MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 2, 1995, at

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 201
HB 114
SB 180

Executive Action: None.

HEARING ON SB 201

Opening Statement by Sponsor:

SENATOR JIM BURNETT, SD 12, Luther, stated Stillwater Mining Company, Nye, MT, is the largest platinum-palladium mine in the Western Hemisphere. The company is concerned about improved working conditions. Senate Bill 201 allows the company to test employees following an accident, which has caused a death, personal injury, or company damages in excess of $500. Senate Bill 201 provides an important tool for employers to reduce the cause of industrial accidents. **SENATOR BURNETT** urged the committee to DO PASS SB 201 **(EXHIBIT A)**.

Proponents' Testimony:

Ward Shanahan, Stillwater Mining Company Attorney, Helena, MT, stated he has represented Stillwater Mining for over thirteen years. **Mr. Shanahan** stated the mine officials requested **SENATOR BURNETT** to sponsor the bill. Stillwater Mining is the successor to two partnerships owned by Chevron USA Inc. and Manville Mining Company. The 1981 partnership began the interest in Montana following exploration activities by Manville Mining Company, which is now the Stillwater Complex. The principle office is located at Nye, MT, in the Beartooth Mountains. The Stillwater Complex is the only significant source of platinum/palladium and associated metals of the platinum group, called BGMs. Stillwater Mining is publicly traded and is engaged in exploration, development, and mining. The mining operation is located at Nye, MT, South of Columbus. The company plans to open a second mine in the area South of Big Timber, and the site will be known as the East Bolder Project. Stillwater also operates a small, fresh metals smelter at Columbus, MT. The smelter recovers metals from Nye concentrates.

Senate Bill 201 deals with accident drug testing, as a condition for continued employment. Drug testing, according to **Mr. Shanahan**, is a complicated problem because it involves the company's concern for safety in the work place, a decent, social work environment for employees, loss time accidents, work construction, and loss of efficiency in earnings. Personal privacy rights and civil rights of the employees must be personally and legally respected. Safety methods are customized, according to the individual mines. Montana law drug testing information is contained in Title 39, Labor, Chapter 2, of the Employment Relationship, part 3, General Prohibitions on Employers. Senate Bill 201 is an additional exception to the prohibitions of employers against lie detector tests and regulations of blood and urine testing. **(EXHIBIT 1)** Senate Bill 201 would amend and clarify the exceptions to the prohibition of blood and urine testing by adding a new exception. The exception is the employee who has been involved in a work related accident which causes death, personal injury or property damage in excess of $500. Federal Law preempts Montana Law in respects to regulated industries. Transportation industry personnel, such as rail, bus, and airplane employees, are tested differently than other people. This legislature has adopted the Department of Transportation regulations for drug testing. Montana law does not authorize annual or random physical examinations or random drug testing. Only pre-employment physical drug testing is allowed, unless the employee acts "strangely." **Mr. Shanahan** distributed the methodology distributed by the Department of Transportation. **(EXHIBIT 2).** Supervisors and other people are trained to determine whether someone takes drugs. The methodology is not satisfactory and often creates problems between employees and employer.

The existing law does not allow the employer to take adverse action against an employee if the person presents a reasonable explanation or medical opinion, indicating test results were not caused by either alcohol or legal drug use. The law contains many safeguards for the employee's rights, In 1991, a full

fledged campaign was tried and met with considerable opposition by labor organizations and civil rights groups. The concern was the invasion of employee's privacy. The statutes, Department of Transportation, regulations and applicable case law demands good reason for drug testing. The employee's privacy rights cannot be violated. **Mr. Shanahan** stated the present law is inadequate. Stillwater Mining is regulated by the Federal Mines Safety and Health Act. Montana law specifically specifies the company provides a safe place to work. Yet, it is difficult to provide that "safe" place. The new exception provides a sufficient cause to make drug testing a condition for continued employment. If there is an accident or death, or personnel injury where property damage is in access of $500, the testing must take place. Senate Bill 201 provides an exception to the reason or the suspicion for drug testing.

Christopher Allen, Corporate Manger of Safety, Stillwater Mining Company, Nye, MT, stated he has been in the mining industry for twenty-five years before getting a degree in health. For the past ten years, **Mr. Allen** stated he has managed safety and environmental programs in Wyoming, Nevada, and Indonesia, as well as Montana. **Mr. Allen** stated in every location, the company has been able to employ drug testing for cause, affecting a reduction of work related accidents. People are aware that if they have an accident, they will be tested, a no-fault guarantee. It does not require a supervisor, lay person to make a intoxication judgment. The company proposed SB 201 as a way to reduce accident rates and reduce Workers' Compensation costs. Mr. Allen provided The Industrial Company Wyoming Inc. (TIC) statistics to committee members **(EXHIBIT 3)**. TIC is a nation wide, major industrial company and is also the company's current contractor. The loss time accident rates, since 1991, dramatically increased

Mr. Allen stated safety drug elements, other than testing have worked as well. The time accident and severity rate is a measure of how long a person was off work and how much is indirectly related to the accident cost. **Mr. Allen** provided national statistical backup **(Exhibit 4)**. TIC does random testing on occasion in states that permit random testing. The number of post accident tests indicate how many people are doing drugs in the work place. Senate Bill 201 is a straight safety bill, not a bill to invade personal privacy. The company believes the legislation provides additional tools to reduce the number of severity of accidents. The industry has high numbers of serious accidents and fatalities. Senate Bill 201 will reduce Montana's statistics.

Russell J. Ritter, Washington Corporations, Missoula, MT, stated there are five operating companies in Montana that would come under the SB 201 jurisdiction. The corporation urged the committing to give a DO PASS recommendation for the same reasons **Mr. Shanahan** stated.

David Owen, Montana Chamber of Commerce, stated support for HB 201. **Mr. Owen** changed the question around and asked. If death, injury, or severe damage to property are not good reasons to test for drugs, what reasons are good enough. **Mr. Owen** urged the committee to accept SB 201.

Don Allen, Montana Wood Products Association, Helena, MT, stated support of SB 201. **Mr. Allen** stated the facilities that process various kinds of lumber materials present more opportunities for accidents and for serious accidents, as well. **Mr. Allen** said safety programs and training methods vary, but accidents still happen. Death, personal injury, property damage are important issues. Senate Bill 201 works for the safety of workers. Mr. Allen urged the committee to pass SB 201.

Mr. Steve Turkiewicz, Montana Auto Dealers Association, Helena, Montana, representing Montana's new truck and car dealers, stated the respective vehicle industry does a great deal of repair and maintenance business. Safety is paramount. SB 201 represents an important tool to protect businesses and consumers.

Opponents' Testimony:

Darrell Holzer, Montana AFL-CIO, Helena, MT, stated Organized Labor rises as reluctant opponents. Montana has some of the absolute, best worker's protection laws in the nation, as related to random drug testing. It is important to protect the interest of the employer, as well as the employee. Organized Labor always is an advocate of safe work places. Property damage in excess of $500 is too low. The investigation start and stop activity concerning a trip-on-small-equipment accidents should remain with the safety committee. The urine tests should not apply, although a work related or fatality related accident should necessitate drug tests and all investigatory avenues for informational gathering purposes.

Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, Helena, MT stated opposition. The language is puzzling. The section of law is a hybrid, a product of bipartisan cooperation over the last decade. The law is carefully crafted, but the compromise strikes a delicate balance between the rights of privacy and the human dignity of the worker, with the public safety considerations of the work place. The Montana State Constitution, sections 4 and 10, states "the dignity of the human being is viable. The right to privacy is essential to the well being of a free society and shall not be infringed without showing its validity and interest." Montana is not like Utah and Nevada. Montana is like very few other places in the Free World. There is an explicit right to privacy, guaranteed to all its citizens. **Mr. Crichton** asked the committee to consider the fact that multi-national companies are operating in Montana. Until a citizen demonstrates otherwise, a citizen is innocent until he/she is proven guilty. The concept should be true in the work place, as well. The existing law provides the

employer a right to test for drugs is there is a reason to believe the employee is working in an impaired way. Senate Bill 201, as it exists, is narrowly tailored. The proposed language is broad. **Mr. Crichton** asked how is a "worker involved in an accident" defined. Does this mean the person has to cause the accident or is the person along side the person who is in an accident. Does the witness at the scene of the accident need to be tested. Does the person who happens to be in the same room at the time of the accident need to be tested. Does the employer have to believe that the worker's faculties are impaired. **Mr. Crichton** asked if the testing occurs immediately after the accident, within a 12 hour window of the following week, or anytime the employer wants to test. The definitions are vague. **Mr. Crichton** hoped the test would be "one time" testing and not an open ended invitation for continued testing. The description of the person who has been involved in an accident should be clearly defined to prevent "bad blood" between workers and management. Absent of compelling flaws in the existing law, the bill addresses a fictional problem. The message of the electorate is to get government out of the private lives. **Mr. Crichton** urged the committee not to be tempted to spend more time and more energy on the contents of SB 201 **(EXHIBIT 5)**.

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SUE BARTLETT asked how far or how narrow is the interpretation of the phrase "has been involved in". **Mr. Chris Allen** replied how far the interpretation goes depends on the circumstances. For instance, all locomotive operators in an underground mine situation who drive a train over a pickup truck because the operator fails to have the person in the front of the train watching where the train was going, would be liable. The pickup truck driver would not be liable. The person driving the train would be liable. In the case where one employee tells another employee to close a valve, but fails to do so, that person would be tested. If the person who closed the valve was told not to close the valve, but does so, that person who precipitated the incident would be tested.

SENATOR BARTLETT asked if the interest is in the individual employee who, at least appears to have caused or precipitated the accident, and would that person be tested. **Mr. Allen** agreed that person would be tested. **SENATOR BARTLETT** stated a water project was undertaken last summer in Helena (1994). No precautions were taken, and the construction worker was killed in a cave-in accident. Would this be an incident when the supervisor should have been required to be tested for drugs because he/she did not enforce the required construction regulations. **Mr. Crichton** stated, absent knowing all the details, the supervisor knew the ditch digging procedures were violated and should have been drug

tested. **SENATOR BARTLETT** asked how long should testing continue. **Mr. Allen** stated testing should be as close to the moment of the accident, as possible. From a toxicological standpoint, the intoxication period varies with the substance. **Mr. Allen** stated that he never tested anyone longer than two hours after the accident. Standard procedures in testing drugs has a high enough cut off that someone who is a weekend recreational user of lipid soluble materials, like THC, and who is tested on Monday will report positive. Generally, cut off levels are set high enough so that there is a fairly clear presumption of intoxication. Everyone was concerned that a positive urine drug test means immediate discharge in the (1960's and 1970s) beginning phase of the drug testing program. The sophisticated drug test are now available, and certain concerns are alleviated. In Nevada and Wyoming, when tests were run, the lab would not disclose the information about anyone who had a rating or what was below the cut off level, the BOT Standards for Concentration of Substance in urine.

SENATOR BARTLETT asked if any testing after the accident was a part of the previous discussions concerning other bills. **Mr. Shanahan** stated there were a whole series of drug testing bills. Montana does not have random drug testing. **SENATOR BARTLETT** asked if testing after accidents was a part of the previous discussions on other bills. **Mr. Shanahan** stated there was a whole series of drug testing bills, historically speaking. Pre-employment testing, random drug testing during the employment period, suspicious situations concerning bizarre behavior, and annual physical examinations are some of the issues of past debate. The protest concerning the invasion of privacy was primarily against the random drug testing and the annual physical examination. All of the prior testing are permitted under the Federal DOP Regulations. Current law allows for drug testing on individuals displaying bizarre behavior. Montana has adopted the methodology or drug testing set forth in 49 CFR. **SENATOR BARTLETT** asked if drug testing after accidents was previously discussed. **Mr. Shanahan** replied the testing afterwards has not been discussed in previous legislation. **SENATOR BARTLETT** asked **Mr. Crichton** if he had been part of previous discussions. **Mr. Crichton** replied the person who was most involved is **Dan Edward, Oil, Chemical and Atomic Workers, Billings MT. Mr. Edward** had prepared testimony to present today, but could not attend the hearing due to negotiation contracts in Cody, Wyoming. **Mr. Edward's** testimony will be submitted at a later date **(EXHIBIT 6)**.

SENATOR VAN VALKENBURG asked **Mr. Chris Allen** about the chart handout from the TIC Company, which shows the statistic on loss time accidents from 4.8 to 0 over four years **(SEE EXHIBIT 4)**. A connection has been drawn between the statistics and the implementation of company drug tests. Yet, other safety procedures were in place. This was not the only thing that was done to reduce accidents in the TIC work environment. **SENATOR VAN VALKENBURG** stated concern about the essential rate of post accident positive test which are displayed as being relatively

constant, even through the accident rate has gone done significantly. **SENATOR VAN VALKENBURG** stated concern about the essential rate of post accident positive tests, which are displayed as being relatively constant, even though the accident rate has gone down significantly. **SENATOR VAN VALKENBURG** stated, according to his interpretation of the handout, the drugs or alcohol are not a very significant factor. In 1994, there were still 16 percent of the people who tested positive, post accident, but there were no loss time accidents. Other factors, other than drug testing or fear of drug testing, contributed to the reduction in loss time accident. **Mr. Allen** responded, not following the TIC information, but responding on the basis of statistics, there are other things going on. Note, that if the accident rate went to "0" and attention was given to the severity rate, the statistics may show the same number of people as a percentage of the work force testing, but the overall impact on the severity of the accident would be declining. TICs hours worked per year increased by approximately 25% per annum. **SENATOR VAN VALKENBURG** stated, in the interest of committee time he would not continue the questioning, but, he would appreciate the opportunity to visit with the corporate safety person about drug testing issues.

Closing by Sponsor:

SENATOR BURNETT closed the hearing on SB 201 and stated that Stillwater Mining Company is a major employer that enjoys a good safety record. The accidents, which have happened, have not happened due to negligence. Senate Bill 201 is a tool to assist the employer's investigation of accidents. **SENATOR BURNETT** urged passage of SB 201.

HEARING ON HB 114

Opening Statement by Sponsor:

REPRESENTATIVE CHRIS AHNER, HD 31, Helena, Montana, stated HB 114 is a straight forward bill that clarifies members of the organized militia are entitled to an unpaid leave of absence during any period of state service during a state emergency and are entitled to reemployment after the emergency. The legislation assures members of the Montana National Guard, who are activated for state duty, will retain their employment at the end of the duty. Although there is national job protection, there is no state protection. The legislation will secure their employment.

Proponents' Testimony:

Master Sergeant A. Roger Hagan, representing approximately 4,000 members of the Officer and Enlisted Association of the National Guard of Montana, Helena, MT, stated the bill provided re-employment rights for members who are called to active duty during a state emergency. The Montana National Guard activations are an unpredictable occurrence. When activations happen, Army

and Air Guard officers and enlisted men/women are quickly sent to the destination. The Montana Militia defends, protects, and preserves lives and property at the call of the Governor. The recent experience of Desert Storm and other regional conflicts have involved Montana National Guards and Reserves. The Guard needs to redefine and strengthen the Federal Veterans Employment and Re-employment Act. The same rights and protection must be afforded Montana members when they are on state active duty. The guideline should mirror the federal guidelines.

Master Sergeant Hagan stated civilians may question the fact that jobs have been denied state militia people. **Master Sergeant Hagan** recounted dismal facts surrounding a Montana National Guard's recent misfortune. An E5 National Guard Sergeant was called by the Governor to fight forrest fires in August, 1994. The Northeastern Montanan had served as a guard member for over four years. He was called up for the first time and left his home, wife, family, and 12 year job to fight the Pryor Mountain Fire and the Yaak Fire in Northwest Montana. The boss called his wife to announce the husband's job was replaced, but he would be offered a lower paying job until he could find employment elsewhere. The SGT returned home to unemployment problems: Loss of employment, demotion as an alternative, possible denial of unemployment benefits, and the expense of legal counsel, no real rewards. The story is true. The sergeant experienced the nightmare no other Montana Militia member should ever experience. The association urges support on HB 114.
(EXHIBIT 7).

Jack Walsh, Department of Military Affairs, Chief of Staff, Army National Guard, Helena, MT, asked the committee to support the legislation. For the past ten years there have been twenty-three different occasions, accounting for approximately 32,000 days of active duty to fight forrest fires, floods, earth quakes, and state institution duty. Desert Shield service equated to the federal Re-employment Rights Act. Unfortunately, state service does not provide protection. **Colonel Walsh** urged support of HB 114.

Polly Latrae-Halmas, U.S. Department of Labor, Veterans' Affair Representative, stated she responds to all assistance requests under Title 38 laws for Veterans Re-employment Act. **Ms. Latrae-Halmas** stated she initially received the above described claim, but could do nothing. There was no protection under the federal law; consequently, **Ms Latrae-Halmas** recommended a private attorney. **Ms. Latrae-Halmas** asked the committee to accept HB 114.

Hal Manson, American Legion, Helena, MT, stated the members of the National Guard are also members of the American Legion. The primary purpose of the Legion is to support a strong military attitude in the country. Security is very important. The National Guard is a good, inexpensive method to train and ready people for necessary active service. However, if obstacles are

put in the way, the effectiveness of the Guard is jeopardized. **Mr. Manson** urged support of HB 114.

Opponents' Testimony:

None.

Informational Testimony :

None.

Questions From Committee Members and Responses:

SENATOR VAN VALKENBURG asked **Colonel Walsh** how many people were called to active duty for the past two years and for what length of time were they put on active duty. **Colonel Walsh** answered that from July, 1994 to September, 1994, there were 12,102 work days. From August of 1992 to August 1993... . **Colonel Walsh** provided statistical tables **(EXHIBIT 8)**.

SENATOR BENEDICT asked **Mr. Hagan** if legislation would result in a detrimental situation for people who are enlisted in National Guard, specifically those who are employed by small businesses. Will the small business owners want to hire National Guard members because of job requirements. Small business people may not be able to afford to hire a National Guard member because of the potential job-loss-days during employment. **Mr. Hagan** stated the existing language provides for nondiscrimination in hiring practices, based on military membership. The legislation would be strengthened for re-employment purposes. As far as a detriment to employment, the law is patterned after federal law for protection; therefore, it would not be a large detriment. The positive benefits are many.

SENATOR AKLESTAD asked if prior legislation pertained to the same topic. **Mr. Hagan** stated he has not been involved in the legislation for a long period of time. His service began in the 1993 Special Session; therefore, he was not able to give a historic perspective at this time.

CHAIRMAN KEATING asked **REP. AHNER** about the House committee hearing. Did the Chamber of Commerce or the NFIB, or any employer organization testify. **REPRESENTATIVE AHNER** stated none of the groups lobbied against HB 114.

Closing by Sponsor:

REPRESENTATIVE AHNER stated appreciation for HB 114's Legislative assurance that Montana National Guards will continue to fight forrest fires, etc., and no members will fear that they will be denied employment because of their absence, due to serving the people of Montana.

HEARING ON SB 180

Opening Statement by Sponsor:

SENATOR LARRY TVEIT, SD 50, Sidney, MT, stated he presents SB 180 in behalf of the Montana School Board Association. The bill addresses binding arbitration. The bill is an act clarifying the binding arbitration provision in a collective bargaining agreement with schools. The bill eliminates the requirement that a collective bargaining agreement to which a school is a party contains a grievance procedure culminating in binding arbitration. The bill prohibits binding arbitration for a complaint based on the same facts and circumstances. The original legislation SB 15 (1993) is too binding for school employees.

Proponents' Testimony:

Jerry Hager, Choteau County Trustee, Choteau, MT, stated last Spring's school negotiation presented problems. A labor specialist spoke to Mr. Hager about the trustee's proposal and offered a counter proposal with management safeguards. After weighing the two proposals, the district negotiating team refused both. Consequently, three salary options were considered, $100 on the base, $159 on the base, and $200, without binding arbitration. The local union accepted the $200 without binding arbitration, and both sides were satisfied. The trustees thought they won by keeping binding arbitration out of the contract.

John Good, Chouteau County Farmer, Fort Benton, MT, stated he has been on the high school district board for over fourteen years and brings experience and practical knowledge to the negotiations. Fort Benton, currently, does not have binding arbitration. Board members have thought binding arbitration equated and amounted to law suits without local control. Binding arbitration substitutes arbitrator judgement for local judgment. Arbitrators are selected through the process of elimination. Problems are created by controversies, such as salary or working conditions. **Mr. Good** urged the committee to consider that mandatory arbitration is a threat to all concerned and is a gun shot in the wrong direction **(EXHIBIT 9)**.

Ron Wetsch, Chairman of Drummond School District 11 and 2, Rancher, Drummond, MT, stated the cost of arbitration and hiring needed attorneys is high. Teachers already have bargaining chips. If an arbitrator dictates what the school board and teachers receive, the voting public do not have rights and can not select or vote. Public schools are for the education of Montana children. The school board, administration, and teachers are challenged to get the best education for the available funds. Small districts funds are not large, but based on "A" and "B". If the arbitrator dictates what is going to be paid, the situation is back to square one with the voters. County taxes pay bills; the legislature does not pay school bills. Taxpayers

should have a choice. School board members are elected and a grievance procedure is in place. Drummond voters want to make sure legislation does not dictate the terms of employer/employee relationship.

Rick Janett, Big Timber, a nine year Trustee of Sweet Grass High School, stated in 1987 the school district had a difficult MEA negotiation experience and gave up much, including money, to keep binding arbitration out of the contract. Without SB 180, the benefits will be null. Binding arbitration could be the biggest unfunded mandate in the school district. The union can be assured if there is a conflict, they can expect binding arbitration and coup some wins. Every time the union gets "something", it will cost the voters money. Should SB 180 fail, **Mr. Janett** urged the legislature to help fund the mandate, to pay the bills. **Mr. Janett** stated he understands the job of a trustee is to educate students, and the school district needs to spend money on education, not binding arbitration.

Morris Van Campen, Elementary Principal, Glendive, MT, read written testimony urging the committee to repeal binding arbitration. Budgets are fixed; schools do not need the added expense of mandatory arbitration **(EXHIBIT 10)**.

Rodney Svee, Superintendent of Schools, Hardin, MT, distributed written testimony **(EXHIBIT 11 & 11-A)**. **Mr. Svee** discussed the standard of review, compared to existing state law and administrative rule. The Pickert Case, Dawson County High School; the Colstrip High School district; and Laurel High School situations were discussed. Laurel and Colstrip are arbitration cases, while Glendive's case was settled by state law. The full Pickert transcript is found on page 19. **Mr. Svee** stated he feels binding arbitration should not be done in these cases. Quotes about sexual harassment were not substantiated because the victims had not stated that the advances "were not welcomed". Striking the students, individual harassment, or touching without consent were situations that were questioned. At what age does one realize the true meaning of what "consent" actually means. The union or the school board have not forced the binding arbitration issue.

Chip Erdmann, Attorney, Montana Rural Education Association, representing school districts across the State, stated SB 180 takes Montana back to the time prior to the 1993 session and leaves the election of remedies provision in the law, which makes sense. Collective bargaining is a two sided bargaining issue. The level playing field has been upset, and the legislation should bring it back. These are contractual remedies, in addition to the statutory remedy. Teachers have the highest standards of any public employee. When there is a just cause provision in the contract, as interpreted by the arbitrator, the just cause provision are even higher than the statutory standard. Rural schools do not have the expertise to meet all the just cause tests and arbitration's seven step test

imposed on teachers. **Governor Racicot** stated he realized after the law went into effect that the small schools didn't have the personnel or legal expertise to meet arbitration needs. The bill reestablished the status quo. **Mr. Erdmann** urged the committee to support SB 180.

Janet Underkofler, Kessler School Board Trustee, Helena, MT, stated the board has binding arbitration in the current contract. The decision should be kept at the local level to work out both side of issues.

Cliff Benjamin, Shelby School District 14, Shelby, MT, offered written support for SB 180 **(Exhibit 11-B)**.

Clinton Clark, Rosebud Public Schools, Rosebud, Montana, submitted written testimony **(Exhibit 11-C)**.

Max Blanchard, Board Member, Rosebud Public Schools, Rosebud, Montana, submitted written testimony **(Exhibit 11-D)**.

Donna Plymtpon, Board Member, Rosebud Public Schools, Rosebud, Montana, submitted written testimony **(Exhibit 11-E)**.

Jeff Webber, Chairman, Clinton Elementary School District, Clinton, MT, submitted written testimony **(Exhibit 11-F)**.

Dee Batey, Board Member, Rosebud Public Schools, Rosebud, MT, submitted written testimony **(Exhibit 11-G)**.

Bob Richman, Shelby School District 14, Shelby, MT, submitted written testimony **(Exhibit 11-H)**.

Opponents:

Eric Fever, Montana Education Association (MEA), Helena, Montana, stated opposition to SB 180. **Mr. Fever,** stated there is confusion as to how binding arbitration affect SB 180. Senate Bill 180 repeals SB 15, which was passed in 1993. The bill has not gone into effect. The effective date is July 1, 1996. Senate Bill 15 has not harmed anyone. No fact can support any allegations of harm. Senate Bill 180 does repeal binding arbitration, as required to go into effect, but SB 180 retains the primary, major compromise that MEA Union made in the SB 15 negotiations. The elections of remedies is a provision to illuminate the so-called two bites of the apple", which was addressed earlier. Senate Bill 15 gave high school employees a guaranteed grievance procedure, ending final and binding arbitration. In return, SB 15 took away, from the school appointees, the "two bites of the apple". Most of the MEA state's contracts have the binding arbitration process, already. These contracts will be amended, as of July 1, 1996, to prevent pursuit of more than one remedy. In effect, SB 15 was compromised legislation, giving and taking from employees and employers and management and labor. Senate Bill 180 will undo

the compromise, even before it has taken effect and will address the grievance procedure everywhere and leave management what it wanted, a restriction on the election of remedies. As for the theory and practice agreement of binding arbitration, the arbitration is readily accessible and relatively cheap, fast and sure. Binding arbitration frequently compels settlement before arbitration actually happens. Litigation rarely does. School districts and grievant, alike, should prefer binding arbitration to the courts. Unfortunately, some school districts detest binding arbitration because the districts members know that without binding arbitration, some grievances and grievant will simply not go away. Without binding arbitration, litigation is expensive, too lengthy, and too inconclusive for employees to pursue. Consequently, school districts win by default. Then, negotiated grievances do not exist, and are not worth the paper the print is placed. There is no way to enforce the situations. If SB 15 is viewed as legislative interference in the local employer and employee relationship, then SB 180 is no less the same interference. In this case, it imposes an election of remedies, that before SB 15 did not exist. Management representatives have declared they do not compel the schools into binding arbitration, but they compel the unions to accept election of remedies. That is interference. Contrary to proponents suggestions, grievance arbitration has nothing to do with contract negotiations, concerning how much teachers are paid or how much tax payers have to pay. This is not to be confused with interest arbitration, when the arbitrator determines the outcome of a contract. This has to do with determining how to enforce the contract both parties have already agreed to. This is when a dispute arises over an interpretation of the contract. Grievance arbitration has nothing to do with budgets.

Mr. Fever expressed concern with the three cases that were brought up in earlier testimony, concerning arbitration. The cases were the Harris, Pickart and Baldridge cases. The Glendive Pickart case is excluded because there was no arbitration; the Glendive contract does not posses any arbitration and is entirely in the courts. The contract is going through the convoluted, lengthy, and expensive process of seeking resolutions to teacher termination through controversial sections of statute. The case is consuming huge resources, and the conclusion may take years. If there had been binding arbitration, there would have been a conclusion.

Mr. Fever stated the Laurel case did go to arbitration. The information packets presented are accurate, but the arbitrator did conclude that the employer had not provided the employee reasonable expectation of punishment given certain circumstances. The board's policy read that if this happens, punishment could "include all". Dismissal was only one option, but a reprimand or a probation were also options. The arbitrator stated that the school district didn't make the punishment fit the crime. That arbitrator's decision is the only arbitrator's decision in the last three years involving a MEA local and a MEA grievant that

has been appealed. All the other arbitrated decisions have been final and binding. The Laurel School District wants to take the case further, but the school district has lost in every step of the way.

The Colstrip Baldridge Case is an important case because, whatever is thought of the grievance, MEA took the arbitration route. The arbitration was offered, not precluded, in the Colstrip contract. The grievant also went to court on his own with no assistance from MEA. Ironically, MEA won the arbitration. The grievant lost, and the court is still pursuing the case. The bizarre case cost the school district a great deal of money. The SB 15 compromise was predicated in part in preventing the very situation from happening. MEA gave up a substantial opportunity in statute to certain school employees from pursuing dispute resolutions through the courts, if the school districts chose arbitration. This should save school districts money, everywhere. School districts should have been happy to see statutes impinge upon contracts and allowed "bites of the apple". **Mr. Fever** urged the committee to not repeal a law that has not gone into effect. School districts can show no damage. Binding arbitration was a tradeoff of an election of remedies. Senate Bill 180's definition of election of remedies is far too restrictive and was rejected in 1993, that would preclude that the proposal is not the same as what is in the current law. The proposal might make it impossible for a custodian who filed a grievance and prevailed on a workman's issue, and later discovered that it was a health condition, was out of luck. The condition, filed later for compensation, would not fly because their contract would appear that no other remedy could be reached for the same circumstance. Senate Bill 180 gives school employees far less than what they had before SB 15, and gives employers what they never had before SB 15. Binding arbitration levels the playing field of dispute resolution and is a cheap, effective way to resolve contract disputes.

Terri Minnow, Montana Federation of Teachers, offered strong opposition to SB 180. Senate Bill 180 strikes at the heart of (1993) SB 15. Senate Bill 15 represented a compromise between school employee unions and school employers, such as school board associations. In exchange for the requirement that every school contract contain a binding arbitration provision and agree to a remedy for election clause in SB 15. Senate Bill 180 strikes one part of the compromise, the section requiring school contracts to include agreements with teachers that culminated a final and binding arbitration. Senate Bill 180 has the potential to actually increase the cost of resolving school employee's grievances. It cost much less to go to binding arbitration than it costs to resolve a court case. Binding arbitration has evolved during the years as a fair and partial way to settle disputes without the delays and costs of potential court judgements. Even though binding arbitration exists in many union contracts, it is a vital step in the grievance procedure. Grievance procedures invest to solve problems at the earliest

possible time, at the lowest level of intervention between management and the grievant. Therefore, the vast number of grievance are resolved quickly. **(EXHIBIT 12)**

Tom Schneider, Montana Public Employees Association, Helena MT. stated he is not talking about interest arbitration, but talking about settling disputes centered around the language of contracts. This is the best way to accomplish the task. Senate Bill 180 takes away the remedies and binding arbitration, a lose, lose situation. The Association opposes SB 180.

Robert L. Anderson, Executive Director, Montana School Boards Association, One South Montana Ave, Helena, Montana, offered written testimony **(Exhibit 13)**.

Nick Klaudt, Glendive Elementary Trustee, Glendive, MT 59330, submitted written testimony **(Exhibit 14)**.

Questions From Committee Members and Responses:

Senator Van Valkenburg asked if the arbitration that would go into place in July, 1996 is the last best offer, but is subjected to "splitting the baby arbitration". Would it make a difference if the required last best arbitration offer was null.

The term last best offer arbitration deals with interest arbitration, involving parties negotiating towards a contract when a contract cannot be reached. Many contracts provide for the parties to submit the difference between negotiating in and the contract, itself, and then go to arbitration. Interest arbitration ultimately decides what will end up in the contract. Baseball used interest arbitration, and the term "last best offer" came from the baseball industry's arbitration. The discussion concerns grievance negotiations where there has been an incident, an employee is disciplined, and the disciplinary action is appeal. If there is arbitration that goes with binding arbitration, the "surviving arbitrators" are often picked because neither side struck their names. This indicates these people are middle of the road and will "split the bath water." Both sides will get a little bit of something.

Mr. Fever stated this has nothing to do with arbitration or "last best offer". The employer and employee do strike names and come to a compromise. Sometimes, an arbitrator may likely be an open minded neutral and will make decisions based on the contract and what the parties intend to say. The only recourse to the school district is to appeal the arbitrator's decision, but only the appeal is available only if the arbitrator exceeded the authority, or violated the law.

SENATOR SUE BARTLETT asked if the committee passed SB 180 and repealed the binding arbitration provision, what would be the

most common method of resolving school district grievances. **Mr. Fever** stated the steps depends of the language of the contract. Completely apart from a school district having a binding arbitration provision, a teacher could pursue statutory remedies. After the school board's determination, they can appeal to the county superintendent of schools, the state superintendent, and ultimately to district courts under statutory good cause standard, which are available to all school district employees. For those districts that currently have an arbitration provision, the bill depends on the contract language. It is still is up to the county superintendent of schools, if the contract itself does not preclude that review.

SENATOR BARTLETT stated a court case about SB 15 determined that this avenue was not available. **Mr. Erdmann** stated he does not remember a court case, but generally, the two options are available to individuals, such as those terminated by a school district. This is a good reason why the election of remedies provision should be in SB 180. **SENATOR BARTLETT** stated in the interest of committee time, she will cease questions, but will pursue the topic outside committee before Executive Action.

CHAIRMAN KEATING asked **Rick Jerret** about negotiating a contract with the school bargaining unit and allowing binding arbitration in the contract, or in lieu of additional payroll. The board increased the pay in order to avoid binding arbitration. **CHAIRMAN KEATING** asked **Rick Jerret** if he was aware that this section of the law would be effective, subsequent to the contract negotiation. **Rick Jerret** stated the arbitration was in 1987, and the law was not on the books. **CHAIRMAN KEATING** asked if the contract has continued since 1987. **Mr. Jerret** replied yes. **CHAIRMAN KEATING** asked if the contract was negotiated, are you fearful that which was negotiated will be removed by the law. Is this the reason to support SB 180. Yes.

Closing by Sponsor:

SENATOR TVEIT, stated he served 9 years on the Sidney School Board and 5 years on State School Board Association, and was president, as well. Senate Bill 180 does not repeal binding arbitration. The language is too arbitrary. The bill removes a school agreement that contains a grievance procedure, culminating and binding final arbitration". Many schools have negotiated all or part of the final arbitration, some schools do not. Small schools, by giving away grievance procedures to automatic binding arbitration have gone too far. Nothing has been harmed due to the future effective date, July 1, 1996. The time to correct the problem is in this session, since the legislature will not be back in session until 1997. There are statute problems, and SB 180 addresses said problems. Senate Bill 180 resolves the problem by restoring the rights of the parties to a school district's contract, by accepting an agreement to arbitrate contract disputes. In the absence of an arbitration clause, employees are still free to pursue their complaints with the

County Superintendent, the Board of Personnel Appeals, the Human Rights Commission, and other agencies with jurisdiction. Another important change concerns the election of the remedies provision. The provision requires employees to choose between binding arbitration and any other available and legal method to search the same remedy. The problems is that a grievance may simultaneously pursue the same complaint in different forms, simply by modifying the requested remedy. Binding arbitration or the court route can be taken, but not both avenues. A grievance based on the same facts and circumstances may not be pursued by binding arbitration. Small school boards need flexibility. **SENATOR TVEIT** asked the committee to accept SB 180.

ADJOURNMENT

Adjournment: The meeting was adjourned at 1:45 p.m.

SENATOR TOM KEATING, Chairman

MARY FLORENCE ERVING, Secretary

TK/mfe

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE February 2, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	☆		
SUE BARTLETT	☆		
STEVE BENEDICT	☆		
JIM BURNETT	☆		
CASEY EMERSON	☆		
FRED VAN VALKENBURG	☆		
BILL WILSON	☆		
GARY AKLESTAD, VICE CHAIRMAN	☆		
TOM KEATING, CHAIRMAN	☆		

SEN:1995
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CS-09

SPONSOR'S STATEMENT ON SB 201

SUBJECT: WORKPLACE DRUG TESTING

For the Record I'm Senator Jim Burnett from Senate District 12. My District contains the largest Platinum Palladium Mine in the Western Hemisphere-The Stillwater Mine at Nye. This mine is operated by the Stillwater Mining Company and they're very concerned about improving safety for their workmen. That's what Senate Bill 201 is about. The Bill will allow the company to test an employee for drugs following an accident which has caused a death, personal injury, or property damage exceeding a value of $500.00

This bill will provide an important tool for employers to reduce the causes of industrial accidents. I respectfully request your concurrence in my sponsorship and trust you will give the bill a DO PASS recommendation.

I've brought with me today, some representatives of Stillwater Mining Company to explain the necessity and the good sense behind this bill. I'll let them explain the details. Thank you!

Jim Burnett

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #1 1 of 4
DATE Feb 2, 1995
BILL NO. SB 201

Stillwater Mining Company Statement on Senate Bill 201

Senate Labor and Employment Relations Committee-
Thursday February 2, 1995

Mr. Chairman, Senator Bartlett and Members of the Committee:

My name is Ward Shanahan. I am a lawyer from Helena who has represented Stillwater Mining Company as a lawyer and a lobbyist for more than 13 years. Stillwater Mining Company requested Senator Burnett to sponsor Senate Bill 201.

Let me first give you some background on Stillwater Mining Company. Stillwater Mining is the successor to two partnerships owned by Chevron USA Inc. and Manville Mining Company. These partnerships began their interest in Montana in 1981 following exploration activities by Manville Mining to outline what is now known as the "Stillwater Complex". The company's principal office is located at HC 54, Box 365, Nye, Montana 59061, Telephone: 406-328-8500.

The Stillwater Complex is the only significant source of platinum, palladium and their associated metals of the platinum group (known as PGMs) outside the Republic of South Africa. It is located in the Beartooth Mountains in southern Montana. Stillwater Mining Company is now a publicly traded company engaged in the exploration, development and mining of this deposit. Mining is located primarily at Nye, Montana, south of Columbus at this time although the company is proceeding with plans to open a second mine south of Big Timber in what is known as "The East Boulder".

Stillwater Mining Company also operates a small electric smelter for the primary recovery of metals from concentrates. This smelter will be expanded as the East Boulder Mine comes on line.

Senate Bill 201--We are here today to talk to you about Senate Bill 201 which deals with Post-Accident Drug Testing as a condition for continued employment. This is an important issue for the company and Mr. Chris Allen will explain the reasons for this in some detail. But first, I would like to tell you about the bill.

Drug Testing of employees in a country like ours, is a complicated problem. This is because it not only involves the company's concern for work place safety, a decent social and work

environment for its employees, lost time accidents, and work disruption and loss of efficiency and earnings, but it also involves the personal privacy rights, the civil rights of the employees. These must be personally and legally respected and safety methods must be designed with these considerations in mind.

The present Montana law on drug testing is contained in Title 39, Labor, Chapter 2, The employment Relationship, Part 3, General Prohibitions on Employers. The specific section of the law we are attempting to amend here is 39-2-304, the title of which is "Lie Detector test prohibited-regulation of blood and urine testing" A copy is attached to this statement for your examination.

Senate Bill 201 will amend that section by clarifying the exceptions to the prohibition on blood and urine testing, and adding a new exception for cases in which "an employee has been involved in a work-related accident that causes death or personal injury or property damage in excess of $500".

Federal law pre-empts Montana law with respect to certain regulated industries such as transportation. Employers doing business in Montana not regulated by the transportation statutes are regulated by the statute I have just quoted to you (and attached to this statement). At present 39-2-304, MCA authorizes only limited forms of pre-employment and "suspicion" testing. Periodic testing (annual physical or random) is not permitted. Previous attempts to change this have been met with strenuous opposition by employee organizations and civil rights groups, but in 1991 the law was changed to require the testing procedures set forth in federal regulation under 49 CFR Part 40.

You will also notice that an employer cannot take "adverse action" against an employee if that person presents a "reasonable explanation" or medical opinion indicating that the test results were not caused by alcohol or illegal drug use. Thus, the law contains many safeguards for the employee's rights.

The problem we confront here in SB 201 is the inadequacy of the law in permitting the employer with options to help solve a real and present work place danger to fellow employees and to adopt measures to prevent the recurrence of serious accidents. That is what this bill is all about.

Stillwater Mining Company is regulated by the Federal Mine Safety and Health Act of 1977 which, by definition, makes Stillwater Mining an employer whose work presents hazards which require special training and safety precautions. It believes that the law needs this additional exception to improve its efforts in work place safety. The new exception provides that a sufficient cause must exist for the employer to make "drug testing" a condition for continued employment following a serious accident. The existing exception which deals with the employer's "reason to believe" the employee's faculties are impaired is just not sufficient. It forces the employer to rely alone on "surveillance"

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #1 3-4
DATE Feb 2, 1995
BILL NO. SB201

and encourages employees to "cover up" their anti-social activities which create a threat to the safety of their fellow employees and to the employer's work place and property.

We sincerely request your concurrence in giving this bill a "DO PASS" recommendation.

Ward A. Shanahan
Attorney/Lobbyist
Stillwater Mining Company

Chris Allen
- safety manager - Stillwater.

39-2-304. Lie detector tests prohibited — regulation of blood and urine testing. (1) A person, firm, corporation, or other business entity or representative thereof may not require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in:

(i) hazardous work environments;

(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

(iii) jobs involving the intrastate commercial transportation of persons or commodities by a commercial motor carrier or an employee subject to driver qualification requirements; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use, except that drug testing may be conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing.

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor.

(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101; and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120; amd. Sec. 1, Ch. 482, L. 1987; amd. Sec. 1, Ch. 477, L. 1991.

Cross-References

Right to equal protection of the laws, Art. II, sec. 4, Mont. Const.

Licensing and regulation of polygraph examiners, Title 37, ch. 62.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #1
DATE Feb 2, 1995
BILL NO. SB 201

EXHIBIT 2
DATE 2-95
BILL NO. SB201

Possibly due to:

IMPAIRMENT INDICATORS FOR SUPERVISORS	ALCOHOL	DRUGS	MEDICAL CONDITION
* Flushed face, neck, and/or head	x	x	x
* Dilated pupils	–	x	x
* Constricted pupils	–	x	x
* Redness and irritation around nasal area	–	x	x
* Uncoordinated gait	x	x	x
* Thick, slurred speech	x	x	x
* Poor motor coordination	x	x	x
* Glassy eyed	x	x	x
* Sleepiness and drowsiness	x	x	x
* Jerky movement of eyes	x	x	x
* Redness or red eyes	x	x	x
* Amnesia	x	x	x
* Tremor of fingers and hands	x	x	x
* Disorientation or confusion	x	x	x
* Blank stare appearance	–	x	x
* Odor of glue, solvent, or paint on clothes	–	x	–
* Unusual body posture	–	x	x
* Odor of alcohol or fruity odor on breath, or clothes	x	–	x
* Muscle rigidity	x	x	x
* Difficulty with speech	x	x	x
* Hearing and/or seeing things	x	x	x
* Poor perception of time and distance	x	x	x

EXHIBIT NO 2

DATE 2-2-95

Possibly Due to: SB 201

IMPAIRMENT INDICATORS FOR SUPERVISORS (CONT.)	ALCOHOL	DRUGS	MEDICAL CONDITION
* Extremely nervous	x	x	x
* Unusually talkative	x	x	—
* Profuse sweating	—	x	x
* Difficulty concentrating	x	x	x
* Use of sun glasses at inappropriate times	x	x	—
* Staggering gait	x	x	x
* Coma	x	x	x
* Convulsions	x	x	x
* Isolation	x	x	x
* Belligerence	x	x	x
* Unable to perform usual routine tasks	x	x	x
* Mood changes	x	x	x
* Odor of burnt rope	—	x	—

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2-2-95
BILL NO. SB201

SYMPTOMS OF DRUG AND ALCOHOL ABUSE

This chart indicates the most common primary symptoms of drug abuse. However, all of the signs are not always evident, nor are they the only ones that may occur. Any drug's reaction will usually depend on the person, his/her mood, his/her environment, the dosage of the drug and how the drug interacts with other drugs the abuser has taken or contaminants with the drug.

****
** LEGEND **
****

NAR - Narcotic Analgesics
DEPR - Depressants
ALC - Alcohol
MJ - Marijuana
PCP - PCP
PSY - Psychedelics
COC - Cocaine
AMPH - Amphetamines and other stimulants

PHYSICAL INDICATORS	NAR	DEPR	ALC	MJ	PCP	PSY	COC	AMPH
GAIT ATAXIA (STAGGERING)		X	X		X			
DROWSINESS	X	X	X	X	X			
TALKATIVENESS							X	X
SLURRED SPEECH	X	X	X					
RAMBLING SPEECH				X		X		
EYES DILATED						X	X	X
CONSTRICTED	X							
RED AND BLOODSHOT			X	X				
HORIZONTAL NYSTAGMUS (Rapid eye movement)		X	X		X			

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2-2-95
BILL NO. SB 201

SYMPTOMS OF DRUG AND ALCOHOL ABUSE (CONT.)

PHYSICAL INDICATORS (CONT.)	NAR	DEPR	ALC	MJ	PCP	PSY	COC	AMPH
VERTICAL NYSTAGMUS (Rapid eye movement)					X			
IMPAIRED COORDINATION	X	X	X	X	X			
DISORIENTATION (TIME & SPACE)				X	X	X		
SECRETIVE BEHAVIOR	X	X	X	X	X	X	X	X
NEEDLE MARKS (OVER VEINS)	X							

SYMPTOMS OF DRUG AND ALCOHOL ABUSE (CONT.)

COMMON ITEMS FOUND IN ASSOCIATION WITH DRUG AND ALCOHOL ABUSE (IN RESTROOMS, TRASHCANS, DESKS, LUNCH PAILS, LOCKERS, ETC.)

MATERIAL INDICATORS	NAR	DEPR	ALC	MJ	PCP	PSY	COC	AMPH
LIQUOR BOTTLES			X					
SMALL FOLDED PAPERS, SMALL PLASTIC BAGS	X						X	X
FOIL PACKETS, SMALL BOTTLES	X						X	X
ROLLED BILLS, CUT-OFF STRAWS							X	X
BAGGIES W/VEGETABLE MATTER				X				
SMALL PIPES				X				
CIGARETTE PAPERS WITHOUT TOBACCO				X				
EYEDROPPERS, SYRINGES	X							
BURNED SPOON OR BOTTLE CAPS	X							
BLOOD SPOTS ON HANDS OR ARMS	X							
ALLIGATOR CLIPS, MEDICAL FORCEPS, OTHER CLIPS				X				

Amendments to Senate Bill No. 238
First Reading Copy

Requested by Senator Van Valkenburg
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 7, 1995

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2-2-95
BILL NO. SB

1. Title, line 5.
Following: "PACKAGE"
Insert: "THROUGH COLLECTIVE BARGAINING"

2. Title, line 6.
Following: "BENEFITS;"
Insert: "PROHIBITING THE COST OF AN ALTERNATIVE BENEFITS PACKAGE FROM EXCEEDING THE COST OF AN EMPLOYEE'S STATE BENEFITS;"

3. Page 1, lines 14 and 15.
Following: "system" on line 14
Insert: "who is hired into a position that is not permanent and"
Following: "package" on line 15.
Insert: "through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment."

4. Page 1, lines 19 and 20.
Following: "system" on line 19
Insert: "who is hired into a position that is not permanent and "
Following: "package" on line 20.
Insert: "through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment."

The Industrial Company Wyoming, Inc.

STILLWATER MINING EXHIBIT SNEATE BILL 201

2-2-95

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7
DATE 2-2-95
BILL NO. SB 201

January 29, 1995

Stillwater Mining Company
HC 54, Box 365
Nye, MT 59061

Attention: Chris Allen

Subject: Drug & Alcohol Testing Information

Dear Mr. Allen:

TIC is committed to keeping our entire workplace drug free. We attribute much of our outstanding safety record to drug and alcohol education and testing. Pre-employment, random, post-accident, and reasonable cause testing are very effective ways of keeping the workplace clean and safe. Random testing combined with an education program helps maintain a drug free environment. Employees know if caught, termination is immediate.

As you requested, TIC has put together D&A statistics concerning random and post-accident testing. It is our hope that this information will be helpful to you.

1991	451 Random,Post-Accident,Pre-employment	8% positive
1992	162 Random	4% positive
	36 Post-Accident	19% positive
1993	250 Random	10% positive
	28 Post-Accident	11% positive
1994	229 Random	6% positive
	37 Post-Accident	16% positive

TIC WYOMING, INC.

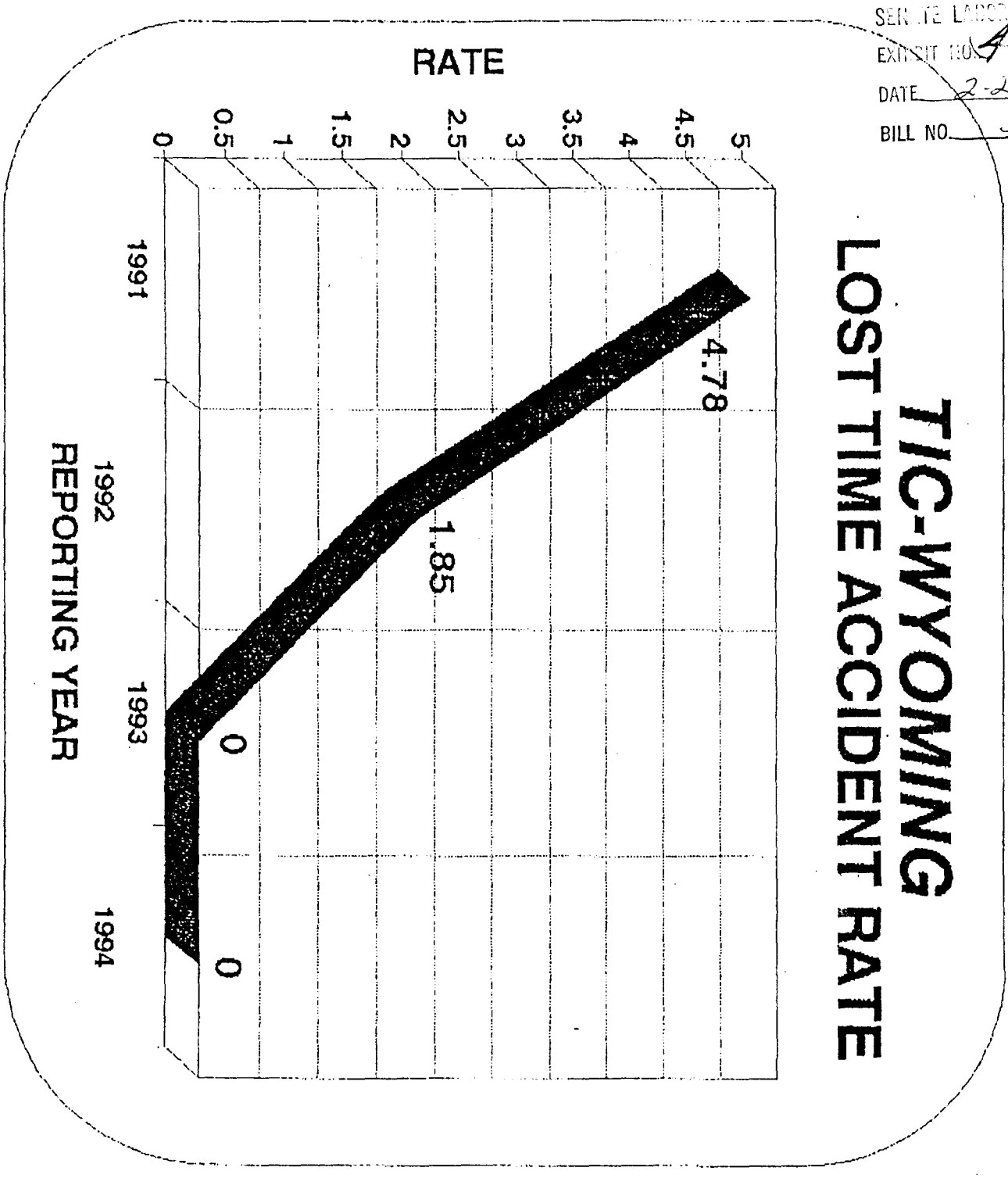
LOST TIME ACCIDENT AND SEVERITY RATES

	Lost Time Accident Rate		Severity Rate	
	TIC	National Average	TIC	National Average
1991	4.78	6.	65.16	160.1
1992	1.85	6.3	20.11	144.6
1993	0	6.5	0	147.1
1994	0	n/a	0	n/a
1994 National averages have not been calculated.				

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 2-2-95
BILL NO. SB 205

STILLWATER MINING EXHIBIT SENATE BILL 201 2-2-95

TIC-WYOMING
LOST TIME ACCIDENT RATE



ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION
P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 2-2-95
BILL NO. SB 201

February 2, 1995

Mr. Chair, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. I'm here today to voice opposition to SB 201.

The language that you are considering to ammend in Section 39-2-304, MCA is puzzling to me. This section of law is the hybrid product of bi-partisan collaboration, the product of numerous legislatures over the last decade. This law is carefully crafted, striking a critical and delicate balance between the constitutionally protected rights of privacy and human dignity and the public safety considerations in the workplace.

I remind you of the Montana Constitution which you all swore an oath to uphold:

> Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.
>
> Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without showing a compelling state interest.

Now you are being asked to consider tinkering with a new amendment (c) subsection (ii) to this law, which unnecessarily opens up revisiting of this controversial issue. What is broken that needs fixing? What is the additional compelling state interest that justifies expanding the law prohibiting lie detector tests and the regulation of blood and urine testing?

SB 201 would expand the law that currently prohibits blood or urine testing except within narrow circumstances. I ask anyone of you to volunteer to submit to such a urine test and to testify how you feel having someone on behalf of your employer watch you urinate into a bottle. After having submitted to such a test, I wonder how many of you would feel such a sampling was an intrusive procedure, invasive to your constitutioanlly protected rights of privacy and human dignity?

Current law allows testing for certain types of work, for reasonable belief one is impaired on the job, and for regular biennial physicals in jobs involving intrastate commercial transportation. To protect against false positives, laboratory errors, and other extenuating circumstances, procedures must follow strict protocol as outlined in 49 CFR, part 40, as spelled out in Section (2). Section (3) insures a second confirmatory test at employers expense, and Section (4) provides for reasonable explanation or medical opinions when applicable.

Unlike the bill this new language seeks to ammend, this new additional exemption is neither narrowly tailored nor in my opinion very well crafted. I want to believ that it was not the sponsors intent for this to be so imprecise and overbroad.

For example, how do you define "involved in" on line 26? Does one have to cause the accident or is it enough for someone to be tangental to the scene of the accident? The way it reads, I interpret this new language to mean there does not have to be any reason for the employer to believe that the employee's faculties are impaired. Is that the intent? When is this testing to occur? Is it a one-time test within a certain time frame or is it an open-ended opportunity for an employer to test employees who might have dropped a tool or had a minor vehicular mishap?

Absent a compelling flaw in existing law, this bill addresses a fictional problem. Finally, I would hope that those of you who understand the message of the electorate to get the government out of our private lives, would not be tempted to spend more time and energy on this bill. For all of these reasons, unless you have been overwhelmingly convinced otherwise from testimony presented today, I urge you to vote no on SB 201.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 2-2-95
BILL NO. SB 201

OCAW
Oil, Chemical & Atomic Workers
International Union, AFL-CIO

Dan C. Edwards
International Representative
P.O. Box 21635
Billings, MT 59104
406/669-3253

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 2-2-95
BILL NO. SB 201

SB 201

D. Edwards

Statement of:

Dan C. Edwards, International Representative
Oil, Chemical & Atomic Workers Int'l Union, AFL-CIO
P.O. Box 21635
Billings, MT 59104

406-669-3253

STATEMENT FOR THE SENATE LABOR COMMITTEE
February 2, 1995, 1:00 p.m.
TOM KEATING, CHAIR

****

Senator Keating and Members of the Committee:

My name is Dan C. Edwards, International Representative for the Oil, Chemical and Atomic Workers International Union, AFL-CIO (OCAW). OCAW represents over 550 members in the State of Montana, including employees of the Conoco and Exxon refineries in Billings, the Cenex refinery in Laurel, the Montana Refining Company in Great Falls, and Montana Power Company in Cut Bank and Shelby.

This statement is to indicate OPPOSITION to SB 201.

SB 201 would, if enacted, amend 39-2-304 to allow blood or urine testing when "an employee has been involved in a work-related accident that causes death or personal injury or property damage in excess of $500.00".

I regret I can not be present in person to testify on this matter, but a previously scheduled arbitration hearing in Cody, Wyoming, prevents me from doing so. Some of you may recall that I was very involved in the legislative process during the 1991 session when 39-2-304 was amended into its present form. Steve Browning and I played a major role in working out the compromise under what was then SB 31 that was eventually adopted. The result is that for the past four years we in Montana have enjoyed a fair and reasonable drug and alcohol testing law that protect the legitimate interests of employers to have employees who are not impaired by drugs or alcohol, while at the same time protecting the individual privacy rights of employees

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6 2 of 2
DATE 2-2-95
BILL NO. SB 201

Regarding the proposed change sought by SB 201, it simply isn't necessary. Current law allows testing when "the employer has reason to believe that an employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use". That allows testing in all the situations set forth in the proposed amendment, as long as the employer has reason to believe the employee's faculties are impaired. The proposed change is far too reaching. When is an employee "involved"? Why test employees if the cause of the accident is known, as they are in most cases?

While I strongly believe that a DO NOT PASS is the best action for this unnecessary proposal, I would be more than happy to work with this committee or the sponsor to attempt to work out more acceptable language if that is desired.

Thank you for your consideration of my testimony.

######

TESTIMONY IN SUPPORT OF HOUSE BILL 114

Senate Labor and Employment Relations Committee
2/02/95

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7
DATE 2-2-95
BILL NO. HB 114

Presented by:
ROGER A. HAGAN
Officer/Enlisted Associations of the Montana National Guard

Mr. Chairman, members of the committee, for the record my name is MSGT Roger A. Hagan. I represent the more than 4,000 members of the Officer and Enlisted Associations of the Montana National Guard. I rise in strong support of House Bill Number 114, a bill to provide remployment rights for our members who are called to active duty during a state emergency.

State activations of our Montana National Guard are an unpredictable occurrence. But, when they do happen our members, both Enlisted and Officer, either Army Guard or Air Guard, are there at a moments notice. Your "Montana Militia" defends, protects, and preserves our state citizens' lives and property at the call of our Commander-in-Chief, the Governor of the State of Montana. A process, that at one time or another, you will most likely witness in your district.

The recent experiences of Desert Storm and other regional conflicts that have involved the National Guard and Reserves, have identified a need to redefine and strengthen the Federal Veteran's Employment and Reemployment Act. Concurrently, the same need was identified for state National Guard activations. These same rights and protections must be afforded guard members when they are on State Active Duty, the same as if they were on a Federal mission. **This bill does just that!**

Some may question the necessity of this legislation. Who, they may ask, would deny a returning guard member the job that they held prior to state activation? Well, the story goes like this.

An E-5, Sergeant, in the National Guard, we'll call him Sergeant Jones, was called by the Governor to fight forest fires in our state in August of this past year. This individual had served our state and nation as a guard member for over 4 years. This was his first state call-up. He leaves his home in Northeastern Montana, a wife, two children, other family members, and his civilian job of 12 years; because many citizens elsewhere in Montana are in danger. He knows his commitment to serve our state and nation as a National Guard member must always come first. He established that obligation when he enlisted in the Montana Militia.

He first is deployed to the Pryor Mountains fire and soon after to the Yaak Fire in Northwestern Montana. While SGT Jones is in the opposite end of the state from his family, his boss called his wife and indicated that he was replaced in his position and that he would be offered a lower paying job until he could find other employment.

Upon completion of a state active duty tour, most Montana Militia members return home to their family and community, proud in knowing that they protected other citizens of our great state. But, upon SGT Jones' return, he knew he had to face this employment dilemna. If he is to continue employment with this employer, he must take a demotion. SGT Jones is effectively unemployed.

After almost a month of unemployment, hiring his own attorney and being denied unemployment benefits, he secures a new job with another employer in his town, at a considerable reduction in benefits. The lawsuit resulted in a settlement; but just a few days ago, SGT Jones had a hearing on the denial of his unemployment compensation claim.

This is the thanks that our SGT Jones got for responding to the needs of our state's citizens? ...Loss of employment, ...a demotion as the alternative, ...denial of unemployment benefits, ...the expenses of legal counsel ...and nowhere to turn for assistance.

Now SGT Jones is an assumed name, but the story is actually true. I spoke with the real sergeant just yesterday. He has experienced a nightmare that no Montana Militia member should ever experience. I hasten to add that , although this story is about a "Mr." SGT Jones, we have several "Ms." SGT Jones' in our National Guard, many who were involved in the forest fire activation this past year.

Our associations consider this a priority "people" issue. We urge you to favorably consider this bill and support it throughout the legislative session. Please insure that we have no more SGT Jones' stories. Thank you for the opportunity to testify and I will remain available for questions.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 2-2-91
BILL NO. HB 114

INFORMATION PAPER ON VETERANS' REEMPLOYMENT RIGHTS FOR MEMBERS OF THE NATIONAL GUARD

- Chapter 43, Title 38 U.S.C. (Veterans' Reemployment Rights) provides civilian job protection for any individual, including members of the National Guard, called to serve the military in a Federal active duty status.

  -- Enforcement of the provisions of the Veterans' Reemployment Rights is a charter of the U.S. Department of Labor in conjunction with the U.S. Department of Justice.

- In 1972, the Secretary of Defense created an organization, comprised primaily of civilian volunteers, called "Employer Support of the Guard and Reserve" to assist in conflict resolution prior to the stages when the U.S. Departments of Labor and/or Justice must be involved.

  -- The undersigned has served for the past six years as the Executive Director for the Montana Committee for Employers Support of the Guard and Reserve.

  -- In that capacity, working very closely with the U.S. Department of Labor, I have been extremely involved with the processes of employer/employee conflict resolution.

- In the six years I have been involved in this conflict resolution process, several things have become evident:

1. If an individual is called to serve on Federal Active Duty, Federal Law is explicit in the protection of that individual's civilian reemployment.

2. If an individual, member of the Montana National Guard, is called by the Governor in the event of a State emergency to serve in a State Active Duty status, there is no State Law to insure job protection.

3. Historically, periods of Federal Active Duty may last for several months (Desert Storm) while periods of State Active Duty are relatively short (usually not over 15 days).

4. Much confusion exists relative to State Active Duty. Most employers, as well as Guardsmen, think the Federal Law (38 U.S.C.) applies. IT DOES NOT!

5. Regardless of the existence, or nonexistence, of law most employers are very understand and cooperative in times of emergency, Federal as well as State emergencies; however, there have been cases (as recent as this past summer when Guardsmen were placed on State Active Duty to fight forest fires) that Guardsmen have been terminated from their civilian employment after returning from combating State emergencies.

6. Montana needs a provision in the law to protect the civilian employment of Montana Guardsmen when those Guardsmen are called to State Active Duty in the event of a State emergency.

Frank E. Tobel, Colonel, MT ANG
Phone: 444-6901

SENATE LABOR & EMPLOYM
EXH'BIT NO. 8
DATE 2-2-95
BILL NO. HB 114

- MONTANA NATIONAL GUARD (ARMY AND/OR AIR) STATE ACTIVATIONS -

START DATE:	END DATE:	WORKDAYS REQUIRED:	EVENT:	LOCATION:
27 Jul 94	30 Sep 94	12,102	Wildfire	Statewide
20 Aug 92	20 Aug 92	4	Wildfire	Dearborn
12 Mar 92	12 Mar 92	4	Wildfire	Cascade County
17 Oct 91	21 Oct 91	279	Wildfire	Lincoln County
17 Oct 91	28 Oct 91	105	Wildfire	Fergus County
10 Oct 91	28 Oct 91	20	Wildfire	Blain County
25 Apr 91	1 May 91	4,334	State Institution Strike	Statewide
14 Nov 90	20 Nov 90	248	Wildfire	Helena Nat'l Forest
9 Aug 90	13 Aug 90	23	Wildfire	Custer Nat'l Forest
2 Aug 89	4 Aug 89	3	Train Wreck	Whitefish
2 Feb 89	3 Feb 89	24	Train Explosion	Helena
16 Jul 88	18 Sep 88	8,888	Wildfire	Statewide
25 Sep 86	1 Oct 86	249	Flood	Milk River
16 Aug 86	19 Aug 86	45	Wildfire	Sand Creek
11 Aug 86	19 Aug 86	68	Wildfire	North Valley
10 Aug 85	15 Aug 85	48	Wildfire	Lost Trail Pass
9 Aug 85	12 Aug 85	67	Wildfire	Woodward Ranch
12 Jul 85	23 Jul 85	120	Wildfire	Hellgate Canyon
5 Jul 85	14 Jul 85	274	Wildfire	Sandpoint
2 Jul 85	6 Jul 85	119	Wildfire	Game Ridge
24 Jun 85	2 Jul 85	56	Wildfire	Milltown
27 Aug 84	20 Sep 84	5,272	Wildfire	Western Montana
21 Jun 84	25 Jun 84	25	Flood	Dillon

Numerous State activations occured prior to 21 Jun 84 (i.e. State Institution Strike in 1979); however, complete records of such activations could not be located.

In addition, numerous Search & Rescue missions (several of which resulted in saving of life) have been performed coincident to training in National Guard Federal status.

The bottom line:

This ten year period, involving 23 State activations, represents 32,377 days in which we jepordized our Guardsmen's civilian jobs while those individuals were dealing with emergency situations in service to our State.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9 1/2
DATE 2-2-95
BILL NO. SB 180

I am John Good

I am testifying in favor of passage of Senate Bill 180.

I am a Chouteau County Farmer.

I have been on the Fort Benton High School Board for almost 14 years now.

I am testifying for the repeal of Binding Arbitration for Montana Schools.

I have been involved in the Collective Bargaining process numerous times during my time on the Fort Benton School Board.

Fort Benton does not have Binding Arbitration in its' teacher contract.

We, as a Board, have always felt that Binding Arbitration amounted to a serious loss of local control. Binding Arbitration substitutes the judgement of an outside third party for that of the elected school board.

I will explain part of my concern.

Arbitrators are usually picked by some version of the following process. An odd number (say 7) of possible names are presented on a list. One party is chosen to lead off(say Management first). Management gets to strike one name from the list. Labor then gets to strike a name. This alternates until one name is left. This person is your arbitrator.

This is a fair way to pick a name.

Some thought should be given however as to why this particular individual survived the process.

An arbitrator who favors Labor will be struck by Management. Likewise an arbitrator who favors Management will be struck by Labor.

The surviving arbitrator will tend to be a compromiser. This person is actually more of a mediator with binding authority over the local school district.

This opens the door for abuse of the system. The method is simple. Ask for twice what you want. Hold out for Binding Arbitration and settle half way in between. This gives you what you had in mind to start with.

This process may relate to disputes involving salary or to working condition disputes. One type results in higher salary, the other in less time on task. Both end up as additional cost to the districts.

School districts cannot afford more costs. Binding Arbitration amounts to an end run around the locally controlled Collective Bargaining System.

Traditionally Collective Bargaining has been a trade type situation. I am speaking from a management perspective but it works both ways. When you want something at the bargaining table you probably will have to trade for something the other side wants. Sometimes it is money for contract language or sometimes language for language, but usually it comes down to a trade. Binding Arbitration seriously limits the effectiveness of this process. The "Ask For Twice What You Want And Compromise In The Middle" process does not lend itself to management rights. Binding Arbitration assures a slow but continued erosion of management rights. Lost management rights are seldom regained.

Binding Arbitration has an adverse effect on the locally controlled school districts ability to control costs.

There will also be additional direct costs. There will be arbitrators fees and an increase in the number of grievences filed.

In closing, I favor a repeal of the Binding Arbitration Law for Schools.

Binding Arbitration is a serious threat to the local control of our schools.

Binding Arbitration will increase the cost of running public schools.

Binding Arbitration will erode the Management rights of the Local School District.

Binding Arbitration is like shooting yourself inthe foot with a 22. It's better than using a 45, but the best plan in not to shoot yourself at all.

REPEAL BINDING ARBITRATION.

Thank you for your time.
John C. Good

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10 1095
DATE 2-2-95
BILL NO. SB 180

To: Morris Van Campen

c/o Colonial Inn

Helena, MT

FAX # 1-406-442-0301

Total pgs: 1/6 (incl. cover sheet)

From:

Dan Martin, Supt.
Glendive Public Schools
(406) 365-5293
FAX (406) 365-6212

Box 662
Glendive Mt 5933
Feb. 1, 1995

Senate Labor & Employee Relations Committee
Montana Legislature
Helena Mt 59601

Honorable Committee Members of the
Senate Labor & Employee Relations Committee:

Please place me on record as supporting the repeal of the mandatory binding arbitration Bill (SB-180).

By implementing this legislation into law, it does away with local control, increased volume of cases, additional costs to district and finally, it has taken away one of the trades at the bargaining table.

I am in favor of the repeal of the mandatory binding arbitration bill.

Sincerely yours,
Marilyn Degmann
Board Chairman
Elementary District #1

EXHIBIT NO. 10
DATE 2-2-95
BILL NO. SB 180

3-95

Peg Stulc
108 Michelle Ln
Glendive Mt 59330

Feb. 2, 1995

Senate Labor & Employee Relation Committee
Helena, Mt

Committee Members;

As a parent, tax payer and Board of Education member, I strongly support the repeal of (SB-180) Binding Arbitration

Repeal of mandatory binding arbitration best maintains community controls over fiscal responsibility and management decisions offering the best education for our students.

Glendive has a strong sense of community support for education and "all" aspects that best insures it reflects our communities interests and commitment.

I strongly encourage your committee to help us maintain our commitments & responsibilities

Sincerely,
Peggy Stulc

SENATE LABOR & EMPLOYMENT
EXHIBIT NO 10 4 of 5
DATE 2-2-95
BILL NO SB 180

February 1, 1995

Senate Labor and Employee Relations Committee

Committee Members:

I support the repeal of binding arbitration (SB-108)

Thank you,

Connie Roberts
Glendive Elementary Trustee

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10 5 of 5
DATE 2-2-95
BILL NO. SB 180

Committee Members of Senate Labor & Relations

I support the repeal of SB 180.
I do not feel there is a need for
binding arbitration to be included
in ~~this~~ legislation.

Thank you

Patricia Attwell
Glendive Elementary Trustee.

Feb 1, 1995

To: The Senate Labor and Employee Relations Committee

Please support the repeal of mandatory binding arbitration (SB-180)

This legislation does away with local control, adds to the cost of doing business for many districts & will add to the number of cases a school district must answer which will end up with a higher annual out of pocket cost.

Thanks for your consideration

Bob Kinsey
Elementary Trustee
Dist #1
Glendive, MT

Reasons to Speak in Favor of Repeal of Mandatory Binding Arbitration

1. The difference between the standard for dealing with misconduct of a sexual nature between a teacher and a student as stated in a Dawson County High School case and the standard used for labor arbitration cases as stated in both the Laurel and Colstrip cases.

2. Being forced to accept the morality of an arbitrator who might say that "Such butt patting undoubtedly is objectionable to some students and therefore may rise to the level of sexual harassment." Laurel p. 10 ... " In light of this language, the core factual questions thus become: Did the Grievant repeatedly touch the accusing students on their buttocks as charged? If so, was this touching 'unwelcomed?' If so, did this conduct create for these students an intimidating, hostile, or offensive education environment?" p.12... " I trust the students' innate perception that his touching was inappropriate." p.12 " A critical aspect of this case turns on the conspicuous use of the word ' unwelcomed' as the defining adjective in the charge against the Grievant. In respose to questions on cross-examination, both students admitted that they said nothing to the Grievant about adverse reaction to his touching them, nor did either make any gesture or movement to indicate that his conduct was offensive.

The Grievant thus had no direct way of knowing that his behavior was 'unwelcomed.'" p.13.... " I must emphasize that I intend no criticism of the students for not acting or speaking out earlier to put an end to the Grievant's misconduct. Competent research establishes that most children and even many adults are often too embarassed and intimidated to confront authority figures whose actions are sexually offensive to them." p.13

Colstrip Case

" Although Mr. 's classroom conduct was inappropriate and distasteful, this Arbitrator does not find that it warranted the type of action traditionally regarded as an ' immediate dischargeable offense.' In the context of the teacher in the classroom, only proven, intentional efforts to harm a student would call for immediate discharge. Such examples would include: striking a student; individual sexual harassment; touching without consent; and intentional efforts that would personally demean, humiliate, or embarass a student." p.29

Arbitrator's Seven Tests of Just Cause
Quoted From "Arbitration Hearing Between Laurel Education Association and Laurel School District"
Also used in the arbitration between Colstrip Education Association and the Colstrip School District p. 26
Both cases quote, Koven and Smith, Just Cause, The Seven Steps (BNA 1992) as the source.

1. Was the work rule allegedly violated by the Grievant reasonable? p.9

2. Was the District's Sexual Harassment Policy clearly expressed and effectively promulgated? p.9

3. Did the District provide its teachers with clear notice of the consequences for violating its Policy? p.10

4. Did the District conduct a full and fair investigation into the facts? p.11

5. Do the facts uncovered by the District's investigation prove the Grievant guilty of the offenses for which he was discharged? p. 11

6. Did the District afford the Grievant equal treatment with that of other employees in comparable situations? p.13

7. Does the penalty of discharge fit the seriousness of the Grievant's proven misconduct? p14

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11
DATE 2-2-95
BILL NO. SB 180

Janice F. Doggett
General Counsel

Legal Corner

Conduct constitutes "unfitness"

Conduct which violates state and federal sexual harassment provisions constitutes "unfitness" as defined in Section 20-4-207, MCA according to county superintendent H. C. "Buzz" Christiansen in a case involving the termination of a tenured teacher.

John Pickart was a tenured teacher employed by the Dawson County High School as a mythology and humanities teacher. In December of 1992 three female high school students filed written sexual harassment complaints against Pickart.

Dan Martin, the school superintendent, determined that the complaints were substantial and advised Pickart of the existence of the complaints, at a meeting Pickart was again advised of the complaint and was suspended with pay pending completion of an investigation.

The district hired an outside investigator to investigate the allegations. The investigator compiled a 25 page report and a summary. The district provided a revised copy of the summary to Pickart. Martin asked Pickart to meet with him to discuss the allegations and the summary, Pickart refused to meet with Martin until he received the entire report. The district again revised the summary to include the names of students who waived their right of privacy. Martin again asked Pickart to meet with him. Based upon the advice of his union and union attorney, Pickart again refused to meet with Martin unless the entire report was disclosed. At that point Martin recommended to the board of trustees that Pickart's employment be terminated, mid-contract pursuant to 20-4-207, MCA. The recommendation for termination was based on allegations of sexual harassment, Pickart's refusal to meet with Martin and allegations that Pickart made anonymous phone calls to Martin's home. The board affirmed Martin's recommendation and terminated Pickart's employment.

Pickart appealed the board's decision to the county superintendent. Christiansen heard the case and concluded that Pickart did, in fact, engage in sexual harassment and intimidation with students. He heard the testimony of eight students who stated that Pickart: referred to the buttocks of a female student as "big dimply Alas" in front of the class; stared at the legs of female students during class; referred to works of art in reference to women's vaginas; indicated that females would get places with their legs; commented about the size of the breasts in female sculptures; referred to female and male body parts in movies shown in class; told female students that it was a good thing that they had looks, because they wouldn't get far on their brains; told "blonde" jokes which students testified humiliated them; approached a student who was sitting sideways at her desk, straddling her legs and leaned into her bringing his face within inches of her face; put his face close to another female student and made sexually suggestive comments; spread his legs while sitting on his desk which appeared to a male student as being seductive to female students; allowed inappropriate comments to be made to a male student as a "queer". The male and female students testified that they were embarrassed, offended, degraded, made to feel uncomfortable, humiliated, shocked and harassed and the conduct created a poor learning environment. Mr. Christiansen found the testimony of the students to be credible.

Christiansen also found that Martin had the power to investigate the allegations and suspend Pickart with pay pending the investigations. In addition to holding that the sexual harassment and intimidation of students violated state and federal law and amounted to "unfitness" under 20-4-207, Christiansen held that Pickart's insubordinate refusal to meet with Martin and his anonymous phone calls to Martin were sufficient reasons to terminate Pickart's employment. In reaching his decision, Christiansen determined that:

[A] higher standard should be imposed upon a faculty member's behavior toward his student than that which is imposed on an employer with regard to his employee ... The student-faculty relationship encompasses a trust and dependency that does not inherently exist between parties involved in a sexual harassment claim under Title VII (a claim of workplace sexual harassment). Patricia H. v. Berkley Unified School District, 830 F.Supp. 1288 (N.D. Cal.1993)

The maintenance of this higher standard is of even greater importance in light of recent federal court decisions imposing liability on public employers and their agents for failing to prevent sexual harassment. See Doe v. Taylor and Kiribian v. Columbia University (cites) reported in the April edition of *School Law Review*. Pickart v. Dawson County High School District, before Yellowstone County Superintendent H. C. "Buzz" Christiansen, sitting for Jean Grow, Dawson County Superintendent, decided April 21, 1994.

Too many administrators?

There are fewer administrators/managers in education than in most areas of business and public administration. According to figures from the U.S. Bureau of Labor Statistics reported by the Educational Research Service, the ratio of the number of staff supervised by public school administrators (14.5 employees) is twice the average of ratios throughout all manufacturing industries (7.1 employees) and four times the ratio in public administration (3.6 employees).

Add the fact that most administrators are supervising a complex transportation system, food service facilities, daycare programs and extracurricular activities, along with the safety of hundreds of students, it makes a strong argument for the value of "managers" in education.

IN THE MATTER OF THE ARBITRATION

BETWEEN

COLSTRIP FACULTY ASSOCIATION, MEA/NEA, Association, and COLSTRIP SCHOOL DISTRICT, COLSTRIP, MONTANA, Employer.	)	ORDER Re: ELMER BALDRIDGE GRIEVANCE -- DISCHARGE

The Arbitrator, in arriving at this decision, has reviewed all of the evidence, exhibits, and transcript of the hearing, as well as the arguments of the parties as set forth in the post-hearing briefs. In view of all the evidence, and for reasons set forth in this Opinion, it is the decision of the Arbitrator that the grievance of Mr. Baldridge be sustained, the termination be set aside, and a remedy awarded in accordance with the following Order.

1. The termination of Elmer Baldridge on May 18, 1988, shall be set aside.

2. Mr. Baldridge shall not be reinstated to his former position in the Colstrip Public School District.

3. Mr. Baldridge shall be restored all lost wages from May 18, 1988, to the date of actual payment on the basis of the straight-time hours he would have otherwise worked but for his wrongful termination. Any monies Mr. Baldridge received in lieu of his regular wages, including unemployment compensation and interim earnings from regular full-time employment, shall be deducted from the amount due him.

4. All mandated payroll tax entitlements, out-of-pocket insurance premiums and unreimbursed health and hospitalization, dental, vision, and disability costs which would have normally been paid by the District, but for Mr. Baldridge's termination, are awarded.

5. The District shall pay interest on the back pay due Mr. Baldridge in accordance with this decision at a rate of 8 percent per annum from May 16, 1988, to the date of payment of the award.

6. The District shall reimburse the Association $1,200 for the costs incurred by the Association in responding to the District's Motion to Preclude Arbitration.

7. Pursuant to Article XII, Section 6 of the Labor Agreement, the costs of the arbitration shall be equally divided between the parties.

8. In accordance with the stipulation of the parties, the Arbitrator shall retain jurisdiction in this matter for a period of sixty (60) days from the date of this Order for the purpose of assisting the parties in the administration of this award should the parties so jointly request.

Eric B. Lindauer
Arbitrator

February 2, 1993

IN THE MATTER OF THE ARBITRATION

BETWEEN

COLSTRIP FACULTY ASSOCIATION, MEA/NEA,

Union,

and

COLSTRIP SCHOOL DISTRICT NO. 19, COLSTRIP, MONTANA,

Employer.

OPINION AND ORDER

Re: GRIEVANCE OF ELMER BALDRIDGE--TERMINATION

BEFORE

ERIC B. LINDAUER

ARBITRATOR

February 2, 1993

REPRESENTATION

FOR THE UNION:

Kay Winter
UniServ Director
Montana Education Association
510 North 29th Street
Billings, MT. 59101

FOR THE EMPLOYER:

Rick D'Hooge
Labor Relations Director
Montana School Boards Assn.
One South Montana Avenue
Helena, MT 59601

NATURE OF PROCEEDING

1. Background

This arbitration arose out of a school district's decision to terminate a high school teacher for classroom misconduct.

The Colstrip Faculty Association (the "Association" or the "Union") and the Colstrip School District (the "District" or the "Employer") are parties to a Collective Bargaining Agreement (the "Agreement") which provides that a teacher shall not be terminated without just cause.

The grievant, Elmer Baldridge (hereinafter "grievant" or "Mr. Baldridge"), a tenured high school science teacher at Colstrip High School, was terminated on May 16, 1988, following a hearing before the District School Board. As a result of his termination, the Faculty Association on behalf of Mr. Baldridge filed two separate appeals as allowed under the terms of the Collective Bargaining Agreement. The first was to file a grievance pursuant to the Grievance Procedure. The second was to appeal the decision of the Board of Trustees to the County Superintendent of Schools as provided by the Montana statutes. The following is a summary of the events which followed the initiation of these two proceedings which now brings this matter before the Arbitrator.

2. The Grievance

On May 24, 1988, the Association, pursuant to Article V, Section 1 (10), and Article XII, Section 1, of the Agreement, filed a grievance contending the School District did not have just cause to terminate Mr. Baldridge. Initially, the School District

participated in the processing of the grievance. When the parties were unable to resolve the grievance, the Association moved the grievance to arbitration. A list of arbitrators was submitted to the District. The District refused to enter into selecting an arbitrator or to submit the issue to arbitration.

On September 30, 1988, the Association filed an action in District Court requesting the court to compel the District to arbitrate the grievance. On December 12, 1990, District Judge Joe L. Hegel ordered the School District to comply with the provisions of the Collective Bargaining Agreement, and specifically ordered the District to proceed with the arbitration of the grievance of Mr. Baldridge. The School District filed a Motion for Reconsideration which was denied by the judge.

On February 15, 1991, the School District appealed the District Court's decision to the Montana Supreme Court. Following submission of written briefs and oral argument, the court on January 16, 1992, affirmed the District Court's decision and ordered the School District to arbitrate the grievance.

3. Statutory Appeal

On June 3, 1988, pursuant to Montana statutes, the Association, on behalf of Mr. Baldridge, filed an appeal with the Rosebud County School Superintendent contesting the decision of the District School Board. Under Montana law, the County Superintendent is allowed to determine, from a review of the record, whether the District School Board had "good cause" to terminate a teacher. After reviewing the record in Mr. Baldridge's

case, the County Superintendent concluded that the District did not have good cause for the termination and ordered Mr. Baldridge's reinstatement as a teacher at Colstrip High School. The School District appealed the County Superintendent's decision to the State Superintendent of Public Instruction, in accordance with the statutory appeal process.

On January 10, 1992, the State Superintendent issued his decision in which he reversed the County Superintendent and upheld the School District's termination. On February 18, 1992, the Association filed its Petition for Judicial Review of the State Superintendent's decision before the State District Court in Billings, Montana. On August 25, 1992, oral arguments were heard by the District Court and a decision regarding the Association's appeal is currently pending.

4. School District's Motion to Preclude Arbitration

Following the decision of the Montana Supreme Court which ordered the School District to arbitrate Mr. Baldridge's grievance, the parties selected the undersigned as the Arbitrator to hear the matter. The Arbitration hearing was set for July 14, 15 and 16, 1992. Thereafter, the School District filed its Motion to Preclude Arbitration with the Arbitrator on the grounds that the State Superintendent's decision is final and should act as res judicata, collateral estoppel, or stare decisis to the arbitration of this grievance. The Association filed its response to the School District's Motion to Preclude Arbitration, arguing that res judicata should be applied to the School District's motion. The

parties agreed to waive an evidentiary hearing and to submit their respective positions to the Arbitrator in the form of written briefs relevant to the underlying issue of whether the grievance of Elmer Baldridge is arbitrable.

Following the receipt of evidence, stipulated facts, and written briefs submitted by the parties, the Arbitrator took the arbitrability issue under advisement. On August 14, 1992, the Arbitrator issued his Opinion and Order denying the School District's Motion to Preclude Arbitration and finding that the grievance was arbitrable.

5. <u>The Arbitration Hearing on the Merits</u>

The arbitration hearing was held on September 29 and 30, 1992, and October 1, 1992, in Colstrip, Montana. The grievant, Elmer Baldridge, and the Colstrip Faculty Association were represented at the hearing by Kay Winter, MEA UniServ Director, and Tom Bilodeau, MEA Director of Research. Colstrip School District No. 19 was represented by Rick D'Hooge, Labor Relations Director for the Montana School Boards Association, and Arlyn Plowman, Labor Relations Specialist for the Montana School Boards Association.

At the commencement of the hearing, the parties represented that the procedural steps of the grievance procedure in the Collective Bargaining Agreement had been exhausted and that the matter was now, finally and appropriately, before the Arbitrator. The parties further stipulated the Arbitrator would retain jurisdiction in this matter for a period of 60 days following the issuance of the Order for the express purpose of assisting the

parties in resolving any questions which may arise out of the implementation of the terms of the Order, should the grievance be sustained and the award include a remedy in favor of the Association.

During the course of the three-day hearing, each party was provided a full opportunity to make opening statements, introduce exhibits, and examine and cross-examine witnesses on all matters relevant to the issues in dispute. In this regard, 33 witnesses testified during the course of the hearing and 54 exhibits were received in evidence. A transcript of the hearing was provided to the Arbitrator.

At the conclusion of the hearing, the parties waived oral argument and agreed to submit their respective positions to the Arbitrator in the form of written post-hearing briefs, which were received by the Arbitrator in a timely manner. Upon receipt of the post-hearing briefs, the hearing record was closed and the Arbitrator took the matter under advisement. The Arbitrator now renders his Opinion and Order in response to the issues in dispute.

ISSUES

At the commencement of the hearing, the parties stipulated the issues to be decided in this arbitration to be as follows:

Issue No. 1

> Did the School Board deny Elmer Baldridge Due Process (Article V, Section 1(4)), Just Cause (Article V, Section 1(10)), and Progressive Discipline (Article V, Section 1(10)) when it terminated him from his teaching position on May 16, 1988? and/or

Issue No. 2

Was Elmer Baldridge terminated for union activity (Article V, Section 1(2)?

Issue No. 3

If so, what should the remedy be?

RELEVANT CONTRACTUAL PROVISIONS

In the opinion of the Arbitrator, the following provisions of the Collective Bargaining Agreement and School District Policies are relevant in determining the issues in dispute:

COLLECTIVE BARGAINING AGREEMENT

ARTICLE V - TEACHER RIGHTS

Section 1 - Teacher Rights: All teachers are entitled to the following rights:

2. To retain membership and participate in the activities of the Colstrip Faculty Association or any other educational association without fear of discipline or discrimination from the School District.

4. To not be disciplined, reprimanded, reduced in rank or compensation, without due process.

9. Any teacher who has been dismissed before the expiration of her/his employment contract may proceed in accordance with state statutes.

10. The School Board agrees to follow a policy of progressive discipline which would normally include verbal warning, written reprimand, suspension or dismissal. It is understood that these elements of discipline, verbal warning, written reprimand, suspension, or dismissal may be implemented at any level by the School Board depending upon the seriousness of the offense.

No teacher shall be disciplined, reprimanded, suspended, reduced in rank or compensation, dismissed, non-renewed or terminated without just cause. It is understood that this provision does not apply to the non-renewal of non-tenured teachers.

11. The terms and conditions of this Agreement shall be interpreted and uniformly applied throughout the School District.

ARTICLE XII - GRIEVANCE PROCEDURE

Section 6 - Adjustment of Grievance: The school District and the grievant shall attempt to adjust all grievances which may arise during the course of employment within the School District in the following manner:

Subsection E - Arbitration:

The Arbitrator shall not add to, subtract from or otherwise modify the terms and conditions of the Collective Bargaining Agreement.

COLLECTIVE BARGAINING AGREEMENT
APPENDIX C
EVALUATION PROCEDURE

III. Interpersonal Relationships

A. Interpersonal Relationships with students are effective.

The teacher:

1. Promotes a positive self-concept.
2. Avoids use of sarcasm with students.
3. Uses appropriate language with students.
7. Shows courtesy towards students.

COLSTRIP SCHOOL DISTRICT POLICY GBBA-R
DUTIES AND RESPONSIBILITIES OF TEACHERS

1. Endeavor to promote harmonious efficiency in our classes and all other professional contacts, always keeping in mind the ultimate good of every pupil.

2. Maintain a wholesome atmosphere for learning in the classroom at all times.

10. Act in such a manner that the reputation, dignity, ability, and efficiently [sic] of teachers and other school employees present a unified and purposeful organization to the community.

15. Teachers are expected to use standard English when communicating with students or in the presence of students. Vocabulary normally considered to be vulgar, cursing, suggestive, or obscene is not allowed at the

school or in the presence of or within hearing of a student. It is strongly recommended that this standard apply to professional relationships.

COLSTRIP SCHOOL DISTRICT
TEACHING PERSONNEL HANDBOOK
(ADOPTED AS SCHOOL BOARD POLICY)

Duties and Responsibilities

Teachers are expected to use standard English when communicating with students. Vocabulary normally considered to be vulgar, cursing, suggestive, or obscene is not allows [sic] during school or in the presence of, or within hearing of a student. It is strongly recommended that this standard apply to professional relationships. Teachers are to demand that their students address them as either Mr., Mrs., Ms., or Miss, whichever applies.

SUMMARY OF FACTS

On May 16, 1988, the Colstrip Board of Trustees, acting on the recommendation of the District School Superintendent, voted unanimously to terminate the teaching contract of Elmer Baldridge, a high school science teacher, for "unfitness, incompetence and violation of the adopted policies of the trustees."

The events which led to the School Board's action are well known to the parties, generally are not in dispute, and may be summarized as follows.

1. The Grievant

Elmer Baldridge, at the time of his termination, was a tenured science teacher at Colstrip High School. He was in his fifth year of a teaching contract with the District and consistently had received satisfactory evaluations for his teaching performance. In addition to his teaching responsibilities, Mr. Baldridge was

actively involved in numerous extracurricular student activities. He was an assistant coach in several sports and was involved in school plays. Prior to his termination, Mr. Baldridge had never been formally disciplined by the District regarding his performance as a teacher. Mr. Baldridge was also very involved in the activities of the Colstrip Faculty Association (CFA). He served as President-elect and President of the CFA. In his capacity as President-elect, he was responsible for processing numerous grievances filed by the Association against either the Superintendent or the School Board. Throughout his career at Colstrip, Mr. Baldridge has been an outspoken advocate on behalf of the Association and was not reluctant to express his personal views on how the high school should be run, which were often critical of the administration. Mr. Baldridge was often reprimanded for his conduct on behalf of CFA and for expressing his personal opinions.

2. Basis for Termination

On April 12, 1988, Eileen Johnson, Mr. Baldridge's building Principal, received a letter from the parents of a student in Mr. Baldridge's high school chemistry class. In their letter, the parents related an incident which occurred during Mr. Baldridge's second period chemistry class on March 30, 1988. According to the letter, Mr. Baldridge, while standing in front of the class near some lab equipment on a counter by a sink, picked up a rubber glove and put it on his hand. He then raised his hand up and asked the students, "Any female volunteers from the audience?" This incident was related to the parents by their daughter, who found

Mr. Baldridge's comment to contain sexual inferences which were personally offensive. The parents requested that the matter be investigated and, if found to be true, that appropriate action be taken by the District.

Thereafter, an investigation was initiated by Principal Johnson, during which she interviewed other students in the class. They confirmed that the incident, as alleged in the parents' letter, had, in fact, occurred. Ms. Johnson then interviewed Mr. Baldridge, provided him with a copy of the letter from the parents, and advised him that other students had been interviewed and corroborated the parents' allegation. Mr. Baldridge admitted that the incident had occurred but that it was not meant to be offensive and was taken out of context by the students. Mr. Baldridge contends that he was asking for assistance to wash the lab equipment and that he had no intention of conveying gynecological inferences.

During the course of Principal Johnson's interviews with the students, she was told of other incidents in which Mr. Baldridge was alleged to have made comments or gestures that had suggestive sexual overtones. Given the seriousness of the allegations, Principal Johnson, on April 13, 1988, sent the following letter to Mr. Baldridge:

> During my conversations with students about this incident, they brought up other things which were said in class. These are serious allegations. Because of my responsibility to the well-being of all students in this school, I am recommending to the Superintendent and the Board of Trustees that you be suspended with pay pending a district inquiry.

On the following day, April 14, 1988, the District Superintendent followed the recommendation of Principal Johnson and advised Mr. Baldridge that he was being suspended with pay pending a "complete investigation." The School Board adopted the administrators' recommendation and notified Mr. Baldridge of his right to a hearing before the Board, which was set for May 17, 1988.

Mr. Baldridge made copies of the suspension letter available to his classes, and the following day, April 15, 1998, there was an organized student walk-out and demonstration in response to Mr. Baldridge's suspension. The demonstration was covered by the local media and a Billings television station.

In view of the sensitive nature of the allegations, the public's awareness of the District's action, and Mr. Baldridge's "high profile" as a CFA advocate, the District retained Mr. Paul Stengel, a retired School Administrator from Miles City, to conduct the investigation. In the course of his investigation, Mr. Stengel interviewed students who had attended Mr. Baldridge's classes and reported the incident to Principal Johnson, as well as other students who were both critical and supportive of Mr. Baldridge's classroom conduct. The District made Mr. Stengel's presence known to all students. Any student who wished to speak with Mr. Stengel regarding Mr. Baldridge's conduct and performance as a teacher was free do so, and many did. The interviews were conducted by Mr. Stengel from April 18 through April 26, and upon completion of

his investigation, transcripts of each student's interview were provided to Superintendent Tokerud.

3. **Superintendent's Recommendation to the Board of Trustees**

Superintendent Tokerud reviewed the interviews, consulted with Principal Johnson, and on April 29, 1988, sent a letter to the Chairman of the School Board recommending that Mr. Baldridge be terminated. In his six-page letter to the Board Chairman, Superintendent Tokerud identified twelve separate incidents of misconduct by Mr. Baldridge which formed the basis for his dismissal. The incidents identified as the basis for recommending dismissal, as set forth in the Superintendent's letter, are as follows:

1. That in several of his classes on or about March 30, 1988 Mr. Baldridge picked up a rubber glove, put it on his hand, raised his hand up and said to the students "Any female volunteers from the audience", or words to that effect. Mr. Baldridge later admitted making the statement. There were students in the class who were embarrassed and believed the comment was sexually offensive.

2. That Mr. Baldridge made the following statement to a student on school property in reference to another student: "Can you believe that (name deleted). I was ready to tell him to stop, drop and blow me."

3. That Mr. Baldridge made the following statement to a group of students on school property, referring to another student: "I'll give you twenty bucks if you make that kid cry."

4. That Mr. Baldridge told his students in class a joke concerning a teacher who was getting a little "quizzie" and a girl (in the joke) said she would like to see your little "testes".

5. That in a conversation with a student on school property concerning a test given by Mr. Baldridge,

the student commented that Mr. Baldridge should be hung. Mr. Baldridge looked down at himself where his private parts are and said "I am".

6. That Mr. Baldridge told a student, in response to a question as to what the class would be doing that day, "I thought about putting some chocolate on the floor and getting naked and rolling around until it melted."

7. That Mr. Baldridge would refer to some individuals by stating: "He's what Cinderella did to her finger". The students commonly understood this to be reference to a "prick".

8. That Mr. Baldridge would state to the class on occasion that: "You guys might think I am a little ....." then he would prick his finger. Again the students commonly understood this to be a reference to a "prick".

9. That Mr. Baldridge on numerous occasions has "flipped off" or "given the finger" to students during the school day on school property.

10. That Mr. Baldridge remarked to a female student who stated she didn't like the sight of blood, "you must have a rough month" or words to that affect.

11. That Mr. Baldridge commonly makes sarcastic remarks in the course of his teaching which are not conducive to good instructional techniques.

12. That Mr. Baldridge distributed the letter he received from the high school principal (Exhibit A) to students, which caused unnecessary disruption in the educational environment.

Superintendent Tokerud concludes his letter by stating:

> It is for the above reasons that I am recommending that Mr. Baldridge be dismissed for unfitness, incompetence and violation of school board policies pursuant to Section 20-4-207. I must keep the well-being of the students as the first priority, and I find that these incidents reflect a consistent pattern of unprofessionalism which cannot, and should not be allowed in the Colstrip Public Schools.

4. **Termination Hearing Before the School Board**

On May 16, 1988, the Colstrip School Board conducted a public hearing pursuant to Section 20-4-207, MCA, in response to Superintendent Tokerud's letter recommending Mr. Baldridge's termination. The hearing was recorded and a transcript of the hearing was introduced as evidence in this proceeding. A review of the transcript established that Mr. Baldridge was represented at the hearing by legal counsel and had a full opportunity to call witnesses and introduce evidence in an effort to refute the allegations set forth in the letter recommending his dismissal. During the course of the hearing, Mr. Baldridge admitted to nine of the incidents, two were not pursued, and one he categorically denied. Although Mr. Baldridge admitted to most of the incidents, he emphasized at the hearing that he did not intend for his remarks to be personally offensive and that the remarks were all conveyed to the students in a humorous manner and were not made in the context that the District contends. The School Board received testimony from students who witnessed Mr. Baldridge's conduct and found it to be offensive, as well as from other students who were not offended by his behavior.

Following the hearing, the School Board voted unanimously, with one abstention, to adopt the Superintendent's recommendations that Mr. Baldridge's employment with the District be terminated.

5. **Post-Hearing Appeals**

On May 24, 1988, the Colstrip Faculty Association filed this grievance contending that the School Board's termination of

Mr. Baldridge was without just cause. As a remedy, the Association requested that:

> Elmer Baldridge must be reinstated with no loss of rights, benefits and privileges -- to include, but not limited to, back pay, return to placement on the salary schedule, and return of sick leave days upon reimbursement to the District for same. His work record must be expunged of all mention of the original suspension and the subsequent dismissal. Any other appropriate remedy may be fashioned by mutual agreement and/or an arbitrator's decision.

The grievance was denied by the District. The Association advised the District that it wished to waive the step process set forth in the Grievance Procedure provisions of the Agreement and submit the issue to binding arbitration. The District refused. For the next four years, the District exhausted all of its legal rights to resist the Association's efforts to have this matter heard by an arbitrator. The issue was finally resolved by the decision of the Montana Supreme Court on January 16, 1992, affirming the District Court's decision which ordered the District to arbitrate the grievance filed by the Association on behalf of Mr. Baldridge. The undersigned was selected as the Arbitrator and the dates for the hearing were agreed upon. Thereafter, the District filed a Motion to Preclude Arbitration which was denied by the Arbitrator. The grievance is now appropriately before the Arbitrator for a decision on the merits of the case in response to the issues that have been stipulated to by the parties.

POSITION OF THE PARTIES

The District

The District contends that it had just cause to terminate Elmer Baldridge and that the penalty imposed was consistent with the seriousness of the conduct given his responsibility as a classroom teacher. The District requests that the Arbitrator sustain its decision for the following reasons.

First, the grievant was afforded all the due process rights necessary to satisfy the just cause criteria, both in the notice of the allegations against him and in a fair investigation, as well as the opportunity to present his side to the School Board before they reached a decision.

Second, the District had just cause to terminate the grievant based on his own admission that he made the statements which formed the basis for the termination. Further, there is no dispute that the grievant's comments were inappropriate and constituted a subtle form of student harassment and intimidation. Such conduct was clearly inappropriate and in violation of district policies regarding the responsibilities of teachers.

Third, given the grievant's conduct, termination was the appropriate remedy. The nature of the grievant's comments to students, and the frequency with which he made them, established that his conduct was irremediable. Further, there is no basis for the Arbitrator to substitute his judgment for that of the District's Board of Trustees in reviewing the penalty imposed. In view of all the circumstances surrounding the grievant's remarks,

the penalty imposed was neither excessive nor unreasonable and, therefore, should not be modified by the Arbitrator. The discipline imposed was not inconsistent with the discipline administered to other School District employees.

Fourth, there is no basis for the grievant's claim that his termination was motivated by the District's efforts to "get rid" of the grievant as a result of his union activities. To the contrary, the School Board members who testified at the hearing indicated that the grievant's union activities played no part in their deliberations.

Finally, the District contends that the Association's request for an award of legal fees it has incurred to date, plus interest, is inappropriate in this case and punitive in nature. There is no provision either in the Labor Agreement or Arbitral precedent which justifies such an award under the circumstances of this case. To the contrary, the Agreement specifically provides that the Arbitrator shall not add to, subtract from, or otherwise modify the terms of the Agreement. Thus, the Arbitrator has no authority to grant the Association's request for legal fees. In the District's view, such an award by the Arbitrator would amount to punitive damages. There is no arbitral basis for punishing the District for exercising its legal and constitutional mandates in defending its decision to resist the submission of this case to arbitration, when the matter was being tried in another forum.

For all these reasons, the District maintains the preponderance of the evidence clearly established that it had just

cause for the disciplinary action taken against Elmer Baldridge and that the penalty imposed was neither unreasonable, excessive, nor discriminatory in nature. Accordingly, the District requests that the Arbitrator sustain the termination and deny the grievance and the Association's request for legal fees.

The Association

The Association contends that the District failed to apply the recognized principles of just cause and progressive discipline before it terminated Elmer Baldridge. The Association has taken this position for the following reasons.

First, there was no evidence to suggest that the comments attributed to Mr. Baldridge were intended to be harmful or that they were, under the circumstances, inappropriate.

Second, the District failed to conduct a fair and impartial investigation of the incidents prior to terminating Mr. Baldridge. The conduct of the District's outside investigator is suspect when considering his bias in favor of the District and the manner in which he conducted the student interviews.

Third, the District failed to apply its disciplinary action in a consistent manner. Further, the District refused to offer Mr. Baldridge a plan of remediation, as had been done for other teachers in circumstances far more serious than those alleged to have been committed by Mr. Baldridge. Mr. Baldridge was terminated without benefit of warning, counseling, or being placed on a plan of remediation; and in so doing, the District violated the basic principles of progressive discipline.

Fourth, the penalty of dismissal is excessive and unreasonable when considering Mr. Baldridge's excellent record as a teacher in the District and the fact that the District failed to provide any opportunity for Mr. Baldridge to improve his conduct through a remediation.

Finally, the District's decision to terminate Mr. Baldridge was the result of his union activities. In the Association's view, the District saw these incidents as an opportunity to get rid of Mr. Baldridge because they perceived him to be a troublemaker for the District. Thus, Mr. Baldridge was terminated because of his union activities and not for the reasons set forth by the District.

For all these reasons, the Association requests the Arbitrator find that the District did not have just cause to terminate Elmer Baldridge, sustain the grievance, and grant the remedies requested in this proceeding. The Association requests that in the event the Arbitrator sustains the grievance, Mr. Baldridge be awarded interest on any award of back pay and the Association be awarded its legal fees associated with compelling the District to proceed to arbitration.

OPINION

The issues raised by this arbitration focus squarely on whether the classroom conduct of Elmer Baldridge was so serious in nature that it justified his termination as a teacher at Colstrip High School.

The Arbitrator's responsibility in this matter centers on two primary issues. First, whether the District has established by a preponderance of the evidence that it had just cause to terminate Mr. Baldridge; and second, whether the penalty of termination, under all the circumstances of this case, was excessive, unreasonable, or discriminatory in nature so as to justify modification.

These two issues are broad enough to cover the three specific issues the Arbitrator is required to decide in this case. Accordingly, the Arbitrator shall approach this matter with the following analysis. First, whether Mr. Baldridge's conduct constituted just cause for disciplinary action. Second, whether the District's actions constituted a denial of Mr. Baldridge's rights to due process and progressive discipline or whether the discipline was imposed as a result of his union activity. Third, if the District lacked just cause to discharge the grievant, whether the penalty of termination should be modified. Based on the evidence submitted by the parties, the Arbitrator's response to these issues is summarized as follows.

Summary of Findings

The Arbitrator finds that the District established by a preponderance of the evidence that it had just cause to discipline Elmer Baldridge for his classroom conduct during the 1987-88 school year. Furthermore, the Arbitrator finds that the District failed to apply the principles of due process and progressive discipline required by the Collective Bargaining Agreement when it terminated

Mr. Baldridge on May 16, 1988. Finally, the actions by the District, however, were not based on the grievant's union activity. For these reasons, the Arbitrator concludes that Mr. Baldridge's termination must be set aside and a remedy must be formulated that is consistent with the interests of the parties and the accepted principles of arbitral remedies.

1. Just Cause

a. Background

Article V, Section 10 of the Agreement provides that "[n]o teacher shall be . . . terminated without just cause." The Agreement also incorporates a separate Evaluation Procedure which sets forth the criteria by which the performance of classroom teachers in the Colstrip School District is evaluated. The stated purpose of the evaluation process is "to improve instruction, student attitudes, and relationships between teachers and administrators in the Colstrip School District No. 19." Section III, Interpersonal Relationships, is particularly instructive to the facts of this case. This section provides that interpersonal relationships with students are effective when the teacher "[a]voids the use of sarcasm with students," "[u]ses appropriate language with students," and "[s]hows courtesy towards students." Further, Colstrip School District Policy GBBA-R sets forth the "Duties and Responsibilities of Teachers." Section 15 specifically provides:

> Teachers are expected to use standard English when communicating with students. Vocabulary normally considered to be vulgar, cursing, suggestive, or obscene

is not allowed at the school or in the presence of, or within hearing of a student.

On April 29, 1988, Superintendent Tokerud sent a letter to the Chairman of the Colstrip Board of Trustees recommending that Elmer Baldridge be terminated for "unfitness, incompetence and violation of school board policies." Superintendent Tokerud set forth twelve specific incidents of inappropriate behavior attributed to the grievant while teaching during the 1987-88 school year. The grievant testified at the School Board hearing and again at the arbitration hearing. He admitted that nine of the allegations were either completely or partially true as alleged. Two allegations were not pursued and the remaining allegation was categorically denied by Mr. Baldridge. In view of his admissions to the allegations, the School Board adopted the Superintendent's recommendation to discharge Mr. Baldridge.

b. Nature of the Incidents

Each incident in the letter recommending termination related to comments or gestures that Mr. Baldridge made to students in his classroom. The comments and gestures all have a common theme of sexual innuendo. The grievant maintains that the comments were never intended to be offensive or cause embarrassment to the students. The evidence, however, is to the contrary.

This is not a case where the underlying facts are in dispute. There is no constructive purpose to review each of the nine separate incidents in this Opinion. The grievant has, to his credit, admitted to a substantial degree that he made the comments or gestures as described. However, due to the severity of the

penalty imposed and the concerns expressed by both students and administrators regarding Mr. Baldridge's classroom conduct, a brief review of the incident which prompted the investigation leading to Mr. Baldridge's termination is appropriate.

A student in Mr. Baldridge's second period chemistry class testified that on March 30, 1988, the grievant "picked up a rubber glove, went to the front of the class with the glove on his hand and said, 'Any female volunteers from the audience?'" The student testified that she, as well as other female students in the class, took the statement to mean that the grievant "was acting as a gynecologist" and that she found the remark to be "offensive." The grievant testified that the remark was made in the context of requesting volunteers to wash the lab equipment. The grievant stated that he only meant "to imply doing these dishes is women's work; it's not my work" and that the remark was not intended to convey any sexual inferences.

In this incident, as in each of the 12 incidents alleged in Mr. Tokerud's letter to the School Board, 15 students testified to their observations of Mr. Baldridge's classroom conduct. In general, the Arbitrator found the testimony of these students to be credible. The statements they gave to the investigator, which formed the basis for their testimony at the hearing, were given prior to the District's initiating any disciplinary action against Mr. Baldridge. It was clear that most of the students (as well as faculty members, administrators, trustees, and parents) decided to "take sides" in which they either supported or opposed the

grievant's termination. These views were strongly held and well-articulated during the course of the hearing.

c. Mr. Baldridge's Response to the Incidents

In response to each incident, the grievant did not deny making any specific remark or gesture, but maintained that he had not intended to convey any sexual inferences. The grievant testified that he did not intend any of his remarks or gestures to be offensive to the students. The grievant explains his response to each of the incidents by placing a different implication on the comment or gesture than what his students inferred. He testified that he often uses this "type of humor" to break the tension in the classroom before a test and that, in most instances, "everyone knows that it is a joke."

d. Arbitrator's Findings

It was clear from the record that many students and faculty members regard the grievant as an excellent teacher. He has consistently received high performance evaluations during his five years at Colstrip High School. Just five months prior to his termination, Building Principal Pearce noted in Mr. Baldridge's annual performance evaluation that "his classes are popular with students; they enjoy being challenged; and they enjoy his sense of humor." There is no question that the grievant was a popular teacher with the students. Given his popularity, he apparently felt comfortable using humor in his classroom. Many male students testified that they regarded Mr. Baldridge as "one of the guys."

Although the evidence is persuasive that Mr. Baldridge did not make any comments with the intent to harm or embarrass the students, the grievant's explanations of these incidents were not credible. This conclusion is based primarily on the cumulative testimony of the students and the grievant, and the nature of their relationship during and after school hours. As he became more comfortable with his role at the school as a friend of the students, a friend who happened to be a teacher, the grievant became more comfortable with making sarcastic remarks of a sexual nature that did indeed offend certain students. As the grievant is now painfully aware, the responsibility of "Teacher" still prevails. It is clear from the record that Mr. Baldridge often made classroom comments that had humorous sexual connotations and inferences. The humorous nature of the comments quickly diminishes when compared to the particular impact of the comments on those female students who considered the remarks offensive and inappropriate. It is not enough for the grievant to simply contend that his remarks and gestures were not meant to be offensive. The standard by which his conduct is to be measured is the District's standard, not Mr. Baldridge's view of the appropriateness of his conduct.

The cumulative effect of Mr. Baldridge's conduct in each of the incidents alleged demonstrated an appalling lack of judgment as a teacher and a personal insensitivity to his students. The Arbitrator concurs with the Association's assessment of Mr. Baldridge's conduct:

The Association acknowledges that Elmer Baldridge's behavior may have lacked judgment. Perhaps Elmer should have realized that his actions might have been misinterpreted when he pulled on a dish washing glove and asked for female volunteers. Perhaps he should have thought how his comments might be misconstrued in each of the other eight incidents.

On the basis of this record, the Arbitrator concludes that the District has established by a preponderance of the evidence that it had just cause to impose disciplinary action against the grievant for the incidents described in the Superintendent's letter to the Board of Trustees.

PENALTY

The remaining issues require the Arbitrator to determine whether the discharge penalty imposed by the District was either excessive, unreasonable, or discriminatory in nature, and thus deserving of modification.

The parties have both measured the conduct of the District against the seven-step just cause standard set forth by Arbitrator Carroll R. Daughtery in the Enterprise Wire Co. case. Each party contends that applying these standards to the evidence in this case supports their respective positions. The seven-step test has received wide recognition and is applied by most arbitrators, either by specific reference or general application. See, Koven and Smith, Just Cause, The Seven Steps (BNA 1992). Accordingly, in determining the appropriateness of the penalty in this case, the Arbitrator will make reference to this accepted arbitral standard.

The Arbitrator has previously concluded that the District had just cause to discipline Elmer Baldridge for his classroom conduct. As to whether the penalty of termination should be modified, this presents a more difficult question. This Arbitrator is mindful of the consequences that flow from the Arbitrator's decision to modify the disciplinary action which the Board of Trustees found to be appropriate in Mr. Baldridge's case. Generally, this Arbitrator subscribes to the doctrine that an arbitrator should not substitute his or her judgment for that of management when determining the appropriateness of the penalty in discipline cases. However, to protect against excessive or unequal penalties, exceptions must be provided. Accordingly, this Arbitrator, as do most when faced with this issue, will set aside or modify a penalty only in those situations where it has been established that, under all the circumstances of the particular case, the penalty was found to be unreasonable, excessive, or discriminatory in nature. That will be the standard applied in this case.

In determining whether the penalty was unreasonable, the Arbitrator shall consider the issues relating to progressive discipline and whether the penalty was reasonably related to the seriousness of the conduct. When considering whether the penalty was excessive, the Arbitrator will address the issues relating to the nature of the grievant's conduct, his past record, and his performance as a teacher for the District. Finally, in determining whether the penalty should be set aside on the basis of discriminatory action by the District, the Arbitrator shall

consider the issues of notice, investigation, due process, disparate treatment, and union activity.

1. The District Violated the Progressive Discipline Provisions of the Labor Agreement When It Terminated Mr. Baldridge

Whether the penalty imposed by an employer is reasonable or unreasonable must be measured against a number of factors. Principal among them is the concept of progressive discipline and whether the employee was forewarned that his conduct could constitute grounds for immediate discharge.

> Inherent in the contractual provision that an employee may be disciplined for just cause is the fairness and reasonableness of the penalty.
>
> Koven and Smith,
> supra at 377.

In reviewing the evidence in this case, the Arbitrator concludes that the penalty imposed by the District was unreasonable. The Arbitrator reached this conclusion based on the following findings.

a. The District Failed to Warn the Grievant

Article V, Section 10 of the Labor Agreement specifically requires that:

> The School Board agrees to follow a policy of progressive discipline which would normally include verbal warning, written warning, written reprimand, suspension or dismissal. It is understood that these elements of discipline, verbal warning, written reprimand, suspension, or dismissal may be implemented at any level by the School Board depending upon the seriousness of the offense.

If Mr. Baldridge had been consistently warned about the inappropriateness of his conduct by his administrators and corrective disciplinary action had been taken, it is unlikely that the parties would be in their respective positions today. The

District would have been justified in proceeding with the dismissal, the grievant would have no grievance, and a different result would probably have been reached by the Arbitrator. However, that is not the state of the evidence before the Arbitrator in this proceeding.

The record contains no evidence that the grievant ever received a verbal warning, written reprimand, or suspension for his classroom conduct. Without such evidence, the critical issue becomes whether the grievant's conduct was so serious in nature that it required the District to summarily discharge him without the benefit of progressive discipline. The District adamantly contends that Mr. Baldridge's conduct was serious enough to justify his termination. The Association is equally insistent that the conduct was not so critical. The preponderance of the evidence supports the Association's position that Mr. Baldridge's conduct did not rise to the level that the progressive discipline policy should have been set aside in favor of summary discharge.

Although Mr. Baldridge's classroom conduct was inappropriate and distasteful, this Arbitrator does not find that it warranted the type of action traditionally regarded as an "immediate dischargeable offense." In the context of the teacher in the classroom, only proven, intentional efforts to harm a student would call for immediate discharge. Such examples would include: striking a student; individual sexual harassment; touching without consent; and intentional efforts that would personally demean, humiliate, or embarrass a student.

In this regard, I agree with Arbitrator William Dorsey's opinion in Touchet Education Association and Touchet School District, where, in setting aside the summary discharge of a teacher for conduct similar to the circumstances of this case, he concluded:

> If the grievant had deliberately set out to demean, embarrass, humiliate, or intimidate even one of her young students, and the District had learned about it for the first time on the evening of May 11, 1989, the Arbitrator would summarily find that she had committed an immediately dischargeable offense and rule that he discharge was for just cause. There is no evidence in the record, however, that the grievant ever intentionally demeaned, embarrassed or humiliated any of her students.
>
> Touchet at 35-36 (emphasis added).

The following facts establish that the District failed to warn the grievant.

First, the parties have contractually agreed to follow a policy of progressive discipline. Most labor agreements do not contain such an express provision. Here, the District is required by the Contract to abide by the principles of progressive or corrective discipline before imposing a penalty. There is no evidence in this case that suggests the District considered any penalty less than termination for Mr. Baldridge. In so doing, they failed to follow the terms of their own Agreement and the well-recognized principles of progressive discipline.

Second, one of the primary purposes of progressive discipline is to bring about improvement of employee performance or conduct. It should, therefore, be axiomatic that the degree of penalty be

proportional to the seriousness of the offense and should be designed primarily to bring about such improvement.

> Once the misconduct has been proved, the penalty imposed must be fairly warranted and reasonably calculated to eliminate or correct the offensive conduct. It has been emphasized that punishment should be based on the employee's actions, not on the consequences of those actions. But when rehabilitation fails, discharge can then follow.
>
> Koven and Smith,
> supra at 387.

In reviewing the evidence in this case, the Arbitrator concludes that the District made no effort to apprise Mr. Baldridge of the inappropriateness of his conduct or to employ any corrective disciplinary measures to improve his conduct. It makes no sense to this Arbitrator that the District would summarily terminate an otherwise excellent teacher for remarks, that he now acknowledges were inappropriate, without making some effort to follow the progressive discipline policy required by the Agreement.

Finally, there is the issue of disparate treatment. Mr. Baldridge is the first teacher to be summarily discharged by the District for a first offense, without the benefit of progressive discipline. As stated by Arbitrator Kesselman in Sperry Rand Corp.:

> Management must be permitted to exercise its judgment as to the proper discipline to impose as long as it does not discriminate against a particular employee. If progressive or corrective discipline is used, then this method must be applied in all cases.
>
> Koven and Smith,
> supra at 393 (emphasis added).

The Arbitrator has carefully reviewed the disciplinary action meted out by the District to other teachers under circumstances that are considered far more serious than the incidents alleged in this case. In those cases, the District followed the collectively agreed progressive discipline policy and issued verbal warnings, written reprimands, and a suspension. The Arbitrator recognizes that in some cases, certain extenuating factors exist that may waive progressive discipline. However, the nature of the allegations in this case do not exempt the District from following the progressive discipline provision of the Agreement.

For these reasons, the Arbitrator concludes that the District violated its own progressive discipline policy when it summarily terminated Mr. Baldridge without warning.

b. <u>The District Failed to Place the Grievant on Notice That His Conduct Was Grounds for Immediate Dismissal</u>

The District has repeatedly emphasized the importance of appropriate behavior in a teacher's interpersonal relationships with students. This is evidenced through the Agreement and in District Policies. These policies include the admonition that the use of "vocabulary normally considered to be vulgar, cursing, suggestive, or obscene is not allowed at the school or within hearing of a student." (<u>Duties and Responsibilities of Teachers, Colstrip School District Policy GBBA-R</u>).

This Arbitrator views notice of consequences of improper conduct in the same manner as most arbitrators:

> Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?
>
> Koven and Smith, supra at 22.
>
> A fundamental component of the just cause standard is that employees must be told what kind of conduct will lead to discipline--especially if the penalty is to be discharge. An employee can hardly be expected to abide by the rules the employer has not communicated, and no arbitrator is likely to uphold a penalty for conduct that an employee did not know was forbidden.
>
> Koven and Smith, supra at 28.

Clearly, the grievant's comments were "suggestive" and, to a lesser degree, "vulgar" and "obscene." The grievant was on notice that such conduct was inappropriate and that he would be subjected to discipline for making such comments. Therefore, the District has met the due process requirement because the grievant was advised of the rule. Further, the Arbitrator finds that the policy was reasonably related to the orderly operation of the District. The District failed to show, however, that the grievant was on notice that such conduct occurring in the classroom could constitute the basis for his immediate dismissal. The principles of just cause require that employees be informed of the rule and that such conduct could result in suspension or discharge. This principle is modified in those situations where the conduct is so egregious that it would justify summary discharge without the necessity of prior warnings or attempts at corrective discipline.

The grievant's conduct may have been inappropriate and insensitive, but as previously explained, it did not reach the

level of severity that required his immediate dismissal. There is no evidence which suggests that Mr. Baldridge made his comments to intentionally embarrass, humiliate, or demean a student or group of students. From the record in this case, the Arbitrator concludes that Mr. Baldridge's conduct was not intentional in nature, nor did it reach the level of severity that justified his immediate dismissal. Accordingly, the Arbitrator concludes that the penalty imposed was unreasonable.

2. <u>The Penalty of Termination Was Excessive</u>

The District argues that discharging the grievant for alleged sexually harassing comments is not an excessive penalty. The District contends that in this day of zero tolerance for sexual harassment in the educational environment, it had no other choice but to dismiss the grievant. The Arbitrator concurs with arbitral doctrine that an employer may only discipline an employee after considering certain factors.

> Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his service with the employer?
>
> Koven and Smith,
> <u>supra</u> at 24.

In determining whether the School Board's decision to terminate Mr. Baldridge as a district teacher was excessive, the Arbitrator has considered two principal factors. First, the nature of Mr. Baldridge's conduct and second, his past record and performance as a teacher. Having reviewed the evidence pertinent to these two issues, the Arbitrator makes the following findings.

a. Mr. Baldridge's Conduct Did Not Warrant Termination

The Arbitrator recognizes the current state of language commonly used by high school students and by some of their teachers. The record in this case reflects occasions where other teachers at Colstrip High School have used language which was far more offensive than the incidents under consideration in this case. The discipline received by those teachers does not compare with the severity of the penalty imposed here. The fact that such language and accompanying inferences are considered common among today's students does not grant teachers, regardless of popularity, corresponding latitude to lower their standards in the classroom. The example a teacher establishes in a classroom, in what they say and how they act, is an appropriate concern for the District. The comments attributed to the grievant fall considerably short of the example the District rightfully expects from its teachers. However, given the nature of the incidents and the current social environment of a high school, I do not find that these incidents, either standing alone or taken together, are serious enough to constitute an immediately dischargeable offense.

The District contends that the conduct of Mr. Baldridge constitutes "sexual harassment" and therefore a dischargeable offense under both federal and state law. I disagree. The term "sexual harassment" is generally applied in those circumstances where an individual intentionally engages in harassing conduct in which he or she is seeking to intimidate a male or female victim. The grievant's conduct in this case was not focused on one

individual student, nor was there evidence that he intended by his comments or gestures to demean, harass, or humiliate any of his students. As previously stated, the Arbitrator regards the conduct of Mr. Baldridge as demonstrating a remarkable lack of good judgment, but it did not constitute sexual harassment.

b. The District Failed to Consider Mr. Baldridge's Teaching Record Prior to His Termination

The Arbitrator must consider the past record of a discharged employee in determining the reasonableness of the penalty. As stated by the Elkouris in their treatise How Arbitration Works:

> Some consideration is generally given to the past record of any disciplined or discharged employee. An offense may be mitigated by a good past record and it may be aggravated by a poor one. Indeed, the employee's past record often is a major factor in the determination of the proper penalty for his offense.
>
> Elkouri, supra at 679.

The Arbitrator was convinced by the evidence of Mr. Baldridge's excellent teaching record during his five years at Colstrip High School. The District never received any complaints about his classroom conduct, nor was there evidence to indicate that the grievant had ever been counseled, warned, reprimanded or disciplined for his behavior in the classroom. In fact, the evidence is to the contrary. There was substantial evidence, in the form of testimony and exhibits, that students and faculty regarded the grievant as an outstanding science teacher. He was among the most popular teachers at the high school. His performance evaluations consistently praised his good use of humor and his rapport with students. In this regard, the Arbitrator

found persuasive the testimony of David Grover, a former student of Mr. Baldridge, and Fay Mathemy, a teacher who is in her twenty-third year with the District. Mr. Grover is currently serving in the Navy as a nuclear-trained mechanic after a successful college education. Mr. Grover made the following response to a question about the grievant's teaching abilities:

> [I]n my opinion, he was the best teacher we had in Colstrip High School and I'm very impressed by his teaching techniques. . . . He instilled in me a greater interest in science that I didn't have before I came into high school. (TR. 109)

Ms. Mathemy is the Chairwoman of the English Department at Colstrip High School and is the senior staff member in the District. Based on comments from the grievant's students, Ms. Mathemy observed:

> He always seemed to excite them about science. They were really turned on. They'd come in all gung-ho into my class period after having him in the previous class period, and still be talking about whatever the lesson was. . . . I think he's outstanding. He's turned numerous students onto science as a career. (TR. 205-207)

I found the testimony of these two witnesses, and others who offered similar opinions of Mr. Baldridge's abilities as a teacher, to be persuasive. Apparently, the District also agreed with the opinions of these witnesses, as they offered to stipulate that Mr. Baldridge was regarded as an outstanding teacher and that he "turned on" numerous students to science as a potential career. (TR. 207)

The Arbitrator has not regarded Mr. Baldridge's past record as a "major factor" in reaching a decision in this matter; however, it is certainly an additional element which must be considered in

determining the appropriateness of the penalty imposed by the District. The combination of factors cited above has established to the satisfaction of the Arbitrator that the discharge penalty imposed by the District, ending the grievant's teaching career at Colstrip High School was excessive under all the circumstances of this case.

3. The District Engaged in Discriminatory Conduct When It Terminated Mr. Baldridge

The Association has made a number of allegations that the District violated Mr. Baldridge's right to due process and equal treatment. Specifically, the Association contends that the District failed to conduct a fair investigation of the charges against Mr. Baldridge; that it discriminated against him by failing to administer its progressive discipline policy in an equal manner; that it failed to consider remediation for Mr. Baldridge, as it had done for other teachers; and finally, that it discriminated against Mr. Baldridge by terminating him as a direct result of his union activities. The Arbitrator has considered the evidence relating to each of these allegations and makes the following findings.

a. The Investigation Conducted by the District Was Fair and Objective

Standard arbitral law requires that an employer conduct a fair investigation of the alleged infractions by the offending employee before determining whether to discipline the employee.

> Did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
>
> * * *

Was the Employer's investigation conducted fairly and objectively?

Koven and Smith,
supra at 24.

The Arbitrator must answer these two questions in the affirmative. As previously discussed, Mr. Baldridge has essentially admitted during formal proceedings to nine of the twelve incidents that formed the basis for his termination. Thus, there was no factual dispute before the District. The dispute centered on matters of interpretation, not on whether the statements attributed to Mr. Baldridge were in fact made. The Association also argues that the investigation was biased in favor of the District by the District's outside investigator, Paul Stengel. The Association contends that the method used when interviewing the students was biased and that the investigator never asked the grievant for his side of the story. The Association called as their expert witness Darrell Puls, whom the Arbitrator found to be well-qualified and credible. Mr. Puls testified that Mr. Stengel asked the students questions in a manner that clearly suggested the answer the District desired. In Mr. Puls' opinion, the integrity of the investigation was compromised by the manner in which Mr. Stengel asked questions.

The Arbitrator considers these issues moot in view of the grievant's admissions that he made the statements that were set forth in each of the nine incidents. Instead of denying that he made the statements, the grievant's position is that the statements were not intended to be offensive. Under these circumstances, the

Arbitrator must conclude that the District did comply with this just cause requirement.

The Arbitrator is satisfied that the District conducted a fair investigation in this matter. In fact, the District went out of its way to insure the fairness of the investigation by retaining an outside investigator and by interviewing the specific students involved in each of the incidents, as well as any other students who wished to say anything about Mr. Baldridge, good or bad. Over 60 students were interviewed by Mr. Stengel. The Arbitrator has reviewed the transcripts of the students interviewed. Many spoke eloquently in support of Mr. Baldridge and others were offended by his conduct in the classroom. Although Mr. Stengel could have asked certain questions in a less suggestive manner, on balance, the student interviews were fairly and objectively conducted.

Accordingly, the Arbitrator concludes that the District conducted a fair and objective investigation of the incidents attributed to Mr. Baldridge before imposing his termination.

b. <u>The District Failed to Apply Its Progressive Discipline Policy in a Non-Discriminatory Manner</u>

The Association contends, and the Arbitrator has previously concluded, that the District violated the just cause provisions of the Agreement by failing to follow the progressive discipline policy prior to terminating Mr. Baldridge. The Association further contends that the District has discriminated against Mr. Baldridge by failing to apply is progressive discipline policy in an even-handed manner.

Has the Employer applied its rules, orders and penalties even-handedly and without discrimination?

Koven and Smith,
supra at 24.

The Association cites seven specific instances where the teachers involved were given lesser forms of discipline for conduct considered far more serious than the conduct attributed to the grievant. The District argues that the District has never encountered conduct equal in severity to that of Mr. Baldridge in the incidents alleged. The Arbitrator has reviewed the evidence surrounding these incidents and the District's corresponding penalties. The Arbitrator is struck by the District's consistent application of progressive discipline for teachers whose conduct appears to be far more serious in nature than the incidents attributed to the grievant. As an example, an industrial arts teacher was given a written reprimand for threatening to "deck" a student and for using foul language. In another incident, a teacher testified that she observed another teacher threatening and using physical force on a student, for which he was placed on leave for counseling. It would serve no constructive purpose to go through each of the incidents involving teacher misconduct. Suffice it to say that the Arbitrator is clearly persuaded that the District singled out Mr. Baldridge and subjected him to more severe discipline than that afforded to other teachers who engaged in conduct that was either equal to or more serious than that attributed to Mr. Baldridge.

From these findings, the Arbitrator concludes that the District did discriminate against Mr. Baldridge by not affording to him the same opportunity to improve his conduct through the progressive discipline policy that it provided to other teachers under similar circumstances.

c. The District Failed to Provide Mr. Baldridge With a Plan of Remediation as an Alternative to Termination

The Association argues that Elmer Baldridge was capable of being remediated and was entitled to receive a plan of remediation by the District prior to his discharge. In support of this contention, the Association directs the Arbitrator's attention to the testimony of a number of witnesses who testified that the District had often placed teachers on remediation plans for any number of reasons. These witnesses established that the basic objective of a remediation plan is to provide a disciplined teacher with an opportunity to improve his or her teaching performance or conduct. If, in the judgment of the District, the teacher, either by conduct or attitude, cannot or will not improve, then the teacher is considered irremedial and dismissal follows.

Colstrip High School Principal Johnson testified that the District policies encourage remediation as part of the progressive discipline policies and that she described two circumstances where remediation plans were used to improve teacher conduct. Bob Boley preceded Ms. Johnson as the Principal of the High School. He occupied the principal position from 1980 through 1987. Mr. Boley testified that he often used the remediation plan as a part of the progressive discipline procedure during the seven years he was

principal. In response to the specific question of whether he would have terminated Mr. Baldridge rather than use a remediation plan, Mr. Boley was adamant:

> No, I would not have. I believe that even if the alleged incidents took place, that those would be remediable and that we could have sat down and come up with a plan of remediation and said, Elmer, this is the way it's going to be, if you can't follow this then you have two choices. I think that's how I would have handled it. (TR. 182)

The District's decision to terminate Mr. Baldridge evidenced its conclusion that the grievant could not, or would not, change his behavior and therefore benefit from a remediation plan. This indicates to the Arbitrator that the District regarded the grievant's conduct as a teacher to be irremedial. Whether Mr. Baldridge's behavior could have changed as a result of a remediation plan is open to speculation. The significance of the District's action is that the grievant was never provided the opportunity to demonstrate that he could be remediated. This action by the District was a clear violation of its own progressive discipline policies. Given the fact the District has acknowledged that Mr. Baldridge was an outstanding teacher, it should have provided Mr. Baldridge with an opportunity to change through remediation rather than a summary dismissal. This opinion is also apparently shared by former Principal Boley.

For the reasons which have been discussed above, the Arbitrator concludes that the District violated its progressive discipline policies by failing to provide Mr. Baldridge with a

remediation plan and, by so doing, engaged in discriminatory conduct.

d. <u>The District Did Not Terminate Mr. Baldridge Because of His Union Activities</u>

The Association contends that the Superintendent's recommendation and the School Board's decision to terminate the grievant were the direct result of his union activity. The Association cites numerous instances that reflect the level of hostility which exists between Mr. Baldridge and the District. In the Association's opinion, the District was "out to get" the grievant.

Article V, Section 2 of the Agreement provides that all teachers are entitled to the right to "participate in activities of the Colstrip Faculty Association without fear of discipline or discrimination from the School District.

The record regarding Mr. Baldridge's activity on behalf of the Association is clear. He has been an outspoken advocate of the Association as its President and President-elect. As President-elect he was responsible for processing the Association's grievances. The testimony established that he has prevailed in all of the 15 grievances he has filed against either the Superintendent or the Board. He also served on the Association's bargaining team. It was apparent to the Arbitrator during the course of the hearing and from a review of the record, that the District's administrators and its Board of Trustees considered Mr. Baldridge to be an irritant and a constant source of frustration to the District.

In the Association's view, the classroom incident in April 1988 provided the District with just the opportunity they were looking for to terminate Baldridge's employment under the guise of "just cause." As stated in their post-hearing brief:

> The District knew that they could not fire Baldridge for speaking out or for processing grievances, they had to find another way. (Page 15)

The Arbitrator cannot overlook the evidence that has been produced on this issue. However, to sustain an allegation that Mr. Baldridge was terminated because of his union activities must be established by significantly more evidence than this record indicates.

> One arbitrator stated that a charge of discrimination because of union activities cannot rest upon mere surmise, inference or conjecture. Numerous other arbitrators agree, requiring clear proof to sustain such charges.
>
> Elkouri and Elkouri,
> supra at 687.

> Arbitrators agree that if an employee engages in misconduct, being a union activist does not offer him any protection from discipline.
>
> Koven and Smith,
> supra at 371.

These authorities recognize the importance of "clear proof" to sustain a charge that an employer has engaged in anti-union discrimination when carrying out disciplinary action against an employee. The District may have been frustrated with Mr. Baldridge and his constant advocacy of Association issues, however, the Arbitrator finds no evidence that established his termination was the direct result of union activities. The conduct which prompted

the District's investigation was the result of Mr. Baldridge's own classroom conduct, not his union activity. Were it not for the incidents related by Mr. Baldridge's students, he would, in all probability, still be teaching at Colstrip High School. The incidents were real, the conduct was inappropriate, and disciplinary action was required. None of these factors can be directly related to the grievant's union activity.

Accordingly, the Arbitrator concludes that the disciplinary action taken in this matter was initiated by the District as a result of Mr. Baldridge's classroom conduct, not his union activity.

4. Conclusion

In response to the stipulated issues presented in this proceeding, the Arbitrator concludes that the District did not have just cause to terminate Elmer Baldridge on May 16, 1988. Further, the Arbitrator concludes that the District failed to provide the grievant his contractual right of progressive discipline prior to termination. Finally, the Arbitrator has determined that the grievant was not denied his rights of due process as they relate to the investigation conducted by the District, nor was he terminated for Union activities. Based on these findings, the Arbitrator is now faced with resolving the remaining issue to be resolved in this proceeding--the determination of the remedy to be awarded.

REMEDY

The Arbitrator has determined for the reasons discussed above that the District violated Article V, Sections 1(4) (Due Process), and 1(10) (Just Cause and Progressive Discipline) when it discharged Elmer Baldridge from his teaching position on May 16, 1988. The Arbitrator did not find sufficient evidence that Mr. Baldridge was discharged for otherwise protected union activities. The Arbitrator's remaining obligation to the parties is to determine an appropriate remedy.

Absent express contract language that restricts an arbitrator's authority to devise a fair and equitable remedy, this Arbitrator subscribes to the findings of the U. S. Supreme Court in its 1960 decision of United Steelworkers v. Enterprise Wheel & Car Corp.:

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.
>
> Elkouri and Elkouri,
> supra at 286,
> citing 80 S.Ct. 1358, 1361 (1960).

In the instant case, the Agreement does not expressly restrict the Arbitrator's remedial authority, except that the Arbitrator "shall not add to, subtract or otherwise modify the terms and conditions of the Collective Bargaining Agreement." Based on the issues presented in this case, the parties requested that this Arbitrator determine an appropriate remedy if any violation of the

Agreement was found. For these reasons, the Arbitrator concludes that remedial authority does exist for the matter at hand.

In evaluating a discharge case, the Arbitrator is required not only to determine whether there is just cause for an employer to take disciplinary action, but additionally whether the penalty imposed is unreasonable, excessive, or discriminatory under all of the circumstances of the case and thus deserving of modification. The generally recognized view regarding the modification of disciplinary penalties has been set forth in the Elkouris' arbitral treatise, where the authors quote Arbitrator Harry H. Platt's conclusion that:

> In many disciplinary cases, the reasonableness of the penalty imposed on an employee rather than the existence of proper cause for disciplining him is the question the Arbitrator must decide . . . . In disciplinary cases generally, therefore, most Arbitrators exercise the right to change or modify a penalty if it is found to be improper or too severe under all the circumstances of the situation. This right is deemed inherent in the Arbitrator's authority to finally settle and adjust the dispute before him.
>
> Elkouri and Elkouri,
> supra at 668.

Based on the analysis presented in the above Opinion, the Arbitrator concludes that the disciplinary action taken against Mr. Baldridge was unreasonable and excessive, and should be modified. Therefore, the Arbitrator shall order that the District pay the grievant back pay, interest on the back pay award, and attorneys' fees for the Association's preparation time and related defense of the District's Motion to Preclude Arbitration. Due to the longstanding animosity between the parties and the grievant's

current employment in the Billings, Montana, area in a similar teaching position, the Arbitrator shall not order the grievant's reinstatement to the Colstrip Public School District for the reasons discussed below.

1. **Immediate and Unconditional Reinstatement to Former Position**

The Association contends the Arbitrator should order that the grievant be immediately and unconditionally reinstated to his former teaching position at Colstrip High School. This is the traditional remedy accorded in most discharge cases where there has been a finding that the discharge was without just cause. However, as the parties are well aware, this is not a traditional discharge case and the Arbitrator must depart from the remedy requested by the Association.

The Arbitrator finds that the unique circumstances of this case prevent the traditional reinstatement remedy from resolving the underlying conflicts that exist between the District and Mr. Baldridge. Therefore, the Arbitrator will order as a provision of the remedy that the grievant be awarded full back pay, but without reinstatement to his former position. The Arbitrator recognizes the gravity of this decision and the consequences which flow from it. This decision has been reached only after considerable deliberation on the long-term consequences of reinstating Mr. Baldridge to his former position, consequences to the grievant personally, to the District's Trustees and administrators, and to faculty, students and parents. The Arbitrator is mindful of the criticism which may result from this

decision, and for that reason, the parties deserve to know and understand the Arbitrator's reasoning in reaching this unusual remedy. The reasons are as follows.

First, the Association, Mr. Baldridge, and the District's Trustees and administrators have been engaged in a four-and-a-half-year legal battle over the precise issue of whether Mr. Baldridge should be returned to teach at Colstrip High School. It has caused the high school and the local community to "take sides," either on behalf of or against Mr. Baldridge. It is apparent to the Arbitrator, as I am sure it is to the parties and the community, that this termination has been a divisive event for the Colstrip community. It has gone on far too long. An order by the Arbitrator reinstating Mr. Baldridge to his former teaching position will only serve to once again re-ignite these strongly held differences. At some point, Mr. Baldridge would most likely be subjected to disciplinary action and the events that have taken place over the last five years would probably start up again. When faced with these unique circumstances, Arbitrators often resort to the remedy of full back pay without reinstatement.

> Where discharge is found not to have been for just cause, but the employer-employee relationship has deteriorated to the point where it is no longer viable or there is little doubt that the grievant, if returned to work, would just be fired again, reinstatement may make no sense. The arbitrator may then award full or partial back pay but permit the termination to stand.
>
> Koven and Smith,
> supra at 438.

Although almost five years have passed, it was evident during the hearing that the relationship between Mr. Baldridge and the

District "has deteriorated to the point that it is no longer viable," especially in view of the legal events which have transpired between the parties since the termination.

Second, the Arbitrator has taken into consideration the transition that Mr. Baldridge has made from Colstrip to Billings Central High School. Mr. Baldridge testified that he continues to teach high school science. His performance evaluations have all been at the highest level. It was apparent from the testimony of a Billings Central faculty member and an administrator that Mr. Baldridge is a highly regarded teacher at their high school. The grievant noted on his most recent performance evaluation that he was "happy with the school." The Arbitrator is also aware of the response by Mr. Baldridge to the question that if he could teach anywhere he wanted, he "would still be at Colstrip High School." However, important in the Arbitrator's consideration of this issue is the fact that Mr. Baldridge, to a certain extent, has by his own conduct foreclosed his return to Colstrip High School. His conduct immediately following his suspension served only to add to the level of hostility between the two sides. Therefore, the grievant must personally accept some of the responsibility for the Arbitrator's denial of his request for reinstatement to Colstrip High School.

Third, the Arbitrator finds the five-year delay from the date of the discharge to the date of reinstatement mitigates against Mr. Baldridge being returned to his former position. Both sides vigorously pursued their contractual and statutory rights.

However, the consequences of those efforts delayed the implementation of this award by at least four years. Mr. Baldridge has been teaching at Billings Central High School since 1989 and appears to enjoy his position there. Colstrip High School has hired a science teacher to replace Mr. Baldridge. Given the abnormal interval of time that has elapsed, the Arbitrator regards the reinstatement remedy to be inappropriate.

Finally, the decision of the Arbitrator in finding a lack of just cause for the termination was based principally on the absence of progressive discipline and procedural due process. As has been repeatedly stated by the Arbitrator, the substance of the "cause" for termination was admitted by Mr. Baldridge. There is no dispute over whether he did the things alleged in the Superintendent's letter to the District Board recommending his dismissal. This becomes significant in the Arbitrator's opinion because it constitutes a procedural error in administering the District's disciplinary policies.

> Back pay without reinstatement may also be the remedy where the employer committed a procedural error that was not, however, viewed by the Arbitrator as serious enough to warrant overturning the discharge.
>
> Koven and Smith,
> supra at 438.

Although the Arbitrator viewed the District's actions as constituting grounds for setting aside the termination, it was also based on procedural error. This distinction becomes significant in the assessment of responsibilities of the parties and the fairness of the remedy. This remedy does not deny Mr. Baldridge the

opportunity to teach high school science, nor does it preclude the opportunity of applying for positions in other high schools at some future date. It simply avoids imposing a binding condition on the parties that in the long term would not be satisfactory to either party.

Accordingly, as to this requested remedy, the Association's request for Mr. Baldridge's immediate reinstatement to his former position at Colstrip High School is denied.

2. **Back Pay**

The extent of the remedy requested by the Association for this case is unusual. The primary basis for the Association's request is the unusual length of time this case has taken to reach resolution. The District contends that the penalty of discharge was not unreasonable, excessive, nor inconsistent with other disciplinary cases and, presumably, that no modification of penalty such as back pay is required. The District also contends that any punitive type of award is beyond the contractual authority of the Arbitrator.

The Arbitrator concurs with the Association contention that this proceeding should have been resolved long ago, but length of time required to achieve a resolution is not determinative to this Arbitrator when issuing remedies. A determination solely on duration of the arbitration process would be punitive in nature. Punitive awards are generally not appropriate in arbitration decisions.

> Even though a party is found to have violated the agreement, the arbitrator may be expected to refuse to

> award any penalty which would in essence be an award of punitive damages, unless, under the circumstances of the case, punitive damages are clearly justified. . . . Some arbitrators have felt justified in awarding punitive damages where the contractual violation was known and repeated, or where it was willful and flagrant.
>
> Elkouri and Elkouri, supra at 405-406 (citations omitted).

The Arbitrator views the payment of back pay as a make-whole remedy. This opinion is shared by most arbitrators, and is best summarized by Bornstein & Gosline:

> [T]he object of back pay is to make the grievant whole, which is defined as placing the employee where he would have been in terms of position, seniority, benefits and pay but for the contractual violation. While reference to back pay is often omitted from collective agreements, the propriety of remedying unjust discharge or other monetary losses by awarding a sum equal to wages lost has been assumed. Arbitrators decided early on that they had jurisdiction to award back pay.
>
> Labor and Employment Arbitration, Section 42.03[1][b].

In the instant case, the grievant did lose wages because of the District's decision to terminate his employment. The request for mandated payroll tax entitlements, out-of-pocket insurance premiums and unreimbursed health and hospitalization, dental, vision, and disability costs which would have been paid by the District, but for Mr. Baldridge's termination, are also granted.

In normal circumstances where back pay is awarded, this Arbitrator shall allow the parties to determine the extent of mitigating factors for determining the actual amount of back pay due the grievant. The Arbitrator shall not deviate from this standard principle except to respond to the Association's request

for the Arbitrator to address the issues of earnings from unemployment compensation and the grievant's "moonlighting" employment.

a. Unemployment Compensation

The Association argues that the grievant's unemployment compensation earnings from the period of summer unemployment after his discharge in 1988 should not be a mitigating factor. This argument is based on the contention that the grievant was actually unemployed because of his discharge, and the grievant was "presented with the imposing economic and psychological weights of unemployment during and following the summer of 1988." (Association's Brief, p 23). The Association also maintains that common practice in Montana is to award unemployment compensation benefits to teachers who do not have "a reasonable assurance" of "reasonably similar employment" in the fall.

There is a mix of authority on this matter:

> Many arbitration awards provide for back pay less any unemployment compensation received, on the theory that such compensation is akin to outside earnings. Others have objected to this practice, finding that unemployment compensation should not normally be deductible from a back pay award.
>
> Labor and Employment Arbitration at 42.03[1][C].

The Arbitrator is not persuaded that the grievant's unemployment compensation should not be offset from the back pay award. As described above, the principle of back pay is to make the grievant whole. The Arbitrator is not inclined in this, or in any other case, to place a grievant in a better position than if he

continued his employment. The Association is essentially arguing that the grievant be allowed to keep the additional monies collected from his unemployment compensation as a way to reward the grievant for the "pain and suffering" that accompanied his discharge. To permit the grievant's unemployment compensation benefits to be excluded from offsetting the final back pay computation would be an endorsement of a punitive damage remedy. The Arbitrator is not willing to make such an endorsement for the reasons noted above, and shall therefore order that the grievant's unemployment compensation benefits for the time period following his discharge offset the final back pay computation.

b. <u>"Moonlighting" Compensation</u>

The Association contends that any monies earned by the grievant while "moonlighting," or engaged in work other than regular school hours, should not offset the back pay award. The Association alludes to the fact that the grievant was holding a second job for a Radio Shack or other businesses in or near Colstrip while working for Colstrip Public Schools. The Association is less clear on the status of the grievant's employment situation following the failure of the Radio Shack business, or if the grievant found gainful employment from the time of his discharge to the time he was hired as a teacher in Billings.

As discussed above, it is not the Arbitrator's intention to place the grievant in a better position than he would have been if the District had not violated the Agreement. To that end, the Arbitrator is concerned that the Association has argued against

deducting interim earnings from the offset to the back pay award without providing sufficient details of the grievant's employment activity subsequent to his illegal discharge. Since there is an incomplete picture of the grievant's employment history following his termination from Colstrip, the Arbitrator shall provide the following guidelines to the parties for their consideration of the final computation of back pay.

The Arbitrator does not regard the grievant's "moonlighting" compensation as monies that should be deducted from the final back pay award. This view is based on the belief that income from part-time employment could have been earned while the grievant was employed in his full-time teaching position. This view is supported by Hill & Sinicropi:

> [A] deduction for earnings in other employment may be made only if the employees, during that period, engaged in regular employment as distinguished from odd jobs or part-time employment. . . . [I]ncome from odd jobs or part-time employment could be earned even during an employee's regular working hours.
>
> Hill and Sinicropi, Remedies in Arbitration, p 73 (BNA, 1981), citing, Thomas, American Chain & Cable Co., 40 LA 312 (1963).

For this reason, the Arbitrator would expect the parties to deduct only those interim earnings where the grievant was engaged in regular employment between teaching positions. Any part-time employment that the grievant engaged in during evenings or during "non-school hours" should not be included in the offset of the back pay award.

For the reasons stated above, the Arbitrator shall order the District to pay the grievant on the basis of the straight-time hours he would have otherwise worked but for his wrongful termination of employment. Any monies the grievant received in lieu of his regular wages, including unemployment compensation and interim earnings from regular full-time employment, shall be deducted from the amount due him.

3. Interest on the Back Pay

The Association argues that interest awards are now commonplace among arbitral awards, and that such a remedy is required in this case to compensate the grievant for the "lost-use value" of the back pay award. The District contends that an award of interest in this case is contrary to the parties' Agreement, and amounts to punitive damages. The District maintains that it was not involved in any type of dilatory tactics or other strategies intending to circumvent the arbitral process, which is the only exception for awarding interest.

Contrary to the Association's contention, interest awards in arbitration decisions are still few and far between.

> Arbitrators still do not generally award interest on back pay, especially if the award is made shortly after an employee's discharge.
>
> Labor and Employment Arbitration, supra at 42.03[1][iv][A].

> Although interest has been awarded in a fair number of cases, most cases still make no mention of interest and this indicates continued validity of [the] statement that

"it is not customary in arbitrations for the arbitrator to grant interest on claims which he finds owing."

Elkouri and Elkouri,
supra at 406-407.

Nor does the Arbitrator agree with the District's arguments. Interest awards are not provided only as punishment to an employer who is attempting to frustrate the arbitral process.

> [A]rbitrators have awarded interest when there is a lengthy delay between the date of layoff or discharge and the issuance of the award. Arbitrators have also awarded interest for the period after an award has been issued to discourage delay in payment. . . . In another case, . . . interest for the use of the employee's money was due where the employer has not one scintilla of justification for its continuing failure to comply with the award.

Labor and Employment Arbitration,
supra at 42.03[1][iv][A].

This Arbitrator believes that interest should be awarded under special circumstances. This case is now in its fifth year of adjudication. The parties have utilized every possible method of appealing each other's verdicts in the state courts. The District even challenged the arbitrability of the case after the Montana Supreme Court ordered it to arbitration. The Arbitrator is not penalizing the District for exercising its right to appeal court decisions. In fact, the grievant's decision to pursue both the statutory remedial forum in addition to the collective bargaining remedial forum is the primary reason that the District had so many opportunities to challenge this claim. The fact remains, however, that the District violated the Agreement when it discharged the grievant on May 16, 1988, and has had use of the monies due grievant for almost five years. In an effort to make the grievant

whole, this Arbitrator considers the unique circumstances of this case to call for payment of interest on the final back pay award from May 16, 1988. The parties shall therefore be ordered to compute the interest on the back pay due the grievant in accordance with this decision at a rate of 8 percent per annum from May 16, 1988, to the date of payment of the award.

4. Attorneys' Fees

The Association argues that the exceptional delay in this case was based solely on the District's attempts to avoid arbitration. According to the Association, the District should pay attorneys' fees for the entire arbitration and appellate processes, in the amount of approximately $12,533. The Association also requests reimbursement for costs related to being required to respond to the District's Motion to Preclude Arbitration after the Montana Supreme Court ordered the District to arbitrate the case. The District contends that the Association's request for attorneys' fees is not appropriate for an arbitral award and is punitive in nature. The District maintains that such an award would penalize the Trustees for exercising their legal right to appeal verdicts that they believed in good faith were without legal merit.

The Arbitrator does not find any basis with which to award attorneys' fees to the Association for the entire arbitration and appellate processes. The cost of presenting a case rests with the presenting party. Any fees and expenses related to the presentation of their case is the responsibility of each party. The Arbitrator concurs with arbitral doctrine, however, that

attorneys' fees may be awarded by an arbitrator to the opposing party when:

> [A] party has had to resort to arbitration repeatedly to obtain compliance with the same contractual provision, and/or where the parties have appealed to the courts to obtain enforcement of the award and the court has remanded the matter to the arbitrator for further consideration of such remedial matters. Arbitrators have awarded attorneys' fees where the union has sought damages for an employer's defiant refusal to comply with an award.
>
> Labor and Employment Arbitration, supra at 42.03[2][b].

The Arbitrator finds that some unusual circumstances of this case require the District to reimburse the Association for the direct postponement costs incurred by the Association relating to the District's Motion to Preclude Arbitration. First, the Montana Supreme Court determined that the parties had exhausted their appeals on this case. The court appropriately ordered both parties to arbitrate this matter. Second, the District decided to ignore the Montana Supreme Court's order and surprise the Association and this Arbitrator with a Motion to Preclude Arbitration. This motion resulted in the Association's having to prepare a response to an arbitrability issue that for all intents and purposes was already decided. Third, the decision by the District to contest the arbitrability of the matter after the Montana Supreme Court order to arbitrate resulted in a delay in this decision of at least five months.

After consideration of the unusual circumstances of this case, the Arbitrator finds that the direct costs incurred by the Association should be reimbursed by the District. The Association

provided documentation that the costs incurred to respond to the District's motion amounted to $1,200. Therefore, the Arbitrator shall order the District to reimburse the Association $1,200 for the reasonable expense required to respond to a matter that was already decided by the Montana Supreme Court.

CONCLUSION

The Arbitrator has determined that the District established by a preponderance of the evidence that it had just cause to discipline Elmer Baldridge for his classroom conduct during the 1987-88 school year. However, the District failed to apply the principles of due process and progressive discipline required by the Collective Bargaining Agreement when it terminated the grievant from his teaching position on May 16, 1988. The Arbitrator has also concluded that the District's decision to terminate the grievant was not based on his union activity. The Arbitrator is mindful of the animosity that has developed between the parties during the nearly five years since the grievant's termination. For these reasons, the Arbitrator concludes that the grievant should not be reinstated to his former position, but that he be awarded a remedy that includes back pay with interest. The Association should be reimbursed its costs in connection with its efforts to resist the District's Motion to Preclude Arbitration.

In the final analysis, the Arbitrator's decision in this case is designed to bring an end to the longstanding animosity that has existed between the grievant and the District. It takes into

consideration that each party must share some of the responsibility for the consequences of their actions.

However tempted the Arbitrator may have been to reinstate Mr. Baldridge to his former position, it was neither realistic nor appropriate in this case. The Arbitrator is fully aware of the parties' deeply held beliefs in this dispute. The matter has caused enough divisiveness in the high school and the Colstrip community. This decision is an attempt to allow both the grievant and the District to get on with their lives and the mission of teaching students.

659

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11-B 1081
DATE 2-2-95
BILL NO. SB 180

NAME Cliff Benjamin

ADDRESS 200 S. Kraft Rd Shelby MT 59474

HOME PHONE 432-3875 WORK PHONE 432-3875

REPRESENTING Shelby School District 14

APPEARING ON WHICH PROPOSAL? SB 180

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

School Boards are like Senators - they are elected by their communities as the person who will best reflect the attitudes and wishes of the community. An arbitrater is typically from outside the community and cannot know, as well, the wishes of the community. The taxpayer expects a Senator to make tough decisions as best they know how - not to hire an arbitrater to run the Senate. We ask you to please allow us, as elected representatives, the same opportunity to fulfill our commitment to our constituents and their children. Thank You,

Cliff Benjamin

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

11-C 1 of 1
2-2-95
SB 180

ROSEBUD PUBLIC SCHOOLS

School District No. 12
P.O. Box 38
ROSEBUD, MONTANA 59347
Phone 347-5353

January 31, 1995

Labor and Employment Relations Committee
Montana Senate
State Capitol
Helena, MT 59601

Dear Senator Keating:

As a school board member I encourage you to pass SB180 which would repeal the provision in state law requiring all school districts to have binding arbitration in their master agreements with teachers. This provision is a costly one in many ways and increases the number of labor disputes that must be settled through the arbitration means. I am sure that many of Montana schools could find better use for their monies than paying arbiters from other states who have been selected to settle contract disputes.

I also believe that forcing school districts to include binding arbitration in contracts is a blow at local control. Teachers, and other school personnel, should be entitled to this in a contract if <u>they have negotiated it.</u> Placing the government of Montana on the side of labor gives them an unfair advantage in any dispute and only encourages them to appeal decisions from one level to another until they eventually get what they want. I am sure this will increase the number of disputes that will be brought before an arbiter for resolution.

Unfortunately, most arbiters tend to try to give both sides of a dispute something they can live with. This unfairly disposes the process to favor teachers. School boards do not file grievances, so it is in the interests of teachers to file grievances and then carry them to the stage of arbitration to win small victories that will significantly change the picture of labor relations in the schools if binding arbitration is allowed to stay on the books. Small victories added together will eventually produce revolutionary changes in board/teacher relations and these changes will not favor boards.

Sincerely,

Clinton Clark

Clinton Clark
Board Chair

11-A 181
2-2-95
SB 180

ROSEBUD PUBLIC SCHOOLS

School District No. 12
P.O. Box 38
ROSEBUD, MONTANA 59347
Phone 347-5353

January 31, 1995

Senate
Labor and Employment Relations Committee
Montana Senate
State Capitol
Helena, MT 59601

Dear Committee Members:

As a board member in a small school I ask for your support in passing SB180. This bill will help us maintain control of our budgets to some extent by lessening the potential for frivolous, or petty, labor disputes from going to the stages of having to be setteled by an arbiter. This process is a lengthy and expensive one and we don't need to be spending our precious dollars on it any more than we absolutely have to.

I am also worried that if binding arbitration is allowed to stay on the books we will have lost an element of local control. In my district, and much of eastern Montana, that is an important issue to those of us who live here. We like to settle our own problems. Allowing, or forcing, others to settle the issues for us is pointless, and also needlessly expensive. We are capable of settling our own disputes. Sometimes the teachers win and sometimes the boards win in disputes, but allowing a system that gives on side or the other an unfair advantage to persist is not responsible. It will cause a shift of power in our schools that none of us want, or will be comfortable with. Passing SB180 will equalize the situation so that those of us who want or are willing to tolerate binding arbitration in our contracts will be able to do so. However, that should be a local decision, not one mandated by government. It seems to me that the recent election was to some extent about returning power to the people. Passing SB180 is one way to do that.

Sincerely,

Max Blanchard

Max Blanchard
Board Member

Senate
Lab. Room 439

11-E 1&T
2-2-95
SB 180

ROSEBUD PUBLIC SCHOOLS
School District No. 12
P.O. Box 38
ROSEBUD, MONTANA 59347
Phone 347-5353

January 31, 1995

Labor and Employment Relations Committee
Montana Senate
State Capitol
Helena, MT 59601

Dear Committee Members:

I would like to take the time to encourage you to pass SB180. If passed, this bill would level the playing field in labor relations between school boards and teacher's associations. The obligation of schools to include binding arbitration in their contracts with teachers puts them in an unfair position when it comes to settling disputes with teachers. I believe that more disputes will have to be heard by arbiters if this law is allowed to stay on the books. More disputes will translate into more costs f[illegible] schools, and my school's budgets are already stretched to the limit. Recent cuts have forced us to trim back in many areas. The net result is we do not have the money to put into paying arbiters.

I also believe that forced binding arbitration gives teachers an unfair advantage when it comes to conflict resolution and only encourages them to appeal their cases to the highest level possible in order to win victories. Unfortunately, this usually costs dollars and the teacher's unions often have more money to spend on these things than we do. Taxpayer dollars should be spent on educating kids, not on settling labor disputes.

There is also the issue of local control. If we want binding arbitration in our contracts we should be able to put it in there, or take it out if we can do it. But, a legal requirement that it must remain in the contract puts the schools at an unfair advantage. This is an issue that should be settled individually by each and every school district, not by the legislature.

Sincerely,

Donna Plymtpon

Donna Plymtpon
Board Member

SENATE LABOR & EMPLOYMENT
EXHIBIT NO 11 F 1&3
DATE 2-2-95
BILL NO SB 180

CLINTON ELEMENTARY
FAX NO. (406) 825-3114

FAX TRANSMITTAL

DATE: 2-1-95

TO: Senate Labor + Emp. Relations Com.
State Capitol
Helena, Mt. 59620

FROM: Jeff Webber

FAX NO. 1-900-225-1600

NO. OF PAGES SENT INCLUDING TRANS. 3

MESSAGE:

Please distribute to members of the L+ER Com.

Thanks,
Jeff

EXHIBIT No. 11-6 2 of 3
DATE 2-2-95
BILL NO. SB 180

February 1, 1995

Jeff Webber
Chairman, District # 32
Clinton Elementary School District
Clinton, MT 59825
(406) 825-3113

Senator Fred Van Valkenburg
State Senate of Montana
Capitol Station
Helena, MT 59620

Dear Senator Van Valkenburg,

I regret that I'm unable to testify at Thursdays hearing for SB 180, Repeal of Binding Arbitration but would like to comment in favor of the bill.

Our contract with our teachers (unionized) has not had a binding arbitration clause and we would like to keep it that way. We have very few issues or grievances which would require such services and feel as though there is no advantage and possibly some disadvantages to including binding arbitration into our contract.

There are two major factors to my objection to binding arbitration. 1) The cost associated with such hearings for a district of our size and, 2) I feel very strongly that most cases taken to arbitration will cost the district something in the settlement even if it is clear that the district has applied the labor contract fairly and correctly. Arbitrators rarely decide to one side or the other but end up splitting the difference. An employee has nothing to loose by taking a dispute to arbitration.

There are other avenues for dispute settlement available for our employees and would not want to deny them that right. I also recognize that some districts and organizations prefer to use binding arbitration for dispute settlement. They can negotiate it into their contracts as they wish. However, we do not need or want to have binding arbitration mandated to us. Please support SB 180 and Repeal the Binding Arbitration law.

Jeff Webber
Chairman
Clinton Elementary School District

11-G 3of3
2-2-92
SB 180

February 1, 1995

Jeff Webber
Chairman, District # 32
Clinton Elementary School District
Clinton, MT 59825
(406) 825-3113

Labor and Employment Relations Committee
State Senate of Montana
Capitol Station
Helena, MT 59620

Dear Labor and Employment Relations Committee,

I regret that I'm unable to testify at Thursdays hearing for SB 180, Repeal of Binding Arbitration but would like to comment in favor of the bill.

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There are two major factors to my objection to binding arbitration. 1) The cost associated with such hearings for a district of our size and, 2) I feel very strongly that most cases taken to arbitration will cost the district something in the settlement even if it is clear that the district has applied the labor contract fairly and correctly. Arbitrators rarely decide to one side or the other but end up splitting the difference. An employee has nothing to loose by taking a dispute to arbitration.

There are other avenues for dispute settlement available for our employees and would not want to deny them that right. I also recognize that some districts and organizations prefer to use binding arbitration for dispute settlement. They can negotiate it into their contracts as they wish. However, we do not need or want to have binding arbitration mandated to us. Please support SB 180 and Repeal the Binding Arbitration law.

Jeff Webber
Chairman
Clinton Elementary School District

Senate Labor 439
Exc

ROSEBUD PUBLIC SCHOOLS

School District No. 12
P.O. Box 38
ROSEBUD, MONTANA 59347
Phone 347-5353

11-G 1of1
2-2-95
SB 180

January 31, 1995

Labor and Employment Relations Committee
Montana Senate
State Capitol
Helena, MT 59601

Dear Senator Akelstad:

While you are not a member of my district I would still like to encourage you to vote in favor of SB180. If passed, this bill will equalize labor relations between school boards and teacher's unions. The fact that binding arbitration is a requirement in contracts between school boards and teachers unions gives the teachers an upper hand when it comes to settling labor disputes. This eventually translates into higher expenditures for schools because of the increased costs spent on labor disputes. If we can limit the amount of dollars spent on things outside of education, maybe we can all hold down the costs of education to some extent.

Forcing binding arbitration also limits the concept of local control to a great extent. People should be able to control what happens in their own school, rather than have it dictated by state government. I realize that some things must be controlled by the state to maintain some sense of quality. But these should be limited to what is taught and how it is taught. If the teachers want to have binding arbitration in their contracts they should have to negotiate it through the usual process, not by going in through the back door and having the legislature become an advocate for their causes.

Sincerely,

Dee Batey

Dee Batey
Board Member

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11-H 1 of 1
DATE Feb 2, 1995
BILL NO. SB 180

NAME Bob Richman

ADDRESS 638 1st St S, Shelby MT 59474

HOME PHONE 434-2019 WORK PHONE 434-5593

REPRESENTING Shelby School District 14

APPEARING ON WHICH PROPOSAL? SB 180

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

I second all the standard arguments about unlevel fields, loss of chips etc. However I want to make sure you understand that passage of SB180 does not preclude binding arbitration. It merely retracts the mandatory language and leaves it as an issue to be decided locally. Each school district has its own unique set of circumstances and problems. Please allow the trustees the latitude to look at this issue as it applies to their area and make choices accordingly. On behalf of our school board I urge you to give a "do pass" recommendation to SB180. Thank you.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS.F11

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 12 1 of 1
DATE 2-2-95
BILL NO. SB 180

2/2/95

Mr. Chairman, members of the committee. My name is Terry Minow. I represent the Montana Federation of Teachers. I appear today in opposition to SB 180.

SB 180 strikes part of SB 15 approved by the 1993 Legislature. SB 15 represented a compromise between school employee unions and school employers, that is, the school boards association. In exchange for the requirement that every school contract contain a binding arbitration provision, we agreed to an election of remedies clause in SB 15. SB 180 strikes one part of that compromise, the section requiring school contracts to include a grievance procedure that culminates in final and binding arbitration.

SB 180 has the potential to actually increase costs of resolving school employee grievances. It costs much less to go to binding arbitration than it costs to ~~file~~ resolve a court case. Binding arbitration has evolved as a fair, impartial way to settle disputes without the delays, attorney costs and potential for expensive judgements found in the courts. Even though binding arbitration is found in many union contracts, it is the final step in the grievance procedure. Grievance procedures exist to solve problems at the earliest possible time, and at the lowest level of intervention between management and the grievant. As a result, the vast majority of grievances are resolved quickly, long before being submitted to binding arbitration.

I would urge a "Do Not Pass" recommendation on SB 180.

Thank you, MR. Chairman.

MSBA
MONTANA SCHOOL BOARDS ASSOCIATION

One South Montana Ave.
Helena, Montana 59601
Telephone: 406/442-2180
FAX: 406/442-2194
Robert L. Anderson, Executive Director

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 2-2-95
BILL NO. SB 180

TESTIMONY OF MONTANA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF SB 180

It is a long-standing belief in the field of labor relations that a collective bargaining agreement should **represent the will of the parties.** This belief is reflected in Section 39-31-305(2), MCA which provides that the obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession."

In 1993, the Montana Legislature passed a bill which flies in the face of this long-standing belief. Beginning on July 1, 1996, Section 39-31-306(5), MCA requires school districts to negotiate grievance procedures which culminate in final and binding arbitration. **No such requirement is imposed on any other public or private employer in Montana.** Such a requirement is particularly unnecessary for school employees because OPI's school controversy contested case rules already provide a dispute resolution procedure to resolve grievances arising under a collective bargaining agreement.

We believe that the duty to arbitrate any grievance on demand by the union unfairly imposes an **unfunded mandate** on our public schools. Current law permits all public employers, including school districts, to enter into agreements which provide for the final and binding arbitration of contract disputes. SB 180 would preserve this right by making voluntary what Section 39-31-306(5) proposes to make mandatory.

It should be noted that unlike decisions by a county superintendent of schools, **arbitration decisions are essentially unreviewable** by our courts. Because collective bargaining agreements often incorporate, by reference, statutes and administrative rules, including the Board of Public Education's accreditation standards, unelected arbitrators may become the

ultimate judges of our school laws, including the laws governing teacher tenure.

In addition, it should be noted that arbitrators must be selected by the parties. An arbitrator who does not seek to satisfy both parties will probably not make a very good living. Consequently, there is a **decided tendency to issue split decisions.** Such compromises are often not justified by the facts of a case and only serve to frustrate the intent of the parties.

Under most arbitration agreements, each party to the contract must pay 50% of the cost of the arbitration. Because a school district must submit every grievance to arbitration if demanded by the union, a labor organization is in a position to **impose significant costs on a district** even if its claims have no merit.

Given the fact that Section 39-31-305(2), MCA establishes the right of a party not to make a concession, the provisions of Section 39-31-306(5), MCA pose some serious practical difficulties. **It is unclear how this requirement will be enforced** if the parties are unable to agree on the exact arbitration clause to be adopted. For example, the district and the union may not agree on the public or private agency which refers arbitrators. They may not agree on the scope of the arbitrator's authority, the hearing procedure and evidentiary standards to be utilized during the arbitration hearing, the production of a transcript or the period of time when the arbitrator's decision is due. One party may want to share the cost of arbitration equally while the other insists the losing party pay the entire cost in order to deter the arbitration of frivolous complaints.

These are not hypothetical problems, but have been the subject of intense debate in the past and will undoubtedly present **obstacles to agreement** in the future. If the parties are unable to agree on one or more of these provisions, how will the matter be resolved? Will employee unions strike in order to obtain their preferred version or will it be up to our courts to draft a model arbitration clause?

Either outcome interferes with the intent of collective bargaining and can be avoided only if the mandatory language contained in Section 39-31-306(5), MCA is repealed.

SB 180 resolves these problems by restoring the right of the parties to a school district contract to voluntarily enter into an agreement to arbitrate disputes which arise under the contract. In the absence of an arbitration clause, employees are still free to pursue their complaint with the county superintendent, board of personnel appeals, human rights commission or other agency with jurisdiction over their complaint.

One other important change made by SB 180 concerns the **election of remedies** provision currently provided in statute. This provision requires employees to choose between binding arbitration and "any other available legal method and forum" in any "complaint that seeks the same remedy." The problem with this language is that a grievant may simultaneously pursue the same complaint in different forums simply by modifying the requested remedy. For example, an employee terminated for cause could demand arbitration in order to obtain reinstatement and back pay while simultaneously filing a complaint with the human rights commission seeking reinstatement and damages for emotional distress. SB 180 solves this problem by requiring the employee to choose one dispute resolution method and forum for any complaint arising from the same facts and circumstances. In this way, employers will not be forced to defend the same action in multiple forums.

In conclusion, the Montana School Boards Association supports SB 180 because it **permits the parties to a collective bargaining agreement to determine the manner in which violations of the agreement will be remedied.** It also protects school districts from having to defend the same claim in multiple forums.

Michael Keedy

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 14 1 of 1
DATE 2-2-95
BILL NO. SB 180

Date: 2-2-95

To: Senate Labor and Employee Relations Committee

From: Nick Klaudt

Subject: SB-180 Repeal of Mandatory Binding Arbitration

Dear Committee Members,

Please note my support for SB-180. I would urge the Legislature not to make our negotiation trades for the local school boards. We have used the binding arbitration issue as a bargaining tool, and as a result wages have been increased to keep it out of our contract. If the Legislature mandates binding arbitration, we loose a bargaining tool and the wages that were increased to keep it out of the contract cannot be reduced per statute 20-4-203 MCA.

Please support SB-180 for passage.

Sincerely,

Nick Klaudt

Nick Klaudt
Glendive Elementary Trustee
217 Lyndale Ave. HC
Glendive, MT 59330
406-687-3304 Work
406-365-2315 Home

S.[illegible]TE LABOR & EMPLOYMENT
EXHIBIT NO. _____
DATE 2-2-95
BILL NO. SB 180

NAME Morris Van Campen

ADDRESS 800 Jefferson School Rd

HOME PHONE _____ WORK PHONE 406-365-4155

REPRESENTING Cloudine School Board

APPEARING ON WHICH PROPOSAL? SB-180

DO YOU: SUPPORT ✓ OPPOSE _____ AMEND _____

COMMENTS:

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. _____
DATE _____
BILL NO. 2-2-95
SB 180

NAME Bob Richman

ADDRESS 638 1st St S, Shelby MT 59474

HOME PHONE 434-2019 WORK PHONE 434-5593

REPRESENTING Shelby School District 14

APPEARING ON WHICH PROPOSAL? SB 180

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

I second all the standard arguments about unlevel fields, loss of chips etc. However I want to make sure you understand that passage of SB180 does not preclude binding arbitration. It merely retracts the mandatory language and leaves it as an issue to be decided locally. Each school district has its own unique set of circumstances and problems. Please allow the trustees the latitude to look at this issue as it applies to their area and make choices accordingly. On behalf of our school board I urge you to give a "do pass" recommendation to SB180 Thank you.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NAME Morris Van Campen

ADDRESS 800 Jefferson School Rd

HOME PHONE _____ WORK PHONE 406-365-4155

REPRESENTING Glendive School Board

APPEARING ON WHICH PROPOSAL? SB-180

DO YOU: SUPPORT + OPPOSE _____ AMEND _____

COMMENTS:

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETAR

'73

DATE February 2, 1995

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 201 * HB 114 * SB 180

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jana L Underkofler	Kessler Trustee	SB 180	X	
John Good Box 98A Floweree MT	Ft Benton Trustee	SB 180	X	
Terry Minow	MFT	SB 180		X
Buddy Malee	"	SB 180		X
Leonard Street	Chester schools trustee	SB 180	X	
Charles Frost	Harlowton School District	SB 180	X	
Chris Kolstad	Chester School trustee	SB 180	X	
Rick Jarrell	Sweet Grass High School	SB 180	X	
Mark Miller	Harlowton MT Trustee	SB 180	X	
[illegible]	" "		X	
Cliff Benjamin	Shelby School District	SB 180	X	
Bob Richman	" " "	SB 180	X	
Ernie Jean	Florence-Carlton School	SB 180	X	
Russ Ritter	Wash Corp	201	✓	
Don Allen	Mt. Wood Products	201	✓	

VISITOR REGISTER

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REGISTER F10

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Name	Representing	Bill No.	Support	Oppose
Polly LaTray-Holmes	111 N. Last Chance #4D DOL - VETS Helena	HB 114	✓	
Jack Cummings	TIC-Wyoming Inc. Box 3 Joo Cesper, WY. 82602 Stillwater Mining	SB 201	✓	
Ward Shanahan	Stillwater Mining	201	✓	
Christopher H. Allen	Nye Montana Stillwater Mining	201	✓	
Ron Wetsch	Drummond Public Schools	180	✓	
Joslyn Murphy				
John F. Walsh	MT Nat. Guard	114	✓	
Roger A. Hagan Helena	Enlisted Association and Officer Assoc. N.G.	114	✓	
Hal Manson	Helena American Legion	114	✓	
Rich Shaffer	Shields Valley Ps	180	✓	
Matt McKamey		201		
Morris Van Cleave	Glendive School Board	SB 180	✓	
Charles R. Brooks	Billings Chamber	SB 201	✓	
Tom Daubert	Ash Grove Cement Co	SB 201	✓	

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Name	Representing	Bill No.	Support	Oppose
Scott Crichton	ACLU	201		✓
Mike Keedy	MSBA	180	X	
Gerald W. Sayer	SCHOOL TRUSTEE	180	✓	
DON WALdron	MREA SB	180	✓	
ERIC FEAVER	MEA	SB180		✓
Steve Turkiewicz	Mt Auto Dealers Assn	SB-201	X	
David Owen	mt Chamber	SB201	✓	
Chip Erdmann	MREA	SB180	X	
Chip Erdmann	Self, Air Guard Member	HB114	X	
Rodney Svee	Hardin Public School	SB180	X	
Jim Foster	MREA	SB 180	X	

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