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STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 7-80:

HAVRE EDUCATION ASSOCIATION, )  
Complainant, )  
- vs - )  
HILL COUNTY SCHOOL DISTRICT )  
NO. 16 AND A, HAVRE, MONTANA )  
Defendant. )

FINAL ORDER

\*\*\*\*\*

No exceptions having been filed, pursuant to ARM 24.26.215 (2), to the Findings of Fact, Conclusions of Law and Recommended Order issued on August 12, 1980;

THEREFORE, this Board adopts that Recommended Order in this matter as its FINAL ORDER.

DATED this 25<sup>th</sup> day of November, 1980.

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 28 day of November, 1980:

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

David Rice  
Deputy Hill County Attorney  
312 Third Street  
Havre, MT 59501

Jennifer Jacobson

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STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE No. 7-80:

HAVRE EDUCATION ASSOCIATION,	)	
	)	
Complainant,	)	
vs.	)	FINDINGS OF FACT;
	)	CONCLUSIONS OF LAW;
	)	AND RECOMMENDED ORDER.
HILL COUNTY SCHOOL DISTRICT	)	
No. 16 AND A, HAVRE, MONTANA	)	
	)	
Defendant.	)	

\* \* \* \* \*

On February 5, 1980, Complainant, Havre Education Association (Association) filed an unfair labor practice against the Defendant, Hill County School District 16 & A (School District), alleging that the School District had failed to bargain in good faith and thereby committed an unfair labor practice as defined in 39-31-401(5), MCA. More specifically, the Association claims that the School District, by refusing to submit a grievance to arbitration, refused to bargain in good faith.

The parties waived a factual hearing, and agreed to submit the matter for decision on the following facts:

1. Complainant Havre Education Association is an unincorporated association affiliated with the Montana Education Association, a non-profit corporation organized under the laws of the State of Montana, maintaining its offices in Helena, Montana. Both Associations are labor organizations within the meaning of Section 39-31-103(5) MCA. Complainant Association is the recognized exclusive bargaining agent for Defendant's professional employees.

2. Defendant is a body corporate school district with principal offices in Havre, Montana, and is a political subdivision of the state of Montana, created and existing under the Constitution and laws of that state. Defendant operates the elementary and secondary schools in Havre, Montana.

3. Robert Jackson is employed as an elementary teacher by

1 Defendant. Jackson was interviewed by Defendant's former Superin-  
 2 tendent of Schools, Joe Lutz, on or about June 6, 1978 and was  
 3 offered a teaching contract with Defendant School for 1978-79.  
 4 His contract was renewed for 1979-80.

5 4. Plaintiff and Defendant had collective bargaining agree-  
 6 ments for 1978-79 and 1979-80, both of which contained grievance  
 7 procedures culminating in final and binding arbitration.

8 5. The 1978-79 Collective Bargaining Agreement contained  
 9 the following salary schedule and qualifications:

10 A. SALARY SCHEDULE FOR 1978-79 (\$9,900 Base of M.E.A. Attainment  
 11 Level 4.1)

11 Yrs.	B.A.	B.A.+1	B.A.+2	B.A.+ 3/or 5th Year	M.A.	M.A.+1
12 0	9,900	10,240	10,590	10,760	10,930	11,280
13 1	10,300	10,680	11,060	11,250	11,440	11,820
14 2	10,700	11,120	11,540	11,750	11,960	12,370
15 3	11,110	11,570	12,010	12,240	12,470	12,910
16 4	11,510	12,010	12,480	12,730	12,980	13,450
17 5	11,910	12,450	12,950	13,220	13,490	13,990
18 6	12,310	12,890	13,420	13,710	14,000	14,540
19 7	12,710	13,330	13,900	14,210	14,520	15,080
20 8	**13,120	**13,770	**14,370	**14,700	**15,030	**15,620
21 9	13,520	14,220	14,840	15,190	15,540	16,160
22 10	13,920	14,660	15,310	15,680	16,050	16,710
23 11		15,110	15,790	16,170	16,560	17,250
24 12			16,260	16,670	17,070	17,790
25 13				17,160	17,590	18,330
26 14					18,100	18,880
27 15					18,610	19,420

\*\*Top point at each level that a teacher new to Havre  
 Schools will be paid.

28 B. Evaluation

29 1. Credit for work beyond the B.A. will be granted for  
 30 those credit hours actually taken following the grant-  
 31 ing of the degree including requirements for the  
 32 teaching certificate, and should be in the teacher's  
 field of special interest and will be according to  
 the following schedule:

- B.A. +1
- B.A. +2
- B.A. +3
- M.A.
- M.A. +1

- a. In order to qualify for the B.A. +1, 15 quarter  
 credits must be earned and need not be on the  
 graduate level.
- b. In order to qualify for the B.A. +2, 30 quarter  
 credits must be earned, 15 of which must be on the  
 graduate level.

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- d. In order to qualify for the M.A., an official transcript from the degree granting institution must be presented to the Business office stating that the M.A. Degree has been granted.
- e. Credits earned more than six (6) years previous to the time of request for a step-up on the salary schedule will not be accepted toward meeting the requirement. (Note: After initial placement on the salary schedule, the credits earned for each succeeding step-up must be earned within a six (6) year period of time.)
- f. Teachers who have an Approved 5th Year Program underway at the time of the adoption of this policy (January, 1973) will be permitted to complete the 5th Year Program.
- g. All credits will be evaluated as of September 1, for advancement on the salary schedule and contract purposes, regardless of the month of graduation or completion of credit, and must be filed with the Clerk of the Board within 60 days following the first day of service each fiscal year.
  - a. Example: Credits which are completed after September 1 of each fiscal year will apply to the contract for the next ensuing school year, and not the current contract.

6. Defendant credited Plaintiff with five years experience in 1978-79.

7. When he began working for Defendant Plaintiff had a Bachelor's Degree and thirty-four (34) additional quarter credits within the previous six years, of which twenty-five (25) were graduate credits. Plaintiff's transcript of credits was filed with the Clerk of the Board within sixty days of Plaintiff's first day of service. Plaintiff was paid a salary of \$11,910 for the 1978-79 academic year by Defendant. The 1978-79 Collective Bargaining Agreement provided for a salary of \$12,950 for teachers with Plaintiff's credited experience and education.

8. The 1979-80 Collective Bargaining Agreement contained the following salary schedule and qualifications:

1 A. SALARY SCHEDULE FOR 1979-1980 (Base of \$10,400-Attainment  
 2 Level 4.1)

3 Yrs. Exp.	B.A.	B.A.+1	B.A.+2	B.A.+3	M.A.	M.A.+1
4 0	10,400	10,760	11,130	11,310	11,480	11,850
1	10,820	11,220	11,620	11,820	12,020	12,420
2	11,240	11,690	12,120	12,340	12,560	12,990
5 3	11,670	12,150	12,610	12,860	13,100	13,560
4	12,090	12,610	13,110	13,370	13,640	14,130
6 5	12,510	13,080	13,610	13,890	14,170	14,700
6	12,930	13,540	14,100	14,410	14,710	15,270
7 7	13,360	14,010	14,600	14,920	15,250	15,840
8 8	**13,780	**14,470	**15,090	**15,440	**15,790	**16,410
9 9	14,200	14,930	15,590	15,960	16,320	16,980
10 10	14,620	15,400	16,090	16,470	16,860	17,550
11 11		15,860	16,580	16,990	17,400	18,120
12 12			17,080	17,510	17,940	18,690
13 13				18,030	18,470	19,260
14 14					19,010	19,830
15 15					19,550	20,400

12 \*\*Top point at each level that a teacher new to Havre  
 13 Schools will be paid.

14 B. EVALUATION OF CREDITS

- 15 1. Credits for work beyond the B.A. will be granted  
 16 for those credit hours actually taken following the  
 17 granting of the degree including requirements for  
 18 the teaching certificate. Six (6) of 15 credits for  
 19 each level change on the schedule (12 of 30 credits  
 20 for movement from B.A. + 30 to Equivalency) must be  
 in the teacher's assigned areas of teaching, extra-  
 curricular assignments, or for elementary degrees  
 in the area of concentration. (If no area of concen-  
 tration is given, an area of concentration will be  
 determined by the superintendent and agreed to by  
 the individual teacher.)

21 The remaining credits can be in the teacher's major  
 22 or minor fields, psychology, guidance or education.  
 23 While the Board recognizes the value of most educa-  
 tion credits, it finds that some are applicable to  
 24 certain teachers only. Acceptance of education  
 credits will be determined by the Teacher Credit  
 Evaluation Committee.

- 25 a. In order to qualify for the B.A. +1, 15 quarter  
 26 credits must be earned and need not be on the  
 graduate level.
- 27 b. In order to qualify for the B.A. +2, 30 quarter  
 28 credits must be earned, 15 of which must be on  
 the graduate level.
- 29 c. In order to qualify for the B.A. +3, 45 quarter  
 30 credits must be earned, 30 of which must be on  
 the graduate level.
- 31 d. In order to qualify for the M.A., an official  
 32 transcript from the degree granting Institution  
 must be presented to the Business Office  
 stating that the M.A. Degree has been granted.

- 1 e. Credits earned more than six (6) years previous  
2 to the time of request for a step-up on the  
3 salary schedule will not be accepted toward  
4 meeting the requirement. (Note: After initial  
5 placement on the salary schedule, the credits  
6 earned for each succeeding step-up must be  
7 earned within a six (6) year period of time.)  
8  
9 f. All credits will be reported to the Superintendent  
10 of Schools by the last day of the first week  
11 of school for advancement on the salary schedule  
12 and contract purposes. Credits completed  
13 after this date of each fiscal year will apply  
14 to the contract the next ensuing school year  
15 and not to the current contract. Official  
16 transcripts must be filed within 60 days  
17 following the first day of service each fiscal  
18 year.

19 9. Defendant credited Plaintiff with six years experience  
20 in 1979-80.

21 10. Plaintiff is being paid a salary of \$12,930 for the  
22 1979-80 academic year by Defendant. This is being paid in twelve  
23 installments of \$1077.50 each. The 1979-80 Collective Bargaining  
24 Agreement provides for a salary of \$14,100 for teachers with  
25 Plaintiff's credited experience and education.

26 11. Complainant and the Montana Education Association staff  
27 member whose responsibilities include assistance to the complainant  
28 have attempted to resolve this problem through the grievance  
29 procedure. Defendant has refused to process the grievance or to  
30 submit it to arbitration.

#### 31 DISCUSSION

32 The Association argues that, upon its request, the School  
District has an obligation to process and submit to arbitration  
Robert Jackson's grievance concerning his initial placement on the  
negotiated salary schedule of the 1978 Collective Bargaining  
Agreement (hereinafter referred to as the 1978 Agreement). This  
duty to process Jackson's grievance and to submit it to arbitration  
allegedly arises out of the 1978 Agreement in which the School  
District agreed to a grievance procedure, culminating in final and  
binding arbitration. The Association argues finally that the  
School District's refusal to process the grievance and submit it

1 to arbitration is a refusal to bargain in good faith.

2       The School District contends that Jackson's initial placement  
3 on a negotiated salary schedule is not a proper subject for the  
4 grievance procedure and arbitration, and the School District  
5 therefore need not process Jackson's grievance. To support this  
6 contention, the School District has basically two arguments: 1.  
7 that initial placement on a salary schedule is within the hiring  
8 and assigning prerogative of the School District and is therefore  
9 neither a mandatory subject of bargaining nor a negotiated item  
10 covered in the 1978 Agreement; and 2. that Jackson was not subject  
11 to the 1978 Agreement at the time he executed his initial hiring  
12 contract with the School District.

13       The following issues, then, warrant discussion:

- 14 (1) whether an employer may refuse to process and to arbitrate
- 15 a grievance on the grounds that the subject matter of the grievance
- 16 is within the hiring and assigning prerogative of the employer;
- 17 (2) whether Jackson was covered by the 1978 Agreement when he
- 18 signed his individual hiring contract with the School District; and
- 19 (3) whether the School District's refusal to arbitrate and
- 20 to process Jackson's grievance is a refusal to bargain in good
- 21 faith.

22       According to the School District, initial placement on a  
23 salary schedule falls under the employer's prerogative to hire  
24 because the 1978 Agreement provides that "selection of teachers  
25 and other personnel" shall not be a matter for negotiation. The  
26 School District further argues that initial placement falls under  
27 the employer's prerogative to "hire, promote, transfer, assign,  
28 and retain employees" as defined in section 39-31-303(2), MCA.  
29 Moreover, the District claims that salary placement is restricted  
30 from negotiation and arbitration because the employment of teachers  
31 is statutorily delegated to the Board of Trustees under section  
32 20-3-324(1), MCA.

1           The School District's argument holds little merit in light of  
2 two prior decisions of this Board: City of Billings v Local 521,  
3 I.A.F.F., ULP (hereinafter referred to as the Firefighter's  
4 case); and Painters Local 1023 v Montana State University, ULP No.  
5 1-1975 (hereinafter referred to as the Painter's case).

6           In the Firefighter's case, the issue presented was whether an  
7 employer may refuse to arbitrate a matter on the grounds that the  
8 subject matter of the grievance concerns management rights. The  
9 policy of the state of Montana, as set forth in section 39-31-101  
10 and section 39-31-306(2), MCA, served as a guide for the discussion  
11 of this issue. Section 39-31-101 reads:

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

15 Section 39-31-306(2) reads:

16                   (2) An agreement may contain a grievance procedure culminating  
17 in final and binding arbitration of unresolved grievances and  
disputed interpretations of agreements.

18           It was noted that a grievance procedure which culminates in  
19 final and binding arbitration is one mechanism in collective  
20 bargaining which allows employers and employees to arrive at  
21 friendly adjustment of all disputes. Because of the policy estab-  
22 lished by the legislature to encourage the friendly adjustment of  
23 all disputes, it was further noted that it is essential for this  
24 Board to encourage the enforcement of those contractual provisions  
25 wherever possible.

26           In the Painter's case, the employer refused to submit a  
27 grievance to arbitration, arguing that if one party to an alleged  
28 dispute does not recognize the dispute because it feels no provision  
29 of the contract is being addressed, then in fact the dispute does  
30 not exist. The employer argued further that it was for the hearing  
31 examiner to decide whether or not the grievance existed. In  
32 response to this issue, the Painter's decision reads:

1 It is not within the jurisdiction of the Board, to  
2 decide whether grievances are suitable for submission to  
3 contractual procedures. Nor is it the right of management or  
4 labor to resolve disputes of the contract by ignoring them.  
The only party which can initiate or withdraw a grievance is  
the aggrieved party, if the grievance procedure is to be  
utilized at all.

5 . . . Reiterating, it is not within the jurisdiction of  
6 the Board to rule on the merits of the grievance in ques-  
7 tion. Whether or not the unilateral action of permitting  
8 students to paint their own rooms is justified or not  
9 under the existing contract is not the question here.  
10 What is in question however, is did the Employer by refus-  
11 ing to take part in the 'contractual mechanism' for the  
12 ongoing process of collective bargaining, refuse to bar-  
13 gain in good faith? The answer to this question is in  
14 the affirmative.

15 After quoting these paragraphs in the Painter's decision, it  
16 was decided in the Firefighter's case that the employer's rights  
17 were sufficiently protected by the arbitration procedure in the  
18 contract, and by redress to the district court if the arbitrator's  
19 order was issued contrary to the contract. Further, it was concluded  
20 that to conduct a hearing to decide if the grievance concerned a  
21 management right would take the matter outside the contractual  
22 agreement between the parties, and would result in a circumvention  
23 of the intent of the Montana legislature when it passed the Collec-  
24 tive Bargaining Act for Public Employees. For these reasons, the  
25 employer was found to have bargained in bad faith and was ordered  
26 to proceed with the agreed upon arbitration procedure.

27 Although the same considerations apply to Jackson's grievance  
28 as were applied in the Painter's case and the Firefighter's case,  
29 the position which this Board took in these two cases should be  
30 explained. In the Painter's case, the hearing examiner concluded  
31 that it was not within the jurisdiction of the Board to decide  
32 whether grievances are suitable for submission to contractual  
procedures. To follow this type of approach strictly would result  
in a per se requirement that all grievances must be submitted to  
arbitration, even if the parties themselves specifically agreed to  
exclude certain matters from arbitration. Such a per se requirement  
would fail to acknowledge that parties to a collective bargaining

1 agreement may specifically limit an arbitration clause.

2 Moreover, to say that this Board may not decide whether  
3 grievances are suitable for submission to contractual procedures,  
4 would fail to recognize that indeed this Board has the jurisdiction  
5 to interpret and enforce a contract when that contract is the  
6 center of the unfair labor practice charge. In NLRB v Strong, 393  
7 U.S. 357, 70 LRRM 2100(1969), the court said that where it is necessary  
8 to adjudicate an unfair labor practice, the NLRB may interpret and  
9 give effect to the terms of a collective bargaining contract.<sup>1</sup>

10 The role of this Board in interpreting a grievance procedure  
11 or arbitration clause of a collective bargaining contract is  
12 nevertheless very limited. A good explanation of such a limited  
13 role was set down in the "Steelworkers' trilogy".<sup>2</sup>

14 In Steelworker's v American Manufacturing the court said:

15 The function of the court is very limited when  
16 the parties have agreed to submit all questions of  
17 contract interpretation to the arbitrator. It is  
18 then confined to ascertaining whether the party seek-  
19 ing a claim is making a claim which on its face is  
20 governed by the contract. Whether the moving party  
21 is right or wrong is a question of contract interpre-  
22 tation for the arbitrator. 46 LRRM 2415.

23 Similarly, it is not the place of this Board to decide the merits  
24 of the grievance. Rather, this Board must decide whether the claim  
25 of the aggrieved party is on its face governed by the collective bar-  
26 gaining contract. As pointed out in Steelworkers v Warrior Naviga-  
27 tion, the inquiry is limited to "whether the reluctant party did  
28 agree to arbitrate the grievance or agreed to give the arbitrator  
29 power to make the award he made". 46 LRRM 2419. In deciding this  
30 inquiry, it is the national policy that the agreement be sent to  
31 the arbitrator unless it is undeniably clear that the arbitration  
32 clause does not cover the asserted dispute. The court in Warrior

33 <sup>1</sup> Citing C & C Plywood v NLRB, 385 U.S. 421, 64 LRRM 2065(1967). See also,  
34 NLRB v Acme Industrial Co. 385 U.S. 432, 64 LRRM 2069(1967).

35 <sup>2</sup> Steelworkers v American Manufacturing Co., 363 U.S. 564, 46 LRRM 2414(1960);  
36 Steelworkers v Warrior & Gulf Navigation Co. 363 U.S. 574, 46 LRRM 2416(1960);  
37 Steelworkers v Enterprise Wheel & Car Corp. 363 U.S. 593, 46 LRRM 2423(1960).

1 Navigation said:

2           An order to arbitrate the particular grievance should  
3 not be denied unless it may be said with positive assurance  
4 that the arbitration clause is not susceptible to an inter-  
pretation that covers the asserted dispute. Doubts should  
be resolved in favor of coverage. 46 LRRM 2420.

5           The Board's adoption of this policy does not preclude the  
6 raising of a defense of arbitrability before the arbitrator.  
7 This Board need only decide that the parties agreed to arbitrate  
8 the matter in dispute. If this Board decides that the parties  
9 agreed to arbitrate a certain matter, this Board is then obligated  
10 to order the grievance processed and sent to arbitration, if  
11 necessary. In cases of doubt, the grievance should be processed.  
12 If the parties themselves specifically agree to exclude certain  
13 matters from arbitration, then this Board should not order the  
14 parties to undergo an expensive and time-consuming arbitration.

15           The question therefore remains in this case whether the  
16 subject matter of the grievance is within the hiring and assigning  
17 prerogative of the School District, and thereby statutorily  
18 excluded from arbitration.

19           It must be remembered that under the Collective Bargaining  
20 Act for Public Employees the prerogatives of a public employer  
21 are limited by mandatory subjects of bargaining as set forth in  
22 section 39-31-305, MCA. Under this section it is the duty of the  
23 employer to bargain collectively in good faith "with respect to  
24 wages, hours, and fringe benefits." Salaries are a mandatory  
25 subject of bargaining and are therefore a legally negotiable  
26 item. Further, in the 1978 Agreement under Subjects for Negotiation  
27 the parties agreed: "It shall be the duty of both parties to  
28 negotiate and bargain in good faith on matters relating directly  
29 to salaries, fringe benefits, hours, and other terms of employment."

30           The School District's argument that initial placement on a  
31 negotiated salary schedule is within its hiring prerogative and  
32 is not a negotiable item holds little merit. The 1978 Agreement  
obligates the School District to negotiate and to bargain in good

1 faith on wages; section 39-31-305(2), MCA, makes wages a legally  
2 negotiable item and a mandatory subject of bargaining. The School  
3 District seems to have overlooked that it negotiated a salary  
4 schedule with the Association in 1978. Placement on that salary  
5 schedule determines the wages of the teacher employed by the  
6 School District. Wages, then, is the center of Robert Jackson's  
7 grievance with the School District, and the School District both  
8 contractually and statutorily has the duty to negotiate and to  
9 bargain in good faith on such a matter.

10 The School District agreed to a grievance procedure which  
11 requires that in order for a grievance to be submitted for arbitra-  
12 tion it must deal "only with an alleged misapplication or misinter-  
13 pretation of a negotiated agreement item." The School District  
14 negotiated a salary schedule and Jackson is disputing his placement  
15 on that schedule. Clearly, such a grievance meets the requirements  
16 of the 1978 Agreement as a grievance based upon the misapplication  
17 or misinterpretation of a negotiated item.

18 The second issue to discuss is whether Jackson was covered by  
19 the 1978 Agreement when he signed his individual hiring contract  
20 with the School District. The School District claims that it is  
21 not bound by the terms of the 1978 Agreement until the individual  
22 it chooses to hire has signed his employment contract. This  
23 argument fails because of the black letter rule first set down in  
24 J.I. Case v N.L.R.B., 321 U.S. 332, 14 LRRM 501(1944), which  
25 provides that the individual hiring contract is subsidiary to, and  
26 in fact superseded by, the collective bargaining agreement.

27 The court in J.I. Case reasoned that the employee must be  
28 considered as a "third party beneficiary" to all of the benefits  
29 of the collective bargaining agreement. Because the employee is a  
30 third party beneficiary to the collective bargaining agreement, the  
31 court concluded that the individual hiring contract is subsidiary  
32 to the terms of the collective bargaining agreement. 14 LRRM 504.

1           The court in J.I. Case noted further that in order for the  
2 National Labor Relations Act not to be reduced to a futility,  
3 private individual contracts must yield to the procedures proscribed  
4 by the Act. In this context, the court set down the rule that  
5 the individual contract is superseded by the collective bargaining  
6 agreement:

7           It is equally clear since the collective trade agree-  
8 ment is to serve the purpose contemplated by the Act, the  
9 individual contract cannot be effective as a waiver of any  
10 benefit to which the employee otherwise would be entitled  
11 under the trade agreement. The very purpose of providing  
12 by statute for the collective agreement is to supersede  
13 the terms of separate agreements of employees with terms  
14 which reflect the strength and bargaining power and serve  
15 the welfare of the group. Its benefits and advantages are  
16 open to every employee of the represented unit, whatever the  
17 type or terms of his pre-existing contract of employment.  
18 J.I. Case, 14 LRRM 501, 504(1944).

19           Similarly, the benefits and advantages of the 1978 Agreement  
20 are available to Jackson, whatever the terms of his pre-existing  
21 contract. Otherwise, the Collective Bargainin Act for Public  
22 Employees and the negotiated provision for a salary schedule  
23 would be rendered meaningless. An employer could hire all new  
24 people, at any wages, thereby circumventing its obligations under  
25 its collective bargaining agreement, and denying its employees  
26 access to an agreed upon grievance procedure. The School District  
27 therefore cannot prevail in its argument.

28           Such a conclusion is consistent with a previous decision of  
29 this Board in which it was decided that an employer could not  
30 unilaterally negotiate terms different from those in the collective  
31 bargaining contract with prospective or newly hired employees.  
32 In American Association of University Professors v Eastern Montana  
College, ULP #16-78, it was concluded: "An employer's unilateral  
action in altering the terms and conditions of employment for new  
hires without first giving notice to, and conferring in good  
faith with, the union constitutes an unlawful refusal to bargain."<sup>3</sup>

          The last issue to decide, then, is whether the School District's  
refusal to process Jackson's grievance is a refusal to bargain in

---

3 Citing NLRB v Katz, 369 U.S. 736, 50 LRRM 2177(1962).

1 good faith. In the Firefighter's case and in the Painter's case,  
2 this Board held that when an employer agrees to a grievance proce-  
3 dure, culminating in final and binding arbitration, its refusal to  
4 submit a grievance to arbitration is a refusal to bargain in good  
5 faith. That position was modified so that this Board would look  
6 to the collective bargaining contract to see if the parties agreed  
7 to process the grievance in dispute, and in cases of doubt the  
8 grievance will be ordered processed.

9 If it is determined that the grievance in dispute is covered  
10 by the procedures in the collective bargaining agreement, then a  
11 refusal to submit such a grievance to arbitration must be considered  
12 a refusal to bargain in good faith. Moreover, as pointed out in  
13 the Firefighter's case, it is the duty of this Board to encourage  
14 and support agreements which provide the necessary mechanisms to  
15 reach friendly adjustments of disputes. It must therefore be  
16 concluded that the School District, by refusing to process Jackson's  
17 grievance, refused to bargain in good faith.

#### 18 CONCLUSION

19 1. The School District has the duty both contractually and  
20 statutorily to negotiate and bargain in good faith on a matter  
21 concerning the initial placement on a negotiated salary schedule.

22 2. Robert Jackson was entitled to the benefits of the 1978  
23 Collective Bargaining Agreement when he signed his individual  
24 contract with the School District.

25 3. By refusing to process Robert Jackson's grievance, the  
26 School District has failed to bargain in good faith as required in  
27 section 39-31-305, MCA, and thereby committed an unfair labor  
28 practice as defined in section 39-31-401(5), MCA.

#### 29 RECOMMENDED ORDER

30 1. The school District shall cease and desist from refusing  
31 to process Robert Jackson's grievance.

32 2. The School District shall proceed with the processing of

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Robert Jackson's grievance as provided in the 1978 Collective Bargaining Agreement.

Dated this 12<sup>th</sup> day of August, 1980.

BOARD OF PERSONNEL APPEALS

BY Elizabeth L. Griefing  
ELIZABETH L. GRIEFING  
Hearing Examiner

NOTICE

Written exceptions may be filed to these Findings of Fact, Conclusions of Law, and Recommended Order within twenty days after service thereof. If no exceptions are filed with the Board of Personnel Appeals within that period of time, the Recommended Order shall become the Final Order of the Board of Personnel Appeals. Exceptions shall be addressed to the Board of Personnel Appeals, Capitol Station, Helena, Montana 59601.

CERTIFICATE OF MAILING

I, Jennifer Jackson, do hereby certify and state that I did on the 12<sup>th</sup> day of August 1980, mail a true and correct copy of the above Findings of Fact; Conclusions of Law; and Recommended Order to the following:

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

David Rice  
Deputy Hill County Attorney  
312 Third Street  
Havre, MT. 59501

PAD3:J