

HOUSE BILL NO. 527

INTRODUCED BY J. KNOX

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ARBITRATOR MAY NOT CONSIDER THE
5 OVERALL COMPENSATION PRESENTLY RECEIVED BY CERTAIN PUBLIC EMPLOYEES, INCLUDING
6 DIRECT WAGE COMPENSATION, HOLIDAY PAY, OTHER PAID EXCUSED TIME, INSURANCE, MEDICAL
7 BENEFITS, SHIFT SCHEDULES AND HOURS, AND ANY OTHER DIRECT OR INDIRECT MONETARY
8 BENEFITS, IN CALCULATING BENEFITS TO BE PAID PURSUANT TO A COLLECTIVE BARGAINING
9 AGREEMENT; AMENDING SECTIONS 39-31-310, 39-31-504, AND 39-34-103, MCA; AND PROVIDING AN
10 EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 39-31-310, MCA, is amended to read:
15 **"39-31-310. Submission of issues to arbitration.** ~~(1) Nothing~~ The provisions in 39-31-307 through
16 39-31-310 ~~prohibits~~ do not prohibit the parties from voluntarily agreeing to submit any or all of the issues to final
17 and binding arbitration, and if such an agreement is reached, the arbitration ~~shall supersede~~ supersedes the
18 factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance
19 with ~~such~~ the agreement ~~shall be~~ is enforceable in the same manner as is provided in this chapter for
20 enforcement of collective bargaining agreements.

21 (2) The arbitrator shall base findings and opinions on the criteria listed in subsections (2)(a) through
22 (2)(d). Primary consideration must be given to the criteria in subsection (2)(a). The criteria are:

23 (a) the interest and welfare of the public;
24 (b) the reasonable financial ability of the unit of government to meet the costs of the proposed contract,
25 giving consideration and weight to the other services provided by the unit of government, as determined by the
26 governing body of the unit of government; and

27 (c) the stipulations of the parties.
28 (3) (a) The arbitrator may not consider the overall compensation presently received by the employees,
29 including direct wage compensation, holiday pay, other paid excused time, insurance, medical benefits, shift
30 schedules and hours, and all other direct or indirect monetary benefits.

1 (b) In calculating the benefits to be paid pursuant to subsection (3)(a), the arbitrator shall calculate those
 2 benefits on a de novo basis that is based on an examination of the financial strength and solvency of the unit of
 3 government that is the public employer."

4

5 **Section 2.** Section 39-31-504, MCA, is amended to read:

6 **"39-31-504. Selection of arbitrator -- procedure -- cost-sharing.** (1) (a) After receipt of the petition
 7 to arbitrate under 39-31-502(2)(d), the board of personnel appeals shall submit a list of five qualified,
 8 disinterested, and unbiased individuals to the parties. Each party shall alternately strike two names from the list.
 9 The order of striking names must be determined by a coin toss. The remaining individual is the arbitrator.

10 (b) If the parties have not designated the arbitrator and notified the board of personnel appeals of their
 11 choice within 5 days of receipt of the list, the board of personnel appeals shall appoint the arbitrator from the
 12 names on the list. However, if one of the parties strikes names from the list, as provided in subsection (1)(a), the
 13 board of personnel appeals shall appoint the arbitrator from the names remaining on the list.

14 (2) The arbitrator shall establish the dates, times, and places of hearings. The arbitrator may issue
 15 subpoenas. Within 14 calendar days prior to the date of a hearing, each party shall submit to the other party a
 16 written last best offer package on all unresolved mandatory subjects. The last best offer package may not be
 17 changed. The arbitrator may administer oaths and shall afford the parties the opportunity to examine and
 18 cross-examine all witnesses and to present evidence relevant to the dispute.

19 (3) The arbitrator shall decide the unresolved mandatory subjects contained in the last best offer
 20 package. The arbitrator shall base findings and opinions on the criteria listed in subsections (3)(a) through ~~(3)(h)~~
 21 (3)(d). Primary consideration must be given to the criteria in subsection (3)(a). The criteria are:

22 (a) the interest and welfare of the public;

23 (b) the reasonable financial ability of the unit of government to meet the costs of the proposed contract,
 24 giving consideration and weight to the other services provided by the unit of government, as determined by the
 25 governing body of the unit of government;

26 ~~(c) the ability of the unit of government to attract and retain qualified personnel at the wage and benefit~~
 27 ~~levels provided;~~

28 ~~_____ (d) the overall compensation presently received by the police officers, including direct wage~~
 29 ~~compensation, holiday pay, other paid-excused time, insurance, and all other direct or indirect monetary benefits;~~

30 ~~_____ (e) comparison of the overall compensation of other police officers in comparable communities with~~

1 similar populations in Montana and contiguous states;

2 ~~—— (f) inflation as measured by the consumer price index, U.S. city average, commonly known as the cost~~
3 ~~of living;~~

4 ~~(g)(c)~~ the stipulations of the parties; and

5 ~~(h)(d)~~ other factors, consistent with subsections (3)(a) through ~~(3)(g)~~ (3)(c), that are traditionally taken
6 into consideration in the determination of wages, hours, and other terms and conditions of employment. However,
7 the arbitrator may not use other factors if, in the judgment of the arbitrator, the factors listed in subsections (3)(a)
8 through ~~(3)(g)~~ (3)(c) provide a sufficient basis for an award.

9 (4) (a) The arbitrator may not consider the overall compensation presently received by the employees,
10 including direct wage compensation, holiday pay, other paid excused time, insurance, medical benefits, shift
11 schedules and hours, and all other direct or indirect monetary benefits.

12 (b) In calculating the benefits to be paid pursuant to subsection (4)(a), the arbitrator shall calculate those
13 benefits on a de novo basis that is based on an examination of the financial strength and solvency of the unit of
14 government that is the public employer.

15 ~~(4)(5)~~ Within 30 days after the conclusion of the hearings or an additional period agreed upon by the
16 parties, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall make
17 written findings along with an opinion and order. The opinion and order must be served on the parties and the
18 board of personnel appeals. Service may be made by personal delivery or by certified mail. The findings, opinion,
19 and order must be based upon the criteria listed in ~~subsection~~ subsections (3) and (4).

20 ~~(5)(6)~~ The cost of arbitration must be borne equally by the parties."
21

22 **Section 3.** Section 39-34-103, MCA, is amended to read:

23 **"39-34-103. Powers and duties of arbitrator for firefighters and public employers.** (1) The arbitrator
24 shall establish dates and a place for hearings and may subpoena witnesses and require the submission of
25 evidence necessary to resolve the impasse.

26 (2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the
27 issues back to the parties for further negotiation.

28 (3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final
29 position on matters in dispute.

30 (4) The arbitrator shall make a just and reasonable determination of which final position on matters in

1 dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall
2 notify the board of personnel appeals and the parties, in writing, of the determination.

3 (5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

4 ~~(a) comparison of hours, wages, and conditions of employment of the employees involved with~~
5 ~~employees performing similar services and with other services generally;~~

6 ~~(b)(a)~~ the interests and welfare of the public and the financial ability of the public employer to pay; and

7 ~~(c) appropriate cost-of-living indices;~~

8 ~~(d)(b)~~ any other factors traditionally considered in the determination of hours, wages, and conditions of
9 employment.

10 (6) (a) The arbitrator may not consider the overall compensation presently received by the employees,
11 including direct wage compensation, holiday pay, other paid excused time, insurance, medical benefits, shift
12 schedules and hours, and all other direct or indirect monetary benefits.

13 (b) In calculating the benefits to be paid pursuant to subsection (6)(a), the arbitrator shall calculate those
14 benefits on a de novo basis that is based on an examination of the financial strength and solvency of the unit of
15 government that is the public employer.

16 ~~(6)(7)~~ The determination of the arbitrator is final and binding and is not subject to the approval of any
17 governing body."

18

19 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2011.

20

21 NEW SECTION. Section 5. Applicability. [This act] applies to collective bargaining agreements
22 entered into or renewed on or after [the effective date of this act].

23

24 NEW SECTION. Section 6. Termination. [This act] terminates June 30, 2015.

25

- END -