

HOUSE BILL 195

Introduced by McCulloch, et al.

1/15	Introduced
1/15	Referred to Labor & Employment Relations
1/15	First Reading
1/21	Hearing
1/28	Tabled in Committee

1 House BILL NO. 195
 2 INTRODUCED BY M. G. H. B. L. W.
 3 John S. Lohr
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING AN AWARD OF
 5 BACK PAY FROM BEING REDUCED FOR INTERIM EARNINGS; AMENDING
 6 SECTION 39-31-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND
 7 AN APPLICABILITY DATE."
 8

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

10 **Section 1.** Section 39-31-406, MCA, is amended to read:

11 "39-31-406. Hearing on complaint -- findings -- order.

12 (1) The complainant and the person charged ~~shall be~~ are
 13 parties and shall appear in person or otherwise give
 14 testimony at the place and time fixed in the notice of
 15 hearing. In the discretion of the board or its agent
 16 conducting the hearing, any other person may be allowed to
 17 intervene in the proceeding and present testimony.

18 (2) In any hearing, the board is not bound by the rules
 19 of evidence prevailing in the courts.

20 (3) The testimony taken by the board or its agent ~~shall~~
 21 must be reduced to writing and filed with the board.
 22 ~~Thereafter, in its discretion, the~~ The board upon notice may
 23 take further testimony or hear argument.

24 (4) If, upon the preponderance of the testimony taken,
 25 the board is of the opinion that any person named in the

1 complaint has engaged in or is engaging in an unfair labor
 2 practice, it shall state its findings of fact and shall
 3 issue and cause to be served on the person an order
 4 requiring ~~him~~ the person to cease and desist from the unfair
 5 labor practice and to take ~~such~~ affirmative action,
 6 including reinstatement of employees with or without back
 7 pay, as will effectuate the policies of this chapter. The
 8 order may further require the person to make reports from
 9 time to time, showing the extent to which he the person has
 10 complied with the order. ~~No An~~ order of the board ~~shall~~ may
 11 not require the reinstatement of any individual as an
 12 employee who has been suspended or discharged or require the
 13 payment ~~to--him~~ of any back pay to the individual if it is
 14 found that the individual was suspended or discharged for
 15 cause.

16 (5) If, upon the preponderance of the testimony taken,
 17 the board is not of the opinion that the person named in the
 18 complaint has engaged in or is engaging in the unfair labor
 19 practice, then the board shall state its findings of fact
 20 and shall issue an order dismissing the complaint.

21 (6) If the evidence is presented before a member of the
 22 board or before an examiner, the member or the examiner, ~~as~~
 23 ~~the--case--may-be,~~ shall issue and cause to be served on the
 24 parties to the proceeding a proposed decision, together with
 25 a recommended order, which ~~that~~ shall must be filed with the

1 board, ~~7-and-if-no~~ If exceptions are not filed within 20 days
 2 after service ~~thereof-upon-the--parties~~ or within such a
 3 further period as the board may authorize, the recommended
 4 order ~~shall-become~~ is the order of the board. The board
 5 shall issue a final order within 5 months after final briefs
 6 are submitted to the hearing officer. If briefs are to be
 7 submitted, but either or both of the parties fail to submit
 8 their brief on the date set by the hearing examiner at the
 9 close of the hearing on the matter, then the board shall
 10 issue a final order within 5 months after the date the last
 11 brief was ordered to be submitted. If no briefs are not to
 12 be submitted, the board shall issue a final order within 5
 13 months after the hearing.

14 (7) Back pay awarded under this section may not be
 15 reduced by interim amounts the employee earned or could have
 16 earned with reasonable diligence."

17 NEW SECTION. Section 2. Award of back pay -- no
 18 deduction for interim earnings. If a court or quasi-judicial
 19 board awards back pay for lost wages, the back pay may not
 20 be reduced by interim amounts the employee earned or could
 21 have earned with reasonable diligence.

22 NEW SECTION. Section 3. Existing collective bargaining
 23 agreements not affected. [Section 2] may not be construed to
 24 remove recognition of established collective bargaining
 25 agreements already recognized or in existence prior to July

1 1, 1993.

2 NEW SECTION. Section 4. Codification instruction. (1)
 3 [Section 2] is intended to be codified as an integral part
 4 of Title 39, chapter 3, part 1, and the provisions of Title
 5 39, chapter 3, apply to [section 2].

6 (2) [Sections 2 and 3] are intended to be codified as
 7 an integral part of Title 39, chapter 31, part 1, and the
 8 provisions of Title 39, chapter 31, apply to [sections 2 and
 9 3].

10 NEW SECTION. Section 5. Effective date. [This act] is
 11 effective July 1, 1993.

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