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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE:

BUTTE TEACHERS UNION No. 332, AFL-CIO )  
affiliated with MONTANA FEDERATION OF )  
TEACHERS AFT-AFL-CIO, )  
Complainant, )  
-vs- )  
BOARD OF TRUSTEES, SCHOOL DISTRICT NO. )  
1, BUTTE, MONTANA, )  
Defendant. )

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

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On November 30, 1976, Mr. Edward A. Heard, Business Agent for the Butte Teachers Union #332, herein referred to as the Union, filed an unfair labor practice charge with the Montana State Board of Personnel Appeals against the Board of Trustees, School District #1, Butte, Montana, herein referred to as the School Board.

The charge alleges that Section 59-1605(1)(a) and (e), R.C.M. 1947, has been violated in that the School Board has failed to negotiate in good faith, that after agreeing to open the contract in effect between the parties to renegotiate salaries the School Board did unilaterally change the rate of pay of an employee.

The School Board denied the charge in an answer filed with the Board of Personnel Appeals on December 9, 1976.

A hearing on the above captioned matter was held on January 10, 1976, in the School District #1 Administration Building, Butte, Montana. The Union was represented by Mr. M. F. Hennessey, counsel for the Union; The School Board was represented by Dr. Joe Sicotte, Superintendent of Schools.

As the 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.

After a thorough review of the record of the case, including sworn testimony and exhibits, I make the following:

1 FINDINGS OF FACT

2 1. That on August 20, 1976, a personnel change of one Union member and  
3 School Board employee, namely the secretary to the superintendent, was affected  
4 by the School Board due to the resignation of the employee.

5 2. That a replacement for that employee was made by the School Board  
6 and the School Board desired that such employee be payed a salary equal to  
7 that being paid the former secretary. To effect that change the School Board  
8 requested the Union's concurrence in a letter dated October 28, 1976, (Joint  
9 Exhibit #2), to open the existing contract to negotiate the salary of this  
10 single employee.

11 3. That the Union responded in a letter dated November 8, 1976, (Joint  
12 Exhibit #3), stating:

13 "...we would be happy, in fact anxious, to re-open the  
14 contract to negotiate classifications for everybody  
15 covered by the Contract and make wage adjustments  
16 where necessary. If, in fact, this is what the Board  
17 has in mind, please contact us immediately."

18 4. That on November 19, 1976, the School Board hired the secretary to  
19 the superintendent at a salary equivalent to that of the previous secretary.

20 5. That the School Board had raised the salaries of several Union members  
21 without opening the contract with the Union. During the 1974-75 school year  
22 four (4) such raises were given and during 1975-76 school year six (6) salaries  
23 were raised.

24 DISCUSSION

25 The charge in ULP #38, 1976, alleges that the School Board has committed  
26 an unfair labor practice in that a unilateral change was made in the working  
27 conditions of an employee during the period those working conditions were being  
28 negotiated. An interesting element is added to this case because the change  
29 made was of benefit to a member of the complainant Union. I make the assump-  
30 tion that an increase in salary is generally perceived to be beneficial.

31 Testimony taken at the hearing indicated that there may have been some  
32 irregularities in the selection process of said employee but that is a question  
I will not address as it is more properly within the scope of the grievance  
procedure of the existing contract between the School Board and the Union and

1 because there have been no allegations that the selection of said employee  
2 was in any way associated with or the result of union sentiments or activities  
3 either of the employee or of other employees within the unit.

4 The question which must be answered in order to arrive at a just decision  
5 in ULP #38 is "was a unilateral change made during the period of negotiations?"

6 The School Board did, without consent of the Union, materially change  
7 the working conditions of an employee. It raised her salary above that  
8 specified in the contract. The contract, however, specifies only a floor  
9 beneath which an employee's salary cannot be lowered; nowhere is it stated  
10 that the contract sets a ceiling above which an employee's salary cannot be  
11 raised. In recent history the School Board has raised the salaries of several  
12 employees above the contractual minimum. The Union readily concurred in  
13 these previous changes.

14 During the course of events which precipitated ULP #38, the School Board  
15 requested the opening of the contract to negotiate a salary increase for the  
16 employee in question. In my opinion this request was not a necessary action  
17 as opening the contract is not necessary and the Union's consent isn't  
18 required in such a matter. The School Board considered their request to be  
19 only a formal gesture. The School Board had made its decision and anticipated  
20 only the Union's rapid acceptance.

21 The Union's response, however, failed to address itself to the specific  
22 request made. Instead the Union asked to have the entire salary schedule of  
23 the contract opened to negotiation and to have a classification made for all  
24 jobs. The School Board did not consider this reply to be responsive to their  
25 request and proceeded to raise the salary of the employee in question following  
26 the precedent of raises given to employees who assume positions of greater  
27 difficulty or responsibility. I see no evidence that the School Board acted  
28 in any way to circumvent or erode the ability of the Union to properly and  
29 effectively represent the interests of its members.

30 At the time ULP #38 was filed, negotiations had not begun between  
31 the School Board and the Union. The contract specifies that the contract can  
32 be opened only with the mutual consent of both parties and as of November 30,  
1976, the filing date of ULP #38, such consent had not been achieved. Although

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both parties had requested the opening of the contract the variance between the scope of the requests makes it inconceivable that there was any agreement on the opening or on a beginning of negotiations.

It is therefore my opinion that no violation has been committed. At the time the School Board raised the one employee's salary negotiations had not begun nor were they even agreed to, and the raise itself was perfectly proper.

CONCLUSIONS OF LAW

The allegation that the Board of Trustees, School District #1, Butte, Montana, has engaged in an unfair labor practice within the meaning of Section 59-1605(1)(a) and (e), R.C.M. 1947, has not been sustained by the Butte Teachers Union #332.

RECOMMENDED ORDER

The unfair labor practice charge filed by the Butte Teachers Union against the Board of Trustees, School District #1, and known as ULP #38, 1976, is hereby dismissed.

DATED this 15<sup>th</sup> day of March, 1977.

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 on the 15<sup>th</sup> day of March, 1977, a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

Mr. M. F. Hennessey P.O. Box H Butte, MT 59701	Mr. Edward A. Heard Business Agent Butte Teachers Union #332 125 West Granite Street Butte, MT 59701
Board of Trustees School District #1 c/o John Schara, District Chairperson 52 Garden Drive Butte, MT 59701	

Janice M. Fishburn  
Janice M. Fishburn

