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STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 39-80:

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

Complainant,

- vs -

FERGUS COUNTY AND ALL  
REPRESENTATIVES OF FERGUS  
COUNTY, MONTANA,

Defendant

FINAL ORDER

\*\*\*\*\*

No exceptions having been filed, pursuant to ARM 24.26.215,  
to the Findings of Fact, Conclusions of Law and Recommended Order  
issued on June 30, 1981, by Hearing Examiner Jack H. Calhoun;

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

DATED this 30 day of October, 1981.

BOARD OF PERSONNEL APPEALS

By John Kelly Addy  
John Kelly Addy  
Chairman

\*\*\*\*\*

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of  
this document was mailed to the following on the 2nd day of  
November, 1981:

R. Nadiean Jensen  
AFSCME, AFL-CIO  
600 North Cooke  
Helena, MT 59601

Bradley B. Parrish  
Deputy County Attorney  
Fergus County Courthouse  
Lewistown, MT 59457

Jennifer Jacobson



1 between the parties.

2 2. Article XI-B of the agreement provides as follows:

3 Health and/or Accident Insurance-the employer shall contribute  
4 towards the provisions of such insurance at the premium rate  
5 for each employee and dependents desiring such coverage, but  
6 not to exceed \$60.00 per month. Such insurance shall include  
7 an employee/family dental plan with no deductible. Covered  
8 claims incurred under this dental plan shall not exceed  
9 \$1,000.00 per year.

7 3. Mr. Fisher incurred dental expenses in the amount of  
8 \$465.00. The insurance provided under Article XI of the agreement  
9 paid \$219.90. The remaining \$245.10 was not covered by the policy  
10 and has not been paid.

11 4. A grievance was filed on December 10, 1979 claiming the  
12 County owed the \$245.10 not covered by the insurance. The County  
13 refused to pay.

14 5. An arbitration hearing was held on February 6, 1980. On  
15 March 3, 1980 the arbitrator found in Mr. Fisher's favor. The  
16 County refused to honor the arbitrator's award. Complainant then  
17 filed this unfair labor practice charge.

18

19 IV. DISCUSSION

20 The Board of Personnel Appeals has consistently held that a  
21 refusal to participate in the processing of a grievance through  
22 the procedure established in the collective bargaining agreement,  
23 including the submission of the matter to binding arbitration, is  
24 tantamount to a refusal to bargain in good faith and, therefore,  
25 violates 39-31-401 (5) MCA. See ULP 5-80, American Federation of  
26 State, County and Municipal Employees, AFL-CIO vs. Mr. Paul Tutvedt,  
27 Mr. Ken Siderius and Mr. Keith Allred, Kalispell School District  
28 No. 5; ULP 7-80, Havre Education Association vs. Hill County School  
29 District No. 16 and A; ULP 30-79, Savage Education Association,  
30 affiliated with Montana Education Association vs. Savage Public  
31 Schools, Richland County Elementary District 7 and High School  
32 District 2; City of Billings vs. Local 521 I.A.F.F., ULP 3-76;



1 Painters Local 1023 vs. Montana State University, ULP1-75. The  
2 National Labor Relations Board holds that collective bargaining is  
3 a continuing process and that it involves day-to-day adjustments  
4 in the contract and other working rules, Conley vs. Gibson, 355  
5 U.S.41,46,41 LRRM 2089 (1957). The Montana Supreme Court, in  
6 City of Livingston vs. Montana Council No. 9, AFSCME, 174 MT 421,  
7 571 P. 2d 374 (1977) held that the duty to bargain in good faith  
8 continues during the entire course of the contract and it includes  
9 the processing of grievances, citing Timkin Roller Bearing Co. vs.  
10 NLRB, 161 F.2d 949, 954 (6th Cir.1947).

11 I agree with complainant, it is clear under both state and  
12 federal law that an employer is obligated to submit grievances to  
13 binding arbitration, if the collective bargaining agreement so  
14 provides. However, that is not the issue raised by this charge.  
15 The facts are clear, the county did not refuse to process the  
16 grievance. On the contrary, the grievance was processed all the  
17 way through arbitration. What the county refused to do was abide  
18 by the arbitrator's decision. That refusal raises an entirely  
19 different question from a refusal to process a grievance under the  
20 terms of the contract.

21 The question of whether failure to implement an arbitration  
22 board's award was an unfair labor practice was answered by the  
23 Board of Personnel Appeals in International Association of Fire-  
24 fighters, Local No. 630 vs . City of Livingston, ULP 2-74, where  
25 the majority held that a refusal to follow the arbitration award  
26 did not constitute a failure to bargain in good faith. The Board  
27 went on to say, ". . .by the time a grievance has gone into final  
28 and binding arbitration, as here, no element of bargaining exists  
29 for there is nothing to negotiate."

30 The NLRB deferred to an arbitration award and dismissed an  
31 unfair labor practice charge in Malrite of Wisconsin, Inc., 198  
32

1 NLRB No. 3 at 3, 80 LRRM 1593 (1972) because, it reasoned, the  
2 award met the standards set forth in its Spielberg doctrine.  
3 Under that doctrine, announced by the NLRB in Spielberg Manufactur-  
4 ing Co., 112 NLRB 1080, 1082, 36 LRRM 1152 (1955), three prerequi-  
5 sites for deferral to arbitration must be met. First, the arbitra-  
6 tion proceedings must have been fair and regular; secondly, the  
7 parties must have agreed to be bound by the award; and, the  
8 decision must not be clearly repugnant to the purposes of the  
9 National Labor Relations Act. If those conditions are met, the  
10 NLRB will adopt the arbitration award as the complete remedy for  
11 unfair labor practices related to the dispute. The Board went on  
12 in Malrite, supra, to explain that noncompliance with an award was  
13 not a matter for its concern:

14 In its formulation of the Spielberg standards the Board did  
15 not contemplate its assumption of the function of a tribunal  
16 for the determination of arbitration appeals and the enforcement  
17 of arbitration awards. If the Board's deference to arbitration  
18 is to be meaningful it must encompass the entire arbitration  
19 process, including the enforcement of arbitration awards. It  
20 appears that the desirable objective of encouraging the  
21 voluntary settlement of labor disputes through the arbitration  
22 process will best be served by requiring that parties to a  
23 dispute, after electing to resort to arbitration, proceed to  
24 the usual conclusion of that process -judicial enforcement -  
25 rather than permitting them to invoke the intervention of the  
26 Board.

\* \* \*

27 Indeed, direct court enforcement of arbitrator's awards can  
28 provide more prompt and effective action than a procedure  
29 which requires a second trial before one of our trial examiners,  
30 an appeal to this Board, and only then a court proceeding  
31 which can lead to an enforcement decree. Surely, immediate  
32 access to the court is to be preferred over this long admini-  
strative route, and this is the course we are encouraging  
these and future disputants to follow. Accordingly, we shall  
dismiss the complaint in its entirety.

33 The U.S. Court of Appeals, District of Columbia Circuit,  
34 upheld the NLRB decision in Malrite. It held in IBEW Local 715 vs.  
35 NLRB, 85 LRRM 2823 (1974) that the employer's recalcitrance after  
36 arbitration did not preclude deferral to the award. It reasoned,  
37 "The policy established by Spielberg is to withhold Board processes  
38 where private methods of settlement are adequate. In this case,  
39 the arbitration process has foundered, but it has not proved

1 inadequate. The union may yet obtain compliance with the award by  
2 means of a suit for its enforcement. As long as the remedy of  
3 judicial enforcement is available, the force of the Spielberg  
4 doctrine is not diminished by one party's disregard for the arbitral  
5 award. The Board acted within its discretion, therefore, in  
6 insisting that the union pursue its judicial remedy."

7 It could be argued that since 29 U.S.C. Section 185(a) (Section  
8 301(a) of the Labor Management Relations Act) specifically grants  
9 federal courts jurisdiction for violation of contracts and failure  
10 to implement an award can be remedied there and since the Montana  
11 Act does not contain a similar provision, the Board of Personnel  
12 Appeals should take a broader view of the matter. That argument  
13 was expressly rejected in International Association of Firefighters,  
14 Local No. 630, supra. The Board held that although the Act did  
15 not directly state how collective bargaining agreements are to be  
16 enforced, it was elementary that a contract could be enforced  
17 through civil action in a court of law.

18 As repugnant to one's sense of fair play as the County's  
19 refusal to honor the collective bargaining agreement may be, I  
20 believe it best promotes the purposes of the Act to adopt the  
21 principles and reasons laid down by the U.S. Circuit Court in IBEW  
22 and by the NLRB in Malrite, supra. It would seem unwise and  
23 impractical, if not impossible, for the Board of Personnel Appeals  
24 to attempt to enforce arbitration awards. A more expeditious  
25 method of enforcement would be to require the party with the award  
26 to go directly to district court.

27 There is nothing on the record to suggest that the arbitration  
28 award made in this case did not meet all the prerequisites of the  
29 Spielberg doctrine. That being so, I would defer to the award and  
30 require that Complainant seek enforcement in the courts.  
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V. CONCLUSION OF LAW

Defendant did not violate 39-31-401(5) MCA by its refusal to abide by the arbitration award.

VI. RECOMMENDED ORDER

It is ordered that this unfair labor practice charge be dismissed.

VII. NOTICE

Exceptions to these Findings of Fact, Conclusion of Law and Recommended Order may be filed within twenty days of service thereof. If no exceptions are filed, the Recommended Order shall become the Final Order of the Board of Personnel Appeals. Address exceptions to: Board of Personnel Appelas, Capitol Station, Helena, Montana 59601.

Dated this 30 day of June, 1981.

BOARD OF PERSONNEL APPEALS

BY Jack H. Calhoun  
JACK H. CALHOUN  
Hearings Examiner

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of this document was mailed to the following on the 30 day of June, 1981:

R. Nadiéan Jensen  
AFSCME, AFL-CIO  
600 N. Cooke  
Helena, Montana 59601

Bradley B. Parrish  
Deputy County Attorney  
Fergus County Courthouse  
Lewistown, Montana 59457

Jennifer Jacobson

PAD5:F