

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

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

by federal law. The one that is proposed, this bill, comes forward and says narrow the impact, narrow the scope of our existing law, and make it apply only to these very large out-of-state companies that engage in professional strikebreaking as a business. I think, on that basis, this bill has merit. Thank you.

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

Senator **LAWRENCE:** Thank you Mr. President. Once again, this is a bill that levels the playing field for American workers, and Maine workers. Some people look back and say the best time in our economy was from the 1930's to the 1960's, and that since that time, on an international comparison, we have been on the decline, the American economy has been on the decline. It's no coincidence that during that time, between 1930 and 1960, was the rise of the American labor movement. It was when labor unions were best able to get the return to the workers, who were their labor. That created a consumer economy in our country. Since that time, since we have chipped away at the advances of the labor movement in this country, we have seen a decline in our economy on the international comparison between other economies. Time and time again we have seen the chipping away of the successes of the American workers. We have seen legislation, time and time again, like this legislation, that seeks to have a concentration of wealth in the hands of a few. It's time to stop over regulating the workers. It's time to give people the fruits of their labor. Let's level the playing field. Thank you.

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

Senator **BENOIT:** Thank you Mr. President. May I please the Senate. Perhaps now if I pose a question through the Chair, it would have some standing. The good Senator Mills has indicated that there is a law on the books, but it is too broad, and that this bill here, if enacted, would narrow it. It seems to me that the merits of the bill are mooted by the Attorney General's opinion. I would like to pose a question through the Chair. Why should I vote for a piece of legislation that, upon its face, is unconstitutional according to the Attorney General of the State?

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 Somerset, Senator Mills.

Senator **MILLS:** Thank you Mr. President, Men and Women of the Senate. The Attorney General's letter of opinion draws a distinction between this bill and the bill that we just considered, and said that there is support in other federal cases, and there are very few of them all together, but there is a line of authority that says that legislation of this kind, that is narrowly focused on the large professional, strikebreaking companies that represent a potential source of violence to a labor dispute, that bills of this kind may well be constitutional. The Attorney General's opinion was in doubt as to whether it would be so adjudicated by the Maine Law Court. His

opinion was a rather flat one, in regard to the prior bill. His opinion on this bill expressed doubt. I think, given the interest that the State of Maine has in preserving our local peace and reducing violence in emotional labor disputes, it would prevail and we would be allowed to enforce this law because it is so narrowly drafted and so carefully constrained to serve the state's own interest.

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

Senator **BEGLEY:** Thank you Mr. President. May I simply quote from the letter of the Attorney General. "I am writing in response to your letter inquiring about Legislative Document 686 and the Legislative Document 316. Would, if enacted into law, be unconstitutional under the primacy clause of the United States Constitution. With the reasons which follow, it is the opinion of the Department that it is very likely that both of the proposals in question would be found to be unconstitutional." Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Ruhlin.

Senator **RUHLIN:** Thank you Mr. President, Honorable Senators of the State of Maine. First, I would like to say one thing. I didn't come here today to act as a member of the Supreme Court, I came here today to act as a Senator of the people of the State of Maine, to try to enact policies that will bring social peace to our society. That is the issue before us. The issue before us is professional strikebreakers. Those people who, for a living, do their best to spread discord throughout our society, those people who have come into our State and disrupted our community and our workplace. Those organizations who would encourage the use of those individuals. This is not new law. This is law that is presently on the books in the State of Maine. What you have before you today is an attempt to amend that law, to decriminalize that law, if you will, to allow it to be handled in the civil courts, and attempt to focus that law so that it comes into a more narrow scope, these unethical activities of the professional strikebreaker, and those who would use them. I say to you today that when you listen to this issue, look at the issue itself, not the smokescreen of constitutionality. We are here to make what is, in fact, the just social policies of this state, and to make them into law. I ask you to take that into consideration. Thank you.

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

Senator **BENOIT:** Thank you Mr. President. May I please the Senate. I agree with the good Senator, Senator Ruhlin, that we are not the Supreme Court. We are not here for that purpose. But, that begs the question, here we are, talking about the merits of something that on its face, according to the Attorney General, is unconstitutional. Instead of talking about the merits of the bill, we should be talking about a way in which it can be cleaned up. Constitutionality is never a smokescreen. I just can't get by that issue. The Attorney General, the chief law enforcement of the State of Maine, has

ruled that this bill, on its face, is bad. How in the world can we vote for a piece of legislation so postured as that? Thank you Mr. President.

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

Senator **LONGLEY:** Thank you Mr. President, Colleagues in the Senate. I have been reading the fine lines here, and I would like to return a question with a question through the Chair. My read shows that two intermediate State Appellate Courts have ruled one way, another Appellate Court has ruled another way. I see equivocation in this Attorney General opinion. Interestingly, the Supreme Court has not ruled here. So we don't need to play the Supreme Court, we can let them play their own game. My question would be, I'm reading what the Attorney General wrote, and it is not agreeing with what I am hearing on the floor, and I would appreciate an explanation. 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 Somerset, Senator Mills.

Senator **MILLS:** Mr. President, Men and Women of the Senate. The opinion says that the professional strikebreaker statute did survive constitutional challenge in some federal cases. It says that the exception is one where the statute in question touches interests that are so deeply rooted in local feeling and responsibility that it appears that Congress would not have intended to pre-empt the field. When we use the word unconstitutional, I think we sometimes use it too loosely. The issue really is whether Congress has so occupied this field of labor dispute that the states do not have the power to exercise their own police power, or discretion, in governing the field. The Constitution comes into play only because it's clear, from the constitution, that the federal government has the power to pre-empt the field. The federal government has the power to say to the states, "We are the one's that are running these labor disputes. We are the one's that issue statutes and regulations to manage labor disputes. And, because of the national interest in uniformity, you states have to keep hands off, even though there is the tenth amendment that suggests otherwise." The issue is, does the State of Maine, in the exercise of its police power, in exercising its own concerns about maintaining peace and civil order, does it have a little area where it can say, "Look, this is our local law. We have a local law that says we don't want out-of-state strikebreaking corporations of a certain size to come in here and foment violence of the sort that we have occasionally, and only rarely, seen in Maine." That's the issue. The Attorney General's opinion is very carefully drafted. It is not clear, in my view at least, and I think as a legislature we have a separate decision to make. 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. I am always struck by the

irony of some of the things I hear in the Maine Legislature. It seems like an overwhelming theme I have heard since the elections of last November were that we should move stuff from the federal government to the state level. The feds shouldn't have the power to pre-empt the state authority. That we shouldn't hide behind the fact that the federal government supposedly occupies the entire field and that responsibility should be turned over to the states. Yet here we have a bill where the state is taking part of that authority, is assuming that responsibility, and yet people want to hide behind the fact that now the federal government should do this, now it's a federal government authority. We can't do it. It belongs in Washington. The question here is really a policy question, and the question is, are you going to stand behind Maine workers? Are you going to level the playing field? Are we going to fight to return to workers what they have labored for? Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Men and Women of the Senate. I'm not a lawyer, and I, too, would like to get back to the merits of this bill. On the face of it it just makes sense to me. We have just turned down another bill that I believe would have leveled the playing field for Maine workers. Now we have before us an even more modest proposal that would decrease the tension in our State when there is a labor dispute. I have been talking to my constituents, as I'm sure you have, and what they are saying to me is they want the volume turned down. They want less conflict. They want less arguments. This bill does that. This bill, as it has been eloquently portrayed by the Senator from Somerset, Senator Mills, prevents professional strikebreaking companies from entering into our State when we have a labor dispute and fomenting violence. That just makes common sense. I urge you to support this bill and the Ought to Pass Report. 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. I have to point out that this legislation, the proposed legislation, is consistent with current public policy as set forth in Title 26, section 851. I would like to read that to you. "It is the declared policy of the State, in the exercise of its police power, for the protection of the public safety, and for the maintenance of peace and good order, and for the promotion of the State's trade, commerce, and manufacturing, to assure all persons involved in labor strikes, or lock outs, freedom of speech and freedom from bodily harm, and to prohibit the occasion of violence and disorder. And, in furtherance of these policies, to prohibit the recruitment and furnishing of professional strikebreakers to replace the employees involved in labor strikes or lock outs." That is current Maine law. This legislation amends the law by defining strikebreaker activity. That would be professional strikebreakers who bring a hundred or more workers into this State to replace our workers more than three times in a five-year period. This is not ultra-legislation. This is very precise. More than

three times, more than one hundred replacement workers in a five-year period. Also, the bill repeals current criminal penalties, which have been the law since the previously stated section was enacted in 1965, and it replaces it with civil action for injunctive relief. That's all this bill does. It refines present legislation that has been on the books in this State since 1965. I urge you, in the name of the working people of this State, to please pass this legislation. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I, too, am not a lawyer. I, too, cannot answer legalistic questions. I, too, do not want to be in the position of voting for an unconstitutional bill. But, I would like to read you amendment ten of the Constitution of the United States, which has just been referred to. "Reserved powers to states. The powers not delegated to the United States by the constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people." So, I hope that that allays that fear. Secondly, let's talk about pre-emption. Let's talk about collective bargaining. If I'm not mistaken, the collective bargaining laws in this nation, and in this state, allow strikes. When you then allow professional strikebreakers, another entity, another business, to come in and pre-empt the reason for that strike, i.e. the workers in that business have said, "We can't work for management under these conditions. Therefore, we are exercising our right to strike." When you, in fact, bring in those workers, those professional workers, another business entity, into that procedure, you are, in fact, pre-empting the collective bargaining agreement and the LNRB. I rest my point. Mr. President, when the vote is taken, I ask for the Yeas and Nays. Thank you.

Senator **BUSTIN** of Kennebec requested a Roll Call.

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

Senator **LONGLEY:** Thank you Mr. President, Colleagues of the Senate. My mission, when I arrived in this Senate, was to work all my bills so that it increased the odds that Maine workers got more jobs. I will simply say that I see this bill as an opportunity to accomplish my mission, which is to see that more jobs go to our neighbors here in Maine. Thank you.

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

Senator **BOENOIT:** Thank you Mr. President. May it please the Senate. Twice in this debate I have heard it said by a speaker that the speaker is not an attorney. That's fine. That's why we give questions to our attorney, the Attorney General. We did it here. Our attorney says very clearly, and I read, "It is the opinion of this department that it is very likely that both of the proposals in question would be found to be unconstitutional." It seems to me there is a regularity about government. Our attorney has so ruled and that will guide my vote. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Carey.

Senator **CAREY:** Thank you Mr. President. I would like to let my learned colleague from Franlin County, Senator Benoit, know that I am sitting on three different opinions from the Attorney General's office. It depends on who was writing the opinion as to whether they agreed or not. I have three opinions that all differ from each other, and that's exactly what they are, opinions. If you care to put your strength into the Attorney General's voice, then you can do that. I have learned, with some degree of disrespect, not to trust what is coming out of the Attorney General's office.

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

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 of Senator **RAND** of Cumberland that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in 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: **BUSTIN, CAREY, ESTY, FAIRCLOTH, GOLDTHWAIT, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, MILLS, O'DEA, PARADIS, PINGREE, RAND, RUHLIN**

NAYS: Senators: **ABROMSON, AMERO, BEGLEY, BOENOIT, BUTLAND, CARPENTER, CASSIDY, CIANCHETTE, FERGUSON, HALL, HARRIMAN, LORD, PENDEXTER, SMALL, STEVENS, and the PRESIDENT PRO TEM, Senator KIEFFER**

ABSENT: Senators: **CLEVELAND, HANLEY, HATHAWAY**

EXCUSED: Senator: **BERUBE**

15 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent and 1 Senator having been excused, the motion of Senator **RAND** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

Senate at Ease

Senate called to order by the President Pro Tem.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED** in **NON-CONCURRENCE**.

Sent down for concurrence.

The President Pro Tem requested that the Sergeant-at-Arms escort the Senator from Cumberland, Senator **BUTLAND**, to the Rostrum where he assumed his duties as President.

The Sergeant-at-Arms escorted the Senator from Aroostook, Senator **KIEFFER**, to his seat on the floor.

Senate called to order by the President.

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

SENATE REPORTS - from the Committee on **BANKING AND INSURANCE** on Bill "An Act to Authorize Participation by the Public Advocate in a Regulatory Proceeding Concerning the Residual Market Mechanism for Workers' Compensation"

S.P. 532 L.D. 1470

Majority - Ought to Pass as Amended by Committee Amendment "A" (S-217) (8 members)

Minority - Ought Not to Pass (5 members)

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

Pending - **ACCEPTANCE** of Either Report

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

Senator **ABROMSON** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President. This is a rerun of a bill, or a similar bill, that we have seen several times in the past when I was serving in the Banking and Insurance Committee in the last session of the Legislature. I believe that our Bureau of Insurance was established, and does exist, for the purpose of regulating these exact types of hearings, whether they be on Workers' Compensation or fire and casualty insurance, or any hearings that legally come before this body. I don't believe that it is necessary to keep funding this additional layer of bureaucracy on top of our regulatory authority. I fully understand I am in the minority, speaking against the report which the three fellow Senators are on, but I do have to speak my opinion on this, the same as I have in the past. I think it's just another unnecessary layer of bureaucracy. Our insurance department is very capable of performing the function of seeing that every party involved is entitled to a fair hearing, and they get a fair hearing. Thank you Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Men and Women of the Senate. I am the designated hitter for the majority report. Just to explain and clarify a couple of things, one, this is an amendment that all of the Senators agreed to. It lowered the cost of the bill. It provides for \$30,000 to be able to be used by the Public Advocate for consultants, that's a very important word, not for staff, not for any feathering of the nest, but for actuaries and people who he deems important to bring before the Superintendent of Insurance in any remanding, re-opening, or other proceedings of the fresh start. Just to clarify a point made by the good Majority Leader from Aroostook, Senator Kieffer, it's true that the Bureau of Insurance is the regulatory body here, but they act as a judge. They are a neutral party. They conduct the proceedings. It's employers on one side and it's workers' comp insurers on the other. You may be sure that the workers' comp insurers have acutary after actuary, and lawyer after lawyer, and consultant after consultant, bolstering their case. This merely seeks to level the playing field and give to the Public Advocate, a very modest ability to hire actuaries and consultants to bolster the employer's case for lowering workers' comp premiums. We think it is a modest proposal and it will help Maine employers. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President. I would just like to point out the fact that in the original bill the request on this was for \$50,000. It was very readily reduced to \$30,000, and that