

SB 343 INTRODUCED BY BLAYLOCK
PROVIDES FOR BINDING ARBITRATION OF SCHOOL LABOR
DISPUTES

2/14 INTRODUCED
2/14 REFERRED TO EDUCATION & CULTURAL RESOURCES
2/18 HEARING
2/20 TABLED IN COMMITTEE

1 ~~Senate~~ BILL NO. 343
2 INTRODUCED BY Blaylock
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
5 ARBITRATION OF LABOR DISPUTES BETWEEN SCHOOL DISTRICTS AND
6 SCHOOL EMPLOYEES; REQUIRING AN ARBITRATOR TO SETTLE A
7 CONTRACT DISPUTE BASED ON THE LAST BEST OFFER OF EACH PARTY;
8 MANDATING 2-YEAR COLLECTIVE BARGAINING AGREEMENTS FOR SCHOOL
9 DISTRICTS; AND GRANTING THE BOARD OF PERSONNEL APPEALS
10 RULEMAKING AUTHORITY."
11

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

13 Section 1. Definitions. As used in [this act], unless
14 the context indicates otherwise, the following definitions
15 apply:

16 (1) "Appropriate unit" means a group of school
17 district employees joined together for collective bargaining
18 purposes as designated by the board.

19 (2) "Board" means the board of personnel appeals
20 provided for in 2-15-1705.

21 (3) "Exclusive representative" means the labor
22 organization that has been designated by the board as the
23 exclusive representative of school district employees in an
24 appropriate unit or has been so recognized by the school
25 district.

1 (4) "School district" means a public employer that is:
2 (a) a board of trustees of an elementary school
3 district, high school district, or county high school
4 district;
5 (b) the governing board of a special education
6 cooperative provided for in 20-7-451; or
7 (c) a political subdivision of the state that provides
8 educational services as defined in 20-30-101.

9 Section 2. Arbitration between school employees and
10 school districts. If a dispute occurs in the course of
11 collective bargaining between the exclusive representative
12 of an appropriate unit and a school district and the
13 procedures for mediation in 39-31-307 have not resulted in
14 settlement of the dispute by May 1 prior to the expiration
15 of the contract, either party or both jointly may petition
16 the board for final and binding arbitration.

17 Section 3. Appointment of arbitrators. (1) The parties
18 to a dispute may appoint an arbitrator by mutual agreement.
19 The board must be notified of the appointment of an
20 arbitrator within 5 days following such appointment.

21 (2) If the parties have not appointed an arbitrator
22 and have not provided for any other method of appointment,
23 the arbitrator must be selected in the following manner:

24 (a) within 3 days of the receipt of a petition for
25 final and binding arbitration, the board shall submit to the

1 parties a list of five qualified and impartial arbitrators;

2 (b) from the list, the parties shall alternately
3 strike four names, after determining by lot which party
4 strikes the first name;

5 (c) the remaining name following this procedure must
6 be appointed the arbitrator; and

7 (d) the parties shall notify the board of the
8 appointment within 5 days of the receipt of the list
9 submitted by the board.

10 Section 4. Hearing and decision. (1) Within 5 days
11 after he is appointed, the arbitrator shall set the date,
12 time, and place for a hearing. The hearing must be held
13 within 30 days following the appointment of the arbitrator.

14 (2) The arbitrator may issue subpoenas, require the
15 submission of evidence, and administer oaths.

16 (3) At the hearing, each party must be given full
17 opportunity to submit all relevant evidence, introduce
18 relevant documents, call witnesses, request subpoenas, and
19 argue on behalf of its position.

20 (4) The hearing may be continued at the discretion of
21 the arbitrator, but in any event it must be concluded within
22 10 days after its commencement. Written posthearing briefs
23 may be submitted by the parties at the discretion of the
24 arbitrator.

25 (5) Prior to making a determination on any issue, the

1 arbitrator may attempt to mediate the dispute or refer the
2 issue back to the parties for further negotiation. The
3 parties may make an agreement on any issue prior to a
4 determination on that issue by the arbitrator.

5 (6) At the conclusion of the hearing, each party shall
6 submit its written respective position on the entire
7 bargaining package in the form of a last best offer.

8 (7) The arbitrator shall resolve the dispute by
9 accepting the last best offer of one party. The arbitrator
10 shall incorporate into a comprehensive decision the accepted
11 last best offer. The arbitrator's decision must also
12 incorporate agreements on issues reached by the parties
13 prior to the decision. Within 20 days after concluding the
14 hearing, the arbitrator shall notify the board and the
15 parties, in writing, of his final decision. The decision of
16 the arbitrator is final and binding upon the parties to the
17 dispute unless submitted to the district court for review.

18 Section 5. Consideration of relevant factors. In
19 arriving at a decision, the arbitrator shall consider all
20 relevant factors, including:

21 (1) the history of negotiations between the parties;

22 (2) the interests and welfare of the public and the
23 financial ability of the school district to pay;

24 (3) the interests and welfare of the employees
25 represented in the dispute;

(4) appropriate cost-of-living indices;

(5) comparison of the hours, wages, fringe benefits, and conditions of employment of the employees involved with employees performing similar services; and

(6) other matters traditionally considered in the determination of hours, wages, fringe benefits, and conditions of employment.

Section 6. Parties to arbitration. The school district and the exclusive representative of the appropriate unit are the only proper parties to arbitration, except that each party has the right to be represented by an attorney at any hearing under [this act].

Section 7. Costs of arbitration. The parties shall share equally the fees and related expenses of the arbitrator. If one party requests a transcript and the other party does not, the requesting party shall bear the expenses of the transcript exclusively. All other costs must be borne by the party incurring them.

Section 8. Enforcement of award. An award or decision issued in accordance with [sections 4 and 5] is enforceable in the same manner as provided in Title 39, chapter 31, for enforcement of collective bargaining agreements.

Section 9. Judicial review. (1) The arbitrator's decision is subject to judicial review upon the filing by a party to the arbitration of a motion to vacate or modify the

decision in the district court for the judicial district in which the school district is located. The motion must be filed within 30 days following receipt of a final decision.

(2) The review must be conducted by the court without a jury and is confined to the record. The review must include any alleged irregularities in procedure before the arbitrator. Upon request by one or both of the parties, the court shall hear oral argument and receive written briefs.

(3) The court may not substitute its judgment for that of the arbitrator as to the weight of the evidence on questions of fact. The court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if substantial rights of the appellant have been prejudiced because such decision is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the arbitrator;

(c) made upon unlawful procedure;

(d) affected by error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(4) A party may obtain review of a final judgment of a

1 district court by appeal to the supreme court within 60 days
2 after entry of judgment. The appeal must be taken in the
3 manner provided by law for appeals from district courts in
4 civil cases.

5 Section 10. Judgment on award -- costs. In a district
6 court action to vacate or modify the decision of the
7 arbitrator or in an appeal to the supreme court, reasonable
8 attorney fees, costs, and legal interest on any salaries
9 withheld as the result of the action or appeal may be
10 awarded against the appellant if the decision is not
11 modified or vacated by the court.

12 Section 11. Strikes and lockouts prohibited. Strikes
13 and lockouts are prohibited during the term of any
14 collective bargaining agreement between the school district
15 and an appropriate unit or during the negotiation or
16 arbitration of such agreement.

17 Section 12. Two-year collective bargaining agreements
18 mandated. Commencing with the state fiscal year that begins
19 July 1, 1989, a collective bargaining agreement between a
20 school district and an appropriate unit must have a duration
21 of 2 years and must coincide with the biennium of the state.

22 Section 13. Adoption of rules. The board may adopt any
23 rules necessary for administration of [this act].

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