

FILED JAN 15 1998

SENATE FILE 2039
BY SZYMONIAK

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

A BILL FOR

1 An Act relating to the process by which a school district may
2 terminate a teacher's continuing contract.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2039

1 Section 1. Section 279.18, unnumbered paragraphs 1 and 2,
2 Code 1997, are amended to read as follows:

3 ~~If either party rejects the adjudicator's decision, the~~
4 ~~rejecting party shall, within thirty days of the initial~~
5 ~~filing of such decision~~ the teacher is no longer a
6 probationary teacher, the teacher may, within ten days, appeal
7 the determination of the board under section 279.16 to the
8 district court of the county in which the administrative
9 office of the school district is located. The notice of
10 appeal shall be immediately mailed by certified mail to the
11 ~~other party~~ secretary of the board. The adjudicator board
12 secretary shall transmit to the reviewing court the original
13 or a certified copy of the entire record which may be the
14 subject of the petition. By stipulation of all parties to the
15 review proceedings, the record of such a case may be
16 shortened. A party unreasonably refusing to stipulate to
17 limit the record may be taxed by the court for the additional
18 cost. The court may require or permit subsequent corrections
19 or additions to the shortened record.

20 In proceedings for judicial review of the adjudicator's
21 board's decision, the court shall not hear any further
22 evidence but shall hear the case upon the certified record.
23 In such judicial review, especially when considering the
24 credibility of witnesses, the court shall give weight to the
25 fact findings of the board; ~~but shall not be bound by them.~~
26 The court may affirm the adjudicator's board's decision or
27 remand to ~~the adjudicator or the board~~ for further proceedings
28 upon conditions determined by the court. The court shall
29 reverse, modify, or grant any other appropriate relief from
30 the board decision ~~or the adjudicator's decision equitable or~~
31 ~~legal and including declaratory relief~~ only if substantial
32 rights of the petitioner have been prejudiced because the
33 action is:

34 Sec. 2. Section 279.18, subsections 2 and 6, Code 1997,
35 are amended to read as follows:

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1 Amend Senate File 2039 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 260C.39, unnumbered paragraph
5 3, Code Supplement 1997, is amended to read as
6 follows:

7 The terms of employment of personnel, for the
8 academic year following the effective date of the
9 agreement to combine the merged areas shall not be
10 affected by the combination of the merged areas,
11 except in accordance with the procedures under
12 sections 279.15 to ~~279.18~~ 279.17 and section 279.24,
13 to the extent those procedures are applicable, or
14 under the terms of the base bargaining agreement. The
15 authority and responsibility to offer new contracts or
16 to continue, modify, or terminate existing contracts
17 pursuant to any applicable procedures under chapter
18 279, shall be transferred to the acting, and then to
19 the new, board of the combined merged area upon
20 certification of a favorable vote to each of the
21 merged areas affected by the agreement. The
22 collective bargaining agreement of the merged area
23 receiving the greatest amount of general state aid
24 shall serve as the base agreement for the combined
25 merged area and the employees of the merged areas
26 which combined to form the new combined merged area
27 shall automatically be accreted to the bargaining unit
28 from that former merged area for purposes of
29 negotiating the contracts for the following years
30 without further action by the public employment
31 relations board. If only one collective bargaining
32 agreement is in effect among the merged areas which
33 are combining under this section, then that agreement
34 shall serve as the base agreement, and the employees
35 of the merged areas which are combining to form the
36 new combined merged area shall automatically be
37 accreted to the bargaining unit of that former merged
38 area for purposes of negotiating the contracts for the
39 following years without further action by the public
40 employment relations board. The board of the combined
41 merged area, using the base agreement as its existing
42 contract, shall bargain with the combined employees of
43 the merged areas that have agreed to combine for the
44 academic year beginning with the effective date of the
45 agreement to combine merged areas. The bargaining
46 shall be completed by March 15 prior to the academic
47 year in which the agreement to combine merged areas
48 becomes effective or within one hundred eighty days
49 after the organization of the acting board of the new
50 combined merged area, whichever is later. If a

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1 bargaining agreement was already concluded in the
2 former merged area which has the collective bargaining
3 agreement that is serving as the base agreement for
4 the new combined merged area, between the former
5 merged area board and the employees of the former
6 merged area, that agreement is void, unless the
7 agreement contained multiyear provisions affecting
8 academic years subsequent to the effective date of the
9 agreement to form a combined merged area. If the base
10 collective bargaining agreement contains multiyear
11 provisions, the duration and effect of the agreement
12 shall be controlled by the terms of the agreement.
13 The provisions of the base agreement shall apply to
14 the offering of new contracts, or the continuation,
15 modification, or termination of existing contracts
16 between the acting or new board of the combined merged
17 area and the combined employees of the new combined
18 merged area.

19 Sec. 2. Section 275.33, subsection 1, Code 1997,
20 is amended to read as follows:

21 1. The terms of employment of superintendents,
22 principals, and teachers, for the school year
23 following the effective date of the formation of the
24 new district shall not be affected by the formation of
25 the new district, except in accordance with the
26 provisions of sections 279.15 to ~~279.18~~ 279.17 and
27 279.24 and the authority and responsibility to offer
28 new contracts or to continue, modify, or terminate
29 existing contracts pursuant to sections 279.12,
30 279.13, 279.15 to 279.21, 279.23, and 279.24 for the
31 school year beginning with the effective date of the
32 reorganization shall be transferred from the boards of
33 the existing districts to the board of the new
34 district on the third Tuesday of January prior to the
35 school year the reorganization is effective.

36 Sec. 3. Section 279.15, Code 1997, is amended to
37 read as follows:

38 279.15 NOTICE OF TERMINATION -- REQUEST FOR
39 HEARING.

40 1. The superintendent or the superintendent's
41 designee shall notify the teacher not later than April
42 ~~30~~ March 15 that the superintendent ~~will recommend in~~
43 ~~writing recommends~~ to the board ~~at a regular or~~
44 ~~special meeting of the board, held not later than May~~
45 15, that the teacher's continuing contract be
46 terminated effective at the end of the current school
47 year. However, if the district is subject to
48 reorganization under chapter 275, the notification
49 shall not occur until after the first organizational
50 meeting of the board of the newly formed district.

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2. Notification of receipt of a teacher's contract shall be personally certified by the superintendent and the board, and shall be complete and correct. The notification shall be made for just cause, or for reasons which shall be given to the board before the termination of the contract. As a part of the personnel file of the teacher, a record of all periods of evaluation between the teacher and appropriate supervisors shall be maintained. Within five days of the receipt of the notice of termination, the superintendent shall recommend to the board a private hearing in writing to the secretary of the board, and at least ten days before the hearing, the superintendent shall furnish to the board a list of persons who may be present at the hearing, along with the names of any persons who may address the board on behalf of the teacher. This exchange of information shall be at the time specified unless otherwise agreed.

3. Section 279.16, Code 1997, is amended to read as follows:

1. The PRIVATE HEARING -- RECORD shall be a majority of the interested members of the board, their representatives, if any, the superintendent, the superintendent's designated

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1 representatives, if any, the teacher's immediate
2 supervisor, the teacher, the teacher's
3 representatives, if any, and the witnesses for the
4 parties. The evidence at the private hearing shall be
5 limited to the specific reasons stated in the
6 superintendent's notice of recommendation of
7 termination. No participant in the hearing shall be
8 liable for any damages to any person if any statement
9 at the hearing is determined to be erroneous as long
10 as the statement was made in good faith. The
11 superintendent shall present evidence and argument on
12 all issues involved and the teacher may cross-examine,
13 respond and present evidence and argument in the
14 teacher's behalf relevant to all issues involved.
15 Evidence may be by stipulation of the parties and
16 informal settlement may be made by stipulation,
17 consent, or default or by any other method agreed upon
18 by the parties in writing. The board shall employ a
19 certified shorthand reporter to keep a record of the
20 private hearing. ~~The proceedings or any~~ Any part
21 thereof of the proceedings shall be transcribed at the
22 request of either party with the expense of
23 transcription charged to the ~~requesting-party~~ school
24 district.

25 2. The ~~presiding-officer-of-the-board~~ adjudicator
26 may administer oaths in the same manner and with like
27 effect and under the same penalties as in the case of
28 magistrates exercising criminal or civil jurisdiction.
29 The ~~board~~ adjudicator shall cause subpoenas to be
30 issued for ~~such~~ witnesses and the production of ~~such~~
31 any books and papers ~~as either~~ the board or the
32 teacher may designate. The subpoenas shall be signed
33 by the ~~presiding-officer-of-the-board~~ adjudicator.

34 3. In case a witness is duly subpoenaed and
35 refuses to attend, or in case a witness appears and
36 refuses to testify or to produce required books or
37 papers, the ~~board~~ adjudicator shall, in writing,
38 report such refusal to the district court of the
39 county in which the administrative office of the
40 school district is located, and the court shall
41 proceed with the person or witness as though the
42 refusal had occurred in a proceeding legally pending
43 before the court.

44 ~~The board shall not be bound by common law or~~
45 ~~statutory rules of evidence or by technical or formal~~

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1 4. At the conclusion of the private hearing, the
2 superintendent and the teacher may file written briefs
3 and arguments with the board adjudicator within three
4 days or such other time as may be agreed upon.

5 5. If the teacher fails to timely request a
6 private hearing or does not appear at the private
7 hearing, the board may proceed and make a
8 determination upon the superintendent's
9 recommendation. If the teacher fails to timely file a
10 request for a private hearing, the determination shall
11 be not later than ~~May-31~~ April 15. If the teacher
12 fails to appear at the private hearing, the
13 determination shall be not later than five days after
14 the scheduled date for the private hearing. The board
15 shall convene in open session and by roll call vote
16 determine the termination or continuance of the
17 teacher's contract.

18 ~~6. Within five days after the private hearing, the~~
19 ~~board shall, in executive session, meet to make a~~
20 ~~final decision upon the recommendation and the~~
21 ~~evidence as herein provided.~~ The board adjudicator
22 shall also consider any written brief and arguments
23 submitted by the superintendent and the teacher.

24 7. The record for a private hearing shall include
25 the following:

26 ~~1-~~ a. All pleadings, motions and intermediate
27 rulings.

28 ~~2-~~ b. All evidence received or considered and all
29 other submissions.

30 ~~3-~~ c. A statement of all matters officially
31 noticed.

32 ~~4-~~ d. All questions and offers of proof,
33 objections and rulings thereon.

34 ~~5-~~ e. All findings and exceptions.

35 ~~6-~~ f. Any decision, opinion, or conclusion by the
36 board.

37 ~~7-~~ g. Findings of fact shall be based solely on
38 the evidence in the record and on matters officially
39 noticed in the record.

40 8. The decision of the board adjudicator shall be
41 in writing and shall include findings of fact and
42 conclusions of law, separately stated. Findings of
43 fact, if set forth in statutory language, shall be
44 accompanied by a concise and explicit statement of the
45 underlying facts and supporting the findings. Each
46 conclusion of law shall be supported by cited
47 authority or by reasoned opinion.

48 ~~9. When the board has reached a decision, opinion,~~
49 ~~or conclusion, it shall convene in open meeting and by~~
50 ~~roll call vote determine the continuance or~~

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~~1 discontinuance of the teacher's contract. The record~~
~~2 of the private conference and findings of fact and~~
~~3 exceptions shall be exempt from the provisions of~~
~~4 chapter 22. The secretary of the board adjudicator~~
~~5 shall make a decision within thirty days and shall,~~
~~6 upon reaching a decision, immediately mail notice of~~
~~7 the board's action decision to the teacher, the~~
~~8 superintendent, and the secretary of the board. The~~
~~9 adjudicator's decision is final and binding unless it~~
~~10 can be shown that the adjudicator exceeded the~~
~~11 adjudicator's authority.~~

12 10. The record of the private hearing and findings
13 of fact and exceptions shall be exempt from the
14 provisions of chapter 22.

15 Sec. 5. Section 279.17, Code 1997, is amended to
16 read as follows:

17 279.17 APPEAL BY TEACHER TO SELECTION AND
18 AUTHORITY OF ADJUDICATOR.

~~19 If the teacher is no longer a probationary teacher,~~
~~20 the teacher may, within ten days, appeal the~~
~~21 determination of the board to an adjudicator by filing~~
~~22 a notice of appeal with the secretary of the board.~~
~~23 The notice of appeal shall contain a concise statement~~
~~24 of the action which is the subject of the appeal, the~~
~~25 particular board action appealed from, the grounds on~~
~~26 which relief is sought and the relief sought.~~

27 1. Within five days following receipt by the
28 secretary of the notice of appeal a teacher's request
29 for a private hearing by an adjudicator as provided in
30 section 279.15, the board or the board's legal
31 representative, if any, and the teacher or the
32 teacher's representative, if any, may select an
33 adjudicator who resides within the boundaries of the
34 merged area in which the school district is located.
35 If an adjudicator cannot be mutually agreed upon
36 within the five-day period, the secretary shall notify
37 the chairperson of the public employment relations
38 board by transmitting the notice of appeal request for
39 a private hearing, and the chairperson of the public
40 employment relations board shall within five days
41 provide a list of five adjudicators to the parties.
42 Within three days from receipt of the list of
43 adjudicators, the parties shall select an adjudicator
44 by alternately removing a name from the list until
45 only one name remains. The person whose name remains

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1 employee relations board of the name of the
2 adjudicator selected.

3 ~~If the teacher does not timely request an appeal to~~
4 ~~an adjudicator the decision, opinion, or conclusion of~~
5 ~~the board shall become final and binding.~~

6 ~~Within thirty days after filing the notice of~~
7 ~~appeal, or within further time allowed by the~~
8 ~~adjudicator, the board shall transmit to the~~
9 ~~adjudicator the original or a certified copy of the~~
10 ~~entire record of the private hearing which may be the~~
11 ~~subject of the petition. By stipulation of the~~
12 ~~parties to review the proceedings, the record of the~~
13 ~~case may be shortened. The adjudicator may require or~~
14 ~~permit subsequent corrections or additions to the~~
15 ~~shortened record.~~

16 ~~The record certified and filed by the board shall~~
17 ~~be the record upon which the appeal shall be heard and~~
18 ~~no additional evidence shall be heard by the~~
19 ~~adjudicator. In such appeal to the adjudicator,~~
20 ~~especially when considering the credibility of~~
21 ~~witnesses, the adjudicator shall give weight to the~~
22 ~~fact findings of the board, but shall not be bound by~~
23 ~~them.~~

24 ~~Before the date set for hearing a petition for~~
25 ~~review of board action, which shall be within ten days~~
26 ~~after receipt of the record unless otherwise agreed or~~
27 ~~unless the adjudicator orders additional evidence be~~
28 ~~taken before the board, application may be made to the~~
29 ~~adjudicator for leave to present evidence in addition~~
30 ~~to that found in the record of the case. If it is~~
31 ~~shown to the adjudicator that the additional evidence~~
32 ~~is material and that there were good reasons for~~
33 ~~failure to present it in the private hearing before~~
34 ~~the board, the adjudicator may order that the~~
35 ~~additional evidence be taken before the board upon~~
36 ~~conditions determined by the adjudicator. The board~~
37 ~~may modify its findings and decision in the case by~~
38 ~~reason of the additional evidence and shall file that~~
39 ~~evidence and any modifications, new findings, or~~
40 ~~decisions, with the adjudicator and mail copies of the~~
41 ~~new findings or decisions to the teacher.~~

42 2. The adjudicator may affirm board action or
43 remand to the board for further proceedings. The
44 adjudicator shall reverse, modify, the
45 superintendent's recommendation to terminate the
46 teacher's contract or grant any appropriate relief
47 from the board action require the board to continue
48 the teacher's contract if substantial rights of the
49 teacher have been prejudiced because the board action
50 is the adjudicator determines that termination of the

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1 contract would be any of the following:

2 ~~1- a. In A violation of a board rule or policy or~~
3 ~~contract; -or.~~

4 ~~2- b. Unsupported by a preponderance of the~~
5 ~~competent evidence in the record made before the board~~
6 ~~adjudicator when that record is viewed as a whole; -or.~~

7 ~~3- c. Unreasonable, arbitrary or capricious or~~
8 ~~characterized by an abuse of discretion or a clearly~~
9 ~~unwarranted exercise of discretion.~~

10 ~~The adjudicator shall, within fifteen days after~~
11 ~~the hearing, make a decision and shall give a copy of~~
12 ~~the decision to the teacher and the secretary of the~~
13 ~~board. --The decision of the adjudicator shall become~~
14 ~~the final and binding decision of the board unless~~
15 ~~either party within ten days notifies the secretary of~~
16 ~~the board that the decision is rejected. --The board~~
17 ~~may reject the decision by majority vote, by roll~~
18 ~~call, in open meeting and entered into the minutes of~~
19 ~~the meeting. --The board shall immediately notify the~~
20 ~~teacher of its decision by certified mail. --The~~
21 ~~teacher may reject the adjudicator's decision by~~
22 ~~notifying the board's secretary in writing within ten~~
23 ~~days of the filing of such decision.~~

24 3. All costs of the adjudicator shall be shared
25 equally by the teacher and the board.

26 Sec. 6. Section 279.18, Code 1997, is repealed."

By ELAINE SZYMONIAK

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