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**The Employer
Advisory**

Employment Case Analysis You Can Use

FEDERAL COURT STRIKES DOWN ILLINOIS STRIKEBREAKER LAW

Caterpillar, Inc. filed a lawsuit seeking a declaratory judgment against seven county prosecutors who, as States Attorneys, must enforce the Illinois Employment of Strikebreakers Act ("IESA"). The IESA required prosecutors to seek criminal penalties against employers who use temporary workers during strikes or lockouts. Caterpillar contended this statute conflicted with federal labor law. The United States District Court for the Central District of Illinois agreed and struck down the statute.

The IESA gave employers two unpleasant choices in the event of a lockout or strike. Employers could comply with the law forbidding worker replacement and suffer economic loss. Alternatively, employers could hire temporary replacements and face criminal penalties.

Congress enacted the National Labor Relations Act (NRLA) to provide a uniform national law ensuring good faith bargaining between labor and management. Each party negotiates by exerting economic pressure on the other party. Employers use temporary replacement workers as economic pressure during economic strikes or lockouts. The court in Caterpillar ruled that the IESA granted labor extra bargaining power by depriving employers of this means of economic pressure. The resulting change in the balance of power interfered with the process of collective bargaining. Because the NRLA was intended to ensure balanced collective bargaining, the IESA is preempted by the NRLA.

The use or threatened use of temporary employees is vital to unionized employers' bargaining strength. The state may not prohibit the use of temporary workers during work stoppages.

Caterpillar Inc. v. Lyons, No. 03-1245. May 14, 2004.

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