

BEFORE THE BOARD OF PERSONNEL APPEALS

ULP-12-1974

AMERICAN FEDERATION OF STATE, COUNTY, ) FINDINGS OF FACT,  
AND MUNICIPAL EMPLOYEES, AFL-CIO, ) CONCLUSIONS OF LAW,  
Complainant, ) AND ORDER AS  
-vs- ) RECOMMENDED TO THE  
LOUIS J. BERTAGNA, TRANSIT DIRECTOR, ) BOARD OF PERSONNEL  
CITY OF BILLINGS, ) APPEALS  
Defendant. )

A hearing was held November 21, 1975 before Peter O. Maltese, duly appointed hearing examiner of the Board of Personnel Appeals pursuant to an unfair labor practice complaint filed by the American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME).

The Complainant was represented by Stanley W. Gerke, field representative of AFS-CME. The Defendant was represented by Willis B. Jones, Esq., city attorney, Billings, Montana.

The issue in this case is whether or not the Defendant violated section 59-1605(1)(b), R.C.M. 1947 by interfering with the administration of a labor organization.

Upon the entire record in this case, including my observation of the demeanor of the witnesses, and upon substantial, reliable evidence, I make the following

### FINDINGS OF FACT

Louis J. Bertagna, the director of the transit department of the city of Billings, seized seven copies of a collective bargaining contract, negotiated between the Complainant and the city of Billings, from Elsie Kemper, a bus driver for the transit department and a member of AFSCME. The copies of the contract, which were delivered to Kemper for distribution to other AFSCME members, were printed at the Complainant's expense.

Bertagna seized the contract copies on September 4, 1974

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

#### 12 DISCUSSION

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

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

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

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

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30 <sup>1</sup>Because section 59-1605(1)(b) is closely modeled  
31 after section 8(a)(2) of the Federal Labor Management  
32 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  
26 CERTIFICATE OF MAILING

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

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  
4 Helena, MT 59601

5 Willis B. Jones, Esq.  
6 City Attorney  
7 P.O. Box 1178  
8 Billings, MT 59103

9 on this 31<sup>st</sup> day of January, 1975.

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BY Robert R. Jensen