

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS
MONTANA STATE SENATE

February 7, 1985

The ninth meeting of the Labor and Employment Committee was called to order by Chairman J. D. Lynch on February 7, 1985 at 1:00 p.m. in Room 413/415, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 285: Chairman Lynch called on Representative Earl Lory, sponsor of House Bill 285. House Bill 285 is an act excluding newspaper advertising salesmen from overtime compensation provisions. What this bill does in essence is remove the requirement that they be paid time and a half for overtime and put them in that exempt class with truck drivers, car salesmen and firemen.

PROPOSERS OF HOUSE BILL 285: Mike Meloy, representing the Montana Press Association which asked Representative Lory to sponsor this bill spoke for the bill. No newspaper in this state pays any retail advertizing salesman anything more than salary, nor do they require that person to work any overtime. But because of the relationship between the ad salesman and the paper, which is that they have to report in (in some cases they don't have to) they come in at 8:00 a.m., go out and sell their ads and come back in at 5:00 p.m.; there is no way the paper knows how many hours they are working, nor do they have to account for those hours; further, they are not asked to work any overtime. The problem arose in 1981, when a person who had been fired by the Independent Record claimed a bunch of overtime, and there was not any way the paper could verify the claim because they don't keep track of salesman's hours.

OPPOSERS OF HOUSE BILL 285: Burt Lindler, representing the Newspaper Guild, Great Falls, President, submitted a letter from the people who opposed House Bill 285 in the office of the Great Falls Tribune.
(Exhibit No. 1)

Jim Murry, Executive Secretary, Montana State AFL-CIO, said the AFL-CIO was opposed to House Bill 285.

Randy Siemers, representing the Operating Engineers, spoke in opposition of House Bill 285.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked how Mr. Meloy responded to Bert Lindler's statement that newspaper salesmen are being singled out for special treatment; not radio or T.V. ads salesmen, not salesmen in advertising agencies, not sales-

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men anywhere else, but just newspaper salesmen.

Mike Meloy said he was not aware that broadcasters and electronic media had a problem because they're regulated by federal law.

Representative Hal Harper, District 44 in Helena, said he had yet to see a newspaper article on this particular bill. He feels proponents want to squeeze more work out of people.

Senator Towe asked Mr. Meloy about the FICA withholding taxes, Social Security taxes, unemployment taxes. Does the incentive pay or does the commission pay all that is used to calculate the Social Security taxes?

Mike Meloy said he was sure there is.

Senator Towe asked if they have to pay withholding, why should they be treated as an hourly wage in every other respect, including overtime.

Mike Meloy said the distinction is not because of the way it is paid, but because of the way the hourly person would work. There is no way of knowing whether or not that individual worked over 40 hours a week.

Senator Thayer asked whether the Independent Record has a similar contract to Guile's in Great Falls.

Mike Meloy said he didn't think so.

Senator Thayer asked Mr. Lindler if they had any instances at the Great Falls Tribune with people putting in for overtime who were denied. He asked if overtime must be authorized by the supervisor.

Bert Lindler replied that overtime has to be authorized by the supervisor. There has never been a case where it was denied.

Senator Thayer asked Mr. Lindler if he knows of any cases where employers have authorized and allowed overtime for salesmen who are out contacting businessmen.

Bert Lindler said he didn't know that his employees have ever worked or filed for any overtime. If they had worked and filed for overtime and it had been denied, he would agree to it. That circumstance has never occurred.

Senator Keating said apparently there are two kinds of salesmen: There is a group that stays in the office, answers the telephone and takes classified ads. Then there are those who go out to the retail stores or into the market and work with layouts;

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generally they have pretty steady clientele that they work with. He asked if all of those people are lumped together under Mr. Lindler's contract.

Bert Lindler said they are in different wage classifications.

Senator Keating asked if the people who stay in the office and answer the telephone for the classified section are working on commission.

Bert Lindler said they work for hourly wages.

Senator Keating said he just wanted to know if they are eligible for commission.

Bert Lindler said they are eligible for commission if they sell more than certain set percentages of advertising.

Senator Keating asked about the other classification that goes out and works in the retail area and does the large accounts, the real advertising. Are they on a similar pool commission or are they paid a specific commission for specific sales they make?

Bert Lindler said they receive hourly wages, the exact same hourly wage as a reporter. They receive commissions depending on how their sales fell during a particular time.

Senator Keating asked if Mr. Lindler's paper is a Lee newspaper.

Bert Lindler said the Great Falls Tribune is owned by a company in Minneapolis. It is not a Lee newspaper.

Senator Keating asked Mr. Meloy if he is representing just the Helena paper or others as well.

Mike Meloy said he is representing the Montana Press Association, which includes the Great Falls Tribune as well as the Lee newspapers.

Senator Lynch asked how Mr. Meloy and the press association answer the contention by the gentlemen from the Tribune, that a reporter would not be included in this; a reporter would get overtime.

Mike Meloy said reporters get overtime because they are called upon to do overtime, because news does not happen between 8:00 a.m. and 5:00 p.m.

Senator Towe said a newspaper reporter is asked to go out and cover news. How can an employer keep better track of him than the advertising salesman, who is asked to go out and sell a certain amount of newspaper ads.

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Mike Meloy said with an ad salesman, their time is pretty much their own time; they aren't told to go over to some place and sell them some advertising.

Senator Keating said the bill fails to include the distinction between working for a commission and working for a wage.

Senator Manning said Mr. Meloy is trying to pass this provision that eliminates overtime and that's strictly for the newspaper. At the same time Mr. Meloy also says he is hired by the Tribune. If we were to pass this bill, the Tribune could come in, according to state law, and say that they are not going to have it in the contract anymore.

Mike Meloy said the way the contract works, it covers all the people at the Tribune who are not management, and they are all paid according to a certain scale.

Senator Manning asked if there is any possibility that the Tribune would use this as negotiating power in its next contract to do away with overtime provisions.

Bert Lindler said the Tribune negotiates a contract.

Senator Blaylock asked how many cases inspired this bill.

Representative Lory said one case.

Mike Meloy said one case occurred, which brought the question to the attention of the newspapers.

Senator Towe referred to the amendments, page 6, line 23 and asked what "or otherwise" means.

Mike Meloy said it really means to exclude all ad salesmen.

Senator Towe asked who sells advertising for a newspaper and what does Mr. Meloy mean by newspaper. Obviously the Tribune and the newspapers, what about the local and county newspapers?

Mike Meloy said yes, he means those too.

Senator Thayer said retail salesmen working on a commission where overtime had not been expressly authorized.

Mike Meloy said that is fine.

Senator Keating asked if an employer negotiates employment with an employee and says this is how I will pay you, they have a written agreement as to how the pay was to be arrived at. Would that contract be superceded by anything in the law?

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Mike Meloy said that contract would supercede anything unless the contract said "you will work more than 40 hours a week, and we won't pay you anything extra for doing that, and you are not included in the category of exempt people."

Representative Lory closed, saying he would like to point out to Mr. Lindler that, he was not putting the Tribune out as exempting.

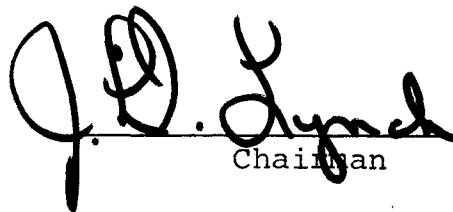
EXECUTIVE ACTION ON SENATE BILL 194: Senator Manning presented amendments to Senate Bill 194.
(Exhibit No. 2)

Senator Lynch stated that amendments 1, 2 and 4 have already been adopted.

Senator Manning moved the amendments. On a voice vote, the committee voted unanimously that the amendments pass.

Senator Haffey made a motion that Senate Bill 194 Do Pass As Amended. On a voice vote, the committee voted unanimously that SENATE BILL 194 DO PASS AS AMENDED.

ADJOURNMENT: The committee adjourned at 2:05 p.m.


Chairman

STANDING COMMITTEE REPORT

February 7

1985

MR. PRESIDENT

We, your committee on Labor and Employment Relations

having had under consideration Senate Bill No. 194

first reading copy (white)
color

LICENSING THOSE WHO USE EXPLOSIVES IN CONSTRUCTION

Respectfully report as follows: That Senate Bill No. 194

be amended as follows:

1. Page 2, line 17.

Following: "logging,"

Insert: "geophysical work,"

2. Page 7, line 23.

Following: line 22

Strike: "the respective program area"

Insert: "administering [this act]"

3. Page 8, line 1.

Following: "[section 9]"

Insert: ", except that, unless the division is making an investigation under [section 11 (2)], the division does not have the power under [this act] to make inspections into construction blasting and may not adopt rules providing for such inspections or for inspectors to carry out such inspections"

4. Page 9, line 16.

Following: line 15

Strike: "NEW SECTION."

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

SENATOR J.D. LYNCH

Chairman.

Labor and Employment

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 2/7/85

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
1 Senator Aklestad	X		
46 Senator Blaylock	X		
9 Senator Haffey	X		
20 Senator Keating	X		
49 Senator Manning	X		
33 Senator Thayer	X		
Sentor Towe	X		
5 Chairman Lynch	X		

Each day attach to minutes.

Feb 16

Labour & Employment

Please Print!

Check One	
Support	Oppose

(Please leave prepared statement with Secretary)

Senate Labor Committee

Dear Senator:

As newspaper advertising employees working for the Great Falls Tribune, we would encourage you to oppose HB285 when it appears before your committee.

We were shocked to learn that Rep. Earl Lory had singled out newspaper advertising employees for exclusion from the state's overtime laws.

What have we done to merit this close attention? We can assure you that advertising salespeople work under close supervision, just as other employees covered by the state's overtime laws.

Most classified advertising salespeople stay in the office all day taking calls over the telephone or selling ads for small promotions. While retail advertising employees may spend half the day or more calling on businesses to solicit advertising, they are responsible to a supervisor.

Retail advertising employees aren't the only newspaper employees who spend much of their day outside the office. Reporters do too. But they, too, are responsible to a supervisor.

Employees in both the classified and retail advertising departments receive commissions when their sales exceed certain levels. However, we are hourly employees and our commissions are rarely more than a few percent of our hourly salary.

We might add that newspaper employees are not the only media employees who sell advertising. So do radio and television station employees.

We feel we are being unfairly singled out for reasons no one has even told us about. Already nearly two-thirds of the letters of the alphabet have been used listing exclusions to the state's overtime law. Save the rest of the alphabet for a better cause. Kill HB 285.

Thanks for your support.

Sincerely,

Guthrie Peil
Andrea Turnbull
RICHARD JUPKA
Lefon M. Brummeier
Diana Geise
Dee Hagen
John Steens
M. J. Juss

Ed Thamer
Herbert Houghton
B. R. Houghton
Thomas R. Johnson
Patricia L. McIntire
Pamela Salket
William
J. Beatty
John D. Dillards

Proposed amendments to SB 194, introduced copy.

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