MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 6, 1979

The twenty-seventh meeting of the Senate Judiciary Committee was called to order by Chairman Everett R. Lensink in Room 331 of the Capitol Building at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 260:

Senator Brown gave an explanation of this bill, which is an act to amend the provisions of the law relating to the disclosure of the proceedings and the related documents of the judicial nominating commission.

He stated that under the present law, the proceedings are confidential. He offered an amendment to this bill on line 17, page 1 after the word, "privacy" that the word, "clearly" be inserted.

He stated that we are talking about the selection of judges - they are very important in our government, they are the people who have the final say on law and theirs is an important function in the matter of law and order. He said that we are not talking about election situations where people have a chance to ask them about their philosophy. He said that he felt the public should be assured and that the proceedings should be open so that the public knows there was good reason for the selection of that particular judge. He said that under the present law, a list is submitted and sent to the Governor, and he felt that the commission should give reasons why they selected that individual for the judgeship. He stated that this bill does not require why they did not recommend anyone to the judgeship.

There were no further proponents and no opponents.

Senator Galt questioned as to why he felt that they need the indication of the vote on each nomination and he felt that this could cause embarrassment. Senator Brown explained that he did not think this would be embarrassing and he said that this may be an indication that they do not have enough confidence in the other one or two applicants.

Senator Olson questioned as to who decides when the demands of individual privacy exceed the merits of public exposure. Senator Brown stated that in each case it is an agency determination and in an agency proceeding, it might be justified. He said that if a person is an alcoholic or has a drinking problem, that he felt that that should be kept confidential.

Senator Van Valkenburg stated that he thinks there is a strong feeling that the commission has been abusing its powers and this would be an appropriate setting to make some inquiry in that matter. He stated they never recommend more than three candidates when they have the power to recommend three to five, and he feels that there has been a tendency to make these recommendations so that the governor is boxed into picking only one or two candidates. He said that the bill properly addresses some of these problems.

Senator Lensink stated that it surprises him that you have to write into the law to give a report to the governor. It seems to him that the commission would communicate to the governor why they did or did not pick someone and if they did not, the governor would ask.

Senator Brown stated that it is his understanding that now no report is being submitted to the governor, but he said he did not know if the governor calls and asks them why they recommend so-and-so. He felt that there should be a written report going to the governor stating why they recommended someone.

There were no further questions and the hearing on the bill was closed.

CONSIDERATION OF SENATE BILL 214:

Senator Roskie, District 21, gave an explanation of this bill, which is an act to adopt the uniform arbitration act and to conform other statutory provisions thereto. He stated that thirty-nine states and the United States have enacted a uniform arbitration act and the net result is that Montana people do not have the same freedom as they do in other states.

Neil Blacker, the regional director of Seattle Division of the American Arbitration Association, gave a statement in support of this bill. He stated that virtually everyone is for arbitration - the construction industries across the board, the national home builders, the labor-management committee in the private sector, the railroad industry, freight loss and damage claims, some medical malpractice, textile industry, international trade, etc. He stated that it is easier to enforce arbitration than court action.

Mr. Don Smith, an attorney for I.F.C. Leasing Company stated that arbitration is a quick resolution that can allow their company to get their equipment back into operation as soon as possible.

Lee Walker, former president of the American Society of Civil Engineers, gave a statement in support of this bill.

Ward Shanahan, representing himself, stated that he served in dispute matters and this is a simple, swift, efficient method. He offered written testimony. (See Exhibit A.)

Sonny Hanson, representing the Design Professionals, Architects and Engineers, gave a statement in support of this bill.

Roy Blehm, representing the Montana State Firemen's Association, stated that the antiquated Montana act has caused problems.

There were no further proponents and no opponents.

Senator Turnage commented that the only difference between this bill and the current law is that you can't enforce future suits and you can't arbitrate something that has not already happened. He said that under Article 2, section 16 of the Constitution, he did not think our supreme court would abstain this bill and wondered as a matter of public policy if we could legislate this. He said that the Constitution says that courts of justice shall be open to every person.

Mr. Shanahan stated that he thought the courts were open to all, and it doesn't mean that people have to go to court.

Senator Turnage raised some questions concerning labor disputes and stated that a greater portion of our local governing entities will sign these contracts, and they may have a bad case of myopia and then they find out that they have nothing to say about it, they can't go to court and they have to arbitrate.

Roy Blehm stated that what they intended to do in disputes over contracts is to suhmit it to the arbitration panel.

Senator Roskie stated that he discussed this with Senator Turnage and this is a concern where you have master agreements and this could be addressed in the act if it is not covered.

Mr. Blacker stated that some of the states that have this act include the labor provision and some do not. He stated that it comes down to the basic question of should people be bound by their word, it does not require people to go to arbitration. He stated that 99 percent are grievance arbitration and not contract arbitration. He wanted to impress that the act is not forcing anybody to arbitrate, if they voluntarily agree to arbitrate, then they will be bound, but it may be advisory only and not bound.

Senator Turnage said that there are two things that he finds disturbing - you are assuming some facts that are not proven, you are assuming that no one is compelled to sign the agreement, but what about if you say to the employer we are going to stay out on that picket line until you do sign an arbitration agreement, is that not being compelled? Also, he was concerned about not being bound by their word and he stated that you are asking people to give their word completely in ignorance of tomorrow's reality because of a natural myopia of people. He felt that he would find that if he had known of what tomorrow would bring, he would never have signed it.

Mr. Blacker stated that he has seen unions hit the bricks for many fringe benefits, wages, labor issues, etc., but he stated

that he has never seen a union go on strike because of not arbitrating.

A letter was submitted from Howard C. Burton, which pertains to exclusion of labor agreements. (See Exhibit B.)

CONSIDERATION OF SENATE BILL 250:

This bill is an act to provide for a statement of intent to record for instruments which may not be recorded because of operation of certain subdivision laws, establishing procedures and a six-month period of constructive notice. Senator Turnage said that the bill, as introduced, will need some amendments. He stated that in recording an instrument, they write down the date, hour and minute of the recording and this fixes the legal right to the land at that time. He said that on the day following the sale of this land, a judgment could be filed and had the judgment beat the recording at the courthouse, the person would have to pay the judgment.

Senator Turnage also commented that if the clerk held the filing up for a day or so for some reason and someone came in with a judgment on that lot, that he thought that the clerk would be liable and the question would be who gets to the courthouse first.

John Bell, representing the Montana Association of County Clerks and Recorders offered some amendments to this bill and then he stated that they would support this bill.

Darlene Hughes, president of the association for Ravalli County said that they were trying to work up some amendments and would offer them to the committee.

There being no further questions or comments, the hearing on this bill was closed.

There being no further business, the meeting adjourned at 10:53 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 2/6/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)			
Healy, John E. (Jack) (D)			

Each Day Attach to Minutes.

SENATE

Please Sign & Return to Secretary of Judiciary

SENATE Judiciary COMMITTEE

BILL SB 214 / 360

VISITORS' REGISTER

DATE 2/6/79

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPP
Ray Bahm	Mt St Firemens Assn	SB 214	X	
Ward Shanahan	mspcdl	214	X	
Neil Blacker	Montana Petroleum Assn.	SB 214	X	
Edward J. Baker	American Society of Civil Engineers	SB 214	X	
Don Smith	IFC Leasing Co	SB 214	X	
Helen Johnson	Realtors			
Ken Potter	Senate Aide	360	X	
[illegible]	[illegible]	[illegible]		
Maxine Fowler	Self			
George F Keeler	Senate Sponsor	214	X	
H.S. Hanson	Mont. Technical Council	214	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SUMMARY OF TESTIMONY TO JUDICIARY COMMITTEE

submitted by

DONALD S. SMITH
Associate General Counsel
All-States Leasing Company/IFG Leasing Company

My companies are in favor of the adoption of the Uniform Arbitration Act because it allows agreements to arbitrate future disputes. Current Montana law prohibits contractual agreements to arbitrate future disputes.

We became aware of the advantages of the Uniform Arbitration Act through the course of business dealings in other states. Our contracts provide for the arbitration of future disputes in those states where it is permissible.

Quicker Resolution of Disputes

Attorneys representing us in Oregon and Washington report that a normal legal action within the judicial system will take from one and one-half to three years for a decision. The time length will vary depending on the case load of the particular forum.

In contrast, they report that arbitration normally resolves a similar dispute within two to three months.

Lower Overall Legal Expenses

Local office personnel often represent our company in smaller or uncomplicated disputes. The attorneys concentrate their time on the larger more complex cases. Arbitration has fewer time delays during the prosecution of a case, which saves time as well as allowing attorneys to use their time more productively.

Expert Arbitrators

Arbitrators are generally experts in the field and have a grasp of the technical aspects and relevant issues at hand. Informal arbitration hearings conducted by expert arbitrators usually require less than four hours to complete.

Uniformity of the Act

Adoption of the Uniform Act will bring Montana into conformity with the modern arbitration law of the United States Government and 36 of its sister states.

PRESENTATION FOR SB 214

February 5, 1979

THE ADVANTAGES OF A MODERN ARBITRATION LAW FOR MONTANA

Under the Montana common law agreements to arbitrate existing disputes are valid and enforceable. But 11 states which retain the common law, such as Montana, do not insure the validity of future dispute arbitration clauses. Although every other provision of a contract may be specifically enforced by Montana courts, a voluntary agreement to arbitrate disputes that may arise in the future can be revoked by any party, for no reason, at any time, and the other party cannot enforce it in court. Therefore, the beneficial features of arbitration are not fully available to the citizens and attorneys of Montana. By contrast, 39 states, the District of Columbia, Puerto Rico, and the United States have enacted the Uniform Arbitration Act which makes agreements to arbitrate future dispute binding, irrevocable and enforceable.*

The net result is that Montana lawyers and businessmen do not have the same freedom to choose forums in Montana that they have in other states. They are forced to rely on the modern arbitration laws of other states such as Arkansas, Illinois and Kansas and to conduct their arbitrations in those states.

The support of arbitration by the business, construction, and professional communities is attributable to many factors.

First, the parties can select arbitrators who are familiar with the practices and customs of the trade and with such matters as current prices, merchantable quality, the terms of sale and the like. This feature of arbitration cannot help but produce advantages to the parties and to the public.

The parties benefit because there is no need to spend valuable time acquainting a judge and jury with the background, customs and usage and technical intricacies of an industry.

The public benefits because there is no need to appropriate funds for the support of such a tribunal. Arbitration would cost Montana taxpayers nothing.

Second, arbitration makes possible speedy, less expensive settlement of disputes. One reason for this was recently noted by Mr. Justice Rehnquist when he wrote "I think that another less frequently realized advantage of arbitration is that its process usually need produce only a settlement between the particular litigants; it need not produce a body of decisional law which will guide lawyers and clients as to what their future conduct ought to be". It is not affected by crowded court calendars. Properly utilized, it may even afford relief to some overcrowded courts.

Another advantage of arbitration is its inherent privacy. This permits businessmen to resolve their problems without having to incur a permanent breach in their relationships because of ill feelings which may flow from a public trial.

These attributes of arbitration, while clearly beneficial to domestic business, are even more beneficial to international transactions. Almost all international trade contracts provide for the arbitration of future disputes.

Businessmen do not stand alone in praise of arbitration. Courts have increasingly been praising the use of this method of dispute settlement.

In 1967, the Supreme Court of the United States in Prima Paint v. Flood & Conklin Mfg. Co., 388 U.S. 395, reassured the commercial community that when a businessman intends a prompt resolution of his dispute through arbitration, he is legally entitled to pursue his rights within that forum without any "delay or obstruction in the courts". The primary purpose of the Uniform Arbitration Act is to insure that this goal is not defeated.

And one year later Chief Justice Warren Burger (then a Judge of the U.S. Court of Appeals for the District of Columbia) stated:

> "...(T) here are better ways of resolving private disputes, and we must in the public interest move toward taking a larger volume of private conflicts out of the courts and into the channels of arbitration".

It should be made clear that lawyers are in no way displaced by arbitration. No businessman uses arbitration today except with the advice and consent of his attorney. Indeed, it is usually an attorney who drafts a contract containing the arbitration clause. He also presents or defends claims in arbitration. And, attorneys are frequently asked to serve as arbitrators.

For these reasons, the Montana Legislature should enact a modern arbitration law such as the Uniform Arbitration Act. This Act was adopted by the National Conference of Commissioners on Uniform State Laws in 1955 and approved by the House of Delegates of the American Bar Association in 1956. In 1976, the House of

Delegates reiterated its endorsement of the Uniform Act that states enact it for use in medical professional liability disputes.

UNIFORM ARBITRATION ACT STATES AND JURISDICTIONS

*Alaska, the District of Columbia, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. (1/1/79)

Prepared by the General Counsel of the American Arbitration Association
140 W. 51st St.
New York, NY, 10020

212-977-2000

Geotechnical Engineering

Field and Laboratory Investigations
Engineering Analysis and Recommendations
Consultation

Great Falls Billings Montana — Boise Pocatello Idaho — Gillette Wyomi

528 Smelter Avenue
P.O. Box 951
Great Falls, Montana 59401
(406) 453-1641

Members of the Committee,

My name is Leland J. Walker, and I am Chairman of the Board of Northern Testing Laboratories, a firm of consulting engineers headquartered in Great Falls, with other offices in Montana, Idaho, Washington and Wyoming. I am a past-president of the Montana Section of the American Society of Civil Engineers, and a past-president of the national organization of that Society. I am here today, representing both the Montana Section and the national organization, to speak in favor of, and to urge your favorable consideration of Senate Bill 214.

I might add that, since 1967, I have been a panelist of the American Arbitration Association, and have served as an arbiter in connection with several construction-related matters since that time.

The American Society of Civil Engineers was a cooperator in the development of the Construction Industry Arbitration Rules, and has continued its endorsement of them throughout the time they have been in effect.

Through active representation on the National Construction Industry Advisory Committee to AAA, the American Society of Civil Engineers is kept informed of the extensive program made available to the construction industry to expedite the settlement of disputes. The continuing interest of the Socity is given substance through active participation in the work of NCIAC, and representation in all the regions of the AAA organization. The publications of this Society have been available to inform the construction industry of developments in arbitration, frequently calling attention to the availability of such services. As an educational effort, arbitration has been a subject for national conferences and conventions of ASCE.

At this moment, a prominent concern is the impact of national policies on the construction industry. Studies are going forward on productivity, delays, impact of governmental regulations, and of course cost escalation. It has become necessary to consider any procedure giving promise of enhancing the health and well-being of the capacity of construction to serve human needs. Certainly prompt settlement of disputes between participants in the construction industry takes deserved prominence among such considerations.

The leadership of the American Arbitration Association, over a period of half a century, has earned the admiration of many organizations, including the American Society of Civil Engineers.

The American Society of Civil Engineers supports the legislation before you here today, in the interest of providing sound procedures for an economical, effective construction process.

I personally support this concept and recommend your favorable vote on Senate Bill 214.

Leland J. Walker

SCHOOL OF LAW

(406) 243-4311

University of Montana

Missoula, Montana 59812

January 30, 1979

Mr. Neil Blacker
Coach House
910 N. Last Chance Gulch
Helena, MT 59601

Dear Neil:

Enclosed is a copy of my memorandum of February 3, 1978 to Dean Sullivan, concerning arbitration in Montana and the Uniform Act. As an appendix to the memo you will find the current provisions of Montana statutory law on commercial arbitration.

On page 5, 3rd full paragraph of the memo, I refer to the arbitration provision of the Montana Collective Bargaining for Public Employees Act. I have enclosed a copy of that Act.

Also enclosed is the most recent Montana Supreme Court opinion on commercial arbitration, Palmer Steel Structures v. Westech, Inc. While the decision presents no departure from the law as discussed in the memo, I enclose it because it represents the last word on the subject. (Note the dissent argues the current law is inadequate.)

I hope this will be helpful. Please feel free to call on me if I can be of further assistance.

Sincerely,

Bill

William L. Corbett
Assistant Professor

WLC:cw

Enc.

UNIVERSITY OF MONTANA

DATE: February 3, 1978

TO: Dean Robert E. Sullivan

FROM: Professor William L. Corbett

RE: Arbitration Law in Montana and the Uniform Arbitration Act

Conclusion:

Montana law is an impediment to the successful resolution of disputes through arbitration. Legislative enactment of the Model Act or other similar legislation is necessary to enable Montana to join with the vast majority of states that permit and encourage effective private dispute settlement through arbitration.

I. Arbitration at Common Law.

To clearly understand the current Montana law on arbitration it is necessary to understand arbitration at common law. This is due to the fact that arbitration law in Montana has changed little in the last one hundred years.

At common law arbitration was viewed with much disfavor by the courts. The courts believed that they should not be ousted of their traditional role in dispute settlement by private tribunals, nor should parties to a contract be deprived of access to the courts. As a consequence, arbitration clauses were almost universally held to be void and unenforceable. School Dist. No. 1 v. Globe and Republic Ins. Co., 146 Mont. 208, 212 (1965). See Note, Contract Clause Providing For Arbitration Of Future Disputes Is Not Enforceable In Montana, 24 Mont. L. Rev. 77 (1963).

At common law, the courts generally recognized but did not necessarily enforce three distinct types of arbitration clauses:

(1) An agreement to arbitrate a dispute existing at the time the agreement is entered. These provisions were valid and enforceable only after the subject was actually arbitrated, but a party would be denied a court order enforcing the contractual duty to arbitrate.

(2) An agreement to arbitrate a future factual dispute (a factual dispute not in existence at the time of the agreement was entered but which might arise in the future). These provisions were considered valid because the courts were not ousted of their jurisdiction over issues of law.

(3) An agreement to arbitrate any future dispute (fact or law). These agreements were uniformly held to be

void and unenforceable because the courts were ousted of their jurisdiction over legal issues and it was believed that the parties should not be deprived of their access to the courts.

II. Arbitration in Montana.

A. Arbitration in commercial disputes.

In 1867 the Montana legislature enacted a statute which upon first reading appears to have reversed the common law bias against arbitration. The statute provides that "persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them . . . . R.C.M. 1947, § 93-201-1.[1] Despite the potentially broad reading this statute might be given, the Montana Court, in conformity with jurisdictions with similar legislation, interpreted the statute to provide for judicial enforcement of an arbitration provision only when the dispute is in existence at the time the agreement is entered. Green v. Wolff, 140 Mont. 413, 423 (1962). Thus, under the statute, an agreement to arbitrate only an existing dispute is valid and enforceable.[2] In addition to the statute, the Montana Court continued the common law notion that an agreement to arbitrate any future factual dispute was valid and enforceable (category #2 discussed above). Moreover, the Court recognized that an arbitration award under a valid and enforceable arbitration agreement is binding on the parties.[3]

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[1] See Appendix, p. i.

[2] The statute did have the positive effect of eliminating the common law obstacle to existing dispute arbitration mentioned in category #1 discussed above.

[3] A party could, of course, receive judicial review of the award and upon an appropriate showing have the award vacated, corrected or modified. This will be discussed infra. pp. 9-10.

However, the major obstacle to arbitration remained. The Montana Court continued to follow the common law rationale that an agreement providing for the arbitration of a future dispute involving an issue of law was unenforceable (category #3). Smith v. Zepp, _____ Mont. _____, 567 P.2d 923, 929 (1977).

Unlike Montana, many jurisdictions early came to the realization that if an agreement providing for arbitration of existing disputes involving issues of law were enforceable, it would not violate public policy to make enforceable an agreement to arbitrate a future dispute involving an issue of law. These courts realized that even if the award of an arbitrator were to be based on an issue of law, the award was not enforceable until a court, with an opportunity to review the legal rationale, enforced the award. See Ezell v. Rocky Mountain Bean & Elevator Co., 76 Colo. 409, 232 Pac. 680 (1925). However, these jurisdictions, unlike Montana, were not faced with a legislative mandate prohibiting the development of arbitration away from its common law limitations.

In 1895 the Montana legislature enacted a statute that codified the existing common law notion that courts cannot be denied their traditional jurisdiction over dispute settlement by agreements of the parties. School Dist. No. 1 v. Globe & Republic Ins. Co., supra 146 Mont. at 212.[4] This 1895 statute has been consistently interpreted by the Montana Court to make unenforceable an agreement to arbitrate future disputes unless the arbitration provision is limited to the determination of solely factual issues. Smith v. Zepp, supra 567 P.2d at 929; Green v. Wolf, supra 140

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[4] The statute provides: "Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract, by the usual proceedings in ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void. R.C.M. 1947 § 13-806.

Mont. at 423; State ex rel. Cave Const. Co. v. Dist. Ct., 150 Mont. 18, 22 (1967).[5] The Montana Court has indicated that such a narrow conception of arbitration is not truly arbitration but merely judicial recognition of commercial appraisal. School Dist. No. 1 v. Globe & Republic Ins. Co., supra 146 Mont. at 213. Thus, what is often referred to as arbitration in Montana is nothing more than legal recognition and enforcement of appraisal agreements in a commercial setting.

B. Arbitration in Labor Disputes.

Frequently a collectively bargained contract between an employer and a union will include a provision for dispute settlement ending in arbitration.[6] In view of the limited scope of arbitration in the commercial setting, the question arises whether the agreed method of labor dispute settlement will fare any better. Because the arbitration machinery in the labor agreement anticipates the resolution of all (factual and legal) future disputes, it could be argued that these arbitration agreements will meet with the same fate as found in commercial contracts. However, this is not the case.

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[5] The Montana Court has held that a provision requiring the arbitration of a future dispute involving an issue of "value or quality" is valid and enforceable. However, the court has consistently held that an arbitration award in a dispute involving an issue of "value or quantity" must be based solely on a question of fact, and that once the arbitrator relies on the "intent and meaning" of the contract in reaching his decision, he is involved in an issue of law and the award is void and unenforceable. State ex rel. Cave Co. v. Dist. Ct., supra 150 Mont. at 22.

[6] Most frequently the contract will provide for a grievance procedure which establishes an agreed method of dispute settlement. Often the grievance procedure will provide that unresolved grievances are to be submitted to arbitration, e.g. "grievance arbitration." A second method of arbitration occasionally provided for in a collective agreement calls for arbitration in the event the parties are unable to reach agreement on the specific provisions to be included in a subsequent contract. This method of labor dispute settlement is referred to as "interest arbitration."

Section 301 of the National Labor Relations Act provides that a suit for violation of a labor contract involving an employer engaged in interstate commerce may be brought in a Federal District Court without regard to the amount in controversy or diversity. 29 USCA 185(a). The great majority of cases brought under § 301 are actions to enforce promises to arbitrate and actions to enforce (or set aside) arbitration awards already rendered. Additionally, under § 301 a federal court can by declaratory relief rule that an employer is not required to arbitrate under the specific contract provisions. Gorman, Robert A., Basic Text on Labor Law Unionization and Collective Bargaining, 547 (1976).

Accordingly, if a Montana employer engaged in interstate commerce agrees to the arbitration of labor disputes, federal law provides for the enforcement of the agreement. The federal law, unlike Montana, does not limit arbitation of future disputes to solely the resolution of factual disputes.

If the arbitration clause is included in a labor agreement involving a Montana public employer (not subject to the federal legislation), it also appears that the clause will be enforced without regard to the limitations found in commercial arbitration. The Montana Collective Bargaining For Public Employees Act provides that nothing "prohibits the parties from voluntarily agreeing to submit any and all of the issues to final and binding arbitration," and any "agreement to arbitrate, and the award issued . . . shall be enforceable in the same manner as is provided in the act for enforcement of collective bargaining agreements." (Emphasis added.) R.C.M. 1947 § 59-1614(9). Thus, the legislature provided for enforcement of public employment arbitration provisions in the same manner as the enforcement of the collective bargaining agreement in which the provision is included. The problem is that the legislature did not (forgot to?) include a provision in the Act concerning the enforcement of the collective bargaining agreement.

However, this (not a significant problem. C(ective bargaining agreements are universally enforced in the same manner as any other contract.[7] It is not reasonable to assume the Montana legislature intended any other procedure. If the legislature intended that "any and all" arbitration clauses would be enforced as collective bargaining agreements, and collective bargaining agreements are traditionally enforced as any other contract, then the only reasonable conclusion is that the legislature intended arbitration provisions to be fully enforced without the limitations found in commercial law.

The need to treat labor arbitration differently than commercial arbitration has long been recognized.[8] It appears that the Montana legislature recognized this distinction and clearly intended that public employee labor arbitration be fully enforceable. While the Montana Court has not spoken directly on this issue,[9] any such decision would certainly place much weight on the expressed legislative intent, especially in light of the universally recognized distinction between labor and commercial arbitration.

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[7] The National Labor Relations Act after which most state public employment acts are patterned, including the Montana Act, provides for judicial enforcement of collective bargaining agreements in a manner not unlike the enforcement of any other contract. 27 USCA 185(a).

[8] The Supreme Court has noted that in the commercial setting arbitration is the substitute for litigation, whereas in the labor setting arbitration is the substitute for industrial strife. United Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574, 578 (1960). Given this distinction, the Court stated since "arbitration of labor disputes has quite different functions from arbitration under an ordinary commercial agreement, the hostility evinced by courts toward arbitration of commercial agreements has no place here. Id.

[9] In Butte Teachers Union v. Bd. of Ed., ____ Mont. ____, 567 P.2d 51, 53 (1977). The Montana Court, without discussing any conflict, upheld a District Court order requiring the employer to arbitrate what appears to be clearly an issue of law under an arbitration clause requiring the arbitration of future disputes.

Accordingly, with labor arbitration provisions involving a Montana employer engaged in interstate commerce fully enforceable under federal law, and such provisions involving a Montana public employer enforceable under the Montana Public Employee Bargaining Act, the vast majority of labor arbitration provisions will be enforceable without regard to the limitations applied to commercial arbitration. For those few Montana solely intrastate employers who have a labor agreement providing for arbitration, it can be argued that the arbitration provision should be fully enforceable without regard to the limitations imposed on commercial arbitration, based upon the universally recognized distinction between labor and commercial arbitration. However, given the fact that Montana, unlike most jurisdictions, has a specific statutory limitation on arbitration, this argument might very well be rejected. See Smith v. Zepp, supra 567 P.2d at 929. Thus, an arbitration agreement involving a solely intrastate private employer might very well be subject to the limitations found in commercial arbitration while no such limitation would be applied to a similar agreement involving an interstate or public employer.

III. Comparison Between the Uniform Arbitration Act and Montana Law.

A summary analysis of the Uniform Arbitration Act and a comparison with current Montana law can conveniently be presented under three headings: (1) which agreements to arbitrate would the model act apply; (2) the judicial procedure applicable in the enforcement of arbitration agreements and arbitration awards; and (3) the hearing procedure used by arbitrators.

1. Agreements Covered.

As previously discussed, current Montana law provides that agreements to arbitrate future disputes involving legal issues are unenforceable. The Model Act eliminates this limitation. The Model Act provides for

the enforcement of a written agreement to submit any existing controversy, or a written contract provision to submit any controversy thereafter arising between the parties regardless whether the issue is legal or factual. Uniform Arbitration Act § 1. (Hereafter cited as U.A.A., see Appendix p. v.)[10] The Model Act also specifically applies to labor arbitration agreements, unless the parties specify otherwise. The equal treatment for both commercial and labor arbitration under the Model Act eliminates the present confusion in Montana law on this subject. See U.A.A. § 31.

2. Enforcement Procedure.

The Model Act provides that upon motion to the court (a court of competent jurisdiction in the state, e.g., a Montana District Court), a party may seek an order directing arbitration. The order must be granted if the court finds that there is an agreement to arbitrate covering the dispute in question and that the opposing party refuses to arbitrate. U.A.A. § 2(a). In the event there is an action or proceeding involving the issue pending before the court, the court must stay that action or proceeding, or sever the arbitrable issue from that action or proceeding. U.A.A. § 2(c) and (d). The purpose of staying the action or proceeding or severing the arbitrable issue from the action or proceeding is to prevent the court from preempting the arbitration process. The Model Act also provides that a court may not refuse an order for arbitration because the court believes the issue lacks merit. U.A.A. § 2(e). Whether the party seeking arbitration raises a meritorious issue is to be left to the decision of the arbitrator and the arbitration

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[10] The Montana statute which provides for the enforcement of agreements to arbitrate existing disputes specifically exempts disputes involving title to real property. R.C.M. § 93-201-1. The Model Act has no such exemption. However, like the Model Act, the Montana statute makes enforceable only written agreements to arbitrate. R.C.M. § 93-201-2.

process must not be preempted by the court. Thus when a party seeks a court order enforcing an arbitration provision, the court need only concern itself with whether there is a valid arbitration agreement and whether the agreement covers the dispute in question. Whether the issue raised has merit is left to the arbitrator. Current Montana law is in substantial agreement with these provisions of the Model Act.[11]

The other major area of judicial intervention concerns the enforcement of the award. The Model Act follows the traditional motions to confirm, vacate, correct or modify the award of the arbitrator. U.A.A. §§ 11, 12, 13. This corresponds to the method used in Montana. Compare R.C.M. §§ 93-201-6 through 93-201-8 with §§ 11, 12 and 13 of the Model Act.[12]

The Model Act provides that the court shall vacate an award on five separate grounds.[13] The Montana statute provides that a court may vacate

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[11] The Montana statute that authorizes arbitration on matters currently in dispute provides that the parties may stipulate that their agreement to arbitrate may be entered as an order of the district court. R.C.M. 1947 § 93-201-3. For arbitration awards not covered by the statute but authorized by common law, the Montana Court will enter an order enforcing a contract duty to arbitrate. School Dist. No. 1 v. Globe and Republic Ins. Co., supra 146 Mont. at 212-213. Where a party seeks to litigate an issue subject to arbitration, the Court had held that the action or proceeding must give way to the agreed upon arbitration settlement procedure. Id. Additionally, the Court has recognized that under a valid arbitration agreement, it is the function of the arbitrator, not the court, to evaluate the issue in dispute. Id.

[12] The Model Act does, however, integrate these motions. Thus, on motion to confirm the award, any grounds for vacating, correcting or modifying the award must be asserted by opposing party. U.A.A. § 13. Similarly, upon an unsuccessful motion to vacate, correct or modify, the Court will confirm the award. U.A.A. § 5 12(d) and 13(b).

[13] (1) the award was procured by corruption, fraud or other undue means;
(2) there was evident partiality by the arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
(3) the arbitrators exceeded their powers;
(4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor, or refused to hear evidence material to the controversy or otherwise so conducted the

an award under similar circumstances. Compare R.C.M. 1947 § 93-201-7 with U.A.A. § 12. Other than the compulsory language in the Model Act requiring the Court to vacate and the permissive language of the Montana Act, there is little substantive difference between the two provisions.[14] Moreover, the Montana Court has recognized that its scope of review under common law arbitration is narrow, and its authority to vacate an award is limited to situations similar to those set forth in the Montana statute and the Model Act. McIntosh et al. v. Hartford Fire Ins. Co., 106 Mont. 434, 439-440 (1930). See also Lee v. Providence Washington Ins. Co., 82 Mont. 264, 274-275 (1928); Clifton Applegate - Toole v. Drain Dist. No. 1, 82 Mont. 312, 328-9 (1928). Accordingly, the Model Act does not represent a sharp departure from current Montana law on this subject.[15]

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hearing, contrary to the provisions of . . . (the Act concerning the hearing procedure), as to prejudice substantially the rights of a party; or

(5) there was no arbitration agreement and the issue was not adversely determined in proceedings under . . . . (the provisions of the Act concerning judicial enforcement of the duty to arbitrate) and the party did not participate in the arbitration hearing without raising the objection. U.A.A. § 12.

[14] There are, however, differences, e.g., Montana provides that the Court may vacate an award if it is indefinite or cannot be performed, while it does not provide for vacating an award where the arbitrator was in fact not neutral. See R.C.M. 1947 § 93-201-7.

[15] The Model Act does provide that a Court may not vacate or refuse to confirm an award because the relief granted was such that could not be granted by a court of law or equity. U.A.A. § 12(a). The leading draftsman of the Model Act has indicated that the necessity for this provision is based on situations where corporate stock is evenly held by stockholders who cannot agree on a question of corporate policy. "It is an increasingly frequent practice to submit such disputes to arbitration and avoid dissolution." Pirsig, Maynard E., Toward a Uniform Arbitration Act. 9 Arb. Journal 115, 118 (1954). Of course, there is no applicable treatment under Montana common law, Montana will not even enforce arbitration awards involving legal issues.

3. Arbitration Hearings.

Dean Pirsig, the leading draftsman of the Model Act, has indicated that the goal of the arbitration hearing procedure in the Model Act "was to safeguard the essentials of a fair hearing without detracting from the informality, the freedom from technicality, and the dispatch which characterize arbitration hearings and which are commonly important reasons why the parties have agreed to resort to arbitration," Pirsig, supra note 15 at 118. The hearing procedure set forth in the Model Act meets this important goal. While, in comparison with the Montana Act, the Model Act specifically provides for more procedural options[16] and procedural safeguards,[17] these provisions are not consistent with the Montana Act or the decisions of the Montana Court. The Model Act merely goes further to assure that the arbitration process will be workable and fair.

IV. Conclusion.

Twenty states and the District of Columbia have adopted the Model Act. Most other states have statutes similar to the Model Act or judicial decisions affording full use of the arbitration process as a method of private dispute settlement. Given the present Montana statutory framework that locks in the out of date, universally rejected common law view of arbitration, the Montana legislature must act if Montana is to have a truly effective method of extra-judicial dispute settlement. The Montana

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16 The Court may appoint the arbitrator or arbitrators in the absence of an agreement between the parties, or if the agreed method fails, U.A.A. § 33; arbitrators may subpeona witnesses, records, etc. with court enforcement, and take depositions, U.A.A. § 37.

17 In the absence of an agreement to the contrary, and upon application by a party, the Court may fix the period of time after the hearing for the award, U.A.A. § 8(b); final awards are to be based on majority vote of arbitrators, U.A.A. § 5(c).

Court has similarly recognized that although "arbitration may be the most speedy and economical means available to parties for a binding resolution of their disputes," full utilization of this method cannot be made until the legislature acts. Smith v. Zepp, supra 567 P.2d at 923. In an era of crowded dockets and lengthy and expensive litigation, methods supporting private settlement of disputes should be encouraged. The Model Act or some tailored form of the Model Act is the best method to achieve this goal.

APPENDIX

CHAPTER 201

ARBITRATION—SUBMISSION TO

93-201-1. (9972) What may be submitted to arbitration, and when. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

History: En. Sec. 302, p. 106, Bannack Stat.; re-en. Sec. 358, p. 207, L. 1867; re-en. Sec. 432, p. 122, Cod. Stat. 1871; re-en. Sec. 459, p. 163, L. 1877; re-en. Sec. 459, 1st Div. Rev. Stat. 1879; re-en. Sec. 472, 1st Div. Comp. Stat. 1887; re-en. Sec. 2270, C. Civ. Proc. 1895; re-en. Sec. 7365, Rev. C. 1907; re-en. Sec. 9972, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1281.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, M. R. Civ. P., Rule 81(a) and Table A.

Fire Insurance Loss

Where the parties to a contract of fire insurance, upon destruction of the property, agree to submit the amount of loss to arbitration, the award fixes the amount of loss sustained, and is binding upon both parties, so that the insured cannot maintain an action upon the policy and have a readjustment of the loss, without first having the award set aside. Solem v. Connecticut Fire Ins. Co., 41 M 351, 353, 109 P 432. See also Aetna Ins. Co. v. Hefferlin, 260 F 695, 700.

Legislative Power

The legislature has power to provide a means by which the parties to a controversy may waive a trial by a court and submit the matter to arbitrators selected by themselves, by whose award they are finally concluded in the absence of fraud, gross error, excess of power, and the like. Shea v. North-Butte Min. Co., 55 M 522, 535, 179 P 499.

Present Existence of Dispute

This section contemplates voluntary submission of disputes in existence at the time of the submission, not to a contractual provision requiring arbitration of future disputes. Green v. Wolff, 140 M 413, 372 P 2d 427, 433.

Collateral References

Arbitration and Award⇨3.

6 C.J.S. Arbitration and Award §§ 10-13.

5 Am. Jur. 2d 559, Arbitration and Award, § 54 et seq.

Validity of agreements to arbitrate disputes generally as a condition precedent to the bringing of an action. 26 ALR 1077.

Power of municipal corporation to submit to arbitration. 40 ALR 1370.

Extraterritorial enforcement of arbitral award. 73 ALR 1460.

Arbitration of issues or questions pertaining to probate matters. 104 ALR 359.

Retention of jurisdiction in suit in equity to determine whole controversy, including amount of loss or damage, after setting aside an award or finding by arbitrators or appraisers. 112 ALR 9.

Dispute as to amount husband or father should pay for support of wife or child as subject of arbitration. 133 ALR 1334.

Validity of agreement to submit all future questions to arbitration. 135 ALR 79.

Construction of arbitration provisions of sales contracts as regards questions to be submitted to arbitrators. 136 ALR 264.

Violation or repudiation of contract as affecting right to enforce arbitration clause therein. 3 ALR 2d 383.

Constitutionality of arbitration statutes. 55 ALR 2d 432.

Arbitration of disputes within close corporation. 64 ALR 2d 643

93-201-2. (9973) Submission to arbitration to be in writing. The submission to arbitration must be in writing, and may be to one or more persons.

History: En. Sec. 303, p. 106, Bannack Stat.; re-en. Sec. 359, p. 207, L. 1867; re-en. Sec. 433, p. 122, Cod. Stat. 1871; re-en. Sec. 460, p. 163, L. 1877; re-en. Sec. 460, 1st Div. Rev. Stat. 1879; re-en. Sec. 473, 1st Div. Comp. Stat. 1887; re-en. Sec. 2271, C. Civ. Proc. 1895; re-en. Sec. 7366, Rev. C. 1907; re-en. Sec. 9973, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1282.

Collateral References

Arbitration and Award⊂=6.

6 C.J.S. Arbitration and Award §§ 14, 17, 25.

93-201-3. (9974) Submission may be entered as an order of the court—revocation. It may be stipulated in the submission that it be entered as an order of the district court, for which purpose it must be filed with the clerk of the district court of the county where the parties, or one of them, reside. The clerk must thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award must be made. When so entered the submission cannot be revoked without the consent of both parties. The arbitrators may be compelled by the court or judge to make an award, and the award may be enforced by the court or judge in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

History: En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1283.

Collateral References

Arbitration and Award⊂=13, 16.

6 C.J.S. Arbitration and Award §§ 26, 32 et seq.

93-201-4. (9975) Powers of arbitrators. Arbitrators have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

History: En. Sec. 305, p. 107, Bannack Stat.; re-en. Sec. 361, p. 208, L. 1867; re-en. Sec. 435, p. 122, Cod. Stat. 1871; re-en. Sec. 462, p. 164, L. 1877; re-en. Sec. 462, 1st Div. Rev. Stat. 1879; re-en. Sec. 475, 1st Div. Comp. Stat. 1887; re-en. Sec. 2273, C. Civ. Proc. 1895; re-en. Sec. 7368, Rev. C. 1907; re-en. Sec. 9975, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1284.

Collateral References

Arbitration and Award⊂=29-40.

6 C.J.S. Arbitration and Award § 48 et seq.

5 Am. Jur. 2d 587, Arbitration and Award, § 90 et seq.

Death of party to arbitration agreement before award as revocation of submission. 63 ALR 2d 754.

93-201-5. (9976) Majority of arbitrators may determine any question—oath of arbitrators. All the arbitrators must meet and act together during the investigation, but when met, a majority may determine any question. Before acting, they must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

History: En. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1285.

Absence of Arbitrator from Investigation

Where one of the arbitrators was absent during part of the investigation, though he may have authorized one of the other arbitrators to sign his name to the award, the investigation could not lawfully proceed, the award was null and void, and no valid judgment could be entered thereon. Dunphy v. Ford, 2 M 300.

Collateral References

6 Am. Jur. 2d 616, Arbitration and Award, § 131 et seq.

Concurrence of all arbitrators as condition of binding award under submission to arbitration. 77 ALR 833.

Award or decision by arbitrators as precluding return of case to or its reconsideration by them. 104 ALR 710.

Right of arbitrator to consider or to base his decision upon matters other than those involved in the legal principles applicable to the questions at issue between the parties. 112 ALR 873.

93-201-6. (9977) Award to be in writing—when judgment to be entered. The award must be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award must be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit, showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award must be entered by the clerk in the judgment book, and thereupon has the effect of a judgment.

History: En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1286.

References

Huffine v. Lincoln, 53 M 474, 476, 164 P 888.

Collateral References

Arbitration and Award⊂⊃48-84.

6 C.J.S. Arbitration and Award § 71 et seq.

Quotient arbitration award or appraisal. 20 ALR 2d 958.

93-201-7. (9978) Award may be vacated in certain cases. The court or judge, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion:

1. That it was procured by corruption or fraud.

2. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced.

3. That the arbitrators exceeded their powers in making the award; or that they refused, or improperly omitted, to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed.

History: En. Sec. 308, p. 108, Bannack Stat.; re-en. Sec. 364, p. 208, L. 1867; re-en. Sec. 438, p. 123, Cod. Stat. 1871; re-en. Sec. 465, p. 165, L. 1877; re-en. Sec. 465, 1st Div. Rev. Stat. 1879; re-en. Sec. 478, 1st Div. Comp. Stat. 1887; re-en. Sec. 2276, C. Civ. Proc. 1895; re-en. Sec. 7371, Rev. C. 1907; re-en. Sec. 9978, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1287.

Honest Effort by Arbitrators

Heating and plumbing contractor was entitled to enforcement of report of arbitrators against school district where ar-

bitrators made a sincere, honest and industrious effort to render a fair and just award. Hopkins v. School District No. 40, 133 M 530, 327 P 2d 395, 398.

Collateral References

Arbitration and Award⊂=76-78.

6 C.J.S. Arbitration and Award §§ 103, 103-111.

5 Am. Jur. 2d 643, Arbitration and Award, § 167 et seq.

Improper attempt by influencing or by attempting to influence decision as ground for revocation of arbitration, or for avoidance of award thereunder. 8 ALR 1082.

Abandonment by mutual consent of award under arbitration. 32 ALR 1365.

Perjury as ground of attack on judgment entered upon an award in arbitration. 99 ALR 1202.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award. 27 ALR 2d 1160.

Loss of right to arbitration through laches. 37 ALR 2d 1125.

Arbitrator's consultation with outsider as justifying vacation of award. 47 ALR 2d 1362.

Vacation of award of arbitrators as to dispute within close corporation. 64 ALR 2d 662.

Time for modification or vacation of arbitration award. 85 ALR 2d 779.

93-201-8. (9979) Court may, on motion, modify or correct the award. The court or judge may, on motion, modify or correct the award, where it appears:

1. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some persons or property therein;

2. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matters submitted;

3. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

History: En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1288.

Collateral References

Arbitration and Award⊂=69, 76.

6 C.J.S. Arbitration and Award §§ 91, 103, 110.

5 Am. Jur. 2d 624, Arbitration and Award, § 143.

Time for modification or vacation of arbitration award. 85 ALR 2d 779.

References

Hopkins v. School District No. 40, 133 M 530, 327 P 2d 395, 399.

93-201-9. (9980) Decision on motion subject to appeal, but not the judgment entered before motion. The decision upon the motion is subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before motion made cannot be subject to appeal.

History: En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R. C. M. 1921. Cal. C. Civ. Proc. Sec. 1289.

93-201-10. (9981) If submission be revoked and an action brought, what to be recovered. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered can only be the costs and damages sustained in preparing for and attending the arbitration.

UNIFORM ARBITRATION ACT

An Act relating to arbitration and to make uniform the law with reference thereto

1955 ACT

Sec.

Be it enacted .....

§ 1. Validity of Arbitration Agreement.--A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act also applies to arbitration agreements between employers and employees or between their respective representatives [unless otherwise provided in the agreement].

§ 2. Proceedings to Compel or Stay Arbitration.—(a) On application of a party showing an agreement described in Section 1, and the opposing party's refusal to arbitrate, the Court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the Court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this Section, the application shall be made therein. Otherwise and subject to Section 18, the application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

Statutory Notes

Minnesota. Substitutes "Proceedings" for "Procedure" in section heading, and omits "involved" preceding "in an action" in first sentence of subdivision (c). M.S.A. § 572.09.

§ 3. Appointment of Arbitrators by Court.—If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

§ 4. Majority Action by Arbitrators.—The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this act.

§ 5. Hearing.—Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

§ 6. Representation by Attorney.—A party has the right to be represented by an attorney at any proceeding or hearing under this act. A waiver thereof prior to the proceeding or hearing is ineffective.

§ 7. Witnesses, Subpoenas, Depositions.—(a) The arbitrators may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the Court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the ..... Court.

Statutory Notes

Minnesota. Provides for issuance of subpoenas by arbitrators themselves, and inserts "district" preceding "court". M.S.A. § 572.14.

§ 8. Award.—(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

§ 9. Change of Award by Arbitrators.—On application of a party or, if an application to the court is pending under Sections 11, 12 or 13, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of Section 13, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of Sections 11, 12 and 13.

Statutory Notes

Minnesota. Substitutes "paragraphs" for "clauses", in first sentence. M.S.A. § 572.16.

§ 10. Fees and Expenses of Arbitration.—Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

§ 11. Confirmation of an Award.—Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter

imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12 and 13.

§ 12. Vacating an Award.—(a) Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection;

but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this Section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of Subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with Section 3, or if the award is vacated on grounds set forth in clauses (3) and (4) of Subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 3. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. As amended Aug. 1956.

Historical Note

The 1936 amendment omitted "or rendered an award contrary to public policy" from subd. 3, and omitted provisions authorizing vacation of award where it is so indefinite or incomplete that it cannot be performed, or is so grossly erroneous as to imply bad faith on the part of the arbitrators.

§ 13. Modification or Correction of Award.—(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

§ 14. Judgment or Decree on Award.—Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

§ 15. Judgment Roll, Docketing.—(a) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) The agreement and each written extension of the time within which to make the award;

(2) The award;

(3) A copy of the order confirming, modifying or correcting the award; and

(4) A copy of the judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

§ 16. Applications to Court.—Except as otherwise provided, an application to the court under this act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

§ 17. Court, Jurisdiction.—The term "court" means any court of competent jurisdiction of this State. The making of an agreement described in Section 1 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this Act and to enter judgment on an award thereunder.

§ 18. Venue.—An initial application shall be made to the court of the [county] in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the [county] where the adverse party resides or has a place of business or, if he has no residence or place of business in this State, to the court of any [county]. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

Statutory Notes

Minnesota. Inserts "county" within brackets in each instance. M.S.A. § 572.25.

§ 19. Appeals.—(a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under Section 2;

(2) An order granting an application to stay arbitration made under Section 2(b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment or decree entered pursuant to the provisions of this act.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

§ 20. Act Not Retroactive.—This act applies only to agreements made subsequent to the taking effect of this act.

§ 21. Uniformity of Interpretation.—This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 22. Constitutionality.—If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Statutory Notes

Minnesota. Substitutes "Severability" for "Constitutionality", and omits "effect" following "given" in text, probably in error. M.S.A. § 572.20.

§ 23. Short Title.—This act may be cited as the Uniform Arbitration Act.

Statutory Notes

Minnesota. Substitutes "Citation" for "Short Title". M.S.A. § 572.30.

§ 24. Repeal.—All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

Statutory Notes

Minnesota. Repeals sections 572.01–572.07 of 1953 Minnesota Statutes. L. 1957, c. 633, § 24, subd. 4.

Also provides that Rule 26.07 of Rules of Civil Procedure is superseded by the provisions of this Act, in so far as inconsistent therewith. L.1957, c. 633, § 24, subd. 2.

§ 25. Time of Taking Effect.—This act shall take effect .....

Statutory Notes

Minnesota. Omits this section.

S T A T E R E P O R T E R
Box 749
Helena, Montana

VOLUME 35

No. 14005

More recent case on Commercial Code. Not included in digest

PALMER STEEL STRUCTURES, a corporation,

Plaintiff and Appellant,

vs.

WESTECH, INC., a corporation, CHARLES V. McCLAREN and ALFRED W. BOYER, JR.,

Defendants and Respondents.

Submitted: May 2, 1978
Decided: Sept.13, 1978

. . . . . .

ARBITRATION, Provisions for Arbitration in Contract as Unenforceable--CONTRACTS

Appealed from the Thirteenth Judicial District Court, Yellowstone County, Hon. Robert Wilson, Judge

For Appellant: Anderson, Symmes, Brown, Gerbase, Cebull & Jones, Billings

For Respondents: Moulton, Bellingham, Longo & Mather and Ward Swanser, Billings

Mr. Rockwood Brown argued the case orally for Appellant, Mr. Swanser for Respondents.

Opinion by Justice Daly; Justices Shea, Harrison and Sheehy concurred.

Cause remanded with instructions.

Palmer Steel Structures, Plaintiff and Appellant, v. Westech, Inc., Defendants and Respondents
35 St. Rep. 1354

Mr. Justice Daly delivered the Opinion of the Court.

Plaintiff Palmer Steel Structures (Palmer) appeals from orders of the District Court, Yellowstone County, setting aside and refusing to reinstate a temporary restraining order which enjoined defendant Westech, Inc. (Westech) from proceeding with arbitration. Palmer Steel Structures contracted to construct a metal airplane hangar building for Westech, Inc. Article 15 of the parties' contract provided that:

"All claims or disputes arising out of this Contract or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. * * *"

Palmer commenced construction on June 17, 1976. By Friday, September 17, 1976, approximately 90% of the construction was complete. To safeguard the structure over the weekend, Palmer's employees installed braces and a rope anchor. The next day, September 8, 1976, a strong wind caused the structure to collapse.

Westech's builders' insurance paid for the removal of debris, material replacement and reconstruction of the collapsed structure to its status at the time of the loss. Palmer thereafter substantially completed the structure in accord with the basic contract.

Under the contract as modified by the parties, Palmer claimed a balance owing to it from Westech, Inc. of $48,714.17. Possession of the building was given to Westech on about January 15, 1977. Following possession Westech asserted certain claims and offsets against the balance of its account to Palmer. On February 15, 1977, under the contract arbitration clause, Westech submitted its dispute for arbitration before the American Arbitration Association. The enumeration of disputes as specified by Westech in its demand for arbitration was:

"1. Delay in performance of contract

"2. Breach of contract, failure to perform contract on or before October 1, 1976

"3. Failure to perform the work in a good and workmanlike manner free from faults and defects as the same pertains to the sliding doors which are an integral part of the contract."

Westech's "CLAIM OR RELIEF SOUGHT" was:

"1. Damages for costs, expenses and lost profits resulting from failure to perform work on or before October 1, 1976, in the amount of $150,000.00.

"2. Damages because of failure to adequately and properly correct doors on the hangar facility in the amount of $50,000.00.

"3. The right to withhold the amount due under the contract to offset damages.

"4. For filing fees.

"5. For arbitration fees.

"6. To reserve the right to add other items after the initial conference."

Palmer promptly gave notice that it did not consent to and refused submission of the matter to arbitration. On April 4, 1977 the American Arbitration Association gave notice to Palmer that unless stayed by court order before April 11, 1977, the matter would be deemed submitted. On April 6, 1977, Palmer filed an action in District Court seeking to recover the $48,714.17 balance owing under the construction contract and also asking for an injunction against submittal of Westech's counterclaim to arbitration.

The District Court, Cascade County, issued an order to show cause and a temporary restraining order. The case was then transferred to the District Court, Yellowstone County. The District Court in Yellowstone County on June 2, 1977, ordered that the temporary restraining order against Westech's arbitration proceedings be set aside. Since the filing of the instant appeal Westech has filed in District Court a counterclaim against Palmer asserting the same claims, alleged delay in performing the contract, alleged defective and faulty construction based upon the alternate theories of breach of contract, negligence, strict liability and breaches of the warranties of fitness and merchantability.

Palmer presents two issues for review:

1. Is the arbitration provision in the parties' contract unenforceable?

2. Is Palmer entitled to injunctive relief?

Section 13-806, R.C.M. 1947, provides:

"Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract, by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void."

This court has long interpreted section 13-806, R.C.M. 1947, to

mean that a contract may require future disputes as to value or quantity to be submitted to arbitration. Wortman v. Montana Central Ry. Co. (1899), 22 Mont. 266, 279, 56 P. 316; School District No. v. Globe & Republic Ins. Co. (1965), 146 Mont. 208, 213, 404 P.2d 889. However, contract provisions which require parties to submit future disputes as to questions of law are void under the statutes. Green v. Wolff (1962), 140 Mont. 413, 372 P.2d 427; State ex rel. Cave Construction Co. v. District Court (1967), 150 Mont. 18, 430 P.2d 634. Here, the contract provision provided that "All claims or disputes arising out of this Contract or the breach thereof shall be decided by arbitration * * *."

The "claims or disputes" submitted by Westech may be paraphrased as: Did Palmer breach its contract by failing to complete its work by October 1, 1976? Was Palmer negligent in its workmanship and inspection of the building? Did Palmer breach its warranties of merchantability and fitness in erecting the building? All of these questions are issues of law or mixed issues of law and fact. Westech may not require Palmer to submit such questions to arbitration without its consent.

Montana has code provisions for submission of existing disputes to arbitration (Title 93, Chap. 201, Sections 93-201-1 through 93-201-10), but such submission must be voluntary, requiring consent of all parties. Apparently such consent may be revoked up to the time an arbitration award is entered in the District Court. Section 93-201-3, R.C.M. 1947. Here the parties are not proceeding under statutory authority. This is a common law agreement for arbitration, which is unenforceable (6 C.J.S. Arbitration Sec. 2, pp. 159, 162) when the agreement is to arbitrate all disputes that may thereafter arise. State ex rel. Cave Construction Co. v. District Court, supra. Without the consent of Palmer Steel Structures, therefore, the arbitrators have no authority to act (6 C.J.S. Arbitration Sec. 72, pp. 286, 287) and any action taken by them without such consent is a mere nullity. In that circumstance the court may stay further proceedings in arbitration:

" * * * So it may be proper to stay arbitration where there is no valid contract to arbitrate * * * /or/ when the contract is unenforceable * * *." 6 C.J.S. Arbitration Sec. 45, p. 247."

Nonetheless Westech contends the District Court did not err in setting aside its injunction order against arbitration. It argues "No harm can be done by allowing Westech to arbitrate its claim. The court must decide which, if any, findings made by the arbitrators will be enforced." Westech is arguing that some issues may be decided under arbitration and submitted to the District Court, even under the otherwise unenforceable arbitration clause. It further argues that arbitration is not a judicial proceeding and will not cause irreparable injury to Palmer.

It is clear that if arbitration is permitted as to any issues, Palmer will have to elect whether to participate in the arbitration process, on pain of having issues decided by the arbitrators without opposition, since the arbitrators' decisions will later be presented to the District Court for adoption. It seems that the proposal to continue in arbitration goes to the very heart of what section 13-806, R.C.M. 1947, declares to be invidious, for Palmer would be "restricted from enforcing his rights under the contract, by the usual proceedings in the ordinary tribunals." As we have noted, anything done by the arbitrators now is a nullity, unenforceable, and the proposal to continue in arbitration is in effect a request for a useless procedure.

While arbitration, in itself, is not a judicial proceeding, it cannot produce an enforceable result without further judicial action. 6 C.J.S. Arbitration Sec. 3, p. 164. In this case, the rules of the arbitration body provide that the parties are presumed to have consented that judgment upon the award rendered by the arbitrators may be entered in any federal or state court of jurisdiction.

Therefore, if further proceedings in arbitration are allowed, or not enjoined, Palmer faces a real threat of irreparable injury. Allowing rhe arbitrators to make decisions might have the effect of rendering the District Court's judgment ineffective (section 93-4204(3), R.C.M. 1947), with additional costs to the parties and a multiplicity of proceedings, judicial or otherwise.

Since the arbitrators are not before the District Court to make a stay of arbitration proceedings effective, it is proper that the District Court reinstate its order enjoining and restraining Westech from taking or attempting to take any further steps purporting to arbitrate or determine the issues between the parties outside the District Court.

The cause is remanded with the instruction that the District Court grant an injunctive order against Westech in accord with this Opinion.

PLEASE INSERT THIS PAGE 1358A & B after PAGE 1358

Palmer Steel Structures, Plaintiff and Appellant, v. Westech, Inc., Defendants and Respondents
35 St. Rep. 1354

Hon. H. William Coder, District Judge sitting for Chief Justice Haswell, dissenting:

I must respectfully dissent from the opinion of my colleagues.

Initially, from a factual standpoint, there is nothing remarkable regarding the circumstances out of which this case arises and our principal consideration, therefore, is the existing state of the case law in Montana, and whether those expressions serve to implement the intent and philosophy of Montana's Statutory Arbitration provisions and thus give vitality to the concept that parties may contractually agree to submit their disputes to arbitrators for resolution and thus, possibly avoid the expensive and time-consuming route of litigation through the Courts.

The majority, in its opinion denying Westech its right to enforce its arbitration clause expressly set forth in its contract with Palmer, relies principally and primarily on sec. 13-806, R. C.M. 1947, and the Wortman case and its progeny, with little more than a passing reference to the arbitration procedures expressly provided by secs. 93-201-1 et. seq. (R.C.M. 1947).

In this case the parties negotiated a contract and each gave consideration for the other's promise to submit all disputes to arbitration. This does not violate the provisions of sec. 13-806 as a part of the Montana provisions for arbitration (Title 93, Chapter 201) requires all cases to go to the District Court before an order is binding on the parties.

The Majority state that the decision of the arbitrators "will later be presented to the District Court for adoption", however, the proceedings in the District Court are required to be no more than a mere rubber stamp of the arbitrators' decision. Sec. 93-201-7(3) provides that the District Court may vacate an award if the arbitrators exceeded their power. This could include any award which is made upon an erroneous determination of a question of law.

It has been recognized by this Court in an opinion by Justice William T. Pigott that the provisions of sec. 13-806 are not sensible.

"The common-law doctrine that a provision in an ordinary contract requiring all differences between the parties touching their rights and liabilities thereunder to be submitted to arbiters, whose decision or award shall be conclusive and final, will not be allowed to bar the litigation of such differences in the Courts of the land, is an anomaly, and inconsistent with the right to freely contract; and if it were not so firmly and well-nigh universally established, we apprehend that it would

be overturned, as resting on no solid foundation of reason." Cotter v. A.O.U.W. 23 Mont. 82, 89 (1899).

It should be noted that this common law rule upon which section 13-806 is based, was developed in a time where the Courts were paid by the parties for each case and to allow such arbitration was to cut the judges' pay. This is no longer the case, and further, there is not a court in this country which does not have more work than it adequately can handle.

Most law suits tried in the Courts today involve such technically complex areas that judges must spend an extraordinary amount of time educating themselves in the innumerable technical areas that present themselves in Court. It seems that these disputes could be much more efficiently handled by arbitration where the arbitrators are already experts in the technical areas involved in the dispute before them. Following the decision by experts in the field the disputes can then be taken to Court to insure that the law involved in the dispute has been correctly applied.

Mr. Justice Holmes made a comment which should have been applied by this Court in Cotter in 1899 and which is even more applicable today:

"It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule simply persists from blind imitation of the past." (Collected Legal Papers, Oliver Wendell Holmes, p. 187.)

Dated Sept. 28, 1978.

BENCH MEMORANDUM

No. 14005

Palmer Steel Structures

v.

Westech, Inc., Charles V. McClaren and Alfred W. Boyer, Jr.

Justice Gene B. Daly
(Steve Roberts)

May 2, 1978
2:30 P.M.

I. FACTS AND PROCEDURE: Appellant Palmer Steel Structures contracted to construct a metal airplane hanger building for respondent Westech, Inc. Article XV of the parties' contract provided that:

> "* * * all claims or disputes arising out of this contract or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise * * *."

Appellant commenced construction on June 17, 1976. By September 17, 1976, approximately 90% of the construction was complete; to safeguard the structure over the weekend, appellant's employees installed braces and a rope anchor. The next day, September 8, 1976, a strong wind caused the structure to collapse.

Respondent Westech, Inc.'s builders' insurance paid for appellant's removal of debris, material replacement and reconstruction of the collapsed structure to its status at the time of the loss. Appellant thereafter substantially completed the structure in accord with the basic contract.

Under the contract, as modified by the parties, there remained owing from respondent to appellant the principal balance of $48,714.17. Possession of the building was given to respondent Westch on about January 15, 1977. Following possession, Westech asserted certain claims and offsets against the balance of its account to appellant. On February 15, 1977, pursuant to the contract arbitration clause, Westech submitted its demand for arbitration before the American Arbitration Association. The nature of the dispute, as specified by Westech in its demand for arbitration was:

1. Delay in performance of contract.

2. Breach of contract, failure to perform contract on or before October 1, 1976.

3. Failure to perform the work in a good and workmanlike manner free from faults and defects as the same pertains to the sli doors which are an integral part of the contract.

Westech's "Claim or Relief Sought" was:

1. Damages for costs, expenses and lost profits resulting from failure to perform work on or before October 1, 1976, in the amount of $150,000.00.

2. Damages because of failure to adequately and properly correct doors on the hanger facility in the amount of $50,000.00.

3. The right to withhold the amount due under the contrac to offset damages.

4. For filing fees.

5. For arbitration fees.

6. To reserve the right to add other items after the initia conference.

Appellant promptly gave notice that it did not consent to and refused submission of the matter to arbitration. On April 4, 1 the American Arbitration Association gave notice to appellant that, unless stayed by court order before April 11, 1977, the matter would be deemed submitted. On April 6, 1977, appellant filed an action in District Court seeking to recover the $48,714.17 balance owing under the construction contract, and also asking for an injunction against submittal of Westech's counterclaim to arbitration.

The District Court, Cascade County, issued an order to show cause and a temporary restraining order. The case was then t ransferred to the District Court, Yellowstone County. The Court, on June 2, 1977, ordered that the temporary restraining order against Westech's arbitration proceedings be set aside. Since filing this appeal, Westech has filed a district court counterclaim against appellant asserting the same claims, alleged delay in performing the contract, and alleged defective and faulty construction, based upon the alternate theories of breach of contract, negligence, strict liability and breaches of the warranties of fitness and merchantability.

II. ISSUES: 1. Was the arbitration provision in the parties' contract void and unenforceable?

2. Was appellant entitled to injunctive relief?

III. ARGUMENTS OF COUNSEL:

a. Appellant --Section 13-806, R.C.M. 1947, guarantees part access to the courts to resolve contract disputes and ~~xxxxxxxxxxxxxx~~s invalidates contract provisions which require the parties to the contract to submit to arbitration all future contract disputes. The contract may require disputes as to value or quantity to be submitted to arbitration. Contract provisions which require the parties to submit future disputes as to questions of law, however, are void. State ex rel. Cave Construction Co. v. District Court, 150 Mont. 18, 430 P.2d 634. The contract provision in this case provided that "All claims or disputes arising out of this contract or the breach thereof shall be decided by arbitration * * The "claims or disputes" submitted by Westech involved matters of law: "Did Palmer breach its contract * * *", "Was Palmer negli * * *","Is Palmer liable to Westech under strict liability?", Did Palmer breach its warranty of merchantability and fitness?"

Nor does this case involve an exception to the prohibition against clauses which require arbitration of future disputes. The issues that Westech has asked the arbitrator to resolve are issue of ultimate liability since Westech asked for specific dollar amounts as damages, offsets and fees. The arbitration clause is not limited to a specific area, but purports to require arbitratio of "all claims or disputes". Nor, finally, is that a case "where arbitration has been entered into." Palmer has at all times refus to enter into arbitration.

An injunction should be issued here because the cost and expenditure of time involved in the unenforceable arbitration proceedings produces a great and irreparable injury to appellant and will not avoid litigation, the real purpose of arbitration, because all of the questions purportedly resolved by the arbitration award would have to be fully resolved again in the District Court.

b. Respondent --- Westech, Inc. may take advantage of the arbitration clause . Appellant agreed in the contract to submit any disputes to arbitration. The decision of the arbitrator is not self-enforcing, but requires a court order declaring it to be a judgment of the court. The court, therefore, may judicially review the arbitrator's decision and is not ousted of its jurisdiction.

In Wortman v. Montana Central Ry., (1889), 22 Mont. 266, 56 P. 316, this Court held that a contractual agreement to submit any future contract disputes to arbitration was void as to the submission of questions of law, but valid as to questions of fact. The court noted that insofar as it required the examining engineer to determine whether the contract specifications had been complied with it was valid. Similar questions are raised by Westech's request for arbitration, such as: the reason for the collapse of the building; whether there was adequate bracing; whether or not the work was performed in accordance with the contract specifications; the amount of damages sustained by Westech, etc.

The policy of the law favors settlement of disputes by arbitration. Lee v. Providence Washington, Ins. Co., (1928). 82 Mont. 264, 266 P. 640. Here, appellant is receiving its right to present this claim to the courts. Westech should be allowed to take advantage of its right under the contract to submit disputes to arbitration.

The District Court did not err in setting aside the preliminary injunction. No harm can be done to appellant by allowing Westech to arbitrate its claim. The court must decide which, if any, findings made by the arbitrators will be enforced.

IV. ANALYSIS: Section 13-806, R.C.M. 1947, prohibits only agreements to finally arbitrate all future questions of law, and not agreements to arbitrate future questions of fact or valuation. Wortman v. Montana Central Ry. (1899), 22 Mont. 266, 56 P. 316, cited in School Dist. No. 1 v. Globe &

Republic Ins. Co., 146 Mont. 208, 213, 404 P.2d 889 (1965). All questions of fact, therefore, under the rule of Wortman, may be submitted to the arbitrators.

Mindful of the oft-stated policy in Montana that "[t]he settlement of disputes by arbitration is favored, and every reasonable intendment will be indulged to give effect to arbitration proceedings," McIntosh v. Hartford Fire Ins. Co., (1938) 106 Mont. 434, 439, 78 P.2d 82, the entire dispute should go to arbitration pursuant to the parties's contractual agreement. Section 13-806, R.C.M. 1947, prohibits only those arbitration agreemen which make arbitration a condition precedent to litigation, Cacic v. Slovenska Narodna Podporna Jednota, (1936), 102 Mont. 438, 441, 442, 59 P.2d 910, or which make the arbitration decision final without a right of appeal to the courts. Wortman, supra.

Thus, in Green v. Wolff, (1962), 140 Mont. 413, 372 P.2d 427, this Court declared void an arbitration clause which required that the decision of the arbitrator as to all future disputes submitted to arbitration "shall be accepted by both parties." In this case, Westech, by submitting the controversy to arbitration, is in no way restricting appellant's access to the courts and is not barring the litigation of any controversy. The contract does not bind the parties to follow the arbitration decision without appeal to the courts. Rather, any arbitration decision must be enforced by the court wherein appellant will have recourse to all its legal rights and defenses.

Both Westech and appellant agreed in their contract to submit contract disputes to arbitration by the American Arbitration Association (A.A.A.) apparently under the belief that the A.A.A. has experts who could act as factfinders to help to ascertain very technical questions relating to a specific area of structural engineering. Section 13-806 is not violated by the agreement, and appellant should be required to abide by its contract obligations. The decision of the District Court should be affirmed.

PALMER STEEL STRUCTURES, a corporation, Plaintiff and Appellant,

v.

WESTECH, INC., a corporation, Charles V. McClaren and Alfred W. Boyer, Jr., Defendants and Respondents.

No. 14005.

Supreme Court of Montana.

Submitted May 2, 1978.

Decided Sept. 13, 1978.

Construction company appealed from order of Thirteenth District Court, Yellowstone County, Robert Wilson, J., setting aside and refusing to reinstate a temporary restraining order which enjoined corporation from proceeding with arbitration of contractual dispute. The Supreme Court, Daly, J., held that: (1) contract provision requiring all claims and disputes arising out of contract to be decided by arbitration was not enforceable by corporation against construction company, without its consent, where dispute involved issues of law or mixed issues of law and fact, and (2) where agreement to arbitrate was unenforceable and where arbitrators were not before court to make stay of arbitration proceedings effective, it would be proper for trial court to grant an injunctive order prohibiting parties seeking to submit dispute to arbitration from attempting to take any further steps purporting to arbitrate or determine issues between parties outside of trial court.

Remanded with instructions to District Court.

Harold W. Coder, Jr., J., filed dissenting opinion.

1. Contracts ⇐127(2)

Under statute declaring void any stipulation or condition in contract restricting enforcement of contract rights in ordinary tribunals, contract may require future disputes as to value or quantity to be submitted to arbitration, however, contract provisions which require parties to submit future disputes as to questions of law are void. R.C.M.1947, § 13-806.

2. Contracts ⇐127(2)

Contract provision requiring all claims and disputes arising out of contract to be decided by arbitration was not enforceable by corporation against construction company, without its consent, where dispute involved issues of law or mixed issues of law and fact.

3. Arbitration ⇐23.5

Since contract provision requiring corporation and construction company to submit all disputes to arbitration was unenforceable, action taken by arbitrators was nullity and court had power to enjoin further proceedings in arbitration, despite contention that no irreparable injury would result from allowing arbitration to proceed. R.C.M.1947, § 13 806.

4. Arbitration ⇐80

While arbitration, in itself, is not judicial proceeding, it cannot produce enforceable result without further judicial action.

5. Arbitration ⇐23.5

Where agreement to arbitrate was unenforceable and where arbitrators were not before court to make stay of arbitration proceedings effective, it would be proper for trial court to grant an injunctive order prohibiting parties seeking to submit dispute to arbitration from attempting to take any further steps purporting to arbitrate or determine issues between parties outside of trial court.

Anderson, Symmes, Brown, Gerbase, Cebull & Jones, Billings, Rockwood Brown (argued), Billings, for plaintiff and appellant.

Moulton, Bellingham, Longo & Mather, Billings, Ward Swanser (argued), Billings, for defendants and respondents.

DALY, Justice:

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2. Is Palmer entitled to injunctive relief?

Section 13-806, R.C.M.1947, provides:

"Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract, by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void."

[1,2] This Court has long interpreted section 13-806, R.C.M.1947, to mean that a contract may require future disputes as to value or quantity to be submitted to arbitration. *Wortman v. Montana Central Ry. Co.* (1899), 22 Mont. 266, 279, 56 P. 316; *School District No. 1 v. Globe & Republic Ins. Co.*, (1965), 146 Mont. 208, 213, 404 P.2d 889. However, contract provisions which require parties to submit future disputes as to questions of law are void under the statute. *Green v. Wolff*, (1962), 140 Mont. 413, 372 P.2d 427; *State ex rel. Cave Construction Co. v. District Court*, (1967), 150 Mont. 18, 430 P.2d 624. Here, the contract provision provided that "All claims or disputes arising out of this Contract or the breach thereof shall be decided by arbitration * * *."

The "claims or disputes" submitted by Westech may be paraphrased as: Did Palmer breach its contract by failing to complete its work by October 1, 1976? Was Palmer negligent in its workmanship and inspection of the building? Did Palmer breach its warranties of merchantability and fitness in erecting the building? All of these questions are issues of law or mixed issues of law and fact. Westech may not require Palmer to submit such questions to arbitration without its consent.

[3] Montana has code provisions for submission of existing disputes to arbitration (Title 93, Chap. 201, Sections 93-201-1 through 93-201-10), but such submission must be voluntary, requiring consent of all parties. Apparently such consent may be revoked up to the time an arbitration award is entered in the District Court. Section 93-201-3, R.C.M.1947. Here the parties are not proceeding under statutory authority. This is a common law agreement for arbitration, which is unenforceable, (6 C.J.S. Arbitration § 2, pp. 159, 162), when the agreement is to arbitrate all disputes that may thereafter arise. *State ex rel. Cave Construction Co. v. District Court, supra.* Without the consent of Palmer Steel Structures, therefore, the arbitrators have no authority to act (6 C.J.S. Arbitration § 72, pp. 286, 287) and any action taken by them without such consent is a mere nullity. In that circumstance the court may stay further proceedings in arbitration:

"* * * So it may be proper to stay arbitration where there is no valid contract to arbitrate * * * [or] where the contract is unenforceable * * *." 6 C.J.S. Arbitration § 45, p. 247.

Nonetheless Westech contends the District Court did not err in setting aside its injunction order against arbitration. It argues "No harm can be done by allowing Westech to arbitrate its claim. The court must decide which, if any, findings made by the arbitrators will be enforced." Westech is arguing that some issues may be decided under arbitration and submitted to the District Court, even under the otherwise unenforceable arbitration clause. It further argues that arbitration is not a judicial proceeding and will not cause irreparable injury to Palmer.

It is clear that if arbitration is permitted as to any issues, Palmer will have to elect whether to participate in the arbitration process, on pain of having issues decided by the arbitrators without opposition, since the arbitrators' decisions will later be presented to the District Court for adoption. It seems that the proposal to continue in arbitration goes to the very heart of what section 13-806, R.C.M.1947, declares to be invidious, for Palmer would be "restricted from enforcing his rights under the contract, by the usual proceedings in the ordinary tribunals". As we have noted, anything done by the arbitrators now is a nullity, unenforceable, and the proposal to continue in arbitra-

tion is in effect a request for a useless procedure.

[4] While arbitration, in itself, is not a judicial proceeding, it cannot produce an enforceable result without further judicial action. 6 C.J.S. Arbitration § 3, p. 164. In this case, the rules of the arbitration body provide that the parties are presumed to have consented that judgment upon the award rendered by the arbitrators may be entered in any federal or state court of jurisdiction.

Therefore, if further proceedings in arbitration are allowed, or not enjoined, Palmer faces a real threat of irreparable injury. Allowing the arbitrators to make decisions might have the effect of rendering the District Court's judgment ineffective (section 93–4204(3), R.C.M.1947), with additional costs to the parties and a multiplicity of proceedings, judicial or otherwise.

[5] Since the arbitrators are not before the District Court to make a stay of arbitration proceedings effective, it is proper that the District Court reinstate its order enjoining and restraining Westech from taking or attempting to take any further steps purporting to arbitrate or determine the issues between the parties outside of the District Court.

The cause is remanded with the instruction that the District Court grant an injunctive order against Westech in accord with this Opinion.

SHEA, HARRISON and SHEEHY, JJ., concur.

H. WILLIAM CODER, District Judge,* dissenting.

I must respectfully dissent from the opinion of my colleagues.

Initially, from a factual standpoint, there is nothing remarkable regarding the circumstances out of which this case arises and our principal consideration, therefore, is the existing state of the case law in Montana, and whether those expressions serve to implement the intent and philosophy of Montana's Statutory Arbitration provisions and thus give vitality to the concept that parties may contractually agree to submit their disputes to arbitrators for resolution and thus, possibly avoid the expensive and time-consuming route of litigation through the Courts.

The majority, in its opinion denying Westech its right to enforce its arbitration clause expressly set forth in its contract with Palmer, relies principally and primarily on § 13–806 (R.C.M.1947) and the *Wortman* case and its progeny, with little more than a passing reference to the arbitration procedures expressly provided by §§ 93–201–1 et seq., (R.C.M.1947).

In this case the parties negotiated a contract and each gave consideration for the others promise to submit all disputes to arbitration. This does not violate the provisions of § 13–806 as a part of the Montana provisions for arbitration (Title 93, Chapter 201) requires all cases to go to the District Court before an order is binding on the parties.

The Majority state that the decision of the arbitrators "will later be presented to the District Court for adoption", however, the proceedings in the District Court are required to be more than a mere rubber stamp of the arbitrators decision. § 93–201–7(3) provides that the District Court may vacate an award if the arbitrators exceeded their power. This should include any award which is made upon an erroneous determination of a question of law.

It has been recognized by this Court in an opinion by Justice William T. Pigott that the provisions of § 13–806 are not sensible.

> The common-law doctrine that a provision in a ordinary contract requiring all differences between the parties touching their rights and liabilities there under to be submitted to arbiters, whose decision or award shall be conclusive and final, will not be allowed to bar the litigation of such differences in the courts of the land, is an anomaly, and inconsistent with the right to freely contract; and if it were

* Sitting for HASWELL, C. J.

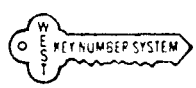
not so firmly and well-nigh universally established, we apprehend that it would be overturned, as resting on no solid foundation of reason. *Cotter v. A. O. U. W.*, 23 Mont. 82, 89, 57 P. 650, 652 (1899).

It should be noted that this common law rule upon which § 13-806 is based, was developed in a time where the Courts were paid by the parties for each case and to allow such arbitration was to cut the judges pay. This is no longer the case, and further, there is not a court in this country which, does not have more work than it adequately can handle.

Most law suits tried in the Courts today, involve such technically complex areas that judges must spend an extraordinary amount of time educating themselves in the innumerable technical areas that present themselves in Court. It seems that these disputes could be much more efficiently handled by arbitration where the arbitrators are already experts in the technical areas involved in the dispute before them. Following the decision by experts in the field the disputes can then be taken to Court to insure that the law involved in the dispute has been correctly applied.

Mr. Justice Holmes made a comment which should have been applied by this Court in *Cotter* in 1899 and which is even more applicable today:

> It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule simply persists from blind imitation of the past. (*Collected Legal Papers*, Oliver Wendell Holmes, page 187).



BASIC BAKERY AGREEMENT

1977 - 1979

EDDY BAKERIES COMPANY, Division of General Host Corporation, herein EMPLOYER, and Montana State Bakers Conference, representing Local Unions #91, #154 and #466, affiliated with the Bakery and Confectionery Worker International Union of America, AFL-CIO, herein UNION, have agreed as follows:

1. SCOPE:

A) The terms of this agreement shall apply as follows:

1) Geographically, this agreement shall be limited to the particular plants of the Employer designated as signatory hereto.

2) As concerns personnel, this agreement shall be limited in application to the employees of the Employer described in each of the various supplements attached hereto, and represented by one of the local unions which are parties hereto either individually or through the Montana State Baker's Conference acting as their agent.

B) 1) Supervisors, as defined by the Labor Management Relations Act of 1947, as amended, are exempt from the terms hereof.

2) Supervisors shall not, on a regular basis perform work normally performed by an employee in the Employers plant but shall not be construed to prohibit supervisors from performing experimental work, work during emergency situations, nor work which is negligible in amount which under the circumstances, it would be unreasonable to assign to an employee otherwise covered by this agreement.

C) The terms hereof are intended to cover only minimums in wages, hours, working conditions and other employee benefits. Employer may place superior wages, hours, working conditions and other employee benefits in effect and may reduce the same to the minimums herein prescribed, without the consent of Union. Provided, however, that for a period of ninety (90) days after the execution of this agreement, Employer agrees to refrain from reducing the hourly wages of above-scale employees.

D) The Employer retains all rights not surrendered herein, to manage, control, operate or regulate his business and his work force.

E) The negotiation and execution of this master agreement shall in no manner alter the composition of or change the appropriateness of the local bargaining units heretofore established and covered by the various supplemental agreements appended hereto.

F) This contract, complete with supplements, comprises the full agreement between the parties hereto as to the matters herein contained. No pre-existing, concurrent or subsequent agreement shall be effective to alter or modify

any of the terms, covenants, or conditions herein contained unless such alterations or modifications shall be between the Union and the Employer and in writing.

G) During the term of this agreement and any extensions hereof, no collective bargaining shall be had upon any matter covered by this agreement or upon any matter which has been raised and disposed of during the course of the collective bargaining which resulted in the consummation of this agreement. This clause shall not be construed to limit, impair or act as a waiver or estoppel of Union's right to bargain collectively on changes contemplated or effected by Employe which may modify the traditional operation of the basic terms and conditions herein set forth.

2. HIRING OF EMPLOYEES - DISCRIMINATION:

A) The various local unions bound to this agreement by Montana State Baker's Conference agree, if requested by Employer to supply available persons for employment in those types of work in those supplements attached hereto.

B) Neither the Employer not the Union will discriminate agains any applicant for employment by reason of age, sex, race, creed, color, religion or national origin.

C) Employer shall have the right to interview potential employees, union or non-union, without obligation, shall have entire freedom of selectivity, may reject employees after trial, and may discharge employees for cause. On request of Union,Employer agrees to give reasons for discharge in writing.

D) In the hiring of employees, Employer agrees not to discri inate against Union members. During the course of employment, Employer agrees not to discriminate against Union, or any member thereof, for lawful Union activity. Union agrees not to discriminate against:

1) Employer.

2) Employees not performing any of the types of work set out in those supplements attached hereto.

3) Employees performing any type of work set forth in those supplements attached hereto, but who are not members of Union because:

a) Thirty-one (31) days have not elapsed since the date of their employment.

b) They have not been offered membership in Union on the the same terms and conditions as all other members thereof.

c) They have been expelled or suspended from the Union for some reason other than non-payment of initiation fees or du

E) Employer agrees that each employee other than supervisors, who performs work of the types set forth in those supplements attached hereto, and who has been offered membership in Union on the same terms and conditions as all other members of Union must accept membership therein within thirty-one (31) days from the date of this agreement or the date of his employment, whichever last occurs, and must thereafter remain a member of Union in good standing insofar as the payment of uniform dues and initiation fees is concerned, or be discharged at the written request of Union, a copy of which will be served by the Union on the employee involved.

F) Union will not discriminate against, and Union and its members will not disparage, the goods, products or services of the Employer. Union will not be held responsible for disparagement by its individual members. The Union label of the Bakery and Confectionery Workers International Union of America shall be used on the mainline white loaf wrapper in a place and size to be determined by the Employer. The Union reserves the right to agitate for the Union label whether the Employer uses the label or not.

G) When janitors are employed they shall do cleaning work on

H) Employer agrees to provide Union with notice of new hires, demonstrating the name, address, classification, date of employment and rate of pay of each new employee, within seven (7) days, provided, however, Union supplies Employer with postage pre-paid cards for such purpose.

3. HOURS - GUARANTEES - OVERTIME - PREMIUMS:

A) The basic straight time work day shall be 7-1/2 hours; the basic straight time work week shall be 37-1/2 hours. In weeks in which any of the holidays designated in paragraph five (5) occur, the work week shall be four days for a total of thirty (30) hours.

B) No split shifts shall be allowed.

C) Employees will receive two ten (10) minute rest periods in each regular full work day. Such rest periods shall be taken as directed by Employer shall not be sooner than one hour after the start of the morning and afternoon work periods and shall be established as near the middle of the work periods as effecient scheduling will permit. An additional ten (10) minute rest period shall be granted after each fifty (50) minutes of overtime worked per shift. If the overtime is scheduled, the first of such rest periods shall be granted prior to the commencement of the overtime work.

D) A lunch period of thirty (30) minutes shall be allowed as near as possible to the middle of an employee's shift: but in no event shall lunch period be taken before three (3) hours from an employee's starting time or completed after five and one-half (5-1/2) hours from an employee's starting time. Lunch periods shall be started and completed within the two and one-half (2-1/2) hour spread described above. If an employee is required to start or finish his lunch period beyond the spread above described, his lunch period shall be on company time.

E) Regular full-time employees who make themselves available for work, and remain available for work shall be guaranteed a total of 37-1/2 hours of work or pay per week, that it, five (5) non-consecutive days of work or five (5) days pay per work week. This guarantee shall not be in addition to, but shall include holiday pay. This provision shall not apply to probationary and part-time employees and shall not apply to the first week of employment on re-hiring after lay-offs or other absences from work; in such instances, the employee shall be guaranteed the balance of the normal work week remaining after re-hiring, recall or return to work.

F) Employees, whether regular or part-time, who are called for work or report for work at their usually designated time or place (they not having been instructed not to so report) and remain available for work, shall receive work or pay equivalent to one-half (1/2) of a standard straight-time shift; employees who, after completing one-half (1/2) shift, are returned for further work, and remain available for work, shall receive work or pay equivalent to a full straight time shift.

G) Employees, who are called back to work after completing a full shift, and remain available for work, shall be guaranteed one-half (1/2) shift of work or pay at one and one-half (1-1/2) times their basic or straight time hourly rate.

H) Work in excess of a work day or a work week as established above shall be compensated for at one and one-half (1-1/2) times the employee's basic or straight time hourly rate. Provided, however, that daily and weekly overtime rates shall not be compounded but shall be offset; and, overtime, reporting pay, call back and premium rates as provided for herein shall not be compounded - the higher of the two applicable rates shall be paid. No employee will be discharged or disciplined for a refusal to work overtime so long as there are qualified personnel on the job to perform the work. When non-scheduled overtime is required, employees will be notified as soon as possible before the end of the shift.

I) When an employee is directed to perform work in a classification which bears an hourly rate of pay higher than that to which the employee is normally assigned, such employee shall receive his normal rate of pay if the work in the higher classification does not exceed one and one-half (1-1/2) hours. If work

in the higher classification exceeds 1-1/2 hours but does not exceed three (3) hours, such employee shall be paid at the higher rate for the time actually spent working in the higher classification. If work in the higher classification exceeds three (3) hours, such employee shall be compensated at the higher classification rate for the entire shift.

J) Any employee in the bargaining unit who is assigned work between the hours of 6:00 o'clock P.M. and 6:00 o'clock A.M., shall receive a premium of twenty cents (20¢) per hour, in addition to his/her regular rate for each hour worked during such period.

4. WORKING RULES:

A) Only one (1) beginner may be employed in the beginner's brackets for each five (5) full scale employees or fraction thereof.

B) Pay days shall be established by the Employer, but shall be at least semi-monthly.

C) No production worker shall be required to perform outside work.

D) All employees are urged to immediately report unsafe working conditions to their plant safety committee.

E) Janitors or sanitors shall not perform work on the machines or bench, except for the purpose of cleaning.

F) 1) Employer agrees to rotate all qualified beginners so as to give them well rounded experience and to qualify them as full scale employees. After working continuously for 1460 hours, an employee shall be classified and paid at full scale for h_ classification.

2) A beginner is defined as a newly-hired employee without prior experience in the baking industry. Any employee having prior experience in the baking industry, in the type of work or classification for which he is hired, within twelve months immediately preceding his employment, shall be given credit for 50% of all hours worked, within such twelve month period and in such classification, for placement in the beginner's wage brackets. The employee shall have the burden of demonstrating his prior experience.

G) The Union shall have the right to examine the time cards of any employee whose pay is in dispute.

H) Contributions of employees to the Community Fund, Red Cross and any other charitable organizations shall be made through the Union and not through the Employer.

I) When non-probationary employees are laid off by reason of a reduction in work force, they shall be given five (5) days notice or five (5) days pay in lieu thereof.

J) When traveling type ovens are in operation, two (2) oven men shall be required when loading and unloading simultaneously.

K) Employees discharged shall, on request, be given the reasons for discharge in writing.

L) Part time employees are defined as those employees who are engaged to work irregularly or those who are engaged to work regularly, but who work less than 126 hours per month. Part time employees, whether regular or irregular shall participate in no guarantees, (other than reporting pay), whether daily or weekly , expressed in this agreement. After regular part time employees have passed

6. VACATIONS:

A) Employees who have been employed for six (6) months without being discharged or without quitting, shall, after the completion of their first full year of employment, be entitled to one (1) week's vacation leave and five (5) day's vacation pay.

B) After two (2) years of continuous employment, employees shall be entitled to two (2) week's vacation leave and ten (10) day's vacation pay.

C) After eight (8) years of continuous employment, employees shall be entitled to three (3) week's vacation leave and fifteen (15) day's vacation pay. The Employer may require the employee to split his vacation into periods of one (1) and two (2) weeks. Effective 1 January, 1978, this benefit shall vest after five (5) years of continuous employment.

D) After seventeen (17) years of continuous employment, employees shall be entitled to four (4) weeks' vacation leave and twenty (20) days' vacation pay. Effective 1 January, 1979, after fifteen (15) years of continuous employment, employees shall be entitled to four (4) weeks' vacation leave and twenty (20) days' vacation pay. The Employer may require the employees to split vacations into two (2) periods of two (2) weeks each or, of three (3) weeks and one (1) week. Except as provided in paragraph A) above, vacations will be prorated on employee termination.

E) Effective 1 January, 1979, employees with twenty (20) years of continuous service shall be entitled to five (5) weeks' vacation leave and twenty-five (25) days' vacation pay. The Employer may require such employees to split their vacation leave into two (2) periods,

F) Effective 1 January, 1978, each eligible employee shall be entitled each year to one (1) additional days' pay at vacation time (but no additional time off), in lieu of an Easter holiday.

G) Employees shall bid for their vacation periods by departments in response to an Employer bulletin to be posted annually on February 1st to March 1st. Vacation periods shall be awarded as per bid according to seniority. An employee failing to bid during this period shall be awarded vacation period on a first come, first served basis from the remaining weeks available on the schedule. In no event shall an employee be bumped off his vacation period once it has been assigned. No more than one employee per department shall be off during assigned vacations absent Employer consent.

H) The taking of vacations shall be mandatory. However, the Employer and the Union may waive this requirement in meritorious situations.

I) After the six (6) months of employment noted in paragraph 6 A) above, any employee terminating or terminated shall be entitled to pro-rata vacation pay.

7. SICK LEAVE:

A) Each regular full time employee covered by this agreement who has been in the service of the Employer for six (6) months or more shall thereafter be allowed sick leave which shall accrue at a rate of one (1) day for each month of service until a maximum of twenty (20) days have been accrued. Sick leave must be earned by employment with the Employer, and in no event will be payable except in the case of bona fide illness or accident. One day's sick leave pay will be computed on the basis of seven and one-half (7-1/2) hours at the employee's regular, straight time hourly rate of pay.

B) Sick leave pay, to the extent it has been earned, shall commence on the day an accident or illness requiring hospitalization occurs, if such day is a regular working day for the employee - if not, then on the next regular working day thereafter. Sick leave for illness not requiring immediate hospitalization on occurence, shall commence after two working days of such illness or, on the employee's third regular working day. Sick leave shall continue, for each regular scheduled work day which such employee misses by reason of such disability, until

the employee's accumulated benefits have been exhausted.

C) Sick leave benefits will be paid only with respect to a work day on which the employee would otherwise have worked, and will not apply to an employee's scheduled day off, holidays, vacations, or any other day on which the employee would not have worked. Such days shall be considered working days, for the purpose of establishing the date on which sick leave pay is to commence.

D) No part time employee will be eligible for sick leave pay.

E) Sick leave pay, to the extent it has been earned, will be integrated with payments under any Federal or State Workmen's Compensation Program, Employer-paid Health and Welfare, or other disability program to which the Employer contributes so as not to permit the employee to receive more than the equivalent of thirty-seven and one-half (37-1/2) hours pay at the employee's regular straight time hourly rate of pay for any week in which the employee is off work.

F) When sick leave pay has been integrated or coordinated with sick leave pay to the employee from other sources, the total amount of money paid or to be paid by the Company to the employee as sick leave pay, for each compensable non-occupational accident or illness, shall be divided by the employees regular, straight time daily rate of pay, and only the resulting number of days shall be deducted from the employee's bank of accumulated sick leave.

G) A doctor's certificate or other autoritive verification of illness or accident may be required by the Employer, and, if so, must be presented by the employee not more than forty-eight (48) hours after return to work. Any employee found to have abused sick leave benefits by falsification or misrepresentation shall thereupon be subject to disciplinary action, which may include termination.

H) Unused sick leave benefits are not convertible to cash.

8. FUNERAL LEAVE:

A) In case of a death in the employee's immediate family (parent, child, spouse, brother, sister, mother-in-law and father-in-law of the employee's existing spouse and the employee's grandparents) the Employer shall grant up to, as required, but not to exceed three (3) days leave of absence with pay. In the event of the death of an employee's grandchild, the employee shall be entitled to take one (1) day's leave of absence with pay.

B) Funeral leave will be paid only with respect to a work day on which the employee would have otherwise worked and will not apply to an employee's scheduled day off, holidays, vacations, or any other day on which the employee would not have worked. Scheduled days off will not be changed to avoid payment for funeral leave.

9. LEAVES OF ABSENCE:

A) Employees desiring leaves of absence must obtain written permission therefor from both the Employer and the Union.

B) No leave of absence shall be granted in excess of ninety (90) days. However, with the consent of both the Union and the Employer, leaves may be extended in increments of ninety (90) days or less.

C) Employees on leave of absence may not, absent the joint, written sonsent of the Union and the Employer, take gainful employment in the baking industry, in Montana.

D) Failure of an employee to comply with these provisions shall result in complete loss of seniority.

10. NON-OCCUPATIONAL HEALTH AND ACCIDENT INSURANCE:

A) The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated May 12, 1955

as amended, establishing the Bakery and Confectionery Union and Industry International Welfare Fund (herein the Welfare Fund) and said agreement is made part hereof by reference.

B) 1) Effective on 1 August, 1977, based on hours worked in July of 1977, the Employer agrees to make contributions to the Welfare Fund to provide a comprehensive health and welfare program for each employee included in the collective bargaining unit covered by such agreement, who worked not less than seventy-five (75) hours in the month proceeding payment of the contribution. The contributions so made in the amount of $83.30 per month shall be made to provide Medical, Dental, Hospital, Loss of Time, Life Insurance and Prescription Benefits in accordance with Plan E-004.

2) The Company agrees to continue such contributions on behalf of all employees within the bargaining unit covered by this agreement, and to contribute such additional premiums as may be necessary to maintain benefits after 1 August, 1978.

a) Effective on 8/1/77, (based on July hours worked) agrees to increase such premium to $88.40 per month per covered employee in order to provide for the maintenance of benefits through 31 July, 1978.

b) Effective on 9/1/77, (based on August hours worked) agrees to increase such premium to $96.48 per employee per month in order to provide additional benefits. Such monthly premium shall be made to provide Medical, Dental, Hospital, Loss of Time, Life Insurance and Prescription Benefits in accordance with Plan G-090.

c) Effective on 9/1/78, (based on August hours worked) agrees to pay, on proper notice from Union, such additional premium as may be necessary to maintain the foregoing benefits, all as required by subparagraph 10 H) below.

C) For the purpose of this Article, it is understood that contributions shall be payable on behalf of employees from the first day of employment if qualified under 10 B) above whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and regardless of whether or not they are members of the Union.

D) If at any time during the term of this Collective Bargaining Agreement, or any renewal or amendment thereof, there should be enacted any laws or regulations requiring the Employer to secure, provide or pay for insurance or Welfare benefits of coverage not provided for in said Plan, either party hereto may, upon thirty (30) days' written notice to the other, reopen this Collective Bargaining Agreement solely for the limited purpose of making such adjustments as may be appropriate in the light of said new laws or regulations.

E) Notwithstanding any provision, if any, to the contrary contained in the Collective Bargaining Agreement between the Employer and the Union, the Union shall have the right to strike by giving the Employer written notice of its intention so to do not less than forty-eight (48) hours in advance if the Employer shall fail to make payment of the contribution due to the Welfare Fund for any month on or before the 10th day of the third calendar month following the month for which such contribution shall be payable; provided that no such action shall be taken by the Union unless and until the Administrative Director of the Welfare Fund shall have certified in writing, to the Employer and to the Union, that the Employer has so failed to pay such contribution. Any strike pursuant to this provision shall be terminated as soon as the Employer shall pay the delinquent contribution or shall make arrangements for the payment of it which meet with the approval of the Administrative Director of the Welfare Fund.

F) This clause encompasses the sole and total agreement between the Employer and the Union with respect to Insurance or Welfare Benefits or coverage.

G) This clause is subject in all respects to the provision of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.

H) Employer agrees to maintain premiums sufficient to maintai the foregoing benefits during the life of this agreement and agrees to maintain exi ting plans until the trusteed plan takes effect.

I) Should a national health plan be adopted, Employer and Union will meet and re-negotiate these health and welfare provisions. Such reneg tiation shall not produce a duplication of benefits or increase Employer's cost.

11. PENSIONS:

A) The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated Septembe 11, 1955, as amended, establishing the Bakery and Confectionery Union and Industry International Pension Fund (hereinafter called the Fund) and said Agreement is made part hereof by reference.

B) Commencing on the first day of the month (as indicated in the various local supplements and exhibits appended hereto and by this reference ma a part hereof), and based upon the hours worked in the preceding month, the Company agrees to pay the monthly contributions, detailed in such local supplements and exhibits hereto, to the Bakery and Confectionery Union and Industry International Pension Fund (herein Pension Fund) for and on account of each employee in the bargaining unit covered by this collective bargaining agreement.

C) It is understood that contributions shall be payable on behalf of employees from the first day of employment, whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and regardless of whether or not they are members of the Union.

12. CHECKOFF:

Effective 1 July, 1978, the Company agrees to deduct from the wages of each employee covered by this agreement the employee's dues and/or initiation fee for membership in the Union, provided that the Employer has received from each employee on whose account such deductions are to be made, a written authorization ca d demonstrative of the amount to be deducted. Such authorization shall be irrevocable for a period of one (1) year or the termination date of this agreement, whichever last occurs. The Employer agrees to remit such deducted monies to the Union as soo as possible, but not later than ten (10) days from the payroll date upon which said deductions are made.

13. SENIORITY:

A) All employees shall be probationers for the first thirty (days of their employment; and, during such probationary period, may be discharged by the Employer without recourse to the grievance and arbitration provisions herein contained.

B) Seniority shall be the determining factor in matters affecting promotions, layoffs, and re-employment, if other factors of fitness and ability are equal. When shift openings occur within the department, consideration will be given to the employee's seniority status in filling such openings.

C) Whenever a permanent vacancy occurs, the Employer will post the job for three (3) working days. Employees in the department where the vacanc exists, desiring to apply for the job, will write their names and seniority status on the posted notice. The successful applicant will be named by the Employer on the basis of seniority. A ten (10) day trial period will be allowed to determine qualifications and should such employee fail to qualify, he or she shall be returned to his or her former job or classification without prejudice. There will be one (1) posting when a vacancy occurs, and, when that job is filled, the job left open will be filled by the Employer, based on seniority, if fitness and ability are equal. For the purposes of this section three departments will be recognized, namely: (1) Production; (2) Packaging; and (3) Sanitation. Separate seniority lists for each department shall be maintained and posted by the Employer; and, it will be recognized by the parties the seniority date in a department and employment date with the Company are not necessarily the same.

D) In the event of a layoff, the last person hired in the bargaining unit will be the first laid off, provided fitness and ability of the remaining senior employee is equal to the laid-off employee.

E) Seniority shall terminate in the event of (1) termination of employment; (2) layoff of six (6) months or more; (3) absence from work of nine (9) months or more due to illness or injury other than occupational; provided, however, that the Company and Union may extend this absence for an additional period not exceeding nine (9) months. When an employee has been off the job twelve (12) months or more by reason of occupational injury or illness, the Employer and the Union shall mutually adjust the continuation or termination of his or her seniority.

F) Recall after lay-off shall be achieved by telephone or certified mail directed to the employee's last known address. Employees must report for work within seventy-two (72) hours after such call or the mailing of such notice. Should any employee fail to so report, the next senior, qualified employee shall be called.

G) Employer and the local Union involved shall agree in advance on the circumstances under which persons who leave the classifications of work detailed in the various supplements to this agreement, but remain in the employ of the Employer in some other capacity, may retain their seniority rights for return to work in their usual classification.

H) Claims respecting seniroity may be processed under the grievance and arbitration provisions hereof.

14. INSPECTION BY BUSINESS REPRESENTATIVES:

Business representatives of the Union shall be admitted to places of employment for the purpose of ascertaining whether or not this agreement is being observed, provided, however, that before entering upon those portions of the Employer's premises to which customers are normally denied access, representatives of the Union will make their presence upon the premises known to some Employer official.

15. POSTING:

A copy of this agreement may be posted by the Union in a conspicuous place in the Employer's place of business. Employer will make space available in the employee's lunch room for the erection and maintenance of a bulletin board by Union.

16. CONSOLIDATION OR CLOSING OF PLANT:

Should the Employer sell, merge or consolidate any of its plants, it will offer any job vacancies within six (6) months which it may have in its remaining plants to displaced employees on the basis of their seniority, they being qualified for the work or qualify for the work within sixty (60) days of employment. Such transferees shall enter their new employment at the bottom of the seniroity list in their classifications and all expenses incident to their acceptance of such employment shall be borne by them.

17. SUCCESSION:

Should the Employer transfer its business, it agrees that prior to such transfer, it will give the transferee written notice concerning the existence of this agreement; and, if possible under the circumstances, will supply Union with a copy of such notice within fifteen (15) days preceding the transfer. Employer must provide Union with notice of the transfer within two (2) days after its consummation.

18. PICKET LINES:

It shall not be a violation of this agreement or grounds for discharge for members of the Union to refuse to cross an authorized picket line, providing the picketing Union is certified bargaining representative as determined by the National Labor Relations Board, and the strike is lawful.

19. SETTLEMENT OF DISPUTES:

A) It is mutually agreed that all claims or grievances of an aggrieved employee or aggrieved employees, arising under or by virtue of the terms of this agreement, may be presented by an individual employee or group of employees to their immediate Employer for adjustment; or, such claim or grievance may be prepared and submitted in writing on their behalf, by the local Union. Provided, however, that prior to the presentation of any claim or grievance by any employee or group of employees to their immediate Employer, the Union must be notified by the Employer and be given the opportunity to have a representative present during such adjustment.

B) Employers shall present claims or grievances in writing to the local Union involved.

C) All claims or grievances or claimed adjustments must relate to an express breach of this agreement and must be presented in one of the alternative modes herein specified within ninety (90) days from and after the time they are alleged to have arisen, or be forever waived. This clause shall not, however, in the consideration of discharge cases, prevent the review of any employee's record for the six (6) preceding months on matters with respect to which the employee has been given notice.

D) In the event the parties to any adjustment sought cannot reach an agreement within seven (7) days from and after the date the claim or grievance is submitted, the matter shall be referred to arbitration as hereinafter prescribed.

20. ARBITRATION:

A) Any matter referred by the moving party for arbitration shall be served upon the other party in writing. Such notice shall name one person who shall serve as a representative of the moving party on the Board of Arbitration.

B) Within five (5) business days the party served by such notice of its representative shall notify the moving party in writing of the name of the person who shall represent it on said Board.

C) The Board shall proceed within three (3) days to name a third disinterested party to serve as Chairman of the Board.

D) In the event a Chairman of the Board cannot be agreed upon within five (5) days, at any time thereafter, upon motion of the moving party, the Director of the Federal Mediation and Concilation Service shall be called upon to submit a list of five (5) persons. Each party shall be entitled to strike two (2) names from the list in alternate order and the name so remaining shall be Chairman of the Board.

E) Time is of the essence; however, the parties by mutual consent in writing may extend the time limit set for herein.

F) Rules of procedure to govern the hearing shall be fixed by the Board of Arbitration and the award, when signed by a majority of the Board, shall be final and binding.

G) The fees and expenses of the Chairman of the Board and other joint costs of the arbitration shall be shared jointly and equally between the parties. Neither party shall be required to pay any part of the cost of a stenographic record without its consent, provided that failure of a party to agree to share the cost of a stenographic record shall be deemed a waiver of such party's right of access to the record.

H) During the processing of any matter under this section, the Union agrees not to strike, render unfair reports or cause slow downs and the Employer agrees not to lock out employees represented by the Union.

I) No arbiter shall have the power to add to, detract from or modify the terms of this agreement; however, nothing shall be construed herein to prohibit the Board of Arbitration from making awards pertaining to the enforcement of this agreement.

21. MODIFICATION OF EXISTING LAW:

Should existing State or Federal Law be amended, or should new State or Federal legislation be enacted to provide that overtime pay shall be paid to any employee covered by this agreement for work in excess of any number of hours per week which is less than forty (40) or the work week established by the several supplements, either party may open for re-negotiation, those terms and conditions of this agreement dealing with wages, hours and overtime pay of the employee or class of employees affected by such legislation. The weekly take home pay established by the agreement, for employees so affected, shall not be reduced by such re-negotiation.

22. RE-NEGOTIATION:

The parties signatory hereto will endeavor, upon the re-opening of this agreement, to re-negotiate the terms hereof through consolidated or integrated collective bargaining. The re-negotiation of the several supplements, schedules or exhibits attached hereto shall be conducted between the individual Employer parties signatory and representatives of the Montana State Bakers' Conference and the local Union involved upon an individual basis.

23. TERM OF AGREEMENT:

A) The terms and conditions set forth herein shall become effective on 1 July, 1977, and shall remain in effect through 30 June, 1979, and annually thereafter from 1 July through 30 June unless one of the parties hereto serves written notice of termination or desire for modification upon one of the other parties hereto, not less than sixty (60) days prior to the above specified expiration date, or any anniversary thereof. If notice of desire for modification is served, such notice must clearly specify the modifications desired. The issuance and service of such notice, whether the same be for termination or modification, shall operate to terminate this agreement on its expiration date if no accord is reached between the parties prior to such time.

B) Answering or counter-notice indicating termination or a desire to modify the agreement may be issued and served by the opposite party. If such notice is issued, it must be in writing, must be served within thirty (30) days from the mailing date of the opening notice, and must, if it indicates only a desire for modification, clearly specify the modification desired.

C) Service shall be deemed complete on the postmarked date of all notices submitted by mail hereunder.

D) The issues as formed by notice and counter-notice, as above specified, shall be the only subjects open for discussion and agreement during the course of negotiation or collective bargaining had during the continuance of this agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 28th day of July, 1977.

EDDY BAKERIES COMPANY DIVISION
GENERAL HOST CORPORATION

By: _____
President

For its individual plants situated at Billings, Great Falls and Missoula, Montana.

MONTANA STATE BAKERS' CONFERENCE

By: _____

Title: _____

Representing:

Local Union #91 of Great Falls, Montana
Local Union #154 of Missoula, Montana
Local Union #466 of Billings, Montana

BILLINGS SUPPLEMENT
1977-1979

1. PENSION:

See Exhibits A and B attached hereto and made a part hereof.

2. WAGES:

A) 1) Classifications:

	7/1/77	7/1/78
Working foremen	$6.45	$6.99
Mixers	6.23	6.77
Sponge Setters	6.23	6.77
Oven Men	6.23	6.77
Bench Machine/Moulders	6.10	6.64
Donut Machine Operators	6.10	6.64
Rec. Clerk/Blender	5.77	6.31
Sanitors	5.66	6.20
Wrapping Machines	6.08	6.62
Wrapping Machine Helper	5.79	6.33
Hand Wrapper	5.52	6.05
Icers	5.64	6.18
Thrift Store Clerk	5.31	5.85

Beginners:

0 - 489 hours worked	85% of classification
490 - 979 hours worked	95% of classification
Thereafter	100% of classification

2) A portion of the rates of pay expressed herein has been accepted by the Union in lieu of a premium for Sunday work.

B) Thrift Store employees and bakery production workers may not perform each others' work.

GREAT FALLS SUPPLEMENT
1977-1979

1. PENSION:

See Exhibits C and D attached hereto and made a part hereof.

2. WAGES:

A) 1) Classifications:

	7/1/77	7/1/78
Working foremen	$6.47	$7.01
Dough Mixers	5.30	6.84
Oven Operators	5.30	6.84
Journeymen Bakers	6.13	6.67
Mark 50 Operators	5.88	6.42
Sales Personnel	5.32	5.85
Hand Wrappers	5.32	5.85
Machine Wrappers	5.72	6.26
Washers, Greasers, Janitors	5.72	6.26
Miscellaneous Help	5.72	6.26

Beginners:

0 - 489 hours worked	85% of classification
490 - 979 hours worked	95% of classification
Thereafter	100% of classification

2) A portion of the rates of pay expressed herein has been accepted by the Union in lieu of a premium for Sunday work.

MISSOULA SUPPLEMENT
1977-1979

1. PENSION:

See Exhibits E and F attached hereto and made a part hereof.

2. WAGES:

A) Classifications:

	7/1/77	7/1/78
Working foremen	$6.45	$6.99
Head Baker	6.20	6.74
Journeymen	6.11	6.65
Helpers	5.28	5.82
Roll Wrappers	5.14	5.68
Janitors and Sanitors	5.32	5.86
Supply Clerk and Blender	5.39	5.93

Beginners:

0 - 489 hours worked	85% of classification
490 - 979 hours worked	95% of classification
Thereafter	100% of classification

B) Any journeyman having charge of one-half (1/2) shift shall receive Head Bakers' scale.

C) A portion of the rates expressed herein has been accepted by the Union in lieu of a premium for Sunday work.

BAKERY AND CONFECTIONERY UNION AND
INDUSTRY INTERNATIONAL PENSION FUND

STANDARD COLLECTIVE BARGAINING CLAUSE

It is hereby agreed to provide pension and retirement benefits as follows:

a. The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated September 11, 1955, as amended, establishing the Bakery and Confectionery Union and Industry International Pension Fund (hereinafter called the Fund) and said Agreement is made part hereof by reference.

b. Commencing with the 1st day of July, 1977, the Employer agrees to make payments to the Bakery and Confectionery Union and Industry International Pension Fund for each employee working in job classifications covered by the said Collective Bargaining Agreement as follows:

> For each day or portion thereof, for which an employee, subject to the Collective Bargaining Agreement, receives pay, the Employer shall make a contribution of $2.40 to the above-named Pension Fund, but not more than $12.00 per week for any one employee.

For the purpose of this Article, it is understood that contributions shall be payable on behalf of employees from the first day of employment, whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and regardless of whether or not they are members of the Union.

c. The payments made in accordance with (b) above shall be allocated as follows:

$2.08 per (day) (~~hour~~) to provide coverage for a Normal, Reduced, Early Retirement and Disability Pension (PLAN A).

$.16 per (day) (~~hour~~) to provide coverage for a Vested Deferred Pension (PLAN B).

$.16 per (day) (~~hour~~) to provide Welfare Benefits for Pensioners (PLAN W-1).

d. It is agreed that the Pension Plan adopted by the Trustees of the said Pension Fund shall be such as will qualify for approval by the Internal Revenue Service of the United States Treasury Department, so as to enable the Employer to treat contributions to the Pension Fund as a deduction for income tax purposes.

e. Notwithstanding any provision, if any, to the contrary contained in the Collective Bargaining Agreement between the Employer and the Union, the Union shall have the right to strike by giving the Employer written notice of its intention so to do not less than forty-eight (48) hours in advance if the Employer shall fail to make payment of the contribution due to the Fund for any month on or before the 10th day of the third calendar month following the month for which such contribution shall be payable; provided that no such action shall be taken by the Union unless and until the Administrative Director of the Fund shall have certified in writing, to the Employer and to the Union, that the Employer has so failed to pay such contribution. Any strike pursuant to this provision shall be terminated as soon as the Employer shall pay the delinquent contribution or shall make arrangements for the payment of it which meet with the approval of the Administrative Director of the Fund.

f. The payments so made to the Fund shall be used by it to provide retirement benefits for eligible employees in accordance with the Pension Plan of said Fund, as determined by the Trustees of said Fund, to be applied to the eligible employees based on the amount of employer contribution. The Employer hereby affirms that he has no arrangement providing for the compulsory retirement of his employees except as specifically set forth herein.

g. This clause encompasses the sole and total agreement between the Employer and the Union with respect to pensions or retirement.

h. This clause is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.

EDDY BAKERIES COMPANY

By: /s/ Carl Beavers

Date: 9/7/77

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA LOCAL UNION NO. 466

By: /s/ Loraine Krueger, Secretary

Date: 10/14/77

BAKERY AND CONFECTIONERY UNION AND
INDUSTRY INTERNATIONAL PENSION FUND

STANDARD COLLECTIVE BARGAINING CLAUSE

It is hereby agreed to provide pension and retirement benefits as follows:

a. The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated September 11, 1955, as amended, establishing the Bakery and Confectionery Union and Industry International Pension Fund (hereinafter called the Fund) and said Agreement is made part hereof by reference.

b. Commencing with the 1st day of January, 1979, the Employer agrees to make payments to the Bakery and Confectionery Union and Industry International Pension Fund for each employee working in job classifications covered by the said Collective Bargaining Agreement as follows:

> For each day or portion thereof, for which an employee, subject to the Collective Bargaining Agreement, receives pay, the Employer shall make a contribution of $3.36 to the above-named Pension Fund, but not more than $16.80 per week for any one employee.

For the purpose of this Article, it is understood that contributions shall be payable on behalf of employees from the first day of employment, whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and regardless of whether or not they are members of the Union.

c. The payments made in accordance with (b) above shall be allocated as follows:

$2.86 per (day) (~~hour~~) to provide coverage for a Normal, Reduced, Early Retirement and Disability Pension (PLAN A).

$.22 per (day) (~~hour~~) to provide coverage for a Vested Deferred Pension (PLAN B).

$.12 per (day) (~~hour~~) to provide coverage for an Age and Service Pension (PLAN C).

$.16 per (day) (~~hour~~) to provide Welfare Benefits for Pensioners (PLAN W-1).

d. It is agreed that the Pension Plan adopted by the Trustees of the said Pension Fund shall be such as will qualify for approval by the Internal Revenue Service of the United States Treasury Department, so as to enable the Employer to treat contributions to the Pension Fund as a deduction for income tax purposes.

e. Notwithstanding any provision, if any, to the contrary contained in the Collective Bargaining Agreement between the Employer and the Union, the Union shall have the right to strike by giving the Employer written notice of its intention so to do not less than forty-eight (48) hours in advance if the Employer shall fail to make payment of the contribution due to the Fund for any month on or before the 10th day of the third calendar month following the month for which such contribution shall be payable; provided that no such action shall be taken by the Union unless and until the Administrative Director of the Fund shall have certified in writing, to the Employer and to the Union, that the Employer has so failed to pay such contribution. Any strike pursuant to this provision shall be terminated as soon as the Employer shall pay the delinquent contribution or shall make arrangements for the payment of it which meet with the approval of the Administrative Director of the Fund.

f. The payments so made to the Fund shall be used by it to provide retirement benefits for eligible employees in accordance with the Pension Plan of said Fund, as determined by the Trustees of said Fund, to be applied to the eligible employees based on the amount of employer contribution. The Employer hereby affirms that he has no arrangement providing for the compulsory retirement of his employees except as specifically set forth herein.

g. This clause encompasses the sole and total agreement between the Employer and the Union with respect to pensions or retirement.

h. This clause is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.

EDDY BAKERIES COMPANY

By: /s/ Carl Beavers

Date: 9/7/77

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA LOCAL UNION NO. 466

By: /s/ Loraine Krueger, Secretary

Date: 10/14/77

BAKERY AND CONFECTIONERY UNION AND
INDUSTRY INTERNATIONAL PENSION FUND

STANDARD COLLECTIVE BARGAINING CLAUSE

It is hereby agreed to provide pension and retirement benefits as follows:

a. The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated September 11, 1955, as amended, establishing the Bakery and Confectionery Union and Industry International Pension Fund (hereinafter called the Fund) and said Agreement is made part hereof by reference.

b. Commencing with the 1st day of July, 1977, the Employer agrees to make payments to the Bakery and Confectionery Union and Industry International Pension Fund for each employee working in job classifications covered by the said Collective Bargaining Agreement as follows:

> For each day or portion thereof, for which an employee, subject to the Collective Bargaining Agreement, receives pay, the Employer shall make a contribution of $3.00 to the above-named Pension Fund, but not more than $15.00 per week for any one employee.

For the purpose of this Article, it is understood that contributions shall be payable on behalf of employees from the first day of employment, whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and regardless of whether or not they are members of the Union.

c. The payments made in accordance with (b) above shall be allocated as follows:

$2.6375 per (day) (~~hour~~) to provide coverage for a Normal, Reduced, Early Retirement and Disability Pension (PLAN A).

$.2025 per (day) (~~hour~~) to provide coverage for a Vested Deferred Pension (PLAN B).

$.16 per (day) (~~hour~~) to provide Welfare Benefits for Pensioners (PLAN W-1).

d. It is agreed that the Pension Plan adopted by the Trustees of the said Pension Fund shall be such as will qualify for approval by the Internal Revenue Service of the United States Treasury Department, so as to enable the Employer to treat contributions to the Pension Fund as a deduction for income tax purposes.

e. Notwithstanding any provision, if any, to the contrary contained in the Collective Bargaining Agreement between the Employer and the Union, the Union shall have the right to strike by giving the Employer written notice of its intention so to do not less than forty-eight (48) hours in advance if the Employer shall fail to make payment of the contribution due to the Fund for any month on or before the 10th day of the third calendar month following the month for which such contribution shall be payable; provided that no such action shall be taken by the Union unless and until the Administrative Director of the Fund shall have certified in writing, to the Employer and to the Union, that the Employer has so failed to pay such contribution. Any strike pursuant to this provision shall be terminated as soon as the Employer shall pay the delinquent contribution or shall make arrangements for the payment of it which meet with the approval of the Administrative Director of the Fund.

f. The payments so made to the Fund shall be used by it to provide retirement benefits for eligible employees in accordance with the Pension Plan or said Fund, as determined by the Trustees of said Fund, to be applied to the eligible employees based on the amount of employer contribution. The Employer hereby affirms that he has no arrangement providing for the compulsory retirement of his employees except as specifically set forth herein.

g. This clause encompasses the sole and total agreement between the Employer and the Union with respect to pensions or retirement.

h. This clause is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.

EDDY BAKERIES COMPANY

By: /s/ Carl Beavers

Date: 9/7/77

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA LOCAL UNION NO. 91

By: /s/ Loraine Krueger, Secretary

Date: 10/14/77

EXHIBIT E - MISSOULA

BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION FUND

STANDARD COLLECTIVE BARGAINING CLAUSE

It is hereby agreed to provide pension and retirement benefits as follows:

a. The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated September 11, 1955, as amended, establishing the Bakery and Confectionery Union and Industry International Pension Fund (hereinafter called the Fund) and said Agreement is made a part hereof by reference.

b. Commencing with the 1st day of July, 1977, the Employer agrees to make payments to the Bakery and Confectionery Union and Industry International Pension Fund for each employee working in job classifications covered by the said Collective Bargaining Agreement as follows:

> For each day or portion thereof, for which an employee, subject to the Collective Bargaining Agreement, receives pay, the Employer shall make a contribution of $3.36 to the above-named Pension Fund, but not more than $16.80 per week for any one employee.

For the purpose of this Article, it is understood that contributions shall be payable on behalf of employees from the first day of employment, whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and regardless of whether or not they are members of the Union.

c. The payments made in accordance with (b) above shall be allocated as follows:

> $2.60 per (day) (hour) to provide coverage for a Normal, Reduced, Early Retirement and Disability Pension (PLAN A).
>
> $.20 per (day) (hour) to provide coverage for a Vested Deferred Pension (PLAN B).
>
> $.40 per (day) (hour) to provide coverage for an Age and Service Pension (PLAN C).
>
> $.16 per (day) (hour) to provide Welfare Benefits for Pensioners (PLAN W-1).

d. It is agreed that the Pension Fund adopted by the Trustees of the said Pension Fund shall be such as will qualify for approval by the Internal Revenue Service of the United States Treasury Department, so as to enable the Employer to treat contributions to the Pension Fund as a deduction for income tax purposes.

e. Notwithstanding any provision, if any, to the contrary contained in the Collective Bargaining Agreement between the Employer and the Union, the Union shall have the right to strike by giving the Employer written notice of its intention so to do not less than forty-eight (48) hours in advance if the Employer shall fail to make payment of the contribution due to the Fund for any month on or before the 10th day of the third calendar month following the month for which such contribution shall be payable; provided that no such action shall be taken by the Union unless and until the Administrative Director of the Fund shall have certified in writing, to the Employer and to the Union, that the Employer has so failed to pay such contribution. Any strike pursuant to this provision shall be terminated as soon as the Employer shall pay the delinquent contribution or shall make arrangements for the payment of it which meet with the approval of the Administrative Director of the Fund.

f. The payments so made to the Fund shall be used by it to provide retirement benefits for eligible employees in accordance with the Pension Plan of said Fund, as determined by the Trustees of said Fund, to be applied to the eligible employees based on the amount of employer contribution. The Employer hereby affirms that he has no arrangement providing for the compulsory retirement of his employees except as specifically set forth herein.

g. This clause encompasses the sole and total agreement between the Employer and the Union with respect to pensions or retirement.

h. This clause is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.

EDDY BAKERIES COMPANY

By: /s/ Carl Beavers

Date: 9/7/77

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA - LOCAL UNION NO. 154

By: /s/ Loraine Krueger, Secretary

Date: 10/14/77

BAKERY AND CONFECTIONERY UNION AND
INDUSTRY INTERNATIONAL PENSION FUND

STANDARD COLLECTIVE BARGAINING CLAUSE

It is hereby agreed to provide pension and retirement benefits as follows:

a. The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated September 11, 1955, as amended, establishing the Bakery and Confectionery Union and Industry International Pension Fund (hereinafter called the Fund) and said Agreement is made part hereof by reference.

b. Commencing with the 1st day of January, 1979, the Employer agrees to make payments to the Bakery and Confectionery Union and Industry Industry International Pension Fund for each employee working in job classifications covered by the said Collective Bargaining Agreement as follows:

> For each day or portion thereof, for which an employee, subject to the Collective Bargaining Agreement, receives pay, the Employer shall make a contribution of $3.92 to the above-named Pension Fund, but not more than $19.60 per week for any one employee.

For the purpose of this Article, it is understood that contributions shall be payable on behalf of employees from the first day of employment, whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and regardless of whether or not they are members of the Union.

c. The payments made in accordance with (b) above shall be allocated as follows:

$3.38 per (day) (~~hour~~) to provide coverage for a Normal, Reduced, Early Retirement and Disability Pension (PLAN A).

$.26 per (day) (~~hour~~) to provide coverage for a Vested Deferred Pension (PLAN B).

$.12 per (day) (~~hour~~) to provide coverage for an Age and Service Pension (PLAN C).

$.16 per (day) (~~hour~~) to provide Welfare Benefits for Pensioners (PLAN W-1).

d. It is agreed that the Pension Plan adopted by the Trustees of the said Pension Fund shall be such as will qualify for approval by the Internal Revenue Service of the United States Treasury Department, so as to enable the Employer to treat contributions to the Pension Fund as a deduction for income tax purposes.

e. Notwithstanding any provision, if any, to the contrary contained in the Collective Bargaining Agreement between the Employer and the Union, the Union shall have the right to strike by giving the Employer written notice of its intention so to do not less than forty-eight (48) hours in advance if the Employer shall fail to make payment of the contribution due to the Fund for any month on or before the 10th day of the third calendar month following the month for which such contribution shall be payable; provided that no such action shall be taken by the Union unless and until the Administrative Director of the Fund shall have certified in writing, to the Employer and to the Union, that the Employer has so failed to pay such contribution. Any strike pursuant to this provision shall be terminated as soon as the Employer shall pay the delinquent contribution or shall make arrangements for the payment of it which meet with the approval of the Administrative Director of the Fund.

f. The payments so made to the Fund shall be used by it to provide retirement benefits for eligible employees in accordance with the Pension Plan of said Fund, as determined by the Trustees of said Fund, to be applied to the eligible employees based on the amount of employer contribution. The Employer hereby affirms that he has no arrangement providing for the compulsory retirement of his employees except as specifically set forth herein.

g. This clause encompasses the sole and total agreement between the Employer and the Union with respect to pensions or retirement.

h. This clause is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.

EDDY BAKERIES COMPANY

By: /s/ Carl Beavers

Date: 9/7/77

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA LOCAL UNION NO. 91

By: /s/ Loraine Krueger, Secretary

Date: 10/14/77

BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION FUND

STANDARD COLLECTIVE BARGAINING CLAUSE

It is hereby agreed to provide pension and retirement benefits as follows:

a. The Employer hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated September 11, 1955, as amended, establishing the Bakery and Confectionery Union and Industry International Pension Fund (hereinafter called the Fund) and said Agreement is made part hereof by reference.

b. Commencing with the 1st day of January, 1979, the Employer agrees to make payments to the Bakery and Confectionery Union and Industry International Pension Fund for each employee working in job classifications covered by the said Collective Bargaining Agreement as follows:

> For each day or portion thereof, for which an employee, subject to the Collective Bargaining Agreement, receives pay, the Employer shall make a contribution of $4.32 to the above-named Pension Fund, but not more than $21.60 per week for any one employee.

For the purpose of this Article, it is understood that contributions shall be payable on behalf of employees from the first day of employment, whether said employees are permanent, temporary, or seasonal, or full-time or part-time employees, and regardless of whether or not they are members of the Union.

c. The payments made in accordance with (b) above shall be allocated as follows:

$3.38 per (day) (~~hour~~) to provide coverage for a Normal, Reduced, Early Retirement and Disability Pension (PLAN A).

$.26 per (day) (~~hour~~) to provide coverage for a Vested Deferred Pension (PLAN B).

$.52 per (day) (~~hour~~) to provide coverage for an Age and Service Pension (PLAN C).

$.16 per (day) (~~hour~~) to provide Welfare Benefits for Pensioners (PLAN W-1).

d. It is agreed that the Pension Plan adopted by the Trustees of the said Pension Fund shall be such as will qualify for approval by the Internal Revenue Service of the United States Treasury Department, so as to enable the Employer to treat contributions to the Pension Fund as a deduction for income tax purposes.

e. Notwithstanding any provision, if any, to the contrary contained in the Collective Bargaining Agreement between the Employer and the Union, the Union shall have the right to strike by giving the Employer written notice of its intention so to do not less than forty-eight (48) hours in advance if the Employer shall fail to make payment of the contribution due to the Fund for any month on or before the 10th day of the third calendar month following the month for which such contributions shall be payable; provided that no such action shall be taken by the Union unless and until the Administrative Director of the Fund shall have certified in writing, to the Employer and to the Union, that the Employer has so failed to pay such contribution. Any strike pursuant to this provision shall be terminated as soon as the Employer shall pay the delinquent contribution or shall make arrangements for the payment of it which meet with the approval of the Administrative Director of the Fund.

f. The payments so made to the Fund shall be used by it to provide retirement benefits for eligible employees in accordance with the Pension Plan of said Fund, as determined by the Trustees of said Fund, to be applied to the eligible employees based on the amount of employer contribution. The Employer hereby affirms that he has no arrangement providing for the compulsory retirement of his employees except as specifically set forth herein.

g. This clause encompasses the sole and total agreement between the Employer and the Union with respect to pensions or retirement.

h. This clause is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.

EDDY BAKERIES COMPANY

By: /s/ Carl Beavers

Date: 9/7/77

BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA-LOCAL UNION NO. 154

By: /s/ Loraine Krueger, Secretary

Date: 10/14/77