

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Seventeenth Legislature

OF THE

State Of Maine

VOLUME IV

FIRST REGULAR SESSION

Senate

May 2, 1995 to June 16, 1995

Senate at Ease

Senate called to order by the President Pro Tem.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on LABOR on Bill "An Act to Forbid an Employer from Hiring Replacement Workers during a Strike"

H.P. 236 L.D. 316

Majority - Ought Not to Pass (7 members)

Minority - Ought to Pass as Amended by Committee Amendment "A" (H-310) (6 members)

Tabled - earlier in the day by Senator KIEFFER of Aroostook

Pending - ACCEPTANCE of Either Report

(In House, June 5, 1995, the Minority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-310).)

(In Senate, earlier in the day, Reports READ.)

Senator BEGLEY of Lincoln moved that the Senate ACCEPT the Majority OUGHT NOT TO PASS Report in NON-CONCURRENCE.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Rand.

Senator RAND: Thank you Mr. President, Men and Women of the Senate. I would ask you, please, to not support the pending motion. This is an exceedingly important piece of legislation that we could enact that would be extremely beneficial to the hard-working people in the State of Maine. We have two amendments that are ready to be offered. Of course, they cannot be offered unless we defeat this motion and move on so that we can pass the bill. At this time I think I am forbidden to speak, because of parliamentary procedure, about the amendments, so I would ask you to please vote down the pending motion so that we can go on to discuss two very good amendments. I think either one would be an excellent move in the right direction for the workers of the State of Maine. Please, defeat the pending motion. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator BEGLEY: Thank you Mr. President. This bill, and another that will come shortly hereafter, are intrusions, once again, into the bargaining and negotiation rights of management and labor. It should be handled there, as in most cases. That is the benefit of both sides. The intention, if we follow that closely, would outweigh one side versus the other, by legislation. That is not what negotiations should be all about. Even a compelling statement on this bill, according to the Attorney General of this state, it is his opinion that the proposals in question will be found unconstitutional by the Federal Regulations Labor Relations Act. It has been found that way in several instances in the past, and will continue to be so. So, in this respect, the bill should be defeated on that point of unconstitutionality if nothing else. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Lawrence.

Senator LAWRENCE: Thank you Mr. President, Men and Women of the Senate. The time has come to level the playing field for workers in the State of Maine. This bill does exactly that. I was a little surprised to hear a prior speaker talk about this bill being so intrusive on the collective bargaining agreement, when the argument was raised on a previous bill to see the vote go the other way, when the argument was made that that bill was intrusive on the collective bargaining agreement. Too often we have tried to tilt the advantage one way or the other. This bill seeks to do something that we need to do for the workers of the State of Maine, and that is put them on a level playing field so that they can bargain equally. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Rand.

Senator RAND: Thank you Mr. President, Men and Women of the Senate. The workers in America are really facing a crisis today, and certainly, the workers in Maine. In increasing numbers, our workers are being fired when they exercise their legal right to withhold their labors when all else has failed in negotiating with their employers. It's been ten years since the air traffic controllers, actually it's been more than ten years, it was in 1981 when the PATCO workers were permanently replaced. One of the previous speakers has mentioned the level playing field, in fact both, I think, have mentioned the level playing field for American workers. America is one of only two countries in the world that allows the permanent replacement of striking employees, only one of two in the entire world that will allow this. When we talk about a level playing field, we are talking in this instance that when the employees strike, they actually have exercised their right to resign. When we are talking about this legislation, I think it is good to remember that we are also talking about a situation where strike is not in progress, but a lock-out can occur. In that situation an employer can, literally, lock their doors against the employees who are attempting to go to work. Then, they hire replacement workers to take the jobs of those employees who they have locked out. If this is a level playing field, I would hate to know what an unlevel playing field is. We have a history in Maine, recent history, of where strikes

and replacement workers have caused untold hardship and terrible tragedies in Maine towns.

The legislation that we are proposing would do a lot to level the playing field and eliminate these horrible situations that occur when a strike is in place and when workers are permanently replaced on their jobs. If we believe that workers have a right to organize, if we believe in the very basics of unionization for our workers in this country, then we have to believe that when, as a last resort, workers have only this one tool, which is to retain their labors, then we must offer them the protection of having that job once the strike has been settled, once it has ended. To permanently replace a worker is to tell them that when they exercise their right to strike they have exercised their right to resign from their job. This is not the way things were meant to be. This is the way they have been interpreted. I think another thing that should be pointed out, as I have mentioned, this is a nationwide problem. Unionized workers have their hands tied when it comes to negotiating their contracts. The President of the United States, in March of this year, issued an executive order that bans the federal government from dealing with companies who have permanently replaced their workers. I would hope that you would defeat the motion on the floor, so that we can go on to pass this L.D. and amend it to take care of the constitutional problems. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator **BEGLEY:** Thank you Mr. President. Negotiations across the country, as well as in Maine, have worked to the betterment of both sides. When one talks of a level playing field, that probably is not going to help either side in regards to negotiations of one way or the other. Right now labor says management has the upper hand, therefore it is uneven. If this bill were to pass it would make it just as uneven, if not more so, on the other side, because once on strike, without any other possibility, they could stay on strike and be guaranteed that the strike would last in that fashion. This is one of the reasons why I think the federal government has stayed out of negotiations and allowed it to work to the betterment of both, and it has done that, with rare exceptions. There is another reason that was pointed out, that the bill, as proposed by the Attorney General, and the National Labor Relations Board, would be unconstitutional. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BOENOIT:** Thank you Mr. President. Let me first apologize to the members of the Senate. During the debate I stepped out to meet with some young people from Wilton, in my district, and I missed some of the debate. I would like to pose a question through the Chair. Given the letter of the Attorney General's office, May 8 of this year, would somebody, and I say this respectfully, tell me why I should vote for a bill on it's face that the Attorney General says is unconstitutional? Thank you.

THE PRESIDENT PRO TEM: The Senator from Franklin, Senator Benoit, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Mr. President, Men and Women of the Senate. The motion on the floor is Ought Not to Pass. If that motion carries there can be no correction made to the bill to deal with the unconstitutionality. My understanding is there are people who have amendments who want to correct it. So, if you want to see those amendments, you have to vote against the motion of Ought Not to Pass. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BOENOIT:** Thank you Mr. President. I appreciate the response to my question, but I think, to me, it's putting the cart before the horse. First, I would like to see what makes this proposed law, that the Attorney General says is unconstitutional, what is it that's going to make it valid. I would like to see that first, before I vote on the matter. That's why it appears to me that I will be supporting the pending motion.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Mr. President, Men and Women of the Senate. Unfortunately, for the good Senator from Franklin, it's impossible to debate an amendment before it is before the body. In order to debate an amendment, we would have to first defeat this pending motion so we could then discuss it. So, I would ask the good Senator's support in defeating this motion, so we can go on to address his issues.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator **BEGLEY:** Thank you Mr. President. The continued advice of the Attorney General was that the amendments, as possibly proposed, and I haven't seen them all, but they have been discussed in the Committee, his opinion is as it continues in the letter, the amendments would very likely be pre-empted by the National Labor Relations Act.

On motion by Senator **AMERO** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President. I would like to pose a question through the Chair. With regards to what the Senator from Lincoln just said about how the amendment would, according to the Attorney General, more than likely violate the pre-emption clause, I would appreciate some explanation, rather than having to go on faith. Thank you.

THE PRESIDENT PRO TEM: The Senator from Waldo, Senator Longley, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE**: Thank you Mr. President, Men and Women of the Senate. Unfortunately, we cannot give that explanation. The good Senator from Lincoln was, perhaps, in advance of himself by discussing an amendment before it has been offered, because you cannot discuss an amendment before it has been offered. So, while there may be a response to what he said, we cannot discuss it until that amendment is offered. So, if you want to be able to discuss it, if you want to be able to debate it, we have got to defeat this motion of Ought Not to Pass. Thank you.

The President Pro Tem noted the absence of Senator **BERUBE** of Androscoggin, and excused her from the following Roll Call vote.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by Senator **BEGLEY** of Lincoln that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: **ABROMSON, AMERO, BEGLEY, BENOIT, BUTLAND, CARPENTER, CASSIDY, CIANCHETTE, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, LORD, MILLS, PENDEXTER, SMALL, STEVENS, and the PRESIDENT PRO TEM, Senator KIEFFER**

NAYS: Senators: **BUSTIN, CAREY, ESTY, FAIRCLOTH, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, O'DEA, PARADIS, PINGREE, RAND, RUHLIN**

ABSENT: Senator: **CLEVELAND**

EXCUSED: Senator: **BERUBE**

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 1 Senator being absent and 1 Senator having been excused, the motion by Senator **BEGLEY** of Lincoln to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE, PREVAILED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on LABOR on Bill "An Act to Prohibit the Employment of Professional Strikebreakers" H.P. 505 L.D. 686

Majority - Ought to Pass as Amended by Committee Amendment "A" (H-312) (7 members)

Minority - Ought Not to Pass (6 members)

Tabled - earlier in the day by Senator **KIEFFER** of Aroostook

Pending - **ACCEPTANCE** of Either Report

(In House, June 5, 1995, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-312).**)

(In Senate, earlier in the day, Reports **READ**.)

Senator **RAND** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator **Begley**.

Senator **BEGLEY**: Thank you Mr. President. For all of the same reasons of the previous bill, this bill should not pass. So, I will simply say to you that the same decision has been reached by the Attorney General, therefore, I hope that you will not support the pending motion so that we may move the Ought Not to Pass. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator **Mills**.

Senator **MILLS**: Thank you Mr. President, Men and Women of the Senate. There is a distinction between this bill and the one we just voted on. This bill would prohibit only professional strikebreaking activity by, essentially, out-of-state firms who specialize in these practices, and who have a habit of coming into a state that is victimized by a labor dispute, and essentially, I think, raising the tensions and presenting a threat to local security and local peace. It is on the basis of that distinction, that laws of this kind have been found to be appropriate under state law. In other words, not entirely pre-empted by federal law. We have an existing law that prohibits professional strikebreaking. It is too broad. It is pre-empted