



## **BILL SUMMARY**

**AB 827: Two-Person Train Crew Bill**

**Date:** March 28, 2000

### **BACKGROUND**

Under current law, two-person crews are required on trains when they are in motion. The crews are to consist of a "certified railroad locomotive engineer" and either another "certified railroad locomotive engineer or a qualified railroad trainman." Current law does not specify where the employees must ride. Thus, the Commissioner of Railroads has recently ruled that only one of the two crew members must be in the lead control locomotive. At least one railroad currently operates several trains per day with an engineer in the lead locomotive and a second engineer in a locomotive at the end of the train.

### **SUMMARY OF AB 827 (AS AMENDED BY COMMITTEE)**

Assembly Bill 827 requires that two crew members be present in the cab of the lead control locomotive at all times that the railroad train or locomotive is in motion, except for the purpose of switching.

### **AMENDMENTS**

**Assembly Amendment 1** to Assembly Bill 827 would create the exception for the purpose of switching. [adopted 17-0-0].

### **FISCAL EFFECT**

No fiscal estimate was prepared by the Department of Transportation.

### **PROS**

1. It was the intent of the original legislation requiring two-person crews for both of the crew members to be in the lead locomotive. However, that was not specified. Thus, AB 827 would close this loophole and specify where the crew should ride.
2. Requiring two persons in the lead locomotive increases the chances that in the event of equipment failure, human error or physical incapacitation a safe course of action will be taken.
3. Although the various unions representing railroad workers were not in agreement on the original bill, all of them have voiced their support for AB 827 as amended.
4. The U.S. Seventh Circuit Court of Appeals has upheld requirements of Wisconsin's two-person crew law for over-the-road freight operations, but not for hostling and helper operations. AB 827 only applies to locomotives, not to hostling and helper operations.

### **CONS**

1. Requiring two persons on the lead controlling locomotive is cost prohibitive and some believe that it would lead, in reality, to three-person crews on most trains.

2. AB 872 would legislate in an area covered by federal safety regulations.
3. Amtrak and all commuter rail and light rail systems throughout the United States operate with an engineer alone in the locomotive.

### **SUPPORTERS**

Rep. Gene Hahn, author; Sen. Roger Breske, lead co-sponsor; John Dobyms; Michael Doyle, United Transportation Union (UTU); Robert LaGesse, UTU; Tim Deneen, UTU; Jeff Minton, UTU; Keith Luebke, Brotherhood of Locomotive Engineers (BLE); James Brando, UTU; C.W. Berthiaume, BLE; Jeffrey Bochman, BLE; James Wathan, BLE; Michael Glynn, BLE; George Kohlmeier, BLE; Timothy Cardinal, BLE; Doug Yakes, BLE; J.T. Noyes, BLE; Thomas Dwyer, UTU; Virginia Dennis, UTU; Joseph Schesny, GLE, Joanne Ricca, WI State AFL-CIO; Ray Wolski, BLE; and J. Nelson, UTU.

### **OPPOSITION**

Brian Sweeney, Burlington Northern/Santa Fe; Carl Whitt, Wisconsin Central; Steve Moenke, Canadian Pacific Railway; and John Bergene, Canadian Pacific Railway.

### **HISTORY**

Assembly Bill 827 was introduced on March 7, 2000, and referred to the Assembly Committee on Transportation. A public hearing and executive session was held on March 16, 2000. The Committee voted 17-0-0 to recommend passage of AB 827 as amended.

**CONTACT:** Sheri Krause, Office of Rep. David Brandemuehl

March 16, 2000

Dear Mr. Chairman and Members:

Last session 132 members of this Legislature passed a Bill authored by me and co-authored by many members that required at least two crew members on a train operating in this great state. The Governor signed that Bill into law. It had hearings in both houses and all votes were unanimous. It wasn't legislation that was introduced without good cause.

The State had gone through a terrible derailment at Weyauwega that resulted in property loss and a lot of displacement. There had been a derailment near Lomira that resulted in the death of a young man from Fond du Lac by the name of Pauly. The Wisconsin Central was preparing to implement "one person" trains and had actually ran some.

I come before you today to admit that I didn't do my job properly. The Bill with its precepts was intended to require two crew members in the cab or controlling unit. I didn't write it into the legislation because I never thought that a railroad would do otherwise.

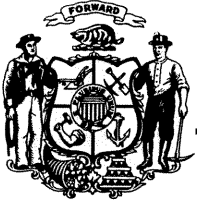
The legislation has been to federal court and stood the test of the court. Now, due to my omission, you have to deal with AB 827, which actually requires that the two crew members be present in the cab of the lead control locomotive at all times that the railroad train or locomotive is in motion. It grants the Commissioner of Railroads exception authority and allows one crew member to dismount to perform switching activities and other duties.

I applaud Rep. Hahn for "cleaning up" after me. I thank those members of the Legislature who co-sponsored AB 827.

You will be told that you shouldn't interfere with railroads operations. You will be told that it is better to have a crew member on each end at times with several tens or over a hundred cars in-between. I ask you to apply what you already know from your personal knowledge of trains. After the wreck in Weyauwega the two crewmen, with the assistance of a company employee, worked arduously to move ten cars from the fiery wreck. If the two had been separated by numerous cars and the fire, could they have done their job – probably not. Our legislation from last session had one purpose, SAFETY. The separation of the crewmembers defeats the purpose of the Bill.

Please vote for AB827, it is a bi-partisan Bill that makes sense for our communities and our hard-working railroad people.

John Dobyms  
N7566 Sandy Beach Road, Fond du Lac, WI 54935  
former Representative, 52<sup>nd</sup> Assembly District



# GENE HAHN

State Representative • 47<sup>th</sup> District

To: All Legislators

From: Representative Eugene Hahn

Date: February 21, 2000

Re: Co-sponsorship of **LRB-4488/2**, relating to two-person train crews

This legislation closes a loophole currently in Wisconsin State Statutes 192.25, which requires two qualified railroad employees on a locomotive when it is operating in Wisconsin. Currently the law does not specify where the crewmember should be on the locomotive. This bill will clarify that both crewmembers must be present on the controlling compartment of the locomotive.

Two-person crews increase the chances that in the event of equipment failure, human error or physical incapacitation, a safe course of action will be taken.

If you would like to co-sponsor **LRB-4488/2**, please contact my office by **February 25, 2000** at 266-3404.

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*Analysis by the Legislative Reference Bureau*

Current law prohibits any railroad train or locomotive from operating in this state unless the crew consists of at least two qualified persons. A locomotive engineer must operate the control locomotive at all times that the railroad train or locomotive is in motion. The other crewmember may dismount the railroad train or locomotive when necessary to perform switching activities and other duties in the course of his or her job.

This bill requires that the two qualified crewmembers be present in the cab of the control locomotive at all times that the railroad train or locomotive is in motion.

The commissioner of railroads may grant exceptions to these requirements, if the exceptions will not endanger life or property.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

February, 2000

## The Wisconsin Railroad Committee

Burlington Northern Santa Fe  
Canadian Pacific (Soo Line)  
Union Pacific  
Wisconsin Central

*bill*

The Wisconsin Railroad Committee urges you to **oppose LRB-4488/2, relating to train crews**, for the following reasons:

- Current Wisconsin law requires train crews of at least two individuals. While this proposal is portrayed as merely closing a 'loophole', in reality, it would require a three-person crew on most trains. This additional cost, without a proven safety advantage, would make Wisconsin an expensive transportation island. Eventually this will move manufacturing jobs to other states where rail transportation is less costly.
- This proposal seeks, through legislation, to override contracts negotiated between rail labor and the rail industry. If there needs to be a change, it should come through negotiation.
- This proposal is directed at a small number of trains that are now operated by two locomotive engineers in full compliance with federal and state requirements. Since no other state has such a requirement, this legislation will drive up transportation costs for Wisconsin shippers, putting Wisconsin at a further competitive disadvantage with other states.
- This bill is attempting to legislate in an area already adequately covered by federal safety regulation. In fact, the federal Court of Appeals for the 7<sup>th</sup> Circuit ruled last year that crew qualifications in the Wisconsin statute were preempted and that it is up to the Federal Railroad Administration (FRA) to determine whether or not the train crew is qualified to carry out their functions.
- Amtrak and all commuter rail and light rail systems throughout the United States operate with an engineer alone in the locomotive. A recent study by Amtrak revealed that their trains operated by an engineer alone in the cab are safer than their trains operated with two people in the cab. This proposal would also adversely effect the economics of any additional passenger service under consideration in Wisconsin.
- The opposition to this bill of the Brotherhood of Locomotive Engineers (BLE) and the AFL/CIO clearly shows that the unions are divided on this issue.

Representing the railroads:

M. William Gerrard	608-258-3700
Sam Gratz	608-251-6394
Kevin Soucie	414-817-1442



Committee on Transportation and Infrastructure

Congress of the United States

House of Representatives

Washington, DC 20515

Bud Shuster  
Chairman

James L. Oberstar  
Ranking Democratic Member

Jack Schonrader, Chief of Staff  
Michael Stracka, Deputy Chief of Staff

February 10, 2000

David Heymerfeld, Democratic Chief of Staff

The Honorable Ernest DuBester  
Chairman  
National Mediation Board  
1301 K Street, NW  
Suite 250-East  
Washington, D.C. 20005

RE: NMB File No. CR-6624

Dear Chairman DuBester:

We understand that the National Mediation Board has before it a petition from the United Transportation Union (UTU) that all members of the crews of railroad trains be considered members of a single craft of "train and engine service employees." The UTU proposes that all members of this alleged craft be required to vote for a single organization to represent all of them, irrespective of the long-established craft distinctions among different groups of train employees.

We strongly oppose the UTU petition, and we urge the Board to reject it.

First, on the narrow facts of the case, there is no evidence that the distinctions in the work performed by conductors and engineers have changed sufficiently to justify considering these two long-separate classes of employees to now be members of the same craft. Engineers operate the train. Conductors supervise the cargo of the train. The responsibilities of these two members of the train crew have not fundamentally changed in the last century. The fact that conductors now perform their duties in the cab of the locomotive rather than in a caboose does not somehow make them into quasi-engineers. Nor does the fact that railroads often hire engineers from the ranks of conductors alter the fundamental distinction between the roles that they play. The vast majority of conductors are not certified as engineers and cannot legally take over for the engineer when the engineer wants a break, as the co-pilot takes over for the pilot. The conductor has a different role and is not allowed, under federal law, to fill in for the engineer should the latter become incapacitated.

(202) 225-9446

Room 2165, Rayburn House Office Building

<http://www.house.gov/transportation/>

Second, the Board has stated in the past that "commonality of interest" is one of the criteria in deciding whether employees are members of the same craft. There is a fundamental lack of commonality of interest between non-engineer train crew members and engineers. For the past thirty years, the railroads have been steadily cutting back on the numbers of non-engineer members of the train crew. Slowing the pace of those reductions has been a major bargaining priority of the non-engineer members of the train crew. By contrast, there has always been one engineer per train, so wage increases have always been a higher priority for the engineers than slowing job cutbacks. This fundamental dichotomy of interest makes it inappropriate for engineer and non-engineer train crew members to be forced into becoming part of the same "craft."

Third, the National Mediation Board has limited authority to grant a petition to re-draw existing craft boundaries. The Railway Labor Act nowhere states that the Board has the authority to decide what the boundaries of crafts should be. The statute says that the Board shall certify the representatives of a craft or class of employees, and conduct elections as necessary to determine who those representatives shall be, and decide which employees are members of a particular craft and are therefore eligible to vote in each election, but there is no explicit authority to decide that the craft boundaries should be something different from what they heretofore have been. The craft lines were considered well-defined when the Railway Labor Act was passed in 1926, and there was no explicit authorization for the newly created Board to re-draw these lines. We realize that the Board has assumed this authority in a few cases in the past, but we believe that the lack of any explicit authorization for the Board to change craft boundaries suggests that the Board should use this authority, if at all, only when the public interest in a change in craft boundaries is compelling.

Finally, we believe that the public interest in this case is clearly on the side of rejecting the UTU petition. One of the central purposes of the Railway Labor Act, as stated in the statute, is "to forbid any limitation upon freedom of association among employees or any denial . . . of the right of employees to join a labor organization." To deny to railroad engineers the right to be represented by their own organization denies to these employees freedom of association, and denies to them the right to belong to the labor organization of their choice. There have been no problems associated with separate crafts for engineers and conductors that approach in seriousness the importance of allowing railroad employees to be represented by the organization of their choice without government interference. On the contrary, forcing the engineers and the conductors to be members of the same union raises the risk of strikes (such as occurred after the Board

The Honorable Ernest DuBester  
February 10, 2000  
Page 3

forced the flight engineers to merge with the airline pilots) and permanently poisoned labor relations. The public interest clearly supports rejecting the UTU petition.

The Board bears a heavy responsibility in this case. The wrong decision could both deny employees their fundamental rights and lead to chaotic labor conditions in a critical national industry. Rather than rashly seeking to break novel legal ground, the Board should follow the cautious path and allow long-settled craft boundaries to remain in place.

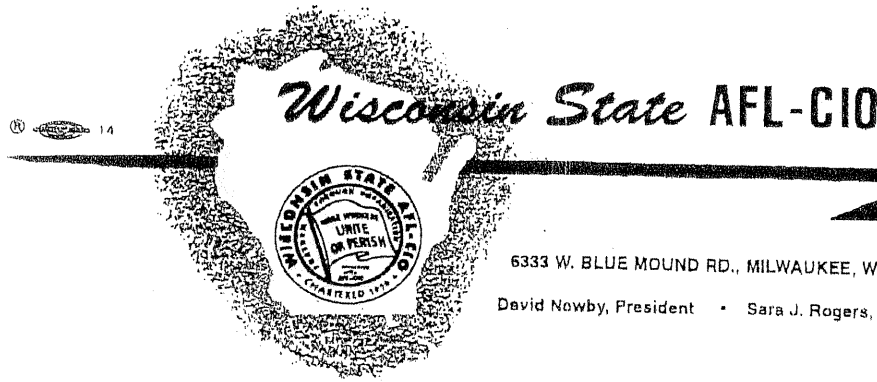
Sincerely,

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cc: Magdalena Jacobsen, Member  
Frank Duggan, Member





CHARTERED 1958

6333 W. BLUE MOUND RD., MILWAUKEE, WISCONSIN 53213    PHONE (414) 771-0700    FAX (414) 771-1715  
 David Nowby, President    •    Sara J. Rogers, Exec. Vice President    •    Phillip L. Neuenfeldt, Secretary-Treasurer

February 22, 2000

TO:            Members of the Legislature  
 FROM:        Phillip L. Neuenfeldt, Secretary - Treasurer  
 RE:            **Legislation Related to Railroad Crews**

There may be legislation circulated that would change current state law related to the composition of railroad crews.

We wanted to let you know that unions representing railroad workers are not in agreement on this legislation and that the Wisconsin State AFL-CIO opposes a change in current law under these conditions.

PN:JR  
 cb, opeiu #9  
 AFL-CIO

## MEMORANDUM

TO: Leroy Jones, VP and NLR  
Tom Pontolillo, Strategic Coordinator  
Keith Luebke, Chairman, WSLB  
Dave Lavery, Chairman, FSLB

FROM: Bob Harvey

DATE: February 15, 2000

RE: Proposed legislation on 2 person crews in Wisconsin and possibly Florida

Brothers;

Dave Lavery sent the Washington Office several pages that included a potential change to the Wisconsin two person crew law. The stated purpose of the amendment was to address the practice of Wisconsin Central, Ltd. from using two locomotive engineers on a train where each are on a locomotive at opposite ends of a train.

Dave provided the correspondence from the UTU that included a news release from Memphis. The news release concerns another bill offered in Tennessee, apparently different from the Wisconsin proposal. It would be easy to read the news report and assume the proposal for Wisconsin intends to address remote control. I would argue that the Wisconsin bill does the exact opposite—creates an opportunity for remote control. Additionally, the proposed law may remove a locomotive engineer from the cab of the locomotive.

The language changes to the existing Wisconsin law follows and is made *bold and italicized*.

192.25 (2) No person operating or controlling any railroad, as defined in § 85.01 (5), may allow the operation of any railroad train or locomotive in this state unless the railroad train or locomotive has a crew of at least 2 individuals *present in the compartment of the locomotive from which the propelling power and power brakes of the train or locomotive are manually controlled*. One of the individuals shall be a certified railroad locomotive engineer. The other individual shall be either a certified railroad locomotive engineer or a qualified railroad trainman. A certified railroad locomotive engineer shall operate the control locomotive at all times that the railroad train or locomotive is in motion. The other crew member *shall be present in the compartment at all times that the railroad train or locomotive is in motion, but* may dismount the railroad train or locomotive when necessary to perform switching activities and other duties in the course of his or her job.

Page two—memo Wisconsin amendment

The impact of the amendment is two-fold. 1) The terminology "manually controlled" could be construed to require two persons in the locomotive only when the locomotive is under manual control from the locomotive compartment. A remote control apparatus (belt-pack), dispatch center with data radio and on-board receiver, or an on-board automatic control of the brake or propulsion system may be interpreted to mean other than manual control and would therefore not require a two person crew.

The language regarding the other crew member will always assure that at least one person is on-board the locomotive. That person need not be a certified locomotive engineer when operated in a non-manual mode. The mention of certified railroad locomotive engineer only provides that the operation of the locomotive is performed by someone certified. It does not require they be on the locomotive and operating from the controls of the locomotive.

#### ALTERNATIVE LANGUAGE:

192.25 (2) No person operating or controlling any railroad, as defined in § 85.01 (5), may allow the operation of any railroad train or locomotive in this state unless the railroad train or locomotive has a crew of at least 2 individuals *present in the compartment of the controlling locomotive*. One of the individuals shall be a certified railroad locomotive engineer. The other individual shall be either a certified railroad locomotive engineer or a qualified railroad trainman. A certified railroad locomotive engineer shall operate the control locomotive at all times that the railroad train or locomotive is in motion. The other crew member *shall be present in the compartment of the controlling locomotive at all times that the railroad train or locomotive is in motion*, but may dismount the railroad train or locomotive when necessary to perform switching activities and other duties in the course of his or her job.

Language from § 49 CFR 229.13

"Control of locomotives

Except when a locomotive is moved in accordance with §229.9, whenever two or more locomotives are coupled in remote or multiple control, the propulsion system, the sanders, and the power brake system of each locomotive shall respond to control from the cab of the controlling locomotive. If a dynamic brake or

regenerative brake system is in use, that portion of the system in use shall respond to control from the cab of the controlling locomotive.”

## Court rules Wisconsin's two-person crew law preempted for hostling and helper operations

CHICAGO -- The U.S. Seventh Circuit Court of Appeals has upheld requirements of the State of Wisconsin's two-person rail crew law for over-the-road freight operations, but not for hostling and helper operations.

In a ruling handed down on July 23, the court held that the state's two-person crew law requirements are not valid with regard to hostling and helper operations because those are preempted by federal regulations issued by the Federal Railroad Administration (FRA) that address related blue-flag protections.

"The court said the state cannot adopt a regulation where the federal government has already covered the subject matter," said UTU Designated Legal Counsel Lawrence M. Mann.

"You can still negotiate to ensure a two-person crew is involved in hostling and helper operations," Mann said, "but this ruling means that such requirements cannot be included as part of a state law."

Mann said UTU members should know that if they seek similar legislation in other states, it should not include anything but a requirement for a two-person crew aboard a locomotive.

Wisconsin's law was crafted, in part, in reaction to the Wisconsin Central's plan to use one-person crews and remote-control operations.

Concerned over safety on the WC, and not willing to wait for disaster, UTU State Legislative Director Thomas P. Dwyer II worked with State Representative John Dobyns, who introduced the two-person crew measure.

In December 1997, the Wisconsin legislature adopted the legislation, and in signing it into law, Governor Tommy Thompson called it the "UTU Bill" because of UTU members' efforts to get it passed. Shortly afterward, UTU International President Charles Little urged all state legislative directors to work for the adoption of similar legislation in their respective states.

A group of railroads including Burlington Northern Santa Fe, the Soo Line, Union Pacific, and Wisconsin Central immediately challenged the law, claiming it was preempted by federal regulation, but the U.S. District Court for the Eastern District of Wisconsin ruled in late 1998 that the law was valid.

The railroads' appeal of that finding led to the recent ruling regarding hostling and helper operations.

"I think the decision regarding hostlers and helpers in this court is wrong," Mann said, "but we want another court to challenge this provision."

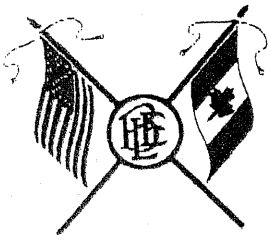
February, 2000

### **The Wisconsin Railroad Committee**

Burlington Northern Santa Fe  
Canadian Pacific (Soo Line)  
Union Pacific  
Wisconsin Central

The Wisconsin Railroad Committee urges you to oppose LRB-4298/2 for the following reasons:

- In fact, under this proposal, most trains would now require a three-person crew. This additional cost, without a proven safety advantage, would make Wisconsin an expensive transportation island. Eventually this will move manufacturing jobs to other states where rail transportation is less costly.
- This proposal seeks, through legislation, to override contracts negotiated between rail labor and the rail industry. If there needs to be a change, it should come through negotiation.
- This proposal is directed at a small number of trains that are now operated by two locomotive engineers in full compliance with federal and state requirements. Since no other state has such a requirement, this legislation will drive up transportation costs for Wisconsin shippers, putting Wisconsin at a further competitive disadvantage with other states.
- This bill is attempting to legislate in an area already adequately covered by federal safety regulation. In fact, the federal Court of Appeals for the 7<sup>th</sup> Circuit ruled last year that crew qualifications in the Wisconsin statute were preempted and that it is up to the Federal Railroad Administration (FRA) to determine whether or not the train crew is qualified to carry out their functions.
- Amtrak and all commuter rail and light rail systems throughout the United States operate with an engineer alone in the locomotive. A recent study by Amtrak revealed that their trains operated by an engineer alone in the cab are safer than their trains operated with two people in the cab. This proposal would also adversely effect the economics of any additional passenger service under consideration in Wisconsin.
- The opposition of the Brotherhood of Locomotive Engineers (BLE) to this bill clearly shows that the unions are divided on this issue.



# Brotherhood of Locomotive Engineers


10 G STREET, N.E., SUITE 480  
WASHINGTON, DC 20002  
TELEPHONE: (202) 347-7936  
FAX: (202) 347-5237

# FAXED

LEROY D. JONES  
International Vice President  
& National Legislative Representative

Via fax transmittal

## MEMORANDUM

TO: State Legislative Board Chairmen  
FROM: L. D. Jones, VP & NLR   
DATE: February 18, 2000  
SUBJECT: AFL-CIO Article XX Sanctions

In a big win for the BLE this week, the AFL-CIO Executive Council voted to strengthen Article XX sanctions against those unions who are non-compliant. The changes were adopted by a unanimous vote by the entire Executive Council and will give the AFL-CIO authority to take swift and strong action against those unions who have not complied with the AFL-CIO sanctions. As you know, UTU has been found non-compliant with the AFL-CIO decision issued under Article XX of the AFL-CIO Constitution, No. 98-006, Union Pacific Railroad.

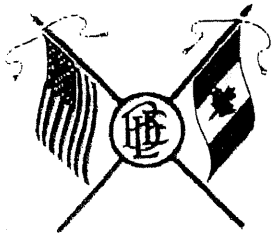
In another Article XX case, No. 99-057, Louisiana & Delta Railroad, UTU will be in non-compliance with a final Article XX decision by February 21<sup>st</sup> if it does not disclaim its recent certification for a bargaining unit previously represented by the BLE.

The AFL-CIO remains committed to resolving this ongoing dispute in a manner that protects BLE's legitimate rights and assures respect by all affiliates of each other's established collective bargaining relationships.

# Brotherhood of Locomotive Engineers

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# FAXED




LEROY D. JONES  
International Vice President  
& National Legislative Representative

Via fax transmittal

## MEMORANDUM

TO: State Legislative Board Chairmen

FROM: L. D. Jones, VP & NLR 

DATE: February 18, 2000

SUBJECT: AFL-CIO Article XX Sanctions

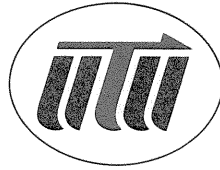
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FEB 22 2000



**united transportation union**  
**Local 581**

February 22, 2000  
1295 Conrad Street  
Oshkosh, WI 54904-840195

*file*

The Honorable David A. Brandemuehl  
49th District, Wisconsin Assembly  
Chairperson, Committee on Transportation  
317 North, State Capitol  
Post Office Box 8952  
Madison, Wisconsin 53708-8952

Dear Representative Brandemuehl:

The Honorable Eugene H. Hahn is circulating legislation that will come before the Assembly Committee on Transportation. My family, my coworkers, and I, most respectfully request that you coauthor this legislative proposal, vote to send it from the transportation committee to the full Assembly, and vote for it when it comes before you on the floor of the Assembly.

The proposal is an amendment to Wisconsin Statute 192.25. When AB 35, now 192.25, came before your committee, it was voted out on a unanimous vote. It passed the Assembly on a unanimous roll call vote. It received the same full support in the other house of the Wisconsin Legislature - unanimous roll call votes in committee and on the floor. At that time we supported AB 35 because we believed that it mandated the presence of two (2) qualified railroad employes in the control cab compartment of all trains and engines moving throughout Wisconsin. To our amazement, and complete anguish, the Wisconsin Commissioner of Railroads has ruled that it does not.

We feel that a one-person-control-cab-compartment crew is a dangerous, thoughtless, unsafe way to operate railroad trains. Doing so endangers railroad profitability, productivity, railroad employes, and the public required to interact with and live near Wisconsin railroad tracks and facilities. What happens in the case of human error or incapacitation? Who is in charge then? Who looks out for public safety then? What happens to our homes and our environment then? I do not want to work alone. I need help when I am on the job! I do not want to be held solely responsible for management greed and lack of judgment. I do not want to be injured or killed at work. My family wants me safe. No railroad employe wants to see our families, coworkers, friends and neighbors, placed in harms way by poor management judgment.

These are but a few of the reasons we respectfully request your assistance and support. Railroading is a dangerous operation. It involves moving heavy equipment, heavier loads, and hazardous materials. We do this at high speeds. We do it every day, all day, regardless of the weather. One oversight, one mistake, one incapacitation, could change Wisconsin, irreparably and forever. Please help us help ourselves. Please support Representative Hahn's amendment to 192.25. It will accomplish what we all thought we had accomplished when your committee and the Wisconsin Legislature passed AB 35.

We look forward to hearing from you in this regard. We have learned that we can count on you.

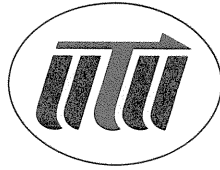
Thank you for your time and attention to this. Thanks too, for the leadership you provide in the Wisconsin Legislature!

Our kindest personal regards.

Very gratefully yours,

*William Andrew Hauck*  
William Andrew Hauck & Family  
Legislative Representative

Cc: T.P. Dwyer II, Wisconsin Legislative Board



MAR 02 2000

**united transportation union**  
**Local 582**

February 22, 2000  
W1442 River Drive  
Stevens Point, WI 54481-324642

The Honorable David A. Brandemuehl  
49th District, Wisconsin Assembly  
Chairperson, Committee on Transportation  
317 North, State Capitol  
Post Office Box 8952  
Madison, Wisconsin 53708-8952

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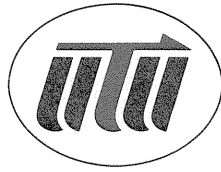
Thank you for your time and attention to this. Thanks too, for the leadership you provide in the Wisconsin Legislature!

Our kindest personal regards.

Very gratefully yours,

Jeffrey J. Thompson & Family  
Alternate Legislative Representative

Cc: T.P. Dwyer II, Wisconsin Legislative Board



**united transportation union**  
**Local 832**

MAR 03 2000

February 22, 2000  
9213 E Schiff Road  
South Range, WI 54874-891813

The Honorable David A. Brandemuehl  
49th District, Wisconsin Assembly  
Chairperson, Committee on Transportation  
317 North, State Capitol  
Post Office Box 8952  
Madison, Wisconsin 53708-8952

Dear Representative Brandemuehl:

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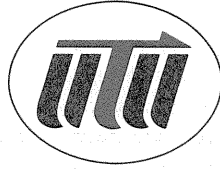
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Our kindest personal regards.

Very gratefully yours,

Robert Loren LaGesse & Family  
Legislative Representative

Cc: T.P. Dwyer II, Wisconsin Legislative Board



**united transportation union**  
**Local 1382**

MAR 03 2000

February 22, 2000  
W232N7494 Highview Drive  
Sussex, WI 53089-2000

The Honorable David A. Brandemuehl  
49th District, Wisconsin Assembly  
Chairperson, Committee on Transportation  
317 North, State Capitol  
Post Office Box 8952  
Madison, Wisconsin 53708-8952

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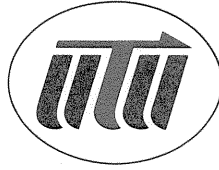
Our kindest personal regards.

Very gratefully yours,

  
Donald P. Ott & Family  
Legislative Representative

Cc: T.P. Dwyer II, Wisconsin Legislative Board

MAR 10 2000



**united transportation union**  
**Local 311**

February 22, 2000  
1726 La Fond Avenue  
La Crosse, WI 54603-143226

The Honorable David A. Brandemuehl  
49th District, Wisconsin Assembly  
Chairperson, Committee on Transportation  
317 North, State Capitol  
Post Office Box 8952  
Madison, Wisconsin 53708-8952

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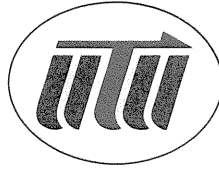
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Our kindest personal regards.

Very gratefully yours,  
*Paul V. Carlson*  
Paul V. Carlson & Family  
Alternate Legislative Representative

*Sandra Carlson*

Cc: T.P. Dwyer II, Wisconsin Legislative Board



**united transportation union**  
**Local 311**

February 22, 2000  
3112 Edgewater Drive  
La Crosse, WI 54603-101612

The Honorable David A. Brandemuehl  
49th District, Wisconsin Assembly  
Chairperson, Committee on Transportation  
317 North, State Capitol  
Post Office Box 8952  
Madison, Wisconsin 53708-8952

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Our kindest personal regards.

Very gratefully yours,

James Eugene Tomten & Family  
Legislative Representative

Cc: T.P. Dwyer II, Wisconsin Legislative Board

WISCONSIN STATE  
**AFL-CIO**



LEGISLATIVE  
**NEWS**

**CAMPAIGN FOR WORKING FAMILIES • EYE ON GOVERNMENT**

MAR 07 2000

TO: Members of the Legislature  
FROM: Phil Neuenfeldt, Secretary-Treasurer  
DATE: March 6, 2000  
RE: **UPDATE ON LEGISLATION RELATED TO RAILROAD CREWS**

We have been informed that the unions representing railroad workers have reached agreement on a bill related to the composition of rail crews, specifically **LRB 4488/3**.

The Wisconsin State AFL-CIO supports **LRB 4488/3** as well and asks legislators to consider cosponsoring this important legislation.

PN:JR/lr  
opeiu#9, afl-cio

**Phil Neuenfeldt**  
*Legislative Director/Secy.-Treas.*

6333 West Bluemound Road, Milwaukee, WI 53213  
414/771-0700 Milwaukee • 608/256-8601 Madison

**Joanne Ricca**  
*Staff Representative*

Att: David Brandenmuehl &  
Committee Members,

3/16/00

This letter is ment to covey the importance of passing LRB 4488/3 for AB827 as worded. The present wording would ensure two things. One, that a federally certified engineer would be operating Wisconsin's trains. Secondly, that two qualified individuals would be in the lead locomotive of said trains and the control of the train would be in the hands of a qualified engineer.

It is important to remember that this is a safety issue. In the past such safety issues have been brought before state legislatures and have been fought by the rail industry. A classic example of this is rear end devices on cabosseless trains. The state of Montana wanted trains to be fitted with rear end devices that could be triggered from the lead locomotive. Railroads defeated the bill. They purchased the cheaper model which just relayed air pressure. After spectacular crashes at the Pigs Eye Yard in Dayton's Bluff MN., in Livingston Montana, and two at Cajon California, which would have covered the cost differential of the more expensive devices, the Congress directed the F.R.A. to step in and force the railroads to install them.

If you believe they will voluntarily spend for safety you are wrong! Wyoming learned its lesson. They passed a two man crew bill. Wisconsin with two of the bigger evacuations (Benzene at Superior and propane at Weyauwega) in railroad history hopefully will not have to learn theirs the hard way.

In closing I would like to state that, "any engineer who would feel comfortable running trains by himself is pretty much a fool and I wouldn't



want to meet him on line. Thank you for your time,

WA Marsh  
Locomotive Engineer  
BLE 290  
Superior, WI

# OFFICE OF THE COMMISSIONER OF RAILROADS

## Testimony of Rodney W. Kreunen

Commissioner of Railroads

Before the Assembly Committee on Transportation

**Regarding AB 827**, An act relating to the minimum number of railroad employes required to be present in the cab of the lead control locomotive when the railroad train or locomotive is in motion

March 16, 2000

### Analysis by the Office of the Commissioner of Railroads

The proposed amendment to section 192.25 would create a requirement that both train crew members must ride in the same lead locomotive. Current law only requires 2 crew members, but does not specify where the employes must ride. At least one railroad currently operates several trains per day with an engineer in the lead locomotive and a second engineer in a locomotive at the end of the train. That practice will become illegal under this bill.

As noted in the 'Analysis by the Legislative Reference Bureau' the provisions of s. 192.25 are preempted except to the extent that they require two-person train crews on over-the-road trains.

**Section 192.25 should be amended to conform to the federal court's preemption ruling.**

- Section 192.25 requires the crew to consist of "a certified railroad locomotive engineer" and either another "certified railroad locomotive engineer or a qualified railroad trainman." As a result of a federal court decision, **these requirements can not be enforced** because they are preempted by federal law. See, Burlington Northern and Santa Fe Railway Co. v. Doyle, 186 F.3d 790 (7<sup>th</sup> Circuit, 1996). **Section 192.25 should be amended to remove the railroad employe qualification requirements.**
- Section 192.25 currently applies to any train operating in Wisconsin. The 7<sup>th</sup> Circuit held that the **2-person crew requirement could not be applied to hostling and helper movements.** Under the federal court decision, the **2-person crew requirement can only be enforced on over-the-road trains.** Insofar as the law applies to hostling and helper movements, the law is preempted and unenforceable.

In sum, the state can not enforce the train crew qualification requirements of sec. 192.25. The state also can not enforce the two-person crew requirement on hostling and helper operations. The state can require that the crew consist of 2 persons on over-the-road operations. The state can also require that both crew members ride in the lead cab as proposed by this amendment.

Excerpts from *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (7<sup>th</sup> Circuit, 1996).

- **Regarding federal preemption of crew member qualification requirements:**

The statute addresses who is qualified to operate a train in three ways: sec. 192.25(1)(a) requires certain qualifications for a "Certified railroad locomotive engineer"; sec. 192.25 (1)(b) requires certain qualifications for a "Qualified railroad trainman"; and sec. 192.25(2) requires that a certified railroad locomotive engineer operate the controls of the locomotive any time the train or locomotive is moving. Federal regulations clearly cover the subject matter of these requirements. 186 F.3d at 796.

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In the face of the federal regulations, Wisconsin argues that these provisions are not preempted not because the federal regulations do not cover the subject matter of the state requirements, but because the state statute does not impose contradictory requirements. The short answer to this argument is that the text of sec. 20106 provides that a state may enforce a law "related to railroad safety *until* the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the state requirement." (Emphasis supplied.) This language does not distinguish between contradictory state requirements and merely duplicative state requirements. 186 F.3d at 796.

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These three provisions of sec. 192.25 are therefore preempted by the federal regulations. 186 F.3d at 797.

- **Regarding the application of 192.25 to hostling and helper movements:**

To the extent sec. 192.25(2)'s two-person crew requirement applies to hostling and helper operations, it is preempted.

We do not reach the same conclusion regarding one-person crews on over-the-road operations, however. 186 F.3d at 802.

Att: David Brandenmuehl &  
Committee Members,

3/16/00

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WA Marsh  
Locomotive Engineer  
BLE 290  
Superior, WI

February, 2000

## The Wisconsin Railroad Committee

Burlington Northern Santa Fe  
Canadian Pacific (Soo Line)  
Union Pacific  
Wisconsin Central

*Bill Foster*

The Wisconsin Railroad Committee urges you to **oppose LRB-4488/2, relating to train crews**, for the following reasons:

- Current Wisconsin law requires train crews of at least two individuals. While this proposal is portrayed as merely closing a 'loophole', in reality, it would require a three-person crew on most trains. This additional cost, without a proven safety advantage, would make Wisconsin an expensive transportation island. Eventually this will move manufacturing jobs to other states where rail transportation is less costly.
- This proposal seeks, through legislation, to override contracts negotiated between rail labor and the rail industry. If there needs to be a change, it should come through negotiation.
- This proposal is directed at a small number of trains that are now operated by two locomotive engineers in full compliance with federal and state requirements. Since no other state has such a requirement, this legislation will drive up transportation costs for Wisconsin shippers, putting Wisconsin at a further competitive disadvantage with other states.
- This bill is attempting to legislate in an area already adequately covered by federal safety regulation. In fact, the federal Court of Appeals for the 7<sup>th</sup> Circuit ruled last year that crew qualifications in the Wisconsin statute were preempted and that it is up to the Federal Railroad Administration (FRA) to determine whether or not the train crew is qualified to carry out their functions.
- Amtrak and all commuter rail and light rail systems throughout the United States operate with an engineer alone in the locomotive. A recent study by Amtrak revealed that their trains operated by an engineer alone in the cab are safer than their trains operated with two people in the cab. This proposal would also adversely effect the economics of any additional passenger service under consideration in Wisconsin.
- The opposition to this bill of the Brotherhood of Locomotive Engineers (BLE) and the AFL/CIO clearly shows that the unions are divided on this issue.

Representing the railroads:

M. William Gerrard	608-258-3700
Sam Gratz	608-251-6394
Kevin Soucie	414-817-1442