MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 5, 1991, at 3:10 p.m.

ROLL CALL

Members Present:
Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

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

Announcements/Discussion: NONE.

HEARING ON HOUSE BILL 305

Presentation and Opening Statement by Sponsor:

Representative Jim Rice told the Committee House Bill 305 was introduced at the request of the Department of Labor and Industry. He explained amendments to the bill have rendered it financially unfeasible. House Bill 305 authorizes the department to hold hearing by telephone which is current department practice. Questions have arisen as to whether or not the department has that authority. He explained in the area of unemployment insurance federal requirements call for a specific amount of cases to be completed in a specified period of time.

Proponents' Testimony:

Bob Jensen, Administrator with the Department of Labor and Industry told the Committee although House Bill 305 is a department bill he was unsure if he were appearing as a proponent

or an opponent. He explained the introduced bill would have provided for telephonic hearings for wage claims, unemployment insurance tax and benefit appeals, and for workers' compensation matters. It also provided for an appealing or requesting party would pay for a written transcript of proceedings. At the request of the workers' compensation judge and workers' compensation insurers, the House Labor Committee deleted all reference to workers' compensation matters. He explained problems were created for the department due to fiscal impact with in-person hearings and transcripts. At the time House Bill 305 was heard in the House the workers' compensation community appeared to have "good reasons" for requesting an exemption for workers' compensation purposes. He stated the language on Page 2, Line 13 provides the department may charge a fee for copying certain documents except for transcripts. The language implies the department would be required to pay any and all transcription costs. The legal services division would incur substantial expenses not included in its current budget. He told the Committee, unless language were drafted to remove the requirement of the department of providing the written transcripts, the position of the department would be to recommend House Bill 305 be tabled.

Bill O'Leary, Administrator of the Legal Services Division of the DOLI told the Committee when House Bill 305 was initially submitted to the House it was to alleviate certain criticism the department has received from various courts throughout Montana. He explained 2000 hearings are held each year, of which 1600 are for UI benefit cases. Telephone authority to conduct such hearings is essential in order to meet the minimum US Department of Labor requirements. House Bill 305 as introduced allowed for telephone hearings including workers' compensation. At the request of the workers' compensation court the provisions allowing telephone hearings was exempted. He explained, as an attorney, he understands there are many and detailed issues in workers' compensation proceedings. The issue is the budget has no appropriation made for the burden of taking the record and transcribing the record for those cases which would go to appeal to the workers' compensation court. He told the Committee approximately 225 workers' compensation cases are held each year, with 10-15% go on appeal to Judge Reardon's court. He explained funding is necessary to do this. He commented portions of House Bill 305 are acceptable, but other portions would "be disaster" for the department. He requested the department not be obligated to pay for cost of transcripts and taking of such transcript. If the bill cannot be modified as such he requests the bill be tabled.

Michael Sherwood, representing the Montana Trial Lawyers Association spoke on House Bill 305. He told the Committee he is neither a proponent nor an opponent. He encouraged the amendments made by the House with respect to Section 5 and Section 6, as well as Page 2, Line 7 and Line 8, which refers to workers' compensation or the Supreme Court which allows a tape

recorded record to be used.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Lynch asked Representative Rice if he wished the bill to be tabled. Representative Rice told the Committee he had no personal interest involved with the bill. He suggested if the Committee approves as is, House Bill 305 should be referred to Finance and Claims.

Senator Towe asked Mr. O'Leary if phone conferences are being used at the present time. Mr. O'Leary stated on occasion those cases deemed to be of a serious nature have a record taken. This is not a transcribed record by a court reporter, it is done by tape.

Senator Towe asked Mr. O'Leary, as it relates to Section 5 and Section 6, if the bill were passed in its present form with those sections deleted, did he see it as legislative intent that telephone conferences are not authorized; and if the department is concerned whether they can continue. Mr. O'Leary told the Committee this was his major concern. He also expressed concern about the absence of funding.

Senator Towe asked Mr. O'Leary what the procedure was now for copying transcripts. Mr. O'Leary explained complainants are charged based on their ability to pay. He told the Committee they cannot refuse individuals the right to go to appeal.

Senator Towe asked Mr. O'Leary if there were any problem with the department's authority to do telephone conference for wage and hour, prevailing wage, collective bargaining disagreements, determination for UI matters, i.e., independent contractor status, etc. Mr. O'Leary explained District Court Judges have indicated in a memo attached to an Order about the propriety of holding telephone hearings and taking these hearing by taped recordings.

Senator Towe asked Mr. O'Leary if the problem were the taped recording or the telephone hearing. Mr. O'Leary told the Committee it is both. The majority of the criticism is directed toward the taped record. During transcribing there can be outside noises which cover the testimony. The word "inaudible" is then inserted in that portion of the transcript.

Senator Towe asked if the sentence on page two were added; "In a proceeding under this title, the commissioner may include a tape recording of a contested case hearing in a record certified to a district court"; and strike all else added to House Bill

305; would this solve the department's concern and problem.

Mr. O'Leary stated it would satisfy the concerns about the department's ability to hold telephone hearings and take a taped record. Senator Towe pointed out the authority in Section 2, 3 and 4 were not needed because the department is holding telephone hearings at this time and that authority is not contested. Mr. O'Leary told the Committee he did not know "how long that's going to continue".

Senator Keating asked Mr. O'Leary if these hearings are open hearings. Mr. O'Leary stated there are confidentiality statutes. He told the Committee if there were a hearing with a claimant seeking benefits he would urge it be confidential and not open to the public, except for the taking of a record, the claimant's personal affairs did not have to be made known; nor the affairs of the employer be made known.

Senator Keating asked if there would be "secret meeting over the telephone". Mr. O'Leary said there would not.

Senator Towe addressed Judge Tim Reardon, Workers' Compensation Judge. Judge Reardon told the Committee he, as well as the self-insurers association and the private insurers supported the deletion of workers' compensation and occupational disease. He explained in 1987 during the major reform of workers' compensation a great deal of that was directed toward giving the department greater jurisdiction at the outset; and to make the workers' compensation court an appeals court. In workers' compensation cases the costs can "get into 6 figures" quickly. He explained he has received transcripts with seven different sections of "inaudible". Attorney's have told him copies of tapes received are blank. Judge Reardon told the Committee under these circumstances he cannot try the case. He can order new evidence be taken resulting in a "tremendous waste of money and time" in having to call in witnesses a second time.

Senator Towe asked Judge Reardon if he had a problem with the telephone hearings. Judge Reardon told the Committee he does. He cited a case in which the issue was who is telling the truth. Reading a "cold record" gives two stories. The Hearings Officer makes a Finding of Fact, a determination the Judge should believe story 'A' or story 'B'. Credibility is an issue, the judgement must be made by "looking at the demeanor of the witness".

Senator Towe asked Judge Reardon if the bill were passed as it presently exists with workers' compensation and occupational disease stricken from it, would he take that as an indication the legislative intent was not to authorize telephone hearings. Judge Reardon told the Committee he would. He explained he understands the department's funding problem, but there is a funding source which funds all administrative costs of workers' compensation. Mr. O'Leary used the figure $70,000 which Judge

Reardon felt is high. He explained court reporters are contracted when he travels at a cost of approximately $14,000 per year. He stated he is doing more hearings than the department at the present time, but the department will do more in the future.

Closing by Sponsor:

Representative Rice closed on House Bill 305.

EXECUTIVE ACTION ON HOUSE BILL 305

Motion:

Senator Lynch moved to TABLE House Bill 305.

Recommendation and Vote:

Motion to TABLE CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 663

Presentation and Opening Statement by Sponsor:

Representative Tim Dowell presented House Bill 663.

Proponents' Testimony:

Phil Campbell of the Montana Education Association told the Committee labor agreements are generally not included under the Uniform Arbitration Act with the exception of an arbitration award being vacated by the court, or modified by the court. House Bill 663 will allow the parties to go directly into court and compel arbitration if the parties refuse to participate, or to enforce/confirm the award. He presented copies of the section (Exhibit #1). This would allow for a shorter process. He told the Committee it would not require arbitration be in labor agreements. If the agreement has arbitration this act can be used to compel, enforce the award, or set the award aside.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Nathe asked Mr. Campbell if House Bill 663 had anything to do with interest arbitration. Mr. Campbell stated it did not. House Bill 663 deals with labor agreements and grievance arbitration and, if arbitration is already in the

collective bargaining agreements. It has nothing to do with interest arbitration or replacing this with the right to strike.

Senator Nathe asked Mr. Campbell to explain grievance arbitration and interest arbitration. Mr. Campbell stated in a collective bargaining agreement there may be a disagreement about how the contract is interpreted or applied. An individual would have the right under their collective bargaining agreement to file a grievance. Under typical circumstances the grievance would end in arbitration. This agreement and the procedure to get there is in the collective bargaining agreement. If there is a dispute as to how the contract is applied or interpreted it is sent to arbitration.

Senator Nathe asked Mr. Campbell to explain interest arbitration. Mr. Campbell stated interest arbitration is used as the "last step" in the bargaining process instead of striking. He explained House Bill 663 does not deal with interest arbitration.

Senator Pipinich commented most all bargaining units have arbitration for grievances. Mr. Campbell explained, at the present time, if a grievance is filed and an employer refuses to participate in arbitration to enforce the contract, an unfair labor practice can be filed or go to court under a breach of contract. House Bill 663 would allow going directly into court only if it is in the contract. He stated it is a "short way to get there" in order to move the agenda, "get on with the arbitration, and solve the problem. It saves "time and dollars".

Senator Devlin asked Mr. Campbell if the School Board Association is in favor of this why are they not at this hearing. Mr. Campbell explained they do not oppose it.

Senator Towe asked Mr. Campbell why this does not apply now. By putting in the "three sections" it states they "shall apply" in each case; to compel arbitration or stay arbitration in court, to confirm the award in court, and to use the state district court. Mr. Campbell explained in order for the Uniform Arbitration Act to apply to labor agreements the parties have to claim to use the whole act. In most labor contracts a process, i.e., selection of an arbitrator, is agreed upon. Mr. Campbell explained they do not want to use the whole process; it is not necessary because it is bargained into a contract and the parties agreed to the process. The mechanism of "how arbitrations are going to work" is not needed.

Senator Towe pointed out it says "arbitration between employers and employees are valid and enforceable and may subject to all or portions of this chapter if the agreement so specifies", except for the two sections would have to apply in each case. He asked Mr. Campbell if he were saying the five sections apply in every case, and one cannot opt out. Mr. Campbell told the Committee that were the case.

Senator Towe asked why this needs to be mandated when one can opt into it now. Mr. Campbell explained under the current statute, not to confuse the Uniform Arbitration Act and get it involved in the collective bargaining agreement, an arbitrator's award can be set aside or vacated. This applies in all cases, the Uniform Arbitration Act can be used to do this. He is asking that under all case they should also be able to be compel it or force the award.

Senator Towe asked if Mr. Campbell were asking this to be automatic without having to stipulate to it in the collective bargaining agreement. Mr. Campbell explained it is not anything which cannot be done, it is "a longer process to get there".

Senator Nathe asked if House Bill 663, in any way, impact legislation in Senate Education. Mr. Campbell explained there is a bill which states all decisions of the trustees must use the administrative procedures which came directly from the Canyon Creek Supreme Court decision. It will put in statute what the Supreme Court says is the process now. An exception in that legislation, is the process need not be used if a provision exists in the statute for direct appeal.

Senator Nathe asked if this would eliminate the problems school boards have with two appeals being filed simultaneously. Mr. Campbell told the Committee he did not know if it would eliminate that problem. This type of problem would be bargained into the contract saying if the statutory appeal process is used the right to come under the contract is forfeited.

Senator Aklestad asked if under an existing collective bargaining agreement, if this issue is not specified, one would be outside the parameters of the Uniform Arbitration Act. Mr. Campbell told the Committee that is correct except for the two provisions which apply all the time. An arbitration award can be modified or vacated under the current statute because those two provisions apply in all cases.

Senator Aklestad asked if House Bill 663 would insure that all five provisions would automatically be under the Uniform Arbitration Act without having it in the collective bargaining agreement. Mr. Campbell explained the added sections would apply under all circumstances.

Senator Aklestad commented it would not need to be specified in the collective bargaining agreement. Uniform Arbitration would automatically be encompassed in those five sections. Mr. Campbell explained it is not that all the Uniform Arbitration Act would apply, only those two concepts; to compel arbitration and to enforce the arbitration award.

Senator Aklestad asked Mr. Campbell to present a situation, irregardless of the section, with the difference between having a collective bargain agreement and having those provisions in that

agreement, and the difference with not having them in the agreement where the Uniform Arbitration Act does not apply. He asked what the steps were, what took place, and what awards are given at a particular time through those steps. Mr. Campbell told the Committee with current status and without this change, if a school district has in the collective bargaining agreement, through the bargaining process, agreed to arbitration, and a grievance is filed, and the district has chosen not to participate (they will not select an arbitrator); the choice is to go through the process with the Administrative Procedures Act. First the county superintendent, then the appeal to the state superintendent, and into court on a breach of contract. He explained this is not a new concept, it is the process now. Under the Canyon Creek decision this has to be the process unless an exemption or procedure is specified in statute. House Bill 663 would solve this problem. He explained with House Bill 663 if the district refuses to participate in the arbitration process it could go directly into court under Section 27-5-115 "Proceedings to compel arbitration" which would compel the parties to participate in the process.

Senator Aklestad asked for an example in which arbitration was not in the collective bargaining agreement. Mr. Campbell explained if arbitration is not in the contract, as a final step to the grievance process, it would vary by contract. Some would stop with the school board if it were bargained in that manner. In the cases where arbitration does not exist, it depends on what the procedure is. Mr. Campbell explained House Bill 663 would only apply if there is arbitration, collectively agreed to in the contract.

Senator Aklestad asked if arbitration is not in the collective bargaining agreement would House Bill 663 apply. Mr. Campbell explained House Bill 663 only deals with the arbitration process.

Senator Aklestad asked if House Bill 663 is only eliminating (in Mr. Campbell's example) the steps with the county superintendent and state superintendent. Mr. Campbell commented these were the two steps in the Administrative Procedures Act; then that can be appealed into district court.

Senator Aklestad asked these two entities would be removed from the scenario. Mr. Campbell told the Committee this was correct. He explained "they haven't yet been in" because this is a new Supreme Court decision and a bill coming through the process.

Senator Towe asked if without House Bill 663 one cannot go directly into court to compel arbitration. Mr. Campbell explained this was correct. A case in Canyon Creek by Billings where a breach of contract occurred. Arbitration was not in the contract. It went to court to enforce the contract. It went to the Supreme Court denied it, and remanded it back saying the

Administrative Procedures was not used.

Senator Towe asked if the federal district court has been excluded. Mr. Campbell told the Committee he could not answer the question. He commented "why would you want to go to federal court to compel". Senator Towe said this is done "constantly". He expressed concern about limiting an opportunity to go to federal court.

Senator Keating pointed to Line 17. Senator Towe explained the employer and employee in a collective bargaining situation can decide what portion of the Uniform Arbitration Act to use, except these five sections cannot be excluded.

Senator Aklestad commented under the provisions being added, will anything supersede the National Labor Relations Board.

Senator Towe asked Mr. Campbell to acquire information regarding this. He commented the right to go to federal court to compel arbitration or confirm an award may be excluded.

Mr. Campbell told the Committee that was not the intent. He explained if possible that section could be left out. If it is a limiting factor it would not be critical to the purpose.

Senator Towe commented the federal laws sometimes say federal law applies unless the state has a contrary law. This would put a contrary law on the books, precluding going to federal court. He suggested this may not be the case, but the information should be obtained from someone familiar with federal jurisdiction.

Senator Towe suggested Tom Gomez clarify the language.

Closing by Sponsor:

Representative Dowell closed on House Bill 663. He told the Committee if there is a contract with arbitration bargained in, and a grievance is filed, House Bill 663 would provide a mechanism to bypass the administrative appeals process. It would save money and time.

HEARING ON HOUSE JOINT RESOLUTION 29

Presentation and Opening Statement by Sponsor:

Representative Carolyn Squires presented House Joint Resolution 29 to the Committee. She explained HJR 29 became a committee bill when funding was cut for dislocated workers through Title III of the Job Training Partnership Act (JTPA). Many states' funding were cut by the US Department of Labor, Montana being among them. She told the Committee HJR 29 will be

used in concert with other western states to ask the Labor Secretary to reallocate, out of the $104 million of discretionary funds, $17.8 million. Montana's share would be $302,313. She explained Montana's dislocated workers' programs are among the finest in the nation, always exceeding federal and state performance standards. Last year 870 dislocated workers were served across Montana with 85% placed in an average wage of $8.50 per hour. Montana has always spent its share of the program dollars while keeping its performance high. Many of states receiving increases, while Montana's share decreased, are states who have not spent all their funds, and who's performances have not been up to the standard.

Proponents' Testimony:

Darrell Holzer of the Montana State AFL-CIO spoke from prepared testimony in support of House Joint Resolution 29. (Exhibit #2)

Sue Mohr, Executive Director of the Montana Job Training Partnership spoke in support of House Joint Resolution 29. She presented the Committee with a listing of JTPA programs and the percentage of cuts to each state (Exhibit #3). She explained the western states were the hardest hit not because the economy in the west is good, but the economy on the east coast is worse. She pointed out the amount of national reserve went up by the total amount the total funds went up (14%). This total amount is close to the amount which was cut.

Bob Andersen of the Research, Safety and Training Division of the Montana Department of Labor and Industry spoke in support of House Joint Resolution 29. He told the Committee the department also supports HJR 29.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Devlin asked Representative Squires if a copy will be sent to the congressional delegation. Representative Squires told the Committee the main emphasize was to direct HJR 29 to the US Secretary of Labor. She commented Congressman Pat Williams has been helpful in the past and would be willing to have such a statement amended into the resolution.

Senator Keating pointed to the third 'WHEREAS' and questioned the reasoning for it. Ms. Mohr told the Committee it may be referring to Wyoming and the oil states affected.

Senator Towe referred to Exhibit #3. He pointed out the first three states, Louisiana, Arizona, and Colorado. He told the Committee these are probably oil states.

Senator Keating commented oil activity has picked up in all those states in the last four or five years, with the only state without an oil activity increase is Montana. He stated Idaho is not an oil state, and yet received an increase.

Senator Keating asked from what industry were the 870 workers dislocated. He referred to the AFL-CIO citing the Champion International loss. He commented lack of timber sales and the prohibition in log shipping reduced the number of lumber and wood products workers. He told the Committee a reason for dislocated workers' funding must be addressed honestly in the 'WHEREAS'. He commented there is not an oil recession in the United States at this time, except in Montana. He pointed out those workers have left the state; there are no dislocated oil workers in Montana. Ms. Mohr told the Committee the timber workers were served out of a discretionary fund; they are not part of the 870 workers Representative Squires referred to. She stated dislocated workers in the Billings area are being served but it is difficult to determine specific industry. In some cases these workers were dislocated from the oil industry, then from another industry.

Senator Keating commented the dislocation of workers in the oil industry took place in 1983 when 10,000 jobs left the state. He pointed out the oil refineries in Billings are increasing their number of employees. He told the Committee this particular 'WHEREAS' appears to be blaming the entire recession on the oil industry.

Senator Towe suggested the sponsor be asked if the 'WHEREAS' could be deleted without effecting the impact of the resolution. Representative Squires told the Committee there was no direct intent to refer to the oil industry.

Closing by Sponsor:

Representative Squires closed on House Joint Resolution 29. She told the Committee Montana was the model for setting up the dislocated workers program. She asked Senator Blaylock to carry House Joint Resolution 29.

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 29

Amendments, Discussion, and Votes:

Senator Keating moved to strike Line 18 through Line 20. Motion CARRIED with Senator Nathe and Senator Pipinich voting NO.

Senator Keating moved to add the language, "BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Secretary of Labor, to each member of Montana's congressional delegation,

and the appropriate committees of the United State Congress that consider labor legislation." Motion CARRIED with Senator Aklestad voting NO.

Senator Keating told the Committee HJR was a good idea. He suggested an additional 'WHEREAS' be inserted:

"WHEREAS, Montana had a model displaced worker program that received national acclaim, and now we are getting cut for our good work, we want reconsideration of the disbursement of funds."

Senator Towe asked Sue Mohr the name of the program which received recognition. Ms. Mohr told the Committee the program Representative Squires was referring to was the program begun in Montana was used as a model for other states.

Senator Towe suggested Senator Keating's motion to read:

"WHEREAS, the Montana Job Training Partnership Act program became a model program for use in other areas to train dislocated workers, and

WHEREAS, the formula employed in FY 91 under Title III reduced the funds to Montana, even though many dislocated workers remain, and"

Tom Gomez told the Committee the discretionary funds available are to be distributed among other things for the purpose of providing funds to exemplary programs.

Senator Keating suggested the stricken 'WHEREAS' be reinstated with the exception of the word "oil".

Senator Towe told the Committee Tom Gomez would draft language for House Joint Resolution.

EXECUTIVE ACTION ON HOUSE BILL 256

Motion:

Senator Keating moved House Bill 256 BE CONCURRED IN.

Discussion:

Senator Keating pointed to the Fiscal Note 1.9% increases unemployment insurance benefits by $800,000 per year. 1.85% would make the bill revenue neutral.

Senator Keating reminded the Committee Representative Driscoll had said if it did not remain at 1.9%, kill the bill.

Senator Keating commented the Department of Labor and Industry was about to move $3 million from the administrative tax into the unemployment fund. The committees withheld it, and directed moving the $3 million into another fund for providing for the JTPA program if there is a short-fall in federal funding.

Senator Keating pointed out there are "efficiencies" for the employer in House Bill 256.

Amendments, Discussion, and Votes:

Senator Aklestad moved to change the formula to 1.87%. He explained not all workers would be affected negatively at the 1.85% although there could be a few. He commented leaving it a 1.9% would not be revenue neutral.

Senator Towe asked Rusty Harper of the Department of Labor and Industry about the impact of changing the formula. Rusty Harper told the Committee it cannot be said every worker will be affected the same, some will go up and some will go down. The overall impact last year can be calculated. He explained from year to year as the mix changes, even that becomes problematic. Two years ago this same bill would have had a fiscal note saying this were revenue neutral. He told the Committee "this is their best guess based on what there is in the system now".

Senator Devlin pointed out if the formula is not reduced there is a risk of decreasing the fund.

Senator Aklestad's motion to change the formula to 1.87% FAILED with three (3) YES (Aklestad, Devlin, and Nathe); four (4) NO (Blaylock, Doherty, Keating, and Towe).

Recommendation and Vote:

Keating motion House Bill 256 BE CONCURRED IN CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HOUSE BILL 152

Amendments, Discussion, and Votes:

Senator Aklestad pointed out House Bill 152 differs from the federal law. The federal law give tip credits. The old law was at $500,000 annual wages. There is no training wage.

Senator Pipinich reminded the Committee all business, even the Chamber of Commerce spoke in support of House Bill 152.

Senator Keating moved to amend House Bill 152 by deleting "$110,000" on Line 22; and adding "$500,000" in its place.

Motion FAILED with four (4) YES (Aklestad, Devlin, Keating, and Nathe); four (4) NO (Blaylock, Doherty, Pipinich, and Towe).

ADJOURNMENT

Adjournment At: 5:00 p.m.

Thomas E. Towe

SENATOR THOMAS E. TOWE, Vice Chairman

Linda Casey

LINDA CASEY, Secretary

TET/llc

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/5/91

____ LEGISLATIVE SESSION ____

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

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 6, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 256 (third reading copy -- blue), respectfully report that House Bill No. 256 be concurred in.

Signed: _____
Thomas E. Towe, Vice Chairman

3/6/91
Amd. Coord.

3/6 10 11:20
Sec. of Senate

9878, R.C.M. 1935; R.C.M. 1947, 93-201-7.

27-5-302. En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1288; re-en. Sec. 9979, R.C.M. 1935; R.C.M. 1947, 93-201-8.

amd. Sec. 26, Ch. 12, L. 1979.

27-5-304. En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1289; re-en. Sec. 9980, R.C.M. 1935; R.C.M. 1947, 93-201-9.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 3/5/91
BILL NO. HJR 29

27-5-305 through 27-5-310 reserved.

27-5-311. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

History: En. Sec. 14, Ch. 684, L. 1985.

27-5-312. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of 27-5-213, as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History: En. Sec. 15, Ch. 684, L. 1985.

27-5-313. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of

subject to arbitration.

History: En. Sec. 4, Ch. 684, L. 1985; amd. Sec. 1, Ch. 236, L. 1989; amd. Sec. 1, Ch. 611, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 236 in (2), at beginning of second sentence, inserted exception clause; inserted (3) allowing members of trade or professional organization to submit future controversies to arbitration; and made minor changes in phraseology and form.

Chapter 611 in (2)(b) changed dollar amount limitation from $35,000 or less to $5,000 or less; and made minor changes in form and phraseology.

Cross-References

Arbitration of unlawful termination of public employee, 2-18-621.

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of public employees' collective bargaining issue, 39-31-306, 39-31-310, 39-31-311.

Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Arbitration of threshers' lien claims, 71-3-801.

27-5-115. Proceedings to compel or stay arbitration. (1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

History: En. Sec. 5, Ch. 684, L. 1985.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History: En. Sec. 16, Ch. 684, L. 1985.

27-5-314. Judgment on award — costs. (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

History: En. Sec. 17, Ch. 684, L. 1985.

27-5-315 through 27-5-320 reserved.

27-5-321. Applications to court — how made. Except as otherwise provided, an application to the court under this chapter must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

History: En. Sec. 18, Ch. 684, L. 1985.

27-5-322. Jurisdiction of district court. The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

History: En. Sec. 19, Ch. 684, L. 1985.

Cross-References

Statute of Limitations tolled by submission to arbitration, 27-2-405.

27-5-323. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto.

History: En. Sec. 20, Ch. 684, L. 1985.

27-5-324. Appeals. (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under 27-5-115;

(b) an order granting an application to stay arbitration made under 27-5-115(2);

DONALD R. JUDGE
EXECUTIVE SECRETARY

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

(406) 442-1708

TESTIMONY OF DARRELL HOLZER ON HOUSE JOINT RESOLUTION 29, BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, MARCH 5, 1991

Mr. Chairman, members of the Committee, for the record, I'm Darrell Holzer representing the Montana State AFL-CIO, and we rise in strong support of House Joint Resolution 29.

The intent of this resolution is to send a message to Washington, D.C., to let them know that we Montanans are out here and that we deserve fair treatment along with the rest of the country.

Montana workers are not experiencing the kinds of layoffs and plant closures that get headlines in the New York Times and the Wall Street Journal. We're not losing thousands upon thousands of jobs literally in the blink of a corporate eye, and we're definitely not in the eye of the Eastern media or establishment.

But, we are here, and workers and families across Montana are suffering the devastating effects of job loss every day. We sometimes see hundreds of job losses in a day, as with the recent Champion International announcements. But we often don't even hear about most job losses -- losses that come 1 or 2, or 4 or 5 at a time in small businesses across the state.

Whether the pain comes in small doses or huge amounts, it's still pain -- and let me tell you, the pain and trauma of workplace dislocation is severe, long-lasting and devastating.

What we hope this resolution will do is tell the folks in Washington, D.C., that we have pain here, too, and that we deserve some of their help and support.

There are estimates that the total of all federal job-training funds probably won't help more than 10 percent of all workers who need it. So it's clear that the government can't help everyone -- probably can't even help everyone in New York City alone. But, our federalist style of government is based on the premise that what help is available should be spread around the country. That's what we're saying here: that Montana workers deserve a fair share of whatever help is available.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3/5/91
BILL NO. HJR 29

We think we're not getting our share. It's clear that federal job training funds for Montana are being cut back, even though the total national pot has been increased. That's a double irony because unemployment in Montana has been rising higher and faster than the national average. That seems to us to be clear proof of on-going need for those funds in Montana.

Some Montana counties, particularly in the western part of the state, have carried a U.S. Department of Labor designation as a "labor surplus area" for over a decade. That designation is supposed to mean something when it comes to allocation of funds to alleviate some of the pain and suffering of economic dislocation.

We're asking that you support this resolution as one way of reminding the federal government of their responsibility to all the people in all the states. Help us get our fair share of federal tax dollars so we can put them to work here in Montana. Please give House Joint Resolution 29 a "do pass" recommendation. Thank you.

U.S. Department of Labor
JTPA Title III Dislocated Worker
Funding Cuts

State	%	$
Louisiana	- 39	7,533,868
Arizona	- 30	1,686,392
Colorado	- 28	1,989,818
Kentucky	- 19	1,681,021
Wyoming	- 19	186,281
Montana	- 18	302,313
Oklahoma	- 18	1,101,246
Mississippi	- 10	849,669
Arkansas	- 8.5	145,354
Maryland	- 8.5	300,409
New Mexico	- 6	189,959
Hawaii	- 5	25,892
Nevada	- 5	63,396
Wisconsin	- 5	251,725
Texas	- 3	1,227,744
Tennessee	- 2	135,323
Alabama	- 1	88,162
North Dakota	- 1	4,405
West Virginia	- .3	18,779
	TOTAL	17,781,756

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(5) provide advice to the Governor regarding performance standards.

(29 U.S.C. 1661f) Enacted August 23, 1988, P.L. 100-418, sec. 6302, 102 Stat. 1536.

PART B—FEDERAL RESPONSIBILITIES

FEDERAL ADMINISTRATION

SEC. 321. (a) STANDARDS.—The Secretary shall promulgate standards for the conduct and evaluation of programs under this title.

(b) BY-PASS AUTHORITY.—In the event that any State fails to submit a plan that is approved under section 311, the Secretary shall use the amount that would be allotted to that State to provide for the delivery in that State of the programs, activities, and services authorized by this title until the State plan is submitted and approved under that section.

(29 U.S.C. 1662) Enacted August 23, 1988, P.L. 100-418, sec. 6302, 102 Stat. 1536.

FEDERAL DELIVERY OF DISLOCATED WORKER SERVICES

SEC. 322. (a) GENERAL AUTHORITY.—The Secretary shall, with respect to programs required by this title—

(1) distribute funds to States in accordance with the requirements of section 302;

(2) provide funds to exemplary and demonstration programs on plant closings and worker dislocation;

(3) otherwise allocate discretionary funds to projects serving workers affected by multi-State or industry-wide dislocations and to areas of special need in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes the effective use of funds;

(4) monitor performance and expenditures and annually certify compliance with standards prescribed by the Secretary under section 106(g);

(5) conduct research and serve as a national clearinghouse for gathering and disseminating information on plant closings and worker dislocation; and

(6) provide technical assistance and staff training services to States, communities, businesses, and unions, as appropriate.

(b) ADMINISTRATIVE PROVISIONS.—The Secretary shall designate or create an identifiable dislocated workers unit or office to coordinate the functions of the Secretary under this title.

(29 U.S.C. 1662a) Enacted August 23, 1988, P.L. 100-418, sec. 6302, 102 Stat. 1536-1537.

ALLOWABLE ACTIVITIES

SEC. 323. (a) CIRCUMSTANCES AND ACTIVITIES FOR USE OF FUNDS.—Amounts reserved for this part under section 302(a)(2) may be used to provide services of the type described in section 314 in the following circumstances:

(1) mass layoffs, including mass layoffs caused by natural disasters or Federal actions (such as relocations of Federal facili-

ties) when the workers are not expected to return to their previous occupations;

(2) industrywide projects;

(3) multistate projects;

(4) special projects carried out through agreements with Indian tribal entities;

(5) special projects to address national or regional concerns;

(6) demonstration projects, including the projects described in section 324;

(7) to provide additional financial assistance to programs and activities provided by States and substate grantees under part A of this title; and

(8) to provide additional assistance under proposals for financial assistance that are submitted to the Secretary and approved by the Secretary after consultation with the Governor of the State in which the project is to operate.

(b) USE OF FUNDS IN EMERGENCIES.—Amounts reserved for this part under section 302(a)(2) may also be used to provide services of the type described in section 314 whenever the Secretary (with agreement of the Governor) determines that an emergency exists with respect to any particular distressed industry or any particularly distressed area to provide emergency financial assistance to dislocated workers. The Secretary may make arrangements for the immediate provision of such emergency financial assistance for the purposes of this section with any necessary supportive documentation to be submitted at a date agreed to by the Governor and the Secretary.

(c) STAFF TRAINING AND TECHNICAL ASSISTANCE.—(1) Amounts reserved for this part under section 302(a)(2) may be used to provide staff training and technical assistance services to States, communities, businesses and labor organizations, and other entities involved in providing adjustment assistance to workers. Applications for technical assistance funds shall be submitted in accordance with procedures issued by the Secretary.

(2) Not more than 5 percent of the funds reserved for this part in any fiscal year shall be used for the purpose of this subsection.

(d) TRAINING OF RAPID RESPONSE STAFFS.—Amounts reserved for this part under section 302(a)(2) shall be used to provide training of staff, including specialists, providing rapid response services. Such training shall include instruction in proven methods of promoting, establishing, and assisting labor-management committees.

(29 U.S.C. 1662b) Enacted August 23, 1988, P.L. 100-418, sec. 6302, 102 Stat. 1537-1538.

DEMONSTRATION PROGRAMS

SEC. 324. (a) AUTHORIZED PROGRAMS.—From the amount reserved for this part under section 302(a)(2) for the fiscal years 1989, 1990, and 1991, not less than 10 percent of such amount shall be used for demonstration programs. Such demonstration programs may be up to three years in length, and shall include (but need not be limited to) at least two of the following demonstration programs:

(1) self-employment opportunity demonstration program;

(2) public works employment demonstration program;

(3) dislocated farmer demonstration program; and

JTPA TITLE III ALLOTMENTS TO STATES
18-Jan-91

	PY 1990	PY 1991	% CHG	SHARE OF TOTL '90	SHARE OF TOTL '91
AL	$10,556,916	$10,468,754	-0.8%	2.3%	2.0%
AK	$1,715,835	$1,570,481	-8.5%	0.4%	0.3%
AZ	$5,563,787	$3,877,395	-30.3%	1.2%	0.7%
AR	$6,276,852	$6,288,391	0.2%	1.4%	1.2%
CA	$33,650,395	$40,019,381	18.9%	7.3%	7.6%
CO	$7,046,862	$5,057,044	-28.2%	1.5%	1.0%
CT	$1,941,298	$3,589,150	84.9%	0.4%	0.7%
DE	$367,807	$493,790	34.3%	0.1%	0.1%
DC	$810,613	$1,012,992	25.0%	0.2%	0.2%
FL	$15,409,064	$22,391,129	45.3%	3.3%	4.2%
GA	$9,439,179	$9,695,200	2.7%	2.0%	1.8%
HI	$516,522	$490,630	-5.0%	0.1%	0.1%
ID	$1,252,165	$1,439,677	15.0%	0.3%	0.3%
IL	$22,845,352	$27,775,566	21.6%	4.9%	5.3%
IN	$4,610,943	$8,635,706	87.3%	1.0%	1.6%
IA	$2,440,442	$3,045,105	24.8%	0.5%	0.6%
KS	$2,011,325	$2,254,856	12.1%	0.4%	0.4%
KY	$8,995,313	$7,314,292	-18.7%	1.9%	1.4%
LA	$19,213,068	$11,679,200	-39.2%	4.1%	2.2%
ME	$730,075	$975,891	33.7%	0.2%	0.2%
MD	$3,538,508	$3,238,099	-8.5%	0.8%	0.6%
MA	$3,432,783	$8,090,462	135.7%	0.7%	1.5%
MI	$24,571,517	$30,699,004	24.9%	5.3%	5.8%
MN	$3,499,322	$4,151,377	18.6%	0.8%	0.8%
MS	$8,148,703	$7,299,034	-10.4%	1.8%	1.4%
MO	$8,191,242	$9,672,559	18.1%	1.8%	1.8%
MT	$1,694,449	$1,392,136	-17.8%	0.4%	0.3%
NB	$933,313	$944,261	1.2%	0.2%	0.2%
NV	$1,329,775	$1,266,379	-4.8%	0.3%	0.2%
NH	$473,189	$1,146,899	142.4%	0.1%	0.2%
NJ	$5,213,270	$7,855,684	50.7%	1.1%	1.5%
NM	$3,475,608	$3,285,649	-5.5%	0.7%	0.6%
NY	$17,046,607	$26,117,788	53.2%	3.7%	5.0%
NC	$3,877,627	$4,460,468	15.0%	0.8%	0.8%
ND	$586,875	$582,470	-0.8%	0.1%	0.1%
OH	$18,094,923	$22,224,928	22.8%	3.9%	4.2%
OK	$6,025,032	$4,923,786	-18.3%	1.3%	0.9%
OR	$3,955,470	$4,798,144	21.3%	0.9%	0.9%
PA	$11,301,340	$15,668,841	38.6%	2.4%	3.0%
PR	$14,824,715	$17,075,338	15.2%	3.2%	3.2%
RI	$495,421	$1,910,579	285.6%	0.1%	0.4%
SC	$2,420,807	$4,145,738	71.3%	0.5%	0.8%
SD	$572,328	$589,822	3.1%	0.1%	0.1%
TN	$6,697,973	$6,562,650	-2.0%	1.4%	1.2%
TX	$39,866,018	$38,638,274	-3.1%	8.6%	7.3%
UT	$1,158,707	$1,439,021	24.2%	0.2%	0.3%
VT	$263,000	$468,203	78.0%	0.1%	0.1%
VA	$3,845,767	$4,846,509	26.0%	0.8%	0.9%
WA	$7,939,661	$8,462,216	6.6%	1.7%	1.6%
WV	$6,343,038	$6,324,259	-0.3%	1.4%	1.2%
WI	$4,663,636	$4,411,911	-5.4%	1.0%	0.8%
WY	$1,007,963	$821,682	-18.5%	0.2%	0.2%
AM SAMOA	$36,675	$37,521	2.3%	0.0%	0.0%
GUAM	$247,347	$282,642	14.3%	0.1%	0.1%
MARSHALL IS	$105,020	$120,006	14.3%	0.0%	0.0%
MICRONESIA	$247,230	$282,508	14.3%	0.1%	0.1%
NO MARIANAS	$26,641	$29,711	11.5%	0.0%	0.0%
PALAU	$26,641	$29,711	11.5%	0.0%	0.0%
VIRGIN IS	$296,232	$338,501	14.3%	0.1%	0.1%
NATL RESERVE	$91,734,814	$104,276,600	13.7%	19.8%	19.8%
	$463,603,000	$526,986,000	13.7%	100.0%	100.0%

(JTPA:allocIII.wk1)

(7) PART A

13.7 to Western States

discretionary (under algns)

DATE 3/5/91

COMMITTEE ON Senate Labor

HB 305 - HB 663 - HJR 29

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Bob Jensen	Dept of Labor & Industry	HB 305	X	
Wm O Leary	" " " "	HB 305	✓	
DARRELL HOLZER	MT. STATE AFL-CIO	HJR 29	✓	
Melanie Symons	Dept of Labor and Industry	HB 305	✓	
BOB ANDERSON	DLI	HJR 29	✓	
Bob Heiser	AFSCME	HJR 29	✓	
Phil Campbell	Mont. Ed. Assoc.	HB 663	✓	
Sue Mohr	MJTP	HJ 29	✓	
Kay Morrison	MJTP - BOS PIC	HJ 29	✓	
Michael Sherwood	MTLA	HB 305	Was amended	

(Please leave prepared statement with Secretary)