

BEFORE THE BOARD OF PERSONNEL APPEALS  
OF THE STATE OF MONTANA

4 IN THE MATTER OF: ) *40-16-1974*  
5 PAINTERS LOCAL UNION #260, FINDINGS AND FACTS, CONCLUSIONS  
6 Complainant, ) OF LAW AND PROPOSED ORDER  
7 -vs- CASE #N16  
8 CITY OF GREAT FALLS, )  
9 Defendant.

11 This matter came on for hearing on the 27th day of  
12 January, 1975. The Painters Local Union No. 260 was represented  
13 by Mr. Terry Lins. The City of Great Falls was represented by  
14 Mr. Richard Thomas, City Manager, and Mr. David Gliko, City  
15 Attorney. Evidence was presented, documentary and oral, and  
16 Neil E. Ugrin, duly appointed Hearing Examiner for the Board of  
17 Personnel Appeals, makes the following:

18 FINDINGS OF FACT

19 1. The City of Great Falls, Montana, a municipal  
20 corporation, hereinafter the "City", and the Painters Local No. 260,  
21 hereinafter the "Union", entered into a collective bargaining  
22 agreement on July 1, 1973 which contained, among other things, a  
23 recitation in the first paragraph that the document provided  
24 means of "amicable and equitable adjustment if any and all  
25 differences or grievances which may arise," between the painters  
26 and the union.

27 2. The contract contained under Article VI a provision  
28 for settlement of disputes which provides for compulsory arbitration  
29 of grievances or disputes.

30 3. The contract provides in Article XII that during the  
31 life of the agreement there will be no authorized strike or  
32 economic activity unless the other party to the agreement is  
refusing to comply with the final decision of an arbitrator reached

1 in accordance with the provisions of the agreement.

2 4. In Schedule "A" Article V, Section I of the  
3 agreement, is found what is commonly called a wage re-opener for  
4 the second year of the two-year contract.

5 5. The City and the Union failed to reach agreement  
6 as to wages after the expiration of the first year of the agreement.

7 6. Prior to the filing of any charge, but subsequent  
8 to July 1, 1974, the date of the wage re-opener, the Union did in  
9 fact initiate economic activity by virtue of a strike against the  
10 City.

11 7. The Union filed with the Board of Personnel Appeals  
12 on November 26, 1974, a complaint which alleged that the City of  
13 Great Falls has refused to bargain in good faith.

14 8. On December 10, 1974 the City filed a complaint with  
15 the Board of Personnel Appeals alleging the Union violated the  
16 terms of the no-strike provision of the collective bargaining  
17 agreement.

18 9. Both the City and the painters agree that it is not  
19 the intent of the contract to bind the parties to binding and  
20 compulsory arbitration with regard to wages under the wage re-opener  
21 provision of the contract.

22 Based upon the foregoing Findings of Fact, your  
23 Hearing Examiner now makes the following:

24 CONCLUSIONS OF LAW

25 Factual as well as the legal problems involved herein are  
26 somewhat unique. Had either party contended in their complaint that  
27 the other had a duty pursuant to the agreement to submit the issue of  
28 wages, after the period of the wage re-opener to compulsory and binding  
29 arbitration, the Hearing Examiner would have concurred. However,  
30 neither party has expressed their complaint in these terms and both  
31 parties expressly agree that the contract does not require binding  
32 and compulsory arbitration with regard to the issue of the wage

1 re-opener and wages after the period of the wage re-opener.

2 Section 59-1603 R.C.M. 1947 grants public employees the  
3 right to engage in concerted activity.

4 Courts applying the National Labor Acts which are similar  
5 to, and are in fact the parents of Montana's Collective Bargaining  
6 Act, have held that unless clear agreement to the contrary has  
7 been reached unions are allowed to engage in concerted economic  
8 activity, including strikes.

9 The crucial question involved in this matter is whether  
10 or not the no-strike provision of the contract is enforceable  
11 against the Union with regard to the issue of wages after the period  
12 of the wage re-opener, since it is the complete agreement of the  
13 parties that the duty of compulsory arbitration does not apply to  
14 wages after the period of the wage re-opener.

15 I hold that the no-strike clause in the union contract  
16 does not apply to the matter of the wage re-opener. I base this  
17 decision on the principles embodied in United Steelworkers v  
18 American Manufacturing Company, 363 US 564, 4 L.Ed. 2d 1403, 80 S. Ct.  
19 1343, which establishes the proposition that parties to a  
20 collective bargaining agreement do not give up their right-to-strike  
21 without some quid pro quo or consideration. The consideration for  
22 a no-strike agreement in a collective bargaining contract is  
23 generally an agreement to arbitrate. As stated by the U. S. Supreme  
24 Court above, "there is no exception in the 'no-strike' clause and  
25 none therefore should be read into the grievance clause, since one is  
26 the quid pro quo for the other." (emphasis supplied.) To similar  
27 affect is Laundry Workers Local No. 93 v Mahoney 85 LRRM 2281.  
28 Inasmuch as the parties agree that the wage re-opener was exempted  
29 from the compulsory arbitration section of the contract, it is held  
30 that the no-strike provision does not apply to that wage re-opener  
31 section, there being no "quid pro quo" for the no-strike clause as  
32 it relates to wages after the period of the wage re-opener.

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ORDER

IT IS THEREFORE ORDERED, that the unfair labor practice complaint by the City against the Union be dismissed. Because of the complexity of the issues involved herein and because of the ambiguity of the contract, I do not expressly find the City to be in bad faith for refusing to bargain with the Union. However, I do order the City to forthwith begin negotiations with the Union with regard to the matter of wages. Anytime after this order might be adopted as the order of the Board of Personnel Appeals and if the City then fails to negotiate, as the Collective Bargaining Act requires, with the Union, I would then make a finding of bad faith on the part of the City.

DATED this 10<sup>th</sup> day of April, 1975.

By: \_\_\_\_\_

HEARING EXAMINER

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2  
3 CERTIFICATE OF MAILING

4 I, ROBERT R. JENSEN, hereby certify and state that I did, on the 15th day  
5 of April, 1975, mail a true and correct copy of the Board of Personnel Appeals  
6 Findings of Fact and Conclusions of Law and Proposed Order in Case #N16, by  
7 depositing a true and correct copy in the United States mail in an envelope  
8 securely sealed with certified postage prepaid, addressed to them at their  
9 last known address as follows:

10 Mr. Terry Lins,  
11 International Brotherhood of Painters  
12 and Allied Trades, Local No. 260  
13 P. O. Box 666  
14 Great Falls, Montana 59403

15 Mr. Richard Thomas  
16 City Manager  
17 City of Great Falls  
18 Civic Center  
19 Great Falls, Montana 59401

20 Dated this 15th day of April, 1975.

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ROBERT R. JENSEN  
Executive Secretary  
Board of Personnel Appeals