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1 BEFORE THE BOARD OF PERSONNEL APPEALS
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3 INTERNATIONAL ASSOCIATION OF)
4 FIRE FIGHTERS, LOCAL NUMBER 630,)
5 Complainant,)
6 -vs-)
7 CITY OF LIVINGSTON,)
8 Respondent.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

9 The International Association of Fire Fighters, Local Number 630, filed
10 an unfair labor practice charge with the Board of Personnel Appeals on January 16,
11 1974. The Complainant alleges that the City of Livingston failed to implement
12 the award of an arbitration board which was convened pursuant to an agreement em-
13 bodied in a contract between the Complainant and the Respondent. The arbitration
14 board has recommended the reinstatement of William D. Juhnke, a fireman suspended
15 by the City because he lived outside the city limits. The Complainant alleges
16 that the City's failure to implement the arbitration board's award constitutes a
17 failure to bargain in good faith and is violative of sections 59-1603 and 59-
18 1605(1)(a) and (e), R.C.M., 1947.

19 Respondent denies Complainant's allegations that it engaged in an unfair
20 labor practice. Respondent contends that the dismissal of fireman Juhnke was
21 authorized by state law and that the arbitration board did not have jurisdiction
22 to render a decision in this matter.

23 A hearing was held before Jerry W. Toner, duly appointed hearing examiner
24 of the Board of Personnel Appeals, on March 22, 1974. Toner filed his recommended
25 findings with the Board. Toner recommended that the unfair labor complaint of
26 Local Number 630 be dismissed. The Complainant has filed exceptions to Toner's
27 recommended findings.

28 Upon a thorough review of Complainant's Exceptions and the entire record in
29 this case, the Board of Personnel Appeals makes the following:

30 FINDINGS OF FACT

31 1. William D. Juhnke was employed as a fireman prior to October 1, 1973, by
32 the City of Livingston, a public employer within the meaning of section 59-1602(1),
R.C.M., 1947.

1 Section 59-1605(3), R.C.M., 1947 defines "bargain collectively" as follows:

2 "For the purpose of this act, to bargain collectively is the
3 performance of the mutual obligation of the public employer,
4 or his designated representative, and the representatives of
5 the exclusive representative to meet at reasonable times and
6 negotiate in good faith with respect to wages, hours, fringe
7 benefits, and other conditions of employment, or the negotia-
8 tion of an agreement, or any question arising thereunder, and
9 the execution of a written contract incorporating any agreement
10 reached. Such obligation does not compel either party to agree
11 to a proposal or require the making of a concession."

12 It seems obvious to us from even a cursory reading of section 59-1605(3)
13 that the failure to implement an arbitration award is not a failure to bargain
14 collectively. The Board believes that by the time a grievance has gone into
15 final and binding arbitration, as here, no element of bargaining exists for there
16 is nothing to negotiate.

17 While the Board is not bound by the precedent of the National Labor Relations
18 Board, the NLRB's vast store of experience and knowledge in labor relations
19 commends itself to use by the Board for guidance in areas where the Board has
20 no experience. As Complainant correctly points out in their proposed Findings
21 of Fact, Conclusions of Law, and Order at page 6:

22 "...where a collective bargaining contract provides for final
23 and binding arbitration and a grievance is arbitrated, the
24 National Labor Relations Board does not consider that failure
25 to implement such an award is a 'refusal to bargain in good
26 faith.'"

27 The Complainant contends that since 29 U.S.C. Section 185(a) (Section 301(a)
28 Labor Management Relations Act) expressly grants federal courts jurisdiction
29 for violation of contracts, a party aggrieved by the failure of the other party
30 to implement an arbitration board's award has recourse to the federal courts
31 for enforcement of the underlying contract. And since there is not a similar
32 provision in our Act, Complainant urges that the Board of Personnel Appeals
would be justified in taking a broader view of what constitutes a refusal to
bargain in good faith. We disagree. The Public Employees Collective Bargain-
ing Act does speak to the remedy of enforcing an arbitration award. Section
59-1614(9) provides in part as follows:

33 "An agreement to arbitrate and the award issued in accordance
with such agreement shall be enforceable in the same manner
as is provided in this act for enforcement of collective
bargaining agreements."

1 While our Act does not directly state how collective bargaining agreements
2 are to be enforced, it is elementary that a contract can be enforced through
3 civil action in a court of law. And since the Act does not provide the Board
4 with any express authority to enforce a contract, the legislature must have
5 intended by section 59-1614(9) that an arbitration award may be enforced by
6 suit in a court of law--as in 29 U.S.C. Section 185 (a).

7 CONCLUSIONS OF LAW

8 The conduct of which Local Number 630 complains--the failure of the City
9 of Livingston to implement the arbitration board's award--is not an unfair labor
10 practice as detailed by section 59-1605(1)(a) and (e), R.C.M., 1947, nor is it
11 violative of section 59-1603, R.C.M., 1947.

12 ORDER

13 It is ordered that the unfair labor practice complaint of the Complainant,
14 the International Association of Fire Fighters, Local Number 630, be dismissed.

15 DATED this 16th day of August, 1974.

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20 PATRICK F. HOOKS, CHAIRMAN
21 BOARD OF PERSONNEL APPEALS

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23 Concurring in the Majority Opinion are Mr. Francis J. Raucci
24 and Mr. Duane Johnson. Mr. Warren Harper dissented and reserved the
25 right to file a Minority Opinion at a later date.

BEFORE THE BOARD OF PERSONNEL APPEALS

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3 INTERNATIONAL ASSOCIATION OF FIRE)
4 FIGHTERS, LOCAL NUMBER 630,)
5 Complainant,) FINDINGS OF FACT, CONCLUSIONS
6 -vs-) OF LAW, AND ORDER AS RECOMMENDED
7 CITY OF LIVINGSTON,) TO THE BOARD OF PERSONNEL APPEALS
8 Respondent.)

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10 I STATEMENT OF CASE

11 Upon charges filed on January 16, 1974 by International Association of
12 Fire Fighters, Local Number 630, Livingston, Montana, the Executive Secretary of
13 the Board of Personnel Appeals of the State of Montana served the Notice of Hearing
14 which was held March 22, 1974. Copies of the charge and Notice of Hearing were
15 duly served upon Respondent.

16 The Complainant alleges, in substance, that the Mayor and City Council of
17 Livingston, Montana, failed to comply with an Arbitration Board decision of
18 December 5, 1973, which recommended reinstatement of William D. Juhnke, a
19 fireman who was suspended by the City of Livingston because he had moved outside
20 the city limits. Further, the Complainant alleges that an agreement presently
21 existing with the City and Union, which outlines the grievance procedure to
22 be followed for unsettled grievances, was not followed.

23 The above, as alleged by the Union, purports to be a violation of Section
24 59-1603 and Section 59-1605(a) and (e), R.C.M., 1947.

25 Respondent's answer, in substance, denies Complainant's allegations that it
26 engaged in an unfair labor practice. It states that a charge filed and served
27 on Fireman Juhnke by the City of Livingston which led to Juhnke's suspension was
28 pursuant to Section 11-1903, R.C.M., 1947, and that the arbitration board did
29 not have jurisdiction to hear the grievance of William D. Juhnke.
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Grievance Procedure

Grievances or disputes which may arise, including the interpretation of this agreement, shall be settled in the following manner: The Union Grievance Committee upon receiving a written and signed petition shall determine if a grievance exists. If, in their opinion, no grievance exists, no further action is necessary by Grievance Committee, but employee has the right to appeal to the next highest command. If the grievance does exist, they shall, with or without the employee, present this grievance to the Chief of the Fire Department for adjustment. If, within five (5) days, the grievance has not been settled, it then shall be submitted to the police and Fire Committee for adjustment. If within five (5) days no settlement has been reached, then the grievance shall be submitted to an arbitration board consisting of a representative of the City, a representative of the Union, and the Labor Mediator of the State Department of Labor and Industries. The finding of this arbitration board shall be final and binding upon all parties concerned.

6. Prior to May 21, 1973, Fire Chief William Dennis requested William D. Juhnke to petition the City Council for permission if he planned to move outside the city limits. Juhnke petitioned the City Council on May 21, 1973; the City Council denied his request. Despite his request being denied, Juhnke did move outside the city limits prior to September 27, 1973. Thereupon specification of charges were filed by Fire Chief William Dennis and served upon William D. Juhnke pursuant to Section 11-1903, R.C.M., 1947 (see Exhibit C).

7. A hearing was conducted on the specification of charges on October 1, 1973, and at the hearing Juhnke was represented by counsel. After the hearing, the City Council decided to suspend Juhnke if he did not move back into the City of Livingston within sixty (60) days. Juhnke failed to do so and was permanently suspended. A grievance was then filed by the Complainant pursuant to the existing collective bargaining agreement between Complainant and Respondent. The grievance was eventually presented to an Arbitration Board consisting of a representative of the city, a representative of the Complainant, and the Montana Commissioner of Labor. The Arbitration Board recommended that Juhnke be reinstated.

8. The Respondent's counsel appeared at the December 5, 1973 Arbitration Board meeting and objected to the Arbitration Board's jurisdiction to hear the alleged grievance and was overruled by the Board's Chairman, Sidney Smith.

1 Arbitration Board Jurisdiction: The Arbitration Board did not have
2 jurisdiction to hear Juhnke's grievance.

3 Counsel for the City objected to the Arbitration Board's jurisdiction
4 to hear complainant's grievance. The City was not properly represented since
5 Councilman Gilbert was not authorized to represent the City at the Arbitration
6 Board hearing. The testimony clearly indicates that the regulation of the
7 Livingston Fire Department requiring firemen to be residents of the City was
8 not a condition of employment but rather a requirement for eligibility of
9 employment and therefore not subject to arbitration.

10 IV CONCLUSIONS OF LAW

11 1. Fireman Juhnke was legally suspended from the Fire Department of
12 the City of Livingston, Montana pursuant to Section 11-1903, R.C.M., 1947.

13 2. The Respondents were exercising their prerogative to operate and
14 manage their affairs as recognized by Section 59-1603, R.C.M., 1947, when
15 they suspended William D. Juhnke.

16 V ORDER

17 It is hereby ordered that the Unfair Labor Practice Charge against
18 the City of Livingston be dismissed.

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22 Jerry Toner, Hearing Examiner
23 Board of Personnel Appeals
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1 CERTIFICATE OF MAILING

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3 I hereby certify that I mailed a true copy of the above
4 Findings of Fact, Conslusions of Law, and Order as Recommended
5 to the Board of Personnel Appeals to:
6

7 Jim Martinez, Vice President
8 International Association of Fire Fighters
9 1312 Newell Street
10 Boise, Idaho 83705

11 Hilley/Loring Law Firm
12 1713 Tenth Ave. South
13 Great Falls, MT 59405

14 David W. DePuy, City Attorney
15 123 W. Lewis Street
16 Livingston, MT 59047

17 Jack Nardella, President
18 Local #630, I.A.F.F.
19 P. O. Box 915
20 Livingston, MT 59047

21 Patrick F. Hooks, Esq.
22 Chairman, Board of Personnel Appeals
23 218 Broadway
24 Townsend, MT 59644

25 on this 10th day of May, 1974.
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BY Robert R. Jensen
Robert R. Jensen
Executive Secretary
Board of Personnel Appeals