

Controversies over Permanent Strike Replacements in the United States

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Abstract

One of the unique characteristics of the U.S. industrial relations system is the permanent strike replacement doctrine which allows employers to hire permanent replacement workers for those positions left vacant by striking employees during an economic strike. The legal authority for employers' right to hire permanent replacements stems not from the National Labor Relations Act (NLRA) itself, but rather from dicta in an old Supreme Court decision *NLRB v. Mackay Radio & Telegraph Co.* Pro-labor members of Congress have advocated the enactment of the Workplace Fairness Act to overturn this Supreme Court's decision, but other commentators want to maintain the status quo in order to keep the delicate balance between labor and management.

Divided into six sections, this article tries to make a thorough examination of the controversies over the permanent strike replacement doctrine embodied in the Mackay case which has been part of American labor relations for the past fifty years and evaluates the wisdom of enacting the Workplace Fairness Act to overturn this long entrenched tradition. Section II explores the major types of strikes and the protection provided by related statutes and various judicial decisions for these concerted activities. Section III traces the origin of the permanent replacement doctrine and examines the backgrounds regarding the Mackay case. Section IV describes several judicial and National Labor Relation Board decisions which have either limited or entrenched the Mackay doctrine. Section V focuses on recent congressional responses to the problems caused by this doctrine and outlines the progress of the enactment of the Workplace Fairness Act. The final section makes an overall assessment of the opinions raised by various commentators concerning this controversial issue.