Rep. Mike Sylvester

Sylvester Sponsor Testimony on LD 1959, An Act To Include within the Definitions of "Public Employee" and "Judicial Employee" Those Who Have Been Employed for Less Than 6 Months

Senator Hickman and esteemed colleagues of the Joint Committee on Labor and Housing, My name is Rep. Mike Sylvester I am here today to introduce LD 775, An Act To Include within the Definitions of "Public Employee" and "Judicial Employee" Those Who Have Been Employed for Less Than 6 Months. What this bill does is to remove a hole within the status of public employees and create an employment situation which aligns Maine's Public and Judicial employees with public workers in other states and with their union counter parts in the private sector.

In most public sector venues and in the private sector, an employee is hired and they have all the same rights and responsibilities of other employees except one, they are likely on probation. Being on probation means that, union or non-union, the employee can be fired for any reason if the employer feels the new hire is not working out. Other than their probation status, however, most new hires are considered employees with the same full rights and responsibilities as every other employee. In the non-union sector, these rights are contained in an employee hand book or policy manual. In a union setting, these rules are delineated in the union contract. That's where Maine law becomes odd.

In Maine, during that probation period, the new public employee has no status. That is not normal in public sector labor relations. New hires in Maine are not public employees under the law, they are not covered under the union contract and they have none of the rights set forth in that contract. If, for example, an employer asked someone to complete an unsafe task, harassed the employee as a protected class or unilaterally changed the terms of their employment, this worker has no rights to grieve these things. The union doesn't even have the right to ask a question about it. So, for example, a worker who was harassed by coworkers would have to individually bring a complaint to his or her supervisors while in a probationary status when they can be let go for any reason. They do not have the support of their union shop steward or the union itself.

What LD 1959 does is to give newly hired employees all of the rights of regular public employees, things like to have their schedules posted, to be provided safe working conditions, etc. while not having what is termed "Just Cause" or the right to grieve their termination. All the other rights in the contract would apply but, if they didn't work out they could still be let go without having the employer to prove that they had a "just cause" to fire them.

Now, why is this important? All public employers, like all private employers, are struggling to find good workers. For the law to create an undesirable work status for the first six months of employment seems counterproductive to hiring and retaining the best employees. People turn to the public sector for surety and predictability. Saying that for your first six months you are on your own doesn't seem in-line with attracting and retaining employees.

Second, whatever your thoughts about unions, the grievance process allows predictability for employees and employers. In these litigious times, to say as I have been told when discussing this bill, that workers can "go to the Department of Labor" or the "Human Rights Commission" seems somewhat disingenuous. Is that the best that we can do for our state and municipal workers?

LD 1959 is a bill about equity but, perhaps as importantly, it is a bill about the state and other public sector employees having the same, predictable dispute resolution for new employees as they do for their non-probationary employees. It is a bill about retaining and attracting the best people available and abolishing this quasi-limbo status in our employment laws.

Now the bill that you see in front of you is the same exact bill that was passed out of this Committee in the 129th. It was the result of much compromise and hard work. You might wonder whether the Governor's office was involved. In fact, the

Governor's office held several stakeholder groups to carve out language which was supported on all sides. You might wonder if the Judicial branch was involved. In fact, I had phone conversations with Julia Finn, Esq. from the Judicial branch and there were long discussions between myself, Ms. Smith and the analyst of the time over several email chains and discussions to land on this language. This would meet the requirement under Title 26 MRS § 1294, which is part of the Judicial Employees Labor Relations Act (JELRA), and states that "This Act shall not be amended without first consulting the Supreme Judicial Court." The language determined as a result of the work from the Governor's office as well as the language consulted upon with Ms. Finn the same exact language that I am submitting today.

With that, I thank my colleagues for their time and I am available for any questions.