

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

FREE CONFERENCE COMMITTEE ON SENATE BILL 15

Call to Order: By Senator Chet Blaylock, Chair, on April 14, 1993, at 12:00 noon.

ROLL CALL

Members Present:

Sen. Chet Blaylock (D), Chairman
Sen. Bob Brown (R)
Rep. Jim Rice (R)
Rep. Randy Vogel (R)
Rep. Linda Nelson (D)

Members Excused:

Sen. Steve Doherty (D)

Members Absent:

None.

Staff Present:

Laura Turman, Committee Secretary
John MacMaster, Legislative Council

Discussion:

Rep. Rice said there was concern that the language in SB 15 was not fair regarding the election of remedies.

Sen. Blaylock said the language (regarding binding arbitration) was clear that "it could not go two ways."

Rep. Rice said he had written the last part, and he thought it was good.

Rep. Nelson asked Sen. Blaylock what language was being discussed. Sen. Blaylock said they were talking about the stricken language which he thought it was good language.

Rep. Rice asked Bruce Moerer what his objections to that language were. Bruce Moerer, Montana School Board Association, said the election was limited to the term "grievance or disputed interpretation of the agreement". He said their concern includes terminations, or progressive discipline parts of a contract. After a party files a grievance, it goes to arbitration.

Sen. Blaylock asked Mr. Moerer if the disputed contract would

immediately go to arbitration. Mr. Moerer said that was an assumption. Under this language, an individual could still file an appeal with the county superintendent based on lack of cause for termination under statutory provisions. His concern is that claims could be changed, and there could be several claims made for one set of circumstances. For example, a claim could be made to the Human Rights Commission that the termination was made on the basis of discrimination. Mr. Moerer said this has always been a problem with the election of remedies, how to truly include everything into the grievance.

Rep. Rice said the law regarding grievances includes jurisdictional statute which states that an individual may go to the county superintendent or directly to the district court. That whole body of the law has nothing to do with human rights claims, which would be a different forum outside of school law.

Mr. Moerer said the jurisdiction issue that arose involved a few limited cases in which individuals had given up the right to appeal past the school board. They have always had the same concern about the election of remedies and going to the Human Rights Commission or personal appeals. Mr. Moerer said they did not want add another grievance after binding arbitration.

Phil Campbell, Montana Education Association, said the language concerning unresolved interpretations was used because it is consistent throughout the bill. MEA does not have a problem with elected remedies over the same issue. They agree not to go to court or to the Human Rights Commission over the same issue. Mr. Campbell said the stricken language was pretty clear. The language added in the Vogel Amendment goes too far because all rights are waived. Mr. Campbell said this may not have been the intention, but that is what is in the language. They are trying to stay out of court by choosing one forum. Mr. Campbell said the amendment agreed to by the Committee was pretty clear.

Sen. Blaylock said he would like to try this language: "After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue any action or complaint involving the same facts or circumstances before any local, state, tribunal court or other forum under which relief may be sought or granted. If a grievant or the exclusive representative files a complaint, appeal or other action with a local state, federal agency or tribunal forum involving the same facts or circumstances, arbitration may not be filed or pursued under this section."

Mr. Campbell said the only way the grievant could change would be after submission to arbitration.

Rep. Vogel said that was correct. Individuals would go through the process up through arbitration, and after the grievance has been submitted to arbitration, the language does not allow that individual to go to court over it. Rep. Vogel said he did not

think they could limit an individual's right to go to the Human Rights Commission or to federal agencies. He said if the remedy was not settled after arbitration, there is still the opportunity to go to the Human Rights Commission.

Bruce Moerer said his interpretation of that language was that an individual could go to a federal agency but not a state agency. Rep. Vogel said that was what he meant.

Rep. Rice said there were two defects with Rep. Vogel's amendment. The first is on Line 19, after the grievance has been filed, the election must be made at the time of the submission of the grievance which is much too early in the process. He said the school board should be involved, and then if arbitration is filed for, that is when the election should kick in. He said the second defect is that the language regarding the election is far too broad. Rep. Rice suggested adding "against the school", which would not take away an individual's right to pursue some other action.

Mr. Moerer suggested "against the employer". Rep. Rice said he was going to leave it with "against the school".

Mr. Campbell asked if that were the chosen route, the Committee may want to include specifically mentioning unemployment or worker's compensation claims.

Mr. Moerer said that was not a claim against the employer, it was a claim against the Department. He said those kinds of claims would be taken out of the picture if it is specified it has to be against the employer.

Rep. Rice said unemployment or worker's compensation claims would be against the employer. Mr. Moerer said those were claims against the Department. Mr. Moerer said an exception could be made for unemployment or worker's compensation to clarify the language.

Rep. Vogel said an exception might have to be made.

Rep. Rice said he had worries about specifically mentioning worker's compensation or unemployment because there might be another kind of claim that would fall under the same thing.

Sen. Blaylock said if other exceptions were not listed, then those claims would be excluded.

Sen. Brown said if the Conference Committee members could not think of another kind of claim, it was probably "pretty rare". He added that the bill could be amended in later sessions.

Rep. Rice said his feeling was that if a court looks at this in the future, they will see arbitration as the method of resolving grievances. They probably are not going to stretch it to include

unrelated claims.

Mr. Campbell said if that came up, and the legislative history was examined, the courts would look at the amendment which was added in Committee regarding limitation to the interpretation of the contract. This was stricken, and something else was added, the argument could be made that the language was intended to go beyond the contract. Mr. Campbell said that was his concern, and said the language added in Committee dealt with the issue clearly. Going back to the original amendment would solve that problem.

Rep. Rice said the "words on the page" were going to be taken as the most important factor.

Sen. Blaylock asked Bruce Moerer to go over his objections to the amendment once again.

Mr. Moerer said his concern was that a claim could be structured so that there were a number of similar claims arising out of the same set of facts and circumstances. For example, a grievance could be filed over a termination that may have violated a particular segment of a contract. He said it could also be appealed to the county superintendent for another reason, and there could be another claim that there violation of human rights laws. Here, each count can be filed in separate forums, and Mr. Moerer said the original language does not provide needed exclusivity.

Sen. Blaylock said there may be a "disputed interpretation of the agreement". The argument is over an interpretation of a contract, and when an individual elects to go for final and binding arbitration, he cannot go anywhere else.

Rep. Vogel said if the wording was changed regarding the dispute, a different dispute could be claimed out of the same circumstances. Then that individual could go to a court.

Rep. Nelson said Mr. Moerer means the language "leaves a door open" for that option.

Sen. Brown asked how language to cover that would be written.

Sen. Blaylock said any option, especially binding arbitration, costs both sides money. Sen. Blaylock said it seemed to him, as human beings are, no union would encourage its members to keep trying because every try costs money.

Rep. Vogel said there comes a time when a union has an obligation to an employee.

Sen. Blaylock said he agreed that the union had an obligation, but added it would not go beyond the first time.

Rep. Nelson asked Sen. Blaylock how he felt about leaving out the stricken language and going with the new proposed language.

Sen. Blaylock said that the way the language is written, the grievant immediately gives up any right to go any further after the grievance has been filed.

Rep. Nelson said she was referring to the changed language.

Sen. Blaylock said he wanted to involve both sides. He said he wanted to be fair, so that individuals could choose one or the other, but not both.

Rep. Vogel said any rights that the grievant might have should not be excluded.

Rep. Rice said the flaw in the Vogel Amendment, on Line 20, is that it is too strong. He said it was an "absolute blanket prohibition against ever going anywhere at anytime". It is such a strong prohibition, many exceptions must be made to fix it.

Rep. Vogel said Rep. Rice's amendment offered in Committee went too far the other way, because it does not do what they are attempting to do.

Rep. Nelson said it was fair that filing for arbitration was final.

Rep. Rice said the problem to be solved was the grievance.

Rep. Vogel said that once an individual files for binding arbitration, they waive their right to any other remedy in regard to the grievance.

Rep. Rice said the good thing with the amendment which he wrote was that it flowed from the first sentence. Rep. Rice read the amendment, starting on Line 8 of the bill. He said the purpose of the bill was to require a remedy for a certain grievance.

Sen. Brown said that seemed clear to him.

Rep. Vogel said the problem was that the circumstances or the intent can be changed. Sen. Brown said there was a phrase "involving the same facts or circumstances" which would help.

Rep. Vogel said that language helped "tremendously".

Sen. Brown said maybe that language could help clarify the deleted language in Subsection Paragraph 5.

Sen. Blaylock asked what would happen if that language were added after "by the aggrieved party" on Line 15. Rep. Rice said it made it "looser".

Mr. Moerer said this brings the discussion back to the original problem. He said it concerned not only the same facts or circumstances, but other claims that come from the same facts or circumstances. A four count complaint could arise from the same facts and those complaints could go to different forums.

Rep. Rice asked Mr. Moerer if these other things were not considered to be grievances. Mr. Moerer said they were not grievances because they did not involve a disputed interpretation of the contract.

Mr. Campbell said this option went beyond the scope of the bill by shutting off other avenues of relief. Mr. Campbell gave an example of a transfer on the basis of seniority. The remedy under that grievance procedure is the transfer. He said the grievant must elect go one way or the other, but the complaint cannot go both ways. Mr. Campbell suggested the language, "by any other legal method or forum involving the same facts or circumstances".

Rep. Rice said he did not feel tying it to the facts and circumstances was a good idea, but tying it to the remedy seemed fair. He said the goal is to stop litigation in two places at one time. Remedies could not be sought in different places at the same time.

Mr. Moerer said he had concerns about the Human Rights Commission awarding damages which are "extraordinary". He gave an example of racial discrimination against a student. In this case, the remedy went beyond what the Human Rights Commission was expected to do.

Eric Feaver said that example was "non-sequitur" because the student does not have a contractual agreement with the employer. The remedy approach might be exactly the way to go. Mr. Feaver said he had concerns that the assumption was that the unions would "go bezerk" or be "irresponsible". He said it is not in the union's interest to be at two forums at the same time. The union is the one who faces the liability, not the employer, for failing to represent their members. Mr. Feaver said it was strange to put into statute what already exists. He said that amending in exceptions, such as worker's compensation, is inappropriate because it would be better to have a bill which provides a good base which can later be added to. He added, the remedy approach is a good one.

Rep. Rice said it is the remedy which they are trying to limit. They do not want individual pursuing the same remedy in two different places. If an individual elects to arbitrate, the remedy cannot be sought anywhere else.

Rep. Nelson said when a grievance involves binding arbitration, it is done.

Mr. Moerer said it was not only remedies that should be considered. He said if there were two remedies arising out of the same facts and circumstances, both remedies should not be limited. Mr. Moerer gave an example of reinstatement of back pay. They want to avoid limiting the opportunity of an individual to seek additional damages, from the Human Rights Commission, for example.

Mr. Feaver said he could not emphasize enough how much the MEA does not want to be at the Human Rights Commission for anything. He said the practical facts are, MEA never goes to the Commission.

Sen. Blaylock said if the remedy goes to the Commission, "that's it".

Rep. Rice suggested adding, on Page 2, Line 11, "The aggrieved party may have the grievance or disputed interpretation of the agreement result in either by final and binding arbitration or by any other legal method and forum but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue any action or complaint against the school which seeks the same remedy." He said that way the triggering mechanism is in the statute about when this election is made, that is when it is submitted to arbitration. It makes binding arbitration exclusive any time the same remedy is sought.

Sen. Blaylock said the language was good.

Mr. Moerer said he wanted to add language so it would work both ways.

Rep. Rice said it would then read, "If a grievant or the exclusive representative files a complaint or other action against the school seeking the same remedy, arbitration may not be filed or pursued under this section."

Rep. Rice then read the entire part, beginning with Line 8.

Mr. Feaver asked Rep. Rice what happened to his amendment. Rep. Rice said it had been taken out.

Mr. Feaver read the agreed upon language.

John MacMaster, Legislative Council, said there were some grammatical problems, and suggested the phrase "cannot seek arbitration for the same remedy" be added to the last sentence.

Rep. Rice said this was a better approach than excluding worker's compensation.

Motion/Vote:

Rep. Rice moved that language. The motion carried UNANIMOUSLY.

ADJOURNMENT

Adjournment: Sen. Blaylock adjourned the meeting at 1:10 p.m.

Chet Blaylock

SENATOR CHET BLAYLOCK, Chair

Laura Turman

LAURA TURMAN, Secretary

CB/LT

Free Conference Committee
on Senate Bill No. 15
Report No. 1, April 16, 1993

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 15, met and considered:

We recommend that Senate Bill No. 15 (reference copy - salmon) be amended as follows:

1. Page 2, line 18.

Strike: line 19 through "GRANTED." on line 24

Insert: "The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy."

2. Page 2, line 25.

Strike: ", APPEAL,"

3. Page 3, lines 1 through 3.

Strike: "WITH" on line 1 through "SECTION" on line 3

Insert: "against the school, arbitration seeking the same remedy may not be filed or pursued under this section"

And that this Free Conference Committee report be adopted.

For the Senate:

Chet Blaylock
Sen. Blaylock, Chair

Bob Brown
Sen. Brown

Steve Doherty
Sen. Doherty

111-
Amd. Coord.
JW
Sec. of Senate

For the House:

Jim Rice
Rep. Rice, Chair

Linda Nelson
Rep. Nelson

Randy Vogel
Rep. Vogel

ADOPT

REJECT

841028CC.Sma