

N.D.A.G. Letter to Hoffner (Sep. 25, 1985)

September 25, 1985

Mr. Serenus Hoffner
State Representative
District 32
1424 Atlanta Drive
Bismarck, ND 58502

Dear Mr. Hoffner:

Thank you for your letter dated August 16, 1985.

In your letter you requested an opinion about a recent "Soo/Milwaukee Employee Protective Agreement" between the Soo Line Railroad and its employees' union. Specifically, you requested an opinion on whether the agreement is contrary to North Dakota law in that it "purports to eliminate the third brakemen's positions" in the operation of the railroad in North Dakota.

Assuming the agreement has the effect you describe, one must look to the relevant North Dakota statutes and the legislative history.

As you correctly point out, under Section 49-1309 of the North Dakota Revised Code of 1943, a full crew of six persons was required of railroad corporations operating under certain conditions in North Dakota. These six persons were one conductor, one engineer, one fireman, two brakemen and one flagman.

On November 8, 1960, Section 49-1309 of the North Dakota Revised Code of 1943 was amended by referred measure to specify a full crew of five persons: one conductor, one engineer, one fireman, one brakeman, and one flagman. 1961 N.D. Sess. Laws 402, §1. Section 2 of the referred measure gave job protection to the brakeman who was no longer required under the new law:

No person employed as a brakeman on any railroad in this state on the effective date of this Act shall be discharged or lose his employment by reason of the provisions of this Act. However, whenever a brakeman retires, terminates or leaves his employment the railroad company need not replace the position so vacated, unless it is to fill a mandatory position under section 1 of this Act.

The referred measure was codified at N.D.C.C. §49-13-09, and effective until repealed by voter approval of an initiated measure on November 3, 1964. 1965 N.D. Sess. Laws 469, §2. While the initiated measure repealed N.D.C.C. §49-13-09, it also provided "that no

brakeman shall be deprived of job protection now afforded by the last paragraph of Section 49-13-09." Id.

Later, N.D.C.C. Ch. 49-13 was entirely repealed. 1977 N.D. Sess. Laws 443. Thus, while legislative protection of the brakeman's position was apparently in effect for many years, the repeal of N.D.C.C. Ch. 49-13 effectively removed the protection. Id.

The North Dakota legislature completely rewrote the statutes on railroad regulation during the 1977 session. With the complete repeal of N.D.C.C. Ch. 49-13 among others, the new law was enacted under N.D.C.C. Ch. 49-10.1.

Presently, N.D.C.C. Ch. 49-10.1 does not contain provisions regarding "full crews".

Please be advised that it is the policy and practice of this office not to render opinions on the legality of particular private agreements. Nevertheless, without examination of the "Protective Agreement", it is my opinion that the agreement, as described by you, is apparently not contrary to North Dakota statutes with regard to elimination of the "third brakemen's position". In other words, current North Dakota law does not preclude elimination of or provide job protection for the "third brakemen's position".

Sincerely,

Nicholas J. Spaeth

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