

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT COMMITTEE
MONTANA STATE SENATE

February 19, 1985

The thirteenth meeting of the Labor and Employment Committee was called to order at 1:00 p.m. on February 19, 1985, by Chairman J. D. Lynch in Room 413/415, State Capitol.

ROLL CALL: All members were present except for Senator Haffey, who was excused.

CONSIDERATION OF SENATE BILL 356:

Chairman Lynch called on Senator Stan Stephens, sponsor of Senate Bill 356. Senate Bill 356 is a piece of legislation that would provide that an independent contractor contracting with a newspaper need not elect to be bound personally and individually by a workers' compensation plan.

PROPOSERS OF SENATE BILL 356:

George Remington, publisher, representing the Billings Gazette, spoke in support of SB 356 and submitted written testimony. (Exhibit No. 1)

George Allen, representing Montana Retail Association, supports Senate Bill 356. He said his group didn't fall when the net was thrown out to correct the problem on independent contractors. It was intended to include this type of independent contracts.

OPPOSERS OF SENATE BILL 356:

Jim Murry, representing Montana AFL-CIO, Executive Secretary, asked the committee to be careful in making these exemptions.

QUESTIONS FROM THE COMMITTEE:

Senator Blaylock asked if this is needed, or could these people be excluded under the present law.

Bill Palmer, Department of Labor, said the mechanism is to establish independent contractors as they apply. The department has granted 300 exemptions since the bill went into effect and probably denied twice that many.

Senator Blaylock said that every individual newsboy would have to ask for an exemption. Bill Palmer said yes.

Senator Keating said when Mr. Palmer says 900 have made applications for exemptions, he's talking in general.

Bill Palmer said yes, he's not just talking about newsboys.

Senator Keating asked if Mr. Palmer recalled if newsboys have made application for exemption. Mr. Palmer said he couldn't answer that question.

Senator Thayer asked if a newsboy did apply for an exemption, how would this be dealt with.

Bill Palmer said it depends on the circumstances. The rule required them to demonstrate that they are an independent contractor by certain specifications. Do they pay social security on themselves; do they withhold and submit quarterly tax payments?

Senator Aklestad asked if this isn't a lot of hassle for the newsboy or people who are doing the extra paper work to get the exemption.

Bill Palmer doubted it. Under current rule, for the newsboy to get an exemption, he would have to show that he was, in fact, an independent contractor.

Senator Blaylock said if a newsboy, delivering for the Billings Gazette in Laurel, Montana fell and really hurt himself, and couldn't operate, could he collect under workmens' compensation. Bill Palmer asked, "Right now?" Senator Blaylock said yes.

Bill Palmer said that in his opinion, the newsboy would be considered an employee. That is an issue that would have to be determined by the courts.

Senator Manning asked in the event that this fellow does not get an exemption, why couldn't he collect? If he is not exempt and not eligible to be exempt, why would he collect benefits?

Bill Palmer answered, "Why wouldn't he collect benefits? It depends upon whether or not there was a dispute by the insurer that he was, in fact, an independent contractor."

Chairman Lynch said that under this bill now, if the bill was passed, and the same newsboy is injured, the paper would be liable for medical expenses.

Mike Meloy, attorney, said it is more complicated than that. There is some coverage that most papers afford news carriers,

which is not under the workers' compensation system. The question that this bill addresses doesn't get to that determination. The determination of an independent contractor or an employee is going to be made by a court.

Senator Towe asked if this is to exempt independent contractors from workers' compensation or not. Mike Meloy said no. Senator Towe asked what it will do. Mike Meloy said it will exempt them from the requirement that they apply to the division for a certification that they are independent contractors.

Senator Towe asked, if the bill passes, then they don't have to apply to become independent contractors, but if an independent contractor establishes itself, doesn't that mean they are exempt? Mike Meloy said yes.

Senator Towe asked if they did go through the process themselves and were exempted, then they would be independent contractors.

Mike Meloy said that would be a determination made by the division.

Senator Towe said in this case, Mr. Meloy is asking the committee to eliminate the need for filing the application. Mike Meloy said yes. Senator Towe asked what the effect of that is.

Mike Meloy said the effect is that they will not have to go through the process of filing an application but their status as an independent contractor or an employee is not affected.

Senator Towe asked if the division would make the decision. Mike Meloy said no, the division has nothing to do with it.

Senator Towe asked if the division anticipates making a ruling on newsboys.

Dave Wanzonried replied if the bill were to pass, the division wouldn't have to deal with the issue of newsboys. Senator Towe asked whether the division has been asked to make a ruling. Bill Palmer said no.

Senator Towe asked Mr. Meloy if there has been a request for a ruling from the department as to whether newsboys are or are not independent contractors.

Mike Meloy said his organization suggested to the division, in lieu of adopting the rule, they adopt one which would permit blanket rulings. They rejected that notion.

Senator Towe asked Mr. Remington what he saw as best for him -- did he want these newsboys covered or not covered. Mr. Remington said he doesn't want them covered. They are covered by a very low cost of insurance and if they are injured, that will cover them.

Senator Towe asked if that is different than Workers' Compensation and George Remington said yes, it is an accident type of insurance.

Senator Towe asked if Mr. Remington preferred that coverage because it is less expensive.

George Remington said he prefers it because it is less expensive and he is trying to get away from this paper blizzard. Senator Towe asked Mr. Remington if he thinks it is best to be covered or not to be covered. George Remington said he would prefer that newsboys be considered independent contractors.

Senator Towe asked Dave Wanzenried what is wrong with the proposal that Mike Meloy made about a blanket decision as a group, so we don't have this paper blizzard.

Dave Wanzenried said if you look at the test, the A, B, C test, it is a case by case basis. That is a test the department required to give to anybody applying for a contract.

Senator Keating said the department is saying that they have had 900 applications. In general, we are looking at 2,200 paperboys over the state who can't go with the blanket rule. By not passing this bill we are inviting 2,200 applications plus a great turnover for the paper persons, and that is what the paper blizzard is.

Senator Manning addressed a question to George Remington in regard to his present insurance coverage, asking him what kind of coverage it is.

George Remington said it is an accident-type policy for the paperboys if they get hurt on the job.

Senator Blaylock asked if the committee could do something that says newsboys could be covered by workers' compensation and not have the paper blizzard. If it has to be a paper blizzard, then Senator Blaylock thinks the newspapers have a really good case.

Senator Towe asked Mr. Remington if he could provide (1) the difference in coverage between the policy that he presently has and workers' compensation; (2) the difference in cost.

George Remington said the last time he checked, the estimate was that his cost would double with workers' compensation costs.

Senator Stephens closed on Senate Bill 356. He feels this is a fine piece of legislation. He requested a Do Pass, not necessarily just for the newspaper profession but to clear away an ambiguous situation for young men and women delivering their home town newspaper.

The hearing was closed on Senate Bill 356.

CONSIDERATION OF SENATE BILL 393:

Chairman Lynch called on Senator Tom Keating, sponsor of Senate Bill 393. Senator Keating offered amendments to delete everything in this bill except the very first topic, which is abolishing the Board of Labor Appeals and transferring the board's function to the commissioner of Labor and Industry. (Exhibit No. 2)

Chad Smith, representing Montana Land Improvement Contractors, Montana Hospital Association and Unemployment Compensation Advisors, supports Senate Bill 393 and said his groups accede to the amendment proposed by the sponsor of the bill, which he mentioned leaves only that portion to be considered relating to the Board of Appeals. The key words that he wants to emphasize are "speed and accuracy."

George Allen, representing Montana Retail Association, rose in support of Senate Bill 393. (Exhibit No. 3)

Janelle Fallan, representing the Montana Chamber of Commerce, said Workers' Compensation is her members' top priority this legislative session. Her members support the unemployment compensation system as long as it is used for what is intended.

Jack Martinz, representing Superior Fire Company, of which he is president and general manager, said his company supports this bill based on numerous experiences of his own and of other members. His company is not against unemployment insurance.

Dave Goss, representing the Billings Chamber of Commerce, said the Billings Chamber very strongly supports this bill.

Don Allen, representing Montana Woods Products Association, rose in support of Senate Bill 393 and requested the committee give it a Do Pass.

OPPONENTS OF SENATE BILL 393:

Eileen Robbins, representing the Montana Nurses' Association, rose in opposition to Senate Bill 393. (Exhibit No. 4)

Jim Murry, Executive Secretary, AFL-CIO, submitted testimony in opposition to SB 393. (Exhibit No. 5)

David Wanzenried, Commissioner of the Montana Department of Labor and Industry, gave the committee a handout on Unemployment Insurance Benefits Adjudication and Appeal Process. (Exhibit No. 6)

QUESTIONS FROM THE COMMITTEE:

Senator Thayer asked who the members of the board are and what their background is.

David Wanzenried said that Mike Whalen, an attorney from Billings, is the chairman; Arlen Plowman from Helena, represents employees; Jerry Overmier with the First Bank in Helena, represents employers. One member represents employees, one represents employers and there is a neutral chairman.

Senator Blaylock asked Mr. Wanzenried if he has the statistics of the number of times the Board of Appeals has overturned the ruling of the personnel officers.

David Wanzenried replied that he had some statistics with him which he would give to Senator Blaylock.

With no further questions from the committee, Senator Keating closed. He said what we are dealing with are claims for unemployment compensation. The dispute that occurs is between the employer and the employee as to the eligibility of the employee to draw from that unemployment fund when he loses his job. To put them into a category of employer and employee, he called the employee a claimant. Under the original determination the averages fell in favor of the employer about 55% of the time and in favor of the claimant about 45% of the time on the average through those three years. About 70% of the decisions made by the referee were in favor of the employer, and about 30% of the decisions went to the claimant

The hearing was closed on Senate Bill 393.

CONSIDERATION OF SENATE BILL 362:

Vice-chairman Manning, acting as Chairman, called on Senator Lynch who presented Senate Bill 362 for Senator Halley, who was excused. Senate Bill 362 increases the minimum wage to

30 cents per hour for each of the next two years. He said employees can't make ends meet on the present minimum wage.

PROPOSERS OF SENATE BILL 362:

Gail Kline, representing Women's Lobbyish Fund, spoke in favor of Senate Bill 362 and submitted testimony. (Exhibit No. 7)

Jim Murry, Executive Secretary of AFL-CIO, rose in support of Senate Bill 362 and submitted testimony. (Exhibit No. 8)

Dave Wanzenried, Commissioner, Montana Department of Labor and Industry, gave the committee a handy reference guide to the Fair Labor Standards Act. (Exhibit No. 9)

Kathleen Guehlstorff, representing herself, testified in favor of Senate Bill 362 and submitted testimony. (Exhibit 10)

Kelly Chandler, representing the Women's Lobbyist Fund, read as testimony, a letter from Kathy Van Hook who was not able to attend today. (Exhibit No. 11)

John Ortwein, representing the Montana Catholic Conference, rose in support of Senate Bill 362. (Exhibit No. 12)

OPPOSERS OF SENATE BILL 362:

George Allen, representing the Montana Retail Association, rose in opposition to SB 362. (Exhibit No. 13)

Janell Fallen, representing the Montana Chamber of Commerce, said that Mr. Allen had said everything she wanted to say. The Chamber opposes Senate Bill 362.

QUESTIONS FROM THE COMMITTEE:

Senator Keating asked Mr. Wanzenried, with regards to the raises in federal minimum wage and state minimum wage, if he had ever read national reports in regard to unemployment caused by the raise in the federal minimum wage.

Dave Wanzenried said no, but he had read reports regarding state minimum wage.

Senator Keating said he was talking about the unemployment. As the minimum wage goes up, is there a greater degree of unemployment, specifically attributable to the increase in the minimum wage. Dave Wanzenried said no.

Senator Thayer asked what category of people and how many people fall into this category.

There was no answer to that question.

Senator Blaylock asked Kathleen Guehlstorff if she works in Helena. Kathleen Guehlstorff said yes. Senator Blaylock asked what her daily average intake in tips was. Kathleen Guehlstorff said it depended on what shift she worked. The average would range from five to ten dollars.

Senator Towe asked Mr. Wanzenried if he had any statistics or information about who was affected by this bill. Dave Wanzenried said he didn't have that information. Senator Towe asked where these people work. Dan Wanzenried said in retail services, motels and hotels.

Mike Stump answered the question further. He represents Labor Standards Division of Department of Labor. He said Montana law covers employees that are not covered by the Fair Labor Standards.

Senator Thayer said Mr. Stump was talking about a percentage that has to deal with the number of employers. He asked if one could make a further assumption that of that 69,000 people who might fall into that category, a great deal of them are probably receiving more. Mike Stump said Senator Thayer was correct.

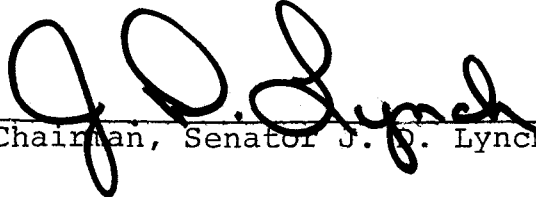
Senator Lynch closed the hearing on Senate Bill 362. He said we are talking about the people who are making the very least and those are the people Senator Haffey is trying to address in his bill.

Vice-chairman Manning turned the chair back over to Chairman Lynch.

The hearing was closed on Senate Bill 362.

ADJOURNMENT:

The meeting was adjourned at 2:20 p.m.


Chairman, Senator J. D. Lynch

Labor and Employment COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 2/19/85

SENATE SEAT #

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

Each day attach to minutes.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Marshall Fox	The IR	356		
Milton Ryan	The Montana Standard	356		
DON McKEEVER	GREAT FALLS TRIBUNE	356		
George Piminstin	The Billings Gazette	356		
Dick Weswick	The Billings Gazette	356		
LAURA STAFFORD	WOMEN'S LOBBYIST FUND	362	✓	
Edren Robbins	Montana Nurses Assoc	393		X
George Allen	MT Retail Assn	356	✓	
George Allen	✓ - ✓	362		✓
George Allen	✓ - ✓	393	✓	
Mike Stump	Labor & Industry			
Holly Munn	MONTANA	362	✓	
John Peterson	9th Cath Conf	362	✓	
Gracida Schobes			✓	
Connie Sullivan	YMT Chamber	393	X	
Kathleen Grahlsdorf	Women's Lobbyist Fund	362	✓	
Connie Sullivan	YMT Chamber	362		✓
Hail Klein	Women's Lobbyist Fund	362	✓	
David Wanzonred	Dept of Labor	362 393	✓	✓
Kelly Chandler	Women's Lobbyist Fund	362	✓	
Dick Debrauff	MT Fabrication Assn	393	✓	
Don Allen	MT Wood Products Assn	393	✓	
Jack Martens	Superior Tire	393	X	

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
<i>M</i>				
<i>Jeanie Connelly</i>	<i>MACO</i>	<i>362</i> <i>393</i>		
<i>Jim Perry</i>	<i>about AFL-CIO</i>	<i>362</i>	<input checked="" type="checkbox"/>	
<i>" "</i>	<i>" "</i>	<i>393</i>		<input checked="" type="checkbox"/>
<i>" "</i>	<i>" "</i>	<i>356</i>		<input checked="" type="checkbox"/>
<i>A. M. Ellwell</i>				

(Please leave prepared statement with Secretary)

February 19, 1985

Statement by George D. Remington, publisher of The Billings Gazette.

Before the Senate Committee on Labor and Employment Relations In support of Senate Bill 356.

I urge your support of this legislation to grant Montana's newspapers an exemption from a law that for all practical purposes is unenforceable for an industry using large numbers of independent contractors.

I believe the Workers' Compensation Division came to that conclusion last year when it unsuccessfully wrestled with the problem of trying to write a rule to implement the law.

It became clear that the paper work involved would overwhelm the Worker's Compensation Division as well as the newspapers of this state.

This law, which was enacted by the 1983 Legislature requires that independent contractors either be covered by Workers' Compensation or apply for an exemption. The Legislature, before passing this measure two years ago, saw fit to exclude independent contractors performing work in agriculture and those selling real estate.

Let me give you an idea of the problem faced by newspapers.

There are about 2,200 newspaper carriers in Montana. These are truly independent contractors. They buy papers from the publisher at wholesale and sell them to their customers at retail.

The Billings Gazette alone, at last count, had 731 foot and motor route carriers, 250 of them in the Billings metropolitan area, the rest scattered around the 80,000 square miles of Montana and Wyoming that we call our circulation area. The foot carriers are mostly boys and girls 11 to 14 years.

Multiply those 2,200 carriers in Montana by as many as five times, to take into consideration substitute carriers, moms, dads, brothers, sisters and friends

Remington statement on SB356---2.

who occasionally fill in for the youngsters. Imagine the burden of providing coverage or requesting exemptions for all these persons. Compounding the problem is the fact that carrier turnover is more than 100% per year.

Carriers aren't the only independent contractors who serve newspapers. Correspondents are another. The 11 dailies in the state have an estimated 125 to 150 correspondents; the 76 weeklies have 500 to 700, many of them homemakers who may spend a few hours a week gathering news of their communities.

There is no standard method of payment for these correspondents. Most are truly free-lance writers or photographers. Some of them sell material to several publications, often in more than one state.

So who covers them? Can you force them to cover themselves? Would they bother to apply for an exemption? Why should they?

Here again, is another category where there is considerable turnover, adding more volume to the paper blizzard.

There's another complicating factor. Workers' Comp rates are based on category of employment and wages paid. Since there's no set standard of payment for carriers and correspondents, we're confronted with another administrative nightmare.

These are the circumstances that make it next to impossible to write a rule that would apply this law to the types of independent contractors engaged by newspapers. Approval of Senate Bill 356 will spare the state and the newspaper industry the horrendous burden of trying to enforce the unenforceable.

Proposed amendments to SB 393, introduced copy.

1. Title, lines 6 through 15.

Following: "INDUSTRY;" on line 6

Strike: "INCREASING" through "BENEFITS," on line 15

2. Title, line 16.

Following: "39-51-603,"

Strike: "39-51-2105,"

3. Title, line 17.

Following: line 16

Strike: "39-51-2201, 39-51-2302,"

4. Title, lines 19 and 20.

Following: "DATES" on line 19

Strike: "AND" through "DATE" on line 20

5. Page 9, line 2 through page 12, line 10.

Following: line 1 on page 9

Strike: Sections 4 through 6 in their entirety.

Re-number: subsequent subsections

6. Page 18, line 23.

Following: "1 through"

Strike: "3, 7 through 12"

Insert: "9"

7. Page 18, line 24.

Following: line 23

Strike: "14"

Insert: "11"

Page 2 of proposed amendments to SB 393, introduced copy.

8. Page 18, line 25.

Following: "(2)"

Strike: "Sections 4 through 6, 13,"

Insert: "Section 10"

9. Page 19, lines 1 and 2.

Following: "1985" on line 1

Strike: ", and" through "1985" on line 2

2/19/85

Executive Office
P.O. Box 440
34 West Sixth
Helena, MT 59624
Phone (406) 442-3388



SENATE BILL NO. 393

Mr. Chairman and members of this committee:

For the record my name is George Allen, Executive Vice President for the Montana Retail Association.

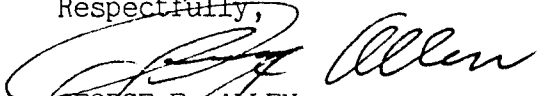
We are here today in support of S.B. 393, as amended.

Abolishing the Labor Appeals Board makes a lot of sense to me. We have a qualified head of the Department of Labor who can make those decisions.

Who is closer and more sensitive to the problems of the employer and employee than the Administrator of the Department of Labor.

The Montana Retail Association strongly supports S.B. 393, as amended.

Respectfully,


GEORGE E. ALLEN
Executive Vice President

2/19/85

NAME Eileen Robbins BILL NO. 393
 ADDRESS P.O. Box 5719 DATE 2/19
 WHOM DO YOU REPRESENT Montana Nurses' Assoc.
 SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Montana Nurses' Assoc. opposes SB 393, for the following reasons:

- 1) the current process of the Bd. of Labor Appeals works well,
- 2) although several decisions by referees are reversed by Board, the reason may lie with the increase in information produced & reviewed by the Board
- 3) the Board of Labor Appeals is an impartial Board of years of expertise in Employee-Employer relations & unemployment compensation.
- 4) The current system allows for impartial review of cases without undue expense to employees - ~~an~~ employees who is already out of work and without a wage to live on.

Please give this bill a DO NOT PASS RECOMMENDATION.

Respectfully
 Eileen Robbins



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON SENATE BILL 393, HEARINGS OF THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 19, 1985

Senate Bill 393 would abolish the Board of Labor Appeals. The Board of Labor Appeals serves as the final administrative appeals tribunal in the unemployment insurance appeals process. It represents the final appeal short of district court. It is an independent, part-time, quasi-judicial citizens board, appointed by the Governor, and confirmed by the Senate.

While we are not always pleased with the board's decisions, it has worked and worked well for Montana's workers, employers and citizens.

Senate Bill 393 would place the burdens and responsibilities of the Board of Labor Appeals upon the Commissioner of Labor and Industry -- duties and responsibilities the Commissioner could not likely perform without additional staff and increased expense. This bill would not save money, rather it would increase the costs of administering the unemployment insurance system.

Placing the entire administrative unemployment insurance appeals process within the Department of Labor and Industry and under the supervision of the Commissioner, would unduly influence the appeals process. The Commissioner would be required to review the decisions of its own staff. It would be difficult to maintain impartiality under such circumstances. Appellants could hardly have much confidence with such a process.

The Board of Labor Appeals hears and decides contested decisions made by the Department of Labor and Industry. To replace the board with the Commissioner would do little to promote independence in the appeals process. We cannot expect that the Commissioner, who has administrative responsibilities for the Unemployment Insurance Division, will be able to assume the role of an impartial, independent, quasi-judicial decision maker.

We cannot make the trust fund solvent by denying benefits to qualified claimants. Workers and employers deserve an impartial and independent appeals process. The Board of Labor Appeals provides that independence and impartiality. The system is not broke, and it does not need to be fixed.

Senate Bill 393 is a slap in the face of those Montana workers who have been forced to take low wage part-time jobs. It would make it more difficult for those who cannot find and obtain good jobs to qualify for unemployment insurance benefits. This bill would force more of the working poor through the "safety net".

The provisions of this bill that would raise the minimum qualifying wages from \$50.00 to \$100.00 per week and total qualifying wages from \$1,000.00 to \$2,000.00 would exclude many of those who have been forced to take poor jobs. As proposed by this bill, a worker earning \$2.75 per hour, Montana's minimum wage, would have to average 36 hours per week for twenty weeks to

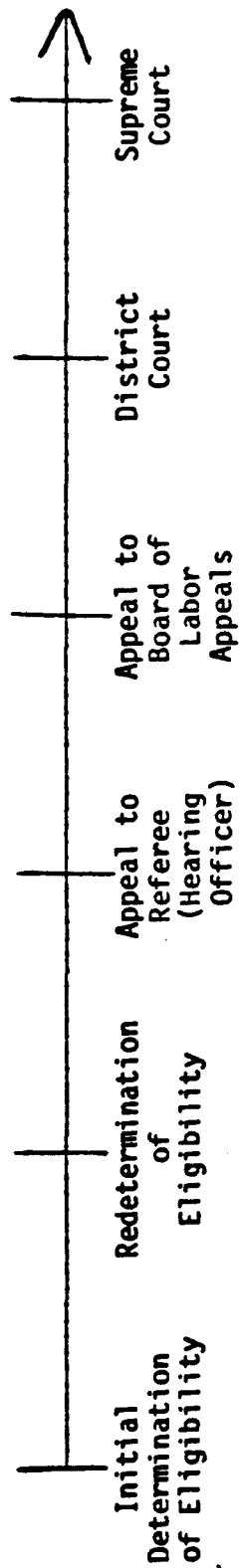
qualify for unemployment insurance benefits. To be forced to accept and go to work at a part-time minimum wage job is a desperate situation. To be laid-off from such a poor job would be a disaster. But to be laid-off from such a job and not be eligible for unemployment insurance benefits is a hardship we have no right to impose upon anyone. It would be adding injury to insult.

Senate Bill 393 would also broaden the disqualifications and increase the penalties for leaving work without good cause. To raise the wage requirements for requalification after leaving work without good cause from six to eight times the weekly benefit amount is unnecessary and vindictive. The requalification requirements should be reduced, not increased. To limit good cause only to those factors attributable to employment would deny benefits to those who must leave their jobs because of family obligations, to care for a disabled parent or a sick child, to follow a spouse who has been transferred. These limitations would be a powerful disincentive to the traditional American way of life. These restrictions would make it more difficult to maintain the traditional family unit and structure.

Senate Bill 393 is an attempt to fix something that isn't broke. To eliminate the Board of Labor Appeals would be a step backward to the days before executive reorganization.

There was good reason then to place the final step of the appeals process in an independent, impartial, quasi-judicial board. There is no good reason to go back to the old ways. We urge you to vote against Senate Bill 393.

**UNEMPLOYMENT INSURANCE
BENEFIT ADJUDICATION & APPEAL PROCESS**



UNEMPLOYMENT INSURANCE

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

February 18, 1985

Testimony of the Women's Lobbyist Fund by Gail Kline, before the Senate Labor and Employment Committee in support of SB 362

Mr. Chairman and other members of the Labor and Employment Committee:

For the record, my name is Gail Kline, representing the Women's Lobbyist Fund (WLF), speaking in favor of SB 362.

The passage of SB 362 is a major issue for the WLF because poverty is a major issue for women.

A 1979 study shows that nationally, one out of every three families headed by women lives in poverty, compared to one out of nine households headed by men. ("Women Who Head Families: Employment Problems and Perspectives," Employment and Training Report of the President 1979, p. 95). In Montana, over 30% of households headed by females have an income below poverty level. Over 38,000 Montana women over 16 years old earn an income below poverty level.

In Fiscal year 1983, the Montana Job Service placed 1,317 women at jobs that pay less than federal minimum wage. That same year, twenty-six per cent more women than men were placed in jobs paying less than \$3.35 per hour.

Minimum wage in Montana is currently \$2.75/hour. This rate has been in effect since July 1982. The inflation rate since 1982 has totaled more than 12%. The gross annual income for a full-time worker at \$2.75 an hour is \$5,720 per year, \$2,760 below the Federal poverty level for a family of three. SB 362 proposes a two step increase: \$3.05 the first year and \$3.35 the second year. This amounts to a gross annual increase of \$624 each year. This is not very much money but it would mean an extra \$1.70 per day for food, rent power bills and medical care, and \$3.40 per day the second year.

We all know that the cost of living in Montana is not low. We are very close to, and in several areas above, the national average. An index report of the American Chamber of Commerce Researchers Association for the third quarter of 1984 shows, with the national average being considered at 100, that Billings was rated at 105.7; Great Falls, 94.3; Havre, 97.1; Missoula, 95.6; Kalispell, 103.7; Helena, 101.2. We cannot continue to expect workers to earn \$.60 less an hour than the Federal minimum wage in a state where the cost of economic survival rivals costs nationwide. In 1984 in Montana, there were more than 800 single working women with families required to supplement their income with Aid to Families with Dependent Children.

All taxpayers are being required to subsidize employers who do not pay their employees enough to feed their families.

"To ignore these implications is unconscionable negligence. The bodies, minds, spirits of millions of women and children are being inevitably affected by the dispiriting hand of poverty." (A Growing Crisis: Disadvantaged Women and their Children. U.S. Commission on Civil Rights, May 1983.)



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON SENATE BILL 362 BEFORE THE SENATE LABOR AND EMPLOYMENT
RELATIONS COMMITTEE, FEBRUARY 19, 1985

Mr. Chairman and members of the Committee, for the record, I am Jim Murry, representing the Montana State AFL-CIO. We are here to wholeheartedly support passage of Senate Bill 362.

This proposal tackles an issue of basic equity. Minimum wage standards were originally enacted into law in order to provide an economic stabilization measure to lower income workers. These standards were enacted as much to protect the American economy from the extreme "lows" of economic recession as to help raise the living standards of those referred to as the "working poor".

The AFL-CIO has traditionally supported increasing minimum wage rates, not because our members are directly affected, but because we are deeply concerned about the working conditions and wage rates of all American workers. We also, as citizens of this country, benefit from the economic stabilization which occurs when people have money to put back into the economy, money earned from gainful employment.

A blue ribbon commission established by the U.S. Congress in 1977 spent three years studying minimum wage issues. According to the Minimum Wage Study Commission, it is a popular misconception that most workers receiving minimum wage are teenagers.

In 1980, 10.6 million workers held jobs at or below federal minimum wage and 69% of them were not teenagers. What was true then is even more likely now, with the economy in dire straits and unemployment remaining at persistently high rates. Neither the Montana economy nor the national economy is producing jobs that can replace the wages that have been lost over the past few years because of plant closures and layoffs.

Laid off workers, who have families to support, are being forced more and more into those jobs that only pay federal or state minimum wage rates. Our entire economy, from the local main street merchant to the national banker, will suffer in the future from this basic transition.

The \$3.35 minimum wage proposed by this bill for 1986 would still only provide \$134 for a 40-hour week. That may mean a total of \$6,986 for a year, before taxes from which to pay rent, utilities, food, clothing and other necessities. These workers' earnings go directly into paying for daily survival. Therefore, any increase in the minimum wage rate will go directly into the Montana economy, stimulating other businesses while helping to create more employment.

Very often, those who work for minimum wage are workers with few skills who end up in dead-end jobs with little chance for advancement. More and more Montana family breadwinners are dependent on the incremental increases granted by this legislative body raising the minimum wage as their only weapon against economic devastation.

Minimum wage workers bear a disproportionate share of the burden of economic hard times. Please vote to grant this critically necessary increase of the state minimum wage rate.

Thank you.

Handy Reference Guide to the Fair Labor Standards Act

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1282
Revised January 1981



The Fair Labor Standards Act establishes minimum wage, overtime pay, record-keeping and child labor standards affecting more than 50 million full-time and part-time workers.

Basic Wage Standards

Covered non-exempt workers are entitled to a minimum wage of not less than \$3.35 an hour beginning January 1, 1981 and should receive overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.

Wages required by the Act are due on the regular pay day for the pay period covered. Deductions made from wages for such items as cash shortages, merchandise shortages, etc., are not legal to the extent they reduce the wages of employees below the minimum rate required by the Act or reduce the amount of overtime compensation due under the Act.

Hospitals and residential care establishments may adopt, by agreement with the employees, a 14-day overtime period in lieu of the usual 7-day workweek, if the employees are paid at least time and a half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.

The Act contains some exemptions from these basic standards. Some apply to

specific types of business; others apply to specific kinds of work.

While the FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which the Act does not regulate. For example, the FLSA does not require:

- vacation, holiday, severance or sick pay
- rest periods, holidays off, or vacations
- premium pay for weekend or holiday work
- pay raises or fringe benefits
- a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees

These and similar matters are for agreement between the employer and the employees or their authorized representatives.

Who Is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the Act.

A covered enterprise is the related activities performed through unified operation or common control by any per-

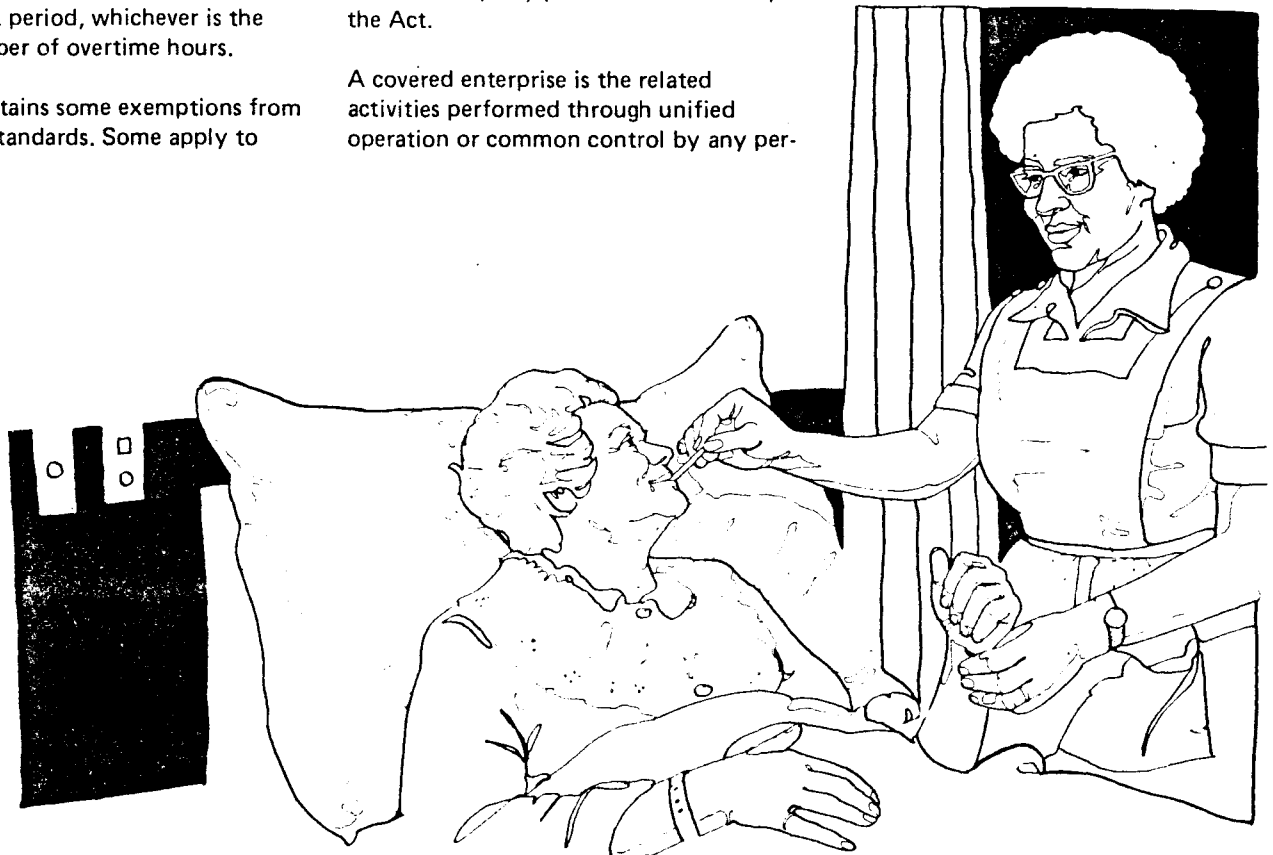
son or persons for a common business purpose and is—

- (1) engaged in laundering or cleaning of clothing or fabrics; or
- (2) engaged in the business of construction or reconstruction; or
- (3) engaged in the operation of a hospital; an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises; a school for mentally or physically handicapped or gifted children; a pre-school, an elementary or secondary school; or an institution of higher education (regardless of whether or not such hospital, institution or school is public or private or operated for profit or not for profit); or
- (4) comprised exclusively of one or more retail or service establishments (as defined in the Act) whose annual gross volume of sales or business done is not less than—

Beginning July 1, 1978
\$275,000

Beginning July 1, 1980
\$325,000

Beginning January 1, 1982
\$362,500



(Any retail or service enterprise which had an annual gross volume of not less than \$250,000 on June 30, 1978 and which later ceases to be a covered enterprise as a result of increases in this dollar volume test must continue to pay its employees at least the minimum wage in effect at the time of the enterprise's removal from coverage, as well as overtime in accordance with the Act.)

- or
- (5) any other type of enterprise having an annual gross volume of sales or business done of not less than \$250,000

The dollar volume standard mentioned above in (4) and (5) excludes excise taxes at the retail level which are separately stated.

Federal employees are subject to the minimum wage, overtime, and child labor provisions of the Act. Employees of State and local governments are subject to the same provisions, unless they are engaged in traditional governmental activities. The Supreme Court has indicated that such traditional governmental activities include schools, hospitals, fire prevention, police protection, public health, parks and recreation.

Employees who are not employed in a covered enterprise may still be entitled to the Act's minimum wage, overtime pay, and child labor protections if they are

individually engaged in interstate commerce. These include—

- (a) communication and transportation workers;
- (b) employees who handle, ship, or receive goods moving in interstate commerce;
- (c) clerical or other workers who regularly use the mails, telephone, or telegraph for interstate communication or who keep records on interstate transactions;
- (d) employees who regularly cross State lines in the course of their work; and
- (e) employees of independent employers who perform clerical, custodial, maintenance, or other work for firms engaged in commerce or in the production of goods for commerce.

Domestic service workers such as maids, day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are covered if they (1) receive at least \$50 in cash wages in a calendar quarter from their employer or (2) work a total of

more than 8 hours a week for one or more employers.

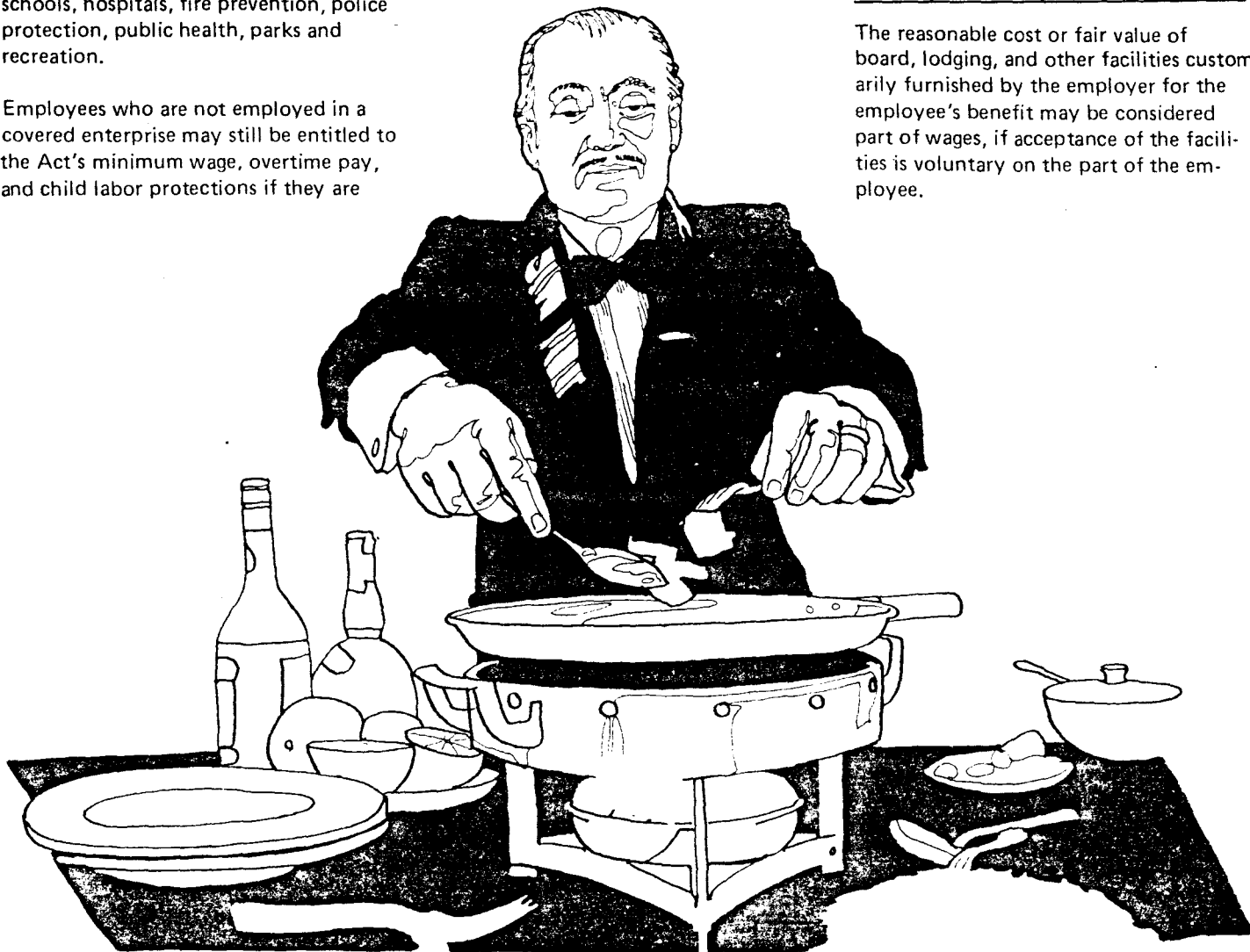
Tipped Employees

Tipped employees are those who customarily and regularly receive more than \$30 a month in tips. The employer may consider tips as part of wages, but such a wage credit must not exceed 40 percent of the minimum wage.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Employer-Furnished Facilities

The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages, if acceptance of the facilities is voluntary on the part of the employee.



TESTIMONY BY KATHLEEN GUEHLSTORFF
FEBRUARY 19, 1985
BEFORE THE SENATE LABOR AND EMPLOYMENT
RELATIONS COMMITTEE ON SENATE BILL 362

Mr. Chairman and Members of the Committee:

I am testifying in favor of Senate Bill 362, to raise the state minimum wage. I have worked as a waitress off and on since 1971. Most recently I worked from September, 1984 to February, 1985. It is this last work experience that I will be referring to in my testimony. Before I proceed, I would like to absolve my former employer. The paying system is typical of restaurants in Montana and in no way reflects particularly bad management on the part of my former employer.

The base rate of pay was \$ 3.10 an hour for waitresses. We paid for our own meals. Tips were arbitrarily assumed to be 8% of the total food bill for each of our customers and it was upon this that we were taxed. Our total tax was based, therefore, upon the sum of our hourly wage and the food bill percentage. For a gross amount of \$288.15, for instance, earned over a two week pay period, I would actually take home a \$85.94 paycheck. It was common for the waitresses to "live off their tips". However, these in -hand tips did not always equal the 8%of the food bill. Generally speaking, people tip the easiest amount possible. The average tip is "a Buck". So for a meal costing anywhere from \$8-\$30 , we would usually receive \$1. There were many times when people left nothing at all even though we were being taxed upon their food bill. We called this "being stiffed". At the end of the day, we had to give 10% of our day's in - hand tips to the kitchen staff. That meant we were the only ones being taxed for tips even though we were giving 10% away.

At my former place of employment, lunch hours were the best times to make tips. Many times we made enough to get by, but quite often we made less than \$5 for the lunch hour shift tips. This was very hard on the single mothers who used their tips to pay for child care. They claimed that on days like that it did not pay them to come to work. From the hours of 3:pm to 5:00pm business was very slow. More often than not the waitress working that shift made no tips at all during those hours.

TESTIMONY OF K.GUEHLSTORFF (CONT.)

Another aspect of the pay situation for waitresses is the inconsistency of scheduled hours to work. Even though our bills were due at set times and in fixed amounts, we were scheduled for different numbers of hours each week and for different shifts. Again, this put a real strain on the waitresses who were trying to arrange for child care .

Most people are under the assumption that waitresses make a lot of money in tips. That is certainly not the case for most waitresses in Montana. At the time I was hired, I was living on unemployment. It surprised me to learn that I brought home less than half of what I was making on unemployment as a waitress. Another misconception that people have is that if the cost of living is increased, for instance , a menu increase or a wage increase, the amount customers tip will be increased as well. I worked through a period of time at my last place of employment in which the cost of the food items was increased. I found there to be no concomitant increase in tipping. The average tip was still " a buck".

I believe that it would really help if the base rate of pay were increased because it would be a reliable source of income and not dependent on the whim of the customers.

K. Guehlstorff
February 19, 1985

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

NAME: Kelly Chandler DATE: 2-19-85

ADDRESS: Box 1099 Helena, MT 59624

PHONE: 449-7917

REPRESENTING WHOM? Kathy vanHook, small business owner

APPEARING ON WHICH PROPOSAL: S.B. 362

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: Kathy van Hook was unable to attend and asked that I read her letter of testimony.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



February 19, 1985

Senate Labor and Employment
Relations Committee
Montana Legislature
Helena, MT 59601

Dear Chairman Lynch and Committee Members:

I sincerely regret not being able to attend the hearing on SB 362.

This is a bill I strongly support and feel it is important for you to hear from business people who favor increasing the state minimum wage. I am an owner and co-manager of a family-run business in Helena that grosses less than \$362,500 per year. We are not required to pay federal minimum wage, but we start new employees in excess of \$3.35 per hour.

Every day, I face the need to keep our business expenses down, but I do not believe that over the long haul, employers save money by paying employees \$2.75 an hour. The rate of pay a person receives is an indication to that person of their value to their employer. Equal only to an employer's working relationship with employees, pay is critical to employee economic well-being, morale, productivity, longevity, commitment and attitude.

We have been in business for over five years and attribute a significant part of our success to low turnover, good morale, low absenteeism and people who have a commitment to working with us to make our business successful.

Another Montana small business person, Gene Herndon of the Double Front cafes in Missoula and Bozeman, shares my feelings and agreed to let me quote from a recent interview with him in Western Business.

"Most of Mr. Herndon's 16 employees in Missoula are long-term. He has had one cook for 20 years. The daytime cook and waitress have both been there for 10 years. His bookkeeper has been with him for nine years (before that, he did his own books).

'You pay a person what they're worth and they'll stay. You pay them minimum wage, and they'll be gone soon, and you won't have good help.'"

Testimony by Kathy van Hook

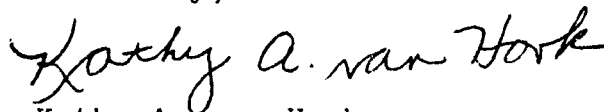
Page 2

The cost of basic necessities is no less for employees in small businesses or small towns and \$2.75 an hour will not buy the basic necessities.

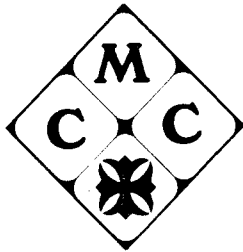
Many full-time workers earning \$2.75 an hour have, in the past, been eligible for federal assistance programs. With the recent cuts in many of these programs, we cannot count on their incomes being supplemented to help feed their families.

I urge you to give serious consideration to passage of SB 362.

Sincerely,

A handwritten signature in cursive script that reads "Kathy A. van Hook". The signature is written in black ink and is positioned above the printed name.

Kathy A. van Hook



Montana Catholic Conference

February 19, 1985

CHAIRMAN LYNCH AND MEMBERS OF THE SENATE LABOR AND EMPLOYMENT COMMITTEE:

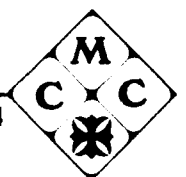
I am John Ortwein representing the Montana Catholic Conference.

I am here today as a supporter of Senate Bill 362.

The first draft of the Bishops' Pastoral on the economy begins with this quote: "The dignity of the human person, realized in community with others, is the criterion against which all aspects of economic life must be measured."

A study by the Federal Reserve Board, Division of Research and Statistics, entitled, "Survey of Consumer Finances, 1983" which was completed in September of 1984, gave the following information. The poorest fifth of the U.S. population received only 4% of the total personal income in the country in 1982, and the poorest two-fifths got only 13%. The richest fifth got 49% of the total income that year. It also noted that disproportionate numbers of the poor are women and minorities.

Passage of Senate Bill 362 is a step in helping women, minorities, and others to a self-realization of their dignity as persons. I urge your support.



2/19/85

Executive Office
P.O. Box 440
34 West Sixth
Helena, MT 59624
Phone (406) 442-3388



SENATE BILL NO. 362

Mr. Chairman and Members of this Committee:

For the record, my name is George Allen, Executive Vice President for the Montana Retail Association.

We are here to oppose S.B. 362. This bill will hurt the small retailer and businessmen. Expecially those located in the small rural communities.

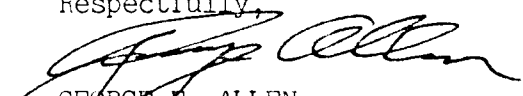
This bill only effects the small guy. The Federal law already deals with this problem in the medium and larger businesses.

Productivity in a small store is extremely low compared to the super markets. Example: In a small store it is not uncommon for a clerk to sell below \$100 in an eight-hour shift, compared to a checker in a supermarket who can take in several thousand dollars in an eight-hour shift!!

According to the Small Business Administration, last year there were over 100 small business that went broke in Montana. It just doesn't make sense to me that during these tough economic times we should be considering raising the state minimum wage.

We strongly urge you to kill Senate Bill No. 362.

Respectfully,


GEORGE E. ALLEN
Executive Vice President