

MONTANA STATE SENATE
LABOR AND EMPLOYMENT COMMITTEE
MINUTES OF THE MEETING

March 14, 1985

The twenty-first meeting of the Labor and Employment Relations Committee came to order at 1:00 p.m. in Room 413/415, in the State Capitol on March 14, 1985.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 554: Chairman Lynch called on Representative Mary Ellen Connelly, sponsor of House Bill 554. House Bill 554 merely requires that contractors projects that are financed under the Montana Economic Development Act, the Montana In-State Investment Act and the Industrial Development Projects (those projects which use coal tax money invested in Montana) give a preference to the employment of Montana residents.

PROPOSERS OF HOUSE BILL 554: None were present.

OPPOSERS OF HOUSE BILL 554: None were present.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked Representative Connelly how this would work in actuality. He said suppose there is an out-of-state contractor that bid a job and got it here in Montana; he has to pay the prevailing wage but he brings a number of his own crew with him; is he subject to a suit under this law?

Representative Connelly replied that the board said it would be their policy to go through the applications and look at them to see who would get the bid. The contractor would be told he would have to give preference to Montanans.

Senator Thayer asked Representative Connelly whether there were more proponents or when this bill was heard in the House.

Representative Connelly replied there were about 10 proponents and two opponents. The opponents objected to the 1% contractors' tax, which was taken out; and they objected to the prevailing wage, which was also out.

Senator Towe pointed out to the committee members that this does not deal with state contractors.

Representative Connelly closed on House Bill 554 saying this bill is trying to help the Build Montana program and provide jobs.

The hearing was closed on House Bill 554.

Senator Towe will carry the bill.

CONSIDERATION OF HOUSE BILL 718: Chairman Lynch called on Representative Kelly Addy, sponsor of House Bill 718. Representative Addy passed out the statement of intent. (Exhibit No. 1) House Bill 718 establishes a uniform grievance process for certain state employees.

PROPONENTS OF HOUSE BILL 718: Dave Wanzenried, Commissioner of Department of Labor and Industry, offered amendments to House Bill 718. (Exhibit No. 2) He said the effect of these amendments is to clarify the language of the bill.

Allen Joslin, current Chairman of the Board of Personnel Appeals, rose in support of House Bill 718.

Barry York, representing Montana Public Employees Association, submitted testimony in support of House Bill 718. (Exhibit No. 3)

Dennis Taylor, Administrator of State Personnel Division, rose in support of House Bill 718 and the amendments offered by Commissioner Wanzenried.

OPPONENTS OF HOUSE BILL 718: Terry Minow, representing Montana Federation of Teachers and the Montana Federation of State Employees, submitted testimony in opposition to House Bill 718, (Exhibit No. 4)

Jim McGarvey, representing Montana Federation of Teachers, AFT, AFL-CIO, supported the testimony given by Terry Minow.

Eileen Robbins, representing Montana Nurses's Association, submitted testimony in opposition to House Bill 718. (Exhibit No. 5)

LeRoy Schramm, representing Legal Council for the Board of Regions, said with the amendments his organization would change from an opponent to a proponent.

QUESTIONS FROM THE COMMITTEE: Senator Haffey asked Barry York if employees covered by collective bargaining agreements have a mechanism through which they can have their agreements. He said employees who do not have that opportunity should have some opportunity beyond due process, and this kind of a bill might provide that.

Barry York answered, yes that is correct.

Senator Aklestad asked Representative Addy if a lot of the bill pertains to the contracts of a grievance procedure that an employee already has? Representative Addy replied it was not intended that way, but page 4, line 15, section 4 of the bill will clarify that.

Senator Aklestad asked Dennis Taylor what the time frame is now for appeals.

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Dennis Taylor replied he didn't think he is the proper person to answer that.

Senator Aklestad asked Bob Jensen how long it takes to get a formal decision on a personnel appeal.

Bob Jensen, representing the Administrator of Personnel Appeals, answered there are no time constraints on those procedures, nor is there any statutory requirement.

Senator Aklestad added he wanted to know the procedures that come before the Personnel appeals; how long does it take to get a decision out.

Dennis Taylor answered it is heard before the hearing examiner in one and a half to two months.

Bob Jensen added that for a final decision it would be about four months.

Senator Haffey asked Dennis Taylor how many collective bargaining agreements the state deals with.

Dennis Taylor replied there are 72 bargaining units in the executive branch and 19 in the university system. He deals with the 72, which are represented by about 20 different unions.

Senator Towe asked Mr. Jensen how many appeals he has had from the Highway Department officially dealing with grievances.

Bob Jensen answered they began hearing grievances for the Highway Department in 1974; they have probably had 15 or 20 since then. They began hearing Fish, Wildlife and Parks grievances in 1977; they have had about six of them.

Senator Towe asked if these appeals would be generally dealing with termination, suspension, promotion, or transfer. Bob Jensen replied some appeals from the Highway Department may have been more severe, but the majority were along the lines Senator Towe mentioned.

Chairman Lynch asked Mr. Jensen if this bill would raise the department's budget about \$50,000 more; \$25,000 for the biennium. Bob Jensen answered yes.

Representative Addy closed on House Bill 718.

The hearing was closed on House Bill 718.

CONSIDERATION OF HOUSE BILL 853: Chairman Lynch called on Representative Krueger, sponsor of House Bill 853. House Bill 853 arose out of concern about trying to place Montanans back to work. This bill says that any state construction project must employ 50% bona fide Montana residents.

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PROPOSERS OF HOUSE BILL 853: Phil Houck, representing the Department of Administration, Architect Division offered amendments to House Bill 853 and submitted testimony in opposition to House Bill 853.
(Exhibit No. 6)

OPPOSERS OF HOUSE BILL 853: Bill Olson, representing the Secretary-Manager of the Montana Contractors' Association, rose in opposition to House Bill 853. He referred to page 1, lines 16 and 17 remarking this will be a nightmare for bookkeepers. He suggested a Do Not Pass.

PROPOSERS OF HOUSE BILL 853: H. S. Hanson, representing Design profession through the Montana Technical Council, offered amendments to House Bill 853 and submitted testimony.
(Exhibit No. 7)

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked Representative Krueger how many of those jobs that have been funded by state or federal money in the last year have employed out-of-state workers.

Representative Krueger answered he is supportive of amendments 1, 2, 3 and 4.

Chairman Lynch asked about Mr. Hanson's amendments.

Representative Krueger replied he would have no problem with them, either.

Senator Keating asked Representative Krueger if he knows if our adjacent sister states have these kinds of preference requirements.

Representative Krueger replied none of our sister states have a law with this type of requirement.

Senator Manning asked Representative Krueger if he had any problem with Mr. Hansen's amendments.

Representative Krueger replied no.

Senator Aklestad asked Representative Krueger what would happen in the case where the employer couldn't get 50% Montana workers.

Representative Krueger replied. There is at least 50% Montanans in every field that are skilled and available in that specific area.

Representative Krueger closed on House Bill 853. Most employee at least 50% bona fide Montanans.

The hearing was closed on House Bill 853.

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ADJOURNMENT: The committee, having no further business,
adjourned at the hour of 2:40 p.m.



Committee Chairman

Labor and Employment

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 3/14/85

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.

March 14

VISITORS' REGISTER

(Please leave prepared statement with Secretary)

49th Legislature

LC 1169

STATEMENT OF INTENT

HOUSE BILL NO. 718

It is the intent of the legislature that when the board of personnel appeals adopts rules to implement this bill, that it review the present rules for the departments of highways and fish, wildlife, and parks and determine the extent to which those rules may be applicable to state employees covered by the grievance procedure provided by this bill. It is further the intent of the legislature that the rules be adopted to provide timely and efficient proceedings while otherwise assuring that employees receive procedural due process and fairness throughout.

PROPOSED AMENDMENTS TO HB 718

Amend House Bill 718, Third Reading Copy as follows:

1. Title, Line 5

Following: "STATE EMPLOYEES"
Insert: ",SPECIFICALLY EXCLUDING EMPLOYEES OF STATE
COLLEGES AND UNIVERSITIES;"

2. Page 2

Following: Line 12
Insert: "(4) Employees of state community colleges,
state colleges, and the state universities
are excluded from the provisions of this
section."
act

Renumber: all subsequent subsections.

MONTANA

Helena, Montana 59604

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Telephone (406) 442-4600

March 14, 1985

PUBLIC

EMPLOYEES

ASSOCIATION

TO: Senator J.D. Lynch, Chairman
Committee on Labor and Employment Relations

FROM: Thomas E. Schneider, Executive Director

SUBJECT: House Bill 718

The Montana Public Employees Association supports HB 718. Some other labor organizations take the position that it provides a right that should only be available to union members. Our position is that all employees should have the right to job security and that the state should have a uniform process to guarantee that right.

CURRENTLY, Department of Highways and the Department of Fish, Wildlife and Parks have a statutory process before the Board of Personnel Appeals. Until two years ago five agencies had a grievance process before the Merit System Council. Those agencies now have only a process which is different in each case and only allows an appeal to the Director who probably approved the termination in the first case.

Employees as low as Grade 13 who are in certain categories, some supervisory and some not, do not have the right to collective bargaining so they cannot have job security if we don't have a process outside of the union contract.

House Bill 718 does not impair any union contracts. It does allow a union to use the new process if they so desire. As far as MPEA is concerned we would continue to use our contract processes but we do have 500 members who are not under contract and this bill would allow those individuals a right which may or may not currently be meaningful but under HB 718 would be uniform and meaningful.

Thank you for your consideration.....

Eastern Region

(Mailing Address) 502 Nelson
Billings, Montana 59102
(Phone) (406) 652-3530

Western Region

(Mailing Address) 1420 Jackson
Missoula, Montana 59801
(Phone) (406) 728-4768





MONTANA FEDERATION OF TEACHERS

AMERICAN FEDERATION OF TEACHERS

AFL-CIO

P.O. Box 1246

Helena, Montana 59624

(406) 442-2123



Exhibit 4

3/14/85



TESTIMONY OF TERRY MINOW ON BEHALF OF THE MONTANA FEDERATION OF TEACHERS AND THE MONTANA FEDERATION OF STATE EMPLOYEES PRESENTED ON HB 718 BEFORE THE SENATE LABOR & EMPLOYMENT COMMITTEE, MARCH 14, 1985.

On behalf of the Montana Federation of State Employees and the Montana Federation of Teachers, I would like to go on record in opposition to HB 718. We oppose the bill for three reasons: 1) It will add to the state's fiscal burden, 2) It will hinder attempts to organize state workers and 3) It will weaken collective bargaining and the grievance arbitration procedure now in place.

Proponents of this measure claim that the added cost to the state will amount to no more than \$50,000 over the next biennium. We believe that this figure is conservative and that the long-term costs to Montana Taxpayers could be substantially greater. In our estimation, the assumption of many more state employee grievances will consume significantly more staff and Board of Personnel Appeals time than the proponents indicate.

There is an assumption in this bill that the agency heads appointed by the Governor are incapable of rendering impartial decisions. While this may be true in some instances, the bill in no way can limit either the employee or the Employer from seeking judicial review of any decision rendered by the Board. Clearly, the bill will not cut legal expenses if all parties to a grievance end up in district court following a Board decision.

Our second objection concerns the administration's apparent decision to discourage state workers from forming unions. Every time we seek to organize employees, representatives of the Department of Administration send letters to the employees belittling the value of labor organizations. The pitch is essentially this: We already provide all the benefits by law or by policy that any labor organization could negotiate for you. So why form a union? I am convinced that this practice is a conscious attempt to weaken collective bargaining in general and that the passage of this bill will be cited by the administration as another example of the benefits already provided to employees.

But is this procedure really adequate to protect public employees or does it actually weaken binding arbitration now in place for unionized workers? By providing an alternative to union negotiated binding arbitration procedures this bill would actually encourage some labor organizations to forego arbitration and dump their grievances at the step of the Board of Personnel Appeals. This would result in several adverse consequences. One, the cost of binding arbitration, now shared equally

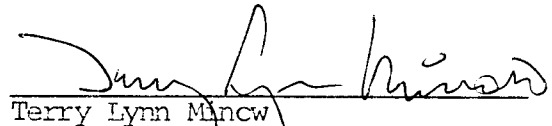
by the Employer and the Union would be shifted entirely to the taxpayers. The risk associated with arbitration would be eliminated. Since neither the Employer nor the Union would have to pay the Board's hearing officer, much of the pressure on both parties to reach a compromise would be eliminated. The number of grievances brought to the Board could actually increase dramatically with all the expense borne by the Montana taxpayers.

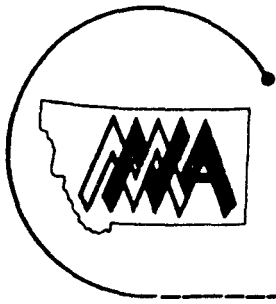
We're concerned about a trend away from binding arbitration for a number of reasons. Not only would the costs of grievance resolution be shifted from the Union to the taxpayers, but we are not convinced that the quality of the decisions might not decline. The staff and members of the Board of Personnel Appeals are certainly honest and dedicated. However, oftentimes the objectivity of a truly neutral outside arbitrator is more in the interest of the process as a whole.

We are curious about why the Montana University system would be excluded from the provisions of this bill. If the bill would do everything it's proponents argue, we see no reason to exclude that branch of government from its provisions.

In summary, we believe that the long-term fiscal implications of this legislation should be carefully studied by this committee. \$50,000, the minimum fiscal impact of this bill, doesn't seem like much. But those of you who sit on the Appropriations Committee know cuts are being made throughout state government - all state funding for Gifted and Talented programs, the Agricultural Experiment Station, state institutions, vo-techs - there are no sacred cows.

For the above reasons, I would urge a "Do Not Pass" recommendation on HB 713.


Terry Lynn Mancini
Lobbyist
Montana Federation of Teachers



Montana Nurses' Association

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P.O. BOX 5718 • HELENA, MONTANA 59604

TESTIMONY HB 718

The Montana Nurses' Association opposes HB 718 for the following reasons:

1) We oppose Section 4., which refers to the grievance procedure and negotiated procedure as being mutually exclusive.... The MNA would suggest that employees who are under collective bargaining contracts be excluded from this law if it is passed. Each labor organization has the duty of fair representation of its members. Because of this duty, labor organizations negotiate a binding arbitration clause in each contract for which it is responsible fiscally. If HB 718 passes, a labor organization would be liable for court costs related to representing a member even though the labor organization and its members did not agree to the procedure used through the collective bargaining process. MNA believes that a grievance procedure which culminates in binding arbitration is the best route for organized employees to settle their differences with employers.

2) MNA disapproves of state agencies having the ability to have the Board of Personnel Appeals reconsider an order. This provision seems to dilute the entire premise of the bill, that of providing a fair and neutral assessment and solution of an employee-employer conflict.

In summary, the MNA supports the concept of this bill for unorganized employees only. We would suggest deletion of the last sentence of of section 2, subsection (2), lines 8-11, page 3., of the proposed bill.

Respectfully submitted,
Eileen C. Robbins
March 14, 1985

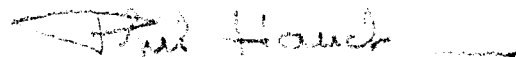
3/14/85

TESTIMONY FOR AMENDMENTS
TO H.B. 853

The Architecture and Engineering Division administers state building construction contracts that are participated in by many federal agencies. The Division is presently working with the National Guard Bureau, Federal Emergency Management Agency, Department of Energy, and the Land and Water Conservation Fund. We have just finished projects with the Department of Labor, Veteran's Administration, and the Army Reserve. Where federal construction monies are involved, federal agencies object to preference laws of any kind and would probably object to the requirements imposed by H.B. 853. This could jeopardize federal funding on future state construction projects. For this reason, the Division recommends that on Page 1, Line 13, following the word "state" insert "or federal"; then, on Page 1, Line 15 following "transportation" insert "or where residency preference laws are specifically prohibited by federal law"; then on Page 1, Line 21 following "transportation" insert "or where residency preference laws are specifically prohibited by federal law".

It has also been apparent over many years that certain specialized categories of labor are not always readily available in the State of Montana. Examples of this are certain types of pipe insulators, installing and testing un-interruptable power sources, art restoration, electronics, and water tower maintenance to name a few. For this reason the Division recommends that on Page 1 following Line 18 insert "This requirement may be waived if specialized labor is not available".

With these amendments we feel comfortable with this bill.

 Paul Houch

Proposed Amendments HB853 - Third Reading Copy

1. Page 1, line 13
Following: "state"
Insert: "or federal"
2. Page 1, line 15
Following: "TRANSPORTATION"
Strike: ", "
Insert: "or where residency preference laws are
specifically prohibited by federal law,"
3. Page 1, line 18
Following: line 18
Insert: "This requirement may be waived if specialized
labor is not available."
4. Page 1, line 21
Following: "TRANSPORTATION"
Strike: ", "
Insert: "or where residency preference laws are
specifically prohibited by federal law,"

NAME: HANSON, H.S. DATE: 3/14/85

ADDRESS: HELENA

PHONE: _____

REPRESENTING WHOM? MONTANA TECHNICAL COUNCIL

APPEARING ON WHICH PROPOSAL: HB. 253

DO YOU: SUPPORT? _____ AMEND? ✓ OPPOSE? _____

COMMENTS: _____

THE DEVELOPMENT & ENFORCEMENT
OF THE 50% B₀ CRAFT REQUIREMENTS
HAS TO BE DETERMINED - SUGGEST B₀
DEPT OF LABOR - THEY ALREADY FURNISH US
SALARY SCHEDULES & VERIFY THERE ~~IS~~ PAYMENT
B₀ THE CONTRACTOR.

House Bill 853

be amended as follows:

1. Page 1, line ~~18~~. 24.
Following: Subsection (1).
Insert: "the Department of Labor will develop the inserted provisions along with enforcing the requirements"