

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE #21-79:

JAMES W. HEALEY, FACULTY MEMBER AT )  
EASTERN MONTANA COLLEGE, MEMBER OF )  
AAUP, )

Complainant, )

- vs - )

AMERICAN ASSOCIATION OF UNIVERSITY )  
PROFESSORS/EASTERN MONTANA COLLEGE )  
CHAPTER, )

Respondent. )

ORDER

\* \* \* \* \*

The parties to this matter, having sought a Declaratory Ruling to the issues raised by this unfair labor practice charge, and agreeing that this unfair labor practice charge should be dismissed;

IT IS ORDERED that this unfair labor practice charge is dismissed.

DATED this 24th day of October, 1979.

BOARD OF PERSONNEL APPEALS

By Jerry L. Painter  
Jerry L. Painter  
Hearing Examiner

\* \* \* \* \*

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify and state that I mailed a true and correct copy of the above ORDER to the following persons on the 24th day of October, 1979:

James W. Healey  
Department of English  
Eastern Montana College  
Billings, MT 59101

Rosemary C. Boschert  
BOSCHERT & BOSCHERT  
219 Hedden-Empire Building  
Billings, MT 59101

Jennifer Jacobson

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE JOINT )  
REQUEST FOR A DECLARATORY )  
RULING )  
JAMES W. HEALEY, FACULTY MEMBER )  
AT EASTERN MONTANA COLLEGE, )  
MEMBER OF AAUP, )  
and )  
AMERICAN ASSOCIATION OF UNIVERSITY )  
PROFESSORS, EASTERN MONTANA COLLEGE )  
CHAPTER )

421-11-79

RULING

\* \* \* \* \*

On May 22, 1979, James W. Healey filed an unfair labor practice charge with this Board alleging that the American Association of University Professors, Eastern Montana Chapter (AAUP) had committed an unfair labor practice by refusing his request for a membership list just prior to an election. At a pre-hearing conference, Mr. Healey agreed to drop his charge and agreed to join with the AAUP in a joint request of this Board to issue a declaratory ruling on the duty of a labor organization to produce such a list prior to an election.

The following are stipulated facts which will be used in this declaratory ruling:

FACTS

1. Mr. Healey is a member in good standing of the American Association of University Professors/EMC Chapter. Mr. Healey is a Professor of English and Chairman of the English Department at Eastern Montana College, Billings, Montana.

2. AAUP/EMC Chapter is the exclusive representative for the faculty at Eastern Montana College, Billings, Montana. AAUP has been certified as the sole representative since January 25, 1978 and was organized and certified under the law of the State of Montana, 39-31-201 MCA et. seq. entitled "Collective Bargaining for Public Employees".



1 available a list of the members in good standing of a labor  
2 organization or labor association to another member in good  
3 standing of the same organization during the course of an  
4 election of officers.

5 DECISION

6 The Montana statute which comes closest to covering the issue  
7 is Section MCA 39-31-206, which reads in part:

8 "Certification as an exclusive representative shall  
9 be extended and continued, as the case may be, only to  
10 a labor or employee organization the written bylaws  
11 of which provide for and guarantee the following rights  
12 and safeguards and whose practices conform to such  
13 rights and safeguards as:

- 14 (1) provisions are made for democratic organization and  
15 procedures;  
16 (2) elections are conducted pursuant to adequate  
17 standards and safeguards; . . ."

18 Neither this Board nor the Montana Courts have ruled on this  
19 section. In the past, however, the Courts have always turned to  
20 the federal sector to interpret our own act. (SEE: State  
21 Department of Highways v. Public Employees Craft Council, 165  
22 Mont. 349, 529 P.3d 785 (1974); AFSCME Local 2390 v. City of  
23 Billings, \_\_\_\_\_ Mont. \_\_\_\_\_, 555 P.2d 507; 93 LRRM 2753 (1976)).

24 The pertinent federal legislation is the Labor Management  
25 Reporting and Disclosure Act (LMRDA). That act was passed to  
26 protect the democratic process with union organizations. (United  
27 Brotherhood of Carpenters and Joiners of America v. Brown, 343  
28 F.2d 872, 59 LRRM 2140, 2147 (CA 10th (1965)). Two sections in  
29 particular should be considered: section 101(a)(1) and 401(c).  
30 I will discuss the two sections in reverse order.

1 Section 401(c) provides as follows:

2 "Every bona fide candidate shall have the right,  
3 once within 30 days prior to an election of a labor  
4 organization in which he is a candidate to inspect  
5 a list containing the names and last known addresses  
6 of all members of the labor organization who are  
7 subject to a collective bargaining agreement requiring  
8 membership therein as a condition of employment, which  
9 list shall be maintained and kept at the principal  
10 office of such labor organization by a designated  
11 official thereof."

12 When Section 401(c) was passed there was a conflict between  
13 the two houses of Congress over what should be the right of a  
14 candidate to have access to the list of eligible voters versus  
15 the potential danger that the lists would be used for improper  
16 purposes by employers, rival unions, subversive organizations,  
17 and the like. Section 401(c) was a compromise between the House  
18 and Senate versions of the bills. (SEE: Conference Report No.  
19 1147 on S. 1555 86th Cong. 1st Session, reprinted in 1959 U.S.  
20 Code Cong. and Ad. News 2503.; Conley v. Aiello, 276 F. Supp.  
21 614, 67 LRRM 2406 (D. SD of New York 1967)).

22 So in order to have the right to inspect the list, a member  
23 must be a candidate. But even as a candidate the member has only  
24 the right to inspect the list, not a right to a copy of the list.

25 In Burgess v. Cab Employees Local 811, members of a union  
26 brought suit against their union demanding that they be given a  
27 list of members in good standing so that they may nominate from  
28 the floor. Otherwise, there would be nominations from the floor  
29 and after nominations were made there would be a determination  
30 of whether or not the individual nominated was a member in good  
31

1 standing and therefore eligible to run for office. The District  
2 Court citing 401(c) held that the members did not have a right  
3 to receive a list of members in good standing.

4 The other section of LMRDA we must consider is 101(a)(1)  
5 which provides:

6 "Equal rights -- every member of a labor organization  
7 shall have equal rights and privileges within such  
8 organization to nominate candidates, to vote in elections  
9 or referendums of the labor organization, to attend  
10 membership meetings, and to participate in the delibera-  
11 tions and voting upon the business of such meetings  
12 subject to reasonable rules and regulations in such  
13 organization's constitution and bylaws."

14 If a union member can prove that a similarly situated union  
15 member has been provided with a list of union members, the member  
16 could frame an argument under LMRDA Section 101(a)(1) which  
17 requires equal treatment of union members. This section of LMRDA  
18 has been interpreted as incorporating the provisions of the 5th  
19 and 14th Amendments of the U.S. Constitution. (SEE: Aikens v.  
20 Abel, 373 F. Supp. 425, 85 LRRM 2786, 2792 (D WD of Pa (1974)).

21 Although under 401(c) a union member does not have a right  
22 to a copy of a membership list, for the union to provide the list  
23 to one member and not to another member would be a violation of  
24 101(a)(1). The Burgess decision, supra also addressed whether or  
25 not the refusal to provide a membership list was a violation of  
26 101(a)(1). In response to Plaintiff's contention that there had  
27 been a violation of LMRDA Section 101(a)(1) when Local 881 failed  
28 to supply a list at the nomination meeting of members eligible  
29 to be nominated because that failure denied members of Local 881  
30 the equal right to nominate candidates, the Court in Burgess  
31 said:

1 The refusal of Local 881 to provide at the nomination  
2 meeting a list of members eligible to be nominated, or  
3 to continue the nomination meeting until such a list  
4 could be prepared, did not interfere with the equal  
5 right and privilege of each member of Local 881 to  
6 nominate any candidate of his choice, because no  
7 member was denied the right to nominate a candidate.  
8 The court lacks jurisdiction over the subject matter  
9 of this charge and alternatively the complaint fails  
10 to state facts sufficient to state a claim upon which  
11 relief can be granted as to this issue.

12 Under the fact situation similar to the facts we are dealing  
13 with here, the Federal District Court could find no violation  
14 of 101(a)(1) because there was no list of names supplied during  
15 the election proceedings.

16 CONCLUSION

17 Under Section MCA 39-31-206 a union does not have to supply  
18 members with list of members in good standing during an election.  
19 A union does have the duty to allow a candidate an opportunity  
20 to inspect the list containing the names and last known addresses  
21 of all members of the labor organization who are eligible to vote  
22 in the upcoming election. All union members must be afforded  
23 the same rights as all other union members. If, as part of an  
24 election campaign or nomination meeting, one member is afforded  
25 the right to a membership list, all other members must likewise  
26 be afforded that same right.

27 DATED this 23<sup>rd</sup> day of October, 1979.

28 BOARD OF PERSONNEL APPEALS

29  
30 By Jerry L. Painter  
31 Jerry L. Painter, Staff Attorney

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NOTE

Written exceptions to this Declaratory Ruling may be filed with the Board of Personnel Appeals within twenty (20) days after service of this Declaratory Ruling. If no written exceptions are filed within twenty (20) days, then this Declaratory Ruling shall become final.

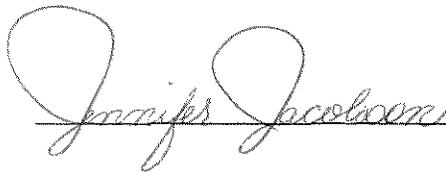
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CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify and state that I mailed a true and correct copy of the above RULING to the following persons on the 23 day of October, 1979:

Dr. James W. Healey  
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Billings, MT 59101

Ms. Rosemary Boschert  
BOSCHERT & BOSCHERT  
219 Hedden-Empire Building  
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