

BEFORE THE BOARD OF PERSONNEL APPEALS

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2
3 RETAIL CLERKS, LOCAL #991,)
4 Complainant,)
5 -vs-)
6 UNIVERSITY OF MONTANA,)
7 Respondent.)

ULP-1-1974
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER AS
RECOMMENDED TO THE
BOARD OF PERSONNEL APPEALS.

8 The above entitled matter came on for hearing before Peter
9 O. Maltese, Esq., duly appointed hearing examiner for the Board
10 of Personnel Appeals on February 27, 1974, pursuant to a complaint
11 filed by the above-entitled Complainant in accordance with section
12 59-1607, R.C.M., 1947. Copies of the charge and Notice of Hearing
13 were duly served on both parties. The Complainant was represented
14 by Lonny Mayer, President and Chief Executive of the Retail Clerks
15 International Association #991. The Respondent was represented
16 by Jeremy G. Thane, Esq. of the law firm of Worden, Thane, Haines
17 and Williams, Missoula, Montana.

18 The Complainant alleges, in substance, that Louis Moses, an
19 employee of the University of Montana, was discriminated against
20 and discharged because of his Union activities. Specifically, the
21 Complainant charges that the University violated its own policy
22 by considering Moses a seasonal employee and thereby not paying
23 him wages for holidays, that the University discriminatorily paid
24 Moses wages lower than any other man on the grounds crew even though
25 he performed the same work as other crew members, and that the
26 University discharged Moses because of purported budget problems
27 even though there were enough funds for the University to retain
28 Moses through the fiscal year.

29 The Respondents contend that the discharge of Moses was prompted
30 by purely economic considerations and not by his Union activities.

31 Upon the entire record in this case, I make the following:
32

FINDINGS OF FACT

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2 1. The University of Montana hired Louis Moses April 10,
3 1972 as a groundskeeper for the grounds crew. (The grounds crew
4 is part of the Physical Plant Department of the University and is
5 responsible for the upkeep of the University grounds.) Moses
6 worked as a groundskeeper for eighteen months, but on October 31,
7 1973, after thirty days notice, he was discharged by the University.

8 2. Moses was actively engaged in Union activities. He was
9 selected as a member of a Union negotiating committee by co-workers
10 and attended meetings of the negotiating committee with Union offic-
11 ials and management representatives of the University.

12 3. The uncontroverted testimony of Jesse Dove, personnel
13 director for the University, and Frank Shandorf, office manager of
14 the physical plant, clearly shows that the University had not de-
15 fined what a seasonal, temporary or part-time employee was, nor
16 had the University established any explicit policy as to when a
17 seasonal, temporary or part-time employee became a permanent employee.

18 4. The evidence clearly establishes that Moses was not a
19 permanent employee.

20 --Moses signed the time card for part-time employees (see
21 Respondent's exhibit #1), not the time card for full-time employees
22 (see Respondent's exhibit #2) throughout the duration of his employ-
23 ment with the University.

24 --Moses admitted that he was not a permanent employee of the
25 University.

26 5. Moses was paid \$2.25 per hour when he started work with
27 the University in April of 1972 and received a seventy five cent
28 raise in July of 1972 and a fifteen cent raise in July of 1973.
29 Despite these raises, Moses testified that he thought he was dis-
30 criminated against by the University because Dick Wolff and Jack
31 Onstad received higher wages than he did even though they all did
32 the same work. However the evidence shows:

1 --Wolff and Onstad were permanent employees; Moses was not.

2 --At the time of Moses's discharge, Wolff had worked approx-
3 imately six years for the University, Onstad approximately five
4 years and Moses only eighteen months.

5 --Onstad was the acting supervisor for a period of approximately
6 seven months during Moses's employ with the grounds crew.

7 6. The grounds crew was beset with financial problems. Its
8 funds for seasonal, temporary and part-time employees, which were
9 also used to pay overtime wages earned by permanent employees, were
10 severely reduced for fiscal year 1973-1974. (The University's
11 fiscal year begins on July 1st and ends July 1st of the following
12 year.) The funds allocated for the seasonal, temporary and part-
13 time employees for fiscal year 1972-1973 were \$19,245.00 and was
14 reduced to \$12,879.00 for fiscal year 1973-1974 (see Respondent's
15 exhibits #3 and #6). After Moses's discharge and the payment of
16 all wages due him, including payments for his accrued annual leave
17 and sick leave, only \$4,862.22 remained in the budget (see Respond-
18 ent's exhibit #5).

19 Because the seasons of spring and summer are the busiest parts
20 of the year for the grounds crew, they usually hire additional
21 seasonal, temporary, and part-time employees in the spring of each
22 year. William Hosford, the supervisor of the grounds crew, testi-
23 fied that Moses was discharged to preserve the remaining funds for
24 seasonal, temporary and part-time employees so that additional
25 employees could be employed in the spring.

26 7. The Grievance Committee for Non-Academic Personnel, a
27 standing committee which investigates University employee's grie-
28 vances, investigated Moses's discharge and recommended that he be
29 restored to his position with the grounds crew or that another
30 position at the University be made available to him. The Grievance
31 Committee came to its decision because of Moses's excellent work
32 record and "Because of the misunderstandings and misinterpretations

1 of information pertaining to the hiring and layoff of Lou Moses and
2 because of the impossibility of determining the facts." The
3 Committee did not thoroughly investigate whether or not Moses
4 was discharged because of Union activities nor did it examine the
5 grounds crew budget.

6 8. J. A. Parker was reported to have remarked "if the Union
7 pressures us too far, somebody is going to be laid off." Hosford
8 allegedly communicated Parker's remarks to Moses and Richard Wolff,
9 another employee of the grounds crew. However Hosford recalled
10 saying to Moses and Wolff "with only so much money available for
11 the grounds crew that if we were forced to raise wages that there
12 would be very little choice but to let somebody go." Hosford
13 testified that Parker never said anything derogatory about Unions
14 to him and that Parker never made the statement that "employees
15 would be laid off if the Union pressures us too far". However,
16 Parker admitted that he may have made statements that could have
17 been interpreted to that effect.

18 9. A number of attempts were made by the University to assist
19 and accommodate Moses prior to and after his discharge from the
20 University grounds crew.

21 --Bill Hosford, supervisor of the grounds crew, tried to get
22 Moses placed on a permanent status with the grounds crew at least
23 a half dozen times prior to Moses's discharge.

24 --Al Johnson, foreman of the labor crew at the University,
25 provided job application forms to Moses so that he might obtain
26 a permanent job with the University.

27 --Jesse Dove, Personnel Director of the University, offered
28 permanent jobs with the University to Moses October 31st, November
29 14th, December 5th, and December 12th of 1973.

30 --After Moses had accepted one of the above jobs offered, the
31 University paid him his old hourly rate of \$3.15 instead of the
32 going rate for his new job of \$2.79 and he did not have to wait for

1 a required qualifying period before becoming eligible for annual
2 leave even though he was discharged from the grounds crew and paid
3 his accrued vacation and sick leave.

4 10. According to Moses:

5 --He was never questioned about his Union activities by his
6 supervisors at the University.

7 --He remained on the Union negotiating committee after his
8 discharge from the University grounds crew.

9 --He is presently a member of the same Union that represents
10 the groundskeepers.

11 --The University has not hired a replacement for his old job
12 with the grounds crew.

13 --No other member of the grounds crew or the Union negotiating
14 committee was discharged by the University.

15 RESOLUTION AND RATIONALE

16 Louis Moses was not discriminated against and discharged
17 because of his Union activities.

18 1. The Respondent did not violate its policy by considering
19 Moses a seasonal employee. The University had no explicit policy
20 as to what a seasonal employee was or when a seasonal employee
21 became a permanent employee and thus eligible for holiday pay.
22 Moses admitted he was not a permanent employee and he signed a
23 time card for part-time employees. Therefore, if the University
24 did not pay Moses for holidays because they did not consider him
25 a permanent employee as alleged in the Complainant's charge (and
26 there is no evidence on the record to show whether Moses was or
27 was not paid holiday pay) they were justified because Moses was
28 clearly less than a permanent employee.

29 2. The University did not discriminate against Moses by
30 paying him less than other employees of the grounds crew. There
31 were sound reasons why the other two employees of the grounds
32 crew received higher wages than Moses. They had more seniority

1 than Moses; they were permanent employees while Moses was not;
2 and one of them had supervisory responsibilities for approximately
3 seven months during Moses employment with the grounds crew.

4 3. The University did not discharge Moses because of his
5 Union activities. The record shows that:

6 (A) Moses was involved in Union activities.

7 (B) Management officials were aware of Moses's Union
8 activities.

9 (C) There was little, if any, anti-union animus on the
10 part of the University. Perhaps Parker's statement
11 (see Findings of Fact, Paragraph 8) could be in-
12 terpreted as an indication of anti-union animus, but
13 when his statement is weighed against the following
14 facts, it is clear that no anti-union animus existed:

15 (i) The University made a number of efforts to
16 accommodate Moses and to retain Moses as an
17 employee of the University, and in fact even-
18 tually rehired Moses.

19 (ii) Moses was never questioned about his Union
20 activities by his supervisors at the University.

21 (iii) Moses remained on the Union negotiating committee
22 after his discharge from the University grounds
23 crew.

24 4. The University discharged Moses for economic reasons. The
25 record clearly establishes that the University was beset with
26 financial problems and had to preserve its budget for the hire of
27 additional employees during its busy season. The fact that the
28 University did not hire a replacement for Moses, tends to show that
29 the discharge of Moses was not pretextual.

30 CONCLUSIONS OF LAW

31 That the University of Montana exercised their prerogatives
32 to operate and manage their affairs as recognized by section 59-1603,

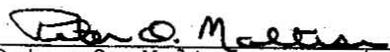
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R.C.M., 1947 when they discharged Louis Moses and are not guilty of an unfair labor practice as specified in section 59-1605, R.C.M., 1947.

ORDER

It is hereby ordered that the unfair labor complaint of the Retail Clerks, Local #991 be dismissed.

Dated this 14th day of May, 1974.


Peter O. Maltese, Hearing Examiner
Board of Personnel Appeals

CERTIFICATE OF MAILING

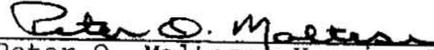
I hereby certify that I mailed a true copy of the above Findings of Fact, Conclusions of Law, and Order as Recommended to the Board of Personnel Appeals to:

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

on this 14th day of May, 1974.


Peter O. Maltese, Hearing Examiner
Board of Personnel Appeals