jay and the surrounding towns, almost half a million dollars because of a company's decision to throw their workers away.

The Unemployment Fund which we heard all through this session in the Labor Committee, how small businesses are affected by any major decision on the trust fund, the Employment Security Commission, over \$3,300,000 was taken out of that fund to help feed the families of Jay, Livermore Falls, Farmington, Wilton, Athens, Wayne, Augusta, and the Lewiston/Auburn areas. That fund was depleted because of International Paper's decision and also because the State of Maine failed to send a message. An additional \$1,970,000 plus funds were paid in dislocated worker benefits.

Ladies and gentlemen, representatives of people from the coast, the county -- couldn't your people have used those funds better? Couldn't a decision have been made to protect those funds and use those funds in the training? It scares me what the state did over the last couple of years. The loggers, the fishermen, the small business owners all helped pay to replace these funds, funds that weren't intended for a dislocated work force because of the strategy of a multi-national corporation. These companies have the money, they have the funds to hire who they want at what cost they want. They have spent over a million dollars (the company did) in housing extra security and transporting them to the mill site.

You have been handed an advertisement in an April, 1989 issue of Pulp and Paper. It says, before you get a piece of his mind, I want you to look at the face of that gentleman, all he is is a regular Mainer. You can smirk, you can smile, but that is all he is. I don't think he is somebody to be feared.

Yes, I want the yeas and nays taken because I want the people of this House to think of the people that work for a living in this state. I want to send out a message to every giant employer that wants to use and abuse our people and that Maine cherishes its working sons and daughters and we want them to know where we stand on it.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative McHenry of Madawaska that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 59

YEA - Adams, Aliberti, Allen, Anthony, Bell, Carter, Cashman, Chonko, Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Daggett, Dipietro, Dore, Duffy, Dutremble, L.; Erwin, P.; Farnsworth, Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heesch, Hichborn, Hickey, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, LaPointe, Larrivee, Lawrence, Lisnik, Luther, Macomber, Mahany, Manning, Marston, Martin, H.; Mayo, McGowan, McHenry, McKeen, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Gara, Paradis, P.; Parent, Paul, Pendleton, Pineau, Plourde, Pouliot, Priest, Rand, Richard, Ridley, Rolde, Rotondi, Rydell, Sheltra, Simpson, Skoglund, Smith, Stevens, P.; Swazey, Tammaro, Tardy, Townsend, Tracy, Walker, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, Begley, Brewer, Butland, Carroll, J.; Curran, Dellert, Dexter, Donald, Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Hepburn, Hutchins, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, McCormick, McPherson, Merrill, Murphy, Norton, Paradis, E.; Paradis, J.; Pines, Reed, Richards, Seavey, Sherburne, Stevens, A.; Stevenson, Strout, D.; Telow, Webster, M.; Wentworth.

ABSENT - Boutilier, Burke, Carroll, D.; Cathcart, Foster, Higgins, Jackson, O'Dea, Oliver, Pederson, Ruhlin, Small, Strout, B.; Tupper, Whitcomb.

Yes, 89; No, 46; Absent, 15; Vacant, 1; Paired, 0; Excused, 0.

89 having voted in the affirmative and 46 in the negative, with 15 being absent and 1 vacant, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-417) was read by the Clerk and adopted and the Bill assigned for second reading Friday, June 9, 1989.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-429) on Bill "An Act to Allow Recovery for Wrongful Death of Unborn Children" (H.P. 408) (L.D. 551)

Signed:

Senators: HOBBS of York
GAUVREAU of Androscoggin
Representatives: ANTHONY of South Portland
PARADIS of Augusta
CONLEY of Portland
COTE of Auburn
RICHARDS of Hampden
MACBRIDE of Presque Isle

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: HOLLOWAY of Lincoln
Representatives: FARNSWORTH of Hallowell
STEVENS of Bangor
HANLEY of Paris
HASTING of Fryeburg

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis
Representative PARADIS: Mr. Speaker, I move that the House accept the Majority "Ought to Pass" Report.