

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 13-80:

MONTANA STATE COUNCIL OF CARPENTERS,)
an affiliate of the UNITED BROTHERHOOD)
OF CARPENTERS AND JOINTERS OF AMERICA,)

Complainant,)

- vs -)

FINAL ORDER

MONTANA UNIVERSITY SYSTEM,)

Defendant.)

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 October 14, 1980;

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

DATED this 25th 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:

D. Patrick McKittrick
Attorney at Law
Davidson Building
Great Falls, MT 59401

Steven A. Veazie
Acting Chief Counsel
Montana University System
33 South Last Chance Gulch
Helena, MT 59601

Jennifer Jacobson

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MONTANA STATE COUNCIL OF CARPENTERS)	
an affiliate of the UNITED)	
BROTHERHOOD OF CARPENTERS AND JOINTERS)	
OF AMERICA,)	
)	
Complainant,)	
)	FINDINGS OF FACT,
vs.)	CONCLUSION OF LAW,
)	AND
MONTANA UNIVERSITY SYSTEM.)	RECOMMENDED ORDER.
)	
Defendant.)	

* * * * *

I. INTRODUCTION

On April 8, 1980, Complainant filed this unfair labor practice charge against the Univeristy system alleging it had violated 39-31-401(1) and (5), 39-31-201 and 39-31-305 MCA by refusing to incorporate into a written contract certain items agreed to at an earlier negotiation session. Defendant denied it had agreed to the items in question. A hearing was conducted on July 1, 1980 under 39-31-405 MCA. Complainant was represented by Mr. D. Patrick McKittrick, Defendant by Mr. Steven A. Veazie.

II. ISSUE (as stipulated to by the parties)

Whether the parties agreed that they would incorporate into their collective bargaining agreement the following items:

1. Two (2) days of annual leave pay (if employee desires);
2. Two (2) days of holiday pay;
3. Credit of two (2) days of sick leave;
4. Credit for two (2) days of annual leave;
5. Contract expires June 30, 1980;
6. retropay July 1, 1979 to January 11, 1980.

III. FINDINGS OF FACT

1 Based on the evidence on the record, including sworn testimony
2 of witnesses, I find as follows:

3 1. The Montana State Council of Carpenters is comprised of,
4 among various other state locals, four local units representing
5 employees at the University of Montana, Eastern Montana College,
6 Montana State University, and Montana Tech in Butte. The union
7 (those four units with which we are concerned here) and the
8 employer (the University System) had an existing collective
9 bargaining agreement prior to July 1, 1979 at which time it
10 expired. The union and employer, through their respective
11 committees, met and bargained before and after the expiration of
12 the old agreement. The union was represented by Mr. Bob Kokoruda
13 as chief negotiator for the union along with representatives of
14 the four locals. The employer's chief negotiator was Mr. Joe
15 Sicotte who had representatives from the various campuses on his
16 team.

17
18 2. During the course of the negotiation sessions the parties
19 agreed on a number of issues; however, as of December 27, 1979
20 there still remained several unresolved items on the table
21 including wages, retroactive pay and certain contract language
22 change proposals made by the employer. On that date the employer
23 withdrew from consideration its proposed contract language changes
24 and made a last and best offer to the union on wages and retroactive
25 pay.

26
27 3. The notes of Mr. Ernest Zilz who was on the union's negotiating
28 team state, with respect to the December 27, 1979 meeting, the
29 following:

30 11:10 a.m. Present are Bob, Larry, John, Smokey,
31 Howie for Carpenters & 6 University Reps.
32

1 Management proposes review of previous proposals.
 2 1 management withdraws proposal to change preamble
 3 dates segment. Suggests caucus.
 4
 5 11:20 2 Union Caucus - Unions feel the employers were
 6 due to present a counter-proposal; however in
 7 case there was any doubt the previous offer (by
 8 the union as a proposal) will be restated.
 9
 10 11:45 Return from caucus. \$1.16 on all classifications -
 11 Money issue is main objective.
 12
 13 11:50 Employers caucus
 14
 15 11:53 Employers return from caucus: Final Offer:
 16 Wages - current 7.93. 1979-80 retro to July
 17 1979 .62 increase hr. giving \$8.55/hr.; 1980-81
 18 same wage. Employer feels \$2,580 increase vs.
 19 \$2,017 for all other state employees; 17,784 is
 20 projected wage. This is \$563 ahead. 15.8%
 21 increase including .63¢ insurance which is
 22 already in effect - \$20 this year.
 23
 24 Employer withdraws all non-agreed language
 25 proposals and asks to take proposal back to the
 26 membership. 15.8% increase the first year with 0
 27 the second except for the insurance. Insurance:
 28 July 1 increased \$20.00 now it is \$30.00.
 29
 30 11:55 Union Caucus
 31
 32 12:07 Negotiation Resume.
 Bob K. "We will take it back however our recommenda-
 tion will be based on what the other crafts
 receive."
 Joe Sicotte - "Assured that all trades will be
 treated consistently."
 Joe: \$50.00 H & W /wk at present and will be
 \$60.00 next year. This is 100% over last year.
 "Rejection means (strike) as we should be aware."

4. Notes kept by Mr. Kokoruda of the meeting in
 question read, in pertinent part, as follows:

11:00 a.m. Employer asks the Union for their answer to
 their last proposal, after due discussion the
 Union caucused at 11:15.

Reconvened at 11:20. The Union rejected the
 employers proposal and submitted the following.
 Effective July 1, 1979 \$1.16 on all classifica-
 tions plus the amount allowed by the State for
 Health Insurance.

A discussion followed on the union proposal and
 L. Simonson discussed the Painter's contract.
 Employer caucused at 11:40 a.m. Reconvened at
 11:46 a.m.

Employer proposed their last best, and final
 offer. Effective July 1, 1979 .62¢ on all

1 classifications of wage .63¢ for Health Insurance
2 15.8% increase over 2 years. Withdraw all
3 language changes as proposed with the exception
4 of the language which the parties agreed to.

5 Union caucused at 11:55 a.m. Reconvened at
6 11:58 a.m. Union will take the employer's
7 proposal back to the membership for a vote.

8 The recommendation for approval or disapproval
9 will be determined at the meeting today with
10 the other crafts.

11 Kokoruda stated the Carpenters are tired of
12 being first to settle their agreement than the
13 other crafts get more money and a better contract.
14 All we ask is to be treated the same.

15 Mr. Sicottle stated you will get the same
16 consideration as the other crafts.

17 5. Notes kept by Mr. Sicotte of that same meeting read, in pertinent
18 part, as follows:

19 They reviewed our proposals:

- 20 #1 We withdraw and keep w/current (k) language
- 21 #6 Hold - Workstoppages
- 22 #7 Hold - Probationary Period - Condition of
- 23 Cont. Employment.
- 24 #8 Hold - Dues Checkoff
- 25 #15 Hold - Probationary Period - 90 days
- 26 #16 Hold - Contracting for Services
- 27 #20 Hold - Grievance Procedures
- 28 #21 Hold - Grievance Procedures Decision
- 29 Binding
- 30 #27 Hold _____ allowable layoffs.

31 Union Caucus 11:11 a.m.
32 Return 11:25 a.m.
Their position is the same as above.

Regents Caucus: 11:22 a.m.
Return: 11:45 a.m.

1. Last Best & Final Offer Retro: 1 July 1979
 1979-80 1980-81
 \$ 7.93 \$ 8.55 \$ 8.55
 (\$.62 - Total - \$2,580 2 yrs.) \$17,784 - 15.8%

Union Caucus 11:55 a.m.
Return: 12:00

They say they will take back to people,
but won't commit to a positive recommendation
until the meeting this afternoon.

Adjourn 12:25 p.m.

6. Messrs. Kokoruda and Zilz believed that, as a result of the
concern they had expressed to the employer about always being the
first union to settle, the employer had agreed to give the

1 Carpenters anything in addition to the above offer which it might
2 later negotiate with the Plumber and Electrician unions.

3 7. Mr. Sicotte and other members of the employers team made the
4 above-noted final offer and, in response to the concern expressed
5 by the Carpenter's representative, offered to return to the
6 bargaining table and negotiate on wages if the Plumbers and
7 Electricians settled for more than a sixty-two cents per hour
8 increase in wages.

9
10 8. During mid-January 1980 and until mid-March 1980 the Plumbers
11 and Electricians were on strike against the University. The
12 Carpenters were not on strike. Prior to the settlement of the
13 strike Mr. Sicotte drafted a contract in accordance with what was
14 his understanding of the settlement of the agreement with the
15 Carpenters and forwarded it to the appropriate union officials for
16 their review. They reviewed the drafted contract after the above-
17 mentioned strike was settled. Because the contract did not contain
18 all the things which the Carpenters believed it should have contained
19 they did not sign it and instead met again with Mr. Sicotte on
20 March 26, 1980. The differences between the parties' understanding
21 of the December 27, 1979 meeting were reiterated.

22
23 9. To settle the strike the employer and the unions engaged in
24 the strike reached the following agreement:

- 25
26 1. Five days of pay (for scheduling conflict).
27 2. Two months of employer contribution to health insurance,
28 3. Two days of annual leave pay (if employee desires),
29 4. Two days of holiday pay,
30 5. Credit of two days of sick leave,
31 6. Credit for two days of annual leave,
32 7. Contract expires June 30, 1980,
8. Retro pay July 1, 1979 to January 11, 1980,
9. \$.62 per hour for calculation of retro pay.

10. The employer paid two months of health insurance for the
1 Carpenters who did not work during the strike to maintain continuity
2 of coverage, to avoid possible difficulties with the carrier over
3 system wide coverage and to facilitate bookkeeping.
4

5 11. At the March 26, 1980 meeting the union expressed its concern
6 to Mr. Sicotte relative to what their contract contained compared
7 to what the Plumbers and Electricians received as noted in No. 9
8 above. Sicotte pointed out that those were strike settlement items
9 and would not be given to the Carpenters.
10

11 12. Some of the employees represented by the Carpenters worked
12 during the strike and received regular pay and fringe benefits.
13

14 13. The contracts the Electricians, Plumbers and Carpenters have
15 with the University are not identical, they differ on some subjects.
16 As of the date of the hearing the Carpenters had not signed the
17 contract which had been forwarded to them by the University because
18 they believe it should contain those items in dispute here.
19

20 14. During negotiations with other labor organizations which
21 settled their contracts prior to the strike the University's
22 negotiator stated that if the sixty-two cents wage increase was
23 increased for any other craft, the University would renegotiate on
24 the base rate. No other union received any of the items in dispute
25 here, nor did they ask for them.
26

27 IV. DISCUSSION

28 The Collective Bargaining Act for Public Employees imposes
29 certain obligations on public employers and exclusive representatives
30 with respect to good faith bargaining. Section 39-31-305 (2) MCA
31
32

1 states "For the purpose of this chapter, to bargain collectively is
2 the performance of the mutual obligation of the public employer or
3 his designated representatives and the representatives of the
4 exclusive representative to meet at reasonable times and negotiate
5 in good faith with respect to wages, hours, fringe benefits, and
6 other conditions of employment or the negotiation of an agreement
7 or any question arising thereunder and the execution of a written
8 contract incorporating any agreement reached. Such obligation does
9 not compel either party to agree to a proposal or require the
10 making of a concession." Section 39-31-306 (1) MCA requires that
11 any agreement reached be reduced to writing and executed by both
12 parties. Relative to the issue and factual situation presented
13 here it is obvious that the key phrase in both sections is "... any
14 agreement reached." In other words, on any agreement reached the
15 parties are required to put it in writing and sign it.

16 In Wilson and Co., Inc., V. NLRB, 7 LRRM 575 (1940) the U.S.
17 Circuit Court of Appeals, 8th Circuit held that when collective
18 bargaining results in agreement, a good-faith compliance with the
19 law requires that the agreement be reduced to writing, unless both
20 parties desire that it remain oral, or unless some other justifiable
21 ground exists for not putting it in writing. Even prior to the
22 enactment of Section 8(d) of the National Labor Relations Act,
23 failure to sign a written agreement amounted to a refusal to bargain.
24 See H. J. Heinz v. NLRB 7 LRRM 291. More recently the U.S. Supreme
25 Court, in NLRB v. Strong, 70 LRRM 2101 (1969), said the NLRB was
26 correct in finding that an employer violated Section 8(a)(5) of the
27 NLRA by refusing to execute and acknowledge a collective bargaining
28 agreement negotiated by a multi-employer bargaining association.

29 The general rule to be extracted from the holdings in the
30 cases interpreting the NLRA seems to impose a duty on both parties
31 to enter into a written agreement on that which was agreed to
32 during negotiations. The present case is unlike the NLRB cases

where the parties had agreed to what was to go into the contract.
1 Here the parties had not agreed. Each believed it understood what
2 the terms of the agreement would be but they did not have a mutual
3 understanding. The Carpenters thought they would receive "every
4 consideration" other craft unions received later. The University
5 offered to negotiate if wages given to the others exceeded a sixty-
6 two cent per hour increase. How this misunderstanding came about
7 is not clear from the record. Each side had witnesses who testified
8 in support of his party's position. The notes of two of the union
9 witnesses, although far from conclusive, tend to reinforce their
10 testimony. The absence of any reference to other consideration at
11 a later date in Sicotte's notes would seem to lend weight to his
12 and other University officials' testimony.

13 However, conflicting as the testimony and notes may be, three
14 points are salient: (1) each side was represented by experienced
15 negotiators, (2) the witnesses for the employer had far better
16 recall of the December 27, 1979 session than did the witnesses for
17 the union, and (3) there was no signed tentative agreement to the
18 effect that the employer would later incorporate into the Carpenter's
19 contract or give otherwise any consideration which might later have
20 been given to another union. It would not seem unreasonable to
21 expect that experienced negotiators would get an initialled or
22 signed note or memorandum of understanding on such an important
23 matter. However, failure to utilize signed written tentative
24 agreements cannot, per se, proscribe the possibility that such
25 agreement was in fact reached. Often contracts are successfully
26 negotiated without either party feeling it necessary to obtain
27 signed tentative agreements. But, the poor recall of the union's
28 witnesses coupled with the absence of a signed tentative agreement
29 or document do force the conclusion that there was no mutual agreement.
30 Clearly, the union representatives thought they had a mutuality of
31 understanding with the employer representatives, and just as clearly,
32

1 the employer representatives thought their position was understood
2 by the union representatives. Unfortunately, their respective
3 understandings were not congruent.

4 The University representative said during the meeting in
5 question that they would return to the table with the Carpenters to
6 negotiate, if the University settled at more than a sixty-two cent
7 per hour increase with the other craft unions. The question raised
8 in this proceeding is not whether the employer has refused to go to
9 the table and bargain, but rather, whether it agreed to incorporate
10 certain items into the collective bargaining agreement with the
11 Carpenters. I must conclude that it did not so agree.

12 V. CONCLUSION OF LAW

13 The Defendant, Montana University System and its agents and
14 officers, did not violate 39-31-401(1) or (5) MCA by refusing to
15 incorporate into a collective bargaining agreement with Complainant
16 certain items used to settle a strike by other unions.

17 VI. RECOMMENDED ORDER

18 This unfair labor practice charge be dismissed.

19 VII. NOTICE

20 Exceptions to these Findings of Fact, Conclusions of Law and
21 Recommended Order may be filed with the Board of Personnel Appeals,
22 Capitol Station, Helena, Montana 59601 within twenty days of service.
23 If no exceptions are filed the Recommended Order shall become the
24 Final Order of the Board.

25 Dated this 14th day of October, 1980.

26
27
28 BOARD OF PERSONNEL APPEALS

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30 
31 Jack H. Calhoun
32 Hearing Examiner

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CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of
this document was mailed to the following on the 15 day of
October, 1980:

D. Patrick Mc Kittrick
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