

1 at approximately 10:55 a.m. while Kemper was off duty.
2 Bertagna testified that he took the contract copies from
3 Kemper to prevent her from distributing the copies to other
4 city employees during working hours. After Bertagna had
5 seized the contract copies, he kept them in his office.
6 Kemper was informed that the contract copies were available
7 in Bertagna's office but she did not retrieve them.

8 The contract copies remained in Bertagna's office until
9 they were distributed to transit company employees by Bertagna
10 at an employee meeting held on September 6, 1974.

11 DISCUSSION

12 AFSCME contends that the Defendant violated section
13 59-1605(1)(b), R.C.M. 1947 by seizing AFSCME's contract
14 copies from Kemper and by distributing those copies to
15 AFSCME's members at an employee meeting. While I do not
16 approve of the Defendant's actions, I do not believe that
17 they constitute an unfair labor practice.¹

18 As stated in The Developing Labor Law, page 135 (Morris
19 ed. 1971):

20 "The purpose of this provision (section 8(a)(2)
21 of the Labor Management Relations Act) is to in-
22 sure that an organization that purports to rep-
23 resent employees in collective bargaining will
24 not be subject to control by an employer, or so
25 dependent on his favor that it would be unable
26 to give wholehearted effort to the employees it
27 represents."

28 Bertagna's actions, in a very technical sense, did
29 interfere with the administration of a labor organization.
30 By distributing the contract copies to AFSCME members,
31 Bertagna precluded AFSCME from distributing the contract
32

¹Because section 59-1605(1)(b) is closely modeled
after section 8(a)(2) of the Federal Labor Management
Relations Act and because there are no precedents from
the Board of Personnel Appeals to guide my deliberations,
I have looked to precedents of the National Labor
Relations Board for guidance.

1 copies to its members. But Bertagna's actions were so
2 trivial that they did not affect what section 59-1605(1)(b)
3 essentially protects, that is the employee's freedom of choice.
4 Only when the public employer actually interferes with the
5 functioning of a labor organization and thereby undermines
6 its independence and integrity will a violation of section
7 59-1605(1)(b) be found--and that has not been established
8 by the Complainant. Federal-Mogul Corporation, Coldwater
9 Distribution Center Division v. NLRB, 394 F.2d 915, 918
10 (6th Cir. 1968); Modern Plastics Corporation v. NLRB, 379
11 F.2d 201, 204 (6th Cir. 1967).

12
13 CONCLUSION OF LAW

14 The Defendant did not violate section 59-1605(1)(b),
15 R.C.M. 1947.

16
17 ORDER

18 The complaint of the American Federation of State,
19 County, and Municipal Employees, AFL-CIO is dismissed.
20 Dated this 30th day of January, 1975.

21
22 Peter O. Maltese

23 Peter O. Maltese, Esq.
24 Hearing Examiner

25 CERTIFICATE OF MAILING

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

29
30 Patrick F. Hooks, Esq.
31 Chairman, Board of Personnel Appeals
32 218 Broadway
Townsend, MT 59644

1 Stanley W. Gerke
2 Representative of the Complainant
3 600 North Cooke
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6 City Attorney
7 P.O. Box 1178
8 Billings, MT 59103

9 on this 31st day of January, 1975.

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BY Robert R. Jensen