

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Nineteenth Legislature
State of Maine

Volume II

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Second Regular Session

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Enclosed please find H.P. 756, L.D. 1046, "An Act to Prohibit the Employment of Professional Strikebreakers," which I am returning without my signature or approval.

I cannot support L.D. 1046, and my position on this bill is consistent with my past position on similar bills that have been presented to me and that I have vetoed. It is clear under established judicial precedent as well as an opinion of our Attorney General analyzing a substantively identical bill in 1995, that this legislation is unconstitutional. For this reason, the bill sends a false message to the working community of Maine in that it unreasonably raises the hope of workers that the State has a role to play in federally regulated labor issues.

In 1989, the Maine Superior Court struck down as unconstitutional an existing Maine law (Title 26 M.R.S.A. §595(3) and (4)) that limited an employer's right to hire replacement workers, concluding that the law was preempted by the federal National Labor Relations Act (NLRA) (29 USC §151 et seq.). The court emphasized that state regulation of labor practices is generally preempted under the NLRA, and that restriction of an employer's ability to continue business in the initial stages of a strike was an unlawful curtailment of an economic self help measure that enjoyed federal protection under the NLRA. In June 1989, the Maine Supreme Judicial Court reinforced the same theme in reviewing a proposed bill that would have prohibited the use of replacement workers for a period of 45 days after the beginning of a strike. The Court cautioned 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." Opinion of the Justices, 517 A.2d 805, 808-09 (Me. 1989).

Likewise, in May 1995, the Maine Attorney General concluded that a bill (with terms substantively identical to those of L.D. 1046) then pending before the Second Regular Session of the 117th Legislature was unconstitutional. The Attorney General determined that the bill's attempt to prohibit the hiring of "professional strikebreakers" would be preempted by the NLRA. Office of the Maine Attorney General, Opinion No. 95-8 (May 8, 1995).

The guidance of the courts and Attorney General in this matter is clear. This law is unconstitutional because it improperly limits an employer's federal right to maintain operations in the face of an employee strike by limiting the pool of skilled replacement workers available for hire. It effectively would change the careful balance of economic rights and remedies set out for employers and employees under the NLRA.

In essence, enactment of this bill would create only an illusory remedy that could well be damaging to employees in a labor dispute. Workers could be left stranded after deciding to strike based upon their perceived advantage under this legislation, only to find later that the law is unconstitutional and that the employer can use its federally protected self help right to employ replacement workers from firms specializing in strike operations. Thus, a well-meaning law could actually harm those workers and their families whom it is designed to help.

For the reasons outlined above, I am firmly opposed to L.D. 1046 and I respectfully urge you to sustain my veto.

Sincerely,
S/Angus S. King, Jr.
Governor

READ and ORDERED PLACED ON FILE.

The accompanying Bill " An Act to Prohibit the Employment of Professional Strikebreakers " (H.P. 756) (L.D. 1046)

The SPEAKER: The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. I don't want to have a long heated debate on the veto. I would like to remind the members of the House of some of the major points with this bill. First of all, in every case, where similar legislation to this has been heard by any state or the federal Supreme Court, it has been ruled to be preempted by the National Labor Relations Act and therefore, it is unconstitutional. This year we had a deputy attorney general come to the committee and testify that, in his opinion, it would be very unlikely that this bill would be ruled constitutional if it was challenged in court. In 1989, the Supreme Judicial Court of Maine issued an opinion essentially saying the same thing about a similar bill. In 1987, another attorney general's report rendered the same opinion. In 1995, on May 8, Attorney General Ketterer issued an opinion saying basically the same thing. There is ample case law that tells us that this is not a good idea. I guess my major concern here would be if we pass this legislation, we are going to be giving organized labor in the State of Maine the false assumption that they are going to be protected by that legislation when, in fact, it is not true. We would be setting them up for a major fall and also possibly a costly lawsuit against the State of Maine. I guess I am reminded of a question that I have heard at times in the past that says, "What is it about no that you don't understand?" Ladies and gentlemen, I would urge you to uphold the veto of the Chief Executive and let's get on with our business.

The SPEAKER: A roll call has been ordered. The pending question before the House is Shall this Bill become a law notwithstanding the objections of the Governor? All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 346V

YEA - Ahearne, Bagley, Baker, Belanger, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bryant, Bull, Cameron, Carr, Chick, Clark, Colwell, Cote, Cowger, Davidson, Desmond, Dudley, Dugay, Dunlap, Duplessie, Etnier, Fisher, Fuller, Gagne, Gagnon, Gerry, Goodwin, Green, Hatch, Honey, Jabar, Jacobs, Kane, LaVerdiere, Lemoine, Lemont, Madore, Mailhot, Martin, Matthews, Mayo, McAlevey, McDonough, McGlocklin, McKee, Mendros, Mitchell, Muse, Norbert, O'Brien LL, O'Neal, O'Neil, Perkins, Pieh, Povich, Powers, Quint, Richard, Richardson J, Rines, Rosen, Sanborn, Savage W, Saxl JW, Saxl MV, Shiah, Sirois, Skoglund, Stanley, Stevens, Sullivan, Tessier, Thompson, Townsend, Tracy, Tripp, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler GJ, Williams, Mr. Speaker.

NAY - Andrews, Berry DP, Bowles, Bragdon, Bruno, Buck, Bumps, Campbell, Cianchette, Clough, Collins, Cross, Daigle, Davis, Duncan, Foster, Gillis, Glynn, Gooley, Heidrich, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, Lindahl, Lovett, MacDougall, Mack, Marvin, McKenney, McNeil, Murphy T, Nass, Nutting, O'Brien JA, Peavey, Pinkham, Plowman, Richardson E, Savage C, Schneider, Sherman, Shields, Shorey, Snowe-Mello, Stanwood, Stedman, Tobin D, Tobin J, Trahan, Treadwell, True, Waterhouse, Weston, Wheeler EM, Winsor.

ABSENT - Chizmar, Frechette, Murphy E, Perry, Samson.

Yes, 88; No, 58; Absent, 5; Excused, 0.

88 having voted in the affirmative and 58 voted in the negative, with 5 being absent, and accordingly the Veto was Sustained.