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STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE #8-77:

MISSION FEDERATION OF TEACHERS,)
LOCAL #3182, AFT, AFL-CIO,)
Complainant,)

- vs -

BOARD OF TRUSTEES OF SCHOOL)
DISTRICT NO. 28, SAINT IGNATIUS,)
MONTANA,)
Defendant.)

FINAL ORDER

* * * * *

The Findings of Fact, Conclusions of Law and Recommended Order were issued by Hearing Examiner Jeff Andrews on June 20, 1979.

Attorney for Complainant, Joseph W. Duffy, filed Exceptions to Hearing Examiner's Findings of Fact, Conclusions of Law and Recommended Order on July 16, 1979.

After reviewing the record and considering the briefs and oral arguments, the Board orders as follows:

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

2. IT IS ORDERED, that this Board therefore adopts the Findings of Fact, Conclusions of Law and Recommended Order of Hearing Examiner Jeff Andrews as the Final Order of this Board.

DATED this 29 day of October, 1979.

BOARD OF PERSONNEL APPEALS

By Brent Cromley
Brent Cromley
Chairman

NOTE: Member George B. Heliker has issued a Dissenting Opinion on this matter.

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CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify and state that I mailed a true and correct copy of the above FINAL ORDER on ULP #8-77 to the following persons on the 29 day of October, 1979:

Edward K. Duckworth
Attorney for Defendant
FRENCH & GRAINEY
Drawer 7
Ronan, MT 59864

Joseph W. Duffy
Attorney at Law
P.O. Box 186
Great Falls, MT 59403



A handwritten signature in cursive script, reading "Jennifer Jacobson", is written over a horizontal line.

BOARD OF PERSONNEL APPEALS

RECEIVED

OCT 11 1979

BOARD OF PERSONNEL APPEALS

ULP # 8-77

IN THE MATTER OF:)
)
 MISSION FEDERATION OF TEACHERS)
 LOCAL # 3182, AFT, AFL-CIO)
)
 Complainant)
)
 vs.)
)
 BOARD OF TRUSTEES OF SCHOOL)
 DISTRICT # 28, SAINT INGNATIUS,)
 MONTANA)
)
 Defendant)

DISSENTING OPINION
 OF
 GEORGE B. HELIKER

I have been a member of this Board for nearly five years. In that time, though I have disagreed with Board decisions on occasion, I have never, until now, felt strongly enough to warrant filing a written dissent. This Decision is different. It is an egregious miscarriage of justice. It is a bad decision, viewed either on its merits or from the standpoint of due process.

Due process has been trampled more than once as this case has ground lackadaisically through the administrative mill for more than two and a half years. The consumption of that much time in bringing to decision an unfair labor practice charge involving the literal destruction of the career of at least one of the teachers affected is itself a shocking violation of due process. The charge was filed on April 20, 1977. Defendant School Board was not anxious to be heard and succeeded in delaying the hearing for almost seven months. Having held a hearing on Nov. 3, 1977, the Hearing Officer got around to rule on Complainant's Motion to Amend Charges, made at the close of the hearing (and for which there was, in my opinion, ample cause to accept then and there), on Oct. 2, 1978. On June 20, 1979, the Hearing Officer issued his Findings and Recommended Order, having duly deliberated over a grossly defective record and memory made stale by the passage of twenty months time. That Recommendation came to the Board at its meeting of Sept. 18, 1979, and was decided in a conference call meeting on Sept. 27, 1979, two members of the Board (Chairman Cromley and myself) having had an opportunity to examine the hearing transcript (what there was of it), one member of the Board (myself) having read the Complainant's Brief, and no member of the Board having had an opportunity to discuss the case with the Hearing Officer, who has left the State. No other member of the Board's staff knows enough about the case to discuss it, including the question of the whereabouts of one entire recording tape containing a minimum of fifty pages (and as much as one hundred pages) missing from the typed transcript of the hearing.

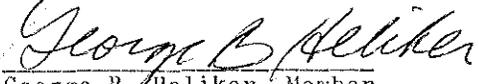
The mystery of the missing tape concerns the second major denial of due process which has afflicted the Complainant. Attorney Duffy, in his Brief for the Complainant, noted at the foot of page 5 that "The transcript, as received, is uncomplete. At page 100, key testimony of Mr. Jarussi abruptly ends with the notation: ('end of tape - one tape missing here.'"). It is an unavoidable inference that the Hearing Officer did not have a complete transcript before him when he wrote his Findings and Recommended Order in June, 1979. And it is completely beyond the realm of reasonable probability that he was able to recall the contents of 50-100 pages of transcript nearly 20 months after the event. From a reading of the remainder of the transcript, it is patent that there is a high probability the missing portion contained testimony crucial to Attorney Duffy's argument and to the Hearing Officer's decision. For that reason alone, the Decision and Order should be vacated and the cause remanded for rehearing.

Due process was denied again when the Motion to Amend Charges was denied. I will not belabor the point, but it is obvious to me from a reading of the transcript that the record, even with a large part missing, is replete with justification for that Motion. The Motion was properly made at the end of the hearing and should have been approved then and there by the Hearing Officer. His opinion that the Defendant would be unfairly prejudiced by the amendment is simply ridiculous and without any basis in fact whatsoever.

On the merits, insofar as we are privy to the testimony which makes a judgment possible, the Hearing Officer's Recommended Order should be reversed.

This Board's *raison d'être* is its expertise in the field of labor relations. On the face of the facts of this case, the credulity of any expert in that field must be stretched beyond the breaking point by the proposition accepted by the Hearing Officer. That five active union members and supporters (the founder and first president, Montana Bockman; the current president, William Bartlett; two members of the negotiating team, Robert Gornick and Naett Sharp; and a teacher who testified for the Union in a previous unfair labor practice hearing, Myrna Vanderburg) could innocently be displaced in a reorganization which endured only long enough to accomplish the nefarious and illegal ends of the Employer, is a proposition on its face so improbable as to best be labelled simply "silly". When one searches the transcript fragment, the Briefs, and the Hearing Officer's Recommendation, one finds no reason to alter that judgment. This case stands as a textbook example of the misuse of the (uncertain) processes of an administrative Board to defeat the most basic purposes of the very legislation that gave life to that Board.

And, while the Board ponderously strokes Nero's fiddle, Montana Bochman, a dedicated teacher, takes three years out of a useful life to tend bar in Ronan! Is this what the Legislature intended when it enacted "the policy of the State of Montana to encourage the practice and procedure of collective bargaining...?"


George B. Heliker, Member
Oct. 7, 1979

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF:

MISSION FEDERATION OF TEACHERS,)
LOCAL #3182, AFT, AFL-CIO,)
)
Complainant,)
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- vs -)
)
BOARD OF TRUSTEES OF SCHOOL)
DISTRICT #28, SAINT IGNATIUS,)
MONTANA,)
)
Defendant.)

ULP #8-77
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
RECOMMENDED ORDER

* * * * *

INTRODUCTION

This matter is before the Board of Personnel Appeals upon the filing of unfair labor practice charges against School District #28, Saint Ignatius, Montana. The charges were filed by the Mission Federation of Teachers, Local #3182, AFL-CIO on or about April 20, 1977.

Subsequent to that filing, on April 21, 1977, counsel for complainant submitted a Motion to Produce requesting certain personnel records pertaining to the discharged teachers.

On April 29, 1977, the Defendant, School District #28, filed a Motion for More Definite Statement and For Hearing (on said Motion).

On May 4, 1977, Defendant filed a Memorandum Opposing Complainant's Motion to Produce.

On May 12, 1977, the Board of Personnel Appeals denied Defendant's Motion for More Definite Statement and directed an Answer be filed by Defendant.

On May 24, 1977, Defendant filed a Motion to Strike which demanded, in essence, dismissal of the Complaint as written and filed.

1 On June 9, 1977, the Board denied said Motion to Strike;
2 whereupon, the Board on June 30, 1977, ordered the hearing on the
3 unfair labor practices to be held on July 7, 1977.

4 On July 1, 1977, the Defendant filed a Petition for Writ of
5 Supervisory Control in the Fourth Judicial District. The petition
6 cited denial of Defendant's motions before the Board as grounds
7 for such Writ. An Order to Show Cause was issued by the Court.
8 On July 6, 1977, the Board cancelled further proceedings pending
9 the outcome of the Court action.

10 Scheduling difficulties of counsel and the Court resulted in
11 two postponements of the Court Action. On August 17, 1977, upon
12 Motion of Defendant's counsel, the Petition for Supervisory Writ
13 was dismissed.

14 An Answer was filed by Defendant on August 19 and the matter
15 was finally set for hearing before the Board on November 3, 1977.

16 Said hearing was held as scheduled.

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

19 FINDINGS OF FACT AND DISCUSSION

20 1. THE BUDGET

21 Fundings for the Saint Ignatius school system came from
22 three separate sources: these are "874" monies from the Federal
23 Government, state foundation funds and mill levy.

24 a. "874 Monies" - These are federal impact funds paid to
25 the school district. These funds were in question at the time
26 of this situation. Rumor had it that President Carter was going
27 to reduce the program and other school districts had asked help
28 to put political pressure on Congressional delegates to help
29 stop any cutback. Any cutback would force the trustees to increase
30 the number of mills levied on the citizenry. Although these
31 problems worried the trustees, in the final accounting they received
32 about \$8,000 more than planned.

1 b. Foundation Monies - These funds come from the state
2 government and testimony given indicated that no word had been
3 received as to what amount the school would receive in that year,
4 either directly or through friends and lobbyists.

5 c. "Mill Levy" - This third source of funds is raised
6 locally. These funds would be used to make up any lack of funds
7 from the two other sources. Citizen pressure was on the trustees
8 to keep spending to a minimum, while maintaining a quality school.
9 Total budget projections, with the elimination of two positions
10 would be about \$290,000, with a levy of about 24 mills. Final
11 budget figures, with the funding which actually materialized, was
12 about 12 mills which is approximately the same as the previous
13 year.

14 2. THE MIDDLE SCHOOL

15 The concept of the middle school first surfaced in Saint
16 Ignatius during January of 1977. The Superintendent, Mr. Jarussi,
17 made a study of its implementation and reported to the trustees.
18 Further input came from Mr. Lyle Egguns and Mr. Bill Yellowtail,
19 who represent the Superintendent of Public Instruction's Office,
20 who advised the implementation as a possible way to ease the
21 transition of students from elementary to secondary school. The
22 middle school concept, in essence, eliminates the junior high
23 school, places the seventh and eighth grades in the middle school
24 and places the ninth grade with the high school. The classroom
25 in the middle school is a more self-contained one than the high
26 school, and is quite similar to an elementary concept with students
27 spending their time in one room with one teacher who teaches almost
28 the entire curriculum.

29 The concept was discussed and adopted for implementation by
30 the trustees at a meeting held March 2, 1977.

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1 3. GORNICK AND VANDENBURG

2 Mr. Robert Gornick and Mrs. Myra Vandenburg were both
3 teachers in the Saint Ignatius school system at the middle school
4 level. Their cases will be discussed simultaneously as the set
5 of facts and circumstances in both cases are virtually identical.

6 Both Mr. Gornick and Mrs. Vandenburg were chosen to not to
7 have their teaching contracts renewed for the 1977-78 school year,
8 and were so notified by the trustees in letters dated March 29,
9 1977. The letters stated that they would not be offered a
10 contract "until you can present evidence to the fact that you
11 shall receive full elementary certification before the beginning
12 of the 1977-78 school year." Mr. Gornick was a member of the
13 union and Mrs. Vandenburg had given testimony favorable towards
14 the union at an unfair labor practice hearing.

15 Both Mr. Gornick and Mrs. Vandenburg requested the trustees
16 to supply them with a written declaration of reasons for the non-
17 renewal. In letters dated April 14, 1977, the trustees answered,
18 "The reason for non-renewal of your contract for the 1977-78 school
19 year is due to the trustees' desire to have the teachers of the
20 7th and 8th grade levels become fully certified as elementary
21 teachers and become skilled in the techniques of elementary
22 instruction. The Board will be willing to re-open your contract
23 when you can present to them a program leading to the above require-
24 ments within reasonable time limits."

25 The record shows that they were concerned with the problem of
26 certification as a result of the institution of the middle school
27 concept. Previously, and in line with state regulations, teachers
28 in the 7th and 8th grade levels were allowed to teach with
29 secondary school credentials, which both Mr. Gornick and Mrs.
30 Vandenburg possessed. The middle school, with its self-contained
31 classrooms, would put different demands on the teachers, demands
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1 more similar to the elementary grades and the trustees were told,
2 through Mr. Lyle Egguns of the Office of the Superintendent of
3 Public Instruction, that Mr. Egguns thought that within a year
4 the accreditation standards were going to be revised and that
5 elementary certification would be needed to teach in a self-
6 contained, elementary-type classroom. The trustees were further
7 aware that provisional certification could be obtained for a
8 teacher with secondary certification to teach a class that required
9 elementary certification. It was also a concern of the trustees
10 that as they would be teaching in an elementary-type classroom,
11 they should "become skilled in the techniques of elementary
12 education." With this in mind, it was requested that Mr. Gornick
13 and Mrs. Vandenburg should have their transcripts evaluated to
14 discern possible inadequacies which could present problems. This
15 led to the non-renewal of the teachers and the letters previously
16 mentioned.

17 Both Mr. Gornick and Mrs. Vandenburg requested hearings
18 before the trustees to reconsider the termination actions. The
19 hearings were granted and were scheduled to be held April 28, 1977.
20 At that session a compromise solution was reached in the form of
21 a memorandum, entered into evidence as Joint Exhibit #5, and which
22 states that the teachers in question shall have their contracts
23 renewed for the 1977-78 school year and that they will "undertake
24 and utilize his/her best efforts to attain such elementary
25 certification".

26 This recision of the terminations of Mr. Gornick and Mrs.
27 Vandenburg, combined with the lack of any substantial direct or
28 circumstantial evidence, directs me to the opinion that the
29 trustees did not violate the law within the meaning of Section
30 59-1605.

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1 4. BOCKMAN

2 Mr. Bockman was employed as a Physical Education grade teacher
3 in the Saint Ignatius schools during the 1976-77 school year.
4 During that year he taught six classes, four in the high school
5 and two in the lower grades. He had previously taught in Saint
6 Ignatius for ten years and was widely known as an active participant
7 in the union.

8 With the advent of the middle school concept, with self-
9 contained classrooms, teachers in the middle school, the seventh
10 and eighth grades, would teach all subjects including physical
11 education. This action affectively eliminated two of Mr. Bockman's
12 classes. Two of Mr. Bockman's other classes in the high school,
13 classes which had few students, were eliminated by consolidation.
14 This left Mr. Bockman with only two classes, which through manip-
15 ulation of scheduling, were assigned to another teacher.

16 Having thus removed all teaching responsibilities from Mr.
17 Bockman, the trustees found him to be expendable and chose not to
18 renew his contract and so informed him in a letter dated March 29,
19 1977, which has been entered into evidence as part of Joint
20 Exhibit #8. Mr. Bockman requested a written declaration of the
21 reasons for his non-renewal. In a letter dated April 14, 1977,
22 the trustees stated:

23 "Your non-renewal of a teaching contract was due to the
24 consolidation of programs and staff reductions and reassign-
25 ments brought about by budgeting considerations. With the
26 elimination of your P.E. classes and the combining of two
27 other P.E. classes with four science classes, it eliminates
28 the need for a full time P.E. teacher."

29 Mr. Bockman then requested and was given a hearing regarding
30 the reasons for non-renewal. The hearing was to be held on
31 April 28, 1977.

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1 We have previously discussed the problem of budgeting in the
2 Saint Ignatius schools and you'll recall that the problem was
3 more one of public pressure and uncertainty of the future of
4 certain public funds. We have also discussed the middle school
5 concept, the self-contained classroom, etc. The middle school
6 demanded four teachers. These were to be filled by Mr. Gornick,
7 Mrs. Vandenburg, as discussed previously, and one other male
8 teacher, a Mr. Worden. The trustees felt that as teachers would
9 be supervising their own P.E. classes, a balanced staff of two
10 men and two women would be the most advantageous deployment of
11 personnel. Mr. Bockman applied for the vacant position on the
12 middle school teaching staff, an application which was denied.
13 One reason for this denial was a feeling among parents that P.E.
14 students should be supervised by a teacher of the same gender.
15 The record gives no other reason relative to the denial of Mr.
16 Bockman's application. The argument that by rearrangement and
17 consolidation, two positions at the high school level could be
18 cut back, and with the majority of Mr. Bockman's teaching being
19 in that area, explains the reason for non-renewal, but not the
20 reason for denying the eighth grade application. This would rank
21 as powerful circumstantial evidence of discrimination against Mr.
22 Bockman except that it is neutralized by the fact that the trustees
23 offered Mr. Bockman a position at the sixth grade level. From
24 the record, especially the testimony of Principal Jarrusi, Mr.
25 Bockman had a satisfactory record as a teacher, and the offer of
26 a job at the sixth grade level would indicate that while the
27 trustees did not feel the school system would be best served with
28 Mr. Bockman teaching the eighth grade, they felt that in another
29 position, sixth grade, he would be a satisfactory employee.

30 It is therefore my opinion that the trustees did not violate
31 the law within the meaning of Section 89-1605, in the handling of
32

1 the non-renewal of the teaching contract of Mr. Bockman.

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3 5. BARTLETT

4 Mr. William Bartlett was employed in the Saint Ignatius
5 school system during the 1976-77 school year. He taught at the
6 high school level, teaching general science, biology, chemistry
7 and math. Mr. Bartlett was informed, in a letter dated March 20,
8 1977, from the trustees that his teaching contract would not be
9 renewed for the 1977-78 school year. He then requested a state-
10 ment of reasons for that non-renewal and was told in a letter
11 dated April 7, 1977, that "non-renewal was due to consolidation of
12 programs and staff reduction and reassignments brought about by
13 budgeting considerations and certification factors." Mr. Bartlett
14 requested a hearing on his termination but this request was denied.

15 Testimony and evidence entered into the record indicates that
16 Mr. Bartlett was teaching out of his area of endorsement, that is
17 he did not have a math endorsement. This caused questions of the
18 accreditation of the school, and this was indicated in a Northwest
19 Accreditation report and a report from the Superintendent of Public
20 Instruction. This problem was discussed with Mr. Bartlett in
21 November of 1976 and again in early March, 1977, and the subject
22 was first aired in 1975. Mr. Bartlett showed an unwillingness to
23 return to college and to receive the math endorsement and could
24 not find a school of his choice which would offer the courses he
25 required. I think it is obvious that Mr. Bartlett showed a lack
26 of cooperation along with the fact that Mr. Bartlett's classes
27 were absorbed by other teachers teaching within their areas of
28 endorsement, led me to the conclusion that the trustees did not
29 violate the law within the meaning of Section 59-1605.

30 6. NAETT SHARP

31 Miss Sharp was employed by the Saint Ignatius school system
32 during the 1976-77 school year as a resource teacher with full-time

1 responsibilities in special education. She had not achieved tenure
2 at the time she was informed by the trustees in a letter dated
3 March 29, 1977, that her teaching contract would not be renewed
4 for the 1977-78 school year. She then requested a statement of
5 reasons for her non-renewal which was delivered in a letter dated
6 April 14, 1977 stating: "The reasons for non-renewal of your
7 contract are due to the uncertainty of our Special Education
8 Program for the high school for the 1977-78 school year, and the
9 Board feels they can employ another person with greater utility
10 in the high school program"

11 Testimony taken at the hearing showed that the trustees
12 were considering the possibility of the need of a part-time
13 special education teacher and if this came to pass they wanted
14 a teacher with other endorsements, specifically an endorsement
15 in a business or commercial area, an area which apparently was
16 demanded by students. Miss Sharp had the credentials to teach
17 Home Economics as well as Special Education, but the Saint
18 Ignatius schools already had several people with Home Economics
19 endorsements which lessened Miss Sharp's value to the school
20 system.

21 Miss Sharp was called by Principal Jarussi to inform her
22 of an opening with the school as a study hall supervisor. Upon
23 investigation however, the Montana Job Service informed Miss Sharp
24 that she was not eligible for the opening.

25 I feel the trustees have substantiated their reasons for
26 not renewing the teaching contract of Miss Sharp and that this is
27 buttressed by Mr. Jarussi's attempt to find Miss Sharp a position
28 within the school system. I therefore find that in this matter
29 the trustees have not violated the law within the meaning of
30 Section 59-1605(1).

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CONCLUSION OF LAW

It is my conclusion that the Board of Trustees of School District #28, Saint Ignatius, Montana, have not acted in violation of Section 59-1605(1) (a) (c) (d), R.C.C. 1947, and the charges brought against them by the Mission Federation of Teachers, Local #3182, AFT, AFL-CIO in ULP #8-77 have not been sustained.

RECOMMENDED ORDER

The unfair labor practice charge brought by the Mission Federation of Teachers, Local #3182, AFT, AFL-CIO, against the Board of Trustees of School District #28, Saint Ignatius, Montana, is hereby dismissed.

DATED this 20th day of June, 1979.

BOARD OF PERSONNEL APPEALS

BY: Jeff Andrews
Hearing Examiner

* * * * *

CERTIFICATE OF MAILING

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

County Attorney
Lake County Courthouse
Polson, MT 59860

CERTIFICATE OF SERVICE
This is to certify that the foregoing was duly served by mail upon parties or attorneys of record at their address or addresses the 20 day of June, 1979
STATE OF MONTANA
BOARD OF PERSONNEL APPEALS
By: Jennifer Jacobson
Box 202 - Capital Station, Helena, MT. 59601