

HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE
February 2, 1983

The House Labor and Employment Relations Committee convened on Wednesday, February 2, 1983 at 7 p.m. in Room 224K of the State Capitol with Chairman J. Melvin Williams presiding and all members present except Rep. Farris, who was excused. Chairman Williams opened the meeting to a hearing on House Bill 504.

HOUSE BILL 504

REPRESENTATIVE CARL ZABROCKI, District 51, chief sponsor, said this act is to provide jobs to railroad employees affected by the consolidation or centralization of railroad stations and facilities. He said in 1982 Burlington Northern made application to centralize more than 60 railroad stations in Montana. He said the application requested removal of properties like docks, depots, etc. He said the intent of the bill is to define the meaning of closure.

JAMES T. MULLEN, Brotherhood of Railway, Airline and Steamship Clerks, spoke next in support and a copy of his testimony is Exhibit 1 of the minutes.

JIM MURRY, Montana State AFL-CIO, spoke in support of the bill and a copy of his testimony is Exhibit 2 of the minutes.

REPRESENTATIVE JOE BRAND, District 28, spoke in support. He said the proposed mergers could cause some of the workers to go out of state to find jobs. He felt there should be some protection for the workers and he asked the committee to consider this bill very seriously.

DANNY OBERG, Public Service Commission, said the policy of the commission is regards to consolidation and centralization is that they are not the same as closure. He felt this might be a misinterpretation. He felt it was an important bill as it would make the law clearer and he recommended a do pass.

REPRESENTATIVE ROBERT BACHINI, District 7, said he supported the bill and had a number of letters he wished added to the record. These letters including a petition signed by 29 people and 8 letters from railroad agents, and two mailgrams are Exhibit 3 of the minutes.

Opponents

TOM DOWLING, Montana Railroad Association, spoke in opposition. He said they have some concerns with the bill. He said the bill is an intrusion on the collective bargaining agreement between the parties. He said in order to achieve this agreement the railroads made certain concessions, and in this piece of legislation the state of Montana is being asked to legislate in favor of the unions. He said there were trade-offs and there are some problems with seniority. He said it does not

say if there is a closure that the railroad will provide a job in Montana but just a job. He said sometimes the railroad does not have a job for a protected employee and this bill would require the railroad to go out and manufacture a job.

BILL PALM, Burlington Northern, said he is the supervisor of manpower control in Billings. He said HB 504 appears to require placement of jobs on a one-to-one basis. He said they already have salary protection to cover almost every bracket of employee. He said BRAC has the best protection plan of any union shop in the industry. He said in 1970 three roads closed and concessions were given by the railroads to accomplish this. He said the clerks came up with an orange protection which is the best of all the protections in some respects. He said it made it impossible to move any employee who had six years of service out of his own 30 mile radius. If they had fewer years they could be moved, but the railroad had to buy his home and pay all moving costs and have a job waiting. He said when you talk merger protection you are talking about paying the individual as though he is working, with all benefits including vacation for the next year. With this bill, he said, they want job protection in addition. He said there are approximately 600 clerical employees in the state and of these only 28 are not fully protected and by October 3 they will also be protected. He said centralization is the thing of the future and the way to compete. He said it will enable them to give 24 hour service, have a staff with more expertise and do a far better job for the state of Montana. Exhibit 3 is an example of an agreement between Burlington Northern and BRAC.

REPRESENTATIVE ZABROCKI in closing said you can tell by the number of signers on the bill that it is a pretty good bill.

Questions were asked by the committee.

Rep. Driscoll asked what the railroad did when a vice president moved. Mr. Palm said they are treated the same as any other employee.

Rep. Dozier asked with whom they competed. Mr. Palm said they have a lot of competition.

Mr. Palm responded to another question that the only way they can get out of salary protection is through firing someone with cause. He said in the last agreement a way was provided to get out of the protection and that was if there was a dramatic decline in business. He said a formula was worked out

allowing them to reduce from the bottom. He said they thought they could do this last year but found there was not enough decline in business.

Rep. Ellerd asked if they could moonlight. Mr. Palm said no, they could, but for every dollar they earned the amount paid would be reduced that amount.

Rep. Hannah asked Mr. Palm about the 28 employees that would not be fully covered, where would they be if this bill doesn't pass. Mr. Palm said everyone this bill is designed to protect will be protected anyway. He said he would go so far as to say if the station were closed tomorrow no one would be affected. Rep. Hannah asked Mr. Mular to respond to this. Mr. Mular said their seniority list has 1400 names which is far more than Mr. Palm's list. Mr. Palm said they are speaking of state of Montana employees and perhaps Mr. Mular isn't. A copy of names was submitted by Mr. Dowling and this is Exhibit 4. Chairman Williams requested that Mr. Mular submit his list of names to the committee. *Ex. 10 at the Historical Library Originals has that list.*

Mr. Oberg was asked if the PSC makes an allowance for extended benefits when they add costs. Mr. Oberg said if it is part of the cost of doing business, it would have to be taken into account.

Chairman Williams closed the hearing on this bill and opened the hearing on House Bill 512.

HOUSE BILL 512

REPRESENTATIVE LLOYD McCORMICK, District 38, chief sponsor, said this bill provides that a workers' compensation insurer that reverses a decision to deny or terminate compensation for a claim must pay costs and attorney fees.

REPRESENTATIVE KELLY ADDY, District 62, spoke for the bill. He said he has had frequent experiences representing workers who on the initial filing of their claim has been turned down but upon being called by a lawyer they reverse the decision and honor the claim. So the client is compensated for his injury but is out his attorney fees.

JIM MOORE, Montana Trial Lawyers, spoke next in support, and a copy of his testimony is Exhibit 5 of the minutes.

JIM MURRY, Montana State AFL-CIO, spoke next in support and said he agreed with the preceding witnesses. He said he felt this was in keeping with the intention of the workers compensation law. He said it is the only fair way of handling the

situation. He said they feel it will provide an incentive for early settlement of claims. He said there is a heavy workload before the Workers' Compensation Court and anything we can do to encourage quicker settlements is to the advantage of all concerned.

Opponents

GARY BLEWETT, Division of Workers' Compensation, spoke in opposition and a copy of his statement is Exhibit 6.

GEORGE WOOD, Montana Self Insurers' Association, spoke in opposition. He said the bill does not provide benefits to the injured working people but to the attorneys. He said he has over 30 years experience working with this court and the situation as reported does not arise frequently. He was not sure what "honor the claim" means, and when does the penalty apply. He said the bill requires an insurer to accept or deny compensation in a certain length of time. As it is, he said, some information may be lacking so he may pay the compensation but deny the claim until further evidence can be gathered; and when that evidence is gathered, it might result in a reversal of the denial. He said there would be a need for evidentiary hearings to determine reasonable costs. He said "shall" on line 17 should be replaced with "may." He requested the bill as written do not pass.

REPRESENTATIVE McCORMICK closed.

Questions were asked by the committee.

Rep. Driscoll asked concerning the little claims. He said to get them paid the injured worker needs a lawyer which they can ill afford. Mr. Blewett said he agreed there needs to be a solution but he didn't think this is the one.

Rep. Pavlovich asked how many of these cases there are. Mr. Wood said in his particular practice he had only seen 3 or 4. He said it is between the two attorneys and not between the court and the claimant. Rep. Kelly said he had seen this four times in the past year in Billings.

Rep. Smith asked if this would result in more claims as the attorneys would know they would get paid. Mr. Wood said attorneys take workmens' compensation cases on a contingent fee - 25% of recovery; 33 1/3% if before the workers' compensation court and 40% before the supreme court. He said the penalty provision of this law grants him his contingency fee and will provide him with some fee based on hourly work performed so he gets the best of both worlds. He said attorneys are in business and most attorneys aren't bashful as they have time and knowledge invested. Rep. Driscoll added that most

workers don't know how to talk so gets an attorney.

Chairman Williams closed the hearing on this bill and opened the meeting to a hearing on HB 514.

HOUSE BILL 514

REPRESENTATIVE GARY SPAETH, District 71, chief sponsor, said this bill was at the request of the Department of Administration. He said it was a relatively simple bill as all it would do is prohibit a public employee from accruing annual leave or sick leave during any period of leave without pay.

MARK CROSS, Chief, Employee Relations Bureau, Department of Administration, spoke in support of the bill and a copy of his testimony is Exhibit 7 of the minutes.

Opponents

TOM SCHNEIDER, MPEA, spoke next against the bill and a copy of his testimony is Exhibit 8 of the minutes.

NADIEAN JENSEN, American Federation of State, County and Municipal Employees, spoke next in opposition and a copy of her testimony is Exhibit 9 of the minutes.

REPRESENTATIVE SPAETH closed. He said he felt this was a case of getting something for nothing. He said the argument that it was more expensive to do it the other way he didn't agree with. He said the argument that new employees may need this, he didn't believe was a solution to their problem. He said maybe they should be able to take their vacation and sick leave as they accrue it instead of waiting the established time. He said this bill doesn't touch the health benefits.

Rep. Dozier asked what the savings would be. Rep. Spaeth said \$44,000 a year. Rep. Dozier asked what the added bookkeeping costs would be. Mr. Cross said from a bookkeeping standpoint they plan to save time and money if this bill passes. He said they have billings systems that automatically keep track of payroll and they will just build in another item to take care of leave without pay. He said it is no great administrative burden and is really more of a burden to do it the way it is. He said they came across this problem in reviewing the rules. He said agencies handle it differently and come in and ask them what is the right way. He said this could alleviate problems and they recommend the change.

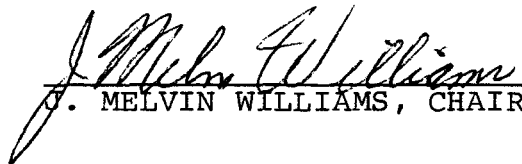
Chairman Williams closed the hearing on this bill and opened the meeting to an executive session on HB 309.

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HOUSE BILL 309 Chairman Williams said the bill had been passed from the committee with an AS AMENDED DO PASS recommendation. He said it was discovered the bill needed a fiscal note and also a statement of intent. Rep. Harper moved the bill be reconsidered. The motion carried with Rep. Miller voting no and absent were Reps. Hannah and Farris.

Meeting adjourned at 9 p.m.

Respectfully submitted,


C. MELVIN WILLIAMS, CHAIRMAN

Emelia A. Satre, Sec.

VISITOR'S REGISTER
LABOR AND
HOUSE EMPLOYMENT RELATIONS COMMITTEE

BILL HB 504

DATE 2/2

SPONSOR ZABROSKI

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
JOHN DELANO	Helena	MONT RR ASSN		X
BILL PALM	LAUREL	BURLINGTON NORTHERN		X
Tom Dowlig	Helena	MONT RR ASSN		✓
Jim Mular	Butte	Bro Rwy Clerks	X	
Danny Oberg	Helena	PSC	X	
Jim Murray	Helena	Mont. AFL-CIO	X	
Joe Brand	Deer Lodge	State Rep Dist 28	X	
Garth...	Glendive	Bro. Mtc. Wj Emp	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.
WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name JAMES T. MULAR Committee On LABOR
Address 440 ROOSEVELT NR BUTTE Date 2/2/03
Representing BRAC Support X
Bill No. 504 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:
1. SEE ATTACHED

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



Exhibit 1

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

440 ROOSEVELT DRIVE R-1

AFL-CIO—CLC

JAMES T. MULAR
State Director
~~P. O. Box 9884~~
Butte, MT 59701
Phone 406-494-2316

TO: HONORABLE MEL WILLIAMS, CHAIRMAN, AND MEMBERS
MONTANA HOUSE OF REPRESENTATIVES COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS

SUBJECT: STATEMENT OF JAMES T. MULAR, STATE LEGISLATIVE DIRECTOR,
BRAC, ON BEHALF OF THE UNITED TRANSPORTATION UNION,
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, BROTHERHOOD
OF LOCOMOTIVE ENGINEERS.

RE: HB 504 COMMITTEE HEARING HELD FEBRUARY 2, 1983

Mr. Chairman, members of the Committee; For the record, my name is James T. Mular - State Legislative Director, Brotherhood of Railway & Airlines Clerks. I live at 440 Roosevelt Drive, Butte, Montana. Our organization supports the amendments contained in HB 504; which clearly defines a rail road station closure - whenever a railroad CONSOLIDATES, or CENTRALIZES station facilities.

In 1973 the Montana Legislature enacted Section 69-14-1001 MCA, giving Montana railroad station employees wage protection as a condition precedent to any Public Service Commission's closure order. The 1973 legislation was patterned after Section 5 (2) (f) of the Interstate Commerce Act, commonly referred to as the WASHINGTON JOB PROTECTION AGREEMENT covering railroad employees affected by railroad mergers, consolidations, and abandonments.

From 1973 to 1980, the Montana Public Service Commission did in fact authorize station consolidations and centralizations. For example, B.N. created mobile agencies, a concept that involved several stations to be serviced directly by a mobile van, with office facilities, and general station accounting capabilities. Whenever the Commission ordered this concept into operation, they allowed the railroad to remove the fixed station facilities, and subjected the carrier to pay wage protection in compliance with Montana law. Thus, a senior agent who was required to displace junior employees through the domino effect kept his rate of pay, and the junior employee who suffered wage loss was protected by the Montana law, up to four years.

(NOTE: Union label removed
for duplication purposes)

Then the B.N.-Frisco lines merger was consumated December 1, 1980. For example, the most recent application to consolidate agency service was docketed January 18, 1983. In this application, B.N. seeks to consolidate Opheim, Glentana, Richland, Peerless, and Four Buttes, with Scobey, Montana, (Docket T-6952) and to consolidate Froid, Homestead, Medicine Lake, Reserve, Antelope, Redstone, and Flaxville with the agency at Plentywood, Montana. (Docket T-6954)

The application further requests that B.N. be authorized to dispose of or otherwise remove the station facilities, which encompasses public dock and tracks, warehouse and depot, and other fixed appurtenances. In 1982 the present Commission took the position that it has no authority to impose wage protection to any employee affected by a consolidation whose position is jeopardized through the domino theory of seniority displacement by a senior agent over a junior employee, even though previous Commissions extended wage protection to ANY employee who was displaced under seniority options made by a Station Agent. That case is now being appealed. Obviously the Public Service Commission interprets existing law as that applicable to any railroad who applies for authority to CLOSE a station and uses that word in the application.

We submit to this committee, that whenever a railroad seeks to consolidate station facilities, and removes its fixed plant that such transaction is a CLOSURE within the purview of Section 69-14-202 MCA, which requires railroads doing business in Montana to maintain and staff facilities in communities of 1,000 or more inhabitants, and at least one in each county where the railroad operates. Any removal of these facilities constitutes a departure from the Montana statute that we have cited.

We are before this Committee seeking a more clearly defined meaning of closure which is contained in HB 504. The amendments shown in this bill would clarify to include any type of consolidation or centralization, and retain Montana rail station operations according to our state laws.

Montan railroads are attempting to consolidate or centralize their station facilities and operations outside our state borders. This is indicative of B.N.'s recent application to consolidate agency services at Bainville, Montana with Williston, North Dakota.

Should this application be granted by the PSC, a dangerous precedent is created for subsequent station consolidations, which would require our junior Montana employees to re-locate in other states whenever a station application was authorized by the Commission. And if amendments contained in HB 504 are not adopted, our junior employees would suffer without any remedy under the present law.

Moreover, withdrawals of station facilities in Montana are not in the public interest. This exodus stifles community economic growth, and impacts a stable employee payroll, which destroys Montana's theme of KEEPING JOBS AND PEOPLE WORKING.

We respectfully request that this Committee give a "do pass" to the amendments shown in HB 504. Thank you for allowing us to testify.

JAMES T. MULAR



BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

440 Roosevelt Drive RR 1

AFL-CIO-CLC
ARTCRAFT, BUTTE

JAMES T. MULAR
State Director
Butte, MT 59701
Phone 406-494-2316

TO:

SUBJ: LEGISLATIVE AUDIT COMMITTEES DECISION TO SUN SET THE
PUBLIC SERVICE COMMISSIONS AUTHORITY OVER RAILROAD
STATION FACILITY CLOSURES (Section 69-14-202 MCA and RAIL
EMPLOYEE SAFETY LAWS.

DEAR

From December 1981, thru December 1982, the following station closures, and
facility removals were requested by Burlington Northern Railroad Company (BN-RC)

TROY, FORTUNE, BROWNING, ST. REGIS, CHOTEAU, CARTER, PORTAGE, BELT,
DARBY, KEVIN, SUNBURST, GALATA, DEVON, LORING, WHITEWATER
WAGNER, DODSON, POPLAR, KALISPELL, WIBAUX, LODGE GRASS, BRIDGER,
BROADVIEW, RAPELJE, COLUMBUS, BIG TIMBER, BOZEMAN, BELGRADE,
MANHATTAN, THREE FORKS, HARRISON, EAST HELENA, PHILLIPSBURG,
FRAZER, SACO, NASHUA, AND HINSDALE, MONTANA.
RICHEY, LAMBERT, FAIRVIEW, BROCKWAY, CIRCLE, TERRY, WHITEHALL,
TWIN BRIDGES, SHERIDAN, ALDER, TRIDENT, TOSTON, and TOWNSEND. A
total of fifty stations.....

Presently the Montana Public Service Commission has jurisdiction over the main-
tenance and staffing of railroad facilities. (Section 69-14-202 M.C.A.) Railroads doing
business in Montana must maintain and staff station facilities in communities of a
1,000 or more inhabitants, and at least one station facility in each county where they
operate. Preferably the County Seat. The foregoing stations that did not meet the
thousand population criterion, became vulnerable to closure.

Pursuant to Montana law, the Commission ordered the following stations remain
open: (Sec. 69-14-202 MCA)

TROY (over 1M pop) BROWNING (over 1M pop) CHOTEAU (over 1m pop & County
Seat) FAIRVIEW (over 1M pop) CIRCLE (County Seat) TERRY (County Seat)
BIG TIMBER (over 1M pop & County Seat) WIBAUX (County Seat) WHITEHALL
(Last Station in Jefferson City) COLUMBUS (over 1M pop & county seat)
PHILLIPSBURG (Granite County seat over 1M pop) BRIDGER (last station in
Carbon County)

Stations ordered to remain open with less than one thousand population:

FALLON (remain open during sugar beet harvest 6 weeks)
DARBY (BN withdrew application requesting dismissal)

Stations ordered closed with less than 1,000 inhabitants:

(more reverse side)

FORTINE, DEVON, LORING, WHITEWATER, WAGNER, DODSON, RICHEY, LAMBERT, BROCKWAY, FRAZER, SACO, NASHUA, HINSDALE, ST. REGIS.

Cases pending disposition are:

CARTER, PORTAGE, BLET, POPLAR, KEVIN, SUNBURST, GALATA, DEVON, LODGE GRASS, BIG TIMBER, BOZEMAN, MANHATTAN, BELGRADE, THREE FORKS, HARRISON, WHITEHALL, TWIN BRIDGES, SHERIDAN, ALDER, TOSTON, TRIDENT, TOWNSEND, EAST HELENA, and KALISPELL.

Pursuant to the Legislative Audit Committees decision to SUN SET the Commissions jurisdiction over station closings. Our members will be directly affected along with our rural communities. Sun Setting, or abolishing Commission jurisdiction over railroad stations will give Burlington Northern CARTE BLANCHE authority to close all stations in Montana.

In 1925, pursuant to the Interstate Commerce Commissions decision in 94 I.C.C. 691 held that:

“We (ICC) found that we lacked jurisdiction over the proposed retirement of a freight and passenger depot.” (Cited also in BOSTON TERMINAL CO. REORGANIZATION Finance Docket No. 12625 at p-378 December 15, 1960)

In the Boston Terminal case cited above the I.C.C. stated:

“The Congress has been fully aware that the abandonment of stations is ordinarily a matter wholly with the jurisdiction of the State Regulatory bodies. Indeed as recently as 1968, the Congress made it clear that it did not wish to transfer such jurisdiction to the Interstate Commerce Commission. (H.Rept. No. 1922 85th Congress 2d Session p-12)”

If the Public Service Commissions' jurisdiction is abolished as recommended by the Legislative Audit Committee, a subsequent repeal by implication will be granted to Burlington Northern. Submitting all of our cities, towns etc. to losing vital rail transportation facilities.

Our organization strongly opposes the loss of state jurisdiction. In as much as our members will be re-located to other states located on BN's 29 state network. Tremendous economic impacts would result in our rural and branch line communities.

We humbly seek your support in the 1983 legislative session in retaining the present law.

Truly Yours,

James T. Mular, SLD BRAC

cy: to all Montana members.

APPENDIX A
PROTECTIVE AGREEMENT
ARTICLE I – PROTECTED EMPLOYEES

Section 1.

(a) All employees subject to the Working Agreement dated May 6, 1980, who are in the service of the Carrier on the effective date of this Agreement, or who are so employed subsequent thereto will become "Protected Employees" subject to the terms of this Agreement as follows:

- (1) Effective with the date of this Agreement for employees who have three (3) or more years of continuous service on that date.
- (2) Effective with the date the employe acquires three (3) years of continuous service for employees with less than three (3) years of service on the date of this Agreement.
- (3) Effective with the date the employe acquires four (4) years of continuous service for employees hired following the effective date of this Agreement.
- (b) Protected Employees will be continued in compensated service with the Carrier and will not be placed in a worse position with respect to compensation as hereafter provided until such time as they leave the service of the Carrier by natural attrition.
- (c) All employees of the Carrier who have an employment relationship on the effective date of their protection who were on leave of absence (including sickness), who occupied official positions or were in a fully excepted status, shall be termed "Protected Employees" as of the date of termination of leave of absence or date of return from official position or excepted status; and shall, subsequent to that date, be continued in compensated service with the Carrier as hereinafter provided until such time as they leave the service of the Carrier by natural attrition.

(d) For the purpose of this Agreement, the term "natural attrition" is defined to mean a Protected Employee leaving the service by reason of retirement, resignation, death, discharge for cause, or dismissal for noncompliance with the terms of the Union Shop Agreement.

Section 2.

In the event of a decline in the Carrier's business in excess of 5% in net revenue ton miles in any calendar month compared

the Carrier, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

**ARTICLE X – APPLICATION TO MERGERS,
CONSOLIDATIONS AND OTHER AGREEMENTS**

Section 1.

(a) Nothing in this Agreement shall be construed as depriving any employe of any rights or benefits or eliminating any obligations which such employe may have under any existing job security or other protective conditions or arrangements: provided however, that if a protected employe otherwise is eligible for protection under both this Agreement and some other job security or other protective conditions or arrangements, he shall elect between protection under this Agreement and protection under such other arrangement and, for so long as he continues to be protected under the arrangement which he so elects, he shall not be entitled to any protection or benefit (regardless of whether or not such benefit is duplicative) under the arrangement which he does not so elect; and, provided further, that after expiration of the period for which such employe is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of his protective period under that arrangement. There shall be no duplication or pyramiding of benefits to any employe, and the benefits under this Agreement, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

(b) Protected employes under the BN-BRAC Protective Agreement of November 17, 1967 and the BN-TCU Protective Agreement of January 18, 1968 will be considered as having elected to retain such protection unless they make written election to be covered by this Agreement. Such employes will retain protection under their applicable merger agreement regard-



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON HOUSE BILL 504 BEFORE THE HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS, FEBRUARY 2, 1983

I am Jim Murry, executive secretary of the Montana State AFL-CIO. I am here today in support of House Bill 504. This bill seeks to clarify the railroad employee protection act by providing these employees with protection in the event of a consolidation or centralization, as well as a closure.

The 1973 legislature enacted Section 69-14-1001, which states:

"Whenever any railroad, as defined in 69-14-101, is granted the authority to close a railroad station or facility by order of the commission, the commission shall require employee protection. Before the commission may approve closure of a station or facility, it shall require from the railroad an agreement to protect employees affected by the closure by providing jobs equal in nature and pay to the job held by the employee for the six months prior to the closure. The equal job and pay agreement must be in effect for a period of 4 years, or in the alternative, the number of years the employee has been employed prior to closure, whichever is shorter."

The Montana Public Service Commission during the years between 1973 and 1980 did require the railroad to comply with this provision of the law when consolidations and centralizations were authorized. Currently, the Commission is applying that provision of the law only to station closures. In our view, whether a railroad applies for a closure, consolidation or centralization, if the net effect is that a station or facility is shut down, legislative intent is that employees should be provided protection. This bill gives the Public Service Commission clear legal authority to require employee protection for consolidations or centralizations.

The Montana State AFL-CIO is deeply concerned at actions by Burlington Northern and adopted two resolutions at our 1982 annual convention which oppose, "the closure of any railroad facility and supports union efforts at Public Service Commission hearings to prevent such closures, and should any closures occur, insists on full compliance with the employee protection act by Burlington Northern . . ."

The resolutions also note that these shutdowns cause the loss of jobs and the discontinuance of vital rail services to Montana rail customers, and that there is a danger that BN may eventually do away with all train service, irrevocably damaging the Montana economy.

As you can see, the Montana State AFL-CIO is opposed to the closure of any railroad facility, whether it is termed closure, consolidation or centralization. But if any facility is shut down, we insist on protections for those railroad employees.

We urge your support for House Bill 504.

Thank you.

MEMBERS,
LABOR AND INDUSTRY COMMITTEE
CAPITOL STATION,
HELENA, MONTANA 59620

LADIES & GENTLEMEN

WE THE UNDERSIGNED STRONGLY URGE YOUR SUPPORT OF HB-504, WHICH MORE CLEARLY DEFINES THE EMPETUS OF THE WORD CLOSURE. THE RAILROAD ALLEGES THAT A CONSOLIDATION OF MULTI STATIONS, DOCKS, AND PUBLIC TRACKS ETC. ARE NOT A CLOSURE. WE THINK DIFFERENTLY. IF THESE DEPOTS AND TRACKS ETC. ARE CLOSED AND TAKEN OUT OF SERVICE AND CAN NO LONGER BE USED, HOW CAN THIS BE MISCONSTRUED AS "NOT" BEING CLOSED???

AGAIN WE SAY, PLEASE SUPPORT HB-504.. THANK YOU.

- | | |
|---------------------------------------|---|
| <u>L Wirtzberger - Havre, Mont.</u> | <u>Glenn Barlow - Great Falls</u> |
| <u>F Lemieux - Culbertson, mt</u> | <u>R J Everett - Power, mt.</u> |
| <u>Robert Ferguson - Poplar, mt</u> | <u>R D Pickett - Conrad, mt.</u> |
| <u>Joseph Pione - Wolf Point</u> | <u>Roger Costick - Fort Benton, mt.</u> |
| <u>Leroy Johnson - Glasgow, mt.</u> | <u>A J Pampa - Great Falls, mt.</u> |
| <u>Richard Lemieux - Harlem, mt</u> | <u>W.C. Minus - Shelby, mt.</u> |
| <u>D R Fritz - Malta, mt.</u> | <u>K.C. Jensen - Havre</u> |
| <u>Harold Bergman - Chinook, mt.</u> | <u>A.D. Malburn 521 2nd St Havre</u> |
| <u>Thomas Roberts - Havre, mt.</u> | <u>David Attaroda - Havre, mt</u> |
| <u>Bob Wendland - Rugby, mt.</u> | <u>Mark W Meyer - Havre, MT</u> |
| <u>Fugene Bengator - Joplin, mt.</u> | <u>A L Shewen - Havre, mt</u> |
| <u>L Henderson - Chester, mont</u> | <u>JH Murray - Havre, mt</u> |
| <u>Herb Bayal - Big Sandy, mont.</u> | <u>JA Kloppenburg - Havre, mt</u> |
| <u>Bauer, Loma, Mont.</u> | |
| <u>B.O. Askelson - Cutbank, mont.</u> | |
| <u>Norman Seglen - Browning, mt.</u> | |

J W PELLETIER
1161 DIAMOND
BUTTE MT 59701

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289

▶ MARK BACHINA
CAPITOL STATION
HELENA MT 59620

WE STRONGLY URGE THAT YOU SUPPORT HOUSE BILL HB504 THIS WILL ASSURE
US A JOB IN MONTANA
FRANK X YBARRA LOCAL CHAIRMAN
LOCAL 454
BUTTE MT 59701

1855 EST

MGMCOMP MGM

JOHN KAIN
631 HASTINGS AVE
MISSOULA MT 59801

Western Union Mailgram®



4-000565 SC31 01/31/83 ICS IPMBNGZ CSP HELB
4065495928 MGM TDBN MISSOULA MT 73 01-31 0115A EST

349

▶ ROBERT BACHINI
LABOR COMMITTEE CAPITOL STATION
HELEN MT 59620

AS YOU ARE AWARE, THERE ARE BROAD AND SWEEPING CHANGES OCCURRING ON THE BURLINGTON NORTHERN RAILWAY INCLUDING EMPLOYEE REDUCTIONS. AS RAILWAY EMPLOYEES WE STRONGLY URGE YOU TO SUPPORT HOUSE BILL 504 WHICH WOULD INSURE EMPLOYEE PROTECTION UPON CONSOLIDATION OR CENTRALIZATION OF RAILWAY STATIONS.

JOHN KAIN, DENNY HOYLO, JOHN ROBBINS, RICK VAN AKEN, LEE KLEM, A. D. COTE, DEL LAMB, VIC COTE, W. B. HANSON

0113 EST

MGMCOMP MGM

Lewiston Post

January 29 1983

Honorable Mel Williams Chairman Labor Committee
Members the Honorable Bob Dozier

- Kelly Addy
- Robert Bachini
- Jan Brown
- Jerry Driscoll
- Bob Ellard
- Carol Farris
- Tom Hannah
- Hal Harper
- Tom Jones
- Mac McCormick
- Ron Miller
- Bob Pavolovich
- Carl Seifert
- Clyde Smith
- Bob Thoft
- Capitol Station

Montana Legislature,
Helena Montana 59620

Strongly urge that you support House Bill 504

Sincerely yours,

Tom VanderVeer
Agent

January 29 1983

Honorable Mel Williams Chairman Labor Committee

Members the Honorable Bob Dozier

- Kelly Addy
- Robert Bachini
- Jan Brown
- Jerry Driscoll
- Bob Ellerd
- Carol Farris
- Tom Hannah
- Hal Harper
- Tom Jones
- Mac McCormick
- Ron Miller
- Bob Pavolovich
- Carl Seifert
- Clyde Smith
- Bob Thoft

Montana Legislature, Capitol Station
Helena Montana 59620

Strongly urge that you support House Bill 504

Sincerely yours,

J M Sheppard
Agent

Belt MT

649

January 29 1983

Honorable Mel Williams Chairman Labor Committee

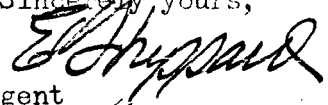
Members the Honorable Bob Dozier

- Kelly Addy
- Robert Bachini
- Jan Brown
- Jerry Driscoll
- Bob Ellerd
- Carol Farris
- Tom Hannah
- Hal Harper
- Tom Jones
- Mac McCormick
- Ron Miller
- Bob Pavolovich
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Montana Legislature, Capitol Station
Helena Montana 59620

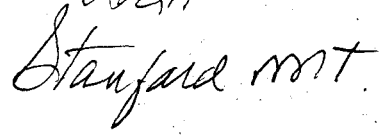
Strongly urge that you support House Bill 504

Sincerely yours,



Agent

ASA



January 29 1983

Honorable Mel Williams Chairman Labor Committee
Members the Honorable Bob Dozier

- Kelly Addy
- Robert Bachini
- Jan Brown
- Jerry Driscoll
- Bob Ellerd
- Carol Farris
- Tom Hannah
- Hal Harper
- Tom Jones
- Mac McCormick
- Ron Miller
- Bob Pavolovich
- Carl Seifert
- Clyde Smith
- Bob Thoft

Montana Legislature, Capitol Station
Helena Montana 59620

Strongly urge that you support House Bill 504.

Sincerely yours,

Agent *D. G. Smith*
Geraldine Mont

849

Denton Monk

January 29 1983

Honorable Mel Williams Chairman Labor Committee
Members the Honorable Bob Dozier

- Kelly Addy
- Robert Bachini
- Jan Brown
- Jerry Driscoll
- Bob Ellerd
- Carol Farris
- Tom Hannah
- Hal Harper
- Tom Jones
- Mac McCormick
- Ron Miller
- Bob Pavolovich
- Carl Seifert
- Clyde Smith
- Bob Thoft
- Capitol Station

Montana Legislature,
Helena Montana 59620

Strongly urge that you support House Bill 504

Sincerely yours,

J. Mathern

Agent

Denton Monk

January 29 1983

Honorable Mel Williams Chairman Labor Committee
Members the Honorable Bob Dozier

- Kelly Addy
- Robert Bachini
- Jan Brown
- Jerry Driscoll
- Bob Ellerd
- Carol Farris
- Tom Hannah
- Hal Harper
- Tom Jones
- Mac McCormick
- Ron Miller
- Bob Pavolovich
- Carl Seifert
- Clyde Smith
- Bob Thoft

Montana Legislature, Capitol Station
Helena Montana 59620

Strongly urge that you support House Bill 504

Sincerely yours,

Agent *A. P. Shannon*
Stanford Mont

WITNESS STATEMENT

Name T. Downing Committee On _____
Address 3030 N. Montana Date _____
Representing MT. R.R. Ass'n Support _____
Bill No. 504 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

- 1.
- 2.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

AGREEMENT
between
BURLINGTON NORTHERN INC.
and
That Craft and Class of Employees
Represented by the
Brotherhood of
Railway, Airline and Steamship
Clerks, Freight Handlers, Express
and Station Employees.



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Rule 1. SCOPE

These rules shall govern the hours of service and working conditions of employes engaged in the work of the craft or class of clerical, office, station, tower and telegraph service and storehouse employes as such craft or class is or may be defined by the National Mediation Board.

A. Work now covered by the scope of this Agreement shall not be removed except by agreement between the parties.

B. When and where machines are used for the purpose of performing work coming within the scope of this Agreement, not previously handled by machines, such work will be assigned to employes covered by this Agreement. A change in the equipment used for the performance of such work will not remove such work from the coverage of this Agreement.

C. Positions and work includes the following:

1. Office Managers, Assistant Office Managers, Supervisors of Train Power Operators, Supervisors—COMPASS, Supervisors of Stations and Yards, Supervisors of Freight Equipment, Supervisors of T.C.F., Supervisors of Special Equipment, Network Supervisors and Assistants, Assistant Material Managers and Chief Clerks.

2. Division Accountants, Valuation Accountants, Traveling Accountants, Special Accountants, Accountants, Timekeepers, Junior or Associate Analysts, Programmers, Console Operators, Coordinators of Car and Locomotive Procedures.

3. Car Service Agents, Station Agents, Assistant Station Agents, Agent-Telegraphers, Agent-Telephoners, Telegraphers, Operator-Clerks, Car Distributors and Assistant Car Distributors, Relay Office Managers, and Assistant Managers, Managers-Telegraphers, Wire Chiefs and Assistants, Central Agents, Customer Service Agents, Manager-Wire Chief, Assistant Manager-Wire Chief, Tower and Train Directors, Block Operators, Printer Operators, Telephoners and Telephone Operators, Towermen (including those operating car retarders at Galesburg and Lincoln), Levermen, Centralized Traffic Control Operators (acting upon proper authority) in offices other than Dispatchers' offices.

4. Buyers, Material Department General and Assistant Foreman, Traveling Refrigerator Inspectors, Valuation Inspectors, Material Inspectors, Fuel Inspectors, Tie and Timber Inspectors, Lumber Inspectors, Fruit and Perishable Inspectors, Traveling Storekeepers, Dining Car Storekeepers, Stationery Storekeepers, Local Storekeepers, Traveling Freight Supervisors, Material Supervisors.

5. Clerks, Yard Clerks, Weighmasters, Crew Dispatchers and Assistants, Chief Callers, Clerk Callers, Freight Checkers.

(a) CLERKS: Employees who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, the operation of office mechanical equipment requiring special skill and training, such as typewriters, calculating machines, bookkeeping machines, data processing machines, and other similar equipment. However, such work is covered by this Agreement.

(b) NONCLERICAL: Employees engaged in assorting tickets, waybills, car movement slips, etc.; operating appliances or machines for perforating and addressing envelopes, numbering claims or other papers, adjusting dictaphone cylinders and work of a like nature; gathering or delivering mail or other similar work not requiring clerical ability; office boys, messengers, chore boys, and other employees doing similar work or performing manual work not requiring clerical ability. However, such work is covered by this Agreement.

NOTE: Clerical work occurring in the spread of eight (8) hours shall not be assigned to more than one position not classified as clerical for the purpose of keeping the time devoted to such work by any one employe below four (4) hours per day.

6. Station, platform, warehouse, transfer, dock, team track freight, truckers, and other similarly employed; sealers, scalers, stores, stevedores, callers, loaders, locators, coopers and other similar positions.

7. Storekeepers and Assistants, Material Supervisors and Assistants, Stock Clerks, Storehelpers and Counter men, Chauffeurs, Equipment Operators, Crane and Derrickmen Operators, Storeroom, Stockroom, and Material Handlers and other similar positions.

8. Other Office, Station and Store Department employes such as: Mail and Baggage room employes; Station Helpers; Telephone Switchboard Operators; Office, Station and Warehouse Watchmen without police authority (except those covered by other agreements); Janitors, Matrons, Scrubbers and Cleaners (except those covered by other agreements); Warehouse Foremen; Store Department Foremen; Crane Operators; Station and Platform employes.

APPENDIX A
PROTECTIVE AGREEMENT

ARTICLE I – PROTECTED EMPLOYEES

Section 1.

(a) All employes subject to the Working Agreement dated May 6, 1980, who are in the service of the Carrier on the effective date of this Agreement, or who are so employed subsequent thereto will become "Protected Employes" subject to the terms of this Agreement as follows:

- (1) Effective with the date of this Agreement for employes who have three (3) or more years of continuous service on that date.
- (2) Effective with the date the employe acquires three (3) years of continuous service for employes with less than three (3) years of service on the date of this Agreement.
- (3) Effective with the date the employe acquires four (4) years of continuous service for employes hired following the effective date of this Agreement.

(b) Protected Employes will be continued in compensated service with the Carrier and will not be placed in a worse position with respect to compensation as hereafter provided until such time as they leave the service of the Carrier by natural attrition.

(c) All employes of the Carrier who have an employment relationship on the effective date of their protection who were on leave of absence (including sickness), who occupied official positions or were in a fully excepted status, shall be termed "Protected Employes" as of the date of termination of leave of absence or date of return from official position or excepted status; and shall, subsequent to that date, be continued in compensated service with the Carrier as hereinafter provided until such time as they leave the service of the Carrier by natural attrition.

(d) For the purpose of this Agreement, the term "natural attrition" is defined to mean a Protected Employee leaving the service by reason of retirement, resignation, death, discharge for cause, or dismissal for noncompliance with the terms of the Union Shop Agreement.

Section 2.

In the event of a decline in the Carrier's business in excess of 5% in net revenue ton miles in any calendar month compared

with the average of the same calendar month for the preceding two calendar years, the number of protected employees, excluding those whose protective status has been suspended, will be reduced to the extent said decline exceeds 5%. When the number of protected employees is reduced as provided for herein, the junior protected employees will not be entitled to protective benefits. Upon restoration of Carrier's business, employees entitled to protective benefits under this Agreement shall have such rights restored in accordance with the same formula within 15 calendar days.

Section 3.

Notwithstanding other provisions of this Agreement, the Carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, tornado, earthquake, fire or labor dispute, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or is not performed. When forces have been so reduced and thereafter operations are restored, employees entitled to preservation of employment must be recalled upon the termination of the emergency. In the event the Carrier is required to make force reductions because of the aforesaid emergency conditions, it is agreed that any decline in net revenue ton miles resulting therefrom shall not be included in any computation of a decline in the Carrier's business pursuant to the provisions of Section 2 of this Article I.

ARTICLE II – COMPENSATION DUE PROTECTED EMPLOYEES

Section 1.

(a) Protected Employees who held a regular assignment prior to the date he became a Protected Employee, shall be guaranteed a minimum daily wage equivalent to the daily rate of the last position to which regularly assigned prior to that date. The guaranteed daily rate of pay shall be multiplied by the number of workdays and holidays falling in the semi-monthly pay period and each employe shall receive no less than this amount each pay date.

NOTE: For the purpose of this Agreement only, monthly rates of pay shall be converted into daily rates by multiplying the monthly rate by twelve (12) and dividing the total by two hun-

dred sixty-one (261). Hourly rates of pay shall be converted into daily rates by multiplying the hourly rate by eight (8). The daily rate of pay for an employe holding a regular relief assignment shall be the average daily rate of the positions relieved in such assignment. The daily rate of pay for an employe holding a guaranteed rotating extra board position shall be the average daily rate of the positions relieved in the ninety (90) day period last worked on the assignment prior to becoming a Protected Employe.

Section 2.

(a) A Protected Employe who never held a regular assignment prior to the effective date of his protection shall be guaranteed by the Carrier an average daily wage which shall be equivalent to the average daily rate of all of the positions worked in the last twelve (12) months immediately preceding the protective date. (If the average daily rate is less than the daily rate of the lowest rated position in the office or department in which employed immediately following the date of consummation of the merger, the daily rate of such lowest rated position shall be used as the minimum daily rate.) The average daily rate thereby determined shall be paid to such Protected Employe for that number of days in each semimonthly pay period which is computed as follows:

- (1) The average number of workdays in the semimonthly pay period shall be determined by dividing by eight (8) the total hours (straight-time and overtime) paid for (not including sick pay) in the last twelve (12) months in which he performed compensated service immediately preceding his protective date; the number of working days thereby determined will be divided by twenty-four (24) and the quotient shall be the average number of workdays in the semimonthly pay period.
- (2) If the Protected Employe worked less than twelve (12) months prior to his protective date, the computations outlined in paragraph (a) (1) above will be made on the basis of number of months worked.

(b) When a Protected Employe who never held a regular assignment is awarded a regular assignment, the daily or monthly rate of such assignment will become his guarantee and computations will be made per Section 1(a) hereof for future semimonthly pay periods.

Section 3.

(a) Employees returning from official positions or fully excepted status, absence account of sickness and/or leave of absence who have not established a guaranteed daily rate in accordance with the foregoing shall be thereafter guaranteed the rate of the position occupied upon return to active service.

Section 4.

In the event any Protected Employee is receiving a higher guaranteed rate established under former Frisco Rule 77 and the February 7, 1965 Agreement, such higher rate shall be used for the purpose of determining his guarantee under this Agreement. All guaranteed rates, however established, shall be increased to the extent of subsequent general wage increases.

Section 5.

(a) In the exercise of seniority a Protected Employee shall be expected to occupy an available position in his home zone, including any guaranteed extra board positions headquartered in his home zone, rated equal to or in excess of his daily guarantee. If a Protected Employee fails to exercise his seniority rights to secure an available position in his home zone for which he has the seniority and qualifications (or has been notified in writing that he has the fitness and ability to become qualified) which carries a rate of pay exceeding the rate of pay of the position he elects to retain, he shall thereafter be treated as occupying the position which he elects to decline.

Section 6.

(a) The guaranteed minimum earnings hereby established shall not be reduced in any pay period except as otherwise provided in this agreement, and in the event an employee is absent the Carrier may deduct from that portion of his guarantee due that pay period an amount equal to the pro rata amount he would have earned on his position had he not been absent.

Section 7.

(a) Time worked in excess of eight (8) hours per day or five (5) days per week shall be paid for at the rate of the position worked at overtime rates in addition to the guaranteed rate or the rate of the position worked, whichever is greater.

ARTICLE III – HOME ZONES OF PROTECTED EMPLOYEES

Section 1.

(a) The home zone of a Protected Employee is the territory

ARTICLE XII – MORATORIUM

(a) The Agreement made this 6th day of May, 1980, is effective on the date of consummation of the merger of the Frisco into the BN under ICC Finance Docket 25383.

(b) In the application of the collective agreement to be applicable upon consummation of the merger, it is agreed and understood that if there are any conflicts between the rules of said agreement and the provisions of this agreement the provisions of this agreement will apply.

(c) The parties to this Agreement shall not serve or process prior to May 16, 1983 any notice or proposal for the purpose of changing the provisions of this Agreement. However, this will not bar the parties from agreeing on subject matters of mutual interest.

FOR: THE BROTHERHOOD
OF RAILWAY, AIRLINE AND
STEAMSHIP CLERKS

GORDON K. WILLIAMS
General Chairman (BN)

JAMES G. DOOLEY
Sr. Vice General Chairman (BN)

GORDON G. GUDE
Vice General Chairman (BN)

T. W. TAGGART
General Chairman (Frisco)

E. C. BURDEN
District General Chairman (Frisco)

APPROVED:
ROBERT M. CURRAN
International Vice President

FOR: BURLINGTON
NORTHERN

A. E. EGBERS
Vice President—
Labor Relations

FOR: ST. LOUIS-
SAN FRANCISCO
RAILWAY COMPANY

ROY L. BUCHANAN
Vice President—
Labor Relations

Glendive

L. Shipman	1-7-80	Protected
M. R. Ketcham	3-5-80	-
C. K. Zabrocki	4-20 4-2-80	-

LAUREL

A. D. Racki	8-12-80	-
R. L. Kline	5-20-80	-

ONE EMPLOYEE FIRED IN NOVEMBER 1982

Blgs MT

G. K. Humphreville	10-8-80	-
L. B. Potter	10-3-80	-
P. B. Worden	6-27-80	-
P. M. Sausser	6-17-80	-
T. D. Ungefucht	7-21-80	-

Forsyth

L. S. Zuelke	3-8-80	-
--------------	--------	---

Livingston

H. L. Tauscher	4-8-80	-	YARD
D. C. Drogitis	4-9-80	-	
J. M. Hay	4-11-80	-	
S. L. Woodhouse	5-18-80	-	

MATERIAL

J. E. Berry	4-21-80	-
R. E. Bergsing	10-20-80	-
D. M. Tendaland	10-20-80	-

Missoula

P K Rouseth 4-14-80 ✓
 M N Grothen 6-29-80 ✓
 R D Galiker 10-21-80 ✓
 J A Robinson 10-04-80 ✓

Shelby

H S Glebke 4-29-80 ✓
 B A ~~St~~ Tronnes 5-05-80 ✓
 D J Knight 5-06-80 ✓
 C O Gulbranson 6-20-80 ✓

Haute

W M Hanson 5-29-80 ✓ on leave
 P A ~~Ed~~ Bielke 5-30-80 ✓
 J V Berg 10-09-80 ✓

Et Falls

B G Morris 5-24-80 ✓

6x.5

WITNESS STATEMENT

Name James D Moore Committee On LABOR
 Address Box 1198, Kalispell Date 2-2-83
 Representing Mt. Trial Lawyers Support X
 Bill No. 512 Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. THE MTLA supports the proposition of having responsibility for costs & fees flow from resolution of the basic question of entitlement. The present
2. law, in ostensibly permitting the insured to change its position at any time precedent to hearing, gives the insurer an unconscionable
3. leverage over the claimant, and atty fees & costs reasonably incurred to preserve his
4. claim should be recoverable from the recalcitrant insurer.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name George Wood Committee On LABOR
Address MISSOULA, MT Date 2/2/83
Representing MT. SELF INSURERS ASSOC Support _____
Bill No. 572 Oppose
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

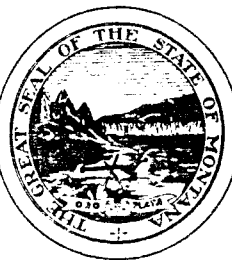
4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

6x.6



**DIVISION OF
WORKERS'
COMPENSATION**



TED SCHWINDEN, GOVERNOR

815 FRONT STREET

STATE OF MONTANA

HELENA, MONTANA 59604

**TESTIMONY OF GARY BLEWETT ON HOUSE BILL NO. 512, BEFORE THE
HOUSE LABOR AND EMPLOYMENT RELATIONS COMMITTEE,
FEBRUARY 2, 1983**

I am Gary Blewett, Administrator of the Division of Workers' Compensation, in opposition to House Bill No. 512 which changes the circumstances under which the court awards costs and attorney fees.

Although the amendment to Section 39-71-611, MCA, seems to be beneficial to claimants by providing for an award of costs and attorney's fees to claimants whenever an insurer reverses its decision to deny a claim or to terminate benefits, the bill presents serious problems, primarily the creation of ambiguities and a fertile field for litigation.

The most evident problem is the patchwork effect of interposing the amending language immediately after the clause which requires adjudication, thereby creating the interpretive problem of whether the amending language requires the prosecution of a court action, or whether a simple change of mind, prior to prosecution, is sufficient to invoke the assessment of costs and fees. The Montana Supreme Court has interpreted the original statutory language to mean that adjudication is a condition precedent to an award of attorney's fees and costs.

EXAMPLE: Claimant files a claim for compensation with an insurer. The insurer denies the claim. Claimant retains counsel who causes the insurer to change its mind, without presenting the issue to a court. Does the insurer incur liability for claimant's attorney's fees and costs?

A second problem is a reconciliation of the amended statute with Section 39-71-608, MCA. Section 608 allows an insurer to pay benefits without admitting liability or waiving any available defenses. The amending language is susceptible of an interpretation which would effectively preclude a prudent insurer from utilizing Section 608.

EXAMPLE: A claim for compensation is filed with an insurer. The insurer does not complete its investigation within the statutorially required 30 day period. Rather than cause the claimant to suffer, it chooses to pay benefits pursuant to Section 608 while it completes its investigation. Subsequently, the insurer determines that the claim is compensable and admits liability. Is this change of mind sufficient to trigger liability for attorney's fees and costs?

A reconciliation must also be made with Section 39-71-613, MCA, which provides that the Division of Workers' Compensation may regulate the amount of the attorney's fee in any workers' compensation case that is not adjudicated by the Workers' Compensation Court. If the amending language is interpreted as not requiring the prosecution of the claim in court as a condition precedent to imposing liability for attorney's fees and costs on the insurer, then it will have, without specific reference and perhaps without specific intent, eliminated the need for Section 613.

EXAMPLE: Claimant files a claim for compensation which is denied. Through the efforts of retained counsel, liability is later admitted. Claimant's counsel presents a statement which appears to the insurer to be inflated. Does the Division resolve the dispute pursuant to Section 613, or the Workers' Compensation Judge pursuant to amended Section 611?

By not amending Section 39-71-612, MCA, which provides for payment of fees and costs after adjudication, based upon the difference between the amount tendered by the insurer and the amount recovered by the claimant through adjudication, it can be argued that the intent of the amending language is to create liability for fees and costs based not upon the work effect of claimant's counsel, but rather, upon the totality of the award.

EXAMPLE: The insurer tenders the sum of \$10,000 to claimant in settlement of a dispute. Claimant's counsel is successful in convincing the insurer that the dispute is worth \$12,000. Is the insurer's liability for fees to be based upon a recovery of \$2,000 or \$12,000?

My objection then, is not with the presumed intent of the bill, but rather with the myriad of problems and certain litigation its adoption and passage would inevitably produce. It is too simplistic and fails to address the resulting consequences.

For these reasons, I oppose the bill and urge the committee to deny the bill its approval.

2-2-83

House BILL NO. 514

[Signature]

1 INTRODUCTION BY
2 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

3 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A PUBLIC
4 EMPLOYEE FROM ACCRUING ANNUAL LEAVE OR SICK LEAVE DURING ANY
5 PERIOD OF LEAVE WITHOUT PAY; AMENDING SECTIONS 2-18-611 AND
6 2-18-619, MCA."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Section 2-18-611, MCA, is amended to read:
9 "2-18-611. Annual vacation leave. (1) Each permanent
10 full-time employee shall earn annual vacation leave credits
11 from the first day of employment. For calculating vacation
12 leave credits, 2,080 hours (52 weeks x 40 hours) shall equal
13 1 year. Vacation leave credits earned shall be credited at
14 the end of each pay period. ~~However, employees are not~~
15 ~~entitled to any vacation leave with pay until they have been~~
16 ~~continuously employed for a period of 6 calendar months.~~

17 (2) Seasonal employees shall earn vacation credits.
18 However, such persons must be employed 6 qualifying months
19 before they may use the vacation credits. In order to
20 qualify, such employees must immediately report back for
21 work when operations resume in order to avoid a break in
22 service.

1 (3) Permanent part-time employees are entitled to
2 prorated annual vacation benefits if they have worked the
3 qualifying period.
4 (4) An employee may not accrue annual vacation leave
5 credits while in a leave-without-pay status exceeding 15
6 working days.

7 (5) Temporary employees do not earn vacation leave
8 credits, except that a temporary employee who is
9 subsequently hired into a permanent position within the same
10 jurisdiction without a break in service and temporary
11 employees who are employed continuously longer than 6 months
12 may count as earned leave credits for the immediate term of
13 temporary employment."

14 Section 2. Section 2-18-618, MCA, is amended to read:
15 "2-18-618. Sick leave. (1) Each permanent full-time
16 employee shall earn sick leave credits from the first day of
17 employment. For calculating sick leave credits, 2,080 hours
18 (52 weeks x 40 hours) shall equal 1 year. Sick leave credits
19 shall be credited at the end of each pay period. Sick leave
20 credits shall be earned at the rate of 12 working days for
21 each year of service without restriction as to the number of
22 working days that may be accumulated. ~~Employees are not~~
23 ~~entitled to be paid sick leave until they have been~~
24 ~~continuously employed 90 days.~~

25 (2) An employee may not accrue sick leave credits

1 while in a leave-without-pay status exceeding 15 working
2 days.

3 (3) Permanent part-time employees are entitled to
4 prorated leave benefits if they have worked the qualifying
5 period.

6 (4) Full-time temporary and seasonal employees are
7 entitled to sick leave benefits provided they work the
8 qualifying period.

9 (5) An employee who terminates employment with the
10 agency is entitled to a lump-sum payment equal to one-fourth
11 of the pay attributed to the accumulated sick leave. The pay
12 attributed to the accumulated sick leave shall be computed
13 on the basis of the employee's salary or wage at the time
14 he terminates his employment with the state, county, or
15 city. Accrual of sick leave credits for calculating the
16 lump-sum payment provided for in this subsection begins July
17 1, 1971. The payment therefor shall be the responsibility of
18 the agency wherein the sick leave accrues. However, no
19 employee forfeits any sick leave rights or benefits he had
20 accrued prior to July 1, 1971. However, where an employee
21 transfers between agencies within the same jurisdiction, he
22 shall not be entitled to a lump-sum payment. In such a
23 transfer the receiving agency shall assume the liability for
24 the accrued sick leave credits earned after July 1, 1971,
25 and transferred with the employee.

1 (6) An employee who receives a lump-sum payment
2 pursuant to this section and who is again employed by any
3 agency shall not be credited with any sick leave for which
4 the employee has previously been compensated.

5 (7) Abuse of sick leave is cause for dismissal and
6 forfeiture of the lump-sum payments provided for in this
7 section."

-End-

WITNESS STATEMENT

Name George Wood Committee On LABOR
Address MISSOULA, MT Date 2/2/83
Representing MT. SELF INSURERS ASSOC Support _____
Bill No. 572 Oppose
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITOR'S REGISTER
LABOR AND
HOUSE EMPLOYMENT RELATIONS COMMITTEE

BILL HB 512

DATE 2/2/83

SPONSOR McCORMICK

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
George Wood	MISSOULA MT	MT. SELF INSURERS ASSOC		✓
Jim Perry	Helena	Mont. State AFL-CIO	✓	
Gary Stewart	Helena	Workmen Comp		✓
[Signature]	Kalispell	" "	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

TESTIMONY OF MARK CRESS, CHIEF, EMPLOYEE
RELATIONS BUREAU, SUPPORTING HOUSE BILL 514

HB514 - Proponent

HB514 has been introduced on behalf of the Personnel Division and the Personnel Network. The Network is made up of personnel officers from all the state agencies and is responsible for advising the state in adoption of personnel policies and rules.

The state's personnel officers have found the language in Title 2, Chapter 18, part 6, very difficult to interpret and administer. The simple change made by HB514 would make things a lot more straightforward.

The current language in 2-18-611 and 618, MCA, concerns the accrual of annual leave and sick leave during leave without pay. Current law, at least implies, that leave can be accrued during a leave without pay of up to 15 days.

I believe the current language was included in the law to provide for administrative ease. If an employee took a few hours off without pay during a pay period, their leave accrued would not have to be recalculated. They could just be credited with the full amount.

It sounds like a good idea, but in practice it has been a lot more trouble than help.

The problem is that we have some employees on LWOP who are accruing leave and some on LWOP who are not. Figuring out which category an employee should be in has become somewhat of a problem. For example, it is unclear whether it means 15 complete days or partial days of LWOP. Is it 15 continuous days or will returning to a pay status for one hour or one day reset the clock and you start counting the 15 days over again? Does an employee accrue leave for the first 15 days of a 16 day leave without pay?

It would be a lot simpler if we just said, "those employees who are getting paid, accrue leave - those who are not, don't accrue leave."

That's what HB514 does.

There's no reason why employees should be earning vacation time when they aren't working, they're not on vacation, and they're not using sick leave - they're on their own time. It is more appropriate and more in line with the intent of the remainder of the sick and annual leave laws to accrue leave only while in a pay status.

During a recent meeting of the Personnel Network, the state personnel officers voted unanimously that this law should be changed. I urge you to support HB514.

WITNESS STATEMENT

Name Tom Schneider Committee On Labor
 Address Box 716 Date 2/2/83
 Representing MPBA Support _____
 Bill No. HB 514 Oppose X
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Mainly used by new employees before they accrue benefits.
2. Bill also covers local Government
3. Health insurance premiums are paid.
4. Not brought before Commission on personnel and labor relations
5. Been in law since inception of law ~~since~~ 1971

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name R. Nadeian Jensen Committee On Labor
Address Helena, MT Date 2-2-83
Representing AFSCME Support _____
Bill No. 514 Oppose X
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. written testimony submitted

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

MONTANA STATE COUNCIL No. 9

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Affiliated With A.F.L.-C.I.O.



Gerald W. McIntee
International President

William E. Lucy
International Secretary-Treasurer

COUNCIL OFFICERS

John P. Walsh, President
1215 West Gold
Butte, MT 59701
Phone: 792-4816

Anta Daws, Secretary
1112 5th St
Deer Lodge, MT 59722
Phone: 846-3308

George E. McCammon, Treasurer
Rte. 1, Box 144
Townsend, MT 59644
Phone: 266-3592

February 2, 1983

TESTIMONY OF R. NADIEAN JENSEN ON HOUSE BILL NO. 514

HOUSE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

VICE-PRESIDENTS

William Anderson
940 South Jordan
Miles City, MT 59301
Phone: 232-3304

James Cook
817 3rd Avenue
Havre, MT 59501
Phone: 265-4489

William McMullin
920 Anchor Street
Billings, MT 59101
Phone: 252-4093

Carolyn Squires
111 S. 10th St. W.
Missoula, MT 59801
Phone: 846-3308

Joe Geraghty
1550 Waterline Road
Butte, MT 59701
Phone: 494-4720

I am Nadiean Jensen, Executive Director of Montana Council #9 of the American Federation of State, County and Municipal Employees, AFL-CIO. As a representative of public employees, I am here to testify against House Bill #514. This bill prohibits a public employee from accruing annual leave or sick leave during any period of leave without pay.

Current law provides that an employee may not accrue annual leave or sick leave while in a leave without pay status exceeding 15 working days. Prior to this law in 1979, collective bargaining agreements specified 15 calendar days as the limit for such accrual

We are concerned for those employees who find it necessary to take leave without pay, who have that leave approved by their supervisor, and then are penalized by losing their sick leave and annual leave.

Presently, an employee who has worked for the state 10 years or less, the amount of vacation they would lose for 15 working days while in a leave without pay status amounts to 6.93 hours, for one who has worked between 10-15 years, it is 8.31 hours, for one who has worked between 15-20 years it is 9.69 hours and for one who has worked 20 or more years it is 11.07 hours.

COUNCIL STAFF

Headquarters
600 N. Cooke
Helena, MT 59601
Phone: 442-1192

R. Nadiean Jensen
Executive Director

George F. Hagerman
Field Representative

Baron Donaldson
Field Representative

Dennette McLane
Office Secretary

Loss of accrued sick leave is 5.53 hours calculated on the 15 working day basis.

We are also concerned about the affects of this bill on new employees. A new employee is not able to use sick leave until after three months of employment, nor annual leave until after six months of employment. It is not unusual for a new employee working in the health care area to get sick via their contact with patients or clients. Since that employee has no accrued sick or annual leave, he or she must take leave without pay, as approved by their supervisor. That employee would be further penalized by the passage of this bill because it would take them longer to earn annual and sick leave as provided by law.

We believe that this bill is just one more attempt to chip away at employee benefits. We also believe that it detracts from the collective bargaining process because it removes one more item off the bargaining table.

We ask that you vote against House Bill #514.

Thank you.

Respectfully submitted by,



R. Nadiean Jensen, Executive Director
Montana Council #9, AFSCME, AFL-CIO

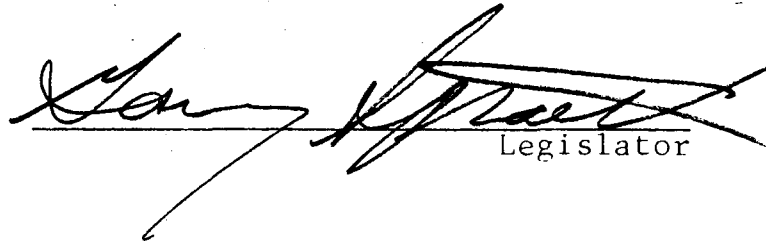
By notice of my signature, I am requesting that MARK
(name)

CRESS appear before the HOUSE LABOR
(name of Committee)

Committee on FEB. 2, 1983 to present information to this
(date)

Committee on HR 514
(bill #)

Signed,


Legislator

VISITOR'S REGISTER
LABOR AND
HOUSE EMPLOYMENT RELATIONS COMMITTEE

BILL HB 514

DATE 2/2/83

SPONSOR SPAETH

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
R. Nadreim Jensen	Helena	AFSCME		X
M. Cruse	Helena	State D. of Admin	X	
Thomas Schneider	Helena	MPFA		X
Long Grant	Helena	sponsor	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.
WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

February 3, 1983

MR. **SPEAKER:**

We, your committee on **LABOR AND EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **504**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE JOBS TO RAILROAD
EMPLOYEES AFFECTED BY THE CONSOLIDATION OR CENTRALIZATION OF
RAILROAD STATIONS AND FACILITIES; AMENDING SECTION 69-14-1001, MCA."**

Respectfully report as follows: That **HOUSE** Bill No. **504**

~~DO PASS~~

STANDING COMMITTEE REPORT

February 3, 19 83

MR. **SPEAKER:**

We, your committee on **LABOR AND EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **512**

First reading copy (**white** color)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WORKERS' COMPENSATION INSURER THAT REVERSES A DECISION TO DENY OR TERMINATE COMPENSATION FOR A CLAIM MUST PAY COSTS AND ATTORNEY FEES; AMENDING SECTION 39-71-611, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **512**

be amended as follows:

1. Page 1, line 16.

Strike: **"or the insurer"**

Insert: **", or in the event the insurer denies liability and subsequently"**

AND AS AMENDED

DO PASS

STANDING COMMITTEE REPORT

February 10,

1983

MR. **SPEAKER:**

We, your committee on **LABOR AND EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **514**

First reading copy (**white**)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A PUBLIC EMPLOYEE FROM ACCRUING ANNUAL LEAVE OR SICK LEAVE DURING ANY PERIOD OF LEAVE WITHOUT PAY; AMENDING SECTIONS 2-18-611 AND 2-18-618, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **514**

DO NOT PASS

XXXXX
DO PASS