

House BILL NO. 535

Bergman

1
2 INTRODUCED BY ~~Wells~~ ~~Reynolds~~ ~~Conrad~~
3 ~~Fisher~~ ~~ORR~~ ~~Love~~ ~~Edams~~ ~~Walters~~ ~~Curtiss~~ ~~Keenan~~ ~~Hettinger~~

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE COLLECTIVE BARGAINING PROVISIONS FOR
5 PUBLIC EMPLOYEES TO PROVIDE THAT A PUBLIC EMPLOYEE HAS THE RIGHT TO CHOOSE NOT TO JOIN
6 OR FINANCIALLY SUPPORT A LABOR ORGANIZATION; PROVIDING THAT A PUBLIC EMPLOYER'S
7 REFUSAL TO BARGAIN IN GOOD FAITH WITH A LABOR ORGANIZATION DOES NOT CONSTITUTE AN
8 UNFAIR LABOR PRACTICE; SUBSTITUTING "MEMBER-ONLY BARGAINING" FOR "COLLECTIVE
9 BARGAINING" AND "LABOR ORGANIZATION" FOR "EXCLUSIVE REPRESENTATIVE"; ELIMINATING THE
10 TERMS "COLLECTIVE" AND "COLLECTIVELY"; AMENDING SECTIONS 39-3-406, 39-4-107, 39-29-111,
11 39-31-101, 39-31-103, 39-31-201, 39-31-202, 39-31-203, 39-31-206, 39-31-301, 39-31-304,
12 39-31-305, 39-31-306, 39-31-307, 39-31-308, 39-31-309, 39-31-310, 39-31-312, 39-31-401,
13 39-31-402, 39-32-109, 39-34-101, AND 39-34-106, MCA; REPEALING SECTIONS 39-31-204, 39-31-205,
14 39-31-207, 39-31-208, 39-31-209, 39-31-210, 39-31-211, AND 39-32-113, MCA; AND PROVIDING AN
15 EFFECTIVE DATE AND AN APPLICABILITY DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 Section 1. Section 39-3-406, MCA, is amended to read:

20 "39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
21 to:

22 (a) students participating in a distributive education program established under the auspices of an
23 accredited educational agency;

24 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
25 mowing lawns, and cleaning sidewalks;

26 (c) persons employed directly by the head of a household to care for children dependent upon the
27 head of the household;

28 (d) immediate members of the family of an employer or persons dependent upon an employer for
29 half or more of their support in the customary sense of being a dependent;

30 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their

1 services to a nonprofit organization on a fully or partially reimbursed basis;

2 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
3 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

4 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
5 30 days of their employment;

6 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
7 may not exceed 180 days from their initial date of employment and further provided that during this
8 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
9 in this part;

10 (i) retired or semiretired persons performing part-time incidental work as a condition of their
11 residence on a farm or ranch;

12 (j) ~~any~~ an individual employed in a bona fide executive, administrative, or professional capacity as
13 these terms are defined by regulations of the commissioner;

14 (k) ~~any~~ an individual employed by the United States of America;

15 (l) resident managers employed in lodging establishments or personal care facilities who, under the
16 terms of their employment, live in the establishment or facility;

17 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
18 basis who is primarily employed in selling or marketing products or services in the food distribution industry
19 for a food broker, wholesaler, or association;

20 (n) a direct seller as defined in 26 U.S.C. 3508.

21 (2) The provisions of 39-3-405 do not apply to:

22 (a) an employee with respect to whom the United States secretary of transportation has power to
23 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

24 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

25 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or
26 natural state;

27 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
28 selling advertising for a newspaper;

29 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
30 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements

1 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
2 engaged in the business of selling the vehicles or implements to ultimate purchasers;

3 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
4 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
5 or aircraft to ultimate purchasers;

6 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
7 selling office supplies, computers, or other office equipment for an office equipment dealer;

8 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
9 advertising for a radio or television station employer;

10 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
11 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
12 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
13 maximum workweek applicable to them under 39-3-405;

14 (j) an employee employed in agriculture or in connection with the operation or maintenance of
15 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
16 basis and that are used exclusively for supply and storing of water for agricultural purposes;

17 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
18 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
19 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

20 (i) primarily employed during a workweek in agriculture by a farmer; and

21 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
22 than that prescribed by 39-3-404;

23 (l) an employee of an establishment commonly recognized as a country elevator, including an
24 establishment that sells products and services used in the operation of a farm, if no more than five
25 employees are employed by the establishment;

26 (m) a driver employed by an employer engaged in the business of operating taxicabs;

27 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
28 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
29 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
30 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities

1 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
2 basis, at an annual rate of not less than \$10,000;

3 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
4 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
5 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
6 not exceed eight;

7 (p) an employee of a sheriff's department who is working under an established work period in lieu
8 of a workweek pursuant to 7-4-2509(1);

9 (q) an employee of a municipal or county government who is working under a work period not
10 exceeding 40 hours in a 7-day period established through a ~~collective~~ member-only bargaining agreement
11 when a ~~collective~~ member-only bargaining unit represents the employee or by mutual agreement of the
12 employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a
13 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage
14 rate for the employee.

15 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
16 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
17 a 14-day period established through either a collective bargaining agreement when a collective bargaining
18 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
19 is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be
20 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

21 (s) a firefighter who is working under a work period established in a ~~collective~~ member-only
22 bargaining agreement entered into between a public employer and a firefighters' organization or its
23 ~~exclusive-representative~~ labor organization;

24 (t) an officer or other employee of a police department in a city of the first or second class who
25 is working under a work period established by the chief of police under 7-32-4118;

26 (u) an employee of a department of public safety working under a work period established pursuant
27 to 7-32-115;

28 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
29 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
30 than half of the employee's compensation for a period of not less than 1 month is derived from

1 commissions on goods and services;

2 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
3 as defined in 37-47-101;

4 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
5 a second- or third-class city or a town."

6

7 **Section 2.** Section 39-4-107, MCA, is amended to read:

8 **"39-4-107. State and municipal governments, school districts, mines, mills, and smelters.** (1) A
9 period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any
10 municipal or county government, the state government, or a first-class school district, ~~and~~ on all public
11 contracts let ~~by them~~, and for all janitors (except in courthouses of sixth- and seventh-class counties),
12 engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or
13 grounds used or occupied for any purpose by ~~such~~ the municipal, county, or state government or first-class
14 school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores,
15 in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply
16 in the event of an emergency when life or property is in imminent danger or to the situations specified in
17 subsections (3) and (4).

18 (2) The provisions of subsection (1) do not apply to firefighters who are working a work period
19 established in a ~~collective~~ member-only bargaining agreement entered into between a public employer and
20 a firefighters' organization or its ~~exclusive representative~~ labor organization.

21 (3) In counties where regular road and bridge departments are maintained, the county
22 commissioners may, with the approval of the employees or ~~their~~ the employees' duly constituted
23 representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. ~~No~~ An employee
24 may not be required to work in excess of 8 hours in any one workday if ~~he~~ the employee prefers not to.

25 (4) In municipal and county governments, the employer and employee may agree to a workday of
26 more than 8 hours and to a 7-day, 40-hour work period:

27 (a) through a ~~collective~~ bargaining agreement when a ~~collective~~ member-only bargaining unit
28 represents the employee; or

29 (b) by the mutual agreement of the employer and employee when no bargaining unit is recognized."

30

1 **Section 3.** Section 39-29-111, MCA, is amended to read:

2 **"39-29-111. Retention during reduction in force.** (1) Subject to the restrictions in subsections (2)
3 and (3), during a reduction in force, a public employer shall retain in a position:

4 (a) a veteran, disabled veteran, or eligible relative whose performance has not been rated
5 unacceptable under a performance appraisal system over other employees with similar job duties and
6 qualifications and the same length of service; and

7 (b) a disabled veteran with a service-connected disability of 30% or more whose performance has
8 not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans,
9 and eligible relatives with similar job duties and qualifications and the same length of service.

10 (2) An employee is not entitled to preference in retention under subsection (1) unless ~~he~~ the
11 employee is a United States citizen.

12 (3) The preference in retention under subsection (1) does not apply to a position covered by a
13 ~~collective~~ member-only bargaining agreement."

14

15 **Section 4.** Section 39-31-101, MCA, is amended to read:

16 **"39-31-101. Policy.** In order to promote public business by removing certain recognized sources
17 of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of
18 ~~collective~~ member-only bargaining to arrive at friendly adjustment of all disputes between public employers
19 and their employees."

20

21 **Section 5.** Section 39-31-103, MCA, is amended to read:

22 **"39-31-103. Definitions.** When used in this chapter, the following definitions apply:

23 (1) "Appropriate unit" means a group of public employees banded together for ~~collective~~
24 member-only bargaining purposes as designated by the board.

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

26 (3) "Confidential employee" means ~~any~~ a person found by the board to be a confidential labor
27 relations employee and ~~any~~ a person employed in the personnel division, department of administration, who
28 acts with discretionary authority in the creation or revision of state classification specifications.

29 (4) ~~"Exclusive representative" means the labor organization which has been designated by the~~
30 ~~board as the exclusive representative of employees in an appropriate unit or has been so recognized by the~~

1 ~~public employer.~~

2 ~~(5)(4)~~ "Labor dispute" includes any controversy concerning terms, tenure, or conditions of
3 employment or concerning the association or representation of persons in negotiating, fixing, maintaining,
4 changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants
5 stand in the proximate relation of employer and employee.

6 ~~(6)(5)~~ "Labor organization" means ~~any~~ an organization or association of any kind in which
7 employees participate and ~~which~~ that exists for the primary purpose of dealing with employers concerning
8 grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions
9 of employment.

10 ~~(7)(6)~~ "Management official" means a representative of management having authority to act for
11 the agency on any matters relating to the implementation of agency policy.

12 ~~(8)(7)~~ "Person" includes one or more individuals, labor organizations, public employees,
13 associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

14 ~~(9)(8)~~ (a) "Public employee" means:

15 (i) except as provided in subsection ~~(9)(b)~~ (8)(b), a person employed by a public employer in any
16 capacity; and

17 (ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor
18 practice or concerted employee action.

19 (b) Public employee does not mean:

20 (i) an elected official;

21 (ii) a person directly appointed by the governor;

22 (iii) a supervisory employee, as defined in subsection ~~(11)~~ (10);

23 (iv) a management official, as defined in subsection ~~(7)~~ (6);

24 (v) a confidential employee, as defined in subsection (3);

25 (vi) a member of any state board or commission who serves the state intermittently;

26 (vii) a school district clerk;

27 (viii) a school administrator;

28 (ix) a registered professional nurse performing service for a health care facility;

29 (x) a professional engineer; or

30 (xi) an engineer intern.

1 ~~(10)~~(9) "Public employer" means the state of Montana or any political subdivision ~~thereof of the~~
2 state, including but not limited to any town, city, county, district, or school board, the board of regents,
3 a public and quasi-public corporation, a housing authority or other authority established by law, and any
4 representative or agent designated by the public employer to act in its interest in dealing with public
5 employees. Public employer also includes any local public agency designated as a head start agency as
6 provided in 42 U.S.C. 9836.

7 ~~(11)~~(10) "Supervisory employee" means any individual having authority in the interest of the
8 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, and discipline other
9 employees, and having responsibility to direct them, to adjust their grievances, or effectively to recommend
10 ~~such~~ action, if in connection with the foregoing, the exercise of ~~such~~ authority is not of a merely routine
11 or clerical nature but requires the use of independent judgment.

12 ~~(12)~~(11) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402."
13

14 **Section 6.** Section 39-31-201, MCA, is amended to read:

15 "**39-31-201. ~~Public employees protected in right~~ Right of self-organization -- choice as to union**
16 **support.** (1) Public employees ~~shall have protection and shall be~~ are protected in the exercise of the right
17 of self-organization, the right to form, join, or assist any labor organization, the right to bargain ~~collectively~~
18 through representatives of their own choosing on questions of wages, hours, fringe benefits, and other
19 conditions of employment, and the right to engage in other concerted activities for the purpose of ~~collective~~
20 member-only bargaining or other mutual aid or protection, free from interference, restraint, or coercion.

21 (2) A public employee, on an individual basis, has the right to choose not to form, join, or assist
22 or financially support any labor organization, free from interference, restraint, or coercion."
23

24 **Section 7.** Section 39-31-202, MCA, is amended to read:

25 "**39-31-202. Board to determine appropriate bargaining unit -- factors to be considered.** In order
26 to ~~assure~~ ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the
27 board or an agent of the board shall decide the unit appropriate for the purpose of ~~collective~~ member-only
28 bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and
29 other working conditions of the employees involved, the history of ~~collective~~ member-only bargaining,
30 common supervision, common personnel policies, extent of integration of work functions and interchange

1 among employees affected, and the desires of the employees."

2

3 **Section 8.** Section 39-31-203, MCA, is amended to read:

4 **"39-31-203. Deduction of dues from employee's pay.** Upon written authorization of any public
5 employee within a bargaining unit, the public employer shall deduct from the pay of the public employee
6 the monthly amount of dues as certified by the secretary of the ~~exclusive representative~~ labor organization
7 and shall deliver the dues to the treasurer of the ~~exclusive representative~~ labor organization."

8

9 **Section 9.** Section 39-31-206, MCA, is amended to read:

10 **"39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification**
11 **or recognition.** (1) Certification or recognition as ~~an exclusive representative~~ shall a labor organization must
12 be extended or continued, as the case may be, only to a labor or employee organization the written bylaws
13 of which provide for and guarantee the following rights and safeguards and whose practices conform to
14 ~~such~~ the rights and safeguards as:

15 (a) provisions are made for democratic organization and procedures;

16 (b) elections are conducted pursuant to adequate standards and safeguards;

17 (c) controls are provided for the regulation of officers and agents having fiduciary responsibility to
18 the organization; and

19 (d) requirements exist for maintenance of sound accounting and fiscal controls, including annual
20 audits.

21 (2) The board shall hear and decide all disputes arising under subsection (1)."

22

23 **Section 10.** Section 39-31-301, MCA, is amended to read:

24 **"39-31-301. Representative of public employer.** The chief executive officer of the state, the
25 governing body of a political subdivision, the commissioner of higher education, whether elected or
26 appointed, or the designated authorized representative shall represent the public employer in ~~collective~~
27 member-only bargaining with ~~an exclusive representative~~ a labor organization."

28

29 **Section 11.** Section 39-31-304, MCA, is amended to read:

30 **"39-31-304. Negotiable items for school districts.** ~~Nothing in this~~ This chapter shall does not

1 require or ~~allow~~ authorize boards of trustees of school districts to bargain ~~collectively~~ upon any matter other
 2 than matters specified in 39-31-305(2)."

3

4 **Section 12.** Section 39-31-305, MCA, is amended to read:

5 "**39-31-305. Duty to bargain ~~collectively~~ -- good faith.** (1) The public employer and the ~~exclusive~~
 6 ~~representative~~ labor organization, through appropriate officials or their representatives, ~~shall~~ have the
 7 authority and the duty to bargain ~~collectively~~. This duty extends to the obligation to bargain ~~collectively~~ in
 8 good faith as set forth in subsection (2) ~~of this section~~.

9 (2) For the purpose of this chapter, to bargain ~~collectively~~ is the performance of the mutual
 10 obligation of the public employer or ~~his~~ the public employer's designated representatives and the
 11 representatives of the ~~exclusive representative~~ labor organization to meet at reasonable times and negotiate
 12 in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the
 13 negotiation of an agreement or any question arising ~~thereunder~~ under the agreement and the execution of
 14 a written contract incorporating any agreement reached. ~~Such~~ The obligation does not compel either party
 15 to agree to a proposal or require the making of a concession.

16 (3) For purposes of state government only, the requirement of negotiating in good faith may be met
 17 by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint
 18 resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence
 19 of a failure to negotiate in good faith."

20

21 **Section 13.** Section 39-31-306, MCA, is amended to read:

22 "**39-31-306. ~~Collective Member-only~~ bargaining agreements.** (1) An agreement reached by the
 23 public employer and the ~~exclusive representative~~ labor organization must be reduced to writing and must
 24 be executed by both parties.

25 (2) Except as provided in subsection (5), an agreement may contain a grievance procedure
 26 culminating in final and binding arbitration of unresolved grievances and disputed interpretations of
 27 agreements.

28 (3) An agreement between the public employer and a labor organization must be valid and enforced
 29 under its terms when entered into in accordance with the provisions of this chapter and signed by the chief
 30 executive officer of the state or political subdivision or commissioner of higher education or by a

1 representative. A publication of the agreement is not required to make it effective.

2 (4) The procedure for the making of an agreement between the state or political subdivision and
3 a labor organization provided by this chapter is the exclusive method of making a valid agreement for public
4 employees represented by a labor organization.

5 (5) An agreement to which a school is a party must contain a grievance procedure culminating in
6 final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party
7 may have the grievance or disputed interpretation of the agreement resolved either by final and binding
8 arbitration or by any other available legal method and forum, but not by both. After a grievance has been
9 submitted to arbitration, the grievant and the ~~exclusive representative~~ labor organization waive any right
10 to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the
11 ~~exclusive representative~~ labor organization files a complaint or other action against the school, arbitration
12 seeking the same remedy may not be filed or pursued under this section."

13

14 **Section 14.** Section 39-31-307, MCA, is amended to read:

15 **"39-31-307. Mediation of disputes.** If, after a reasonable period of negotiation over the terms of
16 an agreement or upon expiration of an existing ~~collective~~ member-only bargaining agreement, a dispute
17 concerning the ~~collective~~ member-only bargaining agreement exists between the public employer and a
18 labor organization, the parties shall request mediation."

19

20 **Section 15.** Section 39-31-308, MCA, is amended to read:

21 **"39-31-308. Initiation of factfinding -- designation of fact finder.** (1) If, upon expiration of an
22 existing ~~collective~~ member-only bargaining agreement or 30 days following certification or recognition of
23 ~~an exclusive representative~~ a labor organization, a dispute concerning the ~~collective~~ member-only bargaining
24 agreement exists between the employer and the ~~exclusive representative~~ labor organization, either party
25 may petition the board to initiate factfinding.

26 (2) Within 3 days of receipt of ~~such a~~ petition, the board shall submit to the parties a list of five
27 qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining
28 person ~~shall~~ must be designated fact finder. This process ~~shall~~ must be completed within 5 days of receipt
29 of the list. The parties shall notify the board of the designated fact finder.

30 (3) If ~~no~~ a request for factfinding is not made by either party before the expiration of the agreement

1 or 30 days following certification or recognition of ~~an exclusive representative~~ a labor organization, the
 2 board may initiate factfinding as provided for in subsection (2) ~~above~~."

3

4 **Section 16.** Section 39-31-309, MCA, is amended to read:

5 "**39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and
 6 place of hearings.

7 (2) The public employer and the ~~exclusive representative~~ labor organization are the only proper
 8 parties to factfinding proceedings.

9 (3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings
 10 conducted by the fact finder. The fact finder may administer oaths.

11 (4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the
 12 fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall
 13 serve the findings on the public employer and the ~~exclusive representative~~ labor organization. The fact
 14 finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved
 15 15 days after the report is submitted to the parties, the report must be made public.

16 (5) When a party petitions the board to initiate factfinding, the cost of factfinding proceedings must
 17 be equally borne by the parties. When the board initiates factfinding, the cost of factfinding proceedings
 18 must be equally borne by the board and the parties.

19 (6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate
 20 the dispute in which the fact finder has been selected or appointed."

21

22 **Section 17.** Section 39-31-310, MCA, is amended to read:

23 "**39-31-310. Submission of issues to arbitration.** Nothing in 39-31-307 through 39-31-310
 24 prohibits the parties from voluntarily agreeing to submit any ~~or all~~ of the issues to final and binding
 25 arbitration, and if ~~such an~~ agreement is reached, the arbitration ~~shall~~ must supersede the factfinding
 26 procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with
 27 ~~such the~~ agreement ~~shall be~~ are enforceable in the same manner as is provided in this chapter for
 28 enforcement of ~~collective~~ member-only bargaining agreements."

29

30 **Section 18.** Section 39-31-312, MCA, is amended to read:

1 **"39-31-312. Nonnegotiable items for state prison.** ~~Collective~~ Member-only bargaining agreements
2 entered after July 14, 1982, may not contain provisions prohibiting or restricting the use of inmate labor
3 as provided for in 53-30-151."

4
5 **Section 19.** Section 39-31-401, MCA, is amended to read:

6 **"39-31-401. Unfair labor practices of public employer.** It is an unfair labor practice for a public
7 employer to:

8 (1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in
9 39-31-201;

10 (2) dominate, interfere, or assist in the formation or administration of any labor organization;
11 ~~however,~~ However, subject to rules adopted by the board under 39-31-104, an employer is not prohibited
12 from permitting employees to confer with ~~him~~ the employer during working hours without loss of time or
13 pay;

14 (3) discriminate in regard to hire or tenure of employment or any term or condition of employment
15 in order to encourage or discourage membership in any labor organization; ~~however, nothing in this chapter~~
16 ~~or in any other statute of this state precludes a public employer from making an agreement with an~~
17 ~~exclusive representative to require, as a condition of employment, that an employee who is not or does not~~
18 ~~become a union member, must have an amount equal to the union initiation fee and monthly dues deducted~~
19 ~~from his wages in the same manner as checkoff of union dues; or~~

20 (4) discharge or otherwise discriminate against an employee because ~~he~~ the employee has signed
21 or filed an affidavit, petition, or complaint or has given any information or testimony under this chapter;

22 ~~(5) refuse to bargain collectively in good faith with an exclusive representative."~~

23
24 **Section 20.** Section 39-31-402, MCA, is amended to read:

25 **"39-31-402. Unfair labor practices of labor organization.** It is an unfair labor practice for a labor
26 organization or its agents to:

27 (1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public
28 employer in the selection of ~~his~~ a representative for the purpose of ~~collective~~ member-only bargaining or
29 the adjustment of grievances;

30 (2) refuse to bargain ~~collectively~~ in good faith with a public employer if it has been designated as

1 the ~~exclusive representative~~ labor organization of employees;

2 (3) use agency shop fees for contributions to political candidates or parties at state or local levels."

3

4 **Section 21.** Section 39-32-109, MCA, is amended to read:

5 "**39-32-109. Unfair labor practices.** (1) It is an unfair labor practice for a health care facility to do
6 one or more of the following:

7 (a) interfere with or restrain or coerce employees in any manner in the exercise of their right of
8 self-organization;

9 (b) initiate, create, dominate, contribute to, or interfere with the formation or administration of any
10 employee organization that has ~~collective~~ member-only bargaining as one of its principal functions;

11 (c) discriminate in regard to hire terms or conditions of employment when a purpose ~~of such~~ is to
12 discourage membership in an employee organization that has ~~collective~~ member-only bargaining as one of
13 its principal functions;

14 (d) refuse to meet and bargain in good faith with the ~~duly~~ designated representatives of an
15 appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of
16 bargaining in good faith that the parties be willing to reduce in writing and have their representative sign
17 any agreement arrived at through negotiations and discussion.

18 (e) unilaterally exclude from work or prevent from working or discharge any one or more employees
19 when the purpose of ~~such~~ the action is in whole or in part to interfere with or coerce or intimidate an
20 employee in the exercise of rights ~~assured~~ ensured in this law.

21 (2) It is an unfair labor practice for a labor organization or its agents to:

22 (a) restrain or coerce employees in the exercise of the right to:

23 (i) form, join, or assist any labor organization;

24 (ii) bargain ~~collectively~~ through representatives of their own choosing; or

25 (iii) engage in other concerted activities for the purpose of ~~collective~~ member-only bargaining or
26 other mutual aid or protection;

27 (b) restrain or coerce an employer in the selection of ~~his~~ a representative for the purpose of
28 ~~collective~~ member-only bargaining or the adjustment of grievances;

29 (c) refuse to bargain ~~collectively~~ in good faith with an employer if it has been designated as the
30 ~~exclusive representative~~ labor organization of employees;

1 (d) use agency shop fees for contributions to political candidates or parties."
2

3 **Section 22.** Section 39-34-101, MCA, is amended to read:

4 "**39-34-101. Arbitration between firefighters and public employers.** (1) This section applies only
5 to firefighters and their public employers.

6 (2) If an impasse is reached in the course of ~~collective~~ member-only bargaining between a public
7 employer and a firefighters' organization or its ~~exclusive representative~~ labor organization and if the
8 procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either
9 party or both jointly may petition the board of personnel appeals for final and binding arbitration."
10

11 **Section 23.** Section 39-34-106, MCA, is amended to read:

12 "**39-34-106. Cost of arbitration.** The cost of arbitration ~~shall~~ must be shared equally by the public
13 employer and the firefighters' organization or its ~~exclusive representative~~ labor organization."
14

15 NEW SECTION. **Section 24. Repealer.** Sections 39-31-204, 39-31-205, 39-31-207, 39-31-208,
16 39-31-209, 39-31-210, 39-31-211, and 39-32-113, MCA, are repealed.

17
18 NEW SECTION. **Section 25. Effective date -- applicability.** [This act] is effective July 1, 1997,
19 and applies to contracts entered into on or after [the effective date of this act].
20

-END-

STATE OF MONTANA - FISCAL NOTE

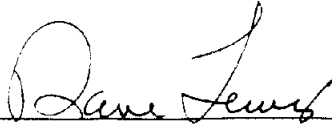
Fiscal Note for HB0535, as introduced

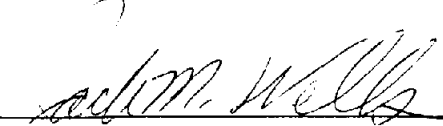
DESCRIPTION OF PROPOSED LEGISLATION:

A bill revising the collective bargaining provisions for public employees to provide that a public employee has the right to choose not to join or financially support a labor organization.

FISCAL IMPACT:

Passage of HB 535 will have no fiscal impact on state government.

 2-15-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 _____
JACK WELLS, PRIMARY SPONSOR DATE
Fiscal Note for HB0535, as introduced
HB 535