

1 IN THE HOUSE

BY MR. METCALF BY REQUEST

2

HOUSE BILL NO. 33

3

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4

TWENTY-THIRD SESSION

5

A BILL

6 For an Act entitled: "An Act relating to condition of employment
7 of certified employees in the public schools
8 of Alaska; setting forth the rights and
9 liabilities of educational boards and of
10 educational employees regarding such con-
11 ditions of employment, repealing Sec. 37-
12 2.7(d) AGLA 1949; and declaring an emer-
13 gency.

14 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

15 Section 1. DEFINITIONS. As used in this Act:

16 (a) "educational board" shall include board of educa-
17 tion; school board, and any other agency or agent there-
18 of which has the authority to engage an educational
19 employee to serve in a public school of Alaska.

20 (b) "education employee" shall include superintendent,
21 principal, supervisor, classroom teacher or any other
22 certified employee.

23 (c) "incompetency" means the unintentional or inten-
24 tional failure to perform one's legitimate duties in
25 a satisfactory manner with respect to (1) one's
26 present position and (2) any vacant position at the
27 disposal of the board concerned.

28 (d) "immorality" means the commission of any act
29 which involves moral turpitude and which, if committed

1 by any citizen generally, would be punishable by law.
2 Section 2. CONTRACTS (a) Every educational board shall
3 enter into contract with the educational employees
4 who, on the effective date of this Act, are serving
5 in its employ in the public schools of Alaska, at or
6 before the beginning of the first school year beginn-
7 ing after such date and shall enter into contract
8 with all other educational employees who may serve
9 in its employ in the public schools of Alaska or
10 before the beginning of such service. Contracts
11 made under the provisions of this paragraph shall be-
12 come effective on or before the final dates by which
13 they must be executed.

14 (b) The said contracts shall be in writing, and shall
15 be in conformity with the laws of Alaska; Provided
16 further that the Commissioner of Education shall
17 prescribe uniform contract forms for the engagement
18 of educational employees and shall regulate the dis-
19 tribution and disposition of such contracts.

20 (c) No contract shall be terminated except by the
21 dismissal of the educational employee in accordance
22 with the provisions of this Act, or by the resignation,
23 retirement, or death of such employee.

24 Section 3. DISMISSAL AND DEMOTION. (a) No educational
25 employee, except as provided in paragraph (b) of this
26 Section, shall be dismissed for any cause other than
27 incompetency, immorality, physical or mental disa-
28 bility, and no such employee shall be demoted for
29 any cause other than incompetency, and such demotion

1 shall be based upon a specified incompetence.

2 (b) Any educational employee may be dismissed or
3 demoted if necessitated by the required elimination
4 of a position due to decreased school enrollment or
5 by a change in school organization which is demon-
6 strably desirable. Such dismissal or demotion will
7 be governed by due consideration of the employee's
8 length of service, type of duty status, and opport-
9 unity for transfer.

10 (1) No additional educational employee shall be
11 engaged to fill any vacant position if any educa-
12 tional employee has been, or is about to be,
13 ordered dismissed or demoted by the educational
14 board, and who has not been restored to his ori-
15 ginal status, who is qualified for, and willing to
16 accept, such position.

17 (2) Every educational employee who is dismissed
18 under the provisions of this paragraph shall be
19 given by the board concerned, prior to the effective
20 date of such dismissal, sixty (60) days' salary
21 at per diem rate.

22 Section 4. REDUCTION OF SALARY OR OTHER PENALTIES. (a) No
23 educational employee serving in a public school of
24 Alaska shall have his salary reduced below that of
25 the preceding year for any cause except where all such
26 employees shall be reduced uniformly.

27 (b) No such employee shall be suspended without pay,
28 fined, or penalized in any manner except for an allow-
29 able cause of a specified nature and provided further

1 that such cause shall not include failure to perform
2 duties which are not legitimate duties, and shall not
3 pertain to race, creed, religion, marital status,
4 organizational affiliation, or to the exercise of
5 civil or other rights which citizens may exercise
6 lawfully.

7 Sec. 9. INSTITUTION OF PROCEEDINGS. The dismissal, demot-
8 ion or penalization of any educational employee in a
9 public school of Alaska shall be instituted in
10 accordance with the following provisions:

11 (a) Any administrative officer concerned shall file
12 with the secretary of the educational board concerned
13 a written, signed, duly detailed, and duly verified
14 statement in duplicate, setting forth the alleged
15 facts in the case. The said secretary shall bring
16 the statement to the attention of the board within
17 seven days after its receipt.

18 (b) The said board upon investigation shall either
19 dismiss the matter or order such penalty as it may
20 consider justified under the terms of this Act.

21 (c) When serving its order upon the employee, the
22 board shall enclose therewith (1) a copy of the Act,
23 (2) a copy of the statement filed with the secretary
24 of the board, (3) a written, signed, and duly de-
25 tailed report by the board of its findings in the
26 matter, and (4) a notice informing the employee of the
27 procedure for filing a request for a hearing.

28 (d) No educational board shall serve its order for
29 the dismissal or demotion of an employee because of

1. incompetency unless at least sixty school days prior
2. thereto the said employee shall have received from the
3. board a written warning specifying the nature of
4. such faults to date so as to furnish said employee
5. an opportunity to correct them, and unless at the req-
6. uest of the employee, and if such transfer is practi-
7. cable, he shall have been granted the opportunity to
8. serve at least thirty school days of the intervening
9. period under another superior officer;

10. (c) No order of any board shall become effective while
11. the employee concerned has the right under the terms
12. of this Act to have the order set aside or amended;
13. and no order of dismissal or demotion under para-
14. graph (b) of Sec. 3 of this Act shall become effec-
15. tive except after sixty days' written notice
16. to the said employee; Provided further that no order
17. of any board shall be served upon any employee except
18. during a school year.

19. (f) Any employee against whom charges have been filed
20. with the secretary of an educational board, which,
21. if wholly or partly correct, warrant the dismissal
22. of the employee because of immorality, mental or
23. physical disability, or incompetency, or the demotion
24. of the employee because of incompetency, may be
25. suspended; Provided that pending the board's order
26. in the matter, the pay of the employee shall not
27. be affected. Should the board decide to order the
28. dismissal or demotion of the employee, it may suspend
29. the said employee without pay immediately; provided

1 that if the said employee is exonerated of the
2 charges, he shall be entitled to all salary or com-
3 pensation accruing during the period of such suspen-
4 sion.

5 (g) No notice of suspension issued under provision (f)
6 of this Section shall be deemed an "order" as the term
7 is used in this Act.

8 Section 6. RIGHT OF, AND ARRANGEMENT OF, HEARING, (a)

9 After receiving an order of educational board, the em-
10 ployee concerned shall have the option of requesting
11 a hearing before the said educational board, but such
12 right shall expire ten days after the receipt of the
13 order; Provided that no such right shall expire
14 within sixty days after this Act takes effect.

15 (b) The educational board, within five days of
16 receiving such request, shall give adequate notifi-
17 cation to the employee and the complainant of the
18 exact time and reasonable place of hearing with its
19 regulations governing such hearing. The time of
20 hearing shall be not less than ten days nor more
21 than fifteen days after such notification, and shall
22 be held as fixed unless otherwise agreed to by both
23 the employee and complainant. If the cases of two
24 or more employees are deemed by the educational
25 board to be essentially similar, they may be tried
26 at the same hearing.

27 Section 7. CONDUCT OF HEARING. The hearing before the
28 educational board shall be conducted in accordance
29 with the following provisions:

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(a) The hearing shall be public unless otherwise requested by the employee.

(b) The employee and the complainant shall each have the right to be heard in person, to be represented by freely selected counsel, to call witnesses, to examine and cross-examine such witnesses, to inspect all documentary evidence produced, and to present such other evidence as may be relevant to the matter under inquiry. Provided that the burden of such proof shall be upon the complainant.

(c) The educational board shall have the power to subpoena witnesses and documentary evidence and shall exercise such power at the request of either side. If any person shall refuse to appear and testify in answer to such subpoena, either side may petition the appropriate court setting forth the facts, which court shall thereupon issue its subpoena commanding such person to appear and testify before the said educational court. Any failure to obey such order of the court may be punished by the said court as contempt thereof.

(d) All testimony shall be taken under oath or affirmation, to be administered by any member of the educational board under the authority hereby granted. Any person making a false oath or affirmation shall be guilty of perjury and punished accordingly.

(e) All action taken by the educational board shall be by a majority vote of all the members thereof, to be recorded by roll-call.

(f) The educational board shall employ a competent and

1 disinterested stenographer to make a literal record
2 of the full proceedings at the hearing, which record
3 shall include all evidence both oral and documentary
4 and the decision and order of the educational board.
5 Such stenographer, within five days after the decision
6 and order have been issued, shall send the employee
7 and the complainant one copy each of a transcript of
8 such record, which shall be certified by the stenog-
9 grapher and by the chairman of the educational board to
10 be complete and correct.

11 (g) Unless otherwise agreed to by both the employee
12 and the complainant, the hearing shall be concluded
13 within ten days after its commencement.

14 (h) After presentment of the case, as hereinbefore
15 provided, and after a full and impartial consideration
16 of the evidence adduced, the educational board on the
17 basis of such evidence and within five days after the
18 conclusion of the hearing, shall render a decision in
19 writing, setting aside, amending in a specific manner,
20 or sustaining the order in dispute. The educational
21 board thereupon shall serve that order upon the employ-
22 ee and the complainant (or upon the employee).

23 Section 8. RIGHT TO, AND ARRANGEMENT OF APPEAL. (a)

24 After receiving the order of the educational board,
25 the employee and/or the complainant shall have the
26 right to request a hearing before the appropriate Dist-
27 rict Court, but their respective rights shall expire
28 ten days after the receipt of the order, and if, prior
29 to such date, neither has requested the hearing, the

1 order shall thereupon become final. The side requesting
2 such hearing shall, when making such request, send
3 copies thereof to the opposing side.

4 (b) The said court, after receiving such request,
5 shall set the exact time for the hearing, which hear-
6 ing shall be held, upon due notice to the parties con-
7 cerned, at the earliest time possible and shall take
8 precedence over all other cases, except older matters
9 of the same character and except matters to which
10 special preference may be given by law; Provided that
11 such hearing shall not be held within ten days after
12 the court receives the said request. If the cases of
13 two or more educational employees are deemed by the
14 court to be essentially similar, they may be tried at
15 the same hearing.

16 Section 9. CONDUCT OF APPEAL. Upon the conclusion of the
17 hearing, the court shall render whatever decision it
18 considers just, setting aside, amending in a specific
19 manner, or sustaining the order in dispute, Provided,
20 upon request such hearing shall be de novo.

21 Section 10. RESIGNATIONS. No educational employee serving
22 in a public school of Alaska shall resign, except by
23 mutual consent, without giving a written notice to the
24 board concerned at least thirty days prior to the
25 effective date of such resignation, but resignation in
26 any other manner shall terminate any contract between
27 the said employee and the said educational board with-
28 out penalty to either party.

29 Section 11. EDUCATIONAL EMPLOYEES ON LEAVE OF ABSENCE. ALL

1 the provisions of this Act applying to educational
2 employees serving in the public schools of this Terri-
3 tory shall be construed to apply both to educational
4 employees on leave of absence from such service and to
5 educational employees in active service.

6 Section 12. SENDING OF WRITTEN COMMUNICATIONS. All orders,
7 reports and other written communications provided for
8 under the terms of this Act shall be sent to the
9 parties concerned at their last known addresses and by
10 registered mail, with postage prepaid. Except where
11 the contrary is stated in this Act such communications,
12 if intended for boards and commissions, shall be
13 addressed to the respective secretaries thereof, and
14 if intended for courts, shall be addressed to the res-
15 pective clerks thereof. The receipt of such communica-
16 tions by such individuals shall constitute receipt by
17 the board, commission, or court concerned.

18 Section 13. INCONSISTENT LAWS. All laws and parts of law
19 inconsistent with the provisions of this Act are hereby
20 repealed.

21 Section 14. INDEPENDENCE OF PROVISIONS. If any provisions
22 of this Act, or the application thereof to any person
23 or circumstance, shall be adjudged invalid or uncon-
24 stitutional, such adjudication shall not invalidate,
25 impair, or affect the remainder of this Act, or the
26 application of such provision to any other person or
27 circumstance.

28 Section 15. SHORT TITLE. This Act shall be known and may
29 be cited as "The Fair Dismissal Act of 1957."

1. Section 16. REPEALER. Section 37-2-7 (d), ACLA, 1949, is
2. hereby repealed.
3. Section 17. EMERGENCY. An emergency is hereby declared to
4. exist and this Act shall take effect immediately upon
5. its passage and approval, or upon its becoming law
6. without such approval.

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