

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 18, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on January 18, 1985, at 9:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present, with the exception of Representative Robert Ellerd and Representative Fred Thomas, who were excused by the chairman.

HOUSE BILL NO. 174: Hearing commenced on House Bill No. 174. Representative Norm Wallin, District #78, sponsor of the bill, stated that the purpose of this bill is to increase to five from three the membership of the Board of Labor Appeals and require that one appointee represent employees and one represent employers. Representative Wallin distributed to committee members Exhibit 1, outlining the proposed amendments. All of the other boards have a larger membership. This increase will not cause a financial burden, the federal government would pay for the expense of the two additional members. The appeals board works approximately two days per month. Representative Wallin stated that in 1982 there were 226 decisions in which 145 were decided against the employer, in 1983 there were 285 decided and 183 against the employer and in 1984 there were 297 decided and 181 against the employer. The unemployment fund is in the red in the approximate amount of 20 million dollars, this deficit is the result of insufficient revenue and policy in granting benefits.

Proponent Forrest Boles, representing the Montana Chamber of Commerce offered his support of House Bill No. 174. Mr. Boles believes that those who receive unemployment, are entitled to these benefits. By passing House Bill No. 174, the employer will be better represented, added Mr. Boles.

Proponent Bob Correa, representing the Bozeman Chamber of Commerce, appeared in support of House Bill No. 174. The owner of Wild West Shirt Company in Bozeman, was not able to be present, and thus Mr. Correa appeared on his behalf. Wild West Shirt Company is a company of approximately 40 employees, with an annual payroll of approximately \$450,000 per year. This company has paid into the unemployment fund approximately \$46,000 and paid out approximately \$6,000. An example of one particular case against Wild West Shirt Company, was explained by Mr. Correa. The initial claim was filed in September, 1982 and through the process of appeals, the court hearing was not until October, 1984. Mr. Correa feels that the additional representation will allow for a more timely and fair decision.

Proponent George Allen, representing the Montana Retail Association, explained that the department has a hearing officer that makes the initial decision and then if appealed it goes to the Commissioner of Labor and if appealed will then go to the appeals board. Mr. Allen questioned the capability of the three members of the board. By increasing the board from 3 to 5 members, it would give the employee and employer a more fair judgment, added Mr. Allen.

Opponent Arlyn L. Plowman, a member of the Board of Labor Appeals, submitted written testimony, which is attached hereto as Exhibit 2.

Opponent Dave Wanzenreid, Commissioner of the Montana State Department of Labor and Industry, explained that he was neither an opponent or proponent of House Bill 174, but was present to give additional information. Mr. Wanzenreid stated that 42 states currently have a board, of which 27 states have a 3 member board. The fiscal note on House Bill 174, would be \$12,400. Mr. Wazenreid explained that there is no discipline in the system. The problem is with the process, not the structure. New information is able to be introduced at each appeal, which helps to reverse a decision. There are no standards or guidelines to follow. The department is currently in the process of drafting guidelines. Mr. Wanzenreid stated that by expanding the board, it could prolong the process. The board hears approximately 40 appeals per month of which 20 minutes are spent per appeal.

Opponent Eileen Robbins, representing the Montana Nurse's Association extended her opposition of House Bill 174. Ms. Robbins feels that the current system is working and the increase of the membership would be unnecessary.

In closing, Representative Wallin stressed again that the fund is in the red 20 million dollars. The other two boards within the labor division have 5 members, this is the only board with 3 members. The rules that are being drawn up would have no impact, added Representative Wallin.

Representative Kadas asked George Allen if the Governor's council had considered this issue. Mr. Allen answered that they had not discussed it.

Representative Brown questioned Representative Wallin for further explanation of the proposed amendment as shown on Exhibit 1. Representative Wallin referred the question to Mr. Bob Jensen, Administrator of the Board of Appeals. Mr. Jensen explained that in 1983 there was a court decision from the 9th Circuit Court that said that any board is unconstitutional if any member could have a conflict of interest. A board member must be an impartial decision maker.

Representative Hansen asked Mr. Arlyn Plowman the occupation of the other two board members. Mr. Plowman replied, that one is a vice-president of a bank here in Helena and the other is an attorney from Billings.

Representative Hansen asked Mr. Dave Wanzenreid if limiting the term a member may serve would help the situation. Mr. Wanzenreid explained that he is not sure that the term is a problem.

Representative Bachini questioned Mr. Bob Jensen as to his position on House Bill 174. Mr. Jensen explained that with the increase to 5 members, it may take a longer period of time to reach a decision, but a better decision may be reached.

Representative Schultz questioned Mr. Plowman as to his occupation. Mr. Plowman is a union member.

Representative Wallin asked Mr. Bob Jensen if he feels that a more efficient and better quality decision would be reached by the passage of House Bill No. 174. Mr. Jensen was in agreement.

Representative Driscoll asked Mr. Jensen how many decisions are overturned in the courts. Mr. Jensen said that approximately 10 - 15 cases in district court have been overturned and approximately 5 - 6 in the supreme court.

Prior to the hearing on House Bill No. 175, Chairman Pavlovich explained to Representative Kadas, sponsor of the bill, that this bill would be placed in the sub-committee that is considering House Bill No. 127.

HOUSE BILL NO. 175: Hearing commenced on House Bill No. 175. Representative Mike Kadas, District #55, sponsor of the bill, stated that the purpose of House Bill 175 is to increase to 9 from 7 the membership of the Board of Private Security Patrolmen and Investigators and to increase to 2 from 1, the members on the board representing contract security companies and proprietary security organizations. Representative Kadas distributed to committee members Exhibit 4. The private security and investigators feel that they currently are over regulated and this increase in board members will provide better representation, added Representative Kadas.

Proponent Don Valiton, representing the Montana Association of Private Investigators and Security Operators, offered his full support. He feels that the increase will give a more proportionate decision and that a fairer judgment will be rendered with more input from the individuals in the industry.

Opponent Chuck O'Reilly, Sheriff of Lewis and Clark County, feels that the existing board is adequate and he likes the present system the way it is.

Clayton Bain, Chairman of the Board of Security Patrolmen and Private Investigators, explained that he is neither an opponent nor proponent but wished to share some information. The present board was appointed in September of 1983; thus having minimal experience. We should give this board a chance, stressed Mr. Bain.

Shirley Miller, Bureau Chief of the Professional and Occupational Licensing Bureau, offered financial information. She explained that with the addition of 2 board members, the annual expense would be a minimum of \$2,500.00.

In closing, Representative Kadas added that we should put the responsibility of regulating this profession on the people who work in the industry.

Representative Jones questioned Mr. Clayton Bain as to how many security patrolmen and investigators are not licensed. Mr. Bain knows of quite a few, but couldn't give exact figures.

Chairman Pavlovich asked Mr. Bain how many licensees are presently in the state. Mr. Bain called upon Shirley Miller to answer the question. Ms. Miller said that there are presently 180 licensed and that figure does not include 154 that are pending licensing.

There being no further discussion by proponent or opponents, all were excused by the chairman and the hearing on House Bill No. 175 was closed.

Mr. Dave Wanzenreid distributed to the committee members Exhibit 5 and 6 which was requested from the meeting held on Monday, January 14, 1985.

ACTION ON HOUSE BILL NO. 72: Representative Kitselman made a motion that HB 72 DO PASS and the proposed amendments to HB 72 DO PASS.

Representative Schultz asked Representative Kitselman if a policy holder would have the option to convert from a variable interest rate to a fixed rate at any time. Representative Kitselman explained that if the initial contract made provisions for such a change, then it could be done.

Representative Kadas seconded the motion that the proposed

amendments to HB 72 DO PASS. The motion passed unanimously. Representative Brandewie seconded the motion that HB 72 DO PASS AS AMENDED and a unanimous vote was received.

ACTION ON HOUSE BILL NO. 137: Representative Driscoll moved that the proposed amendment DO PASS. Representative Kitselman asked Representative Driscoll if this would result in a loss as far as fiscal impact, to which the answer was yes. Second was received and the amendments PASSED unanimously. Representative Driscoll made a motion that HB 137 DO PASS AS AMENDED. Representative Brandewie seconded and HB 137 PASSED unanimously AS AMENDED.

ACTION OF HOUSE BILL NO. 138: Representative Driscoll made a motion that HB 138 DO NOT PASS. Representative Driscoll explained that he spoke with Home Insurance Company who informed him that they will inspect their insured boilers annually regardless of state law. The inspection performed is a complete and thorough inspection and the department will accept said inspection as long as the inspector is certified.

Representative Kitselman asked Representative Driscoll why Mr. Randy Siemers was opposed to HB 138. Representative Driscoll explained that confusion arose between the terms operator and inspector. An inspector has much more knowledge and experience, added Representative Driscoll.

Representative Hansen asked Representative Driscoll if an inspector will tear the boiler down and how two inspectors can inspect every boiler on an annual basis. Representative Driscoll explained that 3,000 inspections are performed by insurance companies and 1,200 by state inspectors and yes they do tear the boilers down.

Representative Simon added that in some circumstances an operator will have the boiler torn down before the inspector arrives, to help in assisting the inspector.

Representative Brandewie suggested that the department could set chronological age requirements and/or that an inspection could be done by request, if an operator felt it was necessary during the two year period.

Question being called for, Representative Driscoll's motion that HB 138 DO NOT PASS, was carried unanimously.

ACTION ON HOUSE BILL NO. 96: Representative Schultz expressed his concern as to where the interest on the money goes until it is distributed to the royalty owners.

Representative Driscoll questioned the committee regarding the

proposed amendment. If the first months payment is due 120 days after production and the second months payment is due in 60 days, where is the reasoning, asked Representative Driscoll. The second months payment would be due before the first months.

Representative Schultz asked Paul Verdon, the staff researcher, if the wording on page two of the bill, means that if their was any kind of court litigation more time would be allowed for payment. Mr. Verdon did have the same understanding.

Representative Glaser expressed his opposition to the amendments. He felt that the original bill was excellent and that if a payment is more than 60 days late interest should be paid.

Representative Bachini asked Representative Schultz if when an oil contract is signed, it is ever stipulated when and how interest will be paid. Representative Schultz does not think that it is ever done.

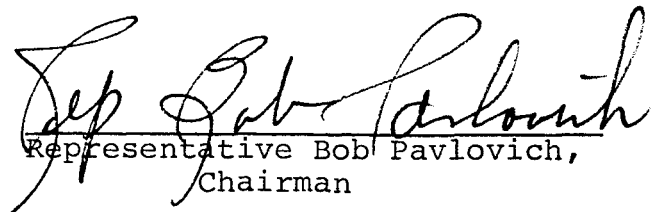
Representative Simon added that a lot of money is at stake and he likes the original bill.

Representative Jones moved that the amendments DO PASS. Question being called, the amendments DO NOT PASS, by unanimous vote.

Representative Brandewie made a motion that HB 96 DO PASS. Second was received and HB 96 PASSED unanimously.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 10:45 a.m.

The Sub-committee considering House Bill No. 127 met immediately following the meeting and amendments are being drawn to be presented to the Business and Labor Committee.


Representative Bob Pavlovich,
Chairman

DAILY ROLL CALL
BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 18, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd			✓
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas			✓
Norm Wallin	✓		

STANDING COMMITTEE REPORT

January 18

1935

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 72

FIRST reading copy (WHITE)
color

REGULATION OF INTEREST RATES ON LIFE INSURANCE POLICY LOANS

Respectfully report as follows: That HOUSE Bill No. 72

BE AMENDED AS FOLLOWS:

1. Title, line 6
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 33-20-109 AND"
2. Page 4, line 13
Following: Line 12
Insert: "(3) The substance of the pertinent provisions of subsection (1) and (3) must be set forth in the policies to which they apply."
Renumber: subsequent subsection

~~AND AS AMENDED~~
~~DO PASS~~

January 19

85
19

3. Page 5, line 10.

Following: Line 9

Insert: "Section 6. Section 33-20-109, MCA, is amended to read:

"33-20-109. Policy loan. (1) There Except as provided in Section 1 through 51, there shall be a provision that after 3 full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding 6% a year, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The commissioner may authorize a rate of interest in excess of 6%, but not in excess of 8% a year (or 7.43 if payable annually in advance), for policies issued on or after January 1, 1980, if the insurer provides adequate written certification that the holders of such policies will benefit fully from the increased earnings of the insurer resulting from the use of an interest rate in excess of the 6% per annum, such as from higher interest income to the company on policy loans, higher investment yield resulting from a reduction in policy loans because of the higher policy loan interest rate, and any additional income to the company resulting from the use of such higher interest rate in any manner whatsoever. These benefits to the policyholder shall be reflected through higher dividends or lower premiums, or both. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year unless the policyowner by written notice to the insurer elects to defer payment of interest until it has accrued. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for 6 months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect.

(2) This section shall not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies."

ReNUMBER: subsequent sections

AND AS AMENDED,

DO PASS

(HB72.scr)

FC2/k1p

STATE PUB. CO.
Helena, Mont.

RKP. PAVLOVICH

Chairman.

STANDING COMMITTEE REPORT

January 18

19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 137

FIRST reading copy (WHITE)
color

WAGE BASE PERIOD OF DISABLED PERSON FILING FOR UNEMPLOYMENT INSURANCE

Respectfully report as follows: That HOUSE Bill No. 137

BE AMENDED AS FOLLOWS:

1. Page 2, line 15
Following: "within"
Strike: "18"
Insert: "24"

AND AS AMENDED,
DO PASS

GR 1/18/85

STANDING COMMITTEE REPORT

January 18 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 138

FIRST reading copy (WHITE)
color

CHANGING LOW PRESSURE BOILER INSPECTION INTERVAL

Respectfully report as follows: That HOUSE Bill No. 138

DO NOT PASS
~~DO PASS~~

JP 1/18/85

STATE PUB. CO.
Helena, Mont.

Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

January 19, 1985 19

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 96

FIRST reading copy (WHITE)
color

**OIL AND GAS OPERATOR MUST PAY INTEREST ON UNPAID
ROYALTIES 60 DAYS AFTER DUE**

Respectfully report as follows: That HOUSE Bill No. 96

DO PASS

2/4/85

STATE PUB. CO.
Helena, Mont.

Chairman.

COMMITTEE SECRETARY

Exhibit 1
January 18, 1985
House Bill 174
Submitted by:
Representative Wallin

Proposed amendments to HB 174, introduced copy

1. Page 1, lines 6, 7, 19, and 20.

Strike: "represent"

Insert: "have experience in representing"

(A) CONSTITUTIONAL ISSUE: In 1981 the Arizona Legislature adopted Arizona Revised Statutes, Sec. 23-1386(B), establishing the Arizona Agricultural Employment Relations Board. Under the statute the Governor of the State of Arizona appointed the members of the Board and under that statute two of the members were to be appointed as Representatives of Agricultural Employers, two members as Representatives of Organized Agricultural Labor and three additional members.

The constitutionality of the Arizona Board was attacked in the case designated, United Farm Workers of America, AFL-CIO, et al, plaintiffs-appellants, vs. Arizona Agricultural Employment Relations Board, et al, defendants-appellees, and was ultimately decided by the United States Court of Appeals for the Ninth Circuit in 1982 as Case No. 80-5777. In a lengthy decision, the Ninth Circuit Court of Appeals concluded that the quasi-judicial board exercising decision making power must have the facial impartiality required by the due process clause of the Federal Constitution. The Court went on to conclude that when members of such a board are appointed as representatives of a particular pecuniary interest, the board by its very composition cannot meet the impartiality requirement of the due process clause and is without power to function as a Constitutional decision making entity.

Lawyer's Alert™

February 7, 1983

Volume 2, Number 8

State Agency Can Not Have "Representatives" From Groups

Where a state administrative agency is required to have representatives of both labor and management, this is unconstitutional, says the Ninth Circuit in a 2-1 decision.

This agency has "adjudicative" powers, and it must "require decisions devoid of favoritism, animosity, or personal interest."

Therefore, where this board is in charge of labor relations for farm workers, it cannot have two members appointed as representatives of agricultural employers, two as representatives of organized labor and three members as representative of the general public.

"The Board's functions include resolution of election disputes and resolution of charges of unfair labor practices. These functions are adjudicatory..."

Even if these same persons were

appointed to the Board, they would have a much better chance of being impartial than where they are chosen to "represent" a special group of persons.

"The labor and employer representatives on the [Board] cannot live up to the high standards of impartiality. We admit that Board members with a philosophical viewpoint favoring labor or employers would be capable of sufficiently impartial decision-making, but a designated labor or employer representative will serve with more than a philosophical viewpoint. A representative is appointed with a clear mandate to serve the interests of the side he represents. It may be appropriate for a group representative to act on rulemaking matters from the perspective of a built-in bias for an interest group, but a representative cannot reasonably be expected to ignore that bias when faced with close questions of fact or law in an adjudicatory context. Even the rare representative who could forget his allegiances when deciding adjudicatory matters would have to withstand the brunt of his constituency's pressure. We conclude that a representative is incapable of providing the impartiality necessary in the context of the adjudicatory matters presented to the [Board]."

"The [Board] has not questioned the conclusion that the labor and employer representatives are partial. They have argued, rather, that the Board as a whole is impartial because the partiality of the employer representative is evenly balanced by the partiality of the labor representative. We conclude, however, that the impartiality required in adjudicatory decision-making cannot tolerate the presence of unconstitutionally biased members, even if biases are balanced."

Dissent

The court has taken over the legislative process, according to the dissent. "Administrative law, with its emphasis on speed, informality and low cost, has been a burgeoning area of experimentation for the last forty years. For the last decade various states have been attempting to deal with a newly organized agricultural work force. It is not surprising that a number of them should have extended administrative experimentation with investigation, arbitration,

rule making and adjudication into the farm labor area. [citation]

"[This] legislature has tried a reasonable experiment. It has combined a number of tasks in one body so that state policy in the agricultural employment area can develop rapidly and uniformly. By representation of competing groups it attempts to have these decisions made by knowledgeable people, thus reducing the risk of erroneous, unwise or uninformed decisions which might otherwise so easily be made in this complicated area which profoundly affects so many. By balancing these groups it attempts to control the board for bias. Whether the overall statute is the best that could have been devised is not for us to say... We sit only to determine whether the legislation is constitutional. The formulation is sufficiently fair and impartial."

U.S. Court of Appeals, Ninth Circuit, San Francisco, CA 84101. Tel 415-556-2335. United Farm Workers of America v. Arizona Agricultural Employment Relations Board, No. 82-5777, January 24, 1983. Lawyer's Alert No. 82-5777 (14 pages).

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BOARD OF PERSONNEL APPEALS

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Testimony of Arlyn L. Plowman
Before the
Montana House of Representatives
Committee on Business and Labor

HB - 174 - 9:00 A.M. - January 18, 1985

Mr. Chairman, Members of the Committee, my name is Arlyn Plowman. I am a member of the Board of Labor Appeals. I am here to testify against House Bill 174.

House Bill 174 would expand the Board of Labor Appeals to five members with the stipulation that one member represent employees and one member represent employers.

This bill presents a due process constitutional issue. I have a letter from Michael Whalen, Chairman of the Board of Labor Appeals which addressed this issue much better than I could. A copy of that letter is attached to my testimony.

Besides the problems with the constitutional issue, House Bill 174 would make the operation of the Board of Labor Appeals more costly and less efficient.

The expansion of the board from three to five members would not lessen the workload, but would, in fact, increase the time and effort required for fact finding, deliberation and decision making. A five member board would be more cumbersome than the present three member board.

No doubt, some in the community are less than pleased with some decisions the board makes. We have our critics. Nobody enjoys losing. However, the expansion of the board would not, in all probability, result in different decisions, only in added expense and difficulty in reaching those decisions.

My experience and research leads me to believe that the Montana Board of Labor Appeals performs as well or better than most Unemployment Insurance Appeals Tribunals. At least 27 jurisdictions have three member boards. There is little or no precedent or evidence that larger boards perform better.

I do not believe House Bill 174 is in the best interest of Montana employers, workers or citizens. I urge you to vote against this bill.

WHALEN & WHALEN
ATTORNEYS AT LAW
SUITE 1306 NORWEST BANK CENTER
175 NORTH 27TH STREET
BILLINGS, MONTANA 59101

PHONE 259-8793
(AREA CODE 406)

January 16, 1985

MICHAEL J. WHALEN
TIMOTHY J. WHALEN

Mr. Arlyn Plowman
P.O. Box 1176
Helena, Montana 59624

Dear Arlyn:

On January 15, 1985, during hearings being conducted by the Board of Labor Appeals in Helena, Montana, Robert R. Jensen, Administrator, handed each of the members of the Board a copy of HB 174. Mr. Jensen stated that hearings would be conducted on the Bill on Friday, January 18, 1985 and inquired as to whether or not members of the Board desired any input. During the Board discussions, Jerry Overmier was uncertain as to whether or not he could appear, I will not be able to, however it is my understanding that you will appear during hearings upon the Bill. Thus, I am directing my comments to you and you may feel free to use them in any manner you deem appropriate in connection with the scheduled hearings.

The substance of the Bill is to increase the membership of the Board of Labor Appeals from three members to five. The Bill further provides that "one appointee shall represent the interest of employees and one appointee shall represent the interest of employers."

As present Chairman of the Board of Labor Appeals, I am opposed to HB 174 for the reasons following:

1. The adoption of the Bill would create a Board which could not stand Constitutional attack; and

2. Even if the proposed Board in HB 174 could withstand a Constitutional attack, it would not do anything to improve the administration of the Unemployment Insurance Statutes of the State of Montana, but during a time of "belt-tightening" would substantially increase the costs of the Board performing its functions.

Mr. Arlyn Plowman
January 16, 1985
Page 2

(A) CONSTITUTIONAL ISSUE: In 1981 the Arizona Legislature adopted Arizona Revised Statutes, Sec. 23-1386(B), establishing the Arizona Agricultural Employment Relations Board. Under the statute the Governor of the State of Arizona appointed the members of the Board and under that statute two of the members were to be appointed as Representatives of Agricultural Employers, two members as Representatives of Organized Agricultural Labor and three additional members.

The constitutionality of the Arizona Board was attacked in the case designated, United Farm Workers of America, AFL-CIO, et al, plaintiffs-appellants, vs. Arizona Agricultural Employment Relations Board, et al, defendants-appellees, and was ultimately decided by the United States Court of Appeals for the Ninth Circuit in 1982 as Case No. 80-5777. In a lengthy decision, the Ninth Circuit Court of Appeals concluded that the quasi-judicial board exercising decision making power must have the facial impartiality required by the due process clause of the Federal Constitution. The Court went on to conclude that when members of such a board are appointed as representatives of a particular pecuniary interest, the board by its very composition cannot meet the impartiality requirement of the due process clause and is without power to function as a Constitutional decision making entity.

Montana's Board of Labor Appeals acts in a quasi-judicial capacity, Sec. 39-51-310, MCA. HB 174, introduced in the Montana House will not meet the due process requirements of the Federal Constitution.

(B) HB 174 burdens rather than improve the administration of the Unemployment Insurance Statute.

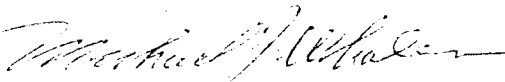
Under Section 2-15-124(2), MCA, a majority of the members of the Board of Labor Appeals shall be appointed to serve terms concurrent with the gubernatorial term. Thus, under our present statute the Governor has the power to appoint a majority of the members of the Board concurrent with his present term in office and under subdivision (3) of Section 2-15-124, supra, the appointees are subject to the confirmation of the Senate. Thus, the Board of Labor

Mr. Arlyn Plowman
January 16, 1985
Page 3

Appeals, as presently constituted, is subject to such political control as the law will allow.

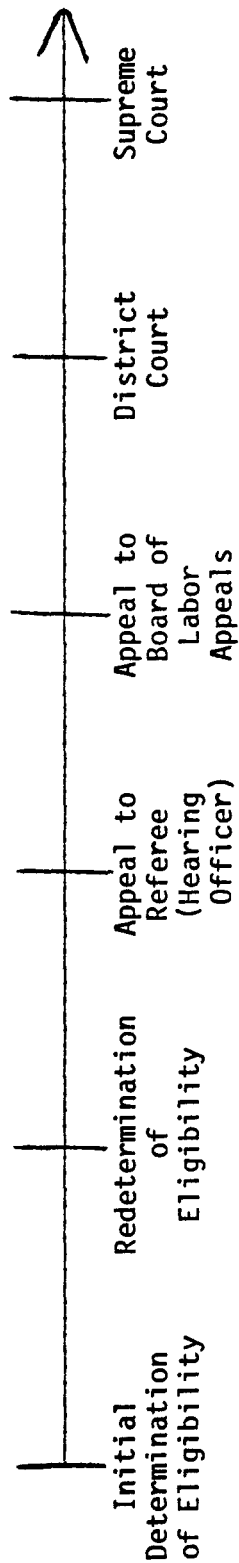
It is recognized that many employers are dissatisfied with the burdens imposed by the Unemployment Insurance Statutes. It is my belief that those burdens will be increased, as distinguished from being lessened, by the adoption of HB 174 under consideration.

Yours very truly,


Michael J. Whalen

MJW:js

UNEMPLOYMENT INSURANCE
BENEFIT ADJUDICATION & APPEAL PROCESS



Information for HB 174

Exhibit 3
January 18, 1985
House Bill 174
Submitted by:
Dave Wanzene

Kadas Amendments to HB175

1. Page 1, line 21.
Strike: "two"
Insert: "one"
2. Page 1, line 22.
Strike: "organizations"
Insert: "organization"
3. Page 2, line 3.
Strike: "a"
Insert: "two"
4. Page 2, line 3.
Strike: "investigator"
Insert: "investigators"

Exhibit 5
January 18, 1985
Submitted by:

COMPARISON OF DEFICIT EMPLOYERS BY CATEGORY 1983 TO 1984 Dave Wanzenreid
general info.
on unemployment
bills

Industry	1984		% of Total Employers	1983		% of Total Employers
	<u>No. of Employers</u> <u>Total</u>	<u>Deficit</u>		<u>Total</u>	<u>Deficit</u>	
Agriculture	500	54	11	439	38	9
Mining	691	182	26	734	85	12
Construction	2,881	968	34	2,735	976	36
Manufacturing	1,191	375	31	1,085	353	33
Transp. & Comm.	1,152	156	14	1,059	128	12
Wholesale Trade	1,985	189	10	931	50	5
Retail Trade	5,901	522	9	5,803	470	8
Finance, Ins. & R.E.	1,873	122	7	1,825	90	5
Services	6,686	677	10	6,358	542	9
-Classified	168	14	8	161	10	6
TOTAL	23,028	3,259		21,130	2,742	

Exhibit 6
January 18, 1985
Submitted by:
Dave Wanzenreid
general info. c
unemployment
bills

CONTRIBUTIONS PAID, BENEFIT CHARGES, AND NUMBER OF EMPLOYERS
BY INDUSTRY

1983 and 1984 Rating Periods

Industry	1 9 8 3 R a t i n g P e r i o d				1 9 8 4 R a t i n g P e r i o d			
	10-1-79 through 9-30-82				10-1-80 through 9-30-83			
	Contributions Paid	Benefit Charges	No. of Employees		Contributions Paid	Benefit Charges	No. of Employees	
			Total	Deficit			Total	Deficit
Retail Trade	23,797,682.25	8,475,636.05	5,803	470	25,008,356.19	9,444,934.20	5,901	522
Services	18,990,187.55	9,256,482.05	6,358	542	20,799,750.03	11,597,149.84	6,686	677
Transportation, Communication	9,972,374.03	3,925,268.94	1,059	128	10,736,520.22	6,220,281.43	1,152	156
Wholesale Trade	10,529,726.44	4,813,282.09	931	50	10,668,811.20	5,668,657.01	1,985	189
Finance Insurance & Real Estate	6,755,574.15	1,271,936.83	1,825	90	7,226,907.56	1,595,414.47	1,873	122
Agriculture, Forestry & Fishing	1,261,062.15	427,370.76	439	38	1,411,370.89	659,738.53	500	54
Non-Classified	250,094.41	97,191.00	161	10	293,584.23	174,275.20	168	14
Mining	10,560,900.35	11,697,172.70	734	85	9,362,598.72	17,660,274.33	691	182
Manufacturing	16,055,761.00	21,474,989.75	1,085	353	17,066,200.39	22,134,902.50	1,191	375
Construction	14,214,041.39	22,269,619.69	2,735	976	14,943,774.26	26,049,809.64	2,881	968
	112,387,406.72	83,708,949.86	21,130	2,742	117,517,873.69	101,205,437.15	23,028	3,259

Noncharged Benefits for 1983 Rating Period (10-1-79 through 9-30-82) 23,970,654.25

Noncharged Benefits for 1984 Rating Period (10-1-80 through 9-30-83) 24,986,073.02

WITNESS STATEMENT

Name ARLYN PLOWMAN Committee On BUSINESS & LABOR
Address 1305 CHATEAU, HELENA Date 1-18-85
Representing SELF Support _____
Bill No. HB - 174 Oppose ☒
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

NAME Eileen Robbins BILL NO. HR 174

ADDRESS P.O. Box 5718 - Helena DATE 1/18/85

WHOM DO YOU REPRESENT Montana Nurses Association

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The MNA feels legislation is unnecessary. The sponsor & proponents have insufficient reason for the change - a question if the Unemploy. deficit would actually be reduced. Do not feel the increase in size will reduce work but actually may increase it. The current Board size is working and feel the proposed change is unnecessary.



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF DON JUDGE ON HOUSE BILL 138, BEFORE THE HOUSE BUSINESS AND
LABOR COMMITTEE, JANUARY 17, 1985

Mr. Chairman and members of the committee, my name is Don Judge and I'm appearing here today on behalf of the Montana State AFL-CIO in opposition to House Bill 138.

I'd like to address this bill as one which is really an issue of public health and safety. Everyone realizes that low pressure boilers have the potential of becoming dangerous explosive devices. The provisions in our current law, requiring annual inspections of low pressure boilers, are there for the benefit of public safety and property protection.

Low pressure boilers are found in our public schools, institutions, city/county buildings, hospitals, nursing homes, this capitol complex, other government buildings, and other places in which the public gathers. It is important that we recognize the need to provide for adequate public safety in these places. Regular annual inspections help to assure that tragedy doesn't occur.

Even if a boiler doesn't explode, it is still subject to breaking down. Regular inspections not only provide for safer operation, but also guard against maintenance problems.

Montana is a state well known for its inclement weather. If a heating unit in a public building breaks down, the costs of repairing the damages resulting from subfreezing temperatures can be enormous. Regular annual inspections help save taxpayers money.

Last, but certainly not least, many of you may have children in public school, friends or relatives in a hospital or nursing home, or working in a public building. I would not like to think of your having to come back here a couple of years from now and say "we shouldn't have changed this law".

Thank you.

WITNESS STATEMENT

Business &

Name Don Valiton Committee On Labor
Address Box 66, Ovando, Montana 59854 Date Jan. 18, 1985
Representing Mont. Assn. of Private Investi-
gators & Security Operators Support X
Bill No. HB-175 by Kadas Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. We support the bill because it will give an opportunity for better geographical representation on the board; and it will give various segments of the occupation better proportionate representation.
- 2.
- 3.
- 4.

Don Valiton

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

BUSINESS AND LABOR

HOUSE

COMMITTEE

BILL House Bill 175

DATE January 18, 1985

SPONSOR Representative Kadas

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE BUSINESS AND LABOR

COMMITTEE

BILL House Bill 174

DATE January 18, 1985

SPONSOR Representative Wallin

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.