

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME III

FIRST REGULAR SESSION
June 15, 1989 to July 1, 1989
Index

The SPEAKER: The pending question before the House is the motion of Representative Carter of Winslow that this bill and all accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 153

YEA - Adams, Aliberti, Boutilier, Carter, Cathcart, Clark, H.; Clark, M.; Cote, Duffy, Erwin, P.; Hale, Handy, Heeschen, Hichborn, Jacques, Jalbert, Joseph, LaPointe, Lawrence, Look, Luther, Macomber, Martin, H.; Mayo, McKeen, Michaud, Mills, Murphy, Nutting, O'Dea, Oliver, Paradis, P.; Paul, Pederson, Pineau, Plourde, Pouliot, Priest, Rand, Reed, Richard, Ridley, Simpson, Smith, Swazey, Tracy, The Speaker.

NAY - Aikman, Allen, Anthony, Ault, Bailey, Begley, Bell, Brewer, Burke, Butland, Cahill, M.; Carroll, D.; Carroll, J.; Coles, Curran, Daggett, Dellert, Dexter, Donald, Dore, Farnsworth, Farnum, Farren, Foss, Foster, Garland, Gould, R. A.; Graham, Greenlaw, Gurney, Hanley, Hastings, Hepburn, Hickey, Higgins, Høglund, Holt, Hutchins, Jackson, Ketover, Kilkelly, Larrivee, Lebowitz, Libby, Lord, MacBride, Mahany, Manning, Marsano, Marsh, McCormick, McGowan, McPherson, McSweeney, Merrill, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; Norton, O'Gara, Paradis, E.; Parent, Pendleton, Pines, Richards, Rolde, Rotondi, Rydell, Seavey, Sheltra, Sherburne, Small, Stevens, A.; Stevens, P.; Stevenson, Strout, B.; Strout, D.; Tammaro, Telow, Townsend, Tupper, Walker, Webster, M.; Wentworth, Whitcomb.

ABSENT - Anderson, Cashman, Chonko, Conley, Constantine, Crowley, DiPietro, Dutremble, L.; Gwadosky, Hussey, Lisnik, Marston, McHenry, Melendy, Paradis, J.; Ruhlin, Skoglund, Tardy.

Yes, 47; No, 86; Absent, 18; Paired, 0; Excused, 0.

47 having voted in the affirmative, 86 in the negative, with 18 being absent, the motion did not prevail.

Subsequently, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 40 was taken up out of order by unanimous consent:

COMMUNICATIONS

The following Communication:

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

June 30, 1989

TO: The Honorable Members of the 114th Legislature:

I am returning without my signature or approval H.P. 292, L.D. 404, "AN ACT to Reduce the Potential for Violence During Labor Disputes."

This week, the Maine Supreme Judicial Court determined that the National Labor Relations Act preempts this legislature from establishing a 45 day cooling-off period during a labor dispute. The Court specifically recognized that "the right of an employer to continue his operations in the face of a strike by hiring replacement workers is one of the 'weapons of economic pressure' that Congress left unregulated and to be controlled by the free play of economic forces." (Emphasis added.) The Court based its decision on a fifty-year line of United States Supreme Court decisions that a state cannot "enter

the substantive aspects of the bargaining process" by establishing a law whose "operative consequence" is to limit that right.

This language reinforces my now oft-stated concern that legislation of this type is preempted by federal law. This conclusion necessarily follows from the two restrictions under L.D. 404 that make that bill more onerous than L.D. 1756 for an employer to exercise its legal right to maintain operations during a labor dispute. First, the hiring ban in L.D. 404 applies to both permanent and temporary replacements, whereas the cooling-off bill applied only to permanent replacements. Second, the hiring ban under this bill has no time limit, whereas the cooling-off bill was limited to just 45 days. Those differences, coupled with the fact that several courts have already invalidated laws nearly identical to L.D. 404, persuades me that there are substantial legal and constitutional problems with this bill.

Of equal concern, though, is my continuing objection to the breadth of this bill. The threshold of this bill -- that a company shall be defined as a strikebreaker if it furnished 10 or more employees on more than 1 occasion in a 10 year period -- is of course far lower than any of the three previous strikebreaker bills I have rejected. My attempt this session to compromise on this issue by offering a proposal that would prevent large-scale replacements by companies both in and out of this state was apparently rejected because it did not go so far as to limit the hiring of as few as 10 people. The statement of fact of L.D. 404, however, indicates that the purpose of the bill is to protect a local community from the potential threat of violence arising from the "mass" hirings of replacement workers in a strike-laden community. I do not regard employing 10 replacement workers as a "mass" hiring, nor do I believe it reasonable to conclude that the employment of 10 such workers would threaten the safety of a community.

For all of the foregoing reasons, I once again request that you respect the dictates of federal law and vote to sustain my veto.

Sincerely,
S/John R. McKernan, Jr.
Governor

Was read and ordered placed on file.

The accompanying Bill "An Act to Reduce the Potential for Violence During Labor Disputes" (H.P. 292) (L.D. 404).

Was read.

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

Representative PINEAU: Mr. Speaker, Men and Women of the House: I would like to sit down and not say anything to this but coming from where I come from I can't and I hope you bear with me.

This is just another veto in the long list of anti-labor positions that the administration has taken. I know you don't have it in front of you on the veto message. I think when you get it, it will look something like what you read two years ago if you were here. It looks something like we read earlier today.

It is obvious that the Governor doesn't want to take a position for the workers of the state, the organized workers. It is obvious that he doesn't see that there are problems when there is a massive strike in one's town. It is obvious that he doesn't care when communities get ripped apart. It is also obvious he doesn't care how much money comes out of the unemployment insurance fund. It is obvious he doesn't care how much public safety funds are expended on an area when it is all needless. It is

obvious he doesn't want to use his gubernatorial authority to try to get the parties to come to an agreement. It is obvious he is leaving the Maine workers out to be the victims of multi-national corporations. I hope you remember this when you vote on this veto.

The SPEAKER: The Chair recognizes the Representative from Cape Elizabeth, Representative Webster.

Representative WEBSTER: Mr. Speaker, Ladies and Gentlemen of the House: I think you will find that there are two significant problems with this bill which may cause you to vote to sustain the Governor's veto.

The first one is the question of preemption of whether Maine's laws are preempted by the National Labor Relations Act. I think there is every indication that in fact this law is preempted by federal law and that there are substantial legal and constitutional problems with this bill as a result of that.

The second concern is the breadth of this bill. The thresholds of this bill that a company shall be defined as a strikebreaker if it furnished ten or more employees on more than one occasion in a ten year period is far lower than any of the three previous strikebreaker bills that have been rejected by the Governor.

I hope that you will vote to sustain his veto of this bill.

After reconsideration, the pending question before the House is, "Shall this Bill become a law notwithstanding the objections of the Governor?" Pursuant to the Constitution, the vote will be taken by the yeas and nays. This requires a two-thirds vote of the members present and voting. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 154V

YEA - Adams, Aliberti, Allen, Anthony, Bell, Boutillier, Burke, Cahill, M.; Carroll, D.; Carter, Cathcart, Clark, H.; Clark, M.; Coles, Cote, Daggett, Dore, Duffy, Erwin, P.; Farnsworth, Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heeschen, Hitchborn, Hickey, Hoglund, Holt, Jacques, Jalbert, Joseph, Ketover, Kilkelly, Larrivee, Lawrence, Luther, Macomber, Mahany, Manning, Martin, H.; Mayo, McGowan, McKeen, McSweeney, Michaud, Mills, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Dea, O'Gara, Oliver, Paradis, P.; Paul, Pederson, Pineau, Plourde, Pouliot, Priest, Rand, Richard, Ridley, Rolde, Rotondi, Rydell, Sheltra, Simpson, Smith, Stevens, P.; Swazey, Tammaro, Townsend, Tracy, Walker, The Speaker.

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

ABSENT - Anderson, Cashman, Chonko, Conley, Constantine, Crowley, DiPietro, Dutremble, L.; Hussey, LaPointe, Lisnik, Marston, McHenry, Melendy, Paradis, J.; Ruhlin, Skoglund, Tardy.

Yes, 80; No, 53; Absent, 18; Paired, 0; Excused, 0.

80 having voted in the affirmative and 53 in the negative with 18 being absent, the veto was sustained. Sent up for concurrence.

The following item appearing on Supplement No. 41 was taken up out of order by unanimous consent:

COMMUNICATIONS

The following Communication:

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

June 30, 1989

TO: The Honorable Members of the 114th Legislature:

I am returning without my signature or approval H.P. 1008, L.D. 1406, "AN ACT Relating to Compensation for Hearing Losses Under the Workers' Compensation Act."

This bill amends the Workers' Compensation Act to provide benefits for occupational hearing losses up to 3000 cycles per second. I recognize that hearing loss is an area that requires careful examination and perhaps benefit review. I cannot, however, support this bill when no one -- including the Labor Committee, the Bureau of Insurance, the Maine Council of Self-Insurers, the National Council of Compensation Insurers and even the proponents of the bill -- could determine what cost this benefit increase would impose on our compensation system.

The unknown costs of this bill come at a time when the expense of our present system is already prohibitively high. The benefit increase to 3000 cycles per second may be consistent with the standards adopted by other states, but there is presently no basis for calculating the financial impact of this standard in Maine where our benefit costs are already higher than most other states. Moreover, this bill does not provide any sure means of limiting that potential impact.

I recognize that the use of the "state average weekly wage" standard, as opposed to the "individual average wage standard," may offset some of the costs, but no one at this time knows whether that method of compensation is an adequate limitation. Prudence dictates that we not proceed with any benefit changes without a sufficient knowledge of their effect on our system. This is especially true when this system will be required to accept additional costs as a result of other legislation this session.

At this point, I simply ask the Legislature to give my administration the opportunity to evaluate the cost impact of this reform. I would certainly be willing to attempt to complete this evaluation prior to the second session of the 114th Legislature. At that time we would all be in a better position to evaluate this legislation. To that end, I urge you to oppose this bill and vote to sustain my veto.

Sincerely,
S/John R. McKernan, Jr.
Governor

Was read and ordered placed on file.

The accompanying Bill "An Act Relating to Compensation for Hearing Losses Under the Workers' Compensation Act" (H.P. 1008) (L.D. 1406).

Was read.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Ladies and Gentlemen of the House: I am the sponsor of this bill and I confess that having a bill of mine vetoed is definitely a new experience and one which I hope will not be repeated very often.

I introduced this bill in the last legislature and the Committee on Labor came close to considering it and passing it out but they chose not to. I introduced it again in this legislature. The committee worked it very hard, they weakened it considerably, but still made one important change and that is, when you consider hearing loss into the