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BEFORE THE BOARD OF PERSONNEL APPEALS

\* \* \* \* \*

IN THE MATTER OF )  
RETAIL CLERKS LOCAL UNION #57 )  
Complainant, )  
-vs- )  
GREAT FALLS INTERNATIONAL )  
AUTHORITY )  
Defendant. )

ULP-5-1976

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER.

\* \* \* \* \*

On March 1, 1976, the Retail Clerks Union, Local #57, filed an unfair labor practice charge with the Montana State Board of Personnel Appeals against the Great Falls International Airport Authority alleging violations of Section 59-1605(1)(a)(b)(c)(d), R.C.M., 1947.

The Retail Clerks Union, Local #57 (herein referred to as the Union) based its charges on:

"That on or about December 4, 1975, the employer by its officers, agents or representatives has threatened reprisal for Union activities, promised benefits to refrain from activities, threatened to demote, threatened to decrease rate of pay to certain employees because of activities engaged in on behalf of the Retail Clerks Union, Local #57, and because they have engaged in concerted activities."

The Great Falls International Airport Authority (herein referred to as the Airport Authority) answered the charge on March 15, 1976, specifically denying each and every allegation.

The Board of Personnel Appeals (herein referred to as the Board) scheduled a hearing on this matter April 8, 1976. After receiving requests for and granting numerous continuances, the Board set a hearing date of June 25, 1976 at which time the hearing was held. As the duly appointed hearing examiner of the Board, I conducted the hearing within the provisions of the Montana Administrative Procedures Act (Sections 82-4201 to

1 82-4225, R.C.M., 1947). The Union was represented by Mr. D.  
2 Patrick McKittrick of the firm of McKittrick and Duffy, Great  
3 Falls, Montana; the Airport Authority was represented by Mr.  
4 John Alexander of the firm of Alexander, Keunning, Miller and  
5 Ugrin, Great Falls, Montana.

6 After a thorough review of the entire record of the case  
7 including the sworn testimony of a number of witnesses, I make  
8 the following:

9 FINDINGS OF FACT

10 1. That on December 4, 1975, a meeting was held between  
11 the members of the Great Falls International Airport Police and  
12 Mr. Joe Attwood, Assistant Director of the Airport Authority.  
13 Police officers in attendance were Grover Botkin, James Wolf,  
14 Tim Tabor, Alfred Corrow, John Szydlowski, Bob Sotello, Nick  
15 Krakalia and Walter Szalaga. The meeting was called by Mr.  
16 Attwood in his usual manner, that is to have Sergeant Wolf  
17 inform the men. There was some confusion at the hearing about  
18 the time of the meeting, but it appears to have been held in the  
19 early afternoon. Some of the officers present were taken off  
20 duty to attend. The officers were not told previously whether  
21 or not their attendance at the meeting was mandatory, however,  
22 testimony indicated that personnel were informed at the meeting  
23 that they were free to leave. Mr. Attwood had asked Sergeant  
24 Wolf to have the meeting arranged for a convenient time.

25 2. Mr. Attwood presided at the meeting and stated at the  
26 outset that his purpose was to discuss the "advisability or  
27 inadvisability of joining the Retail Clerks Union ". Prior to  
28 the meeting, Mr. Attwood sought the advice of Mr. Paul Miller,  
29 attorney for the Airport Authority, as Mr. Miller was more  
30 widely versed in the field of labor law and Mr. Attwood was  
31 somewhat unsure of the role he could legitimately play.

32 3. Mr. Grover Botkin, one of the airport policemen who

1 attended the meeting, in affidavit and testimony asserted his  
2 impression that Mr. Attwood was attempting to discourage Union  
3 affiliation. Three other policemen, James Wolf, Albert Corrow,  
4 and Tim Tabor, testified that they did not feel intimidated or  
5 coerced by Mr. Attwood during the meeting. Mr. Attwood did  
6 question the officers' interest in the Union rather than in an  
7 organization more closely aligned with their trade, and stated  
8 that he felt a small group such as the airport police could  
9 deal more effectively directly with management rather than  
10 through an intermediary.

11 4. Numerous questions were asked at the meeting and during  
12 the course of the questioning Mr. Paul Miller was asked to join  
13 the meeting to answer some questions as it was felt by some of  
14 the officers that a lawyer should answer questions relative to  
15 state law. Two questions caused the most confusion.

16 They were:

17 a) The question of layoffs. The men were concerned about  
18 the secondary effects of an airline strike and wanted to know  
19 if they could be protected from layoff if the airlines struck.  
20 In answer, Mr. Miller directed them to Section 59-1603(2)(c),  
21 R.C.M., 1947, referring to the employer's right to conduct his  
22 business in an efficient manner. This was Mr. Miller's only  
23 reference to a specific state law.

24 b) The question of seniority. The men were concerned  
25 about the effect Union membership would have on promotions. The  
26 question of seniority was raised and discussion ensued about  
27 seniority versus merit as the deciding factor in making pro-  
28 motions. Mr. Attwood told the men that every contract he had  
29 seen contained a seniority clause, that promotions must be  
30 offered to the senior man. Mr. Miller testified that he did  
31 not invoke state law in reference to the matter of seniority  
32 and stated further that he knew of no law which would

1 dictate promotion procedures. Testimony at the hearing  
2 indicated that the officers understood that a clause could be  
3 included in any contract they chose stating that merit would  
4 be the primary promotional factor. The officers, however, were  
5 left with the impression that Sergeant Wolf may lose his  
6 "stripes" because, while he held the highest rank, he was not the  
7 senior man.

8 DISCUSSION

9 The charges we are to consider stem from the December 4,  
10 1975, meeting called by Mr. Attwood and attended by members of  
11 the airport police. Statements and actions surrounding this  
12 meeting, individually and collectively, are the basis on which  
13 the complainant bases the unfair labor practice charge.

14 1. It was the opinion of Mr. Botkin that the purpose of  
15 the meeting was to dissuade the policemen from affiliating  
16 with the Union. This opinion was not supported by the three  
17 other officers who were all at the meeting and who testified  
18 that they in no way felt pressured, intimidated or coerced.

19 2. The meeting was called by Mr. Attwood and the men were  
20 not told that attendance was not mandatory. The men were,  
21 however, told at the meeting that they were free to leave. Some  
22 officers were taken off duty to attend the meeting, some were  
23 not on duty. In a situation such as the one which exists at the  
24 airport where there are three shifts, around the clock, there  
25 would be no time that all employees would be either all on or  
26 all off duty and the meeting appears to have been held at the  
27 most convenient time for all involved.

28 3. The complainant charged that Mr. Attwood indicated an  
29 unwillingness to bargain with the Union, should the men choose  
30 to join. This seems to have been raised by his statement that  
31 he felt it would be easier for a small group, such as the police,  
32 to deal directly with management rather than through an inter-

1 mediary. His testimony, however, showed an understanding of  
2 his legal obligation to bargain in good faith with the  
3 authorized representative of the unit, who ever they chose.

4 4. The complainant charged that Mr. Attwood spoke  
5 derogatorily of Mr. Joe Meyer, a representative of the Union.  
6 The preponderance of credible testimony does not support this  
7 allegation.

8 5. Mr. Attwood questioned the officers' choice of the  
9 Retail Clerks as the appropriate representative of a unit which  
10 has a professional similarity to a different union or associa-  
11 tion. Testimony indicates that he was inquiring into the  
12 officers' motivation and was not attempting to dissuade  
13 affiliation with the Union, nor was he encouraging membership  
14 in an alternate organization.

15 6. The men of the proposed unit (the airport police)  
16 were understandably concerned about job security, specifically  
17 in the situation of an airline strike. In the past, airport  
18 police had suffered layoffs in conjunction with such strikes  
19 and the men wondered about what protection the Union could  
20 provide. Mr. Miller, the Airport Authority attorney was asked  
21 to answer this query and he referred to Section 59-1603(2)(c),  
22 R.C.M., 1947, which states:

23 (2) Public employees and their representatives  
24 shall recognize the prerogatives of public  
25 employers to operate and manage their affairs  
26 in such areas as but not limited to: (c) relieve  
employees from duties because of lack of work or  
funds or under conditions where continuation of  
such work be ineffecient or nonproductive.

27 Mr. Miller's opinion, as expressed to the officers, was that  
28 if an airline strike occurred, and activity at the airport  
29 subsequently curtailed, there would be a lack of work and manage-  
30 ment could legally relieve the officers from duty regardless of  
31 whether or not they were affiliated with the Union. I concur  
32 with Mr. Miller's interpretation of the law.

1           7. The most serious charge under consideration is that  
2 Mr. Miller allegedly misrepresented state law in answering a  
3 question relating to promotions and seniority.

4           A question arose at the meeting as to how promotions would  
5 be decided if the officers joined the Union. Mr. Attwood  
6 answered that in his limited experience with labor contracts  
7 his impression was that they all contained a clause specifying  
8 that promotions would go to the senior man. This brought  
9 about speculation that Sergeant Jim Wolf, who was the supervisor  
10 but had less seniority than some others, would be demoted if  
11 the unit affiliated with the Union and his rank given to the  
12 senior man.

13           Mr. Miller was asked if any state law governing seniority  
14 and promotions. He testified that he did not refer to any law  
15 relating to this topic and indeed that he knew of none.  
16 Credible testimony supports Mr. Miller's testimony although  
17 some confusion surrounded this point throughout the hearing.

18           A number of the officers at the meeting received the  
19 impression that while Sergeant Wolf would not necessarily lose  
20 his "stripes" as a result of Union membership, there was a  
21 possibility that he could. While testimony showed that the  
22 officers' sentiments toward the Union were not influenced by  
23 this impression, and Sergeant Wolf, the man who would be most  
24 effected, testified he wasn't influenced, I feel that Mr.  
25 Miller, with his extensive knowledge of labor law, should have  
26 made it clear to all present at the meeting that union affilia-  
27 tion would not alter the existing hierarchal structure.

28           In my opinion the law has not been violated. Certainly  
29 mistakes were made and misunderstandings were allowed to  
30 continue but there is no evidence that these minor variations  
31 from a preferred course had any effect on the rights guaranteed  
32 to the officers of the airport police under the law.

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CONCLUSIONS OF LAW

The allegations made by the Union in the matter of the Retail Clerks Union, Local #57, vs. the Great Falls International Airport Authority, that the Airport Authority has engaged in unfair labor practices within the meaning of Sections 59-1605(1)(a)(b)(c)(d), R.C.M., 1947, have not been sustained by the Union.

RECOMMENDED ORDER

The unfair labor practice charge filed by the Retail Clerks Union, Local #57, against the Great Falls International Airport Authority of March 1, 1976, is hereby dismissed. Dated this 30th day of September, 1976.

BOARD OF PERSONNEL APPEALS

BY Jeff Andrews  
Jeff Andrews  
Hearing Examiner

CERTIFICATE OF MAILING

\* \* \* \* \*

I, Vonda Brewster, hereby certify and state that I did on the 30th day of September, 1976, mail a copy of the above Findings of Fact, Conclusions of Law and Recommended Order to the following:

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Vonda Brewster  
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