

HOUSE EDUCATION COMMITTEE MINUTES  
February 2, 1981

The House Education Committee convened at 12:30 p.m., on February 2, 1981, in Room 129 of the State Capitol, with Chairman Eudaily presiding and all members present except Rep. Hannah who was excused.

Chairman Eudaily opened the meeting to a hearing on the following bills: HBS 400 and 401.

HOUSE BILL 400

REPRESENTATIVE MICHAEL KEEDY, District 18, chief sponsor, said the bill addresses rather directly and substantially the question of teacher tenure. He said this is not an instant tenure bill and it is not an MEA bill. He said due to the possibility of a conflict of interest he does not carry MEA bills. Rep. Keedy said the bill will protect budding new teachers who are now at times laid off at the end of the third year, not because of their classroom performance but to keep from giving them tenure. Secondly, it would simplify the method of removing a tenured teacher who is incompetent. The bill provides for a fair and prompt process of arbitration that will preserve the inherent values of the present tenure system while eliminating its most serious fault. He went through the bill and discussed the changes made to the law. He said it would also restore normal rights to a specialist.

BEVERLY FRYER, Norris, representing self, said there is an urgent need to change Montana's law concerning nontenured teachers. She said she is an example of a nontenured teacher who was asked to resign at the end of her third year. She said not once had she received a formal complaint or was evaluated in the classroom by anyone with a teaching certificate. In the spring of 1980 she was asked to resign. The reason given was to hire a better teacher. She said she went to the school board and their response was they were told not to say anything. She said she is still in the clouds about what was wrong and it gives a hopeless feeling when a job can be terminated like this. She urged the committee to add something to the laws that would give a teacher a right to due process.

DAVID SEXTON, Montana Education Association, said there has been a tenure law on the books since 1913, when it was felt there was a need to protect teachers from undue political interference and pressures that can come about in the community that could interfere with the freedom of a teacher to teach. If a teacher is going to be eliminated whether tenured or nontenured it should be because of the teacher's performance. He said it has been their feeling for a long time the only think wrong with the tenure law is that it only protects some teachers. There is a large number of teachers without any protection from the whims of the community. He said the MEA has been attempting to show the legislature this need for some time. A teacher should be able to find out why she is being fired and then be able to appeal to the school trustees. He said he had received calls for help from 40 to 50 teachers across the state. He felt the bills concerning this had failed in the past because of scare tactics. MEA had decided not

to reintroduce the legislation this year although they still felt strongly the need of one. When they found that Rep. Keedy had developed a bill, they were skeptical but in looking at this bill they think he has done it.

Testimony was received supporting the bill from ROBERT L. JONES, Missoula, EXHIBIT 1.

CHAD SMITH, School Board Association spoke in opposition. A copy of his testimony is EXHIBIT 2 of the minutes.

JESSE LONG, School Administrators of Montana, spoke in opposition. He felt the three year probationary period is needed to help preserve quality education. He felt it was an appropriate length of time for observation and evaluation of teachers. He said as a former administrator he can speak to the difficulty of dealing with an incompetent teacher in less than three years.

HAROLD WINAAS, Great Falls, School District 1, spoke in opposition. He said these rights the nontenured teacher is seeking can be negotiated in with a master agreement and it is not necessary for the law to do it. The reasons listed whereby a tenured teacher can be terminated do not include some needed ones like if a program is reduced or eliminated - like no one signs up for French. Also, insubordination to a superior or violation of regulations are not spoken to. He said the fact that a nontenured teacher must have a reason for dismissal does not bother him in Great Falls. On the binding arbitration he said they have said themselves their arbitrators need training. They are new in the business and need to develop a cadre of trained arbitrators.

WAYNE F. LERSBAK, Cascade, Supt. of Schools, spoke in opposition and a copy of his testimony is EXHIBIT 3.

Rep. Keedy, in closing, said the testimony makes him know he was naive when he drew up the bill. He said he half expected the MEA to come bolting out and the administrators to embrace it. He said he would like to touch on a couple of points. A lot has been said of the need of a probationary period and that is his objective too. He said he doesn't want that period of evaluation to stop once the teacher has acquired tenure. It should begin with the first day he is hired and continue throughout his career. If a teacher is not doing the job he should be fired. If the term "incompetency" is not what is needed maybe another term could be found. He said he looked at a number of court cases talking about incompetence and found there is a considerable body of case law on the books telling of incompetence. The idea of an arbitrator taking the decision away from local control - he said it could provide more local control. He questioned the criticism that the Board of Personnel Appeals is a stacked deck for the teachers. The arbitrators are not members of the Board of Personnel Appeals but names are included as potential arbitrators because of their interest in labor arbitration matters. He said it seems that it is often stacked the other way. He said this bill is not connected with the Board of Appeals in any way. The additional ground for termination mentioned by

Mr. Winass like the elimination of programs should be included in addition to the financial condition. He said he would be more than happy to work language in to cover that. We are all concerned about percentage education quality. This would give a reasonable amount of protection to all teachers - they all will be evaluated. He said he felt strongly about addressing this problem as he is concerned about high quality classroom education.

Questions were asked by the committee. Rep. Donaldson asked if there could be problems with the word "incompetence." Rep. Keedy said there is a considerable body of case law now on the books covering this term. He said if a better term could be found, fine.

Rep. O'Hara felt "immorality" should be reinserted to the list of reasons for dismissal. Rep. Keedy said one man's definition of what is moral does not agree with another man's. If there is a connection between that and classroom conduct there would be adequate reason for dismissal.

Rep. Anderson said he was a little sensitive at having this called a MEA bill as he had much to do with input into this bill early on. He said it deals with the tenure of special ed coop people. Special ed people work as a coop and are assigned to as many as 18 schools. Rep. Keedy said the coop person retains his or her tenure with the district of origin, regardless of whether he continues to work with that particular district. He felt that is a fouled up system. Rep. Anderson asked Mr. Smith how he saw this problem. Mr. Smith said the tenure continues with the district they are attached to. If he didn't have tenure before he would have what amounts to tenure rights with the coop. The coop teacher will not be treated any differently from the inception of their employment. Rep. Anderson said he still wasn't clear. He asked if due process would be with the board members of that particular coop. Board members normally are from a variety of different school districts.

Rep. O'Hara asked of the make up of the Board of Appeals. Rep. Keedy said five names would be reduced to one. The Board will submit a mixed bag of names. Management and labor would then strike the names they think are oriented either way and find one that represents a middle ground.

Chairman Eudaily said if everybody took the total part of time allowed it would add up about 55 days that could be spent. Plus the time the arbitrator took to schedule the hearing and decide. He said this is going to take way into summer. How many teachers will go through this and not be out looking for another job. Most teachers who get the pink slip will be looking for another job. Someone responded it would take 4-5-6 years for a case to come to full fruition under our present system. Chairman Eudaily questioned the final and binding arbitration. He said you would still be taken to court. Rep. Keedy said the decision of the arbitrator is final and binding. Chariman Eudaily asked if it still couldn't get into a court and take 6-8 years. Rep. Keedy thought it would substantially cut down on judicial action.

Rep. Hanson asked of the necessary evidence to prove incompetence. Chairman Eudaily said the interpretation would develop on a case by case basis. He felt the arbitrator might be lacking the sufficient knowledge of the subject matter. He thought the administrator's function is to evaluate the teacher's performance. Mr. Smith said incompetence is extremely difficult to prove as you are working with variable factors. Unless the teacher flagrantly goes against the rules you are dealing with intangibles.

HOUSE BILL 401

REPRESENTATIVE MICHAEL KEEDY, District 18, chief sponsor, said this bill wasn't introduced after 400 to make it look benign in comparison. He said this bill was a direct result of conversations with Mr. Buchanan in Kalispell. The bill gives the authority to fire a first year teacher for any reason or no reason. He said this bill was written in a spirit of good faith. He said the bill is a lot like HB 400 as it sets up the grounds for termination. He said it is wrong to lock a school system into a corner with declining enrollment which might make it necessary to get rid of tenured teachers.

DAVID SEXTON, Montana Education Association, said he felt HB 400 was a superior bill, however, this was a reasonable alternative if the other doesn't meet with approval.

J. BOARD, President of Montana Education Association, Helena, a proponent said a fact hasn't been mentioned as yet. A great many of the teachers terminated before the end of their third year are now teaching in other school districts. He said you find if a teacher has joined the MEA they will often be fired at the end of their 2nd or 3rd year which is not considered a badge of honor but for these teachers a letter is written not stating the reason for dismissing but a signal is placed in the letter saying if you have any questions please call. In essence it is a black ball system. He said in other regards there should be a clearer and more ethical manner to dismiss teachers. If a teacher is not fit to be a teacher he should be told early on.

CHAD SMITH, Montana School Board Association, said he opposed the bill as it appears before the committee. He said while it has some merit it needs extensive amending before it can be applied to the Montana school system. He said without the amendments they would be as opposed to this bill as the previous one. He passed out amendments and a copy is EXHIBIT 4 of the minutes. He said just allowing one year for probation is reversing the trend of what was considered advisable when they increased the probation time from 2 years to 3 years. He said it is not only teaching ability but the ability to work with a community. He said a specialist is certified differently than a teacher. One of the arguments to giving this kind of certification was that the specialist would not seek tenure. Immorality reasons will be restored - very important especially in smaller communities. Page 5, lines 9 and 10, this amendment would have the appeal go on as before and not use a binding arbitrator procedure. He felt the county superintendent would reflect the attitude of the people of the community as he was

elected by the community and not be somebody brought in by the state. He went through the rest of the amendments.

JESSE LONG, School Administrators of Montana, spoke in opposition. He said many, many administrators spend hours complying with the law and yet cannot dismiss individuals. He also felt that leaving out immorality as a reason for dismissal is not going to be in the best interest of the community.

HAROLD WINAAS, School District #1, Great Falls, spoke as an opponent. He said on page 2, lines 23 to 25, has a provision that a tenured teacher cannot be dismissed if a nontenured teacher is still employed. He asked if the committee wants seniority to be in the state law.

WAYNE LERSBAK, Supt. of Schools, Cascade, spoke next in opposition and a copy of his testimony is EXHIBIT 5 of the minutes.

Rep. Keedy in closing said the bill was an attempt to meet the School Board Association half way. He said he had had hopes they could get together. He hoped the committee could come up with something that was reasonable and balanced. He hoped they could look at these bills, particularly HB 400, from an objective standpoint and consider it on its merits. He said he would be glad to work with the committee on this.

Questions were asked by the committee.

Rep. Andreason said he would like to have a ruling from the staff researcher on the amendments. He questioned if the new amendments could be put under the title. He felt the amendments radically changed the whole idea of the bill. Chairman Eudaily said it could be done by eliminating part of the title.

Rep. Lory said eliminating section 1 would leave it as it is in the law. Mr. Smith said the law permits a teacher to teach until age 70.

Rep. Vincent questioned how much the county superintendent has to do with the larger districts. Mr. Smith said it isn't that the county superintendent operates the school but would reflect the attitude of that general community. Rep. Vincent said, "A county where there is an urban center it is pretty unlikely that the county superintendent would reflect the urban quality of that area. Mr. Smith said he would reflect its constituents as that is his duty. He is school oriented whereas an arbitrator is picked out of the blue.

Rep. Vincent said he has had no indication from his district as to whether they approve or disapprove. He said an administrator is going to go lengths to document the incompetence of a teacher. Procedures in his district allow a superintendent to observe a teacher. The mechanisms are there.

Rep. Dussault asked Mr. Lersbak to defend his statement. Mr. Lersbak said people of 65 should retire as they are unresponsive. Rep.

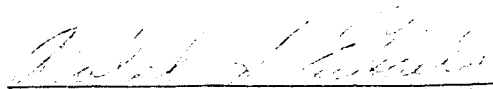
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Dussault said he had better document before he made statements like that before the committee again.

Meeting adjourned at 2:40 p.m.

Respectfully submitted,



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RALPH S. EUDAILY, Chairman

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Ex. 1

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TESTIMONY FOR HB 400

My name is Robert L. Jones and I am a certified secondary social studies teacher (grades 9-12) within the State of Montana. In August, 1978, I acquired my first teaching position in a small rural school about 20 miles outside of Missoula. The name of the school is Florence-Carlton High School and is located in Florence, Montana.

My first teaching year was full of the minor mistakes new first-year teachers make as they fit into their new positions. Overall though, I feel I did a very good job considering the obstacles I was faced with as I tried to "fit" into my new position.

This observation of mine was supported by good to excellent evaluations by the high school principal, Dean Neary, during the entire 1978-79 school year. Because of my teaching ability I was awarded another teaching contract for the 1979-80 school year.

I stepped into my second teaching year with a new confidence that I had overcome the minor mistakes made in my first year.

The year went very well. My teaching position was teaching basic American History to 7th graders, American Government to high school juniors and a World History class made up of all high school grades. My knowledge in history and government is very good as I have a political science degree and a History Major in education and truly enjoy teaching these subjects. My students, as I was told by a majority of them on several occasions, felt I did a fine job of presenting the material and received adequate knowledge in the subject areas we were studying. These statements were also supported by three periodic "pop in" evaluations conducted by the high school principal, which were all regarded as excellent evaluations.

In March 1980, through the teacher "grapevine" I was informed that I might be dismissed or nonrenewed for the 1980-81 school year. I was sincerely shocked as I had done a good job of teaching and had not heard negative comments from either my principal or superintendent Bill Willavise about my teaching ability. The months of March and April were extremely tense as I had not heard anything officially that I would be nonrenewed. I contacted my high school principal, Dean Neary, and asked him for a recommendation. He gave me a very good recommendation and said he had not heard anything about my being nonrenewed. He also told me he was without doubt going to recommend to the superintendent that I be renewed for the 1980-81 school year. At this point my fears dissolved and I went on with my business of teaching.

On April 14, 1980, I received a letter in which I was informed that I was not going to be renewed for the 1980-81 school year. Again, I was totally surprised and angered now as to why. I wrote the school board and asked for the detailed reasons for my dismissal shortly after April 14th.

I received a letter two weeks later in which I was told the reason for my dismissal was..."We can find a better teacher." I then approached my superintendent as to the reasons for my dismissal and he responded with the same quoted

words written in the school board's letter that they were looking for a better teacher. I then asked Mr. Willivise if he had ever seen me teach that year and he responded -- "No." I then asked him if he had told me of any problems I was having that year and he again responded -- "No." I then asked him if he had a positive recommendation from the high school principal, Dean Neary, who had observed me during the 1979-80 year, and he responded -- "Yes." At this point I was extremely angry inside as I was being told I was being fired for no apparent reason except for the "We can find a better teacher" response. I was facing a group of individuals who were afraid to give me a straight answer as to why I was fired and relied on methods to undercut the state legislature's intent in 1975 to give teachers "detailed reasons" for their dismissals so as to avoid court action.

Since June 1980, I have been unemployed and unable to find employment as a teacher near Missoula. (I have to find employment near Missoula due to the fact that my wife is also a teacher in Missoula elementary schools.) I have a wife, two children, and a large mortgage payment. Since June 1980, my life has been a period of insecurity, financial and mental. It has been very taxing on my family and me to survive with an unjustified record of being fired for no apparent reason. When I have looked for work the potential employer always asks, "Why were you fired at Florence," and I have to reply, "I really don't know." This gives my potential employer nervous feelings and I feel is the major reason why I have not been able to obtain employment elsewhere.

Presently, I have returned to the University of Montana to obtain a new degree in Business Administration (Management) and will graduate again in March 1982. As noted above, I am pursuing another field of study and employment in the private sector.

Ladies and gentlemen of the House Education Committee, I sincerely request that you place stiffer laws on the books to protect the rights of nontenured teachers. I do not ask that you make it impossible to replace a teacher once hired, only stop the reckless, political hiring and firing of nontenured teachers based on opinions, gossip, political beliefs, monetary constraints, or other non-related activities which nontenured teachers must put up with today. To be fired unjustly and upon a political whim, ladies and gentlemen, is an extremely demoralizing experience and again I ask you to protect your public employees from arbitrary, small minded individuals whose only interest is to keep their teachers under their thumbs both financially and emotionally.

Within this state you have a lot of fine teachers and you have a right to be proud of them. But if school boards and superintendents are allowed to continue to hire and fire based on "gut level" opinions instead of facts surrounding their teaching ability, you're going to find more and more nontenured teachers leaving the teaching field permanently and the State of Montana would lose one of its best natural resources -- GOOD TEACHERS.

Thank you.

Robert L. Jones



MEMORANDUM IN OPPOSITION TO HOUSE BILL NO. 400

House Bill No. 400 proposes to eliminate the three-year probationary period during which school districts can hire new teachers and observe their performance, fitness and competence before they acquire a status that requires dismissal upon cause only. The acquired status is called tenure and under Montana law (Section 20-4-203, M.C.A.), it is provided that a teacher attains tenure status when he or she enters into the fourth consecutive annual employment contract. Until such time, the teacher does not have tenure status and the school district has the opportunity to observe the teacher during this three-year probationary period to determine whether he or she is the best teacher that the district can obtain for the money available. If the board of trustees is not satisfied with the teacher, the board need not renew the teacher's contract for future school years. This process is necessary to allow the school district to observe the teacher's performance and acceptability to the community, and to routinely make a change if deemed advisable without attacking the teacher on a cause basis.

After tenure is obtained, a teacher can only be dismissed for cause, and the teacher may demand and receive reasons for termination and a hearing before the board of trustees. A tenure teacher may thereafter appeal to the County Superintendent of Schools, to the State Superintendent of Public Instruction, to the District Court and eventually all the way to the Montana Supreme Court, or possibly even into the Federal Courts. In Cookson -v- Lewistown School District No. 1, decided July 19, 1972 and

affirmed December 20, 1972 (No. 3062, Great Falls, Division. U. S. District Judge Russell E. Smith, District of Montana, pointed out the reasons for the probationary period:

"These three years are the testing years during which not only the teacher's merits be weighed but the school's need for a particular teacher assessed. It may be, and perhaps this reasoning underlies the Montana policy, that in the interests of creating a superior teaching staff a school board should be free during a testing period to let a teacher's contract expire without a hearing, without any cause personal to the teacher, and for no reason other than the board rightly or wrongly believes that ultimately it may be able to hire a better teacher."

Judge Smith had opportunity to review his decision in the Cookson case when he decided Branch -v- School District No. 7 of Ravalli County, (1977) and ruled that:

"In Cookson -v- Lewistown School District, 351 F.Supp. 983 (D.Mont.1972), this court determined that the then law of Montana permitted a school district to terminate the services of a nontenured teacher without cause. By 1975 Montana Laws ch. 142 the legislature amended R.C.M. 1947 §75-6105, and it is now required that the school district, if requested to do so, give the reasons for a failure to renew. However, there is no indication that the policy of permitting a school board to terminate a nontenured teacher without cause has changed."

House Bill No. 400 provides that every teacher once hired shall have, in effect, a tenure status in that Section 2 provides that the trustees can only terminate a teacher's services for cause and unless the financial condition of the school district requires a reduction in the number of teachers, the teacher can only be terminated by unfitness, incompetence or violation of adopted policies of the trustees. The result of this is that all teachers, in effect, attain instant tenure from the date they are first hired because every teacher's annual contract must be renewed

unless one of the grounds stated in Section 2 are proved.

A teacher would be given notice of the specific reasons for non-renewal and afforded opportunity for hearing before the trustees and then afforded the opportunity for further hearing before an arbitrator who has power to render a binding decision.

In effect, the need to establish cause for dismissal as proposed and the right to hearing tends to establish a right of entitlement to employment, thereby resulting in a property right for beginning teachers in the same manner that tenure teachers now attain a property right under the present law.

Federal District Judge Russell E. Smith reviewed the leading case on this point rendered by the U. S. Supreme Court, being Board of Regents -v- Roth, decided June 29, 1972, 40 U.S.L.W. 5079, 408 U.S. 564, and found that there is good reason why school districts in Montana let a non-tenure teacher's contract expire "without a hearing, without any cause personal to the teacher, and for no reason other than that the board rightly or wrongly believes that ultimately it may be able to hire a better teacher". The Roth case ruled that neither rights of property or liberty are involved in such non-renewal. It is to the advantage of both the teacher and the board that the probationary relationship be dissolved as routinely as possible to avoid any misinterpretation regarding the non-renewal. The intent of House Bill #400 is to destroy the three-year probationary period. This is the reason this bill is referred to as the "instant tenure bill".

The bill is particularly objectionable in that it is designed to take the power of non-renewal from the school trustees and turn it over to a binding arbitrator who will in effect decide in each case that is appealed whether or not the school trustees had just cause for not renewing the teacher's contract. The decision will be final in that it could only be appealed to the courts upon technical objection. The grounds for appeal would merely be routinely recited in every attempt to call for binding arbitration and the power of the courts to overturn a particular decision of the arbitrator would be severely limited. The bill is particularly objectionable for the reason that it provides that the arbitrator shall be selected from a list of five submitted by the Board of Personnel Appeals. School boards have found that the Board of Personnel Appeals is strongly oriented to the position of labor unions and are most concerned that all five arbitrators suggested will be inclined toward the teacher's position. The net result of this will be that an employee-oriented arbitrator's judgment will most likely replace the discretion which is now placed upon the school trustees by state law to determine who shall be renewed and who shall be dismissed.

The proposal for binding arbitration will, in effect, destroy the power of school boards at present to decide what teachers are adequately performing during the first three years and destroy the trustees' power to do something about it without an extensive adversary proceeding.

The bill has some additional objectionable features, one being that immorality will no longer be a valid consideration by the board for non-renewal or dismissal of teachers. Some liberal thinkers have taken the position that a teacher's immorality has nothing to do with the teacher's relationship with the students but the courts do not agree with this position. The leading case in this consideration was decided by the United States Federal District Court, entitled Sullivan -v- Meade County School District 387, F.Supp. 1237 (1975). In discussing teacher immorality, the court stated:

". . . the overriding question presented is whether the school board could proscribe this conduct, because of their belief that it would have an adverse effect upon the school children, thus making the plaintiff incompetent to teach in their school system.

. . .

". . . a school board may legitimately inquire into the character and integrity of its teachers. (cases cited) However, the conclusions that a school board draws from these inquiries must not be trivial or unrelated to the educational process or to working relationships within the educational institution. Thus, there must be a nexus between the conduct to be proscribed and the workings of the educational system. In seeking to justify dismissal in this case, the school board found that the plaintiff's conduct was an affront to the moral standards of the Union Center community, and that its continuance sets a bad example for the young impressionable people that she is teaching. This Court, in reviewing the proceedings of the school board, cannot say that the reasons for the plaintiff's discharge were unrelated to the educational process or the working relationship within the educational institution. In the present case the school board was reasonable in its belief that the plaintiffs' personal conduct would have an adverse effect upon the pupils she was teaching . . . It would seem reasonable for the school board to conclude that controversy between the plaintiff and the parents and the community members of this locale would make it difficult for Miss Sullivan to

maintain the proper educational setting in her classroom. Thus, this is not a case where a teacher is dismissed for past conduct which has no relationship to her fitness to teach, since the school board gave Miss Sullivan every opportunity to discontinue her living arrangement with Mr. Dragon, and complete the remainder of the 1974-1975 school year.

. . .

". . . Thus the plaintiff in this case was not discharged based upon past conduct which occurred before ample warning was given, but rather, upon the plaintiff's failure to discontinue her conduct after being given fair warning. . . ."

The bill is further objectionable for the reason that it would end the power of school trustees to dismiss a teacher after age 65 whose unfitness and incompetence has become apparent because of age. This power in the trustees has been provided by law for many years recognizing the fact that a teacher's performance should be carefully reviewed after the teacher has reached retirement age and is entitled to draw retirement benefits. It is extremely awkward to have to dismiss a teacher at age 65 for cause after the teacher has performed well for many years in the past. The provision in the bill destroying such power of the trustees is not required by federal law since federal law states only that an individual cannot be automatically dismissed at age 70. The present Montana law does not automatically discharge the teacher but allows the teacher to stay on until age 70 if the board is satisfied with performance. No teacher can be arbitrarily terminated for age alone anyway because state law administered by the Human Rights Commission forbids arbitrary discrimination

on the basis of age. The board would have to be prepared to show the functional reasons if its action to terminate were challenged.

This bill would destroy any effective teacher selection system and would seriously deteriorate the calibre of public school teaching staffs as the years progress. The continual strife between teachers and school trustees in the struggle for management of the school district should not be allowed to reduce the quality of education offered to Montana's children. Our public schools are created for our children, not for teachers.

The children are often the forgotten individuals in the battle. Montana's school teachers already have a tenure security system that virtually guarantees continued employment until age 65 when the fourth consecutive annual contract is signed. Montana's school trustees now respectfully ask for your help to retain enough flexibility of action to perform their most important function without impossible handicap. That function is the selection of the best teachers available.

House Bill No. 400 should be reported do not pass.

Respectfully submitted,

CHADWICK H. SMITH  
Licensed Lobbyist for  
MONTANA SCHOOL BOARDS ASSOCIATION, INC.  
P. O. Box 604  
Helena, Montana 59624

HB 400

Wayne F. Lersbak  
Superintendent of Schools  
Cascade, Montana

This proposed law does not allow for a probationary period of employment, at the beginning of such employment.

Eliminates mandatory age retirement requirements. The majority of individuals teaching at age 65 should retire for they have failed to be responsive to school age children's needs.

Allowing for binding arbitration is a gross violation of local control for boards of trustees. Many school districts in Montana have not negotiated away their right (by law) to manage and control their district.

Reasons for termination:

- (a) unfitness - a word (adverb) and definition not found in the dictionary. What would it mean - may mean the same as (b) incompetence
- (b) incompetence - lack of legal qualification or fitness (definition). It would be difficult to use this term for rationale for termination of a teacher as it only ties in with certification.
- (c & d) These are straight forward and clear cut.



HOUSE BILL NO. 401

MR. CHAIRMAN:

I move to amend House Bill No. 401 as follows:

1. On page 1, commencing at line 17 through page 2, line 11, by deleting all of Section 1 and by re-numbering the remaining sections to conform.

2. On page 2, following line 18 by inserting the following: "(c) immorality;" and by re-lettering the subsequent subsections to conform.

3. On page 4 in lines 9 and 10 by deleting the following: "or subsequently appeal to the superintendent of public instruction as provided in subsection (5),"

4. On page 4 in lines 12 and 13, by deleting the following: "(a) that the trustees' decision was procured by corruption or fraud;" and by re-lettering the subsequent subsections to conform.

5. On page 5 in line 18, by deleting the word "termination" and substituting in lieu thereof the word, "non-renewal".

6. On page 6 in line 9, by deleting the word, "terminate" and substituting in lieu thereof the words, "not renewed"

7. On page 6 in line 12, by deleting the word "termination" and substituting in lieu thereof the word, "non-renewal".

8. On page 6 in line 17, by deleting the word, "~~immarality,~~" and substituting in lieu thereof the following, "immorality,".

Ex. 5

OPPONENT

HB 401

Wayne F. Lersbak  
Superintendent of Schools  
Cascade, Montana

Eliminates mandatory age retirement requirements. The majority of individuals teaching at age 65 should retire for they have failed to be responsive to school age children's needs.

Reasons for termination:

- (a) unfitness - a word (adverb) and definition not found in the dictionary. What would it mean - may mean the same as (b) incompetence
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