

SENATE BILL NO. 275

INTRODUCED BY CETRONE, MANLEY, REGAN, GREELY, BLAYLOCK,
FLYNN, DUNKLE, FASBENDER, TOWE, ROMNEY

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING SECTION
75-6126, AND AMENDING SECTIONS 75-6117, 75-6118, 75-6119,
75-6120, 75-6122, 75-6123, 75-6124, AND 75-6125, R.C.M.
1947; PROVIDING FOR THE UTILIZATION OF THE BOARD OF
PERSONNEL APPEALS IN CONTROVERSIES ARISING UNDER THE
PROFESSIONAL NEGOTIATIONS ACT FOR TEACHERS, DEFINING AND
PROVIDING A REMEDY FOR UNFAIR PRACTICES, AND OTHERWISE
AMENDING THE PROFESSIONAL NEGOTIATIONS ACT FOR TEACHERS."

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

Section 1. Section 75-6117, R.C.M. 1947, is amended to
read as follows:

"75-6117. Definitions. As used in this act, unless the
context clearly requires otherwise:

(1) "Teacher" means an individual certificated where
required in class 1, 2, 4 or 5 as provided in section
75-6006, but shall not include such ~~certificated~~ individuals
who are not, currently under contract to perform classroom
teaching; however "teacher" shall include principals
certificated in class 3 who so elect as provided in
subsection (3); and provided further that classroom teaching

shall be defined as professional services which are
instruction related or performed in contact with students;

(2) "Employer" means a school district as defined in
section 75-6501.

(3) "Appropriate unit" means all of the teachers
employed by a single employer. Principals employed by an
employer may elect to be included in the appropriate unit or
may elect to establish a separate appropriate unit of
principals;

(4) "Board" means any public school board of trustees;

~~(5) "Strike" means any work stoppage by a teacher or
teachers which interferes with the operation of a school or
schools, which includes abstinence in whole or in part from
the full, faithful and proper performance of the duties of
employment, for the purpose of inducing, influencing or
coercing an employer to change any terms or conditions
relating to the employer-teacher relationship;~~

~~(6)~~ (5) "Teacher organization" means any organization
of employees which includes teachers in membership;

~~(7)~~ (6) "Representative of teachers" means a
representative elected pursuant to the provisions of section
75-6121.

(7) "Board of personnel appeals" means the board
provided for in section 32A-1014."

Section 2. Section 75-6118, R.C.M. 1947, is amended to

1 read as follows:

2 "75-6118. Teachers' rights. It shall be lawful for
3 teachers to organize, form, join or assist in employee
4 organizations or to engage in lawful activities for the
5 purpose of collective bargaining or to bargain collectively
6 through representatives of their own free choice, and to
7 engage in other concerted activities for the purpose of
8 collective bargaining or other mutual aid or protection,
9 free from interference, restraint or coercion. Teachers
10 shall also have the right to refrain from any or all such
11 activity but shall be bound by a professional negotiations
12 agreement involving the appropriate unit of which they are a
13 member. It shall be the duty of an employer to meet and
14 confer on any proposal advanced by a representative of
15 teachers, or by a teacher or group of teachers if no
16 representative of teachers has been selected, if such
17 proposal does not endeavor to amend the terms of a
18 professional negotiations agreement then in effect, and
19 nothing in this act shall be construed to diminish such
20 duty. However, a representative of teachers selected as
21 provided by this act, shall be the exclusive representative
22 of all the teachers in the appropriate unit to meet, confer
23 or negotiate upon all matters permitted in section 75-6119
24 and such teachers shall not negotiate individually."

25 Section 3. Section 75-6119, R.C.M. 1947, is amended to

1 read as follows:

2 "75-6119. Duty to negotiate and bargain. It shall be
3 the duty of all employers acting as a board, or acting by
4 and through a bargaining agent designated or employed by the
5 employer, and all teachers, or a representative of teachers,
6 to meet ~~and confer~~ for professional negotiations purposes at
7 the request of either, except as provided by this act, to
8 discuss matters relating directly to the employer-teacher
9 relationship such as salary, hours and other terms of
10 employment, and to negotiate and bargain for agreement on
11 such matters. ~~The matters of negotiation and bargaining for~~
12 ~~agreement shall not include matters of curriculum, policy of~~
13 ~~operation, selection of teachers and other personnel or~~
14 ~~physical plant of schools or other facilities, however~~
15 ~~noting herein shall limit the obligation of employers to~~
16 ~~meet and confer as provided in section 75-6118.~~ Teachers
17 under a professional negotiations agreement, or the
18 representative of teachers, or employers, or their agents or
19 representatives, shall not demand that professional
20 negotiation conferences begin until after November 1 of the
21 last year such agreement is effective, but, if professional
22 negotiation is desired, must serve written notice of
23 intention to negotiate ~~collectively upon the employer upon~~
24 the other party not later than November 1 of such year
25 stating specifically the items to be negotiated. ~~if such~~

~~notice is not served, the employer shall not be required to negotiate any terms of the employer-teacher relationship for the following school year. The parties shall be required to negotiate only those items so noticed, but may by mutual consent negotiate on other matters.~~ Professional negotiation agreements in effect at the time this act becomes effective shall continue to their expiration. No professional negotiation agreement shall extend for a term of more than two (2) years."

Section 4. Section 75-6120, R.C.M. 1947, is amended to read as follows:

"75-6120. Unfair practices. (1) Employers, their agents or representatives, are prohibited from the following unlawful acts:

(a) Interfering with, restraining or coercing teachers in any manner in their right of self-organization or selection of a representative;

(b) Discriminating in regard to conditions of employment when the purpose is to discourage membership in a teacher organization;

(c) Refusing to meet, confer or negotiate in good faith with teachers or the duly elected representative of an appropriate unit of teachers or with a panel mediator selected upon impasse as provided in section 75-6123, to discuss or negotiate upon any matter dealing directly with

the employer-teacher relationship as provided in section 75-6118;

(d) Refusing to reduce to writing and sign a professional negotiation agreement arrived at through negotiation and discussion;

(2) Teachers or teacher organizations, their agents or representatives, are prohibited from the following unlawful acts:

(a) Restraining or coercing teachers in violation of their rights guaranteed under section 75-6118 or interfering in the conduct of an election as provided in ~~this~~ section 75-6121;

(b) Refusing to reduce to writing or sign a professional negotiation agreement arrived at through negotiation and discussion;

~~(c) instituting, maintaining or participating in a strike or boycott against any employer, or picketing any school or school facility to further or to induce a strike or boycott because of any controversy, engaging in, or inducing or encouraging any individual to engage in a strike or refusal to handle goods or perform services or threatening, coercing or restraining any individual where the object thereof is to force or require any employer to discontinue doing business with such individual or to force or require an employer to recognize a teacher representative~~

~~not-selected-as-provided-in-section-75-6121:~~

~~(d)~~ (c) Refusing to meet, confer or bargain in good faith with an employer or its agents or with a ~~panel~~ mediator selected upon ~~impasse~~ ~~impasse~~ as provided in section 75-6123, to discuss or bargain upon any matter dealing directly with the employer-teacher relationship as defined in section 75-6119."

Section 5. Section 75-6122, R.C.M. 1947, is amended to read as follows:

"75-6122. Ratification of agreements ~~-- resolving disputes over interpretation of agreement.~~ (1) All professional negotiation agreements reduced to writing and executed by an employer and the representative of teachers must be ratified by a majority of the members of the teacher organization or if there is no teacher organization by a majority of the teachers in the appropriate unit before becoming binding upon the parties. If a professional negotiation agreement is executed by a professional negotiation agent of the employer it must be ratified by a majority of the board of the employer.

Any individual contract between the board and an individual teacher shall be subject to and consistent with the terms and conditions of the professional negotiations agreement involving that appropriate unit of which the teacher is a member. Only after ratification by a majority

of teachers and a majority of the board shall individual contracts of employment be issued. If an individual contract contains any language inconsistent with the professional negotiations agreement, the professional negotiations agreement during its duration shall be controlling.

(2) The employer and the representative of teachers may include in the professional negotiations agreement a grievance procedure culminating in binding arbitration of any dispute which may arise over the interpretation or application of such agreement."

Section 6. Section 75-6123, R.C.M. 1947, is amended to read as follows:

"75-6123. Professional negotiation. (1) If, after fifty (50) days following the commencement of negotiation between an employer, and a negotiating agent designated by the employer, and teachers, or a representative of teachers, an agreement cannot be reached upon any proper issue or issues presented, ~~either--party--may--notify--the--other--in writing--that-it-desires-to-present-the-issue-or-issues-to-a panel-of-three-(3)-persons,-resident-of-the-state--in-which the--employer--is--located,-one--(1)--to-be-selected-by-the employer,-one-(1)-to-be-selected-by--the--representative--of teachers,-and-the-third-to-be-selected-by-the-first-two-(2) named,-who-shall-act-as-chairman-of-the--panel,-Each--party shall--select--its--panel--member-within-ten-(10)-days-after~~

1 such notification. If the members selected by the parties
 2 are unable to agree upon the third member within ten (10)
 3 days from the date of their selection, the senior district
 4 judge of the county in which the employer is located shall
 5 submit the names of five (5) persons to the parties at
 6 in pass and each party shall in the presence of such senior
 7 district judge alternately strike one (1) name until only
 8 one (1) shall remain. The teachers or representative of
 9 teachers shall strike the first name. The person so
 10 remaining shall be the third panel member. Negotiation shall
 11 thereupon continue before the panel. The panel may take
 12 oral testimony under oath and shall consider all documents
 13 and arguments presented to it. If an agreement has not been
 14 reached by the parties within twenty (20) days after
 15 presentation before the panel has commenced, the panel shall
 16 make findings of fact and recommendations concerning the
 17 issues discussed and shall serve a copy upon both parties
 18 within five (5) days after such twenty (20) day period.
 19 Within five (5) days following mailing of such findings and
 20 recommendations, the parties must notify the county
 21 superintendent of schools and each other whether or not they
 22 accept the findings and recommendations of the panel, and
 23 unless both parties do so accept, the panel shall publicize
 24 its findings of fact and recommendations in such manner as
 25 it deems advisable. Not less than five (5) days nor more

1 than ten (10) days after such publication of findings of
 2 fact and recommendations of the panel, the parties shall
 3 again notify the county superintendent of schools and each
 4 other whether or not they accept the recommendations of the
 5 panel. The parties may further negotiate and settle the
 6 issues at any time before or after the recommendations of
 7 the panel. Each party shall pay the expenses of its selected
 8 member of the panel and both parties shall share equally the
 9 expenses of the third member of the panel and the
 10 publication costs. the parties shall request mediation in
 11 accordance with the provisions of section 59-1614 (1),
 12 R.C.M. 1947, and the rules and regulations of the board of
 13 personnel appeals. The cost of mediation shall be equally
 14 borne by the parties concerned.

15 (2) If within thirty-five (35) days of designation of
 16 a mediator, agreement has not been reached on any issue or
 17 issues presented to the mediator, either party may request
 18 the board of personnel appeals to initiate fact-finding in
 19 accordance with the provisions of section 59-1614 (3)
 20 through (9), R.C.M. 1947, and the rules and regulations of
 21 the board of personnel appeals."

22 Section 7. Section 75-6124, R.C.M. 1947, is amended to
 23 read as follows:

24 "75-6124. Employer's right under other state laws.
 25 (1) Nothing contained in this act shall impair the

1 employer's right to hire teachers or to discharge teachers
2 for cause consistent with other state laws.

3 (2) Nothing contained in this act or in any other
4 statute of this state precludes an employer and the
5 exclusive representative of teachers from negotiating as a
6 condition of employment a requirement that a teacher who is
7 not or does not become a member of the teacher organization
8 recognized as the exclusive representative shall have
9 deducted from his salary an amount equal to the fees and
10 dues required for membership to be remitted to the exclusive
11 representative.

12 (3) For teachers who are members of the teacher
13 organization recognized as the exclusive representative the
14 employer shall, upon the written authorization by the
15 teacher, deduct from the regular payroll of the teacher the
16 amount which is equal to the pro rata share of the
17 membership dues, fees, group insurance premiums and other
18 organization benefits and shall remit the amount to the
19 teacher organization."

20 Section 8. Section 75-6125, R.C.M. 1947, is amended to
21 read as follows:

22 "75-6125. Remedy for unfair practices -- procedure --
23 court court review. Violations of the provisions of section
24 75-6120 are unfair practices remediable in the following
25 manner:

1 (1) An employer, a duly elected representative of
2 teachers, or if no representative of teachers has been
3 selected, then a teacher or group of teachers, may file a
4 complaint with the board of personnel appeals alleging the
5 commission of an unfair practice. Upon receipt of such
6 complaint the board of personnel appeals shall act upon the
7 complaint in accordance with the provisions of section
8 59-1607, R.C.M. 1947, and the rules and regulations of the
9 board of personnel appeals.

10 (2) The board of personnel appeals or the complaining
11 party may institute proceedings in the district court for
12 the county in which the employer is located ~~to-restrain-the~~
13 ~~commission-of-any-unlawful-or-unfair-practice-as-provided-in~~
14 ~~this-act~~ for the enforcement of the order of the board of
15 personnel appeals and for appropriate temporary relief or a
16 restraining order as provided in section 59-1608 (1) and
17 (2), R.C.M. 1947. ~~Any-teacher-acting-in-violation-of-any~~
18 ~~court-order-to-enforce-the-provisions-of-this-act-shall-be~~
19 ~~subject-to-suspension-without-pay-or-dismissal-at-the~~
20 ~~discretion-of-the-employer."~~

21 Section 9. Section 75-6126, R.C.M. 1947, is repealed.

-End-

SECOND READING

MISSING

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 1975, 19 _____, there is hereby submitted a Fiscal Note for Senate Bill 275 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 275 provides for the utilization of the Board of Personnel Appeals in controversies arising under the professional negotiations act for teachers, defines and provides a remedy for unfair practices, and otherwise amends the professional negotiations act for teachers.

ASSUMPTIONS:

1. Proposed legislation would require two additional staff positions. Additional expenditures for operating expenses include contracted services, travel, rent, and supplies.
2. The Montana Education Association predicts 150 negotiations per fiscal year. The Board of Personnel Appeals projects 25 unfair labor practice charges, 40 mediations, and 15 requests for fact-finding.
3. The Montana Education Association and Board of Personnel Appeals interpret Section 6(1) of the proposed legislation regarding the allocation of mediation expenses to mean the mediation costs will be borne equally by the three parties involved including the Board of Personnel Appeals. This interpretation is assumed in analyzing the fiscal impact. The same allocation of costs is assumed for fact-finding.

FISCAL IMPACT:

		FY 76		FY 77
Expenditures by category under present law				
Personal Services	\$ 96,283		\$103,973	
Operating Expenses	<u>45,315</u>		<u>47,715</u>	
Total expenditures under present law		\$141,598		\$151,688
Expenditures by category under proposed law				
Personal Services	\$118,616		\$127,228	
Operating Expenses	65,748		67,948	
Capital Outlay	<u>1,100</u>	\$185,464	<u>0</u>	\$195,176
Estimated increase in expenditures		<u>\$ 43,866</u>		<u>\$ 43,488</u>

CONCLUSION:

Enactment of Senate Bill 275 would result in an additional expenditure of \$87,354 from the General Fund during the 1975-77 biennium.

TECHNICAL NOTE:

Section 6(1), page 10, of the proposed bill states "the cost of mediation shall be equally borne by the parties concerned". As noted in assumption 3 above, the prevailing interpretation of this clause is that the Board of Personnel Appeals shares in the costs of mediation. The language of the bill does not make this interpretation clear.

Michael H. Bellings
By Dawn Wilson
 BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 14, 1975

STATE OF MONTANA

REQUEST NO. 252-75

FISCAL NOTE

Form BD-15

In compliance with a written request received February 28, 19 75, there is hereby submitted a Fiscal Note to Senate Bill 275 (as amended) pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 275 provides for the utilization of the Board of Personnel Appeals in controversies arising under the professional negotiations act for teachers, defines and provides a remedy for unfair practices, and otherwise amends the professional negotiations act for teachers. Amendments to S.B. 275 add a new section concerning petition on representation matters, hearing, notice, and election, and provides an immediate effective date.

ASSUMPTIONS:

1. Proposed legislation as amended would require three additional staff positions. Additional expenditures for operating expenses include contracted services, travel, rent, and supplies.
2. The Montana Education Association predicts 150 negotiations per fiscal year. The Board of Personnel Appeals projects 25 unfair labor practice charges, 40 mediations, and 15 requests for fact-finding.
3. Under amended S.B. 275, the Board of Personnel Appeals would have responsibility for representation elections, unit determinations, mediation, fact-finding (1/3 of cost) and unfair labor practices.
4. No additional expenditures will be incurred until FY 76.

FISCAL IMPACT:

	FY 76	FY 77
Expenditures by category under present law		
Personal Services	\$96,283	\$103,973
Operating Expenses	<u>45,315</u>	<u>47,715</u>
Total expenditures under present law	\$141,598	\$151,688
Expenditures by category under proposed law		
Personal Services	\$134,183	\$143,419
Operating Expenses	67,915	70,315
Capital Outlay	<u>1,500</u>	<u>0</u>
Estimated increase in expenditures	<u>203,598</u> <u>\$ 62,000</u>	<u>213,734</u> <u>\$ 62,046</u>

CONCLUSION:

Enactment of Senate Bill 275 as amended would result in an additional expenditure of \$124,046 from the General Fund during the 1975-77 biennium.

Michael D. Bellings
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: March 6, 1975

Approved by Committee
on Education

SENATE BILL NO. 275

INTRODUCED BY CETRONE, MANLEY, REGAN, GREELY, BLAYLOCK,
FLYNN, DUNKLE, FASBENDER, TOWE, ROMNEY

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING SECTION
~~75-6126~~ 75-6121, AND AMENDING SECTIONS 75-6117, ~~75-6118~~,
75-6119, 75-6120, 75-6122, 75-6123, 75-6124, AND 75-6125,
R.C.M. 1947, AND PROVIDING FOR A NEW SECTION 75-6121.1;
PROVIDING FOR THE UTILIZATION OF THE BOARD OF PERSONNEL
APPEALS IN CONTROVERSIES ARISING UNDER THE PROFESSIONAL
NEGOTIATIONS ACT FOR TEACHERS, DEFINING AND PROVIDING A
REMEDY FOR UNFAIR PRACTICES, AND OTHERWISE AMENDING THE
PROFESSIONAL NEGOTIATIONS ACT FOR TEACHERS; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-6117, R.C.M. 1947, is amended to
read as follows:

"75-6117. Definitions. As used in this act, unless the
context clearly requires otherwise:

(1) "Teacher" means an individual certificated where
required in class 1, 2, 4 or 5 as provided in section
75-6006, but shall not include such ~~certificated~~ individuals
who are not currently under contract to perform classroom
teaching; however "teacher" shall include principals

certificated in class 3 who so elect as provided in
subsection (3); and provided further that classroom teaching
shall be defined as professional services which are
instruction related or performed in contact with students;

(2) "Employer" means a school district as defined in
section 75-6501.

(3) "Appropriate unit" means all of the teachers
employed by a single employer. Principals employed by an
employer may elect to be included in the appropriate unit or
may elect to establish a separate appropriate unit of
principals;

(4) "Board" means any public school board of trustees;

~~(5) "Strike" means any work stoppage by a teacher or
teachers which interferes with the operation of a school or
schools, which includes abstinence in whole or in part from
the full, faithful and proper performance of the duties of
employment, for the purpose of inducing, influencing or
coercing an employer to change any terms or conditions
relating to the employer-teacher relationship;~~

(5) "STRIKE" MEANS ANY WORK STOPPAGE BY A TEACHER OR
TEACHERS WHICH INTERFERES WITH THE OPERATION OF A SCHOOL OR
SCHOOLS, WHICH INCLUDES ABSTINENCE IN WHOLE OR IN PART FROM
THE FULL, FAITHFUL AND PROPER PERFORMANCE OF THE DUTIES OF
EMPLOYMENT, FOR THE PURPOSE OF INDUCING, INFLUENCING OR
COERCING AN EMPLOYER TO CHANGE ANY TERMS OR CONDITIONS

1 RELATING TO THE EMPLOYER-TEACHER RELATIONSHIP;

2 ~~(6)~~ ~~(5)~~ (6) "Teacher organization" means any
3 organization of employees which includes teachers in
4 membership;

5 ~~(7)~~ ~~(6)~~ (7) "Representative of teachers" means a
6 representative elected pursuant to the provisions of section
7 ~~75-6121~~ 75-6121.1.

8 (8) "Board of personnel appeals" means the board
9 provided for in section 82A-1014.

10 (9) "LOCKOUT" MEANS A SUSPENSION OF WORK INITIATED BY
11 THE EMPLOYER AS A RESULT OF A LABOR DISPUTE."

12 ~~Section 2, Section 75-6110, R.C.M. 1947, is amended to~~
13 ~~read as follows:~~

14 ~~"75-6110. Teachers' rights. It shall be lawful for~~
15 ~~teachers to organize, form, join or assist in employee~~
16 ~~organizations or to engage in lawful activities for the~~
17 ~~purpose of collective bargaining or to bargain collectively~~
18 ~~through representatives of their own free choice, and to~~
19 ~~engage in other concerted activities for the purpose of~~
20 ~~collective bargaining or other mutual aid or protection~~
21 ~~free from interference, restraint or coercion; Teachers~~
22 ~~shall also have the right to refrain from any or all such~~
23 ~~activity but shall be bound by a professional negotiations~~
24 ~~agreement involving the appropriate unit of which they are a~~
25 ~~member. It shall be the duty of an employer to meet and~~

1 ~~confer on any proposal advanced by a representative of~~
2 ~~teachers, or by a teacher or group of teachers if no~~
3 ~~representative of teachers has been selected, if such~~
4 ~~proposal does not endeavor to amend the terms of a~~
5 ~~professional negotiations agreement then in effect, and~~
6 ~~nothing in this act shall be construed to diminish such~~
7 ~~duty. However, a representative of teachers selected as~~
8 ~~provided by this act, shall be the exclusive representative~~
9 ~~of all the teachers in the appropriate unit to meet, confer~~
10 ~~or negotiate upon all matters permitted in section 75-6119~~
11 ~~and such teachers shall not negotiate individually."~~

12 Section 2. Section 75-6119, R.C.M. 1947, is amended to
13 read as follows:

14 "75-6119. Duty to negotiate and bargain. It shall be
15 the duty of all employers acting as a board, or acting by
16 and through a bargaining agent designated or employed by the
17 employer, and all teachers, or a representative of teachers,
18 to meet ~~and confer~~ for professional negotiations purposes at
19 the request of either, except as provided by this act, to
20 discuss matters relating directly to the employer-teacher
21 relationship such as salary, FRINGE BENEFITS, hours and
22 other terms of employment, and to negotiate and bargain for
23 agreement on such matters. ONLY THOSE MATTERS SPECIFIED IN
24 THIS SECTION ARE SUBJECT TO NEGOTIATION. ALL OTHER
25 STATUTORY POWERS AND DUTIES OF THE BOARD ARE NOT SUBJECT TO

1 ~~NEGOTIATION. The matters of negotiation and bargaining for~~
 2 ~~agreement shall not include matters of curriculum, policy of~~
 3 ~~operation, selection of teachers and other personnel, or~~
 4 ~~physical plant of schools or other facilities, however~~
 5 ~~nothing herein shall limit the obligation of employers to~~
 6 ~~meet and confer as provided in section 75-6118. Teachers~~
 7 under a professional negotiations agreement, or the
 8 representative of teachers, or employers, or their agents or
 9 representatives, shall not demand that professional
 10 negotiation conferences begin until after November 1 of the
 11 last year such agreement is effective, but, if professional
 12 negotiation is desired, must serve written notice of
 13 intention to negotiate ~~collectively upon the employer~~ upon
 14 the other party not later than November 1 of such year
 15 stating specifically the items to be negotiated. ~~if such~~
 16 ~~notice is not served, the employer shall not be required to~~
 17 ~~negotiate any terms of the employer-teacher relationship for~~
 18 ~~the following school year. The parties shall be required to~~
 19 negotiate only those items so noticed, but may by mutual
 20 consent negotiate on other matters. Professional negotiation
 21 agreements in effect at the time this act becomes effective
 22 shall continue to their expiration. No professional
 23 negotiation agreement shall extend for a term of more than
 24 two (2) years."

25 Section 3. Section 75-6120, R.C.M. 1947, is amended to

1 read as follows:

2 "75-6120. Unfair practices. (1) Employers, their
 3 agents or representatives, are prohibited from the following
 4 unlawful acts:

5 (a) Interfering with, restraining or coercing teachers
 6 in any manner in their right of self-organization or
 7 selection of a representative;

8 (b) Discriminating in regard to conditions of
 9 employment when the purpose is to discourage membership in a
 10 teacher organization;

11 (c) Refusing to meet, confer or negotiate in good
 12 faith with teachers or the duly elected representative of an
 13 appropriate unit of teachers or with a ~~panel mediator~~
 14 selected upon impasse as provided in section 75-6123, to
 15 discuss or negotiate upon any matter dealing directly with
 16 the employer-teacher relationship as provided in section
 17 75-6118;

18 (d) Refusing to reduce to writing and sign a
 19 professional negotiation agreement arrived at through
 20 negotiation and discussion;

21 (E) SUSPENSION OF WORK OR LOCKOUT;

22 (2) Teachers or teacher organizations, their agents or
 23 representatives, are prohibited from the following unlawful
 24 acts:

25 (a) Restraining or coercing teachers in violation of

1 their rights guaranteed under section 75-6118 or interfering
 2 in the conduct of an election as provided in ~~this~~ section;
 3 ~~75-6121~~ 75-6121.1;

4 (b) Refusing to reduce to writing or sign a
 5 professional negotiation agreement arrived at through
 6 negotiation and discussion;

7 (C) INSTITUTING OR PARTICIPATING IN A STRIKE AGAINST
 8 THE EMPLOYER;

9 ~~(c) instituting, maintaining or participating in a~~
 10 ~~strike or boycott against any employer, or picketing any~~
 11 ~~school or school facility to further or to induce a strike~~
 12 ~~or boycott because of any controversy, engaging in, or~~
 13 ~~inducing or encouraging any individual to engage in, a~~
 14 ~~strike or refusal to handle goods or perform services or~~
 15 ~~threatening, coercing or restraining any individual where~~
 16 ~~the object thereof is to force or require any employer to~~
 17 ~~discontinue doing business with such individual or to force~~
 18 ~~or require an employer to recognize a teacher representative~~
 19 ~~not selected as provided in section 75-6121.~~

20 ~~(d)~~ (D) Refusing to meet, confer or bargain in
 21 good faith with an employer or its agents or with a ~~panel~~
 22 mediator selected upon ~~impasse~~ impasse as provided in
 23 section 75-6123, to discuss or bargain upon any matter
 24 dealing directly with the employer-teacher relationship as
 25 defined in section 75-6119."

1 SECTION 4. THERE IS A NEW R.C.M. SECTION NUMBERED
 2 75-6121.1 THAT READS AS FOLLOWS:

3 75-6121.1. PETITION ON REPRESENTATION MATTERS --
 4 HEARING -- NOTICE -- ELECTION. (1) WHENEVER IN ACCORDANCE
 5 WITH SUCH RULES AS MAY BE PRESCRIBED BY THE BOARD OF
 6 PERSONNEL APPEALS, A PETITION HAS BEEN FILED:

7 (A) BY A TEACHER OR GROUP OF TEACHERS OR ANY TEACHER
 8 ORGANIZATION ACTING IN THEIR BEHALF ALLEGING THAT THIRTY
 9 PERCENT (30%) OF THE TEACHERS:

10 (I) WISH TO BE REPRESENTED FOR COLLECTIVE BARGAINING
 11 BY A TEACHER ORGANIZATION AS EXCLUSIVE REPRESENTATIVE, OR

12 (II) ASSERT THAT THE TEACHER ORGANIZATION WHICH HAS
 13 BEEN CERTIFIED OR IS CURRENTLY BEING RECOGNIZED BY THE
 14 EMPLOYER AS BARGAINING REPRESENTATIVE IS NO LONGER THE
 15 REPRESENTATIVE OF THE MAJORITY OF TEACHERS IN THE UNIT; OR

16 (B) BY THE EMPLOYER ALLEGING THAT ONE OR MORE TEACHER
 17 ORGANIZATIONS HAS PRESENTED TO IT A CLAIM TO BE RECOGNIZED
 18 AS THE EXCLUSIVE REPRESENTATIVE IN AN APPROPRIATE UNIT, THE
 19 BOARD OF PERSONNEL APPEALS OR AN AGENT OF THE BOARD OF
 20 PERSONNEL APPEALS, SHALL INVESTIGATE THE PETITION, AND IF IT
 21 HAS REASONABLE CAUSE TO BELIEVE THAT A QUESTION OF
 22 REPRESENTATION EXISTS, IT SHALL PROVIDE FOR AN APPROPRIATE
 23 HEARING UPON DUE NOTICE. IF THE BOARD OF PERSONNEL APPEALS
 24 OR AN AGENT OF THE BOARD OF PERSONNEL APPEALS FINDS THAT
 25 THERE IS A QUESTION OF REPRESENTATION, IT SHALL DIRECT AN

1 ELECTION BY SECRET BALLOT TO DETERMINE WHETHER, AND BY WHICH
 2 TEACHER ORGANIZATION THE TEACHERS DESIRE TO BE REPRESENTED
 3 OR WHETHER THEY DESIRE TO HAVE NO TEACHER ORGANIZATION
 4 REPRESENT THEM AND SHALL CERTIFY THE RESULTS THEREOF. ONLY
 5 THOSE TEACHER ORGANIZATIONS WHICH HAVE BEEN DESIGNATED BY
 6 MORE THAN TEN PERCENT (10%) OF THE TEACHERS IN THE UNIT
 7 FOUND TO BE APPROPRIATE SHALL BE PLACED ON THE BALLOT.
 8 NOTHING IN THIS SECTION PROHIBITS THE WAIVING OF HEARINGS BY
 9 STIPULATION FOR THE PURPOSE OF A CONSENT ELECTION IN
 10 CONFORMITY WITH THE RULES OF THE BOARD OF PERSONNEL APPEALS.

11 (2) IN ORDER TO ASSURE TEACHERS THE FULLEST FREEDOM IN
 12 EXERCISING THE RIGHTS GUARANTEED BY THIS ACT, THE BOARD OF
 13 PERSONNEL APPEALS OR AN AGENT OF THE BOARD OF PERSONNEL
 14 APPEALS SHALL DECIDE THE UNIT APPROPRIATE FOR THE PURPOSE OF
 15 COLLECTIVE BARGAINING, AND SHALL CONSIDER SUCH FACTORS AS
 16 COMMUNITY OF INTEREST, WAGES, HOURS, FRINGE BENEFITS, AND
 17 OTHER WORKING CONDITIONS OF THE TEACHERS INVOLVED; THE
 18 HISTORY OF COLLECTIVE BARGAINING; COMMON SUPERVISION; COMMON
 19 PERSONNEL POLICIES; EXTENT OF INTEGRATION OF WORK FUNCTIONS
 20 AND INTERCHANGE AMONG TEACHERS AFFECTED; AND THE DESIRES OF
 21 THE TEACHERS.

22 (3) AN ELECTION SHALL NOT BE DIRECTED IN ANY
 23 BARGAINING UNIT OR IN ANY SUBDIVISION THEREOF WITHIN WHICH,
 24 IN THE PRECEDING TWELVE (12) MONTH PERIOD, A VALID ELECTION
 25 HAS BEEN HELD. THE BOARD OF PERSONNEL APPEALS OR AN AGENT

1 OF THE BOARD OF PERSONNEL APPEALS SHALL DETERMINE WHO IS
 2 ELIGIBLE TO VOTE IN THE ELECTION AND SHALL ESTABLISH RULES
 3 GOVERNING THE ELECTION. UNLESS THE MAJORITY VOTE IS FOR NO
 4 REPRESENTATION BY A TEACHER ORGANIZATION, IN ANY ELECTION
 5 WHERE NONE OF THE CHOICES FOR A REPRESENTATIVE ON THE BALLOT
 6 RECEIVES A MAJORITY, A RUNOFF ELECTION SHALL BE CONDUCTED;
 7 THE BALLOT PROVIDING FOR SELECTION BETWEEN THE TWO CHOICES
 8 RECEIVING THE LARGEST AND THE SECOND LARGEST NUMBER OF VALID
 9 VOTES CAST IN THE ELECTION. THE TEACHER ORGANIZATION WHICH
 10 RECEIVES THE MAJORITY OF THE VOTES CAST IN AN ELECTION SHALL
 11 BE CERTIFIED BY THE BOARD OF PERSONNEL APPEALS AS THE
 12 EXCLUSIVE REPRESENTATIVE.

13 Section 5. Section 75-6122, R.C.M. 1947, is amended to
 14 read as follows:

15 "75-6122. Ratification of agreements -- resolving
 16 disputes over interpretation of agreement. (1) All
 17 professional negotiation agreements reduced to writing and
 18 executed by an employer and the representative of teachers
 19 must be ratified BY SECRET BALLOT by a majority of the
 20 FOLLOWING: THE TEACHERS WHO ARE members of the teacher
 21 organization AND THOSE WHO HAVE PAID THE FEES NEGOTIATED
 22 UNDER SECTION 75-6124(2), or if there is no teacher
 23 organization by a majority of the teachers in the
 24 appropriate unit before becoming binding upon the parties.
 25 If a professional negotiation agreement is executed by a

1 professional negotiation agent of the employer it must be
2 ratified by a majority of the board of the employer.

3 Any individual contract between the board and an
4 individual teacher shall be subject to and consistent with
5 the terms and conditions of the professional negotiations
6 agreement involving that appropriate unit of which the
7 teacher is a member. ~~Only after ratification by a majority
8 of teachers and a majority of the board shall individual
9 contracts of employment be issued.~~ INDIVIDUAL CONTRACTS MAY
10 BE ISSUED ONLY IF ONE OF THE FOLLOWING CONDITIONS IS MET:

11 (1) A MAJORITY OF THE TEACHERS WHO ARE MEMBERS OF THE
12 TEACHER ORGANIZATION, BY SECRET BALLOT, AND A MAJORITY OF
13 THE BOARD RATIFY THE TOTAL AGREEMENT.

14 (2) IF SOME ITEMS REMAIN AT ISSUE IN NEGOTIATIONS AND
15 THE TEACHERS, THROUGH MAJORITY VOTE BY SECRET BALLOT
16 CONSIDER THOSE ITEMS TO BE OF MINOR IMPORTANCE, CONTRACTS
17 MAY BE ISSUED AND REMAINING ITEMS BE NEGOTIATED FOLLOWING
18 THE ISSUE OF INDIVIDUAL CONTRACTS. If an individual contract
19 contains any language inconsistent with the professional
20 negotiations agreement, the professional negotiations
21 agreement during its duration shall be controlling.

22 (2) The employer and the representative of teachers
23 may include in the professional negotiations agreement a
24 grievance procedure culminating in binding arbitration of
25 any dispute which may arise over the interpretation or

1 application of such agreement."

2 Section 6. Section 75-6123, R.C.M. 1947, is amended to
3 read as follows:

4 "75-6123. Professional negotiation. (1) If, after
5 fifty (50) days following the commencement of negotiation
6 between an employer, and OR a negotiating agent designated
7 by the employer, and teachers, or a representative of
8 teachers, an agreement cannot be reached upon any proper
9 issue or issues presented, ~~either party may notify the other
10 in writing that it desires to present the issue or issues to
11 a panel of three (3) persons, resident of the state in which
12 the employer is located, one (1) to be selected by the
13 employer, one (1) to be selected by the representative of
14 teachers, and the third to be selected by the first two (2)
15 named, who shall act as chairman of the panel. Each party
16 shall select its panel member within ten (10) days after
17 such notification. If the members selected by the parties
18 are unable to agree upon the third member within ten (10)
19 days from the date of their selection, the senior district
20 judge of the county in which the employer is located shall
21 submit the names of five (5) persons to the parties at
22 impasse and each party shall in the presence of such senior
23 district judge alternately strike one (1) name until only
24 one (1) shall remain. The teachers or representative of
25 teachers shall strike the first name. The person so~~

~~remaining shall be the third panel member; negotiation shall~~
~~thereupon continue before the panel; --- The panel may take~~
~~oral testimony under oath and shall consider all documents~~
~~and arguments presented to it; if an agreement has not been~~
~~reached by the parties within twenty (20) days after~~
~~presentation before the panel has commenced, the panel shall~~
~~make findings of fact and recommendations concerning the~~
~~issues discussed and shall serve a copy upon both parties~~
~~within five (5) days after such twenty (20) day period.~~
~~Within five (5) days following mailing of such findings and~~
~~recommendations, the parties must notify the county~~
~~superintendent of schools and each other whether or not they~~
~~accept the findings and recommendations of the panel, and~~
~~unless both parties do so accept, the panel shall publicize~~
~~its findings of fact and recommendations in such manner as~~
~~it deems advisable. Not less than five (5) days nor more~~
~~than ten (10) days after such publication of findings of~~
~~fact and recommendations of the panel, the parties shall~~
~~again notify the county superintendent of schools and each~~
~~other whether or not they accept the recommendations of the~~
~~panel. The parties may further negotiate and settle the~~
~~issues at any time before or after the recommendations of~~
~~the panel. Each party shall pay the expenses of its selected~~
~~member of the panel and both parties shall share equally the~~
~~expenses of the third member of the panel and the~~

~~publication costs; the parties shall, UNLESS THEY HAVE~~
~~MUTUALLY AGREED TO EXTEND NEGOTIATIONS, request mediation in~~
~~accordance with the provisions of section 59-1614 (1),~~
~~R.C.M. 1947, and the rules and regulations of the board of~~
~~personnel appeals. The cost of mediation shall be equally~~
~~borne by the parties concerned.~~

(2) If within thirty-five (35) days of designation of
a mediator, agreement has not been reached on any issue or
issues presented to the mediator, either party may request
the board of personnel appeals to initiate fact-finding in
accordance with the provisions of section 59-1614 (3)
through (9), R.C.M. 1947, and the rules and regulations of
the board of personnel appeals."

Section 7. Section 75-6124, R.C.M. 1947, is amended to read as follows:

"75-6124. Employer's right under other state laws.
(1) Nothing contained in this act shall impair the
employer's right to hire teachers or to discharge teachers
for cause consistent with other state laws.

(2) Nothing contained in this act or in any other
statute of this state precludes an employer and the
exclusive representative of teachers from negotiating as a
condition of employment a requirement that a teacher who is
not or does not become a member of the teacher organization
recognized as the exclusive representative shall have

1 deducted from his salary an amount equal to the fees and
 2 dues required for membership to be remitted to the exclusive
 3 representative, EXCEPT AS PROVIDED IN SECTION 59-1603(5).
 4 WHEN A PROVISION AS DESCRIBED IN THIS SECTION IS LOCALLY
 5 NEGOTIATED, ALL TEACHERS PAYING SUCH FEES TO THE
 6 REPRESENTATIVE TEACHER ORGANIZATION SHALL BE INCLUDED IN
 7 POLLS AND VOTES RELATING TO THE NEGOTIATION PROCESS.

8 (3) For teachers who are members of the teacher
 9 organization recognized as the exclusive representative the
 10 employer shall, upon the written authorization by the
 11 teacher, deduct from the regular payroll of the teacher the
 12 amount which is equal to the pro rata share of the
 13 membership dues, fees, group insurance premiums and other
 14 organization benefits and shall remit the amount to the
 15 teacher organization."

16 Section 8. Section 75-6125, R.C.M. 1947, is amended to
 17 read as follows:

18 "75-6125. Remedy for unfair practices -- procedure --
 19 court court review. Violations of the provisions of section
 20 75-6120 are unfair practices remediable in the following
 21 manner:

22 (1) An employer, a duly elected representative of
 23 teachers, or if no representative of teachers has been
 24 selected, then a teacher-or group of teachers, may file a
 25 complaint with the board of personnel appeals alleging the

1 commission of an unfair practice. Upon receipt of such
 2 complaint the board of personnel appeals shall act upon the
 3 complaint in accordance with the provisions of section
 4 59-1607, R.C.M. 1947, and the rules and regulations of the
 5 board of personnel appeals.

6 (2) The board of personnel appeals or the complaining
 7 party may institute proceedings in the district court for
 8 the county in which the employer is located to-restrain--the
 9 commission-of-any-unlawful-or-unfair-practice-as-provided-in
 10 this--act for the enforcement of the order of the board of
 11 personnel appeals and for appropriate temporary relief or a
 12 restraining order as provided in section 59-1608 (1) and
 13 (2), R.C.M. 1947. Any-teacher-acting-in--violation--of--any
 14 court--order--to-enforce-the-provisions-of-this-act-shall-be
 15 subject-to--suspension--without--pay--or--dismissal--at--the
 16 discretion-of-the-employer.

17 (3) IN THE EVENT OF AN UNLAWFUL STRIKE OR LOCKOUT, THE
 18 COMPLAINING PARTY MAY INSTITUTE PROCEEDINGS IN THE DISTRICT
 19 COURT FOR THE COUNTY IN WHICH THE EMPLOYER IS LOCATED TO
 20 SEEK AN INJUNCTION. NOTWITHSTANDING SECTION 93-4206 THE
 21 COURT MAY NOT ISSUE AN INJUNCTION OR RESTRAINING ORDER
 22 WITHOUT ADEQUATE NOTICE AND HEARING."

23 Section 9. Section ~~75-6126~~ 75-6121, R.C.M. 1947, is
 24 repealed.

25 SECTION 10. THIS ACT IS EFFECTIVE ON PASSAGE AND

SB 0275/02

1 APPROVAL.

-End-

SENATE BILL NO. 275

INTRODUCED BY CETRONE, MANLEY, REGAN, GREELY,

BLAYLOCK, FLYNN, DUNKLE, FASBENDER,

TONE, ROMNLY

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING SECTION
~~75-6126~~ 75-6121, AND AMENDING SECTIONS 75-6117, ~~75-6118~~,
 75-6119, ~~75-6120~~, 75-6122, 75-6123, 75-6124, AND 75-6125,
 R.C.M. 1947; PROVIDING FOR THE UTILIZATION OF THE BOARD OF
 PERSONNEL APPEALS IN CONTROVERSIES ARISING UNDER THE
 PROFESSIONAL NEGOTIATIONS ACT FOR TEACHERS, DEFINING AND
 PROVIDING A REMEDY FOR UNFAIR PRACTICES, AND OTHERWISE
 AMENDING THE PROFESSIONAL NEGOTIATIONS ACT FOR TEACHERS; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-6117, R.C.M. 1947, is amended to
 read as follows:

"75-6117. Definitions. As used in this act, unless the
 context clearly requires otherwise:

(1) "Teacher" means an individual certificated where
required in class 1, 2, 4 or 5 as provided in section
 75-6006, but shall not include such ~~certificated~~ individuals
 who are not currently under contract to perform classroom
 teaching; however "teacher" shall include principals

certificated in class 3 who so elect as provided in
 subsection (3); and provided further that classroom teaching
shall be defined as professional services which are
instruction related or performed in contact with students;

(2) "Employer" means a school district as defined in
 section 75-6501.

(3) "Appropriate unit" means all of the teachers
 employed by a single employer. Principals employed by an
 employer may elect to be included in the appropriate unit or
 may elect to establish a separate appropriate unit of
 principals;

(4) "Board" means any public school board of trustees;

~~(5) "Strike" means any work stoppage by a teacher or
 teachers which interferes with the operation of a school or
 schools, which includes abstinence in whole or in part from
 the full, faithful and proper performance of the duties of
 employment, for the purpose of inducing, influencing or
 coercing an employer to change any terms or conditions
 relating to the employer-teacher relationship;~~

(5) "STRIKE" MEANS ANY WORK STOPPAGE BY A TEACHER OR
 TEACHERS WHICH INTERFERES WITH THE OPERATION OF A SCHOOL OR
 SCHOOLS, WHICH INCLUDES ABSTINENCE IN WHOLE OR IN PART FROM
THE FULL, FAITHFUL AND PROPER PERFORMANCE OF THE DUTIES OF
EMPLOYMENT, FOR THE PURPOSE OF INDUCING, INFLUENCING OR
COERCING AN EMPLOYER TO CHANGE ANY TERMS OR CONDITIONS

1 RELATING TO THE EMPLOYER-TEACHER RELATIONSHIP;

2 ~~(6)~~ (6) "Teacher organization" means any
3 organization of employees which includes teachers in
4 membership;

5 ~~(7)~~ (7) "Representative of teachers" means a
6 representative elected pursuant to the provisions of section
7 ~~75-6121~~ 75-6121.1.

8 (8) "Board of personnel appeals" means the board
9 provided for in section 82A-1014.

10 (9) "LOCKOUT" MEANS A SUSPENSION OF WORK INITIATED BY
11 THE EMPLOYER AS A RESULT OF A LABOR DISPUTE."

12 ~~Section 2, Section 75-6110, R.C.M. 1947, is amended to~~
13 ~~read as follows:~~

14 ~~"75-6110. Teachers' rights. It shall be lawful for~~
15 ~~teachers to organize, form, join or assist in employee~~
16 ~~organizations or to engage in lawful activities for the~~
17 ~~purpose of collective bargaining or to bargain collectively~~
18 ~~through representatives of their own free choice, and to~~
19 ~~engage in other concerted activities for the purpose of~~
20 ~~collective bargaining or other mutual aid or protection,~~
21 ~~free from interference, restraint or coercion. Teachers~~
22 ~~shall also have the right to refrain from any or all such~~
23 ~~activity but shall be bound by a professional negotiations~~
24 ~~agreement involving the appropriate unit of which they are a~~
25 ~~member. It shall be the duty of an employer to meet and~~

1 ~~confer on any proposal advanced by a representative of~~
2 ~~teachers, or by a teacher or group of teachers if no~~
3 ~~representative of teachers has been selected, if such~~
4 ~~proposal does not endeavor to amend the terms of a~~
5 ~~professional negotiations agreement then in effect, and~~
6 ~~nothing in this act shall be construed to diminish such~~
7 ~~duty. However, a representative of teachers selected as~~
8 ~~provided by this act, shall be the exclusive representative~~
9 ~~of all the teachers in the appropriate unit to meet, confer~~
10 ~~or negotiate upon all matters permitted in section 75-6119~~
11 ~~and such teachers shall not negotiate individually."~~

12 Section 2. Section 75-6119, R.C.M. 1947, is amended to
13 read as follows:

14 "75-6119. Duty to negotiate and bargain. It shall be
15 the duty of all employers acting as a board, or acting by
16 and through a bargaining agent designated or employed by the
17 employer, and all teachers, or a representative of teachers,
18 to meet ~~and confer~~ for professional negotiations purposes at
19 the request of either, except as provided by this act, to
20 discuss matters relating directly to the employer-teacher
21 relationship such as salary, FRINGE BENEFITS, hours and
22 other terms of employment, and to negotiate and bargain for
23 agreement on such matters. ONLY THOSE MATTERS SPECIFIED IN
24 THIS SECTION ARE SUBJECT TO NEGOTIATION. ALL OTHER
25 STATUTORY POWERS AND DUTIES OF THE BOARD ARE NOT SUBJECT TO

1 ~~NEGOTIATION. The matters of negotiation and bargaining for~~
 2 ~~agreement shall not include matters of curriculum, policy of~~
 3 ~~operation, selection of teachers and other personnel, or~~
 4 ~~physical plant of schools or other facilities, however~~
 5 ~~nothing herein shall limit the obligation of employers to~~
 6 ~~meet and confer as provided in section 75-6118. Teachers~~
 7 under a professional negotiations agreement, or the
 8 representative of teachers, or employers, or their agents or
 9 representatives, shall not demand that professional
 10 negotiation conferences begin until after November 1 of the
 11 last year such agreement is effective, but, if professional
 12 negotiation is desired, must serve written notice of
 13 intention to negotiate ~~collectively upon the employer upon~~
 14 the other party not later than November 1 of such year
 15 stating specifically the items to be negotiated. ~~if such~~
 16 ~~notice is not served, the employer shall not be required to~~
 17 ~~negotiate any terms of the employer-teacher relationship for~~
 18 ~~the following school year. The parties shall be required to~~
 19 negotiate only those items so noticed, but may by mutual
 20 consent negotiate on other matters. Professional negotiation
 21 agreements in effect at the time this act becomes effective
 22 shall continue to their expiration. No professional
 23 negotiation agreement shall extend for a term of more than
 24 two (2) years."

25 Section 3. Section 75-6120, R.C.M. 1947, is amended to

1 read as follows:

2 "75-6120. Unfair practices. (1) Employers, their
 3 agents or representatives, are prohibited from the following
 4 unlawful acts:

5 (a) Interfering with, restraining or coercing teachers
 6 in any manner in their right of self-organization or
 7 selection of a representative;

8 (b) Discriminating in regard to conditions of
 9 employment when the purpose is to discourage membership in a
 10 teacher organization;

11 (c) Refusing to meet, confer or negotiate in good
 12 faith with teachers or the duly elected representative of an
 13 appropriate unit of teachers or with a ~~panel~~ mediator
 14 selected upon impasse as provided in section 75-6123, to
 15 discuss or negotiate upon any matter dealing directly with
 16 the employer-teacher relationship as provided in section
 17 75-6118;

18 (d) Refusing to reduce to writing and sign a
 19 professional negotiation agreement arrived at through
 20 negotiation and discussion;

21 (E) SUSPENSION OF WORK OR LOCKOUT;

22 (2) Teachers or teacher organizations, their agents or
 23 representatives, are prohibited from the following unlawful
 24 acts:

25 (a) Restraining or coercing teachers in violation of

1 their rights guaranteed under section 75-6118 or interfering
 2 in the conduct of an election as provided in ~~this section~~
 3 ~~75-6121~~ 75-6121.1;

4 (b) Refusing to reduce to writing or sign a
 5 professional negotiation agreement arrived at through
 6 negotiation and discussion;

7 (C) INSTITUTING OR PARTICIPATING IN A STRIKE AGAINST
 8 THE EMPLOYER;

9 ~~(c) -- instituting, -- maintaining -- or -- participating -- in -- a~~
 10 ~~strike or boycott against any -- employer, -- or -- picketing -- any~~
 11 ~~school -- or -- school facility -- to further -- or -- to induce -- a strike~~
 12 ~~or boycott because of any controversy, -- engaging in, -- or~~
 13 ~~inducing -- or -- encouraging -- any individual -- to -- engage in -- a~~
 14 ~~strike or refusal to handle goods or -- perform -- services -- or~~
 15 ~~threatening, -- coercing -- or -- restraining any individual where~~
 16 ~~the object thereof is to force or require any employer -- to~~
 17 ~~discontinue doing business with such individual or to force~~
 18 ~~or require an employer to recognize a teacher representative~~
 19 ~~not selected as provided in section 75-6121.~~

20 ~~(d)~~ ~~(e)~~ (D) Refusing to meet, confer or bargain in
 21 good faith with an employer or its agents or with a panel
 22 mediator selected upon ~~impasse~~ impasse as provided in
 23 section 75-6123, to discuss or bargain upon any matter
 24 dealing directly with the employer-teacher relationship as
 25 defined in section 75-6119."

1 SECTION 4. THERE IS A NEW R.C.M. SECTION NUMBERED
 2 75-6121.1 THAT READS AS FOLLOWS:

3 75-6121.1. PETITION ON REPRESENTATION MATTERS --
 4 HEARING -- NOTICE -- ELECTION. (1) WHENEVER IN ACCORDANCE
 5 WITH SUCH RULES AS MAY BE PRESCRIBED BY THE BOARD OF
 6 PERSONNEL APPEALS, A PETITION HAS BEEN FILED:

7 (A) BY A TEACHER OR GROUP OF TEACHERS OR ANY TEACHER
 8 ORGANIZATION ACTING IN THEIR BEHALF ALLEGING THAT THIRTY
 9 PERCENT (30%) OF THE TEACHERS:

10 (I) WISH TO BE REPRESENTED FOR COLLECTIVE BARGAINING
 11 BY A TEACHER ORGANIZATION AS EXCLUSIVE REPRESENTATIVE, OR

12 (II) ASSERT THAT THE TEACHER ORGANIZATION WHICH HAS
 13 BEEN CERTIFIED OR IS CURRENTLY BEING RECOGNIZED BY THE
 14 EMPLOYER AS BARGAINING REPRESENTATIVE IS NO LONGER THE
 15 REPRESENTATIVE OF THE MAJORITY OF TEACHERS IN THE UNIT; OR

16 (B) BY THE EMPLOYER ALLEGING THAT ONE OR MORE TEACHER
 17 ORGANIZATIONS HAS PRESENTED TO IT A CLAIM TO BE RECOGNIZED
 18 AS THE EXCLUSIVE REPRESENTATIVE IN AN APPROPRIATE UNIT, THE
 19 BOARD OF PERSONNEL APPEALS OR AN AGENT OF THE BOARD OF
 20 PERSONNEL APPEALS, SHALL INVESTIGATE THE PETITION, AND IF IT
 21 HAS REASONABLE CAUSE TO BELIEVE THAT A QUESTION OF
 22 REPRESENTATION EXISTS, IT SHALL PROVIDE FOR AN APPROPRIATE
 23 HEARING UPON DUE NOTICE. IF THE BOARD OF PERSONNEL APPEALS
 24 OR AN AGENT OF THE BOARD OF PERSONNEL APPEALS FINDS THAT
 25 THERE IS A QUESTION OF REPRESENTATION, IT SHALL DIRECT AN

1 ELECTION BY SECRET BALLOT TO DETERMINE WHETHER, AND BY WHICH
 2 TEACHER ORGANIZATION THE TEACHERS DESIRE TO BE REPRESENTED
 3 OR WHETHER THEY DESIRE TO HAVE NO TEACHER ORGANIZATION
 4 REPRESENT THEM AND SHALL CERTIFY THE RESULTS THEREOF. ONLY
 5 THOSE TEACHER ORGANIZATIONS WHICH HAVE BEEN DESIGNATED BY
 6 MORE THAN TEN PERCENT (10%) OF THE TEACHERS IN THE UNIT
 7 FOUND TO BE APPROPRIATE SHALL BE PLACED ON THE BALLOT.
 8 NOTHING IN THIS SECTION PROHIBITS THE WAIVING OF HEARINGS BY
 9 STIPULATION FOR THE PURPOSE OF A CONSENT ELECTION IN
 10 CONFORMITY WITH THE RULES OF THE BOARD OF PERSONNEL APPEALS.
 11 THE RESULTS OF THE BALLOT SHALL BE MADE PUBLIC.

12 (2) IN ORDER TO ASSURE TEACHERS THE FULLEST FREEDOM IN
 13 EXERCISING THE RIGHTS GUARANTEED BY THIS ACT, THE BOARD OF
 14 PERSONNEL APPEALS OR AN AGENT OF THE BOARD OF PERSONNEL
 15 APPEALS SHALL DECIDE THE UNIT APPROPRIATE FOR THE PURPOSE OF
 16 COLLECTIVE BARGAINING, AND SHALL CONSIDER SUCH FACTORS AS
 17 COMMUNITY OF INTEREST, WAGES, HOURS, FRINGE BENEFITS, AND
 18 OTHER WORKING CONDITIONS OF THE TEACHERS INVOLVED; THE
 19 HISTORY OF COLLECTIVE BARGAINING; COMMON SUPERVISION; COMMON
 20 PERSONNEL POLICIES; EXTENT OF INTEGRATION OF WORK FUNCTIONS
 21 AND INTERCHANGE AMONG TEACHERS AFFECTED; AND THE DESIRES OF
 22 THE TEACHERS.

23 (3) AN ELECTION SHALL NOT BE DIRECTED IN ANY
 24 BARGAINING UNIT OR IN ANY SUBDIVISION THEREOF WITHIN WHICH,
 25 IN THE PRECEDING TWELVE (12) MONTH PERIOD, A VALID ELECTION

1 HAS BEEN HELD. THE BOARD OF PERSONNEL APPEALS OR AN AGENT
 2 OF THE BOARD OF PERSONNEL APPEALS SHALL DETERMINE WHO IS
 3 ELIGIBLE TO VOTE IN THE ELECTION AND SHALL ESTABLISH RULES
 4 GOVERNING THE ELECTION. UNLESS THE MAJORITY VOTE IS FOR NO
 5 REPRESENTATION BY A TEACHER ORGANIZATION, IN ANY ELECTION
 6 WHERE NONE OF THE CHOICES FOR A REPRESENTATIVE ON THE BALLOT
 7 RECEIVES A MAJORITY, A RUNOFF ELECTION SHALL BE CONDUCTED;
 8 THE BALLOT PROVIDING FOR SELECTION BETWEEN THE TWO CHOICES
 9 RECEIVING THE LARGEST AND THE SECOND LARGEST NUMBER OF VALID
 10 VOTES CAST IN THE ELECTION. THE TEACHER ORGANIZATION WHICH
 11 RECEIVES THE MAJORITY OF THE VOTES CAST IN AN ELECTION SHALL
 12 BE CERTIFIED BY THE BOARD OF PERSONNEL APPEALS AS THE
 13 EXCLUSIVE REPRESENTATIVE.

14 Section 5. Section 75-6122, R.C.M. 1947, is amended to
 15 read as follows:

16 "75-6122. Ratification of agreements -- resolving
 17 disputes over interpretation of agreement. (1) All
 18 professional negotiation agreements reduced to writing and
 19 executed by an employer and the representative of teachers
 20 must be ratified BY SECRET BALLOT by a majority of the
 21 FOLLOWING: THE TEACHERS WHO ARE members of the teacher
 22 organization AND THOSE WHO HAVE PAID THE FEES NEGOTIATED
 23 UNDER SECTION 75-6124(2), or if there is no teacher
 24 organization by a majority of the teachers in the
 25 appropriate unit before becoming binding upon the parties.

1 If a professional negotiation agreement is executed by a
2 professional negotiation agent of the employer it must be
3 ratified by a majority of the board of the employer.

4 Any individual contract between the board and an
5 individual teacher shall be subject to and consistent with
6 the terms and conditions of the professional negotiations
7 agreement involving that appropriate unit of which the
8 teacher is a member. ~~Only after ratification by a majority~~
9 ~~of teachers and a majority of the board shall individual~~
10 ~~contracts of employment be issued.~~ INDIVIDUAL CONTRACTS MAY
11 BE ISSUED ONLY IF ONE OF THE FOLLOWING CONDITIONS IS MET:

12 (1) A MAJORITY OF THE TEACHERS WHO ARE MEMBERS OF THE
13 TEACHER ORGANIZATION, BY SECRET BALLOT, AND A MAJORITY OF
14 THE BOARD RATIFY THE TOTAL AGREEMENT.

15 (2) IF SOME ITEMS REMAIN AT ISSUE IN NEGOTIATIONS AND
16 THE TEACHERS, THROUGH MAJORITY VOTE BY SECRET BALLOT
17 CONSIDER THOSE ITEMS TO BE OF MINOR IMPORTANCE, CONTRACTS
18 MAY BE ISSUED AND REMAINING ITEMS BE NEGOTIATED FOLLOWING
19 THE ISSUE OF INDIVIDUAL CONTRACTS. If an individual contract
20 contains any language inconsistent with the professional
21 negotiations agreement, the professional negotiations
22 agreement during its duration shall be controlling.

23 (2) The employer and the representative of teachers
24 may include in the professional negotiations agreement a
25 grievance procedure culminating in binding arbitration of

1 any dispute which may arise over the interpretation or
2 application of such agreement."

3 Section 6. Section 75-6123, R.C.M. 1947, is amended to
4 read as follows:

5 "75-6123. Professional negotiation. (1) If, after
6 fifty (50) days following the commencement of negotiation
7 between an employer, and OR a negotiating agent designated
8 by the employer, and teachers, or a representative of
9 teachers, an agreement cannot be reached upon any proper
10 issue or issues presented, ~~either party may notify the other~~
11 ~~in writing that it desires to present the issue or issues to~~
12 ~~a panel of three (3) persons, resident of the state in which~~
13 ~~the employer is located, one (1) to be selected by the~~
14 ~~employer, one (1) to be selected by the representative of~~
15 ~~teachers, and the third to be selected by the first two (2)~~
16 ~~named, who shall act as chairman of the panel. Each party~~
17 ~~shall select its panel member within ten (10) days after~~
18 ~~such notification, if the members selected by the parties~~
19 ~~are unable to agree upon the third member within ten (10)~~
20 ~~days from the date of their selection, the senior district~~
21 ~~judge of the county in which the employer is located shall~~
22 ~~submit the names of five (5) persons to the parties at~~
23 ~~impose and each party shall in the presence of such senior~~
24 ~~district judge alternately strike one (1) name until only~~
25 ~~one (1) shall remain. The teachers or representative of~~

1 teachers---shall---strike---the---first---name. The person so
 2 remaining shall be the third panel member. Negotiation shall
 3 thereupon continue before the panel. The panel may take
 4 oral testimony under oath and shall consider all documents
 5 and arguments presented to it. If an agreement has not been
 6 reached by the parties within twenty (20) days after
 7 presentation before the panel has commenced, the panel shall
 8 make findings of fact and recommendations concerning the
 9 issues discussed and shall serve a copy upon both parties
 10 within five (5) days after such twenty (20) day period.
 11 Within five (5) days following mailing of such findings and
 12 recommendations, the parties must notify the county
 13 superintendent of schools and each other whether or not they
 14 accept the findings and recommendations of the panel, and
 15 unless both parties do so accept, the panel shall publicize
 16 its findings of fact and recommendations in such manner as
 17 it deems advisable. Not less than five (5) days nor more
 18 than ten (10) days after such publication of findings of
 19 fact and recommendations of the panel, the parties shall
 20 again notify the county superintendent of schools and each
 21 other whether or not they accept the recommendations of the
 22 panel. The parties may further negotiate and settle the
 23 issues at any time before or after the recommendations of
 24 the panel. Each party shall pay the expenses of its selected
 25 member of the panel and both parties shall share equally the

1 expenses of the third member of the panel and the
 2 publication costs. the parties shall, UNLESS THEY HAVE
 3 MUTUALLY AGREED TO EXTEND NEGOTIATIONS, request mediation in
 4 accordance with the provisions of section 59-1614 (1),
 5 R.C.M. 1947, and the rules and regulations of the board of
 6 personnel appeals. The cost of mediation shall be equally
 7 borne by the parties concerned.

8 (2) If within thirty-five (35) days of designation of
 9 a mediator, agreement has not been reached on any issue or
 10 issues presented to the mediator, either party may request
 11 the board of personnel appeals to initiate fact-finding in
 12 accordance with the provisions of section 59-1614 (3)
 13 through (9), R.C.M. 1947, and the rules and regulations of
 14 the board of personnel appeals."

15 Section 7. Section 75-6124, R.C.M. 1947, is amended to
 16 read as follows:

17 "75-6124. Employer's right under other state laws.
 18 (1) Nothing contained in this act shall impair the
 19 employer's right to hire teachers or to discharge teachers
 20 for cause consistent with other state laws.

21 (2) Nothing contained in this act or in any other
 22 statute of this state precludes an employer and the
 23 exclusive representative of teachers from negotiating as a
 24 condition of employment a requirement that a teacher who is
 25 not or does not become a member of the teacher organization

1 recognized as the exclusive representative shall have
 2 deducted from his salary an amount equal to the fees and
 3 dues required for membership to be remitted to the exclusive
 4 representative, EXCEPT AS PROVIDED IN SECTION 59-1603(5).
 5 WHEN A PROVISION AS DESCRIBED IN THIS SECTION IS LOCALLY
 6 NEGOTIATED, ALL TEACHERS PAYING SUCH FEES TO THE
 7 REPRESENTATIVE TEACHER ORGANIZATION SHALL BE INCLUDED IN
 8 POLLS AND VOTES RELATING TO THE NEGOTIATION PROCESS, EXCEPT
 9 AS PROVIDED IN SECTION 59-1603(5), R.C.M. 1947.

10 (3) For teachers who are members of the teacher
 11 organization recognized as the exclusive representative the
 12 employer shall, upon the written authorization by the
 13 teacher, deduct from the regular payroll of the teacher the
 14 amount which is equal to the pro rata share of the
 15 membership dues, fees, group insurance premiums and other
 16 organization benefits and shall remit the amount to the
 17 teacher organization."

18 Section 2. Section 75-6125, R.C.M. 1947, is amended to
 19 read as follows:

20 "75-6125. Remedy for unfair practices -- procedure --
 21 court court review. Violations of the provisions of section
 22 75-6120 are unfair practices remediable in the following
 23 manner:

24 (1) An employer, a duly elected representative of
 25 teachers, or if no representative of teachers has been

1 selected, then a teacher or group of teachers, may file a
 2 complaint with the board of personnel appeals alleging the
 3 commission of an unfair practice. Upon receipt of such
 4 complaint the board of personnel appeals shall act upon the
 5 complaint in accordance with the provisions of section
 6 59-1607, R.C.M. 1947, and the rules and regulations of the
 7 board of personnel appeals.

8 (2) The board of personnel appeals or the complaining
 9 party may institute proceedings in the district court for
 10 the county in which the employer is located to restrain the
 11 commission of any unlawful or unfair practice as provided in
 12 this act for the enforcement of the order of the board of
 13 personnel appeals and for appropriate temporary relief or a
 14 restraining order as provided in section 59-1608 (1) and
 15 (2), R.C.M. 1947. Any teacher acting in violation of any
 16 court order to enforce the provisions of this act shall be
 17 subject to suspension without pay or dismissal at the
 18 discretion of the employer.

19 (3) IN THE EVENT OF AN UNLAWFUL STRIKE OR LOCKOUT, THE
 20 COMPLAINING PARTY MAY INSTITUTE PROCEEDINGS IN THE DISTRICT
 21 COURT FOR THE COUNTY IN WHICH THE EMPLOYER IS LOCATED TO
 22 SEEK AN INJUNCTION, NOTWITHSTANDING SECTION 93-4206 THE
 23 COURT MAY NOT ISSUE AN INJUNCTION OR RESTRAINING ORDER
 24 WITHOUT ADEQUATE NOTICE AND HEARING.

25 (3) NOTHING IN THIS ACT PREVENTS ANY AGGRIEVED PARTY,

1 IN THE EVENT OF A STRIKE OR LOCKOUT, FROM PROCEEDING UNDER
2 CHAPTER 42 OF TITLE 93, R.C.M. 1947."

3 Section 9. Section ~~75-6126~~ 75-6121, R.C.M. 1947, is
4 repealed.

5 SECTION 10. THIS ACT IS EFFECTIVE ON PASSAGE AND
6 APPROVAL.

-End-

HOUSE OF REPRESENTATIVES

March 15, 1975

HOUSE COMMITTEE ON EDUCATION AMENDMENTS TO SENATE BILL 275

1. Amend page 1, section 1, subsection (1), lines 21 through 25.

Following: "means an"

Strike: "individual certificated where required in class 1, 2, 4 or 5 as provided in section 75-6006, but shall not include such ~~certificated~~ individuals who are not currently under contract to perform classroom teaching"

Insert: "employee of a district who holds a certificate in class 1, 2, 4 or 5 as provided in section 75-6006, and is under contract to perform classroom teaching or professional services which are instruction related; or where certification is not required is under contract with at least a bachelor of arts degree and provides professional services in contact with students"

2. Amend page 2, section 1, subsection (1), lines 2 through 4.

Following: "(3);"

Strike: The remainder of subsection (1) in its entirety.

3. Amend page 2, section 1, subsection (2), line 6.

Following: "75-6501"

Strike: "."

Insert: ";

4. Amend page 3, section 1, subsection (7), line 7.

Following: "75-6121.1"

Strike: "."

Insert: ", or recognized by the board in school year

1974-1975;"

HOUSE COMMITTEE ON EDUCATION AMENDMENTS TO SENATE BILL 275

5. Amend page 3, section 1, subsection (8), line 9.

Following: "82A-1014"

Strike: "."

Insert: ";

6. Amend page 4, section 2, line 22.

Following: "terms"

Insert: "and conditions"

7. Amend page 4, section 2, lines 24 and 25, and page 5, line 1.

Following: "NEGOTIATION."

Strike: "ALL OTHER STATUTORY POWERS AND DUTIES OF THE BOARD ARE NOT SUBJECT TO NEGOTIATION."

8. Amend page 6, section 3, subsection (1)(e), line 11.

Following: "confer"

Strike: "or"

Insert: "and"

9. Amend page 7, section 3, subsection (2)(d), line 20.

Following: "confer"

Strike: "or"

Insert: "and"

10. Amend page 10, section 5, subsection (1), line 21.

Following: "FOLLOWING"

Insert: "who cast ballots"

11. Amend page 11, section 5, line 4.

Before: "Any"

Insert: "(2)"

12. Amend page 11, section 5, line 10.

Following: "~~issued~~"

Insert: "(3) Except as provided in subsection (4)."

13. Amend page 11, section 5, line 11.

Following: "ONLY IF"

Strike: "ONE OF THE FOLLOWING CONDITIONS IS MET: (1) A MAJORITY OF THE TEACHERS WHO ARE MEMBERS OF THE TEACHER ORGANIZATION, BY SECRET BALLOT, AND A MAJORITY OF THE BOARD RATIFY THE TOTAL AGREEMENT."

Insert: "the agreement has been ratified."

Re-number: Subsequent subsections.

14. Amend page 11, section 5, lines 15 through 19.

Following: "(4)"

Strike: All the underlined material on lines 15 through 19.

Insert: "When some items remain at issue in negotiations and the representative of teachers deems it necessary, an election shall be called. If a majority of those casting ballots consider the items remaining to be of minor importance, individual contracts may be issued and the items remaining shall be negotiated following the issuance of contracts."

15. Amend page 14, section 7, line 17.

Following: "laws"

Insert: "-- agency shop -- payroll deductions"

16. Amend page 15, section 7, subsection (3), line 12.

Following: "employer"

Strike: "shall"

Insert: "may"

17. Amend page 15, section 7, subsection (3), line 17.

Following: "organization."

Insert: "During the 1975-1976 school year all teachers in an appropriate unit shall be accorded this benefit."

HOUSE OF REPRESENTATIVES

March 22, 1975

HOUSE COMMITTEE ON EDUCATION AMENDMENTS TO SENATE BILL 275

Be amended in the third reading copy as follows:

1. Amend the title, page 1, lines 6 through 9.

Following: "AN ACT"

Strike: "REPEALING SECTION ~~75-6126~~ 65-6121, AND AMENDING SECTIONS 75-6117, ~~75-6118~~, 75-6119, 75-6120, 75-6122, 75-7123, 75-6124, AND 75-6125, R.C.M. 1947;"

2. Amend the title, page 1, lines 9 through 13.

Following: "PROVIDING FOR"

Strike: "THE UTILIZATION OF THE BOARD OF PERSONNEL APPEALS IN CONTROVERSIES ARISING UNDER THE PROFESSIONAL NEGOTIATIONS ACT FOR TEACHERS, DEFINING AND PROVIDING A REMEDY FOR UNFAIR LABOR PRACTICES, AND OTHERWISE AMENDING THE PROFESSIONAL"

Insert: "ISSUANCE OF INDIVIDUAL TEACHER CONTRACTS DURING"

3. Amend the title, page 1, line 13.

Following: "NEGOTIATIONS"

Strike: "ACT FOR"

Insert: "BETWEEN"

4. Amend the title, page 1, lines 13 and 14.

Following: "TEACHERS"

Strike: ; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

Insert: "AND SCHOOL BOARDS"

March 22, 1975

HOUSE COMMITTEE ON EDUCATION AMENDMENTS TO SENATE BILL 275

5. Amend page 1, line 17, through page 17, line 6.

Following: "Section 1."

Strike: The remainder of the bill in its entirety.

Insert: "There is a new R.C.M. section that reads as follows:

Issuance of individual teacher contracts. In the case of negotiation involving teachers and school boards, individual teacher contracts may be issued if an agreement has been ratified. If an individual teacher contract contains any language inconsistent with the agreement, the agreement during its duration shall be controlling. In the event some items remain at issue in negotiations and the representative of teachers deems it necessary an election may be called. If a majority of those teachers casting ballots consider the items remaining to be of minor importance, individual teacher contracts may be issued and the items remaining shall be negotiated following the issuance of individual teacher contracts."

AS SO AMENDED
BE CONCURRED IN