

HOUSE BILL NO. 698

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING THE CERTIFICATION AND DECERTIFICATION OF EXCLUSIVE REPRESENTATIVES OF PUBLIC EMPLOYEES; PROVIDING DEFINITIONS; CLARIFYING THE PETITION ON REPRESENTATION QUESTION; ESTABLISHING THAT A LABOR ORGANIZATION CANNOT BE AN EXCLUSIVE REPRESENTATIVE UNLESS IT RECEIVES A MAJORITY VOTE AFTER A SECRET BALLOT ELECTION; PROVIDING THAT PUBLIC EMPLOYEES MAY PETITION TO DECERTIFY OR CHOOSE A NEW EXCLUSIVE REPRESENTATIVE 12 MONTHS AFTER AN ELECTION; AND AMENDING SECTIONS 39-31-103, 39-31-207, 39-31-208, AND 39-31-210, MCA."

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

Section 1. Section 39-31-103, MCA, is amended to read:

"39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining,

1 changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand
2 in the proximate relation of employer and employee.

3 (6) "Labor organization" means any organization or association of any kind in which employees
4 participate and which exists for the primary purpose of dealing with employers concerning grievances, labor
5 disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

6 (7) "Management official" means a representative of management having authority to act for the
7 agency on any matters relating to the implementation of agency policy.

8 (8) "Person" includes one or more individuals, labor organizations, public employees, associations,
9 corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

10 (9) "Proof of interest" means a document submitted to the board in support of a petition to certify or
11 decertify a labor organization as the exclusive representative of an appropriate unit of public employees that
12 contains:

13 (a) a public employee's:

14 (i) name, typed or legibly printed; and

15 (ii) signature, dated within 6 months of the date of the filing of the petition; and

16 (b) a statement that the public employee designates the named labor organization as the public
17 employee's exclusive representative for purposes of collective bargaining with the public employee's public
18 employer.

19 ~~(9)~~(10) (a) "Public employee" means:

20 (i) except as provided in subsection ~~(9)(b)~~ (10)(b), a person employed by a public employer in any
21 capacity; and

22 (ii) an individual whose work has ceased as a consequence of or in connection with any unfair
23 labor practice or concerted employee action.

24 (b) Public employee does not mean:

25 (i) an elected official;

26 (ii) a person directly appointed by the governor;

27 (iii) a supervisory employee, as defined in subsection ~~(14)~~ (12);

28 (iv) a management official, as defined in subsection (7);

- 1 (v) a confidential employee, as defined in subsection (3);
- 2 (vi) a member of any state board or commission who serves the state intermittently;
- 3 (vii) a school district clerk;
- 4 (viii) a school administrator;
- 5 (ix) a registered professional nurse performing service for a health care facility;
- 6 (x) a professional engineer; or
- 7 (xi) an engineer intern.

8 ~~(10)~~(11) "Public employer" means the state of Montana or any political subdivision thereof, including
 9 but not limited to any town, city, county, district, school board, board of regents, public and quasi-public
 10 corporation, housing authority or other authority established by law, and any representative or agent designated
 11 by the public employer to act in its interest in dealing with public employees. Public employer also includes any
 12 local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

13 ~~(11)~~(12) (a) "Supervisory employee" means an individual having the authority on a regular, recurring
 14 basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge,
 15 assign, reward, or discipline other employees or to effectively recommend the above actions if, in connection
 16 with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use
 17 of independent judgment.

18 (b) The authority described in subsection ~~(11)(a)~~ (12)(a) is the only criteria that may be used to
 19 determine if an employee is a supervisory employee. The use of any other criteria, including any secondary test
 20 developed or applied by the national labor relations board or the Montana board of personnel appeals, may not
 21 be used to determine if an employee is a supervisory employee under this section.

22 ~~(12)~~(13) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402."
 23

24 **Section 2.** Section 39-31-207, MCA, is amended to read:

25 **"39-31-207. Petition on representation question -- investigation by board -- hearing.** (1) The
 26 board or an agent of the board shall investigate the petition and, ~~if it has reasonable cause to believe that a~~
 27 ~~question of representation exists~~ if the petition is properly before the board, it shall provide for an appropriate
 28 hearing upon due notice ~~whenever~~, in accordance with such rules as may be prescribed by the board, ~~a petition~~

1 ~~has been filed:~~ to determine whether the petition raises a question concerning representation.

2 (a) A question concerning representation occurs when:

3 ~~(a)(i) by an employee or group of employees~~ a public employee or group of public employees or any
4 labor organization acting ~~in~~ on their behalf ~~alleging that 30% of the employees~~ submits proof of interest showing
5 that 30% of the public employees in an appropriate unit:

6 ~~(i)(A)~~ wish to be represented for the purpose of collective bargaining by a labor organization as
7 exclusive representative; or

8 ~~(ii)(B) assert that the labor organization which has been certified or is currently being recognized by~~
9 ~~the public employer as bargaining representative is no longer the representative of the majority of employees in~~
10 ~~the unit~~ no longer wish to be represented by the exclusive representative; or

11 ~~(b)(ii) by the public employer alleging~~ a public employer alleges that one or more labor organizations
12 have presented to it a claim to be recognized as the exclusive representative ~~in~~ of an appropriate unit.

13 (2) In this hearing, the board is not bound by common law and statutory rules of evidence."
14

15 **Section 3.** Section 39-31-208, MCA, is amended to read:

16 **"39-31-208. Representation election at direction of board.** (1) If the board or an agent of the
17 board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an
18 election by secret ballot to determine whether and by which labor organization the public employees desire to
19 be represented or whether they desire to have no labor organization represent them and shall certify the results
20 thereof.

21 (2) Only those labor organizations which have been designated by more than 10% of the public
22 employees in the unit found to be appropriate shall be placed on the ballot.

23 (3) The board or an agent of the board shall determine who is eligible to vote in the election and
24 shall establish rules governing the election.

25 (4) Unless the majority vote is for no representation by a labor organization and in any election
26 where none of the choices for a representative on the ballot receives a majority, a runoff election shall be
27 conducted, the ballot providing for selection between the two choices receiving the largest and the second
28 largest number of valid votes cast in the election.

1 (5) A labor organization which receives the majority of the votes cast in an election shall be
2 certified by the board as the exclusive representative.

3 (6) No labor organization shall be certified by the board or recognized by a public employer as the
4 exclusive representative of public employees unless the labor organization receives the majority of votes cast in
5 a secret ballot election conducted by the board in accordance with this section."

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7 **Section 4.** Section 39-31-210, MCA, is amended to read:

8 **"39-31-210. Election in 12-month period following valid election prohibited -- petition to**
9 **decertify or select different labor organization allowed 12 months after election.** (1) An election ~~shall~~ may
10 not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month
11 period a valid election has been held.

12 (2) Public employees may petition the board to decertify an exclusive representative or to select a
13 different labor organization as the exclusive representative at any time following the 12-month period specified
14 in this section."

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