

BEFORE THE BOARD OF PERSONNEL APPEALS

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, )  
AND HELPERS--LOCAL 448, )  
Complainant, )  
-vs- )  
RAVALLI COUNTY COMMISSIONERS, )  
Respondents. )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER AS  
RECOMMENDED TO THE  
BOARD OF PERSONNEL APPEALS.

ULP-4-1973

The above-entitled matter came on for hearing before Peter O. Maltese, Esq., duly appointed hearing examiner for the Board of Personnel Appeals, in Hamilton, Montana on December 7, 1973, (unless otherwise specified, all dates herein are 1973), pursuant to a complaint filed by the above-entitled Complainant in accordance with Section 59-1607, R.C.M., 1947. The hearing was held after a notice of hearing and a copy of the complaint had been personally served on Howard Hammer, Ravalli County Commissioner, November 28, by Robert R. Jensen, Executive Secretary of the Board of Personnel Appeals and after a notice of hearing had been sent by certified mail, Number 436873 and received on December 3rd by the Complainant.

The Complainant was represented by Robert Skelton, Esq. of the law firm of Skelton and Knight, Missoula, Montana; the Respondent was represented by Jeremy G. Thane, Esq. of the law firm of Worden, Thane, Haines and Williams, Missoula, Montana.

Basically at issue here is Respondent's underlying reason for discharging eleven employees of the Ravalli County Road and Bridge Department (hereinafter called the Road and Bridge Department or the Department). The Complainant maintains that Respondent's action was discriminatorily motivated, in violation of Sections 59-1603 and 59-1605, R.C.M., 1947, because of the union sympathy or activity of those employees; Respondent insists that its motivation was purely economic, and that these particular individuals were selected for discharge because they were less efficient than others with lower seniority in the same category who were retained in its employ.

During the hearing I took motions of Counsel Thane and Counsel Skelton under advisement as well as an objection to evidence by Counsel Thane. My

1 rulings on those motions and objection to evidence are as follows:

2 1. Counsel Thane's motion that the hearing be vacated because the  
3 complaint was not verified as required by the emergency rules of the Board  
4 of Personnel Appeals is denied. No prejudice has been shown by Respondents  
5 and no substantial rights of the parties were impaired by this technical  
6 defect. Furthermore, Counsel for Complainant remedied the defect by sub-  
7 mitting a verification to the complaint at the hearing which was accepted  
8 by the Hearing Examiner.

9 2. Counsel Thane's motion that the hearing be vacated because the  
10 notice of hearing violated the emergency rules of the Board of Personnel  
11 Appeals is denied. No prejudice has been shown by Respondents and no sub-  
12 stantial rights of the parties were impaired.

13 3. Counsel Thane's motion to dismiss the complaint is denied.

14 4. Counsel Skelton's motion for any appropriate temporary relief was  
15 denied by order of the Hearing Examiner dated December 11, 1973, and served  
16 by prepaid mail upon all counsel of record.

17 5. Counsel Thane's objection to testimony by Karl Short about a con-  
18 versation between Short and his foreman, Bud Dye, is sustained.

19 Upon the entire record in this case, and from my observation of the  
20 witnesses, and their demeanor on the witness stand, and upon substantial,  
21 reliable evidence, I make the following:

22 FINDINGS OF FACT

23 1. The Respondents, Howard Hammer, Edwin Spannuth, and James McKinley,  
24 are the County Commissioners for Ravalli County. As the County Commissioners,  
25 Respondents have general control and supervision of the Road and Bridge  
26 Department.

27 2. The Complainant is the Teamsters, Chauffeurs, Warehousemen and  
28 Helpers--Local 448 (hereinafter called Local 448).

29 3. The complaint of Local 448 alleged that eleven employees of the  
30 Road and Bridge Department were discharged--ten on October 24th, and one on  
31 or about July 28--without regard to seniority because of their union sympathy  
32 or activity and that the discharge of these employees resulted in violation

1 of Sections 59-1603 and 59-1605, R.C.M., 1947.

2 4. The Respondents contend that the discharge of the eleven employees  
3 was wholly unrelated to their union activity or sympathy; and that, on the  
4 contrary, they were prompted by purely economic considerations, while the  
5 selection of the employees to be discharged was because they were the least  
6 efficient.

7 5. The eleven employees in question were either actively engaged in  
8 union activities or sympathized with the union. Many of the discharged employees  
9 communicated their feelings about the union to co-employees.

10 6. Cecil Williams, President and Business Manager of Local 448, held  
11 three meetings with Road and Bridge Employees in 1973. Harlen Clark, one of  
12 the discharged employees telephoned Williams prior to January 10th and requested  
13 Williams to meet with employees of the Road and Bridge Department about or-  
14 ganizing the group. The first meeting was held on January 10th, the second  
15 meeting on or about April 6th, and the third meeting on July 16th. Employees  
16 of the Road and Bridge Department signed union authorization cards at the  
17 first two meetings.

18 After the July 16th meeting, Williams sent a letter (Petitioner's  
19 Exhibit: #6) to the Respondents. This letter, dated July 23, stated that  
20 Local 448 represented "Employees working for Ravalli County Road Department."  
21 In the letter, Williams requested that the Respondents make no "changes in  
22 wages or working conditions for these employees" until they were negotiated and  
23 requested that a meeting be held to commence negotiations.

24 A meeting between Complainant and Respondents was held August 7th in  
25 Hamilton. At the meeting the Respondents received a copy of a proposed con-  
26 tract from the Complainant. Another meeting was held between the Complainant  
27 and Respondent on August 27th in which parts of the proposed contract were  
28 discussed.

29 Complainant sent the Labor Standards Division a list of the employees  
30 who had signed union authorization cards. An election was requested. Tony  
31 Softich, Administrator of the Labor Standards Division, held a pre-election  
32 meeting October 3rd. The election, to determine which if any union would

1 represent the employees, was held October 16th. Because the results of the  
2 election were indecisive a run-off election was scheduled and held on November  
3 7th. Ten ballots cast at the run-off election were challenged by Counsel  
4 Thane, who was acting on behalf of the Respondents, on the grounds that the  
5 individuals who cast the ballots were no longer employees of the Road and  
6 Bridge Department.

7 7. Patrick W. Flanagan was discharged from the Road and Bridge Depart-  
8 ment on or about July 28th. Phillip G. Richards, Harlen B. Clark, Thomas W.  
9 Richards, Robert F. Evanoff, Homer N. Jones, Karl Short, Eldon D. Wildey,  
10 Henry M. Suarez, Edward A. Schreckendgust, and James D. Loesch were dis-  
11 charged from the Road and Bridge Department on October 24th.

12 The employees discharged October 24th had each worked the following  
13 number of years for Ravalli County:

14	Harlen Clark	15½ years
15	Thomas W. Richards	9½ years
16	Robert F. Evanoff	5 years
17	Homer N. Jones	4½ years
18	Phillip G. Richards	3½ years
19	Karl Short	2 years
20	Eldon D. Wildey	1¼ years
21	Henry M. Suarez	1¼ years
22	Edward A. Schreckendgust	1 year
23	James D. Loesch	1 year

24 Patrick W. Flanagan had worked for Ravalli County approximately one and  
25 a half years before he was discharged on or about July 28th.

26 The employees in question had worked for the Road and Bridge Department  
27 longer than many of the employees that were retained by the Department after  
28 October 24th. Clark and Thomas Richards had worked longer than eleven re-  
29 tained employees, Evanoff longer than ten retained employees, Jones longer  
30 than eight retained employees, Phillip Richards longer than eight retained  
31 employees, Short longer than six retained employees, Wildey and Suarez longer  
32 than three retained employees, Schreckendgust and Loesch longer than one

1 retained employee.

2 The evidence clearly showed that the Road and Bridge Department did  
3 not have an established seniority plan--express or implied. However, the  
4 evidence did show that the job experience of the employees, or their length  
5 of employment with the County was a factor that was taken into account by the  
6 Respondents for their selection of employees to be discharged.

7 The employees discharged October 24th were not given notice of their  
8 pending discharge even though the determination of who was to be discharged  
9 was made prior to July 16th. The Respondents testified that they did not  
10 give notice to the employees because they construed the language "We respect-  
11 fully request that you do not make any changes in wages or working conditions  
12 for these employees, until the same have been negotiated between a represen-  
13 tative of your county and this Local Union" contained in William's letter of  
14 July 23rd (Petitioner's Exhibit #6) to mean that they were precluded from  
15 giving notice. The Respondents testified that they also received the im-  
16 pression from Tony Softich, prior to the October 16th election, that they  
17 could not make any changes of personnel or give the employees notice. I do  
18 not credit this testimony. The Respondents purported construction of the  
19 language in William's letter seems implausible, judging from the plain  
20 meaning of those words. It is difficult to determine what Tony Softich may  
21 have said that would have given the Respondents their impression since  
22 Softich did not testify at the hearing.

23 8. The determination of which men would be discharged was made jointly  
24 by the Respondents and the Supervisor of the Road and Bridge Department,  
25 George Clute, prior to the release of the preliminary budget July 16th. Clute  
26 made recommendations to the Respondents as to who should be discharged, which  
27 received great weight by the Respondents.

28 Basically, the Respondents contend that the employees in question were  
29 discharged because of economic considerations and that the employees selected  
30 for discharge were those that were dissatisfied with their job or were less  
31 beneficial to the county in terms of job performance.

32 The Road and Bridge Department was beset with financial problems when

1 the employees were discharged October 24th. The normal size of the Bridge  
2 and Road Department is between eighteen and twenty-two employees. However,  
3 the Road and Bridge Department hired as many as thirty-eight employees in  
4 1973 because of spring flooding in many areas of Ravalli County which caused  
5 considerable damage to the County's roads and bridges. The salaries of  
6 additional employees were paid partly through emergency funds which Ravalli  
7 County qualified for because of the flooding. Most of the damage caused by  
8 the flooding had been repaired by July, and no emergency funds were granted  
9 to the county for fiscal year 1973-1974. (Ravalli County's fiscal year begins  
10 on July 1st and ends June 30th).

11 In fiscal year 1972-1973, the following amounts of money were budgeted  
12 for salaries on the Road and Bridge Department:

13	Road Budget	\$182,303.21
14	Bridge Budget	16,100.00
15	Emergency Bridge Budget	<u>59,853.36</u>
16	Total	<u>\$258,256.57</u>

17 In fiscal year 1973-1974, the following amounts of money were budgeted  
18 for salaries on the Road and Bridge Department:

19	Road Budget	\$196,792.32
20	Bridge Budget	22,910.00
21	Emergency Bridge Budget	<u>0</u>
22	Total	<u>\$219,702.32</u>

23 As these figures show, Ravalli County had \$38,554.25 less to expend on  
24 salaries for the Road and Bridge Department in fiscal year 1973-1974.

25 Also in fiscal year 1972-1973, Ravalli County had Emergency Employment Act  
26 funds (hereinafter called E.E.A. funds) to augment the budget for Road and  
27 Bridge Department salaries. These funds were equivalent to the wages of four  
28 employees. However, the state of Montana discontinued these funds on June 30th.  
29 Thus, employees paid by E.E.A. funds had to be picked up under the county's  
30 regular payroll funds.

31 Purportedly because of the lower budget for salaries and the completion of  
32 most of the work caused by the spring flooding, ten employees were discharged

1 from the Department prior to October 24th--one being Patrick W. Flanagan--  
2 and ten of the employees in question were discharged October 24th.

3       The budget for fiscal year 1973-1974 made allowances for the payment of  
4 salaries for the first three months of fiscal year 1973-1974 to those employees  
5 that would be discharged. Respondents testified that the employees were  
6 retained July, August, and September because those months are the busiest  
7 months of the year for the Department. The employees were retained in October,  
8 according to Respondent's testimony, because of the union election that was  
9 held October 16th, and Respondent's purported belief that they could not  
10 discharge the employees until after the election. Because of the retention  
11 of these employees, fifty-four per cent of the budget for salaries was  
12 expended after four months of fiscal year 1973-1974.

13       Clute listed a number of reasons why he recommended the discharge of  
14 certain employees to the Respondents. Clute testified that he developed  
15 these reasons from his observations of the employees and by reports from other  
16 personnel. Most of Clute's reasons relate to the employee's dissatisfaction  
17 with their jobs or wages, their infraction of rules, or their poor job per-  
18 formance. A catalog of Clute's reasons, by employee, follows:

19       Harlen Clark. In his testimony Clute characterized Clark as dissatisfied with his  
20 work because Clark wanted more wages and complained about running a crusher.

21       On one occasion Clute said that two employees of the Department, Bill Misener  
22 and Ed Schreckendgust, reported to him that Clark had threatened them that if they  
23 failed to sign union authorization cards he would "make it so hard on them that  
24 they would quit."

25       Clute stated that when Clark was driving a truck for the Department, he  
26 left for work from the county shops late and returned early, and he failed to  
27 maintain his truck properly.

28       According to Clute, Clark was ineffective as a foreman when he served  
29 in that capacity. Clute testified that when Clark was a bridge foreman his  
30 crew did not accomplish their tasks.

31       Clute told of an occasion when the crusher Clark was running broke down.  
32 Clute stated that Clark failed to call the county shop for a mechanic to repair

1 the machine or to fix it himself, as he was required to do, and that his  
2 crew sat idle at the crusher sight all day.

3 Robert F. Evanoff. In his testimony Clute characterized Evanoff as  
4 dissatisfied with his work because he wanted more wages. Clute also stated  
5 that Evanoff had a heart attack and used his heart condition as an excuse to  
6 avoid manual labor.

7 Homer N. Jones. In his testimony Clute characterized Jones as dis-  
8 satisfied with his work because he wanted more wages. Clute testified that  
9 Jones may have been responsible for damaging an old dozer because of the manner  
10 in which he operated it, and that Jones told Clute that the Commissioners and  
11 Clute were a "bunch of crooks."

12 Phillip G. Richards. In his testimony Clute characterized Richards as  
13 dissatisfied with his work because he wanted more wages.

14 Clute testified that Richards "spent as much time in the office arguing  
15 as he did doing his work."

16 Clute stated that when Richards was a foreman, Richards thought his men  
17 should have a "play period" if they worked hard.

18 On one occasion, according to Clute, Richards got angry at Clute and told  
19 him he could not be fired.

20 Clute hinted that a water truck that Richards tipped over was caused  
21 because of Richard's negligence in operating the truck.

22 Thomas W. Richards. In his testimony Clute characterized Richards as  
23 dissatisfied with his work because he wanted more wages.

24 Clute stated that he received "reports" that Richards was sleeping on  
25 the job.

26 On one occasion, according to Clute, Richards ran a backhoe loader over  
27 a car. Clute said that Richards was negligent in the operation of the backhoe  
28 loader because he did not use its back-up signal--a safety device required to  
29 be on when the backhoe loader is operated.

30 Clute testified that Richards disregarded Occupational, Safety, and Health  
31 Act laws by failing to wear his hard hat on the job.

32 Clute said that, on one occasion, he requested Richards to take a radio

1 out of the cab in the loader Richards operated, and that Richards would not.  
2 Eventually, Clute removed the radio from the cab himself.

3 Patrick W. Flanagan. In his testimony Clute characterized Flanagan as  
4 dissatisfied with his work because he complained about driving a truck and  
5 when he was transferred to a bridge crew as a result of his complaints, he  
6 complained about working on the bridge crew.

7 Karl Short. Clute testified that he had received "reports" that Short  
8 was dissatisfied with his job. Clute stated that Short was hired under the  
9 E.E.A. and that the funds from that program were discontinued June 30th.

10 Henry M. Suarez and Eldon D. Wildey. Clute testified that Suarez and  
11 Wildey were discharged because they were some of the later men that were  
12 hired on by the Department.

13 James D. Loesch and Edward A. Schreckendgust. Clute testified that  
14 both Loesch and Schreckendgust were hired under the E.E.A. and that the funds  
15 from that program were discontinued June 30th. Clute stated that Loesch was  
16 one of the newer employees and that Schreckendgust was hired on a temporary  
17 basis.

18 The reasons Clute assigns to some of the employees for recommending  
19 their discharge to the Respondents are believable and are not disputed by the  
20 evidence before me. I refer specifically to the employees, Karl Short, Henry  
21 M. Suarez, Eldon D. Wildey, James D. Loesch, and Edward A. Schreckendgust. All of  
22 these employees were relatively new employees of the Department. None had worked  
23 longer than two years for the Department. Most, if not all, of these employees  
24 were hired either under the E.E.A. or for the bridge disaster crew. The evidence  
25 clearly shows that the E.E.A. funds were discontinued June 30th and additional  
26 bridge disaster funds were not granted to the county for fiscal year 1973-1974.  
27 Acknowledging that the Road and Bridge Department had financial problems, Clute's  
28 reasons for selecting these employees for discharge seems reasonable.

29 I do not credit Clute's testimony as to the reasons he recommended the  
30 discharge of Clark, Jones, Evanoff, and Tom and Phil Richards to the Respondents.  
31 Most of Clute's reasons as to these men are disputed by other testimony, or if  
32 analyzed are not creditable.

1 An analysis of Clute's reasons why he recommended the discharge of  
2 Clark, Jones, Evanoff, and Tom and Phil Richards shows:

3 Ed Schreckendgust denied that Clark ever threatened him to pressure him  
4 to sign a union authorization card. Bill Misener, the other employee allegedly  
5 threatened by Clark, never testified at the hearing.

6 Clark testified that when the crusher broke down he did call a mechanic  
7 and that he kept the crusher crew at the crusher sight because there were  
8 many things that the crew could accomplish there.

9 Clark testified that he was never advised by the Commissioners or by  
10 Clute that his work was unsatisfactory.

11 Evanoff testified that he was never reprimanded for his job performance.

12 Clute stated that Jones may have been responsible for the damage to  
13 an old dozer. In Clute's words: "There was always a question on it."  
14 Clute was speculating that Jones may have damaged the dozer--not that he  
15 actually did. Jones testified that the dozer was in a state of disrepair  
16 and that he protested running it in that condition. Jones also testified  
17 that he was never reprimanded by Clute or anyone for damaging a dozer.

18 Jones denied that he ever called the Commissioners "crooks".

19 Clute really did not know why the water truck was tipped over by Phil  
20 Richards. He speculated it may have been caused by Richards's negligence.

21 Clute did not have first hand knowledge that Thomas Richards was sleeping  
22 on the job.

23 Thomas Richards denied that he ever operated the loader without the  
24 back-up signal being on.

25 Clute's reasons for recommending Flanagan's discharge are not convincing.  
26 Clute testified that Flanagan was a "good truck driver", and that he wrote him  
27 a recommendation after he left the employ of the Department. These actions  
28 are hardly consistent with characterizing Flanagan as dissatisfied with his  
29 work because he complained about his job. I credit Flanagan's own testimony  
30 as to why he was discharged. Flanagan, a very sincere and creditable witness,  
31 testified that he was on vacation when he injured himself in a motorcycle  
32 accident. His wife informed Clute that he would have to take sick leave.

1 Flanagan was told to find another job because he had been taking off too much  
2 time. Flanagan's discharge does not seem to fit the patterns of the other  
3 discharges. Flanagan was discharged approximately three months earlier than  
4 the other employees; there is no evidence that he was hired under E.E.A. or  
5 for the bridge disaster crew; his own creditable version of why he was dis-  
6 charged certainly is not pretextual.

7 Taking Clute's testimony as a whole, I do not credit it. Often times  
8 his testimony seemed evasive. On other occasions when testifying he could  
9 not remember important dates or facts. However, what damaged Clute's credibility  
10 most was evidence of an almost complete absence of prior censure, warning,  
11 criticism, rebuke, or other indication of dissatisfaction by Clute with the  
12 work performance, or work attitude of the discharged employees. Of course,  
13 Clute would have little reason to display any dissatisfaction with employees  
14 Short, Suarez, Wildey, Loesch or Schreckendgust. His reasons for recommending  
15 their discharge did not concern their job performance. Such is not the case  
16 with employees Clark, Jones, Evanoff and Tom and Phil Richards, and the  
17 almost complete lack of an indication of dissatisfaction by Clute with these  
18 employees tends to show that his reasons for recommending their discharge to  
19 the Respondents was pretextual.

20 9. Clute was aware that some employees of the Road and Bridge Department  
21 were involved in union activities. Clute testified that he knew in late  
22 January that Local 448 and employees of the Road and Bridge Department had  
23 a meeting. He also testified that he knew about the other meetings Local 448  
24 held with employees of the Department.

25 Clute was also aware of which individuals were active in the union  
26 although his testimony is conflicting on this point. In answer to a question  
27 by Counsel Thane, "Did you personally know who the people that were active,  
28 pushing the union, either of the unions were?" Clute replied, "I had my  
29 ideas." Also Clute walked into one meeting between Local 448 and the employees  
30 that was held at the county shop and observed the meeting for two or three  
31 minutes. Phil Richards testified that he knew that Clute was aware of his  
32 activity with the union. Clute testified that he was aware that Clark was

1 involved in the union because of a purported threat by Clark to two employees  
2 to sign authorization cards.

3 Howard Hammer testified that he was aware of one or two employees that  
4 were active in the union, and that he had heard rumors from time to time that  
5 there was union activity within the Department.

6 10. Howard Hammer admitted to Cheryl Richards, the wife of Tom Richards,  
7 that the men selected for discharge were doing a satisfactory job and that  
8 her husband was a "good worker". In answer to her question of why were they  
9 selected for discharge, Hammer replied, "These men have been causing problems  
10 and they were in politics." Hammer stated that this had been going on since  
11 last spring. The clear implication of Hammer's statement was that the employees  
12 had been discharged because of their union activities. Mrs. Richards was a  
13 very creditable and convincing witness.

14 11. Resolution and Rationale.

15 (A) I find that Respondent's discharge of Harlen B. Clark, Thomas W.  
16 Richards, Robert F. Evanoff, Homer N. Jones and Phillip G. Richards under  
17 the circumstances detailed were in violation of the Collective Bargaining  
18 Act for Public Employees and that Respondent's alleged reasons for their  
19 discharge are pretextual. I have given weight to the following considerations:

20 The timing of the discharge. The discharge took place after an indecisive  
21 union election October 16th and fourteen days before a run-off election in  
22 which ten ballots cast by discharged employees were challenged by Respondents.

23 The precipitate nature of the discharge. The above-mentioned employees  
24 were not given any prior notice of discharge. The Respondent's explanation  
25 of why notice was not given is implausible.

26 Respondents inadequate explanation of reasons for discharge. The  
27 Respondents did not adequately explain their reasons for the discharge of the  
28 five above-mentioned employees.

29 Absence of an indication of dissatisfaction by Respondent. There was  
30 an almost complete absence of prior censure, warning, criticism, rebuke or  
31 other indication of dissatisfaction by the Supervisor of the Department or  
32 the Respondents with the work performance or work attitude of the five  
above-mentioned employees..

1 The experience of the above-mentioned employees. The five above-mentioned  
2 employees had thirty-seven and one-half years of experience among them with  
3 the Department. None had less than three and one-half years experience with  
4 the Department.

5 Union activity of above-mentioned employees. The record is replete  
6 with evidence that the five above-mentioned employees were actively involved  
7 with attempts to organize the Department and had union sympathies.

8 Knowledge of union activities by Supervisor of Department and Respondents.  
9 The record adequately establishes that Clute was aware of the union activities  
10 or sympathies of the above-mentioned employees. The record adequately establishes  
11 that Hammer was aware of the union activities or sympathies of the above-  
12 mentioned employees.

13 (B) I find that the discharge of Karl Short, Henry M. Suarez, Eldon D.  
14 Wildey, James D. Loesch, and Edward A. Schreckendgust was justified because  
15 Respondents had a valid economic basis for discharging them. I have given  
16 weight to the following considerations:

17 Financial difficulties of Respondent: The evidence clearly shows that  
18 fifty-four per cent of the County's budget for Road and Bridge Department  
19 salaries was expended by the end of the fourth month of fiscal year 1973-  
20 1974, and that this was partly brought about by the elimination of E.E.A.  
21 funds and bridge disaster funds.

22 Source of revenue for salaries of the above-mentioned employees. The  
23 evidence adequately establishes that most, if not all of the above-mentioned  
24 employees were hired with E.E.A. funds or bridge disaster funds which were  
25 discontinued prior to July 1st.

26 Lack of experience of above-mentioned employees. The above-mentioned  
27 employees were relatively new employees of the Department. None had worked  
28 longer than two years for the Department.

29 (C) I find that the discharge of Patrick W. Flanagan was justified  
30 because the Respondents were legitimately exercising their managerial prerogatives.  
31 I have given weight to the following considerations:

32 Date of discharge of employee. The above-mentioned employee was discharged

1 almost three months prior to the union election.

2 Lack of experience of employee. The above-mentioned employee had only  
3 one and one-half years experience with the Department.

4 Reason for discharge. Flanagan's own testimony as to why he was dis-  
5 charged eliminates the possibility it is pretextual.

6 CONCLUSIONS OF LAW

7 1. That Respondents violated provisions of Section 59-1605, R.C.M.,  
8 1947 and are guilty of unfair labor practices as specified in Section 59-  
9 1605(1) (a)&(c), R.C.M., 1947 by discharging Harlen B. Clark, Thomas W.  
10 Richards, Robert F. Evanoff, Homer N. Jones, and Phillip G. Richards.

11 The discharge of said employees was motivated by the employees in-  
12 volvement in union organizational activity, which are rights of public  
13 employees protected by Section 59-1603, R.C.M., 1947.

14 2. That Respondents were exercising their prerogatives to operate  
15 and manage their affairs as recognized by Section 59-1603, R.C.M., 1947  
16 when they discharged Karl Short, Eldon D. Wildey, Henry M. Suarez, Edward  
17 A. Schreckendgust, James D. Loesch and Patrick W. Flanagan.

18 ORDER

19 It is hereby ordered that the Ravalli County Commissioners:

20 1. Cease and desist from discouraging membership in or lawful activity  
21 on behalf of Teamsters, Chauffeurs, Warehousemen and Helpers--Local 448, or  
22 any other labor organization, by discharging any employee because he joined  
23 or assisted a labor organization or engaged in any concerted activity protected  
24 by Section 59-1603, R.C.M., 1947.

25 2. Take the following affirmative action:

26 (A) Offer to Harlen B. Clark, Thomas W. Richards, Robert F. Evanoff,  
27 Homer N. Jones and Phillip G. Richards immediate and full reinstatement to  
28 their former or substantially equivalent positions, and make each of them  
29 whole for any loss of pay suffered in consequence of their discharge because  
30 of their engagement in union activity.

31 (B) Notify the Executive Secretary of the Board of Personnel Appeals  
32 in writing, within twenty (20) days from receipt of this decision, what

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steps have been taken to comply herewith.

DATED on this 1st day of February, 1974.

Peter O. Maltese

Peter O. Maltese, Esq.  
Hearing Examiner  
Board of Personnel Appeals

CERTIFICATE OF MAILING

I hereby certify that I mailed a true copy of the above Findings of Fact, Conclusions of Law, and Order as Recommended to the Board of Personnel Appeals to:

Jeremy G. Thane, Esq.  
Counsel for Respondent  
Savings Center Building  
Missoula, MT 59801

Robert Skelton, Esq.  
Counsel for Complainant  
127 E. Main  
Missoula, MT 59801

Patrick F. Hooks, Esq.  
Chairman, Board of Personnel Appeals  
218 Broadway  
Townsend, MT 59644

on this 1st day of February, 1974.

BY Peter O. Maltese