

HOUSE BILL NO. 450

INTRODUCED BY JOHNSON, PALMER, BRAND, HELMBRECHT, GILLIGAN,
KEMMIS, FEDERICO, LESTER, DUSSAULT, KIMBLE, MULAR

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LABOR
RELATIONS AND PRACTICES; ENACTING THE MONTANA STATE LABOR
RELATIONS ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Industrial strife can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that both parties have the duty to minimize to the best of their ability, the impact of labor disputes upon the public interest.

It is the purpose and policy of this act to prescribe the legitimate rights of both employees and employers in their relations, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations, to define and prescribe practices on the part of labor and management which are inimical to the general welfare, and to protect the rights of the public in

connection with labor disputes.

Section 2. When used in this act: (1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting on behalf of or in the interest of an employer, directly or indirectly, but a labor organization or any officer or agent thereof shall only be considered an employer with respect to individuals employed by such organization.

(3) The term "employee" shall include any employee. It shall include but is not restricted to any individual employed by a labor organization; any individual employed in agriculture; any individual employed in domestic service in or about a private home as a full time employee; any individual employed by any nonprofit corporation or association; and shall not be limited to the employees of a particular employer, unless the act explicitly states otherwise.

(4) The term "representative" includes a labor organization or an individual whether or not employed by the employer of those whom he represents.

(5) The term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or

1 of dealing with employers concerning grievances, terms or
2 conditions of employment.

3 (6) The term "unfair labor practice" means only those
4 unfair labor practices listed in sections 5, 6 and 7 of this
5 act.

6 (7) The term "labor dispute" includes, but is not
7 restricted to, any controversy between employers and
8 employees or their representatives as defined in this
9 section concerning terms, tenure or conditions of employment
10 or concerning the association or representation of persons
11 in negotiating, fixing, maintaining, changing, or seeking to
12 negotiate, fix, maintain, or change terms or conditions of
13 employment, or concerning the violation of any of the rights
14 granted or affirmed by this act, regardless of whether the
15 disputants stand in the proximate relation of employer and
16 employee.

17 (8) The term "department" means the department of
18 labor and industry.

19 (9) The term "policies of this chapter" means the
20 policies set forth in section 1 of this act.

21 Section 3. The department may amend and rescind such
22 rules as may be necessary to carry out the provisions of
23 this act.

24 Section 4. Employees shall have the right to
25 self-organization, to form, join or assist labor

1 organizations, to bargain collectively through
2 representatives of their own choosing, and to engage in
3 other concerted activities for the purpose of collective
4 bargaining or other mutual aid or protection, and shall also
5 have the right to refrain from any or all of such activities
6 except to the extent that such right may be affected by an
7 agreement requiring membership in a labor organization as a
8 condition of employment as authorized by this act.

9 Section 5. It shall be unfair labor practice for an
10 employer: (1) to interfere with, restrain, or coerce
11 employees in the exercise of the rights guaranteed in
12 section 4 of this act;

13 (2) to dominate or interfere with the formation or
14 administration of any labor organization or contribute
15 financial or other support to it; provided, that subject to
16 rules made and published by the department, an employer may
17 not be prohibited from permitting employees to confer with
18 him during working hours without loss of time or pay;

19 (3) to discriminate in regard to hiring or tenure of
20 employment or any term or any condition of employment to
21 encourage or discourage membership in any labor
22 organization; provided, that nothing in this act shall
23 preclude an employer from making an agreement with a labor
24 organization (not established, maintained, or assisted by
25 any action defined in this subsection as an unfair labor

1 practice) to require as a condition of employment membership
 2 therein on or after the thirtieth day following the
 3 beginning of such employment or the effective date of such
 4 agreement, whichever is the later, if such labor
 5 organization is the representative of the employees as
 6 provided in this act in an appropriate collective bargaining
 7 unit covered by such agreement when made. No employer may
 8 justify any discrimination against an employee for
 9 nonmembership in a labor organization:

10 (a) if he has reasonable grounds for believing that
 11 such membership was not available to the employee on the
 12 same terms and conditions generally applicable to other
 13 members, or

14 (b) if he has reasonable grounds for believing that
 15 membership was denied or terminated for reasons other than
 16 the failure of the employee to tender the periodic dues and
 17 the initiation fees uniformly required as a condition of
 18 acquiring or retaining membership;

19 (4) to discharge or otherwise discriminate against an
 20 employee because he has filed charges or given testimony
 21 under this act;

22 (5) to refuse to bargain collectively with the
 23 representatives of his employees, subject to the provisions
 24 of this act.

25 Section 6. It shall be an unfair labor practice for a

1 labor organization or its agents: (1) to restrain or
 2 coerce:

3 (a) employees in the exercise of the rights guaranteed
 4 in section 4 of this act; provided, that this paragraph
 5 shall not impair the right of a labor organization to
 6 prescribe its own rules with respect to the acquisition or
 7 retention of membership therein; or

8 (b) an employer in the selection of his
 9 representatives for the purposes of collective bargaining or
 10 the adjustment of grievances;

11 (2) to cause or attempt to cause an employer to
 12 discriminate against an employee in violation of this act or
 13 to discriminate against an employee with respect to whom
 14 membership in such organization has been denied or
 15 terminated on some ground other than his failure to tender
 16 the periodic dues and the initiation fees uniformly required
 17 as a condition of acquiring or retaining membership;

18 (3) to refuse to bargain collectively with an
 19 employer, provided it is the representative of his
 20 employees;

21 (4) (a) to engage in, or to induce or encourage any
 22 individual to engage in, a strike or a refusal in the course
 23 of his employment to use, manufacture, process, transport,
 24 or otherwise handle or work on any goods, articles,
 25 materials, or commodities or to perform any services; or

1 (b) to threaten, coerce, or restrain any person where
2 in either case an object thereof is:

3 (i) forcing or requiring any employer or self-employed
4 person to join any labor or employer organization;

5 (ii) forcing or requiring any person to recognize or
6 bargain with a particular labor organization as the
7 representative of his employees if another labor
8 organization has been certified by the board as the
9 representative of such employees;

10 (5) to require of employees covered by union security
11 agreement as a condition precedent to becoming a member of
12 such organization, the payment of a fee in an amount which
13 the department finds excessive or discriminatory under all
14 the circumstances. In making such a finding, the department
15 shall consider, among other relevant factors, the practices
16 and customs of labor organizations in the particular
17 industry, and the wages currently paid to the employees
18 affected;

19 (6) to cause or attempt to cause an employer to pay or
20 deliver or agree to pay or deliver any money or other thing
21 of value, in the nature of an exaction, for services which
22 are not performed or not to be performed; and

23 (7) to picket or cause to be picketed, or threaten to
24 picket or cause to be picketed, any employer where an object
25 thereof is forcing or requiring an employer to recognize or

1 bargain with a labor organization as the representative of
2 his employees, or forcing or requiring the employees of an
3 employer to accept or select such labor organization as
4 their collective bargaining representative, unless such
5 labor organization is currently certified as the
6 representative of such employees:

7 (a) where the employer has lawfully recognized in
8 accordance with this act any other labor organization and a
9 question concerning representation may not appropriately be
10 raised under this act; or

11 (b) where within the preceding twelve (12) months a
12 valid election under this act has been conducted by the
13 department.

14 Section 7. It shall be an unfair labor practice for an
15 employer or for a labor organization or its agents in regard
16 to hiring or tenure of employment or in regard to admission
17 to or membership in a labor organization or in the operation
18 of hiring hall to discriminate with reference to race,
19 creed, color, sex, national origin, or religious belief.

20 Section 8. For the purposes of this act, to bargain
21 collectively is the performance of the mutual obligation of
22 the employer and the representative of the employees to meet
23 at reasonable times and confer in good faith with respect to
24 wages, hours, and other terms and conditions of employment,
25 or the negotiation of an agreement, or any question arising

1 thereunder, and the execution of a written contract
 2 incorporating any agreement reached if requested by either
 3 party, but such obligation does not compel either party to
 4 agree to a proposal or require the making of a concession;
 5 provided, that where there is in effect a collective
 6 bargaining contract the duty to bargain collectively shall
 7 also mean that no party to such contract may terminate or
 8 modify such contract, unless the party desiring such
 9 termination or modification:

10 (1) serves a written notice upon the other party to
 11 the contract of the proposed termination or modification
 12 sixty (60) days prior to the expiration date thereof, or in
 13 the event such contract contains no expiration date, sixty
 14 (60) days prior to the time it is proposed to make such
 15 termination or modification;

16 (2) offers to meet and confer with the other party for
 17 the purpose of negotiating a new contract or a contract
 18 containing the proposed modifications;

19 (3) notifies the department of labor and industry
 20 within thirty (30) days after such notice of the existence
 21 of a dispute; and

22 (4) continues in full force and effect, without
 23 resorting to strike or lockout, all the terms and conditions
 24 of the existing contract for a period of sixty (60) days
 25 after such notice is given or until the expiration date of

1 such contract, whichever occurs later.

2 Section 9. The department is empowered and directed to
 3 prevent any unfair labor practice and to issue appropriate
 4 remedial orders. This power shall not be affected or
 5 impaired by any means of adjustment, mediation or
 6 conciliation in labor disputes that have been or may
 7 hereafter be established by law.

8 Section 10. Whenever a charge has been made concerning
 9 any unfair labor practice, the department may issue and
 10 cause to be served a complaint stating the charges in that
 11 respect, and containing a notice of hearing before the
 12 department at a place therein fixed to be held not less than
 13 seven (7) days after the serving of said complaint. Any
 14 such complaint may be amended by the department at any time
 15 prior to the issuance of an order based thereon. The person
 16 so complained of shall have the right to file an answer to
 17 the original or amended complaint within five (5) days after
 18 the service of such original or amended complaint and to
 19 appear in person or otherwise to give testimony at the place
 20 and time set in the complaint. In the discretion of the
 21 agent conducting the hearing, or of the department, any
 22 other person may be allowed to intervene in the said
 23 proceedings and to present testimony. In any such
 24 proceedings the department or its agent shall not be bound
 25 by technical rules of evidence prevailing in the courts of

1 law or equity.

2 Section 11. For the purpose of all hearings and
 3 investigations, which, in the opinion of the department are
 4 necessary and proper for the exercise of the powers vested
 5 in it by this act, the department, or its duly authorized
 6 agents or agencies, shall at all reasonable times have
 7 access to, for the purposes of examination, and the right to
 8 examine, copy, or photograph any evidence, including
 9 payrolls or list of employees, of any person being
 10 investigated or proceeded against that relates to any matter
 11 under investigation or in question. The department may
 12 issue subpoenas requiring the attendance and testimony of
 13 witnesses and the production of any evidence that relates to
 14 any matter under investigation or in question before the
 15 department, its agent, or agency, conducting the hearing or
 16 investigation. The department, or any agent or agency
 17 designated by the department for such purposes, may
 18 administer oaths and affirmations, examine witnesses, and
 19 receive evidence.

20 Section 12. The department, or any party to the
 21 department proceedings, may petition the district court of
 22 the state within the county wherein the unfair labor
 23 practice in question occurred or wherein any person charged
 24 with the unfair labor practice resides or transacts
 25 business, or if such court be on vacation or in recess, then

1 to the district court of any county adjoining the county
 2 wherein the unfair labor practice in question occurred or
 3 wherein any person charged with the unfair labor practice
 4 resides or transacts business, for the enforcement of such
 5 order and for appropriate temporary relief or restraining
 6 order, and shall certify and file in the court a transcript
 7 of the entire record in the proceeding, including the
 8 pleadings and testimony upon which such order was made and
 9 the findings and order of the department. Upon such filing,
 10 the court shall cause notice thereof to be served upon such
 11 person, and thereupon shall have jurisdiction of the
 12 proceeding and of the question determined therein, and shall
 13 have power to grant such temporary relief or restraining
 14 order as it deems just and proper, and to make and enter
 15 upon the pleadings, testimony, and proceedings set forth in
 16 such transcript a decree enforcing, modifying, and enforcing
 17 as so modified or setting aside in whole or in part the
 18 order of the department.

19 Section 13. In order to insure to employees the full
 20 benefit of their right to self-organization, to collective
 21 bargaining and otherwise to effectuate the policies of this
 22 act the department shall have the authority and upon proper
 23 petition shall determine after public hearing with
 24 reasonable notice the appropriate collective bargaining
 25 unit.

1 Section 14. Upon proper petition the department shall
 2 decide any question concerning representation of a
 3 collective bargaining unit. Before making its determination
 4 the department shall provide for a public hearing with due
 5 notice. If thirty percent (30%) or more of the employees
 6 file a petition with the department stating that the
 7 question shall be resolved by a secret ballot of the
 8 employees, the department shall conduct a secret ballot of
 9 the employees. The department shall determine how the
 10 ballot will read and shall certify the results to the
 11 parties involved.

12 Section 15. If, at an election conducted pursuant to
 13 this act, three (3) or more nominees for exclusive
 14 collective bargaining representative appear on the ballot
 15 and no one of them receives a majority of the votes cast at
 16 the election, the two (2) nominees who received the highest
 17 number of votes shall appear on the ballot of a second
 18 election to be conducted hereunder, and the one receiving a
 19 majority of the votes cast at the second election shall be
 20 the exclusive representative of all the employees in such
 21 unit for the purpose of collective bargaining in respect to
 22 rates of pay, wages, hours of employment or other conditions
 23 of employment. Notwithstanding any other provision
 24 contained in this act any certification as to the bargaining
 25 representatives made pursuant to an election conducted under

1 this act, shall be effective for one year from the date of
 2 such election.

3 Section 16. The department may determine who may
 4 participate in the election and may establish the rules
 5 governing any such election.

6 Section 17. When thirty percent (30%) or more of the
 7 employees in a bargaining unit file with the department a
 8 petition alleging they desire their representative be
 9 changed, the department shall take a secret ballot of the
 10 employees in such a unit and certify the results thereof to
 11 the representative and the employer; provided, however, no
 12 such election may be conducted pursuant to this section if a
 13 valid election has been held in the preceding twelve (12)
 14 month period.

15 Section 18. The provisions of this act shall not apply
 16 to the employees of any employer who are subject to and
 17 protected by the provisions of the National Labor Management
 18 Relations Act or the Federal Railway Labor Act or to
 19 employees employed in domestic service in or about a private
 20 home on a part time basis or to casual employees employed by
 21 a householder for occasional employment in connection with
 22 the household and not in connection with the householder's
 23 business or occupation. The provisions of this act shall
 24 also not apply to employees of the federal government.

25 Section 19. Insofar as the provisions of this act are

1 inconsistent with the provisions of any other general,
2 special or local law, the provisions of this act shall be
3 controlling.

4 Section 20. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 21. This act shall be known and may be cited
11 and referred to as the "Montana State Labor Relations Act".

-End-

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 450

INTRODUCED BY JOHNSON, PALMER, BRAND, HELMBRECHT, GILLIGAN,
KEMMIS, FEDERICO, LESTER, DUSSAULT, KIMBLE, MULAR

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LABOR
RELATIONS AND PRACTICES; ENACTING THE MONTANA STATE LABOR
RELATIONS ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Industrial strife can be avoided or
substantially minimized if employers, employees, and labor
organizations each recognize under law one another's
legitimate rights in their relations with each other, and
above all recognize under law that both parties have the
duty to minimize to the best of their ability, the impact of
labor disputes upon the public interest.

It is the purpose and policy of this act to prescribe
the legitimate rights of both employees and employers in
their relations, to provide orderly and peaceful procedures
for preventing the interference by either with the
legitimate rights of the other, to protect the rights of
individual employees in their relations with labor
organizations, to define and prescribe practices on the part
of labor and management which are inimical to the general
welfare, and to protect the rights of the public in

connection with labor disputes.

Section 2. When used in this act: (1) The term
"person" includes one or more individuals, partnerships,
associations, corporations, legal representatives, trustees,
trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting on
behalf of or in the interest of an employer, directly or
indirectly, but a labor organization or any officer or agent
thereof shall only be considered an employer with respect to
individuals employed by such organization.

(3) The term "employee" shall include any employee.
It shall include but is not restricted to any individual
employed by a labor organization; any individual employed in
agriculture; any individual employed in domestic service in
or about a private home as a full time employee; any
individual employed by any nonprofit corporation or
association; and shall not be limited to the employees of a
particular employer, unless the act explicitly states
otherwise.

(4) The term "representative" includes a labor
organization or an individual whether or not employed by the
employer of those whom he represents.

(5) The term "labor organization" means any
organization which exists and is constituted for the
purpose, in whole or in part, of collective bargaining, or

1 of dealing with employers concerning grievances, WAGES,
2 HOURS AND OTHER terms or conditions of employment.

3 (6) The term "unfair labor practice" means only those
4 unfair labor practices listed in sections 5, 6 and 7 of this
5 act.

6 (7) The term "labor dispute" includes, but is not
7 restricted to, any controversy between employers and
8 employees or their representatives as defined in this
9 section concerning terms, tenure or conditions of employment
10 or concerning the association or representation of persons
11 in negotiating, fixing, maintaining, changing, or seeking to
12 negotiate, fix, maintain, or change terms or conditions of
13 employment, or concerning the violation of any of the rights
14 granted or affirmed by this act, regardless of whether the
15 disputants stand in the proximate relation of employer and
16 employee.

17 (8) The term "department" means the department of
18 labor and industry.

19 (9) The term "policies of this chapter" means the
20 policies set forth in section 1 of this act.

21 Section 3. The department may amend and rescind such
22 rules as may be necessary to carry out the provisions of
23 this act.

24 Section 4. Employees shall have the right to
25 self-organization, to form, join or assist labor

1 organizations, to bargain collectively through
2 representatives of their own choosing, and to engage in
3 other concerted activities for the purpose of collective
4 bargaining or other mutual aid or protection, and shall also
5 have the right to refrain from any or all of such activities
6 except to the extent that such right may be affected by an
7 agreement requiring membership in a labor organization as a
8 condition of employment as authorized by this act.

9 HOWEVER, NO EMPLOYEE WHO IS A MEMBER OF A BONA FIDE
10 RELIGIOUS SECT, OR DIVISION THEREOF, THE ESTABLISHED AND
11 TRADITIONAL TENETS OR TEACHINGS OF WHICH OPPOSE A
12 REQUIREMENT THAT A MEMBER OF SUCH SECT OR DIVISION JOIN OR
13 FINANCIALLY SUPPORT ANY LABOR ORGANIZATION, MAY BE REQUIRED
14 TO JOIN OR FINANCIALLY SUPPORT ANY LABOR ORGANIZATION AS A
15 CONDITION OF EMPLOYMENT, IF SUCH EMPLOYEE PAYS, IN LIEU OF
16 PERIODIC UNION DUES, INITIATION FEES AND ASSESSMENTS, AT THE
17 SAME TIME OR TIMES SUCH PERIODIC UNION DUES, INITIATION FEES
18 AND ASSESSMENTS WOULD OTHERWISE BE PAYABLE, A SUM OF MONEY
19 EQUIVALENT TO SUCH PERIODIC UNION DUES, INITIATION FEES AND
20 ASSESSMENTS, TO A NONRELIGIOUS, NONUNION CHARITY DESIGNATED
21 BY THE LABOR ORGANIZATION. SUCH EMPLOYEE SHALL FURNISH TO
22 SUCH LABOR ORGANIZATION WRITTEN RECEIPTS EVIDENCING SUCH
23 PAYMENTS AND FAILURE TO MAKE SUCH PAYMENTS OR FURNISH SUCH
24 RECEIPTS SHALL SUBJECT THE EMPLOYEE TO THE SAME SANCTIONS AS
25 WOULD NONPAYMENT OF DUES, INITIATION FEES OR ASSESSMENTS

1 UNDER THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT.
 2 AN EMPLOYEE DESIRING TO AVAIL HIMSELF OR HERSELF TO THE
 3 RIGHT OF NONASSOCIATION WITH A LABOR ORGANIZATION AS
 4 PROVIDED IN THIS SECTION SHALL MAKE WRITTEN APPLICATION TO
 5 THE CHAIRMAN OF THE BOARD OF PERSONNEL APPEALS. WITHIN TEN
 6 (10) DAYS OF THE DATE OF RECEIPT OF SUCH APPLICATION, THE
 7 CHAIRMAN SHALL APPOINT A COMMITTEE OF THREE (3) CONSISTING
 8 OF A CLERGYMAN NOT CONNECTED WITH THE SECT IN QUESTION, A
 9 LABOR UNION OFFICIAL NOT DIRECTLY CONNECTED WITH THE LABOR
 10 ORGANIZATION IN QUESTION, AND A MEMBER OF THE PUBLIC AT
 11 LARGE, WHO SHALL BE THE CHAIRMAN. THE COMMITTEE SHALL,
 12 WITHIN TEN (10) DAYS OF THE DATE OF ITS APPOINTMENT, MEET AT
 13 THE LOCAL OF EITHER THE EMPLOYEE'S RESIDENCE OR PLACE OF
 14 EMPLOYMENT AND, AFTER RECEIVING WRITTEN OR ORAL
 15 PRESENTATIONS FROM ALL INTERESTED PARTIES, DETERMINE BY A
 16 MAJORITY VOTE WHETHER OR NOT SUCH EMPLOYEE QUALIFIES FOR THE
 17 RIGHT OF NONASSOCIATION WITH SUCH LABOR ORGANIZATION. THE
 18 COMMITTEE'S DECISION SHALL BE MADE IN WRITING WITHIN THREE
 19 (3) DAYS OF THE MEETING DATE AND A COPY THEREOF SHALL BE
 20 MAILED TO SUCH EMPLOYEE, LABOR ORGANIZATION AND THE CHAIRMAN
 21 OF THE BOARD OF PERSONNEL APPEALS."

22 Section 5. It shall be unfair labor practice for an
 23 employer: (1) to interfere with, restrain, or coerce
 24 employees in the exercise of the rights guaranteed in
 25 section 4 of this act;

1 (2) to dominate or interfere with the formation or
 2 administration of any labor organization or contribute
 3 financial or other support to it; provided, that subject to
 4 rules made and published by the department, an employer may
 5 not be prohibited from permitting employees to confer with
 6 him during working hours without loss of time or pay;

7 (3) to discriminate in regard to hiring or tenure of
 8 employment or any term or any condition of employment to
 9 encourage or discourage membership in any labor
 10 organization; provided, that nothing in this act shall
 11 preclude an employer from making an agreement with a labor
 12 organization (not established, maintained, or assisted by
 13 any action defined in this subsection as an unfair labor
 14 practice) to require as a condition of employment membership
 15 therein on or after the thirtieth day following the
 16 beginning of such employment or the effective date of such
 17 agreement, whichever is the later, if such labor
 18 organization is the representative of the employees as
 19 provided in this act in an appropriate collective bargaining
 20 unit covered by such agreement when made. No employer may
 21 justify any discrimination against an employee for
 22 nonmembership in a labor organization:

23 (a) if he has reasonable grounds for believing that
 24 such membership was not available to the employee on the
 25 same terms and conditions generally applicable to other

1 members, or

2 (b) if he has reasonable grounds for believing that
3 membership was denied or terminated for reasons other than
4 the failure of the employee to tender the periodic dues and
5 the initiation fees uniformly required as a condition of
6 acquiring or retaining membership;

7 (4) to discharge or otherwise discriminate against an
8 employee because he has filed charges or given testimony
9 under this act;

10 (5) to refuse to bargain collectively with the
11 representatives of his employees, subject to the provisions
12 of this act.

13 Section 6. It shall be an unfair labor practice for a
14 labor organization or its agents: (1) to restrain or
15 coerce:

16 (a) employees in the exercise of the rights guaranteed
17 in section 4 of this act; provided, that this paragraph
18 shall not impair the right of a labor organization to
19 prescribe its own rules with respect to the acquisition or
20 retention of membership therein; or

21 (b) an employer in the selection of his
22 representatives for the purposes of collective bargaining or
23 the adjustment of grievances;

24 (2) to cause or attempt to cause an employer to
25 discriminate against an employee in violation of this act or

1 to discriminate against an employee with respect to whom
2 membership in such organization has been denied or
3 terminated on some ground other than his failure to tender
4 the periodic dues and the initiation fees uniformly required
5 as a condition of acquiring or retaining membership;

6 (3) to refuse to bargain collectively with an
7 employer, provided it is the representative of his
8 employees;

9 (4) (a) to engage in, or to induce or encourage any
10 individual to engage in, a strike or a refusal in the course
11 of his employment to use, manufacture, process, transport,
12 or otherwise handle or work on any goods, articles,
13 materials, or commodities or to perform any services UNLESS
14 IT IS OF AN UNSAFE NATURE; or

15 (b) to threaten, coerce, or restrain any person where
16 in either case an object thereof is:

17 (i) forcing or requiring any employer or self-employed
18 person to join any labor or employer organization;

19 (ii) forcing or requiring any person to recognize or
20 bargain with a particular labor organization as the
21 representative of his employees if another labor
22 organization has been certified by the board as the
23 representative of such employees;

24 (5) to require of employees covered by union security
25 agreement as a condition precedent to becoming a member of

1 such organization, the payment of a fee in an amount which
 2 the department finds excessive or discriminatory under all
 3 the circumstances. In making such a finding, the department
 4 shall consider, among other relevant factors, the practices
 5 and customs of labor organizations in the particular
 6 industry, and the wages currently paid to the employees
 7 affected;

8 (6) to cause or attempt to cause an employer to pay or
 9 deliver or agree to pay or deliver any money or other thing
 10 of value, in the nature of an exaction, for services which
 11 are not performed or not to be performed; and

12 (7) to picket or cause to be picketed, or threaten to
 13 picket or cause to be picketed, any employer where an object
 14 thereof is forcing or requiring an employer to recognize or
 15 bargain with a labor organization as the representative of
 16 his employees, or forcing or requiring the employees of an
 17 employer to accept or select such labor organization as
 18 their collective bargaining representative, unless such
 19 labor organization is currently certified as the
 20 representative of such employees:

21 (a) where the employer has lawfully recognized in
 22 accordance with this act any other labor organization and a
 23 question concerning representation may not appropriately be
 24 raised under this act; or

25 (b) where within the preceding twelve (12) months a

1 valid election under this act has been conducted by the
 2 department.

3 Section 7. It shall be an unfair labor practice for an
 4 employer or for a labor organization or its agents in regard
 5 to hiring or tenure of employment or in regard to admission
 6 to or membership in a labor organization or in the operation
 7 of hiring hall to discriminate with reference to race,
 8 creed, color, sex, national origin, or religious belief.

9 Section 8. For the purposes of this act, to bargain
 10 collectively is the performance of the mutual obligation of
 11 the employer and the representative of the employees to meet
 12 at reasonable times and ~~confer~~ NEGOTIATE in good faith with
 13 respect to wages, hours, and other terms and conditions of
 14 employment, or the negotiation of an agreement, or any
 15 question arising thereunder, and the execution of a written
 16 contract incorporating any agreement reached if requested by
 17 either party, but such obligation does not compel either
 18 party to agree to a proposal or require the making of a
 19 concession; provided, that where there is in effect a
 20 collective bargaining contract the duty to bargain
 21 collectively shall also mean that no party to such contract
 22 may terminate or modify such contract, unless the party
 23 desiring such termination or modification:

24 (1) serves a written notice upon the other party to
 25 the contract of the proposed termination or modification

1 sixty (60) days prior to the expiration date thereof, or in
2 the event such contract contains no expiration date, sixty
3 (60) days prior to the time it is proposed to make such
4 termination or modification;

5 (2) offers to meet and confer NEGOTIATE with the other
6 party for the purpose of negotiating a new contract or a
7 contract containing the proposed modifications;

8 (3) notifies the department of labor and industry
9 within thirty (30) days after such notice of the existence
10 of a dispute; and

11 (4) continues in full force and effect, without
12 resorting to strike or lockout, all the terms and conditions
13 of the existing contract for a period of sixty (60) days
14 after such notice is given or until the expiration date of
15 such contract, whichever occurs later.

16 Section 9. The department is empowered and directed to
17 prevent any unfair labor practice and to issue appropriate
18 remedial orders. This power shall not be affected or
19 impaired by any means of adjustment, mediation or
20 conciliation in labor disputes that have been or may
21 hereafter be established by law.

22 Section 10. Whenever a charge has been made concerning
23 any unfair labor practice, the department may issue and
24 cause to be served a complaint stating the charges in that
25 respect, and containing a notice of hearing before the

1 department at a place therein fixed to be held not less than
2 seven (7) days after the serving of said complaint. Any
3 such complaint may be amended by the department at any time
4 prior to the issuance of an order based thereon. The person
5 so complained of shall have the right to file an answer to
6 the original or amended complaint within five (5) days after
7 the service of such original or amended complaint and to
8 appear in person or otherwise to give testimony at the place
9 and time set in the complaint. In the discretion of the
10 agent conducting the hearing, or of the department, any
11 other person may be allowed to intervene in the said
12 proceedings and to present testimony. In any such
13 proceedings the department or its agent shall not be bound
14 by technical rules of evidence prevailing in the courts of
15 law or equity.

16 Section 11. For the purpose of all hearings and
17 investigations, which, in the opinion of the department are
18 necessary and proper for the exercise of the powers vested
19 in it by this act, the department, or its duly authorized
20 agents or agencies, shall at all reasonable times have
21 access to, for the purposes of examination, and the right to
22 examine, copy, or photograph any evidence, including
23 payrolls or list of employees, of any person being
24 investigated or proceeded against that relates to any matter
25 under investigation or in question. The department may

1 issue subpoenas requiring the attendance and testimony of
 2 witnesses and the production of any evidence that relates to
 3 any matter under investigation or in question before the
 4 department, its agent, or agency, conducting the hearing or
 5 investigation. The department, or any agent or agency
 6 designated by the department for such purposes, may
 7 administer oaths and affirmations, examine witnesses, and
 8 receive evidence.

9 Section 12. The department, or any party to the
 10 department proceedings, may petition the district court of
 11 the state within the county wherein the unfair labor
 12 practice in question occurred or wherein any person charged
 13 with the unfair labor practice resides or transacts
 14 business, or if such court be on vacation or in recess, then
 15 to the district court of any county adjoining the county
 16 wherein the unfair labor practice in question occurred or
 17 wherein any person charged with the unfair labor practice
 18 resides or transacts business, for the enforcement of such
 19 order and for appropriate temporary relief or restraining
 20 order, and shall certify and file in the court a transcript
 21 of the entire record in the proceeding, including the
 22 pleadings and testimony upon which such order was made and
 23 the findings and order of the department. Upon such filing,
 24 the court shall cause notice thereof to be served upon such
 25 person, and thereupon shall have jurisdiction of the

1 proceeding and of the question determined therein, and shall
 2 have power to grant such temporary relief or restraining
 3 order as it deems just and proper, and to make and enter
 4 upon the pleadings, testimony, and proceedings set forth in
 5 such transcript a decree enforcing, modifying, and enforcing
 6 as so modified or setting aside in whole or in part the
 7 order of the department.

8 Section 13. In order to insure to employees the full
 9 benefit of their right to self-organization, to collective
 10 bargaining and otherwise to effectuate the policies of this
 11 act the department shall have the authority and upon proper
 12 petition shall determine after public hearing with
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 14 unit.

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 21 question shall be resolved by a secret ballot of the
 22 employees, the department shall conduct a secret ballot of
 23 the employees. The department shall determine how the
 24 ballot will read and shall certify the results to the
 25 parties involved.

1 Section 15. If, at an election conducted pursuant to
 2 this act, three (3) or more nominees for exclusive
 3 collective bargaining representative appear on the ballot
 4 and no one of them receives a majority of the votes cast at
 5 the election, the two (2) nominees who received the highest
 6 number of votes shall appear on the ballot of a second
 7 election to be conducted hereunder, and the one receiving a
 8 majority of the votes cast at the second election shall be
 9 the exclusive representative of all the employees in such
 10 unit for the purpose of collective bargaining in respect to
 11 rates of pay, wages, hours of employment or other conditions
 12 of employment. Notwithstanding any other provision
 13 contained in this act any certification as to the bargaining
 14 representatives made pursuant to an election conducted under
 15 this act, shall be effective for one year from the date of
 16 such election.

17 Section 16. The department may determine who may
 18 participate in the election and may establish the rules
 19 governing any such election.

20 Section 17. When thirty percent (30%) or more of the
 21 employees in a bargaining unit file with the department a
 22 petition alleging they desire their representative be
 23 changed, the department shall take a secret ballot of the
 24 employees in such a unit and certify the results thereof to
 25 the representative and the employer; provided, however, no

1 such election may be conducted pursuant to this section if a
 2 valid election has been held in the preceding twelve (12)
 3 month period.

4 Section 18. The provisions of this act shall not apply
 5 to the employees of any employer who are subject to and
 6 protected by the provisions of the National Labor Management
 7 Relations Act or the Federal Railway Labor Act or to
 8 employees employed in domestic service in or about a private
 9 home on a part time basis or to casual employees employed by
 10 a householder for occasional employment in connection with
 11 the household and not in connection with the householder's
 12 business or occupation. The provisions of this act shall
 13 also not apply to employees of the federal government OR
 14 PERSONS SUBJECT TO OTHER COLLECTIVE BARGAINING ACTS.

15 Section 19. Insofar as the provisions of this act are
 16 inconsistent with the provisions of any other general,
 17 special or local law, the provisions of this act shall be
 18 controlling.

19 Section 20. Severability. If a part of this act is
 20 invalid, all valid parts that are severable from the invalid
 21 part remain in effect. If a part of this act is invalid in
 22 one or more of its applications, the part remains in effect
 23 in all valid applications that are severable from the
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25 Section 21. This act shall be known and may be cited

1 and referred to as the "Montana State Labor Relations Act".

-End-

1 HOUSE BILL NO. 450

2 INTRODUCED BY JOHNSON, PALMER, BRAND, HELMBRECHT, GILLIGAN,
3 KEMMIS, FEDERICO, LESTER, DUSSAULT, KIMBLE, MULAR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LABOR
6 RELATIONS AND PRACTICES; ENACTING THE MONTANA STATE LABOR
7 RELATIONS ACT."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Industrial strife can be avoided or
11 substantially minimized if employers, employees, and labor
12 organizations each recognize under law one another's
13 legitimate rights in their relations with each other, and
14 above all recognize under law that both parties have the
15 duty to minimize to the best of their ability, the impact of
16 labor disputes upon the public interest.

17 It is the purpose and policy of this act to prescribe
18 the legitimate rights of both employees and employers in
19 their relations, to provide orderly and peaceful procedures
20 for preventing the interference by either with the
21 legitimate rights of the other, to protect the rights of
22 individual employees in their relations with labor
23 organizations, to define and prescribe practices on the part
24 of labor and management which are inimical to the general
25 welfare, and to protect the rights of the public in

1 connection with labor disputes.

2 Section 2. When used in this act: (1) The term
3 "person" includes one or more individuals, partnerships,
4 associations, corporations, legal representatives, trustees,
5 trustees in bankruptcy, or receivers.

6 (2) The term "employer" includes any person acting on
7 behalf of or in the interest of an employer, directly or
8 indirectly, but a labor organization or any officer or agent
9 thereof shall only be considered an employer with respect to
10 individuals employed by such organization.

11 (3) The term "employee" shall include any employee.
12 It shall include but is not restricted to any individual
13 employed by a labor organization; any individual employed in
14 agriculture; any individual employed in domestic service in
15 or about a private home as a full time employee; any
16 individual employed by any nonprofit corporation or
17 association; and shall not be limited to the employees of a
18 particular employer, unless the act explicitly states
19 otherwise.

20 (4) The term "representative" includes a labor
21 organization or an individual whether or not employed by the
22 employer of those whom he represents.

23 (5) The term "labor organization" means any
24 organization which exists and is constituted for the
25 purpose, in whole or in part, of collective bargaining, or

1 of dealing with employers concerning grievances, WAGES,
2 HOURS AND OTHER terms or conditions of employment.

3 (6) The term "unfair labor practice" means only those
4 unfair labor practices listed in sections 5, 6 and 7 of this
5 act.

6 (7) The term "labor dispute" includes, but is not
7 restricted to, any controversy between employers and
8 employees or their representatives as defined in this
9 section concerning terms, tenure or conditions of employment
10 or concerning the association or representation of persons
11 in negotiating, fixing, maintaining, changing, or seeking to
12 negotiate, fix, maintain, or change terms or conditions of
13 employment, or concerning the violation of any of the rights
14 granted or affirmed by this act, regardless of whether the
15 disputants stand in the proximate relation of employer and
16 employee.

17 (8) The term "department" means the department of
18 labor and industry.

19 (9) The term "policies of this chapter" means the
20 policies set forth in section 1 of this act.

21 Section 3. The department may amend and rescind such
22 rules as may be necessary to carry out the provisions of
23 this act.

24 Section 4. Employees shall have the right to
25 self-organization, to form, join or assist labor

1 organizations, to bargain collectively through
2 representatives of their own choosing, and to engage in
3 other concerted activities for the purpose of collective
4 bargaining or other mutual aid or protection, and shall also
5 have the right to refrain from any or all of such activities
6 except to the extent that such right may be affected by an
7 agreement requiring membership in a labor organization as a
8 condition of employment as authorized by this act.

9 HOWEVER, NO EMPLOYEE WHO IS A MEMBER OF A BONA FIDE
10 RELIGIOUS SECT, OR DIVISION THEREOF, THE ESTABLISHED AND
11 TRADITIONAL TENETS OR TEACHINGS OF WHICH OPPOSE A
12 REQUIREMENT THAT A MEMBER OF SUCH SECT OR DIVISION JOIN OR
13 FINANCIALLY SUPPORT ANY LABOR ORGANIZATION, MAY BE REQUIRED
14 TO JOIN OR FINANCIALLY SUPPORT ANY LABOR ORGANIZATION AS A
15 CONDITION OF EMPLOYMENT, IF SUCH EMPLOYEE PAYS, IN LIEU OF
16 PERIODIC UNION DUES, INITIATION FEES AND ASSESSMENTS, AT THE
17 SAME TIME OR TIMES SUCH PERIODIC UNION DUES, INITIATION FEES
18 AND ASSESSMENTS WOULD OTHERWISE BE PAYABLE, A SUM OF MONEY
19 EQUIVALENT TO SUCH PERIODIC UNION DUES, INITIATION FEES AND
20 ASSESSMENTS, TO A NONRELIGIOUS, NONUNION CHARITY DESIGNATED
21 BY THE LABOR ORGANIZATION. SUCH EMPLOYEE SHALL FURNISH TO
22 SUCH LABOR ORGANIZATION WRITTEN RECEIPTS EVIDENCING SUCH
23 PAYMENTS AND FAILURE TO MAKE SUCH PAYMENTS OR FURNISH SUCH
24 RECEIPTS SHALL SUBJECT THE EMPLOYEE TO THE SAME SANCTIONS AS
25 WOULD NONPAYMENT OF DUES, INITIATION FEES OR ASSESSMENTS

1 UNDER THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT.
2 AN EMPLOYEE DESIRING TO AVAIL HIMSELF OR HERSELF TO THE
3 RIGHT OF NONASSOCIATION WITH A LABOR ORGANIZATION AS
4 PROVIDED IN THIS SECTION SHALL MAKE WRITTEN APPLICATION TO
5 THE CHAIRMAN OF THE BOARD OF PERSONNEL APPEALS. WITHIN TEN
6 (10) DAYS OF THE DATE OF RECEIPT OF SUCH APPLICATION, THE
7 CHAIRMAN SHALL APPOINT A COMMITTEE OF THREE (3) CONSISTING
8 OF A CLERGYMAN NOT CONNECTED WITH THE SECT IN QUESTION, A
9 LABOR UNION OFFICIAL NOT DIRECTLY CONNECTED WITH THE LABOR
10 ORGANIZATION IN QUESTION, AND A MEMBER OF THE PUBLIC AT
11 LARGE, WHO SHALL BE THE CHAIRMAN. THE COMMITTEE SHALL,
12 WITHIN TEN (10) DAYS OF THE DATE OF ITS APPOINTMENT, MEET AT
13 THE LOCALE OF EITHER THE EMPLOYEE'S RESIDENCE OR PLACE OF
14 EMPLOYMENT AND, AFTER RECEIVING WRITTEN OR ORAL
15 PRESENTATIONS FROM ALL INTERESTED PARTIES, DETERMINE BY A
16 MAJORITY VOTE WHETHER OR NOT SUCH EMPLOYEE QUALIFIES FOR THE
17 RIGHT OF NONASSOCIATION WITH SUCH LABOR ORGANIZATION. THE
18 COMMITTEE'S DECISION SHALL BE MADE IN WRITING WITHIN THREE
19 (3) DAYS OF THE MEETING DATE AND A COPY THEREOF SHALL BE
20 MAILED TO SUCH EMPLOYEE, LABOR ORGANIZATION AND THE CHAIRMAN
21 OF THE BOARD OF PERSONNEL APPEALS."

22 Section 5. It shall be unfair labor practice for an
23 employer: (1) to interfere with, restrain, or coerce
24 employees in the exercise of the rights guaranteed in
25 section 4 of this act;

1 (2) to dominate or interfere with the formation or
2 administration of any labor organization or contribute
3 financial or other support to it; provided, that subject to
4 rules made and published by the department, an employer may
5 not be prohibited from permitting employees to confer with
6 him during working hours without loss of time or pay;

7 (3) to discriminate in regard to hiring or tenure of
8 employment or any term or any condition of employment to
9 encourage or discourage membership in any labor
10 organization; provided, that nothing in this act shall
11 preclude an employer from making an agreement with a labor
12 organization (not established, maintained, or assisted by
13 any action defined in this subsection as an unfair labor
14 practice) to require as a condition of employment membership
15 therein on or after the thirtieth day following the
16 beginning of such employment or the effective date of such
17 agreement, whichever is the later, if such labor
18 organization is the representative of the employees as
19 provided in this act in an appropriate collective bargaining
20 unit covered by such agreement when made. No employer may
21 justify any discrimination against an employee for
22 nonmembership in a labor organization:

23 (a) if he has reasonable grounds for believing that
24 such membership was not available to the employee on the
25 same terms and conditions generally applicable to other

1 members, or

2 (b) if he has reasonable grounds for believing that
 3 membership was denied or terminated for reasons other than
 4 the failure of the employee to tender the periodic dues and
 5 the initiation fees uniformly required as a condition of
 6 acquiring or retaining membership;

7 (4) to discharge or otherwise discriminate against an
 8 employee because he has filed charges or given testimony
 9 under this act;

10 (5) to refuse to bargain collectively with the
 11 representatives of his employees, subject to the provisions
 12 of this act.

13 Section 6. It shall be an unfair labor practice for a
 14 labor organization or its agents: (1) to restrain or
 15 coerce:

16 (a) employees in the exercise of the rights guaranteed
 17 in section 4 of this act; provided, that this paragraph
 18 shall not impair the right of a labor organization to
 19 prescribe its own rules with respect to the acquisition or
 20 retention of membership therein; or

21 (b) an employer in the selection of his
 22 representatives for the purposes of collective bargaining or
 23 the adjustment of grievances;

24 (2) to cause or attempt to cause an employer to
 25 discriminate against an employee in violation of this act or

1 to discriminate against an employee with respect to whom
 2 membership in such organization has been denied or
 3 terminated on some ground other than his failure to tender
 4 the periodic dues and the initiation fees uniformly required
 5 as a condition of acquiring or retaining membership;

6 (3) to refuse to bargain collectively with an
 7 employer, provided it is the representative of his
 8 employees;

9 (4) (a) to engage in, or to induce or encourage any
 10 individual to engage in, a strike or a refusal in the course
 11 of his employment to use, manufacture, process, transport,
 12 or otherwise handle or work on any goods, articles,
 13 materials, or commodities or to perform any services UNLESS
 14 IT IS OF AN UNSAFE NATURE; or

15 (b) to threaten, coerce, or restrain any person where
 16 in either case an object thereof is:

17 (i) forcing or requiring any employer or self-employed
 18 person to join any labor or employer organization;

19 (ii) forcing or requiring any person to recognize or
 20 bargain with a particular labor organization as the
 21 representative of his employees if another labor
 22 organization has been certified by the board as the
 23 representative of such employees;

24 (5) to require of employees covered by union security
 25 agreement as a condition precedent to becoming a member of

1 such organization, the payment of a fee in an amount which
 2 the department finds excessive or discriminatory under all
 3 the circumstances. In making such a finding, the department
 4 shall consider, among other relevant factors, the practices
 5 and customs of labor organizations in the particular
 6 industry, and the wages currently paid to the employees
 7 affected;

8 (6) to cause or attempt to cause an employer to pay or
 9 deliver or agree to pay or deliver any money or other thing
 10 of value, in the nature of an exaction, for services which
 11 are not performed or not to be performed; and

12 (7) to picket or cause to be picketed, or threaten to
 13 picket or cause to be picketed, any employer where an object
 14 thereof is forcing or requiring an employer to recognize or
 15 bargain with a labor organization as the representative of
 16 his employees, or forcing or requiring the employees of an
 17 employer to accept or select such labor organization as
 18 their collective bargaining representative, unless such
 19 labor organization is currently certified as the
 20 representative of such employees:

21 (a) where the employer has lawfully recognized in
 22 accordance with this act any other labor organization and a
 23 question concerning representation may not appropriately be
 24 raised under this act; or

25 (b) where within the preceding twelve (12) months a

1 valid election under this act has been conducted by the
 2 department.

3 Section 7. It shall be an unfair labor practice for an
 4 employer or for a labor organization or its agents in regard
 5 to hiring or tenure of employment or in regard to admission
 6 to or membership in a labor organization or in the operation
 7 of hiring hall to discriminate with reference to race,
 8 creed, color, sex, national origin, or religious belief.

9 Section 8. For the purposes of this act, to bargain
 10 collectively is the performance of the mutual obligation of
 11 the employer and the representative of the employees to meet
 12 at reasonable times and confer NEGOTIATE in good faith with
 13 respect to wages, hours, and other terms and conditions of
 14 employment, or the negotiation of an agreement, or any
 15 question arising thereunder, and the execution of a written
 16 contract incorporating any agreement reached if requested by
 17 either party, but such obligation does not compel either
 18 party to agree to a proposal or require the making of a
 19 concession; provided, that where there is in effect a
 20 collective bargaining contract the duty to bargain
 21 collectively shall also mean that no party to such contract
 22 may terminate or modify such contract, unless the party
 23 desiring such termination or modification:

24 (1) serves a written notice upon the other party to
 25 the contract of the proposed termination or modification

1 sixty (60) days prior to the expiration date thereof, or in
 2 the event such contract contains no expiration date, sixty
 3 (60) days prior to the time it is proposed to make such
 4 termination or modification;

5 (2) offers to meet and ~~confer~~ NEGOTIATE with the other
 6 party for the purpose of negotiating a new contract or a
 7 contract containing the proposed modifications;

8 (3) notifies the department of labor and industry
 9 within thirty (30) days after such notice of the existence
 10 of a dispute; and

11 (4) continues in full force and effect, without
 12 resorting to strike or lockout, all the terms and conditions
 13 of the existing contract for a period of sixty (60) days
 14 after such notice is given or until the expiration date of
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HB 0450/02

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