

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

RONAN TEACHERS' PROGRESSIVE CAUCUS,  
AFFILIATE OF MONTANA FEDERATION OF  
TEACHERS, AFT, AFL-CIO,

Complainant,

-vs-

RONAN-PABLO UNIT, MONTANA EDUCATION  
ASSOCIATION, AFFILIATE OF NATIONAL  
EDUCATION ASSOCIATION AND MONTANA  
EDUCATION ASSOCIATION,

Defendants.

ULP 34-1978

FINAL ORDER

The above-captioned matter came on for hearing April 7, 1979, in the library of Ronan High School, Ronan, Montana. The hearing was conducted under the authority and in accordance with 39-31-406, MCA and the Montana Administrative Procedures Act, 2-4-101, et. seq., MCA.

On August 9, 1979, the hearing examiner in this matter issued a Findings of Fact, Conclusions of Law and Recommended Order. On August 22, 1979, Exceptions were filed by Defendant Ronan-Pablo Unit of the Montana Education Association. On September 18, 1979, oral arguments were presented before the Board of Personnel Appeals. On October 29, 1979, an Interim Order was issued by the Board remanding the matter back to the hearing examiner for clarification and editing. On January 10, 1980, the Board received a letter from the hearing examiner amending certain findings. That letter was sent to the parties. On March 19, 1980, the Board received renewed exceptions to the Recommended Order from the Defendant. On April 23, 1980, an oral argument was presented to the Board on the renewed exceptions. In view of the oral arguments, and the review done by the hearing examiner in this matter, the hearing examiner's Recommended Order is amended and the Final Order of the Board is as follows: (Additions to the hearing examiner's Recommended Order are noted by underlining)

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INTRODUCTION

The Ronan-Pablo Unit of the Montana Education Association, the recognized bargaining agent for the unit, (hereinafter referred to as RPU) negotiated a contract with School District 30 which contained an agency shop provision. Those teachers not wishing to become members of the MEA were required, under the contract, to pay a "representation service fee". This provision was the source of much disagreement within the unit.

Several of the teachers in the unit did then, and do now, belong to the American Federation of Teachers (AFT) (hereinafter referred to as AFT members). Early in the fall of 1978 those teachers belonging to the AFT decided to become members of MEA in order to "bring about change from within". The major change they were concerned to bring about appeared to be reopening negotiations of the agency shop provision with an eye to eliminating it. This intention was communicated to the MEA membership.

Subsequent to that decision events followed which gave rise to the filing of unfair labor practice charges herein.

FINDINGS OF FACT

1. The Montana Education Association is the recognized bargaining agent for teachers at the Ronan-Pablo Unit in School District 30, Ronan, Montana.

2. The American Federation of Teachers (AFT) is a rival union which several teachers in the Ronan-Pablo Unit (RPU) have joined.

3. The Master Contract between the Ronan-Pablo Unit, Montana Education Association and School District No. 30 contains an agency shop provision and requires the payment of a representation service fee by non-members of MEA. (See Joint Exhibit 1, Section 4.04.)

4. James Gillhouse is President of RPU.

5. James Clairmont is President of the AFT members.

1           6.    At an AFT meeting in late October or early November, AFT  
2 members decided to become members of MEA in order to attempt to  
3 bring about changes in the MEA from within. The purpose was  
4 communicated to the MEA membership.

5           7.    An RPU meeting was held in Ronan on November 14, 1978.  
6 Prior to and subsequent to that meeting, several AFT members  
7 submitted membership cards. Those teachers attended the RPU  
8 meeting voted and were generally recognized as members.

9           8.    There is some evidence indicating that AFT members  
10 experienced difficulty in obtaining membership application cards.  
11 There was contradictory testimony as to when and exactly how many  
12 cards were turned over. It is certain that at least 18 cards were  
13 supplied to AFT members by November 3, 1978 (see Affidavit of  
14 James Gillhouse attached to Defendant's Memorandum). There was no  
15 evidence amounting to a preponderance that Mr. Gillhouse intentionally  
16 withheld cards for an unreasonable period.

17           9.    Between November 14, 1978, and February 13, 1979, no  
18 general MEA meetings were held by RPU. However, there was also no  
19 evidence that this was substantially irregular. Some teachers  
20 testified that they heard Mr. Gillhouse announce a meeting for  
21 December 12, 1978, right after the November 14, 1978, meeting.  
22 That meeting never took place, although several AFT members appeared  
23 on that date and voted to change the MEA officers. A later attempt  
24 to change the November minutes to reflect this announcement failed  
25 for lack of majority. Also, it appears to be past practice for  
26 notices to go out prior to each meeting, and no notice was given  
27 in December.

28           10. Two Executive Committee meetings were held between the  
29 above-mentioned dates. Upon request, an AFT member was later  
30 allowed to submit a written request for a copy of them. Although  
31 there was testimony that members could volunteer to be on Committees  
32 within RPU, it appeared that in fact they are appointed to commit-  
tees by President Gillhouse.

1           11. Appointments were made to two Committees between November  
2 14, 1978, and mid-February, 1979. Appointments to a committee to  
3 revise the constitution were started in November and continued  
4 into January. No AFT members were appointed to this committee  
5 until January 24, 1979, at which time Ron Bond was appointed.  
6 This date was after RPU was notified of the unfair labor practice  
7 charges against them. There was testimony by one member of the  
8 Executive Committee, Lonnie Smith, that "it was felt" that since  
9 Mr. Bond has paid some dues by then, he was "serious" about becoming  
10 an MEA member.

11           12. The Nominating Committee was appointed by the Executive  
12 Committee in February. No AFT members were appointed because they  
13 had had their MEA membership revoked as of that time.

14           13. A copy of the MEA Constitution was supplied to AFT  
15 members on January 24, 1979.

16           14. Prior to the end of January, 1979, the policy of MEA as  
17 to members paying dues on a cash basis was that one-half of the  
18 dues were to be paid by February 1, and the other half by April 1.  
19 Different arrangements could be made upon request.

20           15. On January 27-28, 1979, the Executive Board of MEA met  
21 and changed the dues payment policy to require all cash-paying  
22 members to pay dues within 30 days following application for  
23 membership. (See Complainant's Exhibit 4A.)

24           16. In a letter dated January 30, 1979 (Defendant's Exhibit  
25 11), Mr. Gillhouse, in response to an inquiry from Mr. Clairmont,  
26 informed Mr. Clairmont that he and others would be required to pay  
27 one-half of their dues by February 1, 1979.

28           17. Most AFT members decided not to pay their dues as of  
29 February 1, 1979. As of that date, however, no memberships were  
30 revoked.

31           18. In a letter dated February 5, 1979 (Complainant's Exhibit  
32 3), Mr. Clairmont requested clarification of the policy from Mr.  
Randels, then Interim Executive Secretary of MEA.

1 19. A letter addressed in blank, intended apparently for MEA  
2 members, was written by Mr. Randels informing members who had not  
3 paid their dues as of February 1, 1979, that they had thirty days  
4 to do so. (Complainant's Exhibit 4B).

5 20. Two letters to Mr. Clairmont issued from Mr. Randel's  
6 office on February 8, 1979. One (Complainant's Exhibit 4A) gave  
7 Mr. Clairmont and others 30 days to comply with the policy.  
8 Another (Complainant's Exhibit 5) revoked Mr. Clairmont's membership  
9 for nonpayment of dues, effective immediately.

10 21. Mr. Larry Diebold, Executive Secretary of MEA at the  
11 time of the hearing but not at the time the letters were sent out,  
12 testified that he had the impression that the rationale for the  
13 conflicting letters referred to in paragraphs 15 and 20 above was  
14 that the blank letters were designated for members who had paid  
15 dues before but were merely delinquent. On the other hand, members  
16 who had never paid were terminated immediately. There was no  
17 evidence to show that any members other than AFT members had their  
18 membership revoked immediately.

19 22. Mr. Gillhouse was requested to phone the Helena MEA  
20 office to seek an explanation of the membership status of the AFT  
21 members. He refused to do so, indicated he had spoken with that  
22 office already and was satisfied that their memberships had been  
23 revoked.

24 23. On February 13, 1979, a general MEA meeting was held in  
25 Ronan. The minutes of the meeting state:

26  
27 (I)f the non-members vote it will have to be recorded separately  
28 and if indeed, it is determined at a later date they are members,  
29 their votes will be counted . . . Lonnie Smith moved that we  
continue the meeting and separate the votes. Ron Krants seconded.  
Motion carried. (Defendant's Exhibit #14)

30  
31 Inspite of those minutes an affidavit submitted by Defendant signed  
32 by President Gillhouse and not contradicted by Complainant shows that  
in fact two lists were not maintained in the votes taken during

1 the February 13, 1979, meeting. Therefore, we find that two lists  
2 were not maintained during the voting procedure at the February 13,  
3 1979, meeting.

#### 4 DISCUSSION

5 There appear to be six charges contained in the More Specific  
6 Statement of Charges and the Amendment of Complaint. Each charge  
7 will be stated in Complainant's language and discussed separately  
8 here. For simplicity, they will be numbered 1-6 and referred to as  
9 such hereafter. (Defendants are alleged to have violated 39-31-402,  
10 MCA and 39-31-205, MCA in Counts 1-4).

11 1. That on or about November 29, 1978, James  
12 Gillhouse, President of the Ronan-Pablo Unit of the  
13 Montana Education Association, refused to provide Com-  
14 plainant with a copy of the Constitution and by-law of  
15 Defendant union because Complainants had formally exercised  
16 their rights guaranteed under the Act to join and assist a  
17 rival labor organization.

18 Complainants were supplied with copies of the documents they  
19 requested on January 24, 1979. Although this did not occur until  
20 after the Defendants learned of the filing of unfair labor practice  
21 charges, there is no further remedy this Board could order with  
22 respect to this charge. This issue is therefore moot.

23 2. That Complainant members of the Ronan Publo-Unit  
24 of the Montana Education Association have purposely ex-  
25 cluded from participating in union activities including  
26 participation on important union committee because said  
27 members had exercised their right to join and assist a rival  
28 labor organization.

29 Between November 14, 1978, and late February, it appears that  
30 appointments were made to only two committees. Mr. Gillhouse  
31 testified that he began making appointments to the Constitutional  
32 Committee in late November. No AFT-MEA members were appointed to  
that committee until January 24, 1979, after the unfair labor  
practice charges had been filed against the defendant union. On  
that date, Ron Bond, an AFT-MEA member was appointed. He apparently  
was the only AFT-MEA member who had paid dues then, although they  
were not due until February 2, 1979.

During February, appointments were made to a Nominating  
Committee. No AFT-MEA members were appointed because they had had

1 their memberships revoked by then. Because the memberships were  
2 improperly revoked (see paragraph 5 of this Discussion), those  
3 members were not eligible to be appointed to that committee.  
4 Although there was no obligation on the part of President Gillhouse  
5 to appoint these people to the committee the fact that they could not  
6 even have been considered for appointment excluded them from  
7 participating in union activities.

8 3. That Defendant had conducted all union business  
9 in secret excluding Complainants from meetings or purposely  
10 cancelling meetings to preclude Complainants' members from  
11 participating in union affairs because Complainants had  
12 joined and assisted a rival labor organization.

11 No general MEA meetings were held between November 14, 1978,  
12 and December 13, 1978. However, there was no evidence presented  
13 indicating that this substantially deviated from past practice.  
14 Although some AFT members testified that they heard Mr. Gillhouse  
15 announce a December 12th meeting at the November 14th meeting, a  
16 majority of the members could not substantiate this. Additionally  
17 there is evidence that it is regular practice for teachers to be  
18 given notice just before a meeting, and none was given in December.

19 Two Executive Committee meetings were held between November  
20 14, 1979 and February 14, 1979. Members of AFT who wished to see  
21 the minutes of these were allowed to see them, but had to submit a  
22 written request for a copy of them.

23 Although the requirement of a written request for minutes  
24 appears harsh, none of the above sustains the charge that business  
25 was conducted in secret.

26 4. That Complainants were purposely discouraged from  
27 joining the Defendant union because Complainant had assisted  
28 and joined a rival union. When Complainant sought membership  
29 cards in order to comply with the agency shop provision of  
30 the pertinent collective bargaining agreement, Defendant  
31 feigned inability to provide such cards which were finally  
32 provided only after considerable effort on the part of  
33 Complainants, and some employees are still not being provided  
34 with membership cards."

31 Although there was some evidence that AFT members had difficulty  
32 in obtaining membership applications, none amounted to a prepond-

1 erance showing Mr. Gillhouse intentionally withheld these cards  
2 for an unreasonable period.

3 5. That on or about 9 February, 1979, Mr. James R.  
4 Clairmont, a member of the Ronan Teachers' Progressive  
5 Caucus received communications from Mr. Raymond L. Randels,  
6 Interim Executive Secretary of the Montana Education Associ-  
7 ation. In a letter dated 9 February, 1979, Mr. Randels  
8 informed Mr. Clairmont that, according to a new policy  
9 adopted by the Board of Directors of the Montana Education  
10 Association, dues payments to the MEA should be made 30 days  
11 following application for membership and that failure to  
12 do so constitutes grounds for revocation of membership. The  
13 letter further stated that '. . . we are advising all persons  
14 who have not paid their 1978-79 dues that they have thirty  
15 days to comply with the policy' and that "this policy is  
16 being uniformly applied throughout the state."

17 In a letter dated the very same day, 9 February,  
18 1979, Mr. Randels notified Mr. Clairmont that his membership  
19 was terminated effective immediately. Such an action on the  
20 part of the Defendant is undeniable evidence that the Defend-  
21 ant is willfully engaging in a course of conduct to discrimi-  
22 nate against employees within a bargaining unit because said  
23 employees have attempted to exercise rights guaranteed by  
24 39-31-201, MCA. Such conduct is clearly violative of 39-31-402(1),  
25 MCA and 39-31-305(2), MCA. Moreover, although it is not speci-  
26 fically prohibited in Montana law as it is in the NLRA,  
27 employees of the bargaining unit in question are being  
28 discriminated against by their union for filing a complaint  
29 before the Board of Personnel Appeals. [R.C.M. citations  
30 in the original changed to MCA citations.]

31 As of February 1, 1979, there appeared to be some confusion  
32 on part of AFT members as to the dues payment policy. This con-  
33 fusion was not justified. They had been informed that the policy  
34 was that they would have to pay one half of their dues by February  
35 1, 1979; however, no memberships were revoked. On February 5,  
36 1979, Mr. Clairmont sent a letter (Complainant's Exhibit 3) request-  
37 ing clarification of the policy to Mr. Randels in the state MEA  
38 office. There had been a state MEA meeting in the latter part of  
39 January at which the policy had changed.

40 A number of letters were issued from the state office both in  
41 response to Mr. Clairmont's letter and in general (see findings of  
42 fact 20 and 21). Mr. Clairmont received two of these letters in  
43 one day. One of them gave him 30 days to pay his dues. The other  
44 revoked his membership immediately. Additionally, a blank letter,  
45 apparently for MEA members in general purported to give them 30  
46 days in which to pay their dues if they were delinquent on February  
47 1, 1979.

1 At best, the policy was unclear as put to Mr.  
2 Clairmont. At worst, and in fact, there seems to have been two  
3 policies: one policy applied to MEA members in general the other  
4 applied to AFT members.

5 The union (RPU-MEA) has a fiduciary duty to inform an employee  
6 of a delinquency and a pending membership revocation.  
7 This was not done. Also, Mr. Gillhouse, as President of RPU, had  
8 an obligation to inquire on behalf of his members as to the correct  
9 policy and to help them in their efforts to remain members. As  
10 such, he should have contacted the state MEA office when requested  
11 at the February 13, 1979, meeting, as opposed to accepting one  
12 version of the policy put forth by that office. (See: Teamsters,  
13 Local 122 (Bush & Co. of Mass.) 203 NLRB 1235 (1973), enf. 509  
14 F.2d 1160, 87 LRM 3274 (CAL, 1974). Additionally, the dues obli-  
15 gation must be enforced uniformly. (see: Hospital & Nursing Home  
16 Employees, Local 113 (Mounds Park Hospital, 228 NLRB No. 197, 96  
17 LRRM 1422, enf. 567 F.2d 831, 97 LRRM 2160 CA8, 1977); Local 9 Sugar  
18 Workers IIA (American Sugar Co.), 146 NLRB No. 14, 55 LRRM 1261  
19 (1964).), and it was obviously not in this case.

20 6. That on or about 13 February 1979, at a regular  
21 meeting of the Ronan-Pablo Unit of the Montana Education  
22 Association, the Defendant established by a motion passed  
23 out of order over the objection of the Complainant, that  
24 two separate unions would be formed within the bargaining  
25 unit represented by the Ronan-Pablo Unit of the Montana  
26 Education Association -- one union of dues paying members  
27 and the role of the non-dues paying members was left  
28 unclear. Beyond the puzzling aspect of this action, the  
29 Defendant is discriminating against employees within  
30 the collective bargaining unit solely for the reason that  
31 said employees have sought in the past and continued to  
32 exercise rights guaranteed by Section 59-1605(1) of the  
Act. [This is obviously a clerical error. The section  
cited prohibits conduct by a public employer. The  
Complainant obviously was referring to Section 59-1605(2)  
which is not 39-31-402(1), MCA and which prohibits conduct  
by a labor organization.]

In view of finding of fact number 23 the charge is denied.  
Although there was a motion passed to segregate votes, the minutes  
show that such segregation did not actually take place.

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CONCLUSION OF LAW

The Defendants have committed unfair labor practices as prohibited in 39-31-402(1), MCA in counts 2 and 5. Count 1 is dismissed as moot. The remainder of the charges are denied as unsupported by the evidence.

ORDER

1. Defendants Ronan-Pablo Unit of the Montana Education Association and the Montana Education Association shall cease and desist from interfering with employees of Lake County District #30 in the exercise of rights guaranteed by section 39-31-201 MCA.

2. Defendant Ronan-Pablo Unit of the Montana Education Association shall take the following affirmative actions:

- a. Immediately reinstate Complainant members to the Ronan-Pablo Unit of the Montana Education Association and allow them thirty days in which to pay the pro rata share of the current year's dues figured from the date of reinstatement to August 31, 1980.
- b. Permit said members the same membership rights as other members within the Ronan-Pablo Unit of the Montana Educations Association and its affiliates.
- c. Post for 30 calendar days this Order in conspicuous places and wherever the union is permitted by contract to post union business.
- d. Complete the attached certificate of posting.

Dated this 22<sup>nd</sup> day of August, 1980.

BOARD OF PERSONNEL APPEALS

BY: *Brent Crowley*  
Brent Crowley, Chairman

CERTIFICATE OF MAILING

I, *Jennifer Judelson*, hereby certify and state that on the 25<sup>th</sup> day of August, 1980 a true and correct copy of the above captioned ULP 34-1978 FINAL ORDER was mailed to the following:

Emilie Loring  
Hilley & Loring, PC  
1731 Tenth Avenue South  
Great Falls, MT 59405

Cordell R. Brown, Representative  
Montana Federation of Teacher, AFL-CIO  
P.O. Box 1246  
Helena, MT 59601

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ASSOCIATION, AFFILIATE OF NATIONAL	)	
EDUCATION ASSOCIATION AND MONTANA	)	
EDUCATION ASSOCIATION,	)	
Defendants.	)	

CERTIFICATE OF POSTING

I, \_\_\_\_\_, do certify that I did post  
in conspicuous places and wherever the union is permitted by  
contract to post union business, a copy of the Order of ULP 34-1978,  
and will keep those copies posted for a period of 30 calendar  
days.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1980.

\_\_\_\_\_  
President  
Ronan-Pablo Unit of the Montana  
Education Association

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ULP 34-1978

FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
AND  
RECOMMENDED ORDER

13 The above-captioned matter came on for hearing April 7,  
14 1979, in the library of Ronan High School, Ronan, Montana. The  
15 hearing was conducted under the authority and in accordance with  
16 39-31-406, MCA and the Montana Administrative Procedures Act,  
17 2-4-101, et. seq., MCA.

18 Complainants were represented by Cordell R. Brown, Repre-  
19 sentative, Montana Federation of Teachers, AFL-CIO, P.O. Box  
20 1246, Helena, Montana, 59601. Defendants were represented by  
21 Emilie Loring, Hilley & Loring, P.C., 1713 Tenth Avenue South,  
22 Great Falls, Montana, 59405. Post-hearing briefs were ordered  
23 and submitted.

24 INTRODUCTION

25 The Ronan-Pablo Unit of the Montana Education Association,  
26 the recognized bargaining agent for the unit, (hereinafter refer-  
27 red to as RPU) negotiated a contract with School District 30 which  
28 contained an agency shop provision. Those teachers not wishing  
29 to become members of the MEA were required, under the contract,  
30 to pay a "representation service fee". This provision was the  
31 source of much disagreement within the unit.

32 Several of the teachers in the unit did then, and do now,  
belong to the American Federation of Teachers (AFT) (herinafter  
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teachers belonging to the AFT decided to become members of MEA in

1 order to "bring about change from within". The major change they  
2 were concerned to bring about appeared to be reopening negotia-  
3 tions of the agency shop provision with an eye to eliminating it.  
4 This intention was communicated to the MEA membership.

5 Subsequent to that decision events followed which gave rise  
6 to the filing of unfair labor practice charges herein. After  
7 carefully listening to the testimony and considering all evidence  
8 and briefs presented by both parties, I make the following findings  
9 of fact.

10 FINDINGS OF FACT

11 1. The Montana Education Association is the certified  
12 bargaining agent for teachers at the Ronan-Pablo Unit in School  
13 District 30, Ronan, Montana.

14 2. The American Federation of Teachers (AFT) is a rival  
15 union representing several teachers in the Ronan-Pablo Unit (RPU).

16 3. The Master Contract between the Ronan-Pablo Unit,  
17 Montana Education Association and School District No. 30 contains  
18 an agency shop provision and requires the payment of a representa-  
19 tion service fee by non-members of MEA. (See Joint Exhibit 1,  
20 Section 4.04.)

21 4. James Gillhouse is President of RPU.

22 5. James Clairmont is President of the AFT members.

23 6. At an AFT meeting in late October or early November,  
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25 to bring about changes in the MEA from within. The purpose was  
26 communicated to the MEA membership.

27 7. An RPU meeting was held in Ronan on November 14, 1978.  
28 Prior to and subsequent to that meeting, several AFT members  
29 submitted membership cards. Those teachers attended the RPU  
30 meeting voted and were generally recognized as members.

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32 experienced difficulty in obtaining membership application cards.  
There was contradictory testimony as to when and exactly how

1 many cards were turned over. It is certain that at least 18  
2 cards were supplied to AFT members by November 3, 1978 (see  
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4 There was no evidence amounting to a preponderance that Mr.  
5 Gillhouse intentionally withheld cards for an unreasonable period.

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7 general MEA meetings were held by RPU. However, there was also  
8 no evidence that this was substantially irregular. Some teachers  
9 testified that they heard Mr. Gillhouse announce a meeting for  
10 December 12, 1978, right after the November 14, 1978, meeting.  
11 That meeting never took place, although several AFT members  
12 appeared on that date and voted to change the MEA officers. A  
13 later attempt to change the November minutes to reflect this  
14 announcement failed for lack of a majority. Also, it appears to  
15 be past practice for notices to go out prior to each meeting, and  
16 no notice was given in December.

17 10. Two Executive Committee meetings were held between the  
18 above-mentioned dates. Upon request, an AFT member was later  
19 allowed to see the minutes of those meetings, although he was  
20 required to submit a written request for a copy of them. Although  
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22 Committees within RPU, it appeared that in fact they are appointed  
23 to committees by the Executive Committee.

24 11. Appointments were made to two Committees between November  
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27 into January. No AFT members were appointed to this committee  
28 until January 24, 1979, at which time Ron Bond was appointed.  
29 This date was after RPU was notified of the unfair labor practice  
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31 Executive Committee, Lonnie Smith, that "it was felt" that since  
32 Mr. Bond had paid some dues by then, he was "serious" about  
becoming an MEA member.

1           12. The Nominating Committee was appointed by the Executive  
2 Committee in February. No AFT members were appointed because  
3 they had had their MEA membership revoked as of that time.

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8 dues were to be paid by February 1, and the other half by April  
9 1. Different arrangements could be made upon request.

10           15. On January 27-28, 1979, the state office of MEA met and  
11 changed the dues payment policy to require all cash-paying members  
12 to pay dues within 30 days following application for membership.  
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15 11), Mr. Gillhouse, in response to an inquiry from Mr. Clairmont,  
16 informed Mr. Clairmont that he and others would be required to  
17 pay one-half of their dues by February 1, 1979.

18           17. Most AFT members decided not to pay their dues as of  
19 February 1, 1979. As of that date, however, no memberships were  
20 revoked.

21           18. In a letter dated February 5, 1979 (Complainant's  
22 Exhibit 3), Mr. Clairmont requested clarification of the policy  
23 from Mr. Randels, then Interim Executive Secretary of MEA.

24           19. A letter addressed in blank, intended apparently for  
25 MEA members, was written by Mr. Randels informing members who had  
26 not paid their dues as of February 1, 1979, that they had thirty  
27 days to do so. (Complainant's Exhibit 4B).

28           20. Two letters to Mr. Clairmont issued from Mr. Randel's  
29 office on February 8, 1979. One (Complaint's Exhibit 4A) gave  
30 Mr. Clairmont and others 30 days to comply with the policy.  
31 Another (Complainant's Exhibit 5) revoked Mr. Clairmont's member-  
32 ship for non-payment of dues, effective immediately.



1           2.    "That Complainant members of the Ronan Pablo-Unit of  
2 the Montana Education Association have purposely excluded from  
3 participating in union activities including participation on  
4 important union committee because said members had exercised  
5 their right to join and assist a rival labor organization."

6           Between November 14, 1978, and late February, it appears  
7 that appointments were made to only two committees. Mr. Gilhouse  
8 testified that the Executive Committee began making appointments  
9 to the Constitutional Committee in late November. No AFT members  
10 were appointed to that committee until January 24, 1979, after  
11 the unfair labor practice charges had been filed against the  
12 defendant union. On that date, Ron Bond, an AFT member was  
13 appointed. He apparently was the only AFT member who had paid  
14 dues then, although they were not due until February 1, 1979.  
15 Because other AFT members who had joined the MEA but had not yet  
16 paid their dues were at that time bona fide members, they should  
17 have been appointed to the Committee on an equal basis.

18           During February, appointments were made to a Nominating  
19 Committee. No AFT members were appointed because they had had  
20 their memberships revoked by then. Because the memberships had  
21 been improperly revoked (see paragraph 5 of this Discussion),  
22 those AFT members should have been appointed to that committee on  
23 an equal basis.

24           3.    "That Defendant had conducted all union business in  
25 secret excluding Complainants from meetings or purposely cancel-  
26 ling meetings to preclude Complainant's members from participating  
27 in union affairs because Complainants had joined and assisted a  
28 rival labor organization."

29           No general MEA meetings were held between November 14, 1978,  
30 and December 13, 1978. However, there was no evidence presented  
31 indicating that this substantially deviated from past practice.  
32 Although some AFT members testified that they heard Mr. Gillhouse  
announce a December 12th meeting at the November 14th meeting, a  
majority of the members could not substantiate this. Additionally,  
there is evidence that it is regular practice for teachers to be  
given notice just before a meeting, and none was given in December.

Two Executive Committee meetings were held between November 14,

1 1979, and February 13, 1979. Members of AFT who wished to see  
2 the minutes of these were allowed to see them, but had to submit  
3 a written request for a copy of them.

4 Although the requirement of a written request for minutes  
5 appears harsh, none of the above sustains the charge that business  
6 was conducted in secret.

7 4. "That Complainants were purposely discouraged from  
8 joining the Defendant union because Complainant had assisted and  
9 joined a rival union. When Complainant sought membership cards  
10 in order to comply with the agency shop provision of the pertinent  
11 collective bargaining agreement, Defendant feigned inability to  
12 provide such cards which were finally provided only after consid-  
13 erable effort on the part of Complainants, and some employees are  
14 still not being provided with membership cards."

15 Although there was some evidence that AFT members had  
16 difficulty in obtaining membership applications, none amounted to  
17 a preponderance showing Mr. Gillhouse intentionally withheld  
18 these cards for an unreasonable period.

19 5. "That on or about 9 February, 1979, Mr. James R.  
20 Clairmont, a member of the Ronan Teachers' Progressive Caucus  
21 received communications from Mr. Raymond L. Randels, Interim  
22 Executive Secretary of the Montana Education Association. In a  
23 letter dated 9 February, 1979, Mr. Randels informed Mr. Clairmont  
24 that, according to a new policy adopted by the Board of Directors  
25 of the Montana Education Association, dues payments to the MEA  
26 should be made 30 days following application for membership and  
27 that failure to do so constitutes grounds for revocation of  
28 membership. The letter further stated that '...we are advising  
29 all persons who have not paid their 1978-79 dues that they have  
30 thirty days to comply with the policy' and that "this policy is  
31 being uniformly applied throughout the state."

32 In a letter dated the very same day, 9 February, 1979, Mr.  
Randels notified Mr. Clairmont that his membership was terminated  
effective immediately. Such an action on the part of the Defend-  
ant is undeniable evidence that the Defendant is willfully  
engaging in a course of conduct to discriminate against employees  
within a bargaining unit because said employees have attempted to  
exercise rights guaranteed by 39-31-201, MCA. Such conduct is  
clearly violative of 39-31-402(1), MCA and 39-31-305(2), MCA.  
Moreover, although it is not specifically prohibited in Montana  
law as it is in the NLRA, employees of the bargaining unit in  
question are being discriminated against by their union for  
filing a complaint before the Board of Personnel Appeals." [R.C.M.  
citations in the original changed to MCA citations.]

As of February 1, 1979, there appeared to be some confusion  
on part of AFT members as to the dues payment policy. This  
confusion was not justified. They had been informed that the  
policy was that they would have to pay one half of their dues by

1 February 1, 1979; however, no memberships were revoked. On  
2 February 5, 1979, Mr. Clairmont sent a letter (Complainant's  
3 Exhibit 3) requesting clarification of the policy to Mr. Randels  
4 in the state MEA office. There had been a state MEA meeting in  
5 the latter part of January at which the policy had changed.

6 A number of letters were issued from the state office both  
7 in response to Mr. Clairmont's letter and in general (see findings  
8 of fact 20 and 21). Mr. Clairmont received two of these letters  
9 in one day. One of them gave him 30 days to pay his dues. The  
10 other revoked his membership immediately. Additionally, a blank  
11 letter, apparently for MEA members in general, purported to give  
12 them 30 days in which to pay their dues if they were delinquent  
13 on February 1, 1979.

14 At best, the policy at that time was unclear as put to Mr.  
15 Clairmont. At worst, and in fact, there seems to have been two  
16 policies: one policy applied to MEA members in general the other  
17 applied to AFT members.

18 The union (RPU-MEA) has a fiduciary duty to inform an employee  
19 clearly of a delinquency and a pending membership revocation.  
20 This was not done. Also, Mr. Gillhouse, as President of RPU, had  
21 an obligation to inquire on behalf of his members (AFT members)  
22 as to the correct policy and to help them in their efforts to  
23 remain members. As such, he should have contacted the state MEA  
24 office when requested at the February 13, 1979, meeting, as  
25 opposed to accepting one version of the policy put forth by that  
26 office. (See: Teamsters, Local 122 (Bush & Co. of Mass.) 203 NLRB  
27 1235 (1973), enf. 509 F.2d 1160, 87 LRRM 3274 (CAL, 1974).  
28 Additionally, the dues obligation must be enforced uniformly.  
29 (See: Hospital & Nursing Home Employees, Local 113 (Mounds Park  
30 Hospital, 228 NLRB No. 197, 96 LRRM 1422, enf. 567 F.2d 831, 97  
31 LRRM 2160 CAB, 1977); Local 9, Sugar Workers ILA (American Sugar  
32 Co.), 146 NLRB No. 14, 55 LRRM 1261 (1964).), and it was obviously  
not in this case.



