

Jan Business 2/23 De Pass 3/12 (p. 983)

FEB 16 1990

Place On Calendar

HOUSE FILE 2460
BY COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 688)

Passed House, Date 2/21/90 (p. 533) Passed Senate, Date 3/13/90 (p. 1057)
Vote: Ayes 27 Nays 0 Vote: Ayes 48 Nays 0
Approved March 23, 1990

A BILL FOR

1 An Act relating to remedial relief for public employment
2 relations violations and to unfair representation by a
3 bargaining representative of a public employee.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 20.1, subsection 2, Code 1989, is
2 amended to read as follows:

3 2. ~~Adjudicating prohibited practice complaints and~~
4 ~~fashioning-appropriate-remedial-relief-for-violations-of-this~~
5 ~~chapter including the exercise of exclusive original~~
6 jurisdiction over all claims alleging the breach of the duty
7 of fair representation imposed by section 20.17.

8 Sec. 2. Section 20.1, Code 1989, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 2A. Fashioning appropriate remedial
11 relief for violations of this chapter, including but not
12 limited to the reinstatement of employees with or without back
13 pay and benefits.

14 Sec. 3. Section 20.17, subsection 1, Code Supplement 1989,
15 is amended to read as follows:

16 1. The employee organization certified as the bargaining
17 representative shall be the exclusive representative of all
18 public employees in the bargaining unit and shall represent
19 all public employees fairly. However, any public employee may
20 meet and adjust individual complaints with a public employer.
21 To sustain a claim that a certified employee organization has
22 committed a prohibited practice by breaching its duty of fair
23 representation, a public employee must establish by a
24 preponderance of the evidence action or inaction by the
25 organization which was arbitrary, discriminatory, or in bad
26 faith.

27 EXPLANATION

28 Section 1 of this bill confers upon the public employment
29 relations board exclusive original jurisdiction over all
30 claims that an employee organization representing public
31 employees has breached its duty of fair representation,
32 altering the current situation where the board and the
33 district courts share concurrent jurisdiction over such
34 claims.

35 Section 2 specifies that the board may, as a remedy for

1 violation of chapter 20, reinstate employees with or without
2 back pay and benefits.

3 Section 3 brings state law concerning the duty of certified
4 employee organizations into conformity with that which exists
5 in the private sector by codifying the standard for judging
6 claims of unfair representation which has been developed by
7 the national labor relations board and the federal courts.

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HSP 688

LABOR & INDUSTRIAL RELATIONS

Now

HOUSE FILE 2460

BY (PROPOSED COMMITTEE ON
LABOR AND INDUSTRIAL
RELATIONS BILL BY
CHAIRPERSON SHERZAN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to unfair representation of a public employee by
2 a bargaining representative in an employment dispute and
3 providing a penalty.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 20.10, Code 1989, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 3A. It shall be a prohibited practice for
4 the representative of an employee organization to represent an
5 employee in the bargaining unit in an unfair manner.

6 a. In order to sustain an allegation of unfair
7 representation, an employee must prove by a preponderance of
8 the evidence that the employer violated a collective
9 bargaining agreement, and that the representative willfully
10 acted in an arbitrary, discriminatory, or bad faith manner in
11 representing the employee in a dispute concerning the
12 violation of the collective bargaining agreement.

13 b. The board has primary and exclusive jurisdiction over
14 the employer and the representative in proceedings held
15 pursuant to this subsection.

16 c. The provisions of section 20.11 apply to proceedings
17 held pursuant to this subsection except that:

18 (1) A complaint alleging a violation of this subsection
19 must be filed with the board within ninety days of the alleged
20 violation or within ninety days of the time when an employee
21 using reasonable diligence would have discovered the alleged
22 violation.

23 (2) Upon finding a violation of this subsection, the board
24 may award monetary damages or enter an order for equitable
25 relief on behalf of an employee.

26 Sec. 2. Section 20.11, subsections 1 and 4, Code
27 Supplement 1989, are amended to read as follows:

28 1. Proceedings Except for complaints filed for allegations
29 of unfair representation as provided in section 20.10,
30 subsection 3A, proceedings against a party alleging a
31 violation of section 20.10, shall be commenced by filing a
32 complaint with the board within ninety days of the alleged
33 violation causing a copy of the complaint to be served upon
34 the accused party in the manner of an original notice as
35 provided in this chapter. The accused party shall have ten

1 days within which to file a written answer to the complaint.
2 However, the board may conduct a preliminary investigation of
3 the alleged violation, and if the board determines that the
4 complaint has no basis in fact, the board may dismiss the
5 complaint. The board shall promptly thereafter set a time and
6 place for hearing in the county where the alleged violation
7 occurred. The parties shall be permitted to be represented by
8 counsel, summon witnesses, and request the board to subpoena
9 witnesses on the requester's behalf. Compliance with the
10 technical rules of pleading and evidence shall not be
11 required.

12 4. The board shall file its findings of fact and
13 conclusions of law. ff Except as provided in section 20.10,
14 subsection 3A, if the board finds that the party accused has
15 committed a prohibited practice, the board may, within thirty
16 days of its decision, enter into a consent order with the
17 party to discontinue the practice, or after the thirty days
18 following the decision may petition the district court for
19 injunctive relief pursuant to rules of civil procedure 320 to
20 330.

21 EXPLANATION

22 The bill provides that unfair representation in an
23 employment dispute by a public employee's bargaining
24 representative is a prohibited practice, subject to review by
25 the public employment relations board. In order to sustain an
26 allegation of unfair representation, an employee must prove
27 that the employer violated a collective bargaining agreement
28 and that the representative willfully acted in an arbitrary,
29 discriminatory, or bad faith manner in representing the
30 employee in a dispute concerning violation of a collective
31 bargaining agreement. The bill provides that the board may
32 award monetary damages or enter an order for equitable relief
33 upon a finding in favor of an employee.

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HOUSE FILE 2460

AN ACT
RELATING TO REMEDIAL RELIEF FOR PUBLIC EMPLOYMENT RELATIONS
VIOLATIONS AND TO UNFAIR REPRESENTATION BY A BARGAINING
REPRESENTATIVE OF A PUBLIC EMPLOYEE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 20.1, subsection 2, Code 1989, is amended to read as follows:

2. ~~Adjudicating prohibited practice complaints and fashioning appropriate remedial relief for violations of this chapter including the exercise of exclusive original jurisdiction over all claims alleging the breach of the duty of fair representation imposed by section 20.17.~~

Sec. 2. Section 20.1, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. Fashioning appropriate remedial relief for violations of this chapter, including but not limited to the reinstatement of employees with or without back pay and benefits.

Sec. 3. Section 20.17, subsection 1, Code Supplement 1989, is amended to read as follows:

1. The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly. However, any public employee may meet and adjust individual complaints with a public employer. To sustain a claim that a certified employee organization has committed a prohibited practice by breaching its duty of fair representation, a public employee must establish by a preponderance of the evidence action or inaction by the

organization which was arbitrary, discriminatory, or in bad faith.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2460, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved *J. March 23.* 1990

TERRY E. BRANSTAD
Governor