

HOUSE BILL 619

Introduced by Kimberley, et al.

2/05	Introduced
2/05	Referred to Education & Cultural Resources
2/06	First Reading
2/20	Hearing
2/20	Tabled in Committee

1 House BILL NO. 619  
 2 INTRODUCED BY Timberley Blaylock Dolezal  
 3 Marko Nesbet Whalen Coekiaulla John Johnson Jay  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR Boas  
 5 Bob Brown ARBITRATION IN LABOR DISPUTES BETWEEN SCHOOL EMPLOYEES AND

6 PUBLIC SCHOOL DISTRICTS; REQUIRING AN ARBITRATOR TO SETTLE A  
 7 CONTRACT DISPUTE BASED ON THE LAST BEST OFFER OF EACH PARTY;  
 8 PROVIDING FOR THE APPOINTMENT OF AN ARBITRATOR; PROVIDING  
 9 FOR A HEARING UPON APPOINTMENT OF AN ARBITRATOR; PROHIBITING  
 10 STRIKES AND LOCKOUTS DURING THE TERM OF A COLLECTIVE  
 11 BARGAINING AGREEMENT AND ARBITRATION; PROVIDING FOR JUDICIAL  
 12 REVIEW; AND PROVIDING A TERMINATION DATE."

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

15 NEW SECTION. Section 1. Definitions. As used in  
 16 [sections 1 through 10], the following definitions apply:

17 (1) "Appropriate unit" means a group of school district  
 18 employees joined together for collective bargaining purposes  
 19 as designated by the board.

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

22 (3) "Exclusive representative" means the labor  
 23 organization that has been:

24 (a) designated by the board to represent school  
 25 district employees in an appropriate unit; or

1 (b) recognized by the school district.  
 2 (4) "School district" means a public employer that is:  
 3 (a) a board of trustees of an elementary school  
 4 district, high school district, or county high school  
 5 district; or  
 6 (b) the governing board of a special education  
 7 cooperative.

8 NEW SECTION. Section 2. Arbitration between school  
 9 employees and school districts authorized. If a dispute  
 10 occurs in the course of collective bargaining between the  
 11 exclusive representative and a school district and the  
 12 procedures for mediation in 39-31-307 have not resulted in  
 13 settlement of the dispute by May 1 prior to the expiration  
 14 of the contract, either party or both parties jointly may  
 15 petition the board for final and binding arbitration.

16 NEW SECTION. Section 3. Appointment of arbitrator. (1)  
 17 The parties to a dispute may appoint an arbitrator by mutual  
 18 agreement and, within 5 days following the appointment,  
 19 shall notify the board of the appointment of the arbitrator.  
 20 (2) If the parties have not appointed an arbitrator and  
 21 have not provided for any other method of appointment, the  
 22 arbitrator must be selected in the following manner:

23 (a) within 3 days of receipt of the petition for final  
 24 and binding arbitration, the board shall submit to the  
 25 parties a list of five qualified and impartial arbitrators;



1 (b) From this list, the parties shall alternately  
2 strike four names, after determining by lot which party  
3 strikes the first name;

4 (c) the person whose name remains on the list must be  
5 appointed as the arbitrator; and

6 (d) the parties shall notify the board of the  
7 arbitrator's appointment within 5 days of receipt of the  
8 list submitted by the board.

9 NEW SECTION. Section 4. Hearing and decision. (1)

10 Within 5 days after his appointment, the arbitrator shall  
11 set the date, time, and place for a hearing, which must be  
12 held within 30 days following the appointment of the  
13 arbitrator.

14 (2) The arbitrator may issue subpoenas, require the  
15 submission of evidence, and administer oaths.

16 (3) At the hearing, each party must be given full  
17 opportunity to submit all relevant evidence, introduce  
18 relevant documents, call witnesses, request subpoenas, and  
19 argue on behalf of his position.

20 (4) The hearing may be continued at the discretion of  
21 the arbitrator, but it must be concluded within 10 days  
22 after its commencement. The arbitrator may allow the parties  
23 to submit written posthearing briefs.

24 (5) Prior to making a determination on any issue, the  
25 arbitrator may attempt to mediate the dispute or refer

1 issues back to the parties for further negotiation. The  
2 parties may make an agreement on any issue prior to the  
3 rendering of a determination on that issue by the  
4 arbitrator.

5 (6) At the conclusion of the hearing, each party shall  
6 submit its written position on each outstanding issue in the  
7 form of a last best offer.

8 (7) The arbitrator shall separately resolve each  
9 disputed issue by accepting the last best offer of one party  
10 and incorporating the accepted last best offer in a  
11 comprehensive decision. The arbitrator's decision must also  
12 incorporate agreements on issues reached by the parties  
13 prior to the decision.

14 (8) Within 20 days after the conclusion of the hearing,  
15 the arbitrator shall notify the board and the parties, in  
16 writing, of his final decision. Unless submitted to the  
17 district court for review, the decision of the arbitrator is  
18 final and binding upon the parties to the dispute.

19 NEW SECTION. Section 5. Consideration of relevant

20 factors. In arriving at a decision, the arbitrator shall  
21 consider any relevant factors, including but not limited to:

22 (1) the history of negotiations between the parties;

23 (2) the interests and welfare of the public and the  
24 financial ability of the school district to pay;

25 (3) the interests and welfare of the school employees

1 represented in the dispute;

2 (4) appropriate cost-of-living indices;

3 (5) the hours, wages, fringe benefits, and other  
4 conditions of employment of the school employees involved as  
5 compared to those of other employees performing similar  
6 services;

7 (6) a comparison with the state and regional labor  
8 markets generally; and

9 (7) other matters traditionally considered in the  
10 determination of hours, wages, fringe benefits, and  
11 conditions of employment.

12 NEW SECTION. **Section 6.** Parties to the arbitration.

13 The school district and the exclusive representative are the  
14 only proper parties to the arbitration, except that each  
15 party has the right to be represented by an attorney at any  
16 hearing conducted under [sections 1 through 10].

17 NEW SECTION. **Section 7.** Arbitration costs. The parties

18 shall equally share the fee and related expenses of the  
19 arbitrator. If one party requests a transcript and the other  
20 party does not, the requesting party shall bear the expense  
21 of the transcript exclusively. All other costs must be borne  
22 by the party incurring them.

23 NEW SECTION. **Section 8.** Strikes and lockouts

24 prohibited. Strikes and lockouts are prohibited during the  
25 term of any collective bargaining agreement between the

1 school district and the exclusive representative or during  
2 the negotiations or arbitration of the agreement.

3 NEW SECTION. **Section 9.** Enforcement of award or

4 decision. An award or decision issued in accordance with  
5 [sections 1 through 10] is enforceable in the same manner as  
6 provided for in Title 39, chapter 31, for enforcement of  
7 collective bargaining agreements.

8 NEW SECTION. **Section 10.** Judicial review -- court

9 costs. (1) The arbitrator's decision is subject to judicial  
10 review upon the filing by a party to the arbitration of a  
11 motion to vacate or modify the decision in the district  
12 court for the judicial district where the school district is  
13 located. The motion must be filed within 30 days following  
14 receipt of a final decision.

15 (2) The district court shall conduct the review, which  
16 is confined to the record. The review must include any  
17 alleged irregularities in procedure before the arbitrator  
18 not shown in the record, and evidence may be presented to  
19 the court. Upon request, the court shall hear oral argument  
20 and receive written briefs.

21 (3) The district court may not substitute its judgment  
22 for that of the arbitrator as to the weight of the evidence  
23 on questions of fact. The court may affirm the decision of  
24 the arbitrator or remand the case for further proceedings.  
25 The court may reverse or modify the decision if the

1 substantial rights of a party were prejudiced because the  
2 decision is:

3 (a) in violation of constitutional or statutory  
4 provisions;

5 (b) in excess of the statutory authority of the  
6 arbitrator;

7 (c) made upon unlawful procedure;

8 (d) affected by other error of law; or

9 (e) arbitrary or capricious, characterized by abuse of  
10 discretion, or clearly an unwarranted exercise of  
11 discretion.

12 (4) An aggrieved party may obtain review of a final  
13 judgment of the district court under [sections 1 through 10]  
14 by appeal to the supreme court within 60 days after entry of  
15 judgment. The appeal must be taken in the manner provided by  
16 law for appeals from district courts in civil cases.

17 (5) In any action brought to vacate or modify the  
18 decision of the arbitrator, reasonable attorney fees, costs,  
19 and legal interest on salaries withheld as a result of an  
20 appeal may be awarded against the appellant if the decision  
21 is not modified or vacated by the court.

22 NEW SECTION. Section 11. Codification instruction.  
23 [Sections 1 through 10] are intended to be codified as an  
24 integral part of Title 39, and the provisions of Title 39  
25 apply to [sections 1 through 10].

1 NEW SECTION. Section 12. Termination. [This act]  
2 terminates July 1, 1997.

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