MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 9, 1995, at 3:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

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

Committee Business Summary:

Hearing: HB 264
HB 432

Executive Action: HB 200

{Tape: One; Side: One}

HEARING ON HB 264

Opening Statement by Sponsor:

REPRESENTATIVE ALVIN ELLIS, HD 23, Carbon County, Bear Tooth Front, stated HB 264 is an act providing that a public employer's failure or refusal to grant a wage increase contained in an expired collective bargaining agreement does not constitute an unfair labor practice; providing an exemption for firefighters in cities of the first and second class. House Bill 264 is an amendment to the unfair labor practices act, which states nothing in the statute or any other state statute can mandate a pay raise to be included in an expired bargaining agreement. In 1983,

Forsyth Education Association pursued a case against Rosebud County School District. To date, a new contract has not been settled, but the master agreement was maintained. *Steps and lanes* in the master agreement prevailed. The *step and lanes* must be paid in absence of a new contract. The case was taken before the Montana Board of Personnel Appeals, which ruled the Association was entitled to the *step and lane* increases. In 1987, Lolo School District, Missoula County, had put a clause in their bargaining agreement. The window of agreement stated all parts of the agreement ended on the agreement's ending date. Again, the case was pursued by their bargaining agents. The Board of Personnel Appeals declared that they had already ruled on similar cases for Forsyth. The clause did not mean anything, in as much as the Supreme Court never ruled on the Forsyth case. Forsyth settled before it reached the Supreme Court. Therefore, the case was moot. The action taken in 1983 was ratified. In 1991, the House Appropriation Committee unilaterally took all steps out of the state pay plan. There was no agreement, no bargaining, no nothing. The state had never been forced to pay a pay plan. In an expired bargaining agreement, the State University has never been enforced, which should have also been covered by the rule. **REPRESENTATIVE ELLIS** stated the ruling by the Board of Personnel Appeals, in effect, in nothing, more or less than a $15M unfunded mandate.

Proponents' Testimony:

Debra Fulton, President of the Montana School Boards Association, and a nine year member, Helena Board of Trustees, stated she represents over 15,000 Montana school trustees, who believe in House Bill 264. **Ms. Fulton** stated it is not an easy personal decision to support HB 264. Since the House committee discussion, **Ms. Fulton** stated her name has been taken in vain in newspapers across the state and in the MEA publications. **Ms. Fulton** stated her son's sixth grade teacher personally wrote a letter to the editor and personally criticized her. **Ms. Fulton** stated she is testifying because HB 264 is an important bill for school boards. The unfunded mandate needs to be removed. There has been a lot of controversy about SB 264. **Ms. Fulton** stated the bill does not say that teachers are not valued professionals. The bill does not say that school boards do not have a requirement to bargain in good faith with their union employees. The bill says that increases in compensation, however arrived at, are salary, and must be negotiated. The bill says the state needs to eliminate the worst form of unfunded mandate, that which is placed on public entities by regulatory agencies and not by statutes. There is no statutory requirement that *steps and lanes* automatically go into an expiring agreements. It is an interpretation by the Board of Personnel Appeals. *Steps and lanes* is an unfair mandate to public schools. Why is the bill being introduced at this time? Many people know, in the past, school districts were able to bargain with their employee groups, determine what the budgetary requirements were, and then go to the voters with the levy. The voters decided if the budget was

fair and either approved or disapproved the levy. The bargaining climate was different than it is today. Now, school budgets are capped, and increases are limited to 4%. The average *step and lane* resulted in a 2% increase. The increase is not viewed as a salary, but viewed as an entitlement. So, 2% of the 4% increases have already been taken up. This year, in the Helena district, the increase is 3.5%. So, the Helena school district will be forced to ask voters for the maximum increase. If the district attempts the levy and are successful, the district will not be able to give any more money to the students. If the district is not successful, programs are going to have to be cut. The teachers view the increase as an entitlement. **Ms. Fulton** stated she disagrees, it is an increase in salary, and should be negotiated. No other public employee have the same rights, and teachers should not be a special entity. The question is easy. Does the committee believe that an automatic 2% to 3% increase for public employee union members, regardless of the financial condition of the public employer, is fair, then do not support the bill. If the committee members believes all compensation increases are salary and should be negotiated, then support HB 264.

Michael Dahlem, Staff Attorney for Montana School Board Association, stated before he went to work for the Association, he spent 6½ years working as a union representative for the Montana Federation of Teachers. **Mr. Dahlem** stated he has bargained more than 100 collective bargaining grievances from the union standpoint. **Mr. Dahlem** stated he is one of few people who ever argued both sides of the issue before the Board of Personnel Appeals. The proposed statutes seeks to amend section 3931401-5 MCA. The original statute, adopted in 1973, says it is an unfair labor practice for the employer to bargain in bad faith with a public employee union. **REPRESENTATIVE ELLIS** discussed the 1983 Forsyth case, and the 1986 Lolo case. The board interpreted the statute to mean that it is an unfair labor practice. It is bargaining in bad faith for the public employer to withhold the wage agreements, which were part of an expired collective bargaining agreement. House Bill 264 seeks to overturn and remedy the situation. Prior to Forsyth, the normal remedy was to file an unfair labor practice because one side or the other was bargaining in bad faith. The bargaining order told the parties to go back to the bargaining table and continue to bargain in good faith until an agreement was reached. The Board of Personnel Appeals had no authority and, ordinarily, had no authority to impose the terms and conditions of contract for either party. In fact, the law makes it clear that either party is required to make a concession. In 1983, the Forsyth case changed the precedent. The board held that it was unfair labor practice to withhold a step increase from a contract that had already expired and ordered the school district to pay the step increases. Ever since, school districts have routinely granted *step and lane* increases, whether they were bargained or not. As long as they did not reach a bargaining impasse, which identified another problem in statutes. The boards in Lolo and Forsyth said if an

impasse was reached, the last best and final offer could be made. Unfortunately, the board never gave a clear or workable definition for the term "bargaining impasse. The MREA does not know when the impasse has been reached. In fact, in the entire history of the act, the board found only one case "impassable." As a practical matter, teachers and other employees view the increases to be automatic. **Mr Dahlem** presented a document of an unfair practice charge **(EXHIBIT 1 & 1A)**. The charge was filed approximately two months ago in the Smith Valley school district. Page 2, item 2 reads: "The Defendant has presented individual contracts to the members of the unit indicating that it does not intend to pay the automatic wage increases based on years of service and college credits contained in the expired collective bargaining agreement." Increases in an expired agreement are automatically granted, they are not salary increases, they are not bargained, they are simply entitlement. It is an unfair interpretation of the law. Now, school districts must defend themselves in a contested case hearing at considerable cost, because the school district did not grant an automatic wage increase. **Debra Fulton** indicated as did **REPRESENTATIVE ELLIS**, that there is a question of unequal application. The ruling benefited school employees, but it has not benefited university employees or state employees. The state employee pay plan has been frozen on many occasions. State employees have not taken advantage of this rule, nor have they been able to take advantage of the rule.

Mr. Dahlem stated the bill does not abolish *steps and lanes*. The bill does not preclude an employer in an union from agreeing to granting *steps and lanes* prior to a new agreement. It provides a defense against a charge that it is an unfair labor practice to withhold *step and lane* wage increases. House Bill 264 does not interfere with collection bargaining duties or remedies. In fact, the Board of Personnel Appeals interferes when issues goes through rulings. Duty to bargain in good faith is still in the law, as is the right of mediation; the right to fact findings; the right to binding arbitration, if agreed upon by the parties; and the right to strike. House Bill 264 says until the parties bargain for the wage increase, the wage increase is not granted automatically. It does not violate any tentative federal labor law. The issue has never been addressed by the Montana Supreme Court. By the time the Forsyth case got to the Supreme Court, the parties had already settled. The Supreme Court would not hear the case. **Mr. Dahlem** stated he had filed a petition in behalf of four school districts with the Board of Personnel Appeals asking for a declaratory rule on whether or not the rule was still law. The board declined to hear the case in part because the MREA had legislative relief available. The unions who oppose HB 264 will be before the Board of Personnel Appeals urging the board not to hear the case because the MREA had the right to come to the legislature. Today, the unions will probable testify for the committee to defeat HB 264 because the MREA has the right to go to the Board of Personnel Appeals. It

is time for the legislature to make a stand, interpret the law, and apply the law in a fair manner.

Rodney Svee, Superintendent of Hardin Public School, Hardin, MT, distributed and explained the Hardin's teacher's salary schedule **(EXHIBIT 2)**. The lanes are horizontal from a BA to a MA+2, and the steps are vertical from 0 down to 15 and are based on years of experience. When the salary schedules were negotiated previous to the Forsyth decision, the negotiation team assumed the Hardin public school was negotiating a teacher's placement on the chart, not the automatic yearly increase. The Forsyth decision changed the intent. Montana Education Association, as testify in the House hearing, stated they could negotiate, now, to null and void the Forsyth decision. The question of why should the school have to bargain to take away something that was never bargained to put in to begin with. The decision was made by an agency decision. **Mr. Svee** stated he has reviewed the minutes of Hardin's first contract negations (March 8, 1964). The board never intended automatic steps, but limited the contract expiration. The agency took the decision away from the local board. The decision making power should be reinstated with the local board. Other things have happened due to the court decisions and agency decisions. The pattern of thinking emerged "if the union can not get 'it' at the bargaining table, they go after 'it' through the agency process. The Hardin school board thinks the process should be negotiated. All entities should be made to "play" on the same field.

Don Waldron, Montana Rural Education Association, stated the Association supports HB 264. **Mr. Waldron** stated it is important to be able to negotiate contracts. Not all the schools are having these problems every fall. Many contract are settled long before school starts. There are other problems that need to be settled, like insurance coverage. Negotiated decisions should be made that are in the local school district's best interest. The staff and districts would be better off if decisions were made at the local levels.

Leroy Schramm, chief legal council, University System, clarified that even though the committee has heard testimony that HB 264 does not apply to anyone beyond the school districts, the testimony is not correct. House Bill 264 does apply to the university system, which has been the recipient of four unfair labor practices in the last three years, based on the rule HB 264 seeks to overturn. The university system has always taken the bargaining position that if a facility member made $33K last year and the contract bargaining agreement expired, the faculty member would get $33K in the next year. At the time of the new contract, the members may get $33K, or perhaps get a lower salary. That is what the status quo meant, not $33K plus a step. The university system has held to the position, even though Forsyth or Lolo would disagree. The hope was at a later date, the university system would be in a position where they could legally challenge the decisions in court. The university has always settled the

contracts, and under the court rule, the settlement moots the issue. Consequently, there has never been an opportunity to challenge. Consequently, a "ritual" in some of the bargaining units has been established. When the step is not granted, and the salary is made to remain the same, a unfair labor practice standard is filed to give leverage. When the contract settles, the unfair labor practice challenge is dropped. **Mr. Schramm** anticipated the opponents would ask in their opponent statements "why don't the negotiators just negotiate a contract clause to say 'when the contract ends, you get no steps, and we really meant it, or something like that'". **Mr. Schramm** stated he thought that is what the school board in Lolo tried, but that clause was ineffective. It is not an easy task to know how to negotiate a clause that contains the "magic word". The Lolo ruling compounded the problem created by Forsyth. House Bill 264 is not an exclusive issue for only school districts; the university system is also involved.

Opponents' Testimony:

Phil Campbell, Montana Education Association, stated opposition to HB 264. **Mr. Campbell** stated the term, "automatic salary increase", is what the school board association is trying to stop. **Mr. Campbell** stated the issue is not the automatic salary increase. The increase only becomes "automatic" if the increase is agreed to in the contract. The Board of Personnel Appeals' first decision in 1982 basically said the reason the board ruled in Forsyth was because the Forsyth contract language said "the teacher would get an extra step with each year of experience on a salary schedule". The labor rule is the contract/status quo has to be maintained. Unilateral changes cannot be made in the working conditions, even after a contract expires. They agreed in the contract that there would be *step and lane* increases, and that is what the board ruled on. That language had to be maintained. **LeRoy Schramm** stated he would like the committee to believe the salary is the same salary we are talking about. It is the same language that is in the contract. In the school board's case, if the school board association does not want to grant *step and lanes*, they can put language in the contract to say they do not want *step and lanes*. **Mr. Campbell** distributed documents concerning the Billings, Lolo and Terry school districts **(EXHIBIT 3)**. There have been no unfair labor practices filed in Billings since 1983 because of the status of salary schedules language in the contracts. Lolo had two contracts, one for teachers and one for classified. The Lolo teacher's contract says, "... a teacher will have no right to either increment (step) or lane advancement after the expiration of this Agreement." The same bargainer the Lolo school district hired to negotiate the contract for the Lolo classified contract put something different in the contract. The board basically ruled the same, the contract expires twice, and doesn't have any different meaning. Terry's school district contact says basically the same thing. There is no mystery of how to stop this from happening, when the language is in the contract. There

are no unfair labor practices in the three stated school districts, Lolo, Billings, and Terry. The Board of Personnel Appeals did not impose anything on school districts. The rule has always been, even before the decision. They reaffirmed the rule that unilateral changes cannot be made in the contract after the expiration date. The working conditions have to be continued until an impasse is reached or a settlement is reached.

Mr. Campbell stated he would challenge a lot of the school districts that are testifying that the average *steps and lanes* are 2% or 3%. In a lot of districts, especially in the larger districts, the attrition factor is almost a wash. Attrition is a factor in the Billings district, where people are retiring and/or resigning and the district is bringing in new teachers at a lower salary schedule. If nobody left the district, the step might average about 2% to 2.5% increase. There may be problems for the smaller school districts, which do not have the turnover rate the larger school districts do.

The problem is not new. The ruling came from the Board of Personnel Appeals in 1982-83. **SENATOR TVEIT** introduced SB 198 in the 1983 session. Senate Bill 198 was the exact same bill, to prevent the *step and lanes* beyond the contract. In it's infinite wisdom the legislature decided it was not a good idea. The peer review belongs to the Board of Personnel Appeals. The purpose was to make a determination about what constitutes an unfair labor practice. Montana Education Association urges the committee to oppose HB 264.

Thomas Schneider, Montana Public Employees Association (MPEA), stated opposition to HB 264. **Mr. Schneider** stated HB 264 is not a bill that deals solely with teachers. The bill comes from the education community, but affects all public employee collective bargaining contracts. House Bill 264 covers the period of time, from the time one contract expires until the new contract is negotiated. House bill 264 simply covers what happens with the existing language in a contract until a new contract has been negotiated. **Mr. Schneider** directed the committee's attention to the document he distributed **(EXHIBIT 4)**. The salary schedules were negotiated by the Montana Public Employees Association. The secretary salary schedule, 1979 to 1980, has ten steps. In 1985, after Forsyth, the MPEA changed the contract to provide steps up through 21 years. In 1990, after both Forsyth and Lolo, the MPEA expanded the contract to provide steps up through 35 years. **Mr. Schneider** stated there was nothing in the negotiation that said these steps disappear at the termination or expiration date of the contract, and only reappear if the steps are renegotiated. in fact, the opposite took place. Everyone knew that the steps would continue from one contract to the next. It was a provision that told the members of the bargaining unit that the parties can expect the steps to be there if the teachers continue to work for the district. What the bill does in the simplest terms, if it was compared to a court legal case, it shifts the burden of proof. Currently, if there are steps in the contract, and the

contract expires without negotiations being concluded, the steps continue until that contract has been re-negotiated. If HB 264 passes, all any employer has to do, even if they have negotiated steps, health insurance, and longevity in good faith, is to wait until the contract expires. Simply, sit at the bargaining table and do not reach an agreement. Once the contract expires, all three of the items have to be re-negotiated. It has shifted the burden from the employees having "it", until "it" is negotiated away, to not having "it", until they re-negotiate. The reason it is not fair is because when it was negotiated, it was intended to continue until it was negotiated away. House Bill 264 precludes, and will stop. The entire burden of negotiating contracts shifts, once House Bill 154 becomes law. **Mr. Schneider** directed the committee's attention to line 30, section 7-33-4128 in the bill. The amendment was put on in the House. The amendment refers to longevity for fire fighters. If the bill passes, the longevity that anyone else has will be discontinued unless the longevity is negotiate. Now, a situation occurs where firefighters are going to be treated differently than the university people, the school district people, the city and town people, even the people at the state. **Mr. Schneider** stated he would take issue with the state people, who talk about steps. The reason steps were taken out in state government is because the constitutional provision says that one legislature cannot encumber a prior legislature or a future legislature. Steps never were intended to go beyond the two year period. State steps should not be included in SB 264.

Mr. Schneider asked why the school districts do not declare an impasse. **Mr Schneider** stated he is a member of the Board of Personnel Appeals, but he was not a member when the Forsyth or Lolo case was active. The board has one case where the case has been contested since 1991, and the school district has refused to declare an impasse, which they could easily declare. They could solve the problem, and the board could make a ruling. There have been no attempts made by school districts to look at the "impasse" and to use the "impasse". The simplest thing to do would be to bring the bill to the legislature, pass the bill, and cut off all of the things they negotiated for in good faith. In the current case, **Mr. Schneider** stated every place where there would be an on-going wage provision, the provision was negotiated in good faith, and both parties intended the provision was to go on into the future. House Bill 264 is not a fair bill, it will cause labor relation problems, and needs to be stopped.

Terry Minow, Montana Federation of Teachers, Montana Federation of State Employees, stated strong opposition to HB 264. The legislation interferes with the status quo, the collective bargaining process, as interpreted by the Board of Personnel Appeals. The bill has the potential for affecting all public employees, that is, all public employees with a *step and lane* structure in their contracts, with the exception of fire fighters. Public employers, including school boards, can negotiate language to prevent the payment of *steps and lanes* after the expiration date of the contract. They obviously do not

want to negotiate, they would rather have the legislature do the work for them. **Ms. Minow** urged the committee to give HB 264 a DO NOT PASS recommendation.

Darrell Holzer, Montana AFL-CIO, Helena, MT stated opposition to HB 264. **Mr. Holzer** stated the proponents, ironically, made the best argument why HB 264 is a bad idea. In earlier testimony the opponents immediately recognized the issue is something they would like to negotiate. There is absolutely nothing preventing the proponents from doing exactly that, as **Mr. Campbell** pointed out in previous testimony. **Mr. Holzer** stated he has been involved with labor unions for many years. If the labor unions were in the business of negotiating contracts in behalf of union members, the union had better do one or two things. Especially in this circumstance, since these employees are paid a portion of their own money (taxes). **Mr. Holzer** stated if he was to negotiate a contract that he knew ultimately was going to cost members their jobs, he would not have a job for very long. Unions are not in the business of losing jobs. When both sides come together and sit down, we talk about available monies. Both sides are inclined to look realistically at the money issue and come to a compromised solution, workable for both sides without causing undue suffering. That is how the negotiating process works. **Mr. Holzer** stated **Ms. Minow's** testimony pointed out what is occurring. House Bill 264 is a collective bargaining issue, recognized by the proponents, but there is one dynamic twist. The proponents are asking the legislature to be their collective bargaining agent. **Mr. Holzer** encouraged the committee to stop HB 264.

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR STEVE BENEDICT asked **Mr. Holzer** whether or not the unions have ever come to the legislature and ask the legislature to be their collective bargaining agent through passage of laws to benefit unions. **Mr. Holzer** replied that statement is certainly true in certain circumstances. **Mr. Holzer** stated he is not aware of any time labor has come to the legislature and asked, pure and simple, to serve as labor's bargaining agent in establishing collective bargaining agreements. **Mr. Holzer** stated, obviously, the union has asked to help establish some of the parameters, some of the ground rules on both sides.

SENATOR SUE BARTLETT asked **Mr. Dahlem.** In glancing at the Lolo case, the information indicates the Forsyth decision was a decision made by the board. The case, apparently, stopped at the hearing examiner's level. If this is an issue of such concern to the school boards, **SENATOR BARTLETT**, stated she was curious about why neither the Forsyth nor the Lolo cases were appealed to the district court. **Mr. Dahlem** replied the cases were appealed to

the district court. Forsyth appealed to the Montana Supreme Court, but the court refused jurisdiction. The district court also heard Lolo and eventually dismissed the case. Other cases have been filed. Both contracts had been settled prior to a final determination. There have not be any declaratory judgement requests to the Board of Personnel Appeals. The board declined to hear the case.

SENATOR EMERSON asked if any of the wording in the Terry, Lolo, or Billings' examples ever been challenged **(See EXHIBIT 3). Mr Dahlem** stated to the best of his knowledge, the wording has not been challenged. Very few collective bargaining agreements contain that kind of labor language. First, it is very hard to bargain the "language". **Mr. Dahlem** stated if he was a union representative, he would not agree to the language unless he extracted something in return that would be costly to the district. Two, it has never been challenged. So, whether the Board of Personnel Appeals would object to the waiver language, it is not known. The only time the issue comes to the board's attention was in Lolo, and the board said the language was not clear and unmistakable enough to constitute a waiver and disallowed the language.

SENATOR VAN VALKENBURG asked Ms Fulton to what extent are school districts setting budgets for anything less than a 4% increase over the previous year's budget. Ms Fulton stated she cannot answer that question. The Helena District is not contemplating a 4% increase. **SENATOR VAN VALKENBURG** stated due to the existing law it is less likely that teachers are going to cause a the work stoppage, because in essence they get a *step and lane* increase automatically. If HB 264 is passed, a teacher may engage in work stoppages and disrupt education. **Ms Fulton** stated she did not believe it true. The board will make a measured decision about what is best for the respective district. It is an interesting parallel because, for example, in Helena, the board does not have a contract, but has seven months to increase the *steps and lanes*.

{Tape: One; Side: Two}

SENATOR EMERSON stated he thought **Phil Campbell's** figures were off. The problems are bigger. **Mr. Campbell** stated, on the average, steps probably averaged 2.5% to 3%. He checked with Billings and was told the situation is almost a wash due to attrition. In the smaller districts without turnovers, the affect will be larger. **Mr. Campbell** stated the only way that steps become automatic is if they are bargained into the contract or if the contract does not speak to the specific issue. If there is a long-standing practice, and the board looks to that as a working condition that cannot be unilaterally changed. The only way to stop this long established practice in the contract is to change the *step* language. The new language would say the *steps* will not be granted.

Closing by Sponsor:

REPRESENTATIVE ELLIS stated he believes negotiations should start out where they left off in the last negotiation session. **Tom Schneider** made the best argument, "a Legislature cannot obligate by Constitution further Legislatures". The implication of the statement is that board members can forever obligate the school board into eternity. House Bill 264 encourages negotiation by leveling the playing field. The bill is not tipped in favor of school boards. Both parties look at the same facts when negotiation takes place. House Bill 264 protects *steps and lanes* because it is an unfunded mandate. Last year, *steps and lanes* cost Billing's school districts $783,042 and cost Helena's school districts $566,000, plus. If the figure is extrapolated across the number of Montana students, the amount is $19.2M. But all students in Montana are not covered by these types of contracts. Many rural schools, and small high schools do not have these kinds of agreement. If HB 264 is passed, health benefits are allegedly wiped out. **REPRESENTATIVE ELLIS** stated he has served many years on the school board, by did not realize the rules obligate future school boards to increase salaries. When teaches get 60%, full family coverage, the figure may inflate because health care costs inflate. The language, included in the Billings contact, has never been challenged. We do not know if there is any language that would satisfy the Board of Personnel Appeals. The committee will have to decided whether a board that was appointed primarily by Governor Tom Judge, over ten years ago, is the board that should decide proper labor practices.

REPRESENTATIVE ELLIS asked what a school board can give in order to get the stated increase. **SENATOR EMERSON** read the situation correctly. It can be well in excess of a 4% increase for a teacher who has increased a *lane*. They get the *step* increase and the *lane* increase. The teachers who top out in the *steps and lanes* schedule do not get another increase because there is no *steps and lanes* that apply. This also mitigates the cost. There are not real figures to support the 2.5%. Without HB 264, it is said that teachers will be unfairly handled when a negotiated settlement comes late in the session, But almost always, in any labor contact, not just with teachers, the settlement is usually retroactive back to the beginning of negotiated period. **REPRESENTATIVE ELLIS** urged the committee accept HB 264.

HEARING ON HB 432

Opening Statement by Sponsor:

REPRESENTATIVE BILL WISEMAN, HD 41, Malmstrom Area, Great Falls, MT, stated HB 432 has been changed extensively. The bill is an act implementing the recommendation of the Governor's task force to renew Montana Government by transferring licensure functions of the fire prevention and investigation program from the Department of Justice to the Department of Commerce; transferring

boiler safety and inspections from the Department of Labor and Industry to the Department of Commerce. **GOVERNOR RACICOT** thought the fire prevention and investigation program should be moved from Justice to Commerce, as well as to have the boiler safety and inspection moved from Commerce to Labor and Industry. In the House hearing, many fire marshals testified against moving fire prevention and investigation program from Justice to Commerce. The marshals had no problems with moving the licensing, but Justice Department should retain the fire prevention and investigation program because of the arson issue. Consequently, the bill was changed. Fire prevention of investigation remains in the Justice Department, and only the licensing activities moves to the Commerce Department. The boiler safety and inspection program created no controversy.

Proponents' Testimony:

Laurie Ekanger, representing the Governor's Office, stated HB 432 was one of the recommendations from Renew Government Task Force to place like functions within the same department. Governor Racicot urges the committee to accept HB 432.

Chuck Hunter, Department of Labor and Industry, stands in support of the boiler safety and inspection program. Like functions should be placed together.

Steve Meloy, Chief, Professional and Occupational Licensing Bureau (POL), stated support for HB 432. The POL will license, but the Department of Justice will inspect the installer and service providers.

Mike Wellenstein, Department of Justice, stated the scenario of HB 432 is acceptable to the Department of Justice. The licensing function will remain with the department of commerce.

William H. Jellison, Department of Commerce, stated support of HB 432.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BURNETT asked **REP. WISEMAN** if the facts remained the same. **REPRESENTATIVE WISEMAN** stated the Department of Commerce already has a vast bureaucracy that cares for licensing issues. The updated fiscal note stated there will be one, grade 9, FTE. The grade nine will be transferred from the Department of Justice

to the Department of Commerce. One half FTE, grade eight, will be added to the DOC budget.

SENATOR AKLESTAD asked **REP. WISEMAN** if the state is trying to become more efficient, but every time a move is made, it costs more money and more FTEs. **REPRESENTATIVE WISEMAN** stated it is still the same people that are working, but they are put into different departments to have like function in the same department. There are costs in moving the people, but after the move is complete, the cost will remain the same and hopefully there will be savings.

SENATOR SUE BARTLETT stated the first section of the bill talks about the Workers' Compensation Administration Fund, which would be used to pay for the boiler inspections and the administrative expensive. Please clarify. **Mr. Hunter** stated the current funding for the boiler inspection program comes from the Workers' Compensation and Research Assessment Division. There is language about funding boiler inspectors primarily through fee for service. House Bill 462 completes the three pieces of the transfer and consolidation function. **Mr. Hunter** encouraged the committee to combine the locations because it would be easier to manage the entire program from one place. **SENATOR BARTLETT** stated the Department of Labor would continue to be responsible for establishing the administrative assessment rates. **Mr. Hunter** stated if the department was still funding some parts of the program, they would provide a budget to substantiate the need. The intention is to fully fund the function with special fees, rather than by assessments.

SENATOR EMERSON asked **Bill Jellison, Department of Labor**, about the ½ FTE position in the building codes bureau. The administrative aide position does not transfer, and that person provides the data entry functions. **SENATOR EMERSON** asked if any ½ FTE could be cut in the other section. **Mr. Jellison** stated he could not answer the question. **John Maloney, Chief of Safety Bureau**, stated the boiler safety unit has two different functions, to license the boiler operators, and to inspect and issue boiler certificates. For that function, there is a ½ FTE in administrative support, and that person has been designated to go with the licensing function in the professional licensing division, Department of Commerce. The boiler inspectors go to the building codes division. The person will be in another building and will not be available to do the data input and/or the record keeping inspection functions.

CHAIRMAN KEATING explained the situation. The reason the bill came to the Labor Committee. The reason was to merge three bills into one. The merging process has already been worked out. **Eddye McClure** stated at the end of one hearing, **SENATOR BENEDICT** requested a consolidation. House Bills 66, 68, and 432 were combined to make a substitute bill. The bill with the broadest title is HB 68 because there are safety functions already in the bill. Everything would be struck after the enacting clause; the

title would be amended, and the various portion from each bill would be brought together. House Bill 66 and 68 had amendment concerns. **Ms. McClure** stated she spoke with Commerce and Labor, but has not talked to Justice. **REPRESENTATIVE WISEMAN** has no problems with the changes. If the committee wanted to consolidate the bills, **Ms. McClure** stated she would bring a 16 to 17 page, HB 68 amendment to executive action. Otherwise, if there will be two bills and a coordination process must take place. **CHAIRMAN KEATING** asked if every committee person agreed to put everything into one bill. Yes. **SENATOR BENEDICT** asked if the committee would table the other two bills. **Ms. McClure** replied the function would be like an amendment. The committee could go through the document section by section. Each section would be identified. **SENATOR BENEDICT** asked if just the existing bills go together. If the committee wanted to offer a mint growers, would the amendment be submitted at that time. Yes. **Ms McClure** stated she worked with Commerce, Labor, etc. and made the necessary adjustments to the respective sections. **SENATOR BARTLETT** had concerns over the discretion issue. **Ms. McClure** stated she created an amendment in that particular section to address **SENATOR BARTLETT's** concerns.

SENATOR AKLESTAD asked if the committee went with two bill, which bills would they be. **Ms. McClure** stated the decision would be left to the committee. House Bill 68 would be the one to keep because it is a broader bill. It depends on which bill the committee wants by itself. The other bill would be moved into the primary bill. **SENATOR AKLESTAD** asked if there would be less amending, if the Committee chose two bills, instead of one. **Ms. McClure** replied it probably would not be less amending because the amendments would need to be coordinated. One of the bills has 3971201 information concerning the administration fund. The concern is in HB 66 and it is also in a different version in HB 432. So, if it is dumped out of one bill, the committee would have to be concerned if both bills passed or not. Two bills would have to be tracked. **CHAIRMAN KEATING** stated he asks the committee to respond because he does not want to jeopardize a particular bill by a merger, if there is an objection. There is some disturbance over the additional FTE, and if the FTE is going to be a factor, then **CHAIRMAN KEATING** stated he does not want to jeopardize any of the other bills. If it would work better and be easier to understand without the coordination worry, then the amendments would be the way to go. **SENATOR BENEDICT** stated the committee could rely on the Finance and Claims Chairman, **SENATOR AKLESTAD**, to make sure the budget is adjusted accordingly. **CHAIRMAN KEATING** asked for assurance that the committee agrees to combine the three into one. **SENATOR EMERSON** asked if there was a chance if the *steps* are put together, would any *steps* be lost. **CHAIRMAN KEATING** stated if we lose the combined bill, the committee loses all three bills. **Ms. McClure** stated she asked Labor if the department prefers two bills or one bill. Labor thought the way to go would be one bill. **SENATOR BARTLETT** stated she would like to see the bill laid down as one bill, so the committee can tell what is happening and if all the provisions

mesh together. **SENATOR BARTLETT** stated she did not want to find out after the session the mesh did not take place.
CHAIRMAN KEATING stated the committee, subject to the decision of the members, will be presented with a single bill. If the bill is accepted, the committee will go with the bill. If it is not accepted, the committee will go back to three bills. **REPRESENTATIVE HERRON** will be notified of the changes.

Closing by Sponsor:

REPRESENTATIVE WISEMAN stated the legislation is an attempt to combine like functions within the same department. Just because a ½ FTE is requested, it does not mean the department will receive the employee.

EXECUTIVE ACTION ON HB 200

CHAIRMAN KEATING stated the Department Health has withdrawn their amendment to HB 200. **SENATOR WILSON's** Department of Labor's amendment and **SENATOR VAN VALKENBURG'S** amendment are to be considered.

Motion:

SENATOR BENEDICT moved to AMEND HB 200.01 (EXHIBIT 5).

Discussion:

CHAIRMAN KEATING stated **Mr. Wood** is against the Shapiro Amendment and the Department of Health Amendment. **Ms. McClure** state no committee member formally asked her to prepare the stated amendments, so they were not created.

The HB 200.01 amendment was created at the request of the Department of Labor. The amendment deals with the additional $25 application fee to juice up the money at the department. **SENATOR VAN VALKENBURG** asked **Chuck Hunter** if it was his intent to not have the contractors have to pay the $25 fee and the $70 contractor fee from **SENATOR FORRESTER'S** Bill. Does the amendment address the fact that the contractors do not have to pay the $25. **Mr. Hunter** replied no.

{Tape: One; Side: Two; Approx. Counter: 29.1; Comments: Unable to hear Mr. Hunter speak.}

CHAIRMAN KEATING asked if there were additional questions. There were none.

Vote:

The motion to amend HB 200 CARRIED UNANIMOUSLY.

Discussion:

SENATOR AKLESTAD asked if the intent of the amendment was to identify that the $25 would not be needed. **SENATOR AKLESTAD** stated he would consider segregating item 3 and 4 from the amendment. Would that work. **SENATOR BENEDICT** replied No. **SENATOR VAN VALKENBURG** stated what is needed is to put in an additional statement that would read "if they could not collect the $25 from a contractor who applied at the same time under the contractor registration requirement." **SENATOR VAN VALKENBURG** stated he would suggest to **SENATOR FORRESTER** that he prepares a floor amendment to do exactly that, rather than simply rely on the administrative rule making process. **SENATOR AKLESTAD** asked what would happen if the committee took the $25 out. **SENATOR VAN VALKENBURG** replied the other independent contractors, who are not contractors, do not have to pay anything to obtain the exemption, which is really one of the major purposes of the bill. **SENATOR BENEDICT** stated he does not think it is a major purpose of the bill. It is an amendment the Department of Labor would like. If we just took out 3, we would be striking the fee. If we took out 4, we would be striking the requirement for the independent contractors to re-register with the Department on a yearly basis. The re-registration is the reason why the department needs the $25. Current law says that once the independent contractors are registered with the department, they are registered forever or until they tell the department they are no longer an independent contractor. **SENATOR AKLESTAD** suggested the amendment is just left the way it is, without the $25 fee or the requirement to re-register every year. The re-registration makes the department need the $25 to process the paper. The rest of the amendments speak to different part of the bill that needs to be addressed. For instance, the title is struck, which clarifies the liability of the employer if contracts work out. There are other parts of the amendment that are important to the bill.

SENATOR BENEDICT stated is he is correct, by taking 3 and 4 out, the contractor registration and re-registration issue would be taken care of. **Mr. Hunter** pointed out that one of the problems the department has concerning the independent contractors agreement is people get the exemption and then operate differently from how they described their operation. The situations change, but the department has no way to know. The annual registration is important, along with **SENATOR FORRESTER's** Bill. **SENATOR AKLESTAD** asked if 3 is segregated, would the department get the $25. Then, the problem can be worked out. **Mr. Hunter** stated the $25 can be removed. The work will still go on. The department will just charge the insurers for doing it, rather than charging the independent contractors. **CHAIRMAN KEATING** explained the committee heard about the self-insured fund. The entities who are insured under the State Fund and who are insured under private carriers have all complained they are paying a premium tax to fund the department. So if the department increases their expenses, the department will increase the fee on those who are buying Workers' Comp Insurance. By

charging the $25 application fee, you are charging the person who is getting the benefit from the opportunity to be an independent contractor.

SENATOR BARTLETT stated in relation to the last bill heard, the labor inspections had been funded out of the administrative assessment. The independent contractor registration had been taken out. The bills, put through during the 1993 session, carried fiscal notes and increased assessments. Those assessments have increased essentially. These are items that are relatively unrelated to the administrative fund purpose, on which the assessments are based. **SENATOR BARTLETT** stated if the committee agrees, she would like to take the action to relieve the pressure.

No substitute amendment was made.

Motion:

The motion to amend SB 200 PASSED. SENATOR AKLESTAD voted NO.

Motion:

SENATOR VAN VALKENBURG moved to amend HB 200.

Discussion :

SENATOR VAN VALKENBURG stated the amendment would provide an exception to how telephonic hearings in Workers' Compensation court cases would work. The Workers Comp. court presently travels around the state and has hearings in regional locations. The amendment makes it possible for the parties to stipulate that the telephonic hearings can be made. The state prefers to operate telephonically. **Eddye McCLure** checked with **Judge McCarter** at the workers comp court. The judge wasn't aware that the prior telephonic method was premature. **Judge McCarter** reported that the telephonic method was needed. **SENATOR AKLESTAD** stated he thought the telephonic topic was the center of discussion during the hearing. Both parties would have to agree. **SENATOR VAN VALKENBURG** stated there were two different kinds of hearings. The first kind is before the Department. The Department indicated that in most instances people want to do their businesses by the teleconference mode. If there is an extreme instance, the Department would try to accommodate their testimony. The original intent was not to include Workers' Comp. court, which is a different entity. **Ms McClure** stated the Workers' Comp. courts are administratively attached to the department. Section 318 addresses Workers' Comp. court. They have more formal hearings. The only time the video conferencing is done is when both parties make the request. During court cases, the judge needs to have video conferencing, but said to leave it the way it is, because the hearings are much more formal **(EXHIBIT 6)**.

Vote:

The Motion to amend HB 200 CARRIED UNANIMOUSLY.

Motion:

SENATOR BENEDICT moved HB 200 BE CONCURRED IN AS AMENDED.

Discussion:

SENATOR VAN VALKENBURG asked about the amendments that were withdrawn by the Department of Health. He recollected the Department of SRS was the department of origination. **SENATOR KEATING** agreed. **SENATOR VAN VALKENBURG** asked how SRS intends to deal with volunteers working for an employer. Will they be subjected to common law, tort regulations. **SENATOR BENEDICT** stated he had asked **Ms. McClure** to prepare the amendment. **Nancy Butler** and **Russ Cator** discussed the volunteer issue. They believed the welfare reform bill basically was an ongoing two year process. It will take time before they are ready to get a lot of people out of the system. Project design is necessary, as they go. As the growth takes place, they will be putting a few people "out" at a time, rather than "dumping" a whole lot people. The department thought they would have plenty of time to come up with a workable plan. They will present the plan to the 1997 legislature.

Vote:

The BE CONCURRED IN motion for HB 200 PASSED UNANIMOUSLY. SENATOR WILSON will carry the bill to the floor.

ADJOURNMENT

Adjournment: The meeting was adjourned at 3:54 p.m.

TOM KEATING, Chairman

MARY FLORENCE ERVING, Secretary

TK/mfe

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE March 9, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	✓		
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
JIM BURNETT	✓		
CASEY EMERSON	✓		
FRED VAN VALKENBURG	✓		
BILL WILSON	✓		
GARY AKLESTAD, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Labor and Employment Relations having had under consideration HB 200 (third reading copy -- blue), respectfully report that HB 200 be amended as follows and as so amended be concurred in.

Signed: Keating
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, lines 11 and 12.
Following: "COMPANIES;" on line 11
Strike: remainder of line 11 through "OUT;" on line 12

2. Title, line 25.
Strike: "39-71-405,"

3. Page 11, line 12.
Following: "conduct"
Insert: "-- exception"

4. Page 11, line 14.
Following: "(2)"
Strike: "A"
Insert: "Except for a hearing before the workers' compensation court, a"

5. Page 13, lines 15 through 17.
Following: "department" on line 15
Insert: "and must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program"
Following: "."
Strike: remainder of line 15 through "contractor." on line 17

6. Page 13, lines 20 through 23.
Following: "(d)" on line 20
Strike: remainder of line 20 through "status." on line 23
Insert: "The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of October 1, 1995, or thereafter. The renewal application and the $25 renewal

application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption."

7. Page 15, line 6 through page 16, line 16.
Strike: section 7 in its entirety
Renumber: subsequent sections

8. Page 27, line 18.
Strike: "10"
Insert: "9"

9. Page 27, line 20.
Strike: "18"
Insert: "17"

10. Page 27, line 22.
Strike: "25"
Insert: "24"

11. Page 27, line 25.
Strike: "13, 22, and 25 through 28"
Insert: "12, 21, and 24 through 27"

12. Page 27, line 27.
Strike: "12, 14 through 21, 23, and 24"
Insert: "11, 13 through 20, 22, and 23"

-END-

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS
IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 61-94:

SMITH VALLEY TEACHERS' ASSOCIATION,)
MEA/NEA)
Complainant,)
)
-vs-) SUMMONS
)
SMITH VALLEY ELEMENTARY SCHOOL)
DISTRICT NO. 89, FLATHEAD COUNTY)
Defendant.)

* *

TO: CARSON DUNK, SUPERINTENDENT
SMITH VALLEY ELEMENTARY SCHOOL
DISTRICT NO. 89
600 BATAVIA LANE
KALISPELL MT 59901

* *

You are hereby served with an unfair labor practice charge against the Smith Valley Elementary School District No. 89, Flathead County, Montana, which has been filed by the Smith Valley Teachers' Association, affiliated with the Montana Education Association, NEA of Missoula, Montana.

Section 24.26.680 ARM requires that you file a response to the charges within ten (10) days after receipt of the charges. A response is a letter setting forth in detail facts relevant to the complaint which the Respondent wishes to bring to the Board's attention including a specific reply to each factual allegation made in the complaint.

After receipt of the response, I will investigate the alleged unfair labor practice and issue a determination whether it has probable merit, pursuant to section 39-31-405 MCA.

Serve one copy of the response upon the Complainant and file the original response, with proof of service, with the Board of Personnel Appeals.

If you fail to file a timely response, the Board may consider such failure an admission of material facts and waiver of a hearing.

If you have any questions regarding this matter, contact this office.

DATED this 7th day of September, 1994.

BOARD OF PERSONNEL APPEALS

BY Paul Melvin
Paul Melvin
Labor Mediator

cc: Tom Gigstad
Karl J. Englund
Mike Dahlem

RECEIVED
SEP - 7 1994
BOARD OF PERSONNEL APPEALS

Date Filed 9/7/94

Case No. ULP-61-94.

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BOARD OF PERSONNEL APPEALS

UNFAIR LABOR PRACTICE CHARGE

1. NAME OF CHARGING PARTY (COMPLAINANT):

   Smith Valley Teachers' Association

2. AFFILIATION (IF ANY):

   Montana Education Association (NEA)

3. ADDRESS OF COMPLAINANT (street, city, zip and phone):

   3700 S. Russell #C119
   Missoula MT 59801
   (406) 721-2928

4. NAME OF PARTIES AGAINST WHOM THE CHARGES ARE MADE (DEFENDANT):

   Smith Valley Elementary School District No. 89, Flathead County, Montana

5. AFFILIATION (IF ANY):

   NA

6. ADDRESS OF DEFENDANT (street, city, zip and phone):

   600 Batavia Lane
   Kalispell, Montana 59901
   (406) 756-4536

7. DETAILS OF CHARGES:

   The Complainant and the Defendant are parties to a collective bargaining agreement covering the certified staff employed by the Defendant. The latest collective bargaining agreement covered the term of 1992-1994. Since March, 1994, the parties have been negotiating for a successor agreement.

EXHIBIT 1
DATE 3-9-95
HB 264

During the course of negotiations, the Defendant has violated Montana Code Annotated §§ 39-31-401 (1) and (5) by:

1. Engaging in surface bargaining and regressive bargaining. In illustration of these tactics -

   a. The District has attached arbitrary deadlines for acceptance of its proposals under threat of withdrawing same. For example on May 2, 1994, the District gave the Association until just May 9, 1994, to accept in toto a new District offer of that date or it would be withdrawn.

   b. The District has raised a major new issue at an advanced stage of bargaining. On May 2, 1994, for the first time in nearly two months of bargaining, the District demanded that language be placed in the Agreement which would allow the District to make unilateral changes in both benefits and salary.

   c. On June 6, 1994, the District made a regressive proposal in the form of a modified two year total salary freeze after having proposed just a one year freeze in its previous proposal.

2. The Defendant has presented individual contracts to the members of the unit indicating that it does not intend to pay the automatic wage increases based on years of service and college credits contained in the expired collective bargaining agreement.

8. If the charges allege a violation of Section 39-31-401(5), MCA, or Section 39-31-402(2), MCA, has the charging party requested the Board of Personnel Appeals to provide mediation assistance, pursuant to ARM 24.26.695 of the Board's rules? (Yes or No):

   No, but the Defendant school district has requested mediation.

STATE OF MONTANA)
) SS.
County of Missoula)

Tom Gigstad, BEING DULY SWORN, DEPOSES AND SAYS, that he/she is the representative of the charging party above named, that he/she has read the above charges including attached additional page(s), is familiar with the contents thereof and the same are true to the best of his/her knowledge.

Dated this 1st day of September, 1994

Tom Gigstad

Signature of COMPLAINANT'S REPRESENTATIVE

ATTORNEY FOR CHARGING PARTY:
Karl J. Englund
Box 8142
Missoula MT 59807
(406) 721-2729

[NOTARIAL SEAL]

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1st DAY OF September, 1994.

Notary Public

NOTARY PUBLIC FOR THE STATE OF MONTANA.
RESIDING IN MISSOULA, MONTANA

My Commission expires 7/3, 1995.

EXHIBIT 1
DATE 3-9-95
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Michael Dahlem
Staff Attorney
Montana Schools Boards Association
1 South Montana Avenue
Helena, MT 59601
(406) 442-2180
Attorney for Defendant

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 61-94:

SMITH VALLEY TEACHERS ASSOCIATION, MEA/NEA, Complainant, -vs- SMITH VALLEY ELEMENTARY SCHOOL DISTRICT NO. 89, FLATHEAD COUNTY Defendant.	RESPONSE TO UNFAIR LABOR PRACTICE CHARGE

Pursuant to ARM 24.26.680B, the Board of Trustees, Smith Valley Elementary School District No. 89 hereby submits this response in the above-captioned matter.

The Defendant Board admits that the information contained in items nos. 1 through 6 in the complaint are correct.

With respect to item no. 7, the Board admits that it is party to a collective bargaining agreement covering its certified staff for the term from 1992-1994. It admits that the parties began formal negotiations on March 7, 1994. However, the Board first requested negotiations on January 18, 1994. The Board made several requests to begin negotiations prior to March 7, 1994. Each of these requests was rejected by the Association. On

February 17, 1994 the Board proposed a two-year wage and benefit freeze to the Association. (See correspondence marked Exhibit A.)

The Board denies that it has engaged in surface or regressive bargaining. It denies that its conditional offer of May 2, 1994, including its proposed Article 10.2, was in any way impermissible. That proposal was offered as part of a package and was subsequently withdrawn when rejected by the Association. The Board denies that its June 6, 1994 proposal was regressive. The Board merely reinstated an offer made before the Association rejected the conditional offer made on May 2, 1994.

On June 6, 1994, the Board presented the Association with a last, best and final offer. Because that offer was rejected by the Association, the parties are at an impasse and the Board is free to implement the terms of that offer without committing an unfair labor practice. (See Exhibits B and C.)

The Board denies the allegation that teachers are entitled to "automatic" step and lane increases under Montana law. The Board also states that no teacher is eligible for a lane change during the 1994-95 school year.

Even though the parties have been at impasse since June 6, 1994, the Board made a unilateral request for mediation on June 20, 1994 in an attempt to obtain a settlement. To date, mediation efforts have not been successful. (See Exhibits D and E.)

For all of the above reasons, the Board of Trustees respectfully requests that the agent find that this charge is

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without probable merit.

Submitted this 22nd day of September, 1994.

Michael Dahlem

Michael Dahlem
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 1994, a true and correct copy of the foregoing has been mailed postage prepaid to the following:

Tom Gigstad
3700 Russell #C119
Missoula, MT 59801

Karl Englund
Attorney at Law
Box 8142
Missoula, MT 59807

Toni B. Demers

EXHIBIT 1
DATE 3-9-95
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STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 61-94

SMITH VALLEY TEACHERS' ASSOCIATION, MEA/NEA Complainant, -vs- SMITH VALLEY ELEMENTARY SCHOOL DISTRICT NO. 89, FLATHEAD CO. Defendant.	INVESTIGATION REPORT AND DETERMINATION

* * * * * * * * * *

I. INTRODUCTION

On September 7, 1994, the Smith Valley Teacher's Association filed an unfair labor practice charge with this Board alleging that the Smith Valley Elementary School District No. 89, Flathead County, Montana was violating Section 39-31-402 (1) and (5), MCA. The Defendant denied any violation of the above cited law.

II. DISCUSSION

An investigation was conducted which included a review of the documentation provided by all parties involved. The Complainant alleges that the Defendant has: 1.) engaged in surface and regressive bargaining, and 2.) does not intend to pay the automatic wage increases based on years of service and college credits contained in the expired collective bargaining agreement.

The Defendant responded to the Complainant's illustrations of surface and regressive bargaining by pointing out that the proposals offered by the School Board were part of a package, and

were subsequently withdrawn when rejected by the Association. The Defendant also specifically denies that its conditional offer of May 2, 1994 was in any way impermissible. Further, the Defendant attests: "On June 6, 1994, the Board presented the Association with a last, best and final offer. Because that offer was rejected by the Association, the parties are at an impasse and the Board is free to implement the terms of that offer without committing an unfair labor practice."

The Complainant additionally charges that "The Defendant has presented individual contracts to the members of the unit indicating that it does not intend to pay the automatic wage increases based on years of service and college credits contained in the expired collective bargaining agreement." The Defendant "...denies the allegation that teachers are entitled to 'automatic' step and lane increases under Montana law. The Board also states that no teacher is eligible for a lane change during the 1994-95 school year."

The Board of Personnel Appeals (BOPA) dealt with the issue of continuation of contract terms after expiration of the collective bargaining agreement when deciding ULP #37-81, Forsyth Education Association, MEA, NEA vs. Rosebud County School District No. 14, Forsyth, Montana. The BOPA ruled that:

> "Wages, however stated or paid, are a mandatory subject of bargaining. Therefore, a unilateral change in wages, even following expiration of a collective bargaining agreement, is a violation of 39-31-401(5), MCA. ... To not pay a teacher according to the contract's stated method of placement on the pay matrix and in accord with the truth as to how many years experience and college credits that a given teacher actually has, is a

EXHIBIT 1
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unilateral change in a mandatory subject of bargaining. ... [T]he Forsyth school district's failure to pay returning teachers in the fall of 1981 the automatic step increase to which they were entitled was a violation of 39-31-401(1) and (5) MCA."

In the same ruling, BOPA also noted that "[I]f during negotiations impasse occurs, then the employer is free to unilaterally implement its last, best, final offer." The Montana Supreme Court stated in its 1985 review of ULP #37-81 that the Board of Personnel Appeals "simply ordered that, in the absence of an 'impasse', the provisions of the expired contract may not be unilaterally changed by the employer."

The Complainant alleges that collective bargaining with the Defendant has not occurred in "good faith", and therefore true impasse does not exist. The facts stated by one party do not agree with those offered by the other.

III. DETERMINATION

Accordingly, pursuant to Section 39-31-405 MCA, we find that there is probable merit for the charges filed and will issue a notice of hearing.

DATED this 21st day of October, 1994.

BOARD OF PERSONNEL APPEALS

By: Paul Melvin
Paul Melvin
Investigator

NOTICE

ARM 24.26.680B (6) provides: As provided for in 39-31-405 (4), MCA, if a finding of probable merit is made, the person or entity against whom the charge is filed shall file an answer to the complaint. The answer shall be filed within ten (10) days with the Investigator at P.O. Box 1728, Helena, MT 59624.

* * * * * * * * * * *

CERTIFICATE OF MAILING

I, Jennifer Jacobson do hereby certify that a true and correct copy of this document was mailed to the following on the 21st day of October, 1994:

Carson Dunk, Superintendent
Smith Valley Elementary School
District No. 89
600 Batavia Lane
Kalispell, MT 59901

Tom Gigstad, Uniserv Director
Montana Education Association, NEA
3700 South Russell #C119
Missoula, MT 59801

Karl J. Englund, Attorney at Law
P.O. Box 8142
Missoula, MT 59807

Michael Dahlem, Staff Attorney
Montana School Boards Association
One South Montana Avenue
Helena, MT 59601

S... #1-A
L...
DATE March 9, 1995
BILL NO. HB 264

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

In the matter of Unfair Labor Charge No. 29-86 LOLO EDUCATION ASSOCIATION, MONTANA EDUCATION ASSOCIATION Complainant, vs. MISSOULA COUNTY SCHOOL DISTRICT NO. 7 Defendant.	FINDINGS OF FACT; CONCLUSIONS OF LAW; RECOMMENDED ORDER

* * * * * * * * * * *

I. INTRODUCTION

The Complainant, Lolo Classified Association, Montana Education Association filed an Unfair Labor Practice charge with the Board of Personnel Appeals on December 11, 1986. The complaint alleged that the Defendant violated 39-31-401(1) and (5), MCA, by refusing to bargain in good faith with Complainant, the certified exclusive representative of its classified employees.

On May 4, 1987 the Complainant and the Defendant filed stipulated facts and a briefing schedule. The Complainant waived the filing of a response brief to the the Defendant's brief. Neither side requested oral argument. The matter was thus submitted on July 7, 1987.

II. LEGAL ISSUE

Whether the failure to pay step increases based on years of experience provided in the expired contract, in light of provision 13.1, is a unilateral change in a mandatory subject of bargaining constituting a refusal to bargain in good faith and a violation of Section 39-31-401(1) and (5), MCA.

III. STIPULATED FACTS

1. Complainant Association is the duly certified

exclusive representative of Defendant's classified employees at the Lolo School.

2. The last collective bargaining contract between the parties expired on July 1, 1986. The parties have been in bargaining attempting to reach an agreement on a successor contract and have requested and utilized mediation; impasse has not been reached.

3. The expired contract had a wage schedule providing for step increases based on years of experience.

4. The Defendant has refused to advance the employees for an additional year of experience on the salary schedule after the contract expired.

5. The expired collect bargaining agreement contained the following provision:

> 13.1 Effective Period
>
> This agreement shall be effective as of June 30, 1985 and shall continue in full force and effect until June 30, 1986. It is expressly understood that all provisions of the agreement terminate after this date.

IV. CONCLUSIONS OF LAW

A matter similar to this has been previously addressed by the Board of Personnel Appeals in Forsyth Education Association v. Rosebud County School District No. 4, ULP. 37-81; Forsyth School District No. 4 v. Board of Personnel Appeals and Forsyth Education Association, 42 St. Rptr. 21, 692 P.2d 1261 (1985). The Supreme Court in Forsyth v. Board, supra, did not address the heart of the Forsyth case which was whether failure to implement negotiated steps constituted an unfair labor practice. The Supreme Court ruled that because retroactive benefits were paid Forsyth was moot. The Court further held that this was not an occasion to apply the "capable of repetition, yet evading review" doctrine. The hearing examiner must make

EXHIBIT 1-A
DATE 3-9-95
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specific note that this question is a recurring one and that some clear guidance by the Board and the courts is necessary.

In the Forsyth Order issued by the Board on December 16, 1983, the Board made several conclusions very relevant to the Lolo case at hand. The Board stated in Forsyth, "We specifically reject, however, the use of public sector cases as precedent in this case for the reason stated below." The Board then went on to point out that public sector cases often come to opposite conclusions over the same issues. For that reason the Board elected to give credence to decisions of the National Labor Relations Board under the Labor Management Relations Act and to negate the usefulness of decisions rendered by state courts and boards. This was consistent with long held Board practice. Counsel have not cited nor has the hearing examiner found any federal case directly on line with the issue in Lolo. Forsyth, thus appears controlling to the extent it addresses the issue.

It is well settled that a unilateral change in a mandatory subject of bargaining, even after the expiration of a collective bargaining agreement, is a violation of 39-31-401 (5) MCA. Wages, however stated or paid are a mandatory subject of bargaining. A unilateral change in wages, even following the expiration of a collective bargaining agreement, is a violation of 39-31-401 (5) MCA, Forsyth, ULP #37-81, supra.

In Forsyth, the Board in lengthy discussion addressed whether implementation of steps or failure to implement steps was a disruption of status quo. The Board in citing a Ninth Circuit case, American Distributing Co. V NLRB, 715, F.2d 446, 114 LRRM 2402 (CA 9, 1983) likened the collective bargaining agreement to a living document whose obligations

carry on beyond expiration. Citing other cases the Board concluded that to not implement steps constituted a change from the status quo and thus an unfair labor practice. Of primary importance the Board stated:

> Placement on a salary schedule such as the matrix in question is an automatic wage increase determined only by the length of years of experience and current number of credits.

If as the Board has found, that a pay matrix constitutes a living part of every agreement subject only to meeting the contractual term of the matrix (a year of service), it makes no difference that the contract has language such as in 13.1. Failure to pay an employee according to the contract's stated method of placement on the pay matrix and in accord with the truth as to how many years experience that employee has, is a unilateral change in a mandatory subject of bargaining.

Had Missoula County School District #7 implemented the step changes contained in the agreement the District would not have been guilty of an unfair labor practice charge under the Board's holding in Forsyth. As it were, the District committed an unfair labor practice under 39-31-401 (1) and (5) MCA by failing to implement the negotiated steps.

V. RECOMMENDED ORDER

IT IS ORDERED that the Defendant, Missoula County School District No. 7, cease not paying the increments provided for in a collective bargaining agreement upon expiration of that agreement.

IT IS FURTHER ORDERED that Missoula County School District No. 7 recognize the step increments where applicable subsequent to the expiration of the collective bargaining agreement and compensate employees in accordance with

EXHIBIT 1-A
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this decision.

NOTICE

Pursuant to ARM 24.25.107(2), this RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless written exceptions are filed within 20 days after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER upon the parties.

Dated this 9th day of July, 1987.

BOARD OF PERSONNEL APPEALS

By _____
John Andrew
Hearing Examiner

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of this document was mailed to the following on the 9th day of July, 1987.

Emilie Loring
Hilley and Loring, P.C.
Executive Plaza - Suite 2G
121 - 4th St. N.
Great Falls, MT 59401

Don Klepper
The Klepper Company
P.O. Box 4152
Missoula, MT 59806

_____

FOF2:030vt

EXHIBIT 2
DATE March 9, 1995
BILL NO. HB264

SCHOOL DISTRICTS 17-H & 1
BIG HORN COUNTY-HARDIN, MT
1994-95 TEACHER SALARY SCHEDULE

ATTAINMENT LEVEL 3.75
$18,225
BASE

	BA	BA+1	BA+2	BA+3	MA	MA+1	MA+2
0	18225	18808	19410	19701	19992	20585	21168
1	18899	19546	20203	20525	20849	21497	22143
2	19574	20284	20995	21350	21706	22407	23118
3	20248	21022	21787	22175	22563	23319	24093
4	20922	21760	22580	23000	23419	24230	25068
5	21597	22499	23373	23825	24275	25142	26044
6	22271	23237	24166	24649	25132	26052	27018
7	22945	23974	24959	25474	25989	26964	27994
8	23620	24712	25752	26298	26845	27875	28968
9	24294	25451	26545	27123	27702	28786	29943
10	24968	26189	27338	27948	28559	29697	30919
11		26927	28130	28772	29414	30608	31893
12		27666	28923	29597	30271	31520	32869
13				30422	31128	32432	33843
14				31247	31985	33343	34818
15							35794

95-96 - 1 step

NO.	DEGREE	AMOUNT
3	BA-1	$56,698
5	BA-2	$97,868
3	BA-3	$60,744
1	BA-4	$41,845
2	BA-5	$43,193
3	BA-6	$66,813
1	BA-7	$22,945
1	BA-9	$24,294
2	BA-12	$49,937
0	BA1-1	$0
0	BA1-2	$0
2	BA1-4	$43,521
3	BA1-5	$67,497
1	BA1-6	$23,237
0	BA1-7	$0
0	BA1-8	$0
0	BA1-9	$0
1	BA1-10	$26,189
1	BA1-11	$26,927
1	BA1-12	$27,666
1	BA1-13	$27,666
1	BA1-14	$27,666
1	BA1-18	$27,666
1	BA1-22	$27,666
0	BA2-1	$0
1	BA2-2	$20,995

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2	BA2-5	$46,747
2	BA2-6	$48,332
1	BA2-8	$25,752
2	BA2-9	$53,090
0	BA2-10	$0
1	BA2-11	$28,130
2	BA2-12	$57,845
1	BA2-13	$28,923
2	BA2-14	$57,845
1	BA2-15	$28,923
1	BA2-16	$28,923
1	BA2-19	$28,923
1	BA2-20	$28,923
1	BA2-21	$28,923
1	BA2-27	$28,923
1	BA2-38	$28,923
1	BA3-2	$21,350
2	BA3-5	$47,650
1	BA3-7	$25,474
1	BA3-8	$26,298
0	BA3-9	$0
0	BA3-10	$0
2	BA3-11	$57,544
1	BA3-12	$29,597
1	BA3-13	$30,422
3	BA3-14	$93,741
2	BA3-16	$62,494
1	BA3-17	$31,247
3	BA3-18	$93,741
1	BA3-22	$31,247

1	BA4-6	$25,132
1	BA4-7	$25,989
1	BA4-9	$27,702
1	BA4-11	$29,414
1	BA4-12	$30,271
1	BA4-13	$31,128
1	BA4-17	$31,985
1	BA4-18	$31,985
1	BA4-19	$31,985
1	BA4-20	$31,985
1	BA4-21	$31,985
1	BA4-30	$31,985
1	BA5-11	$30,608
2	BA5-15	$66,685
3	BA5-18	$100,028
1	BA5-19	$33,343
1	BA5-26	$33,343
1	BA6-6	$27,018
1	BA6-15	$35,794
1	BA6-21	$35,794
1	BA6-24	$35,794
1	BA6-26	$35,794
1	BA6-27	$35,794
1	MA-6	$25,132
0	MA-9	$0
2	MA-13	$62,256
0	MA-14	$0
1	MA-17	$31,985
1	MA-25	$31,985

EXHIBIT 2
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0	MA1-4	$0
1	MA1-7	$26,964
0	MA1-8	$0
0	MA1-11	$0
0	MA1-12	$0
0	MA1-13	$0
1	MA1-14	$33,343
1	MA1-16	$33,343
1	MA1-17	$33,343
1	MA1-22	$33,343
1	MA1-30	$33,343
2	MA2-11	$63,786
0	MA2-12	$0
2	MA2-14	$69,637
1	MA2-15	$35,794
1	MA2-17	$35,794
1	MA2-18	$35,794
2	MA2-19	$71,588
2	MA2-20	$71,588
3	MA2-21	$107,381
1	MA2-22	$35,794
1	MA2-36	$35,794
1	MA3-14	$35,794
1	MA3-17	$35,794
1	MA3-21	$35,794
1	MA3-22	$35,794
1	MA3-25	$35,794
132		$3,829,450

representative of the BEA will be present at this conference if the teacher so elects. A teacher volunteering for this additional period shall not be entitled to overload pay.

(4) A teacher assigned to a sixth period of structured classroom teaching in place of the assigned period, shall be compensated at the rate of one-seventh (1/7th) of the BA base salary per year for this sixth period assignment. If the assignment is for a portion of the sixth period, the extra stipend will be prorated.

(5) If a teacher is assigned a seventh period structured classroom teaching in place of the preparation period, the teacher shall be compensated an amount in addition to the stipend required by (4) above. This additional stipend shall be at the rate of one-seventh (1/7th) of the teacher's regular base pay for this seventh period. If the assignment is for a portion of the seventh period this extra stipend shall be prorated.

Subd. 3. Preparation time is available to teachers teaching half time or more.

ARTICLE VII
COMPENSATION

Section 1. Basic Salary:

Subd 1. 1993-94 School Year: The salary reflected in Appendix B attached hereto, shall be a part of this Agreement for the 1993-94 school year. The teacher, if eligible, will advance one step on the salary schedule for the 1993-94 school year.

Subd. 2. If a session of the Montana Legislature reduces funds available to the School District during the term of this Agreement, the School District may give notice to the Association within sixty (60) calendar days after such reduction is final of the District's intention to renegotiate the salaries reflected in Appendix B attached hereto. If a session of the Montana Legislature increases funds available to the School District during the term of this Agreement, the Association may give notice to the School District within sixty (60) calendar days after such increase is final of its intention to renegotiate the salaries reflected in Appendix B attached hereto.

Section 2. Step Merger: The parties have agreed to merge the eleventh, twelfth and thirteenth experience steps of the salary schedule in the 1993-94 contract year. Teachers placed on the consolidated "10-11-12" step in 1992-93, will move to the consolidated "11-12-13" step in 1993-94. No other teachers working under this Agreement are affected by the above described step mergers.

Section 3. Status of Salary Schedules: The 1993-94 salary schedule shall not be construed to continue beyond the duration of this Agreement and a teacher shall have no right to either increment or lane advancement after the expiration of this Agreement.

Section 4. Salary Schedule Guidelines:

Subd 1. Placement: All teachers, including those in Federal and other special programs, will be placed on the salary schedule at a level that they qualify for under these guidelines. Newly employed teachers shall have one year from the date of initial salary schedule placement to challenge said placement based on the guidelines herein.

Subd. 2. Part-time Teachers: Less than full time teachers shall be placed on and shall advance on

LoLo

The Association recognizes that the Board's ability to fund the economic benefits and programs contained herein is dependent upon the financial resources of the School District. Should there be s substantial decrease in revenue which impairs the ability of the Board to fund economic and other benefits contained herein, or a significant increase in funding the two parties shall immediately reopen the Agreement to negotiate the provisions herein that are affected by the economic impact.

20.7 RENEWAL AND REOPENING OF AGREEMENT

The 1993-95 Salary Schedule shall not be construed to continue beyond this Agreement and a teacher will have no right to either increment (step) or lane advancement after the expiration of this Agreement.

Terry

Section 2. Building Hours: The specific hours at any individual building may vary according to the needs of the educational program of the School District. The specific hours for each building will be designated by the School District.

Section 3. Additional Activities: Upon mutual consideration, teachers shall also be required to perform additional duties beyond the basic duty day, as is required by the School District, to attend to those matters requiring their attention, including consultations with parents, faculty meetings, open houses, supervisory activities, curriculum meetings, parent conferences and other professional responsibilities not scheduled during the regular duty day.

Section 4. Noon Duty: Noon duty teacher will be given free lunch.

EXHIBIT 3
DATE 3-9-95
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ARTICLE IX
BASIC COMPENSATION

Section 1. Basic Compensation:

Subd. 1 1994-95, 1995-96 Rate of Pay: The wages reflected in Schedule A. and B., attached hereto, shall be effective only for the 1994-96 school years and teachers shall advance one (1) increment on the salary schedule subject to Section 2 hereof.

Section 2. Status of Salary Schedules: The salary schedule shall not be construed to continue beyond the duration of this Agreement and the teacher shall have no right to either increment or lane advancement after the expiration of this agreement.

Section 3. Placement on Salary Schedule: The following rules shall be applicable in determining placement of a teacher on the appropriate salary schedule.

Subd. 1 Eligibility: Credits to be considered for application on any educational lane of the salary schedule must receive approval of the Superintendent of Schools. Requests denied by the Superintendent may be appealed to the Board for their consideration. Each teacher must earn 6 quarter hours of credit during each 5 year period to be eligible for continued vertical advancement on the salary schedule.

Subd. 2 Hours for Quarter: Fifteen quarter hours or 10 semester hours of approved credit shall constitute one quarter for pay purposes.

Subd. 3 Effective Date: Subject to Subdivision 1 and 2 hereof, individual contracts will be modified to reflect qualified educational lane changes once each year effective at the beginning of the school year, providing a transcript of qualified credits is submitted to the Superintendent's office no later than September 1 of each year. Credits submitted by transcript after September 1 even though otherwise qualifying shall not be considered until the following school year. If a transcript is not available by September 1, other satisfactory evidence of successful completion of the course will be accepted, pending receipt of the official transcript; however, any pay adjustment shall not be made until the official transcript is received.

Subd. 4 Application: Credits to apply to educational lanes beyond a particular degree lane, must be earned subsequent to the earning of the degree, and must be taken from an accredited college or university.

Subd. 5 New Employees: A teacher newly employed who has had experience in school systems or in other fields or endeavors will be allowed the actual number of years of outside experience to a maximum of 5 years.

Section 4. Pay Deductions: Whenever pay deduction is made for a teacher's absence, the annual salary divided by the number of teacher duty days as provided in Article VII herein shall be deducted for each days' absence.

MONTANA
PUBLIC
EMPLOYEES
ASSOCIATION

1426 Cedar Street • P.O. Box 5600
Helena, Montana 59604

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SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE March 9, 1995
BILL NO. HB 264

HB 264

Submitted by: Thomas E. Schneider
Executive Director

Mr. Chairman and members of the committee. The other day I was listening to an interview of a major league baseball player and he said " the players don't understand why this has gone on and on. On a scale of 0 to 10, we started at 10 the owners started at 0 and we expected to settle at 5. If only collective bargaining was that simple. House Bill 264 seems that simple. Why should someone get a benefit from an expired contract? The bill, however, is not that simple. What happens with HB 264 will affect public employee collective bargaining and the ability of the parties to reach agreement forever.

Specifically, it wipes out sixty years of labor law history on how wage provisions of collective bargaining agreements are dealt with during the period of time that occurs after a contract expires and until a new contract is put in place.

It terminates wage provisions which were intended, at the time they were bargained, to be ongoing at least until changed in future negotiations.

I have attached copies of three different salary schedules negotiated with the same employer which contain steps and lanes. If both parties had not intended for the steps to continue from contract to contract until changed, they would have simply provided for a one step increase each year. The salary schedule was put in the contract to tell the employees what they could expect to receive as a minimum if they continue to work for the school district.

The first schedule was agreed to in 1979 which was before the Forsyth decision, the second one was negotiated in 1985 which was after the Forsyth decision and the third one was negotiated in 1989 which was after both the Forsyth and Lolo decisions. As you can see there is no language which terminates the salary schedule at the expiration of the agreement. Having negotiated these particular contracts I can tell you that both parties intended the steps to continue beyond the term of the contract.

Eastern Region
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Billings, MT 59104
(406) 245-2252

Western Region
P.O. Box 4874
Missoula, MT 59806
(406) 251-2304

MPEA

What we are witnessing is what is referred to as "status quo". To keep a level playing field during the period of time after a contract expires and a new one is agreed to the, NLRB, state PERB boards and state and federal courts have defined "status quo" to both protect and penalize both parties until a new agreement is reached.

While the employer may be required to pay an increase that was negotiated previously, please remember that the union will loose its "union security clause", and it protection from raiding provided by the "contract bar" as examples of items not protected by "Status Quo". These losses and protections are intended to put pressure on both parties to bring about a speedy agreement. HB 264 will destroy an important part of that.

Then there is the statement that " the employees don't loose because once agreement is reached, the settlement will be retro-active back to when the other agreement expired. NOT SO!!! When negotiations go beyond the expiration date, retro-activity becomes a new item to be negotiated. In fact, the longer negotiations continue the more important retro-activity becomes to the employees. This issue, alone, gives the employer the upper hand once the previous contract expires.

****
* HB 264 allows the employer to cancel a wage increase it neg- *
* otiated in good faith by simply allowing the contract to ex- *
* pire and there isn't anything the union can do about it.*
****

Can wage provisions be negotiated to expire at the time a contract expires? Certainly! This committee has been shown examples of language that requires such expiration. HB 264 says you can't have an ongoing wage provision even if both parties want to negotiate one. My understanding of the law would indicate that HB 264 would also include longevity and health insurance because they are considered wages by the law.

This issue was heard before the Board of Personnel Appeals, again, just this past year on a request for a declaratory ruling by many of proponents appearing here today. The BPA is made up of two management members, two labor members and a neutral chairman appointed by the Governor. I am a member of the BPA, appointed by Governor Racicot. I did not sit on the case as MPEA was a named defendent. That left the board with two mamagement members, one labor member and the neutral chairman to hear the case and render a decision. The Board of Personnel Appeals ruled 3 to 1 against this issue which is before you. After a full day of legal arguments one management member, one labor member and the neutral chairman ruled against doing what you are being asked to do. Please do the same. Let labor relations in Montana continue on a level playing field. VOTE "DO NOT CONCURR" ON HB 264.

3/23/79

EXHIBIT 4
DATE 3-9-95
HB 264

SECRETARY SALARY SCHEDULE
1979-80

12 MONTH EMPLOYEES

Step	Level 1	Level II	Level III	Level IV
0	590	615	640	665
1	612	637	662	687
2	634	659	684	709
3	656	681	706	731
4	678	703	728	753
5	700	725	750	775
6	722	747	772	797
7	744	769	794	819
8	756	791	816	841
9	778	813	838	863
10	810	835	860	885

10 MONTH EMPLOYEES

Step	Level I	Level II	Level III
0	565	590	615
1	587	612	637
2	609	634	659
3	631	656	681
4	653	678	703
5	675	700	725
6	697	722	747
7	719	744	769
8	741	766	791
9	763	788	813
10	785	810	835

3/18/85

MPEA SALARIES 1985-86

Step	Grade I	Grade II	Grade III	Grade IV	Grade V
0	$915	$940	$965	$990	$1,015
1	940	965	990	1,015	1,040
2	965	990	1,015	1,040	1,065
3	990	1,015	1,040	1,065	1,090
4	1,015	1,040	1,065	1,090	1,115
5	1,040	1,065	1,090	1,115	1,140
6	1,065	1,090	1,115	1,140	1,165
7	1,090	1,115	1,140	1,165	1,190
8	1,115	1,140	1,165	1,190	1,215
9	1,140	1,165	1,190	1,215	1,240
10	1,165	1,190	1,215	1,240	1,265
11	1,190	1,215	1,240	1,265	1,290
12	1,215	1,240	1,265	1,290	1,315
13 thru 16	1,240	1,265	1,290	1,315	1,340
17 thru 20	1,265	1,290	1,315	1,340	1,365
21 and above	1,290	1,315	1,340	1,365	1,390

EXHIBIT 4
DATE 3-9-95
HB 264

EXHIBIT B:
ARTICLE 1 - EMPLOYEE BENEFITS - NEW SCHEDULE
Section 1. Pay

Employees shall be provided all of the rights and benefits to which they are entitled by law or by personnel policy including but not limited to such matters as compensation, holiday, leaves, and fringe benefits. The following provisions shall apply to all members of this unit.

a. Clerical Salary Schedule

Step	Grade I	Grade II	Grade III	Grade IV	Grade V
0	1,031	1,056	1,081	1,106	1,131
1	1,056	1,081	1,106	1,131	1,156
2	1,081	1,106	1,131	1,156	1,181
3	1,106	1,131	1,156	1,181	1,206
4	1,131	1,156	1,181	1,206	1,231
5	1,156	1,181	1,206	1,231	1,256
6	1,181	1,206	1,231	1,256	1,281
7	1,206	1,231	1,256	1,281	1,306
8	1,231	1,256	1,281	1,306	1,331
9	1,256	1,281	1,306	1,331	1,356
10	1,281	1,306	1,331	1,356	1,381
11	1,306	1,331	1,356	1,381	1,406
12	1,331	1,356	1,381	1,406	1,431
13-16	1,371	1,396	1,421	1,446	1,471
17-20	1,411	1,436	1,461	1,486	1,511
21-24	1,451	1,476	1,501	1,526	1,551
25-28	1,491	1,516	1,541	1,566	1,591
29-32	1,531	1,556	1,581	1,606	1,631
32-35	1,571	1,596	1,621	1,646	1,671

*See next page 7 for descriptions on Grades I through V.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE March 9, 1995
BILL NO. HB200

Amendments to House Bill No. 200
Third Reading Copy

Requested by Senator Wilson
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 7, 1995

1. Title, lines 11 and 12.
Following: "COMPANIES;" on line 11
Strike: remainder of line 11 through "OUT;" on line 12

2. Title, line 25.
Strike: "39-71-405,"

3. Page 11, line 12.
Following: "**conduct**"
Insert: "-- **exception**"

4. Page 11, line 14.
Following: "(2)"
Strike: "A"
Insert: "Except for a hearing before the workers' compensation court, a"

5. Page 13, lines 15 through 17.
Following: "department" on line 15
Insert: "and must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program"
Following: "."
Strike: remainder of line 15 through "contractor." on line 17

6. Page 13, lines 20 through 23.
Following: "(d)" on line 20
Strike: remainder of line 20 through "status." on line 23
Insert: "The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of October 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption."

7. Page 15, line 6 through page 16, line 16.
Strike: section 7 in its entirety
Renumber: subsequent sections

8. Page 27, line 18.
Strike: "10"
Insert: "9"

9. Page 27, line 20.
Strike: "18"
Insert: "17"

10. Page 27, line 22.
Strike: "25"
Insert: "24"

11. Page 27, line 25.
Strike: "13, 22, and 25 through 28"
Insert: "12, 21, and 24 through 27"

12. Page 27, line 27.
Strike: "12, 14 through 21, 23, and 24"
Insert: "11, 13 through 20, 22, and 23"

SBS

EXHIBIT 6
DATE March 9
BILL NO. HB 200

Amendment to House Bill #200
(RE: Workers' Compensation)
Third Reading Copy as Amended

1. Title, line 9.
Following: "ELECTION;"
Insert: "EXEMPTING VOLUNTEERS FROM COVERAGE UNDER THE WORKERS'COMPENSATION ACT UNLESS THE EMPLOYER ELECTS TO COVER THEM;"

2. Page 7, line 22.
Following: "worker,"
Insert: "**volunteer,**"

3. Page 8.
Following: line 30
Insert: "(c) performing service as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), 'volunteer' means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123, and includes recipients of assistance under the aid to families with dependent children program who are performing community service work in the community service program component of the families achieving independence in Montana project and recipients of assistance under the aid to families with dependent children program participating in a work experience program."

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c)."
Renumber: subsequent sections

-End-

DATE June 9, 1995

SENATE COMMITTEE ON Labor + Employment Relations

BILLS BEING HEARD TODAY: HB 432 HB 414 HB ~~462~~ 264

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
W. H. JELLISON	COMMERCE	HB432	X	
CHUCK HUNTER	D.O.L.I.	" "	X	
STAN KALECZYC	NAT'L COUNCIL ON COMP. INSURANCE	414	X	
Terry Minow	HB4 MFT	264		X
John Maloney	M.F.T.	264		X
Steve Melton	Commerce	432	X	
JAMES A. LOFTUS	MT FIRE DIST ASSN	432	✓	

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DATE March 9, 1995

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: HB 432 HB 414 HB ~~60~~ 264

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Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Tom Schneider	MPEA	HB 264		X
Michael Dahlem	MSBA	264	X	
Jim Foster	MREA	264	X	
CHV				
DARRELL HOLZER	AFL-CIO	264		X
Rodney Svee	Hardin Public Schools	264	X	
Don Waldron	MREA	264	X	
Debra Fulton	MSBA	264	X	
Carter Christianson	Plevna Schools	264	X	
Phil Campbell	MEA	264	~~X~~	X
Marya Warren	~~E-Helo~~ Myself	264		X
Kris Runnalls	Teacher	264		X
Barbara Schaff	myself	264		X
Melissa Case	Hoki Employees Union Port. Employees	264		X

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