

1997 -

SENATE EDUCATION

EXHIBIT NO. 3

DATE 2-16-11

BILL NO. SB 315

TO: SENATOR TOEWS, CHAIRMAN
COMMITTEE MEMBERS
SENATE EDUCATION AND CULTURAL RESOURCES COMMITTEE

FROM: MONTANA SCHOOL BOARDS ASSOCIATION
MONTANA EDUCATION ASSOCIATION
MONTANA RURAL EDUCATION ASSOCIATION
MONTANA FEDERATION OF TEACHERS
SCHOOL ADMINISTRATORS OF MONTANA

RE: HOUSE BILL 49

JOINT TESTIMONY OF MSBA, MEA, MREA, MFT, & SAM

House Bill 49 comes to the Senate Education Committee after a consensus agreement reached by the representatives of all affected parties in the House. The Montana School Boards Association (MSBA), the Montana Education Association (MEA), the Montana Rural Education Association (MREA), the Montana Federation of Teachers (MFT) and the School Administrators of Montana (SAM) have joined in supporting the current version of House Bill 49 without any changes other than deletion of the word "tenure" on page 9, line 16, as introduced by the sponsor. The single amendment is necessary to correct a typographical error from the bill. House Bill 49 as currently written contains a very important compromise that will work to the benefit of public education and the children educated in this system.

Concessions by Those Representing the Interests of School Boards and Administrators:

The primary concession by those representing the school boards and administrators was the decision to agree to mandatory binding arbitration as the sole means of resolving disputes over termination decisions in districts where the teachers are covered by a collective bargaining agreement. This part of the agreement involves a significant departure from a historical, philosophical opposition to arbitration by school districts.

Concessions by Those Representing the Interests of Teachers:

The primary concession by those representing teachers was the removal of the "true reasons" language for nontenure teachers. This language has been subject to litigation, and was first placed in the law in 1991.

The remainder of House Bill 49 involves provisions that have not been significantly controversial as this bill has progressed. The summary below identifies the substance of the changes enacted by House Bill 49. The compromise reached on this bill has been difficult to achieve, and is based strictly on the version of House Bill 49 that you have before you. The parties to this agreement respectfully urge that the Senate Education Committee issue a "do concur" recommendation on House Bill 49 without changes other than the technical amendment on Page 9, line 16.

Summary of Consensus Bill

- HB 49 provides for mandatory binding arbitration of termination decisions as the exclusive remedy in districts whose teachers are covered by a collective bargaining agreement under Title 39.
- HB 49 provides for appeal before the county superintendent for termination decisions in districts whose teachers are *NOT* covered by a collective bargaining agreement. This provision provides for an additional savings in litigation expenses in these cases by providing for appeal of the county superintendent's decision directly to district court instead of to OPI.
- HB 49 provides for dismissal of a tenure teacher or any teacher under contract for good cause. The definition of good cause originally proposed under HB 49 is removed from HB 49 to allow traditional definitions of this term and similar terms such as "just cause" or "cause" under arbitration decisions to control. It is the intent of the parties that the terms "good cause" and "just cause" and "cause" are all interchangeable and would be determined by the arbitrator by referencing traditional notions of these terms. The interchangeable term "good cause" replaces the terms "immorality, unfitness, incompetence, or violation of the adopted policies of such trustees," that are currently applied under 20-4-207(1), MCA. The term "good cause" is also placed in 20-4-204, MCA, to reflect court cases that have inferred a "good cause" requirement for dismissal under this section. The standard for dismissal will now be the same for any teacher, under contract, as well as for a tenure teacher dismissed at the end of the contract year.
- While protected by dismissal for good cause only during the contract year, a nontenure teacher under HB 49 may be nonrenewed at the end of the contract period with or without cause upon proper notice. HB 49 does not require a statement of true reasons. It provides for nontenure status during the first three contract years, and tenure upon the offer and acceptance of the fourth contract. This will eliminate all appeals for nonrenewals of nontenure teachers in the absence of a provision in the collective bargaining agreement to the contrary.
- HB 49 continues to provide for the return of an administrator to the classroom during a reduction in force, and provides the administrator with the right to the first administrative opening thereafter.
- HB 49 extends the deadline for reelection notice to June 1. This will give districts the extra time needed following the first opportunity to place a levy before the voters to better predict the need for staff in the ensuing school year. By extending the deadline to June 1, districts will have a better idea of the district's financial picture, leading to fewer unnecessary termination letters.
- HB 49 incorporates the principles of HB 198, introduced by Representative Ellis, which has since been tabled due to its inclusion in HB 49.

MSBA, MREA, MEA, MFT, AND SAM ALL SUPPORT HOUSE BILL 49!

SEVEN TESTS FOR JUST CAUSE
(As defined by Arbitrator Carroll R. Daugherty)

1. Did the employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee conduct?
(IN PLAIN ENGLISH - Was the employee adequately warned of the consequences of his conduct?)
2. Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the employers business?
(IN PLAIN ENGLISH - Was the company's rule or order reasonably related to the efficient and safe operation?)
3. Did the employer, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
(IN PLAIN ENGLISH - Did management investigate before administering the discipline?)
4. Was the employers investigation conducted fairly and objectively?
(IN PLAIN ENGLISH - Was the investigation fair and objective?)
5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
(IN PLAIN ENGLISH - Did the investigation produce evidence or proof of guilt?)
6. Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?
(IN PLAIN ENGLISH - Did the employer exhibit discrimination?)
7. Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the employer?
(IN PLAIN ENGLISH - Was the penalty reasonably related to the seriousness of the offense and the past record?)

A "no" answer to any one or more of the above questions normally signifies that just and proper cause did not exist. In other words, such "no" means that the employer's disciplinary decision contained one or more elements of arbitrary, capricious, unreasonable, and/or discriminatory action to such an extent that said decision constituted an abuse of managerial discretion warranting the arbitrator to substitute his judgment for that of the employer.

Montana Code Annotated 2009

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39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason, unless the employer acts within the provisions of [39-2-313\(3\)](#) or (4).

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

History: En. Sec. 3, Ch. 641, L. 1987; amd. Sec. 3, Ch. 193, L. 1993.