

ILLEGAL ALCOHOL IMPORTS

Northwest in hot water with wholesalers

Airline is cited for trucking in Minnesota beer

By JENNIFER DIXON
FREE PRESS STAFF WRITER

Northwest Airlines is one of the world's largest airlines, with annual revenues of \$11.3 billion and 38,000 employees around the globe, 8,600 based in Michigan.

But the airline discovered that it wasn't a match for the power of the Michigan Beer & Wine Wholesalers Association, a trade group of 75 family-owned distributors.

Northwest got into a feud with the wholesalers in 2002 when a Wayne County beer distributor caught the airline paying to have beer trucked from Minnesota to Metro Airport for departing flights. Northwest said it was cheaper than buying from Michigan distributors.

After the Michigan Liquor Control Commission was alerted, the agency cited Northwest, saying it was violating Michigan laws requiring all beer to be purchased from a state-licensed wholesaler.

Karen Wilson, chief executive at Central Distributors of Beer in Romulus, said her company notified the Liquor Control Commission after some of her salespeople noticed pallets of beer bearing a Minnesota distributor's name were delivered to Northwest at Metro Airport. Central Distribu-



MANDI WRIGHT/2004 Free Press photo

Northwest used to ship its beer, wine and spirits to Metro aboard wide-body jets. In the 1990s, it began trucking in beer from Minnesota, sparking a battle with Michigan distributors.

tors has the exclusive rights to distribute Budweiser and other Anheuser-Busch beers across much of western Wayne County, including Metro Airport.

A liquor commission investigator determined that the airline was illegally importing alcohol into Michigan and was breaking the law by purchasing from an unlicensed source.

The agency issued Northwest a violation warning notice on June 19, 2002, and sent the airline a reminder letter on Sept. 4 of that year. The letter said Northwest would be called before the com-

mission for a hearing if there were "further violations of this kind."

Northwest, the dominant carrier at Metro, argued that it wasn't breaking the law because the alcohol from out of state was meant for passengers in interstate commerce, not for consumption in Michigan. Therefore, state law did not apply, the airline said.

And, the airline pointed out, it was buying beer from in-state wholesalers to serve at its four WorldClubs at the airport.

Northwest would not disclose how much beer, wine and spirits it serves aboard flights out of De-

troit, saying that was proprietary information. It has about 540 daily departures from Metro.

For years, Northwest shipped its beer, wine and spirits to Metro aboard wide-body jets — and the airline says it was allowed to do so under the law.

But as it expanded its presence at the airport and its wide-body planes were routed to long-haul, international flights, Northwest began to truck in supplies in the mid-1990s.

After the Liquor Control Commission intervened, Northwest turned to Gov. John Engler and

the Legislature for help in late 2002.

Northwest argued that if it was allowed to fly in alcohol, it should be allowed to truck in the products. The wholesalers wanted something themselves: exclusive geographic territories in which to distribute wine, just as they have for brands of beer.

Neither side got what it wanted. And Engler left office in January 2003 and promptly joined Northwest's board of directors. By then, Northwest had succumbed to the wholesalers' pressure and had begun to buy beer in Michigan for Metro flights. It buys from several wholesalers, including Central.

Northwest continues, however, to use its own wine and spirits distributors as it waits to see how the U.S. Supreme Court rules in a suit challenging Michigan's rules on interstate wine shipments. A decision is expected this year.

Northwest thought it had a truce with the wholesalers.

But last year, the association made it clear that the issue was not resolved in a questionnaire that it sent to candidates for the House to gauge their support for various industry issues. The wholesalers association told the candidates that Northwest Airlines was attempting to get an exception from the law.

"Their primary reason is that they can 'save money,'" the wholesalers said on Page 2 of the 17-page questionnaire.

Since 2001, the airline has lost \$2.9 billion.

The wholesalers are pushing the Liquor Control Commission to require Northwest to use local distributors for wine, as well as beer.

Representatives of other airlines said they fly in enough alcohol for their outbound flights.

American Airlines, for example, said flights that leave Miami, Dallas and Chicago carry "what they need to go to Detroit and come back." Southwest Airlines said beer, wine and spirits come in on its planes and leave on its planes.

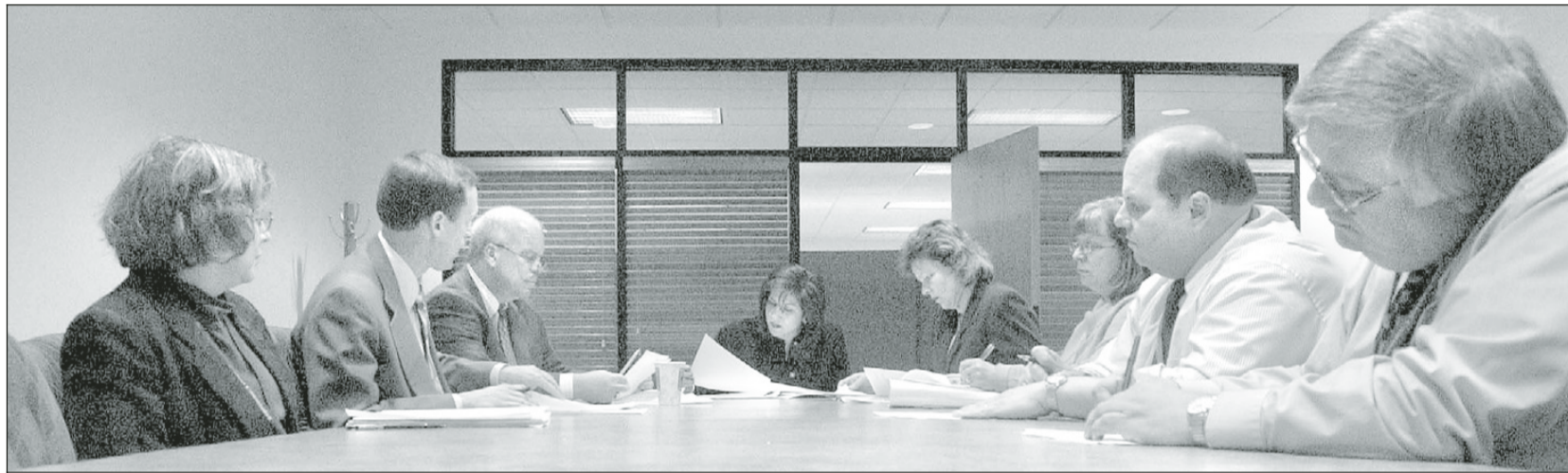
Northwest has argued that if the Michigan Liquor Control Commission decides to regulate all of its alcohol purchases for in-flight consumption, it would hurt the airline, costing the airline up to \$3 million more a year.

"If Northwest is required to purchase liquor in Michigan, it is placed at a tremendous competitive disadvantage in comparison with other airlines who apparently do not have to purchase liquor in Michigan for provisioning Michigan outbound flights," Northwest told the liquor commission in a letter in 2003.

Wilson, the Central Distributors executive, said Northwest should be required to follow the rules and pay the taxes that Michigan deserves from beer and wine consumption.

If Northwest wins, she said, "it would be a bad precedent for the industry."

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HUGH GRANNUM/Detroit Free Press

Members of the Michigan Liquor Control Commission meet Jan. 18 in the State Office Building in Lansing. Legal experts say some of the group's private sessions with the Michigan Beer & Wine Wholesalers Association violate the state open meetings law.

WHOLESALE | Secret sessions illegal, experts say

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Samona defended the gatherings and said she believed they were legal. She said the regulators merely were hearing opinions from the special interest group or getting together socially for lunch.

"People come in, we listen to them," she said.

Some of the issues discussed at the meetings were important to others in the business of manufacturing or selling beer and wine in Michigan. Their interests were not represented.

Dawn Hertz, general counsel to the Michigan Press Association, an association of Michigan newspapers, said the liquor commission is breaking the law when it meets in private to discuss policy or enforcement issues.

"Generally speaking, when there is a quorum present of a public body and they are deliberating toward a decision, those meetings must comply with the Michigan Open Meetings Act," said Hertz. "This means they must be noticed; they must be open, and there must be minutes. All three aspects are critical for the citizens of Michigan to receive due process."

Samona said the meetings were legal because they were not formal sessions, and because no votes were taken and no decisions were made.

In justifying the meetings, the commission cited an exemption in the Open Meetings Act that permits a meeting that "is a social or chance gathering or conference."

The commission also cited a 1978 attorney general's opinion that said when a public body meets with "a neighborhood organization or other groups for the sole purpose of observing and gathering information, the gathering is exempt from open meeting requirements."

Commission records, however, show that the meetings were planned — and not chance gatherings. On Oct. 1, Hybarger, the vice president of the Beer & Wine Wholesalers Association and a former commission employee, sent an e-mail to Samona, outlining topics for their private meeting the fol-

lowing week. The wholesalers, he said, wanted to know the following: ■ What could the commission do to crack down on retailers who write bad checks for beer and wine, and then either sell or go out of business.

■ Was the commission considering any sting operations to document the extent of illegal shipments of alcohol into Michigan? At the time, the U.S. Supreme Court was preparing to hear oral arguments in a lawsuit challenging a Michigan law prohibiting residents from ordering wine directly from out-of-state wineries. The wholesalers were fighting to keep the law intact.

■ Was the commission aware of any violations involving illuminated beer signs that bar and restaurant owners want to install in their establishments?

Attending five days later were Samona and Commissioners Judith Allen and Patrick Gagliardi, and staff members. Others there were Pat Laughlin, the wholesalers' chief lobbyist; Hybarger; Michael Lashbrook, president of the wholesalers association, and several distributors.

The next day, Hybarger e-mailed Samona.

"We look forward to working with the commission on new issues that were raised at the meeting and in reaching solutions that are winners for both sides," Hybarger said.

In response, Samona replied to Hybarger: "Thank you, I, too, thought it was a good meeting."

Another note arrived from Hybarger after the wholesalers sat down with four of the five commissioners over lunch on Nov. 18, 2003.

In the letter, he thanked Samona for discussing "a number of issues that are of primary concern to the beer and wine wholesalers in this state," among them the wine shipment case.

"We greatly appreciated the time that you spent listening to our concerns," Hybarger said. "We believe that such meetings are useful in sharing what's on each of our agendas and strengthening the controlled system under which we

operate."

The other commissioners at that meeting were Gagliardi, Allen and Jim Storey.

Two other meetings took place last fall — on Sept. 29 and Oct. 27. On each occasion, the commissioners met with Lansing lobbyists Pat Harrington, representing Northwest Airlines, and Laughlin, representing the wholesalers. The wholesalers and Northwest have been at odds since 2002, when a distributor discovered that the airline was trucking beer from Minnesota to Michigan for its flights out of Metro Airport.

The commission acknowledged that no minutes were kept for three of the private meetings with the beer and wine wholesalers. Notes were taken at the fourth meeting.

Herschel Fink, the Free Press' lawyer, said the meetings clearly were illegal.

"They're learning about at least one group's view of what their activities as a commission should accomplish," Fink said. "They're informing themselves so they can make a decision on some issue of public policy. That's why they're meeting with these people. They can't do that."

Steve Wahlstrom, owner of Wahlstrom's Restaurant and Lounge in Marquette, said the meetings aren't right.

"Both sides should be heard," Wahlstrom said. "But I think we run into this on just about every major issue there is, where we're kind of on the outside. What do you do about that? How do you get yourself into the room?"

Laughlin said the commission has an obligation to meet with the people it regulates.

"None of these meetings have been clandestine," Laughlin said. "Nothing nefarious goes on."

Harrington, the lobbyist representing Northwest Airlines, said at the two meetings he attended, that he and Laughlin "went back and forth and the chair and members attempted to see if there was a creative solution to the problem under the existing legal scheme. We had very candid discussions," Harring-

ton is president of Muchmore Harrington Smalley & Associates Inc., a lobbying firm.

Northwest says it is cheaper to buy its alcohol out of state than from Michigan wholesalers. The Free Press asked the commission for records on all private meetings with the main groups involved in the sale or distribution of alcohol.

Samona cited only one meeting with a group other than the wholesalers association.

In November 2003, Lansing lobbyist Jon Smalley, whose clients include the Michigan Restaurant Association, had a private lunch with three commissioners.

Smalley said, "It was an opportunity to present myself and the clients I represent who might have issues before the commission." Commission aide Karen Hogan said in a written explanation that "there were no notes taken at this luncheon and there were no notices or minutes prepared as this social gathering was not held for the purpose of deliberation or decision making."

As a result of their lobbying efforts, the wholesalers are the envy of their industry.

Howard Wolpin stressed that point in a speech last year as he was finishing his term as chairman. He reminded his colleagues of the blessings of being a Michigan beer and wine distributor.

"I am sure everybody in this room has experienced what I and other leaders of this group do when we travel to out-of-state meetings and conventions with wholesalers from around the country," he said. "We are constantly being congratulated, or harassed in some cases, about how good we have it here and how people wish they could be wholesalers in Michigan."

"So when you're thinking about how it would be nice for better weather on weekends or a slow-down in the carb craze, try to focus back on what we have accomplished, and what is, quite frankly, the blessings we have as distributors in the Great Lakes state."

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A SCUFFLE OVER NEON

Bars, restaurants fight to hang signs

Distributors don't want the responsibility

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The state's restaurant and tavern owners had what seemed like a simple request for the Michigan Liquor Control Commission: permission to plug in neon signs advertising the beer for sale behind their bars.

Instead, they started a fight with the Michigan Beer & Wine Wholesalers Association, a squabble that has taken up countless hours of state regulators' time.

The commission thought it had found a compromise in 2002 — when it proposed new rules that would have allowed bar owners to buy and install the lighted signs.

The proposal prohibited distributors from giving, installing or maintaining the signs for restaurants and bars.

The wholesalers were still adamantly opposed. Stephen Anderson, president of Anderson Distributing Co. in Jackson, warned the Liquor Control Commission chairman in a May 23, 2002, letter that it would be a "colossal mistake to allow lighted neon signs in the state of Michigan."

Anderson said the wholesalers would wind up footing the bill for the signs. Tom Eastman, general manager of Mervenne Beverage in Holland, suggested in a letter to the agency that the widespread use of signs could lead to "intemperate promotions and excessive consumption and unfavorable public backlash."

Bar and restaurant owners by the dozens wrote the commission in favor of the proposed rules, noting that they already were allowed to have illuminated signs for nonalcoholic beverages

and that large sports arenas were permitted to hang illuminated signs for alcoholic beverages. The proposal, however, never was adopted.

At the request of the Michigan Restaurant Association and bar owners in her district, state Sen. Bev Hammerstrom, R-Temperance, sought Attorney General Mike Cox's opinion in February 2003.

Hammerstrom said she had heard the claims that lighted signs could lead to more drinking, even underage drinking, and "I wasn't buying into the arguments."

On Jan. 8, 2004, Cox said that the ban on the signs, dating to the repeal of Prohibition, was a free speech violation.

But to Hammerstrom's dismay, Cox didn't get the last word. A year later, the commission and the wholesalers are still wrangling over the signs. Under state law, brewers and wholesalers cannot give a bar or restaurant anything of value.

The wholesalers are urging the commission to propose a rule that explicitly prohibits breweries, wineries and beer and wine importers and their wholesalers from providing, delivering, installing, replacing or repairing the signs.

Without that, warns Mike Lashbrook, the wholesalers association president, there could be "commercial bribery," with bars or restaurants demanding expensive signs in return for selling a particular product.

Charles Mathews, owner of the Sawdust Saloon in Inkster, said illuminated signs add to the decor.

"It certainly does help the atmosphere," he said. The wholesalers "don't think so, but they're not here."



MARY SCHROEDER/Detroit Free Press

At the Last Lap Café in Westland, owner Ron Kudak, 42, has purchased 32 neon beer signs. State beer distributors say they don't want the responsibility of providing and servicing the signs.

In Michigan, whiskey made up 24.8 percent of liquor sales in fiscal year 2002-03, and vodka accounted for 26.2 percent.

Source: Michigan Liquor Control Commission