

BEFORE THE BOARD OF PERSONNEL APPEALS

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IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE #20-76:

DANIEL JAMES MULLAN, PRESIDENT, )  
VICTOR FEDERATION OF TEACHERS, )

Complainant, )

-vs-

FINAL ORDER

DUANE W. REAGAN, SUPERINTENDENT )  
OF SCHOOLS, VICTOR PUBLIC )  
SCHOOLS, )

Defendant. )

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The Board of Personnel Appeals, having heard oral argument in the above-captioned matter on January 18, 1977, finds as follows:

IT IS ORDERED, that the Exceptions to the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommended Order, filed December 9, 1976, by Duane W. Reagan, Superintendent of Victor Public Schools, are denied.

IT IS FURTHER ORDERED, that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Examiner, Mr. Jeff Andrews, dated November 17, 1976, are upheld as written.

DATED this 27th day of January, 1977.

BOARD OF PERSONNEL APPEALS

BY Brent Cromley  
Brent Cromley  
Chairman

(ATTACHMENT B)

BEFORE THE BOARD OF PERSONNEL APPEALS

1 IN THE MATTER OF UNFAIR LABOR PRACTICE: ULP - #20-76

2 DANIEL JAMES MULLAN, PRESIDENT )  
3 VICTOR FEDERATION OF TEACHERS, )  
4 Complainant, )  
5 -vs- )  
6 DUANE W. REAGAN, SUPERINTENDENT )  
7 OF SCHOOLS, VICTOR PUBLIC SCHOOLS, )  
8 Defendant. )

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

9 \* \* \* \* \*

10 On July 2, 1976, Mr. Daniel J. Mullan, President of the Victor Federation  
11 of Teachers, affiliated with the Montana Federation of Teachers, filed an unfair  
12 labor practice charge with the Montana State Board of Personnel Appeals against  
13 Duane W. Reagan, Superintendent of Schools, Victor Public Schools.

14 The charge alleges that Section 59-1605(1)(e), R.C.M., 1947, has been  
15 violated in that Mr. Reagan has refused to bargain in good faith with the Victor  
16 Federation of Teachers.

17 A hearing in the above captioned matter was held on October 6, 1976, in  
18 the Conference Room of the Ravalli County Courthouse, Hamilton, Montana. The  
19 Victor Federation of Teachers was represented by Mr. David L. Astle of the  
20 law firm of Astle and Astle, Kalispell, Montana; Mr. Reagan represented himself.

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

24 After a thorough review of the record of this case, I make the following:

25 FINDINGS OF FACT

26 1. That the Victor Federation of Teachers has been certified as the  
27 exclusive representative for the teachers in the Victor Public Schools.

28 2. That there is currently no contract in effect between the Federation  
29 and the School District.

30 3. That no negotiations toward writing a contract have been held.

31 4. That Mr. Mullan, President of the Federation, has requested of Mr.  
32 Reagan, Superintendent of Victor Schools, that negotiations commence.

5. That Mr. Reagan, on behalf of the School Board, has offered to  
negotiate a master contract for the 1977-78 school year, but has refused  
to negotiate a master contract for the 1976-77 school year.





1 in interpreting the action of the Legislature of placing the teachers under  
2 the Public Employees Collective Bargaining Act, which gives public employees  
3 the right to bargain collectively and to engage in other concerted activities,  
4 along with Section 75-6102, R.C.M., 1947, requiring the issuance of individual  
5 contracts, it becomes obvious that the intention of the Legislature was not  
6 to allow the substitution of individual contracts to that of the master  
7 agreement.<sup>2</sup> Such a substitution would remove the collective from collective  
8 bargaining.

9 Mr. Reagan contends that individual contracts can substitute for a  
10 master agreement. I can find no justification for such a contention. Were  
11 there a master agreement in effect, it would still not be binding on the  
12 V.F.T. as a successor representative is not bound to agreements made by the  
13 previous representative. Therefore, I can find no justification for Mr.  
14 Reagan's refusal to negotiate a contract with the V.F.T.

15 It should be noted that while Mr. Reagan is named as the defendant in  
16 this action it is well understood that it is in his capacity as Superintendent  
17 of Schools that he is charged. In this capacity he is the chief executive  
18 agent for the School Board. It is virtually impossible to separate Mr.  
19 Reagan's actions from those of the School Board. Therefore, any recommended  
20 affirmative action shall be incumbent upon not only Mr. Reagan but on the  
21 Victor School Board as well.

#### 22 CONCLUSIONS OF LAW

23 The allegation that Duane W. Reagan, Superintendent of Victor Schools,  
24 has engaged in an unfair labor practice within the meaning of Section 59-1605(1)(e)  
25 R.C.M., 1947, by refusing to negotiate in good faith with an exclusive repre-  
26 sentative, has been sustained.

27  
28  
29 2. For further discussion on the matter of individual teaching  
30 contracts, see Board of Personnel Appeals, ULP #17, 1976,  
31 Final Order, which is recommended because of its clarity and  
32 eloquence.

RECOMMENDED ORDER

It is hereby ordered that Duane W. Reagan, Superintendent of Victor Schools:

1. Cease and desist from failing to bargain in good faith with the Victor Federation of Teachers relative to the drafting of a master agreement.

2. Take the following affirmative action:

(a) Upon request of the Federation, meet and bargain collectively, in good faith, regarding wages, hours, and other conditions of employment.

(b) Notify the Administrator of the Board of Personnel Appeals, in writing, of what steps have been taken to comply herewith.

DATED this 17<sup>th</sup> day of November, 1976.

BOARD OF PERSONNEL APPEALS

BY *Jeff Andrews*  
Jeff Andrews  
Hearing Examiner

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CERTIFICATE OF MAILING

I, Janice M. Fishburn, hereby certify and state that I mailed a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

Duane W. Reagan  
Supt. of Schools  
Victor Public Schools  
Victor, MT 59875

Daniel James Mullan  
President  
Victor Federation of Teachers  
112 Crestline Drive  
Missoula, MT 59801

James McGarvey  
Executive Director  
Montana Federation of Teachers  
P.O. Box 1246  
Helena, MT 59601

David L. Astle, Attorney at Law  
Astle & Astle  
705 Main  
Kalispell, MT 59901

DATED this 17<sup>th</sup> day of November, 1976.

*Janice M. Fishburn*  
Janice M. Fishburn

