

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE #12-78:

BROCKTON EDUCATION ASSOCIATION,)
Affiliated with the MONTANA)
EDUCATION ASSOCIATION,)

Complainant,)

- vs -)

FINAL ORDER

BOARD OF TRUSTEES, ROOSEVELT)
COUNTY SCHOOL DISTRICT NO. 55,)
and 55F,)

Defendant.)

The Findings of Fact, Conclusions of Law and Recommended Order were issued by Hearing Examiner Jeff Andrews on September 24, 1979.

Attorney for Complainant, Emilie Loring, filed exceptions to the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommended Order on November 21, 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 adopt the Findings of Fact, Conclusions of Law and Recommended Order as the Final Order of this Board.

DATED this 11th day of December, 1979.

BOARD OF PERSONNEL APPEALS

By Brent Cromley
Brent Cromley
Chairman

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify and state that I mailed a true and correct copy of the above FINAL ORDER to the following persons on the 17th day of December, 1979:

Emilie Loring
HILLEY & LORING, P.C.
1713 Tenth Avenue South
Great Falls, MT 59405

John Warner
WEBER, BOSCH, KUHR, DUGDALE,
WARNER & MARTIN
4th Avenue at 4th Street
Havre, Montana 59501



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

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3 IN THE MATTER OF UNFAIR LABOR PRACTICE #12-78:

4 BROCKTON EDUCATION ASSOCIATION,)
5 AFFILIATED WITH THE MONTANA)
6 EDUCATION ASSOCIATION,)

7 COMPLAINANT)

8 VS.)

9 BOARD OF TRUSTEES, ROOSEVELT)
10 COUNTY SCHOOL DISTRICT #55 & 55F)

11 DEFENDANT.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

12 * * * * *

13 INTRODUCTION

14 On May 4, 1978, the Complainant filed an unfair labor prac-
15 tice charge with the Board of Personnel Appeals alleging that the
16 Defendant violated Section 59-1605(1)(a) and (c), R.C.M. 1947.

17 Defendants answer was filed on May 16, 1978 and denies all
18 the allegations.

19 A hearing on this matter was held on June 6, 1978, in Brockton,
20 Montana. The Complainant was represented by Ms. Emilie Loring of
21 the law firm of Hilley and Loring, P.C., Great Falls, Montana;
22 the Defendant was represented by Mr. John Warner of the law firm
23 of Weber, Bosch, Kuhr, Dugdale, Warner and Martin, Havre, Montana.

24 As the duly appointed hearing examiner of this Board, I
25 conducted the hearing in accordance with the Montana Administra-
26 tive Procedures Act (Sections 82-4201 to 82-4225, R.C.M. 1947).

27 After a thorough review of the record of the case, I make
28 the following:

29 FINDINGS OF FACT

30 1. Mr. James Carlisle was a teacher employed by the
31 Brockton School District during the 1976-77 and 1977-78 school
32 years. In April of 1978, he was notified that his teaching
contract would not be renewed for the 1978-79 school year.

1 2. Mr. Carlisle was an active member of the Brockton
2 Education Association, having served as its president and chief
3 negotiator.

4 3. Considerable testimony was taken as to ongoing problems
5 between Carlisle and School Superintendent David Wilson:

6 a) In July of 1977, Wilson questioned Carlisle about why
7 he would want to be involved in union activities.

8 b) Wilson stated to Mr. Duane Braut, a teacher in Poplar,
9 that the last two union presidents had not been renewed
10 and that Carlisle would not be renewed.

11 c) On September 23, 1977, Wilson asked for names of union
12 members and criticized the union's method of choosing
13 its negotiators.

14 d) In his capacity as union president, Carlisle filed
15 numerous grievances with Wilson. This angered Wilson
16 and he considered Carlisle the instigator of the griev-
17 ances.

18 4. Several evaluations were made of Carlisle's teaching
19 performance.

20 a) The first, done by Elementary Principal Monteau, as
21 well as two others by Superintendent Wilson, were
22 negative. Mr. Carlisle disagreed with these evaluations
23 but was not allowed adequate opportunity for rebuttal.

24 b) A fourth evaluation was done by Nellie Fisher, a veteran
25 teacher but not professionally qualified to make a
26 formal evaluation. This evaluation was also negative.
27 Mrs. Fisher further testified of problems with discipline
28 and parental discontent with Mr. Carlisle.

29 5. School Board members testified that they made their
30 decision in the matter of Mr. Carlisle on the basis of the evalu-
31 ations, primarily that by Mrs. Fisher, and that they discounted
32 the evaluations by Mr. Wilson because of the well known antagon-
ism between Wilson and Carlisle.

1 4. An unsatisfactory employee cannot place himself in a
2 better position because of protected union activities. (Mt.
3 Healthy City School District Board of Education v. Doyle, 429
4 U.S. 274, 287 (1977)).

5 Substantial evidence has been presented that the non-renewal
6 of Mr. Carlisle's teaching contract was at least partially moti-
7 vated by his union activities. The most damaging evidence, of
8 course, was the admission of School Board member Gary Melbourne
9 to that effect. Further evidence shows the anti-union bias of
10 Superintendent Wilson which was frequently directed toward Mr.
11 Carlisle because of his position as union president. This is
12 sufficient to shift the burden to management to prove its inno-
13 cence.

14 The School Board made a very convincing case for its inno-
15 cence. Mr. Carlisle was evaluated a total of four times: by
16 Elementary Principal Monteau, twice by Superintendent Wilson, and
17 by Mrs. Nellie Fisher. All four evaluations were negative.
18 Testimony from the School Board was that their decisions as to
19 who would or would not be offered contracts were made almost
20 solely on the advice of Mrs. Fisher. The evaluations made by
21 Superintendent Wilson were discounted by the School Board because
22 of the well known conflict between Wilson and Carlisle. It was
23 Mrs. Fisher's report to the School Board that Mr. Carlisle was
24 not performing adequately either in teaching or in discipline.
25 Although Mrs. Fisher was not professionally qualified to make
26 these evaluations, the School Board seemed to place great confi-
27 dence in her opinion. It is my opinion that the decision to not
28 renew Mr. Carlisle's contract was made primarily on the recommen-
29 dation of Mrs. Fisher and not because of Mr. Carlisle's union
30 activity.

31 This decision has been difficult to make because I do not
32 feel Mr. Carlisle has been treated fairly; unfortunately no

1 relief can be made by this Board. I do not think Mr. Carlisle
2 was given a fair and professional evaluation either while he was
3 teaching or at the time of his non-renewal. He was not given an
4 opportunity to answer the complaints made about him. The School
5 Board's decision, while not discriminatory, was certainly not
6 made in a manner befitting his professional status and the effects
7 such a decision may have.

8 CONCLUSIONS OF LAW

9 The allegation that the Board of Trustees, Roosevelt County
10 School District No. 55 and 55F, has engaged in an unfair labor
11 practice within the meaning of Sections 59-1605(1)(a) and (c),
12 R.C.M. 1947, has not been sustained by the Brockton Education
13 Association.

14 RECOMMENDED ORDER

15 The unfair labor practice charge filed by the Brockton
16 Education Association against the Board of Trustees, Roosevelt
17 County School District No. 55 and 55F, is hereby dismissed.

18 Dated this 24 day of September, 1979.

19
20 BOARD OF PERSONNEL APPEALS

21 *Jeff Andrews*
22 *by Robert R. Jensen*
23 Jeff Andrews *Administrative*
24 Hearing Examiner

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26 513:v

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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 FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER in ULP #12-78 to the following persons on the 24 day of September, 1979:

John Warner
Attorney for Defendant
P.O. Box 152
Havre, MT 59501

Emilie Loring
HILLEY & LORING, P.C.
1713 Tenth Avenue South
Great Falls, MT 59405


