

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS F. KEATING, on February 11, 1997, at 3:05 p.m., in Room 413/415.

#### ROLL CALL

##### Members Present:

Sen. Thomas F. Keating, Chairman (R)  
Sen. James H. "Jim" Burnett, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Benedict (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Dale Mahlum (R)  
Sen. Debbie Bowman Shea (D)  
Sen. Fred Thomas (R)  
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Services Division  
Gilda Clancy, Committee Secretary

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

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: SJR 5, HB 172, SB 225; 2-5-97  
Executive Action: SB 251, SB 233, SJR 5

#### HEARING ON SJR 5

Sponsor: SEN. GARY AKLESTAD, SD 44, Galata

Proponents: Ingrid Danielson, Department of Labor & Industry  
JoAnn Erickson, Office Public Instruction  
Tom Hayes, Moantana Job Training Program  
Mike Kahoe, Montana Job Training Program, and  
Chief Executive Granite County Commission  
Mike Murray, Lewis & Clark County Commissioners  
Candy Wimmer, Crime Control Youth Justice Council

Opponents: None.

Opening Statement by Sponsor:

SEN. GARY AKLESTAD, SD44, Galata, said this bill is a simple and straight-forward bill. In the past the job training program under the **Job Training Partnership Act, (JTPA)**, has had a 13-week provision in it. The first week the individual is interviewed they had a job, then 13 weeks later they would interview or contact that individual to see if he had a job at that time.

During the interim, between the initial sign-up and the thirteenth week, there is no tracking record. So that individual actually could have held two jobs for two days, one at the beginning and then the thirteenth week when it was checked, they could be holding a different job that day. Or they could have held several jobs during that interim and not maintained the jobs.

SJR 5 allows **JTPA** to check 10% of those who are going through this program. They would like to check them at 13 weeks and 26 weeks, and they would like a tracking records in between that time period to see if the program is actually working, how many job placements they have and if they just had one job between the first week and the thirteenth week. This is a check to see if the program is working. If it is not then they will consider what needs to be done to correct it. This decision would have to be made during the next legislative session. Then **JTPA** would also be able to target those who are at risk. On page 2 of SJR 5, line 6 is trying to take those funds from 2, (b) and direct them into 2, (c), which entails taking funds from the summer camp program and putting it into the job training program for kids. The object to that is to give these kids a work ethic by getting them involved in work, not only to keep them busy but to try to get a work ethic and provide some job skills. We may learn from this project that this will prevent them from getting in trouble or keeping them out of jail.

SEN. AKLESTAD said his main thrust in the last provision of the resolution is working towards that end. One of the largest legislation this session is the institution funds dealing with prisons. He believes this program begins the effort to put programs into place for these individuals to learn work ethics and responsibility so we don't end up with these young people incarcerated in our prison system.

Proponents' Testimony:

Ingrid Danielson, Chief of State Job Training Bureau, Department of Labor & Industry, stated this bureau is responsible for the over-sight of job training programs and the **Job Training Partnership Act**.

**JPTA** was established to provide programs to prepare youth and unskilled adults into entry in the labor force. It provides job training to economically disadvantaged individuals and others

facing serious barriers to employment. We are in need of this training to obtain productive employment.

Title II of the **Job Training Partnership Act** authorizes training services for adults and youth. Funding and services are organized by subtitle. Title II, A is for adults, Title II, B establishes a program for youth during the summer months which is designed to enhance basic education skills and to encourage youth to complete their education. This also exposes them to work experience. Title II, C establishes a year-around youth program designed to improve long-term employment and enhance youth education, occupational and citizenship skills. It encourages enrollment and completion of alternative high schools and increases employment and provides you with the ability to make successful transition from school to either work or apprenticeships, military or post-secondary educational training programs.

**JTPA** has been and is performance driven, and has a set of performance standards in place since its inception in 1983. Those standards have changed over the years, forcing certain policy and priority changes, but always keeping outcomes and accountability in mind. The Department of Labor and Industry, as administrator for **JPTA** funds and programs, strongly stands behind the funds measures and outcome. As a proponent to this resolution, the Department encourages the service delivery areas and their private industry councils to establish additional follow-up measures, to identify long-term outcomes for adults participating in the **JPTA** Title II, A programs. They attempt to take advantage of existing systems and data base already corrected, such as the Unemployment Insurance wage records, which are recorded by employers.

By conducting matches between the **JPTA** participating data base and those other data bases, such as the Unemployment Insurance wage records, they expect they can produce the information in the type of long-term tracking as **SEN. AKLESTAD** mentioned. They further would work with the service delivery areas and their private industry council to transfer funds from the Title II, B which is the summer youth program allocations to the Title II, C programs within the federal limitation, which is currently set at 20%.

They also offer support to assist the private industry councils to work with the Youth Justice Advisory Council, setting goals and priorities and performance measures for service. One correction **Ms. Danielson** suggested in SJR 5 is the language which references the Job Training Coordinating Council. That council has been dissolved and is no longer in existence under executive order as in the past. The report that would have been provided by that council will be submitted by the State Job Training Bureau instead. Collaboration between the legislature, private industry, advisory groups and councils and others should help

assure us that the individuals of our state receive the quality job training services so they might become productive workers.  
(EXHIBIT 1)

JoAnn Erickson, Office of Public Instruction, said they support this bill and the JPTA and believe this will work well.

Tom Hayes, Program Manager, Montana Job Training Partnership, Inc., said they are staff for the two service delivery area councils of commissioners and private industry councils. He referred to copies of their annual report (EXHIBIT 1). He stated in the back of the report are two additional handouts which were submitted to a special committee on corrections. They discuss services to the offenders from JTPA.

He would like to clarify the service delivery area councils take no position on the bill since there are so many other needy groups which are targeting according to federal legislation, the councils are reluctant to specify one needy group over another. There are two prime councils within the state which are referred to in the back of the annual report. This lists the council members and the service delivery areas.

There are four different programs within the JPTA, the adult programs which serve those 22 years of age and over, dislocated workers program which deals with people who lose their employment due to business closures or reductions, the year-around youth program, and the summer youth program. Funds are distributed by these councils who are policy-making bodies according to two service providers who must meet performance. The amount of funds distributed are generally allocated in geographic areas and the population to be served. One thing to keep in mind regarding the allocations of these funds, they must make performance as sighted by the U.S. Department of Labor. Failure to meet those performance standards means that the service delivery area program is taken over by the federal government.

They currently serve offenders primarily in the year-around youth programs and adult programs at a considerably higher rate than they occur in our population. Their target rate is about 8%, and in youth programs this number is up into the teens. The adult program is somewhere in the 20 percentile. There is interest in providing more of these services to youth, especially to offenders.

The Title II, C youth program is the proper venue for those services to occur, however, the Title II, C youth programs have endured tremendous cuts in funding in the past two years, a total of 80%. In 1990, the Title II, C youth program was funded at \$2.5 million from the federal government, and last year the total was \$290,000. By July 1, 1998 the Department of Administration is advocating completely eliminating this program. There has been a large increase in Title II, B summer youth funds. The councils are now in the process of transferring funds to the

Title II, C year-around youth program and they will do anything they can to serve youth offenders.

**Mike Kahoe, Chief Executive, Granite County Commissioners,** gave his testimony. (EXHIBIT 2)

**Mike Murray, Lewis & Clark County Commissioner,** said he is also a business owner in Helena and Vice Chairman of the Private Industry Council. He supports SJR5.

**Candy Wimmer, Montana Board of Crime Control,** spoke in support of SJR 5. She said her job with the Youth Justice Council is over-seeing the Juvenile Justice and Delinquency Prevention Act which gives approximately \$600,000 to the State of Montana. They fund programs which deal with delinquency prevention, anything from a huge grant from the Montana Conservation Corp. to working with offending youth, to provide mentoring services, to over-seeing community service projects, to simply going out and being with youth who are coming back from the community from treatment programs or from correctional studies.

**Ms. Wimmer** also over-sees the budget which supports detention programs in the State of Montana and she has come to this legislative session asking for an additional half million dollars. They really need to be more effective in the prevention field.

The Youth Justice Council has firmly adopted a philosophy. When a youth commits an offense, he incurs an obligation to restore the justice that he or she destroyed in the commission of a criminal behavior. They are primarily concerned always with the public safety and always review each and every case with that in mind. Public safety can be met in more ways than just locking children up through meaningful activity.

They also believe that youth need to develop a better competency during the time they are involved with the justice system. Many of the programs they fund at this point concentrate on that competency developed. She believes with the **JTPA** that can work as a filter into supported positions that **JTPA** would be involved in.

**Opponents' Testimony:** None.

**Questions From Committee Members and Responses:**

**SEN. CASEY EMERSON** asked **Mike Kahoe** regarding the percentages he mentioned, he noticed in the paper about a 16% reduction in the case loads of the Welfare Department, does this affect **Mr. Kahoe's** department?

**Mr. Kahoe** responded they have worked for a long time trying to use job training money to get people off welfare. Several of

their programs, including single mothers and teen parents, are run through their job-training partnership.

**SEN. EMERSON** asked since there is a 16% reduction, does that reduce their load of 16%.

**Mr. Kahoe** responded that it does not because they are only serving approximately 5% of the population that is eligible. It also does not affect their federal funding.

**SEN. DEBBIE SHEA** asked **SEN. AKLESTAD** regarding the 10% participants who they would like to follow-up, is that a random selection?

**SEN. AKLESTAD** responded he is not sure he can answer that, but possibly they pick every tenth person.

**Ingrid Danielson** answered that right now they do a follow-up on all the people who terminate from their programs three months after they complete the program. They do an in-person telephone interview and they are required by law to do a statistical report of the people in each program. They haven't worked out the details of this and would like to do so before committing to that.

They would like to attempt to use data which is already collected by doing a social security number match with a participant so they would not be incurring a great cost in a labor-intensive follow-up. If possible, they would like to use information which is already collected and on the records and perform analysis on that data.

**Closing by Sponsor:**

**SEN. AKLESTAD** closed by stating the first part of the resolution is to see if they can check accountability by seeing if those people are on the job. If they are not on the job, what they can do to keep them on the job and train them so we can get these people working opposed to being in a prison system. The last part of the resolution directly relates to that. We need to begin, not only in this area, but in other areas of state government to take up the slack. This is one step in that direction.

**HEARING ON HB 172**

**Sponsor:** REP. LOREN SOFT, HD 12, Billings

**Proponents:** Mark Cress, Department of Administration  
Jack Holstrom, Montana Association of Counties  
Russ McDonald, Montana Department of  
Transportation  
Lance Melton, Montana School Board Association  
Doug Denler, Department of Fish, Wildlife & Parks

Opponents: None.

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, stated he is bringing this bill before the Committee at the request of the Department of Administration. This is a bill for clarifying employment practices related to permanent, temporary, and seasonal positions; providing for a category of employee called a short-term worker. For those in the private sector, it would mean we are outdating our personnel practices and procedures.

REP. SOFT said this bill is to address the issues brought forth by Human Resources advisory groups and Human Resources directors in the larger state agencies. The issues were the current statutes contain two sets of definitions, one for position and one for employee. The bill clarifies this by incorporating those two terms into the term employee and deleting the term provision.

Secondly, the current law is unclear as to the rights and benefits packages for employees who are in various employment categories, whether short-term or temporary.

Thirdly, there is a need to clarify the employment statutes for seasonal and temporary employees. Current law also allows for maximum nine months for temporary employment positions and this bill extends that to twelve months. There are projects which the state government has at different times, that run longer than nine months. They would dismiss the employee then hire them back to finish the project so this extends up to twelve months.

Lastly, there needs to be additional assurance that when temporary employees are moved into permanent positions, they cannot be hired without going through a competitive selection process. In other words, if you are a temporary employee and are looking at applying for a full-time permanent position, you need to go through a competitive application process like anyone else. This levels the playing field.

The Department had good input in the process of accomplishing the provisions considered in this bill and the Human Resources advisory group labored over these issues and developed the position paper, which was subsequently shared with the following entities: State Employer Union, Public Employers' Association, Montana Federation of State Employers and Employees, Local Government Associations, including the Montana Association of Counties, Montana League of Cities and Towns, Montana School Boards' Association and a couple of temporary employment companies, the Western Staff Services and Express Personnel Services. There was input received from these folks throughout this process and as a result, a preliminary draft of legislation was shared.

To give the committee an idea of what the sections contain, **REP. SOFT** stated in Section 1, page 2, line 24 is the change of the definition from position to employee. Page 3, line 6 through 26, clarifies the employment status for seasonal employees and short-term workers and temporary employees. Also listed with those clarifications are their respective benefits packages. On line 26 at the bottom of page 3 states that temporary employees cannot become permanent employees without going through that competitive selection process.

Section 2 states the new language of inserting employment for position so that language is consistent with the definition of Section 1.

Sections 3 and 4 are language clarification in the code and addresses "exempt employees" and makes the various sections consistent with the definitions.

Section 5, again is that language change from position to employee in hiring preferences for residents of Indian reservations.

Section 6, page 8, line 11, excludes short-term workers who work a maximum of 90 days from earning service towards longevity allowances.

Section 7, page 9, lines 8 through 17, again are definitions of seasonal and temporary employees for the purpose of sick and annual leave. This deletes the definition of a sick pay plan. This was an obsolete term which was not used in the state process.

Section 8, page 10, line 4, excludes short-term workers from receiving holiday pay.

Section 9, page 10, line 23, states that temporary employees earn vacation but cannot use credits until they have been employed six months. Line 25 excludes short-term workers from earning vacation leave credits, short-term means the 90-day worker.

Section 10, page 11, line 5, excludes short-term workers from earning sick leave credits.

Section 11, page 12, line 29 changes the language from position to employee in the Veteran Preference Act.

Section 12, page 14, line 30 is a language change from position to employee in the Disabled Persons Preference Act.

Section 13 contains some repealers of the old, outdated sick pay plan. The effective date is 7/1/97.

**Proponents' Testimony:**



**Mark Cress, Department of Administration**, said they tried to get input from as many groups as possible to incorporate the input into this legislation. This bill clarifies existing statute rather than making fundamental changes in employment status.

The most substitutive change is to move the allowable status of temporary employment from nine months to twelve months. That was requested by agencies to be more consistent with their project time on a fiscal year basis.

As **REP. SOFT** mentioned, the bill clarifies definitions so that there are one set of definitions. Currently, we have a definition of a temporary employee and a definition of temporary position. The bill creates the short-term worker status and clarifies that they cannot receive benefits. Currently, employees who work less than 90 days for a state agency do not receive most of those benefits. They would not receive longevity credit, they do accrue leave but are not eligible to use it and when they are terminated, it is forfeited. This deals with people who are hired for less than 90 days in a more efficient manner without recording benefits that they will never have an opportunity to use.

It does provide some protection so that if the employee is in a short-term category without competitive process, but before they can be moved to a long-term or permanent position, they would have to go through a competitive selection procedure. He presented on amendment (**EXHIBIT 3**) which he feels is necessary. This amends Section 3 of the bill on the bottom of page 4.

The bill accrues a list of employees and officers which are exempt from the personnel policy's classification. This included on page 5, lines 14 and 15, teachers under the authority of the Department of Corrections of Public Health and Human Services. Some time ago there was a court case which said these teachers are state employees and should be treated the same as other state employees. Under the policies, they have a pay plan in statute in Section 3. The language in the bill will exempt them from that Section 3 from that pay plan unless this amendment is adopted. The amendment takes teachers out of that list.

This bill clarifies employment definitions and makes it easier for agencies to manage temporary and short-term workers.

**Jack Holstrom, Montana Association of Counties**, supported HB 172. They believe there are three very important things this legislation accomplishes. First, it clarifies the definitions relating to permanent, seasonal, and temporary employees. This is extremely important for county government in that the present definitions are seasonal, temporary, and permanent as they exist in the law now. Counties do not have positions on an agency roster, so they have been basically trying to fit definitions in to utilize it in county government. By taking that language out and tying this to the definitions of seasonal, temporary and

permanent to the actual employee, it will make it much simpler and much clearer for county government.

Secondly, the creation of short-term worker is also advantageous to county government. {Tape: 1; Side: B; Approx. Time Count: 3:48 p.m.} This classification can be utilized for short-term employment such as week spraying, county fairs, voter registration, some short-term road work and things of this particular nature.

Thirdly, the expansion of the concept of temporary employees from nine months to twelve months is beneficial. **Mr. Holstrom** said he worked for state government for 26 years before he went to work for county governments. There were many times when managers would need an employee for longer than a nine-month period, so they would go through a sham of creating termination of this particular employee and break service for one week and then hire that employee back. This gives managers a little more latitude. Another issue particularly imperative this bill accomplishes is that it eliminates the opportunity for managers to run over the nine-month temporary employment period and create by administrative fiat, a permanent employee.

**Mr. Holstrom** is personally aware of situations where this has happened. The employer will forget about breaking service in nine months and then they will call the division administrator a couple of weeks after the nine month period and tell him they have another permanent employee on the roster now. This is not fair to the employing agency nor is it fair to other employees who would like to compete for those permanent positions.

**Russ McDonald, Department of Transportation**, appeared as a proponent to this bill. The changes to the definitions make this bill more comprehensive and make the terms easier to understand. The Department of Transportation has had experiences where projects ran beyond the nine months and they either had to terminate the employee, then rehire them. Sometimes they are not available and they would have to hire someone new and retrain them. It would certainly be a benefit to have the twelve months rather than the nine months as the length of the temporary assignment.

Another advantage of that twelve-month period is that they have a number of employees who are either injured on the job or have had some illness of some kind and they hold their jobs open for a period of time. Under the current law, that period of time is nine months. The additional three months would give them time to work with positions.

They also have need for the short-term worker. An example is a flood they had in their building last year and they had to bring three or four people in to move boxes and files, etc. in their basement. He hopes the committee will look favorably upon this bill.

**Lance Melton, Montana School Boards' Association**, stated comparing the comments of the other proponents, particularly those of the Association of Counties, school districts are in a similar situation of those of the counties in terms of where the definition of agency applies under 218-601. The bill saw strong support in the House and passed 65 to 35 vote on the third reading. They respectfully ask a do-concur vote from this committee.

**Doug Denler, Montana Fish, Wildlife & Parks**, supported HB 172. They believe it will help them properly manage work force and provide better service to the public. The short-term work provision is especially beneficial to them, especially in those types of positions which are difficult to fill, highly skilled types like computer professionals. He urged the committee's favorable consideration of this bill.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**SEN. EMERSON** asked **Mark Cress** in reference to part-time employees, if independent contractors were ever hired.

**Mr. Cress** answered the state does hire independent contractors.

**SEN. EMERSON** asked if some of the short-term employees are independent contractors.

**Mr. Cress** responded one of the areas they believe this bill might help address is the question about independent contractors who may not really be independent contractors but are employees of the state. Sometimes it is difficult.

For example, **Doug Danler** from **FWP** mentioned they need a computer programmer for a short period of time. To find somebody who will come in as a state employee to fix the computer is difficult. The person they find may not be a private business person and meet all the requirements as an independent contractor. This bill would allow the agency to bring them in a short-term basis to get the job done.

**SEN. SUE BARTLETT** asked **Mark Cress** if there is a possibility he might be back the next session or the one after that to make temporary workers people who work less than fifteen months instead of twelve.

**Mr. Cress** answered he does not believe they will be back to change this again. Some people they spoke to wanted to extend it past twelve, but some were comfortable with nine as well as the unions they spoke to. They settled on twelve months as being the perfect time period.

Closing by Sponsor:

REP. SOFT responded in the interest of time, he urges a do-concur.

HEARING ON SB 225

Sponsor: SEN. GERRY DEVLIN, SD 2, Terry

Proponents: George Kurkowski, Mayor, City of Miles City

Opponents: Tim Bergstrom, Montana State Firemens' Assoc.  
REP. JOE QUILICI, HD 36, Butte  
Vern Erickson, Montana State Firemens' Assoc.  
(EXHIBIT 4) Sent to the Committee by Fax

Opening Statement by Sponsor:

SEN. GERRY DEVLIN, SD 2, Terry, presented SB 225. He said this is a bill which may not be tasteful to a lot of people.

In Miles City, five out of three years the disagreements have gone to an arbitrator. It is his belief that is more often than the members of the original legislation had in mind. He believes something is amiss and this could be that one or both sides are not really bargaining in the best of faith. It is also an issue which was a resolution coming out of the League of Cities and Towns and their platform. He feels this is a good time to see if everybody is coming to the table in good faith.

Proponents' Testimony:

George T. Kurkowski, Mayor of Miles City, supported SB 225.

(EXHIBIT 5 & 6)

Opponents' Testimony:

Tim Bergstrom, Montana State Firemens' Association, stated he is present in opposition to SB 225. He believes it is important to set the record straight. In all due respect to the Mayor of Miles City, there are two types of arbitration in the Montana law.

One is called issue arbitration which deals with grievances. There was a comment made by Mr. Kurkowski made in reference to a child molester in another city which has nothing to do with SB 225 or the type of arbitration contemplated in this bill.

This particular bill deals with interest arbitration exclusively. Interest arbitration is the form of arbitration that is required when firefighters and their public employers come to impasse on their terms of bargaining agreement and there is no remedy at hand for them settling the dispute. The remedy, then, is provided by a neutral third-party arbitrator. That is interest

arbitration and that is the only kind of arbitration that is referred to in SB 225.

The question posed by SB 225 is whether firefighters and their employer should submit bargaining issues at impasse to an impartial third party for resolution. The other side of that question is whether or not it is better for them to force their interests at all costs upon the other party. If binding arbitration is removed from the current statute in Montana as a last resort from the bargaining process, the employer is left with the possibility of a serious interruption in the delivery of an essential public safety service.

Firefighters could choose to invoke a strike and thereby, withhold their services. That makes the issue much more important than the language in a collective bargaining agreement, which becomes a very, very important issue for the citizens of those cities. Some may remember in 1977 Butte incurred a very nasty firefighters' strike. There are many wounds which some have never healed in Butte. There were no winners in that particular situation.

The current arbitration statute for firefighters before you here which is suggested by SB 225 for repeal, prohibits strikes. They feel that should stay in place.

**Mr. Bergstrom** believes it is important for the committee members to understand how the two parties to a bargaining agreement would arrive at arbitration. That obviously begins with initial negotiations where the parties exchange proposals, generally there is common ground on a number of issues. They are signed off and set aside. If there are issues where impasse does develop, and after a series of negotiations, if they cannot decide those things between the two parties, then the services of the State Mediator are requested through the Department of Labor & Industry. The State Mediator will come in and make suggestions to both parties. Generally, they will devise a package proposal for both parties to look at and find some common ground and once again, the State Mediator services are not binding on either party.

There are reasons that is so, one of the main reasons is that current law in Montana does not require either party to a collective bargaining agreement to make concessions in existing language in order that it meet its obligation to bargain collectively in good faith.

If mediation doesn't help and there is no resolution to the dispute, the next step which is available for the parties is fact finding. Fact finding is a very formal procedure where a list of fact finders is received generally from the Department of Labor & Industry. Both parties alternately strike a name off the list and the name remaining is designated as the fact finder. In a fact-finding hearing, the witnesses are sworn in, they are asked

direct questions by members of their bargaining team, then they are cross-examined by members of the other bargaining teams. The fact-finding proceedings have generally been tape recorded by the hearings examiner and that tape recording is used as a weapons tool in drafting a decision. Those decisions of fact finders, much like mediation, are advisory only. They are not binding on either party, but following a fact finding hearing, the parties will always meet again to see if recommendations made by a fact-finder, if there is some ground for settlement.

It has been **Mr. Bergstrom's** experience in his 22 years in the fire service, that is what happens. Generally, there is settlement. In the event there is an outstanding issue that's very bitter or a divisive issue, then those proceedings may be sent to arbitration, either party to the negotiations mediation fact finding may request arbitration.

Arbitrators are selected very much like fact finders. A list of arbitrators is provided by the Department of Labor & Industry, and the parties alternately strike a name off until one name remains. That particular name will be the arbitrator of record.

**Mr. Bergstrom** explained that although arbitration hearings are held very much like fact finding hearings, there is one specific difference. At any point in the arbitration proceedings, an arbitrator may stop the arbitration and declare that form is now in negotiations. In the case in 1993 in Miles City, that did happen at one point in the proceedings. In those instances where the arbitrator senses that compromise may be at hand on a specific issue and they declare that they are going to hold negotiations, that arbitrator will then participate in those deliberations as a mediator or a facilitator. Having done that, if there are still divisive issues the arbitrator then holds the remaining of the arbitration hearing and has 30 days upon close of the hearing to present a written final and binding decision which is binding to both parties.

It should be pointed out that the parties are free to negotiate following an arbitration hearing during the interim of the hearing, up until that arbitrator's decision is in receipt of both parties. Throughout that whole process of negotiations, mediations, fact finding and arbitration, one thing remains constant. The firefighters remain at work. There are no work stoppages and no slow downs. The reason is that the current bill which provides arbitration for firefighters prohibits strikes. That is why it is important that we keep that law.

**Mr. Bergstrom** referred to (EXHIBITS 7, 8, 9). Exhibit 7 is a synopsis of the arbitrator record of 1993 case in Miles City.

Exhibit 8 is a list of unfair labor practices by employers against firefighter units for failure to bargain collectively in good faith. In 1988 there was one in the City of Kalispell. Upon further investigation they found that charge has been

withdrawn by the City of Kalispell. Both parties got to the bargaining table and settled the issue at impasse. That charge was totally withdrawn. There are a number of agreements ratified by firefighters in Montana and their public employers since 1979 demonstrates that Montana's publicly employed firefighters and their employers have sought their chief settlements.

Thirteen major cities in Montana have agreements with their firefighters and there are two rural fire districts that have similar agreements with full paid firefighters. Those agreements are ratified year in and year out. Most of these agreements are one or two year agreements but occasionally there is a multi-year one. One is particular in Kalispell was a five-year one. Since enactment of the firefighters' arbitration statute in 1979, there have been only six arbitrations in Montana in 18 years.

**Mr. Bergstrom** stated that in hearing from the proponents that arbitration is expensive and certainly a fee assessed by an arbitrator who comes in from out of state is expensive. In that 1993 case in Miles City, the firefighters utilized a district representative for firefighters who was a retired firefighter to present help present their case. They reduced the cost significantly for that.

However, the city chose to employ an attorney from Colorado to do its entire negotiations, mediation and subsequent arbitration. It certainly is expensive if someone travels from Denver to Miles City to do contract work on a regular basis. They made inquiry to the Miles City City Clerk about those costs. They have identified approximately \$22,300 that was charged to the City of Miles City for the services of this attorney exclusively for work with the firefighters on behalf of the city. Obviously utilizing people from out of state can be expensive but it is not a necessary expense. There are usually local people who can perform these services.

**Mr. Bergstrom** referred to (EXHIBIT 9). In Montana police officers were equivalent in rank to firefighters and police officers make much more money than firefighters. This exhibit is a salary exhibit. Quite frankly, the allegation firefighters rely on arbitration to increase salaries to an inordinate amount is not found to be substantial at all.

In 1994 the City of Billings commissioned a company called Personnel Concepts of Sacramento, California to study rates for all employees in Billings including the city firefighters. Their recommendations which were subsequently adopted by the City Council increased fire captains and battalion chiefs' salaries by 25% over a five-year period, plus negotiated increases. At the end of this five-year period, this would only bring Billings firefighters up to the 1994 medians for similar grades and ranks in fire departments in the fire service in their area.

So it is not that firefighters are making hay with arbitration in Montana, there has only been six interest arbitrations in Montana in 18 years. Compulsory binding arbitration for firefighters to avert strikes has worked well in Montana. Settlement of contracts between firefighters and their employers has been the norm, and that is evidenced by only six arbitrations in 18 years. Twenty six states have some form of arbitration by firefighters and other states are currently considering such. Repeal of the firefighters' arbitration statute could have a disastrous impact on Montana cities and areas served by rural districts. A strike by firefighters would jeopardize the welfare, lives and property of those citizens in those areas.

**Mr. Bergstrom** would like the committee to know there are disparities in a number of things such as pension or salary. The job of the fire service is a special job. When **Mr. Bergstrom** was a rookie in 1974, they did a lot of responding to fires and not a lot more, but in today's environment they not only respond to fires but natural disasters of all kinds. They respond to thousands of medical incidents including explosions, confined space or technical rescue types of situations.

In Billings in 1996 there were 7,039 calls for fire department assistance, emergency calls alone. The citizens of Montana expect their fire department to respond when they call the 911 center.

The current statute that SB 225 seems to repeal, provides a final and binding arbitration for firefighters and serves a very important purpose. Firefighters, no matter what the impasse might be, are still on the job and ready to respond to that emergency where they are called with their specialized skills and equipment. Current law guarantees the citizens essential fire and emergency services and prohibits strikes. To repeal these statutes makes strikes by firefighters a real possibility in Montana. That would be extremely aggressive and not in the best interest of our taxpaying citizens.

{Tape : 2;, Side: A; Approx. Time Count: 4:24 p.m.}

**Rep. JOE QUILICI, HD 36, Butte**, stated when he saw this arbitration would be repealed, he thought he should respond. One of the reasons he sponsored this legislation in 1979 is because Butte had a terrible fireman's strike and it disrupted the whole community. Nobody benefited from it. So they finally worked with the firefighters on this arbitration bill. It has worked exceptionally well. He said he hopes that every firefighter will bargain in good faith. He believes this type of legislation gives emphasis to bargain both ways. Since 1979 there has only been one minor amendment. If it's not broke, let's not try to fix it.

**Vern Erickson, Montana State Firefighters' Association**, said he was instrumental in the initial passage of this legislation. The



reason this happened was the very ugly strike in Butte. Ill feelings still exist. This is not the way the government should operate.

He had a nice visit with the Mayor of Miles City and feels very sad about the situation in Miles City. He hopes there can be some resolution to that without taking something off the law which has served Montana very well. Since the arbitration has been on the statutes, not an emergency call has been missed.

The question was brought up about other departments not having binding arbitration. The answer may well be that they do not want to give up the right to strike. When he was present in 1979, they were opposed by organized labor and there was some opposition by cities. They took the position that they would take their chances with this. He feels this has been beneficial and encourages a do not pass.

Questions From Committee Members and Responses:

SEN. DALE MAHLUM asked Tim Bergstrom if he had a three-year union contract with the cities which states a particular period of time then the contract is adjusted.

Mr. Bergstrom responded that is exactly correct.

SEN. BILL WILSON asked Mayor Kurkowski from the results he has seen in his own life arbitration has never worked out too well, what is unique about Miles City?

Mayor Kurkowski answered he cannot answer that until he speaks to the other cities because of the ease for which in the local field they can resort to binding arbitration.

When he first took office this last term, one of the most controversial issues was the use of public vehicles of city personnel, taking them home, taking their children to school, etc. There were eleven employees doing this so he got a committee to study the different groups to find out which were essential and which were nonessential. One of the nonessential was a mechanic for the firefighters.

Immediately the union took him to binding arbitration, the arbitrator ruled on past practices that the mechanic keep his vehicle. Now, according to the chief he doesn't necessarily even use it most the time. Mayor Kurkowski believes this was a frivolous thing which could have been worked out.

Right now there is another arbitration coming up the 26th of this month. They resorted to mediation and the mediator has told Mayor Kurkowski that he has met them more than half way and he didn't know why they wouldn't settle. This is time to put the firefighters on an equity with the other city employees.

**SEN. WILSON** asked **Mayor Kurkowski** if he characterizes issues to be due to peripheral issues due to wages and working conditions.

**Mayor Kurkowski** responded he did not, he believes the issues regard wages, insurance cap, and working hours. One of the many complaints is that the firefighters are on a 24-hour on, 72-hour off schedule. He has not ever had any complaint with the firefighters' base salary. It is on par with everything else. But the structure of 24-hours on, 72-hour off allows them to run the ambulance on their days off. The City of Miles City has paid overtime of over \$100,000 this year. We are talking about a small city who has a general fund of about \$2.6 Million. One firefighter alone made over \$18,000 in overtime last year. That is more than most city employees make.

**SEN. WILSON** asked **Tim Bergstrom** to characterize the issues involved.

**Mr. Bergstrom** answered that the type of arbitration **Mayor Kurkowski** is speaking about with city employees and city vehicles has nothing to do with this bill. That is a grievance which is not contemplated by this bill.

As far as the issues in Miles City, if they have difficulties there of firefighters making too much overtime, quite frankly, maybe they don't have enough firefighters. He does not know what the problem is there.

**SEN. SUE BARTLETT** stated to **Mayor Kurkowski** regarding a copy of the 1993 arbitration in the Miles City instance and one of the things the arbitrator noticed in the preliminaries to the decision was there had apparently been collective bargaining going on between the city and its firefighters since 1973, and that there was no impasse prior to 1993 arbitration. She asked if he mentioned there had been several contract arbitrations since 1993.

**Mayor Kurkowski** responded the 1993 was for a three-year term. There was three in the last five years.

**SEN. BARTLETT** then asked him what changed in 1993, if the city and its firefighters had never been at impasse, had never gone to arbitration before in a 20 year period, what changed in 1993.

**Mayor Kurkowski** responded two things, one was the public reaction against the status of the firefighters as being a favored group and the second is a more aggressive young leadership in the union.

**SEN. BARTLETT** asked if there were any changes on the management side or city council side.

**Mayor Kurkowski** responded there were changes, in fact there was a whole government change. The city and management in most cases

do not wish to go to binding arbitration. They try to avoid it. If binding arbitration was not advantageous to the union, they would not be so much in favor of it.

**SEN. STEVE BENEDICT** asked **Mayor Kurkowski** if this is something that would benefit all the cities in Montana, why they aren't here supporting this bill.

**Mayor Kurkowski** answered they were at one time, and this bill was endorsed by the Montana League of Cities and Towns and the only two withstanding votes at the convention were Butte and Anaconda. The other cities all supported this.

**SEN. BENEDICT** then asked him what has happened since then.

**Mayor Kurkowski** responded because of the agenda of other bills which are affecting the cities right now, they are in other committee hearings rather than here.

**SEN. WILSON** asked **Mayor Kurkowski** to give him a scenario. For example, they strike the City of Miles City, what is the next step?

**Mayor Kurkowski** responded if the firefighters strike he would immediately go to the volunteer firefighters, there is a rural firefighter association in the community. He does believe they have as many fires as class one cities. Miles City does not have over three or four fires per month.

**SEN. WILSON** asked if it would be his contention that the volunteer force in place there could insure public safety of the community.

**Mayor Kurkowski** said he thought they could temporarily.

**SEN. DALE MAHLUM** asked **Mayor Kurkowski** how long his contract is with the firefighters' union.

**Mayor Kurkowski** said the last arbitration agreement put them on three years but he requested a one-year contract so he does not bind future councils or future mayors. So their contracts are now annual.

**SEN. MAHLUM** asked if they are usually in agreement when the contracts come up.

**Mayor Kurkowski** responded he thought this year they could work things out. They had four issues, one was to change the shift because that is such a political issue. He was planning to concede completely on that issue if the firefighters would just accept the insurance cap that the other employees had. That is why they are in arbitration.

Closing by Sponsor:

SEN. DEVLIN wanted to bring this to the attention of this committee especially. The statistics show six cases since 1979 with three in Miles City so he felt it was behooving of him to bring the bill forth. He does not know what the hang-ups are down there but there must be a hang-up. He really is not crazy about wrecking the system for some other cities or towns, but he happens to have a city in his district that is not. This isn't just the Mayor, this is the whole city council, they were 100% together on this. He feels this should brought up front. If this does not pass he plans to be back in a couple of years and this bill will be back with a lot more enthusiasm than he brought today.

EXECUTIVE ACTION ON SB 233

Amendments: SB023301.AEM (EXHIBIT 12)

Motion: SEN. BENEDICT MOVED THAT SB 251 DO PASS WITH AMENDMENTS.

Vote: SB 233 PASSED WITH FIVE IN FAVOR OF THE BILL BY ROLL CALL VOTE.

EXECUTIVE ACTION ON SB 251

Amendments: SB025101.AEM (EXHIBIT 11)

Motion: SEN. BENEDICT MOVED THAT SB 251 DO PASS WITH AMENDMENTS.

Discussion: CHAIRMAN TOM KEATING and Eddye McClure commented on changes which have been made on amendment (EXHIBIT 11).

MOTION: SEN. BENEDICT MOVED THAT ALL AMENDMENTS 1 THROUGH 7 BE ADDED TO SB 251.

Vote: THE AMENDMENT PASSED UNANIMOUSLY BY VOICE VOTE.

Motion: SEN. BENEDICT MOVED THAT SB 251 DO PASS AS AMENDED.

Vote: SB 251 PASSED UNANIMOUSLY BY VOICE VOTE.

EXECUTIVE ACTION ON SJR 5

Amendments: SJR00501.AEM (EXHIBIT 10)

Motion: SEN. BURNETT MOVED SJR 5 DO PASS.

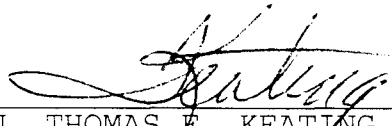
Discussion: Eddye McClure stated on page 2, line 5 it was mentioned that the annual performance report should be the part of the state Job Training Bureau rather than Job Training Coordinating Council.

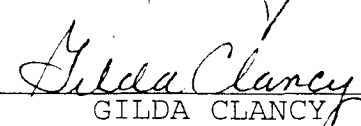
Motion/Vote: SEN. BENEDICT MOVED THE AMENDMENT DO PASS. IT WAS UNANIMOUSLY PASSED BY VOICE VOTE.

Vote: SJR 5 PASSED UNANIMOUSLY BY VOICE VOTE.

ADJOURNMENT

Adjournment: 4:53 p.m.

  
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SEN. THOMAS F. KEATING, Chairman

  
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GILDA CLANCY, Secretary