MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Richard Manning, on January 24, 1991, at 1:05 p.m.

ROLL CALL

Members Present:
Richard Manning, Chairman (D)
Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: NONE.

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON SENATE BILL 74

Presentation and Opening Statement by Sponsor:

Senator Towe told the Committee that frequently when a union election is called in a plant, prior to the election companies have recently been taking advantage of their position by requiring all their employees to attend a meeting during working hours. At the meeting a public relations person, hired by the company, gives negative information to the employees about the union. Senator Towe explained that the company has a right to hold this meeting, but unions do not have this same right. He told the Committee that Senate Bill 74 would provide equal time to the union. He pointed out that employers not wanting to provide the time to the union, can avoid having to do so by not holding a meeting during working hours.

Proponents' Testimony:

Don Judge, Executive Secretary of the Montana State AFL-CIO spoke from prepared testimony. (Exhibit #1)

Gene Fenderson of the Montana Building and Construction Trades Council spoke in support of Senate Bill 74. Mr. Fenderson told the Committee that over the years the use of "captured audiences" have become more prevailing. He pointed out that in some cases this is being done on a daily basis up until the 24-hour period before the election. Mr. Fenderson explained that this Bill would give fairness in the area of labor relations.

Bob Heiser from the United Food and Commercial Workers International Union stated that as an organizer for UFCW they have been put in an unfair situation each time an organizing campaign arises. Mr. Heiser told the Committee that in most cases the employees contact the union requesting information on organizing. He explained that the union obtains the names, addresses and phone numbers of the employees and then contacts them. The company calls meetings on a fairly regular basis, where "anti-union consultants" are brought in to "tell these people about how bad unions are, how much the union is going to cost them". Mr. Heiser said the union cannot respond to that information. He has requested an invitation to the company meeting in order to respond, but has been turned down each time.

Teresa Reardon of the Montana Federation of Teachers and Montana Federation of State Employees urged support of Senate Bill 74. She told the Committee it would be helpful in organization of health care employees.

Lars Ericson of the Montana State Council of Carpenters urged the Committee to vote in favor of Senate Bill 74. He explained the difficulties in speaking with workers about organizing when the contractors or companies can talk to them during the work day. He also explained it is difficult to talk to employees "at the gate" that are in the sight of their employer because they (the employees) are afraid for their jobs.

Senator Towe asked that it be entered into the record that Dan Edwards, International Representative for the Oil, Chemical and Atomic Workers International Union asked that he be noted as in support of Senate Bill 74.

Opponents' Testimony:

John Fitzpatrick, Director of Community and Governmental Affairs for Pegasus Gold Corporation spoke in opposition to Senate Bill 74. Mr. Fitzpatrick cited statistics relating to union growth as compared to overall work force growth. He told the committee that since 1945 the growth of unions was not as substantial as the growth of the overall work force, and as a result unions make up 16 to 16.5% of the national work force. Mr. Fitzpatrick pointed out that Senate Bill 74 would not assist unions in organizing, but would "enmesh organized labor in lawsuit after lawsuit...". He told the Committee that this Bill would "butt heads" with the constitutional guarantees that protect private property. He cited court cases, and pointed out

that employees have the right to union information but that these rights "must be balanced with the private property rights of the employer". Mr. Fitzpatrick told the Committee that it is the National Labor Relations Board's responsibility to balance those rights. Mr. Fitzpatrick pointed out that Senate Bill 74 would infringe upon the employer's right of free speech. He explained that the courts have held "as long as the employers actions are non-coercive they have the right of free speech". He told the Committee that only the small businesses would be affected by the Bill.

Forrest H. Boles, President of the Montana Chamber of Commerce spoke in opposition to Senate Bill 74. Mr. Boles told the Committee that the inference of a continuous effort of employers to affect the thinking of employees could be broadly interpreted. Mr. Boles said this legislation would place an unnecessary burden on the employers of Montana.

Steve Johnson, Chief of the State Labor Relations Bureau, and as Chief Negotiator for the Executive Branch of State Government in collective bargaining spoke from prepared testimony in opposition the Senate Bill 74. (Exhibit #2)

Fred Panion of the Montana Talc Company in Three Forks, Montana expressed his opposition to Senate Bill 74. Mr. Panion told the Committee that this Bill "would not apply to vast majority of employees in the state of Montana".

Patrick Fleming, attorney for the Montana Power Company and attorney for Entech told the Committee that Senate Bill 74 does not apply to anything not already covered by the National Labor Relations Act or by the National Labor Relations Board. Mr. Fleming also pointed out that the Bill "tips the scales" and precludes the employer from free speech. He told the Committee that if the employer threatens or takes disciplinary steps against employees the employer runs the risk of losing the election. He said the Bill does not specifically mention a "captive audience" group. He also pointed out that there is no provision in the Bill for the union organizer to put the employer on notice regarding an organizing effort that has already begun, in order for the employer to get equal time.

LeRoy Schramm, Legal Council for the Montana University System asked to speak as neither a proponent nor an opponent. He presented a proposed amendment to the Bill. He explained that if the Bill's intention was to address "captive audience" activities, as it is written now, the employer would be required to allow the union, during working hours, to respond to <u>any</u> information presented by the employer that is intended to discourage employees. Mr. Schramm said that with the amendment the "captive audience" situation would be addressed. (Exhibit #3)

Hand delivered testimony from Ellen Livers, Human Resources

Manager of St. Peter's Community Hospital was entered in opposition to Senate Bill 74 and Senate Bill 75. (Exhibit #4)

Questions From Committee Members:

Senator Lynch asked Steve Johnson why they (the State of Montana) was concerned about this Bill. Mr. Johnson explained his concern was regarding the section on giving information to employees. He told the Committee that on occasion his office will answer questions by letter to explain, for example, the concept of "agency shops". Senator Lynch asked Patrick Fleming about his objection to pamphlet distribution. Mr. Fleming said that Section 3 talks about dissemination of any information, either truthful or otherwise.

Senator Towe asked Mr. Fleming if the Bill were amended to say only meetings that were mandated by the employer, would he still object. Mr. Fleming said MPC would have less trouble with it in that case.

Senator Lynch asked Mr. Johnson if he would still object if the amendment Senator Towe spoke of were added. Mr. Johnson said he would not.

Closing by Sponsor:

Senator Towe told the Committee that the concerns expressed by most people have been addressed in the Bill, but agreed with the concept of the amendment LeRoy Schramm offered. He said an amendment should be offered to cover the "captive audience" required meeting. Senator Towe emphasized that if the company let it remain voluntary, there would be no need to offer equal time to the union. He also pointed out that the NLRB is behind in their cases, and it is difficult getting action from them.

HEARING ON SENATE BILL 75

Presentation and Opening Statement by Sponsor:

Senator Towe told the Committee that striking workers should be entitled to the same constitutional rights as other individuals. He cited cases where the number of pickets, as well as the place of the pickets were limited by court orders, enjoining the employees (union members) from performing legitimate strike related activities. He explained that Senate Bill 75 would only add one paragraph (#9) to the injunction statute that says courts may not grant injunctions in certain areas.

Proponents' Testimony:

Don Judge, Executive Secretary of the Montana State AFL-CIO spoke from prepared testimony in support of Senate Bill 75. (Exhibit #6)

Senator Pipinich told the Committee that as a union member he was involved in a similar situation as described in the magazine article Mr. Judge has presented to the Committee. During negotiation between Stone Container and the union, Stone Container brought in 18 trailers, with security guards, and a kitchen with enough food to feed 250 people. Senator Pipinich went on to say these things were done a week and a half before the union went out on strike. The company also brought in professional strikebreakers. The strike never took place.

Jay Reardon, President of the United Steelworkers of America, Local 72 in East Helena asked the Committee to support Senate Bill 75.

Teresa Reardon of the Montana Federation of Teachers and Montana Federation of State Employees spoke in support of Senate Bill 75.

Gene Fenderson of the Montana State Building and Construction Trades Council spoke in support of Senate Bill 75. Mr. Fenderson told the Committee that state courts argue jurisdiction with the federal courts, or the federal courts argue jurisdiction with the state. Senate Bill 75 would make the state law more clear.

Bob Heiser of the United Food and Commercial Workers International Union spoke in favor of Senate Bill 75. Mr. Heiser gave an example of a UFCW strike where 11 people went out on strike. The company had a 24-hour operation. The union was limited to 11 pickets over the 24-hour period, with two and sometimes three pickets at one time. The company took the union to court to file an injunction against the unions "mass picketing". The order was upheld. With four entrances into the operation the union could not adequately cover all four entrances. The union was limited to two, and preferable one picket at a time.

Senator Towe asked that the record note that Dan Edwards, International Representative of the Oil, Chemical and Atomic Workers International Union, asks support of Senate Bill 75.

Lars Ericson, Montana State Council of Carpenters asked to be noted as in support of Senate Bill 75.

Opponents' Testimony:

Bruce Moerer of the Montana School Board Association asked that the Bill be amended to exclude schools. Mr. Moerer pointed out that if the entrance is blocked to the school the school cannot continue to operate as is their option. Mr. Moerer cited a past practice in which a school trustee's private business was picketed. He pointed out that it would not be possible to get an injunction to stop the picketing of a trustee's private business.

Forrest H. Boles, President of the Montana Chamber of Commerce spoke in opposition to Senate Bill 75. Mr. Boles questioned the wording on page 1, line 14, where the word "cannot" has been changed to "may not". He told the Committee that wording changes the application of the other eight existing prohibitions. Mr. Boles said this was unnecessary legislation and it favors unions.

Ward Shanahan, attorney for Stillwater Mining Company spoke from prepared testimony in opposition to Senate Bill 75. (Exhibit #7)

Patrick Fleming, attorney for Montana Power Company and Entech asked for clarification of "substantial" and "clear and present danger". Mr. Fleming pointed out that this Bill will cause attorneys seeking an injunction to bypass state courts. He told the Committee that (8) and (9) are inconsistent.

Steve Johnson, Chief of the State Labor Relations Bureau and Chief Labor Negotiator in collective bargaining with the Executive Branch of state government spoke from prepared testimony. (Exhibit #8)

Questions From Committee Members:

Senator Devlin asked Senator Towe what 27-19-105 is. Senator Towe explained it is the "form and scope of the injunction".

Senator Aklestad questioned the word "substantial". He pointed out that anyone else in society that commits violence of any type are subject to our laws and our courts. Senator Aklestad said this amendment would give preferential treatment to unions. He asked Senator Towe how this could be fair and equal treatment to society. Senator Towe explained that he wanted fair and equal treatment for strikers. Senator Aklestad asked Senator Towe what his definition of "substantial" was. Senator Towe agreed that "substantial" might have to be defined more precisely. He explained that an injunction could be needed if some damage were going to took place, or some injury is likely; but when strikers are singled out for injunctions simply because they are striking, it is not.

Closing by Sponsor:

Senator Towe said Senate Bill 75 is to protect activity guaranteed by the Constitution. He explained that the concept of "a clear and present danger" means something in the law. He told the Committee that the word "substantial" should be defined more precisely because it means different things to different judges.

ADJOURNMENT

Adjournment At: 3:35 p.m.

Sen. Richard E. Manning
RICHARD E. MANNING, Chairman

Linda Casey
LINDA CASEY, Secretary

REM/llc

DATE 1/24/91

COMMITTEE ON Senate Labor

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Bob Heiser	U.F.C.W	74+75	✓	
Steve Johnson	State Labor Relations	74+75		✓
Ken Manuel	Cement	74-75		✓
Rid Hanek	City of Helena	74		✓
Brock Bola	Montana Chamber of Commerce	SB 74-75		✓
Fred Panzer	MONTANA TALC	SB 74+75		✓
John Fitzpatrick	Pegasus Gold Corp	SB 74+75		✓
Don Judge	MT STATE AFL-CIO	74+75	X	
Bruce W. Moore	MSBA	74,75		✓
Larry Fasbender	MFFS/Canadian			✓
Jerry Jenson	MT BLG TRADES	74&75	✓	
MARK CANGDORF	MT Council #9 AFSCME	74&75	✓	
WARD SHANAHAN	STILLWATER MINING	74&75		✓
Teresa Reardon	MFT/MFSE	74&75	✓	
JAY REARDON	USWA LOCAL 12 E.H.	74+75	✓	
Don Allen	Mt. Wood Products Assn	74+75		✓
CARL ERICSON	MT CARPENTERS	74-75		
Chet Kruzich	Carpenters	74-75	✓	
Dan Walker	US WEST Communications	74		✓
Paul T Fleming	MPC/Entech	74-75		✓

MONTANA STATE AFL-CIO
APRIL 29 1956

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on SB 74, Senate Labor and Employment Relations Committee, Thursday, January 17, 1991, Room 413, 1 p.m.

Mr. Chairman, members of the committee, I'm Don Judge of the Montana State AFL-CIO, and I'm here to support Senate Bill 74.

This bill is about basic fairness and open debate. It would simply allow a labor organization the same access to employees that the employer has -- if the employer takes advantage of that access.

There's nothing in this bill that will immediately lead to massive unionization across the state. There's nothing in here that will give unions an advantage over employers -- we're not seeking an advantage over employers. We just want to level the playing field.

If employers are allowed to go in to staff meetings and argue against a union organizing drive, the union should have the right to respond in kind. That guarantees that employees will have equal input from both sides. That enables them to do what all workers should have the right to do, and that's simply to make a choice based on valid information.

We urge the committee to give all sides an equal opportunity to present information, and we believe this bill will help do that. We urge you to approve Senate Bill 74.

Thank you.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 1/24/91
BILL NO. SB74

DEPARTMENT OF ADMINISTRATION
STATE PERSONNEL DIVISION

STAN STEPHENS, GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 444-3871

HELENA, MONTANA 59620

TESTIMONY OF STEVE JOHNSON
IN OPPOSITION TO SB 74

Mr. Chairman, members of the committee, my name is Steve Johnson. I am Chief of the State Labor Relations Bureau. I also serve as the chief negotiator for the executive branch of state government in collective bargaining. I appear before you today in opposition to SB 74.

I am opposed to SB 74 for two main reasons: (1) the proposed legislation is somewhat superfluous, and (2) the ambiguity in the bill would likely encourage unnecessary litigation.

The purpose of the legislation, according to Section 1, is to "protect the right of employees to self-organization for the purpose of collective bargaining through a representative of their own choosing and to assure that this right is exercised free from any interference by an employer." However, for public employees in Montana, the right of self-organization free from employer interference is already sufficiently protected under Chapter 31, Montana Code Annotated, "Collective Bargaining for Public Employees."

Because of the similarity between Montana's collective bargaining law for public employees and the National Labor Relations Act, which governs private sector collective bargaining, Montana's Board of Personnel Appeals has, in many cases, adopted the precedents of the National Labor Relations Board and the federal courts. Various NLRB and court decisions have addressed specifically the rights and obligations of both employers and unions relative to organizing campaigns. In general the courts and the labor boards have attempted to strike a balance between an employer's right of free speech and the rights of employees to self-organize free from employer interference.

For example, absent special circumstances, an employer cannot prohibit union and/or employee representatives from orally soliciting union membership on the employer's premises, as long as such solicitation is during nonworking time. In addition, employers in general cannot prohibit union and/or employee representatives from distributing union literature on the employer's premises, as long as such distribution is during nonworking time and does not take place in working areas.

In deciding on the legality of "captive audience" speeches by employers, the NLRB generally looks at whether or not the employer also has in place no solicitation/no distribution rules that effectively deny the union an opportunity to reply to such

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 1/24/91

speeches. If the employer has such rules in place, the Board generally finds that the scales have been tipped too heavily in favor of the employer, and that the employer has committed an unfair labor practice. Moreover, even in cases where the Board does not find an unfair labor practice, undue employer interference may result in a certification election being overturned.

However, if the union has reasonable alternative means of communicating its message to employees, such as oral solicitation and distribution of literature on the employer's premises, the Board generally finds that "captive audience" speeches do not unduly interfere with employees' protected rights. In any event, the Board prohibits "captive audience" speeches within 24 hours of an election, whether by an employer or a union.

In a state agency conducting business on public property, unions at present have relatively easy access to state employees. Unions have ample opportunities to attempt to convince those employees about the benefits of their representation. The State Labor Relations Bureau generally advises agency managers to take a "hands-off" approach to union organizing campaigns. Thus, it is simply not necessary for the legislature to ensure that unions have even greater access to state employees, particularly if such access is at the taxpayers' expense.

Passage of SB 74 would upset the delicate balance that has been achieved by the NLRB and the courts. It would result in a rigid "equal opportunity" doctrine that the National Labor Relations Board has rejected since 1953.

Finally, the intent of SB 74 is not clear in Section 3, which requires an employer to provide a union with equal time to "meet with employees during working hours to respond to information presented by the employer that is intended to discourage employees from voting for certification of the labor organization as their exclusive representative...." Numerous questions come to mind.

For example, what is "information...that is intended to discourage employees from voting for certification" of a particular labor organization? Does it include factual information about union representation or labor-management relations? Does it refer only to captive audience speeches, or would it include memos or other forms of communication? What about if employees come to the employer voluntarily and ask questions about union representation? Would the answers given by the employer be subject to the language of Section 3? Finally, what does it mean for unions to "meet with employees during working time?" Does this mean that employees must be paid to attend such meetings, or that the meetings will be held during an employee's coffee break?

These questions can only be answered through litigation, which the passage of SB 74 will likely encourage. For the reasons I have mentioned, I urge a "do not pass" recommendation on SB 74. Thank you for your time and consideration.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 24th day of January, 1991.

Name: Steve Johnson

Address: Dept. of Administration
Mitchell Bldg., Helena

Telephone Number: 444-3871

Representing whom?
State Labor Relations Bureau

Appearing on which proposal?
SB 74

Do you: Support?____ Amend?____ Oppose?✓

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Amend S.B. 74 as follows:

Page 2, line 14 after "employer" insert "during working hours".

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 1/24/91
BILL NO. SB74

ST. PETER'S COMMUNITY HOSPITAL

(406) 442-2480 • 2475 Broadway, Helena, Montana 59601

January 24, 1991

Members of the Senate Labor Relations Committee:

RE: Montana Senate Bill 74 and Montana Senate Bill 75

My name is Ellen Livers. I'm the manager of Human Resources at St. Peter's Hospital in Helena, and I am writing in opposition to Senate Bill 74 and Senate Bill 75.

Senate Bill 74 would require an employer to provide representatives of a labor organization an equal amount of time to meet with employees in order to respond to information disseminated by the employer intended to discourage said employees from voting for the labor organization as their exclusive representative in collective bargaining.

Based on our discussions with the Hospital's legal counsel, this legislation would appear to be preempted by federal labor law. It is highly unlikely that this legislation, if enacted by the legislature of Montana, would survive an initial court challenge on a federal preemption theory. The proposed bill intrudes into well established areas of federal labor law. The House of Representatives of the United States Congress passed a similar legislative proposal and forwarded it to the United States Senate for consideration in 1977. The proposal died in the Senate in 1978. The Congress, however, clearly acknowledged in considering this proposal the preemptive nature of federal labor law with respect to the rights of employers and labor organizations with respect to access to employer's facilities.

The NLRB has on occasion required an employer to provide access to a labor organization as a remedy for an unfair labor practice in a representation campaign setting. The implementation of such a remedy by the NLRB further evidences the federal labor law aspects of access to employers' facilities.

Additionally, this legislation would appear to be violative of property rights of employers and be in conflict with state trespass laws.

The phrase "intended to discourage" is quite vague and susceptible to numerous interpretations, many of which may be in conflict with federal labor law given the fact that employers under Section 8(c) of the NLRA enjoy free speech rights to state their position on employment law issues and issues of unionization.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 1/24/91
BILL NO. SB 74 + 75

This proposal would permit labor organizations to interfere with the operations of employers and would require employers to pay employees to participate in activities not consistent with the business interests of the employer. The legislation would require an employer to support the activities of the labor organization by forcing its employees, on employers' paid time, to assist the efforts of the labor organization in questions. Such financial support would clearly violate the NLRA, as employers are prohibited from providing financial assistance to labor organizations.

Finally, this legislation simply is not needed. Unions are free to engage in such persuasive or campaign activities as they deem appropriate, including distributing literature, engaging in informational picketing, sending correspondence, and holding meetings with employees with respect to the merits of their particular organization.

Montana Senate Bill 75. This legislative proposal would restrict a state court judge from issuing an injunction unless a finding was made that the activity in question presented a "clear and present danger of violence in the form of substantive injury to person or property." This proposal is defective for a number of reasons.

First the proposal states "there is a presumption that the exercise of a constitutional right does not lead to violence." Such a presumption is incorrect.

This proposal establishes an unnecessary high standard before an injunction could issue in work stoppage situations. It would appear to prohibit state court judges from issuing an injunction with respect to trespass on a employers' property and also prohibit a state court judge from protecting the property rights in any form in strike situations unless actual violence had occurred.

Further, it would appear to prohibit state court judges from issuing injunctions to prohibit the interference with ingress and egress from an employers' facility. Such interferences to a hospital, for example, could be particularly crucial with respect to providing patient care, particularly with respect to permitting emergency vehicles and others from delivering patients in need of emergency care to a hospital.

The proposal would appear to limit a state court judge from enjoining the activities of strikers that may result in harassment and threats to employees or members of the general public. This proposal also would appear to prohibit a state court judge from enjoining the massing of pickets or restricting in any form the number of pickets at a particular location. This proposal also would appear to prohibit a state court judge from enjoining an obstruction of traffic, littering, noise, and other types of confrontational activity designed to interfere with a business and the right of the general public to avail

themselves of the services of the business in question in a strike situation.

Finally, the proposal destroys the delicate balance between employers and labor organizations in a work stoppage setting and would establish a substantial bias towards the interest of organized labor. More importantly, it ignores the interest of the public and the need for the judiciary to protect the public welfare in often highly emotional and difficult strike situations.

I urge you to vote against Senate Bill 74 and Senate Bill 75.

Sincerely,

Ellen Livers

Ellen Livers
Human Resources Manager
St. Peter's Community Hospital

EL:jm

MONTANA STATE AFL-CIO
APRIL 29 1956

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
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(406) 442-1708

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Mr. Chairman, members of the committee, I'm Don Judge, representing the Montana State AFL-CIO, and I'm here to support Senate Bill 75.

More than anything else, Senate Bill 75 would help explode a myth that has been passed on over the years about strikes. That myth centers around the phrase "union violence."

That phrase itself is a misnomer. Throughout history, there has been violence on the picket lines, and sometimes it has been caused by union members whose last desperate moves to save their jobs and their livelihoods turned into a violent protest. We don't approve of violence on the picket line, although we may understand it.

However, over the years, there also have been many cases of picket line violence that can be laid at the doorstep of the companies and the bosses. These companies brought in armed gangs of thugs and so-called guards to break up the picket lines and, they hoped, break up the unions. Many trade unionists have been severely injured and killed on the picket lines as the result.

But that's history, and that's just a small slice of history. More than 95 percent of all collective bargaining negotiations end without any strike action. They're completely peaceful and involve nothing more than groups of people sitting at tables talking with each other.

In that small percentage of contract talks that don't end with an agreement, and thus may result in a strike, an even smaller percentage see any kind of picket line violence.

Emotions are certainly high on the picket line on both sides. Jobs, livelihoods and incomes are at stake. Workers don't want to lose their jobs. Employers don't want to lose business. So it clearly can be an emotional and highly charged situation.

But it rarely leads to violence.

That brings us to the point of this bill. Let's explode the myth that strikes are always violent and that the violence is always caused by the union. Let's tell the companies right now that they can't use the myth to go into court and get an injunction whose real purpose is simply to break the union.

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DATE 1/24/91
BILL NO. SB 75

Let's also tell the unions and union members right now that if violence is likely and provable, there will be an injunction because those tactics are not acceptable. That's the same as it could be for any citizen who is likely and provably going to be involved in an illegal act.

Mr. Chairman and members of the committee, I would like to share with you a copy of a recent magazine article about a company whose main line of business is union-busting. This company is essentially a private army, with some 45,000 troops around the country and strategically located stockpiles of supplies that can be put to immediate use in the event of a strike.

These people provide full strike facilities, as they call it, including everything from so-called guards to bust through picket lines to a replacement workforce to cut off all hope for the strikers.

We share this with you so that you can have some idea of the kind of forces that are stacked up against workers on the other side of the picket line -- forces that often are instigators and agitators, and who will do everything they can to perpetuate the myth of union violence.

We urge you to reject the myth and give workers the same protections that all citizens have -- freedom from restraint when they practice their constitutional rights.

Thank you.

Private Crime Fighting for a Profit

SUMMARY: South Florida-based Wackenhut Corp., once a small private-eye shop, now boasts a multimillion-dollar budget and business interests ranging from emergency services to prisons. The firm continues to grow with its philosophy that many services provided by government can best be handled by the private sector.

They tracked down Jean-Claude "Baby Doc" Duvalier when, in addition to a generous helping of Haiti's treasury, he ran off with some private funds. They keep order in the stands when the ponies run at Saratoga, or any of the other New York Racing Authority tracks. If a prisoner has a toothache, they may provide his dental clinic service — in fact, they may own and operate the prison.

"They" are the 40,000 employees of the Wackenhut Corp., a former mom-and-pop private-eye shop that has grown into what some call a free market army and what its stockholders call healthy earnings: Fourth quarter revenues were up 18 percent over the same period in 1989. Their privatized brand of crime fighting also includes armed and unarmed security guards, investigators, crowd control for special events and strikes, and a comprehensive strikebreaking service (providing bedding, bath facilities and a catering service for those working inside a picketed plant).

"The private sector is being forced to take on what has traditionally been done by county and municipal law enforcement, because it's not being done well enough," says Don Hodges, president of First Dallas Securities. "Ten years ago you saw hospitals do the same thing: privatize an industry that was not providing the public adequate service." He is bullish on Wackenhut, and he is not alone.

Although Wackenhut is a medium-sized corporation with 1989 revenues of more than $462 million, company officials exude a down-home family spirit combined with a feeling of shared mission: to prove that the private sector can take on functions traditionally reserved for government, perform them more efficiently and turn a profit. "There are a lot of benefits to private industry," says Richard R. Wackenhut, president and chief operating officer of the corporation and son of founder George R. Wackenhut, who started the South Florida-based company in 1954. "There's a management discipline in private companies that you don't see in the public sector, a need to acquire profit rather than work off a continually expanding budget."

PHOTOS BY WACKENHUT CORP

The company has moved aggressively into the realm of correctional facilities.

Wackenhut cites his company's experience when it was hired by a city of 150,000 to operate its fire and emergency medical station. "We found we could save them $250,000 in one year," he explains. Employees were working eight-hour shifts, and those with seniority claimed the night shift. They would "work day jobs, then come in, make dinner and sleep." Wackenhut managers changed work schedules to four days a week at 12 hours per shift, increasing efficiency and reducing overtime. Not everyone was pleased: the employees' union complained. "Am I trying to hurt the union? No," says Wackenhut. "I may be hurting an individual's income, but should the taxpayer be paying for that?"

Unions, in fact, are the company's fiercest critics. "Their business in life is to attack trade unions," says Howard Samuels, president of the industrial union department of the AFL-CIO. During strikes, "they bring in armed guards, most of them poorly trained. Their job is to make it easy for strikebreakers to go to work, or replacement workers." Samuels says this undermines labor-management dialogue. Employers can avoid negotiating by hiring Wackenhut or a similar company to allow replacement workers and strikebreakers to cross picket lines. "At that point, [the employer is] no longer dealing with the union inside the plant. He can conduct a decertification vote, and because only the strikebreakers and replacement workers vote, it's the end of the union."

Wackenhut officials see it differently. They say their Emergency Services Division employs well-trained guards to protect employees and the physical plant, as well as provide services. "We do not union-bust," says Alan Bernstein, senior vice president for domestic operations. "We are not violent. Ninety percent of our people do not carry guns. We protect the assets. If something happens to the plant, there may not be anything left to negotiate." The specter of a large security force and what company brochures tout as "strategically located warehouses and millions of dollars of inventory across the United States" to be marshaled in a labor dispute is understandably daunting. "What it comes down to is Wackenhut is an army for hire," says a union member.

Emergency Services is but one of the areas that grew out of the original Wackenhut investigations office. "My father had an FBI background and started his office as an investigative unit," says Richard Wackenhut. "He found that while there was a need for investigative services, the business had peaks and valleys. He needed a steadier stream of income." The elder Wackenhut added what remains the bread and butter of the company, the guard business. "It took off from there, and we've expanded through opportunity."

Government contracts account for one-quarter of the company's revenues. They are "what we call low-margin, high-volume contracts," says Timothy P. Cole, senior vice president for government services.

Special teams guard nuclear sites such as the U.S. Savannah River plant.

Wackenhut personnel guard and monitor several public and privately owned nuclear facilities. Department of Energy sites, the Alaska pipeline, the Nevada Test Site and the Strategic Petroleum Reserve. Municipal and local governments are also contracting out an increasing amount of police support services to companies such as Wackenhut. The company's personnel transport criminals and suspects, provide security for courts and public buildings, and monitor domestic child visitation, all services that free police officers to address other duties.

Much of the business is run on tight margins, especially the security guard operations. "A company should be doing well to net 4 or 5 percent after taxes" on security guards, says Robert McCrie, assistant professor of security management at John Jay College of Criminal Justice. "It's a highly fragmented industry, with about 1,500 guard companies competing for the business." McCrie says Wackenhut is one of the few companies that have pursued the armed guard niche. "Armed security necessitates higher insurance costs," he points out.

The highly competitive nature and tight profit margins for guard operations encouraged the company to branch into other areas. "We are similar to a private FBI," says Wayne Black, director of Wackenhut's special investigations service. "In the event of a kidnapping, we will negotiate with the bad guys; we investigate investors for banks; we trace stolen money."

Black's division also prepares cases against narcotics traffickers for banks. A recent Florida court decision requiring banks to investigate loan applicants has opened new opportunities for the company. "Now have a bank compliance division that helps banks show they are being diligent," says Black. "A lot of times, people put up a property as collateral, with the property in a nominee's name — and it turns out, this supposed owner of a $100 million horse farm was working at a convenience store two years ago for minimum wage, and somehow paid for half of the property in cash. You tell me."

Wackenhut's special investigative services have increased in popularity over the past five years. Black recounts being hired by a private individual who was owed money by former Haitian dictator Duvalier. He located Duvalier in New York City through old records of his outgoing telephone calls. "He was pretty easy to find," says Black, "but usually, the white-collar criminal slips between the cracks."

He says growing violent crime and shrinking law enforcement budgets are siphoning resources away from cash crimes. As a result, financial investigations are one of the company's largest growth areas and a prime example of Richard Wackenhut's philosophy for expansion: "We look for areas related to our expertise that we feel private industry could perform better."

In that spirit, the company has expanded into designing, managing and operating correctional facilities, leveraging the cost-cutting lessons it learned through the inglorious rent-a-cop business. In five years, the company has opened seven facilities and captured the No. 3 position in the private correctional business. In an Aurora, Colo., facility that Wackenhut operates for the Immigration and Naturalization Service, notes Cole, it took less than six months "from the time we turned the first shovel of dirt to the time we opened the doors."

The new business has not been without its bumps and bruises. In April, three prisoners escaped from the Central Texas Parole Violators facility that Wackenhut runs near San Antonio for Bexar County. Company officials say it is a process of live and learn. "We've gained unique experience through sheer repetition, and through having comprehensive responsibility for the whole project," says George C. Zoley, president of Wackenhut Corrections, a wholly owned subsidiary of the Wackenhut Corp.

The company designs its facilities to need fewer supervisory personnel than traditional jails. "We use more of a clustered design for facility layout, rather than a rambling, campus style," says Zoley. The result: "We can accomplish tasks with fewer people." Design is not the only innovation. At a medium-security prison the company runs in Lockhart, Texas, businesses "can come in and employ inmates as labor." Work is voluntary, and the inmates are paid a minimum wage. Most correctional employees have previous experience with government facilities. "We tap talented former government employees, give them greater authority and responsibility, which allows them to accomplish the job faster and cheaper than if they were constrained by bureaucracy," says Zoley.

Wackenhut officials are optimistic that their business is "countercyclical," as Black puts it. "When people worry about the economy taking a dive, they want to find the assets securing the sloppy loans they made earlier." Others say the need for security guards increases during times of greater unemployment. Threats to the international oil supply have spurred the federal government to beef up the Wackenhut force guarding the Strategic Petroleum Reserve. Federal and state court orders to reduce prison crowding are filling Wackenhut correctional centers as fast as they are built. Though he is happy with his company's growth, Richard Wackenhut regretfully attributes much of it to crime.

"My own wife was shot last February in a robbery attempt," he says, still bewildered by the attack. "Unfortunately, my business is doing well because we're living with that type of fear."

— Deanna Hodgin

One division feeds strikebreakers.

TESTIMONY ON SENATE BILL 75

Subsection 9 of Senate Bill 75 cannot stand since it is preempted by federal law. Section 7 of the National Labor Relations Act (29 U.S.C. § 157) gives employees the right to strike. American Ship Bldg. Co. v. NLRB (1965), 380 U.S. 300, 13 L. Ed. 2d 855, 85 S. Ct. 955. Additionally, Section 8 of the National Labor Relations Act (29 U.S.C. § 158) sets out in detail what constitutes unfair labor practices by employers and labor unions. The conditions under which the union and its members may engage in strikes against an employer fall within the provisions of Section 7 and Section 8 of the National Labor Relations Act.

The United States Supreme Court has made it clear that a state does not have jurisdiction to legislate in areas which are covered or potentially covered by the National Labor Relations Act. In San Diego Bldg. Trade Council v. Garmon (1959), 359 U.S. 236, 3 L. Ed. 2d 775, 79 S. Ct. 773, the U.S. Supreme Court stated that Sections 7 and 8 of the Act regulate "the vital, economic instruments of the strike and the picket line, and impinge on the clash of the still unsettled claims between employers and labor unions." The court stated that Congress has given primary responsibility for

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interpretation of this Act to the National Labor Relations Board. If the exercise of state power over a particular activity falls within the area regulated by the Act, states have been precluded from acting.

The Supreme Court made it clear in Garmon that even if an activity is arguably subject to Section 7 or Section 8 of the Act, the states must defer to the exclusive competence and jurisdiction of the National Labor Relations Board. "The governing consideration is that to allow the states to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy." Garmon, 359 U.S. at 246.

29 U.S.C. § 52 deals specifically with the issue of when a restraining order or injunction may be issued by a federal court in cases involving conflicts and strikes between employers and employees. Therefore, it is clear that Section 7 and Section 8 of the Act, in conjunction with 29 U.S.C. § 52, regulates specifically the subject matter involved in subsection 9 of Senate Bill 75. When and under what conditions union members may strike and when and under what conditions injunctions may issue are issues exclusively within the competence of the National Labor Relations Board. These issues involve one of the primary areas regulated by the National Labor Relations

Act and the National Labor Relations Board. Accordingly, subsection 9 is clearly preempted by federal law.

Additionally, subsection 9 of Senate Bill 75 sets forth a standard for issuing injunctions far more stringent than required by 29 U.S.C. § 52. That section allows a federal court to issue an injunction or restraining order where it is "necessary to prevent irreparable injury to property, or to a property right." The language found in Senate Bill 75 introduces standards set forth for preventing first amendment rights specifically in the area of labor relations. For the reasons set forth above, a state does not have the power to do this. At the very least, the bill should be amended to conform to the language set forth in 29 U.S.C. § 52. However, even with this modification, if the bill should pass, the law will be struck down by the federal courts because it has been preempted by federal law.

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TESTIMONY OF STEVE JOHNSON
IN OPPOSITION TO SB 75

Mr. Chairman, members of the committee, my name is Steve Johnson. I am Chief of the State Labor Relations Bureau. I also serve as the chief negotiator for the executive branch of state government in collective bargaining. I appear before you today in opposition to SB 75.

SB 75 deals with the conduct of striking employees, and prohibits the courts from issuing an injunction against striking employees unless their conduct "presents a clear and present danger of violence in the form of substantial injury to person or property." However, SB 75 totally ignores the possibility that strikes themselves may either be expressly prohibited by law or may fall outside of the protection of the law. In such cases, injunctions may be entirely appropriate, and the courts should not be unduly restricted.

There are two major categories of prohibited or unprotected strikes: (1) those involving unlawful or wrongful means, and (2) those involving unlawful or wrongful ends.

Strikes with unlawful or wrongful means include sit-down strikes, slowdowns, partial or intermittent strikes, or strikes involving picket line misconduct other than violence or destruction of property.

Strikes with unlawful of wrongful ends include: (1) strikes in violation of law, such as jurisdictional or "featherbedding" strikes, (2) strikes in breach of contract, such as no-strike provisions, (3) strikes in circumvention of the exclusive bargaining representative, and (4) secondary boycotts.

It is unclear how SB 75 would affect the courts' authority to enjoin prohibited or unprotected strikes. I believe that the decision as to whether or not injunctive relief is appropriate should: (1) be left to the courts and labor boards, and (2) be based on a more complete analysis than is provided for in this bill. For that reason I urge a "do not pass" recommendation on SB 75.

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BILL NO. SB 75

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 24th day of January, 1991.

Name: Steve Johnson

Address: Mitchell Bldg., Helena, Dept. of Administration

Telephone Number: 444-3871

Representing whom?

State Labor Relations Bureau

Appearing on which proposal?

SB 75

Do you: Support?____ Amend?____ Oppose?✓

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 1/24/91

___ LEGISLATIVE SESSION ___

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P 1:10pm	A	
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING	P		
SENATOR NATHE	P 2:20pm	A	
SENATOR PIPINICH	P		
SENATOR TOWE	P		

Each day attach to minutes.