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BEFORE THE BOARD OF PERSONNEL APPEALS

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IN THE MATTER OF:)
FRAZER EDUCATION ASSOCIATION,)
Complainant,)
vs)
VALLEY COUNTY SCHOOL DISTRICT #2 & 2B)
Defendant.)

ULP-15-1976

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

* * * * *

STATEMENT OF CASE

On 15 June 1976, the Frazer Education Association, affiliated with the Montana Education Association (hereafter referred to as the Association or the F.E.A.) filed an unfair labor practice charge with the Montana Board of Personnel Appeals against the Valley County School District #2 & 2B (hereafter referred to as the School Board).

The charges allege that Section 59-1605(1)(a), R.C.M., 1947, has been violated in that the School Board had interfered with, restrained, or coerced employees in the exercise of their rights guaranteed in section three of the Montana Public Employees Collective Bargaining Act. The Association also alleges the Board violated Section 59-1605(1)(e), R.C.M., 1947, by failing to bargain collectively in good faith with the exclusive representative - the Association.

The Association's third unfair labor practice charge alleges that the Board violated Section 59-1605(1)(c) by discriminating in regards to tenure of employment to discourage membership in the Association. The four non-renewals alleged because of the violation of 59-1605(1)(c) involved Mr. Thomas Gigstad, Mr. Burdett Newman, Ms. Kathy Newman, and Ms. Diane Dehne. The Association's specific charge relating to Ms. Newman and Ms. Dehne is as follows:

1 "2. The contract of Kathy Newman was not renewed
2 although her rating was above average. The stated
3 reason, to hire a "better teacher" is inadequate
4 under the statute as it does not explain why Ms.
5 Newman was not renewed. She had been a party to
6 two grievances and had been active in preparing
7 and investigating other grievances. She was a
8 member of the negotiating team (serving as its
9 secretary) and was secretary-treasurer of the
10 Frazer Education Association."

11 "3. The contract of Diane Dehne was not renewed,
12 although her rating was above average. Again,
13 the stated reason did not refer to Ms. Dehne.
14 She was the subject of a bitter grievance struggle
15 and her evaluation was reduced in the area of
16 "administration relations" because of her participa-
17 tion in the association grievance over salaries.
18 She was also a party to three additional grievances."

19 The School Board denied the charges in an answer filed with the
20 Board of Personnel Appeals (hereafter referred to as the Board) on
21 13 July 1976. In part, the School Board stated that, "Hiring and
22 firing of teachers is the prerogative of the School Board."

23 A hearing on the above-captioned matter was held on 29 July
24 1976 and 17 August 1976, at the Frazer Public School, Frazer, Montana.
25 The Association was represented by Ms. Emilie Loring of the law firm
26 of Hilley and Loring, Great Falls, Montana. Mr. Peter O. Maltese,
27 Attorney at Law, Glasgow, Montana represented the School Board.

28 As the duly appointed hearing examiner of the Board, I conducted
29 the hearing in accordance with the provisions of the Montana
30 Administrative Procedures Act (Sections 82-4201 to 82-4225, R.C.M.,
31 1947).

32 MOTION

At the 17 August 1976 hearing the Hearing Examiner granted a
motion by the parties to bifurcate the various allegations in the
Association's charge and to only address, at this time, the
allegations contained in the third charge (59-1605(1)(c)) which
pertains to the alleged discrimination of non-renewal of Ms. Kathy
Newman and Ms. Diane Dehne.¹

¹. During the period between the two hearing dates, the School Board offered a contract to Mr. Gigstad. Also, Mr. Newman has accepted a contract with another school district. Therefore, the question of their non-renewal because of alleged discrimination is moot.

1 OBJECTIONS TO TESTIMONY

2 During the hearing I took several objections to testimony under
3 advisement. My ruling on those objections is as follows:

4 1. Counsel Loring's and Counsel Maltese's objections to hear-
5 say evidence are hereby sustained.

6 After a thorough review of the entire record of this case,
7 including briefs of parties concerned, sworn testimony and evidence,
8 I make the following findings:

9 1. The Association is the exclusive representative for
10 collective bargaining purposes for all teachers employed by the
11 School Board.

12 2. The School Board and the Association agreed to their first
13 collective bargaining contract for the 1975-76 school year (Joint
14 Exhibit A).

15 3. The 1975-76 contract included a grievance procedure clause
16 (Joint Exhibit 1: Article V). Ms. Newman, as the Secretary-
17 Treasurer of the Association, assisted in some of the grievance
18 investigations; typed and delivered all of the grievances; and was
19 a party to several, specifically her placement on the salary
20 schedule, (Complainant Exhibit 1) and the evaluation procedure
21 (Complainant Exhibits 11 and 12).

22 4. The minutes of a regular School Board meeting on 9 March
23 1976 state: (Complainant Exhibit #15)

24 "The following teachers were re-elected:...²

25 One teacher resigned: Margaret Steidle. Four
26 teachers were not re-elected because the Board
27 felt they could find someone better: Thomas
28 Gigstad, Kathy Newman, Burdette Newman, and
29 Diane Dehne."

30 5. Ms. Newman and Ms. Dehne were formally notified on 14 April
31 1976 that their contracts would not be renewed "because the trustees feel

32 2. Seventeen teachers were re-elected.

1 they can find better teachers to take your place." (Complainant
2 Exhibit 10; tp. 630.)³

3 Mr. Blount testified that the attorney for the Montana School
4 Board Association advised the Frazer School Board that the above
5 explanation was sufficient reason for non-renewal of a teacher's
6 contract.

7 6. Ms. Newman was also a member of the Association's
8 negotiation team, which was attempting to negotiate a contract to
9 succeed that 1975-76 agreement.

10 Mr. Tom Gigstad, President of the Association, testified that
11 negotiation for the 1976-77 school year began on February 17, 1976.
12 By May, after six sessions (several postponements by the School
13 Board), the only agreements involved the recognition clause and a
14 few sections of three articles. A mediation session was held on
15 22 May.

16 GRIEVANCE

17 7. In reference to grievances, Ms. Newman testified under
18 cross examination, as follows:

19 Mr. Maltese: "You mentioned, Ms. Newman, that
20 Mr. Langdon (Superintendent) at one time
21 criticized you for typing grievance letters
22 instead of doing your school work?"

23 Ms. Newman: "He made the statement that I
24 wouldn't be such a problem if I would be
25 doing school work instead of typing letters
26 for the Association."

27 Mr. Maltese: "In conjunction with that
28 criticism was he criticizing you about some
29 matter which related to your teaching?"

30 Ms. Newman: "No."

31 Mr. Maltese: "Is that the only occasion he
32

3. *tp* is the place on the tape, 29 July hearing,
TP refers to 17 August tape.

1 criticized you in an oblique way about your
2 handling grievance matters?"

3 Ms. Newman: "Directly, yes." (tp. 565)

4 8. Ms. Dehne was a party to several grievances; specifically
5 her placement on the salary schedule (Complainant Exhibits 1, 2,
6 6, 7, and 8) and the evaluation procedure (Complainant Exhibit 10).

7 Ms. Dehne testified that in discussing her evaluation with
8 her principal, Mr. Laisnez, she learned her evaluation was reduced
9 from outstanding to satisfactory in one area because she had not
10 gone to him individually, but had gone to the F.E.A. for assistance
11 in processing the grievance. The Association filed a second
12 grievance relating to alleged reprisal on her teacher evaluation
13 form for filing the first grievance (Complainant Exhibit 7).

14 The first evaluation began on 2 December but was not signed
15 (or completed) until February. (Complainant Exhibit 7 and 23).

16 9. On the first evaluation, signed February 1976, Ms. Dehne
17 had seven outstanding, thirteen satisfactory and two unsatisfactory;
18 on the second, signed 8 March 1976, she had eleven outstanding,
19 thirteen satisfactory and one unsatisfactory - (punctuality)
20 (Complainant Exhibit 23).

21 During both evaluations Mr. Laisnez (Principal) never mentioned
22 the possibility that her contract might not be renewed.

23 10. Ms. Newman was evaluated twice. On the first evaluation
24 in the 1975-76 school year, Ms. Newman had eighteen outstanding and
25 seven satisfactory; on the second one, twenty-four outstanding and
26 one satisfactory. Ms. Newman was not informed at either evaluation
27 that her contract might not be renewed.

28 11. Ms. Newman testified that "Mr. Laisnez did mention that my
29 lesson plan books hadn't been turned in on time every Friday evening.
30 Which is true - they hadn't - but most of the time they (the lesson
31 plans) were turned in the following Monday morning." (tp 506)

32 On the second evaluation, 11 March, Ms. Newman received an

1 "outstanding" rating in this category because she had improved
2 greatly. That was a two day difference (Tuesday - Thursday) and
3 "I hadn't even turned them in yet."

4 12. Ms. Newman testified that "At the end of the second
5 evaluation he (Mr. Laisnez) mentioned that I was one of the best
6 teachers as far as discipline and rapport with the students."
7 (tp. 514)

8 13. Mr. Harold Blount, Chairman of the School Board, testified
9 that the following factors are used by the School Board to determine
10 if a teacher is re-elected or not re-elected:

11 1) Meet with the administration, namely the superintendent
12 and the principal. Listen to their evaluation of each teacher.

13 2) Board members may make their own evaluation by visiting
14 the school.

15 3) Listen to the views of the community.

16 14. Mr. Blount testified that another reason (beside those
17 stated in the 14 April letter) for Ms. Newman's non-renewal was
18 reports in her personnel file stating she was out of her classroom.

19 During cross examination, Mr. Blount stated that he never saw
20 Ms. Newman's written rebuttals regarding the absences, nor did he
21 see her formal teacher evaluation form on the 9 March meeting.

22 He testified that "Another reason was that
23 a vocational report needed to be filed and she
24 was instructed to do so and it was a direct order
25 from the superintendent to complete this report..."(TP 76)

26 During cross examination, Mr. Blount stated he never visited
27 Ms. Newman's nor Ms. Dehne's classroom.

28 15. Mr. Laisnez testified that Ms. Newman could have supervised
29 her students better; also he testified that she did not get along with
30 her supervisor at all times, citing one instance and the vocational
31 form as examples of "insubordination." (TP 187)

32 16. Ms. Newman testified that sometime in February she received
a note in her school mail box requesting that she fill out a form

1 pertaining to vocational education. Ms. Newman returned the form
2 with a note stating she could not complete it without having
3 additional information. She was later accused of refusing to
4 complete the form. Ms. Newman testified that she never refused
5 to complete it but only needed additional information to do so."

6 17. Under vigorous cross examination during rebuttal, Ms.
7 Newman responded that she was only absent from her classroom for
8 school related functions (supplies stored in office, some students
9 worked in the office) (TP 407). "In notes Ms. Newman was
10 reprimanded for leaving the classroom. She wrote rebuttals to
11 these notes."

12 18. Mr. Blount testified that the principle reason Ms. Dehne's
13 contract was not renewed was because the School Board did not
14 know if Title I funds would be available for the 1976-77 school
15 year.⁴ (TP 139)

16 Mr. Laisnez concurred with Mr. Blount's testimony and added
17 that Ms. Dehne frequently was not punctual. The evaluation form
18 checked as "unsatisfactory" under "Attendance and Punctuality."

19 19. In reference to the specific unfair labor practice charge,
20 Mr. Maltese asked Mr. Laisnez two questions: "Would you say that
21 her (Newman's) membership in F.E.A. was a reason for her discharge?"
22 and "Would you say her participation in grievance procedure or
23 anything else?" Mr. Laisnez response was "I don't believe so." (TP 2)

24 20. Chairman Blount testified as follows regarding the specific
25 charge:

26 Mr. Maltese: "During the executive board meeting
27 (9 March) did you or the Board ever mention that
28 these people were discharged because they belonged
29 to the F.E.A.?"
30

31 *4. Ms. Dehne was hired under a grant from the Elementary and*
32 *Secondary Education Act Title I.*

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Mr. Blount: "No."

Mr. Maltese: "Was there any mention about their participation as to grievances?"

Mr. Blount: "Not at this executive session."

Mr. Maltese: "Was there any discussion about these two people being involved in collective bargaining?"

Mr. Blount: "No, not at that particular session."

DISCUSSION

I find that the Respondent's discharge of Ms. Newman and Ms. Dehne, under the circumstances detailed, was in violation of the Collective Bargaining Act for Public Employees and that the reasons given for their non-renewal are pretextual. I have given weight to the following considerations.

The timing of the non-renewal: The non-renewal action was taken on the evening of the day of Ms. Newman's first evaluation. Ms. Newman was not given a second evaluation before the non-renewal to determine if any of the deficiencies detected in the first evaluation had been corrected. Ms. Newman and Ms. Dehne, according to the testimony, were not given any prior notice of even the possibility of non-renewal. There was an absence of formal prior censure, warning, criticism, or dissatisfaction by the Superintendent or the Principal of their teaching performances or attitudes which might have been detrimental to the smooth operation of the small school.

I do not credit Mr. Blount's testimony that Ms. Newman's contract was non-renewed based on the minor infractions of working rules. I give little credit to this when nothing concrete showing insubordination was established. On the contrary, the explanation given by Ms. Newman as to the vocational report was that she requested additional information, she didn't refuse to complete it. Also, after the initial "flare-up" of discussion with the Superintendent/

1 Principal there is no evidence on the record that this was a contin-
2 uous problem to the administration, to other faculty members, or
3 that it involved the students. From her demeanor on the witness
4 stand, I think it is safe to say that Ms. Newman was "abrupt"
5 with the administrators but there is no evidence that it caused
6 disruptions in the school system or that it was insubordination.
7 In fact even the first evaluation states "outstanding" under the
8 category of cooperation with the administration. Indeed, an odd
9 rating when by evening of the same day that rating became a basis
10 for non-renewal.

11 Union activities of Employees: It is clear that Ms. Newman
12 and Ms. Dehne did engage in Association activities and that the
13 Respondent had knowledge of those activities.

14 The Respondent contends that the non-renewal of Ms. Newman and
15 Ms. Dehne was unrelated to any union activities; that the non-renewals
16 were prompted by employee insubordination and deficient teaching
17 standards.

18 In reference to Ms. Newman's non-renewal, the Respondent
19 substantiated her alleged "insubordination" based on (1) one "heated"
20 discussion at the beginning of the 1975-76 school year and (2) the
21 matter of the vocational report.

22 Though evaluations vary from district to district, I cannot
23 ignore the fact that even after the School Board decided not to
24 renew Ms. Newman's contract, the evaluation form, two days later, shows
25 that she was rated as "outstanding" in the vast majority of the
26 twenty-five areas evaluated by the Principal.

27 Ms. Dehne's evaluations are not as high as Ms. Newman's; however,
28 she was rated as "outstanding" or "satisfactory" in every area
29 except one - punctuality. That one "unsatisfactory" rating does not
30 indicate a major teaching deficiency.

31 The Respondent's major contention for the non-renewal of Ms.
32 Dehne's contract was the uncertainty of Title I funds. Yet, in
the formal non-renewal notification, Ms. Dehne was not advised

1 that that was the reason for the School Board's action.

2 It is common knowledge that this School Board, like many
3 others, does not know if Title I funds are available until late
4 spring or early summer. Therefore, should all Title I teachers
5 be non-renewed every year until a School Board has definite
6 word about the funds available?

7 The Attorney General's opinion No. 77 states that a teacher
8 can gain tenure, regardless of source of funds (federal) for the
9 salary.

10 CONCLUSIONS OF LAW

11 1. The Respondent violated provisions of Section 59-1605, R.C.M.,
12 1947, and is guilty of unfair labor practices as specified in
13 Section 59-1605(1)(c), R.C.M., 1947 by non-renewing the contracts
14 for Ms. Kathy Newman and Ms. Diane Dehne.

15 2. The discharge of said employees was motivated by the
16 employees' involvement in union activities, which are rights of
17 public employees protected by Section 59-1603, R.C.M., 1947.

18 RECOMMENDED ORDER

19 1. Having found that the Respondent has engaged in an unfair
20 labor practice within the meaning of Section 59-1605(1)(c), of that
21 Act, it is ordered that the Respondent cease and desist therefrom
22 and take certain affirmative action designed to effectuate the
23 policies of the Act.

24 2. Take the following affirmative action:

25 (a) Offer to Kathy Newman and Diane Dehne immediate and
26 full reinstatement of their former positions and make them whole
27 for any loss of pay or loss of fringe benefits suffered in
28 consequence of their non-renewal because of their engagement in
29 union activities.

30 (b) Notify the Administrator of the Board of Personnel Appeals
31 in writing, within twenty (20) days from receipt of this decision,
32 what steps have been taken to comply herewith.

1 (c) Place copies of this order in the personnel files of
2 Ms. Newman and Ms. Dehne. The orders shall remain in the personnel
3 files of said employees until such time as they may in writing
4 request their removal.

5 Dated this 16th day of September, 1976.

6
7 BOARD OF PERSONNEL APPEALS

8
9 BY Ray Saeman
Ray Saeman
Hearing Examiner

10
11 CERTIFICATE OF MAILING

12 * * * * *

13 I, Vonda Brewster, hereby certify and state that I did on the
14 16th day of September, 1976 did mail a copy of the above Findings
15 of Fact, Conclusions of Law and Recommended Order.

16
17 Harold Blount
Chairman, Board of Trustees
18 Frazer Schools
Frazer, MT 59225

19 Emilie Loring
20 Hilley & Loring
1713 Tenth Avenue South
21 Great Falls, MT 59401

22 Peter O. Maltese
P. O. Box 388
23 Glasgow, MT 59230

24 Tom Gigstad, President
Frazer Education Association
25 Frazer, MT 59225

26
27 Vonda Brewster