

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

February 18, 1977

The seventeenth 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 201: An act to revise the laws relating to child labor.

This bill was requested by the Department of Labor.

Dave Fuller, Commissioner of Labor and Industry, stated that the law as drafted had serious problems. We did not have sufficient time to really study it. The bill should be killed until more time can be spent on it.

Ernie Post, Montana State AFL-CIO, also stated that this bill should go into further study and review.

Senator Mehrens moved that SB 201 DO NOT PASS. The motion carried unanimously.

CONSIDERATION OF SB 263: An act providing for unemployment insurance coverage of employees of certain agricultural, domestic, and non-profit employers.

Harold Kansier, representing Employment Security Division, introduced SB 263 to the committee. This bill deals with federal required legislation. It covers agricultural employees, domestic employees, and non-profit elementary and secondary school employees. The agriculture employer who pays \$20,000 or more in wages in a quarter or who employs 10 or more workers in 20 weeks shall be subject to this act. The domestic unit who pays \$1,000 or more in wages for domestic services a quarter is also subject to this act. This bill also provides a change in the benefit year. The purpose for this change is to offer the first payment of benefits to the claimants. Finally SB 263 defines the independent contractor. This individual has a normal business practice, and furnishes all supplies necessary in carrying out his obligation to his clients.

Harold Kansier also submitted to the committee an amendment to amend page 9, line 16. Following: "act". Insert: "irrespective of whether the common law relationship of master and servant exists."

Jim Murray, representing Montana State AFL-CIO, stated they support SB 263.

Tom Schneider, representing Montana Public Employees Association, stated that they were informed that SB 263 covers everything in SB 279. Therefore they support SB 263.

Fred Barrett, Employment Security Division, appeared in support of SB 263. Congress has passed this and made it mandatory that every state pass their own legislation on unemployment insurance. There is no alternative if the state wishes to remain in confront with the Workers' Compensation Act. This is a federal required piece of legislation.

There being no further proponents, Senator Lee called for any opponents to SB 263.

Gloria Lueck, representing Billings Bench Water Association appeared in opposition to SB 263. Our organization is a non-profit corporation (agriculture). We only have nine employees most of the time and for approximately four months we must have part-time help. This bill would mean we would have to pay unemployment taxes. It is already a load on the farmers to pay this.

Mrs. Howard Hanson, Ranch owner and operator, appeared in opposition to SB 263. This bill is going to be very hard on business and cattle industries. We feel SB 263 will create more problems than it will help.

R. A. Ellis, Helena Valley Irrigation, appeared in opposition to SB 263. We keep full-time employees year round and this bill will cause problems.

Richard Moe, rancher in Wheatland County, appeared in opposition to SB 263. The seasonal nature of agriculture would make unemployment insurance difficult to impliment by. Agricultural producers often have difficulty finding workers willing to do agricultural labor. Workers would have the option of quitting after they qualified for unemployment benefits. (See attached testimony)

General discussion was then held by the committee. Mr. Barrett stated that if the state does not comply with this federal requirement the tax credit would no longer be in effect. The changing of the benefit year and the defining of the independant contractor are not federal requirements, they are agency recommendations. Every state must amend its own Unemployment Compensation laws so it will comply with the federal law.

Senator Mehrens made a motion that SB 263 DO PASS AS AMENDED. The motion failed with Senators Lee, Blaylock, Mehrens and Smith voting "aye" and Senators Lowe, Goodover, Himsl and Nelson voting "nay". SB 263 will go to Second Reading without recommendation.

CONSIDERATION OF SB 409: An act concerning public employment labor relations to establish dispute resolution procedures, to create labor relations and grievance appeals boards, and to prohibit strikes.

Senator Lowe, District 33, Chief Sponsor of this bill, introduced SB 409 to the committee. This measure is a compromise in trying to get this "naughty" problem solved. It has just been the last two years that recognizing the public employees into labor groups has been recognized and condoned. Employees have come under situations where they can bond themselves into negotiating units or unions. Putting on a no-strike law doesn't work. We will have the strike. The strike is not the best way to solve a problem, it is costly and disruptive. Therefore I came up with a prospective step to reaching the worker. The dispute shall be solved by binding arbitration. The determination of the arbitration panel is final and binding and is not subject to approval by any governing body.

There being no further proponents, Senator Lee called for any opponents to SB 409.

Tom Schneider, representing Montana Public Employees Association, appeared in opposition to SB 409. We cannot support this bill the way it is written. I have some amendments that I have showed to Senator Lowe. That is the only way the bill could be workable.

Dave Fuller, representing the Department of Labor and Industry, appeared in opposition to SB 409. We are especially opposed to section 2 and 3 involving the structure of a new public employment relations board. The present five-member part-time Board of Personnel Appeals is serving the collective bargaining process well. SB 409 would abolish this board and create a three-member board with a full-time chairman who would also serve as chief executive officer. There is little justification for a full-time chairman. Mr. Fuller submitted an amendment to delete all reference to the structuring of a three-member labor relations board. (See attachment #2)

Bob Jenson, representing Board of Personnel Appeals, appeared in opposition to SB 409. The bill streamlines responsibilities along functional lines. The guides for collective bargaining purposes is the handling of classifications. We see a direct conflict in that the arbitration panel shall submit its determination to the Board of Personnel Classification and grievance appeals. Without further clarification in this area, it will be the subject of further litigation.

Maurice J. Hickey, representing Montana Education Association, appeared in opposition to SB 409. This bill will create more problems than it will solve. It ties the resolution of all bargaining to submission of a budget. It mandates the use of mediation and fact-finding as a method of resolution. We are opposed to outlawing the right to strike unless an alternative is provided which has reasonable hope of resolving the dispute. Because of the problems created by the bill and the costs involved, we are opposed to SB 409. (See attachment #3)

Clifford McGillivray, representing Montana State Merit System Council appeared in opposition to SB 409. He referred to sections 8, 9, and 10 which is the renaming of the Merit System Council to the board of personnel classification and grievance appeals.

Pat McKittrick, representing Montana Joint Council of Teamsters, #23, appeared in opposition to SB 409. The present system is working well and it should be allowed to develop more. There would be a lot of problems in adopting this piece of legislation. It would also be very costly.

Jim Murray, representing Montana State AFL-CIO, appeared in opposition to SB 409. The present law is a good law and also working very well. The unions feel very strong about their responsibility under the law. We take those rights of collective bargaining very seriously, we don't want to jeopardize anyone in the state of Montana. This legislation is also very costly.

Ray Saeman, representing Board of Personnel Appeals, appeared in opposition to SB 409. Mediation has worked with the settling of disputes. Only about 30 percent go to fact finding. The pressure is pretty heavy going to the fact finder. Mandated timetables take away from the effectiveness of a mediator and fact finder.

Stan Gerke, representing AFSCME, AFL-CIO, appeared in opposition to SB 409. This bill would make it impossible and too costly, for both the employer and the employee to resolve contract disputes. Through mandatory final and binding arbitration, a three member arbitration panel could dictate a spending budget for any governing body. Meaningful and realistic contract negotiations would be destroyed. (See attachment #4)

Lonny Mayer, representing Retail Clerks Union, appeared in opposition to SB 409. The whole intent of this bill is to take away the right to strike and force the unions into final binding arbitration. The present law is adequate.

Jim Cambell, representing the City of Helena, appeared in opposition to this bill. The timetable concept destroys good faith bargaining. Mandated legislative procedures are unnecessary. No responsible public official desires a strike. The best way to avoid a strike is to develop salary administration, personnel and employee relation policies and procedures which alleviate or avoid the conditions which impel workers to strike. (See attachment #5)

Glen Drake, representing League of Cities and Towns, appeared in opposition to SB 409.

Al Sampson, representing Montana State Fire Association, appeared in opposition to SB 409. The timing as stated in the bill is unworkable for local Government and would force all units bargaining into binding arbitration even if they did not wish to.

General discussion was then held by the committee.

CONSIDERATION OF SB 80: Senator Goodover moved that SB 80 DO PASS AS AMENDED. The motion failed with Senators Lowe, Himsl, Goodover, and Nelson voting "aye" and Senators Lee, Blaylock, Mehrens and Smith voting "nay". SB 80 will go to Second Reading without recommendation.

CONSIDERATION OF SB 187: Senator Mehrens moved that SB 187 be amended as follows. Amend page 2, line 23. Following: "entitled". Insert: "or by a combination of both". The motion carried unanimously.

Senator Blaylock made a motion that SB 187 DO PASS AS AMENDED. The motion failed with Senators Lee, Blaylock, Mehrens and Smith voting "aye" and Senators Lowe, Goodover, Himsl and Nelson voting "nay".

There was further discussion on this bill and Senator Mehrens made a motion to reconsider the motion made early. The motions carried unanimously. John Bobinski would get together with Moody Brickett and work out some amendments to SB 187.

SB 187 was again taken up at a short meeting on adjournment of the Senate. John Bobinski presented some amendments to the committee. Senator Mehrens then made a motion to reconsider the original motion that he made that SB 187 DO PASS AS AMENDED. The motion failed and SB 187 will go to Second Reading without recommendation. (See attached amendments)

ADJOURN:

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

  
\_\_\_\_\_  
Robert E. Lee, Chairman



201  
 BILL SB 263  
 409

SENATE LABOR COMMITTEE

VISITORS' REGISTER

DATE 2/18

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
<i>Ann Meyer</i>	Retail Clerks Union	SB 409		X
<i>Stan Jerle</i>	AFSCME	SB 409		X
<i>Pete Barnes</i>	D of A	SB 409		
<i>Gregg Anderson</i>	Office of Labor Relations	SB 409		
<i>Bob Jensen</i>	Board of Personal Appeals	SB 409		X
<i>Richard Moe</i>	Wheatland Co. Farmers	SB 263		X
<i>Amill J. Linn</i>	"	SB 263		X
<b>DAVE FULLER</b>	DEPT OF LABOR & IND	SB 409		X
<i>Pat McKittrick</i>	Mt. Commie of Teamsters #23	SB 409		X
<i>Doc Rossing</i>	Mt. Lewat Council of Teamsters	SB 409		X
<i>Wim Campbell</i>	City of Helena	SB 409		X
<i>Wend W Stittler</i>	Personnel Division	SB 409		
<i>Ray Saeman</i>	Bd of Per Appeals	SB 409		
<i>John Howard</i>	Supt of Public Inst	SB 409		
<i>R. B. Ellis</i>	Helena Valley Irrig	SB 263		X
<i>Thomas Schindler</i>	MPEA	SB 263	X	
<i>Thomas Schindler</i>	MPEA	SB 409		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

DATE 2/18

COMMITTEE ON LABOR

BILL NO. SB <sup>409</sup>  
<sup>201</sup>  
263

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
John De Vries	Billings Beach water Assoc	263	X
Charlotte Posey <sup>SB 409</sup>	Communications Workers of America		X
David R. Fisher	Billings Beach Water Assn.	263	X
Clara Lueck	" " " "	263	X
Donald Melberg Jr.	" " " "	263	X
Sam Camp	AFSCME local #971 Box 608	<del>409</del>	409
Edward J. Helweg	Montana State Mint System Council		
Maurice J. Dickey	MEA		409
David Sexton	MEA		409
Al Sampson	Mont State Firefighters		409
Jim Murry	Mont. State AFL-CIO		409
Ernest Poak	Mont State AFL-CIO		409 201
Fred Barrett	E. Sec. Division	263	
Howard Hanson	Beach owner & operator -		X
Mr. Howard Hanson -	Opponent of 263		X
GERE SPILDE	S.L.A.A. M.N.D.A.	263	X
Allen Decker	League of Cities & Towns	409	X

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/18 SENATE Bill No. 80 Time \_\_\_\_\_

NAME	YES	NO
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		✓

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: Senator Goodover moved SB 80 DO PASS.  
The motion failed. It will go to second  
Reading without Recommendation.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/18 SENATE Bill No. 187 Time \_\_\_\_\_

NAME	YES	NO
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	✓	

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: Senator Blaylock moved SB 187  
DO PASS AS AMENDED. The motion failed. SB 117  
will go to Second Reading Without Recommendation.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 2/18 SENATE Bill No. 263 Time \_\_\_\_\_

NAME	YES	NO
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	✓	

Laurie Jo Antonietti  
Secretary

Senator Robert Lee  
Chairman

Motion: Senator Mehrens moved SB 263  
DO PASS AS AMENDED. The motion  
failed. SB 263 will go to Second Reading  
Without Recommendation.

(include enough information on motion—put with yellow copy of committee report.)

SENATE LABOR COMMITTEE

February 17, 1977

SB 263 --- Hearing Oppose

My name is Richard Moe. I ranch near Two Dot in Wheatland County.

I am strongly opposed to unemployment insurance coverage for agricultural employees for several reasons:

1. The seasonal nature of agriculture would make unemployment insurance difficult to impliment and prone to abuse by
2. Agricultural producers often have difficulty finding workers willing to do agricultural labor. Unemployment insurance would aggravate this problem. Workers would have the option of quitting after they qualified for benefits.
3. Unemployment insurance for agriculture would push the States unemployment rate higher. Why work if you can draw an unemployment check. The incentive to work would be gone.

Agriculture has been and remains one of the nations most efficient industrys. One major contributing factor has been minimal government regulations.

I urge the Senate Labor Committee to act against SB 263.

## Attachment #2

Testimony in opposition to SB-409  
Submitted to the Senate Committee  
on Labor and Employment Relations  
by Dave Fuller, Commissioner of  
Labor - February 18, 1977

The Department of Labor and Industry opposes Senate Bill 409. Although we have several concerns with the bill we are especially opposed to sections 2 and 3 involving the structure of a new public employment relations board.

We feel the present five-member part-time Board of Personnel Appeals is serving the collective bargaining process well. As written Senate Bill 409 would abolish this board and create instead a three-member board with a full-time chairman who would also serve as chief executive officer. In our opinion there is little justification for the full-time chairman. Only four other states with boards having much greater workloads than ours have this type of board structure. We also feel there is little justification for the additional funds needed to staff the office of the full-time chairman, especially in view of the fact that this same bill reduces the board's workload by transferring its classification appeals and grievance functions to another board.

Administratively speaking, we feel there would be an inherent conflict with the chief executive officer making decisions on a daily basis and then having a vote when those same decisions are appealed to the board. We have no objection to having the board renamed the Montana Public Employment Relations Board nor do we have any particular objection to the removal of our board's classification and grievance functions.

We would ask, Mr. Chairman, that SB-409 be amended to delete all reference to the structuring of a 3-member labor relations board and that instead all reference be made to the existing Board of Personnel Appeals renamed as the Public Employment Relations Board. We are prepared to offer an amendment to that effect at this time.

SENATE BILL 409

AMENDMENTS

page 3 Line 24

(7) "board" means the public employment labor relations board provided for in 82A-1014;

page 5 Line 25

strike lines 25 page 5 through line 8 page 8

add new Section 2

~~\*82A-1014. Board of personnel appeals~~ Public  
employment labor relations board created. (1) There is

1 ~~created a board of personnel appeals~~ public employment labor  
2 relations board.

3 (2) The board is allocated to the department of labor  
4 and industry for administrative purposes only as prescribed  
5 in section 82A-1011.

6 (3) The board consists of five (5) members appointed  
7 by the governor. Two (2) members shall represent management,  
8 two (2) members shall represent employees or employee  
9 organizations of the state, and one (1) member shall  
10 represent a neutral position.

11 ~~(4) (a) Any employee or his representative affected~~  
12 ~~by the operation of Title 59, chapter 9, R.E.M., 1947, is~~  
13 ~~entitled to file a complaint with the board and to be heard~~  
14 ~~under the provisions of a grievance procedure to be~~  
15 ~~prescribed by the board.~~

16 ~~(b) Direct or indirect interference, restraint,~~  
17 ~~coercion, or retaliation by an employee's supervisor or the~~  
18 ~~agency for which the employee works against an employee~~  
19 ~~because the employee has filed or attempted to file a~~  
20 ~~complaint with the board shall also be basis for a complaint~~  
21 ~~and shall entitle the employee to file a complaint with the~~  
22 ~~board and to be heard under the provisions of the grievance~~  
23 ~~procedure prescribed by the board.~~

24 ~~(c) If upon the preponderance of the evidence taken at~~  
25 ~~the hearing the board is of the opinion that the employee is~~

1 aggrieved, it may issue an order to the department of  
2 administration requiring such action of the department as  
3 will resolve the employee's grievance. In any hearing the  
4 board is not bound by statutory or common-law rules of  
5 evidence.

6 (d) The board or the employee may petition for the  
7 enforcement of the board's order and for appropriate  
8 temporary relief, and shall file in the district court the  
9 record of the proceedings. Upon the filing of the petition,  
10 the district court shall have jurisdiction of the  
11 proceedings. Thereafter, the district court shall set the  
12 matter for hearing. After the hearing, the district court  
13 shall issue its order granting such temporary or permanent  
14 relief as it considers just and proper. No objection that  
15 has not been raised before the board shall be considered by  
16 the court unless the failure or neglect to raise the  
17 objection is excused because of extraordinary circumstances.  
18 The findings of the board with respect to questions of fact  
19 if supported by substantial evidence on the record  
20 considered as a whole shall be conclusive.

21 (5)(4) The board is designated a quasi-judicial board  
22 for purposes of section 92A-112."

page 25 Line 6

and 82A-1014, R.C.M. 1947, are repealed

Montana  
Education  
Association

1232 East Sixth Avenue  
Helena, Montana 59601

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Telephone 442-4250

STATEMENT OF MAURICE J. HICKEY, EXECUTIVE SECRETARY, MONTANA EDUCATION  
ASSOCIATION IN OPPOSITION TO SB 409

Senate Bill 409 will create more problems than it will solve. It ties the resolution of all bargaining to submission of a budget. In a school district the preliminary budget submission date is the 4th Monday in June which this year is June 20. If we were under this bill now for bargaining and a dispute developed, such a dispute would have to have occurred and be known before January 20 to meet the deadlines required by this bill if the full time was used to resolve the issue.

The next problem we see, it mandates the use of mediation and fact-finding as a method of resolution. The parties have to follow the procedure even though it may not solve the problem. They are also mandated to pay part of the cost of mediation and fact-finding. Under present law the mediation is paid by the state agency. Fact-finding is shared on a 1/3 basis by each party.

Under this bill the parties do not have an option but must pay the cost of this procedure. The dispute may still continue to binding arbitration with the costs shared between the employer and the labor organization. The cost of these three procedures would be completely prohibitive for teachers and boards in small school districts.

The bill allows the Board of Public Employment Relations to decide whether you have one member of a panel or 3 members on the fact-finders panel, and the arbitration panel will be composed of 3 people. The going rate for such services ranges from \$100 per day to \$250 plus expenses per person. The American Arbitration panel members now range from \$200 to \$250 per day plus expenses. If you used a total of 10 days in the three processes the cost would be prohibitive for a small school district and teacher organization.

Last best-offer arbitration is not mandatory. It requires mutual agreement in order to be utilized. It is unlikely that people will agree to submit their dispute to this procedure when they couldn't come to an agreement up to that point.

We are opposed to outlawing the right to strike unless an alternative is provided which has reasonable hope of resolving the dispute.

There is also the strong probability that public employers would challenge the constitutionality of mandatory binding arbitration thus tying up all chance of settlement for many months.

Because of the problems created by the bill and the costs involved, we are opposed to the bill in its present form.

February 18, 1977

Testimony in opposition to Senate Bill 409

Mr. Chairman:

We stand in opposition to Senate Bill 409. We believe Senate Bill 409 to be completely unworkable and sight the following examples.

First, on page 5, line 25, the Board of Public Employment Relations is created. According to the following language, two of the three members of the Board could be representatives of the employer. Neither of these two members, however, could be public employees or public officers.

We also find a conflict with the duties of the Chairman of the Board. In reference to page 6, lines 16 through 21, the language infers the Chairman of the Board shall also be an employee of that Board. We submit to you it would be illegal for the Chairman to be directly involved in any matter that may result in a formal hearing before the Board that he chairs.

The entire proposed procedure for resolving contract disputes, very simply, will just not work. For example, take any city or town in Montana. Cities and towns have a fiscal year of July 1st to June 30th. Their budgets are to be adopted by the 2nd Monday in August. Cities and towns must wait until approximately the 10th of July for the report on property tax revenues--the exact amount of money they will receive. Wage negotiations are just not meaningful until the employer knows what money he has. Thus, hard-core wage negotiations with cities and towns do not occur until approximately July 10th; 30 some days away from final adoption of the budget. In fact, our contracts are not open until June 30th of each year. Beginning on page 11, line 4, of SB 409, the mediation procedure is outlined. According to the procedure, a request for mediations must be submitted at least 120 days prior to the budget submission date. As you can see, it would be literally impossible to determine an impasse on wage negotiations before the actual wage negotiations take place.

I believe there's no need to continue into the next steps of fact-finding and arbitration; the limits imposed on the process will not allow for meaningful or effective mediations, fact finding or arbitration.

On page 14 beginning on line 19, the costs of arbitration, fact-finding and arbitration are addressed. If a labor organization found itself caught up this race to beat the time limit, the labor organization would be expending great amounts of money for the procedure with no results. The procedure does not allow time for effective mediation or thorough fact-finding.

The last step in solving contract disputes is final and binding arbitration as explained on page 14 beginning on line 6. We agree that final and binding arbitration could be a solution to a particular contract dispute. We agree that final and binding arbitration should be an option as it is today under the present law. We absolutely oppose forced or mandatory final and binding arbitration for contract disputes.

If this Legislature should make SB 409 a law, this Legislature is committing itself and future Legislature to final and binding arbitration--a three member arbitration panel could be setting the wage schedules for all state employees. The Legislature, according to SB 409, could not alter, amend, approve or disapprove an arbitration decision. (page 14, line 6 through 8)

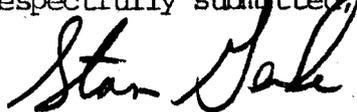
As we've discussed, the existing five member Board of Personnel Appeals, Department of Labor and Industry would be abolished and replaced with a new three member Board of Public Employment Relations. It's function to administer the collective bargaining act for public employees. On page 22, beginning on line 7, the merit system council is abolished and replaced with a three member Board of Personnel Classification and Grievance Appeals, Department of Administration. Its duties to hear and resolve classification appeals, non-union employee grievance and review the operation of the merit system. We oppose this mechanism whereas

an employee is forced to file an appeal for a grievance for final determination with the same department which was involved earlier in the same grievance. We believe a neutral party must be the final step. We would support this concept of any employee appeals board or review board to be under the Department of Labor and Industry. We presented similar testimony on House Bill 700.

Senate Bill 409 again addresses public employees' strikes. You addressed strikes in SB 163 and made your decision. This bill would again open the door for more debates on that subject.

In summary, Senate Bill 409 would make it impossible and too costly, for both the employer and the employee, to resolve contract disputes. The bill appears to create biased appeals on review boards. Through mandatory final and binding arbitration as this bill contains, a three member arbitration panel could dictate a spending budget for the State Legislature, city governments, county governments, school board, any governing body. Meaningful and realistic contract negotiations would be destroyed.

Respectfully submitted,



Stanley W. Gerke, Field Representative  
AFSCME, AFL-CIO, Montana Council No. 9  
600 North Cooke (442-0760)  
Helena, MT 59601

M E M O R A N D U M

February 18, 1977

TO: Labor and Employment Relations Senate Committee

FROM: City of Helena

RE: Reasons why the City of Helena urges you to vote against Senate Bill #409.

## Time Table Concept

- Destroys good faith bargaining

Mandated legislative procedures are unnecessary. They take away authority of both local labor and local management to settle their own affairs. One side or the other may just wait for the deadline to come then go to mediation. Again not bargain in good faith and go to fact finding, hoping to improve their present position through an arbitrated settlement.

- Destroys effectiveness of mediator and/or fact finder.

Mandated timetables can take away the effectiveness of a mediator and/or fact finder. They must settle within their time limit. The City of Helena had last year a fact finder appointed by the Board of Personnel Appeals on October 12, 1976. He did a good job for both labor and management but it took 41 days. Had arbitration been thrown into the process he would not have been able to complete his job that both sides accepted bilateral. Also, there is no latitude for the mediator or fact finder to send both sides back to the bargaining table.

- Costly

Mediator gets close to an agreement but must stop then it goes to the fact finder. They get close to an agreement but not quite within the time table. It then goes to arbitration where they impose a settlement.

At \$100.00 per day this process could cost the labor union and the government agency each \$5,000.00, using 15 days for mediation,

*City of Helena, Montana*

15 days for fact finding and 30 days for arbitration.

Binding Arbitration Concept (parties stop trying)

- Binding Arbitration is a very poor mechanism for impasse resolution.

The parties can give up on the hard work of bargaining and turn their dispute over to others

- Poor settlements

Negotiated settlements are better than those resulting from imposed settlements. A negotiated agreement represents the sum total of voluntary compromises in which each side has had the unfettered right to say "yes" or "no." Imposed settlements frequently carry features objectionable to one or both parties.

- Third-party neutrals

An arbitration board does not have to be accountable nor responsive to the people that must live with an imposed settlement.

- Good faith bargaining deteriorated

Issue-by-issue best-offer arbitration may actually serve as a deterrent to actual good-faith bargaining. Since a party to the process could reasonably hope to improve its position, each best-offer on a given issue could be carefully structured to represent something better than existing practice.

Alternative to Binding Arbitration

No responsible public official desires a strike. A public agency cannot, even if it wants to build an inventory of repaired water lines, already delivered garbage, cleaned streets, solved crimes, prevented fires, etc.

But public strikes do occur.

The best way to avoid strikes is to develop salary administration, personnel and employee relations policies and procedures which alleviate or avoid the conditions which impel workers to strike.

#### The Strike as a Management Tool

A city that has prepared itself can continue to operate and build up its treasury by saving on payroll costs.

Two recent examples:

Albuquerque, New Mexico

Police Strike, July 1975.

The strike was not the terrible event which had been anticipated. A number of neighboring jurisdictions urged the city to stand firm fearful that whip lashing would precipitate similar pay increases in their own areas.

Berkeley Fire Fighter Strike, 1975

The 1975 Berkeley, California, fire fighter strike is a good example of a city which made what it felt was a fair, final offer, experienced a strike and, using contingency plans, supervisory employees and overtime pay (among other things) continued to operate. The final settlement was very similar to the city's last offer before the strike. Also, as a result of operating with reduced manpower, the city now finds it possible to make permanent personnel reductions which are resulting in savings to the taxpayers.

Berkeley city officials reported that the strike did not completely cripple the city's ability to operate, and that

they feel the walkout did not produce huge gains for the union. It is a matter of opinion whether the strike was "broken," but it is clear that the city stood firm rather than capitulate.

The City of Helena urges this committee to vote against Senate Bill #409.

## Right of Control

	<i>Management</i>	<i>Labor</i>	<i>Other</i>
Collective Bargaining	✓	✓	
Mediation	✓	✓	
Fact-Finding	✓	✓	
Strike	✓	✓	
Arbitration			
CONVENTIONAL	—	—	✓ (Outsider)
FINAL OFFER— ISSUE-BY-ISSUE	—	—	✓ (Outsider)
FINAL OFFER— PACKAGE	—	—	✓ (Outsider)
Referendum	—	—	✓ (The Community)

## Compulsory Binding Arbitration

1. ALASKA—for police, firemen, jail, prison and hospital workers. Conventional type procedure.
2. CONNECTICUT—for municipal employes. Final offer—issue-by-issue.
3. IOWA—almost all public employes. Final offer—issue-by-issue.
4. MAINE—state and municipal employes. Advisory on economic issues; binding on non-economic items.
5. MASSACHUSETTS—police and firemen. Final offer—package.
6. MICHIGAN—police and fire. Final offer on economic issues—issue-by-issue; all other items, conventional.
7. MINNESOTA—“essential” employes. Conventional.
8. NEBRASKA—public employes. Court of Industrial Relations decides.
9. NEVADA—local employes. Governor may make fact-finding recommendations binding.
10. NEW YORK—police and fire. Conventional.
11. OREGON—police, fire, guards at prisons and mental hospitals. Conventional.
12. PENNSYLVANIA—police and fire. Conventional. Guards at prisons, mental hospitals and court employes. Advisory on issues that require legislative enactment, binding on all others.
13. RHODE ISLAND—most state and municipal employes. Advisory on wages, binding on other items. Teachers, fire and police. Conventional.
14. UTAH—fire fighters. Advisory on wages, binding on other items. (On appeal to State Supreme Court.)
15. WASHINGTON STATE—uniformed personnel. Conventional.
16. WISCONSIN—police and fire. Final offer—package or conventional by choice of the parties.
17. WYOMING—firemen. Conventional.

AMENDMENTS TO SB 187

1. Amend title, lines 6 through 9.

Following: "To"

Strike: "lines 6 through 9 in their entirety."

Insert: "GENERALLY REVISE THE ADMINISTRATIVE AND CRIMINAL PENALTIES FOR MAKING FALSE STATEMENTS OR REPRESENTATIONS OR FAILURE TO DISCLOSE A MATERIAL FACT IN ORDER TO OBTAIN OR INCREASE UNEMPLOYMENT COMPENSATION BENEFITS AND TO PROVIDE FOR CRIMINAL PROSECUTION FOR THE FRAUDULENT RECEIPT OF UNEMPLOYMENT COMPENSATION BENEFITS."

2. Amend page 1, section 1, line 16.

Following: "benefits."

Strike: "(a) Whoever"

Insert: "(1) A person who"

3. Amend page 1, section 1, line 18.

Following: "fact"

Strike: ", "

Insert: "in order"

4. Amend page 1, section 1, line 20.

Following: line 19

Strike: "act"

Insert: "chapter"

Following: "state"

Strike: ", "

5. Amend page 1, section 1, line 21.

Following: "government"

Insert: ", "

6. Amend page 1, section 1, line 22.

Following: "person,"

Strike: "shall"

Insert: "is"

7. Amend page 1, section 1, line 23 through line 4 on page 2.

Following: line 22

Strike: line 23 on page 1 through line 4 on page 2 in their entirety.

8. Amend page 2, section 1, line 5.

Following: line 4

Strike: "(2) Be"

Insert: "(a)"

Following: "thereafter"

Strike: "until"

Insert: "for"

9. Amend page 2, section 1, line 14.

Following: "not"

Strike: "less than ten (10) nor"

AMENDMENT TO SB 187  
PAGE 2

10. Amend page 2, section 1, line 15.

Following: "weeks"

Strike: "have elapsed"

Insert: ", "

11. Amend page 2, section 1, line 19.

Following: "case"

Strike: "."

Insert: "; and"

12. Amend page 2, section 1, lines 20 and 21.

Following: line 19

Strike: "(3) In either of the circumstances under subsection (1)  
or (2) above, be"

Insert: "(b)"

13. Amend page 2, section 1, line 21.

Following: "division"

Insert: ", "

14. Amend page 2, section 1, line 23.

Following: "entitled"

Insert: "or by a combination of both such methods"

15. Amend page 2, section 1, line 24.

Following: "amount"

Strike: "so"

Insert: "wrongfully"

Following: "him"

Strike: "; however"

Insert: ". However"

Following: "he"

Strike: "will"

Insert: "is"

Following: "not"

Strike: "be"

16. Amend page 2, section 1, line 25.

Following: "amount"

Strike: "so"

Insert: "wrongfully"

17. Amend page 3, section 1, lines 1 and 2.

Following: "that"

Strike: "the claimant"

Insert: "he"

18. Amend page 3, section 1, line 2.

Following: "made"

Strike: "such"

19. Amend page 3, section 1, line 4.

Following: line 3

Insert: "(2) A person who, in order to obtain or increase for himself or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 94-7-204 and the division may cause criminal proceedings to be initiated against him.

(3) A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 94-2-107 is guilty of a crime under 94-6-302 and a county attorney may initiate criminal proceedings against him."

20. Amend page 3, section 1, line 4.

Following: line 3

Strike: "(b)"

Insert: "(4)"

21. Amend page 3, section 1, line 11.

Following: "this"

Strike: "act"

Insert: "chapter"

22. Amend page 3, section 1, line 25.

Following: line 24

Strike: "(c)"

Insert: "(5)"

23. Amend page 4, section 1, line 1.

Following: "this"

Strike: "act"

Insert: "chapter"

24. Amend page 4, section 1, line 3.

Following: "this"

Strike: "act"

Insert: "chapter"

25. Amend page 4, section 1, line 12.

Following: line 11

Strike: "(d)"

Insert: "(6)"

26. Amend page 4, section 1, line 16.

Following: "this"

Strike: "act"

Insert: "chapter"

27. Amend page 4, section 1, line 17.

Following: "this"

Strike: "act"

Insert: "chapter"

AMENDMENTS TO SB 187

Page 4

28. Amend page 4, section 1, line 21.

Following: "this"

Strike: "act"

Insert: "chapter"

29. Amend page 4, section 1, line 24.

Following: "this"

Strike: "act"

Insert: "chapter"