

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
2 OF THE STATE OF MONTANA
3 IN AND FOR THE COUNTY OF SILVER BOW

4 MONTANA PUBLIC EMPLOYEES ASSOCIATION, INC.,
5 a Montana non-profit corporation,

6 Petitioner,

7 vs.

No. 63807

8 MARIO MICONE, Chief Executive of the
9 Government of Butte-Silver Bow; and
10 COUNCIL OF COMMISSIONERS OF THE GOVERNMENT
11 OF BUTTE-SILVER BOW,

12 Respondents.

13 **FILED**

MAR 7 1979

DAN BUKVICH, CLERK

By M. R. Joyce
DEPUTY CLERK

14 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

15 This matter came on for hearing in open court on ^{CLERK}
16 November 3, 15, and 22nd, 1978. Representatives of
17 petitioner, MONTANA PUBLIC EMPLOYEES ASSOCIATION, INC.,
18 appeared with counsel Barry L. Hjort, and were sworn and
19 testified. MARIO MICONE, and another witness for the
20 respondents, appeared with counsel Robert McCarthy, and
21 Deirdre Caughlan, and were also sworn and testified.

22 From the evidence and testimony presented at hearing,
23 the Court makes the following:

24 FINDINGS OF FACT

25 I.

26 That petitioner, Montana Public Employees Association,
27 Inc., is a duly organized and existing Montana non-profit
28 corporation which is recognized under Montana law as a
29 labor organization approved and certified to represent the
30 interests of public employees who have banded together and
31 chosen said petitioner as their exclusive representative
32 for collective bargaining purposes.

II.

That respondent, Mario Micone, is the duly elected,

1 qualified and acting chief executive of the Government of
2 Butte-Silver Bow, and that the Council of Commissioners of
3 the Government of Butte-Silver bow is vested with the
4 legislative power of said government in accordance with
5 provisions of the laws of the State of Montana and the
6 charter and laws of said government.

7 III.

8 That petitioner and respondents, and the predecessor
9 county government of the County of Silver Bow, have, since
10 1973, entered into four (4) separate collective bargaining
11 agreements, with the latest such agreement bearing an
12 effective date of May 5, 1978. (See petitioner's Exhibits
13 1 through 4.)

14 IV.

15 That the present collective bargaining agreement in
16 effect between the parties provides in the preamble that:

17 "This contract applies to the following bargaining
18 unit of employees of the Employer:

- 19 1. All chief deputies, deputies and assis-
20 tants of the following elected officials
21 of Butte-Silver Bow, State of Montana:
Auditor, Clerk and Recorder, Clerk of
the Court, Treasurer.
- 22 2. All other secretarial, bookkeeping, steno-
23 graphic and clerical employees of Butte-
Silver Bow, authorized by the laws of
Montana.
- 24 3. All Butte-Silver Bow Hospital general
25 office clerical personnel to include:
26 Purchasing Department, Secretaries,
27 Clerks, including Insurance, Payroll,
Billing, Admitting, Posting, all Wards,
28 Out Patient-Admitting, Pharmacy Aids,
Medical Records, P.B.X. Operators and
E.K.G. Technicians.
- 29 4. All other employees of Butte-Silver Bow
30 who choose to be represented by the
Association."

31 and said Agreement further provides in Article 6, Section
32 5, that:

1 "The Association shall be provided payroll deduction
2 for its dues in accordance with existing state laws."

3 V.

4 That each of the four (4) collective bargaining agree-
5 ments which have been entered into by the parties have
6 contained the above list of provisions with respect to
7 bargaining unit scope and the right of the Association to
8 dues deduction for its members.

9 VI.

10 That pursuant to that section of the present, and of
11 past collective bargaining agreements between the parties,
12 which permits: "all other employees of Butte-Silver Bow
13 who choose to be represented by the Association" to join
14 the petitioner's bargaining unit, certain deputy sheriff
15 employees and clerical employees of Silver Bow General
16 Hospital joined petitioner's organization by election in
17 writing (dues deduction authorization), designating
18 petitioner to be their exclusive bargaining representative,
19 and elected to be within the coverage of past collective
20 bargaining agreements between the parties.

21 VII.

22 That pursuant to the above-referenced section of the
23 existing collective bargaining agreement in effect between
24 the parties, one Leo Mock, foreman of the Silver Bow
25 County Weed Control Board joined petitioner's organization
26 and availed himself of the protection and benefits of a
27 past collective bargaining agreement negotiated and
28 ratified between the parties.

29 VIII.

30 That during the month of April or early May, 1978,
31 James Fogarty, Butte-Silver Bow Clerk and Recorder, was
32 directed by the Government of Butte-Silver Bow payroll

1 office to cease deducting membership dues in petitioner's
2 association for certain employees of the Government of
3 Butte-Silver Bow.

4 IX.

5 That James Fogarty did then direct persons in his
6 office responsible for handling dues deduction for
7 employees of the Government of Butte-Silver Bow to cease
8 withholding dues from the paychecks of the following
9 persons:

10 June Buckley, Cyrilla Meade, Kristie Burns, Sherrie
11 Ryan, Gloria Cameron, Kathryn Gordon, Cynthia Smyth,
12 Kathy Lamb, Lori Maloney, Barbara Greenfield, Ann
13 McCartney, Ellen Kelly, Kay Markovich, Eileen Reilly,
14 Helen Miller, Shiela St. Pierre, Anthony Mazzola,
Joan Lawrence, Kathy Shea, Helen McFaul, Dee Dee
Krause, Ollie Gardner, Mary Stoddard, Margaret
Phillips, Sarah Sullivan, Tony Bierklo, Carl Bartch,
Valarie Constantine

15 all of whom elected, in writing, to be members of
16 petitioner's association, as their exclusive bargaining
17 representative. (See Exhibit 18.)

18 X.

19 That petitioner, through its Executive Director, did
20 on May 26, 1978, demand of the Chief Executive of the
21 Government of Butte-Silver Bow that payroll deductions for
22 the above employees be recommenced.

23 XI.

24 That respondent Chief Executive denied such demand
25 and asserted that said employees were not entitled to dues
26 deduction because they were persons hired after the con-
27 solidation of the new government of Butte-Silver Bow on
28 May 1, 1977, and as such, were not members of petitioner's
29 bargaining unit and therefore not entitled to the right
30 of dues deduction.

31 XII.

32 That the Government of Butte-Silver Bow has a policy

1 of permitting its employees who do not belong to particular
2 bargaining units, or to any bargaining unit at all, to have
3 dues deducted from their paychecks for membership in labor
4 organizations, including petitioner's organization.

5 XIII.

6 That the parties have entered into a collective
7 bargaining contract whereby respondents have agreed in
8 clear and unambiguous terms, to-wit: "all other employees
9 of Butte-Silver Bow who choose to be represented by the
10 Association," to permit any employee of the Government of
11 Butte-Silver Bow who so desires to join and be represented
12 by petitioner's organization.

13 XIV.

14 That subsequent to the denial by respondent Micone of
15 petitioner's demand for recommencement of dues deduction
16 for the affected employees represented by petitioner herein,
17 petitioner filed this action on October 11, 1978, seeking
18 a Writ of Mandamus to compel the government of Butte-Silver
19 Bow to recommence taking dues deductions from the payroll
20 check of each employee of the Government of Butte-Silver
21 Bow who is a member of petitioner's association and who has
22 signed the proper payroll authorization; and further,
23 seeking a declaratory judgment that each member of
24 petitioner's collective bargaining unit is entitled to all of
25 the rights, benefits and privileges of the existing
26 collective bargaining agreement in effect between the
27 parties.

28 XV.

29 That the persons whose names appear in Finding of
30 Fact IX have signed the payroll deduction authorization,
31 have elected petitioner to be their exclusive bargaining
32 representative, and have sought the rights, benefits and

1 privileges, and more particularly the wage benefits, con-
2 ferred by the collective bargaining contract presently in
3 effect between the parties and have each been denied such
4 rights, benefits, privileges and wages.

5
6 XVI.

7 That petitioner sought to file a grievance under the
8 collective bargaining agreement in effect between the
9 parties concerning the denial by respondents of the wage
10 benefits of the contract to the above-listed employees of
11 the Government of Butte-Silver Bow, and petitioner further
12 sought arbitration under the collective bargaining agree-
13 ment of respondents denial of such wages, but the demand
14 for grievance and arbitration was denied by respondents
15 and their representatives and agents. (See petitioner's
16 Exhibit 12 through 17 and Exhibit 19.)

17 XVII.

18 That every employee of the Government of Butte-Silver
19 Bow who belongs to petitioner's association and chooses to be
20 represented by said association is entitled to all the
21 rights, privileges and benefits, including wages, of the
22 collective bargaining agreement presently in effect between
23 the parties.

24 XVIII.

25 That petitioner has no plain, adequate or speedy
26 remedy in the ordinary course of law.

27 XIX.

28 That a real controversy exists between the parties
29 which is capable of resolution by this action.

30 XX.

31 That because of respondents failure and refusal to
32 observe the plain language of the collective bargaining
agreement in effect between the parties, petitioner and

1 its members suffered irreparable injury.

2 XXI.

3 That this Court has jurisdiction over the parties and
4 the subject matter of this action.

5 CONCLUSIONS OF LAW

6 I.

7 That the Court has jurisdiction over the subject
8 matter and parties to this action.

9 II.

10 That petitioner has no plain, adequate or speedy
11 remedy in the ordinary course of law.

12 III.

13 That it is provided in Section 59-1612, RCM 1947, that:

14 "Upon written authorization of any public employee
15 in the bargaining unit, the public employer shall
16 deduct from the pay of the public employee the
17 monthly amount of dues as certified by the secretary
18 of the exclusive representative and shall deliver
19 the dues to the treasurer of the exclusive repre-
20 sentative."

21 IV.

22 That respondents have no discretion to deny the
23 withholding of dues deductions for employees represented
24 by petitioner and respondents further have a clear legal
25 duty to withhold properly authorized dues deductions from
26 the payroll checks of its employees and to pay the full
27 sum of said dues deductions to petitioner as the exclusive
28 representative of the affected employees.

29 V.

30 That the collective bargaining agreement in effect
31 between the parties clearly and unambiguously permits any
32 employee of the Government of Butte-Silver Bow who chooses
33 to be represented by petitioner's association to come
34 within the coverage of the collective bargaining
35 agreements, terms and conditions.

1 VI.

2 That respondents have failed to observe the plain
3 language of the collective bargaining agreement in effect
4 between the parties and certain of petitioner's members
5 have been improperly denied rights, privileges, and
6 benefits to which they are entitled under the collective
7 bargaining agreement.

8 VII.

9 That a real and a justifiable controversy exists
10 between the parties.

11 From the foregoing Findings of Fact and Conclusions
12 of Law, the Court makes the following:

13 ORDER

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

15 1. Respondents and their agents and representatives
16 are mandated to immediately commence deducting the dues
17 of those employees of the Government of Butte-Silver Bow
18 who have submitted proper authorization for the same;

19 2. That the collective bargaining agreement presently
20 in effect between the parties permits, by its terms, any
21 employee of the Government of Butte-Silver Bow who chooses
22 to be represented by the Association, to be entitled to all
23 of the rights, privileges, and benefits, including wages,
24 which are conferred upon bargaining unit members under
25 the terms of the collective bargaining contract presently
26 in effect between the parties;

27 3. That petitioner shall have their costs and dis-
28 bursements herein, including reasonable attorney's fees
29 to be determined at a hearing in this matter on the 16th
30 day of March, 1979, at 11:00 o'clock A.M.

31 DATED this 7th day of March, 1979.

32 
ARNOLD OLSEN, DISTRICT JUDGE