

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By Chairman Schye, on February 1, 1989, at 3:00 p.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council Researcher

Announcements/Discussion: Chairman Schye announced that due to the weather no Executive Action would be taken and that written testimony would be accepted into the record.

Rep. Simpkins asked for a Committee Bill draft on (EXHIBIT 7.) to clarify the ruling on the Bible and other religious materials kept in libraries and used as reference.

Reps. Kilpatrick and Johnson both stated school libraries are allowed to contain these religious materials now under a Supreme Court Ruling and this would be unnecessary.

Chairman Schye stated that to his understanding the U.S. Supreme Court Law supercedes anything statewide and Andrea Merrill said he was correct. Chairman Schye then said Bibles were already allowed in schools as literary and historical documents.

Rep. Thomas then made the motion to draft a Committee Bill and a Roll Call Vote was taken. The motion FAILED with 9 yes, 10 no and a 2/3 majority needed for passage.

HEARING ON HOUSE BILL 344

Presentation and Opening Statement by Sponsor:

Rep. Jerry Nisbet, District 35, stated HB 344 authorizes the Montana School for the Deaf and Blind (MSDB) to admit students as day students who return to their homes after school each day. Rep. Nisbet said this is already being done in accordance with policy established by the Board of

Public Education. He said it also permits MSDB to offer consultative resources to parents of hearing and visually impaired students attending public schools. It is vital that intervention take place as early as possible for deaf and blind children in order to maximize opportunities for remediation of the developmental deficits resulting from these devastating sensory impairments. Federal legislation mandates educating handicapped children in the public schools wherever possible and the provision of consultative assistance to the public schools enables service to many of these children who could not otherwise succeed in the public school setting. Rep. Nisbet also stated that HB 344 recognizes the expanding roll of the school to that of a statewide resource. He continued by saying current law also limits applications for the position of superintendent to those who have taught for three or more years in a school for the deaf and establishes an arbitrary limit on the number of trips home residential students at MSDB can make for weekend visits at school expense. The proposed change makes the number of trips discretionary on the part of the Board of Public Education and retains the limitation placed on the superintendent's authority to grant variances and permits children to be sent home as many times as the Board deems appropriate given budget constraints.

Testifying Proponents and Who They Represent:

Claudette Morton, Executive Secretary, Board of Public Education

Proponent Testimony:

Claudette Morton stated that when the Board of Public Education started to examine the school and its policies of operation it was not in fact what the Legislature was directing and paying for. She said the school is a statewide resource in relation to outreach to infants and those in the public education system. Ms. Morton continued that the Board looked at the changing roll of the school and recognized the need for children to have time at home with their families.

Testifying Opponents and Who They Represent: None

Opponent Testimony: None

Questions From Committee Members: None

Closing by Sponsor: Rep. Nisbet thanked the committee and asked that HB 344 be given a positive recommendation.

HEARING ON HOUSE BILL 332

Presentation and Opening Statement by Sponsor:

Rep. Mary Ellen Connelly, District 8, stated that HB 332 revises school law to allow Community Colleges to do what

school boards do presently in local school districts. She said in dealing with the acquisition of property, the law does not currently allow Community Colleges to lease properties. HB 332 also allows up to 35% of the general fund budget to be carried over through November of the next fiscal year to pay general fund warrants and would thus allow Community Colleges to better meet their financial obligations.

Testifying Proponents and Who They Represent:

LeRoy Schramm, Chief Legal Counsel, Board of Regents,
(Also Representing various Montana Community Colleges)

Proponent Testimony:

LeRoy Schramm stated that all three Community Colleges support HB 332 and that Community Colleges are under the Board of Regents in the sense that the Regents approve budgets and curriculum. He said the Community Colleges also have a locally elected board that operates in the same manner as a locally elected school board, doing the hiring and running the school on a day to day basis. Mr. Schramm stated that Community Colleges have a different funding arrangement, get their state funds differently and charge tuition. He said they can't operate just like school districts so the legislature went through the school laws and picked out several sections that apply to Community Colleges. In closing his comments Mr. Schramm said the Board of Regents, Commissioner of Higher Education as well as the Community Colleges believe HB 332 is a sound approach to Community College statutes and urged the committee's support.

Testifying Opponents and Who They Represent: None

Opponent Testimony: None

Questions From Committee Members: Rep. Wallin asked Mr. Schramm what the cost would be to implement these new requirements. Mr. Schramm answered that HB 332 had no monetary impact and merely changes bookkeeping procedures. He said there would be bills to change the funding formula for the Community Colleges but HB 332 is not one of them.

Closing by Sponsor: Rep. Connelly in closing described HB 332 as a clean-up measure. She said the Board of Trustees in Flathead County reviews all school law every few years to see which are outdated and this piece of legislation is a result of that review. Rep. Connelly recommended a positive committee vote for HB 332.

Presentation and Opening Statement by Sponsor:

Rep. Ted Schye, District 18, Glasgow stated HB 217 mandates that school districts have a non-voting student on local school boards and was brought to him by a group of young people at the Farmer's Union Youth Camp who were interested in becoming involved in the education process. He said the students asked what the procedure would be to get their schools to allow them to be non-voting members of their local school boards. Rep. Schye stressed the fact these students would not be involved in any executive action but would have a seat on the board, providing important input dealing with student issues as needed.

Testifying Proponents and Who They Represent:

Jack Copps, Office of Public Instruction (OPI)
Toni Niklas, Montana Education Association (MEA)
Jesse Long, School Administrators of Montana (SAM)
Lerria Rogers, Student Representative, Board of Public Education
Phil Brooks, Chairman, Helena School Board

Proponent Testimony:

Jack Copps stated the OPI supports the concept of this legislation believing school boards are better served with a representative from the student body. In Helena for example, there has been one representative from each high school for the past two years on the board. The Helena School Board found that the student representatives are not only valuable as they interact with the board but provide valuable insight into important student issues. Mr. Copps stressed that in terms of amendments, HB 217 needs to clarify that the students are non-voting representatives having no access to Executive Session, especially those sessions dealing with matters of privacy, negotiation, or termination of staff. Mr. Copps said there are also concerns with the GPA set at 2.7 since there are students who do in fact work to their potential and capability and only earn a 2.0 GPA. He said average students should have access to this opportunity.

Toni Niklas, (EXHIBIT 1.)

Jesse Long stated that SAM has supported this concept for a number of years and sees it is a means by which the students can communicate at a public board meeting and have an opportunity to have a voice in their education.

Lerria Rogers, (EXHIBIT 2 and 3.)

Phil Brooks stated that the Helena School Board has had student representatives for the past two years and it has been a very successful program. He also shared concern for the amendment since the Helena School Board does exclude student

representatives from Executive Sessions. Mr. Brooks also expressed concern with the 2.7 GPA and said if there were to be a minimum the committee should carefully consider a 2.0 GPA.

Testifying Opponents and Who They Represent: None

Opponent Testimony: None

Questions From Committee Members: Rep. Simpkins asked Rep. Schye if the students referred to had gone through their student organizations such as student council. Rep. Schye responded that many have but he could not give an exact number. Rep. Simpkins then stated he assumed most high schools have student governments and that would be the way to go about getting a representative on the board.

Rep. Zook asked Rep. Schye if he would be opposed to an amendment having the student representative on the board represented by the student council or at least chosen by the student council and eliminate all reference to a GPA. Rep. Schye responded that he opposed the 2.7 GPA and felt a student with passing grades in all subjects should be eligible to participate. He also said he would rather see an election independent from student council to choose the student representative. Rep. Zook stated he was afraid that in an election situation in a high school setting it would be quite simply a popularity contest.

Rep. Spring asked Rep. Schye if he felt there would be a problem with students becoming disinterested and not attending the board meetings. Rep. Schye answered that if a student took the time to run for election in most cases he or she would continue.

Rep. Simpkins asked Bruce Moerer if there was any reason why school boards are hesitant to let students on the boards and if administrators have a problem with this concept. Mr. Moerer replied he did not know how many districts had refused nor what there reasons were for refusal.

Closing by Sponsor: Rep. Schye said this legislation has a great deal of merit and there are aspects to clarify on GPA standards and the process of election. Rep. Schye thanked the committee for the hearing and recommended a positive committee report for HB 217.

HEARING ON HOUSE BILL 311

Presentation and Opening Statement by Sponsor:

Rep. Ted Schye, District 18, Glasgow, stated that he drafted this legislation very early after his community went through a strike this year. He said he had people including school board members, community leaders, teachers and business

people asking what could be done to avert a strike in the future. Rep. Schye stated strikes dealing with children are devastating and wounds to the community may never heal. He stressed the fact that binding arbitration can work and said the firefighters have used it since 1983 very well. He continued that with arbitration if the two units cannot reach an agreement a third party arbitrator would be appointed. The arbitrator has the power to subpoena and hear arguments, set deadlines and come up with an opinion that is binding to both parties. Rep. Schye said without a doubt there would be some loss of local control however, the positive aspects of arbitration would outweigh any negatives.

Testifying Proponents and Who They Represent:

Phil Campbell, Montana Education Association (MEA)
J. Henry Badt, Montana Association of County School
Superintendents (MACSS)

Proponent Testimony:

Phil Campbell, (EXHIBITS 4 and 5.)

J. Henry Badt stated that strikes tear the community apart as well as the school system and it takes years to recover. He said there is an overwhelming frustration level during and after strike and also usually years of frustration on the part of teachers before the point of making the decision to strike. He continued that teachers are professionals and have the best interests of students at heart. He said if teachers had this alternative method of settling disputes available it would result in a much smoother educational program for all concerned.

Testifying Opponents and Who They Represent:

Bruce Moerer, Montana School Boards Association (MSBA)
Jim McGarvey, Montana Federation of Teachers (MFT)
Chip Erdmann, Local Control

Don Judge, Montana State AFL-CIO

Opponent Testimony:

Bruce Moerer, stated that HB 311 hits right at the heart of who runs the school districts and has been defeated before. He stressed the fact that there have basically only been five strikes since the right to strike and organize began in 1975 and that school boards don't take strikes lightly and understand the problems caused by them. The problem with interest arbitration is that you place the fiscal control of the district into the hands of an arbitrator while the trustees are elected specifically to manage the affairs of

the district. He continued the representative form of governing the district is the best method and Article 10, Section 8 of the Constitution grants local supervision and control of districts to the trustees not an arbitrator. If taxpayers don't like what the school board does they can register their dissatisfaction at the polls. He said two year contracts take away some flexibility in negotiations and don't allow for the changes in funding problems.

Mr. Moerer also expressed concerns with a packaged offer and whether you accept the last final packaged offer of one side or the other. He said the firefighters take the last offer issue by issue of each party and don't look at the entire package so the arbitrator can go down the list issue by issue. In general he continued, labor struggles are most indicative of fiscal problems particularly in Montana today and arbitrators can't resolve fiscal problems.

In closing his comments Mr. Moerer stated equity at the bargaining table requires a balancing act on the part of teachers as to whether they want to strike and a balancing act on the part of trustees whether or not they want to submit the district to that strike. He said the current system works well and is the best compromise at the present time.

Jim McGarvey presented testimony from Terry Minow of the Montana Federation of Teachers, (EXHIBIT 6.).

Chip Erdmann stated that Montana has had Collective Bargaining for teachers since 1975 and it has worked. He said HB 311 asks for a change in this workable system, a change not bargained for but one mandated by the Legislature. He stated that Montana has not had many problems with strikes and when a strike is approached ultimately in the overwhelming majority of cases problems are settled. Mr. Erdmann also said that two year contracts would be very difficult in Montana given the economy and that HB 311 takes equity away from the bargaining table.

Don Judge stated that nobody likes strikes - teachers, students, trustees or taxpayers and that 97% of all contracts are settled without a strike. He said nationally the process works and works well. He continued that Collective Bargaining Units and their representatives are determined by the feelings of a majority of the employees in the bargaining unit and not at all times do the employees want to remain with a specific bargaining representative. If those employees want to select another bargaining agent under law they can't do so until the window of opportunity comes open in their contracts. He continued they cannot file a petition for decertification or recertification into another Collective Bargaining Unit more than 90 days prior to or less than 60 days prior to the expiration date of a

collective bargaining agreement. Mr. Judge said locking employees into a two year contract would be locking employees into a mandated two year Collective Bargaining Unit with no chance to pull out on their current representation no matter what process of bargaining has taken place or no matter what the level of satisfaction with that representative is. He closed his remarks by saying HB 311 makes the collective bargaining process much more difficult and makes it more difficult for teachers to participate fully in the process.

Questions From Committee Members: Rep. Spring asked Mr. Campbell how a neutral arbitrator would be selected. Mr. Campbell responded that the Board of Personnel Appeals issues a list of five names to the parties of people who serve as arbitrators. Each party strikes two names and the remaining of the original five would be the arbitrator.

Rep. Eudaily asked Mr. Campbell if he would continued to support HB 311 if there was bargaining on each issue, elimination of the first part of Section 8 and total elimination of Section 9 and he responded yes.

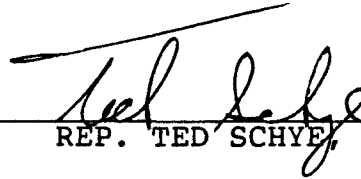
Rep. Zook asked Mr. Campbell if he agreed that comparing the firefighters' situation and teachers was like comparing apples and oranges. Mr. Campbell answered in reference to the critical nature of the work and emergency situations it was quite different.

Rep. Cocchiarella asked Mr. Campbell how MEA came to the decision to support this piece of legislation and Mr. Campbell said members of the MEA come together annually to develop a legislative program and also set priorities about the legislative program through the Delegate Assembly of almost 400 delegates. He said the Delegate Assembly adopted the decision to support HB 311 and placed it high on the list of priorities for their legislative program.

Closing by Sponsor: Rep. Schye stated that he believed even one strike where students, teachers and business people are at odds is one strike too many. He said the welfare of our most prized possessions, our children, is of the utmost importance. He continued that the strike in Glasgow was over insurance, not wages and that both sides were backed into a corner and couldn't get out. Rep. Schye said he believed if they would have had arbitration a strike could have been averted. In addressing the local control argument, he said the school boards don't negotiate personally anyway, but instead have their association lawyers and negotiators doing the negotiations. In closing his remarks Rep. Schye thanked the committee and asked for a positive vote on HB 311.

ADJOURNMENT

Adjournment at 6:30 p.m.

A handwritten signature in cursive script, appearing to read "Ted Schye", is written over a horizontal line.

REP. TED SCHYE, Chairman

TS/dlm

2704.min

DAILY ROLL CALL

EDUCATION & CULTURAL RESOURCES

COMMITTEE

DATE February 1, 1989

NAME	PRESENT	ABSENT	EXCUSED
Rep. Ted Schye, Chairman	✓		
Rep. Fritz Daily, Vice-Chairman	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Paula Darko	✓		
Rep. Ervin Davis	✓		
Rep. Ralph Eudaily	✓		
Rep. Floyd Gervais	✓		
Rep. Bill Glaser	✓		
Rep. Dan Harrington	✓		
Rep. John Johnson	✓		
Rep. Tom Kilpatrick	✓		
Rep. Richard Nelson	✓		
Rep. John Phillips	✓		
Rep. Richard Simpkins	✓		
Rep. Wilbur Spring, Jr.	✓		
Rep. Barry "Spook" Stang	✓		
Rep. Fred Thomas	✓		
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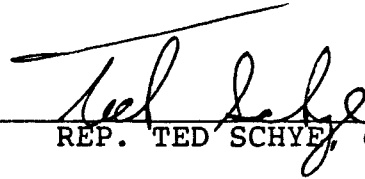
HOUSE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

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Page 9 of 9

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Rep. Barry "Spook" Stang	✓		
Rep. Fred Thomas	✓		
Rep. Norm Wallin	✓		
Rep. Diana Wyatt	✓		
Rep. Tom Zook	✓		

Handwritten: Toni Niklas 2/1/89

Mr. Chairman, members of the committee,

I am Toni Niklas. I am a graduate of Helena High School and currently a sophomore at the University of Montana. I am representing myself as well as the Montana Education Association when I support this bill.

This Legislation provides for a non-voting student member to sit on High School Boards. I cannot think of a better way to improve communication between the administration and students!!

Too many times, you, as lawmakers, and, in effect, administrators, and I, as a student, hear stories where both sides are accused of acting in their own interest.

"The board passed that rule.... they don't even care about us kids," and, "those kids don't know what's good for them!" Scenarios like these stem from a lack of communication between the two bodies. Putting a student on the board can provide a great bridge to this gap.

A student can bring to the board a perspective that may presently be lacking or overlooked. They may offer insights and suggestions that may never occur in a board made of adults alone. On the other side, the board members may find it much easier to justify a decision to students if he/she has already had to explain it to the student member.

I mentioned that I graduated from Helena High. It is a district that has allowed for student representation for at least two years. In speaking with the Administration office, they feel that student input has been quite helpful and they have had no problems. The students conduct themselves very professionally and have never violated their position of trust. I know from experience, that having a student on the board makes it easier for other students and student groups to approach the board.

In anticipation of questions that you may have regarding specific guidelines, etc., I took the liberty of presenting you with Helena's format. It outlines provisions for this particular district and explains how one must go about being elected, as well as what is expected of the position. Please look it over as it may also answer questions concerning closed sessions, and areas of sensitivity.

In sum, then, I urge you to give HB217 a DO PASS for two reasons. First, it is a positive move in this session with so many negatives, and, second, and most importantly, it will provide greater communication and understanding between the board and the students, thereby creating a better education system.

STUDENT REPRESENTATIVE
TO THE SCHOOL BOARD--HELENA SCHOOL DISTRICT NO. 1 **

PURPOSES

1. To help the Board of Education gain a greater insight into student activities, program, and needs.
2. To encourage more student involvement in school district governance activities.
3. To provide a greater awareness and understanding of mutual issues between school staff and students.
4. To provide for the active involvement of students in their education and to foster a spirit of inquiry whereby students may freely express their views and listen to and evaluate the opinions of others.

GUIDELINES

1. The Helena School District No. 1 Board of Education shall appoint two nonvoting student members on the Board.
2. One student representative will be selected from Helena High School, one from Capital High School.
3. Students will serve in an advisory, nonvoting capacity. As such, they will not be able to make motions, but will be encouraged to introduce topics and comment on all issues.
4. Students will be eligible to serve as student representatives during their junior or senior year. They will be selected by May 1 of their sophomore or junior year.
5. The term of student board members will begin the first board meeting in June and end with the last meeting in May of the following year.
6. Aspiring candidates for student representatives must first have a petition signed by 12% of their respective student bodies. Twenty-five percent of the signatures must be those of freshmen, 25% must be those of sophomores, 25% must be those of juniors, and 25% must be those of seniors.
7. Candidates will receive an application form when the petition is submitted to a student council advisor. The application and a letter of recommendation will be due one week from the day the form is received. The letter of recommendation cannot be written by a building principal or student council advisor.

8. The applications will be screened by a local building committee consisting of the four student body officers, the principal, and the student council advisor. The committee will choose a maximum of three students per high school for interview by a School Board Committee.
9. The board interview committee will consist of three school board members and the two existing student representatives. (The first year--1987--the two high school student body presidents shall serve on the interview committee.)
10. A representative from each school shall be appointed by the Board of Trustees from the finalists.
11. Students who apply for the positions of student representatives need not be members of their respective student councils; once selected, representatives will be appointed as ex-officio student council members.
12. Student representatives will represent all School District No. 1 students (K-12) in their respective attendance areas. They will be expected to create a vehicle for communications with all grade levels.
13. Student representatives will sit at the board table.
14. Student representatives will be eligible to serve on board committees.
15. Student representatives' comments will be recorded in the minutes just as other board members are recorded.
16. Student representatives will be reimbursed for authorized expenses.
17. Student representatives will not attend executive sessions (Open Meeting Laws).
18. Attendance at all official board functions will be required.
19. The guidelines for student representatives will be reviewed annually by the school committees and the school board.

**** Purposes and Guidelines approved by Board Action 10/13/87.**



Board of Public Education

FEBRUARY 1, 1989

33 South Last Chance Gulch
Helena, Montana 59620-0601
(406) 444-6576

EXHIBIT # 3
DATE 2-1-89
HB 217

Claudette Morton
Executive Secretary

TO: Members of House Education and Cultural Resources

FROM: Lerria Rogers
Student Representative
Board of Public Education

RE: Testimony for House Bill 217

My name is Lerria Rogers and I am currently the Student Representative on the Montana Board of Public Education. I am speaking today on behalf of the Board in support of House Bill #217.

The Board has had a student representative since 1977 and the position has worked out very well. The student has been able to provide an insight on how students in Montana feel about their education. This has been very helpful to Board members in making decisions. The Board supported HJR 26, which was passed by the Legislature in 1985. HJR 26 urged the Trustees of each school district to appoint a non-voting student to represent the school student body.

When trustees of a school district adopt a policy for a student representative election, the prime consideration should be stressed that the student is aware of what he/she is getting into. There is a lot of responsibility involved in being a student representative. The student must attend meetings that are often long and sometimes hard to understand. We want to make sure that the student chosen for this position is the one most interested and most qualified.

I would like to offer one simple amendment to this bill. Instead of having an election in September, it should be done in May. This would allow time for the new student representative to work with the previous representative. Under the present proposal of election in September, the newly elected representative would not have the benefit of conferring with the previous representative should he/she be a graduating senior, on duties and performances of the office.

I highly encourage everyone to support this bill. As we all know, students talk to students. A student representative is an easy person for students to learn from, and to express what they feel is positive or negative about their education. The student representative can bring these feelings back to the Board. I cannot think of better information for the Board to hear than the feelings of the people who are working and learning from the system everyday.

Thank you.



EXHIBIT # 4
DATE 2-1-89
HB 311

Montana Education Association

1232 East Sixth Avenue • Helena, Montana 59601 • 406-442-4250

TESTIMONY - HOUSE BILL 311

THE MONTANA EDUCATION ASSOCIATION SUPPORTS HB-311.

The purpose of this bill is to resolve school district contract disputes in a peaceful manner through "last best offer" arbitration. The adoption of this bill would mean that whenever there is a bargaining dispute, and the mediation process proves unsuccessful, the parties would present their final position to an arbitrator in the form of a last best offer. The parties would have the opportunity to present arguments on behalf of their position before the arbitrator at a hearing. After the hearing the arbitrator will choose the position of one party or the other. The parties would be bound by the arbitrator's decision.

The Montana Education Association is a strong advocate for the collective bargaining process and a strong advocate for the right of all public employees to use the process. The Montana Education Association has also been a strong advocate for and a defender of the right to engage in concerted activity including the right to strike. We have taken this stand because we believe that the right to strike is the balancing factor that maintains equity in the bargaining process. We would oppose any attempt to unbalance the equity needed for the process to work. However, we feel that a viable alternative exist that will maintain the equity at the bargaining table, maintain the integrity of the bargaining process, and allow for a peaceful resolution of differences. That alternative is last best offer arbitration. Last best offer arbitration substitutes reason and equity for force and disruption.

Think for a minute, if you will, about the psychology of last best offer arbitration. The parties would have to more reasonable in their demands at the bargaining table knowing that the position they are taking will be subject to review by an impartial person who will choose the more reasonable position if a dispute should arise. There will a great deal of pressure on both parties to reach agreement on their own rather than gamble that the other parties position might be chosen verbatim.

In factfinding and/or regular arbitration, the arbitrator can fashion a remedy in any manner that is fair and just given the circumstances of the hearing. That may mean a decision that is a little from both sides and some from the middle. But such is not the case in last best offer arbitration. The arbitrator must choose either the total offer of one party or the other. The arbitrator may not divide the issues or make compromises on the issues. With this in mind, the parties are force to bargain in good faith upon reasonable proposal and make every effort to reach an agreement on their own in order to avoid the arbitration process.

Some will tell you that the process of arbitration will not work and that the parties will not negotiate but rather run everything through arbitration in hopes of gaining an issue through arbitration that they couldn't bargaining at the table. The facts show this is not the case.

In the state of Iowa, only 3.6% of all the teacher contracts have gone to arbitration over the past nine years. Iowa has over 370 contracts. Similar statistics are found in Connecticut and in Minnesota where they have last best offer arbitration.

Here in Montana, the Firefighters have had last best offer arbitration since 1979 and only a few have gone to arbitration. The facts show that the process of last best offer arbitration works and is a viable alternative to strikes.

I would anticipate that a few people will stand in opposition to this bill and I would also anticipate a few of their arguments.

First, I know there is some concern on part of the university system about lines 6 & 7 on page 2. The intent of this bill is to apply only to the public schools (K-12) and not to the university system. This part should be deleted.

The school boards will tell you that this bill will eliminate local control. This is the standard line of the school boards. This is not the real issue but used only to confuse the real issue. The school boards know that in most cases the balance of power is tilted in their favor when it comes to bargaining. They would prefer to keep the strike over an approach that would provide more balance to the process. They know that most school employees won't strike because of their dedication to the job and to kids.

There have been very few school strikes in Montana. Most of the contracts get settled short of striking. However, there are many times when the employees are prepared to go on strike and this is what causes the settlements. But the preparation for a strike can and does cause the same kind of unnecessary polarization within a community as an actual strike. The employees are affected, the students are affected, parents are affected, and the community as a whole is affected - all adversely. All of this seems a waste of time and energy when a better way exists - arbitration.

You will hear opposition from at least one labor organization. They will tell you that the process is not broken so don't try to fix it. They will say that this is something that should be bargained. While the current law does allow for arbitration, it requires that both parties must agree. This has happened only once in Montana. I suggest that in order to bargain this provision it would take a strike to get it - which doesn't make a lot of sense.

I would like for the committee to know that the Montana Education Association has over 7,500 active member in this state and we represent well over 9,000 school employees at the bargaining table in this state. Our membership overwhelmingly support this concept. I would submit to you that the overwhelming majority of teachers support the concept in this bill.

The committee should also notice which labor organizations are not here today. The largest public employee union, which also represents school employees, is not here today in opposition to this bill because they know that the school employees they represent feel the same way as the employees that we represent. I suggest they have a political problem and could not come in to support this bill.

I don't mind telling you that I feel a little strange standing here today asking this committee to prohibit our right to strike, which is why the other labor organizations are oppose to this bill. But we are convinced that this bill will provide the needed balance to the bargaining process and provide for peaceful resolution to bargaining disputes.

We strongly urge a favorable recommendation to HB-311.

Thank you.

INTEREST ARBITRATION

Sheldon N. Sandler
Young, Conaway, Stargatt & Taylor
Wilmington, Delaware

NATURE OF INTEREST ARBITRATION

Concerns Making Of Contract, Not Interpreting It.

Legislative, Not Judicial, Process - What Should The
Conditions Of Employment Be?

At Least Twenty States Authorize It. Little Expansion In
Last Ten Years.

Most States Use It For Essential Service Employees.

Some Statutes More General --
E.g., Wisconsin, Iowa, Connecticut.

FORMS OF INTEREST ARBITRATION

Conventional Arbitration - Arbitrator decides the issues
based on statutory criteria. E.g., New York City, New
York State, Nebraska.

Issue By Issue Final Offer - Arbitrator selects the
position of one or the other side on each issue. E.g.,
Connecticut, Illinois.

Total Package Final Offer - Arbitrator selects the entire
package of one side or the other. E.g., Wisconsin Munici-
pal Arbitration Law. In this variant, the discretion of
the arbitrator is most narrowly circumscribed.

Hybrids -

New Jersey -- Non-economic items are issue-by-issue.
All economics issues are treated as one package.

Michigan Police and Firefighters -- issue-by-issue on
economic issues and conventional arbitration on
non-economic issues.

Iowa -- Three choices. In addition to the position of each side, the arbitrator can also select the factfinder's recommendation on each issue.

Rhode Island -- Advisory decision on economic issues, binding on non-economic.

PROCEDURE

Frequently Tri-Partite Panel -- A neutral arbitrator and a representative of each party on the panel.

Neutral has continuing opportunity to engage in mediation. Especially important in final offer.

Suggested Changes In Trial-Type Model.

Prehearing Statement -- Aids in consideration of complex issues in a shorter time.

Discovery limited.

Advance agreement on time for case-in-chief and rebuttal.

Each side presents its position through a narrative statement rather than questions and answers.

Principal witnesses explain the proposals and contract demands.

No cross examination except for clarification.

Rebuttal instead of cross-examination.

Rules of evidence not strictly followed.

Post-Hearing Briefs.

STANDARDS FOR DECISION

Michigan Police and Fire Law -- very comprehensive.

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.

- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services with other employees generally: (i) In public employment in comparable communities; (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.
- (h) Such other factors, not defined in the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment. MICH. COMP. LAWS. ANN. § 423-239(a-h).

New York's Taylor Law -- must consider peculiarities of trade or profession, such as hazards of employment, physical qualifications, educational qualifications, mental qualifications, and job training and skills. N.Y. CIV. SERV. LAW, § 209.4(c)(v)c.

Some Statutes Prescribe Time Limits For Decision. E.g., The Postal Arbitration Act requires that the proceeding be completed in forty-five (45) days. 39 U.S.C. § 1207(c)(2).

Comparability Most Important.

What is like work? Who is a comparable employee?

Scope Of Bargaining Must Be Considered.

Are matters sought to be arbitrated within the authorized scope of bargaining?

Pensions sometimes excluded from consideration because not negotiable.

Employer's Ability To Pay.

Unions should not be trapped into treating it as a threshold issue.

Too much emphasis placed on finding hidden funds.

Employer Approaches --

Municipal Disaster Approach

Zero/Limited Funds Approach

Comparability -- not "we can't pay" but "we shouldn't."

Arbitrators tend to regard ability to pay as a secondary issue.

How is it connected with the need to enact legislation?

SCOPE OF REVIEW

Courts frequently require a detailed analysis of the reasons for the decision, making reference to the statutory criteria.

Courts reviewing interest arbitration awards frequently apply a substantial evidence standard, a broader standard than is used in reviewing grievance arbitration awards.

Sometimes same standard as grievance arbitration.

FUTURE OF INTEREST ARBITRATION

Many States Remain Reluctant To Relinquish Ultimate Unilateral Decision Making Power.

Same Argument Was Made Against Grievance Arbitration --

"[N]o outsider" should be "allowed to dictate a grievance decision." Slichter, Healey and Livernash, THE IMPACT OF COLLECTIVE BARGAINING ON MANAGEMENT (1960), pp. 749-50.

Questions About Legality Arising Less Frequently.

Empirical Studies Show It Reduces Strikes And Has No Pernicious Impact On The Bargaining Process.

Pendulum May Be Moving Toward Increased Use, As Shortages Of Public Sector Employees Once Again Makes Strikes More Likely And Effective.

<u>State</u>	<u>Covered Employees</u>	<u>Form Of Arbitration</u>
Alaska	Law enforcement, Firefighters, Prison, Hospital	Conventional
Connecticut	Municipal Employees and Teachers	Final-offer by issue
Hawaii	Firefighters, Police	Final-offer
Illinois	Police and Firefighters	Final-offer by issue
Iowa	All	Final-offer by issue (fact-finder's recommendation may be selected)
Maine	State	Conventional, not binding on wages
Michigan	Police and Firefighters	Final-offer on economic issues, conventional on others
Minnesota	Police and Firefighters exceptions	Conventional or final-offer
Nebraska	All	Conventional
Nevada	Firefighters	Final-offer
New Jersey	Police, Firefighters, Prison	Final-offer or conventional
New York	Police and Firefighters	Conventional
Ohio	Law Enforcement, Firefighters, Prison, some Medical	Final-offer by issue
Oregon	Police, Firefighters, Hospital, Prison	Conventional
Pennsylvania	Police and Firefighters	Conventional
Rhode Island	State, Teachers, Municipal	Conventional, not binding on wages
	Police and Firefighters	Conventional
Vermont	State	Conventional

Washington	Police and Firefighters	Conventional
Wisconsin	Police, Firefighters, Municipal, and Teachers	Final-offer
Wyoming	Firefighters	Conventional

(As reported in the Journal of Economic Literature, Vol. XXIV at 72 (March 1986))



MONTANA FEDERATION OF TEACHERS

AMERICAN FEDERATION OF TEACHERS, AFL-CIO

EXHIBIT #6

DATE 2-1-89

HB 311



Box 1246

Helena, Montana 59624

(406) 442-2123

Jim McGarvey
President

February 1, 1989

To: House Education Committee
Montana State Legislature

Re: House Bill 311

Dear Members of the House Education Committee:

My name is Terry Minow. I am a representative of the Montana Federation of Teachers, AFT, AFL-CIO. We would like to express our opposition to House Bill 311. This bill would prohibit strikes of school district employees and institute binding arbitration of contract disputes. It would also mandate two year collective bargaining agreements.

Binding arbitration is allowed under current law and, if it is in the best interest of both the union and the school board, nothing prevents the two parties from coming to that agreement.

The right to strike is the most fundamental right of employees, and the record shows that school district employees and their unions have acted responsibly in exercising that right.

HB 311 would impose additional costs on school districts in the form of arbitration fees and increase the likelihood of additional litigation costs if the decision of the arbitrator is challenged.

We also object to being required to sign two year collective bargaining agreements. This is another issue that is best left to local unions and the school boards with which they collectively bargain.

In summary, HB 311, interferes with a collective bargaining system that is working well in Montana. It takes the final decision-making authority away from the parties most intimately involved with the collective bargaining process. It adds additional costs to the collective bargaining process and raises the probability of increased litigation. Please give HB 311 a Do Not Pass recommendation.

Thank you for your consideration.

Sincerely,

Terry Lynn Minow
Legislative Coordinator
Montana Federation of Teachers
AFT, AFL-CIO

Democracy in Education — Education for Democracy

EXHIBIT

#7

DATE

2-1-89

HB 646 (introduced 2/10)

20-7-112. Sectarian publications, ~~prohibited and~~ prayer permitted, and prohibition on instruction. No publication of a sectarian or denominational character shall be used or distributed in any school ~~or be included in the school library~~. Instruction ~~shall~~ may not be given in sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer. "Publication of a sectarian character," for purposes of this section, ~~shall~~ may not be considered to include the Bible, the Koran, or any other publication with historical and literary value.

NEW SECTION. Section 2. Severability. If a part of (this act) is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of (this act) is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

VISITORS' REGISTER

EDUCATION & CULTURAL RESOURCES COMMITTEEBILL NO. 344DATE February 1, 1989SPONSOR Nisbet

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Claudette Morton	Board of Public Ed	✓	
Bernice Rogers	Board		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

EDUCATION & CULTURAL RESOURCES COMMITTEEBILL NO. 332DATE February 1, 1989SPONSOR Connelly

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>J. R. H. Schuman</i>	<i>Board of Regents</i>	<i>✓</i>	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

EDUCATION & CULTURAL RESOURCES COMMITTEEBILL NO. 217DATE February 1, 1989SPONSOR Schye

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Clayton M. Morton	Board of Public Ed	✓	
J. Henry Bell	MAKSS	✓	
Toni Niklas	MEA	✓	
Jesse W. Long	SAM	✓	
Herria Rogers	Board of Public Ed	✓	
Holly Kalczyk	OPI	✓	
Ph. J. Brooks	Helena School Board	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

EDUCATION & CULTURAL RESOURCES COMMITTEE

BILL NO. 311

DATE February 1, 1989

SPONSOR Schye

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>[Signature]</i>	MACSS	✓	
Bruce W. Moerer	MSBA		✓
<i>[Signature]</i>	MT STATE AFL-CIO		✓
Ioni Niklas	NFA	✓	
Jim McGarvey	Mont Fed Teachers		✓
Chap Edmann	Local Control		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

EDUCATION AND CULTURAL RESOURCES

COMMITTEE

DATE 2-1-89

BILL NO. _____

NUMBER #1

NAME	AYE	NAY
Rep. Ted Schye, Chairman		✓
Rep. Fritz Daily, Vice-Chairman		✓
Rep. Vicki Cocchiarella		✓
Rep. Paula Darko		✓
Rep. Ervin Davis		✓
Rep. Ralph Eudaily	✓	
Rep. Floyd Gervais	✓	
Rep. Bill Glaser		
Rep. Dan Harrington		✓
Rep. John Johnson		✓
Rep. Tom Kilpatrick		✓
Rep. Richard Nelson	✓	
Rep. John Phillips	✓	
Rep. Richard Simpkins	✓	
Rep. Wilbur Spring, Jr.	✓	
Rep. Barry "Spook" Stang		✓
Rep. Fred Thomas	✓	
Rep. Norm Wallin	✓	
Rep. Diana Wyatt		✓
Rep. Tom Zook	✓	

TALLY

9 10

Rianne McKittuck
Secretary

Ted Schye
Chairman

MOTION: Motion by Rep. Thomas to draft
Committee Bill on Rep Simpkins
Exhibit 7.

FAILED 9 yes, 10 no - needed
2/3 majority