

MAINE LEGISLATURE
131st Legislature, Second Regular Session

Testimony of Michael Guare, Pine Tree Legal Assistance
In Support of L.D. 2184:

“Resolve, Regarding Legislative Review of Chapter 9: Rules
Governing Administrative Civil Money Penalties for Labor Law
Violations, a Major Substantive Rule of the Department of Labor,
Bureau of Labor Standards”

Senator Tipping, Representative Roeder and Members of the Committee:

I am an attorney at Pine Tree Legal Assistance in Bangor. I work in Pine Tree’s Farm Worker Unit and I have been representing farm workers in Maine for over 20 years.

I would like to share a little of my work experience with you in support of LD 2184.

As you know, this bill would authorize a rule proposed by the Bureau of Labor Standards of the Department of Labor to enhance the civil money penalty structure used by the Bureau of Labor Standards. The proposed rule would also create an evaluative process which would be designed to focus the Bureau’s enforcement efforts in areas where they are most needed, including sectors:

- with high rates of violations and probable violations;
- which employ workers who are the least likely to exercise a private right of action or to complain to the Bureau, and
- where workers are most vulnerable and in need of protection for reasons such as low pay, language barriers, discrimination, dependence on employers for housing and transportation, and others.

If this proposal becomes the Bureau’s rule, I am virtually certain that farm workers would be one of the groups of workers on which the Bureau would focus – farm workers satisfy all of those criteria.

I do not suggest that most agricultural employers in Maine are labor law violators – but violations do occur and when they do they are often very serious and widespread. For example, one of the problems I see most often is seriously substandard housing, a problem which when it occurs affects an employer’s entire workforce.

You may also remember that in the last session I spoke about to you about one of our cases involving two workers who were assaulted for having the audacity to request a raise. Those things happen to farm workers; that case is ongoing.

Thankfully, those workers came forward and told us what happened to them, but many farm workers do not because of fear and vulnerability and lack of legal protection.

In that regard, I have another case is, unfortunately, not ongoing: I recently had to close out a case involving other workers who were very seriously mistreated and underpaid – in one worker's case, the only pay received was being housed in a place that had, among many other problems, no running water or electricity. The reason I had to close this case was that the workers were so frightened by the many threats – both verbal and physical, once with a forklift – which the employer had made during the course of employment that they feared actual violent retaliation by the employer if they made any complaints. One of them even decided not to pursue a workers' comp claim for fear of the employer.

In short, a focus on farm workers and on other workers who share some of the same vulnerabilities by the Bureau would be highly appropriate.

Lastly, in my work, I have had a couple of experiences with employers whom I have sued multiple times – in one case, 6 times, over a period of years. At first, I did not understand why these employers repeatedly kept doing unlawful things, over and over, and I finally realized that it was because the statute under which I was suing (the federal Migrant and Seasonal Agricultural Worker Protection Act, 29 USC §§1801, *et seq.*) has a maximum statutory penalty of \$500 per violation, and amount which has not been increased since that law was passed 40 years ago in 1983. We did our best to obtain some justice for the workers we represented but it was literally cheaper for those employers to violate the law than to comply with it. That should never be the case and the proposed rule's increase of maximum penalties is a necessary step in the right direction.