

1 *Senate* BILL NO. *409*
 2 INTRODUCED BY *Mr. Roylan Edward Bergman*
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4 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING PUBLIC
 5 EMPLOYMENT LABOR RELATIONS, TO ESTABLISH DISPUTE RESOLUTION
 6 PROCEDURES, TO CREATE LABOR RELATIONS AND GRIEVANCE APPEALS
 7 BOARDS, AND TO PROHIBIT STRIKES; AMENDING SECTIONS 59-914,
 8 59-1602, 59-1603, 59-1605, AND 59-1614, R.C.M. 1947; AND
 9 REPEALING SECTIONS 32-2504, 32-2505, 32-2505.1, 32-2505.2,
 10 32-2505.3, 59-1613, 82A-206, 82A-709, AND 82A-1014, R.C.M.
 11 1947."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 59-1602, R.C.M. 1947, is amended to
 15 read as follows:

16 "59-1602. Definitions. ~~When~~ As used in this ~~act~~
 17 chapter, the following definitions apply: (1) "public Public
 18 employer" means the state of Montana or any of its political
 19 ~~subdivision thereof~~ subdivisions, including but not limited
 20 to, any town, city, county, district, school board, board of
 21 regents, public and quasi-public corporation, housing
 22 authority or other authority established by law, and any
 23 representative or agent designated by the public employer to
 24 act in its interest in dealing with public employees, ~~when,~~
 25 when the board of regents is the public employer ~~defined is~~

1 ~~this section,~~ the student government at an institution of
 2 higher education may designate an agent or representative to
 3 meet and confer with the board of regents and the faculty
 4 bargaining agent prior to negotiations with the professional
 5 educational employees, to observe those negotiations and
 6 participate in caucuses as part of the public employer's
 7 bargaining team, and to meet and confer with the board of
 8 regents regarding the terms of agreement prior to the
 9 execution of a written contract between the regents and the
 10 professional educational employees. The student observer is
 11 obliged to maintain the confidentiality of these
 12 negotiations.

13 (2) "public Public employee" means a person employed
 14 by a public employer in any capacity, ~~except:~~ (a) elected
 15 officials; (b) persons directly appointed by the governor; (c)
 16 supervisory employees and management officials ~~as~~
 17 defined in subsection[s] (3) and (4) ~~below~~; (d) members
 18 ~~of~~ of any state board or commission who serve the state
 19 intermittently; (e) school district clerks and school
 20 administrators, ~~and;~~ (f) registered professional nurses
 21 performing service for health care facilities; (g)
 22 professional engineers and engineers in training, ~~and,~~
 23 "Public employee" includes any individual whose work has
 24 ceased as a consequence of, or in connection with, any
 25 unfair labor practice or concerted employee action.

1 (3) "~~supervisory~~ Supervisory employee" means ~~any an~~
 2 individual having authority, in the interest of the employer
 3 to hire, transfer, suspend, lay off, recall, promote,
 4 discharge, assign, reward, discipline other employees,
 5 having responsibility to direct them, to adjust their
 6 grievances, or effectively to recommend such action, if in
 7 connection with the foregoing the exercise of such authority
 8 is not of a merely routine or clerical nature, but requires
 9 the use of independent judgment.

10 (4) "~~management~~ Management officials" means
 11 ~~representatives a representative~~ of management having
 12 authority to act for the agency on any ~~matters~~ matter
 13 relating to the implementation of agency policy.

14 (5) "~~labor~~ Labor organization" means ~~any an~~ an
 15 organization or association of any kind in which employees
 16 participate and which exists for the primary purpose of
 17 dealing with employers concerning grievances, labor
 18 disputes, wages, rates of pay, hours of employment, fringe
 19 benefits, or other conditions of employment.

20 (6) "~~exclusive~~ Exclusive representative" means ~~the a~~
 21 labor organization which has been designated by the board as
 22 the exclusive representative of employees in an appropriate
 23 unit or has been so recognized by the public employer.

24 (7) "~~board~~ Board" means the board of ~~personnel appeals~~
 25 ~~provided for in section 82A-1044,~~ public employment

1 relations.

2 (8) "~~person~~ Person" includes one or more individuals,
 3 labor organizations, public employees, associations,
 4 corporations, legal representatives, trustees, trustees in
 5 bankruptcy, or receivers.

6 (9) "~~unfair~~ Unfair labor practice" means any unfair
 7 labor practice listed in ~~section~~ 59-1605.

8 (10) "~~labor~~ Labor dispute" includes any controversy
 9 concerning terms, tenure or conditions of employment, or
 10 concerning the association or representation of persons in
 11 negotiating, fixing, maintaining, changing, or seeking to
 12 arrange terms or conditions of employment, regardless of
 13 whether the disputants stand the proximate relation of
 14 employer and employee.

15 (11) "~~appropriate~~ Appropriate unit" means a group of
 16 public employees banded together for collective bargaining
 17 purposes as designated by the board.

18 (12) "Mediation" means an effort by an impartial third
 19 party confidentially to assist in resolving, through
 20 interpretation, suggestion, and advice, a dispute arising
 21 from collective bargaining between the public employer and
 22 the exclusive representative.

23 (13) "Fact-finding" means the investigation of an
 24 unresolved dispute arising from collective bargaining, the
 25 submission of a report defining the unresolved issues, the

1 reporting and analyzing of the relevant facts, and the
 2 making of recommendations to resolve the dispute.

3 (14) "Arbitration" means a method of resolving a
 4 labor-management dispute by having an impartial third party
 5 hold hearings and render a decision or recommendation on the
 6 dispute.

7 (15) "Budget submission date" means the date by which,
 8 under law or practice, the public employer submits the
 9 budget containing the employer's proposed expenditures to
 10 the appropriate legislative body for review and approval.
 11 For the purposes of state government, the budget submission
 12 date is October 1.

13 (16) "Strike" means concerted action in failing to
 14 report for duty, the willful absence from one's position, or
 15 the stoppage or slow down of work for the purpose of
 16 inducing, influencing, or coercing a change in conditions of
 17 employment.

18 (17) "Modified last best offer arbitration" means a
 19 method of resolving a labor-management dispute wherein an
 20 impartial third party selects either the last best offer of
 21 the labor organization or the last best offer of the public
 22 employer."

23 Section 2. There is a new R.C.M. section that reads as
 24 follows:

25 board of public employment relations created. (1) There

1 is a board of public employment relations.

2 (2) The board consists of three members appointed by
 3 the governor. Each member is appointed for a term of 6
 4 years. However, the terms of the members first appointed
 5 expire on July 1, 1979, July 1, 1981, and July 1, 1983,
 6 respectively. No more than two members of the board may be
 7 of the same political party. No more than one member of the
 8 board may be a person who can be classified as a
 9 representative of the employer by virtue of previous
 10 employment or affiliation. No more than one board member may
 11 be a person who can be classified as a representative of
 12 employers or employee organizations by virtue of previous
 13 employment or affiliation. No member need be an attorney.
 14 Except for the chairman of the board, no board member may
 15 hold any other public office or public employment.

16 (3) The governor shall designate one member to serve
 17 as chairman of the board. The chairman shall serve as a
 18 full-time, chief executive officer. The chairman shall
 19 receive an annual salary established by the appropriation
 20 approved for the board. The chairman is entitled to the same
 21 benefits accorded other full-time state employees.

22 (4) Except as otherwise provided in this act, the
 23 board is allocated to the department of labor and industry
 24 for administrative purposes only as prescribed in 82A-108.

25 (5) Except as otherwise provided in this act, the

1 board is designated a quasi-judicial board for the purposes
2 of B2A-112.

3 Section 3. There is a new R.C.M. section that reads as
4 follows:

5 Duties and powers of the board of public employment
6 relations. (1) The board has the following duties and
7 powers:

8 (a) to administer Title 59, chapter 16, and other laws
9 pertaining to public sector collective bargaining;

10 (b) to make studies and analyses of subjects relevant
11 to public employee labor relations;

12 (c) to collect and analyze data from governments and
13 public employee organizations which will enable the board to
14 perform its functions;

15 (d) to resolve unfair labor practice charges;

16 (e) to hold hearings and to make inquiries necessary
17 to carry out its responsibilities;

18 (f) to establish training requirements for fact
19 finders and mediators;

20 (g) to establish lists of qualified fact finders,
21 mediators, and arbitrators;

22 (h) to perform any other duties prescribed by law.

23 (2) The board may adopt rules consistent with the
24 Montana Administrative Procedure Act in carrying out its
25 duties and powers.

1 (3) The board may subpoena witnesses and may
2 administer oaths and affirmations in carrying out this act.
3 A person who fails to obey a subpoena issued by the board
4 may be ordered by the district court of the first judicial
5 district to obey the subpoena. Failure to obey a court order
6 may be punished by the court as contempt.

7 (4) The board may hire an administrator and other
8 personnel and may prescribe their duties.

9 Section 4. Section 59-1614, R.C.M. 1947, is amended to
10 read as follows:

11 ~~"59-1614. Mediation of disputes fact finding~~
12 ~~proceeding arbitration. (1) If after a reasonable period~~
13 ~~of negotiation over the terms of an agreement, or upon~~
14 ~~expiration of an existing collective bargaining agreement, a~~
15 ~~dispute concerning the collective bargaining agreement~~
16 ~~exists between the public employer and a labor organization,~~
17 ~~the parties shall request mediation.~~

18 ~~(2) If upon expiration of an existing collective~~
19 ~~bargaining agreement, or thirty (30) days following~~
20 ~~certification or recognition of an exclusive representative,~~
21 ~~a dispute concerning the collective bargaining agreement~~
22 ~~exists between the employer and the exclusive~~
23 ~~representative, either party may petition the board to~~
24 ~~initiate fact finding.~~

25 ~~(3) Within three (3) days of receipt of such petition~~

1 ~~the board shall submit to the parties a list of five (5)~~
 2 ~~qualified, disinterested persons from which list the parties~~
 3 ~~shall alternate in striking two (2) names, and the remaining~~
 4 ~~person shall be designated fact finder. This process shall~~
 5 ~~be completed within five (5) days of receipt of the list.~~
 6 ~~The parties shall notify the board of the designated fact~~
 7 ~~finder.~~

8 ~~(4) If no request for fact finding is made by either~~
 9 ~~party before the expiration of the agreement, or thirty (30)~~
 10 ~~days following certification or recognition of an exclusive~~
 11 ~~representative, the board may initiate fact finding as~~
 12 ~~provided for in (3) above.~~

13 ~~(5) The fact finder shall immediately establish dates~~
 14 ~~and place of hearings. Upon request of either party of the~~
 15 ~~fact finder, the board shall issue subpoenas for hearings~~
 16 ~~conducted by the fact finder. The fact finder may administer~~
 17 ~~oaths. Upon completion of the hearings, but no later than~~
 18 ~~twenty (20) days from the day of appointment, the fact~~
 19 ~~finder shall make written findings of facts and~~
 20 ~~recommendations for resolution of the dispute and shall~~
 21 ~~serve such findings on the public employer and the exclusive~~
 22 ~~representative. The fact finder may make this report public~~
 23 ~~five (5) days after it is submitted to the parties. If the~~
 24 ~~dispute is not resolved fifteen (15) days after the report~~
 25 ~~is submitted to the parties, the report shall be made~~

1 public.

2 ~~(6) The public employer and the exclusive~~
 3 ~~representative shall be the only proper parties to~~
 4 ~~fact-finding proceedings.~~

5 ~~(7) The cost of fact-finding proceedings shall be~~
 6 ~~equally borne by the board and the parties concerned.~~

7 ~~(8) Nothing in this section prohibits the fact finder~~
 8 ~~from endeavoring to mediate the dispute in which he has been~~
 9 ~~selected or appointed as fact finder.~~

10 ~~(9) Nothing in this section prohibits the parties from~~
 11 ~~voluntarily agreeing to submit any or all of the issues to~~
 12 ~~final and binding arbitration, and if such agreement is~~
 13 ~~reached the arbitration shall supersede the fact finding~~
 14 ~~procedures set forth in this section. An agreement to~~
 15 ~~arbitrate, and the award issued in accordance with such~~
 16 ~~agreement shall be enforceable in the same manner as is~~
 17 ~~provided in this act for enforcement of collective~~
 18 ~~bargaining agreements. Procedures for resolving disputes.~~

19 ~~(1) A public employer and a labor organization or its~~
 20 ~~exclusive representative may enter into an agreement~~
 21 ~~prescribing procedures to be invoked in the event of~~
 22 ~~disputes which reach an impasse in the course of collective~~
 23 ~~bargaining. The agreement may include a procedure to submit~~
 24 ~~any or all of the issues to impartial arbitration. If an~~
 25 ~~agreement does not exist or if the procedures in the~~

1 agreement fail to bring about a resolution of the dispute,
 2 the procedures described in this section for the resolution
 3 of the dispute shall be followed.

4 (2) If after a reasonable period of negotiation, but
 5 no later than 120 days prior to the budget submission date,
 6 a dispute exists between representatives of the public
 7 employer and the labor organization, the parties shall
 8 request mediation by petition to the board of public
 9 employment relations. The board shall designate a mediator
 10 who shall seek to bring the parties together to resolve the
 11 dispute.

12 (3) If the dispute has not been resolved within 20
 13 days after the commencement of mediation, but no later than
 14 100 days prior to the budget submission date, the parties to
 15 the dispute shall petition the board of public employment
 16 relations to initiate fact-finding proceedings. The board
 17 shall appoint a fact-finding panel which may consist of
 18 either one or three members. The fact-finding panel shall
 19 establish dates and a place for hearings and may subpoena
 20 witnesses and administer oaths. Nothing prohibits the
 21 fact-finding panel from attempting to mediate the dispute.

22 (4) The fact-finding panel shall complete its
 23 proceedings within 20 days of its appointment but no later
 24 than 80 days prior to the budget submission date. Upon
 25 completion of the fact-finding proceedings, the fact-finding

1 panel shall submit its findings of fact and recommendations
 2 to the board and to the parties to the dispute. Within 10
 3 days of the submission of the findings of fact and
 4 recommendations, the parties to the dispute shall notify the
 5 board and each other whether they accept the recommendations
 6 of the fact-finding panel. If the parties do not accept the
 7 recommendations, the panel shall publicize its findings of
 8 fact and recommendations. Within 5 days of the publication
 9 of the findings of fact and recommendations, the parties to
 10 the dispute shall again notify the board whether they accept
 11 the recommendations of the panel.

12 (5) If the dispute has not been resolved within 10
 13 days of the publication of the findings of fact and
 14 recommendations, but no later than 60 days prior to the
 15 budget submission date, the board of public employment
 16 relations shall refer the dispute to an arbitration panel.
 17 The arbitration panel shall consist of three members. One
 18 member shall be appointed by the labor organization. One
 19 member shall be appointed by the public employer. The third
 20 member shall be appointed jointly by the labor organization
 21 and the public employer from a list of arbitrators
 22 maintained by the board. The list shall consist of five
 23 qualified arbitrators. Each party to the dispute shall
 24 alternately strike two arbitrators from the list. The
 25 remaining arbitrator shall be the third member of the panel

1 and shall serve as chairman of the panel. Within 5 days of
 2 the appointment of the panel, but no later than 50 days
 3 prior to the budget submission date, the panel shall
 4 commence its proceedings. The panel shall hold hearings on
 5 all matters related to the dispute, and the panel may
 6 subpoena witnesses and require the submission of evidence
 7 from the parties. All matters presented to the panel for its
 8 determination shall be decided by a majority vote of the
 9 panel. Prior to a vote on any issue relating to the dispute
 10 before it, the panel may refer the issues back to the
 11 parties for further negotiations. The panel shall make a
 12 just and reasonable determination of the matters in dispute
 13 within 20 days of the commencement of its proceedings but no
 14 later than 30 days prior to the budget submission date. In
 15 arriving at its determination, the arbitration panel may
 16 consider any recommendations made by the fact-finding panel,
 17 and the arbitration panel shall consider any relevant
 18 circumstances, including:

19 (a) comparison of wages, hours, and conditions of
 20 employment of the employees involved with employees
 21 performing similar services and with other services
 22 generally;

23 (b) the interests and welfare of the public and the
 24 financial ability of the public employer to pay;

25 (c) appropriate cost of living indices;

1 (d) the total costs of proposed settlements;

2 (e) statutes regarding hours, wages, and conditions of
 3 employment; and

4 (f) any other factors traditionally considered in the
 5 determination of hours, wages, and conditions of employment.

6 (6) The determination of the arbitration panel is
 7 final and binding and is not subject to approval by any
 8 legislative or governing body.

9 (7) The arbitration panel shall submit its
 10 determination to the parties involved and to the board of
 11 personnel classification and grievance appeals. The board
 12 of personnel classification and grievance appeals shall
 13 review the determination of the arbitration panel. The board
 14 of personnel classification and grievance appeals shall
 15 certify to the budget director of the public employer no
 16 later than 20 days prior to the budget submission date that
 17 the arbitration panel has reached its determination
 18 according to the provisions of this act.

19 (8) The costs of mediation and fact-finding shall be
 20 shared equally by the parties to the dispute and the board
 21 of public employment relations. The costs of arbitration
 22 shall be shared equally by the public employer and the labor
 23 organization.

24 (9) The board of public employment relations may, upon
 25 its own motion, initiate the proceedings in this section if

1 it determines that the parties to a collective bargaining
 2 negotiation will not be reaching an agreement to meet the
 3 budget submission date.

4 (10) After fact-finding proceedings have been exhausted
 5 but prior to the beginning of the arbitration proceedings
 6 described in this section, the parties to a dispute may
 7 mutually agree to submit the dispute to modified last
 8 best-offer arbitration. If the parties so agree, they
 9 shall so notify the board of public employment
 10 relations. The procedures for modified last best-offer
 11 arbitration shall be the same as for other arbitration
 12 procedures in this act except that the arbitration
 13 panel shall render its determination by selecting
 14 either the last best-offer submitted by the labor
 15 organization or the last best-offer submitted by the
 16 public employer."

17 Section 5. There is a new R.C.M. section that reads as
 18 follows:

19 Public employee strikes. (1) No public employee or
 20 employee organization may engage in or cause, instigate,
 21 encourage, or condone a strike.

22 (2) In the event of a strike, the public employer
 23 shall initiate an action in the district court for relief.
 24 The court may levy penalties against the striking employees
 25 and their representatives, including fines, loss of job

1 rights, benefits, and dues checkoff privileges.

2 Section 6. Section 59-1603, R.C.M. 1947, is amended to
 3 read as follows:

4 "59-1603. Employees' right to join or form labor
 5 organization and engage in collective bargaining activities.

6 (1) Public employees shall have, and shall be protected in
 7 the exercise of, the right of self-organization, to form,
 8 join or assist any labor organization, to bargain
 9 collectively through representatives of their own choosing
 10 on questions of wages, hours, fringe benefits, and other
 11 conditions of employment and to engage in other concerted
 12 activities for the purpose of collective bargaining or other
 13 mutual aid or protection, free from interference, restraint
 14 or coercion.

15 (2) Public employees and their representatives shall
 16 recognize the prerogatives of public employers to operate
 17 and manage their affairs in such areas as but not limited
 18 to:

19 (a) direct employees;

20 (b) hire, promote, transfer, assign, and retain
 21 employees;

22 (c) relieve employees from duties because of lack of
 23 work or funds or under conditions where continuation of such
 24 work be inefficient and nonproductive;

25 (d) maintain the efficiency of government operations;

1 (e) determine the methods, means, job classifications,
2 and personnel by which government operations are to be
3 conducted;

4 (f) take whatever actions may be necessary to carry
5 out the missions of the agency in situations of emergency;

6 (g) establish the methods and processes by which work
7 is performed.

8 (3) Labor organizations designated in accordance with
9 the provisions of this act are responsible for representing
10 the interest of all employees in the exclusive bargaining
11 unit without discrimination for the purposes of collective
12 bargaining with respect to rates of pay, hours, fringe
13 benefits, and other conditions of employment.

14 (4) Certification as an exclusive representative shall
15 be extended or continued as the case may be only to a labor
16 or employee organization the written bylaws of which provide
17 for and guarantee the following rights and safeguards and
18 whose practices conform to such rights and safeguards as:
19 provisions are made for democratic organization and
20 procedures; elections are conducted pursuant to adequate
21 standards and safeguards; controls are provided for the
22 regulation of officers and agents having fiduciary
23 responsibility to the organization; and requirements exist
24 for maintenance of sound accounting and fiscal controls
25 including annual audits.

1 (5) No public employee who is a member of a bona fide
2 religious sect, or division thereof, the established and
3 traditional tenets or teachings of which oppose a
4 requirement that a member of such sect or division join or
5 financially support any labor organization, may be required
6 to join or financially support any labor organization as a
7 condition of employment, if such public employee pays, in
8 lieu of periodic union dues, initiation fees, and
9 assessments, at the same time or times such periodic union
10 dues, initiation fees, and assessments would otherwise be
11 payable, a sum of money equivalent to such periodic union
12 dues, initiation fees, and assessments, to a nonreligious,
13 nonunion charity designated by the labor organization. Such
14 public employee shall furnish to such labor organization
15 written receipts evidencing such payments and failure to
16 make such payments or furnish such receipts shall subject
17 the employee to the same sanctions as would nonpayment of
18 dues, initiation fees or assessments under the applicable
19 collective bargaining agreement.

20 A public employee desiring to avail himself or herself
21 to the right of nonassociation with a labor organization as
22 provided in this subsection shall make written application
23 to the chairman of the board of ~~personnel appeals~~. Within
24 ten days of the date of receipt of such application, the
25 chairman shall appoint a committee of three (3) consisting

1 of a clergyman not connected with the sect in question, a
 2 labor union official not directly connected with the labor
 3 organization in question and a member of the public at
 4 large, who shall be the chairman. The committee shall,
 5 within ten (10) days of the date of its appointment, meet at
 6 the locale of either the employee's residence or place of
 7 employment and, after receiving written or oral
 8 presentations from all interested parties, determine by a
 9 majority vote whether or not such public employee qualifies
 10 for the right of nonassociation with such labor
 11 organization. The committee's decision shall be made in
 12 writing within three (3) days of the meeting date and a copy
 13 thereof shall be forthwith mailed to such public employee,
 14 labor organization and the chairman of the board of
 15 ~~personnel appeals.~~"

16 Section 7. Section 59-1605, R.C.M. 1947, is amended to
 17 read as follows:

18 "59-1605. Unfair labor practices of employer or labor
 19 organization. (1) It is an unfair labor practice for a
 20 public employer to:

21 (a) interfere with, restrain, or coerce employees in
 22 the exercise of the rights guaranteed in section 59-1603;

23 (b) dominate, interfere, or assist in the formation or
 24 administration of any labor organization; however, subject
 25 to rules adopted by the board ~~under section 59-1612(4)~~, an

1 employer is not prohibited from permitting employees to
 2 confer with him during working hours without loss of time or
 3 pay;

4 (c) discriminate in regard to hire or tenure of
 5 employment or any term or condition of employment to
 6 encourage or discourage membership in any labor
 7 organization; however, nothing in this act or in any other
 8 statute of this state precludes a public employer from
 9 making an agreement with an exclusive representative to
 10 require that an employee who is not or does not become a
 11 union member shall be required as a condition of employment
 12 to have an amount equal to the union initiation fee and
 13 monthly dues deducted from his wages in the same manner as
 14 checkoff of union dues;

15 (d) discharge or otherwise discriminate against an
 16 employee because he has signed or filed an affidavit,
 17 petition, or complaint or given any information or testimony
 18 under this act;

19 (e) refuse to bargain collectively in good faith with
 20 an exclusive representative.

21 (2) It is an unfair labor practice for a labor
 22 organization or its agents to:

23 (a) restrain or coerce employees in the exercise of
 24 the right guaranteed in subsection (1) of section 59-1603,
 25 or a public employer in the selection of his representative

1 for the purpose of collective bargaining or the adjustment
2 of grievances;

3 (b) refuse to bargain collectively in good faith with
4 a public employer, if it has been designated as the
5 exclusive representative of employees;

6 (c) use agency shop fees for contributions to
7 political candidates or parties at state or local levels.

8 (3) For the purpose of this act, to bargain
9 collectively is the performance of the mutual obligation of
10 the public employer, or his designated representatives, and
11 the representatives of the exclusive representative to meet
12 at reasonable times and negotiate in good faith with respect
13 to wages, hours, fringe benefits, and other 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. Such
17 obligation does not compel either party to agree to a
18 proposal or require the making of a concession.

19 (4) For purposes of state government only, the
20 requirement of negotiating in good faith may be met by the
21 submission of a negotiated settlement to the legislature in
22 the executive budget, or by bill or joint resolution. The
23 failure to reach a negotiated settlement for submission is
24 not, by itself, prima facie evidence of a failure to
25 negotiate in good faith.

1 (5) This act does not limit the authority of the
2 legislature, any political subdivision or the governing
3 body, relative to appropriations for salary and wages,
4 hours, fringe benefits, and other conditions of employment."

5 Section 8. There is a new R.C.M. section that reads as
6 follows:

7 Board of personnel classification and grievance appeals
8 created. (1) The merit system council, repealed in [section
9 11 of this act], is renamed the board of personnel
10 classification and grievance appeals.

11 (2) The board is allocated to the department of
12 administration for the purposes of 82A-108, except that the
13 board may hire its own personnel.

14 (3) The board is composed of three members appointed
15 by the governor for 6-year overlapping terms. However,
16 persons who are members of the merit system council prior to
17 the effective date of this act may serve the remainder of
18 their terms as members of the board of personnel
19 classification and grievance appeals.

20 (4) Except as otherwise provided in this section, the
21 board is designated a quasi-judicial board for the purposes
22 of 82A-112.

23 Section 9. There is a new R.C.M. section that reads as
24 follows:

25 Duties and powers of board of personnel classification

1 and grievance appeals. (1) The board shall establish a
2 grievance procedure consistent with the Montana
3 Administrative Procedures Act for the filing of grievances
4 described in this section.

5 (2) An employee affected by the operation of Title 59,
6 chapter 9, or other conditions of employment is entitled to
7 file a complaint with the board and to be heard under the
8 provisions of the grievance procedure prescribed by the
9 board.

10 (3) Direct or indirect interference, restraint,
11 coercion, or retaliation by an employee's supervisor or the
12 agency for which the employee works against an employee
13 because the employee has filed or attempted to file a
14 complaint with the board is also a basis for a complaint and
15 entitles the employee to file a complaint with the board and
16 to be heard.

17 (4) If upon the preponderance of the evidence taken at
18 the hearing the board is of the opinion that the employee is
19 aggrieved, it may issue an order to the department of
20 administration or other appropriate agency requiring action
21 that will resolve the employee's grievance. In any hearing
22 the board is not bound by statutory or common-law rules of
23 evidence.

24 (5) The board or the employee may petition for the
25 enforcement of the board's order and for appropriate

1 temporary relief and may file in the district court the
2 record of the proceedings. Upon the filing of the petition,
3 the district court has jurisdiction of the proceedings. The
4 district court shall set the matter for hearing. After the
5 hearing, the district court shall issue its order granting
6 temporary or permanent relief as it considers just and
7 proper. No objection that has not been raised before the
8 board may be considered by the court unless the failure or
9 neglect to raise the objection is excused because of
10 extraordinary circumstances. The findings of the board with
11 respect to questions of fact, if supported by substantial
12 evidence on the record considered as a whole, are
13 conclusive.

14 (6) Where applicable, the grievance procedure for
15 employees who are under a collective bargaining agreement as
16 prescribed in Title 59, chapter 16, takes precedence over
17 the grievance procedure established by the board.

18 (7) The board shall perform such other duties
19 prescribed by law.

20 Section 10. Section 59-914, R.C.M. 1947, is amended to
21 read as follows:

22 "59-914. Merit system continued. The merit system,
23 established in 1940 by certain state agencies of state
24 government, as a requirement for receipt of federal funds,
25 shall continue to operate for those agencies under the

1 policies and procedures established by the ~~merit system~~
2 ~~council department subject to review by the board of~~
3 ~~classification and grievance appeals."~~

4 Section 11. Repealer. Sections 32-2504, 32-2505,
5 32-2505.1, 32-2505.2, 32-2505.3, 59-1613, 82A-206, 82A-709,
6 and 82A-1014, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 403-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 8, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 409 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Provides for the establishment of dispute resolution procedures, creates labor relations and grievance appeals boards, and prohibits strikes of state employees.

ASSUMPTIONS:

1. The present Board of Personnel Appeals staff positions and appropriation continue under the Board of Public Employment Relations.
2. Three (3) additional positions would be required under this bill for the Board of Public Employment Relations - full-time board chairman, administrative secretary and research specialist.
3. The new board of Classification and Grievance Appeals in the Department of Administration would require an administrator, attorney, two (2) hearing officers, a grievance and appeals officer, administrative secretary and two (2) clerk typists in order to handle the approximately 300 classification and state employee grievances for a year.
4. The present appropriation for the Board of Personnel Appeals could absorb approximately \$5,000 of the required mediation and fact-finding costs of this bill.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>Total</u>
Personal services	\$179,464	\$184,140	\$363,604
Operating expenses	51,427	51,427	102,854
Equipment	17,228	2,000	19,228
Total increased expenditures	<u>\$248,119</u>	<u>\$237,567</u>	<u>\$485,686</u>

OTHER IMPACT:

Management units in the various jurisdictions would experience approximately \$43,000 of direct arbitration, mediation, and fact-finding costs. The effect of arbitration awards on local revenues is difficult to estimate.

TECHNICAL NOTE:

1. It appears that "employers" in line 12 page 6 should be "employees".
2. Line 4, page 8 should probably refer to "just" district court as collective bargaining activity occurs throughout the state and not in just the first judicial district.

Richard L. Drury for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-15-77