

BEFORE THE BOARD OF PERSONNEL APPEALS

1  
2 LOCAL 521 I.A.F.F., )  
3 Complainant, )  
4 vs- )  
5 CITY OF BILLINGS )  
6 Defendant. )

ULP-3-1976

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDED ORDER.

7 \* \* \* \* \*

8 On January 27, 1976, Complainant, Local 521, International Association  
9 of Fire Fighters (Union), filed an unfair labor practice charge against the  
10 Defendant, City of Billings (City), alleging that the City had failed to  
11 bargain in good faith and has therefore committed an unfair labor practice as  
12 defined in 59-1605 (1)(e). Specifically, the Union alleges that the City, by  
13 failing to engage in the grievance procedure as outlined in the agreement  
14 between the parties, is guilty of refusing to bargain in good faith.

15 A hearing was held in Billings, Montana, on April 22, 1976, and briefs  
16 were submitted on the matter on May 5, 1976. From the hearing the following  
17 are my findings of facts:

18 1. Local 521 I.A.F.F. is the bargaining representative for the fire dep-  
19 artment except the chief and assistant chief.

20 2. An agreement exists between the City and the Union which was in effect  
21 at the time of the alleged grievance.

22 3. Article XVII of that Agreement establishes a grievance and arbitra-  
23 tion procedure.

24 4. Captains Diede, Larson, La Motte, Frink, Damjanovich and Dillon  
25 instituted the first step of the grievance procedure by reporting their  
26 grievance to the shop steward, Pat Schmaing.

27 5. On November 21, 1975, Pat Schmaing, reported the grievance to Chief  
28 Wallace W. Frickle.

29 6. Chief Frickle stated in a letter that he was unable to resolve the  
30 problem and suggested that the grievance be carried to the next step, the  
31 Grievance Committee Chairman for further action.

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- 1           7. The Chairman of the Grievance Committee, Robert Dozier, presented  
2 the grievance to C. Brent Hunter, Director of the Department of Personnel and  
3 Safety.
- 4           8. On November 28, 1975, Mr. Hunter in a letter addressed to Mr. Dozier,  
5 denied the grievance, recommending the individual captains take the matter  
6 back to the Classification Appeals Committee.
- 7           9. In a letter dated December 3, 1975, Mr. Dozier requested the matter  
8 be submitted for arbitration.
- 9           10. On December 9, 1975, Mr. Hunter submitted Mr. Bill Anderson's name  
10 as a suggested arbitrator.
- 11           11. A letter dated December 10, 1975, was sent to Mr. Anderson by Mr.  
12 Dozier requesting on behalf of the Union and the City that he serve as the  
13 arbitrator.
- 14           12. On December 31, 1975, Mr. Hunter sent Mr. Dozier a letter stating  
15 that an agreed date for the hearing before the arbitrator was January 22,  
16 1976.
- 17           13. A letter noting that confirmation of the January 22 date was sent  
18 to the arbitrator by Mr. Hunter.
- 19           14. On January 13, 1976, Mr. Hunter sent a letter to Mr. Dozier stating  
20 that the City has decided to forego the pending arbitration hearing assert-  
21 ing that the issue of the grievance was outside the realm of a valid grievance.
- 22           15. On January 15, 1976, in a letter addressed to the arbitrator Mr.  
23 Dozier informed the arbitrator that even though the City had abandoned the  
24 pending arbitration, that the Union planned on being present at the January  
25 22 hearing date.
- 26           16. On January 17, 1976, the arbitrator wrote a letter addressed to  
27 both parties, withdrawing as arbitrator in order to avoid being caught in the  
28 middle.
- 29           17. On January 20, 1976, Mr. Dozier wrote Mr. Hunter requesting the  
30 City's cooperation in selecting a new arbitrator to replace Mr. Anderson.
- 31           18. Mr. Hunter replied on January 22, 1976, that the City did not  
32

1 want to take the matter to arbitration.

2 DISCUSSION

3 The Union asserts that the City is guilty of an unfair labor practice  
4 by failing to bargain in good faith in violation of 59-1605 (1)(e). The  
5 charge is a result of the City's refusal to proceed with the arbitration of  
6 the grievance.

7 The City's argument is that Classification is a management right citing  
8 59-1603(2)(e):

9 "(2) Public employees and their representatives shall recognize  
10 the prerogatives of public employers to operate and manage their  
11 affairs in such areas but not limited to:  
12 (e) determine the methods, means, job classifications, and personnel  
13 by which government operations are to be conducted."

14 The City argues that management rights are not subject to grievance  
15 procedure.

16 The Union in its argument relies heavily on this Board's previous order,  
17 International Brotherhood of Painters and Allied Trades, Local No. 1023 vs  
18 Montana State University and Barry Hjort. The City contends, however, that  
19 that decision is not applicable here because it did not decide the issue of  
20 management rights.

21 The issue therefore presented at this hearing is may an employer refuse  
22 to arbitrate a matter on the grounds that the subject matter of the grievance  
23 concerns management rights.

24 In the Collective Bargaining Act for Public Employees, the Legislature  
25 stated the policy of the state of Montana:

26 59-1601 Policy: In order to promote public business by removing  
27 certain recognized sources of strife and unrest, it is the policy  
28 of the state of Montana to encourage the practice and procedure of  
29 collective bargaining to arrive at friendly adjustment of all disputes  
30 between public employers and their employees. (emphasis added)

31 Section 59-1610(2) states:

32 "2. An agreement may contain a grievance procedure culminating in  
final and binding arbitration of unresolved grievances and disputed  
interpretations of agreements."

A grievance procedure which culminates in final and binding arbitration  
is one mechanism in collective bargaining which allows employers and employees

1 to arrive at friendly adjustment of all disputes. This is in agreement with  
2 the policy established by the legislature, and it is essential that this Board  
3 encourage the enforcement of those contractual provisions wherever possible.

4 In the Painters decision our order reads:

5 It is not within the jurisdiction of the Board, to decide whether  
6 grievances are suitable for submission to contractual grievance  
7 procedures. Nor is it the right of management or labor to resolve  
8 disputes of the contract by ignoring them. The only party which  
9 can initiate or withdraw a grievance is the aggrieved party, if  
10 the grievance procedure is to be utilized at all.

11 ...Reiterating, it is not within the jurisdiction of the Board  
12 to rule on the merits of the grievance in question. Whether  
13 or not the unilateral action of permitting students to paint  
14 their own rooms is justified or not under the existing contract  
15 is not the question here. What is in question however, is did  
16 the employer by refusing to take part in the "contractual mechan-  
17 ism" for the ongoing process of collective bargaining, refuse to  
18 bargain in good faith? The answer to this question is in the  
19 affirmative."

20 The defense of the City that classification is a management right and  
21 therefore not subject to the grievance procedure is not well taken here. Step  
22 III of the grievance procedure as set out in the Agreement between both parties  
23 states:

24 "...The arbitrator's decision shall be final and binding on both parties,  
25 but he shall have no power to alter in any way the terms of the Agree-  
26 ment, City Ordinance, State Law, or Federal Law..." (emphasis added)

27 Under terms of the agreement, an arbitrator could not alter state law.  
28 If the grievance deals with a matter left exclusively to the prerogative of an  
29 employer as in 59-1603(2)(e) as alleged by the City, then the arbitrator must  
30 take cognizance of that fact and his decision must reflect that fact. The  
31 City is protected in that it has redress through the district court if the  
32 arbitrator's order is issued contrary to the agreement.

It is granted that this Hearing Examiner could conduct a long, drawn-out  
hearing to decide if the grievance concerns a management right. That, however,  
would provide for expensive duplication of hearings and take the matter outside  
the contractual agreement between the parties which was established to allow  
the parties "to arrive at a friendly adjustment of all disputes between public  
employers and their employees." In turn, that would result in a circumvention  
of the intent of the Legislature

1 To reiterate, this Board must encourage and support Agreements which pro-  
2 vide the necessary mechanisms to reach friendly adjustments of disputes. The  
3 grievance procedure providing for binding arbitration does just that in this  
4 fact situation. The city's rights are sufficiently protected in the grievance  
5 procedure and were obviously intended to be protected by the phrase stating the  
6 arbitration cannot alter state laws. Therefore, the only conclusion that I  
7 can reach is that the City incorrectly refused to proceed with the arbitration  
8 in question as requested by the Union.

9 A second issue was injected into this hearing by the City in its brief.  
10 The City alleges that the grievance in question was filed after the 3-day  
11 limit set by the grievance procedure. We find no merit to that argument. A  
12 grievance concerning salary is a continuing grievance, and each day the cap-  
13 tains are not properly placed on the classification matrix would in essence  
14 constitute a new grievance. Therefore, the captains could choose any one of  
15 those days as the subject of their grievance.

16  
17 CONCLUSION

- 18 1. The City has failed to bargain in good faith as required in 59-1604  
19 and is therefore guilty of an unfair labor practice as defined in 59-1605(1)(e).  
20 2. The grievance in question complies with the 3-day requirement of the  
21 grievance procedure.

22 ORDER

23 The City shall proceed with the arbitration as called for in Article XVII  
24 of the agreement between the City and the Union; and a report shall be made to  
25 the Executive Secretary of this Board by the City of what steps are being im-  
26 plemented to comply with this Order.

27 Dated this 28th day of May, 1976.

28   
29 Jerry L. Painter  
30 Hearing Examiner  
31  
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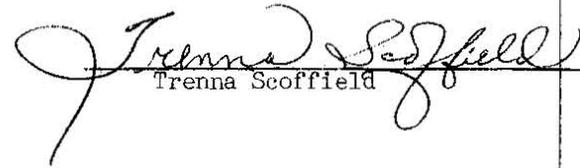
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CERTIFICATE OF MAILING

I, Trena Scoffield, hereby certify and state that I did on the 28th day of May, 1976, mail a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order to the following:

Ms. Rosemary Boschert  
Attorney at Law  
219 Hedden-Empire Bldg  
Billings, Mt 59101

Mr. Frank Richter  
Office of the City Attorney  
720 North 30th Street  
Billings, Mt 59101

  
Trena Scoffield