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STATE OF MONTANA
BOARD OF PERSONNEL APPEALS
UNFAIR LABOR PRACTICE CHARGES

IN THE VARIOUS MATTERS INVOLVING)
)
BOARD OF TRUSTEES SCHOOL DISTRICT)
NO. 2, and BILLINGS HIGH SCHOOL)
DISTRICT, BILLINGS, MONTANA)
)
and)
)
BILLINGS EDUCATION ASSOCIATION, et al)

ULP-11-1975

ORDER

On September 25, 1975 at 9:30 o'clock in Billings, Montana a hearing was held to determine whether the above parties had committed certain unfair labor practice charges against each other. Each of the parties was present or represented by counsel, testimony taken, exhibits were entered and the Board of Personnel Appeals now being fully advised in the premises makes the following:

FINDINGS OF FACT

We will take the charge filed by the Billings Education Association, hereinafter BEA first. On August 22 the BEA charged the Board of Trustees of School District #2 hereinafter, Board, with an unfair labor practice in that on August 21, 1975 BEA requested further negotiations with the School Board and that the School Board refused to meet with the BEA.

Prior to the time of this charge the parties had engaged in thirteen face to face negotiating sessions between January 22, 1975 and August 22, 1975, the date of the charge, with the last face to face session occurring on June 6, 1975. In addition, the Board of Personnel Appeals of the State of Montana, hereinafter BPA, conducted mediation sessions on July 30 and 31, and August 19, 20 and 21, 1975.

Taking the evidence as a whole, we find that the course of negotiation entered into between the two parties was certainly less than model and perhaps left much to be desired. However, it is obvious that particularly in the early part of the negotiations, some progress had been reached. It is further apparent, taking the record as a whole, that as the date of August 22 was approached, the negotiations had slowed. The BPA mediator acting on behalf of the BPA initiated the fact finding

1 process as provided by law. On August 21, 1975 the BEA sent the Board a letter,
2 BEA Exhibit 8. The Board responded with a letter, BEA Exhibit 9. In essence,
3 the BEA demanded to meet the next day, August 25, 1975 and the Board responded
4 that they would be willing to negotiate but only after receiving a writing
5 evidencing some change in position by the School Board. From the above findings
6 of fact we draw the following:

7 CONCLUSIONS OF LAW

8 Taking BEA Exhibits 8 and 9 in the context of the history of bargaining show
9 in this dispute and in light of the attempts to mediate which had apparently not
10 been fruitful it is the opinion of the Board of Personnel Appeals that the charge
11 activity does not constitute an unfair labor practice. While the Board does main
12 tain a strong policy of requiring parties to make every reasonable and good faith
13 effort to arrive at a comprised, negotiated settlement it will not require parties
14 to engage in negotiations which could not, by any reasonable standard, prove fruit
15 ful at that time. While, perhaps, under other circumstances the activity complain
16 of by the Board might constitute an unfair labor practice, the Board of Personnel
17 Appeals must decide each case on its own issues and in light of its own bargaining
18 history, and in this instance cannot say that the action of the School Board was
19 unreasonable or unwarranted.

20 ORDER

21 The charge filed by BEA against the Board dated August 22, 1975 and docketed
22 August 25, 1975 is hereby dismissed.

23
24 We shall secondly review, one at a time, each of the six counts filed by the
25 Board against the BEA in a charge dated August 28, 1975.

26 COUNT I.

27 FINDINGS OF FACT

28 We find that the Board is fundamentally correct in its factual allegation tha
29 as a percentage matter the BEA had moved only very little on economic matters
30 between April 16, 1975 and August 25, 1975. We would find that the allegations
31 of the Board with regard to the facts involved are fundamentally correct. From
32 this we draw the following:

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CONCLUSIONS OF LAW

Notwithstanding the fact the BEA had moved very little on the economic offer, we find no basis for an unfair labor practice charge. As a matter of law, we cannot say that the BEA was compelled to make a movement in this area.

ORDER

We dismiss Count I of Board's complaint.

COUNT II.

FINDINGS OF FACT

In the exceedingly hazy and nebulous area of School Board financing, and based upon the testimony in the record as we find it, we cannot as a matter of fact conclude that the BEA's proposal would have required deficit financing, and feel the BPA need treat the matter no further. Therefore, we make the following:

CONCLUSIONS OF LAW

Because the Board did not demonstrate as a matter of fact the allegation complained of in Count II., it must fail without having reached any question of law on the matter.

ORDER

Count II. of Board's complaint is dismissed.

COUNT III.

FINDINGS OF FACT

The BPA find that both parties to this negotiation are to one degree or another guilty of some lack of candor in dealing with the public. The Board would recommend, as inferred in the section of this document dealing with the BEA's complaint, that this negotiation certainly not be used as a model for further negotiations. The Board makes the following:

CONCLUSIONS OF LAW

We do not find sufficient evidence to prove the allegations of this Charge. We therefore, do not reach the question of whether such conduct would constitute an unfair labor practice.

ORDER

It is therefore ordered Count III. Board's complaint be dismissed.

COUNT IV.

- 1 (d) maintain the efficiency of government operations;
2 (e) determine the methods, means, job classifications, and personnel by
3 which government operations are to be conducted;
4 (f) take whatever actions may be necessary to carry out the missions of
5 the agency in situations of emergency;
6 (g) establish the methods and processes by which work is performed."

7 Section 59-1605(5), R.C.M. 1947, reads as follows:

8 "(5) This act does not limit the authority of the legislature, any
9 political subdivision or the governing body, relative to appropriations
10 for salary and wages, hours, fringe benefits, and other conditions of
11 employment. (Sec. 59-1605(1) to (5), as amended by Ch. 36, L. 1975,
12 effective March 7, 1975, and by Ch. 97, L. 1975, effective July 1, 1975)."

13 Section 59-1617, R.C.M. 1947, reads as follows:

14 "59-1617. NEGOTIABLE ITEMS. Nothing in this chapter shall require or
15 allow boards of trustees of school districts to bargain collectively
16 upon any matter other than matters specified in Sec. 59-1605(3). (As
17 added by Ch. 117, L. 1975, effective July 1, 1975)."

18 In its brief, the Board argues that the BEA "bargained to impasse a number
19 of non-mandatory bargaining issues," and sets forth a list of 14 of what it
20 reasons to be non-mandatory bargaining issues.

21 Clearly, the Montana state legislature, in its 1975 amendments to the
22 Montana Public Employees Collective Bargaining Act, intended Section 59-1617,
23 R.C.M. 1947, to narrow to some extent the issues to be bargained between a
24 school board and a teacher association. However, issues negotiated between
25 employers and employees are apt not to be clearly within either the definition
26 of "other conditions of employment" or the definition of "management prerogative."
27 Instead, the issues typically fall within the "gray" area somewhere in between.

28 In the present case, we find a lack of sufficient evidence to conclude
29 that the BEA insisted on bargaining the 14 issues enumerated to impasse, or
30 even to conclude that any of the 14 issues are so clearly outside the scope
31 of "other conditions of employment" as to be non-bargainable under Section
32 59-1617. The record here, however, does not reveal such issues being "bargained
to impasse".

ORDER

Count VI is dismissed.

DATED this 13th day of April, 1976.

BOARD OF PERSONNEL APPEALS

BY Brent Cromley
Brent Cromley

Acting Chairman.

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CERTIFICATE OF MAILING

I, Vonda Brewster, hereby certify and state that I did on the 13th day of April, 1976, mail a true and correct copy of the Board of Personnel Appeals' Order to the following people at their last known address:

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Vonda Brewster