

SENATE BILL NO. 94

INTRODUCED BY J. FULLER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LABOR LAWS RELATING TO PUBLIC FUNDS; PROHIBITING THE USE OF PUBLIC FUNDS AND RESOURCES FOR LABOR ORGANIZATION ACTIVITIES, INCLUDING ITS APPLICATION TO SCHOOL DISTRICTS AND TEACHER ORGANIZATION; PROHIBITING CERTAIN LABOR ORGANIZATION ACTIVITIES WHILE RECEIVING COMPENSATION; PROVIDING LIMITATIONS; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-2-121, 20-1-304, 20-4-304, AND 39-31-103, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Use of public resources for labor organization activities.** (1) A public employer may not:

(a) contribute public funds to, or expend public funds on behalf of, a labor organization; or
(b) provide any form of compensation or paid leave to a public employee, directly or indirectly, for the purpose of engaging in labor organization activities.

(2) Upon agreement by a public employer and an exclusive representative in collective bargaining, a public employee:

(a) may be granted time off without pay or benefits to engage in labor organization activities, and a labor organization may compensate a public employee for engaging in labor organization activities;

(b) may use compensated personal leave, whether it is the employee's own or voluntarily donated by members of the appropriate unit, to engage in labor organization activities if:

(i) the leave is accrued at the same rate by similarly situated public employees in the appropriate unit without regard to membership or participation in a labor organization; and

(ii) the public employee may freely choose how to use the leave; and

(c) may engage in ~~representational~~ LABOR ORGANIZATION activities while in a duty status without loss of pay or benefits if:

(i) ~~the exclusive representative reports to the public employer not less than twice per calendar year the amount of time, in increments rounded to the nearest quarter of an hour, spent on representational activities each day by each public employee engaged in representational activities; ANOTHER MEMBER OF THE APPROPRIATE UNIT VOLUNTEERS TO COVER THE PUBLIC EMPLOYEE'S ABSENCE WITHOUT PAY; OR~~

(ii) (A) THE EXCLUSIVE REPRESENTATIVE REPORTS TO THE PUBLIC EMPLOYER NOT LESS THAN TWICE PER CALENDAR YEAR THE AMOUNT OF TIME, IN INCREMENTS ROUNDED TO AT LEAST THE NEAREST HALF HOUR, SPENT ON LABOR ORGANIZATION ACTIVITIES EACH DAY BY EACH PUBLIC EMPLOYEE ENGAGED IN LABOR ORGANIZATION ACTIVITIES;

~~(ii)(B)~~ the public employer calculates the pro rata value of compensation, including wages and benefits, paid or accruing to a public employee for time spent engaged in ~~representational~~ LABOR ORGANIZATION activities and provides an invoice to the exclusive representative not less than twice per calendar year for the amounts so calculated; and

~~(iii)(C)~~ upon receipt of the invoice from the public employer, the exclusive representative remits full payment to the public employer within 30 days.

(3) Upon a petition by a public employer that has been notified by the U.S. department of labor that the public employer's protective arrangement covering mass transit employees does not meet the requirements of 49 U.S.C. 5333(b) and would jeopardize the public employer's continued eligibility to receive federal transit administration funding, the board may waive the application of any provision of this section, but only to the extent necessary for the petitioning public employer to comply with the requirements of 49 U.S.C. 5333(b).

Section 2. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (6), use public time, facilities, equipment, state letterhead, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or

1 other economic benefit from the officer's or employee's agency;

2 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic
3 benefit from any agency;

4 (e) perform an official act directly and substantially affecting to its economic benefit a business or
5 other undertaking in which the officer or employee either has a substantial financial interest or is engaged as
6 counsel, consultant, representative, or agent; ~~or~~

7 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
8 with a person whom the officer or employee regulates in the course of official duties without first giving written
9 notification to the officer's or employee's supervisor and department director; or

10 (g) violate [section 1].

11 (3) (a) A candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for
12 any advertisement or public service announcement in a newspaper, on radio, or on television that contains the
13 candidate's name, picture, or voice except in the case of a state or national emergency and then only if the
14 announcement is reasonably necessary to the candidate's official functions.

15 (b) A state officer may not use or permit the use of public time, facilities, equipment, state
16 letterhead, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service
17 announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice
18 except in the case of a state or national emergency if the announcement is reasonably necessary to the state
19 officer's official functions or in the case of an announcement directly related to a program or activity under the
20 jurisdiction of the office or position to which the state officer was elected or appointed.

21 (4) A public officer or public employee may not participate in a proceeding when an organization,
22 other than an organization or association of local government officials, of which the public officer or public
23 employee is an officer or director is:

24 (a) involved in a proceeding before the employing agency that is within the scope of the public
25 officer's or public employee's job duties; or

26 (b) attempting to influence a local, state, or federal proceeding in which the public officer or public
27 employee represents the state or local government.

28 (5) A public officer or public employee may not engage in any activity, including lobbying, as

1 defined in 5-7-102, on behalf of an organization, other than an organization or association of local government
2 officials, of which the public officer or public employee is a member while performing the public officer's or
3 public employee's job duties. The provisions of this subsection do not prohibit a public officer or public
4 employee from performing charitable fundraising activities if approved by the public officer's or public
5 employee's supervisor or authorized by law.

6 (6) A listing by a public officer or a public employee in the electronic directory provided for in 30-
7 17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this
8 section. The public officer or public employee may not make arrangements for the listing in the electronic
9 directory during work hours.

10 (7) A department head or a member of a quasi-judicial or rulemaking board may perform an official
11 act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a
12 statute and if the person complies with the disclosure procedures under 2-2-131.

13 (8) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
14 unless the member is also a full-time public employee.

15 (9) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local
16 government from performing an official act when the member's participation is necessary to obtain a quorum or
17 to otherwise enable the body to act. The member shall disclose the interest creating the appearance of
18 impropriety prior to performing the official act."

19
20 **Section 3.** Section 20-1-304, MCA, is amended to read:

21 **"20-1-304. Pupil-instruction-related day.** A pupil-instruction-related day is a day of teacher activities
22 devoted to improving the quality of instruction. The activities may include but are not limited to inservice
23 training, ~~attending state meetings of teacher organizations,~~ and conducting parent conferences. A maximum of
24 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for
25 instructional and professional development meetings or other appropriate inservice training, if the days are
26 planned in accordance with the policy adopted by the board of public education. The days may not be included
27 as a part of the required minimum aggregate hours of pupil instruction."

Section 4. Section 20-4-304, MCA, is amended to read:

"20-4-304. Attendance at instructional and professional development meetings. ~~The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings of teachers' organizations.~~ A teacher may attend instructional and professional development meetings without loss of salary or attend other appropriate inservice training that may be prescribed by the trustees without loss of salary. If a teacher does not attend, the teacher may not be paid."

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

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

(1) "Affiliate" means any membership organization affiliated with a labor organization or with which a labor organization is affiliated.

(1)(2) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

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

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

(4)(5) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

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

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

(8) (A) "Labor organization activities" means activities undertaken at the direction of, on behalf of,

1 or to advance the purposes of a labor organization or its affiliate by, including but not limited to:
2 (a)(I) supporting or opposing any candidate for federal, state, or local public office;
3 (b)(II) influencing the passage or defeat of any federal or state legislation, federal or state regulation,
4 local ordinance or resolution, or any ballot measure;
5 (c)(III) promoting or soliciting membership or participation in, or financial support of, a labor
6 organization or its affiliate;
7 (d)(IV) seeking to become the exclusive representative of an appropriate unit;
8 (e)(V) participating in the administration, business, or internal governance of a labor organization or
9 its affiliate;
10 (f)(VI) preparing, conducting, or attending labor organization or affiliate events, conferences,
11 conventions, meetings, or trainings, unless the training is directly related to the performance of a public
12 employee's job duties;
13 (g)(VII) distributing labor organization or affiliate communications;
14 (h)(VIII) representing or speaking on behalf of a labor organization or its affiliate in any setting, venue,
15 or proceeding in which the public employer is not a participant;
16 (i)(IX) preparing, filing, or pursuing grievances or unfair labor practices;
17 (j)(X) representing public employees in investigatory interviews, disciplinary proceedings, or appeals,
18 up to and including termination, or other administrative or legal proceedings;
19 (k)(XI) engaging in collective bargaining negotiations and any related mediation, fact-finding, or
20 arbitration;
21 (l)(XII) administering a collective bargaining agreement; or
22 (m)(XIII) participating in labor-management committees.
23 (B) THE TERM DOES NOT INCLUDE:
24 (I) TRAINING THAT REGARDS THE PERFORMANCE OF A PUBLIC EMPLOYEE'S JOB DUTIES OR THE PROVISION
25 OF MEDICAL CARE OR MENTAL HEALTH CARE TO A PUBLIC EMPLOYEE;
26 (II) EVENTS FOR THE PURPOSE OF FUNDRAISING FOR A CHARITABLE ORGANIZATION OPERATING UNDER 26
27 U.S.C. 501(C)(3), FOR A CIVIC OR COMMUNITY PURPOSE, OR RELATED TO THE DEATH OF A PUBLIC EMPLOYEE IN THE
28 LINE OF DUTY; OR

(III) INFORMALLY CONFERRING WITH A PUBLIC EMPLOYER ABOUT THE ADMINISTRATION OR INTERPRETATION
OF A COLLECTIVE BARGAINING AGREEMENT.

~~(7)~~(9) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

~~(8)~~(10) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

~~(9)~~(11) (a) "Public employee" means:

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

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

(b) Public employee does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

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

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

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

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

(vii) a school district clerk;

(viii) a school administrator;

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

(x) a professional engineer; or

(xi) an engineer intern.

~~(10)~~(12) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

~~(13)~~ "Representational activities" means those activities specified in subsections ~~(8)(i)~~
~~through (8)(m)~~.

~~(11)(14)(13)~~ (a) "Supervisory employee" means an individual having the authority on a regular,
recurring basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote,
discharge, assign, reward, or discipline other employees or to effectively recommend the above actions if, in
connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but
requires the use of independent judgment.

(b) The authority described in subsection ~~(11)(a)~~ ~~(14)(a)~~ ~~(13)(A)~~ is the only criteria that may be
used to determine if an employee is a supervisory employee. The use of any other criteria, including any
secondary test developed or applied by the national labor relations board or the Montana board of personnel
appeals, may not be used to determine if an employee is a supervisory employee under this section.

~~(12)(15)(14)~~ "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-
402."

NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an
integral part of Title 39, chapter 31, and the provisions of Title 39, chapter 31, apply to [section 1].

NEW SECTION. Section 7. Saving clause. [This act] does not affect rights and duties that matured,
penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are
severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 9. Applicability. [This act] applies to any collective bargaining agreement
or other contract executed, renewed, modified, extended, or amended on or after the effective date of [this act].

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