

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

January 13, 1987

The second meeting of the Labor and Employment Relations Committee was called to order by Vice Chairman Gene Thayer on January 13, 1987 at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present with the exception of Sen. Lynch who was excused.

CONSIDERATION OF SENATE BILL NO. 8 AND SENATE BILL NO. 9:  
Sen. William Farrell, Senate District #31, sponsor of the bills, stated that SB 8 and SB 9 are identical bills with one relating to the Workers' Compensation Act and the other pertaining to the Montana Occupational Disease Act. The Legislative Council pointed out that there is identical wording in both bills and that it would probably be unconstitutional if we didn't change both at the same time. Sen. Farrell originally introduced the bill in October, before the Governor's Advisory Council presented their changes. He wanted to make sure that people in his area were aware of the Liberal Construction Clause. Workers' Compensation has pointed out the severity of what it is doing to the employers in this state and the Liberal Construction Clause is only one segment of the total problem. Sen. Farrell asked that we look at these two bills because the new constitution was ratified after the enactment of the Workers' Compensation Act and the Montana Occupational Disease Act. The Occupational Disease Act was written in 1957 and the Workers' Compensation Act was redone in 1948. Sen. Farrell suggested that the language of these statutes is out of date with new court decisions and new interpretations of the constitution. Sen. Farrell asked to reserve the right to close.

PROPONENTS: Keith Olson, Executive Director of the Montana Logging Association, which represents 650 independent logging contractors throughout the timber regions of Montana, voiced his support. Mr. Olson stated that Workers' Compensation was the number one issue when this association was formed in 1976, and when he was hired in 1980 the Workers' Compensation premium was 18% and today it is over 34%. Mr. Olson believes that the solution to the Workers' Compensation problem in Montana is to give maximum benefits to the employees and minimum premiums for the employer, however, arriving at the middle ground doesn't appear to be so simple. Mr. Olson said that the Montana Logging Association appears here in the spirit of "hopeful desperation" because this industry is on the verge of

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collapsing under the burden of Workers' Compensation rates. On January 1, 1987 the premium rate went to \$34.39 per \$100.00 worth of payroll wages. This means that on a worker who earns \$20,000.00 per year, the Workers' Compensation alone was \$6,878.00 per year. Add social security and unemployment costs to that sum and the employer pays \$9,500.00 per year in payroll taxes. Payroll costs on the logging industries are rapidly approaching the 50% rate. Mr. Olson stated that this, at its best, brings about wage concessions for the employees and, at its worst, it brings about lay-offs for the employees. Neither is acceptable to the Montana Logging Association. Mr. Olson discussed three articles that he recently read, which he believes emphasizes the Montana Workers' Compensation dilemma: The first article discussed the fact that over one-half of the jobs created in the United States in the last five years pays only \$7,000.00 per year and the Montana Logging Association pays \$6,878.00 per year for Workers' Compensation benefits. The second article discussed Montana's recent decline in population. The third article discussed that Montana college graduates have to leave the state to obtain employment in their profession. Mr. Olson suggests that to reform the Workers' Compensation dilemma: 1) we need to have a greater emphasis on safety, 2) we need more aggressive claims management to get prompt benefits to injured employees, 3) we need to preclude legal intervention, and 4) we need better medical integrity. He also stated that the true victim of today's Workers' Compensation dilemma is the non-injured employee because he is the one who is losing his job or making wage concessions. However, everyone suffers the social consequences of the employee's lower standard of living through a depleted tax base and an increase on tax woes.

Mr. George Wood, Executive Secretary of Montana Self-Insurers Association, rose in support of this legislation because the Liberal Construction Clause as written in the present provides that the court will interpret this clause liberally and the court has taken it literally. He also stated that the court has taken the liberal interpretation to mean, that you wrote it, but you told us to interpret it so we are going to change it to suit us. What the Montana Self-Insurers Association proposes is that you say, we wrote this clause and we understand what it says and we want you to interpret it that way. He requested that the committee support this legislation.

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Mr. Robert N. Holding, Montana Motor Carriers Association, voiced his support of this bill. He stated that the Motor Carriers' January 1987 raise for a single driver in Montana was \$850.00 and that raises the Montana Workers' Compensation premium per driver to \$4,000.00. North Dakota pays a \$832.00 premium per driver for Workers' Compensation so, that means Montana pays approximately five times more than the state of North Dakota. The Motor Carriers Association has preliminary estimates that many of the Montana drivers are considering moving to other states for their cheaper rates and these are jobs that will be leaving the state of Montana. He asked the committee to vote in favor of this bill.

Mr. Herb Delinger, Montana Building Materials Users Association supports this bill because their rates have increased by approximately 4% and this is doubled compared to other areas.

OPPONENTS: Mr. Norm Grosfield, Helena attorney specializing in Workers' Compensation representation, and prior Administrator of the Division of Workers' Compensation opposed this bill. Mr. Grosfield said that he has cited the Liberal Construction Clause many times in court and the courts have ignored it because they say the statute is clear or the facts are clear. Mr. Grosfield believes that the Liberal Construction Clause states that if a statute is unclear or there are conflicting statutes and if it comes down to a 50/50 interpretation the courts will find in favor of the claimant. This is only used if there is a close call. In order for this bill to have meaning it should state that, if there is some doubt of the interpretation of the statute, it should fall over to the advantage of the injured worker instead of the billion dollar insurance company. Mr. Olson is a proponent of making some substantial changes in the Workers' Compensation system but he believes that the system can't be changed by removing the Liberal Construction provision. Mr. Olson feels that this provision shouldn't be changed because it is a reflection of Montana's concern for its injured workers. He urges that this piece of legislation remain.

Mr. James Murray, Executive Secretary, Montana State AFL-CIO, clearly feels that this is unfair legislation. Mr. Murray states that the Montana AFL-CIO has worked with the Governor's Advisory Committee and they recognize the need for changes in the law. Mr. Murray stated that

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the cost of Workers' Compensation is too great but they don't feel changing the Liberal Construction Clause would be the answer. He stated that this legislation changes the entire direction of this law by taking the advantage from the injured workers and giving the advantage to the large insurance companies. Also, for over half a century this legislation has been an important piece of social legislation, to be liberally construed to meet social needs in the state of Montana. He urged the committee to vote against SB 8 and SB 9.

Mr. Wilber Raymond, Montana Nurses Association, representing 1,400 members, all of whom are health care employees and exposed in many instances to contagious diseases which are now covered under the Workers' Compensation Act opposes these bills. Mr. Raymond believes that one of the things that gets lost in the language of SB 8 and SB 9 is the fact that many workers are exposed to hazards on the job and many are life threatening in terms of contagious diseases. He feels that these bills turn the advantage from the injured worker to the industries. Mr. Raymond doesn't believe that this approach of stripping the bill is the answer.

Mr. Phil Campbell, Montana Education Association, opposed this bill. He stated that this Association is sympathetic with industries and workers concerning the cost of the system but they don't believe that this approach of stripping the bill is the answer.

Ms. Claudia Clifford, United Food and Commerical Workers, stated that this is a serious piece of legislation and the impact on the workers needs to be considered closely.

QUESTIONS (OR DISCUSSION) ON SENATE BILLS 8 & 9:

Mr. Bob Robinson, Administrator for the Workers' Compensation Division, spoke not as an opponent or a proponent but to inform the committee that this concept, although not the exact language contained in these bills was included in the Workers' Compensation Advisory Council's recommendations. He stated that this issue will be discussed again when the major reform act for Workers' Compensation is presented and he suggested that the committee not take any action at this time.

Sen. Blaylock asked Mr. Grosfield if this law only applied during the case of a close call? Mr. Grosfield stated that this was correct.

Sen. Blaylock asked how many cases were heard in the courts concerning these close calls? Mr. Grosfield

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replied that the Workers' Compensation Court hears approximately 200-300 cases a year, and he had to guess that the Liberal Construction Clause was only cited in far less than 50% of the cases.

Sen. Blaylock wanted to know if a fiscal note was needed to indicate the amount of money that would be saved by strict interpretation of the Workers' Compensation Act. Sen. Farrell said that he didn't request a fiscal note nor did the Legislative Council request a note.

Sen. Gage, referring to SB 8 and SB 9, asked if the language would have the result of limiting the courts to interpret the law only when necessary in dealing with the provision of this act. Sen. Farrell stated that this was his understanding when the Legislative Council drew this up and that it would apply to all the divisions, including the Workers' Compensation Division.

Sen. Thayer said that the staff researcher, Tom Gomez, had some comments he would like to share with the committee. Mr. Gomez stated that the rule of Liberal Construction doesn't relieve the courts of its duties to consider carefully, the evidence and the facts of a case before a decision is made. Mr. Gomez continued, that this section, according to the interpretations of the court meant that this act in any case would be liberally construed in favor of the claimant. There is a long line of cases from the Montana Supreme Court, with regard to the language in the Workers' Compensation Act and the Occupational Disease Act, which uphold this role. Mr. Gomez clarified that if the statutes are open to more than one interpretation, where one is favorable to the employee and one is not, then according to the holding of the 1986 court decision in the case of Gidley v. W.R. Grace and Company, the statutes must be construed in a manner most favorable to the employee. Mr. Gomez continued to inform the committee that this relates to the specific terms of the language under both the Occupational Disease Act and the Workers' Compensation Act and that the two are being considered together because the rationale of the Liberal Construction Clause applies to both.

Sen. Haffey asked Mr. Gomez to summarize what was discussed in today's hearing. Mr. Gomez responded that if there was any possible interpretation, the courts would favor the worker because the court is required to use the most favorable interpretation of the parts and sections of the law under both acts, and it would award the claim to the person who is seeking protection under either act.

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Mr. Gomez continued, that in relationship to Sen. Farrell's bill, the bill has the effect of not applying an interpretation in favor of anyone. However, as of right now, there is clear favor to the benefit of the injured workers in the construction of the terms of the law, because the laws must be interpreted in a manner most favorable to the employee or injured workers.

Sen. Keating asked Mr. Robertson about the fact that he mentioned the similar language coming up in the Workers' Compensation package, but he wanted to know if there was any mention of the Occupational Disease Act. Mr. Robertson replied, that the language in the provision in the partially drafted bill, developed by the Advisory Council, basically states that the Occupational Disease Act, Chapter 71 and the Workers' Compensation Act, Chapter 72 would be construed according to their terms and not liberally in favor of either party.

Sen. Thayer asked Mr. Robertson to inform the committee on how the Advisory Council voted. Mr. Robertson could not remember the exact count but there was a majority vote in favor of removing the Liberal Construction language.

Sen. Thayer asked Mr. Grosfield why he believes that this bill would have the effect of reversing the process and mandating that the courts rule in favor of the insurance companies. Mr. Grosfield replied that the provision of the Workers' Compensation Act must be construed according to their terms and in his opinion, this mandates that, if there is any question about interpretation, then the court is ordered to find in favor of the insurance company. Mr. Grosfield feels that if you want to make this statement neutral, then this section would have to be deleted and reworded to read that this act should not be construed liberally in favor of either party, because any time the use of strict construction is used, then the court is allowed to reserve the precedent that had been established in 1915 and there is a rule of statutory construction, that any change in the statute except for a recodification means that the legislature intended it. Mr. Grosfield feels, that with this new language, the courts would have to find in favor of the insurance companies if there was ever any question of interpretation of the law.

Sen. Thayer asked Mr. Grosfield if the next line of the bill, which stated that you may not construe liberally in favor of either party, was specific enough to prevent the courts from ruling in favor of insurance companies. Mr. Grosfield replied that he didn't think

that this would take care of it, and in order to take care of his initial concerns, the terms regarding strict construction would have to be removed or the statute would have to be repealed completely or add the statement that "this act shall not be construed in favor of any party." Mr. Grosfield continued that he opposes these bills because he believes this statute should remain in effect and that there should be a liberal construction provision.

Sen. Farrell, in closing, stated that he believes this bill would allow the courts to still construe it liberally if they desired. He also informed the committee that Workers' Compensation cases do not always concern rich insurance companies because it also involves private self-insurers. He continued that the Montana Logging Association does not have the most expensive rates; that the Steel Erectors Association's base rate is \$72.00 per \$100.00 of wages, and if you have an accident factor, their base rate is \$140.00 per \$100.00 of wages.

Sen. Thayer reminded the committee that the Department of Labor's Advisory Council is preparing a bill with similar language and it will be presented to this committee in the near future. Sen. Thayer continued that Chairman Lynch requested that the committee defer action on these two bills until we see the disposition of the big bill.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 1:40 p.m.

  
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SENATOR THAYER, VICE CHAIRMAN







NAME: KEITH LO OLSON DATE: 1-13-87

ADDRESS: P.O. Box 1716 Kal MT 59903

PHONE: Kal / 755-3185 Hel / 443-2200

REPRESENTING WHOM? MT. Logging Assn.

APPEARING ON WHICH PROPOSAL: SB 8 & SB9

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: GEORGE WOOD DATE: 1/13/87

ADDRESS: Box 2899 Missoula, MT 59806

PHONE: (406) 543-7195

REPRESENTING WHOM? MONTANA SELF INSURERS ASSOC

APPEARING ON WHICH PROPOSAL: SB 849

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: BOB HELDING DATE: 1-13-87

ADDRESS: 2328 CHEVONUE - MISSOULA MT. 59803

PHONE: 251-2891

REPRESENTING WHOM? MONTANA Motor Carriers Assoc.

APPEARING ON WHICH PROPOSAL: SB 8 + SB 9

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: We support the enactment  
of both bills

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: James W. McHenry DATE: 4/13/87

ADDRESS: P.O. Box 1176 Helena

PHONE: 442-1708

REPRESENTING WHOM? Mont. State AFL-CIO

APPEARING ON WHICH PROPOSAL: SB 849

DO YOU: SUPPORT?        AMEND?        OPPOSE? X

COMMENTS: \_\_\_\_\_  
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