

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

March 3, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on March 3, 1983, at 1:00 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present.

CONSIDERATION OF HOUSE BILL NO. 277:

Chairman Aklestad and Vice-Chairman, Senator Keating, were absent at the beginning of the meeting due to conflicts with other meetings. In their absence Senator Galt presided.

Senator Galt introduced Representative Clyde Smith, sponsor of House Bill No. 277, to the Committee, and Representative Smith presented the bill to the Committee.

House Bill No. 277 is an act making workers' compensation coverage mandatory for independent contractors and providing for an optional exemption from coverage.

PROPONENTS OF HOUSE BILL NO. 277:

Representative Robert Ellerd, representing House District No. 75, offered an amendment to House Bill 277. This amendment is attached. (Exhibit No. 1)

Gary Blewett, administrator of the Division of Workers' Compensation, stated that they are in support of House Bill 277 as well as the amendment offered by Representative Ellerd. Mr. Blewett's printed testimony is attached. (Exhibit No. 2)

Gene Phillips of Kalispell, representing LHC Inc., stated that they support House Bill 277 mainly for two reasons:

- (1) It promotes insurance coverage.
- (2) It puts the determination up front in the beginning at no cost to anyone.

Keith Olson of Kalispell, representing the Montana Logging Assoc., stated they are in support of House Bill 277 as amended.

Robert Holding of Missoula, representing Montana Wood Products Association, stated they support House Bill 277.

Bob Lamley of Milltown, Montana, representing Champion International, stated that they are in support of House Bill 277.

Jim Murry, representing the Montana AFL-CIO, stated they are in support of House Bill 277. Mr. Murry's printed testimony is attached. (Exhibit No. 3)

John Hollow, representing Montana Home Builders, stated that they are now in support of House Bill 277 and had withdrawn the objection they had to the bill in the House.

Representative Jerry Driscoll, representing House District 69 of Billings, stated that they support House Bill 277. He further stated that this bill would make sure that they had proof they are an independent contractor.

OPPONENTS OF HOUSE BILL NO. 277: None were present at the hearing.

QUESTIONS FROM THE COMMITTEE ON HOUSE BILL NO. 277:

Senator Galt: This bill will affect other industries as well as the timber industry--will those industries have to come in to get an exemption?

Representative Smith stated that he wasn't sure about this.

Gary Blewett: Foremen, etc. could purchase insurance or use the exemption. He explained the exemption process to the Committee.

Mr. Blewett stated that there may be lots of applications coming in at the outset that they would have to evaluate.

Senator Aklestad: Is there any restriction in the law that says you have to act on them when they are received?

Gary Blewett: Not at the present time.

Representative Smith made closing remarks in support of House Bill 277.

Chairman Aklestad called the hearing closed on House Bill 277.

CONSIDERATION OF HOUSE BILL NO. 157:

Chairman Aklestad asked Representative Jerry Driscoll, sponsor of House Bill No. 157, to present the bill to the Committee.

House Bill No. 157 is an act authorizing each party to an unfair labor practice proceeding to disqualify without cause one hearing examiner designated to hear the matter.

Representative Driscoll stated that this bill would give a little more credibility to the hearing examiner.

PROPOSERS OF HOUSE BILL NO. 157:

LeRoy Schramm, chief counsel for the Montana University System, stated that he was a member of the Study Commission and this bill would enhance the credibility of the hearing process in front of the Board.

Chad Smith, representing the Montana Hospital Association and himself as an attorney, stated that he supports House Bill 157. He further stated that it is not enough to have fairness, but it is also important that the people involved feel that there is fairness.

Dennis Taylor, representing the State Personnel Division in the Department of Administration, stated that they are in support of House Bill 157 and that the labor sector plus local and state government support the bill.

Mr. Taylor submitted printed information concerning House Bill 157 from the Personnel and Labor Relations Study Commission. This information is attached. (Exhibit No. 4)

Chip Erdmann, representing the Montana School Board Association, stated that they support House Bill 157.

Pat Fairbanks, representing the Montana Federation of Teachers, stated that they support House Bill 157.

OPPONENTS OF HOUSE BILL NO. 157: None were present at the hearing.

There were no questions from the Committee on House Bill 157.

Representative Driscoll made closing remarks in support of House Bill 157.

Chairman Aklestad called the hearing closed on House Bill 157.

CONSIDERATION OF HOUSE BILL NO. 201:

Representative Addy, sponsor of House Bill No. 201, presented the bill to the Committee.

House Bill No. 201 is an act changing the time when the final order concerning an unfair labor complaint must be issued from 5 months after a complaint is submitted to the hearing officer to 5 months after final briefs are submitted to the hearing officer.

PROPOSERS OF HOUSE BILL NO. 201:

LeRoy Schramm, representing the Montana University System, stated that they support House Bill No. 201. He feels that it clarifies what the statutes mean.

Joyce Brown, Project Director for the Personnel & Labor Relations Study Commission, stated that they support House Bill No. 201.

J. Brown submitted testimony telling what House Bill 201 does. Her printed testimony is attached. (Exhibit No. 5)

Robert Jensen, representing the Board of Personnel Appeals, spoke briefly in support of House Bill 201.

Dennis Taylor, Administrator of the Personnel Division, submitted printed information concerning House Bill 201. This information is attached. (See Exhibit No. 4)

Thomas Schneider, representing the Montana Public Employees Assoc., was unable to be present at the hearing, but a letter from him was distributed to the Committee in support of House Bill 201. This letter is attached. (Exhibit No. 6)

OPPONENTS OF HOUSE BILL NO. 201: None were present at the hearing.

There were no questions from the Committee.

Chairman Aklestad called the hearing closed on House Bill 201.

ACTION ON HOUSE BILL NO. 225:

Senator Goodover moved that House Bill 225 Be Concurred In as Amended. On a Roll Call Vote, the Committee voted 5-3 that HOUSE BILL NO. 225 BE CONCURRED IN AS AMENDED. The Roll Call Vote is attached.

Senator Gage will carry House Bill No. 225 on the floor.

ACTION ON HOUSE BILL NO. 226:

Senator Keating moved that House Bill No. 226 Be Not Concurred In. On a Roll Call Vote, the Committee voted 7-1 that HOUSE BILL NO. 226 BE NOT CONCURRED IN. The Roll Call Vote is attached.

Senator Aklestad will carry the adverse Committee Report on the floor.

ACTION ON HOUSE BILL NO. 14:

Senator Lynch moved that House Bill No. 14 Be Concurred In. On a voice vote, the Committee voted unanimously that HOUSE BILL NO. 14 BE CONCURRED IN.

Senator Lynch will carry the bill on the floor.

ACTION ON HOUSE BILL NO. 142:

Senator Lynch moved that House Bill No. 142 Be Concurred In. On a voice vote, the Committee voted 7-1 that HOUSE BILL NO. 142 BE CONCURRED IN. Senator Aklestad voted "no".

Senator Manning will carry House Bill 142 on the floor.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 2:05 p.m.

  
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Senator Gary C. Aklestad, Chairman

ROLL CALL

LABOR

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/3/83

[illegible]

# STANDING COMMITTEE REPORT

March 3, 1983

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **14**

**Vincent (Lynch)**

Respectfully report as follows: That **HOUSE** Bill No. **14**

**BE CONCURRED IN**

**~~XXXXXX~~**

# STANDING COMMITTEE REPORT

March 3,

19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **142**

**Harper (Manning)**

Respectfully report as follows: That **HOUSE** Bill No. **142**

**BE CONCURRED IN**

**~~XXXXXX~~**



# STANDING COMMITTEE REPORT

March 3, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **HOUSE** Bill No. **225**

**Asay (Gage)**

Respectfully report as follows: That **HOUSE** Bill No. **225**  
**third reading, be amended as follows:**

1. Page 2, line 2.  
Strike: lines 2 through 10

**And, as so amended**  
**BE CONCURRED IN**  
**~~XXXXXX~~**

# STANDING COMMITTEE REPORT

..... **March 3,** ..... 19 **83** .....

MR. **PRESIDENT:** .....

We, your committee on ..... **LABOR & EMPLOYMENT RELATIONS** .....

having had under consideration ..... **HOUSE** ..... Bill No. **226** .....

**Asay (Aklestad)**

..... **HOUSE** .....  
Respectfully report as follows: That..... Bill No. **226** .....

**BE NOT CONCURRED IN**  
~~XXXXXX~~

*W.C.*

SENATE COMMITTEE LABOR

Date 3/3/83 House Bill No. 225 Time 1:50

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT	✓	
PAT GOODOVER	✓	
DELWYN GAGE	✓	
CHET BLAYLOCK	✓	
JOHN LYNCH		✓
DICK MANNING		✓
GARY AKLESTAD, CHAIRMAN		✓

Marjorie Nichols  
Secretary

Senator Gary C. Aklestad  
Chairman

Motion: Senator Goodover moved that House Bill  
No. 225 Be Concurred In as amended.

Motion carried 5-3.

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

SENATE COMMITTEE LABOR

Date 3/3/83 House Bill No. 226 Time 1:55

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT		✓
PAT GOODOVER	✓	
DELWYN GAGE	✓	
CHET BLAYLOCK	✓	
JOHN LYNCH	✓	
DICK MANNING	✓	
GARY AKLESTAD, CHAIRMAN	✓	

Marjorie Nichols  
Secretary

Senator Gary C. Aklestad  
Chairman

Motion: Senator Keating moved that House Bill  
No. 226 Be Not Concurred In.

Motion carried 7-1

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



Exhibit No. 1

Submitted by:

Representative Robert Ellerd

March 3, 1983

AMENDMENT TO HOUSE BILL 277

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS' COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE AND REQUIRING EMPLOYERS TO POST THE STATUS OF THEIR COVERAGE IN THE WORKPLACE: AMENDING SECTION 39-71-401, MCA."

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment regardless of whether the location is temporary or permanent and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who does not properly post such a sign is guilty of a misdemeanor.

amend statement of intent by adding at the end:

It is also the intent of the Legislature that the Division will provide employers with signs and determine an economical and convenient method of distribution and disposal of such signs through insurers when the employer is properly covered under one of the three compensation plans or when a policy is cancelled in accordance with 39-71-2205, MCA, or through the Division directly when a policy is cancelled in accordance with 39-71-2307, MCA, when self-insurance status is revoked in accordance with 39-71-2105, MCA, when an employer is exempt from coverage under this chapter, or when an employer lacks coverage and has been ordered to cease operations in accordance with 39-71-507, MCA, and that the Division will maintain procedures to control the distribution and disposal of such signs to prevent their improper use and to accommodate the changing coverage employers may have from time to time.



**DIVISION OF  
WORKERS'  
COMPENSATION**



2



TED SCHWINDEN, GOVERNOR

815 FRONT STREET

STATE OF MONTANA

HELENA, MONTANA 59604

TESTIMONY OF GARY BLEWETT ON HOUSE BILL 277, BEFORE THE SENATE LABOR AND  
EMPLOYMENT RELATIONS COMMITTEE, MARCH 3, 1983

I am Gary Blewett, Administrator of the Division of Workers' Compensation, in support of House Bill 277. This bill provides for mandatory workers' compensation coverage for independent contractors unless they elect not to be covered and that election is approved by the Division. An election not to be covered would be disapproved if the applicant was found not to be an independent contractor but was, in fact, an employee.

This is opposite of the situation under current law. Independent contractors do not now have to have coverage for themselves unless they elect coverage. This arrangement allows for two recurring problems: (1) So-called independent contractors who have an accident on a job often will seek coverage as an employee after the fact; and (2) independent contractors often do not insure their employees, when they have them, due to confusion about what is required of independent contractors.

The first problem happens because the distinction between an independent contractor and an employee is subtle. An independent contractor

**Division Telephones:**

Administration  
406-449-2047

Insurance Compliance  
406-449-3721

Safety & Health  
406-449-3402

is one who renders occupational services free from the control or direction of the employer and is engaged in an independently established trade, occupation, profession, or business. How free a person is from control is arguable and often is in court after a so-called independent contractor has an accident. If the court determines the claimant is an independent contractor, the claimant loses all right to workers' compensation benefits, and the insurer is relieved from all liability. If, on the other hand, the court determines that the claimant is an employee, then the claimant receives workers' compensation benefits, and liability for such payments is placed upon the employer's insurance carrier even though no premium has been collected by it for the assumption of such risk.

The second problem is, perhaps, an even greater one in that it creates what seems to be a growing population of uninsured employers. The fact that the owners of businesses that are independent contractors currently do not have to seek either insurance or exemption creates an atmosphere of disregard for any coverage at all. This is partly due to confusion about what is required of independent contractors and partly due to their changing circumstances. From time to time only the owner or the partners may be providing the contracted services, but at other times they may have employees working with them on a contract. Current law says that when the owner or partners are doing the work, insurance is not required, but when an employee is on the job then that employee, at least, must be covered. Unfortunately, the insurance is frequently not purchased because the independent contractor only infrequently has employees.



House Bill 277 with substitute language addresses the most important objective of the Workers' Compensation Act--it promotes coverage for everyone who is an employee while minimizing uninsured circumstances. It achieves this by requiring those who hold themselves out or consider themselves to be independent contractors to either purchase workers' compensation insurance or seek official exemption from the Division. If they are approved for the exemption, they are precluded from receiving workers' compensation benefits. However, if they are not certified as exempt independent contractors, insurers will either collect premium for the risk directly from the independent contractor or from the employer of an alleged but uncertified independent contractor.

By requiring the decision about coverage to be up front, the Division can carry out its compliance function within the scope of its current staff. The proposed legislation is largely self-enforcing through the concern of employers for their own financial well-being. An employer will require independent contractors to either have insurance or a Division certificate of exemption; otherwise, they will be subject to premium payments on an alleged independent contractor who will be treated by insurers as an employee.

The proposed legislation will overcome deficiencies in current law, and I urge your support.



Exhibit No. 3  
Submitted by Jim Murry  
March 3, 1983

Box 1176, Helena, Montana

JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59624  
406/442-1708

TESTIMONY OF JIM MURRY IN SUPPORT OF HOUSE BILL 277, BEFORE THE SENATE  
LABOR AND EMPLOYMENT RELATIONS COMMITTEE, MARCH 3, 1983

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I am Jim Murry, executive secretary of the Montana State AFL-CIO.

The Montana State AFL-CIO supports House Bill 277. This bill is an attempt to provide workers' compensation coverage to more Montana employees.

There are loopholes in Montana law today which allow some corporations, particularly in the lumber and construction industries, the ability to deny workers' compensation and unemployment insurance benefits to their workers. This loophole is in the listing of exemptions. Each session, this legislature faces an attempt to expand the exemptions so that more employees will be denied coverage.

In recent years, there has been an increasing trend to call additional employees in certain industries independent contractors. This saves the employer from paying workers' compensation premiums. In especially dangerous industries, that can be a substantial savings for the company.

House Bill 277 requires that so-called independent contractors have workers' compensation coverage, unless they are determined to be independent contractors by the division. There will be several effects of that provision.

First, it could work a financial hardship on so-called independent contractors, so that they will try very hard not to let the prime employer force them into the position of being called independent contractors.

Testimony of Jim Murry  
House Bill 277  
March 3, 1983

The second effect will be that the so-called independent contractor may be forced to have insurance against disaster. When injuries strike, as they do so often in the industries which most make use of so-called independent contractors, coverage will be provided. This will protect the worker. It also protects the company from lawsuits brought by injured workers. These are workers who, when they are not able to work due to work-related accidents, claim that they were really employees rather than independent contractors.

Not every independent contractor will be covered. In fact, every independent contractor has the option of refusing coverage by applying to the Workers' Compensation Division for exemption. The Division must accept that application, unless it finds that the person or persons are not really independent contractors. That ruling will then be binding on both the contractor and the company.

If the person is ruled to be in fact an independent contractor, then no benefits can be received under this act. And the company subcontracting with the independent contractor has no liability.

If however, the person is found to be an employee, the company must provide coverage under workers' compensation.

House Bill 277 is an excellent way to extend coverage to more workers in dangerous occupations, and to provide clarity as to who is and isn't covered for the protection of both the workers and the companies involved.

We recommend that you give this bill a "do pass" recommendation.

## 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

## CHAPTER IV

### ISSUE AREA B: OPERATIONS OF MONTANA'S COLLECTIVE BARGAINING LAWS

The Commission addressed the overall question of whether the actual operation of Montana's collective bargaining laws are workable and accomplishing their purpose by examining several aspects of public sector collective bargaining. These included: (1) operations of Montana's labor board or labor relations agency—the Board of Personnel Appeals, (2) impasse resolution procedures, (3) the collective bargaining process, and (4) incidences of confusion or duplication created by existing statutory language.

#### OPERATIONS OF THE BOARD OF PERSONNEL APPEALS

##### ISSUE

In its examination of Board of Personnel Appeals operations, the Study Commission addressed three major issues which are typical concerns of users of any labor board or labor relations agency. These are:

1. timeliness of dispute resolution, particularly timeliness of unfair labor practice proceedings;
2. user confidence in the professionalism and neutrality of the Board and its staff; and
3. the level of discretion exercised by the Board of Personnel Appeals in decision making.

These three issues are summarized below:

1. **THE ISSUE OF TIMELINESS:** Available figures (for unfair labor practice charges filed between 10-78 and 5-81) indicated that the Board of Personnel Appeals exceeds its statutory five-month time limit for issuing a final decision after "submission of a complaint" (interpreted by the Board of Personnel Appeals to mean five months after submission of final briefs by both parties) in 55% of the cases. Proceedings average nearly eleven months from filing to issuance of a final Board of Personnel Appeals decision and some exceed a year and a half.

HB 201

Some parties to unfair labor practice proceedings complain that the time required to obtain resolution is too great and frustrates justice. Agreeing that timeliness is critical, the Board of Personnel Appeals noted recently instituted changes in staff procedures which are expected to expedite proceedings. Many of the changes were recommended by an independent Public Employment Relations Service Review and Evaluation Team. The Board of Personnel Appeals also observed that unavoidable delays are caused by the precedence given mediation requests and that one possible approach to streamlining the process (staff investigation and dismissal of unmeritorious cases) is frustrated by the statutory requirement that all cases be automatically scheduled for hearing before the Board of Personnel Appeals.

2. **THE ISSUE OF CONFIDENCE IN PROFESSIONALISM AND NEUTRALITY:** While many Board of Personnel Appeals users reportedly respect the Board of Personnel Appeals and staff for its professionalism and neutrality, others report doubts about these characteristics.

HB 157

3. **THE ISSUE OF LEVEL OF DISCRETION:** The Board of Personnel Appeals, like most administrative agencies, administers laws which contain ambiguities necessitating use of discretion in interpretation. This sometimes involves the use of discretion or assumption of authority that user groups feel is excessive.

The two major instances of alleged excesses examined by the Study Commission were:

- a. The Board's practice of assuming jurisdiction over contract disputes as opposed to deferring them to arbitration where the contract provides a grievance procedure ending in binding arbitration.

Opponents of this practice argue that it makes the Board a "free" grievance panel which was never intended, that it is contrary to the precedent set by national case law, and that arbitration is faster, more conclusive and places the dispute where it belongs—with the parties.

Supporters argue that national precedent is not so clear, and that the goal of balancing the rights of employees and employers is better served by Board assumption of jurisdiction since arbitration is too expensive for small unions and small employers.

- b. The Board's interpretation of the grandfather clause of the Collective Bargaining for Public Employees Act as protecting not only contracts in existence before passage of the act but also units in existence before passage of the act. This interpretation permits occupants of supervisory positions who were part of a pre-existing unit to remain in the unit even though they are ineligible under the act unless the employer can demonstrate that inclusion creates substantial conflict.

Opponents argue that units were never intended to be protected, that the Board's interpretation frustrates legislative intent that only non-supervisory employees be eligible and that, regardless of intent, after eight years of operation, it is no longer needed and serves only to create problems and litigation.

Supporters argue that the grandfather clause was part of the original compromises struck during passage of the act, was necessary to protect existing relationships, that the Board of Personnel Appeals correctly interprets it to cover units and that it creates no significant problems.

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

## FINDINGS

### F-2. REGARDING THE ISSUE OF TIMELINESS

Although due process requirements and the precedence given mediation precludes overnight resolution of unfair labor practice charges, justice demands the speediest possible resolution consistent with these requirements and conflicting demands. In light of recent improvements in Board of Personnel Appeals staff procedures, no specific recommendations for expediting unfair labor practice proceedings and abiding by statutory time limits are needed at this time. The time limit should be clarified and the statutory impediment to speedier resolution removed.

### F-3. REGARDING THE ISSUE OF CONFIDENCE IN PROFESSIONALISM AND NEUTRALITY

Specialists in the field of labor relations generally agree that, since public sector labor relations by its nature exists in the political world, establishing and maintaining a labor board or labor relations agency whose integrity and impartiality the parties respect is not an easy achievement but one that is central to its overall effectiveness. While the Board of Personnel Appeals and staff are generally respected for their professionalism and impartiality, a number of factors contribute to lack of confidence by some users.

These are:

- a. Assignment of the same staff person to conduct both adversarial proceedings and mediation for the same employee or employer. (The Board of Personnel Appeals has indicated that these practices are avoided whenever possible within the constraints of a small staff.)
- b. No opportunity for parties to a dispute to reject an assigned hearings officer in whom they lack confidence for whatever reason.
- c. Lack of staff training in mediation due to insufficient funds.
- d. Inaccessibility of precedent setting Board decisions resulting from insufficient funds to complete a case index.
- e. Selection and supervision of Board of Personnel Appeals staff by the Commissioner of Labor and Industry rather than by the Board, creating the potential for outside influence over staff proceedings and potential lack of confidence in the neutrality of the Board staff in cases involving the Department of Labor and Industry.

HB 1.57

### F-4. REGARDING THE ISSUE OF LEVEL OF DISCRETION

The Board of Personnel Appeals has not clearly exceeded an appropriate level of discretion in

either of the incidents examined. With respect to deferral of contract disputes to an existing contractual arbitration process, the Board recently made two such deferrals establishing a precedent for future referrals.

With respect to its interpretation of the grandfather clause, the Montana Supreme Court in *City of Billings v. Billings Firefighters Local No. 521*, 39 St. Rep. 1844 (1982) recently upheld the Board's authority to interpret the grandfather clause to protect collective bargaining units.

However, given the uncertainty about legislative intent in enacting the grandfather clause, the general principle that management employees should be excluded from bargaining units and the practical problems created by their continued inclusion, recommendation 12 has been adopted to clarify the statutory language. The recommended language protects incumbents of grandfathered positions but not their replacements, thus permitting eventual exclusion of supervisory employees.

## RECOMMENDATIONS

B201 **Recommendation 3:** Amend the Collective Bargaining for Public Employees statute to clarify the starting date of the five-month time limit for a final Board of Personnel Appeals decision on an unfair labor practice case as: "five months after final briefs are submitted to the hearings officer or, if no briefs are submitted, then within five months after the hearing." (Vote: passed unanimously)

See proposed implementing legislation, LC0012/01, in Appendix B.

**Recommendation 4:** Amend the Collective Bargaining for Public Employees statute to permit the Board of Personnel Appeals staff to expedite unfair labor practice proceedings by investigating an unfair labor practice complaint and dismissing the charge if it is found unmeritorious subject to review by the Board if a request for a review is made by the charging party within ten days of the staff notice of intent to dismiss. (Vote: passed unanimously)

See proposed implementing legislation, LC0013/01, in Appendix B.

**Recommendation 5:** Provide both parties to an unfair labor practice charge with the right to disqualify the person designated by the Board of Personnel Appeals to hear the complaint. (Vote: 11-yes, 1-no)

See proposed implementing legislation, LC0117/01, in Appendix B.

**Recommendation 6:** Provide funds to the Board of Personnel Appeals to provide training in mediation to its staff - \$5,000 was the projected amount needed. (Vote: passed unanimously)

**Recommendation 7:** Provide funds to the Board of Personnel Appeals to complete an index of its decisions—\$5,000 was the projected amount needed. (Vote: passed unanimously)

**Recommendation 8:** Amend the statute establishing the Board of Personnel Appeals, 2-15-1705, M.C.A., to give the Board the authority to hire its own staff. (Vote: 10-yes, 2-no)

See proposed implementing legislation, LC0044/01, in Appendix B.

HB  
157

## IMPASSE RESOLUTION ISSUE

The Collective Bargaining for Public Employees Act provides three methods for resolving an impasse in collective bargaining between an employer and labor organization: mediation—a relatively informal attempt by a neutral mediator to bring both parties to agreement; fact finding—a more formal process involving information gathering by a neutral fact finder and a written report with recommendations which must be made public if agreement is not reached; and voluntary binding arbitration—a formal process involving a hearing and a binding decision by a neutral arbitrator. Since only binding arbitration involves imposition of a solution on both parties, it is the only method which automatically ends an impasse.

Testimony of Joyce Brown, Project Director,  
Personnel & Labor Relations Study Commission  
in support of House Bill 201 before the Senate  
Labor & Employment Relations Committee, March  
3, 1983.

Mr. Chairman, members of the Committee, HB201 is the 4th Personnel and Labor Relations Study Commission bill to appear before this committee.

Unlike some of the other Commission bills which were opposed by organized labor and/or management - both before the Study Commission and this committee, HB201 was unanimously supported by all members of the Study Commission and all affected parties. It is also supported by the Governor.

HB201 serves to clarify disputed language in the Collective Bargaining for Public Employees Act which establishes a time requirement for a Board of Personnel Appeals ruling on an unfair labor practice charge in a manner consistent with the Board's own interpretation.

Current language indicates that "the Board shall issue a final order within 5 months after a complaint is submitted to the hearings officer". While the Board of Personnel Appeals has interpreted this language to mean 5 months after final briefs are submitted to the hearings officer, some Board users argue that it could just as well mean 5 months after a case has been assigned to a hearings officer or 5 months after the hearing.

Typically, briefs and sometimes reply briefs are submitted by both parties to an unfair labor practice proceeding following the hearing. Since the time taken to prepare these briefs can be substantial, the Study Commission felt that requiring the Board to reach a decision 5 months after their submission was a more realistic requirement than other possible interpretations of the statutory language.

Since the clarification will eliminate disputes and possible litigation over the time requirements, the Personnel and Labor Relations Study Commission encourages its adoption.



# MONTANA

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Helena, Montana 59604

Telephone (406) 442-4600

## PUBLIC

March 3 , 1983

## EMPLOYEES

## ASSOCIATION

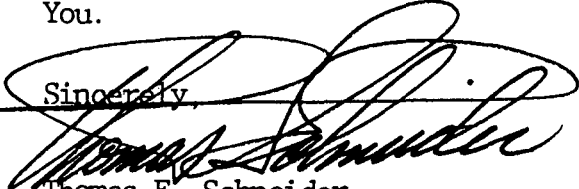
Chairman Gary C. Aklestad  
Senate Labor Committee  
State Capitol  
Helena, Montana 59620

Dear Chairman Aklestad:

I will be unable to attend the hearing on House Bills 157 and 201. The Montana Public Employees Association would like to go on record in support of both bills. I was a member of the Governor's Commission on Personnel and Labor Relations which introduced these bills and want the committee to know that they were two of the few which were supported by all of the commission members.

I would appreciate your letting the committee know our feelings. Thank You.

Sincerely,

  
Thomas E. Schneider  
Executive Director

**Eastern Region**

(Mailing Address) 502 Nelson  
Billings, Montana 59102  
(Phone) (406) 652-3530

**Western Region**

(Mailing Address) 1420 Jackson  
Missoula, Montana 59801  
(Phone) (406) 728-4768



(This sheet to be used by those testifying on a bill.)

NAME:

*Robert A. Bell*

DATE:

*Mar 3/83*

ADDRESS:

PHONE:

REPRESENTING WHOM?

*District #75*

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

*X*

AMEND?

*X*

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: GENE PHILLIPS DATE: 3/3/83

ADDRESS: Kalispell

PHONE: 755-6644

REPRESENTING WHOM? LHC Inc.

APPEARING ON WHICH PROPOSAL: NB 277

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME KEITH L. OLSON BILL No. HB 277  
ADDRESS KALISPELL DATE 3-3-83  
WHOM DO YOU REPRESENT Montana Logging Assn.  
SUPPORT an amended OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

- MLA represents ... ind. contractors ... timbered regions of MT.
- Work Comp represents ... most significant indirect expense ... cost of logging
- When MLA formed 1976 ... excess of \$35 ... Today less than \$20
- MT's work comp laws benefit MT's Employers & Employee's ALIKE
  - for Employers ... represents liability insurance ... sole recourse
  - for Employees ... represents medical and loss of income insurance
- Problem in Logging Industry is in the Gray Area which defines
  - independent contractor status of owner-operators
  - for example, is the own/oper of \$100,000 log truck ind. contr / employee?
- Apparent conflict between State Law and Judicial Opinion is at fault
  - State Law: ind. contr. does not have to cover himself
  - Judicial Opinion: After accident may determine injured own/oper is employee
- No mechanism exists to make determination before the accident
- HB 277 is that mechanism ...
- MLA appreciates seriousness of this conflict / straddling the fence
  - 40% of membership own/oper 60% prime contractors
- Many prime contractors ... realizing liability exposure ... hire own/oper who cover selves
- Own/oper resent this
- MLA's desire is to narrow, if not eliminate, gray area creating conflict
- HB 277 as amended will
  - (1) require own/oper eligible for benefits to pay premium
  - (2) allow own/oper not eligible for benefits to obtain exemption

NAME: BOB HELDING DATE: 3-7-83

PHONE: 728-3650

REPRESENTING WHOM? MONTANA WOOD PRODUCTS ASSOC

APPEARING ON WHICH PROPOSAL: HB 277

DO YOU: SUPPORT? ✓ AMEND?            OPPOSE?           

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Bob Samley DATE: 3-3-83

ADDRESS: Champion Int<sup>l</sup> P.O. Box 8 Milltown Mont 59831

PHONE: 258-5511

REPRESENTING WHOM? Champion Int

APPEARING ON WHICH PROPOSAL: HB 277

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Hollow DATE: 3/3/83

ADDRESS: 40 W. 6<sup>th</sup> Helena

PHONE: 442-5790

REPRESENTING WHOM? Mr Home Builders

APPEARING ON WHICH PROPOSAL: \_\_\_\_\_

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

1. Provides certainty to use of status as  
Employee - independent contractor.

2. Concerns can be alleviated through  
rulemaking. They are:

a) Transition w/in same quarter or year  
from independent contractor to employee  
to independent contractor

b) industry by industry application  
of statutory definition of independent  
contractor

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: CHAD SMITH DATE: 3-3-83

PHONE: 442-2980

REPRESENTING WHOM? Mont Haysassin

APPEARING ON WHICH PROPOSAL: 148157

DO YOU: SUPPORT? AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



(This sheet to be used by those testifying on a bill.)

NAME: DENNIS M. TAYLOR DATE: 3-3-83

ADDRESS: HELONA

PHONE: 449-3871

REPRESENTING WHOM? STATE PERSONNEL DIV / D7A

APPEARING ON WHICH PROPOSAL: HB 157

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: \_\_\_\_\_

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Chip Erdmann DATE: 3/3/83

ADDRESS: Helena MT

PHONE: 442-2180

REPRESENTING WHOM? MSBA

APPEARING ON WHICH PROPOSAL: HB 157

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: MSBA believes that HB 157 will  
improve the acceptability and effectiveness  
of the Bd of Pers Appeals. If fact  
MSBA supports all of the Personnel &  
Labor Relations Study Commission recommendations

The option to disqualify a BPA hearing  
examiner is necessary & justified. BPA only  
has 5 hearing examiners - get involved in dispute  
mediation - conducting elections and other functions  
in addition to their duties as hearing examiners  
In mediation and other areas, there is a great  
deal of tension and conflict. Occasional  
resentment is natural in a mediation. - Then

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The same mediator may later be a hearing  
examiner with for the disgruntled party.

By allowing that party to disqualify  
the examiner, all parties will have more  
trust in the process - which will improve  
the effectiveness of the BPA.

NRB

Mr. Schwann  
Rep. Driscoll