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BEFORE THE BOARD OF PERSONNEL APPEALS

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TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, )  
& HELPERS UNION LOCAL #448, )  
Complainant, )  
-v- )  
CITY OF LIBBY )  
Defendant. )

ULP-11-1976  
FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND PROPOSED ORDER

\*\*\*\*\*

An unfair labor practice charge was filed by Teamsters, Chauffeurs, Warehousemen, & Helpers Union Local #448, (Union) against the City of Libby (City). The charge makes the following four allegations:

1. About 2-10-76 defendant did attempt to elicit signatures on a petition prepared by the defendant, to repudiate the certified bargaining representative.

2. About 2-15-76 defendant submitted a bargaining proposal directly to the members of the bargaining unit.

3. About 2-18-76 defendant, by letter, proposed an increase in wages and clothing allowance and withdrew all old agreements previously resolved.

4. Defendant refuses to abide by Section 11-1024.3, R.C.M., 1947, although the taxpayers were assessed two mills to pay for implementing said Section.

A hearing on the charges was held in the Fire Hall at Libby, Montana, on July 13, 1976. Robert Skelton represented the Union at the hearing, and David W. Harman represented the City.

After reviewing the testimony and evidence presented at the hearing, I have determined that there is insufficient evidence to base any type of decision as to charge number 3 as above quoted. Therefore, that charge is dismissed.

As to the remaining three charges, the following are my Findings of Fact:



FINDINGS OF FACT

1  
2 1. That on or about February 18, 1976, the City of Libby sent to Robert  
3 Skelton, attorney for the Union, a proposal entered into evidence as Complain-  
4 ant's exhibit 1. That exhibit stated on the last page of the proposal:

5 "The City holds the terms and conditions contained in this agree-  
6 ment open to the union for a period of ten days from February  
7 18, 1976, if the agreement is not accepted within that time  
8 it shall automatically be withdrawn."

9 2. Mr. Skelton has appeared with Union representatives at previous  
10 negotiation session with the city.

11 3. Mr. Skelton after receiving the City's proposal, sent the proposal  
12 to Leonard Driscoll, secretary-treasurer of Local 448.

13 4. Mr. Driscoll in turn sent the proposal to Jack Eagen, Business  
14 Representative for the Union. Upon receipt of the proposal, Mr. Eagen  
15 contacted Mr. Harmon and requested an extension of time to accept the offer.  
16 Mr. Harmon was adamant in refusing the extension.

17 5. Edward Baker, Libby City Councilman and the City's representative in  
18 the negotiations, testified that he wasn't sure precisely how the policemen  
19 got a copy of the proposal, but believes that he just took a copy down and  
20 handed it to them. The testimony is clear that the policemen were presented  
21 with a copy of the proposal, and the testimony is also quite clear that Council-  
22 man Baker was responsible for presenting it to them.

23 6. Respondent's exhibit A, a duplicate of Complainant's exhibit no. 1,  
24 shows the agreement was signed individually by each of the members of the  
25 police force as an acceptance of the City's offer. The City through its attor-  
26 ney, Mr. Harmon, stated upon inquiry of Fred Brooks, a member of the Union,  
27 that although the City would like to have the Union respond to their proposal,  
28 that if the Union wasn't going to respond, then the signatures of the Union  
29 members was sufficient.

30 7. Mr. Fred Brooks testified that upon his request, that he obtained  
31 from Mr. Baker what is marked as Complainant's exhibit #2 which is a copy of  
32 this Board's regulation for Petitions for Decertification and a petition which  
states the purpose of the petition is to decertify the Union. Testimony

1 elicited from all witnesses establishes that at no time was there any pressure  
2 from the City or any of its representatives to have the members of the Union sign  
3 the petition. Mr. Baker did state to Mr. Brooks that as long as the men are  
4 in the Union, he could not deal with them directly.

5 8. The insurance now held by the police department is insurance provided  
6 through the Teamster's Union and is different insurance from that of other City  
7 employees.

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#### CONCLUSION OF LAW

10 1. In view of the above Findings of Facts, I conclude that the City of  
11 Libby is not guilty of an unfair labor practice as charged in Count I of  
12 Complainant's Petition. Although Councilman Baker used poor judgment in pro-  
13 viding Complainant's exhibit #2 to Fred Brooks, he did in essence provide Mr.  
14 Brooks with nothing more than a copy of this Board's rules. There is absolutely  
15 no evidence on record which established that Councilman Baker or for that matter  
16 anyone from the City encouraged the signing of the Petition for Decertification  
17 or encouraged Mr. Brooks in initiating the petition drive.

18 2. From the above Findings of Fact, I conclude that the City of Libby is  
19 guilty of an unfair labor practice as alleged in Count II of Complainant's  
20 Petition. By presenting its proposal directly to the membership with the  
21 contingency: "The City holds the terms and conditions contained in this  
22 agreement open to the Union for a period of ten days from February 18, 1976,  
23 if the agreement is not accepted within that time it shall automatically be  
24 withdrawn," the City has engaged in individual bargaining and has deprived  
25 the employees of their rights guaranteed under section 59-1603 which is an  
26 unfair labor practice as defined by 59-1065 (a).

27 Let me add for the purpose of clarification that it is not the showing of  
28 the proposal to the employees for which I am finding the unfair labor practice.  
29 That, I would interpret as nothing more than an informational service by the  
30 City to the employees. The behavior for which I am finding the unfair labor  
31 practice is the contingency attached to the contract which in essence does  
32 not allow the Union to effectively respond to the proposal and thus forces the

1 employees to act individually in order to take advantage of the offer and  
2 settle the dispute. This is especially true in view of the fact the proposal  
3 was not sent directly to the bargaining representative. If such bargaining  
4 technique were allowed to stand and not be kept in check, then the entire pur-  
5 pose of the Title 59, Chapter 16 would be circumvented.

6 3. From the above Findings of Fact, I conclude that the City of Libby is  
7 not guilty of an unfair labor practice as alleged in Count IV of Complainant's  
8 Petition. The testimony and arguments are sketchy as to the exact factual  
9 situation which now exists concerning insurance and the negotiations which have  
10 transpired thus far. I attribute the sketchiness to the difference in inter-  
11 pretation which each side gives to the statute involved, Section 11-1024.3.  
12 In order to avoid any further confusion, I will give this Board's interpreta-  
13 tion of the responsibilities that that statute puts on both parties as it  
14 concerns Title 59, Chapter 16.

15 Section 11-1024.3 provides:

16 "GROUP INSURANCE FOR POLICEMEN -- PAYMENT OF PREMIUM.  
17 Cities of all classes, if they provide insurance for  
18 other city employees under Section 11-1024 shall:

- 19 (1) provide the same insurance to their respective  
20 policemen;  
21 (2) notwithstanding Section 11-1024, pay the full  
22 premium of each policeman's insurance coverage  
23 for the policeman and his dependents."

24 (Emphasis added)

25 Researching the legislative history of this section did not shed anymore  
26 light on the meaning of the statute than can be found in the text of the statute.  
27 I, therefore, must conclude that the intent of the legislature is that which  
28 can be discerned from the face of the statute.

29 As my Findings of Fact show, the City of Libby presently provides insur-  
30 ance to other city employees. The City therefore is obligated by the above  
31 quoted language to pay the full premium for the policeman and his dependents  
32 as it would cost under that insurance protection provided other city employees.

1 This is not a bargainable item, but rather a statutory right of the policemen.

2 The policemen, however, are not under the same insurance policy as the  
3 other City employees. As my Findings of Fact show, they have opted to be  
4 covered by the Teamster's Insurance, which is better coverage than that pro-  
5 vided by the City. This is a logical step considering the hazardous occupa-  
6 tion of the policemen.

7 The City, however, is under an obligation by the above-quoted statute  
8 only to pay that amount which it would cost to provide coverage under the  
9 insurance provided to all city employees. ANY ADDITIONAL AMOUNT IS A BARGAIN-  
10 ABLE ITEM. So it is not an unfair labor practice under Title 59, Chapter 16,  
11 for the City to negotiate on that amount which they are not statutorily  
12 required to pay.

13 Clause 11 of the contract signed by the members of the Union February  
14 28, 1976, states:

15 "11. Effective July 1, 1975, the City shall pay into the Montana  
16 Teamsters Employers Trust the following amounts: (1) If the  
17 policeman is single, the sum of \$20.73 per month; (2) If the  
18 patrolman is married but has no children, the sum of \$42.74 per  
19 month; (3) If the policeman is married and has a family, the  
20 sum of \$50.83 per month. The City shall make a \$10.00 contribu-  
21 tion for the health and welfare of the police clerks. The amounts  
22 herein specified shall be paid in lieu of wages (before taxes)  
23 for every member of the bargaining unit who worked 80 hours or  
24 more the preceeding month, to provide a paid health and accident  
25 insurance plan. The payments are to be made on or before the  
26 10th of each month. . . ."

27 If the above quoted amounts in the present contract are the same premium  
28 amounts for the insurance coverage enjoyed by other city employees, then the  
29 City has complied with 11-1024.3. If the Union desires more premium to be  
30 paid by the City, then they must succeed through negotiations.

31 The Complainants in their brief on this matter makes reference to the  
32 fact that the City has levied a 2 mill tax to support these payments. The

1 City is under a duty to meet its obligation of paying the premiums of the  
2 police officers as I have previously stated. The levying of this mill levy  
3 does not, however, increase their statutory obligation under 11-1024.3. They  
4 still do not have to pay any more premium than the amount for the insurance  
5 coverage of other City employees.

6 Paragraph 2 of clause 11 of the February 28, 1976, employee signed agree-  
7 ment reads:

8 "It is specifically understood and agreed that if R.C.M.  
9 1947, Sec. 11-1024.2 is declared unconstitutional, or if  
10 the City declares not to continue its group insurance plan  
11 and therefore eliminates the condition precedent contained  
12 in Sec. 11-1024.1, then all amounts over and above \$10.00  
13 per employee per month as contribution, shall be considered  
14 wages and taxed accordingly. The \$10.00 contribution shall  
15 be considered in lieu of wages."

16 If either of the two conditions occur as stated in the above quoted para-  
17 graph (I believe the section made reference to was meant to be 11-1024.3 refer-  
18 ring to Policemen and not 11-1024.1 referring to firemen), then I would say that  
19 there would be a change of conditions which would necessitate the re-opening  
20 of negotiations. If however, both sides are willing to agree to the above  
21 quoted paragraph, then there would be no necessity of re-opening negotiations.  
22 It should be understood, however, that the City cannot refuse to meet its  
23 statutory obligation until the Union agrees to the above quoted condition. The  
24 City may protect itself by stating that Clause 11 is agreed to only so long as  
25 Section 11-1024.3 is valid and as long as the remainder of the City employees  
26 have an insurance program.

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#### PROPOSED ORDER

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1. The City of Libby shall cease and desist from any further individual bargaining. The City of Libby shall make all further proposals through the bargaining representative of Teamsters, Chauffeurs, Warehousemen & Helpers Union Local #448. The City shall refrain from making proposals directly to the membership.

1           2. The City of Libby shall continue to meet its statutory obligation  
2 under Section 11-1024.3 as it has in the past, and shall refrain from requiring  
3 a condition precedent to that statutory requirement, unless it is agreed to  
4 by the Union.

5           3. The City of Libby, through its counsel, Dave Harmon, shall send a  
6 letter to the administrator of the Board of Personnel Appeals stating that  
7 it understands this order and intends to comply with it. This letter shall be  
8 sent within 20 days after this decision becomes final or a final order is  
9 issued.

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Dated this 23rd day of September, 1976.

BOARD OF PERSONNEL APPEALS

BY Jerry L. Painter  
Jerry L. Painter  
Hearing Examiner

CERTIFICATE OF MAILING

I, Janice M. Fishburn, hereby certify and state that I did on the 23rd day of September, 1976 mail a copy of the Findings of Fact, Conclusions of Law and Proposed Order to the following:

Robert Skelton  
Attorney at Law  
127 East Main  
Missoula, MT 59801

David W. Harman  
Attorney  
City of Libby  
Libby, MT 59923

Jack Eagen, Local Representative  
Teamsters, Chauffeurs, Warehousemen, &  
Helpers Union Local #448  
P.O. Box 51  
Kalispell, MT 59901

Mayor Fred ~~Simon~~ Brown  
City of Libby  
Office of Mayor  
Libby, MT 59923

Janice M. Fishburn  
Janice M. Fishburn

