

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Tom Nelson, on January 12, 1993, at 3:05 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chairman (R)
Rep. Gary Feland, Vice Chairman (R)
Rep. Steve Benedict (R)
Rep. Alvin Ellis (R)
Rep. Norm Mills (R)
Rep. Bruce Simon (R)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Vicki Cocchiarella, Rep. Jerry Driscoll, Rep. Pat Galvin, Rep. Sonny Hanson, Rep. Bob Pavlovich, Rep. Tim Whalen

Members Absent: none

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. This meeting was the second half of the informational briefing given by the Department of Labor employees to the members of the Labor Committee.

ANNOUNCEMENTS/DISCUSSION:

Laurie Ekanger, Commissioner of Labor, introduced the remaining staff of the Department of Labor. **Ms. Ekanger** noted again the department has 640 employees which included the local job service. The Department is made up of five divisions and two attachments; those being the Human Rights Commission and Workers Compensation.

Mr. Chuck Hunter, Employment Relations Division, clarified a question asked in the first meeting about exempting out of the system sole proprietors and partners. He stated they are automatically written out of the system and must opt to be in the system by notifying the insurer. However, corporate officers must opt out of the system by filling out a form in the labor office.

He said hand tallies of the number of prosecutions relating to the felony statutes for fraud, have shown approximately 7-10 cases referred to county attorneys for prosecution since 1990.

REP. GARY FELAND asked **Mr. Hunter** why these fraud cases are not handled through the workers compensation judge. **Mr. Hunter** stated that the statute put into place in 1987 puts these cases into a criminal felony category and they are prosecuted in the civil courts system.

Bob Rafferty, Chief of Research and Analysis, Research, Safety and Training Division, began his part of the briefing by stating that his division is broken up into three distinct bureaus; Research and Analysis, Apprenticeship, and Training and Safety Bureau. **Mr. Rafferty** referred to the brown handout labeled "The Research, Safety & Training Division". and also briefly covered the green handout called "Statistics in Brief, November 1992".

Mr. Rafferty stated that the current unemployment rate as of last Friday was 5.9 percent. These calculations determine many of the funding formulas for the county. They even determine bonding issues, the price of milk, and they are also a social indicator. This number is audited by the federal government. He also stated that the Non-Agricultural Wage and Salary Employment by selected industries is a survey that is federally funded. This helps determine economic activity by employment, wages, and hours, and also helps determine the economic profile of the country every month. This is Montana's portion of the profile.

The Labor Force Statistics gives the average weekly wage in Montana. Other sections included in this, are production workers and the average hourly work week. The economic indicator gives the consumer price index nationally and it basically determines the rate of inflation.

Mr. Rafferty touched on occupational health and safety. He stated that this is a mandatory survey sent out to all employers, approximately three to five thousand, in Montana.

Mr. Rafferty stated prevailing wage is funded by UI administrative tasks. He closed by asking for questions.

REP. STEVE BENEDICT asked where the UI trust fund comes from and also where the money for the benefits come from. **Mr. Rafferty** replied that will be covered in a later briefing.

REP. BILL TASH asked about the insured boilers inspection. **Mr. Rafferty** stated that private insured boilers and uninsured boilers are public boilers not insured.

Ms. Ekanger stated that the salary work **Mr. Rafferty** does dictates the wage cost of public contracts. Wages are developed in one part of an operation and enforced in another part.

Bob Jensen, Unemployment Insurance Division, opened with information on status of the Unemployment Insurance Program. He also announced that the committee will be hearing several bills this session dealing with this division. He highlighted the status of the trust fund and also stated that everyone deals with the deficit on a daily basis; however, there currently is not a deficit in the Unemployment Program. This program contains approximately 100 employees, and is broken into two bureaus; the Benefit Bureau and the Tax Bureau. Employers pay taxes that fund the benefits employees are paid, and no General Fund goes into the program.

The Unemployment Insurance program is usually referred to as having a Federal/State relationship because the Federal Government passes the enabling legislation and then the State is free to pass its own; however, they must meet the minimums as established by the Federal Government. Which means Montana can pass legislation dealing with some tax schedules for the employers as well as benefit levels. He said there will be several bills this session on increased benefits.

Mr. Jensen stated the responsibility of the Unemployment Insurance Division was to try and maintain a ratio between the amount of benefit paid out and the reserves in the trust fund. He mentioned there is presently \$94 million in the trust fund, whereas it was \$90 million in 1991. He projected the fund would continue to increase unless there would be an increase in benefit levels or other factors.

The UI program was in a deficit status in 1983-1984. In 1985 the legislature restructured the program to put it back into a solvent status. It provided an increased tax schedule for employers as well as decreasing benefit levels for employees.

Mr. Jensen stated there is a program for those who have used all their benefits. There has been an extended benefit program since November of 1991 which has paid \$18 million to approximately 11 thousand claimants, none of which came from the trust fund. The problem with this is that special funds in Washington can be extended after June; however, the states may be required to pay half the cost. Another concern is that there is currently no charge to the Montana employer or anywhere else in the nation. When the program came out in 1991, it had several tiers. In November 1991, Montana moved into one of the highest tiers. as some of the claimants were on unemployment for over one year.

Mr. Jensen explained that the main issue is the solvency of the trust fund, and the fiscal notes will show what effects these bills will have on the trust fund. He stated with no changes, every aspect remaining status quo, there would be \$128 million in the fund by 1995, but the Federal Government recommends there should be \$130 million for inflation reasons. He said the compromising structure that the group came up with in 1985

provides for an automatic trigger; when the benefit levels are so high or the wage is so high it will affect what level of the ten schedules employers in Montana are on. If any changes occur there may be a problem with the trust fund. He said everyone will be given a notice on Friday they are moving from the lowest to schedule three on the tier. The reason being because wages have increased, not because wages have been paid. This is the reason the projection for 1995 is \$128 million. He stated the Department's position on the UI bills is that they realize the trust fund is healthy and hope to keep it that way, therefore, they will probably oppose any bill which will affect the trust fund.

Mr. Jensen reported the Department only has one bill they are introducing this session. The bill deals with a series of conformity issues. He stated the Department is not in compliance with the federal regulations, therefore, they must change.

Mr. Jensen closed by asking for questions.

REP. BENEDICT stated that he was not clear on the relation of the wages going up and the trigger mechanism. Mr. Jensen referred the question to Mr. Rafferty, and he stated that the relationship between the wages are not constant or adjusted by inflation. Everyone earns more money, therefore, during a recession there will be many more people and wages to draw from.

REP. STEVE BENEDICT asked if that wouldn't trigger the wages downward rather than upward. Mr. Rafferty stated that what happens is, the average weekly wage computes that benefits are only determined at half that amount. This makes more people move toward this direction and wages are extended.

REP. NORM MILLS asked what the increase on that bill was. Mr. Rafferty stated it was a large increase, however, he was not sure of the exact amount, but would guess eight or nine percent.

REP. CAROLYN SQUIRES questioned if the bill was eight or nine percent, what amount in money would that be, five, six, or seven dollars. What hourly rate would cause the big increase? Mr. Rafferty answered that it is a running total in billions of dollars.

REP. SQUIRES asked if it is the total paycheck and if the department doesn't actually know the hourly wage. Mr. Rafferty referred to the green handout of economic indicators. He gave an example of an average wage of \$9.00 per hour or \$319.00 weekly in 1992.

REP. BENEDICT asked why most people thought these service workers were so under paid if they are making \$8.00 per hour flipping burgers.

REP. SQUIRES answered him by stating that service is much more

than flipping burgers. Service includes nurses, social workers, television, radio, and any other organization providing a service for anyone.

REP. ROLPH TUNBY asked if an employee is laid off, does this directly affect the employer's schedules in the future. Mr. Jensen answered that it can through the experienced wait of the employer, and it could also affect their rates.

REP. TUNBY gave an example of an employee in the Plevna school system who quit and went to work for someone else, when laid off, this person fell back on the Plevna system. Mr. Jensen commented that during the base period they had a various selection of employers and that is how they probably got a part of that.

REP. BRUCE SIMON asked if the first fourteen thousand dollars (\$14,000) needed taxes paid on them or if they could crossover that threshold. Mr. Rafferty stated that the total wage is used and that this threshold is not even considered.

REP. SIMON asked if it is possible to interrelate benefits paid to individuals through UI and those paid through workers compensation. Could an individual collect both at the same time, or is it possible to cross check to make sure an individual is not paid both at the same time? Mr. Hunter answered that yes, they have these capabilities.

REP. SIMON asked how long that program has been in existence. Mr. Hunter stated that it has been there at least four or five years. REP. SIMON asked if you can always cross check employers that are paying UI and not workers compensation. Mr. Hunter answered that yes, in fact, both programs benefit from the information received.

REP. SIMON also asked about the fly-by-night roofers in Billings, and why many were not covered by either. How many of these employers were found guilty? Mr. Hunter stated that he knows there were several problems; however, he is not aware of any specific one and will have to get more information on that question at a later date.

REP. SQUIRES stated that the names of the fly-by-nighters (roofers) in Billings would not quote a specific address causing problems for both sides. Mr. Hunter stated that usually those who were delinquent in one were also delinquent in the other.

CHAIRMAN NELSON asked about the benefit amount paid to unemployed workers under the unemployed insurance act. He asked what the amounts are based, on and if they fluctuate frequently with economic indicators. Mr. Hunter stated that the amount is anywhere from \$52 to \$209 dollars per week. The average is \$134 dollars per week and the duration is usually 13 weeks.

HOUSE LABOR & EMPLOYMENT RELATIONS COMMITTEE

January 12, 1993

Page 6 of 9

REP. SIMON asked if the \$14 thousand is a fixed number or floating number. Mr. Hunter stated that it is a floating number. Mr. Rafferty stated that this number does not set the wage base, but it is set by the Federal Government.

David Scott, Legal Department, began his briefing by stating that his department has two functions, the Legal Attorney side, and the Hearing side. He stated the attorneys try to be involved in the preventive law process, and are usually defense oriented. He said most of the law suits deal with the defendant; however, occasionally they do represent the plaintiff side. He said an example would be enforcing subpoenas. The department forces employers to show their records, contracts, leases or any information dealing with the sharing of state funds.

He noted the Department had held 2384 hearings about Unemployment Insurance in the last year. He said the Department plans to conduct hearings by telephone, which will be very convenient for the public because the federal law states that 60 percent of the hearings must be heard within 30 days, and 80 percent must be heard within 45 days.

Mr. Scott stated the two full-time hearing officers usually hear approximately four to five cases per day and any number over that amount is picked up as slack by others. The breakdown of cases heard last year are Workers Compensation, approximately 188: wage per hour was approximately, 133; and all others were about 100. The Board of Labor appeals quasi judicial board hears appeals from the Unemployment Insurance hearings. There are three members on the board, one attorney and two other Montana citizens. The board also hears other independent contractors issues through Workers' Compensation. When they were reorganized in September, they moved to our department. Under Federal law 40 percent of these cases must be heard within 45 days, and 80 percent within 72 days. Currently there are no bills coming to the legislature from this department.

REP. ALVIN ELLIS asked if an employer wants to have a hearing, regarding an person filing a claim against him, and he doesn't believe he/she is entitled to a judgement against him, what could the employer do? Mr. Scott answered an appeal can be filed.

REP. ELLIS inquired if the second letter is always sent to the employer notifying them of the decision. Mr. Scott replied yes.

REP. MILLS gave a scenario of an employee who quits for no cause, and asked if after a waiting period, that person can receive benefits. Mr. Scott answered that this individual has to earn at least eight times his average wage to re-qualify for benefits.

REP. MILLS stated that this statement has him confused because the individual is not even working. Mr. Hunter answered that a person can't receive benefits if they quit a job. They are not

930112LA.HM1

eligible to receive benefits unless they are currently making six times the amount they made before quitting.

REP. SQUIRES asked permission to be excused from the meeting and congratulated the new Commissioner of Labor.

CHAIRMAN NELSON excused REP. SQUIRES to sponsor a bill in another committee.

Anne MacIntyre, Human Rights Commission, began her briefing by stating that the agency was appointed by the Governor and assigned by the Senate. She announced all of the current members and the vacancies that will be available shortly. She stated that the primary responsibility of her commission was to enforce Montana laws prohibiting discrimination in many areas. Ms. MacIntyre then referred to the handout, "The Montana Human Rights Commission." She stated that the agency is neutral and does not take sides. The commission enforces the laws by receiving, investigating, by attempting to resolve through mediation and by holding hearings on complaints of discrimination. The staff has some authority to engage in a more proactive type enforcement however, several conflicts usually arise. Furthermore, because of changes in the discrimination laws, we do anticipate more complaints.

CHAIRMAN NELSON asked how there could be a conflict of interest. Ms. MacIntyre replied that the commission staff is actually the staff of the board and they usually hear the cases in which a hearing is conducted. Furthermore, if the staff presents the case before the commission and are the commission's own staff it tends to create some problems. She noted they are the one entity that does receive the bulk of their funding from General Funds. However, they do have work share agreements with two federal agencies; the Housing and Urban Development, and the U.S. Equal Opportunity Commission. The size of the staff is ten FTE's in base statewide. She said they occasionally receive grants for special activities such as education in the area of housing discrimination by housing providers. The primary concern is to keep up with the workload because new complaints have gone up in the last five years. Since FY88 there has been an 87 percent increase. They project linear 606 complaints filed in FY93, and only have enough staff for 400 cases. She noted they are trying to let civil complaints go directly to court instead of filing them with the commission first. Ms. MacIntyre closed by asking for questions.

REP. TASH asked what the amount of the general fund and the current year budget are. Ms. MacIntyre stated that the current year budget is approximately \$450 thousand with approximately \$350 thousand coming from the general fund. The administration budget proposes an increase of three FTE's for the commission.

REP. MILLS asked if funding for studies comes from the General Fund or from a grant. Ms. MacIntyre stated that the legislature

usually sets aside some money for interim studies.

REP. TUSS asked how many complaint hearing officers there are and how long each hearing takes. Ms. MacIntyre stated that they only have one hearing officer and he/she has to go through a two step process which includes informal investigation and then a hearing examiner. However, most cases are resolved without a hearing examiner. Once filed, the entire process takes approximately two and one half years. Presently many cases are put in pending status waiting for investigation.

Ms. MacIntyre closed by asking for questions. No questions were asked.

Gary Curtis, Job Service Division, opened by stating that he had no bills for the legislature this year. Mr. Curtis also listed the services that they provide at the job service. These services include job matching, veterans programs, job training, and miscellaneous programs. There are currently 23 local offices with a total of 330 staff. The job service plans to make some changes in the near future. Historically every person would come in and speak to a representative face to face; however, they plan to try an automated system where people can just call on the phone. They will probably only try it in specific geographical areas to check the attitude of the employee, and the employer. Money seems to be the big push behind this trial system.

Mr. Curtis closed by asking for questions.

REP. TASH asked if this retraining program was basically for the unemployed. Mr. Curtis stated that it was for everyone, and included those who have never worked or haven't worked for a long time.

REP. TASH asked about the money source of the job service. Mr. Curtis stated that the money is primarily from the Job Training Partnership Act, which is federal funded and comes down to the state.

REP. ELLIS asked if the department doesn't receive General Fund, if they get money from other agencies by bidding their jobs. Mr. Curtis stated that the general structure uses no general fund; however, he is not sure concerning money from other agencies.

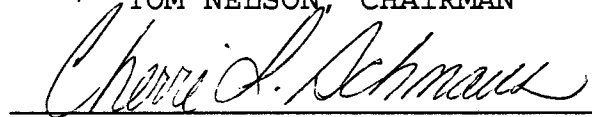
Ms. Ekanger closed by stating that the Department of Labor works hard for the customer and referred to the mission statement on the front page of the gray book.

ADJOURNMENT

CHAIRMAN NELSON closed the meeting at 4:25 and thanked the Department for their time.

A handwritten signature in cursive script, appearing to read "Tom Nelson", written over a horizontal line.

TOM NELSON, CHAIRMAN

A handwritten signature in cursive script, appearing to read "Cheri Schmaus", written over a horizontal line.

CHERRI SCHMAUS, SECRETARY

TN/CS