

2013 SENATE INDUSTRY, BUSINESS, AND LABOR

SB 2224

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2224
January 29, 2013
Job Number 17887

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to unemployment insurance eligibility in the case of a lockout

Minutes:

Testimony Attached

Chairman Klein: Called the committee to order.

Senator Murphy: Sponsored the bill. Written Testimony Attached (1).

Daniel E. Phillips, Attorney for Solberg Stewart Miller: Written Testimony Attached (2).

Chairman Klein: Asked why an employer would want to have a lockout and how are they still operating yet.

Daniel: Said when the union and the company meet and negotiate, they are trying to come up with a contract which both parties can agree with and in this case the employer said, this is the contract and the employees say, that they aren't going to except the contract. He expands on what causes them not to agree on the contract and more questions are asked (13:00 - 24:07).

Senator Mathern: Said he thinks it is a matter of social justice when people don't have an opportunity to go to work because they have been locked out, they should be eligible for unemployment.

Gayln Olson; Locked out worker from American Crystal Sugar: Written Testimony Attached (3). (24:55)

Questions asked about the American Crystal Sugars lockout (31:19 - 34:00).

Brad Olson; Locked out worker from American Crystal Sugar: Written Testimony Attached (4). (34:54)

Tom Ricker; President of the North Dakota AFL - CIO: Written Testimony Attached (5). (39:00)

Dakota Drapper; Representing the North Dakota Education Association: Written Testimony Attached (6). (43:40)

Stuart Savelkonl; Executive Director of the North Dakota Public Employees Association: He said they stand in support of the bill. He spoke to a couple of the questions that were asked earlier. (44:09 - 50:32)

Kevin Murch; Case New Holland Tractor Plant in Fargo: Said he is in support of the bill. He shared his feeling on lockouts by employers (50:51 - 52:51).

In Opposition

Jon Godfread; Greater North Dakota Chamber of Commerce: Written testimony Attached (7). (53:52 - 57:02)

Chairman Klein: Asked if after the Supreme Court makes its decision if his argument would be mute.

Jon: Said yes, but this is where they stand.

Senator Murphy: Asked if he framed the language typifying unemployment compensation as a subsidy.

Jon: Said essentially in their opinion, in this case, it would be because you have employees who are members of a union and that union has rejected a contract offer and therefore they are not at work.

Senator Murphy: Said the bill has nothing to do with unions or non-unions, it has to do with people who are locked out.

Jon: Said a lockout generally stems from a labor dispute, which is created through organized labor and the employers. It's addressing a lockout issue which arises from an organized labor dispute.

Senator Murphy: Said his point is, it is irrelevant to him because this does not have to be a union issue. It has been in the past it doesn't mean it has to be in the future.

Jon: Said he would be unfamiliar of any time where there would be a non-organized labor workforce being subject to a lockout.

Senator Andrist: Said he has empathy for those that don't belong to the union and were not a part of the negotiations and yet are locked out with all the others, do you?

Jon: Said certainly. It is his understanding that the people who are locked out our union employees. He said that North Dakota is a right to work state.

Neutral Position

Senate Industry, Business and Labor Committee

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Darren Brostrom; Director of Unemployment Insurance with Job Service of North Dakota:
Written Testimony Attached (8). (1:01:51 - 1:06:52)

Discussion continued on the requirements for being unemployed and receiving
unemployment. (1:07 - 1:11:50)

Chairman Klein: Closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2224
February 5, 2013
Job Number 18311

Conference Committee

Committee Clerk Signature

Eva Leibel

Explanation or reason for introduction of bill/resolution:

Relating to unemployment insurance eligibility in the case of a lockout

Minutes:

Discussion and Vote

Chairman Klein: Opened the meeting.

Senator Murphy: Said when this gets to the floor he will let it rip and appeal for a few green lights.

Senator Murphy: Motioned for a do pass.

Senator Sinner: Seconded the motion.

Discussion followed (1:15-3:00).

Roll Call Vote: Yes - 2 No - 5

Senator Unruh: Motioned for a do not pass.

Senator Andrist: Seconded the motion.

Discussion followed (3:50-6:10).

Roll Call Vote: Yes - 5 No - 2 Absent: 0

Floor Assignment: Senator Unruh

FISCAL NOTE
Requested by Legislative Council
01/18/2013

Bill/Resolution No.: SB 2224

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures		\$8,892		\$1,000		
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Financial impacts of SB 2224 - Computer programming: \$1,000. Estimated trust fund benefits payable per locked out employee: \$8,892 . Further detail is provided within part 2B of this fiscal note.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Two financial impacts arise as a result of the language within SB 2224: 1) Computer programming charges of \$1,000. The change to computer programming relates to the addition of eligibility questions within the Unemployment Insurance claims intake system, specifically within the Job Service North Dakota web-based application and IVR. Subsequently, electronic workflow changes would be required within these same systems. 2) Impact of unemployment benefits payable per locked out employee – \$8,892 per employee of the lockout employer. Although \$8,892 is provided as an estimated per employee costs, the actual impact of any benefits paid on future tax rates will vary based upon lockout size, duration of lockout, total statewide taxable wages and a variety of other inputs. Because the overall impact could vary significantly, a per-individual potential cost was created for purposes of this fiscal note. The weekly benefit amount (WBA) per claimant currently ranges from \$43 to \$516, with \$342 being the current average WBA. The maximum claim duration, which is the timeframe that an individual can receive regular North Dakota Unemployment Insurance (UI) benefits, is 26 weeks. Multiplying the average WBA by the maximum duration establishes a potential total cost per individual: \$342 X 26 = \$8,892 per claimant. While benefits paid are ultimately charged back to the employer locking out the worker(s), in instances of large lockouts or with employers with low or negative reserves, the benefit charges may significantly exceed the Unemployment Insurance Account balance of the employer. What this means is that the employer will probably move to a negative balance status. Negative balance employers are those employers who have paid in less in tax contributions than has been paid out in benefits to their employees. Having negative employers within our system has a couple of impacts. The first impact is that the tax rate assigned to the employer increases in order to recover the funds paid out. The second impact is that because even the highest tax rate often will not pull the employer out of the negative status immediately, all employers within the state will receive a higher tax rate to account for the drawdown of the unemployment insurance trust fund. In order to understand the potential impact upon tax rates a recent lockout situation was reviewed to establish an example. Under this lockout, the potential impact upon the tax rates of all employers statewide would have been a tax rate increase of 0.06% across the entire rate table, an approximate increase of \$16.74 per employee of the employer per year.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Computer programming changes - \$1,000. The change to computer programming relates to the addition of eligibility questions within the Unemployment Insurance claims intake system, specifically within the Job Service North Dakota web-based application and IVR. Subsequently, electronic workflow changes would be required within these same systems.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Darren Brostrom

Agency: Job Service North Dakota

Telephone: 701-328-2843

Date Prepared: 01/21/2013

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2224**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Murphy Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein		x	Senator Murphy	x	
Vice Chairman Laffen		x	Senator Sinner	x	
Senator Andrist		x			
Senator Sorvaag		x			
Senator Unruh		x			

Total (Yes) 2 No 5

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2224**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Unruh Seconded By Senator Andrist

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy		x
Vice Chairman Laffen	x		Senator Sinner		x
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Unruh

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2224: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2224 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SB 2224

Testimony in favor of 2224

Mr. Chairman, members of the committee. Currently, North Dakota interprets its statutes on unemployment insurance eligibility in such a manner that employees who show up for work to find the doors locked by their employer so that they cannot work, are not eligible for unemployment benefits.

There are many states that do allow workers who find themselves in this predicament to receive benefits. Some even with the same language in their code have interpreted it in favor of the worker. But not North Dakota. You may know that our State Supreme Court is currently pondering a decision already heard on this matter, and I wish any future locked out worker the best in that regard.

There are many reasons why people have chosen to take sides on this matter, and we will hear both sides today, but really, I do not want to hear it all again because to me, it is a simple matter. Some of you work for yourself while some, like me, work for others - work for the Man. I work for the Man because it is the most efficient way for me to get my work done - teaching, in this case. And I can tell you this: if, after my 31 years of working at the same place the doors are locked to me against my will and I can no longer be what I was, it will rock my world. A large and important part of me is being a teacher and not being able to work with the people I have known for that time, nor being able to serve the people and community I have given over half of my life to will require some adjustment. Adjustments such as; Who am I? What am I? Where do I go now? What do I do now? What about the people counting on me like my spouse and children? Do I sell my house? Move? Commute? You get the picture.

Employers pay into unemployment compensation accounts because of these uncertainties and because it has been judged by this state and all others in our union to be the right thing to do.

For me, as I said before, it is a simple matter. What are these unemployment accounts for? No wonder other states pay locked out workers who want to work but cannot. No wonder. But not North Dakota. Not our state, our state that is doing so well with such low unemployment and abundant jobs. The locked out workers that I know want to work. People need a few weeks or maybe a little more to sell their house or make the decisions that have fundamentally changed their lives. We have the mechanism in place to help these people when these rare events (one in 1980, I believe, and one in 2011) occur. Why not help them? What are these accounts for if we will not use them when people need them?

There will be those that have any number of arguments about why we should be chintzy with this situation, but I do not care. I was raised to help those in need. It seems consistent with my heritage and the nature of the people of this state to give a helping hand to those relocating and adjusting to a very harsh condition. Lawyers can argue the particulars, but I do not care - I care about the people affected and I ask you to do the same.

Before the Senate Industry, Labor and Business Committee

Testimony of Daniel E. Phillips on Senate Bill 2224, January 29, 2013

Hon. Chairman Jerry Klein and members of the Committee:

I am an attorney practicing law at Solberg Stewart Miller and have been barred in the State of North Dakota since 1993. I have been representing working people in North Dakota since I began practicing law. I testify today in support of SB 2224, what is obviously a clarification of the Unemployment Compensation Act related to payment of unemployment compensation in the case of a lockout of employees by the employer,

As part of my representation of North Dakota's working people, I recently represented the numerous employees of American Crystal Sugar Company who were locked out by the employer on August 1, 2011. Those employees are still locked out today. Arguments were made to the North Dakota Supreme Court that the present law supports that employees who are locked out are eligible for unemployment compensation benefits. As yet, the North Dakota Supreme Court has not issued a decision on that appeal.

As a brief explanation, a lockout is commonly referred to as the employer's counter to a strike. Clearly, a "strike" is the concerted effort of the employees to withhold work from the employer. A "lockout" is the employer withholding work from the employees.

The question that is addressed by the bill before the committee today is whether the locked out employees would receive unemployment compensation benefits if the employer locks out the employees and withholds work from the locked out employees. As I pointed out, this bill clarifies that in a lockout, employees locked out are eligible for unemployment benefits. Had this present bill been law, there would have been no need for the lengthy appeals that were necessitated by the law as it is presently written which does not address the situation of a lockout. Again, having researched and argued this issue before the North Dakota Supreme Court, it is apparent to me that the present law supports unemployment compensation but, I support clarification of the law to preclude any question in the future.

Legislatures have taken primarily two manners of responses to labor disputes and unemployment compensation benefits. These two manners are "active progress" and "work stoppage" statutes. Active progress statutes look primarily at the existence or absence of a labor dispute and the statutes withhold benefits during the existence of a labor dispute. Work stoppage statutes look to whether the work of the employer is stopped and the statutes withhold benefits during – and based on which party – may have caused the work stoppage. The majority of states – and the recent trend – seems to follow the work stoppage statutes.

North Dakota has long followed the work stoppage manner in its application of its Unemployment Compensation Act. Indeed in 1981 the Legislature changed the Unemployment Compensation Act in response to a strike at the Amoco refinery wherein the employees went on strike but, because there was no stoppage of work at the refinery as a consequence of the strike, the employees were awarded unemployment compensation benefits. In 1981, the statute was changed to its present form wherein it was included that if there was a “strike, sympathy strike, or a claimant’s work stoppage dispute of any kind which exists because of a labor dispute...,” benefits would be denied. A lockout was not included in the statutory change. That is now corrected and the law is clarified by this present bill.

The present bill is absolutely consistent with the Legislative changes that were made in 1981 when the language of the statute was changed from simply finding a work stoppage to preclude unemployment benefits. In 1981, the statute was changed to preclude benefits when the work stoppage resulted from the actions of the employee, a “strike, sympathy strike, or a claimant’s work stoppage....” Obviously, all the statute’s references pointing to work stoppages caused by the employees’ actions.

Lockouts are obviously not caused by the employees but, rather, by the employer. The unemployment Compensation Act in North Dakota has always been based on the intent of the person applying for unemployment compensation. Indeed, the public policy of the of the Act is set out in the opening statues of the Act itself and is focused on the claimant’s frame of mind and whether the claimant is voluntarily left employment without good cause attributable to the employer. N.D.C.C. § 52-01-05. Lockouts are not the claimant’s decision but wholly the decision of the employer. To prevent locked out employees from getting unemployment benefits really turns the Act upside down by allowing the employer to prevent the employee from working and yet prohibit the employees from being awarded unemployment compensation benefits to which the employee would in all ways be otherwise eligible but for the fact that the employer has locked the employee out of the employee’s work. A lockout is clearly involuntary unemployment for the out of work claimant.

North Dakota’s language in its statutes is unique. Indeed, there are three states with employees that have been locked out by American Crystal Sugar Company, Minnesota, Iowa, and North Dakota. Employees in both Minnesota and Iowa have received benefits when only the North Dakota employees have been denied. Iowa statues are similar but, not precisely on point. The only other state that has language more akin to North Dakota as to the precise issue of a work stoppage is Texas. And, in Texas, the court found that “claimant’s work stoppage” does not mean a lockout which is the company’s stoppage of work and not the claimant’s stoppage of work. Thus, by the clarification in the bill before this committee, the law in North Dakota would also move in a like manner to language that is similar.

Lastly, during the appeal of the denial of unemployment benefits to the locked out employees of American Crystal Sugar Company, Job Service and American Crystal Sugar Company argued that the benefits must be withheld from the locked out employees so that the State could remain “neutral” in labor disputes. I would like to briefly address this neutrality issue because I feel that the argument might initially cause this committee to question this clarification amendment as proposed. First of all, the denial of unemployment benefits to locked out workers is inconsistent with the public policy of providing those benefits to involuntarily unemployed workers in North Dakota. Second, withholding benefits from involuntarily unemployed workers who are in all ways otherwise eligible for those benefits is not “neutral” but, in fact, the State standing on the side of the employer when work is being withheld from its workers. That would hardly be called neutral.

The fact of the matter is, from the company’s perspective, if workers receive unemployment benefits during a lockout, the State is supporting the out of work employees. From the locked out employees’ perspective, if the benefits are withheld, the State is acting on behalf of the employer. There is NO position that can be seen from all sides as being absolutely “neutral” in the case of a labor dispute. But, the most “neutral” position that seems to be available to Job Service is that which with this proposed clarification of the Act in SB 2224 (and the position I argued recently at the North Dakota Supreme Court on the appeal of the locked out American Crystal Sugar Company employees), is that the State elects to withhold benefits when there is a strike, voluntary action by the employee, and pay benefits when there is a lockout, voluntary action by the employer. This appears as the least “taking sides” by the State in a labor dispute

**Testimony of Mr. Gayln Olson to the North Dakota Senate
Industry, Business and Labor Committee, re. SB 2224.
January 29, 2013**

Good morning, Mr. Chairman and committee members. Thank you for the opportunity to speak, this morning.

My name is Gayln Olson. I'm a locked-out worker from American Crystal Sugar. I've been employed for 36 years at the Hillsboro, ND factory. I am the president of BCTGM Local 372G. I'm speaking on my own behalf and also on behalf of the 420 workers locked out from Crystal Sugar's North Dakota factories in Hillsboro and Drayton who have received no unemployment benefits from the State of North Dakota.

I am testifying in support of **SB 2224** to clarify that locked-out workers qualify for unemployment benefits. Lockouts should be treated the same as layoffs because, in a lockout, the employer forces workers out; the workers do not choose to leave their jobs.

Instead of working with us on an extension of the contract while we continued negotiating a new one, as we have done in past negotiations, American Crystal Sugar chose to have Strom engineering (security) escort all employees off the property. Union workers of American Crystal Sugar wanted to continue working. We never threatened to strike. Just the opposite: our union negotiating committee offered to keep on working under the terms of the former contract, while we continued negotiations on a new one. The contract included a no-strike clause for the duration of the processing season. The new contract proposed by the union also included that same no-strike provision. The choice to remove us from our employment was American Crystal's, **not** the workers'. It was completely involuntary on our part.

Being locked out has caused great hardship to us workers and our loved ones, ESPECIALLY the children.

There are conflicts between workers and their spouses, due to no income, which the children have no choice but to hear.

Due to no income or unemployment benefits, almost all of the families involved went from a full time job with healthcare benefits for our spouses and children, to going to food shelves and seeking food and medical assistance from the state. But, while Crystal Sugar employees are drawing on state social services resources, unemployment benefits are available in the state unemployment fund. Those employer-funded benefits are being held back because of an interpretation of the state code that denies unemployment benefits to locked-out workers. That's not right. Taxpayers should not have to bear the costs of the lockout because of the company's decision to throw workers out of their jobs and not even attempt to negotiate.

Our children have had to give up sports, camps and family vacations, due to the parents not being able to pay the bills and let them attend what they would have normally been active in, had American Crystal kept us employed.

Me, personally, I have a family of 6 under my roof. I lived in a 7-bedroom farm house for 13 years, until I was locked out and could no longer afford my mortgage payments and utilities. I had no other choice but to take a hardship loan out of my 401(k) to purchase and move my family into a 3-bedroom house in town and let the farmstead go. The locked out workers are having a difficult time finding work because employers do not want to hire them because of fearing that they are going to back to their American Crystal Sugar job. Our children have been very understanding through all of this, knowing we truly can't afford what they want and that we have to budget just for what they need. It was – and still is – very hard on my children, as they want our farm house back and want life to return to normal.

School shopping isn't made up of us going shopping and writing out a check for all their clothing and supplies anymore. It is very hard to swallow the fact that the community donates school supplies for our locked-out children, including the backpacks. We are very fortunate to live in such a loving, caring community.

Christmases at our homes the last 2 years have not been normal. We can no longer afford to buy the children what they ask for. We buy them what they need.

Parents are traveling to get jobs elsewhere and it is costing time with their children.

This has a huge impact on our communities

Due to the lockout many businesses have suffered because of lack of sales. Some of the local businesses have showed a 40% loss in sales, since the lockout began.

A huge impact this lockout has had on our community is that there are employees, farmers, neighbors and families talking or arguing over this lockout. Some of the workers' families are beet farmers and they have not spoken since the lockout began. This affects the whole community, as every person has their own opinion.

According to the **Job Service North Dakota Employer's Guide**, the intent of the Unemployment Insurance Program, "is not only to protect an unemployed worker's financial health, but also to help keep main street businesses and a community's economy stable during periods of high unemployment. " Neither of these important purposes are served when hundreds of involuntarily unemployed workers are denied unemployment benefits. Our state law needs to be modified to clarify that locked-out workers are eligible for unemployment coverage.

Good Morning Chairman and Members of the Committee, Thank you for this opportunity to speak this morning.

My name is Brad Olson, and I am testifying in support of SB 2224.

I live in Mayville, and I am a locked out worker from the ACS plant in Hillsboro. I worked at the plant for 15 years, and I loved my job, and I dedicated my life to American Crystal Sugar. At the end of the day, I took great satisfaction in knowing that I had earned my wage, and the Company had got their moneys' worth.

18 months ago, on August 1, 2011 1300 workers in Minnesota, North Dakota and Iowa were locked out of our jobs at ACS.

As Galyn Olson testified, we wanted to keep working and continue negotiating; the company chose to lock us out.

I have applied for numerous jobs around the area – including Grand Forks and Fargo – but employers would not hire me, because they believe I will return to work at the ACS plant once the lockout is over.

My wife works full time so we are surviving, but just barely. I cannot afford health insurance for me, and I hope and pray that I will stay healthy.

In the Mayville/Portland area there approximately 50 workers that have been locked out of work by American Crystal Sugar, and the consequences on our community have been great. All of those 50 workers are suffering because of the State Job Service decision to deny us Unemployment benefits. We were all willing and wanted to continue to work under an extension of the contract. The impact on local businesses, churches, schools has been dramatic.

At least ½ of my paychecks, and this is true for many of the 50 workers was spent locally – at the grocery store, gas stations, the local bakery, and restaurants, local car dealers and local doctors and chiropractors.

My children are adults, but I cannot afford birthday or Christmas presents for my seven grandchildren – but for many of my fellow workers who have young children this is especially difficult. The children are not able to participate in extracurricular activities. The most dramatic impact is that we are not able to live the life we use to – the loss of an income, the dignity of working and earning a paycheck – and consequently the stress level in our homes is very high – and this is especially damaging for young children.

I urge to vote for SB 2224, for me, my family, and our communities, and the hard working locked out workers.

Thank you committee chairman Klein and members of the Senate Industry, Business and Labor committee for the opportunity to testify in support of SB 2224, a bill that would result in locked out workers being eligible for unemployment benefits.

My name is Tom Ricker; I am the President of the North Dakota AFL-CIO. I stand before you today on behalf of the North Dakota AFL-CIO and its affiliates.

At the very heart of this matter is a fundamental moral issue. I am persuaded that the cause of social justice must include the priority of the dignity and fair treatment of workers. We have before us a great opportunity to stand together for the dignity and fair treatment of all workers in the great state of North Dakota.

We have more than 400 North Dakota workers who have been locked out of their jobs. This is causing great economic, psychological and spiritual hardship to them and their families. It is also causing great hardship to the communities in which they reside. It is tearing families apart, there are a number of locked out workers who have relatives who are either in management roles or are growers, this lock out is stretching those relationships to the breaking point. We have an opportunity to relieve some of these hardships.

These more than 400 North Dakota workers have not chosen to be unemployed. The management of American Crystal Sugar has locked them out of their jobs. From the very beginning and even now, the locked out workers have expressed their willingness to work under the existing contract and to continue negotiations. They wanted to continue working and to continue to make American Crystal Sugar the profitable company that it has been. They are not on strike! Their offer to continue working has been reciprocated with them being locked out of their jobs.

Other states in our country have recognized that workers who have been locked out of their jobs should be eligible for unemployment benefits. Included in that number are the states of Minnesota and Iowa who also have workers locked out

of their jobs by American Crystal Sugar. These states have recognized that without unemployment benefits for locked out workers, employers have an unfair advantage over the workers they have locked out. In short, they have the unfair advantage of using economic starvation on the workers who fail to surrender to the employer's negotiation position. We have an opportunity to partially remedy this unfair advantage an employer has over North Dakota workers who have been locked out of their jobs.

On behalf of the locked out BCTGM workers and for the benefit of all workers in our state, we are asking you to support SB 2224 and the changes it will bring to the North Dakota law on unemployment benefits. It is a great opportunity to stand together for the dignity and fair treatment of all workers of our state.

Thank you for this opportunity to address this committee & I will gladly answer any questions that you may have.

Tom Ricker

President, ND AFL-CIO



**TESTIMONY OF DAKOTA DRAPER,
NORTH DAKOTA EDUCATION ASSOCIATION
SB 2224
January 29, 2013**

Chairman Klein and members of the committee:

My name is Dakota Draper, and I'm here representing the North Dakota Education Association. I am here in support of SB 2224.

As the President of the NDEA, we represent educators and educational support professionals who provide services to many North Dakotans. We believe these workers need the safety net of unemployment benefits, in the event that they lose their jobs for reasons beyond their own control.

If a worker is laid off, unfairly removed from duty or loses their ability to work, they can apply for unemployment benefits. It is a safety net so that its citizens can rest assured that they will be given a chance to pick themselves up when life knocks them down. The locked-out workers of American Crystal Sugar at the Hillsboro and Drayton plants did not leave their work or choose to leave. These men and women showed up to work, and found themselves forced out of their jobs. They are now unemployed, beyond their control, and they need assistance.

These workers have been denied unemployment benefits in North Dakota because our state law denies assistance to workers involved in a labor dispute. Workers at the Minnesota plants are able to collect unemployment benefits while they are locked out, because their state's laws allow for an exception in matters of a lockout. These North Dakotans deserve some assistance until the differences can be resolved between themselves and management on a new labor contract, and they can get back to work. The state of North Dakota does not need to take sides in this dispute. However, it should recognize that its own citizens have been forced out of jobs against their own will, and deserve the same benefits granted to any of North Dakota's workers who lose their jobs unfairly.

Thank you for the opportunity to address this important topic on the behalf of the members of NDEA. I am available for any questions from the committee.



Testimony of Jon Godfread
Greater North Dakota Chamber
SB 2224
January 29, 2013

Mr. Chairman and members of the committee, my name is Jon Godfread. I am the Vice President of Governmental Relations for the Greater North Dakota Chamber (GNDC), the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group, we stand in opposition of SB 2224.

The Greater North Dakota Chamber supports North Dakota's unemployment insurance laws, which provide adequate and temporary financial assistance to employees who become unemployed through no fault of their own. We support the current interpretation of the North Dakota law not allowing unemployment insurance to individuals in a labor dispute. GNDC opposes the extension of benefits to workers who, through their own actions or inactions, become unemployed, including as a result of an employer-initiated lockout or an employee strike.

This is not an issue of insurance for unemployed workers. SB 2224 seeks to subsidize a union decision to reject a contract offer. By paying workers involved in a labor dispute, the taxpayers, specifically the businesses that pay the unemployment insurance premiums, will be in essence subsidizing their contract dispute. The Greater North Dakota Chamber supports the true use of unemployment insurance, which is a safety net for people in-between employment, to help those employees who, through no fault of their own, find themselves out of a job.

North Dakota has a long history as a right to work state. Employees in North Dakota are protected by our right to work laws and cannot be required to join or pay dues or fees to a union. Employees in North Dakota have the right to resign from a union at any time. North Dakota's right to work law secures the right of employees to decide for themselves whether or not to join or financially support a union.

Strikes, lockouts or walkouts are all tactics used when employers and employees cannot agree to the terms of employment, including wages, working conditions, job descriptions, etc. This issue must be resolved by the parties involved and, as a right to work state, North Dakota should not be involved in aiding either side in the negotiation. What has been done in the past and should be done in the future is the State of North Dakota should remain neutral on all labor disputes.

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To draw some parallels, the business community is not in front of this committee asking for support in the instance of a strike, to cover any loss of production, the cost of finding a new workforce, training that workforce or in making up any gap in wages. On the surface, it would seem outlandish for businesses in this state to ask for these kinds of support. SB 2224 is essentially the same but supporting the other party at the table. We as the GNDC would not support either proposal; we are standing with the principles of our right to work state and encourage this committee and this body to do the same.

The State of North Dakota has never chosen sides in a labor dispute. By passing this bill, the State of North Dakota would take a big step away from the right to work principles we have upheld for decades. By subsidizing a labor dispute, the state would essentially side with the union and remove the incentive to have meaningful negotiations. The Greater North Dakota Chamber promotes the necessary give and take to reach an agreement and get everyone back to work and the business back to producing.

Thank you for allowing me to appear before you in opposition to SB 2224. I know this can be an emotional issue, but when the emotion is removed and the facts are determined, we hope this committee understands the need for the State of North Dakota to remain neutral in all labor disputes. The Greater North Dakota Chamber strongly supports a Do Not Pass on SB 2224.

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Senate Bill 2224
Testimony of Darren Brostrom
Job Service North Dakota
Before the
Senate Committee On
Industry, Business and Labor
Senator Jerry Klein, Chair
January 29, 2013

Mr. Chairman, members of the committee, I am Darren Brostrom, the Director of Unemployment Insurance with Job Service North Dakota. I am here today to provide information relating to Senate Bill 2224.

Job Service is taking a neutral stance on this bill. Arguments could be made on both sides of the issue, and ultimately a decision as to the merits of providing benefits to locked out workers is a statewide policy decision that should be made by the legislative body. My testimony today will hopefully provide background and relevant data that will help you as you deliberate on the issue.

Current North Dakota statute, 52-06-02 subsection 4, provides for a disqualification from the receipt of benefit payments as a result of a labor dispute. Although our statute does not specifically note that a lock out is a labor dispute, the courts in North Dakota have found that lock outs are labor disputes, and that lock outs are disqualifying under North Dakota statute. This has been affirmed in two instances in North Dakota District Court.

Although we have the District Court opinions affirming our interpretation of statute, we are currently awaiting a decision by the North Dakota Supreme Court

relating to the eligibility for benefits of the employees of American Crystal Sugar who were locked out and denied unemployment insurance benefits.

A common question relating to benefits for locked out workers is; how do other states handle the situation? In order to answer this, research was done and various states were contacted. In reviewing various state laws and speaking with the Unemployment Insurance Directors within other states, it was clear that although our laws are similar, states such as Iowa and Minnesota that have allowed benefits in lock out situations have specific statutory allowances for locked out workers, sometimes in other areas of their law.

In addition to state contacts, information was gathered from the USDOL. According to the USDOL, 21 states allow Unemployment Insurance benefits to locked out workers, 20 states do not allow benefits and 9 states have provisions that could result in locked out workers being allowed.

An example of a condition for eligibility from one of the nine states conditionally allowing benefits to locked out workers would be the way in which Vermont handles lock out eligibility. In Vermont, benefits are allowed to locked out workers unless the lockout is in response to actual or imminent damage to the employer's property or a purposeful effort by employees to reduce productivity.

Another question asked relating to lock outs is; what is the financial impact of allowing benefit payments to locked out workers? The impact to workers is obvious in that they would receive benefits at a time when they are not receiving wages. The impact to the employer involved in the labor dispute is also fairly obvious in that they are charged for any benefits paid. The impact that is not so

obvious is the potential financial cost to the other employers of the state in the form of increased tax rates.

While benefits paid are ultimately charged back to the employer locking the workers out, the size and duration of a lock out can create a situation in which the employer does not have a reserve amount with Job Service that is sufficient to cover the costs of the benefits paid. What this means is that the employer may move to a negative balance status. Negative balance employers are employers who have paid less in taxes than has been paid out in benefits to their employees.

Having negative balance employers within our system has the potential of impacting statewide tax rates. This is because even the highest tax rate will often not pull the employer out of the negative status immediately. When this occurs, all employers within the state receive a higher tax rate to account for the drawdown of the unemployment insurance trust fund.

It is important to note that not all lock outs would result in an impact to the tax rates of the employers of the state. The financial impact will vary greatly and is based upon the number of workers impacted and the duration of the lockout.

There is a fiscal note associated with this bill. The fiscal note amounts to \$1,000 for IT system changes that would be required. Additionally, an explanation of potential per employee charges was provided within the fiscal note. This amounted to \$8,892 per employee under current conditions and averages.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer questions from the committee.