

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 5-80:

AMERICAN FEDERATION OF STATE,  
COUNTY, AND MUNICIPAL  
EMPLOYEES, AFL-CIO,

Complainant,

- vs -

FINAL ORDER

MR. PAUL TUTVEDT, MR. KEN  
SIDERIUS, AND MR. KEITH  
ALLRED, KALISPELL SCHOOL  
DISTRICT #5,

Defendants.

\*\*\*\*\*

The Findings of Fact, Conclusions of Law and Recommended  
Order were issued by Hearing Examiner Kathryn Walker, on  
July 7, 1980.

Exceptions to the Findings of Fact, Conclusions of Law and  
Recommended Order were filed by Jonathan B. Smith of the Office  
of Flathead County Attorney, Kalispell, Montana, on behalf of  
the Defendant, on July 22, 1980.

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

1. IT IS ORDERED, that the Exceptions of Defendant to the  
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 Kathryn Walker as the Final Order of this Board.

DATED this 30<sup>th</sup> day of September, 1980.

BOARD OF PERSONNEL APPEALS

By Brent Cromley  
Brent Cromley  
Chairman

cc: Jonathan B. Smith  
George F. Hagerman

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE #5-80:

1		
2		
3	AMERICAN FEDERATION OF STATE, )	
4	COUNTY, AND MUNICIPAL )	
	EMPLOYEES, AFL-CIO, )	
5	Complainant, )	FINDINGS OF FACT,
6	vs. )	CONCLUSIONS OF LAW,
		AND RECOMMENDED ORDER.
7	MR. PAUL TUTVEDT, MR. KEN )	
8	SIDERIUS, AND MR. KEITH )	
9	ALLRED, KALISPELL SCHOOL )	
	DISTRICT #5, )	
10	Defendants. )	

11 The above-captioned unfair labor practice charges were  
12 filed with this Board on January 25, 1980. On February 29,  
13 1980, this Board accepted Complainant's amendments to those  
14 charges. The charges allege that the Defendants violated  
15 section 39-31-401(5) MCA by failing to comply with the  
16 Agreement entered into between the Board of Trustees of  
17 School District #5, Kalispell, Montana and Local #2795 of  
18 the American Federation of State, County, and Municipal  
19 Employees, AFL-CIO (specifically, that the School District  
20 refused to strike names for selection of an arbitrator in  
21 accordance with the Adjustment of Grievance procedure out-  
22 lined by Article 11.4.6(4) of the Agreement and violated the  
23 grievance procedure time limits provision contained in  
24 Article 11.4.3 of the Agreement which requires settlement of  
25 the grievance in behalf of the grievant should such a vio-  
26 lation occur).

27 On February 8, 1980, this Board received the Defendants'  
28 Motion to Dismiss and Brief in Support and Answer. The  
29 Motion to Dismiss was denied on February 29, 1980. The  
30 Defendants' Answer, which encompassed the scope of the  
31 Amended Complaint and was deemed the Defendants' Answer in  
32 the matter, admitted that the December 14, 1979, letter

1 referred to in the Complaint was sent and that the Defendants  
2 did not participate in the striking of names from the original  
3 list provided by the Board of Personnel Appeals but denied  
4 that those actions constituted an unfair labor practice.

5 The matter was set for hearing on March 20, 1980. On  
6 that date the American Federation of State, County, and  
7 Municipal Employees, AFL-CIO (herein referred to as the  
8 Union), represented by George Hagerman, Field Representative  
9 for AFSCME Montana Council #9, and Kalispell School District  
10 #5 (herein referred to as the District), represented by  
11 Jonathon B. Smith, Flathead Deputy County Attorney, met with  
12 the hearing examiner, Kathryn Walker, and agreed (1) to  
13 waive the administrative hearing in the matter, (2) to  
14 present a stipulation of the fact situation to the hearing  
15 examiner, and (3) to brief the issues to be considered by  
16 the hearing examiner.

17 The parties' briefs were duly received by this Board  
18 and the matter was deemed submitted on April 14, 1980.

19 FINDINGS OF FACT

20 The following facts were stipulated to by the parties  
21 and are the facts upon which the hearing examiner will base  
22 her decision in this matter.

23 1. The Board of Trustees of School District #5 (Dis-  
24 trict) and the Kalispell local of AFSCME, AFL-CIO (Union)  
25 signed anegotiated labor agreement attached hereto as  
26 Exhibit #1.

27 2. On August 9, 1979, the Union filed a grievance.  
28 The grievance proceeded throughout the first three steps, in  
29 accordance with the procedures of the Agreement, without  
30 resolution.

31 3. On or about November 9, 1979, the Union requested  
32 a list of arbitrators from the Board of Personnel Appeals.

1 That list was issued by the Board of Personnel Appeals on  
2 December 10, 1979.

3 4. The District and the Union agreed to meet on  
4 December 14, 1979, for the purpose of striking names from  
5 the list furnished by the Board of Personnel Appeals.

6 5. On the morning of December 14, 1979, representa-  
7 tives of the Union and the District met for the purpose of  
8 determining the order of striking names on the list. The  
9 results of the coin flip were that the Union would strike  
10 names first.

11 6. On December 14, 1979, Flathead County Attorney,  
12 Ted Lympus, executed a letter. That letter is Exhibit #2.  
13 Exhibit #2 was delivered by the District to the Union on  
14 December 14, 1979. At that time the District declined to  
15 engage in striking names from the list provided by the Board  
16 of Personnel Appeals.

17 7. Up to December 14, 1979, the grievance procedures  
18 in Exhibit #1 were followed by both parties.

19 8. On December 18, 1979, representatives of the  
20 District and the Union met briefly. At that meeting the  
21 District reaffirmed the action of December 14, 1979, and  
22 agreed that other options were available.

23 9. On January 4, 1980, Robert Jensen, the Adminis-  
24 trator of the Board of Personnel Appeals, transmitted a  
25 letter to Mr. Ted O. Lympus, County Attorney. That letter  
26 is attached as Exhibit #3. Mr. Lympus has not responded to  
27 that letter as of this date.

28 10. On January 25, 1980, the Union, without filing any  
29 grievance with the District concerning its declining to  
30 strike names, filed an unfair labor practice charge with the  
31 Board of Personnel Appeals.

32 11. The District and the Union did not, between the

1 dates of December 14, 1979, and March 19, 1980, talk with  
2 one another concerning the obtaining of a new list of arbi-  
3 trators.

#### 4 DISCUSSION

5 Before considering the substantive issues relevant to  
6 this unfair labor practice charge, the hearing examiner will  
7 briefly address the District's contention that:

8 The dispute between the parties is no more than a  
9 dispute over the interpretation of the contract signed  
10 by the parties which should, under the terms of that  
11 Agreement, be dealt with according to the procedures  
12 contained in the Agreement. [Brief of Defendants]

13 This Board has previously considered the relationship  
14 of an unfair labor practice charge to a contract's grievance/  
15 arbitration machinery. It is familiar with and has applied  
16 the principles of prearbitral deferral as set forth in the  
17 National Labor Relations Board's Collyer doctrine, derived  
18 from its landmark Collyer Insulated Wire<sup>1</sup> decision which  
19 enunciated its policy to refrain from exercising jurisdic-  
20 tion in respect to disputed conduct which is arguably both  
21 an unfair labor practice and a contract violation when  
22 certain criteria are met. In fact, in ULP #13-78, American  
23 Federation of State, County, and Municipal Employees, AFL-CIO  
24 vs. City of Laurel this Board determined that the policies  
25 and provisions of the Act would best be effectuated if that  
26 complaint were remanded to the grievance/arbitration proce-  
27 dure specified by the parties' collective bargaining agree-  
28 ment.

29 However, regardless of the usefulness and broad applica-  
30 tion of prearbitral deferral, neither this Board nor the  
31 National Labor Relations Board will "automatically" defer,  
32 even when a complaint is related to a contract provision and

---

<sup>1</sup>Collyer Insulated Wire, 192 NLRB 837, 77 LRRM 1931 (1971).

1 the contract contains a grievance procedure that could  
2 arguably address the problem. Rather, both bodies consider  
3 and weigh certain factors and use their discretion on a  
4 case-by-case basis when determining the advisability of  
5 deferral of a complaint to arbitration.

6 Several National Labor Relations Board decisions illus-  
7 trate that an employer's interference with the use of a  
8 contract's grievance/arbitration procedure constitutes  
9 grounds for denial of prearbitral deferral.<sup>2</sup> Based on this  
10 reasoning, this hearing examiner thinks it inappropriate to  
11 defer the matter now before her to the parties' contractu-  
12 ally agreed upon grievance procedure, for the complaint  
13 alleges that the District did interfere with the operation  
14 of the contract's grievance procedure by refusing to strike  
15 names on an arbitration list. Basically, this hearing  
16 examiner thinks it illogical and potentially unproductive to  
17 defer this complaint to the same process from which it  
18 originated.

19 It is not disputed that on December 14, 1979, the  
20 District refused to strike names for the selection of an  
21 arbitrator from a list received from the Board of Personnel  
22 Appeals in accordance with the District's and the Union's  
23 collective bargaining agreement. The District argues that  
24 this refusal was permitted by the contract language:

25 In this case, the District and the Union disagree over  
26 the application of the terms of their contract. The  
27 District believes that that contract allows the parties  
28 to decline to strike names from a list of arbitrators  
29 if they consider that list unacceptable in its entirety.  
30 The Union, on the other hand, argues that the contract

31 <sup>2</sup>For discussion of this point and case citations see American Bar  
32 Association, The Developing Labor Law: Cumulative Supplement 1971-1975  
(Washington, D.C.: Bureau of National Affairs, Inc., 1976), p. 276;  
1976 Supplement (Washington, D.C.: Bureau of National Affairs, Inc.,  
1977), p. 136; 1977 Supplement (Washington, D.C.: Bureau of National  
Affairs, Inc., 1978), p. 162; and 1978 Supplement (Washington, D.C.:  
Bureau of National Affairs, Inc., 1979), p. 136.

1 requires the parties to strike names from any list  
2 provided by this board [the Board of Personnel Appeals]  
3 . . . [Emphasis added] [Defendant's Reply Brief]

4 The contract, which contains a rather standard grievance  
5 procedure<sup>3</sup>, specifies that an arbitrator be selected in  
6 the following manner:

7 Should the Union consider the reply of the Board of  
8 Trustees to be unsatisfactory, the Union shall, within  
9 five (5) working days of the receipt of the reply,  
10 notify in writing the Board of Trustees of its intention  
11 to refer the grievance to arbitration. Thereupon,  
12 within ten (10) working days after such notice is  
13 delivered to the Chairman of the Board of Trustees, the  
14 Chairman and or the Union may request the Board of  
15 Personnel Appeals, Department of Labor and Industry,  
16 State of Montana, to provide both parties with an  
17 identical list of names and addresses of five (5)  
18 persons who have indicated a desire to provide services  
19 as arbitrators. The Union and the Chairman of the  
20 Board of Trustees shall, within three (3) working days'  
21 receipt of such lists, meet and by alternately striking  
22 names from the list select the arbitrator by requesting  
23 the services of the last name remaining on the list.  
24 [Emphasis added] [Exhibit #1, Labor Agreement between  
25 District and Union, I.4.6]

26 This language is plain and unambiguous. It clearly  
27 does not support the District's argument that the "contract  
28 allows the parties to decline to strike names from a list of  
29 arbitrators if they consider that list unacceptable in its  
30 entirety." (Defendant's Reply Brief)

31 Another factor relevant here is that there is no indi-  
32 cation on the record that the District ever attempted to  
explain its reasons for finding the list of arbitrators so  
objectionable. The December 14, 1979, letter from Ted O.  
Lympus, County Attorney and agent for the District in this  
matter, to the Union and the Board of Personnel Appeals  
merely states that ". . . the list of proposed arbitrators

---

3 The contract defines a "grievance" as "an allegation by an employee  
resulting in a dispute or disagreement between the employee and the  
School District as to the interpretation or application of terms and  
conditions of this Agreement." It provides for a four step grievance  
procedure: step 1, response of immediate supervisor; step 2, response  
of Superintendent or his designee; step 3, response of Board of Trustees;  
step 4, final and binding arbitration.

1 . . is unacceptable to the District in its entirety and the  
2 District does, therefore, hereby reject same." (Exhibit #2)  
3 Furthermore, finding of fact #9 establishes that Mr. Lympus  
4 never responded to a letter from Robert R. Jensen, Adminis-  
5 trator of the Board of Personnel Appeals, asking for "spe-  
6 cific objections to each person on the December 10th list . . ."  
7 (Exhibit #3) No substantive reasons for its rejection of  
8 the list of arbitrators having been offered, it is impos-  
9 sible for this hearing examiner to find that the District's  
10 refusal to strike names in accordance with the contract is  
11 in any way mitigated by the fact that the list was somehow  
12 unfair, inappropriate, or biased.

13 From the foregoing, the hearing examiner concludes that  
14 the District was in breach of contract when it refused to  
15 strike names from the arbitration list. She now must deter-  
16 mine if this breach of contract constituted the unfair labor  
17 practice of refusing to bargain in good faith in violation  
18 of section 39-31-401(5) MCA.

19 As pointed out in Defendant's Briefs, a contract viola-  
20 tion is not a per se unfair labor practice. However, the  
21 facts of this matter show that the District's refusal to  
22 strike names on the arbitration list resulted in the parties'  
23 failure to select an arbitrator and rendered ineffective  
24 their contractually agreed upon dispute resolving mechanism.  
25 This board has consistently ruled that such action consti-  
26 tutes a failure to participate in the ongoing process of  
27 collective bargaining and therefore the unfair labor prac-  
28 tice of refusing to bargain in good faith.

29 The Board's decision in the matter of ULP #1-75, Inter-  
30 national Brotherhood of Painters and Allied Trades, Local  
31 #1023 vs. Montana State University and Barry Hjort pointed  
32

1 out that "collective bargaining is a continuing process"<sup>4</sup>  
2 that "does not cease with the completion of negotiations on  
3 a working agreement between labor and management." The  
4 decision stated "[i]f a provision of a standing contract is  
5 disputed by either the employer or the Union, the 'contractual  
6 mechanism'<sup>5</sup> for the continuing process of collective  
7 bargaining is the all important, agreed to grievance procedure"  
8 and asked "did the employer, by refusing to take part  
9 in the 'contractual mechanism' for the ongoing process of  
10 collective bargaining, refuse to bargain in good faith?"  
11 The hearing examiner determined that the answer to that  
12 question was in the affirmative and concluded:

13 By refusing, and continuing to refuse, to bargain  
14 collectively with the Union through the use of the  
15 standing contractual grievance procedure, the Employer  
16 did engage and is engaging in an unfair labor practice  
17 within the meaning of Section 59-1605 (E) of the Revised  
18 Codes of Montana, 1947 [now section 39-31-405(5) MCA].

19 In ULP #3-76, Local #521 of the International Association  
20 of Fire Fighters vs. City of Billings the Board pointed  
21 out that what is now section 39-31-101 MCA of Montana's  
22 Collective Bargaining Act for Public Employees provides:

23 In order to promote public business by removing certain  
24 recognized sources of strife and unrest, it is the  
25 policy of the state of Montana to encourage the practice  
26 and procedure of collective bargaining to arrive at  
27 friendly adjustment of all disputes between public  
28 employers and their employees.

29 and that what is now section 39-31-306(2) MCA states:

30 An agreement may contain a grievance procedure culminating  
31 in final and binding arbitration of unresolved  
32 grievances and disputed interpretations of agreements.

Following the guidance of these statutory provisions,  
the hearing examiner went on to say:

<sup>4</sup>Citing Conley vs. Gibson 355 U.S. 41, 46, 41 LRRM 2089 (1957) Accord  
NLRB vs. Acme Industrial Co., 385 U.S. 432, 64 LRRM 2069 (1967).

<sup>5</sup>Citing Timkin Roller Bearing Co. vs. NLRB, 161 F.2d 949, 20 LRRM  
2204 (Ca 6, 1947) Accord NLRB vs. Knight Morely Corp., 251 F.2d 753, 41  
LRRM 2242 (Ca 6, 1957).

1 A grievance procedure which culminates in final  
2 and binding arbitration is one mechanism in collective  
3 bargaining which allows employers and employees to  
4 arrive at friendly adjustment of all disputes. This is  
5 in agreement with the policy established by the legis-  
6 lature, and it is essential that this Board encourage  
7 the enforcement of those contractual provisions where-  
8 ever possible.

9 . . . . .  
10 To reiterate, this Board must encourage and support  
11 Agreements which provide the necessary mechanism to  
12 reach friendly adjustments of disputes. The grievance  
13 procedure providing for binding arbitration does just  
14 that in this fact situation. . . . [T]he only conclusion  
15 that I can reach is that the City incorrectly refused  
16 to proceed with the arbitration in question as requested  
17 by the Union.

18 The hearing examiner concluded that the City had failed  
19 to bargain in good faith and was therefore guilty of an  
20 unfair labor practice. He ordered the City to proceed with  
21 the arbitration as called for in the agreement between the  
22 City and the Union.

23 This hearing examiner finds the above-cited Board  
24 precedent applicable in principle to the matter now under  
25 consideration. Accordingly, she finds that the District did  
26 violate section 39-31-401(5) MCA when it refused to strike  
27 names on the arbitration list.

28 Having disposed of the primary issue before her, the  
29 hearing examiner will not proceed to consider the other  
30 points raised in the complaint. The Union's request that  
31 the hearing examiner resolve the grievance giving rise to  
32 this complaint in favor of the grievant because the speci-  
fied time limits have been violated is a matter more appro-  
priately addressed by the arbitrator deciding the merits of  
the grievance itself. Because she lacks the authority to  
assess punitive damages, this hearing examiner cannot con-  
sider the Union's request that she direct the District to  
pay the costs it has incurred in this matter.

31 CONCLUSION OF LAW

32 By refusing to strike names for the selection of an  
arbitrator in accordance with Article 11.4.6(4) of the

1 collective bargaining agreement between it and the Union,  
2 the District has violated section 39-31-401(5) MCA.

3 RECOMMENDED ORDER

4 Within five days of the time this Recommended Order  
5 becomes the Final Order of the Board, agents of the District  
6 and the Union shall meet to select an arbitrator from the  
7 list provided by the Board of Personnel Appeals on December  
8 10, 1979. In accordance with the coin flip of December 14,  
9 1979, the Union shall strike the first name. The parties  
10 shall then participate in the arbitration process as speci-  
11 fied in their collective bargaining agreement.

12 NOTICE

13 Exceptions may be filed to these Findings of Fact,  
14 Conclusions of Law, and Recommended Order within twenty days  
15 service thereof. If no exceptions are filed with the Board  
16 of Personnel Appeals within that period of time, the Recom-  
17 mended Order shall become the Final Order. Exceptions shall  
18 be addressed to the Board of Personnel Appeals, Capitol  
19 Station, Helena, Montana 59601.

20 DATED this 7<sup>th</sup> day of July, 1980.

21  
22 BOARD OF PERSONNEL APPEALS

23 By Kathryn Walker  
24 Kathryn Walker  
25 Hearing Examiner

26 CERTIFICATE OF MAILING

27 I, Joseph Jacobson, do hereby certify and  
28 state that I did on the 8 day of July, 1980 mail a  
29 true and correct copy of the above Findings of Fact, Conclu-  
30 sions of Law, and Recommended Order to the following:

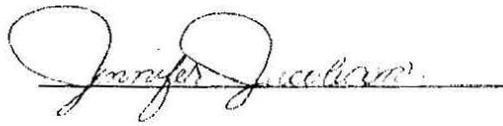
31 Mr. Paul Tutvedt, Chairman  
32 Kalispell School Board  
Kalispell School District #5  
233 1st Avenue East  
Kalispell, MT 59901

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

Mr. Keith Allred, Superintendent  
Kalispell School District #5  
233 1st Avenue East  
Kalispell, MT 59901

Mr. Jonathon B. Smith, Deputy  
Office of the Flathead County Attorney  
P.O. Box 1516  
Courthouse West Annex  
Kalispell, MT 59901

Mr. George Hagerman  
American Federation of State,  
County and Municipal Employees  
AFL-CIO  
Helena, MT 59601



PAD2:c

RECEIVED

JUN - 8 1981

Form No. 48

BOARD OF PERSONNEL APPEALS

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

No. DV-20-600

FILED

JUN 5 1981

BOARD OF TRUSTEES OF FLATHEAD COUNTY SCHOOL DIST. NO. 5

-vs.-

STATE OF MONTANA, DEPT. OF LABOR AND INDUSTRY, acting through the BOARD OF APPEALS, and the AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO.

AGENCY LEGAL SERVICES BUREAU

NOTICE OF ENTRY OF JUDGMENT

\* \* \* \* \*

TO: Jonathan B. Smith and J. Daniel Hoven

YOU WILL PLEASE TAKE NOTICE that on the 4th day of June, 1981, the above-named Court rendered a Judgment in the above matter, a copy of which is hereto attached.

DATED this 4th day of June, 1981.

JOHN VAN  
Clerk of the District Court

By: \_\_\_\_\_  
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of June, 1981, I served a copy of the foregoing Notice of Entry of Judgment, by mailing a copy thereof, first class mail, postage prepaid, as follows, to-wit:

<u>Jonathan B. Smith</u>	<u>J. Daniel Hoven</u>
<u>County Attorney's Office</u>	<u>Montana Dept. of Justice</u>
<u>Flathead County</u>	<u>Agency Legal Services Bureau</u>
<u>Kalispell, Mt. 59901</u>	<u>Capitol Building</u>
	<u>Helena, Mt. 59620</u>

JOHN VAN  
Clerk of the District Court

By: \_\_\_\_\_  
Deputy Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT  
OF THE STATE OF MONTANA,  
IN AND FOR THE COUNTY OF FLATHEAD

BOARD OF TRUSTEES OF FLATHEAD )  
COUNTY SCHOOL DISTRICT NO. 5 )

Petitioner, )  
vs. )

Cause No. DV-80-600

STATE OF MONTANA, DEPARTMENT )  
OF LABOR AND INDUSTRY, acting )  
through the BOARD OF PERSONNEL )  
APPEALS, and the AMERICAN )  
FEDERATION OF STATE, COUNTY )  
AND MUNICIPAL EMPLOYEES, )  
AFL-CIO, )  
Respondents.)

JUDGMENT

DEPUTY  
*[Signature]*

1981 JUN -4 PM 10:53

CLERK OF DISTRICT COURT

\*\*\*\*\*

On May 15, 1981, this court issued its findings of fact and conclusions of law in this case.

Wherefore, it is hereby Ordered that within 10 days of the filing of this Judgment with the Clerk of Court, agents of the school district and the union shall meet to select an arbitrator from the list provided by the Board of Personnel Appeals on December 10, 1979. In accordance with the coin flip of December 14, 1979, the union shall strike the first name. The parties shall then participate in the arbitration process as specified in their collective bargaining agreement.

It is further Ordered that the Clerk of Court shall forthwith serve a copy of this Judgment on all parties to this action.

Dated this 3<sup>rd</sup> day of June, 1981.

*[Signature]*  
Robert C. Sykes  
District Judge

RECEIVED  
MAY 19 1981  
BOARD OF PERSONNEL APPEALS

1 IN THE ELEVENTH JUDICIAL DISTRICT COURT  
2 OF MONTANA, FOR THE COUNTY OF FLATHEAD

3 Cause No. DV-80-600

4 BOARD OF TRUSTEES OF FLATHEAD )  
5 COUNTY SCHOOL DISTRICT NO. 5, )

6 -vs- )

7 STATE OF MONTANA DEPARTMENT OF )  
8 LABOR AND INDUSTRY, acting )  
9 through the BOARD OF PERSONNEL )  
10 APPEALS, and the AMERICAN )  
11 FEDERATION OF STATE, COUNTY )  
12 AND MUNICIPAL EMPLOYEES, )  
13 AFLO-CIO, )

14 Respondents. )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

15 The above matter, by stipulation, being presented to  
16 the Court on briefs; and the matter being supplemented by  
17 oral argument this date; and the Court having duly con-  
18 sidered the same and all matters in the file, makes the  
19 following:

20 FINDINGS OF FACT

21 1. The Board of Trustees of School District No. 5  
22 (District) and Kalispell local of AFSCME, AFL-CIO (Union)  
23 signed a negotiated labor agreement attached hereto as  
24 Exhibit No. 1.

25 2. On August 9, 1979, the Union filed a grievance.  
26 The grievance proceeded throughout the first three steps,  
27 in accordance with the procedures of the Agreement, with-  
28 out resolution.

29 3. On or about November 9, 1979, the Union requested  
30 a list of arbitrators from the Board of Personnel Appeals.  
That list was issued by the Board of Personnel Appeals on  
December 10, 1979.

4. The District and the Union agreed to meet on  
December 14, 1979, for the purpose of striking names from  
the list furnished by the Board of Personnel Appeals.

5. On the morning of December 14, 1979, representa-  
tives of the Union and the District met for the purpose  
of determining the order of striking names on the list.  
The results of the coin flip were that the Union would  
strike names first.

6. On December 14, 1979, the Flathead County Attorney  
had executed a letter, delivering same by the District to

1 the Union on that same date. Said letter was to the  
2 affect that School District No. 5 did not accept and the  
3 list of arbitrators was unacceptable to the District in  
its entirety, and by reason thereof, rejected same.

4 7. The District at that time offered to negotiate  
the obtaining of another list of arbitrators from a  
5 different source. The District, after delivery of the  
6 letter, declined to engage in striking names from the  
list provided by the Board of Personnel Appeals.

7 8. Up to December 14, 1979, the grievance procedures  
in Exhibit No. 1 were followed by both parties.

8 9. On December 18, 1979, representatives of the  
9 District and the Union met briefly. At that meeting the  
District reaffirmed the action of December 14, 1979 and  
10 agreed that other options were available.

11 10. On January 4, 1980, Robert Jensen, the Administra-  
tor of the Board of Personnel Appeals, transmitted a  
12 letter to Mr. Ted O. Lympus, County Attorney. That letter  
stated in pertinent part as follows:

13 "Since passage of the Act in 1973, management and  
14 union negotiators have often agreed to some form  
of arbitration for the resolution of grievances  
15 and have frequently asked the Board of Personnel  
Appeals to provide lists of arbitrators when the  
16 need arises.

17 Although there is no specific statutory authority  
18 for our involvement in this kind of activity, we  
offer the service in an effort to help parties  
resolve their differences.

19 I would appreciate your providing me with your  
20 specific objections to each person on the December  
10th list as this information would be helpful  
21 when submitting future arbitration lists."

22 No response as of this date was made to that letter.

23 11. On January 25, 1980, the Union, without filing  
any grievance with the School District concerning its  
24 declining to strike names, filed an unfair labor practice  
charge with the Board of Personnel Appeals.

25 12. The District and the Union did not, between the  
26 dates of December 14, 1979 and March 19, 1980, talk with  
one another concerning the obtaining of a new list of  
27 arbitrators.

28 By reason of the above Findings of Fact, the Court  
makes the following:

29 CONCLUSIONS OF LAW

30 1. The provisions as to grievance-arbitration process

1 was an integral part of a mandatory condition in the con-  
2 tract by reason of the procedure by both parties prior  
to utilizing the arbitration provisions of the contract.

3 2. The School District's refusal to participate and  
4 strike names was a violation of the agreement.

5 3. Such violation constituted an unfair labor prac-  
6 tice by reason of its constituting a breach of the con-  
7 tract in failure to bargain in good faith.

8 By reason of the above, the action of the Board of  
9 Personnel Appeals should be affirmed.

10 Let judgment be rendered accordingly.

11 DATED: May 15, 1981.

12 /s/ Robert C. Sykes  
13 District Judge