

ADVERTISING FOR REPLACEMENT WORKERS

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House Bill 5026 (reported without amendment)

Sponsor: Rep. Amanda Price

Committee: Oversight, Reform, and Ethics

First Analysis (2-21-12)

BRIEF SUMMARY: The bill would eliminate the statutory requirement that employers, when advertising for replacement workers during a strike, tell the new workers that a strike is underway, and that they would be replacing employees involved in a labor dispute.

FISCAL IMPACT: Although removing the notification provisions might make it easier to hire replacement workers, the bill itself would not be expected to have a significant fiscal impact.

THE APPARENT PROBLEM:

Many employers and employees, especially in large manufacturing operations, work under labor contracts that are designed to ensure uninterrupted, oftentimes around-the-clock, production of products by workers who are employed in three separate eight-hour shifts.

Historically, when employers and their workers come to an impasse in their labor relations, and the employees withhold their labor and skills (customarily called a strike), or employers refuse to admit their employees to the workplace (customarily called a lock-out), the work at the plant comes to a stop. That work stoppage can become permanent, if prolonged labor strife forces the employer into bankruptcy. Generally, however, the work stoppage is temporary. Operations stop until labor and management agree to settle their differences and the workers once again resume work, or until employers open their operation elsewhere, hiring new workers in a different state or country.

In the event of temporary work stoppages, employers sometimes hire replacement workers to provide labor for their operations. Sometimes those replacement workers take over the jobs of the workers who have called the strike or who have been locked out while negotiations continue between labor and management to resolve the dispute. From the perspective of those whose work is being done by new temporary hires (pejoratively called "scabs" because they are temporary), the new replacement workers who hire-in during continued labor negotiations prolong the work stoppage by lessening the adverse economic impact on the employer. From the perspective of the employer, however, the temporary workers are essential if the manufacturing operation is to continue so that product demand can be met, and that both workers and management (and shareholders, if any) can realize their wages or profits.

Under Michigan law, since 1962, when employers advertise for or recruit replacement workers during a lawful strike or lockout, they are required to tell the new workers (or to

include in their advertisement for new workers) that there is a strike or lockout under way, and that the employment they are being offered is in place of the employees involved in a labor dispute.

Legislation has been introduced to eliminate this requirement from the law.

THE CONTENT OF THE BILL:

House Bill 5026 would amend Public Act 150 of 1962 to repeal Section 3a of the law. That section of the law now reads as follows:

No person, partnership, agency, firm or corporation, or officer or agent thereof, shall recruit, solicit or advertise for employees, or refer persons to employment, in place of employees involved in a lawful strike or lockout, without adequate notice to the person, and in the advertisement, that there is a strike or lockout at the place at which employment is offered and that the employment offered is in place of employees involved in the strike or lockout.

Further, under House Bill 5026, the title of the act would be changed to read: "An act relating to solicitations for employment; to prohibit the importation or contracting for the importation of strikebreakers from outside this state; and to provide penalties for violations of this act." The bill would eliminate the phrase in the current title that says: "to prohibit recruitment of or advertising for employees to take the place of employees engaged in a labor dispute without stating that the employment offered is in place of employees involved in a labor dispute."

MCL 423.253a

ARGUMENTS:

For:

Proponents of the bill say the bill is needed to protect Michigan's still-struggling economy by better protecting job providers so they can hire replacement workers if they are the target of strikes or in the event of necessary lockouts. Proponents argue that with our economy just beginning to rebound, we must ensure that Michigan job providers are able to deliver their goods and services and keep our economy moving forward. The legislation will help provide a stable economy, while giving job providers some recourse to stop disruptive acts such as strikes by more easily hiring workers to replace those who withhold their labor.

Proponents of the legislation say that this bill is one of four that constitute a "labor reform" package. They note that the four bills in the package, which increase penalties for participating in illegal public worker strikes, make it easier to get court orders against mass picketing, increased penalties for picketing, and make it easier for employers to find replacements for striking workers, when taken together, represent a proactive effort. The aim is to head off potential labor problems.

Against:

One spokesperson for a labor organization argues that "House Bill 5026 would eliminate the statutory requirement for notification that workers are being solicited as strikebreakers. This provision of law has been in effect since 1962—50 years this year. The cost is minimal or non-existent, it has not been raised as a problem by employers in the past, and it benefits both applicant and employer by letting people know the facts surrounding the employment." He continues: "this bill appears to be another solution in search of a problem.

Another labor spokesperson says the bill "is likely pre-empted by federal (labor relations) law, and is unnecessary and not in the best interests of workers on either side of a labor dispute." He points out that "workers applying for jobs to replace strikers should know the hazards they face, in terms of being terminated when the strike is settled, (and) facing the wrath of co-workers, neighbors and the community for engaging in strikebreaking." In short, "job applicants should be able to make an informed decision whether or not to scab." Further, "employees that are considering a strike should be made aware of any advertisement for their replacements" in advance of their strike vote, since it may influence their decision, to the advantage of the employer. This opponent of the bill continues: "Employers that depend on the image of goodwill in a community must consider the impact on that goodwill by a public statement of the intent to hire striker replacements. The requirement to notify of a labor dispute in advertisements for scabs is an incentive for all sides to settle (a strike), and should not be removed."

Opponents of the bill, and other related legislation, find it bewildering. They see this bill, combined with similar legislation, as an unnecessary attack on the collective bargaining power of unions and on the political power of union workers. Critics say the proposed legislation does nothing to create jobs or improve the lives of the people of Michigan. Instead, the bill is part of a package that appears designed to intimidate workers who join labor organizations and dismantle collective bargaining one piece at a time. They note that this employment relations strategy is flawed, because Michigan workers in both the public and private sectors have over the past decade of economic uncertainty demonstrated their willingness to lower their pay and benefits, in an effort to keep Michigan companies and state and local government agencies successful. The introduction and passage of this kind of legislation creates, if anything, a more divisive and hostile relationship between employees and employers, and so rather than contribute to labor peace, they risk producing an increase in labor-management strife.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (1-17-12)

The Associated Builders and Contractors support the bill. (1-17-12)

The Michigan Retailers Association supports the bill. (1-17-12)

The National Federation of Independent Business supports the bill. (1-17-12)

The International Union, UAW opposes the bill. (1-17-12)

The Michigan Professional Fire Fighters oppose the bill. (1-17-12)

The Michigan AFL-CIO opposes the bill. (1-17-12)

The Michigan Education Association opposes the bill. (1-24-12)

The MEA/NEA Local 1 and the 6-E Coordinating Council oppose the bill. (1-17-12)

The Michigan Laborers District Council opposes the bill. (1-17-12)

The Association of Federal, State, County, and Municipal Employees (AFSCME) Council 25 opposes the bill. (1-17-12)

The Macomb Intermediate School District opposes the bill. (1-17-12)

The Teamsters oppose the bill. (1-17-12)

Teamsters Local 406 opposes the bill. (1-17-12)

The Michigan State Employees Association opposes the bill. (1-17-12)

The Michigan Municipal League opposes the bill. (1-24-12)

IW Local 25 opposes the bill. (1-24-12)

UAW Retirees, Fight for Your Rights oppose the bill. (1-31-12)

The IBEW Local 58 opposes the bill. (1-31-12)

UAW Local 6000 opposes the bill. (1-31-12)

The IUOE Local 324 opposes the bill. (1-31-12)

Progressive Democrats of Monroe oppose the bill. (1-31-12)

SEIU Local 517M opposes the bill. (1-31-12)

The Michigan Building and Construction Trades oppose the bill. (1-31-12)

Citizens of Michigan opposes the bill. (1-31-12)

The Michigan Nurses Association opposes the bill. (1-31-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.