

BEFORE THE BOARD OF PERSONNEL APPEALS

1 IN THE MATTER OF UNFAIR LABOR PRACTICE )  
2 #17-76: )  
3 INTERNATIONAL ASSOCIATION OF MACHINISTS )  
4 LOCAL #231, & AERONAUTICS WORKERS, AFL-CIO, )  
5 Complainant, )  
6 -vs- )  
7 CITY OF HELENA, MONTANA, )  
8 Defendant. )

FINAL ORDER

9 \* \* \* \* \*

10 No party to the above captioned matter has filed exceptions to the  
11 Findings of Fact, Conclusions of Law, and Recommended Order within the  
12 time limits established by the Rules and Regulations of the Board.

13 Therefore, the Board adopts the Recommended Order, in the above-  
14 captioned matter, as the Final Order of the Board.

15 Dated: September 2, 1977.

BOARD OF PERSONNEL APPEALS

16 BY Brent Cromley  
17 Brent Cromley, Chairman

18 CERTIFICATE OF MAILING

19 I, Trena Scoffield, hereby certify and state that I did on the 6th  
20 day of September, 1977, mail a true and correct copy of the above Final Order  
21 to the following persons:

22 Jim Campbell  
23 Manpower Director  
24 City of Helena  
25 Helena, Mt 59601

Barry L. Hjort  
Attorney  
P. O. Box 5600  
Helena, Mt 59601

26 Mayor Kathleen Ramey  
27 Civic Center  
28 Helena, Mt 59601

William Leaphart  
The Leaphart Firm  
1 N. Last Chance Gulch  
Helena, Mt 59601

29 Franz Ortloff  
30 3833 Birdseye Road  
31 Helena, Mt 59601

32 Trena Scoffield  
Trena Scoffield

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 17, 1976:

INTERNATIONAL ASSOCIATION OF MACHINISTS )  
LOCAL #231, & AERONAUTICS WORKERS, )  
AFL-CIO, )

Complainant, )

-VS- )

CITY OF HELENA, MONTANA, )

Defendant. )

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

\*\*\*\*\*

On July 1, 1976, the International Association of Machinists Local #231, and Aeronautics Workers, AFL-CIO, herein referred to as the Union, filed an unfair labor practice charge with the Board of Personnel Appeals against the City of Helena, herein referred to as the City. The City responded with a motion for more definite statement and such was ordered on August 2, 1976. I renewed the order on May 27, 1977, and the Union complied by filing an amended charge on June 3, 1977.

The charge alleges that Section 59-1605(1)(e), R.C.M. 1947, has been violated in that the City has failed to bargain in good faith with the Union, the exclusive representative of certain employees of the City, and has refused to enforce the modified agency shop clause of the contract between the City and the Union.

A hearing in the above captioned matter was held on June 16, 1977. The Union was represented by Mr. Barry Hjort, Attorney at Law, Helena, Montana; the City was represented by Mr. C. W. Leaphart, Jr., of the Leaphart Law Firm and City Attorney for Helena, Montana.

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

1 After a thorough review of the record of the case, I make  
2 the following:

3 FINDINGS OF FACT

4 1. That on or about April 15, 1976, Mrs. Julie Veazie was  
5 hired by the City as the parts clerk or shop clerk in the City  
6 shop. The funds which made possible the hire of Mrs. Veazie  
7 became available upon the retirement of Mr. Bill Roberts, who  
8 had been employed in the City shop as a partsman.

9 2. That certain persons employed in the City shop were  
10 represented for purposes of collective bargaining by the Union.  
11 These employees were members of a unit determined by the Board  
12 of Personnel Appeals in Unit Determination #15, 1974. Mr.  
13 Roberts was a member of this unit.

14 3. That Mr. Franz Ortloff, Business Representative for  
15 the Union, was of the opinion that the position filled by Mrs.  
16 Veazie was covered by the Union contract and that she was required  
17 to fulfill the obligation stated in the modified agency shop  
18 clause of that contract. Mr. Ortloff made this position known  
19 to both Mrs. Veazie and City Manpower Director Jim Campbell.

20 4. That Mr. Campbell was of the opinion that the position  
21 filled by Mrs. Veazie was not covered by the Union contract and  
22 so advised both Mrs. Veazie and Mr. Ortloff.

23 5. That Mrs. Veazie did not join the Union nor did she pay  
24 a service fee in lieu thereof.

25 6. That in a letter to Mr. Campbell dated June 29, 1976,  
26 Mr. Ortloff requested that the City discharge Mrs. Veazie in  
27 accordance with Section 4 of the contract, the modified agency  
28 shop clause.

29 DISCUSSION

30 The purpose of this decision is to determine the validity  
31 of the Union's allegation that the City has engaged in an unfair  
32

1 labor practice within the meaning of Section 59-1605(1)(e),  
2 R.C.M. 1947.

3 Section (1)(e) states that it is an unfair labor practice  
4 for a public employer to refuse to bargain collectively in good  
5 faith with an exclusive representative. In Complainant's brief  
6 an excellent argument is made to sustain a charge against an  
7 employer who refuses to honor a modified agency clause by failing  
8 to require an employee to join a union or pay a service fee in  
9 lieu thereof when such is required by contract and when the  
10 employee is covered by that contract. Were such facts present  
11 in the case at hand, a violation of Section (1)(e) would cer-  
12 tainly be found.

13 The facts we confront in ULP #17, 1976, leave unanswered the  
14 crucial question of whether or not Mrs. Veazie's position was  
15 covered by the Union contract. It is not within the scope  
16 of this decision to make that determination, nor shall we attempt  
17 to rule on the correctness of arguments presented by the City  
18 and the Union on that subject. Without that determination, it  
19 is impossible to sustain the Union's allegation.

20 The filing of an unfair labor practice charge is a poor  
21 route to take toward resolution of a conflict such as the one  
22 which precipitated ULP #17. More correctly, the Union should have  
23 requested negotiations with the City to decide whether or not the  
24 position was "covered" by the contract; or, if a satisfactory  
25 solution could not be reached, the Union could have filed a  
26 Petition for Unit Clarification with the Board of Personnel  
27 Appeals in accordance with the Rules and Regulations of the  
28 Board (Montana Administrative Code 24-3.8(1)-0800 through  
29 24-3.8(30)-S8270). Neither of these procedures was followed,  
30 resulting in the question of Mrs. Veazie's status remaining  
31 unanswered and dictating the decision made below.

32

1 CONCLUSIONS OF LAW

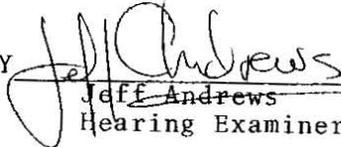
2 The allegation of ULP #17, 1976, that the City of Helena  
3 has engaged in an unfair labor practice within the meaning of  
4 Section 59-1605(1)(e), R.C.M. 1947, has not been sustained  
5 by the Union.

6 RECOMMENDED ORDER

7 IT IS HEREBY ORDERED, upon the basis of the foregoing  
8 Findings of Fact, Conclusions of Law, and upon the entire record  
9 of the case, that the charge be dismissed in its entirety.

10 DATED this 5<sup>th</sup> day of August, 1977.

11 BOARD OF PERSONNEL APPEALS

12  
13  
14 BY   
15 Jeff Andrews  
16 Hearing Examiner

17 \* \* \* \* \*

18 CERTIFICATE OF MAILING

19 I, Janice M. Fishburn, hereby certify and state that I  
20 mailed on the 5<sup>th</sup> day of August, 1977, a true and correct  
21 copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED  
22 ORDER to the following:

23 Jim Campbell  
24 Manpower Director  
25 City of Helena  
26 Helena, MT 59601

Barry L. Hjort  
Attorney  
P.O. Box 5600  
Helena, MT 59601

27 Mayor Kathleen Ramey  
28 Civic Center  
29 Helena, MT 59601

William Leaphart  
The Leaphart Firm  
1 N. Last Chance Gulch  
Helena, MT 59601

30 Franz Ortloff  
31 3833 Birdseye Road  
32 Helena, MT 59601

  
Janice M. Fishburn