Testimony of Julie Rabinowitz
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Maine Department of Labor

In favor of

LD 1501, "An Act to Amend the Law Regarding Disqualification for Unemployment Benefits During Stoppages of Work"

Before The Joint Standing Committee On

Labor, Commerce, Research & Economic Development

Sponsored by: Representative Stetkis

Date of Hearing: January 28, 2015

Senator Volk, Representative Herbig, and members of the Joint Standing Committee on Labor, Commerce, Research and Economic Development; my name is Julie Rabinowitz and I am the Director of Policy, Operations and Communications for the Maine Department of Labor (Department). I am here to testify in support of LD 1501, "An Act to Amend the Law Regarding Disqualification for Unemployment Benefits During Stoppages of Work."

This bill would amend the law to return it to the original language of the disqualification provision that applies in the instances of a labor dispute, such as a strike, and would make Maine's statute easier to apply and enforce. The language in issue is contained in one of the disqualification provisions for collecting unemployment benefits. The Employment Security Law provides that a worker who has become unemployed due to a "stoppage of work that exists because of a labor dispute" is not entitled to collect unemployment benefits. This provision has been in effect since the law was first enacted in 1935.

In 1985, the language of this provision was amended to provide that unemployment benefits also would be denied if "there would have been a stoppage of work had substantially normal operations not been maintained with other personnel previously and currently employed by the same employer and any other additional personnel that the employer may hire to perform tasks not previously done by the striking employees." It is this language regarding replacement workers that this bill seeks to remove from the statute. A copy of this original language is attached to this testimony.

The primary reason why the Department seeks to have this language removed from the statute is that the language introduces a confusing and complicated issue to the determination of whether a work stoppage relating to a labor dispute is a disqualifying event. This language is not only difficult for the Department to interpret and apply, but also results in the agency having to exceed the area of its expertise in applying the provision in practice.

At the first moment that the Agency learns that a work stoppage due to a labor dispute has occurred, there is an important determination that must be made by the Unemployment Compensation Bureau Director. Bureau staff must gather information regarding the nature of the work stoppage – is it a strike? What caused the strike? Conversely, is it a lockout by the employer? How many workers are out of work? What collective bargaining units are involved? Aware that many workers will begin filing claims for benefits, the director must act quickly and decisively to determine whether the labor dispute is a disqualifying event. In simplest terms, if the work stoppage was the result of a strike that is unrelated to safety issues, the striking workers will be disqualified from receiving benefits. If the work stoppage is related to a strike due to safety issues or a lockout by the employer, the striking or locked out workers will be qualified to receive benefits, assuming they meet the eligibility requirements of the law. To be eligible, the striking workers must be able and available to work and be searching for work in each week for which they file for unemployment benefits during the strike.

Typically, during the very early days of a strike, the employer will not have hired replacement workers. The hiring of replacement workers usually would not happen, if it happens at all, until much later in the strike. Yet, the director's initial determination as to the striking employees' qualification to receive unemployment benefits will have already occurred. The language in the statute that requires analysis of the effect of replacement workers cannot be applied by the director at the point when she must make her initial determination. Such determinations have a high likelihood of appeal, which may push a final determination of qualification for benefits for several weeks depending on the number of striking workers involved. Thus, analysis of facts relating to the employer's use of replacement workers compels the Bureau, through its adjudicators or its appeals hearings officers, to reassess the facts on the ground to attempt to ascertain whether the employer's use of these workers meets the terms of the exception to the disqualification. Specifically, the Bureau must determine the following complicated facts: (1) whether the employer is using replacement workers to do the work of the displaced workers; and (2) whether the use of those replacement workers allowed the employer to maintain "substantially normal" operations.

These issues are complicated and require analysis of the employer's business operations far beyond the scope of the usual unemployment adjudication or hearing. In the instances in which this statutory language has been invoked, the burden on the parties and the Bureau in attempting to adjudicate the facts has been lengthy and burdensome, resulting in extensive and costly litigation. The language regarding replacement workers unnecessarily complicates the determination of whether the striking workers are entitled to receive unemployment benefits and thus does not serve the ultimate goal of the Employment Security Law, which is to ensure that workers who are unemployed through no fault of their own receive benefits through a process that is equitable and timely.

Furthermore, the Bureau is concerned that the analysis required by this language involving replacement workers puts the Bureau in the position of potentially interfering in labor relations. In adjudicating the issue of entitlement to benefits in the context of a labor dispute, the Bureau must remain neutral. Qualification and eligibility determinations must be made pursuant to the Employment Security Law. The employment of replacement workers during a strike is a contentious issue with high stakes for the parties in their collective bargaining process. Requiring

the Bureau to analyze the use of these workers to determine the ability to collect benefits puts the Bureau in the middle of sensitive labor negotiations, risking the Bureau's required neutrality.

In sum, the Department does not want to be in the position of inserting itself into labor disputes on the basis of this confusing language, we want to remain a neutral party and with the responsibility to test each unemployment claim arising from a labor dispute against the clear exemptions already enumerated in the statute that fall within our traditional areas of expertise.

Thank you for your consideration of this testimony. I would be happy to answer any clarifying questions, and someone from the Agency can be available to attend the work session.

(New Draft of H.P. 175, L.D. 209)
FIRST REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No. 1057

H.P. 751 House of Representatives, March 19, 1985

Reported by Representative Bonney from the Committee on Labor and printed under Joint Rule 2. Original bill sponsored by Representative Willey of Hampden. Cosponsored by Senator Twitchell of Oxford, Representative Bell of Paris and Representative Brown of Gorham.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FIVE

AN ACT to Restrict the Payment of Unemployment Compensation Benefits to Workers Who are on Strike.

Be it enacted by the People of the State of Maine as follows:

26 MRSA §1193, sub-§4, as amended by PL 1983, c. 351, §17, is further amended to read:

4. Stoppage of work. ~~For any week with respect~~ to which the deputy, after notification by the Director of Unemployment Compensation ~~pursuant to~~ under section 1194, subsection 2, finds that his total or partial unemployment is due to a stoppage of work ~~which exists because of a labor dispute at the factory~~, establishment or other premises at which he is or was employed, or there would have been a stoppage of work had substantially normal operations not been maintained with other personnel previously and currently employed by the same employer and any other

additional personnel which the employer may hire to perform tasks not previously done by the striking employees. This subsection ~~shall~~ does not apply if it is shown to the satisfaction of the deputy that:

A. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work;

B. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

C. He has obtained employment subsequent to the beginning of the stoppage of work and has earned at least 8 times his weekly benefit amount or has been in employment by an employer for 5 full weeks; or

D. He became unemployed because of a strike or lockout caused by an employer's willful failure to observe the terms of the safety and health section of a union contract; an employer's willful failure to comply in a timely fashion with an official citation for a violation of federal and state laws involving occupational safety and health; or the quitting of labor by an employee or employees in good faith because of an abnormally dangerous condition for work at the place of employment of that employee or employees; provided that the strike or lockout shall not extend past the time of the employer's compliance with the safety and health section of the union contract, the employer's compliance with the official citation, or the finding that an abnormally dangerous condition does not exist by a ~~federal or state official empowered to issue official citations for violation of federal and state laws involving occupational safety and health.~~

~~If in any case separate branches of work which are~~ commonly conducted as separate businesses in separate premises are conducted in separate departments of the

same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises;

FISCAL NOTE

If enacted, this new draft will create potential savings in federal fund expenditures held in reserve by the Department of Labor for the payment of unemployment compensation. The amount of these savings will be determined by the number, length, size and circumstances of labor disputes in the State.

STATEMENT OF FACT

This new draft clarifies the extent of the work stoppage disqualification of striking workers. It is adapted from a Kansas law and is intended to disqualify striking workers from receiving unemployment benefits unless they have been effectively displaced from their former jobs. This displacement is deemed to occur when an employer maintains substantially normal operations at his establishment by hiring new personnel to perform work ordinarily done by the striking workers.

The new draft allows employers more freedom to keep their business in operation by using supervisory personnel or nonstriking full-time or part-time employees to perform work normally done by the striking workers; employees who work in a different, nonstriking factory or establishment of the employer may also be used in this way. It also allows an employer to hire additional employees during the strike to help maintain normal operations without automatically authorizing the payment of benefits to the striking workers, as long as those new workers do not perform any of the tasks that would be done by the striking workers had a strike not occurred. In all these situations, the workers' jobs would still be available for them to return to if the labor dispute is settled.

The new draft continues the present practice under the work stoppage test of allowing striking workers to receive benefits if the employer maintains a substantially normal level of operations by hiring additional employees to perform the striking workers' normal tasks. The determination of a work stoppage will still depend on an analysis of many factors, including any drop in production or the number of employed production workers, as compared with previous levels.

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