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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE
CHARGE #7, 1977;

RETAIL CLERKS UNION LOCAL #991
affiliated with Retail Clerks
International Constitution, AFL-CIO,
Complainant,

vs-

UNIVERSITY OF MONTANA
MISSOULA, MONTANA,
Defendant.

)
)
) FINAL ORDER
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)

A Proposed Findings of Fact, Conclusions of Law and Order
was issued by Hearing Examiner, Jerry L. Painter, on May 20,
1977.

Exceptions to Examiner Painter's Findings were filed by
Complainant on June 24, 1977.

The matter was set for oral argument before the Board of
Personnel Appeals on November 17, 1977. Complainant waived the
right to argue orally and submitted a brief dated November 22,
1977 and received November 28, 1977 in lieu of oral argument.
Defendant appeared before the Board on November 17, 1977 and
submitted briefs and memorandum in support of the Findings of
Fact, Conclusions of Law and Recommended Order of the Hearing
Examiner.

After reviewing the record and briefs, the Board makes the
following Order:

1. IT IS ORDERED, that the Exceptions to the Hearing
Examiner's Proposed Findings of Fact, Conclusions of Law and
Proposed Order are denied.

2. IT IS ORDERED, that this Board therefore adopts the
Findings of Fact, Conclusions of Law and Order issued by Examiner
Painter on May 20, 1977.

Dated this 23rd day of December, 1977.

BOARD OF PERSONNEL APPEALS

BY Brent Crowley
Brent Crowley, Chairman



CERTIFICATE OF MAILING

1 I, Trena Scoffield, hereby certify and state that I did
2 on the 23rd day of December, 1977, mail a true and correct
3 copy of the FINAL ORDER to the following persons:

4 Joseph W. Duffy
5 Attorney
6 315 Davidson Bldg
7 Great Falls, Mt 59401

8 George L. Mitchell
9 Legal Counsel
10 University of Montana
11 Missoula, Mt 59812

12 Lonny Mayer
13 Retail Clerks Union Local #991
14 P. O. Box 7112
15 Missoula, Mt 59801

Trena Scoffield
Trena Scoffield

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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE #7, 1977:

3 RETAIL CLERKS UNION LOCAL #991)
 affiliated with Retail Clerks)
 4 International Constitution, AFL-CIO,)
)
 5 Complainant,)
)
 6 -VS-)
)
 7 UNIVERSITY OF MONTANA, MISSOULA,)
 MONTANA,)
 8)
 Defendant.)

FINDINGS OF FACT
 CONCLUSION OF LAW
 AND RECOMMENDED ORDER

* * * * *

INTRODUCTION

11 An unfair labor practice charge was filed by Complainant
 12 charging Defendant with a violation of Section 59-1605(1) (a) and
 13 (b), R.C.M. 1947. A hearing was held in the matter on April
 14 19, 1977. Complainant was represented at that hearing by Mr.
 15 Joseph Duffy. Defendant was represented by Mr. George Mitchell.
 16 The hearing examiner was Jerry Painter. After considering
 17 Complainant's case-in-chief, the complaint was dismissed by the
 18 hearing examiner. The following are my Findings of Fact,
 19 Conclusion of Law, and Proposed Order.
 20

FINDINGS OF FACT

- 21 1. Retail Clerks Union Local #991 is the certified bar-
- 22 gaining representative for the unit in question.
- 23
- 24 2. Mr. Tom Stockstill is the Copper Common Manager for
- 25 the University Food Service Department (Complainant's Exhibit
- 26 #1, Carson Veers and Christine Carver).
- 27
- 28 3. In November of 1976, Mr. Lloyd "Jack" Kirkland was
- 29 hired as a cook for the University Food Service. (Kirkland)
- 30
- 31 4. Mr. Kirkland was told by Mr. Stockstill, although it
- 32 was in passing, something to the effect "We would like to break
- up this friggin union". The response was made in sympathy to
- Mr. Kirkland's comment that he had to pay dues to the Retail
- Clerks Union. Mr. Kirkland testified the comment had no effect
- on him. (Kirkland)

1 The testimony taken at the hearing, even given the full
2 weight that it can be given, in no way supports any of the
3 alleged charges.

4 This hearing examiner was asked to take administrative
5 notice of Unfair Labor Practice 38, 1976. This hearing examiner
6 is intimately familiar with that case and decision and it in
7 no way affects the subject matter involved here. There must be
8 some showing of interference, coercion, or restraint in protected
9 activities, for this Board cannot presume it because it has
10 taken place before in a different factual setting. This is
11 especially true when Complainant's own witnesses admit that
12 there was no interference, coercion, and restraint involved in
13 this matter. And that case had absolutely nothing to do with
14 management's assistance in the formation of a union.

15 CONCLUSION OF LAW

16 The Complainant has failed to show any violation by the
17 University of Montana of Section 59-1605, R.C.M. 1947, or any
18 other section of Title 59, Chapter 16.

19
20 ORDER

21 The Complaint filed by Complainant filed April 18, 1977,
22 is dismissed. Pursuant to Rule MAC 24-8(26)-S8330(6) a party
23 adversely effected by this Order may file written exceptions
24 to this decision within 20 days.

25 DATED this 20th day of May, 1977.

26 BOARD OF PERSONNEL APPEALS

27
28 BY Jerry L. Painter
29 Jerry L. Painter
30 Hearing Examiner
31
32

CERTIFICATE OF MAILING

1
2 I, Janice M. Fishburn, hereby certify and state that I
3 mailed on the 20th day of May, 1977, a true and correct copy
4 of the FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDED
5 ORDER to the following:

6  Lonny Mayer
7 Chief Executive Officer
8 Retail Clerks Union Local 991
9 P.O. Box 7112
10 Missoula, MT 59807

11 George L. Mitchell
12 Legal Counsel
13 University of Montana
14 Missoula, MT 59801

15 Joe Duffy
16 Duffy & McKittrick
17 315 Davidson Building
18 Great Falls, MT 59401

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Janice M. Fishburn