

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

January 29, 1985

The sixth meeting of the Labor and Employment Committee was called to order by Chairman J. D. Lynch on January 29, 1985, at 1:00 o'clock p.m. in Room 413/415, Capitol.

ROLL CALL: All the members were present

CONSIDERATION OF HB 124: Representative Kelly Addy is the sponsor of this bill. Representative Addy told the committee that Judge Bennett ruled that the Board of Personnel Appeals (BPA) did not have jurisdiction to hear cases arising which involve recognized as opposed to certified exclusive representatives. He then told the committee that the Board accepted jurisdiction to determine whether Local 1023 of the International Brotherhood of Painters and Allied Trades (IBPAT) had violated 39-31-206 MCA, during a dues-increase election. Representative Addy then read the statute to the committee. He told the committee that the BPA hearing examiner determined in favor of the union. The Board affirmed the hearing examiner, and it was appealed. Judge Bennett ruled that 39-31-206 limited the jurisdiction of the BPA to review certain actions by a union. Judge Bennett ruled that when the union was recognized by the employer, then the BPA did not have jurisdiction to review allegations that a union was violating a union member's rights. At the request of both sides Judge Bennett again reviewed the case. However, he once again ruled against the BPA saying, "It is neither the function of this Court, nor, for that matter, the BPA, to rewrite legislation because such a revision may be what the legislature really meant to say. Unfortunately, we all are stuck with what the legislature actually said." Representative Addy went on to say that there are many thousands of state, city, county and school district employees in Montana that are in recognized units represented by recognized exclusive representatives (unions). He said the sole purpose and effect of the proposed legislative amendment is to extend the rights and safeguards provided for in 39-31-206, MCA to public sector employees represented by recognized exclusive representatives (unions), and not just employees represented by certified exclusive representatives (unions). (For more of Representative Addy's testimony see Exhibit 1 attached hereto and by this reference made a part hereof.)

PROPOSERS: Bob Jensen, Administrator of the Montana Board of Personnel Appeals, supports this bill. He feels this bill is primarily a process question. It is necessary to maintain a sense of fairness and stability in the collective bargaining process in Montana. Mr. Jensen entered written testimony attached hereto marked Exhibit 2, and by this reference made a part hereof.

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QUESTIONS OF THE COMMITTEE: Senator Aklestad said that he guessed that he sees no safeguards in this bill in that if 52% of the employees decided to go union and the employer felt that it shouldn't and decided to use intimidation of something, I can't see them actually having an election. Representative Addy replied that that just points up one more good reason to have the bill because those using strong-arm tactics would have to allow democratic procedures to their members, just as certified unions do. Representative Addy said that they are simply giving bargaining units of recognized unions more safeguards. He told Senator Aklestad that those unions that he is afraid for are receiving more safeguards. Senator Keating asked where these would be heard. Representative Addy replied that the BPA hears all disputes right now. In recognized units, the Board has not been called in by both parties, and subsection 2 just makes it clearer that the Board will have jurisdiction in any subsequent disputes. Senator Keating asked what the order of appeal was. Representative Addy replied that you go to a hearing examiner, then you the Board for administrative appeal, and then you go to the court. Senator Haffey stated that in order to drive the point home, the bill says that a member who might have a dispute as to whether there was a problem with the election, or for one reason or another, now has recourse to have that revisited? Representative Addy replied that that was right. He said that it gives the members not being adequately represented by the union formal recourse as the legislature originally intended, but did not say.

Representative Addy said he was closed. The hearing on HB 124 is closed.

CONSIDERATION OF SB 194: Senator Manning passed out a statement of intent for this bill. Senator Richard E. "Dick" Manning is the sponsor of this bill. Senator Manning said that this was a bill that he introduced last session dealing with the licensing of persons dealing with explosives in demolition of buildings, construction of buildings, and certain other purposes prohibiting use of such explosives unless licensed or under the supervision of a licensee; providing for licensing requirements and examinations; providing for licensure of persons licensed by other jurisdictions; providing for regulation of the use of explosives; granting rulemaking power to the workers' compensation division; providing for discipline of licensees; and providing for civil and criminal penalties. Senator Manning said that during the last session Senator Aklestad had a problem with this bill because it did not define openly, exempting some ranchers and farmers from some areas. He said that has been provided for in this bill this time. Senator Manning said that John MacMasters was the person who drew this legislation up and that he could answer any questions.

PROPOSERS: Burt Wilson, licensed powder handler for the states of Washington and Alaska, supports this bill. Mr. Wilson said that this bill excludes the mining industry and private users and pertains mainly to the construction industry in and around populated areas. He felt this bill is very important for workers' safety

and protection of property. He told about the licensing programs that would be set up under this bill. Mr. Wilson feels this training and testing is necessary. Mr. Wilson next gave examples of times in Montana where lack of safety training or testing caused problems.

Larry Persinger, Construction Trades Council, supports this bill. He said that they felt that there were many times when safety training would come in handy when working around towns or in communities.

Bill Olson, Montana Contractors' Association, supports this bill. He said that not only from safety's standpoint, but from the workers' standpoint, and possibly reduced insurance rates, they support this bill.

OPPONENTS: None.

QUESTIONS OF THE COMMITTEE: Senator Thayer asked how many people would be affected by this bill. Senator Lynch called on Gary Blewett to answer the question. Gary Blewett, Administrator of Workers' Compensation, Department of Labor and Industry, said that they had prepared a fiscal note for the bill. He gave them the information off the fiscal note, saying that there would be between 500-600 licenses issued per year. He said that they would need one full-time safety officer and one half-time clerical person associated with that, which will average on an annual basis, about \$40,000 per year, and the initial start-up would be about \$50,000 per year. Mr. Blewett said that if this was on a pay-as-you-go basis, it would cost about \$100 per license to fund this operation. Senator Lynch said, you are telling us, Mr. Blewett, that it is going to cost \$50,000 to start, \$40,000 per year to maintain these licenses? Mr. Blewett said yes. He then itemized the expenses for Senator Lynch. Senator Blaylock asked John MacMasters if Fourth of July fireworks were considered in this at all. Mr. MacMasters, Legislative Council, replied that he did not think that they would be. Senator Lynch said that this appeared to be a good bill until he saw the fiscal note. He asked either Mr. Blewett or Mr. Wanzienried if this was absolutely necessary. They told him that as far as the impact of workers getting hurt through explosives, they have only three listed in the last five years directly related to an explosion impact. Senator Lynch asked them if they gave this responsibility to their Department and told them to "eat it" because they weren't going to get any more money, what would they do? Mr. Wanzienried said they would have to make some priority decisions about where to put their staff. They would have to spread their staff over this function as well as the other functions that they have. He said they already have responsibilities regarding the regulation of the use of explosives. He then went on to tell him about those responsibilities. He then told Senator Lynch what this job would entail. Senator Lynch

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asked if they already had experienced people who deal with the explosives issue. Mr. Blewett introduced Mr. Gatzemeier, Department of Labor and Industry, who said they do have experienced people. Senator Haffey asked Mr. Wilson how many people do what he does. Mr. Wilson replied that crossing over into mining and other areas, probably 600-800. Senator Haffey asked him if he thought this bill would be helpful. Mr. Wilson replied that it would eliminate a lot of the unsafe practices, and yes, I think it is important. Senator Thayer asked about the fiscal note's impact. Senator Lynch said that this bill, if it passed, would not go to Labor and Employment in the House until it goes down to Representative Bardanoue's committee and everything with fiscal impact will gather there until it is determined how much money there is. Senator Keating asked Mr. Gatzemeier many questions regarding the bill, which all boiled down to whether or not the bill was talking about construction sites only. Mr. Gatzemeier said that as he reads the bill, they are focusing on construction sites. Senator Towe asked many questions regarding the blasters that are already licensed. He wanted to know if they are making it difficult or discriminating against good people in Montana, who haven't had the benefit of training. Mr. Wilson felt that you would not have to take the training over and over, but that you would have to take a test every year in order to get your license. Senator Towe asked if, under subsection 3, the blaster who had been at it for a number of years would have to go and take this training because he was never formally trained. Senator Manning replied that he would. Senator Towe asked if that was his intention, and he replied yes. He is concerned that these people who have been blasting for all these years are suddenly going to find out that they can't do any blasting for at least a year while they take training, and he doesn't feel that's right. Senator Towe said that this gives the Department a lot of rule-making authority, but he doesn't see why they would have to hire a safety inspector. Senator Lynch said that that should be in the statement of intent if they intend for this to hire more people, and he feels this should be in the statement of intent. Senator Lynch said this would not be acted on today. Senator Towe said the \$100 application fee also distressed him. Senator Towe wanted to know why this rule-making authority was given to the Division of Workers' Compensation rather than the Department of Commerce. Mr. Wilson replied that that's the way it is done in the state of Washington and Alaska, it always falls under the Department of Labor and Industry. Mr. Blewett said it made no difference to them. Senator Aklestad asked Mr. Wilson what was to stop him from buying powder and dynamite. Mr. Wilson replied that at the present all he would have to do is sign his name.

Senator Manning closed by saying that this bill probably needs a little working over. He feels that this bill is needed and he asks the committee to work with him. Senator Manning told about his experience with blasters. He feels the safety precautions are needed. The hearing on SB 194 is closed.

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CONSIDERATION OF SB 199: Senator David Fuller is the sponsor of this bill entitled, "AN ACT REQUIRING THAT A WORKER FOR WHOM AN APPRENTICESHIP AGREEMENT IS REGISTERED BE PAID AT THE PREVAILING HOURLY RATE ON A PUBLIC WORKS PROJECT. Senator Fuller told the committee that this bill is the criteria that the State Labor Department currently uses under Federal guidelines. This bill makes it fair to employers who take the time to work with and spend money training young people by requiring that all employers do the same. Senator Fuller said that the main point is that this bill would protect young people from unfair employers who tell them that they are apprentices and pay them less than the prevailing hourly wage by requiring that they be paid journeyman scale on public works projects, when lack of registration in an existing apprenticeship program determines that they are not actual apprentices. Senator Fuller pointed out the new sections in the bill to the committee.

PROPOSERS: David Wanzenried, Administrator, Department of Labor and Industry, supports this bill.

Eugene Fenderson, Business Manager, Laborers' International Union of North America, AFL-CIO, supports this bill.

OPPOSERS: There were no opposers.

QUESTIONS OF THE COMMITTEE: None.

The hearing on SB 199 is closed.


FURTHER CONSIDERATION OF SB 199: Senator Lynch asked the committee if they felt comfortable with moving on SB 199. Senator Towe presented the committee with some amendments prepared by the Department of Labor and Industry. (Exhibit 3) Senator Towe said that he had checked them over and they appeared to be okay. Mr. MacMasters, Legislative Council, suggested making a corresponding change in the title of the bill. He said that in line 6 of the title, he would cross out the words "at the prevailing hourly wage," and insert the words "at the rate specified in the registered agreement," in order to conform the title to the first amendment, which will then become a second amendment. Senator Towe moved that the amendment be adopted with Mr. MacMasters change in the title. Question was called. Following a voice vote, the motion was adopted unanimously. Senator Keating said he had a question for Mr. MacMasters. He said that in the code there is no reference to any specific type of work until they put in apprentice work, and he wondered why this amendment goes into this section of the code, and becomes a specified individual. Mr. MacMasters said that perhaps Mr. Wanzenried could answer this question, but he thinks it is because a person is an apprentice and does have an agreement with his employer that has been registered, and it seems to me it is the intent to provide whatever that agreement provides

that he must be paid. Mr. Wanzenried agreed with Mr. MacMaster's and he said without this, you would have to pay what a journeyman was paid at. He said that logically this is where you locate that. Senator Keating said this was for a registered apprentice and asked if that was what he was talking about. Mr. Wanzenried said there are two kinds of apprenticeship agreements, those that are registered and approved by the Department and those that are worked out by the contractor or an individual employed by him, but we don't recognize those. Senator Keating said that's what he is getting at, in this B part when an apprentice has not been registered, then that contractor or employer must pay the journeyman rate? Mr. Wanzenried replied that that's right. Senator Keating said, then this would encourage employers to file with your office any contracts then if they wanted to pay lower rates? Mr. Wanzenried replied that it would. He said that that is what he understood the intent of the bill to do. Senator Lynch told the committee that he has decided not to act on the bill at this time. They will have executive action at the next meeting. Senator Keating asked if Mr. Wanzenried felt that the employer would be better off to register so he could pay the lower rate. Mr. Wanzenried said it would be to the advantage of both the employer and the employee. The employer because he could pay the lower wage, and the employee because it would be a developed plan to help him learn as he worked, and in that way develop his or her skills.

EXECUTIVE ACTION ON HB 124: Senator Manning made a motion that HB 124 do pass. Question called, and with Senator Aklestad voting no, HOUSE BILL 124 BE CONCURRED IN.

EXECUTIVE ACTION ON SB 81: Senator Manning made a motion that SB 81 do not pass. Question was called and with Senator Aklestad, Senator Keating and Senator Thayer voting no, SB 81 DO NOT PASS. However, Senator Aklestad asked that a minority report be issued in SB 81, so SB 81 will be reported out of committee with both a majority opinion and a minority opinion. The minority opinion to be signed by Senator Aklestad, Senator Keating, and Senator Thayer.

The meeting was adjourned at 2:30 p.m.


SENATOR J. D. LYNCH, CHAIRMAN

DEPARTMENT OF LABOR AND INDUSTRY
PERSONNEL APPEALS DIVISION

Exhibit 1
AB-124
1-29-85



CERTIFICATION

REFERENCE: MONTANA 10620

December 14, 1984

TO: Bob Jensen
FROM: Jim Gardner
RE: Certification Challenge 2-81

As you are aware Judge Gordon Bennett ruled in the case of CC 2-81 that the Board of Personnel Appeals (BPA) does not have jurisdiction to hear cases arising under 39-31-206 which involve recognized as opposed to certified exclusive representatives.

In CC 2-81, the Board accepted jurisdiction to determine whether Local 1023 of the International Brotherhood of Painters and Allied Trades (IBPAT) had violated 39-31-206, MCA, during a dues-increase election. Section 39-31-206, MCA, provides that,

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification. Certification as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

- (1) provisions are made for democratic organization and procedures;
- (2) elections are conducted pursuant to adequate standards and safeguards;
- (3) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and
- (4) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

After a hearing, a BPA hearing examiner determined that the dues increase election was conducted "pursuant to adequate standards of safeguards." The Board affirmed the hearing examiner. On appeal, Judge Bennett, on his own and without any assertions of lack of BPA jurisdiction by any party, determined that the wording of 39-31-206 limited the jurisdiction of the BPA to review certain actions by a union

(exclusive representative) only when that union (exclusive representative) was certified by the BPA. The judge ruled that when the union was recognized by the employer, then the BPA did not have jurisdiction to review allegations that a union was violating a union member's rights as found in 39-31-206.

The BPA asked Judge Bennett to reconsider his decision. The Judge agreed and received briefs from all sides. The BPA's main points of disagreement with the Judge's decision were stated as follows:

1. There is no clear legislative intent¹ indicating a distinction between recognized and certified exclusive representatives for purposes of protecting union members' rights given them in 39-31-206.

2. The term certification as used in 39-31-206 should be given a broad interpretation so that all union members (those members in both recognized and certified unions) are given the protection of 39-31-206.

Judge Bennett ruled that most of the arguments advanced by the BPA were policy arguments and since the word certification alone was used in 39-31-206 but certified and recognized were distinguished in 39-31-207, that he was without authority to broaden the legislature's use of certification in 39-31-206.

The Judge concluded that, "It is neither the function of this Court, nor, for that matter, the BPA, to rewrite legislation because such a revision may be what the legislature really meant to say. Unfortunately, we all are stuck with what the legislature actually said."

Given the clear wording of 39-31-206 which uses the word "certification" and not also recognized, the BPA's chance of success in having the Montana Supreme Court overturn Judge Bennett's decision is slim.

As you are aware, there are many thousands of state, city, county and school district employees in Montana that are in recognized units represented by recognized exclusive representatives (unions). It is a positive statement about public sector collective bargaining in Montana that in the ten years since the Act was passed that the BPA has had only a handful of cases arising under 39-31-206.

However, all public sector labor union members in Montana should be afforded the rights and safeguards now given to union members represented by certified exclusive representatives. Therefore, I would recommend that the following legislative amendment be made to 39-31-206.

1. Legislative history, definition of exclusive representative as found in 39-31-103, general labor law principles which make no distinction between the two types of units and unions.

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification. Certification or recognition as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for an guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

- (1) provisions are made for democratic organization and procedures;
- (2) elections are conducted pursuant to adequate standards and safeguards;
- (3) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and
- (4) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

As indicated above, the sole purpose and effect of the proposed legislative amendment is to extend the rights and safeguards provided for in 39-31-206, MCA, to public sector employees represented by recognized exclusive representatives (unions), and not just employees represented by certified exclusive representatives (unions).

DEPARTMENT OF LABOR AND INDUSTRY
BOARD OF PERSONNEL APPEALS

Exhibit 2
HB-124
1-29-85
CAPITOL STATION



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 444-3022

HELENA, MONTANA 59620

TESTIMONY ON HB-124

Senate Labor and Employment Relations
By Robert R. Jensen, Administrator
Montana Board of Personnel Appeals
January 29, 1985

Mr. Chairman, Committee members, my name is Bob Jensen. I am Administrator of the Montana Board of Personnel Appeals, the agency that administers the Collective Bargaining Act for Public Employees.

I rise in support of HB-124. We feel this bill is primarily a process question. It is necessary to maintain a sense of fairness and stability in the collective bargaining process in Montana.

Currently, hundreds of employees are in recognized bargaining units in our state, county, municipal and public school jurisdictions. Some of these recognized bargaining units are among the more stable. We are concerned that without this bill, employees in these recognized bargaining units may feel they have to petition for a representation election in order to acquire the rights and safeguards outlined in section 206 of this bill. Obviously, this would greatly upset our now stable employer-union relationships.

Employees in recognized bargaining units now utilize mediation, fact finding, decertification, unfair labor practices and other processes provided for in the Collective Bargaining Act for Public Employees.

The passage of this bill would also provide these employees with the protection of the rights and safeguards in section 206.

Thank you.

For Sen. Bill
Suggested by
Dave Wanzar Reid
Exhibit 3
SB-199
1-29-85

Proposed amendments to SB 199, introduced copy.

1. Title, line 6.

Following: line 5

Strike: "AT THE PREVAILING HOURLY RATE"

Insert: "THE RATE SPECIFIED IN THE REGISTERED AGREEMENT"

2. Page 1, lines 22 and 23.

Following: "paid" on line 22

Strike: "at least the prevailing hourly rate for an apprentice
of that trade"

Insert: "the rate specified in the registered agreement"

3. Page 2, line 3.

Following: "for"

Strike: "journeymen"

Insert: "that craft"