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CITY OF CAMBRIDGE

CAMBRIDGE MA.

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April 29, 1991

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Council Order #33, 11-26-90; Proposed Amendment to the
Code re: Hiring of Strikebreakers in labor disputes

Dear Mr. Healy:

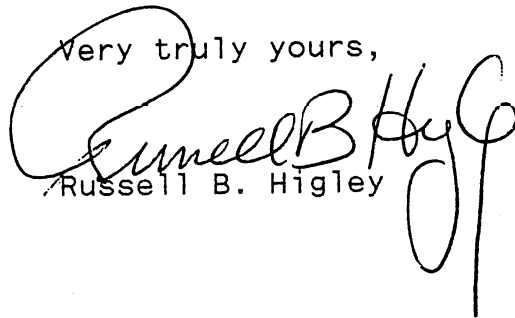
In response to a memorandum from the City Clerk, dated November 30, 1990, I have reviewed the above proposed amendment to the Code.

The proposed amendment prohibits an employer in the City of Cambridge from hiring a "strikebreaker". It also prohibits such an employer from hiring a "replacement worker", and from recruiting either a strikebreaker or replacement worker if it is found that such actions are likely to cause a threat to public safety, violence or harm to persons or property. Such findings occur automatically whenever the Police Commissioner so determines or whenever the Police Department deploys officers to preserve the public peace "in association with a strike or a lockout." Violations of the ordinance are punishable by fine.

This ordinance is copied word for word from a Boston ordinance which was passed by the Boston City Council on June 13, 1990. On the strength of an opinion from Joseph I. Mulligan, Jr., Esq., the Corporation Counsel, Mayor Flynn vetoed the ordinance on July 2, 1990, but I am informed that it was subsequently passed over his veto. I am enclosing copies of the Mayor's veto message and the opinion of the Corporation Counsel.

In his opinion, Mr. Mulligan concluded, inter alia, that the ordinance is "preempted by federal law and is unconstitutional." Without discussing the opinion in detail, I will say that my conclusion is the same, and, therefore, I do not recommend the adoption of this proposed amendment to the Code.

Very truly yours,



Russell B. Higley

BA/jeb

cc: Mr. Joseph E. Connarton



RECEIVED
CITY OF BOSTON

90 JUL -2 PM 4:57

CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
RAYMOND L. FLYNN

July 2, 1990

TO THE CITY COUNCIL

Dear Councillors:

I return herewith without my signature and disapproved an ordinance passed by your Honorable Body on June 13, 1990, Docket No. 0708, "In Memory of Robert Waterhouse", which would regulate private employers in the City of Boston who attempt to replace striking employees during a strike or lockout.

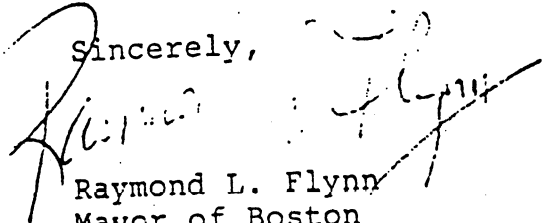
I regret that I am compelled to disapprove this ordinance for legal reasons. As the Corporation Counsel informed the City Council when he was called to testify before the Council's Committee on Government Operations, and as he states in his letter to me, which I attach, since federal law regulates an employer's hiring of workers, the City is prohibited from enacting its own laws in this area. The Corporation Counsel informs me that the ordinance is not only pre-empted by federal law, it is unlawful for other reasons as well, including violation of the United States Constitution's Commerce Clause, its Privileges and Immunities Clause, and its equal protection and due process protections, as well as the Massachusetts Constitution's Home Rule Amendment.

I have always supported our working men and women in their struggle for decent wages and working conditions. There can be no excuse when lawlessness and violence are used against those who exercise their right to strike. However, the answer to the painful incidents of such lawlessness is not to pass laws which are themselves illegal. Such action would offer false hope to workers, would result in costly litigation which the City would lose, and would contribute to the cynicism which many now feel toward government. There is a lawful vehicle for addressing this problem in the form of federal legislation sponsored by

*Use 11
1 =
Council
Flynn*

Senator Kennedy, which is now pending in Congress, S.2112,
amending the National Labor Relations Act and the Railway
Labor Act. That legislation deserves our strong support.

Sincerely,

A handwritten signature in dark ink, appearing to read "Raymond L. Flynn". The signature is written in a cursive style with a large initial "R" and a long horizontal stroke at the end.

Raymond L. Flynn
Mayor of Boston



July 2, 1990

City of Boston
Law Department

The Honorable Raymond L. Flynn
Mayor of Boston
City Hall
Boston, MA 02201

Room 615
Boston City Hall
Boston, Massachusetts 02201
617/725-4034
FAX 617/725-3199

RE: Ordinance "In Memory of Robert Waterhouse"

Joseph I. Mulligan, Jr.
Corporation Counsel

Dear Mr. Mayor:

This letter is to advise you on the legal issues concerning the proposed ordinance (the ordinance) passed by the City Council June 13, 1990. That ordinance prohibits an employer in the City of Boston from hiring a "strikebreaker", as defined therein. It also prohibits such an employer from hiring a "replacement worker", as defined, and from recruiting either a strikebreaker or replacement worker, if it is found that such actions are likely to cause a threat to public safety, violence, or harm to persons or property. Such findings occur automatically whenever the Police Commissioner so determines or whenever the Boston Police Department, "in association with a strike or lockout", deploys officers to preserve the public peace.

As you know, I recently testified before the City Council's Committee on Government Operations and informed the members that the ordinance, as then written, was unconstitutional as being pre-empted by federal law. That ordinance was subsequently amended and then passed by the Council.¹ I have reviewed the ordinance as passed and reiterate my earlier conclusion. In addition, the ordinance contains other serious Constitutional

¹The amendments relate exclusively to changed or added references to G.L. c. 40 and do not further enhance the underlying legality of the ordinance.

flaws, including violation of the United States Constitution's Commerce Clause, Privileges and Immunities Clause, and equal protection and due process protections, as well as the Massachusetts Constitution's Home Rule Amendment.

I. THE COMMERCE CLAUSE AND FEDERAL PRE-EMPTION

It is well-settled that, in general, the states (and cities within those states) are pre-empted from legislating in those areas where the federal government has already legislated. With respect to labor-management issues, the Commerce Clause of the United States Constitution (Art. I, §8, Cl. 3) grants to the Congress the power to regulate commerce among the several states. As a general rule, the exclusive jurisdiction of labor relations matters that affect interstate commerce has been granted by Congress, under the National Labor Relation Act (NLRA), 29 USCS, §151 et seq., to the National Labor Relation Board (NLRB). See, also the Labor Management Relations Act (LMRA or Taft-Hartley Act), 29 USCS, §141 et seq. State or local legislation which infringes on the exclusive jurisdiction of the NLRB is subject to the doctrine of federal pre-emption. That is, the legislation is pre-empted by federal law.

The reason for federal pre-emption has been stated to be as follows:

Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid those diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies.

Garner v. Teamsters, 346 U.S. 485, 498-99, 98 L.Ed. 228, 74 S.Ct. 161 (1953).

The pre-emption test was applied to an almost identical ordinance in Michigan several years ago. The outcome in that case, where the ordinance was

found to be unconstitutional, would be² the same were the Boston ordinance to be tested.

The Michigan court struck down a state "strikebreaker" law on grounds of federal pre-emption. Michigan State Chamber of Commerce v. State of Michigan, 115 LRRM 2887 (1984). Section 1, the key section of that law, is virtually identical to Section 3A of the subject ordinance. Both state essentially that it is unlawful for an employer to employ a strikebreaker in place of an employee involved in a strike or lockout.

A. Two Lines Of Pre-Emption Analysis.

There are two lines of pre-emption analysis, one where the federal legislation has clearly addressed the subject matter and one where there is some federal legislation on the subject matter but the legislation does not specifically address certain aspects thereof. The Michigan court discussed them both.

The first line of pre-emption analysis was established in San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959). In Garmon, the Supreme Court stated as follows:

²See, also USA Chamber of Commerce v. State of New Jersey, 89 N.J. 131, 445 A.2d 353 (1982) (New Jersey "Strikebreakers Act" struck down by New Jersey Supreme Court as being unconstitutional. The Act proscribed the importation, transportation or supplying of individuals for employment in New Jersey for the purpose of interfering by force or violence with lawful employer/employee bargaining, or replacing employees who are lawfully on strike or locked out. The Act also forbade anyone not directly involved in the strike or lock out from recruiting persons to replace such employees and prohibited employment agencies from knowingly referring applicants to an employer whose employees were then on strike or locked out. (Cited in Bardane Manufacturing Co. v. Jarbola, 724 F.Supp. 336, 342 (M.D.Pa. 1989)).

When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by §7 of the National Labor Relations Act [29 U.S.C. 157], or constitute an unfair labor practice under §8 [29 U.S.C. 158], due regard for the federal enactment requires that State jurisdiction must yield...

When an activity is arguably subject to §7 or §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted. 359 U.S. at 244-45, 79 S.Ct. at 779-80, 3 L.Ed.2d 782-82.

The second line of pre-emption analysis was established in Teamsters Local No. 20 v. Morton, 377 U.S. 252, 84 S.Ct. 1253, 12 L.Ed.2d 280 (1964). Morton held that state law may be pre-empted even where the activity involved is not arguably protected by §7 or §8. Morton allows for pre-emption in areas where Congress intended the conduct to be unregulated and left to the free play of economic forces. The Michigan court cited Illinois v. Federal Tool and Plastics, 344 N.E.2d 1 (1975), which stated:

An employer has a right to hire replacements for striking employees (NLRB v. Mackay Radio & Telegraph Co. (1937), 304 U.S. 333, 58 S.Ct. 904, 82 L.Ed. 1381...) and that right constitutes an important economic weapon left to the employer by Congress when it struck the balance of power between labor and management. 344 N.E.2d at 4.

Indeed, in Mackay, the court stated:

Nor was it an unfair labor practice to replace the striking employes with others in an effort to carry on the business....It does not follow that an employer, guilty of no act denounced by the statute [NLRA] has lost the right to protect and continue his business by

supplying places left vacant by strikers. Mackay, supra, at 345.

Having reviewed the two lines of pre-emption analysis, the Michigan court found that the limitation as to the hiring of strikebreakers was an unacceptable impairment of the employer/employee balance struck by Congress, stating that such a limitation impinged on an employer's recognized right to hire replacement workers. Michigan, supra, at 2889.

B. Limitations On Or Exceptions To Pre-Emption.

It is clear that under federal law an employer has the right to hire employees to fill positions vacated by striking employees, and the legal analysis could end here.³ However, I am mindful that some have stated,³ and the ordinance

³I have been provided with correspondence to some members of the City Council from two New York City attorneys, which correspondence is offered as support for the legality of the ordinance. One of those letters misreads the content of the ordinance. The legal analysis, in any event, commences with the acknowledgment that "Over the past three decades, numerous state courts have declared 'strikebreaker' laws unconstitutional on the ground that federal labor law 'pre-empts' state and local prohibitions on the hiring of replacements." Letter from attorney Ronald L. Kuby to Councillor Scondras dated June 9, 1990. Although Mr. Kuby then goes on to indicate why he believes the proposed Boston ordinance to be different from these other laws which have fallen to legal challenge over the past thirty years, I do not find his analysis or his reliance upon cases involving laws with dissimilar terms to be persuasive. While he does note that a New York law which he describes as similar to the Boston ordinance is now under challenge in New York State courts, in the face of two decided cases ruling similar ordinances unconstitutional (Michigan State and USA Chamber of Commerce), I cannot rely upon an undecided case still pending before New York's lower courts.

on its face indicates, that the purpose of the ordinance is to protect public safety and to prevent violence. Thus, it is suggested, the ordinance is not pre-empted by federal law because it falls within the exceptions thereto.

Although the NLRB's jurisdiction is very broad, there are some instances where state courts have jurisdiction in matters concerning labor-management relations. The Michigan court addressed these limitations on federal pre-emption. See Michigan, supra, at 2889. Where a state law regulates the relations between employees, their union, and their employer, the pertinent inquiry is whether the potentially conflicting federal and state laws were "brought to bear on precisely the same conduct." Sears, Roebuck & Co. v. Carpenters, 436 U.S. 180, 193-94, 56 L.Ed.2d 209, 98 S.Ct. 1745 (1978), quoting from Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 479, 99 L.Ed 546, 75 S.Ct. 480 (1955).

The leading case of San Diego Building Trades Council v. Garmon, 359 U.S. 236, 3 L.Ed. 775, 79 S.Ct. 773 (1959), stated two exceptions to federal pre-emption. The first allows states to regulate in the area of labor relations where the activity regulated is merely of peripheral concern to the LMRA. Id. at 243.

The activity to be regulated by the ordinance is the hiring of employees by a struck employer. The LMRA states in relevant part that

It is the purpose and policy of this Act [citations omitted], in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce....

29 USCS §141. The activity proscribed by the ordinance is not activity "merely of peripheral concern" to the LMRA. The first of the two exceptions under Garmon, then, does not apply.

Nor does the second exception apply. The second exception under Garmon allows a state to regulate activity "where the regulated conduct touche[s] interests so deeply rooted in local feeling and responsibility that, in the absence of

compelling congressional direction, we could not infer that Congress had deprived the States of the power to act." Id. at 244. This limitation generally has been restricted to "traditional state actions in areas such as torts or prevention of violence."⁴ Michigan, supra, at 2889, quoting from USA Chamber of Commerce v. State of New Jersey, supra, at 361.

It is important here not to confuse that pre-emption based on actual federal protection of certain conduct (here, an employer's right to hire) with that pre-emption based on the primary jurisdiction of the NLRA. See Brown v. Hotel Employees, 468 U.S. 491, 502, 82 L.Ed.2d 373, 104 S.Ct. 3179 (1984). Where federal pre-emption is based on the latter primary jurisdiction rationale, the presumption of federal pre-emption gives way, and state courts can have jurisdiction where "deeply-rooted local interests are at stake." Id. at 502-03.

However, the ordinance implicates not the primary jurisdiction rationale but the federal protection rationale.

If the state law regulates conduct that is actually protected by federal law, ... pre-emption follows not as a matter of protecting primary jurisdiction, but as a matter of substantive right. Where, as here, the issue is one of an asserted substantive conflict with a federal enactment, then '[t]he relative importance to the State of its own law is not material...for the Framers of our Constitution provided that the federal law must prevail.'

⁴See, e.g., Belknap, Inc. v. Hale, 463 U.S. 491, 77 L.Ed.2d 798, 103 S.Ct. 3172 (1983) (state court jurisdiction allowed in a state breach of contract action by strike replacements); Sears, Roebuck, supra (state court jurisdiction allowed in state trespass actions); and Farmer v. Carpenters, 430 U.S. 290, 51 L.Ed.2d 338, 97 S.Ct. 1056 (1977) (state court jurisdiction allowed for

(Footnote Continued)

Free v. Bland, 369 U.S. 663, 666, 8 L.Ed.2d 180, 82 S.Ct. 1089 (1962).

Under Mackay, supra, it is clear that federal law protects an employer's right to hire workers in place of striking employees. The ordinance is a substantive conflict with that federally-protected right and the ordinance is, therefore, pre-empted by federal law. The primary jurisdiction rationale, which allows for an exception to pre-emption where deeply-rooted local interests are at stake, does not apply to the ordinance.

II. DUE PROCESS AND OTHER LEGAL INFIRMITIES

Since I have concluded that the ordinance is pre-empted by federal law, I need not expound on the legal infirmities which exist under the Privileges and Immunities Clause of the United States Constitution or its Equal Protection Clause. Nor need I address the legal problems raised under the Massachusetts Constitution's Home Rule Amendment when a local government seeks to regulate private relationships.⁵ I do feel compelled, however, to address briefly the due process issues raised by the ordinance because those problems illuminate my earlier conclusion that the ordinance is pre-empted by federal law.

Under the ordinance an employer is prohibited from hiring or recruiting replacement workers or strikebreakers if either 1) the Boston Police Department deploys officers to preserve the public peace, or 2) the Boston Police Commissioner determines that action taken in association with hiring replacement workers is "likely to cause" a threat to public peace or safety. Monetary penalties are imposed for the violation of the ordinance. See ordinance, Sections 3B, 3C and 4.

(Footnote Continued)
state tort remedies for intentional infliction of emotional distress).

⁵I also do not address the potential for municipal liability were this ordinance to be enacted. Suffice it to say that the City would likely be sued if it did and if it didn't seek to enforce the ordinance.

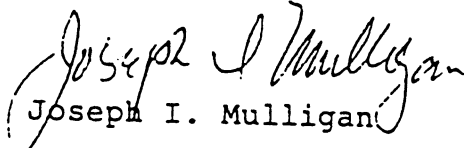
Under the first test, the mere act of police officers being dispatched to the scene of a strike - whether at the behest of an employer, an employee, or a member of the public, or upon the Police Department's own initiative and regardless of whether the officer is needed to ticket illegally parked cars or break up a riot - automatically makes the employer's actions in regard to the hiring of workers unlawful. Under the second test, application of the vague standard of whether an employer's action is "likely to cause" a threat to public peace or safety, is left to the subjective determination of one individual, the Police Commissioner. It is not difficult to see that, under the ordinance, an employer's due process rights can be erased without even minimal acknowledgment of fundamental constitutional protections.

The import of the lack of due process exposes the fallacy of the argument that the ordinance is not regulating labor relations (thus triggering pre-emption) but rather is merely regulating public safety. If an employer has the right under federal law to hire replacement workers (as he does), but automatically loses that right if, for example, a police officer shows up to direct traffic at a busy strike location, the federally provided right would become meaningless.

III. CONCLUSION

My research has indicated to me that the subject ordinance is pre-empted by federal law and is unconstitutional.

Very truly yours,


Joseph I. Mulligan

JIM/ds



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9017

JOSEPH E. CONNARTON
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

November 30, 1990

TO: RUSSELL B. HIGLEY
CITY SOLICITOR

FROM: JOSEPH E. CONNARTON
CITY CLERK

SUBJECT: PROPOSED AMENDMENT TO THE MUNICIPAL CODE RE: HIRING OF
STRIKE BREAKERS IN LABOR DISPUTES.

Enclosed you will find a copy of an order which was adopted by the City Council at its meeting of November 26, 1990 regarding the hiring of strike breakers in labor disputes in the City of Cambridge.

Would you kindly review this proposed amendment and incorporate it into the new text of the Municipal Code of the City of Cambridge.

Your kind attention in this matter will be greatly appreciated.



City of Cambridge

33.

IN CITY COUNCIL

November 26, 1990

COUNCILLOR CYR
VICE MAYOR REEVES
COUNCILLOR MYERS
MAYOR WOLF
COUNCILLOR DUEHAY

ORDERED: That the attached amendment to the Municipal Code of the City of Cambridge regarding the limiting of hiring of strike breakers in labor disputes in the City of Cambridge, be and hereby is referred to the Ordinance Committee for hearing and report.

In City Council November 26, 1990.
Adopted by the affirmative vote of nine members.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

Joseph E. Connarton
City Clerk

Cambridge
CITY OF ~~BOSTON~~
~~IN CITY COUNCIL~~

- An Act limiting the hiring of strike breakers in
Labor disputes in the City of Cambridge -
by Reeves, Myers, ~~Wright, DeHay~~

SPONSORED BY COUNCILLORS ~~COOPER, SALES,~~

~~WHELAN, CASEY, MCCORMACK, McLAUGHLIN AND TRAVAGLINO~~

IN MEMORY OF ROBERT WATERHOUSE

- WHEREAS the City of ^{Cambridge} ~~Boston~~ must protect the peaceful enjoyment of its resources by citizens, visitors, and tourists, and;
- WHEREAS the desire of all citizens and the first and foremost responsibility of government is to preserve the public peace and prevent violence, and;
- WHEREAS the enjoyment of personal and real property of the citizens, visitors, and tourists is endangered when labor disputes are unnecessarily and unwarrantedly aggravated by strikebreakers, and;
- WHEREAS the employment of strikebreakers to replace employees who are locked out or who are on strike has resulted in inconvenience, strife, injuries, fatalities, and destruction of real and personal property, and;
- WHEREAS the Pittston Mine strike, the International Paper strike, the Greyhound Bus strike, the Colonial Meat strike, the Hormel strike, the General Electric strike and the Kohler strike bring vivid memories of shootings, beatings, property destruction, fear, intimidation, and violence, and;
- WHEREAS Robert Waterhouse, a striking Greyhound worker, was

over and killed in Redding, California by a Greyhound bus driven by replacement worker, and;

WHEREAS implicit in contract negotiations and legal strikes is an agreement that strikes are a legitimate part of labor disputes, and;

WHEREAS state and federal law specifically list situations and industries in which strikes are not allowed, thereby making clear that strikes are a legitimate right retained by workers during other labor disputes; and

WHEREAS the use of strikebreakers or replacement workers breaks this well known and accepted agreement that workers have the right to strike, and can as a result lead to extremely tense and at times violent outcomes endangering the public safety; and

WHEREAS the City of ^{Cambridge} ~~Boston~~ under its police powers has the right and obligation to protect the public and not to waste police resources, and;

~~WHEREAS in the case of the Greyhound strike, many police who could have been employed protecting the public in other details had to be employed protecting the Greyhound station, in part because Greyhound against the advice of many chose to widely advertise for replacement workers and chose to conduct interviews and hiring at the Greyhound station while knowing full well this would understandably antagonize those participating in a legal strike, and;~~

~~WHEREAS Greyhound has not yet paid for the details necessary to~~

~~protect the company, knowing their failure to pay puts
greater stress on limited public safety resources and
city revenues.~~

NOW THEREFORE BE IT ORDAINED IN THE CITY OF ^{CAMBRIDGE}~~BOSTON~~, AS FOLLOWS:

SECTION 1. POLICY

It shall be the policy of the City of ^{CAMBRIDGE}~~BOSTON~~ in accordance with the provisions of M.G.L. Ch. 40 sec 21, to regulate the conduct of employers who attempt to replace employees who are members of or are associated with a labor organization engaged in a dispute resulting in a legal strike or a lockout involving the employer in order to protect the safety, convenience, and peaceful enjoyment of the residents, visitors, and tourists of the city of

^{CAMBRIDGE}
~~BOSTON~~

SECTION 2. DEFINITIONS

When used in this ordinance, the following terms shall have the following meanings:

- A. "EMPLOYEE". Any person who performs services for wages or salary under a contract of employment, express or implied, for an employer.
- B. "EMPLOYER". Any individual, partnership, or corporation who employs any employee to perform services for a wage or salary and includes any agent of any employer acting directly or indirectly.
- C. "LABOR ORGANIZATION". Any organization of any kind or any agency or employee representation committee or plan in which employees participate and which exists for the

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

- D. "LOCKOUT". A refusal by an employer to permit his employees to work as a result of a dispute with such employees that affects wages, hours, and other terms and conditions of employment of said employees, provided, however, that a lockout shall not include a termination of employment for reasons deemed proper under Massachusetts state and federal law.
- E. "REPLACEMENT WORKER". Any individual hired for the purpose of replacing either permanently or temporarily an employee who is currently engaged in a lawful strike or who is locked out by his or her employer.
- F. "STRIKE". Any concerted act of the employees in a lawful refusal of the employees to perform work or services for the employer, provided such acts are not recognized as unlawful under Massachusetts State or Federal law, and if the employees are represented by a labor organization, that the said labor organization shall have approved or sanctioned the act.
- G. "STRIKEBREAKER". Any person who customarily and repeatedly offers himself or herself for employment for the duration of a strike or lockout in the place of an employee involved in a strike or lockout.

SECTION 3. UNLAWFUL CONDUCT.

- A. It shall be unlawful in the city of ^{Cambridge} ~~Boston~~ for any

employer wilfully and knowingly to employ any strikebreaker to replace employees who are either on strike against or locked out by such employer.

B. It shall be unlawful in the city of ~~Boston~~^{Cambridge} for any employer not directly involved in a strike or lockout to recruit, secure or offer to secure employment for any strikebreaker or, any replacement worker where it is found that such action is likely to cause a threat to the public safety, violence, or harm to persons or property.

C. It shall be unlawful in the city of ~~Boston~~^{Cambridge} for any employer to employ one or more replacement workers, where it is found that such hiring of replacement workers is likely to cause a threat to the public safety, violence, or harm to persons or property.

D. The findings required under part B and C of this section shall be satisfied either by:

1. Deployment by the ~~Boston~~^{Cambridge} Police Department of detail officers or regular officers in order to preserve the public peace, prevent violence, prevent intimidation, or prevent threats to the public safety in association with a strike or a lockout, or
2. A determination by the Police Commissioner that one or more actions taken in association with hiring replacement workers is likely to cause a threat to the public peace or public safety, violence, intimidation, or harm to persons or

property.

SECTION 4. PENALTIES

In accordance with the provisions of M.G.L. Ch. 40 sec 21, the ~~Board of Commissioners~~ ^{City manager} of the City of ~~Boston~~ ^{Cambridge} shall enforce the provisions of this ordinance. Each strikebreaker or replacement worker employed, recruited or secured for employment, and each attempt or offer to recruit or secure employment, in violation of any provision of the unlawful conduct section of this ordinance, shall be construed as a separate and succeeding offense. Each day or part thereof of violation of any provision of the unlawful conduct section of this ordinance, whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense. Each violation shall carry a penalty of Two Hundred (\$200.00) Dollars.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect immediately upon passage.

SECTION 6. SEVERABILITY

The provisions of this ordinance shall be severable and if any one or more provisions, or parts or subparts thereof, shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions or parts thereof.

be held unconstitutional or otherwise invalid by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions or parts thereof.

In City Council JUN 13 1990
Passed
Robert F. McHenry asst. City Clerk
Approved year eleven days one
Mayor



City of Cambridge

33.

IN CITY COUNCIL

November 26, 1990

COUNCILLOR CYR
VICE MAYOR REEVES
COUNCILLOR MYERS
MAYOR WOLF
COUNCILLOR DUEHAY

ORDERED: That the attached amendment to the Municipal Code of the City of Cambridge regarding the limiting of hiring of strike breakers in labor disputes in the City of Cambridge, be and hereby is referred to the Ordinance Committee for hearing and report.

In City Council November 26, 1990.
Adopted by the affirmative vote of nine members.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

Joseph E. Connarton
City Clerk

Cambridge
CITY OF ~~BOSTON~~

~~IN CITY COUNCIL~~

- An Act limiting the hiring of strike breakers in
labor disputes in the city of Cambridge -
by Reeves, Myers, King, DeHay

SPONSORED BY COUNCILLORS ~~POWERS, SALERNO,~~

~~WHELAN, CASEY, MCCORMACK, McLAUGHLIN AND TRAVAGLINI~~

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~~WHEREAS Greyhound has not yet paid for the details necessary to~~

~~protect the company, knowing their failure to pay puts
greater stress on limited public safety resources and
city revenues.~~

NOW THEREFORE BE IT ORDAINED IN THE CITY OF ^{Cambridge}~~BOSTON~~, AS FOLLOWS:

SECTION 1. POLICY

It shall be the policy of the City of ^{Cambridge}~~BOSTON~~ in accordance with the provisions of M.G.L. Ch. 40 sec 21, to regulate the conduct of employers who attempt to replace employees who are members of or are associated with a labor organization engaged in a dispute resulting in a legal strike or a lockout involving the employer in order to protect the safety, convenience, and peaceful enjoyment of the residents, visitors, and tourists of the city of ^{Cambridge}~~Boston~~.

SECTION 2. DEFINITIONS

When used in this ordinance, the following terms shall have the following meanings:

- A. "EMPLOYEE". Any person who performs services for wages or salary under a contract of employment, express or implied, for an employer.
- B. "EMPLOYER". Any individual, partnership, or corporation who employs any employee to perform services for a wage or salary and includes any agent of any employer acting directly or indirectly.
- C. "LABOR ORGANIZATION". Any organization of any kind or any agency or employee representation committee or plan in which employees participate and which exists for the

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

- D. "LOCKOUT". A refusal by an employer to permit his employees to work as a result of a dispute with such employees that affects wages, hours, and other terms and conditions of employment of said employees, provided, however, that a lockout shall not include a termination of employment for reasons deemed proper under Massachusetts state and federal law.
- E. "REPLACEMENT WORKER". Any individual hired for the purpose of replacing either permanently or temporarily an employee who is currently engaged in a lawful strike or who is locked out by his or her employer.
- F. "STRIKE". Any concerted act of the employees in a lawful refusal of the employees to perform work or services for the employer, provided such acts are not recognized as unlawful under Massachusetts State or Federal law, and if the employees are represented by a labor organization, that the said labor organization shall have approved or sanctioned the act.
- G. "STRIKEBREAKER". Any person who customarily and repeatedly offers himself or herself for employment for the duration of a strike or lockout in the place of an employee involved in a strike or lockout.

SECTION 3. UNLAWFUL CONDUCT.

- A. It shall be unlawful in the city of ^{Camden} ~~Boston~~ for any

employer wilfully and knowingly to employ any strikebreaker to replace employees who are either on strike against or locked out by such employer.

B. It shall be unlawful in the city of ~~Boston~~^{Cambridge} for any employer not directly involved in a strike or lockout to recruit, secure or offer to secure employment for any strikebreaker or, any replacement worker where it is found that such action is likely to cause a threat to the public safety, violence, or harm to persons or property.

C. It shall be unlawful in the city of ~~Boston~~^{Cambridge} for any employer to employ one or more replacement workers, where it is found that such hiring of replacement workers is likely to cause a threat to the public safety, violence, or harm to persons or property.

D. The findings required under part B and C of this section shall be satisfied either by:

1. Deployment by the ~~Boston~~^{Cambridge} Police Department of detail officers or regular officers in order to preserve the public peace, prevent violence, prevent intimidation, or prevent threats to the public safety in association with a strike or a lockout, or
2. A determination by the Police Commissioner that ^{Chief/} one or more actions taken in association with hiring replacement workers is likely to cause a threat to the public peace or public safety, violence, intimidation, or harm to persons or

property.

SECTION 4. PENALTIES

In accordance with the provisions of M.G.L. Ch. 40 sec 21, the ~~Police Commissioner~~ ^{City manager} of the City of ~~Boston~~ ^{Cambridge} shall enforce the provisions of this ordinance. Each strikebreaker or replacement worker employed, recruited or secured for employment, and each attempt or offer to recruit or secure employment, in violation of any provision of the unlawful conduct section of this ordinance, shall be construed as a separate and succeeding offense. Each day or part thereof of violation of any provision of the unlawful conduct section of this ordinance, whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense. Each violation shall carry a penalty of Two Hundred (\$200.00) Dollars.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect immediately upon passage.

SECTION 6. SEVERABILITY

The provisions of this ordinance shall be severable and if any one or more provisions, or parts or subparts thereof, shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions or parts thereof.

be held unconstitutional or otherwise invalid by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions or parts thereof.

In City Council
Passed
JUN 18 1990
Robert F. McHenry asst. City Clerk
Approved year eleven, days one.
Mayor



City of Cambridge

33.

IN CITY COUNCIL

November 26, 1990

COUNCILLOR CYR
VICE MAYOR REEVES
COUNCILLOR MYERS
MAYOR WOLF
COUNCILLOR DUEHAY

ORDERED: That the attached amendment to the Municipal Code of the City of Cambridge regarding the limiting of hiring of strike breakers in labor disputes in the City of Cambridge, be and hereby is referred to the Ordinance Committee for hearing and report.

In City Council November 26, 1990.
Adopted by the affirmative vote of nine members.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

A handwritten signature in cursive script that reads "Joseph E. Connarton".

ATTEST:-

Joseph E. Connarton
City Clerk

Cambridge
CITY OF ~~MASSACHUSETTS~~
IN CITY COUNCIL

- An Act limiting the hiring of strike breakers in
Labor disputes in the city of Cambridge -

SPONSORED BY COUNCILLORS ~~SCOTT, SALERNO,~~
Cyr. Reeves, MYERS Wolf, Dehay

~~MERRILL, ZASBY, MCCORMACK, McLAUGHLIN AND TRAVAGLINI~~

IN MEMORY OF ROBERT WATERHOUSE

- WHEREAS ^{Cambridge} the City of ~~Boston~~ must protect the peaceful enjoyment of its resources by citizens, visitors, and tourists, and;
- WHEREAS the desire of all citizens and the first and foremost responsibility of government is to preserve the public peace and prevent violence, and;
- WHEREAS the enjoyment of personal and real property of the citizens, visitors, and tourists is endangered when labor disputes are unnecessarily and unwarrantedly aggravated by strikebreakers, and;
- WHEREAS the employment of strikebreakers to replace employees who are locked out or who are on strike has resulted in inconvenience, strife, injuries, fatalities, and destruction of real and personal property, and;
- WHEREAS the Pittston Mine strike, the International Paper strike, the Greyhound Bus strike, the Colonial Meat strike, the Hormel strike, the General Electric strike and the Kohler strike bring vivid memories of shootings, beatings, property destruction, fear, intimidation, and violence, and;
- WHEREAS Robert Waterhouse, a striking Greyhound worker, was r

over and killed in Redding, California by a Greyhound bus driven by replacement worker, and;

WHEREAS implicit in contract negotiations and legal strikes is an agreement that strikes are a legitimate part of labor disputes, and;

WHEREAS state and federal law specifically list situations and industries in which strikes are not allowed, thereby making clear that strikes are a legitimate right retained by workers during other labor disputes; and

WHEREAS the use of strikebreakers or replacement workers breaks this well known and accepted agreement that workers have the right to strike, and can as a result lead to extremely tense and at times violent outcomes endangering the public safety; and

WHEREAS the City of ^{Cambridge} ~~Dorset~~ under its police powers has the right and obligation to protect the public and not to waste police resources, and;

~~WHEREAS in the case of the Greyhound strike, many police who could have been employed protecting the public in other details had to be employed protecting the Greyhound station, in part because Greyhound against the advice of many chose to widely advertise for replacement workers and chose to conduct interviews and hiring at the Greyhound station while knowing full well this would understandably antagonize those participating in a legal strike, and;~~

~~WHEREAS Greyhound has not yet paid for the details necessary to~~

~~protect the company, knowing their failure to pay puts
greater stress on limited public safety resources and
city revenues:~~

NOW THEREFORE BE IT ORDAINED IN THE CITY OF ^{Cambridge}~~BOSTON~~, AS FOLLOWS:

SECTION 1. POLICY

It shall be the policy of the City of ^{Cambridge}~~Boston~~ in accordance with the provisions of M.G.L. Ch. 40 sec 21, to regulate the conduct of employers who attempt to replace employees who are members of or are associated with a labor organization engaged in a dispute resulting in a legal strike or a lockout involving the employer in order to protect the safety, convenience, and peaceful enjoyment of the residents, visitors, and tourists of the city of ^{Cambridge}~~Boston~~.

SECTION 2. DEFINITIONS

When used in this ordinance, the following terms shall have the following meanings:

- A. "EMPLOYEE". Any person who performs services for wages or salary under a contract of employment, express or implied, for an employer.
- B. "EMPLOYER". Any individual, partnership, or corporation who employs any employee to perform services for a wage or salary and includes any agent of any employer acting directly or indirectly.
- C. "LABOR ORGANIZATION". Any organization of any kind or any agency or employee representation committee or plan in which employees participate and which exists for the

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

- D. "LOCKOUT". A refusal by an employer to permit his employees to work as a result of a dispute with such employees that affects wages, hours, and other terms and conditions of employment of said employees, provided, however, that a lockout shall not include a termination of employment for reasons deemed proper under Massachusetts state and federal law.
- E. "REPLACEMENT WORKER". Any individual hired for the purpose of replacing either permanently or temporarily an employee who is currently engaged in a lawful strike or who is locked out by his or her employer.
- F. "STRIKE". Any concerted act of the employees in a lawful refusal of the employees to perform work or services for the employer, provided such acts are not recognized as unlawful under Massachusetts State or Federal law, and if the employees are represented by a labor organization, that the said labor organization shall have approved or sanctioned the act.
- G. "STRIKEBREAKER". Any person who customarily and repeatedly offers himself or herself for employment for the duration of a strike or lockout in the place of an employee involved in a strike or lockout.

SECTION 3. UNLAWFUL CONDUCT.

- A. It shall be unlawful in the city of ^{Cambridge}~~Boston~~ for any

employer wilfully and knowingly to employ any strikebreaker to replace employees who are either on strike against or locked out by such employer.

B. It shall be unlawful in the city of ~~Boston~~ ^{Cambridge} for any employer not directly involved in a strike or lockout to recruit, secure or offer to secure employment for any strikebreaker or, any replacement worker where it is found that such action is likely to cause a threat to the public safety, violence, or harm to persons or property.

C. It shall be unlawful in the city of ~~Boston~~ ^{Cambridge} for any employer to employ one or more replacement workers, where it is found that such hiring of replacement workers is likely to cause a threat to the public safety, violence, or harm to persons or property.

D. The findings required under part B and C of this section shall be satisfied either by:

1. Deployment by the ~~Boston~~ ^{Cambridge} Police Department of detail officers or regular officers in order to preserve the public peace, prevent violence, prevent intimidation, or prevent threats to the public safety in association with a strike or a lockout, or
2. A determination by the Police Commissioner that one or more actions taken in association with hiring replacement workers is likely to cause a threat to the public peace or public safety, violence, intimidation, or harm to persons or

property.

SECTION 4. PENALTIES

In accordance with the provisions of M.G.L. Ch. 40 sec 21, the ~~Police Commissioner~~ ^{City manager} of the City of ~~Boston~~ ^{Cambridge} shall enforce the provisions of this ordinance. Each strikebreaker or replacement worker employed, recruited or secured for employment, and each attempt or offer to recruit or secure employment, in violation of any provision of the unlawful conduct section of this ordinance, shall be construed as a separate and succeeding offense. Each day or part thereof of violation of any provision of the unlawful conduct section of this ordinance, whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense. Each violation shall carry a penalty of Two Hundred (\$200.00) Dollars.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect immediately upon passage.

SECTION 6. SEVERABILITY

The provisions of this ordinance shall be severable and if any one or more provisions, or parts or subparts thereof, shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions or parts thereof.

be held unconstitutional or otherwise invalid by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions or parts thereof.

In City Council JUN 18 1990
Passed
Sarah F. McLaughlin asst
City Clerk
Approved year eleven, days one.
Mayor

Order # 33

0-56

Councillor Cyr, Vice Mayor Reeves,
Councillor Myers, Mayor Wolf and
Councillor Duehay re: limiting
the hiring of strike breakers in
labor disputes in the City of
Cambridge.

In City Council,

November 26, 1990

Order Adopted

*Copy sent to Ordinance
Committee + Law Dept.
11/29/90 @ ee .*