

H B

5 2 1

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 9, 1994

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4/6/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HR 521

HOUSE BILL NO. 521

JUDICIAL REVIEW:TEACHER TENURE DECISIONS

"An Act relating to judicial review of decisions of school boards relating to nonretention or dismissal of teachers."

RECOMMENDATIONS:

be replaced with _____ the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Education

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Signature]
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 521

Revision Date: _____

Department Affected: Department of Education

Title: Judicial Review: Teacher Tenure Decisions

BRU: Executive Administration

Component: Commissioner's Office

Sponsor: House State Affairs Committee

Requestor: House State Affairs Committee

COMPONENT SERIAL NO. _____
185

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

This legislation will have no fiscal impact on the Department of Education. However, passage of HB 521 may result in considerable savings to the local school districts.

Prepared by: Sheila Peterson
Division: Commissioner's Office

Phone: 465-2803
Date: March 15, 1994

Approved by Commissioner: _____
Agency: Education

Jerry Covey
Date: March 15, 1994

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Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 4/16/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 SB 160: MEMORIAL SCHOLARSHIP LOANS
 SB 266: DIRECT-ENTRY MIDWIVES / BOARD / PRACTICES
BILLS HELD OVER
 HB 521: JUDICIAL REVIEW: TEACHER TENURE DECISIONS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Auge Kanne	Certified Direct-Entry	740 5th St Apt 3 Juneau, Ak.	99801	463-3797		(Y) N	SB 266
Terry Ahness Taylor	Sen Taylor	State Capitol		6550 →		(Y) N	SB 160
Diane Barrans	Podiatric	3030 Vintage		6743		Y N	SB 160 Available for Query
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

H/HESS ROLL CALL FORM

BILL HB 521 DATE 4/10/94
 TAPE 94-124 NUMBER 082
 SUBJECT OF VOTE TO PASS HB 521 OUT OF COMMITTEE
WITH INDIVIDUAL RECOMMENDATION

MEMBER	YEA	NAY	ABS
Rep. Cynthia Toohey	✓	—	—
Rep. Con Bunde	—	✓	—
Rep. Gary Davis	✓	—	—
Rep. Al Vezey	✓	—	—
Rep. Pete Kott	✓	—	—
Rep. Harley Olberg	✓	—	—
Rep. Bettye Davis	—	—	—
Rep. Irene Nicholia	✓	—	—
Rep. Tom Brice	—	—	—
TOTAL	<u>6</u>	<u>1</u>	—

+++++

BILL _____ DATE _____
 TAPE 94- NUMBER _____
 SUBJECT OF VOTE _____

MEMBER	YEA	NAY	ABS
Rep. Con Bunde	—	—	—
Rep. Gary Davis	—	—	—
Rep. Al Vezey	—	—	—
Rep. Pete Kott	—	—	—
Rep. Harley Olberg	—	—	—
Rep. Bettye Davis	—	—	—
Rep. Irene Nicholia	—	—	—
Rep. Tom Brice	—	—	—
Rep. Cynthia Toohey	—	—	—
TOTAL	—	—	—

**FAX****TO:** Representative Cynthia Jookey
HB 521**DATE:** 3-30-94**FAX #:** 907-349-6722**FROM:** Alicia Newman**PAGES:** 1

1710 Commodore Drive

Anchorage, AK. 99507

I am writing to ask you to oppose HB 521. If all school administrators followed existing state regulations in observations, evaluations would be adequately documented and hearings on terminations would be fair and impartial. Ex novo trials are only used by people who were not given a full or impartial hearing.

Sincerely

Alicia Newman



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 3/22/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 *HB 533: ALLOWABLE EXPENDITURE FOR SCHOOL FUNDING
 *HB 521: JUDICIAL REVIEW: TEACHER TENURE DECISIONS
 *HR 54: SUPPORT MEDICAL SAVINGS ACCOUNT LEGISLATION
 - BILLS HELD OVER -
 HB 412: COMMUNITY CARE FACILITIES
 # INDICATES FIRST PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
PAT O'BRIEN	NSS				465-2145	(Y) N	HB 412 Answer Questions
DUANE GUILLEY	DOE	801 WEST 10TH ST STE 201	99801		465-2897	Y N	HB 533 AVAILABLE TO ANSWER QUESTIONS
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	



Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

SUBJECT OF MEETING:

DATE:

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
CLAUDIA DOUGLAS	NEA-ALASKA	114 Second JUNEAU	99801		586-3090	<input checked="" type="radio"/>	N	HB 521
CARL ROSE	AASB	316 W 11th JUNEAU	99801		61083	<input checked="" type="radio"/>	N	HB 521
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

4 REP	T	BRICE	AK	(907)000-0000
				TSFY, ALL ITEMS
5 REP	G	DAVIS	AK	(907)000-0000
				TSFY, ALL ITEMS
6 REP	A	VEEVE	AK	(907)000-0000
				TSFY, ALL ITEMS
7 REP	L	NICHOLIA	AK	(907)000-0000
				TSFY, ALL ITEMS
8	TO	OBSERVE	AK	(907)000-0000
				OBSV, ALL ITEMS
9	TO	OBSERVE		OBSV, ALL ITEMS
10	TO	OBSERVE		OBSV, ALL ITEMS
11	TO	OBSERVE		OBSV, ALL ITEMS
12	TO	OBSERVE		OBSV, ALL ITEMS
13	TO	OBSERVE		OBSV, ALL ITEMS
14	TO	OBSERVE		OBSV, ALL ITEMS
15	TO	OBSERVE		OBSV, ALL ITEMS
16	TO	TESTIFY		TSFY, ALL ITEMS
17	TO	TESTIFY		TSFY, ALL ITEMS

PARTICIPANTS IN: SITKA
 1 OR. JUNO HOLST SIT SITKA SCH. DIST TSFY, HB 521

LTN: 100-905 LEGISLATIVE TELECONFERENCE NETWORK PAGE 02
 04/10/94 17:07:26
 TON: 49564 DATE & TIME: 03/22/94 15:45 TO 17:00 STATUS: 7 STATE: IN

PARTICIPANTS IN: SITKA SIT
 BOX 179 SITKA AK 99835 (907)747-3602

PARTICIPANTS IN: KEN/SOL SOL
 1 OR. RICHARD DWARNEE KPSD TSFY, HB 521
 144 R. BIRLEY COLETONA AK 99669 (907)262-5843
 2 OR. JAMES SIBERTON KENAI TSFY, HB 521
 811 ALICE ST. #5 AK 99611 (907)233-4360

PARTICIPANTS IN: OFFNET 1 ZZZ OFF
 1 OR. LEHMAN AK TSFY, ALL ITEMS
 (907)000-0000

1174100-001
03/10/94

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 06
17:07:26

TEL: 90564 DATE & TIME: 03/21/94 15:45 TO 17:00 STATUS:7 STAFF: JN

*** ORDER SUMMARY ***

SPONSOR: HHS HOUSE HEALTH, EDUCATION AND SOCIAL SERVL CHAIRS: TOOHEY
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE BURDE
CONTACT: LYNDI TEL#: (907)465-6825
TRAINING SITE: JUNEAU CAPITOL CAP106

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 3 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.
OCN REQUESTED ON 03/22/94 AND HAS 3 UPDATES

*** AGENDA ***

1 HR 521 JUDICIAL REVIEW:TEACHER TENURE DECISIONS

*** PARTICIPATING LIOS ***

BAR BARRON	COURTHOUSE #305	LOCATION STAFF
* JRU JUNEAU	CAPITOL CAP106	LOCATION STAFF
SIF SITKA	210 LAKE STREET	LOCATION STAFF
SOL KEN/SOL	34824 KALIFORSKY	LOCATION STAFF

*** VOLUNTEER & OFFERET LIES ***

ZZZ OF1 DEHBT 1 ANCHORAGE LARRY WIGGITS (907)269-2255

PARTICIPANTS IN: BARRON

1 NR. TOM	EVERITT	BAR	NORTH SLOPE B.SD TSEY, HR 521
BOX 169		BARRON	AK 99723 (907)952-5311

PARTICIPANTS IN: JUNEAU

1 REP C	BURDE	JRU	TSEY, ALL ITEMS
			AK (907)000-0000
2 REP C	TOOHEY		TSEY, ALL ITEMS
			AK (907)000-0000
3 REP H	OLBERG		TSEY, ALL ITEMS

KENAI PENINSULA BOROUGH SCHOOL DISTRICT



148 North Binkley Street • Soldotna, AK 99669-7595 • Phone 907/262-5846 • Fax 907/262-9645

March 22, 1994

Rep. Con Bunde
Room 112C, Capitol
P. O. Box V
Juneau, AK 99811

Dear Rep. Bunde:

The Kenai Peninsula Borough School District would like to go on record in support of HB521.

We just recently went through the a de novo trial for the non-retention of a tenure teacher and the district's legal costs were \$74,000. This is an exorbitant, but normal, price to pay for an employee who's performance is not satisfactory. If HB521 had been in place, our legal fees for the judicial review would have been \$20,000 to \$25,000 instead of \$74,000.

Money is tight in this district and I can assure you an extra \$50,000 has significant meaning. I view HB521 as a cost containment measure while at the same time preserving the employee's right to due process.

While we like to avoid legal fees as much as possible, and have a good track record over the years, when it does become necessary, we believe it should be done in the most cost effective way.

Not only do we have the cost of legal fees, but we also have the cost of administrative time in preparing for and participating in a de novo trial. Attached is a letter from our personnel director, Sharon Radtke, to Carl Rose that explains in more detail the problems involved.

Again, we strongly urge you to pass HB521.

Sincerely,

Richard Swarner
Executive Director
Business Management



NEA-ALASKA

Affiliated with the National Education Association

NEA-Alaska Position Paper

NEA-Alaska opposes HB 521, "An Act relating to Judicial review of decisions..."

If enacted, HB 521 would end the right of a dismissed, tenured, teacher to obtain a *trial de novo*, or new trial, before a Superior Court judge. Instead, the teacher's right of appeal would be limited to asking the judge to consider whether the school board abused its discretion when it took the dismissal action. Furthermore, new evidence, not considered by the school board, could be presented to the court. The teacher's right to ask for a jury, already questioned, would clearly be lost if HB 521 becomes law.

Alaska law giving tenured teachers the right to *trial de novo* in the Superior Court has a long history. In 1975, the Supreme Court found that the right to *trial de novo* was supported by strong policy reasons. For example, the Court stated: "It is well known that the composition of many school boards is not such as to endow them with fact-finding expertise in matters of teacher nonretention." In 1977, in another case, the Court observed: "There is no question that a judicial body, often further removed from the political pressures involved in a teacher nonretention dispute, will provide more objective perspective of the proceedings." Last fall, the Supreme Court called the right to a *de novo* trial "an additional protection" for tenured teachers.

HB 521 would upset this history. it would require judges to treat school board decisions to dismiss tenured teachers in the same manner as judges treat decisions of such neutral, expert, agencies as the Workers Compensation Board, the Professional Teaching Practices Commission, the Board of Fisheries and the Board of Game.

Those agencies are specialized bodies which have the "fact-finding expertise" which the Supreme Court says school boards lack in matters of teacher non-retention. And those agencies are neutral adjudicators--not employers of the very people whose rights they affect! Finally, getting a fair hearing from school boards is nearly impossible because school boards often "rubber stamp" the recommendation of administrators and so make the school board's hearing perfunctory at best.

HB 521 is another example of regressive legislation designed to weaken the rights of working people in Alaska.

State of Alaska

Rep. Al Vezey
Chairman
Rep. Pete Kott
Vice Chairman
Rep. Bettye Davis
Rep. Gary Davis
Rep. Harley Olberg
Rep. Jerry Sanders
Rep. Fran Ulmer



House State Affairs Committee

Session
Rm. 102
State Capitol
Juneau, AK 99801
(907) 465-3719

Interim
119 N. Cushman St.
Suite 211
Fairbanks, AK 99701
(907) 456-5081

March 14, 1994

SPONSOR STATEMENT: HB 521

"An Act relating to judicial review of decisions of school boards relating to nonretention or dismissal of teachers."

This bill eliminates the requirement for a De Novo trial for appeals of school board decisions. The record that is built during the administrative hearing can be used as part of the record for the appeal to the superior court.

This bill clarifies that appeals from board decisions will be treated as an appeal from a decision of an administrative agency under the Administrative Procedure Act.

This bill also establishes that a non-tenured teacher is not entitled to appeal a board decision to the courts.



Fairbanks North Star Borough School District

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

P.O. Box 71250 Fairbanks, Alaska 99707-1250 (907) 452-2000

Board of Education

March 1, 1994

Jerry McBeath
President
Seat C
479-2870

The Honorable Al Vezey
Alaska House of Representatives
State Capitol, MS 3100
Juneau, Alaska 99801-1182

Sue Wilken
Vice President
Seat A
474-0341

Dear Representative Vezey:

I was sorry that I missed meeting with you on a recent trip to Juneau.

Jane Hough
Treasurer
Seat D
457-7834

The Board's major concerns this legislative session are:

Joy Cook
Clerk
Seat B
488-0488

Changes to Tenure - HB84 - The grants for school improvement and extending tenure from two to four years is acceptable. However, the rest of the bill regarding tenure review boards, the make-up and duties of such boards, etc., is not acceptable. Our statutes protecting teachers as public employees have diluted our negotiating power at the local level. Please, let us set up the parameters. Many districts have very good evaluation processes, the biggest deterrent is time. Keep it simple, just extend the time.

Andy Warwick
Member
Seat F
474-9148

Open Meetings Act - Please define a meeting, allow at least two people to talk. Every time two Board members attend a school open house, we are in violation or at least the public sees it that way. It impedes the process of good local government.

Bob Boko
Member
Seat G
474-9081

De Novo Trial - \$ - Funding

Bill Burrows
Member
Seat E
451-0985

Full-Funding For Education

Steven Boyce, Lt. Col.
Eielson Air Force Base
Representative
372-3921

Thank you for allowing me to share the Board's concerns with you.

Dave Melcher, Lt. Col.
Fort Wainwright Army Post
Representative
356-2150

Sincerely yours,

Sue Wilken, President
Board of Education

Arrie Symmes
Student Representative
456-8551

SW/plh
cc: Board of Education
Superintendent

NORTH SLOPE BOROUGH SCHOOL DISTRICT

Box 169 • Barrow, Alaska 99723 • (907) 852-5311 • FAX (907) 852-5984

Patsy Aamodi, Superintendent



Nunamiut Wolves
 Nunamiut School
 P.O. Box 21029
 Anaktuvuk Pass,
 Alaska 99721
 (907) 661-3226
 FAX (907) 661-3402

March 17, 1994

Atkasuk Eagles
 Moada River School
 Atkasuk, Alaska 99791
 (907) 633-6315
 FAX (907) 633-6215

Carl Rose
 Alaska Association of School Boards
 316 W. 11th St.
 Juneau, AK 99801-1510

Barrow Whalers
 Barrow High School
 P.O. Box 8950
 Barrow, Alaska 99723
 (907) 852-8950
 FAX (907) 852-8969

Dear Carl,

HMS WOLVES
 Eben Hodson Sr.
 Memorial Middle School
 P.O. Box 3880
 Barrow, Alaska 99723
 (907) 852-3880
 FAX (907) 852-7794

The North Slope Borough School District is opposed to the "de novo" trial because of the seemingly unnecessary expenditure of funds for legal fees that instead could be used to educate our children. We have two clear examples that illustrate the high cost of going to trial after the Board has heard the termination hearing on a tenured teacher. Consider these recent examples:

Arctic Fox
 Fred Ipalook
 Elementary School
 P.O. Box 450
 Barrow, Alaska 99723
 (907) 852-4711
 FAX (907) 852-4713

Example #1: A tenured teacher was terminated for striking a child. The teacher requested a hearing. The Board hired our attorneys and a hearing officer for the hearing. This was expensive, but little compared to the \$126,000 in additional legal fees the District spent for the "de novo" trial. This money could have purchased staff and supplies that would have helped educate our children instead of enriching our attorneys.

Kavealook Rams
 Harold Kavealook School
 P.O. Box 10
 Kaktovik, Alaska 99747
 (907) 640-6628
 FAX (907) 640-6718

Example #2: A tenured teacher was terminated for incompetence. As in the previous example the teacher requested and received a hearing. The legal fees for our attorneys and the hearing officer were substantial. The preparation for the trial and settlement negotiations involved another \$29,000 in legal fees. In addition our insurance company paid the ex-teacher \$59,500 as a settlement to avoid the legal expenses of a trial. Total legal fees and settlement cost subsequent to the board hearing for this example, which did not even go to trial, were over \$88,500. This is almost prohibitively expensive.

Nulqsut Trappers
 Trapper School
 Nulqsut, Alaska 99789
 (907) 480-6712
 FAX (907) 480-6621

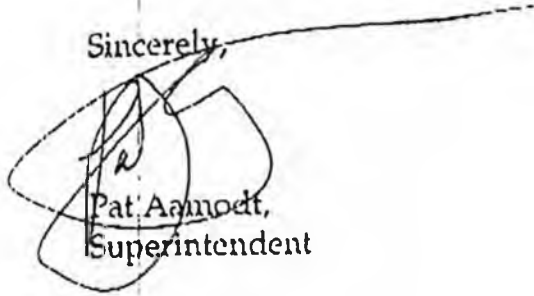
Tikigaq Harpooners
 Tikigaq School
 P.O. Box 148
 Point Hope, Alaska 99766
 (907) 368-2662 or 368-2663
 FAX (907) 368-2770

Cully Qavvika
 Cully School
 Point Lay, Alaska 99759
 (907) 833-2311
 FAX (907) 833-2315

Alak Huskies
 Alak School
 P.O. Box 10
 Wehnwright, Alaska 99782
 (907) 763-2541
 FAX (907) 763-2550

We oppose the "de novo" trial because of the tremendous legal expenses involved, as shown in the above two examples.

Sincerely,

A handwritten signature in black ink, appearing to be "Pat Aamodt", is written over a circular stamp. The signature is somewhat stylized and overlaps the text below it.

Pat Aamodt,
Superintendent

PA/gcc

Enc: Board Resolution
cc: Board of Education



Fairbanks North Star Borough School District

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

P.O. Box 71250 Fairbanks, Alaska 99707-1250 (907) 452-2000

February 17, 1994

Association of Alaska School Boards
Carl Rose, Executive Director
316 W 11th Street
Juneau, Alaska 99801-1510

Dear Mr. Rose:

This is in response to your request for information regarding hearing and litigation costs in personnel matters. The Fairbanks North Star Borough School District currently has two cases in progress.

The first is currently being appealed by the terminated employee to the Alaska supreme court. Hearing costs for this case were \$44,512 and trial costs to date are \$38,095, for a total of \$82,607.

The second is scheduled for trial in superior court in January 1995. Hearing costs in this case were \$82,920 and trial costs to date are \$30,010, for a total of \$112,930.

Please let me know if you need additional information.

Sincerely,

Barbara M. Martin
Assistant Superintendent
Business and Finance

SITKA SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES



JOHN HOLST
SUPERINTENDENT

P.O. BOX 179, SITKA, ALASKA 99836
PH 907-747-8822
FAX 907-747-6330

March 18, 1994

Carl Rose, Executive Director
Association of Alaska School Boards
316 W. 11th Street
Juneau, AK 99801-1510

Dear Mr. Rose:

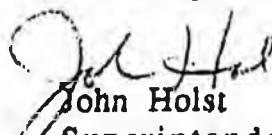
As per your request concerning the costs of a recent termination case involving the Sitka School District, we are providing the following information.

The legal fees paid directly by the Sitka School District was \$39,963. This included the original hearing before the School Board. At that point, an attorney and legal firm was appointed by our insurance carrier. They handled the case from that point onward. Their costs of the de novo trial were apparently \$50,386 and the costs associated with the appeal to the Supreme Court another \$24,067. Since the case has now been remanded to the Superior Court, we do not know at this time what the costs will be to process this next step.

This makes no accomodation for the administrative costs associated with a termination which often require 60%-70% of the supervisor's time for one to two years of close supervision and documentation prior to the actual termination recommendation to the Board. This item alone would amount to another \$100,000 in actual costs.

If you need any clarification of this information, feel free to contact me.

Sincerely,


John Holst
Superintendent

KENAI

Date JAN 21 1994

Peninsula Clarion

Teacher hired back, but district to appeal ruling

By JANIE LAWLEY
Peninsula Clarion

George Clouston has been rehired as a teacher in the Kenai Peninsula Borough School District, but the school board isn't happy with his reinstatement and plans to appeal it to the Supreme Court.

The board decided Monday to appeal a judge's order to rehire Clouston, who was fired in 1991 for allegedly sleeping in class.

The board voted 6 to 1 in favor of appealing the superior court judge's order that the district rehire him. Board member Neils Anderson voted against the idea.

See TEACHER, page 9

...Teacher

Continued from page 1

The board didn't spend any time discussing the issue, which was included in a consent agenda package.

Sharon Radtke, personnel director, said that Clouston has been given a full-time teaching position at Skyview High School. He is teaching woodshop, math and study skills.

School Board President Betty Obendorf said she believes the district needs to pursue an appeal because it disagrees with the findings of Superior Court Judge M. Francis Neville. She ordered the district to rehire Clouston and to pay him damages for lost earnings of about \$90,500.

"I think that because of our disagreement and disappointment about

the judicial findings that we should go ahead and appeal," Obendorf said.

John Patterson, the attorney for Clouston, said that he wasn't surprised by the district's decision to appeal. However, he said he doesn't know what the district is basing its appeal on.

"I haven't the foggiest notion of what they will appeal. Usually, you have to have some reason for an appeal," Patterson said.

Clouston, a former shop teacher who worked 11 years with the district, was fired by the district in 1991 for what it believed to be incompetency and substantial non-compliance.

The charges stemmed from an incident that occurred in February of 1991 while Clouston was teaching at Soldotna High School. The district based its decision to fire him on the

belief that an employee from Kenai Supply found Clouston sleeping in his office.

In addition, the district believed that Clouston misrepresented it during a phone call to the business later in which he allegedly said he would get physical with the driver and not purchase supplies there if he returned to the school.


Clouston appealed the district's decision and it went to Superior Court. It was here that Judge Neville ordered the district to reinstate him and to pay him the salary he would have been earning if he wouldn't have been fired.

The district has spent about \$74,000 on the lawsuit so far. On Thursday, Radtke estimated that the appeal will run about \$15,000. The district's attorney is working on the appeal now.

ASSOCIATION OF ALASKA SCHOOL BOARDS

316 W. 11th St. • Juneau, Alaska 99801-1510
(907) 586-1083 • Fax (907) 586-2995

To: The Honorable Con Bunde, Co-Chair, HESS
The Honorable Cynthia Toohey, Co-Chair, HESS
Members of the HESS Committee

From:  Carl F. N. Rose, Executive Director, AASB

Date: March 22, 1994

Re: HB521: An act relating to judicial review of decisions of school boards relating to non-retention or dismissal of teachers

The Association of Alaska School Boards supports the passage of HB521.

Under AS14.20.205 Judicial Review: a school district is obligated to submit to a trial de novo (a new trial) if a decision of the school board is unfavorable to a teacher, and the teacher appeals the decision by the board to non-retain or dismiss them. This is an extraordinary standard that has not been extended to any other group of employees. AASB views this requirement to be both duplicative and extremely costly.

The history of de novo trials in various school districts has established a pattern of unnecessary legal expenses. We feel that, by simply adding a new trial, does not improve the due process protection for an employee.

HB521 will provide an opportunity for the superior court to review the established record of the local hearing. With HB521 a teacher will still be able to appeal a school board's decision to the superior court.

The question is; "Has the school board provided a fair and impartial hearing?" If the school board's action is in question, the superior court should review the record of the hearing to ascertain that judgement. If not, there is no need for a new trial.

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

MEMORANDUM

March 22, 1994

TO: LARRY WIGET
DIRECTOR/GOVERNMENT RELATIONS

FROM: LEE WILSON *LW*
EXECUTIVE DIRECTOR/LABOR RELATIONS

SUBJECT: HB 521, REGARDING TEACHER ACCESS TO DE NOVO TRIAL

We support the passage of HB 521.

The current provisions of AS 14.20.205, in combination with very generous tenure benefits, confer upon Alaska teachers a measure of job security unheard of in other employment arenas. That security imposes an extraordinary burden on School Districts which attempt to remove from the teaching ranks those whose performance insults public expectations and inhibits student growth.

Specifically, teachers judged by elected school boards to be unfit for duty - following lengthy and formal evidentiary hearing, usually before trained hearing officers, during which teachers may call and examine witnesses and be represented by legal counsel - have the option to begin the process all over again, in Superior Court. They may request, and must receive, a trial *de novo*, "a new trial", from scratch. Effectively, teachers can secure two complete trials over the same issues. The second trial typically occurs more than a year after the hearing before the school board, thus increasing the difficulty and cost of securing testimony from witnesses who may be out of state, or out of country. In a recent case, in Anchorage, after the District spent roughly \$20,000 to prevail before a hearing officer, it was forced to expend an additional \$100,000 to achieve the same result in Superior Court. All witnesses used in the hearing before the School Board were required to testify again at trial. All arguments, all discovery, all briefs, were recreated and submitted to a judge. Moreover, the motion practices in civil trials increase costs and cause substantial delays.

HB 521 would protect teachers by giving them access to court review of an administrative judgement, following a fair hearing before an impartial arbitrator. This process is common to employees covered by collective bargaining agreements. The standards which govern courts during such review processes are well established and well known. Basically, in order for an award of a hearing officer to be overturned by a court, the appealing party is required to demonstrate that a substantial error in fact or law was made. The burden of proof rests clearly on the appellant.

If passed, this bill would place teachers in this state on an equal footing with other represented employees. A review of the established record of the hearing, to determine if a substantial error in law or fact was made will be provided. What will be lost is the extraordinary and completely unwarranted second evidentiary proceeding in Superior Court.



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

148 North Binkley Street • Soldotna, AK 99669-7598 • Phone 907/262-5846 • Fax 907/262-9645

March 15, 1994

TO: Carl Rose
 FROM: *Chris* Chris Monfor/ Personnel
 Subject: Costs for Legal Services in Non-Retention of Tenured Teacher

According to Dick Swarner, KPBSD Business Manager, the costs thus far in the non retention legal fees for a tenured teacher have been \$74,000 with another \$20,000 anticipated in the appeal to the Supreme Court.

According to Dick we also lost another non-retention case a number of years ago that cost the district \$50,000.

As soon as Sharon returns I'll pass on the information you gave me so she can respond to the "chilling effective" these cases have on the district financially as well as the effects it has on administrators, etc.

If we can be of further help, please let us know.



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

148 North Binkley Street • Soldotna, AK 99669-7598 • Phone 907/262-5946 • Fax 907/262-9645

March 20, 1994

Carl Rose
Executive Director, AASB
316 11th Street
Juneau, AK 99801-1510

Dear Carl:

I understand you will be speaking in favor of HB ⁵²¹~~531~~ - legislation, which would, if enacted, amend Section I AK 14.20.205 to make the scope of judicial review be the same as an appeal from a decision of an administrative agency under AS 44.62.

Currently, as you know, once a tenured teacher is recommended for termination or dismissal, the recommendation is acted upon by the School Board. At that juncture, the teacher can appeal the Board's decision to a De Novo trial in superior court.

As Executive Director of Personnel for Kenai School District, I have had recent experience with the current process which allows for the De Novo trial appeal. This process is expensive, time consuming, and puts the District at a distinct disadvantage, since the Board hearing allows time for the defense to hear District testimony, and use the created record as it prepares for De Novo trial. At the same time, the District is not allowed to use the record which it has created for the Board hearing in preparation of further testimony.

School Boards statutorily are assigned a wide range of responsibilities, one of the most serious being conducting a fair and impartial hearing. These hearings take on all the elements of a trial. Testimony is given on-record, under oath. Legal counsel is used. Fair, impartial hearings allowing for due process are real expectations, and no participant should settle for less. The new legislation would allow for a judicial review of the Board process to see if a fair and impartial hearing was conducted, and that all aspects of due process were allowed.

It is important that all people be protected from an abusive system. A review of process is not an improper procedure. It is, however, unfair to saddle districts with the burden of proof twice, without benefits of using the first preparation for the second presentation, when, in fact, the defense uses the District record to prepare for the De Novo trial.

If the proposed legislation was enacted before Kenai's recent case, the cost would have been approximately 1/4 of what it has been.

The Kenai District is in strong support of the proposed language of HB 52/ ~~131~~. We, indeed, are proponents of a fair, impartial hearing process, with all participants having the benefits of due process.

If I can be of any further help in urging serious consideration of their amendment, please contact me.

Sincerely,



Sharon Radtke
Executive Director, Personnel