MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 4, 1977

The eleventh meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROW CALL: All members present.

CONSIDERATION OF SB 80: An act to generally revise and clarify the laws relating to collective bargaining and Public Employment Relations.

Senator Roberts, Chief Sponsor of this bill, introduced SB 80 to the Committee. Senate Bill 80 is the result of a two-year interim study by the Select Committee on State Employee Pay, which studied the interaction of the state classification and pay plan and collective bargaining. The task of the Select Committee was both complex and controversial. The Committee believes that SB 80 addresses the more serious problems in the interaction of collective bargaining and the classification and pay plan. It is a good bill for both the employee and employer. Senator Roberts then went through each section of the bill and explained them to the committee. (A copy of his testimony is attached.

Tom Winsor, representing the Montana Chamber of Commerce, appeared in support of this bill. There are two sections that they favor very strongly. Section 5, any negotiated agreement that exceeds state law must receive legislation approval, he feels is a necessity. This is the only way we believe that there can be any tax payer control. Section 10, an agreement to submit a controversy to arbitration, is removed from this bill. Arbitration clauses are standard in most labor contracts. There has to be some control and they exist to provide a peaceful resolution to disputes arising during the life of a contract over the terms of a contract.

Duane Johnson, representing the Department of Administration, appeared in support of SB 80. What we have today is one set of laws and regulations mandated to the pay plan which requires by law the idea of equity for certain positions. The classification and pay plan cannot stand the strain of negotiating classifications in a situation of collective bargaining. This legislation is going to take away equities. Bargaining should be done along occupational lines and department lines. This will work.

There being no further proponents to SB 80, Senator Lee asked if there were any opponents.

Jim Murray, Executive Secretary of AFL-CIO, appeared in opposition to this Bill.

George Hammond, Montana State Council No. 9, AFSCME, AFL-CIO, appeared in opposition to this bill. I have become aware of the problems involved in negotiating for Montana's public employees. Negotiations were very seldom easy, but in all instances they were accomplished. It took ten years of work to get a law for collective bargaining passed, and now just three years later there is an attempt to rework the law. It needs time to work in order to tell how effective it is. If the bill is not killed we ask that it be put into a sub-committee where amendments can be worked on. (See attached testimony.)

Jim McGarvey, representing Montana Federation of Teachers appeared in opposition to this bill. Section 2, page 13, the department of administration shall make investigation and hold hearings for the purpose of banding together the approporiate coalitions, he feels threads on labor policies. They do not provide for these sort of negotiations.

Robert Vytoski, representing Operating Engineers Local #40, appeared concerning SB 80. He stated that if this bill was placed in a sub-committee and amendments added, they would support this bill.

Lonny Mayer, representing the Retail Clerks Association, appeared in opposition to this bill. It is very important to bargain on negotiations at the table. Then you don't end up appealing to the board. I recommend that you put this bill in sub-committee and work on amendments.

Robert Bethke, representing Warm Springs Independant Union, appeared in opposition to SB 80. It mandates meddling in state government and union.

Joe Rossman, representing the Joint Council of Teamsters, appeared in opposition to this bill. The Collective Bargaining bill is fairly new and hasn't had enough time to really work. It will take a long time to set up coalition bargaining and we do not have the time.

Pat McKittrick, representing Joint Council of Teamsters #23, appeared in opposition to this bill. There is no panacea to people getting around a bargaining table to discuss wages that reflect their lives. The Collective Bargaining Bill is only three years old and a lot of these things do take time to work out before they get resolved. Coalition bargaining can work, I believe, but what about people who don't want to belong to a union. I feel a sub-committee should look at this bill and a lot of problems could be worked out.

Thomas Schneider, representing Montana Public Employees Association appeared appeared in opposition to this bill. I do not feel that this bill adequately addresses the problems and that we may be building more problems into statutory language than we currently have.

This language would take the negotiations out of the hands of the employees and place it in the hands of the labor organizations. This would be totally unfair to the employees and create problems not yet imagined. (See attached testimony)

Chad Smith, representing Montana School Boards Associations, appeared in opposition to this bill. If amendments were made, he would support this bill. The school board objects to negotiations not being open to the public. These sessions should be open to the public. The public sector is involved in every type of collective bargaining and it si necessary that the actual discussion be before the public. The public should know the position of both sides. Coalition bargaining should expand beyond state employees. School employees are in the same position , there conditions are the same and there is a lot of duplication. Every effort should be made to bring these together.

Emily Loring, representing herself, presented testimony to the committee. (See attached testimony)

There were also a large number of people representing different unions who were opposed to this bill. There names are recorded on the visitors sheet.

Senator Roberts stated that this bill is a very compex and controversial area. Senate Bill 80 represents the best that the Select Committee could come up with. This is not an anti-union bill and it is not an anti-employee bill. It is to preserve the hard fought rights of the people. I will agree that this bill be put into sub-committee and have amendments added.

Discussion was then held by the committee. Senator Lee appointed a sub-committee to work on amendments to this bill. The committee consists of Senator Richard Smith, Chairman, Senator Mehrens, Senator Himsl and Senator Goodover.

ADJOURN:

There being no further business, the meeting was adjourned at 11:20 a.m.

Robert E. Lee, Chairman

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 2/4

NAME	PRESENT	ABSENT	EXCUSED
Senator Robert Lee, Chairman	✓		
Senator Bill Lowe, Vice Chairman	✓		
Senator Chet Blaylock	✓		
Senator Pat Goodover	✓		
Senator Matt Himsl	✓		
Senator Sandy Mehrens	✓		
Senator Harold Nelson	✓		
Senator Richard Smith	✓		

SENATE LABOR COMMITTEE

BILL SB 80 VISITORS' REGISTER DATE 2/4

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Don Judge	AFSCME, AFL-CIO	SB 80		X
George Hammond	AFSCME, AFL-CIO	SB 80		✓
James R. Nunn	IAM Machinists Local 1046 AFL-CIO	SB 80		X
Jerry Ostloff	IAM Local 231 & 1434 Machinist	SB 80		X
[illegible] Murray	Montana State AFL-CIO	SB 80		X
Pat Berry	Mt. Conference-SDA	SB80	—	—
Randall Rapkoch	Randall Rapkoch	SB80		
Ordell Brown	MPEA	SB80		X
David W. Stutelex	State Personnel Division	SB80	X	
[illegible] Mic	"	SB80	X	
Robert Brekke	WSSH-Ind Union	SB80		X
Larry Adams	W.S.S.H. Ind. Union	SB80		X
Mike Sheese	W.S.S.H. L.P.N's Union	SB80		X
[illegible] Kauffman	WSSH X.R. Group	SB80		✓
Linda Engle	WSSH Reg Nurses Group	SB 80		X
Oscar R. Engle	W.S.S.H. Ind. Union	SB80		✓
Myron Hoyt	AFSCME, AFL-CIO (Local #971)	SB80		X
Marion Mee	Butte Teachers' Union ALCA	SB80		X
[illegible] Mabee	Anaconda Teachers	SB 80		X
Jim McGarvey	Mont Fed of Teachers AFL-CIO	SB80		X
Joe Mayer	Retail Clerks	SB 80		X
Lenny Mayer	Retail Clerks	SB80		X
Bill O'Leary	Carpenters Union	SB80		X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE LABOR COMMITTEE

BILL SB 80 VISITORS' REGISTER DATE 2/4

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Gene Mary Gross	1620 Galen	SB-80		–
[illegible] Hansen	Dalen Local 1620	SB-80		–
[illegible] Mosich	AFSME #971 Boulder	SB-80		✓
Michael Mensen	MT. St. Emp. AFSME #971	SB-80		–
[illegible] Payne III	AFSME 971 Boulder	SB80		–
Mike Laughlin	Warm Springs MT	SB 80		
[illegible]	Warm Springs Mt	SB80		
[illegible]	Warm Springs Mt	SB 80		
Wayne Buchanan	Montana School Boards	SB 80		
[illegible] Fagerness	Galen State Hosp	SB-80		✓
Sharon Henderson	BR S&H Boulder	SB 80		–
Cecelia Richards	BR S&H Boulder	SB80		✓
Gene Schulz	1620 Galen	SB 80		✓
[illegible]		SB80		
Steve Wilson	Montana Chamber	SB80	✓	
Chad Smith	MSBA	SB80	amend	
Jim McGarvey	Mont Fed of Teachers AFT/CIO	"		–

DATE _____

COMMITTEE ON LABOR BILL NO. SB 80

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Oppose
Mike Loring		w/ amendment	
Peter Michaelson	Plumbers + Fitters 41		X
Daniel Kemmis	Visitor		
[illegible]	"		
[illegible]	MEA		X
Wm P Estenson	Personnel Division	X	
Carol A Gardner	Local #1064		X
Elsie Ehli	Local 1064		X
Kathleen West	Local 1064		X
[illegible]	Local 1064		X
[illegible]	Local 1064		X
[illegible]	Local 1064		X
Lea Bennett	Local 1064		X
Arlene Haney	Local 1064		X
Gloria Buck	Local 1064		X
Patricia Dyer	Local 1064		X
[illegible]	Local 1064		X
[illegible]	Local 1064		X
[illegible]	Local 1064		X
[illegible]	Local 1064		X
Linda K. Woods	Local 1064		X
Ruth Stunnell	Local 1064		X
[illegible]	" IUOE #927		X
Edward Story	" " "		X
Edgar E. Cozad	Machinists Council		X
Kenneth W. Walter	MPEA - MVS		X

DATE ______________________

COMMITTEE ON ______________________ BILL NO. ________

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Jim [illegible]	I.U.O.E. 400		✓
[illegible]	IUOE 400		✓
Harold A. Braham	IBEW #629		✓
Tom [illegible]	IUOE #927		✓

TESTIMONY OF SENATOR JOE ROBERTS, SENATE BILL NO. 80

February 4, 1977

Mr. Chairman, members of the Committee:

Senate Bill 80 is the result of a two-year interim study by the Select Committee on State Employee Pay, of which I was the chairman. The Select Committee on State Employee Pay was established by the Committee on Priorities of the 1975 Legislature to study the interaction of the state classification and pay plan and collective bargaining.

During the course of its two-year study, the Select Committee solicited assistance and testimony from over 85 labor and management officials. Several public hearings were held. In addition, the members of the Select Committee devoured a great deal of written material on the classification and pay plan and on public sector collective bargaining in the United States and in Montana.

From the beginning the task of the Select Committee was both complex and controversial. The result of its work--Senate Bill 80--was unanimously adopted by committee members as a committee bill. The Select Committee believes that Senate Bill 80 addresses the more complex and serious problems in the interaction of collective bargaining and the classification and pay plan. The Select Committee also believes that Senate Bill 80 is a good bill for both the employer and employees--that Senate Bill 80 is a great step forward in making the classification and pay plan and collective bargaining both compatible and workable.

In its essential features, Senate Bill 80 applies only to state government. I'll now go through the bill with you, section by section. I'll address the problems each section seeks to correct as well as the effect of the solutions proposed.

The first section (p. 1, lines 24-25, p.2, lines 1-2) removes all university system employees from the statewide classification and pay plan.

This section addresses the question of whether it is possible to maintain an equitable classification and pay plan within the framework of collective bargaining when jurisdiction for the pay plan is centralized while jurisdiction for collective bargaining is divided.

Under current statutes, the University System conducts its collective bargaining separate and apart from the rest of the Executive Branch. Concurrently, employees of the University System (except faculty) are under the provisions of the classification and pay plan. Thus, there is a serious diffusion of authority--the Executive Branch has responsibility to administer the classification and pay plan for all state employees and, yet, has responsibility for negotiations involving only those employees in the Executive Branch.

This diffusion of authority has resulted in different rates of pay being negotiated for the same job classifications in the University System and the Executive Branch. For example, the negotiated grade and step for Plumbers in the University System equals $8.02 per hour, while in the Executive Branch it is $7.22 per hour. In short, classification and pay plan equity between the two authorities has proven impossible to maintain.

To resolve this problem, the Committee considered two options: (1) consolidate all responsibility for bargaining under one management authority; or (2) remove the University System from the jurisdiction of the classification and pay plan. The Committee chose the latter option. The Committee questioned

whether the Legislature (given the constitutional provision affecting the University System) could compel the University System to give its bargaining authority to the Executive Branch. The Committee also thought that the University System, under a directive from the Board of Regents, could come under the present classification and pay plan voluntarily if it so desired. Referring again to the Constitution, it appeared that the University System was under the present classification and pay plan voluntarily even though the statute stated otherwise. The Committee also thought that its recommendation would raise anew the issue of the University System as the fourth branch of government.

Removing the University System from the classification and pay plan clearly established two authorities for the operation of classification and pay and collective bargaining. Although equity between the two authorities is not reestablished, equity within each authority's sphere is more easily maintained.

As a footnote, I might mention that Representative Carroll South has introduced a bill--House Bill 618--that would place jurisdiction for collective bargaining for nonfaculty university employees with the governor. Under Mr. South's bill, the university would still retain jurisdiction for faculty bargaining. University faculty are now excempt from the classification and pay plan. Mr. South's bill, then, is another approach to resolving the problem that section 1 in Senate Bill 80 addresses.

The primary change in Section 2 (p. 2, line 22) is to remove classifications from the list of negotiable items in collective bargaining. Job classifications in the state classification and pay plan became negotiable under a bill enacted by the 1975 Legislature.

A job classification and wage plan is supposed to provide an orderly system of arranging jobs according to approximately similar duties and responsibilities so that "similar pay for similar work" can be achieved and maintained. Jobs are classified by standardized methodologies to ensure equity throughout the entire work force.

The problem addressed in Section 2 of Senate Bill 80 is whether the integrity of a classification and pay plan can be maintained if the scope of collective bargaining includes the classification of positions.

Under current Montana law, job classifications are negotiable (59-907). At the same time, the state is required to classify positions so that similar pay is provided for similar work (59-906). This is a conflict: how can individual job classifications be negotiated <u>in a situation of multi-unit bargaining</u> and still maintain similar pay for similar work?

The Select Committee's recommendation eliminates classification from the scope of bargaining and thus permits the integrity of the classification and pay plan to be maintained.

I should note that the Select Committee discussed at some length whether classification could be retained as a negotiable item if coalition bargaining along occupational lines were mandated. Some members of the Select Committee thought that classifications could be negotiated <u>if</u> coalition bargaining were mandated. However, if coalition bargaining--which we will get to in a minute--is not mandated, it is absolutely essential that classifications not be negotiable. The classification and pay plan cannot stand the strain of negotiating classifications in a situation of multi-bargaining unit collective bargaining. What occurs

in such a situation--a situation that exists today--is "the ripple effect." The "ripple effect" is the impact of a negotiated wage increase or other economic benefit upon the expectations of other employees who are not covered by that collective bargaining agreement but who work under the same employer. The "ripple effect" can reverberate throughout an entire classification and pay plan, affecting both organized and unorganized employees.

A hypothetical example of the "ripple effect" might better illustrate the ramifications involved. Assume that the Bargaining Unit A in the Department of Highways contains a number of "Secretaries I" classified at pay grade 07. As the result of a negotiated agreement, these "Secretaries I" are reassigned to pay grade 09. The title "Secretaries I" occurs in almost every agency in state government. On the basis of the "similar pay for similar work" mandate, all "Secretaries I" would have to receive a pay hike. (Presumably, nonorganized "Secretaries I" would appeal their classification to the Board of Personnel Appeals.) Furthermore, an adjustment to pay grade 09 for "Secretaries I" would place that title one pay grade above "Secretaries II" who are at grade level 08. To maintain the appropriate pay grade differential between "Secretaries I" and "Secretaries II," the latter would have to be reassigned to pay grade 10. Additional titles also exist in the secretary series that would be affected. The salaries of supervisors, moreover, would have to be reevaluated to minimize compaction--that is, a situation where several job titles, which are quite different in responsibilities, are all close together on the pay plan matrix. In short, a negotiated change in the pay grade of "Secretaries I" could result in changes throughout the entire classification and pay plan.

As the illustration indicates, there are several conflicting elements in the collective bargaining and pay plan process. The primary conflict is between: (1) the obligation of the employer to bargain with each bargaining unit on wages, hours, fringe benefits, other conditions of employment, and job classifications, and (2) the obligation of the employer to provide equal benefits to all employees regardless of whether they are organized or unorganized.

The Select Committee's recommendation to eliminate classifications from the scope of bargaining addresses this conflict.

Section 3 (p. 3, line 3-18) is a new R.C.M. section that, if enacted, would be part of the classification and pay plan act (Title 59, chapter 9). Section 3 limits the number of times and the number of avenues a state employee has to appeal his job classification.

Section 3 addresses the question of whether a state employee should have a multiple number of opportunities to appeal his job classification. In other words, if a classification appeal is determined to be unjustifiable, should the employee be able to file yet another appeal on the same issue? At what point in the appeals process is a "final" determination "final"?

Under current law, an organized employee may file a classification appeal with the Board of Personnel Appeals while his bargaining unit is simultaneously engaged in negotiations that may affect his classification. Even after a negotiation has been completed, the employee may file a classification appeal. This raises a serious question: Which has precedence--a negotiated settlement or a Board ruling?

The broader questions raised are: Should an employee represented by a bargaining unit be allowed to appeal his classification at the same time that his unit representative is engaged in negotiations? Should the employee be allowed to appeal after a contract is negotiated and ratified? If the Board rules to raise or lower the appellant's classification, should that ruling supersede a negotiated contract?

The Select Committee's recommendation is to allow employees who are in bargaining units the right to only file an "allocation appeal." (An "allocation appeal" is one in which an employee believes that his duties warrant a different level within the series than the one assigned, e.g., an Accountant I who believes that the work he is doing is more correctly defined in the job specifications as an Accountant II and, so stating, files an appeal with the Board. The employee filing an "allocation appeal" is not questioning the job specifications that classify an Accountant I; rather, he believes that Accountant II more properly defines his particular work, and therefore appeals to be "allocated" to that position.)

The Select Committee's recommendation assumes that: (1) coalition bargaining will occur along occupational lines, and that (2) the rate of pay for a particular occupational series will be negotiated. The negotiations would determine the pay rate for a particular job series within an occupation, e.g., the Accountant Series. Because there may be questions of individual allocations being incorrect after negotiating the pay rate for all classes within an occupational unit, employees should have the right to file "allocation appeals." ("Allocation appeals" may be filed by one employee or by a group of employees.) In

the same vein, only allowing "allocation appeals" eliminates the conflict between a negotiated contract and a Board order because the grade level of the class (i.e., the rate of pay) would be resolved at the bargaining table and the Board would review the allocation of positions within the classes as the result of the formal appeal.

Section 3 also addresses state employees who are in the classified service and who are not organized for purposes of collective bargaining.

Under the current law, an unorganized employee has the right to file both an appeal of his assigned classification (an "allocation appeal") and also be a member of a "class action appeal," which may result in the adjustment of grade levels for the entire series. Both appeals may be under consideration by the Board of Personnel Appeals simultaneously.

The question raised is whether an employee should have two opportunities to appeal/change his classification. From a personnel administration perspective, to allow two appeal avenues is redundant and inefficient.

The Select Committee's recommendation provides that an unorganized employee may file either an allocation or a class action appeal but not both. However, an employee who has filed an allocation appeal may file or be a member of a class action appeal if: (1) the employee can establish that his position was initially misclassified in the classification system, or (2) that since then, the employee can establish that a significant change has occurred in his duties and responsibilities.

Section 4 of Senate Bill 80 amends the Definition section of the public employee collective bargaining act. Section 4

exempts persons with access to confidential labor relations information (p. 5, lines 2-3) from the definition of "public employee," and adds to the section a definition of "appropriate coalition" (p. 6, lines 22-25).

Personnel who serve in a confidential capacity to management's labor relations team are not now exempt from inclusion in a bargaining unit. (A bargaining unit is a group of employees who are banded together for the purpose of collective bargaining.) These confidential-type employees include secretaries in the Personnel Division, secretaries to key agency managers, the secretary or clerk to a board of school trustees, etc. Because these employees have access to management's bargaining position, strategy, and tactics, they should be excluded from participation as a union member in collective bargaining. In addition, these employees usually prefer to be excluded from bargaining units; they otherwise often develop very uncomfortable loyalty conflicts.

The reason for the definition of "appropriate coalition" should be clear when we talk about the Select Committee's recommendation on coalition bargaining. In effect, "appropriate coalition" is a group of bargaining units that are banded together for the purpose of negotiating economic items.

The fifth section of the bill clarifies legislative authority over negotiated settlements (p. 9, lines 10-13). Current law does not specifically address the question of management's authority to negotiate changes in statutorily established provisions, such as fringe benefits, without legislative approval. The Committee's recommendation would clearly define this authority--legislative action would be necessary to implement a negotiated settlement that required appropriations or that included a fringe

benefit provision that exceeded the benefit allowed by law.

(Note: In the printing of the bill, the words "of this act" were inadvertently left out on page 8, line 10, following "59-1603." A clerical amendment should be suggested as follows:

1. Amend page 8, section 5, line 10.
Following: "59-1603(1)"
Insert: "~~of this act~~"

Sections 6 and 7 are companion sections. The interlined language in section 6 (p. 11, lines 5-14) is transposed into a new section, section 7. This is merely a clerical amendment; the drafter of this bill determined that the criteria for determining bargaining units--that is, the language in section 6, subsection (3)--more properly belongs in a section by itself.

However, in the transposing of this language the drafter inadvertently left out some language. Therefore, this Committee should consider the following clerical amendments:

1. Amend page 12, section 7, line 13.
Following: "wages,"
Insert: "hours"

2. Amend page 12, section 7, line 17.
Following: "functions of"
Insert: "and interchange among"

Section 8 is really the heart of Senate Bill 80. This section mandates coalition bargaining along occupational lines for economic items. It applies only to state government.

This section addresses the most serious problem in making the classification and pay plan and collective bargaining work together successfully. That problem is: how to insure equity among all state employees while at the same time bargaining separately with 70 different bargaining units.

There are 53 bargaining units in state government and another 17 units in the University system. Under current law, the employer

(the state) bargains separately with each of the 53 units. Many of these units represent the same job classification; in fact, there are several situations in which the same job classification (e.g., teachers) in the same agency (e.g., Department of Institutions) is split into two or more separate bargaining units represented by two or more different unions (e.g., MEA, AFT, MPEA, AFSCME).

At the same time that the employer is bargaining with 53 separate units (represented by 18 different labor organizations), the employer is responsible for maintaining equity throughout a single classification and wage plan. The problem is the near impossibility of conducting several separate negotiations for the same job classification and still maintaining classification and wage equity.

Coalition bargaining along occupational lines for economic items would resolve this dilemma. For example, assume that there are 3 bargaining units, each of which contains several different classes of employees, and each of which is represented by a different union. Assume further that each unit contains, among others, a class of "technical" employees. For purposes of bargaining on economic items for these technic, the representatives of the 3 bargaining units would be banded together as a coalition--they would negotiate as "one" with the employer. In this manner, equity would be maintained for all "technical" employees.

Without coalition bargaining or, as an alternative, the creation of a few, large occupationally-based units, the classification and pay plan cannot endure. Without coalition bargaining, the legislature will be faced in the near future with three alternatives: (1) mandate a few, large occupationally-based

units; (2) eliminate the classification and pay plan; or (3) eliminate collective bargaining.

Under the present situation, collective bargaining and the classification and pay plan are not compatible.

Section 9 of this bill (p. 14, lines 2-11) concerns collective bargaining and open meetings.

During the course of the Select Committee's study, the question arose as to whether bargaining sessions should be closed to the public. The present law is not clear on this question.

Traditionally, negotiating sessions have been closed to the public; closed-door sessions usually allow more give and take by unions and employers than open meetings. Open-meeting sessions tend to become "propagandistic" rather than "good-faith negotiation" sessions.

The Select Committee decided to clarify the issue by providing for closed-door bargaining sessions. Concurrently, the Committee decided that the public has a right to know the initial demands and counter-proposals of the parties to the negotiations as well as the final results of the negotiations.

Section 9 was one of the few Select Committee recommendations that both management and labor unanimously endorsed.

The last section, Section 10, is a technical, housekeeping type amendment. Section 10 amends section 17-807.

Section 17-807, R.C.M. 1947, enacted in 1895, states that an agreement in a contract to submit a controversy to arbitration is not enforceable.

However, Section 59-1610, enacted in 1973, states that the parties to a negotiation may include in a contract a

provision for the arbitration of grievances and disputed interpretations of agreements.

Arbitration clauses are standard in most labor contracts; they exist to provide a peaceful resolution to disputes arising during the life of a contract over the terms of a contract.

To clarify any question about the legality of arbitration clauses, the Committee recommends that 17-807 be amended to eliminate the language regarding the unenforceability of an arbitration clause.

As with section 9, both labor and management agreed to the recommendation in section 10.

That completes my testimony, Mr. Chairman. I'll leave a copy of the technical amendments I've suggested with the secretary. Thank you.

February 4, 1977

TESTIMONY ON SENATE BILL 80

Mr. Chairman and members of the committee:

I am George Hammond, Executive Director of Montana State Council No. 9, of the American Federation of State, County and Municipal Employees, AFL-CIO.

I come before you today as a staunch opponent of Senate Bill 80. I have been involved in the Montana Public Employee labor movement for over 35 years and have seen numerous attempts to subvert public employee's participation in the traditional collective bargaining process. However, in terms of being detrimental to public employee labor organizations, this ranks high on the list.

As a prime author of the Montana Collective Bargaining Act for public employees, I have become acutely aware of the plights and problems involved in representing and negotiating for Montana's public employees. I spent 31 years as an employee of the Montana Highway Department, many of these years as a union member, and 11 years as Executive Director of Montana State Council 9, AFSCME, AFL-CIO. During these years I have participated in negotiations with four departments of State Government, various cities, counties, school districts and units of the Montana University System.

In all these years, I can truthfully say that negotiations were very seldom easy, but in all instances they were accomplished. Problems were continuously cropping up, but were also being solved. Perhaps one of the most acute of these problems has been operating without a collective bargaining law for public employees. It took 10 long years of work and effort to get such a law passed, and now just three short years later we are finding an attempt to rework the law in such a manner that it will no longer even look like the original.

In looking through this piece of legislation, we find the additional exclusion of "confidential" employees from protection under the law; we find a retraction of the right to negotiate classifications; we find exclusion of

employee organizations rights to represent employees on their classification appeals; we find what we believe is permissive rather than mandated and guaranteed election procedures under the law; we find that factors have been removed from the section of the law provided for determination of appropriate units; and perhaps most offensive to us is that we find a new section of law which completely nullifies "desire of the employees" by mandating that their "chosen representative" work together with other organizations in the process of collective bargaining in state government.

We have tried long, and we feel hard, to convince the interim committee that we recognize problem areas in bargaining for state employees, but that we also feel these problems can be work out under the present statutes. Ours, and all other labor organization's testimony seemed to have no effect with the committee.

In hearings before the Interim committee, there was not one labor organization which supported the concept of "mandated" coalition bargaining. I repeat, "not one labor organization supported that concept."

In spite of testimony of all labor organizations expressing their belief in the ability to work their problems out, the committee adopted a recommendation repugnant to all. Now we are faced with possible changes in statute that we believe, due to traditional rivalries, may possible result in less effective representation of employees affected.

Mr. Chairman, members of the committee, we would hope that this legislation might be given its proper burial in your committee, but if not, we respectfully request that you place this legislation in a sub-committee, where we can help you work on amendments which the majority of labor organizations involved, feel will help make this legislation more acceptable.

Although SB 80 was never really acceptable to organized labor, we did attempt, by amendment, to be in a position to appear as proponents. Perhaps,

if the bill is placed in a sub-committee and we can have amendments considered, many opponents will change to proponents.

I have these amendments with me today and will leave them for consideration of the committee.

Thank you for the opportunity to sepak before you today.

George Hammond

George Hammond, Executive Director
Montana Council No. 9, AFSCME, AFL-CIO
600 North Cooke St.
Helena, MT 59601

THE MONTANA UNIVERSITY SYSTEM
33 SOUTH LAST CHANCE GULCH
HELENA, MONTANA
59601

COMMISSIONER OF HIGHER EDUCATION

January 28, 1977

To: Rep. Carroll South

From: Lawrence K. Pettit, Commissioner of Higher Education

Subject: Proposal to consolidate authority for collective bargaining with nonacademic university employees in the Department of Administration

A law consolidating collective bargaining authority for all classified employees, including university system employees, would have significant administrative and legal implications which should be carefully considered.

One significant legal consideration is the Regents' statutory authority to sell revenue bonds. (Sections 75-8503 and 75-8504, R.C.M. 1947) A major portion of the state's bonded indebtedness (over $70 million) has been incurred by the Regents for the construction of dormitories and other university facilities. These are not general obligations of the state, and the Regents are responsible for managing such facilities to ensure that the requirements of the bonds are met. The Department of Administration may not be responsive to the bond requirements and would not have to bear the consequences of decisions made at the negotiating table. For instance, a strike at a university could shut down the revenue-producing facilities, causing a default in the bond indenture obligations. The goals of a negotiating team working directly under the Governor would obviously be different than one responsible to the Regents, who are concerned primarily with the educational impact of their decisions.

Labor strife and strikes are predictable if the negotiating authority is transferred to the Department of Administration with a directive to equalize salaries for classified employees throughout the state. Long-time employees at the university units will balk at wage cuts or wage freezes for several years in the name of statewide uniformity. The alternative is to give all other state employees catch-up increases, which will be tremendously costly to the state and, of course, objectionable to the voters.

If the motive for transferring bargaining authority is the belief that labor negotiators for the Department of Administration are "tougher,"

a closer analysis will reveal that the reasons for generally higher wage rates in the university system are not that simple. Various craft unions have negotiated with individual universities in the system for over 50 years. Through the 1960s, wages were generally negotiated in relation to the prevailing downtown rate for the particular craft, a practice which is still used by many high school districts and other institutions in the state. When the statute authorizing collective bargaining for public employees was enacted several years ago and the Board of Regents was designated as a "public employer," the decision was made to make uniform the wage rates for similarly classified employees throughout the system. This was also done to satisfy the "equal pay for equal work" requirement of the pay plan. It was impossible to negotiate wage cuts for employees on campuses who were receiving the highest rates, but we did succeed in negotiating minimal increases for these campuses while the other campuses caught up. The wage increases negotiated since bargaining authority was delegated to the Regents have been closely related to increases in the cost of living. The present wage levels are attributable to bases established over the last 50 years on the campuses.

Wage rates for craft employees in the university system are generally well below 85% of the prevailing downtown scales. If the gap between the downtown and university scales continues to increase, the universities will have difficulty attracting qualified personnel. The Department of Administration would not be responsive to market realities in all cities of the state. The University of Montana presently cannot fill certain vacancies in its printing shop because the step one rate for printers and pressmen is too low. The centralization of bargaining will increase these situations where an artificial rate is established and supervisors are unable to attract competent personnel.

While a bill to centralize collective bargaining authority is intended to remedy the disparity in wages and benefits between the state and university system, an even more serious dichotomy will be created within the university system. At Montana State University, 50 of the 800 classified employees are not in unions, and at the smaller units the percentage is higher. The Regents would thus be setting personnel policies for top-level administrators, faculty, and some classified employees, while the Department of Administration would negotiate personnel policies for another group of classified employees. If two employees who work side-by-side have different sets of rules governing them, the potential for confusion and grievances by employees, not to mention administrative problems, is obvious.

With regard to administrative problems, statutory consolidation would increase state government bureaucracy and impair the efficiency of personnel systems on campuses. First, policy making will be divorced from management. This will impair the ability of personnel offices on campuses to respond to and solve problems of contract administration as they arise. The Director of Personnel Services at Montana State University estimates that he receives an average of 15 inquiries per week from union representatives, employees and supervisors concerning the interpretation or application of contract provisions. Because he presently participates in contract negotiations, he understands the intent of a particular section and is able to respond to questions immediately. In fact, personnel administrators help shape many of the contract provisions in response to problems they have encountered on the campuses. If negotiating authority is centralized in the Department of Administration, the personnel officers will not be able to participate or provide input into the negotiations process, or at least not as much as under the present system. When routine questions of contract administration arise, the personnel officers will often refer the inquiry to the Department of Administration. Delays will result because of understaffing in the Department of Administration and its location in Helena, which will reduce the effectiveness of personnel administration on the campuses. This will also affect the local relationships between middle management and employees. While this may be the inevitable trend as state government grows and is centralized, it does not have to happen here.

Another aspect of centralized bargaining authority is that the Department of Administration would have total authority to set nonmonetary personnel policies and would not necessarily be responsive to many unique conditions of employment that exist on a university campus. Probably the most unique factor is the presence of students, coupled with the obligation under federal law for universities to provide students with employment opportunities. The unions are constantly battling to limit or curtail student employment and to require union membership. This situation does not exist in other state agencies, and state negotiators may not be sensitive to this requirement.

There are many other provisions in university collective bargaining contracts which have evolved over the years and are different from other state contracts. They relate to procedures for hiring (and the need to conform with Title IX and campus affirmative action plans), educational opportunities, layoff and termination procedures, etc. These provisions in present contracts are working well, but in the interest of statewide

uniformity, would probably be abandoned. The progress achieved through many years of negotiation and experience would be lost. It should also be mentioned that wages are sometimes used as a "club" to attain desirable management and personnel procedures. If the objective of centralized bargaining authority is to hold down costs and make compensation uniform throughout the state, efficient personnel management as it presently exists may be sacrificed. A final example of unique contractual provisions which may be lost if bargaining is centralized is found in addenda to classified employee contracts where specific duties, areas of responsibility, etc. are detailed.

Another issue which concerns the campuses is whether state negotiators will be responsive to campus problems and make adjustments when contracts are negotiated. Under the consolidation proposal, campus officials would negotiate with representatives from the Commissioner's office, who in turn would negotiate with the state negotiators, who would negotiate with the unions in order to make changes in the present contracts. In other words, campus administrators are removed an additional step from the policy-making process. This would make the job of personnel officers on campuses frustrating and ineffective, particularly in relation to the present system, as they would be unable to remedy operational problems that arise. While state negotiators will listen to campus problems, it is doubtful they will "buy" solutions to unique nonmonetary problems on campuses when they have orders to keep wage settlements as low as possible.

I am always reluctant to raise the issue of the autonomy of the university system under the Montana Constitution, though of course it is my duty to uphold the Constitution. In this regard, attorneys on my staff advise me that transferring authority to negotiate with university system classified employees to the Department of Administration would erode the power of the Board of Regents to supervise, coordinate, manage and control the university system. The Regents' authority to set compensation for all university personnel was confirmed in the Board of Regents v. Judge Supreme Court decision in 1975. In considering the section of the appropriations bill which limited increases to presidents' salaries to a maximum of 5% per year, the Court stated:

> "Inherent in the constitutional provision granting the Regents their power is the realization that the Board of Regents is the competent body for determining priorities in higher education. An important priority is the hiring and keeping of competent personnel. The limitation set forth in Section 12(6), H.B. 271, specifically denies the Regents the power to function effectively by

> setting its own personnel policies and determining its own priorities. The condition is, therefore, unconstitutional."

Arguments have been made that classified personnel may be distinguished from faculty, and that the Regents' control over personnel only extends to setting compensation for faculty. Administrative personnel are obviously an integral part of the operation of an educational institution. In addition, many of the classified employees in unions provide important support services for faculty members. Determining the level of compensation for classified employees is crucial if the Regents are to attract and retain competent personnel, who are essential if a university is to provide quality education for its students. Finally, while setting salaries for classified personnel was not an issue in the Board of Regents v. Judge case, the Court consistently referred to "Personnel" in its ruling, and not just to "faculty" or "top-level administrators."

In conclusion, I recognize the problems and resentment created by the present disparity in wages between the university system and the rest of the state. I suggest, however, that the problems can be remedied on a voluntary basis, and the serious consequences of statutory consolidation can be avoided. For instance, we offered this year to meet with the Department of Administration and work out joint wage guidelines and strategy. Such coordination is mutually beneficial and thus can easily be achieved. Secondly, we would agree to conduct coalition bargaining with the executive branch on a voluntary basis. This would be particularly worthwhile for negotiations with the Montana Public Employees Association, which represents the same type of employees in the university system as in other state departments. It should be mentioned that M.P.E.A. presently represents the majority of classified employees who are in unions in the university system, and that M.P.E.A. employees in the university system receive exactly the same compensation and benefits as similar employees working for other state departments. Coalition bargaining is not as important for craft unions, which represent a small minority of university system classified employees, and often perform different work than similar employees for other state departments. Unique market factors and traditions of employment within the university system also suggest that separate bargaining is a better course for craft employees. However, coordination of wage guidelines and strategies for these unions would help eliminate the present wage disparities.

I look forward to discussing with you the issue of bargaining authority for classified employees at your earliest convenience.

LKP:ab

cc: Mike Billings
Board of Regents
Unit Presidents

International Union of Operating Engineers

AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

202 Powell
WRITER'S ADDRESS

LOCAL UNION NO. 927 CITY Anaconda, STATE Mont. 59711

January 21, 19 77

To: The Select Committee on State Employee Pay, Labor, and Management Officals; and Interested Persons

From: The International Union of Operating Engineers Local #927 Affiliated with the AFL - CIO

Gentlemen:

Our Union is in total opposition to the suggested revisions of the New State Employee's Act, especially the Collective Bargaining issue. We would demand and expect continuence for our Union's "Separate Identity" to represent all Stationary Engineers at both State hospital institutions at Galen and Warm Springs.

Our Union goes on record to state, if need be, we will continue or pursue our objectives and goals to the various courts available to us. There is no responsible agency, union, or other group that possesses our Union's deep understanding, compassion, and obligations towards both the Stationary Engineers, whom we represent, as well as the patients.

The End

Respectively Submitted,

Russell L. Myers
Business Agent
I.U.O.E. Local # 927

RLM:cse

COPY

MONTANA PUBLIC EMPLOYEES ASSOCIATION

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February 4,1977

SENATE BILL 80

I stand as an opponent to this bill as I have during the select committee study conducted the past two years. I simply do not feel that this bill adequately addresses the problems and that we may be building more problems into statutory language then we currently have.

As a case in point I refer to the fact that even though we have continually heard about all of the problems in negotiations, the legislature is currently faced with fewer settlements than this bill would mandate the next legislature to face. Further that the settlements currently before the select committee on pay and benefits are uniform on total compensation even though the method of splitting up the dollars are different. This bill would guarantee neither.

WITH THESE THOUGHTS IN MIND AND WITH THE KNOWLEDGE THAT THE MAJORITY OPINION AT THIS TIME IS THAT COALITION BARGAINING ON ECONOMIC ISSUES HAS TO BE, I WILL SUPPORT SENATE BILL 80 WITH THE FOLLOWING CHANGES:

1. Page 2 line 22 reasonable classifications and re-instated in the law.
2. Page 3 - The admendments as presented by the Personnel Division
3. Page 5 - The change in language concerning confidential employee as presented by the Personnel Division.
4. THE REMAINDER OF THE BILL AS IT IS IN PRINTED FORM WITH SOME OF THE RECCOMMENDED MINOR CHANGES. MPEA WILL AGREE WITH THE SECTION ON COALITION BARGAINING AS IT IS WRITTEN AND RECOMMENDED BY THE SELECT COMMITTEE ON STATE EMPLOYEE PAY.

To change the language as has been recommended by other labor organizations would take the negotiations out of the hands of the employees and place it in the hands of the labor organizations. This would be totally unfair to the employees and create problems not yet imagined. The majority of the members should rule in this as they do in the present organization and negotiation structure and to do less in this bill would deny employees the identity that was sought and paid for in the first place.

MEMORANDUM

To: Senate Labor Committee

From: Emilie Loring,
Hilley & Loring
1713 10th Avenue South
Great Falls, Montana 59405

Date: February 4, 1977

My testimony is limited to the final section of S.B. 80 as introduced by the Select Committee on State Employee Pay, relating to amending Section 17-807, R.C.M. 1947.

In the first place, I regret that this matter has been included in the same bill with the controversial proposals relating to the classification plan and the public employees collective bargaining Act. As a matter of fact, the present title of S.B. 30 makes no reference to the subject matter of this section, and probably should be amended.

The statute involved is set forth on page 14 of the introduced bill and it relates to the subject of specific enforcement of certain contracts. When a contract is breached, the damaged party can sue for damages or, in certain situations, he may ask a court to require the other party to do whatever it was he promised to do. Such a remedy is called "specific enforcement". It would be unjust or impossible to require a person to perform some contracts, and some specific types are set forth in the statute: an agreement to render personal service, an agreement to marry, and agreement to do something which one cannot lawfully do, etc. Our law also states in subsection 3 of 17-807 that an agreement to submit a controversy to arbitration is not enforceable.

Now, this is not limited to labor contracts, it is not limited to contracts involving public employees, and that is one reason it really was not appropriate to include its repeal in this bill. However, that is where the Legislative Council, in its infinite wisdom, chose to place it.

The rationale of this provision back in the Nineteenth Century was that commercial arbitration at that time was a substitute for litigation. The Courts were naturally jealous of their jurisdiction and did not want to share it with Arbitrators. Arbitration in labor relations, however, is not a substitute for judicial litigation but a substitute for strikes or lockouts. Parties have found that it is much better to use arbitration rather than resort to economic action over every grievance. Therefore, arbitration has become accepted in the labor field as a method of assuring labor peace during the life of a contract.

For years, employers and unions have included provisions in collective bargaining contracts that grievances not resolved between the parties will be submitted to final and binding arbitration by a mutually acceptable third party, someone from the American Arbitration Association, the Federal Mediation and Conciliation Service, or some other source of arbitrators.

In the private sector of the economy, there is no problem in enforcing agreements to arbitrate where the agreement involves an employer subject to federal law, specifically the Labor Management Relations Act. If a firm agrees to submit grievances to arbitration and then refuses to arbitrate, it is comparatively easy for the labor organization to get an order from a Federal Court compelling arbitration. The problem arises with small private employers

and particularly, public employers.

Presently our firm is representing several union clients where there has been an agreement between the labor organization and the public employer to submit grievances to arbitration and the employer has refused to arbitrate a particular grievance. We have gone into state Court and the public employer relies on this statute as an excuse for not arbitrating, claiming that the Court has no jurisdiction to compel arbitration.

As you know, the Public Employees Collective Bargaining Act provides that parties do not have to reach any particular agreements or make any concessions. That is, neither side has to agree to arbitrate disputes. All we are asking is when an employer does agree to arbitrate such a contract may be enforced in our courts; that he can be required to live up to the agreements that he does make.

The present statute, providing that agreements to arbitrate may not be specifically enforced is archaic and does positive harm. California, having had an identical statute, in 1961 amended their law to delete the section referring to agreements to arbitrate. I have been unable to find a reported case, in either California or Montana, where the statute was ever applied. In fact Montana Courts, in the past, have routinely enforced agreements to arbitrate, particularly in insurance cases where the parties have agreed on arbitration as a method of determining damages.

There is absolutely no reason why the statute should not be amended. When public employers and small private employers, not large enough to be covered by the federal Taft-Hartley Act, agree to resolve grievances by final and binding arbitration, Montana

courts should be able to enforce such agreements. No employer has to agree to arbitration. All we ask is that when they do, through good faith collective bargaining, they can be required to live up to the agreements they have made.

Thank you,

Emilie Loring