

BEFORE THE BOARD OF PERSONNEL  
APPEALS

ULP-3-1975

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDED ORDER

1  
2 IN THE MATTER OF: )  
3 UNITED BROTHERHOOD OF CARPENTERS AND )  
4 JOINERS OF AMERICA, LOCAL UNION NO. 112, )  
5 )  
6 )  
7 )  
8 )  
9 )

COMPLAINANT, )  
-vs- )  
BOARD OF COUNTY COMMISSIONERS, )  
SILVER BOW COUNTY, )  
RESPONDENT. )

I. STATEMENT OF CASE

11 As a result of an unfair labor practice charge filed on January 30, 1975,  
12 by the United Brotherhood of Carpenters and Joiners of America, Local No. 112,  
13 herein referred to as the Union, the Montana State Board of Personnel Appeals  
14 duly served copies of the charge and Notice of Hearing on the Silver Bow County  
15 Commissioners.

16 The Union's charge, herein referred to as ULP No. 3, 1975, basically alleges  
17 that the Silver Bow County Commissioners, herein referred to as the Employer,  
18 contracted out carpentry work which resulted in the layoff of a county carpenter,  
19 and that these actions constituted a violation of Section 1605 (1) (e), R.C.M.,  
20 1947. This section of the law deals specifically with the failure of an employ-  
21 er to bargain in good faith. The Union's reasoning in this matter is based on  
22 the ruling of the United States Supreme Court in the "Fibreboard Case,"<sup>1</sup> in  
23 which the subcontracting issue is contemplated.

24 The Employer filed an answer to the charge on February 25, 1974\*, and basi-  
25 cally denied said charge on the grounds that the layoff of Mr. John Bolton, the  
26 carpenter in question, was due to fiscal considerations. The Employer also  
27 denied that work was subcontracted out which should have been assigned to Mr.  
28 Bolton under the terms of the collective bargaining agreement in existence be-  
29 tween the Employer and the Union. It was also claimed by the Employer that

30  
31 1. *East Bay Union of Machinists v. NLRB (Fibreboard Paper Products) 322 F 2d*  
32 *411, 53 LRRM 2666 (CA, DC, 1963) aff'd 379 U.S. 203, 57 LRRM 2609 (1964).*  
\* Note that the Union filed the charge on January 30, 1975, and then amended  
its charge shortly thereafter. The Board received the first answer to the  
charge on February 11, 1975, and an amended answer on February 25, 1975.

1 statutory requirements prompted the call for bids on the work that the Union  
2 insists should have been assigned to Mr. Bolton.

3 As the duly appointed hearing examiner of the Board of Personnel Appeals,  
4 I conducted the hearing held March 14, 1975, in accordance with the provisions  
5 of the Montana Administrative Procedures Act (Section 82-4201 to 82-4225,  
6 Revised Codes of Montana 1947).

7 After thorough review of the entire record of the case, including sworn  
8 testimony and evidence, I make the following:

9 II. FINDINGS OF FACT

10 The Alleged Unfair Labor Practice

11 1. Mr. John Bolton worked for the Employer continuously from December 1,  
12 1973 to December 1, 1974. He had worked intermittently for the Employer prior  
13 to this last term of employment.

14 On or about December 1, 1974, the Employer laid off Mr. Bolton without  
15 notice. He was told that there were insufficient funds to keep two carpenters  
16 employed, and that as soon as the budget would permit, he would be rehired.  
17 (transcript, page 21)

18 Mr. James Cadigan, business representative for the Union, testified that  
19 he had not been informed of the intended layoff.

20 2. Subsequent to Mr. Bolton's layoff on December 1, 1974, the Union, as  
21 aforementioned, filed an unfair labor practice charge with the Board. At the  
22 hearing, Mr. Cadigan contended that Mr. Bolton should not have been laid off  
23 for either lack of work or funds because an extensive remodeling project on the  
24 Silver Bow County jail was underway, and that Mr. Bolton should have been  
25 assigned the carpentry work on this project.

26 3. The Union charged that Employer's actions in contracting out the re-  
27 modeling of the county jail not only violated the intent of the contract be-  
28 tween the two parties, but as was averred in the charge, ran directly counter  
29 to NLRB precedent set in the Fibreboard Case concerning employer subcontracting  
30 practices.

31 The employer argues that a project of this scope, had to be let for bid  
32 pursuant to Sections 16-1803 and 16-1803.1, R.C.M. 1947. It was further argued  
that the existing contract between the Employer and the Union did not preclude

1 this action.

2 Past Employment Practices: Silver Bow County

3 4. Mr. Cadigan testified that the number of carpenters working for the  
4 Employer fluctuated from one (1) to four (4). It appears that the number  
5 working is determined by the amount of work which has to be done, and the money  
6 available to fund such work. In 1974, there were two carpenters employed;--  
7 Mr. Bolton, and Mr. Dave Sullivan who has worked continuously for the Employer  
8 for approximately fifteen (15) years.

9 The record is exiguous concerning the particulars of Mr. Bolton's em-  
10 ployment with the County prior to his hiring on December 1, 1973. From what  
11 I can deduce however, Mr. Bolton has never worked "full-time" for the Employer  
12 before December 1, 1973. In the past, Mr. Bolton was paid from both federal  
13 revenue sharing and general county construction funds. It also appears that he  
14 was hired for specific jobs.

15 Mr. Cadigan cited numerous examples of Mr. Bolton's work, including the  
16 remodeling of the County Attorney's offices, and maintenance work on almost  
17 every County building at one time or another. Mr. Bolton's last term of  
18 employment, in fact some ten months of it, was specifically spent working on  
19 the County Attorney's offices. Mr. Ed DeGeorge, County Commissioner, tes-  
20 tified that Mr. Bolton was hired specifically in December, 1973, for this  
21 remodeling project and that federal revenue sharing funds were used. (tr. p. 31)

22 It was uncontested that Mr. Bolton is an experienced and capable carpenter  
23 as well as a good worker.

24 5. The Union contended that the job on the County Attorney's offices was  
25 extensive maintenance carpentry work, and that there was similar work being  
26 done on the county jail that should have been assigned to Mr. Bolton. The  
27 remodeling of the County Attorney's offices was one of the most extensive jobs ever  
28 assigned to Mr. Bolton. Mr. Bolton testified that this remodeling cost in  
29 excess of twenty thousand dollars (\$20,000.00). Mr. DeGeorge estimated a cost  
30 of approximately ten thousand (\$10,000.00) for the project.

31 It is clear from the record that none of the jobs assigned to Mr. Bolton  
32 have been as extensive as the entire remodeling job that is presently underway

1 at the Silver Bow County Jail in terms of sheer cost, involvement of other  
2 crafts, etc. I will speak to this point further in the discussion of State  
3 Laws governing County contracting practices.

4 The Existing Contract

5 6. The present contract between the Union and the Employer is effective  
6 from July 1, 1974 to June 30, 1975. (Union's exhibit A) The collective  
7 bargaining history between the two parties ranges back a number of years. The  
8 Employer also negotiates separate contracts with other craft unions.

9 7. The contract is characterized by a formidable management's rights  
10 clause which reads as follows:

11 The employer has the exclusive duty and right to determine the  
12 quality and quantity of work, to manage the business and  
13 schedule the work. The Union recognizes the responsibility  
14 imposed upon its jurisdiction, and realizes that in order  
15 to provide maximum opportunities for continuing employment,  
16 good working conditions and a high standard of wages, the  
17 Employer must be able to manage and operate efficiently and  
18 economically, consistent with fair labor standards and the  
19 Laws of the State of Montana. The Union through its bargaining  
20 agency, agrees to cooperate in the attainments of these goals.  
21 The Employer, therefore retains all rights not otherwise  
22 specifically covered by this agreement. (emphasis added)

23 The negotiations on this contract consisted of the Union submitting a  
24 proposed contract to the Employer; the Employer made some changes to "conform  
25 to state law;"and the Union then signed the contract as acceptable.

26 It should be mentioned that the above management's rights clause was  
27 added to the first contract submitted by the Union to the Employer. (Employer's  
28 exhibit A) This fact is significant as this strong clause was won through  
29 collective bargaining even though there was not a great deal of bargaining  
30 done. Although there was no stringent objection, the Union questioned the  
31 merits of this evidence and pointed out that there was some writing and un-  
32 derlining done on Employer's exhibit A that was not the work of the Union.  
I think it sufficient that I am cognizant of these additional markings.  
This document is both relative and important. It should be considered be-  
cause it is fundamental in establishing what exactly was bargained for in  
terms of work etc. It is also integral in establishing whether or not the  
Union had waived its rights to bargain on the subcontracting matter.

1 8. There are some notable and serious deficiencies in the contract.\*  
2 There is no succinct definition of who is in the bargaining unit.<sup>2</sup> There is  
3 no definition of the bargaining unit work,<sup>3</sup> or in other words what work is to  
4 be done. There is not even a semblance of a grievance<sup>4</sup> and/or arbitration<sup>5</sup>  
5 procedure.

6 The Union security clause is fairly broad and it is here where the pos-  
7 sibility of unfair labor practice arises in this case. Basically, it recog-  
8 nizes the Union as the "exclusive representative bargaining agent with respect  
9 to wages, hours of work, and other conditions of employment." (emphasis added)  
10 It is the above underlined phrase which has been interpreted by the NLRB to  
11 include the subject of subcontracting,<sup>6</sup> and it is here I presume that the  
12 Union has called attention to Fibreboard.

13 Similar language is present in the Montana Public Employees Collective  
14 Bargaining Act, Section 59-1602(5) R.C.M. 1947 reads:

15 "'labor organization' means any organization or association of any  
16 kind in which employees participate and which exists for the prim-  
17 ary purpose of dealing with employers concerning grievances, labor  
18 disputes, wages, rates of pay, hours of employment, fringe benefits, or  
19 other conditions of employment." (emphasis added)

20 Because of similar wording in the standing contract between these two  
21 parties, the National Labor Relations Act, and the Montana Public Employees  
22 Collective Bargaining Act, it is necessary to develop and explore the question  
23 of subcontracting in my discussion.

24 State Law Concerning County Contracting Practices

25 9. Section 16-1803, R.C.M. 1947, speaks specifically to what purchases  
26 or construction jobs must be let out for bid. The prime determinant as to  
27 whether or not bids must be taken for a particular purchase or construction  
28 job is cost. The pertinent language concerning construction reads:

29 \* I mention these deficiencies because they are considered mandatory sub-  
30 jects of collective bargaining by the NLRB and are really essential to the  
31 body of a collective bargaining agreement. A contract is built around the  
32 framework of a determination of what work is to be done, who does this work  
and is under contract, and what amount is to be paid in wages and benefits  
for the defined work. A grievance and/or arbitration procedure is extremely  
helpful in resolving disputes because of differing interpretation of these  
fundamental considerations.

2. *Douds v. International Longshoremen's Assn.*, 241 F 2d 278, 282, 39 LRRM (CA2, 1;

3. *Almeida Bus Lines Inc.*, 142 NLRB 445, 53 LRRM 1055 (1963).

4. *Bethlehem Steel Co.* 136 NLRB 1500, 50 LRRM 1013 (1962); *Crown Coach Co.*,  
155 NLRB 625, 60 LRRM 1336 (1965).

5. *NLRB v. Boss Mfg.* 118 F 2d 187, 8 LRRM 729 (CA 7, 1941)

6. *Westinghouse Corp.* 150 NLRB 1574, 58 LRRM 1257 (1965)

1 "No contract shall be entered into between a board of county  
2 commissioners for the purchase of any automobile, truck or other  
3 vehicle, ...or for the construction of any building, for which  
4 must be paid a sum in excess of two thousand dollars (\$2,000.00)  
5 without first publishing a notice calling for bids for furnishing  
6 a notice calling for bids for furnishing the same." (emphasis added)

7 Section 16-1803.1 further qualifies this requirement. It reads:

8 "Division of contracts to circumvent bidding procedures prohibited.  
9 Whenever any law of this state provides a limitation upon the  
10 amount of money that a county can expend upon any public work or  
11 construction project without letting such public work or construc-  
12 tion project to contract under competitive bidding procedures, a  
13 county shall not circumvent such provision by dividing a public  
14 work or construction project or quantum of work to be performed  
15 thereunder which by its nature or character is integral to such  
16 public work or construction project, or serves to accomplish one  
17 of the basic purposes or functions thereof, into several contracts,  
18 separate work orders or by any similar device.

19 10. As aforementioned, an integral aspect of the Union's case is that  
20 Mr. Bolton was fully capable to do the carpentry work on the County jail, and  
21 that this work was restoration or maintenance, not new construction, and  
22 therefore was not really different from the work he had been doing for the  
23 Employer all along. Section 16-1803 R.C.M. 1947, does state that:

24 "Provided that the provisions of this section shall not apply  
25 to contracts for public printing entered into in accordance with  
26 the provisions of Chapter 12, of Title 16 and provided further,  
27 that the provisions of this section shall not apply to contracts  
28 for purchases, which in the opinion of the board, are made neces-  
29 sary by fires, flood, ..." ...or for restoration of a condition  
30 of usefulness which has been destroyed by accident, wear, tear,  
31 mischief..." (emphasis added)

32 As a result of these considerations a good deal of the testimony at  
the hearing dealt with the question of whether the County jail project con-  
stituted maintenance work of the type that the County carpenters had been doing  
for the Employer, or whether it was that type of work subject to the contract-  
ing requirements specified in the above mentioned passages of the law.

The work on the County Attorney's offices involved putting up petitions,  
rebuilding window frames, sheet rocking, etc. An electrician was hired without  
bid, to rewire the offices as Mr. Bolton's work progressed.

The work in the county jail has involved extensive employment of other  
crafts, such as ironworkers, plasterers, electricians and plumbers. I have  
already mentioned that I do not believe Mr. Bolton has worked on any job as  
extensive as that of the county jail for the employer.

1 Mr. Cadigan's testimony substantiates this assessment:

2 "The thing I would like to point out, that we have no objections  
3 to Silver Bow County contracting out the work in the jail. That  
4 did not come under our collective bargaining agreement. There's  
5 iron workers, cement finishers, a tremendous amount of plumbing,  
6 electrical work. Silver Bow County, to my knowledge does not have  
7 a collective bargaining agreement that covers this type of work."  
(tr. p. 9 )

6 Mr. Cadigan also testified that he had no objection to the contract let out  
7 on the Silver Bow County Nursing Home which involved new construction.

8 11. The Employer took the position that the law required that the work  
9 on the Silver Bow County Jail had to be contracted out in whole (see lines  
10 5 to 11 page 6) Employer also contended that this decision was prompted by  
11 the advice rendered by the architectural firm of Moyle-Aanes and Associates, Inc.  
12 (Employer's exhibit 6).

13 The contract was awarded to Taylor-McDowell Construction for the sum of  
14 \$107,885.00 (Employers exhibit 5).

15 12. The Union did raise a point which complicates the case. The County  
16 painter was working on the County jail with the men employed by Taylor-McDonnell  
17 Construction, the prime contractors on the job.

18 DISCUSSION

19 This case presents a number of complex issues, not the least of which is  
20 the subcontracting problem alluded to by the Union in its mentioning of the  
21 Fibreboard Case. The subcontracting issue, and how it relates to the collec-  
22 tive bargaining process, has been considered in a number of cases before the  
23 National Labor Relations Board in the last decade.<sup>7</sup> Although this issue is  
24 not entirely settled, the NLRB has set some fundamental trends in this area.  
25 The Board of Personnel Appeals is not bound by this precedent, but it would  
26 be wise to look closely at the experience and expertise of the NLRB in this  
27 regard.

28 There is however, a distinct possibility that this case could be dismissed  
29 offhand without speaking to the difficult issue of subcontracting. It could  
30 be argued, especially in view of the pleadings of the Union, that the real ques-  
31 tion in this matter is not did the Employer refuse to bargain in good faith,

32 <sup>7</sup>: *Town and Country Mfg. Corp v. International Union of Electrical, Radio,  
and Machine Workers, AFL-CIO. 150 NLRB 1574, 58 LRRM 1257 (1965).*

1 but rather did the Employer simply violate the existing contract thereby  
2 reducing this case to a dispute of contract? If the latter were the case,  
3 then this charge would be dismissed for lack of jurisdiction as contract  
4 disputes are matters for grievance procedures or ultimately the courts.

5 But in order to allay any suspicion that the Employer did engage somehow  
6 in unfair labor practice, I choose to illustrate in light of NLRB precedent  
7 and other considerations which apply specifically to this case, that the  
8 Employer's actions of letting out a contract on the County jail project and  
9 the laying off of Mr. John Bolton, are not only unrelated, but conclusively  
10 do not constitute a failure to bargain in good faith.

11 In the important *Westinghouse Case*,<sup>8</sup> the NLRB renders the most defin-  
12 itive explanation of how it reads the decision of the United States Supreme  
13 Court in *Fibreboard*. A series of tests were laid down by the NLRB to deter-  
14 mine whether or not a particular subcontracting decision necessitates bar-  
15 gaining. Subcontracting of unit work does not require bargaining, said the  
16 Board, if

- 17 (1) the subcontracting is motivated solely by economic reasons;
- 18 (2) it has been customary for the company to subcontract various  
19 kinds of work;
- 20 (3) no substantial variance is shown in kind or degree from the  
21 established past practice of the employer;
- 22 (4) no significant detriment results to employees in the unit;
- 23 (5) the union has had an opportunity to bargain about changes in  
24 existing subcontracting practices at general negotiating meetings.

25 It would be useful to examine these five tests or criteria with respect  
26 to the case at hand.

27 1. It is entirely plausible that the Employer in this case was motivated  
28 solely by economic reasons. I have no reason to doubt Mr. DeGeorge's tes-  
29 timony that the Employer was acting on the advice of the architect. There  
30 is also the pertinent question of compliance with Sections 16-1803 and  
31 16-1803.1, R.C.M. 1947.

32 Anti-union animus was not apparent and it seems relations between the

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8. *Westinghouse Elect. Corp. v. International Union of Electrical Radio  
and Machine Workers, AFL-CIO.* 150 NLRB 1574, 58 LRRM 1257 (1965)

1 parties have been relatively good.

2  
3 2. From the record, it appears customary that the Employer has in the  
4 past used its discretion to subcontract work that it feels is too extensive  
5 for the craft employees under contract with the Employer and/or to comply  
6 with Sections 16-1803 and 16-1803.1 R.C.M. 1947.

7 3. The third criterion is of course closely related to the second and  
8 here again judging from the facts available in the record, there does not  
9 appear to be any marked deviation or "substantial variance" from past employ-  
10 ment practices. (See point of fact #4.)

11 4. and 5. In applying the fourth and fifth criteria, we get to the nucleus  
12 of the issue in deciding if the Employer has been engaging in an unfair labor  
13 practice within the meaning of Section 59-1605 (1) (e). Did Mr. Bolton sus-  
14 tain "significant detriment" because the Employer sub-contracted work out from  
15 under the collective bargaining agreement governing the carpentry bargaining unit?  
16 Further, did the Union have the opportunity to bargain on changes in subcontract-  
17 ing practices, if in fact, there were any changes? These questions have to be  
18 answered separately.

19 Mr. Bolton could have sustained "significant detriment" as a result of  
20 the Taylor-McDowell contract on the county jail if it can be shown that this  
21 work was bargained for by the Union and in turn reflected in the contract.  
22 Yet after examining said contract, there does not appear to be any real defini-  
23 tion of what work is to be done by the bargaining unit. Also by contractual  
24 agreement, the Employer is permitted to use its discretion in determining  
25 the "quantity of work."

26 As for the maintenance versus new construction argument, Section 16-1803,  
27 R.C.M. 1947, leaves the Employer a considerable amount of latitude in deter-  
28 mining what work should be exempted from the two thousand dollar (\$2,000.00)  
29 requirement with the words "in the opinion of the board." (See lines 19, p. 6)  
30 Therefore, it could be argued that the Employer was of the opinion that the  
31 work on the County Attorney's offices did not require subcontracting but the  
32 more extensive work on the county jail did.

From these considerations then, a strong argument can be made that Mr.

1 Bolton's layoff was not the result of the Employer's action of awarding the  
2 contract to Taylor-McDonnell. The employer was not obligated to assign this  
3 work to Mr. Bolton because it was not intended for him by contract.

4 In considering the question of the Union's opportunity to bargain on  
5 the employer's actions, again the argument can be used that it was the Em-  
6 ployer's prerogative, in accordance with the contract, to decide what work  
7 was to be done thus abrogating any duty to bargain on the subject.

8 The contract does not really define sufficiently who was in the bargain-  
9 ing unit. Mr. Cadigan testified that it was his "intent" (transcript page 7)  
10 in negotiating the contract, that Mr. Bolton and Mr. Sullivan would do all  
11 maintenance work for the Employer. He also stated: "There was not talk (in  
12 the negotiation) of who was to be the employee. We did definitely mention  
13 Mr. Bolton and Mr. Sullivan during the period of negotiations". Mr. Cadigan  
14 was also asked: "But whether or not it was Mr. Bolton or Mr. Sullivan,  
15 you still had jurisdiction,...you still claim jurisdiction over the work?"  
16 Mr. Cadigan replied, "right." (tr. p. 8 )

17 The Union then "claims" all maintenance work by contract, and it was  
18 "intended" that Mr. Bolton was to be in the unit. Yet, there is not a semblance  
19 of these claims or intentions on paper, nor did the Union ever claim an oral  
20 contract.

21 Mr. Cadigan called attention to Article II. Section A of the contract as  
22 the clause that substantiated these claims and intentions. The pertinent  
23 language reads: "the Employer recognized the Union as the exclusive bargain-  
24 ing agent with respect to wages, hours of work, and other conditions of employ-  
25 ment for employees in the bargaining unit." It is difficult to construe that  
26 this wording substantiates the claims and intentions of the Union.

27 I am not convinced that it was Employer's intent that Mr. Bolton was to  
28 be employed under the same conditions as Mr. Sullivan, the other County Car-  
29 penter. He may have received a similar wage, yet the Employer claims that  
30 even at the time of negotiation on the contract in question, funds were not  
31 budgeted for an additional carpenter. (tr. p. 32). Although there is no  
32 documentary evidence submitted to substantiate this claim, it would not sur-

1 prise me in view of the peculiar bargaining that was done on the contract.

2 Finally, without delving into NLRB precedent concerning the waiver of  
3 bargaining rights to deeply, it has been found that if something is specif-  
4 ically stated in a collective bargaining agreement, then that topic is closed  
5 to further negotiations.<sup>9\*</sup> By agreement, the Employer has the right to de-  
6 termine the "quantity of work" to be done by the obscurely defined bargaining  
7 unit. The Employer even retains "all rights not otherwise specifically  
8 covered by this agreement." These facts are devastating to the Union's case.

9 In summary then, for the Union to sustain its charge that the Employer  
10 has engaged in an unfair labor practice, it had to show that work was sub-  
11 contracted out from under the collective bargaining agreement between the Em-  
12 ployer and the Union, and further that this action was taken without  
13 giving the Union a chance to bargain on the matter. The Union also had to  
14 show that this action was related directly to the layoff of Mr. Bolton. In  
15 my opinion, the preponderance of evidence is quite contrary to these pre-  
16 requisites for the sustainment of ULP No. 3, 1975. It was not required that the  
17 work in question be assigned to this bargaining unit, and there is a ques-  
18 tion that Mr. Bolton was ever a "full-time" member of the unit in the same  
19 sense as the other County Carpenter, Mr. Sullivan.

20 There remains the question of the County painter working on the County  
21 Jail project. This in addition to the shoddy practice of not notifying an  
22 employee of possible layoff well in advance of such action, only serves to  
23 exacerbate and complicate this dispute. Yet these facts are not really suf-  
24 ficient to sustain an unfair labor practice charge in this case.

25 After diligent consideration of the foregoing facts, I am  
26 going to recommend that this charge be dismissed. This should not be in-

27  
28 9. *Hughes Tool Corp.* 100 NLRB 208, 30 NLRB 208, 30 LRRM 1265. *Alder Corp.*,  
150 NLRB 1658 58 LRRM 1280.

29 \* *Where the employer and the Union have collectively bargained on a partic-*  
30 *ular subject, either party can refuse rightfully to a reopening of the*  
31 *contract on that subject, until the time specified by the "reopening"*  
32 *provision of the contract. In this case, if the contract had not spoken*  
*to the Employer's right to determine the quantity of work, the union could*  
*have pressed to reopen the contract on the matter. Grievance and/or*  
*arbitration machinery can be utilized to resolve disputes that involve*  
*contract interpretation and could possibly be used in the case at hand if*  
*such machinery were available.*

1 terpreted as a license for public employers to subcontract work without con-  
2 sulting labor organizations. On the contrary, public employers must be cog-  
3 nizant of their responsibility to bargain on work to be subcontracted out if it  
4 affects any member of a collective bargaining unit. Subcontracting cannot  
5 be used as an anti-union weapon if the policies of the Montana Public Employees  
6 Collective Bargaining Act are to be effectuated.

7 It is my hope that both parties to this dispute would negotiate more  
8 seriously and competently in the future in order to prevent such disputes, and  
9 to give the employees in question a more realistic picture of the true nature  
10 of their employment.

11 III. CONCLUSIONS OF LAW

12 The allegation that the Employer has engaged in an unfair labor practice  
13 within the meaning of Section 59-1605 (1) (e), R.C.M. 1947, has not been sus-  
14 tained by the Union.

15 IV. RECOMMENDED ORDER

16 It is recommended, after consideration of the foregoing Findings of  
17 Fact, Conclusions of Law, and upon the entire record of the case, that ULP  
18 No. 3, 1975 be dismissed in its entirety.

19 Dated this 5<sup>th</sup> day of May, 1975.

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21   
CORDELL R. BROWN  
22 Hearing Examiner  
23 Board of Personnel Appeals  
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CERTIFICATE OF MAILING

I, Cordell R. Brown, hereby certify and state that I did, on the 5<sup>th</sup>  
day of May, 1975, mail a true and correct copy of the Board of Personnel  
Appeals Findings of Fact, Discussion, Conclusions of Law and Recommended Order  
by depositing a true and correct copy in the United States Mail in an envelope  
securely sealed with postage prepaid, addressed to them at their last known  
address as follows:

Mr. Robert J. Holland  
Attorney at Law  
120 West Granite  
Butte, Montana 59701

Mr. James Cadigan  
Business Representative  
United Brotherhood of Carpenters & Joiners of America  
P. O. Box 3412  
Butte, Montana 59701

Mr. M. F. Hennessey  
Chief Deputy Attorney  
for Silver Bow County  
106 West Granite  
Butte, Mt 59701

Dated this 5<sup>th</sup> day of May, 1975.

  
Cordell R. Brown  
Hearing Examiner  
Board of Personnel Appeals