

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By Chairman Richard Manning, on January 10, 1991,  
at 1:00 p.m.

#### **ROLL CALL**

**Members Present:**

Richard Manning, Chairman (D)  
Thomas Towe, Vice Chairman (D)  
Gary Aklestad (R)  
Chet Blaylock (D)  
Gerry Devlin (R)  
J.D. Lynch (D)  
Dennis Nathe (R)  
Bob Pipinich (D)

**Members Excused:** Thomas Keating (R)

**Staff Present:** Tom Gomez (Legislative Council).

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Announcements/Discussion:** Chairman Manning welcomed Committee  
members. He stated that the Committee would proceed as it  
has in the past. All members with the exception of Senator  
Towe served on this Committee in the past session.

#### **HEARING ON SENATE BILL 30**

#### **Presentation and Opening Statement by Sponsor:**

Senator Tom Towe informed the Committee that he had been  
retained by the United Mine Workers to assist them during a  
strike at Decker. Certain laws protecting laboring and union  
people came to his attention. He explained to the Committee that  
he felt these could be improved. Specifically those dealing with  
professional strikebreakers. He went on to explain that certain  
groups of people go from strike to strike, working as "scabs",  
professional strikebreakers. Many years ago the state of  
Montana outlawed professional strikebreakers.

He informed the Committee that during the Decker strike they

had the names of some people who not only offered themselves for employment at Decker during the strike, but actually went to work for Decker, and had been working at Peabody during the Peabody strike just a few months earlier. There was evidence of some of them being at other coal mines at other strikes. He felt that if they had worked three times it was an indication that they were professional strikebreakers.

Senator Towe's bill would define a professional strikebreaker as a person who within the previous five years either, 1) has been employed two or more times by an employer during a strike, or 2) has offered himself three or more times for employment during a strike. It also asks employers during a strike to ask a prospective employee to state whether or not he has worked during a strike within the last five years. If he has, he must list his name, the name and address of the employer for whom he worked, and the company must then submit that information to the union. If it appears that he may fit the definition of a strikebreaker as defined by this law the Commissioner of Labor must forward the information to the county attorney for appropriate action. Anyone making a false statement can be prosecuted for a misdemeanor. Any employer hiring someone knowing that he made a false statement is also guilty of a misdemeanor.

#### Proponents Testimony:

Don Judge, COPE Director of Montana State AFL-CIO urged support of Senate Bill 30 and read from prepared testimony. (Exhibit #1)

Gene Fenderson, Chief Lobbyist, Montana Building and Construction Trades representing 15 different international unions across Montana. He expressed full support of SB 30. He explained that there have been many conflicts between and labor and management over the years, and that would continue in our society. The government for many years had tried to keep a "level playing field" between management and labor, but the occupation of a professional strikebreaker has resurfaced. He said that this bill would clarify the difference between those workers who stay on because they believe in what their employer is doing, and those workers who exploit a situation for sole benefit of themselves.

Wilbur Rehman, Labor Relations Director for the Montana Nurses Association spoke in strong support of Senate Bill 30. He told the committee that it is not a question of someone's ability to find jobs, it's a question of whether or not we are going to allow people to travel the state and nation engaging in activity which takes away the fairness of the bargaining concept. The two sides, labor and management come together in the best interest of whatever the entity is to try to solve their concerns and problems. He told the Committee that people hiring out to simply tip the balance to one side or the other is wrong.

Terry Minnow with the Montana Federation of Teachers and Montana Federation of State Employees spoke in support Senate Bill 30. She told the Committee that they have not had a strike for many years and hope to not have for many more. She said

Senate Bill 30 would be a preventive measure to protect all the workers of the state of Montana. (Exhibit #2)

Bob Heiser, lobbyist from the United Food and Commercial Workers Union spoke in support of Senate Bill 30. (Exhibit #3)

### Opponents Testimony:

Forrest Boles, President of the Montana Chamber of Commerce read from prepared testimony. (Exhibit #4)

Bruce Moerer, Staff Attorney for the Montana School Board Association told the committee that they had questions and concerns about Senate Bill 30. He questioned whether or not it was necessary and expressed a real concern about the burden on the employer. He referred to page 3, line 11, and questioned the definition of "knowingly" in this situation. He felt that this added another impediment to public service for non-compensated school trustees. Referring to page 2 and 3, sub-section 4, he expressed concerned about the lack of definition regarding "any other information", and who would determine what "any other information" would consist of. He expressed another concern in regards to sub-section 3 that requires the employer to inquire about previous employment history during a strike. He explained that this appeared to be a more broad interpretation than the actual definition of professional strikebreaker. He stated that the bill does not exclude people who live in the community or an employee who crosses the picket line.

He told the committee that he felt the employer needs to have the option to operate during the strike, as well as the employees having the option to strike, but that this bill as written would go too far. (Exhibit #5)

### Closing by Sponsor:

Senator Towe stated that it would be appropriate to amend the bill to make it clear that a person striking the same company, and it being the only one he has struck, would not be called a professional strikebreaker. With regard to the inquiry, he stated that questions asked by the employer that violate the Equal Employment Opportunity Act or the Civil Rights Act, by gathering information that can be used adversely, or the employer could use to discriminate on employment is prohibited. Questioning whether or not someone is a professional strikebreakers is not in violation of these Acts.

He also explained that employers hiring a person they suspect of being a professional strikebreaker is not acting "knowingly". "Knowingly" is well-defined in the Criminal Code.

Senator Towe also explained that "any other information" refers to any other information the Commissioner of Labor may determine is necessary in order to fulfill his responsibility

under this section.

Questions From Committee Members:

Senator Lynch asked Mr. Moerer if Senator Towe had answered his questions. Mr. Moerer said that the way the bill reads now, even if someone had worked just one time during a strike it had to be reported. Senator Towe explained that information can be given to the union, who then can cross check the information and determine the actual number of times the employee had worked during a strike.

Senator Devlin asked Senator Towe if an individual "offering" themselves more than three times, and were not hired, if they would still be considered a professional strikebreaker. Senator Towe said that was correct. He explained that that individual's intent was to displace a striking employee.

Senator Devlin questioned the wording in Section 1 (b). He asked if it should be "when the employer's business is involved..." instead of "when the employer's business has been involved...". Senator Towe explained the wording was carefully reviewed, and that it is talking about any time within the last five years. He went on to cite the Peabody Mine strike that was resolved in a few months. The Decker strike came within the five years of the Peabody strike.

Senator Nathe addressed Senator Towe regarding the right to privacy. He said he sees nothing in this bill protecting the right to privacy. He asked if Senator Towe would be adverse to amending the bill and that the list of names only go to the County Attorney. Senator Towe said he would not amend it. The list would be circulated to the union to identify scabs, and he does not see it as a privacy matter.

Senator Pipinich told the Committee that he had been through a strike in Missoula. The employer, Stone Container, employed people from all over the country to replace the striking workers. The union was not able to identify the professional strikebreakers, and the County Attorney was not able to act. He went on to express concern regarding the number of times an individual offers themselves for employment. He explained that three times would identify them as a professional strikebreaker.

Senator Aklestad asked Senator Towe if an employee within the same company but in a multi-state situation, and working out of state, fit in this category. Senator Towe explained that this would be a transfer; not the employee offering himself as a new employee.

Senator Aklestad expressed concerned about adding to the constitutionality of laws already on the books, in regards to an individual's right to seek employment. Senator Towe said there

are certain things the Constitution does not protect in the area of employment.

Senator Aklestad asked to question the Commissioner of Labor, Mike Micone, who was present at the meeting. He asked Mr. Micone if he had examined the bill, and if his department had the expertise and people to enforce this law. Mr. Micone explained that his department has questions about the enforcement of this legislation. He felt it was still unclear as to how the department could enforce it. He asked if no response came from the employer it would still not be resolved even after the strike had ended. Senator Towe explained that the company found in violation of these codes should be notified that they are guilty of a felony when they do not submit reports.

In answer to Senator Aklestad's question, Mr. Micone explained that expertise is available, without additional costs.

Mr. Micone asked Senator Towe about the scope of classification. He asked about employees who choose to cross a picket line. The company could employ someone to replace that individual. He asked if the replacing employee would be classified as a strikebreaker. Senator Towe agreed that the classification point is something that should be looked at.

Senator Aklestad asked Senator Towe if he was aware that there were professional strikers. Senator Towe said that he would agree that there are persons who get involved in more than one strike, or are involved in assisting the employees who are involved in a strike. Senator Aklestad pointed out that these individuals are not employed by the company being struck. He asked Senator Towe if he would amend his bill to cover this situation, by making those names available to the Commissioner of Labor and the county attorney. Senator Towe said he would not. He explained that he found no problem in that area. There are individuals who take jobs that belong to striking employees, and there are individuals who offer assistance to striking employees.

Senator Aklestad asked Senator Towe how many strikebreakers were identified in the last year. Senator Towe said eleven names were submitted to the county attorney in the Decker strike.

Senator Pipinich said that there were 585 Montana residents that were replaced by 250 people brought in from out of state. He went on to explain that labor contracts only come up every one, two or four years, making last year (1990) an off year for labor contracts.

Senator Aklestad pointed out that even all those 250 individuals would not fall into this category. Senator Pipinich explained that after the strike they were all identified as out-of-state strikebreakers.

Senator Devlin asked how it was determined that these

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individuals were from out of state. Senator Pipinich explained that the information came from another union that had been involved in a strike.

Mr. Boles asked about how much leeway do the employer get in investigating the employees and whether or not there was adequate protection of the employer against litigation. Senator Towe says the questionnaire protects the employer. The employer can site the code to the employee.

EXECUTIVE ACTION ON SENATE BILL 30



Motion:

No action at this time.

Chairman Manning told the Committee that Senate Bill 30 would be amended and would go to Executive Action at the next meeting.

ADJOURNMENT

Adjournment At: 2:05 p.m.

  
SENATOR RICHARD MANNING, Chairman  
  
LINDA CASEY, Secretary

RJM/llc

LA011091.SM1

ROLL CALL

NATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 1/10/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING			E
SENATOR LYNCH	P		
SENATOR MANNING	P		
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		

Each day attach to minutes.



JAMES W. MURRY  
EXECUTIVE SECRETARY

110 WEST 13TH STREET  
P.O. BOX 1176  
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF DON JUDGE ON SB 30, PROFESSIONAL STRIKEBREAKERS  
SENATE LABOR COMMITTEE, THURSDAY, JAN. 10, 1991, RM. 413, 1 P.M.

Mr. Chairman and members of the Committee, I'm Don Judge representing the Montana State AFL-CIO, and I'm here in strong support of Senate Bill 30 regarding professional strikebreakers.

SB 30 tightens up the restrictions against professional strikebreakers and requires that the Department of Labor maintain a list of those who have repeatedly offered themselves as strikebreakers. In addition, the misdemeanor penalty clause puts some teeth into enforcement of the law.

This bill would make it clear to employers that they can't bring in professional strikebreakers to walk all over their employees. It would also send a clear message to professional strikebreakers, telling them that vultures of the non-bird kind are not welcome in the state of Montana.

This is a good step in the right direction, and we strongly support it.

Nationally, Congress is considering legislation that would protect workers from being permanently replaced whenever they are forced to strike.

Permanent replacements for a workforce have been used time and time again in recent years, starting most visibly with the Professional Air Traffic Controllers who were all fired by President Reagan when they dared to strike.

We have seen a similar situation here in Montana by the Peter Kiewit & Sons coal company in Decker. They hired replacement workers and strikebreaking security personnel during the course of their three-year dispute with the United Mine Workers of America.

The National Labor Relations Board has ruled that the company engaged in an unfair labor practice against the union and has ordered it to rehire many of the original workers. Unfortunately, the company is slow to comply and many workers are still out on the street.

The laws and Supreme Court decisions that have allowed many employers to simply hire a new workforce when confronted with a strike must be changed if workers are to have any real protection.

In the employer-employee relationship, almost all of the power rests in the hands of the employer. The employer sets the hours of work, the work schedule, lunch hours, breaks, vacation policy, sick-leave policy, production quotas, quality standards, etc. About the only effective way for employees to deal with these issues is through the collective bargaining process. And with or without a union, the only thing employees can really control with any certainty is whether or not they work.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 1/10/91

BILL NO. SB 30





TESTIMONY OF DON JUDGE  
SENATE BILL 30  
JANUARY 10, 1991

No one likes a strike, not the workers who are forced into it, not their kids and families, not the company, not the community, no one. Bringing professional strikebreakers into a workplace just makes a difficult situation even more difficult.

I want to stress that the vast majority -- more than 95 percent -- of all collective bargaining agreements are reached without any strike activity. The vast majority of employers are interested in obtaining a fair and reasonable settlement.

But when employers set unreasonable standards or propose unacceptable changes in the working conditions, withholding your labor sometimes is a worker's only option. We ought not allow bad employers to take that power away, too. There have to be some checks and balance between employers and employees.

SB 30 helps to move us toward that balance in Montana, and is a good first step.

We support Senate Bill 30 and we urge you to give it a "do pass" recommendation.

Thank you.

NAME: Eugene Fenn DATE: \_\_\_\_\_

ADDRESS: Box 202 Helen

PHONE: 442-1441

REPRESENTING WHOM? SB 30

APPEARING ON WHICH PROPOSAL: State Bldg. Trachs

DO YOU: SUPPORT? ☒ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

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

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



1-10-91

MFT / MFSE

- Terry Minow -

We are ~~here~~ here in support of SB30.  
We haven't had a strike in years -  
we hope not to have one for many more  
years. This bill is a preventative measure  
we hope you will vote to protect the  
rights of <sup>all</sup> workers of Montana.

Thank you, Mr. C

Montana Federation of Teachers  
" " of State Employees

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 1/10/91

BILL NO. SB30

1-10-91

Mr Chairman and Members of The Committee  
For the record my name is Bob Heiser and  
I am here on behalf of the over 3,000 members  
of the United Food & Commercial Workers in  
support of S.B. 30

We believe S.B. 30 is a good bill for the  
following reasons. This bill goes on to define  
a professional strikebreaker as a person, partnership,  
or firm who within the last 5 years has been  
employed two or more times by an employer who  
has been involved in a labor dispute resulting in  
a strike or who has offered himself three or  
more times for employment. We feel it is  
important to clarify what constitutes when  
a person is a professional strikebreaker and  
this bill clearly defines when that happens

For those reasons we hope this committee  
will support S.B. 30

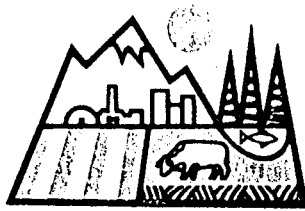
Thank You

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 1/10/91

BILL NO. SB 30



## MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730

• HELENA, MONTANA 59624

• PHONE 442-2405

Testimony  
of the  
Montana Chamber of Commerce  
by  
Forrest H. Boles, President

Senate Labor Committee  
Helena, Montana  
January 10, 1991

Mr. Chairman members of the Committee, my name is Forrest Boles, President of the Montana Chamber of Commerce.

While we have some questions as to the overall necessity of this legislation, our objections are fairly minor and are in the form of questions we think should be answered.

On page one line 24-25 does that mean the same employer or separate ones? It is not clear whether an employee who was already working when the labor dispute developed would fall into this category on a circumstantial basis.

On page two lines 19 through 24 the burden on the employer to inquire into the worker's employment background raises a question as to the employer's exposure to inappropriate hiring practice charges by the worker. An employer cannot ask about marital status, mental or physical health history, ethnic background or many other protected background facts. Would this

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EXHIBIT NO. 4

DATE 1/10/91

BILL NO. 5830

be different?

Finally, on page three line 11 through 13 seems to open an area of potential litigation if the employer suspects the worker may have denied previous employment that would make him ineligible for employment and does not have the resources or access necessary to make a true determination of the facts.

Mr. Chairman members of the Committee unless these questions are addressed we would have to oppose the legislation.

Thank you.

NAME: Bruce W. Moerer DATE: 1-10-90

ADDRESS: One South Mt Ave

PHONE: 442-2180

REPRESENTING WHOM? Mont. School Bds Assn

APPEARING ON WHICH PROPOSAL: SB 30

DO YOU: SUPPORT?            AMEND?            OPPOSE? X

COMMENTS: 1. do not believe there is a serious problem to solve  
2. adds a burden to employers  
3. concerned with definition of knowingly  
4. V adds another impediment to public service  
for non-compensated school trustee  
5. intent of ~~law~~ proponents seemed to be on out-of-  
state people. This bill does not exclude local people  
6. current employees who cross picket line may be  
covered by definition  
7. "any other info" - page 2, line 25 and page 3, line 1  
not defined  
8. information required in 35-35-202 (3) - page 2 - would be  
reported even if employee not in defn of "prof. strikebreaker"  
9. do not keep a level playing field.

PLEASE LEAVE ANY PREPARED STATEMENT

COMMITTEE SECRETARY.



SENATE LABOR & EMPLOYMENT

EXHIBIT 5

DATE 1/10/91

BILL NO. SB30

Bruce W. Moerer  
Staff Attorney

Montana School Boards Association  
1 S. Montana Ave.  
Helena, MT 59601  
442-2180



DATE 11/10/91

COMMITTEE ON LABOR

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary.)