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

January 25, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on January 25, 1983, at 1 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF SENATE BILL NO. 169: Chairman Aklestad introduced Senator Fred Van Valkenburg, sponsor of Senate Bill No. 169, to the Committee, and Senator Van Valkenburg explained the bill to the committee.

Senate Bill No. 169 is an act authorizing the Board of Personnel Appeals to investigate and dismiss complaints of unfair labor practices.

Senator Van Valkenburg stated that this bill will not bring about great changes in the present state system. It is the general conclusion that if a hearing is not necessary it would be better to get the unfair labor practices complaint disposed of early so that the issue wouldn't remain at the end of a difficult negotiating session.

PROPONENTS OF SENATE BILL NO. 169:

Thomas Schneider, representing the Montana Public Employees Association, stated they are in support of Senate Bill No. 169.

Representative Kelly Addy, representing House District No. 62, Billings, Montana, stated they are in support of Senate Bill 169. He stated that it will help police backlog before BPA.

LeRoy Schramm, representing the Personnel Study Commission, stated they support Senate Bill 169.

R. J. Jim Sewell, representing the Montana Hospital Association, stated that they are in support of Senate Bill 169. They support the concept of giving complete adjudicatory authority to the Board of Personnel Appeals to dismiss complaints found to be frivilous.

OPPONENTS OF SENATE BILL NO. 169: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON SENATE BILL NO. 169:

Senator Gage: There seems to be no indication of investigative time in the bill.

Bob Jensen: The average investigation is 15 days, then the complaint is dismissed or goes to hearing.

Senator Keating: Who decides the age and qualifications of investigators and appoints hearing examiners?

Mr. Addy: Mr. Jensen would appoint the hearing examiner.

Mr. Jensen: Labor mediators are the investigators. Part of the qualifications are six years of experience in the labor relations area.

Chairman Aklestad called the hearing closed on Senate Bill No. 169.

CONSIDERATION OF SENATE BILL NO. 92: Chairman Aklestad again introduced Senator Fred Van Valkenburg, sponsor of Senate Bill No. 92, to the Committee, and Senator Van Valkenburg explained the bill to the committee.

Senate Bill No. 92 is an act authorizing the issuance of an injunction against public employees engaged in a strike or other concerted interruption of work that has an impact on essential public services; and requiring the parties to submit to final-offer arbitration that is binding on the employer, employees, and appropriating authority if an injunction is issued.

Senator Van Valkenburg stated that this bill is a product of the Personnel Study Commission. He further stated that this bill did not receive the unanimous support of the Commission.

Senator Van Valkenburg stated that this bill is an attempt to deal with the very difficult problem of public employee strikes. The problem is difficult because many public employee services are the more essential services such as fire protection, police protection, care of the disabled, the education of our school children, etc.

Senator Van Valkenburg told the Committee that teachers' strikes and prison strikes during the 1979 session stressed the need for legislative concern in this area.

This particular bill attempts to provide some legal mechanism wherein a public employer could get an injunction to stop a public employee strike in essential services.

The reason for language about binding the appropriating authority is that public employer ought to be fully aware of the consequences of seeking the injunction. The employees should be assured that they will not have to go to the state legislature and lobby their case a second time. The arbitrator has to choose between public employee's position or the employer's position.

Senator Van Valkenburg feels the bill has some real merit in trying to get parties to negotiate settlements before the possibility of strikes and injunctions ever come about.

PROPONENTS OF SENATE BILL NO. 92:

Representative Cal Winslow stated that both management and labor have some real concerns about the problem, and this bill would help protect the public against interruption of service.

Maynard Olson, representing the Office of Public Instruction, stated they are in support of Senate Bill No. 92. Mr. Olson's printed testimony is attached. (Exhibit No. 1)

Don Robinson from Butte, representing the State Personnel Commission, stated that he feels this legislation is needed, if not now, in the future. The public interest is what we are talking about.

Marilyn Miller, representing the Office of Public Instruction and the Personnel and Labor Relations Commission, spoke in support of Senate Bill No. 92. She stated that she thinks this legislation is a compromise.

R. J. Jim Sewell, representing the Montana Hospital Association, stated that they are in support of this bill. Mr. Sewell stated that injunctive relief requires prior approval of a judge and a hearing within ten days. The mechanism provided will give the essential protection available to the public and the workers involved.

OPPONENTS OF SENATE BILL NO. 92:

R. Nadiean Jensen, representing AFSCME and AFL-CIO, stated that they are in opposition to the bill. Mrs. Jensen's printed testimony is attached. (Exhibit No. 2)

Jim Dundas of Three Forks, Montana, representing United Cement, Lime, Gypsum and Allied Workers' Local 239, stated that they oppose Senate Bill No. 92. Mr. Dundas' written testimony is attached. (Exhibit No. 3)

Terry Minow from Boulder, Montana, representing the Montana Federation of Teachers, stated they oppose Senate Bill 92.

Pat McKittrick from Great Falls, Montana, representing the Joint Council of Teamsters No. 2, stated they oppose Senate Bill 92. They feel some important aspects of the bill are missing, and there are constitutional problems as well. Mr. McKittrick stated there are some legal questions involved.

Dennis Taylor, representing the Personnel Division of the Department of Administration, stated they oppose Senate Bill No. 92. Mr. Taylor's printed testimony is attached. (Exhibit No. 4)

LeRoy Schramm, representing Personnel Study Commission as well as himself, stated that he opposes Senate Bill No. 92. He would like to see an amendment to the bill. On page 3, line 4, he wants the words mandatorily negotiable inserted between "unresolved" and "issues".

Mr. Schramm stated that neither side can go to impass on permissive issues. You can only strike over mandatory issues. If the language is left as it is written in the bill, employers might say "no" to all permissive negotiable issues and refuse to negotiate on those issues. The arbitrator will say "I'll go ahead and make a finding on those."

Eileen Robbins, representing the Montana Nurses' Association, stated that they oppose Senate Bill 92. E. Robbins' testimony is attached. (Exhibit No. 5)

Thomas Schneider, representing Montana Public Employees Assoc., stated they oppose Senate Bill 92. He feels the bill has two basic problems: (1) It deals only with essential employees. (2) It requires that the governing body appropriate the funds as it is bound by the arbitrator's decision.

QUESTIONS FROM THE COMMITTEE ON SENATE BILL NO. 92:

Senator Lynch: What was the vote by the Commission?

Mr. Schneider: Seven were in favor; five opposed.

Senator Blaylock: Re: The nurses' strike in Missoula, they totally lost the strike. In some cases do you think it might be better if there was an injunction and final-binding arbitration?

Eileen Robbins: In some cases it might be better.

Senator Goodover: Some sessions ago labor and management were both in favor of binding arbitration--why has that changed now? Now they are both against it.

R. Nadiean Jensen: It is not on final offer arbitration.

Senator Goodover: It was on final offer arbitration.

Senator Lynch: I see this as a question of do you have an absolute right to strike or not. I'm opposed to any limit on the right.

Senator Van Valkenburg: I would agree that it limits the right to strike.

Senator Gage: In a strike haven't you come to a point where there is no middle ground?

R. Nadiean Jensen: Within the strike itself, but there is a lot of difference between final offer arbitration and binding arbitration.

Senator Gage: Both managment and labor say they don't like this law. Will the fact that neither likes this law detract from the law's effectiveness?

Mr. Schramm: That is not a very black and white question. Final offer arbitration does not make both sides very afraid.

Senator Goodover: Would like to ask the same question of management. Why has management changed its position?

Dennis Taylor: I don't believe management has changed its position, but I am concerned about the language.

Senator Blaylock: What happened in the Butte teachers' strike?

Don Robinson: The strike was settled before an injunction.

Senator Keating: In reference to line 6, page 3 of the bill--item concerning "appropriating funds". Is there any legal precedence for that?

Don Robinson: If the legislature gave the arbitrator that authority, the legislature could hardly go to court and argue against being bound by arbitration.

Senator Keating: Is this measure a first in history or do other states have it?

Don Robinson: Forty-two out of 50 states prohibit public employees from striking. Seven limit such strikes. That leaves Montana. There's no precedent on the binding provision.

Senator Aklestad: Question to school people. If this bill passes, would you accept what comes out of it?

The school people stated that they would.

Senator Aklestad: Who determines whether the strike is in the best interest?

Senator Van Valkenburg: The district court judge would determine this.

Senator Aklestad questioned lines 3 and 4, page 3 regarding final-offer arbitration.

Senator Van Valkenburg: In reference to lines 3 and 4, page 3. This would apply only to unresolved issues between the parties. Each makes a last best offer to the other on the unresolved issues and the arbitrator will choose between the last best offers.

Senator Van Valkenburg made closing comments in support of Senate Bill 92. The public deserves that their employees work out their differences so that essential public services are provided. He hopes that it will be received as an initial step in a workable solution in public employee strikes.

The city of Missoula submitted a letter to the Committee in support of Senate Bill 92. This letter is attached. (Exhibit No. 6)

Chairman Aklestad called the hearing closed on Senate Bill 92.

CONSIDERATION OF SENATE BILL NO. 154: Chairman Aklestad called on Committee member Senator Thomas Keating, sponsor of Senate Bill No. 154, to explain the bill to the Committee.

Senate Bill No. 154 is an act amending the grandfather clause contained in Title 39, Chapter 31, MCA, collective bargaining for public employees, by providing that collective bargaining units recognized by the grandfather clause may contain supervisory employees, management officials, or other employees excluded from Title 39, Chapter 31, MCA, only as long as those employees continue to occupy the positions they occupied on July 1, 1973; authorizing the Board of Personnel Appeals to make unit clarifications or bargaining units recognized by the grandfather clause; amending section 39-31-109, MCA.

Senator Keating stated that this bill has to do with supervisory positions that are in existence at the time of the act. It is the attempt of the measure to continue those positions in the grandfather situations by changing the situations so that employees who are not union or who have not been in the bargaining unions, would not be in the union and supervisory position at the same time. Senator Keating stated that only about 20 or 30 positions in the state would be affected by this bill.

Senator Keating stated that there was an error in the title of the bill and he offered a proposed amendment to correct the error in the title. The proposed amendment is attached to the minutes. (Exhibit 7)

PROPONENTS OF SENATE BILL NO. 154:

LeRoy Schramm, representing the Personnel Study Commission, stated they are in support of Senate Bill 154. Mr. Schramm stated that there would be more than 30 people who would be affected by the bill counting the state employees, but it would not be in the hundreds. Mr. Schramm stated that the bill does not wipe out the grandfather clause. Those units before 1973 will be the same as those organized after 1973. Mr. Schramm doesn't think there is anything wrong with organizing supervisors.

Curt Chisholm, representing the Department of Institutions, stated they are in support of Senate Bill 154. Mr. Chisholm submitted printed testimony from the Department of Institutions. This testimony is attached. (Exhibit No. 8)

Rod Sunsted, representing the State Labor Relations Bureau stated they are in support of Senate Bill 154. He stated that this bill allows supervisors to get out of the bargaining. However, they may remain in the unit if they wish.

OPPONENTS OF SENATE BILL NO. 154:

Ray Blehm, representing Montana State Firemen's Assoc., stated they oppose Senate Bill 154. He stated that the state of the law on the grandfather clause is well tested. With the authority of the Board of Personnel to rule on the application of this provision, a state board has the authority to adjust these units if actual, substantial conflict exists.

Joe Rossman from Butte, representing the Teamsters Union, stated they are in opposition to Senate Bill 154. Mr. Rossman distributed a letter from the Western Conference of Teamsters Pension Trust to the Committee. This letter is attached. (Exhibit No. 9)

Mr. Rossman stated that it wasn't uncommon for supervisors to organize to bargain for themselves. This bill would affect people in units in Butte and Anaconda.

Pat McKittrick, representing Teamsters, stated they are in opposition to Senate Bill 154. He stated that pension rights would be in jeopardy. He also told the Committee that under federal law you can pick and choose on who can contribute to union rights.

Michael Walker, representing Montana State Council of Professional Fire Fighters, stated they are in opposition to Senate Bill 154. He stated that there has not been sufficient evidence that serious problems have arisen to substantiate a change in this section of the law, and it is the position of the fire fighters that to change the law for the sake of changing law is bad government practice.

R. Nadiean Jensen, representing AFSCMA and AFL-CIO, stated that they oppose Senate Bill 154. Her testimony is attached to the minutes. (Exhibit No. 10)

Brent Hunter from Billings, representing the city of Billings, stated they would like to have the bill amended to eliminate the unnecessary and unreasonable extension of the grandfather clause as allowed in Senate Bill 154's current terms. Mr. Hunter's printed testimony is attached. (Exhibit No. 11)

Chairman Aklestad called the hearing closed on Senate Bill 154.

At the conclusion of the hearing the following exhibits were submitted, and these exhibits are attached.

Exhibit No. 12 is a final report from the Governor's Council on Management, and was submitted by Dennis Taylor.

Exhibit No. 13 is a report from the Personnel and Labor Relations Study Commissioners. This report was submitted by Dennis Taylor.

Exhibit No. 14 is a position paper from the Montana School Boards Association. This paper was submitted by Jeff Minckler.

Exhibit No. 15 is a letter from the city of Missoula regarding Senate Bill No. 154.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 3:00 p.m.

Gary C Aklestad

Senator Gary C. Aklestad, Chairman

mn

ROLL CALL

LABOR COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 1/25/83

NAME	PRESENT	ABSENT	EXCUSED
TOM KEATING, VICE-CHAIRMAN	✓		
JACK GALT	✓		
PAT GOODOVER	✓		
DELWYN GAGE	✓		
CHET BLAYLOCK	✓		
JOHN LYNCH	✓		
DICK MANNING	✓		
GARY AKLESTAD, CHAIRMAN	✓		

DATE 1/25/83

COMMITTEE ON Labor & Employment Relations

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Madrean Jensen	AFSCME, AFL-CIO	92		X
Madrean Jensen	AFSCME, AFL-CIO	154		X
Tom Schneider	MPEA	92		X
Tom Schneider	MPEA	154		X
Tom Schneider	MPEA	169	X	
Joyce Brown	P & L RSC	92	✓	
Joyce Brown	"	154		
" "	"	169		
Kelly Addy	State Rep HD62	169	X	
(At Request)	State Rep	92	✓	
Mike Walker	State Fire Fighters	154		✓
Ray Blehm	Mt St Firemens Assoc	154		✓
Jim Davies	Cement Workers #339	92		X
Rick BARROS	OPI	92	✓	
MARILYN MILLER	OPI	92	✓	
MAYNARD OLSON	OPI	92	✓	
Jesse W Long	School Admin of MT	92		✓
Dennis M. Taylor	Personnel D of A	92		X
Dennis M. Taylor	Personnel Div/DofA	154	X	

(Please leave prepared statement with Secretary)

NAME: Thomas E Schneider DATE: 1/25/83

ADDRESS: Box 716 Helena

PHONE: 442-4600

REPRESENTING WHOM? MPEA

APPEARING ON WHICH PROPOSAL: SB-169

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Kelly Addy DATE: Jan 25, 1983

ADDRESS: 237 Ave C, Billings, MT 59101

PHONE: 252-5500 / 443-4511

REPRESENTING WHOM? House Dist 62

APPEARING ON WHICH PROPOSAL: S.B. 169

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Will help police backlog before BPA

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: LeRoy H. Schramm DATE: 1-25-83

ADDRESS: 1000 7th Ave. Helena

PHONE: 443-7358

REPRESENTING WHOM? Personnel Study Comm

APPEARING ON WHICH PROPOSAL: S.B. 169

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: R. J. Jim Sewell DATE: 1-25-83

ADDRESS: 26 W 6th

PHONE: 442-2980

REPRESENTING WHOM? MONTANA HOSPITAL ASSOCIATION

APPEARING ON WHICH PROPOSAL: SB-169

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Montana Hospital Association supports the concept of giving complete adjudicatory authority to the Board of personnel appeals to dismiss complaints found to be frivilous

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Maynard A. Olson DATE: 1-25-83

ADDRESS: 206 So. Dakota

PHONE: 442-9244

REPRESENTING WHOM? OPT

APPEARING ON WHICH PROPOSAL: S.F. 92

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rick Bartos DATE: 1/25/83

ADDRESS: Capitol

PHONE: 449-3685

REPRESENTING WHOM? OSPI

APPEARING ON WHICH PROPOSAL: SB 92

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Please see Memorandum Addressed to Committee.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Marilyn Nelson DATE: 1/25/83

ADDRESS: 1814 Townsend - Helena

PHONE: 443-3992

REPRESENTING WHOM? Office of Public Instruction
Personnel - Labor Relations Commission

APPEARING ON WHICH PROPOSAL: SB 92

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: R. J. Jim Sewell DATE: 1-25-83

ADDRESS: 26 W 6th - Helena

PHONE: 442-2980

REPRESENTING WHOM? MONTANA HOSPITAL ASSOC.

APPEARING ON WHICH PROPOSAL: SB-92

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Montana Hospital Association supports this Bill. There are 2 County Hospitals and 17 Hospital Districts in Montana conducting emergency medical care services, many in rural areas where little or no other medical services are available.

Injunctive relief requires prior approval of a judge and a hearing within ten days. The mechanism provided will give the essential protection available to the public and the persons involved.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: L. Madeleen Jensen DATE: 1-25-83

ADDRESS: Helena, MT

PHONE: 442-1192

REPRESENTING WHOM? AFSCME, AFL-CIO

APPEARING ON WHICH PROPOSAL: SB # 92

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: Testimony submitted on seperate sheet

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jim Dundas DATE: Jan 25, 1983

ADDRESS: Three Forks, Mt. 59752

PHONE: 285-6864

REPRESENTING WHOM? United Cement, Lime, Gypsum & Allied Workers Local 239

APPEARING ON WHICH PROPOSAL: SB 92

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Terry Lynn Minow DATE: 1/25/83

ADDRESS: Box 513, Boulder, MT

PHONE: 225-4397

REPRESENTING WHOM? Montana Fed. of Teachers

APPEARING ON WHICH PROPOSAL: SB 92

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Pat McKittrick DATE: 1/25/83

ADDRESS: P.O Box 1184 Great Falls, Mt. 59403

PHONE: 727-4041

REPRESENTING WHOM? Joint Comm. of Tourism Dist 2

APPEARING ON WHICH PROPOSAL: SB, 92, SB, 154

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? SB 92, SB 154

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: DENNIS M. TAYLOR DATE: 1-25-83

ADDRESS: PERSONNEL DIV / DofA Helena

PHONE: 449-3871

REPRESENTING WHOM? STATE PERSONNEL DIVISION

APPEARING ON WHICH PROPOSAL: SB 92

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: See attached Comments

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: LeRoy H. Schramm DATE: 1-25-93

ADDRESS: 1000 9th, Helena

PHONE: 443-7358

REPRESENTING WHOM? Personnel Study Comm.

APPEARING ON WHICH PROPOSAL: S.B. 92

DO YOU: SUPPORT? _____ AMEND? ✓ OPPOSE? ✓

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Eileen Robbins DATE: 1/25/83

ADDRESS: P.O. Box 5718

PHONE: 492-6710

REPRESENTING WHOM? Montana Museums Association

APPEARING ON WHICH PROPOSAL: SB 92

DO YOU: SUPPORT? _____, AMEND? _____ OPPOSE? X

COMMENTS: Written testimony attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thomas E. Schneider DATE: 1/25/83

ADDRESS: Box 716 Helena

PHONE: 442-4600

REPRESENTING WHOM? MPEA

APPEARING ON WHICH PROPOSAL: SB-92

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jessie W Long DATE: _____

ADDRESS: 201 N. Sanders

PHONE: 442-2510

REPRESENTING WHOM? School Adm of MT

APPEARING ON WHICH PROPOSAL: SB 92

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: LeRoy H Schramm DATE: 1-25-83

ADDRESS: 1000 9th, Helena

PHONE: 443-7358

REPRESENTING WHOM? Personnel Study Comm.

APPEARING ON WHICH PROPOSAL: S.B. 154

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: CURT CHISHOLM DATE: 12/26/83

ADDRESS: 1539 11TH - HELENA -

PHONE: 449-3930

REPRESENTING WHOM? DEPT of INSTITUTIONS

APPEARING ON WHICH PROPOSAL: SB 154

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: WRITTEN TESTIMONY SUBMITTED - NO REQUEST.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rod Sundsted DATE: 1-25-83

ADDRESS: Rm. 130, Mitchell Bldg.

PHONE: 449-5614

REPRESENTING WHOM? State Labor Relations Bur.

APPEARING ON WHICH PROPOSAL: SB 154

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: R.J. Jim Sewell DATE: 1-25-83

ADDRESS: 26 W 6th

PHONE: 442-2980

REPRESENTING WHOM? MONTANA HOSPITAL ASSOCIATION

APPEARING ON WHICH PROPOSAL: SB-154

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ray Bluhm DATE: 1/25/85

ADDRESS: 226 Wallace

PHONE: 442-6929

REPRESENTING WHOM? Mt St Firemen's Assoc

APPEARING ON WHICH PROPOSAL: SB 154

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: The state of the Law on the grandfather clause is well tested. With the authority of the Board of Personnel to rule on the application of this provision a State Board has the authority to adjust these units if actual, substantial conflict exists.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Joe Bossman DATE: 1-25-83

ADDRESS: 3314 Hannibal St Butte

PHONE: 494-4446

REPRESENTING WHOM? teamsters Local

APPEARING ON WHICH PROPOSAL: SB 92 & SB 154

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Michael A Walker DATE: 1/25/83

ADDRESS: 226 Wallace Helena

PHONE: 442-6929

REPRESENTING WHOM? Montana St. Council of Professional Fire Fighters

APPEARING ON WHICH PROPOSAL: S.B. - 154

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: We risen in opposition to SB 154 as there has not been sufficient evidence that serious problems have arisen to substantiate a change in this section of law. It is our position that ~~the~~ to change law for the sake of changing law is bad government practice.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: R. Vadrean Jensen DATE: 1-25-82

ADDRESS: Helena, Mt

PHONE: 442-1192

REPRESENTING WHOM? AFSCME, AFL-CIO

APPEARING ON WHICH PROPOSAL: SB # 154

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: Testimony submitted on seperate sheet

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Brent Hunter DATE: 1-25-83

ADDRESS: 1153 Toole, Billings, MT

PHONE: 252-4957 Home 657-8204 Bus

REPRESENTING WHOM? City of Billings

APPEARING ON WHICH PROPOSAL: SB 154

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Thomas E. Schneider DATE: 1/25/83

ADDRESS: Box 716 Helena

PHONE: 442-4600

REPRESENTING WHOM? MPCA

APPEARING ON WHICH PROPOSAL: SB 154

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit No. 1
Submitted by: Maynard Olson
January 25, 1983

OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 449-3095

Ed Argenbright
Superintendent

January 25, 1983

TO: Senate Labor and Employment Committee

FROM: Maynard Olson, Deputy Superintendent
Rick Bartos, Attorney
Marilyn Miller, Executive Assistant to the Superintendent

RE: Senate Bill #92

A bill for an act entitled: "An act authorizing the issuance of an injunction against public employees engaged in a strike or other concerted interruption of work that has an impact on essential public services; and requiring the parties to submit to final offer arbitration that is binding on the appropriating authority if an injunction is issued."

The office of the State Superintendent of Public Instruction supports Senate Bill 92 for four major reasons:

1. Senate Bill 92 would allow school boards of trustees to maintain 180 days of school if they chose.

2. The option to seek injunctive relief through the courts, stop a strike and go to binding arbitration rests with the local board of trustees.

3. This option would avoid the loss of school foundation monies to the district by maintaining a minimum of 180 days of school. Present law provides for a penalty, at least for elementary districts, if they fail to complete 180 days of school.

4. Senate Bill 92 would bring to a final conclusion a labor dispute between the district and the union.

Our main concern is for the education, safety and welfare of students, staff and parents.

The three major school strikes in the State of Montana have not been in the best interests of education, students, staff and parents. Everyone loses in a strike-the entire community.

During the recent strike at Missoula County High School District, the students lost 18 instructional days which will never be made up.

In many school strikes in the state, the confrontation becomes so serious that there is major concern for the safety and welfare of individuals It takes many years for these wounds to heal in the community.

Therefore, the office of the State Superintendent of Public Instruction, after lengthy and detailed consideration of other alternatives, urges you to support Senate Bill 92.

Exhibit No. 2 -- by R. Nadiean Jensen 1/25/83

MONTANA STATE COUNCIL No. 9

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Affiliated With A.F.L.-C.I.O.

TESTIMONY ON SENATE BILL #92

Senate Committee on Business and Labor, January 25, 1983

Mr. Chairman, Members of the Committee:

I am Nadiean Jensen, Executive Director of Montana State Council #9 of the American Federation of State, County and Municipal Employees, AFL-CIO. As Vice-President of the Montana State AFL-CIO, I am also here to testify on behalf of the state federation, because those representatives are at another hearing.

I am here as an oponent to Senate Bill #92, which restricts the fundamental right of public employees to strike, and distorts the collective bargaining system.

Senate Bill #92 allows injunctions against public employee strikes, work stoppages or refusals to work, when it endangers public services. The bill allows the injunction when a court finds that there is an imminent danger to the health, safety or welfare of the public. Although there is a statement that inconvenience and discomfort of the public are not sufficient reasons for a court to provide and injuntion, there could be courts for which "health, safety and welfare" could be used to cover any and all public employee strikes.

The bill requires final offer arbitration in the event of an injunction which means that an arbitrator selects only one of the two proposals from management and labor without seeking a middle ground. While there are certain times when final offer arbitration is appropriate, it should be only when it is agreed to by both labor and management. That is how it is now. It should not be forced by law on either management or labor.

By placing final decision making authority in the hands of an arbitrator, this bill could usurp the appropriating authority which belongs to the legislature. Let us assume that the legislature appropriates a five (5%)percent increase for all state employees. One bargaining unit refuses to accept this increase, and goes on strike after the legislative session is over. An injunction is issued, and the arbitrator decides that the unions request for a higher increase is fair. What would happen then: Would the Governor have impose a reduction in force to fund those pay increases? That kind of a decision could cause innumerable problems, including disrupting the state's classification and pay plan.

A school district could experience similar problems, if it had raised all the funds it is allowed by mill levies, recieved its money from the state and had its employees granted further pay increases by an arbitrator. Where would the money come from to fund the increases? It would be pretty difficult for a school district to lay off teachers to provide for more dollars when classroom size is mandated by collective bargaining.

We are also concerned that with the severability clause, it could be decided by the courts that the final offer arbitration was not binding on management. That would make the law extremely one-sided, with the arbitrator having authority only over the union.

The present system of collective bargaining works well for both management and labor. Tinkering with the present system creates nothing but problems for both sides. We urge your opposition to Senate Bill #92.

Respectfully Submitted by,

Nadiean Jensen

R. Nadiean Jensen, Executive Director
Montana State Council #9, AFSCME, AFL-CIO

TESTAMONY OF JIM DUNDAS BEFORE SENATE LABOR ~~LABOR~~ COMM ON JANUARY 25, 1983 REGARDING SENATE BILL # 92

FINAL AND BINDING ARBITRATION AS PROPOSED BY THIS BILL WOULD TAMPER WITH THE COLLECTIVE BARGAINING PROCESS. THE RIGHT TO STRIKE IS AN IMPORTANT PART OF COLLECTIVE BARGAINING.

PEOPLE IN POLAND AND OTHER COUNTRIES ARE WILLING TO GO TO JAIL IN ORDER TO INSTITUTE COLLECTIVE BARGAINING AS NOW ENJOYED BY WORKERS IN MONTANA.

WE ARE NOT PUBLIC EMPLOYEES. BUT WE DO NOT BELIEVE PUBLIC EMPLOYEES SHOULD BE SECOND CLASS CITIZENS. WE REALIZE WHATEVER LAW AFFECTS THEM WILL EVENTUALLY INCLUDE US. WE ENDORSE THE TESTIMONY ~~OF~~ OF OUR GOOD FRIEND NADINE JENSEN.

THANK YOU.

Exhibit No. 3
Submitted by Jim Dundas
January 25, 1983

Exhibit No. 4: Submitted by Dennis Taylor
January 25, 1983

DEPARTMENT OF ADMINISTRATION
PERSONNEL DIVISION

TED SCHWINDEN, GOVERNOR

ROOM 130, MITCHELL BUILDING

STATE OF MONTANA

(406) 449-3871

HELENA, MONTANA 59620

TESTIMONY OF DENNIS M. TAYLOR, ADMINISTRATOR, PERSONNEL DIVISION, DEPARTMENT OF ADMINISTRATION PRESENTED TO THE STATE LABOR AND EMPLOYMENT COMMITTEE IN OPPOSITION TO SB92

Mr. Chairman and Committee Members, my name is Dennis Taylor and I am the Administrator of the State Personnel Division in the Department of Administration. I appear before you today in opposition to SB92 introduced by Senator Fred Van Valkenburg at the request of the Personnel and Labor Relation Study Commission.

SB92 would amend the Collective Bargaining for Public Employees Act to provide injunctive relief from a strike or work stoppage upon a petition to District Court by a public employer where the court determines that continuation of a strike would pose an imminent danger to the health, safety or welfare of the public. Injunctive relief under SB92 automatically triggers compulsory, final offer arbitration which is binding on both parties including the government body responsible for appropriating funds. SB92 is a noble attempt by the Personnel and Labor Relations Study Commission to come to grips with the vexing problem of public employee strikes, especially where so called "essential public services" are at stake. In their sincere attempt to find a workable and politically acceptable way to resolve contract disputes in the public sector employment, the Study Commission seized the ideas embodied in SB92 as a balanced approach to preventing a contentious and unstable collective bargaining environment.

The Study Commission felt that SB92 would help achieve labor peace while assuring service delivery. Unfortunately, SB92 will not lead to a stable system of collective bargaining in the public sector without the legitimate resort to work stoppages. It does not contribute to good faith bargaining by the two parties. Quite the contrary, SB92, with its requirement for compulsory final offer arbitration, will suppress the potential of collective bargaining, imaginative mediation and other voluntary methods of settlement. SB92 will make the compulsory, binding arbitration routine where essential public services are involved.

SB92 won't improve the speed of settlement, instead SB92 brings a third party into the dispute, and that undermines the quality of the bargaining relationship. The last, best offer mechinism, in the view of leaders of both labor and management, does not settle disputes in a manner that promotes equitable or practical settlement.

SB92 makes the award of the third party arbitrator binding on the governing body of the jurisdiction seeking an injunction to stop a public sector strike. The State Legislature, the School Board or the local government governing body. This significantly distorts the collective bargaining and budget process by shifting decision making to an outside party who is simply not accountable. The arbitrator does not have to live with the consequences of his or her decision. It is this feature of SB92 that is most worriesome to me. I believe SB92 has some serious politicial, practical and constitutional problems if the compulsory and binding arbitration feature remains in the bill. SB92 places too much power with the courts to define essential public services and could lead to a situation where public employers could "shop around" for a judge who would rule their way. Public service could be considered "essential" in one court and not in another. There are too many uncertainties with SB92 and no real solutions for public sector strike situations.

I urge you to give SB92 a "do not" pass recommendation. We all want to find some way to prevent public sector strikes especially where essential public services are involved. Unfortunately, SB92 won't work the way it was intended by the Personnel and Labor Relations Study Commission. The measure should be rejected. Thank you for your consideration. I will be happy to attempt to answer your questions.

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

January 13, 1983

Mr. Dennis Taylor, Administrator
State Personnel Division
Department of Administration
Capitol Station
Helena, Montana 59620

Dear Mr. Taylor:

After reviewing a draft of the Personnel and Labor Relation Study Commission's final report, I would like to commend you on a tremendous effort. I believe that the commission brought a balanced perspective to its mission and conducted a thoughtful and reasoned analysis of the state's personnel and labor relations programs.

By identifying and defining the significant Personnel and Labor Relations issues for Montana State Government in the '80's, the commission has laid the groundwork for significant improvements in the management of state personnel. I understand that improvements in the classification system, as well as a shift in Board of Personnel Appeals policy on deferral of grievance disputes to arbitration, have already resulted, at least partially, from commission review of these areas.

With respect to the commission's 33 specific recommendations, following is a brief summary of my administration's position on each.

Recommendation 1. Institute measures to improve executive/legislative branch communications on collective bargaining.

This administration strongly supports this recommendation and the Department of Administration has begun implementation for this collective bargaining session as follows:

A meeting has been held with members of the legislative leadership to brief them on the status of collective bargaining and the Department of Administration is working with the Office of Budget and Program Planning and the Legislative Fiscal Analyst's office to develop mutually acceptable procedures to calculate the costs of negotiated settlements.

Recommendation 2. At the option of the Legislature, establish a Joint Legislative Committee on Employee Compensation.

I agree with Morris Brusett's observation that irrespective of structure, the success of the collective bargaining process depends upon consistent and credible communication between all parties including the Legislature, and his conclusion that Recommendation 1 should correct any past breakdowns

in communication. I also fear that substantial involvement by additional parties would further lengthen and complicate an already lengthy and complex process.

Despite these reservations, I am willing to defer to the Legislature and will not oppose adoption of Recommendation 2.

Recommendation 3. Amend the Collective Bargaining for Public Employees Act to clarify the time limit for Unfair Labor Practice decisions by the Board of Personnel Appeals.

I feel this recommendation helps clarify ambiguous language and support its implementation.

Recommendation 4. Amend the Collective Bargaining for Public Employees Act to permit the Board of Personnel Appeals staff to investigate and dismiss unmeritorious Unfair Labor Practices.

Although I doubt that this change in procedure will significant shorten the adjudication process for Unfair Labor Practices and may in fact lengthen it, again, I am willing to defer to the collective bargaining judgment of the Legislature.

Recommendation 5. Provide both parties to an Unfair Labor Practice with the opportunity to disqualify the designated hearings officer.

Since this provision should help insure that quasi-judicial Unfair Labor Practice proceedings are conducted by a hearings officer whose neutrality and professionalism both parties respect, and since both labor and management have expressed a need for the provision, I endorse its adoption.

Recommendations 6 and 7. Provide funds to the Board of Personnel Appeals to provide mediation training to its staff and to complete an index of its decisions.

I defer to the study commission's judgment that these limited expenditures will enhance the board's professionalism, although they are not currently part of the executive budget due to late introduction, and I will support the necessary appropriation.

Recommendation 8. Amend the statute establishing the Board of Personnel Appeals to give the board authority to hire its own staff.

Although I understand the need for Board of Personnel Appeals' neutrality and independence, I think it is achieved through the strict balance, and lay status of the board, not through board authority to hire and manage its own staff. The Board of Personnel Appeals, like most lay boards, cannot be expected to manage the day-to-day operations of a full-time staff. Accountability for effectiveness and productivity must rest with a full-time

official who can himself be held accountable.

Since I have been presented with no evidence of infringement on board authority by the Commissioner of Labor and Industry, and since I feel this recommendation violates principles of good management, I am opposed to its adoption.

Recommendation 9. Amend the Collective Bargaining for Public Employees Act to require use of mediation notice of concerted action, including strikes and lockouts.

This recommendation encourages resolution of collective bargaining disputes by the parties themselves, and where resolution is not possible, mitigates the adverse effects of concerted action on the public by providing time for contingency planning without restricting the collective bargaining rights of labor or management. It appears to be a good compromise recommendation -- one that recognizes the rights of the public without distorting the collective bargaining process. I support it.

Recommendation 10. Amend the Collective Bargaining for Public Employees Act to permit District Courts to enjoin a strike that endangers the public upon petition by the public employer. Strike injunction automatically initiates mandatory arbitration, which is binding on the governing body responsible for appropriations.

This recommendation, like Recommendation 9, would help protect the public from disruption of services. However, I feel that it significantly distorts the collective bargaining and budget process by shifting decision-making to an outside party that is not accountable.

I oppose its adoption.

Recommendation 11. Administratively move toward a single pre-budget negotiation session for all items.

Although the Department of Administration has expressed some reservations about the feasibility of a single session for all units, given the short negotiation period, large numbers of units and small staff, the advantages in increased flexibility for both parties make this a desirable goal and one the department is currently working toward.

Recommendation 12. Amend the Collective Bargaining for Public Employees Act to clarify the nature of the grandfather clause so that it protects current, but not future, employees in grandfathered units from exclusion when they occupy supervisory positions.

I concur with both the Council on Management's and Study Commission's recommendations that supervisors be excluded from bargaining units. I doubt that the grandfather clause was intended to lock supervisors into

bargaining units, and feel that collective bargaining is most successful when the division between management and labor is clear. I consequently support adoption of this recommendation.

Recommendations 13 and 14. Amend the Collective Bargaining for Nurses Act to make it more consistent with the Collective Bargaining for Public Employees Act, and amend 39-51-2305 to require the Labor Appeals Board to defer to the Board of Personnel Appeals or National Labor Relations Board for a determination of whether an Unfair Labor Practice has been committed for purposes of awarding unemployment insurance.

On both of these recommendations, I will defer to the Legislature and its determination of whether the proposed changes will simplify and/or improve the affected processes.

Recommendation 15. Enhance the existing position classification system by the introduction of quantitative methods.

I concur that the state's procedures for classifying positions should be as objective and understandable as possible and feel that this recommendation represents a practical and cost effective approach to better achieving those objectives. The Department of Administration is currently proceeding with plans for implementation.

Recommendation 16. Establish a non-base building, pay for performance bonus system for unorganized employees, leaving the subject negotiable for organized employees.

I feel that this concept has considerable merit but question whether sufficient funds will be available given the state's budgetary constraints. If the Legislature appropriates the necessary funds, I assure every effort will be made to implement an effective program, and have asked the Department of Administration to draft a pay-for-performance bill to be introduced.

If no funds are appropriated, I would consider authorizing its implementation on an agency-by-agency basis, depending on the availability of agency funds that can be used for this purpose.

Recommendation 17. Allow different pay plans and matrices for broad occupational groups.

This recommendation is currently under further study by the Department of Administration and may or may not be adopted, depending on the Department's determination of the merits and hazardous of separate plans. I am generally opposed to separate plans for narrow groups of employees because of the fragmentation and confusion it would create.

Recommendation 18. Establish a mandatory recruitment and selection training program to improve the quality of incoming employees.

I support this recommendation and such training is currently being provided by the Department of Administration.

Recommendation 19. Require all state agencies to recruit through job service for all job openings.

I strongly support this recommendation and have issued a memorandum in effect requiring it. In light of information that it is not being fully implemented, I will review the problems and attempt to secure more universal compliance.

Recommendation 20. Requiring job service to post notices of all state job openings.

I support this recommendation and plans are currently being made by the job service for implementation.

Recommendation 21. Establish a comprehensive agreement between job service and the state providing that Job Service will screen applicants down to the number specified by the agency for positions which readily permit such screening and refer all applicants who meet minimum qualifications for positions requiring less easily assessed qualifications.

I concur that state agencies and the Job Service should establish service agreements that satisfy legal and professional standards for employee selection and meet the needs of the agencies within the program capability of job service.

Recommendation 22. Establish a joint Job Service/Personnel Division training team to provide selection training to Job Service interviewers involved in referrals to state positions.

I feel that this recommendation should improve the coordination between Job Service selection services and Department of Administration selection training and technical assistance programs and support its adoption. The Department of Administration and Department of Labor and Industry are proceeding with implementation.

Recommendation 23. Provide sufficient resources (2 FTE's) to update and validate merit examinations administered by Job Service.

Although I agree that use of unvalidated tests as unwise, no additional FTE's have been included in the executive budget, and I oppose the substantial appropriation which would be required. I feel that this problem can be resolved more effectively by the elimination of any formal examinations which fail to meet professional standards.

Recommendations 24 through 27. Amend the Veterans'/Handicapped Preference Act to clarify the nature of the preference.

I support these recommendations and understand that most, if not all, of them will be incorporated in bill drafted by the Council on Employment of the Handicapped in cooperation with other handicapped and veterans organizations.

Recommendations 28 through 30. Involving establishing more comprehensive management and job or program specific employee training.

Both the Council on Management and Study Commission have stressed the need for more comprehensive training programs for state managers and employees to increase employee morale and productivity. I support this concept and will support its implementation.

Recommendation 31. Establish a non-monetary reward program that recognizes the accomplishments of individuals and groups of employees.

I agree that this recommendation could help improve both employee morale and motivation and support it.

Recommendation 32. Study the need for a state employee assistance program.

I concur that an employee assistance program deserves further study and have given the assignment to the Department of Administration.

Recommendation 33. Establish a uniform intra-agency grievance procedure for resolutions of significant employee grievances and discontinue special procedures.

I understand that this was a fairly controversial area, but I feel that the commission has developed a good compromise recommendation. I think the value of having a uniform, impartial and understandable process overrides the legitimate objections raised by the minority. Consequently, I support the recommendation so long as a single lay-board is created to oversee the uniform appeal procedure.

I appreciate your taking the time from your busy schedule to participate in the study commission's meetings and hearings. Your personal sacrifices and investment have already resulted in significant improvements in many areas of the state's personnel and labor relations systems. A lot more work needs to be done. I look forward to your continued assistance during the Legislature's consideration of study commission recommendations.

Again, thank you.

Sincerely,

TED SCHWINDEN
Governor

Exhibit No. 5
Submitted by Eileen Robbins
January 25, 1983

Montana Nurses' Association

2001 ELEVENTH AVENUE (406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59604

TESTIMONY SB 92

The Montana Nurses' Association opposes this bill. If passed this bill would remove the parity and equality now enjoyed by both parties to a collective bargaining agreement. The Employer would have the choice of going to arbitration; the Employees involved would have no choice. If a strike were called by a group of Employees the Employer could stop the strike by imposing binding arbitration through an injunction.

This bill limits its coverage to strikes by Employees who provide essential public services; for the most part these are the Employees who have participated in concerted activity in the past for the betterment of all public Employees and the public. In essence, those Employees who have been successful in the past in attaining improvements in working conditions and wages through concerted action are being stopped from doing so in the future.

This bill is a no-strike bill in limited disguise. Employees of the State of Montana must retain the legal right to withhold services through strike action.

Respectfully submitted,

Eileen C. Robbins
January 25, 1983

Exhibit No. 6
Submitted by City of Missoula
January 25, 1983

Missoula, Montana 59802

THE GARDEN CITY
HUB OF FIVE VALLEYS

January 25, 1983

OFFICE OF CITY ATTORNEY
201 West Spruce Street
Phone 721-4700

83-68

TO: Chairman Gary C. Aklestad
Members of Labor and Employment Relations

FROM: Mae Nan Ellingson for the City of Missoula

RE: Senate Bill 92

Through the summer of 1982 the City of Missoula followed the deliberations of the Personnel and Labor Relations Study Commission. While we have not agreed with all of the proposals submitted by the Committee, we believe that overall the Committee's proposals represent a commendable effort to balance the rights of public employees to collectively bargain for hours, wages, and conditions of work and engaged in concerted activity with respect thereto, with the duty of the public employer to provide essential governmental services.

Senate Bill 92 specifically seems to address those competing demands, and for that reason the City of Missoula supports Senate Bill 92 as a means of last resort for getting needed public employees back to work.

As most of you know, "management" has generally opposed final and binding arbitration on economic issues as being an infringement on its decision-making authority in the area of wages and hours of work. The City of Missoula has perhaps been a little out of step with other cities in that we had labor contracts providing for final and binding arbitration with our police officers and firefighters long before the state mandated final and binding arbitration for firefighters in 1979. I think the City of Missoula has always recognized that in the provision of police and fire protection, the danger and risk of a strike outweighed our need to have the last word as to salary. We have always been willing to take our last wage offer to arbitration and have a neutral party determine if it was a fair offer.

In 1981 the City police officers insisted on negotiating out of their contract final and binding arbitration so that they can strike in the future. Consequently, we are faced as a result of Section 39-31-109, M.C.A., and the Montana Supreme Court's interpretation of that Section, with the potentiality of a strike by a police force, containing not only the rank and file police officer but supervisory personnel as well. The City does not contend that police officers and other public employees should be second class citizens and not be able to use some form of concerted job action, including strikes.

We do believe, however, that Senate Bill 92 imposes a reasonable limitation on that right, namely a finding by a court that the strike or other work stoppage would result in an imminent danger to the public health, safety, or welfare. The City or other public employer is ultimately held responsible for the failure to provide the essential government, and this is particularly true when someone is injured by the lack of service. This bill gives the employer the option to go to a court of law and convince that court that the strike is resulting in imminent danger to the health, safety or welfare and not an inconvenience or discomfort to the public. If the injunction is obtained, the parties must submit to final and finding aribtration all unresolved issues.

One of the best features of the Bill, it seems to me, is the lack of a constant definition of essential public services. This protects both the employer and the employee. For example, every police strike may not result in imminent danger to the public, particularly if there are a lot of supervisory personnel outside the bargaining unit. Normally a strike by street department employees would not constitute an imminent danger to the public health or safety, but if the City's streets were covered with black ice or had been blanketed with snow it might.

As a general rule, strikes do not benefit either the employer or the employee. Strikes are generally resorted to by employees when they feel they have not been treated fairly. Being able to submit their position to a fair and impartial third party substantially removes the need for a strike.

The City of Missoula urges the Committee to support Senate Bill 92.

Respectfully,

Mae Nan Ellingson

Mae Nan Ellingson
Deputy City Attorney
City of Missoula

MNE/jd

Exhibit No. 7
Submitted by Senator Keating
January 25, 1983

Proposed Amendment to Senate Bill 154

1. Title, line 10.
Following: "SUPERVISORY"
Strike: "EMPLOYEES"
Insert: "POSITIONS"

2. Title, line 11.
Following: "MANAGEMENT"
Strike: "OFFICIALS"
Insert: "POSITIONS"

3. Title, line 11.
Following: "OTHER"
Strike: "EMPLOYEES"
Insert: "POSITIONS"

4. Title, line 12.
Following: "ONLY"
Strike: remainder of line 12 through "OCCUPIED" on line 13.
Insert: "IF THE POSITIONS EXISTED ON JULY 1, 1973, AND THE EMPLOYEES OCCUPYING THOSE POSITIONS ON OCTOBER 1, 1983, CONTINUE TO OCCUPY THOSE POSITIONS OR OCCUPY OTHER POSITIONS CONTAINED IN THE UNIT"

MISC3/John/Amend SB 154

Exhibit No. 8
Submitted by Curt Chisholm
January 25, 1983

DEPARTMENT OF INSTITUTIONS

TED SCHWINDEN, GOVERNOR
1539 11TH AVENUE
STATE OF MONTANA
(406) 449-3930
HELENA, MONTANA 59620

January 25, 1983

TO: Senate Labor and Employment Relations Committee

FROM: Carroll V. South, Director, Department of Institutions

SUBJECT: Senate Bill 154

Mr. Chairman, members of the Committee,

The Department of Institutions supports SB 154 which provides a means of obtaining bargaining unit clarification. There is a need to distinguish supervisory positions from those which are supervised. Without this distinction there is a potential for conflict of interest in the following areas:

1) employee evaluations;
2) employee discipline;
3) work scheduling; and,
4) testimony at grievance hearings.

As an example, consider the position of lieutenant at Montana State Prison. Lieutenants are clearly supervisory, in fact they are responsible for the operation of the entire institution during holidays, weekends and evenings. They are involved in the hiring, firing and disciplining of employees. They schedule employees and perform employee evaluations. Five lieutenants are members of the Montana Public Employees Association, as are those employees they supervise.

SB 154 addresses this problem by eliminating supervisory positions from the same bargaining unit but only through a process of attrition of those positions which are grandfathered.

We believe that there should be a clear line of distinction between labor and management and that employees promoted to positions of management are promoted because they desire to become a part of management and assume the various duties and obligations that are a part of management.

Respectfully submitted

CARROLL V. SOUTH, Director
Department of Institutions

Exhibit No. 9
Submitted by Joe Rossman
January 25, 1983

Western Conference of Teamsters Pension Trust

An Employer-Employee Jointly Administered Pension Plan

Northwest Administrative Office:
2323 Eastlake Ave. E., Seattle, Wa. 98102
(206) 329-4900

January 24, 1983

Mr. Joe Rossman
Teamsters Local Union No. 2
c/o Jorgensons "Holiday Inn"
Helena, Montana 59601

RE: Montana School Districts

Dear Mr. Rossman:

Mr. Jim Roberts, Secretary-Treasurer of Teamster Local Union No. 2 recently inquired as to the acceptability /unacceptability of excluding new employees performing the same bargaining unit work as other employees presently covered under labor agreements between the Montana School Districts and Teamster Local Union No. 2. In other words, Mr. Roberts has asked if those employees presently being reported can maintain their participation in the Trust while new employees are excluded. These labor agreements basically cover Administrative personnel (principals, vice-principals, assistant directors, supervisors, managers).

Please be advised that this arrangement would be unacceptable. It is the policy of the Trustees of the Western Conference of Teamsters Pension Trust Fund that pension contributions must be submitted on behalf of all employees who perform the same bargaining unit work commencing with the first hour of employment for all hours worked or compensated. There can be no selectivity.

If the labor agreements were to provide for such an exclusion, the Agreements would be deemed unacceptable. Corrections to amend the contract provisions to conform to the Trustees Policy would be pursued and if after a reasonable period of time has elapsed the corrections were not received, the following would apply:

1. The Employer account(s) would be terminated in the billing files and no further pension contributions would be accepted.

2. Contributions submitted for the period the contract became unacceptable would be deposited in a separate account. These monies held in such separate account would be disbursed to the employees involved pursuant to the Trust's policy covering a refund of contributions.

3. The discontinuance of employer contributions may also result in the Employer's being assessed employer withdrawal liability under the Trust's Employer Withdrawal Liability Rules and Procedures adopted by the Trustees in compliance with the Multiemployer Pension Plan Amendments Act of 1980.

4. Due to the absence of an acceptable labor agreement employees applying for benefits under the Plan would have their benefits computed in accordance with Article IV, Section 4 of the Plan which provides that employees may lose their Past Service Credits because of the discontinuance of employer contributions. (Many of the employees of the Montana School Districts have substantial Past Service Credits accured and therefore their monthly benefits would be greatly affected).

Enclosed find the Trusts Agreement and Declaration of Trust which provides in part for the Trustees Policy on Acceptance of Employer Contributions as well as the Employer Withdrawal Liability Rules and Procedures in addition to the Western Conference of Teamsters Pension Plan.

If you have any further questions, please feel free to contact us.

Yours very truly,

Joyce Carlson
Pension Manager

Dick Pirnke
Pension Service Manager

JC:DP:kn
enclosure

Exhibit No. 10 Submitted by Nadiean Jensen

MONTANA STATE COUNCIL No. 9 Jan. 25, 1983

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
Affiliated With A.F.L.-C.I.O.

TESTIMONY ON SENATE BILL 154

Senate Committee on Business and Labor, January 25, 1983

Mr. Chairman, Members of the Committee:

I am Nadiean Jensen, Executive Director of Montana State Council #9 of the American Federation of State, County and Municipal Employees Union, AFL-CIO. I am also, as Vice-President of the Montana State AFL-CIO, appearing today on behalf of the State AFL-CIO, because it's representatives are testifying in another committee hearing at this time.

Both AFSCME and the Montana State AFL-CIO strongly oppose Senate Bill #154, which amends the "grandfather clause" of the collective bargaining act for public employees. Any person in a supervisory capacity before July 1, 1973 would be allowed to remain as part of the collective bargaining unit, if he or she has been a part of that unit, in that job since 1973. The supervisor would also have the option of getting out of the unit. However, any new person who is hired for the position does not have such options. They are automatically excluded from union protection, even if they would choose to have it.

Basically, what the bill does is remove supervisory employees from union bargaining units by a method of attrition. We are against this attempt to disrupt the collective bargaining process, which, for the most part works well for both employees and employers. We view this as an effort to weaken the collective bargaining process by removing people from the unit, and thus diluting its strength at the bargaining table.

This bill would cause discrimination against certain employees. It would remove collective bargaining protection from certain employees while others, similarly employed, were provided that protection. Seniority rights and the right to grieve would be unfairly removed for certain employees, and it would deny those employees their right to choose whether or not to remain in the bargaining unit. In addition, an employer could choose not to provide certain benefits to these employees which others, still in the unit, enjoy or vice-versa.

There seems to be more and more requests by the employer to the legislature to weaken the collective bargaining process. We are against any such measure and we ask that you vote against SB #154.

Respectfully submitted by,

Nadiean

R. Nadiean Jensen, Executive Director
Montana State Council #9, AFSCME, AFL-CIO

Exhibit No. 11
Submitted by Brent Hunter
January 25, 1983

January 25, 1983

TO: SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

FROM: BRENT HUNTER, PERSONNEL DIRECTOR
CITY OF BILLINGS

RE: SENATE BILL 154

Gentlemen:

Senate Bill 154 is a recommendation to you from the Personnel and Labor Relations Commission on how to finally bring to an end an "exception to the rule" in the Collective Bargaining Law, which is commonly known as the grandfather clause. This exception to the rule allows supervisors to remain in the same bargaining unit as the employees that they supervise. This is allowed simply because that was the way it was prior to 1973, when the Collective Bargaining Law was passed. This has allowed, in the city of Billings' fire department, a situation to exist, in which only the Fire Chief and the Assistant Chief are the only supervisors excluded out of 95 sworn firefighters.

It is also an exception to the rule because it is generally accepted that supervisors should not belong to the same union as the employees that they are responsible for hiring, firing, promoting, disciplining, evaluating, and other supervisory responsibilities. This relationship usually results in either poor supervision or poor union representation; it has a built-in conflict of interest. In some states, supervisors are allowed to belong to unions; however, they are not allowed to belong to the same union as do the employees that they supervise. In Montana, under the Collective Bargaining Law, and in the private sector, under the National Labor Relations Act, it is clear that supervisors are not to belong to any union!

Senate Bill 154 basically addresses a process to eliminate this exception to the rule. It states that any supervisor in a grandfathered union has, after 10-1-83, a choice to make. He or she can either remain in the union so long as they stay in the same or equivalent position, or they can elect to individually be excluded from the union.

This option allows the individual, who has the greatest impact from this change, to make their own decision regarding participation in the union. Senate Bill 154, then, in finally bringing this exception to an end, states that all future replacements to these supervisory positions must be excluded from the union. This also allows future potential supervisors to make a decision; they can elect to stay in the union and not be promoted to a supervisor's position, or they can elect to assume the full responsibilities of a supervisor and be excluded from the union. Up to this point, Senate Bill 154 is accepted and should eliminate the grandfather clause within a reasonable period.

However, Senate Bill 154 goes beyond this point in subsection (3), lines 16-19, and this is where the City believes the inequity exists. In the above lines, Senate Bill 154 states that any employee in the grandfathered unit, who is on board as of 10-1-83, and who is promoted in the future to a supervisor's job, shall be able to stay in the union also. This continuation provision means, to the City's fire department where career employment leads to a 25-30 year tenure, that the grandfather could remain intact for the next 30 years. We believe that this extension of time, which is granted for employees who are not currently affected by the grandfather provision, causes an unreasonable delay in ending this exception to the rule. We also urge the Committee and the labor unions to carefully review this provision. We believe that many public employers, faced with either promoting internally and continuing the grandfather clause or hiring supervisors from the outside and ending the grandfather clause, may be forced to consider the latter choice. This could be a serious problem to career employees, like our firefighters, who depend upon internal promotions for their career and retirement benefits.

In closing, the City of Billings does not support Senate Bill 154, as currently proposed. We recommend that the Senate Labor and Employment Relations Committee amend the bill to eliminate the unnecessary and unreasonable extension of the grandfather clause as allowed in Senate Bill 154's current terms.

DENNIS M. TAYLOR
Exhibit No. 12
January 25, 1983

Governor's Council on Management

Final Report

be trained to provide counseling and guidance to problem employees. Implementation will cut sick leave payments and increase overall productivity.

25. Establish a standard job announcement form.

The Governor has directed all departments to list vacancies with Job Service. However, many agencies do not do so if there are indications the position will be filled internally. Furthermore, each agency uses a different format for vacancy announcements.

To achieve standardization, each agency should be issued the form developed by the Personnel Division, plus control numbers to provide an audit trail. Completed forms should be forwarded to Job Service for posting. Implementation will standardize information necessary for each opening, provide an audit trail for Equal Employment Opportunity purposes, and comply with the Governor's directive.

26. Eliminate five-year longevity allowances.

Montana codes provide longevity allowances for employees based on five-year periods of uninterrupted service. They also authorize yearly raises on employees' anniversary dates. While the latter are called merit increases, there is no evaluation system. Therefore, they are actually longevity awards for another year's service. This is a costly practice unsupported by accepted management practices.

Since two longevity raises are awarded in every fifth year of employment, the five-year longevity allowance should be eliminated. Implementation will provide an annual saving of approximately $1.7-million.

SB 120

27. Require management personnel to sever union affiliations.

Several management employees are members of bargaining units representing division employees. This creates a conflict of interest and makes it difficult to maintain the confidentiality required in management relationships. All managers, supervisors and employees who hold sensitive positions should be exempted in the bargaining unit's definition. Therefore, they should terminate their union membership.

28. Develop and implement an employee opinion survey.

The Personnel and Labor Relations Study Commission was established to make recommendations to the Governor and Legislature on methods for improving the personnel system. While the commission is doing a commendable job, it should seek additional input from individual employees.

To accomplish this, an employee opinion survey should be drafted. The Personnel Division should design questions around job, state government, and fellow employee satisfaction; orientation and training; working conditions; communications; grievance procedures; supervision; performance evaluation; plus wages and benefits. Yes or no responses should be required to encourage participation while color coding could be used to determine responses by departments. Implementation will encourage employee participation in the commission's activities while indicating areas of concern for future benefit planning, training and the like.

SB 42 Exhibit No. 13
Submitted by Dennis Taylor
January 25, 1983

PERSONNEL AND LABOR RELATIONS STUDY COMMISSIONERS

Chairman

Representative Francis Bardanouve
Democrat from Harlem

Legislative Commissioners

Senator Fred Van Valkenburg,
Democrat from Missoula

Rep. Calvin Winslow
Republican from Billings

Senator Jan Johnson Wolf,
Republican from Missoula

Labor Commissioners

Jerry Driscoll, President
Montana State AFL-CIO
Assistant Business Manager
Laborers Local No. 98, Billings

Richard Ferderer, Secretary-Treasurer
Teamsters Local 45, Great Falls

Tom Schneider, Executive Director
Montana Public Employee Association,
Helena

Private Sector Commissioners

Percy Cline, Staff Manager
Mountain Bell, Helena;
resigned March, 1982

Jean Fitzsimmons, Regional
Director of Personnel,
Burlington Northern Inc.,
Billings; appointed March,
1982 to replace Percy Cline

Nancy Hanson, Vice-President
for Human Resources, First
Northwestern National Bank,
Billings

Don Robinson, Attorney
Law Firm of Poore, Roth,
Robeschon and Robinson, Butte

Executive Branch Commissioners

Marilyn Miller, Executive Assistant
to the Superintendent, Office of
Public Instruction, Helena;
appointed March, 1982 to replace
Ray Shackleford

Dr. LeRoy Schramm, Chief Legal
Counsel, Office of the Commissioner
of Higher Education, Helena

Ray Shackleford, Deputy State
Superintendent, Office of Public
Instruction, Helena; resigned
March, 1982

Gary Wicks, Director
Department of Highways, Helena

Staff

Provided by the Personnel Division, Department of Administration

Dennis M. Taylor, Administrator
Personnel Division

Joyce Brown, Project Director

John Balsam, Research Specialist
Lois Lofstrom, Secretary

Montana's three impasse resolution methods are used by most states. However, unlike other states, Montana public employees may, with few restrictions*, stop work or strike to end an impasse. All other states either prohibit all strikes or prohibit strikes which interrupt essential services. However, many states have found that strike prohibitions without an effective alternative—generally binding arbitration—do not eliminate strikes but rather produce illegal strikes which create greater animosity and disruption in public service than most legal strikes.

See the Bibliography "Issue Area B" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-5.
Mediation is responsible for resolving a large percentage of disputes and should be required before any concerted action -either a strike by employees or lockout by the employer. The most critical factors in the success of mediation aside from the extent of differences between the parties is trained mediators and the perceived neutrality of the mediators.

F-6.
Fact finding is successful in resolving some types of disputes and consequently should continue to be available for implementation by either party but should not be required.

F-7.
Binding arbitration is an effective alternative to disruptive strikes but has a major disadvantage. It transfers fiscal control from the public jurisdiction to an outside third party. Consequently, binding arbitration should *not* be *statutorily imposed* on a public sector employer unless in all cases the negative effect of a strike would outweigh the adverse fiscal impact. (Many jurisdictions who previously favored binding arbitration over the right to strike are finding that most strikes are more manageable than the fiscal impact of binding arbitration.)

F-8.
Binding arbitration should continue to be *an available option* for use when both the employer and labor organization agree to it because, in a particular case, they feel it would be preferable to the adverse consequences of a strike. It should also be available as an option to a harmful strike which can be imposed by a district court along with a strike injunction *provided* that district court, upon petition by the employer, determines that the strike poses an imminent danger to the health, safety *provided* that district court, upon petition by the employer, determines that the strike poses an imminent danger to the health, safety and welfare of the public. (See finding F-10.)

F-9.
Strikes should only be prohibited when binding arbitration is an acceptable alternative—i.e., when the public employer is willing to risk the fiscal impact of binding arbitration because a strike poses an imminent danger to the health, safety and welfare of the public. Prohibition without an effective alternative results in illegal strikes, which are more severe, create more adversarial proceedings such as contempt proceedings and jailings, produce more militancy; and generally make continuation of public service more difficult than a legal strike.

F-10.
The adverse effects of strikes by public employees on the public itself should be reduced. Adverse effects can be reduced in two ways. First, by requiring prior notice before any strike by public employees. This will permit contingency planning to minimize the adverse impact upon the public. Second, by providing a means to end strikes by public employees which are causing imminent danger to the public's health, safety and welfare.

The best means of ending strikes which are harmful to the public is to allow the employer to petition district court to enjoin the strike if the court determines it endangers the public with the condition that enjoining the strike will institute binding, package, final-offer arbitration to settle the dispute.

* There are certain restrictions on strikes by nurses and provisions for binding arbitration in lieu of a strike by firefighters when initiated by either the employer or labor organization.

Package, final-offer arbitration has been found to be a fair process because it involves a decision by an independent neutral party between the final package offered by each party involved in negotiations. Since the arbitrator will select the most reasonable package, the parties generally offer packages that are similar and at least partially meet the demands of the other party.

RECOMMENDATIONS

Recommendation 9: Amend the Collective Bargaining for Public Employees Act to:

1. require use of mediation before concerted action by either party to a dispute;

2. require a 120-hour (5 day) notice of a concerted refusal to work at any public place or before engaging in any strike, lockout or picket which results in a concerted refusal to work at any public place of employment;

3. provide injunctive relief for a violation of either of these provisions. (Vote: 9-yes, 3-no)

See proposed implementing legislation, LC0074/01, in Appendix B.

Recommendation 10: Amend the Collective Bargaining for Public Employees Act to provide injunctive relief from a strike or work stoppage upon a petition to district court by a public employer where the court determines that continuation of a strike would pose an imminent danger to the health, safety or welfare of the public, as opposed to inconvenience or discomfort. Injunctive relief automatically triggers compulsory, final-offer arbitration which is binding on both parties including the governing body responsible for appropriating funds. (Vote: 7-yes, 5-no)

SB 92

See proposed implementing legislation, LC0093/01, in Appendix B.

THE COLLECTIVE BARGAINING PROCESS

ISSUE

Statutory language in the Collective Bargaining for Public Employees Act, 39-31-305 MCA, suggests that the legislature intended that economic items be negotiated in advance of the legislative session. In addition, gubernatorial executive orders 2-15, 9-11 and 12-81 call for pre-budget negotiations on economic items. Non-economic items are generally negotiated later as contracts expire.

This two-tiered collective bargaining process was developed to permit economic items to be included in the executive budget but has been criticized by both management and labor.

Both parties feel that it provides insufficient bargaining flexibility. Managers complain that once salaries and benefits are set, there are few bargaining "chips" for second-tier bargaining. They also complain that, although second-tier bargaining supposedly involves non-economic items (seniority clauses, grievance procedures, etc. as opposed to wages and benefits) many items with an economic impact such as uniform allowances are bargained second-tier and agreements may consequently involve unbudgeted expenses.

Labor leaders complain that it is usually impossible to obtain concessions on any items involving costs after the Legislature goes home. They also complain about being pressured to reach agreements on non-economic items under threat that previously negotiated economic benefits will be withheld until agreements are reached.

See the Bibliography "Issue Area B" in Appendix E for a list of the staff reports and other materials considered.

FINDING

F-11.

Although comprehensive pre-budget negotiations may be difficult to realize given the small size of the state's labor relations staff and the large number of bargaining units, the advantages of increased flexibility and the ability to budget for all cost items make it a worthwhile goal, that should be pursued by all parties.

RECOMMENDATION

Recommendation 11: Administratively move toward a single pre-budget negotiation session for all items (both economic and non-economic items) to increase bargaining flexibility. (Vote: passed unanimously)

HOUSEKEEPING MEASURES TO ELIMINATE CONFUSION AND DUPLICATION IN THE COLLECTIVE BARGAINING PROCESS

ISSUE

The Commission identified three incidences of ambiguity or duplication in the collective bargaining process which it felt could be corrected through statutory changes. These were:

1. ambiguity in the grandfather clause of the Collective Bargaining for Public Employees Act, 39-31-109, M.C.A., and consequent disagreement over appropriate application;

2. duplication in statutory language and the collective bargaining process for public sector nurses and other public sector employees; and

3. duplication in authority to make unfair labor practice determinations between the Labor Appeals Board which makes such determinations for purposes of deciding eligibility for unemployment compensation and the State Board of Personnel Appeals and National Labor Relations Board, which make such determinations for all other purposes.

The three issues are summarized below:

1. **THE ISSUE OF THE GRANDFATHER CLAUSE:** The grandfather clause of the Collective Bargaining for Public Employees Act, 39-31-109, M.C.A., states: "Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to the effective date of this Act." The Board of Personnel Appeals has interpreted this language to protect collective bargaining units which were in existence prior to the passage of the act as well as preexisting collective bargaining agreements. While the Supreme Court in *City of Billings v. Billings Firefighters Local No. 521*, 39 St. Rep. 1844 (1982), recently upheld the Board of Personnel Appeal's authority to interpret the clause in this way, the intent of the legislature, and the desirability of such an interpretation, remain at issue. See previous section on Operations of the Board of Personnel Appeals—Issue.

SB 151

2. **THE ISSUE OF DUPLICATE STATUTES AND PROCESSES FOR NURSES:** The Collective Bargaining for Nurses Act (CBNA) serves the same purpose as the Collective Bargaining for Public Employees Act (CBPEA)—to establish statutory collective bargaining rights—but since it predated the CBPEA, it contains inconsistent provisions or lacks provisions of the more general CBPEA. While most of the gaps and inconsistencies in the Nurses' Act have been corrected through administrative rules adopted by the Board of Personnel Appeals, the need for a separate act remains at issue.

Opponents of a separate nurses' act argue that (a) the inconsistencies between the two acts create unnecessary confusion, especially with respect to LPNs who appear to be covered by both acts, and (b) that while consistency between the Nurses' Act and the CBPEA is desirable, use of administrative rules to create consistency is inappropriate use of administrative rules to make law.

Advocates of separate acts—The Montana Nurses' Association—argue (a) that no significant problems have been created by separate acts, (b) that coverage of public sector nurses by the CBPEA and repeal of the CBNA would result in the exclusion of supervisory nurses who might organize in the future (no supervisory nurses are currently organized under the Nurses' Act), and (c) that coverage of public sector nurses by the CBPEA and repeal of the CBNA would eliminate all statutory rights to bargain collectively for private sector nurses who are not covered by the National Labor Relations Act. This includes nurses who are employed by a health care facility with annual revenues of under $250,000. (No private sector nurses are currently organized under the CBNA.)

3. **THE ISSUE OF DUAL AUTHORITY TO DETERMINE UNFAIR LABOR PRACTICES:** The statute administered by the Board of Labor Appeals contains a provision, 39-51-2305, M.C.A., that requires the Board to consider a violation of any statute by the employer (which could include an unfair labor practice) for purposes of determining whether the employer unlawfully caused the unemployment of a claimant for unemployment benefits thus entitling the claimant to benefits.

Consequently, the Labor Appeals Board claims authority to determine whether an employer has committed an unfair labor practice and this authority was recently upheld in a First Judicial District Court decision, *State of Montana v. AFSCME*, No. 47496 (March 9, 1982). Thus, the Labor Appeals Board determines whether an employer has committed an unfair labor practice for purposes of determining eligibility for unemployment compensation, and either the Board of Personnel Appeals or National Labor Relations Board makes this determination for all other purposes creating the possibility of conflicting determinations.

The Labor Appeals Board argues that it needs authority to make this determination because determinations by the Board of Personnel Appeals and National Labor Relations Board are made too late to provide meaningful unemployment benefits.

Opponents of this authority for the Board of Labor Appeals argue that, while the Board of Personnel Appeals is generally respected for its neutrality, the Labor Appeals Board is not a neutral Board (it has a disproportionate number of labor representatives) and has never ruled against a claimant.

See the Bibliography "Issue Area B" in Appendix E for a list of the staff reports and other materials considered.

FINDINGS

F-12. REGARDING THE ISSUE OF THE GRANDFATHER CLAUSE

The existing interpretation of the grandfather clause violates the principle and apparent legislative intent that only non-supervisory employees be eligible to belong to bargaining units. The language should consequently be clarified to permit eventual exclusion of supervisory employees from bargaining units without eliminating protection for current employees in grandfathered positions.

F-13. REGARDING THE ISSUE OF DUPLICATE STATUTES AND PROCESSES FOR NURSES

Recognizing the commitment of professional nurses to their pioneer Collective Bargaining for Nurses Act, the act should be retained, but in the interest of fairness and consistency, it should be amended to define unfair labor practices by labor organizations and make procedures for nurses more consistent with those established for public employees by the Collective Bargaining for Public Employees Act.

F-14. REGARDING THE ISSUE OF DUAL AUTHORITY TO DETERMINE U.L.P.S.

Determination of whether an unfair labor practice has been committed should be left to the state and national labor boards constructed and trained to make such determinations, and both boards should streamline their procedures to permit such determinations as early as possible.

RECOMMENDATIONS

Recommendation 12: Amend the Collective Bargaining for Public Employees Act (CBPEA) to clarify the nature of the grandfather protection provided to employees in positions which were contained in bargaining units prior to the effective date of the CBPEA—July 1, 1973 as follows: If on July 1, 1973 (the effective date of the CBPEA) a collective bargaining unit contained a position occupied by an employee who would not be eligible to belong to the unit under the CBPEA (a supervisor) then the employee who occupies that position on the effective date of this amendment (October 1, 1983) may, if he desires remain in the bargaining unit for as long as he continues to occupy the same position or another position which was contained in the unit on July 1, 1973, unless the Board of Personnel Appeals determines that he should be excluded. If the employee leaves a position which on July 1, 1973 was contained in the unit and occupied by an

employee who would not be eligible to belong to the unit under the CBPEA (a supervisor), his replacement is excluded from the bargaining unit unless the replacement has, since the effective date of this act (October 1, 1983), continuously occupied a position or positions which were contained in the unit on July 1, 1973. (Vote: 9-yes, 3-no)

See proposed implementing legislation, LC0027/01, in Appendix B.

Recommendation 13: Amend the Collective Bargaining for Nurses Act to: (1) establish unfair labor practices for labor organizations representing nurses as well as for health care facilities (employers), (2) establish procedures for adjudicating unfair labor practice charges consistent with procedures under the CBPEA and, (3) make procedures for determining appropriate units and resolving representation questions for nurses more consistent with procedures established by the CBPEA for public employees. (Vote: 7-yes, 4-no)

See proposed implementing legislation, LC0046/01, in Appendix B.

Minority views are presented in Chapter VII.

Recommendation 14: Amend 39-51-2305, M.C.A., to require the Labor Appeals Board (referred to in statute as the Department of Labor and Industry) to defer to the Board of Personnel Appeals or the National Labor Relations Board for a determination of whether the employer of an applicant for unemployment benefits committed an unfair labor practice that resulted in a labor dispute, work stoppage and the applicant's unemployment for purposes of deciding whether the applicant is entitled to benefits. (Vote: 10-yes, 2-no)

See proposed implementing legislation, LC0076/01, in Appendix B.

CHAPTER VII
MINORITY REPORT

Minority views are presented below for three recommendations at the request of the minority contingents.

Recommendation 13: Amend the Collective Bargaining for Nurses Act (CBNA) to: (1) establish unfair labor practices for labor organizations representing nurses—as well as for health care facilities, (2) establish procedures for adjudicating unfair labor practice charges consistent with procedures under the Collective Bargaining for Public Employees Act (CBPEA), and (3) make procedures for determining appropriate units and resolving representation questions for nurses more consistent with provisions established by the CBPEA for public employees.

MINORITY VIEW: Opponents of Recommendation 13 generally favored the option of placing nurses under the CBPEA and abolishing the CBNA arguing that the Nurses Act is no longer needed and creates unnecessary confusion and duplication. Other arguments in favor of this minority option were that it creates no ill effects because, while supervisory nurses could legally join a bargaining unit under the Nurses Act but not the CBPEA, none have done so during the 12 years of existence of the Nurses Act, and while private sector nurses who are not covered by the National Labor Relations Act (those employed by a health care facility with annual revenues under $250,000) could legally organize under the Nurses Act but not under the CBPEA, again, none have done so during the existence of the Nurses Act.

MINORITY MEMBERS: Rep. Francis Bardanouve, Jean Fitzsimmons, Nancy Hanson, Marilyn Miller, and Gary Wicks.

Recommendation 16: Establish a non-base-building pay-for-performance bonus system for all unorganized employees.

MINORITY VIEW: Opponents of this recommendation argued that: (a) pay-for-performance can be expected to generate more animosity and hard feelings than productivity because performance appraisal is never completely objective, (b) the experiences of the City of Great Falls and County of Missoula with performance pay were unfavorable, (c) rank and file members oppose it as demonstrated by letters or petitions from 1,865 organized employees, and (d) pay-for-performance funds could better be spent on making base salaries more competitive or on other benefits such as shift differentials.

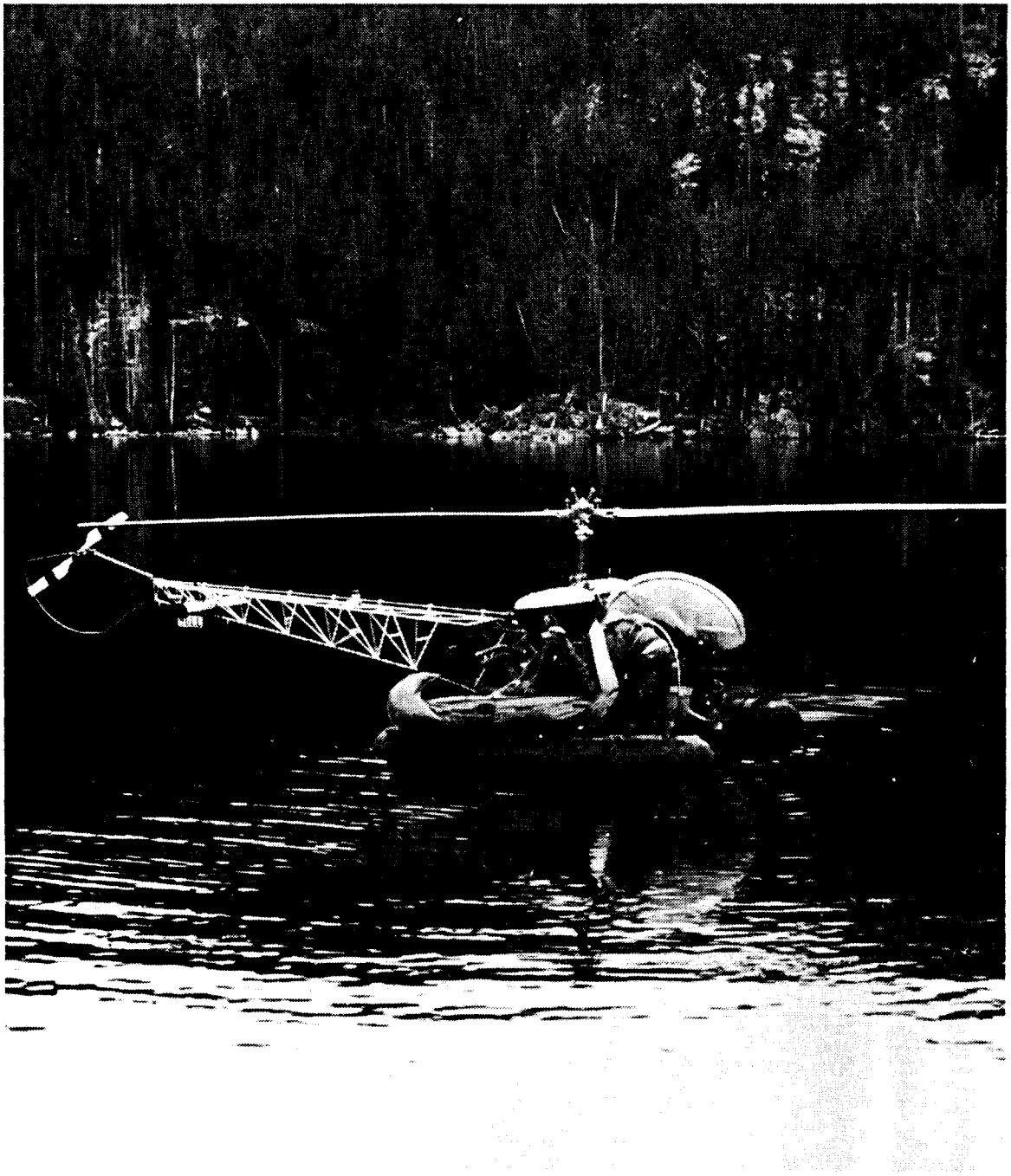
MINORITY MEMBERS: Jerry Driscoll, Tom Schneider, Senator Fred Van Valkenburg, Richard Ferdever.

Recommendation 33: Establish a uniform procedure for resolution of significant employee grievances by: (1) statutorily requiring each agency to establish a grievance procedure with specified features, (2) statutorily provide employees with the right to enforce grievance rights through district court and to be awarded costs and attorney's fees, (3) abolish the Merit System Council, and (4) repeal statutory provisions establishing grievance appeal procedures through the Board of Personnel Appeals for employees of the Departments of Highways and Fish, Wildlife and Parks.

MINORITY VIEW: Some opponents of Recommendation 33 argued against it because it eliminates existing statutory right of appeal to the Board of Personnel Appeals for employees of the Departments of Highways and Fish, Wildlife and Parks and existing appeal procedures through the Merit System Council. Others opposed any procedure that involves an independent hearing, arguing that grievance resolution should be handled internally by each agency unless employees have collectively bargained a grievance arbitration process. Still, others argued that the current diversity in grievance processes creates no real problems and is preferable to either creating a costly grievance board or eliminating existing statutory rights. Some favored extending the statutory right of appeal through the Board of Personnel Appeals currently held by employees of the Departments of Fish, Wildlife and Parks and

Highways to all employees but others argued that the Board's concentration on labor relations should not be diluted—that the Board of Personnel Appeals should be patterned after the National Labor Relations Board. It was also noted that labor law is a special field and should not be applied to grievances by unorganized employees.

MINORITY MEMBERS: Jerry Driscoll, LeRoy Schramm, Richard Ferderer, Senator Fred Van Valkenburg, Tom Schneider.



High mountain lake, fish survey, Department of Fish, Wildlife and Parks.

MONTANA SCHOOL BOARDS ASSOCIATION
LABOR RELATIONS SERVICE

Exhibit No. 14
Submitted by Jeff Minckler
January 25, 1983

POSITION PAPER

Proposed Legislation: **SENATE BILL NO. 154**
Association's Position: **SUPPORT**

ir. Chairman, Senators:

The Montana School Boards Association appears today in favor of Senate Bill No. 54. Unlike many of the other Bills being presented to this Legislature pertaining to labor relations, this Bill would help establish bargaining units s they were intended when the Public Employees Collective Bargaining Act was assed, in 1973.

hat Act, and the collective bargaining statutes of many other states and the National Labor Relations Act, excludes from a bargaining unit employees who are anagerial, supervisory or confidential in nature. The rationale for these xclusions is based on the conclusion that these employees do not share a community of interest with other employees, as inherent conflicts of interest evelop if managerial, supervisory or confidential personnel are contained in a collective bargaining unit.

urrently, only one school district in Montana is operating under 39-31-109, which allows individuals who are specifically exempt from collective bargaining ights to continue to participate in that process, simply because these individuals were engaged in the process prior to the enactment of the Public mployees Collective Bargaining Act. That district has 16 school buildings, 480 eachers, 6,700 students and 31 administrators. This morning, the bargaining u t which contains all but one administrator for the Butte public schools went n strike, and the Butte teachers's union recognized the administrators' picket line. Today, no school will be taught in Butte, as a result of a strike by the

single managerial bargaining unit in the State's school system. The only time we have ever heard a union seriously contest the philosophy that supervisors and managers should be exempt from collective bargaining is when those unions have said that, since some have been allowed to participate in the past, those bargaining units should forever be allowed to continue. Therefore, this is not really an issue involving the rights of certain levels of managerial personnel, but the attempt to continue an inequity in its totality.

Senate Bill 154 does not overnight relieve certain employees of their collective bargaining rights, but rather gradually gets us back to where the Legislature in 1973 recognized we belonged.

The Montana School Boards Association urges a **"do pass"** recommendation.

Exhibit No. 15
Submitted by City of Missoula
January 25, 1983

Missoula, Montana 59802

THE GARDEN CITY
HUB OF FIVE VALLEYS

January 25, 1983

OFFICE OF CITY ATTORNEY
201 West Spruce Street
Phone 721-4700

83-68

TO: Gary C. Aklestad, Chairman
Members of Labor and Employment Relations

FROM: Mae Nan Ellingson for the City of Missoula

RE: Senate Bill 154

Senate Bill 154 attempts to address the conflicts inherent in Sections 39-31-109 and 39-31-103, M.C.A. At issue is whether supervisory employees or management officials or other persons not defined as public employees are entitled to remain in public employee collective bargaining groups.

When the legislature enacted the Public Employees Collective Bargaining Act in 1973, it defined "public employee" as follows:

> "(2)(a) 'Public employee' means:
> (i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and
> (ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.
> (b) 'Public employee' does not mean:
> (i) an elected official;
> (ii) a person directly appointed by the governor;
> (iii) a supervisory employee, as defined in subsection (3) of this section;
> (iv) a management official, as defined in subsection (4) of this section;
> (v) a confidential employee, as defined in subsection (12) of this section;
> (vi) a member of any state board or commission who serves the state intermittently;
> (vii) a school district clerk;
> (viii) a school administrator;
> (ix) a registered professional nurse performing service for a health care facility;
> (x) a professional engineer; or
> (xi) an engineer-in-training."

In adopting the Public Employees Collective Bargaining Act, the 1973 legislature followed the precedent set by Congress in excluding supervisory personnel from the definition of "employee" under the National Labor Relations Act. The legislative history behind the supervisory exclusion in the private section under the National Labor Relations Act illustrates the strong policy considerations

which led Congress to exclude supervisors from employee bargaining units. Specifically Congress recognized that supervisors are supposed to be representatives of management and that supervisory loyalty to management would be compromised through supervisory membership in employee collective bargaining units:

> "Bona fide supervisory employees are members of management and should therefore not be organized into unions, lest the conflicting loyalties of these foremen between labor and management ruin their effectiveness."

Congressional Record, Senate (March 17, 1947), reprinted in 1 Legislative History of the Labor-Managment Relations Act of 1947, at 993.

The policy considerations which led Congress to exclude supervisory personnel from collective bargaining units applies with equal, if not greater, force to collective bargaining in the private sector:

> "The structure of (public sector) bargaining units can also have an impact on the effectiveness of middle management and supervisory personnel. In order to assure strong management direction and to have the ability to administer negotiated contracts, bona fide supervisory personnel should be considered part of the management and encouraged to think of themselves as management. In the event of a strike or other job action, it is especially important that supervisory personnel be clearly allied with management so that they can be counted on to help provide a minimum level of essential services. (7/) We believe that supervisory personnel should be considered part of management and consequently should not be included in bargaining units."

Committee on Economic Development, Improving Managment of Public Work Work Force: The Challenge to State and Local Governments 68-69 (1978).

In spite of the clearly drafted provisions of Section 39-31-109 and the policy considerations to exclude supervisory employees from collective bargaining units, the law in Montana currently allows supervisory employees to remain in some bargaining units. This stems from decisions of the Board of Personnel Appeals and the Montana Supreme Court interpreting Section 39-31-109 which provides that:

> "Existing collective bargaining agreements not affected. Nothing in this chapter shall

> be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to the effective date of this act."

The difficulty has been trying to ascertain what the legislature meant by enacting that section and particularly by its use of the words "recognition of established collective bargaining agreements". Confusion has resulted from the use of the word "recognition" since bargaining units rather than bargaining agreements are generally recognized. A bargaining unit is defined by the act as a group of "public employees" banded together for collective bargaining purposes as designated by the Board. The Act contains provisions by which bargaining units can be altered or clarified.

In spite of these provisions the Board of Personnel Appeals has determined that the legislature intended to protect existing bargaining units regardless of whether the unit is appropriate for the purposes of collective bargaining and regardless of whether the unit includes personnel who otherewise would be statutorily excluded. The Board of Personnel Appeals' interpretation was upheld by the Montana Supreme Court in September of 1982, and hence the purpose of this statute is to provide some method for removing supervisory personnel from "grandfathered" bargaining units short of having to have an actual on-going conflict between the supervisors and the rank and file members of the bargaining unit.

One alternative would be to simply repeal M.C.A. 39-31-109 in its entirety and treat all public employee collective bargaining units equally. That approach is clearly preferable to the employer and is most consistent with the provisions of the Act. Given the political realities of the situation a compromise is in order.

The provisions of Senate Bill 154, however, as currently written do not provide a realistic mechanism for excluding supervisory employees from a bargaining unit. In addition, it is confusing and difficult to follow. We would suggest that section (3) read as follows:

> "(3) If on July 1, 1973, a collective bargaining unit contained a position occupied by an employee who was not a public employee, as defined by 39-31-103, that employee may after October 1, 1983, either elect to remain in the bargaining unit in the same or equivalent position, or may elect to be excluded from the bargaining unit. In all cases, future replacements for that position shall comply with subsection (2)."

Respectfully submitted,

Mae Nan Ellingson

Mae Nan Ellingson, Deputy City Attorney

MNE/jd