



**TESTIMONY
OF
CONNECTICUT HOSPITAL ASSOCIATION
LABOR AND PUBLIC EMPLOYEES COMMITTEE
Thursday, February 20, 2003**

HB 5536, An Act Prohibiting The Hiring Of Professional Replacement Workers

The Connecticut Hospital Association (CHA) appreciates the opportunity to submit testimony on **HB 5336, An Act Prohibiting The Hiring Of Professional Replacement Workers**. CHA opposes this bill.

This proposed bill would prohibit employers from using “professional replacement workers” during a strike or lockout. Presumably, “professional replacement workers” are workers who were previously employed in the same profession or industry who are hired in place of employees involved in strikes or lockouts. Thus, the proposed bill seeks to limit the pool of replacement workers available to employers that are struggling to keep their businesses operating in the event of a strike or lockout. CHA opposes the bill for the following reasons.

First, current law seeks to achieve a balance between the interests of labor and management during labor negotiations, without favoring one side over the other. Workers have the option of striking to obtain better pay or working conditions and employers have the option to hire replacement workers and to continue operations during a strike. In the healthcare industry, with its acute workforce shortages, there simply may not be enough skilled and experienced replacements available. In those circumstances, an employer may have to recruit professional replacement workers, often from other parts of the country, in order to keep its business running. Eliminating that pool of replacement workers would make it difficult, if not impossible, for many healthcare employers to keep providing critical services to the communities they serve during a strike. Furthermore, this proposed bill would encourage workers to strike rather than negotiate, since they could gain a tactical advantage through their employers’ inability to find sufficient replacements.

A second and perhaps more important problem with the proposed bill is that it shares a fatal flaw with other, similar laws that have preceded it: it is preempted by the National Labor Relations Act (NLRA). For example, in March 1995, President Clinton issued an Executive Order addressing the controversial issue of employers permanently replacing striking workers. The Executive Order prohibited federal agencies from making contracts to buy goods and services sold by companies that permanently replace workers striking for economic reasons. The Executive Order was challenged on many levels, finally in court by an industry coalition. In February 1996, the D.C. Circuit Court of Appeals struck down the Order as unconstitutional, because it was preempted by the NLRA.

The Minnesota Supreme Court has also held that that state's striker replacement act was preempted by the NLRA. Like a prohibition against hiring permanent replacements, HB 5536 seeks to place limitations on an employer's ability to hire replacements in the event of a strike. And like a striker replacement act, the proposed bill is preempted by the NLRA.

Moreover, the General Assembly has already legislated in this area. Sec. 31-48a of the General Statutes of Connecticut makes it unlawful for any "professional strikebreaker" to "take or offer to take the place in employment of employees involved in a strike or lockout," or for "any person, partnership, agency, firm or corporation, or officer or agent thereof," to "recruit, procure, supply or refer any professional strikebreaker for employment in place of an employee involved in a strike or lockout in which such person, partnership, agency, firm or corporation is not directly interested." The term "professional strikebreaker" is defined as "any person who has been employed anywhere two or more times in the same craft or industry in place of employees involved in strikes or lockouts." While we believe that Sec. 31-48a is also preempted by the NLRA, the General Assembly has already enacted restrictions on the hiring of professional strikebreakers and there is no need for HB 5536.

Thank you for your consideration of our position.