

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT COMMITTEE
MONTANA STATE SENATE

March 12, 1985

The twentieth meeting of the Labor and Employment Committee was called to order at 1:00 p.m. on March 12, 1985, by Chairman J. D. Lynch in Room 413/415, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 453:

Chairman Lynch called on Representative Dorothy Bradley, sponsor of House Bill 453. She directed the committee's attention to page 6, line 6, because the old language is the issue and that is what she is trying to change. It says "compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period." Representative Bradley has proposed changes and made an exception in that rule so you can get temporary total disability benefits and you would still be eligible for indemnity benefits. On page 5, lines 15-17, it puts retraining clearly under temporary total disability benefits, which is where it should be.

PROPOSERS OF HOUSE BILL 453:

Karl Englund, representing Montana Trial Lawyers Association, said under the current system, someone would have to forego the training, because they would not be entitled to their benefits while they are in retraining. This is not a question of expanding the amount of the indemnity benefits a person is going to get, it is a question of when they are going to get them and if they need them while they are in retraining. This bill will make it so they are allowed to get benefits, therefore it is a good bill.

Jan VanRiper, representing the Montana Department of Labor and Industry, said the department suggests a portion of House Bill 453 be replaced with the language in Senate Bill 402, Senator Fuller's bill. She directed the committee's attention to page 6, line 11.

OPPOSERS OF HOUSE BILL 453:

George Wood, Executive Secretary of the Montana Self-Insurers Association, spoke in opposition of House Bill 453 and submitted testimony.
(Exhibit No. 1)

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QUESTIONS FROM THE COMMITTEE:

Chairman Lynch asked where Senate Bill 402 is in the process. Karl Englund replied it is in the House Business and Labor Committee.

Chairman Lynch asked Representative Bradley if she feels both bills should pass. Representative Bradley replied she doesn't think there are any conflicts.

Senator Towe remarked that vocational rehabilitation should not affect the definition of total temporary disability. A person who is being retrained is still temporarily disabled and is disabled until the training ends. By putting language in there such as Representative Bradley has, we are not accomplishing that.

Representative Bradley replied that this clarifies what she said earlier; retraining is in a position of limbo. She said if you look at the opinion on the Grimshaw case, they really call it permanent total disability. She didn't think it was permanent, and the justification seems to be that it was considered at total disability until the employee received retraining.

Senator Towe asked Karl Englund to further explain how this language is going to help. A worker shall be paid temporary total disability benefits. He asked if that is changing the law from what we have at the present time.

Karl Englund replied he thinks it is calling a temporary disability a temporary disability, which is the proper thing to do.

Senator Keating addressed this question to anybody who could answer it: "Is there any kind of a fiscal impact on the fund? What does it do to the premiums?" Representative Bradley replied it is her impression that any fiscal impact would really be negligible. All it does is allow a sum of money which is destined to the recipient to go there a little bit earlier. So it is just a matter of time and that would be the only impact.

Senator Towe asked George Wood what he said about that. Under the Grimshaw case, the wording there is "permanent total disability," and therefore there is some question about whether the employee is under permanent total disability or temporary total disability while he is in retraining. He asked if by putting this language in we will clarify that point. George Wood answered that he doesn't

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think it needs clarification. When a man or woman is in retraining under the vocational rehabilitation and is totally disabled, the court has said that we will call them permanent totally disabled temporarily, but they are still getting total disability benefits. They are getting the benefits at the full rate rather than at the half rate. He doesn't think that clarifies the situation regarding the definition. If you change the definition, you put in in the definition section.

Senator Towe asked George Wood how temporary total disability benefits are different from the permanent total disability benefits; is the only difference the length of time. George Wood replied no.

Senator Towe asked if there is a difference in payment. George Wood replied that temporary total disability is paid at 66 2/3 of the loss in the wage subject at the present time to a maximum of \$286. The permanent partial disability benefits are 66 2/3 of loss of wage subject to a maximum of \$143. The Montana Self-Insurers Association routinely agree to advances on partial disability while employees are in retraining at the \$143; indemnity benefits are paid at \$143.

Senator Towe remarked that permanent total disability and total temporary disability are the same, there is no difference at all because George Wood said "they both draw \$286 a week." He asked if the only difference is the indemnity portion. George Wood replied yes.

Senator Towe addressed Representative Bradley and asked what she is getting at. In order to allow for the individual while he is in retraining to receive the indemnity benefits, would we have to have this language? Representative Bradley replied that is correct. On the bottom of page 3 is the definition of permanent partial disability. We are not concerned with that; it has nothing to do with this. She thinks that this is where the statement was that there was a difference. The top of page 4 is permanent total; that seems to be where the Grimshaw case comes in, because it refers to permanent total disability. The idea there seems to be that you are considered totally disabled until you get the retraining. There is no difference in temporary total and permanent total.

Senator Towe asked Representative Bradley if she agreed with George Wood, that without this change from the Grimshaw case and making the retraining period a temporary total period you couldn't get indemnification. Representative Bradley replied that is the whole purpose of this bill. The point

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is, you are going to get indemnified if you lose your arm. You are going to get those benefits because no amount of retraining is going to bring back your arm.

Representative Bradley closed on House Bill 453.

The hearing was closed on House Bill 453.

CONSIDERATION OF HOUSE BILL 272:

Chairman Lynch called on Representative Wallin, sponsor of House Bill 272. He carried the bill for the Department of Labor. Simply, everything is covered on five lines, lines 7 through 11 on page 2.

PROPOSERS OF HOUSE BILL 272:

Dave Wanzenried, Commissioner of Department of Labor and Industry, asked that the bill be concurred in.

OPPOSERS OF HOUSE BILL 272:

None were present.

QUESTIONS FROM THE COMMITTEE:

Senator Blaylock asked Dave Wanzenried if we have to have the interest rate at 18% Dave Wanzenried replied that is an interest rate the employers pay on when they pay wages.

Representative Wallin closed on House Bill 272.

The hearing was closed on House Bill 272.

CONSIDERATION OF HOUSE BILL 467:

Chairman Lynch called on Representative Tom Hannah, sponsor of House Bill 467. This bill is designed to clarify what the current language says in relationship with non-association labor organizations. You don't have to belong to labor organizations if 1) your religion tells you not to, 2) if you have a personal belief against it, 3) if you have a problem with a particular organization; what this will do is allow those people who have trouble with a particular organization to be exempt from belonging to that organization.

PROPOSERS OF HOUSE BILL 467:

Juanita Kajkowski, who introduced herself as a Montana

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native, submitted written testimony.
(Exhibit No. 2)

Gary Swat, Biology teacher at Powell County High School in Deer Lodge and president of the Montana Education Council, said it was against his religious beliefs to pay dues into a union. He is against where the money is being spent, not against paying the money. He and many other teachers who felt as he did hired a lawyer and went through the de-certification process in Deer Lodge. They de-certified the school district from the MEA in an election. He said he can't say he is against all unions, because he doesn't know anything about the other unions, just the one he belongs to. He doesn't think House Bill 467 is going to be used by thousands of teachers.

OPPONENTS OF HOUSE BILL 467:

Eileen Robbins, representing the Montana Nurses Association, submitted written testimony in opposition to House Bill 467.
(Exhibit No. 3)

QUESTIONS FROM THE COMMITTEE:

Senator Blaylock addressed Juanita Kajkowski. The way the language was in the bill he didn't see what is wrong with it. Nobody has to join any labor organization if they don't want to, but they do have to pay in lieu thereof. Ms. Kajkowski replied when she applied she was denied a hearing because they interpreted any union to mean all unions; in other words she had to be able to say that she believes all unions were bad and she could not belong to all unions, and she doesn't believe that.

Chairman Lynch addressed Represented Hannah and said the Montana Education Association (MEA) gets the majority of representation in Butte. If he, Chairman Lynch, belongs to the Montana Federation of Teachers (MFT) and says he doesn't want to belong to MEA, has never belonged to them and doesn't want to belong to them, and 51% of the teachers voted for MEA, 49% for MFT, and he refuses to pay anything to the MEA--can he do that under this bill?

Representative Hannah replied that he can do that now.

Senator Lynch said, this organization which an employee does not wish to belong to is negotiating and increasing their benefits and wages -- under this bill they have no obligation to contribute anything to what the majority is fighting for, but they may pay the same amount of money as union dues to go to the charity of their choice.

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Representative Hannah replied that the union would pay the charity.

Senator Haffey addressed Eric Feaver, representing the Montana Education Association, and said he sensed from Mr. Feaver's absence of opposition that he perceived this language as simply clarifying what the law intended anyway. Mr. Feaver said he was only answering this question because Senator Haffey asked. MEA did not testify for or against this bill in the House, nor will they here today. The situation we are in is such that an appeal made could only occur if there were locally negotiated contracts containing a fee provision that required people to either join the association or pay the fee that would cover the cost of bargaining.

Senator Haffey asked who could speak for the decision of personnel appeals. "Any" was identified as meaning "all", secondly, a person had to say in writing that they opposed collective bargaining.

Bob Jensen, Administrator of the Board of Personnel Appeals, said the board didn't know if "any" meant a person could be opposed to a particular labor organization or whether they had to oppose "all" labor organizations. The board came down basically with the position that an individual had to oppose all unionization. That also would include the second question -- "collective bargaining."

Chairman Lynch asked Representative Hannah if there was any particular reason that date has to be effective on passage and approval rather than the normal date? Representative Hannah answered that he would say no.

Representative Hannah closed on House Bill 467, saying this bill allows that narrow band of people to fall within the exemptions.

The hearing was closed on House Bill 467.

CONSIDERATION OF HOUSE BILL 387:

Chairman Lynch called on Representative Kelly Addy, sponsor of House Bill 387. House Bill 387 is a request by the Department of Labor and Industry. It specifically gives rule-making authority to the Commissioner of Labor for the purpose of setting the prevailing wage. There is a lengthy statement of intent.

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PROPOSERS OF HOUSE BILL 387:

Dave Wanzenried, Commissioner of Department of Labor and Industry, said this bill simply clarifies the department is to set the prevailing wage rates by using the Administrators Procedures Act. The bill does not expand the authority of the department in this area.

Gene Fenderson, representing Montana State Building Construction Trades Council, rose in support of House Bill 387. The council thinks it is good legislation. It allows the public entities of this state, the school district, cities, and counties to participate and learn how the prevailing rates have been set in this state.

Jim Murray, Executive Secretary of the Montana State AFL-CIO, said his organization supports the legislation and the position taken by the Montana State Building Construction Trades Council.

Todd Hudak, representing the Montana Association of Counties, said his director, Gordon Morris, would like him to put MACO on record as supporting House Bill 387.
(Exhibit No. 4)

Chip Erdmann, representing Montana School Boards Association, said the association supports House Bill 387. They do not support the Little Davis-Bacon Act, but it is there and we have to live with it.

OPPOSERS OF HOUSE BILL 387:

None were present.

QUESTIONS FROM THE COMMITTEE:

Senator Aklestad asked Representative Addy who is going to actually establish the prevailing wage. Representative Addy answered the Commissioner of Labor will propose what the prevailing wage for a certain kind of labor in a certain area will be.

Senator Aklestad asked if there is going to be an established hearing process where different parties can come voice their opinions. Dave Wanzenried said the department intends to use the Administrators Procedures Act to provide notice and have public hearings in different parts of the state.

Senator Aklestad asked if this would be set up by regions.

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Dave Wanzenried replied the department will have regional hearings right now. He anticipates having seven hearings around the state.

Senator Thayer referred to the top of page 2, the definition of locality and asked how the department is going to interpret "locality." Dave Wanzenried answered that is the language out of the statute.

Senator Aklestad asked Dave Wanzenried, under the current way prevailing wage is set, if the commissioner doesn't have established jurisdiction that would establish prevailing wage? Dave Wanzenried answered it is geographical.

Senator Aklestad asked Dave Wanzenried whether the bill outlines specific counties in a certain jurisdiction. Dave Wanzenried replied yes.

Representative Addy closed on House Bill 387.

The hearing was closed on House Bill 387.

EXECUTIVE ACTION ON HOUSE BILL 387:

Senator Towe made a motion that House Bill 387 Be Concurred In. On a voice vote, the committee voted unanimously that HOUSE BILL 387 BE CONCURRED IN.

EXECUTIVE ACTION ON HOUSE BILL 467:

Senator Keating moved that House Bill 467 Be Concurred In. On a voice vote, the committee voted unanimously that HOUSE BILL 467 BE CONCURRED IN.

EXECUTIVE ACTION ON HOUSE BILL 272:

Senator Keating moved that House Bill 272 Be Concurred In. Senator Towe asked about a portion of the bill on page 1, line 10 "except that future benefits may not be used to offset the interest due. . . ."

Dave Wanzenried answered that under current law it is possible for the department to offset future benefits for the person receiving payment. He said you don't want to offset interest with future benefits but you want to offset benefits with interest.

Harold Kansier, Department of Labor and Industry, said the law now says that when an individual has drawn benefits he was entitled to, in order to collect those benefits the department can use benefits the individual is currently

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entitled to to pay for the older payment. What the department can not do, and this is what the federal government is talking about, is to use the benfits to pay for the interest that has accrued.

Senator Keating asked Mr. Kansier how the department collects interest due. Harold Kansier replied that not all of the older payments are collected by offset; they just have to go out and collect it.

On a voice vote, the committee voted that HOUSE BILL 567 BE CONCURRED IN.

EXECUTIVE ACTION ON HOUSE BILL 378;

Jim Murry said the Montana AFL-CIO feels non-insured employment should continue to be used for requalifying employment compensation benefits. On page 1, line 25, he suggested the language "varifiable" employment and strike the rest of the amendments throughout the bill.

Dave Wanzenried stated that in order for the department to have any control over the program it needs to have the bill the way it is written. He recommended the bill be passed in current form or not passed at all.

Senator Haffey asked Dave Wanzenried if this bill was introduced to try to solve a problem that really affects only 20 or 40 persons a year. Dave Wanzenried replied it was introduced because the federal government has required the state to enact two different programs to improve quality control. This is one of the areas where Montana needs to do something. 600 people a year requalify; of that amount, around 5 to 10% perform noncovered jobs.

Senator Haffey followed up on his first question. 600 people per year requalify, 5 to 105 of whom are requalified through getting the employment with non-covered employers, so that is 30-60. Within that group do we find some who are not working that are faking it?

Dave Wanzenried replied roughly half.

Senator Haffey said now we are down to 15-30, and it is those 15-30 people for whom the federal government wants us to improve our quality control. Dave Wanzenried replied yes.

Senator Towe offered an amendment. On page 1, line 25, insert "may be in covered or verifiable noncovered

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employment." Strike the balance of line 1, all of line 2, and the underscored material in line 3. On page 2, line 22, delete the underscored material and reinsert all stricken material in the remainder of the bill. Do the same for pages 3, 4, and 6.

Senator Towe then withdrew the last part of his motion and simply asked to strike sections 2, 3, 4, and 5 from the bill.

Senator Keating stated we might as well kill the bill--what we are doing is returning to the original statute.

Senator Towe moved the amendments to House Bill 378. On a Roll Call vote the committee voted 5-3 to accept the amendments. See attached Roll Call vote sheet.

Senator Aklestad made a substitute motion that House Bill 378 be Tabled as Amended.

Senator Keating made a substitute motion for all motions pending, that House Bill 378 Be Not Concurred In.

Chairman Lynch made a ruling to vote on the motion that House Bill 378 be tabled as amended. On a voice vote, the committee voted, with Senator Keating voting no and all others voting yes, that HOUSE BILL 378 BE TABLED AS AMENDED.

ADJOURNMENT: The committee, having no further business, adjourned at the hour of 2:45 p.m.


J. R. Lynch, Committee Chairman

STANDING COMMITTEE REPORT

March 12 19 85

MR. PRESIDENT

LABOR AND EMPLOYMENT RELATIONS

We, your committee on.....

having had under consideration..... **HOUSE BILL** No. **272**

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color

PAY INTEREST WHEN REPAYING FRAUDULENTLY OBTAINED UNEMPLOYMENT COMPENSATION

Respectfully report as follows: That..... **HOUSE BILL** No. **272**

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

.....
SENATOR J.D. LYNCH

Chairman.

STANDING COMMITTEE REPORT

March 12

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MR. PRESIDENT

We, your committee on **LABOR AND EMPLOYMENT REALTIONS**

having had under consideration **HOUSE BILL** No. **387**

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ADMINISTRATIVE RULES RELATION TO PUBLIC WORKS CONTRACTS

Respectfully report as follows: That **HOUSE BILL** No. **378**

BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXXXX~~

SENATOR J.D. LYNCH

Chairman.

STANDING COMMITTEE REPORT

March 12

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MR. PRESIDENT

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

having had under consideration **HOUSE BILL** No. **467**

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color

**RELIGIOUS BELIEF VS. REQUIRING PUBLIC EMPLOYEE TO JOIN
LABOR ORGANIZATION**

(Senator Keating will carry the bill)

Respectfully report as follows: That **HOUSE BILL** No. **467**

BE CONCURRED IN

~~XXXXXX~~
DO NOT PASS

~~XXXXXXXXXX~~
DO NOT PASS

SENATOR J.D. LYNCH

Chairman.

Labor and Employment

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 3/12/85SENATE
SEAT
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NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Aklestad</u>	X		
<u>Senator Blaylock</u>	X		
<u>Senator Haffey</u>	X		
<u>Senator Keating</u>	X		
<u>Senator Manning</u>	X		
<u>Senator Thayer</u>	X		
<u>Sentor Towe</u>	X		
<u>Chairman Lynch</u>	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

DATE March 12 1985 BILL NO. HB 378 TIME

NAME	YES	NO
SENATOR ALKESTAD		X
SENATOR BLAYLOCK	X	
SENATOR HAFHEY	X	
SENATOR KEATING		X
SENATOR MANNING	X	
SENATOR THAYER		X
SENATOR TOWE	X	
CHAIRMAN LYNCH	X	

Beth Daulton
SECRETARY

J.D. Lynch
J.D. LYNCH

Motion: Senator Towe amendments to House Bill 378

HOUSE 453

Mr. Chairman, Members of the Committee, my name is George Wood, Executive Secretary of the Montana Self-Insurers Association.

I arise in opposition to House Bill 453.

The Bill does three things:

(1) it changes the definition of temporary total disability;

(2) it provides that temporary total disability benefits must be paid while a person is "undergoing" vocational rehabilitation;

and

(3) it provides for payment of indemnity benefits while the person is being paid temporary total benefits.

(1) The change in the definition of temporary total disability is unneeded. As written in the present statute, the definition is a medical determination. The proposed change would made the determination a medical-legal-rehabilitation determination and only complicate the interpretation of the basic compensation classification. It is unneeded because compensation is presently paid during vocational rehabilitation under the classification of permanent total disability by judicial interpretation of the Workers' Compensation Statutes.

(2) The ammendment to Section 39-71-1003, MCA, a rehabilitation statute, provides that temporary total benefits must be paid when a person is "undergoing" vocational rehabilitation.

The sentence preceding this amendment states "the eligibility of an injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided,..."

The proposed amendment certainly changes this provision.

The person in vocational rehabilitation presently may receive compensation for temporary total or permanent total or for permanent partial disability, depending on his physical condition and whatever his rehabilitation is academic or on the job training.

The amendment provides for payment of temporary total disability while a person is "undergoing" vocational rehabilitation. It does not provide that vocational rehabilitation is necessary because of injuries due to an industrial accident only that the person is "undergoing" vocational rehabilitation. The reason for the vocational rehabilitation may be unrelated to the industrial injury. It may be as the result of congenital or developmental conditions found at the time of the injury.

(3) The bill also provides for payment of indemnity benefits while a person is receiving temporary total benefits. The question of payments of indemnity benefits while being paid total disability benefits was addressed in Senate bill 402 which was heard in this Committee, without opposition, approved and passed by the Senate.

It would appear that the problem which this bill wishes addressed was adequately taken care of by Senate Bill 402.

I respectfully request that this Committee report House Bill 453. DO NOT PASS.

GEORGE WOOD

Executive Secretary

GW:de

Dear Chairman and Senate Subcommittee Members:

My name is Juanita Kajkowski and I am a Montana native. I have taught in the Montana Public School System for twelve and one-half years.

In September 1983 I applied for non-association with a labor organization (National Education Association) under Montana State Code Title 30, Chapter 31-204. It was my understanding that the intent of the law was to protect individuals from having to do something against their beliefs or consciences. I asked for non-association because of NEA's belief stand that prefers evolution over creation. I have a copy of that letter. I was denied a hearing because the Montana Board of Personnel Appeals interpreted the words any union in the State Code to mean all unions. They also interpreted the State Code to mean that I had to be opposed to collective bargaining. I am not opposed to all unions nor am I opposed to collective bargaining.

The following is a letter from my pastor in 1983.
To whom it may concern:

As pastor of the Community Evangelical Free Church of Deer Lodge, Montana, I have been authorized by our church board to write a letter representing the pertinent beliefs of our church in reference to Juanita Kajkowski's relationship with the National Education Association. It is my understanding that Juanita's right to non-association with her union is based on bona fide religious tenets or teachings of our church. Our church is a member of the Evangelical Free Church of America (E.F.C.A.). The doctrine of the E.F.C.A. is stated in Twelve Articles of Faith. Our local church here in Deer Lodge subscribes to the 12 Articles and have them written in the official constitution of our church. (See attached doctrinal statement) In article Two it states: We believe in one God Creator of all things, infinitely perfect and eternally existing

in three persons Father, Son, and Holy Spirit." We believe that this article is diametrically opposed to the theory of evolution. We believe that this is what scripture teaches and we also believe that Juanita should obey the teachings of scripture.

We are not opposed to unions per se but we are opposed to membership or support of any organization whose official stand is opposed to the teachings of scripture.

In conclusion let me say that Juanita Kajkowski is a voting member of our church and that we support her efforts to make her faith relevant to her life.

For God's Glory,
Pastor Timothy W. Foutz

I also have a letter from my present pastor at the E.F.C.A.

I had belonged to NEA for several years. At first I knew little or nothing about the organization. Then I became active on a local level with school and community relations. I was not aware at that time of their belief stands. I began attending state conventions and went to their political action meetings. I heard and learned about their beliefs. I also heard negative comments from leaders about various Christian individuals and various Christian groups.

I struggled for two years prior to 1983 with resolving this with my conscience. I believe we are supposed to have liberty and justice for all in our country, not just for the majority. I believe that part of that liberty is religious freedom, I *think* that passage of this bill will protect that religious freedom. Thank you for your time.

Respectfully,
Juanita Kajkowski
Mrs. Juanita Kajkowski



Montana Nurses' Association

2001 ELEVENTH AVENUE

(406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59604

TESTIMONY HB 467

The Montana Nurses' Association opposes HB 467. The current law sufficiently protects an employee's right of non association with a labor organization based on religious grounds. As the law now stands, if a particular religious order opposes a contractual requirement that a member of such order join or financially support a labor organization, that person is free not to join a labor organization.

This bill would put religious organizations in the practice of comparing and judging different labor organizations. If a religious order opposes the joining of labor organizations this comparison is not necessary.

This bill would permit religious organizations whose tenets did not previously oppose the joining of or financial support to ^{labor} organizations to selectively oppose any (and/or all) labor organizations based on a single position of the labor organization. Essentially, this bill could open the current law to areas not intended in the name of protection of employee rights.

This bill is not necessary. The testimony in support of this bill is confusing and contradictory; it does not show a need for the legislation. The current law adequately protects all members of religious organizations in their right to non association with labor organizations.

Respectfully submitted,
Eileen C. Robbins
March 12, 1985

NAME:

TODD HULAK

DATE:

3/12

ADDRESS:

PHONE:

REPRESENTING WHOM?

MACO

APPEARING ON WHICH PROPOSAL:

HB 387

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS: