

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE 30-81

MONTANA STATE COUNCIL #9, AMERICAN )  
FEDERATION OF STATE, COUNTY AND )  
MUNICIPAL EMPLOYEES, AFL-CIO )  
Complainant )  
vs. )  
HAVRE SCHOOL DISTRICT #16 and A, )  
HAVRE, MONTANA )  
Defendant. )

\* \* \* \* \*

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

\* \* \* \* \*

The Montana State Council #9, American Federation of State, County and Municipal Employees (Union) filed an unfair labor practice charge against the Havre School District #16 and A (employer, management or school district) alleging that the School District engaged in surface bargaining, engaged in undermining the union by not notifying the exclusive representative of changes in the tentative agreement and engaged in discriminatory conduct by paying other employees at a different pay raise formula. Because the Board of Personnel Appeals has little precedent in some areas I will cite federal statute and case law for guidance in the application of Montana's Collective Bargaining Act, Title 39, Chapter 31, MCA (Act). The federal statute will generally be the National Labor Relations Act, 29 U.S.C., Section 151-166 (NLRA). The Montana Supreme Court when called upon to interpret the Montana Collective Bargaining for Public Employees Act has constantly turned to the National Labor Relations Board (NLRB) precedent for guidance. (State Department of Highways v. Public Employees Craft Council, 165 Mont. 349, 529 P.2d 785, 1974; AFSCME Local 2390 v. City of Billings, 555 P.2d 507, 93 LRRM 2753, 1976; State of

Montana ex. rel., Board of Personnel Appeals v. District Court of the Eleventh Judicial District, 598 P.2d 1117, 36 State Report, 1531, 1979; Teamsters Local 45 v. Board of Personnel Appeals and Stewart Thomas McCarvel, 635 P.2d 1310, 38 State Report 1841, 1981).

At the hearing held November 11, 1981, the parties stipulated that the Defendant is a public employer as defined by the Collective Bargaining Act; that the Complainant is a labor organization as defined by the Collective Bargaining Act; and that the Board of Personnel Appeals has jurisdiction.

#### I. FINDINGS OF FACT

After a thorough review of the testimony, exhibits, post-hearing briefs and reply brief, I set forth the following findings:

1. On April 16, 1981, the parties entered into their first collective bargaining agreement covering a period from ratification to June 30, 1981. The collective bargaining agreement contained the following salary schedules:

#### ADDENDUM "A"

#### SALARY SCHEDULE

#### Business Office

	Effective July 1, 1980	Effective Jan. 1, 1981
Accounts Payable I - (Snow)	\$5.51	\$5.75
Accounts Receivable - (Seeley)	5.30	5.75
Payroll Clerk - (Horab)	4.75	5.00
Purchasing Clerk/Assistant Payroll (Rhinehart)	4.60	4.75
Accounts Payable II - (Ambler)	3.85	4.25

#### Clerical I

Business Manager Secretary (Keeler)	4.60	4.65
Assistant Superintendent Secretary (Whitford)	3.48	3.75
High School Secretary - (Bachmeier)	3.96 (Effective date of hire)	4.00
Attendance Office Secretary - (Snoddy)	3.50 (Effective date of hire)	3.75
Junior High Secretary - (George)	4.49	4.50
High School Accounts Secretary (Bult)	3.80	4.00

Clerical II

High School Guidance Secretary (Dorcheus)	3.44	3.50
High School Librarian Secretary (Nord)	4.04	4.05
Media Center Secretary/Machine Operator (Grant)	3.91	4.00
High School Switchboard Telephone Operator/Principal Office Secretary - (Wagner)	3.48	3.75
Elementary Secretary - (Kuka)	4.14	4.15
Elementary Secretary - (Sheldon)	3.64	3.75
Elementary Secretary - (Hanson)	3.48	3.50
Elementary Secretary - (Gehlen)	3.48	3.50
Special Services Secretary (Stockdill)	3.44	3.50
Real World Secretary - (Hofeldt)		3.50

. . . .

(JOINT EXHIBIT I)

2. On April 24, 1981, the following memorandum was sent to the School Board:

TO: Hugo Anderson, Personnel Director  
FROM: Kathy Sheldon, Chairman, Negotiations Committee  
RE: RELEASE TIME FOR NEGOTIATIONS  
Local #336, AFSCME-AFL-CIO

The Union has chosen the following three people from the negotiations committee to have release time for the purpose of negotiating.

Norma Wagner  
Gloria Horab  
Kathy Sheldon

Please make the necessary arrangements for these members to have release time beginning on Monday, April 27, 1981. As you had requested, these people are not solely from one building.

Thank you.

(UNION EXHIBIT 2).

Linda Keeler was chairperson of last year's negotiating committee.

3. The first negotiation meeting for a new collective bargaining agreement was held on April 27, 1981. The union presented their first proposal for a new contract to the School District as follows:

UNION PROPOSAL - 24% total

ADDENDUM "A"

SALARY SCHEDULE

## BUSINESS OFFICE

current salary	proposed salary
\$5.75	\$5.90
\$5.75	\$5.90
\$4.75 \$5.10 Average	\$5.90 Average of 16% or .80 per hour
\$5.00	\$5.90
\$4.25	\$5.90

## CLERICAL I

current salary	proposed salary
\$4.65	\$5.10
\$3.75	\$5.10
\$4.00 \$4.10 Average	\$5.10 Average of 24.5% or \$1.00 per hour
\$3.75	\$5.10
\$4.50	\$5.10
\$4.00	\$5.10

## CLERICAL II

current salary	proposed salary
\$3.50	\$4.92
\$4.05	\$4.92
\$4.00	\$4.92
\$3.75 \$3.72 Average	\$4.92 Average of 32% or \$1.20 per hour
\$4.15	\$4.92
\$3.75	\$4.92
\$3.50	\$4.92
\$3.50	\$4.92
\$3.50	\$4.92
\$3.50	\$4.92

One year contract

(JOINT EXHIBIT II)

The School District did not respond because the school district wanted time to review and cost out the union's proposal.

Some time during the early part of negotiations, the parties agreed to several ground rules for negotiations. The negotiation ground rules stated among other things that all proposals would be in writing and all tentative agreements would be signed off immediately.

4. Some time during negotiations the school board produced a set of cost documents. The documents were never given to the union. The first page of the document is a cost out of the current collec-

tive bargaining agreement that expired June 30, 1981 and states the following:

CLERICAL UNION -- 1980-1981

NAME	SALARY	LONGEVITY	INSURANCE
AMBLER, CINDY	\$ 8,424.00	\$120.00	\$420 (12 mos.)
HORAB, GLORIA	10,140.00	420.00	420 (12 mos.)
RHINEHART, JUDY	9,724.00	260.00	none(12 mos.)
SEELY, MARIAN	11,492.00	300.00	420 (12 mos.)
SNOW, BETTY	<u>11,710.00</u> (51,490.00)	<u>300.00</u> (1,400.00)	<u>420 (12 mos.)</u> (1,580.00)
BACHMEIER/BEVERS	\$8,279.00	\$180.00	(Bachmeier--no) \$420 (Bevers--yes)
BULT	6,972.44	145.00	none (10 mos.)
GEORGE	7,489.37	405.00	385 (11 mos.)
KEELER	9,620.00	300.00	none (12 mos.)
SNODDY/CROSS	7,540.00	0.00	(Snoddy--no) 420 (Cross--yes)(12 mos)
WARRINGTON/WHITFORD	<u>6,904.56</u> (46,804.37)	<u>110.00</u> (1,140.00)	<u>385 (Whitford--no)</u> (1,610)
DORCHEUS	\$6,195.56	100.00	none (10 mos.)
GEHLEN	7,492.70	70.00 (7 mos.)	none (9½ mos.)
GRANT	7,065.44	230.00	\$350 (10 mos.)
HANSON	5,449.08	100.00	none (10 mos.)
HOFELDT/KRAUTH/HULL	2,016.00	0.00	none (9 mos.)
KUKA	6,470.94	350.00	350 (10 mos.)
NORD	7,216.96	250.00	none (10 mos.)
SHELDON	5,774.44	210.00	350 (10 mos.)
STOCKDILL	4,229.52	130.00	none (9 mos.)
WAGNER	<u>6,467.52</u> (53,378.16)	<u>250.00</u> (1,750)	<u>none (10 mos.)</u> (1,050)
<u>TOTALS</u>	<u>\$151,672.53</u>	<u>\$4,290.00</u>	<u>\$4,340.00</u>

\$160,307.53

(MANAGEMENT EXHIBIT B, PAGE 1).

The totals in the above exhibit are the management's calculations of the school district's costs for the past contract year at the two different hourly wage rates paid July 1980 and January 1981. The second page is a cost out of the union's first salary proposal dated April 27, 1981. The document states:

CLERICAL UNION -- 1981-1982 (FIRST DRAFT -- FIRST PROPOSAL BY UNION

BUSINESS OFFICE

NAME	SALARY	LONGEVITY	INSURANCE
AMBLER, CINDY (5.90)	\$12,272.00 (2080)	\$210.00	2 yrs; 3 mos. 9 @ 15; 3 @ 25 \$618.00 (12 mos.)
HORAB, GLORIA (5.90)	12,272.00 (2080)	\$540.00	11 yrs; 11 mos. 12 @ 45 \$618.00 (12 mos.)
RHINEHART, JUDY (5.90)	12,272.00 (2080)	\$420.00	5 yrs; 8 mos. 12 @ 35 none (12 mos.)
SEELY, MARIAN (5.90)	12,272.00 (2080)	\$420.00	8 yrs; 8 mos. 12 @ 35 \$618.00 (12 mos.)
SNOW, BETTY, (5.90)	12,272.00 (2080)	\$440.00	9 yrs; 2 mos. 10 @ 35; 2 @ 45 \$618.00 (12 mos.)
	<u>\$61,360.00</u>	<u>\$2,030.00</u>	<u>\$2,472.00</u>

CLERICAL I

BACHMEIER, L. (5.10)	\$10,608.00 (2080)	\$370.00	4 yrs. 7 mos. 5 @ 25; 7 @ 35 none (12 mos.)
BULT, RAMONA (5.10)	\$ 9,098.40 (1784)	\$250.00	3 yrs. 9 mos. 10 @ 25 none (10 mos.)
GEORGE, EVELYN (5.10)	\$ 8,496.60 (1666)	\$550.00	15 yrs. 2 mos. 10 @ 55 566.50 (11 mos.)
KEELER, LINDA (5.10)	\$10,608.00 (2080)	\$420.00	6 yrs. 11 mos. 12 @ 35 none (12 mos.)
SNODDY, CAROL (5.10)	\$10,608.00 (2080)	\$105.00	0 yrs. 8 mos. 5 @ 0; 7 @ 15 none (12 mos.)
WARRINGTON/ WHITFORD (5.10)	\$ 9,710.40 (1904)	\$135.00	WA: 0 yrs. 10 mos. 2 @ 0; 2 @ 15 WH: 2 yrs. 2 mo 566.50 (11 mos.) 7 @ 15
	<u>\$59,129.40</u>	<u>\$1,830.00</u>	<u>\$1,133.00</u>

CLERICAL II

DORCHEUS, APRIL (4.92)	\$ 8,777.28 (1784)	\$250.00	3 yrs. 0 mos. 10 @ 25 none (10 mos.)
GEHLEN, PATTY (4.92)	3,512.88 ( 714)	142.50	1 yr. 7 mos 9½ @ 15 none (9 mos.)
GRANT, BETTY (4.92)	8,777.28 (1784)	450.00	10 yrs. 4 mos 10 @ 45 \$515.00 (10 mos.)
HANSON, SONDRRA (4.92)	7,680.12 (1561)	180.00	2 yrs. 5 mos. 7 @ 15; 3 @ 25 none (10 mos.)
HOFELDT, BETTY (4.92)	2,833.92 ( 576)	15.00	0 yrs. 4 mos. 8 @ 0; 1 @ 15 none (9 mos.)
KUKA, MARY ELLEN (4.92)	7,680.12 (1561)	530.00	14 yrs; 10 mos. 2 @ 45; 8 @ 55 515.00 (10 mos.)
NORD, BEVERLY (4.92)	8,777.28 (1784)	350.00	6 yrs. 9 mos. 10 @ 35 none (10 mos.) 5 yrs. 6 mos.

SHELDON, KATHY (4.92)	7,680.12 (1561)	350.00	10 @ 35	515.00 (10 mos.)
			3 yrs. 8 mos.	
STOCKDILL, DONNA (4.92)	5,992.56 (1218)	225.00	9 @ 25	none (9 mos.)
			6 yrs. 6 mos.	
WAGNER, NORMA (4.92)	8,777.28 (1784)	350.00	10 @ 35	none (10 mos.)
	<u>\$70,488.84</u>	<u>\$2,842.50</u>		<u>\$1,545.00</u>
TOTALS	\$190,978.24	\$6,702.50		\$5,150.00
	26%	.56%		18.6%

\$42,529 new dollars

26.5% Increase over-all

(MANAGEMENT EXHIBIT B, PAGE 2)

For homework to negotiations, the union asked for a copy of the school district's budget. The school district indicated the budget was not fully developed but the union could have a copy when the budget was completed. The union never did get a look at the school district's budget.

5. The second negotiation meeting was held on May 6, 1981. Russell S. Carlson, Superintendent, made an informational presentation with calculations on the blackboard in which he stated among other things that the union's proposal was way out of line; that the school district could give roughly 10% new dollars; that the total cost of the salary and longevity for the collective bargaining unit for the last contract year was \$155,962.53; that the school district was willing to pay 15,516.00 new dollars; that any increase in insurance, holidays, longevity and/or other benefits would come out of the \$15,516.00 new dollars; that \$15,516.00 is the top figure the school board would approve; and that the above is not an offer but for information only. Throughout this meeting and negotiations Russell Carlson repeatedly stated \$15,516.00 new dollars. (See testimony of Linda Keeler, Kathy Sheldon).

The union witnesses Kathy Sheldon and Linda Keeler along with management witness, Hugo Andersen, all testified that Russell Carlson stated \$15,516.00 new dollars or \$15,516.00 new money. To Judy Rhinehart, new dollars meant the amount of money we could apply to our June, 1981 wages. To Linda Keeler, new money meant more money above the base wages paid of June 1981. To Hugo Andersen,

new dollars or new money meant the increased amount of money the school district could pay for the new collective bargaining agreement above the old collective bargaining agreement.

Management made the following contract proposals:

Board Counter Proposal

5-6-81

Employee Travel Counter

OK

5-13-81 No employee shall be required as a condition of employment SD to use his or her vehicle to conduct school district business ok unless mutually agreeable. In the event an employee agrees RSC to use their personal vehicle, reimbursement will be the prevailing travel rate per mile established by board policy.  
5-13-81

Two Additional Holidays

drop President's Birthday  
Holy Thursday

The district will NOT grant the above two additional holiday

Life Insurance

The district will not agree to offering participation rights in the teachers term life program.

Union Security

The district will not agree to a Union Security Clause in the contract.

. . . .

Board Salary Offer #1 - May 6, 1981

SALARY SCHEDULE

BUSINESS OFFICE

	current salary	
Snow	\$5.75	6.00
Seely	\$5.75	6.00
Rhinehart	\$4.75	5.00
Horab	\$5.00	5.25
Ambler	\$4.25	4.75

CLERICAL I

	current salary	
Keeler	\$4.65	4.90
Warrington	\$3.75	4.00
Bachmeier	\$4.00	4.25
Snoddy	\$3.75	4.00
George	\$4.50	4.75
Bult	\$4.00	4.25

CLERICAL II

	current salary	
Dorcheus	\$3.50	3.90
Nord	\$4.05	4.35

Grant	\$4.00	4.30
Wagner	\$3.75	4.05
Kuka	\$4.15	4.45
Sheldon	\$3.75	4.05
Hanson	\$3.50	3.90
Gehlen	\$3.50	3.90
Stockdill	\$3.50	3.90
Hofeldt	\$3.50	3.90

(UNION EXHIBIT 1).

The above is the only written contract proposal made by the school district.

The union made the following proposal:

8% of the average base salary in each classification, PLUS

\$45.00 per month BONUS not applied to the base, to be paid on a monthly and hourly pro-rated basis.

Both of the above to be effective July 1, 1981.

ADDENDUM "A"  
SALARY SCHEDULE

BUSINESS OFFICE

JUNE 1981 SALARY

\$5.75 \$5.10 average  
 \$5.75 2080 average hours  
 \$4.75 worked per year  
 \$5.00 present cost  
 \$4.25 \$53,040.00

July 1, 1981 - 1982 SALARY

	increase	bonus	total cents per hour
\$5.80	5¢	26¢	31¢
\$5.80	5¢	26¢	31¢
\$5.34	59¢	26¢	85¢
\$5.34	34¢	26¢	60¢
\$5.26	1.01	26¢	1.27

total cost of the bonus per year \$2704.00  
 8% of the average hourly salary additional cost  
 \$4243.20 total additional cost to the District  
 \$6943.20

CLERICAL I

\$4.65 \$4.10 average  
 \$3.75 1921.11 average  
 \$4.00 hours worked per  
 \$3.75 year.  
 \$4.50 present cost  
 \$4.00 \$47,257.31

\$4.70	5¢	26¢	31¢
\$4.34	59¢	26¢	85¢
\$4.34	34¢	26¢	60¢
\$4.34	59¢	26¢	85¢
\$4.55	5¢	26¢	31¢
\$4.34	34¢	26¢	60¢

total cost of the bonus per year \$2997.00  
 8% of the average hourly salary additional cost  
 \$4533.78 total additional cost to the District  
 \$7530.78.

CLERICAL II

\$3.50  
 \$4.05 \$3.72 average  
 \$4.00 1395.33 average  
 \$3.75 hours worked per  
 \$4.15 year.  
 \$3.75 present cost  
 \$3.50 \$51,906.28  
 \$3.50  
 \$3.50  
 \$3.50

\$3.97	47¢	26¢	73¢
\$4.10	5¢	26¢	31¢
\$4.08	8¢	26¢	34¢
\$3.97	22¢	26¢	48¢
\$4.20	5¢	26¢	31¢
\$3.97	22¢	26¢	48¢
\$3.97	47¢	26¢	73¢
\$3.97	47¢	26¢	73¢
\$3.97	47¢	26¢	73¢
\$3.97	47¢	26¢	73¢

present total cost	total cost of the bonus per year \$3627.86
\$152,205.60	8% of the average hourly salary additional cost \$4144.07.
	total additional cost to the District \$7771.95

total cost of the bonus for the year \$9328.86  
total cost of the 8% increase for the year \$12,921.05  
total additional cost to the District \$22,245.93 (approx. 14.6%)

(MANAGEMENT EXHIBIT A).

The present total cost in the above exhibit is the union's calculation of the school district's cost for the past contract year at the hourly wage rate paid for the last half of the contract year - January 1981 to July 1981. The school district objected to the above union proposal because of questions about the number of hours each employee may have worked and questions about other figures. The parties never did reconcile their differences or agree to the cost of the last collective bargaining agreement. In light of the above objections the union withdrew the above proposals and submitted the following proposals:

Union Proposal 5-6-81 1:45 pm

8% of the average salary in each classification, PLUS

\$45.00 per months BONUS not applied to the base, to be paid on a monthly and hourly pro-rated basis.

Both of the above to be effective July 1, 1981

ADDENDUM "A"

SALARY SCHEDULE

BUSINESS OFFICE

<u>JUNE 1981 SALARY</u>		<u>JULY 1, 1981 - 1982 SALARY</u>
\$5.75		\$5.80
\$5.75		\$5.80
\$4.75	\$5.10 average	\$5.34
\$5.00		\$5.34
\$4.25		\$5.26

CLERICAL I

\$4.65		\$4.70
\$3.75		\$4.34
\$4.00	\$4.10 average	\$4.34
\$3.75		\$4.34
\$4.50		\$4.55
\$4.00		\$4.34

CLERICAL II

\$3.50		\$3.97
\$4.05		\$4.10
\$4.00		\$4.08
\$3.75		\$3.97
\$4.15	\$3.72 average	\$4.20
\$3.75		\$3.97
\$3.50		\$3.97
\$3.50		\$3.97
\$3.50		\$3.97
\$3.50		\$3.97

One year contract

(JOINT EXHIBIT III).

Later, the union submitted a third proposal as follows:

9:40 pm 5-6-81

Union Counter Proposal (package)

Union can agree to School Dist. counter proposal 5-6-81, Article XVI

ok ok Union can agree to school Dist. counter for Travel expense  
5-13-81 Withdraw Holdiay proposal  
RSC SD Retain Life Insurance proposal

ok ok Retain Union Security Proposal  
5-13-81 Withdraw Health Insurance Contribution increase, retaining the  
RSC SD current \$35.00

ok Withdraw proposal for increased longevity payments, retaining present  
5-13-81 longevity  
SD  
ok RSC  
5-13-81

. . . . .

UNION PROPOSAL - 12/3 % total

ADDENDUM "A"  
SALARY SCHEDULE

BUSINESS OFFICE

current salary		proposed salary	
\$5.75		\$5.85	
\$5.75		\$5.85	
\$4.75	\$5.10	\$5.50	(9%)
\$5.00		\$5.50	
\$4.25		\$5.00	

CLERICAL I

current salary		proposed salary	
\$4.65		\$4.85	
\$3.75		\$4.50	
\$4.00	\$4.10 Average	\$4.50	(13%)
\$3.75		\$4.50	
\$4.50		\$4.85	
\$4.00		\$4.50	

CLERICAL II

current salary		proposed salary	
\$3.50		\$4.25	
\$4.05		\$4.25	
\$4.00		\$4.25	
\$3.75	\$3.72 Average	\$4.25	(15%)
\$4.15		\$4.25	
\$3.75		\$4.25	
\$3.50		\$4.25	
\$3.50		\$4.25	
\$3.50		\$4.25	
\$3.50		\$4.25	

one year contract

(JOINT EXHIBITS IV AND VII).

6. The third negotiation meeting was held on May 13, 1981 between the negotiation committees with the union membership present. Russell Carlson answered many questions of the union membership including the 10% - \$15,516 new dollar informational statement and the budget. With the exception of salaries, union security and life insurance, the parties disposed of all outstanding items by signing them off or withdrawing the proposed items.

In a union caucus, the union membership voted to reject the school district's offer of May 6, to resubmit the union's last proposal and to jointly request mediation. Russell Carlson stated that the school district could move another five or six cents per hour above the May 6th offer. Russell Carlson would not join the union in requesting mediation. Judy Rhinehart states that the School District offer at this point is \$15,516. Linda Keeler stated that the membership was not happy with the \$15,516 offer.

7. On July 15, 1981, a mediation session was held. The union made the following proposal:

2:20 p.m.  
ADDENDUM "A"

SALARY SCHEDULE

BUSINESS OFFICE

<u>JUNE 1981 SALARY</u>		<u>JULY 1, 1981 - 1982 SALARY</u>		
10400 Total hrs. - average hours	2080			
2080 hrs. \$5.75	25¢	6.00	5.20	
2080 hrs. \$5.75 \$5.10 average	25¢	6.00	5.20	average 5.53

2080 hrs. \$4.75	50¢	5.25	10.40	average 43¢
2080 hrs. \$5.00	30¢	5.30	6.24	
2080 hrs. \$4.25	85¢	5.10	17.68	
ave. \$10,608 x 5 = \$53,040 total cost			44.72	

CLERICAL I

11593.98 total hrs. - average hours 1932.33				
1784 hrs. \$4.65	25¢	4.90	446	
2080 hrs. \$3.75	75¢	4.50	1560	
2080 hrs. \$4.00 \$4.10 average	50¢	4.50	1040	average 4.63
2080 hrs. \$3.75	75¢	4.50	1560	average 53¢
1666 hrs. \$4.50	40¢	4.90	666.40	
1904 hrs. \$4.00	50¢	4.50	952	
Ave. \$7,922.55 x 6 = \$47,535.32 total cost			6224.40	

CLERICAL II

14327 Total hours - average hours 1432.7				
1784 hrs. \$3.50	50¢	4.30	1427.20	
1561 hrs. \$4.05	25¢	4.30	390.25	
1561 hrs. \$4.00	30¢	4.30	468.30	
1561 hrs. \$3.75	55¢	4.33	858.55	
576 hrs. \$4.15 \$3.72 average	25¢	4.40	144	average 4.31
1784 hrs. \$3.75	55¢	4.31	981.20	average 59¢
1218 hrs. \$3.50	80¢	4.30	974.40	
714 hrs. \$3.50	80¢	4.30	571.20	
1784 hrs. \$3.50	80¢	4.30	1427.20	
1784 hrs. \$3.50	80¢	4.30	1427.20	
Ave. \$5,329.64 x 10 = \$53,296.40 total cost			8664.50	

Union Figures \$153,871.72 + Longevity \$4,290 = \$158,161.72  
 19,365.90 overall ave. 53¢  
 School Dist. Figures \$155,962.53 x 10% = ?\$15,516  
 One year contract

(JOINT EXHIBIT V).

The School District responded by rejecting union security and the life insurance proposals plus restating that the school has \$15,516 and saying "that's all the unions going to get." The mediator communicated to the union the above is management's last and final offer.

After a lengthy union caucus, the union made the following proposals:

Union proposal - package	7-15-81
Withdraw union security and life insurance	6:15 pm
	agreed 6:26 p.

ADDENDUM "A"  
SALARY SCHEDULE

BUSINESS OFFICE

	<u>JUNE 1981 SALARY</u>		<u>JULY 1, 1981 - 1982 SALARY</u>
10400 Total hrs. - average hours 2080			
2080 hrs. \$5.75	.15	-	5.90

2080 hrs. \$5.75	\$5.10 average	.15	-	5.90
2080 hrs. \$4.75		.29	-	5.04
2080 hrs. \$5.00		.29	-	5.29
2080 hrs. \$4.25		.52	-	4.77
ave.	\$10,608 x 5 = \$53,040 total cost			\$2,912

CLERICAL I

11593.98 total hrs. - average hours	1932.33			
1784 hrs. \$4.65		.30	-	4.95
2080 hrs. \$3.75		.55	-	4.30
2080 hrs. \$4.00	\$4.10 average	.40	-	4.40
2080 hrs. \$3.75		.55	-	4.30
1666 hrs. \$4.50		.25	-	4.75
1904 hrs. \$4.00		.40	-	4.40
Ave.	\$7,922.55 x 6 = \$47,535.32 total cost			\$4,773.30

CLERICAL II

14327 Total hours - average hours	1432.7			
1784 hrs. \$3.50		.80	-	4.30
1561 hrs. \$4.05		.25	-	4.30
1561 hrs. \$4.00		.30	-	4.30
1561 hrs. \$3.75		.55	-	4.30
576 hrs. \$4.15	\$3.72 average	.20	-	4.35
1784 hrs. \$3.75		.55	-	4.30
1218 hrs. \$3.50		.80	-	4.30
714 hrs. \$3.50		.80	-	4.30
1784 hrs. \$3.50		.80	-	4.30
1784 hrs. \$3.50		.80	-	4.30
Ave.	\$5,329.64 x 10 = \$53,296.40 total cost			7815.55

Union Figures \$153,871.72 + Longevity \$4,290 = \$158,161.72  
15,504.85

School Dist. Figures \$155,962.53 x 10% = ?\$15,516  
One year contract 15,596.25

(JOINT EXHIBIT VI).

Sharon Donaldson, union field representative, presented the above proposal to Russell Carlson in the presence of the negotiating committee and the mediator but not Hugo Andersen. Russell Carlson stated that if the proposal costed out and there is no problem, we have a tentative agreement. Union witness, Linda Keeler and Judy Rhinehart both stated that Russell Carlson stated if the proposal costed out or the proposal looks fine but we have cost it out. The union representative at the hearing tried in redirect testimony to secure a statement that the tentative agreement was not subject to the cost out of the school district. I give credibility to the witnesses first statement less the coaching of the union representative.

The tentative agreement was given to Hugo Andersen the next

day to cost out. The tentative agreement was not signed by the parties. The union secured permission to use the conference room in the Robins School for a union contract ratification meeting to be held the next evening.

8. At about 3:40 pm on July 16, 1981 Russell Carlson bypassed two other members of the union negotiating committee and asked Linda Keeler if Sharon Donaldson would be in to see him in the morning. Russell Carlson said he had to see her. The conversation continued with Russell Carlson stating that the tentative agreement (union proposal, joint exhibit VI) did not cost out correctly. Linda Keeler stated that Russell Carlson's assessment was not correct because the union had checked and rechecked their proposal. Russell Carlson pointed out that the union did not take into account the fact that the employees were paid at a 7% raise for the first half of the last contract year and a 11% raise for the second half of the last contract year. When Linda Keeler reiterated that Russell Carlson's assessment was not correct, Russell Carlson directed Linda to Hugo Andersen's office. Linda Keeler classifies the statements as conversation. Linda Keeler, Judy Rhinehart and Gloria Horab met with Hugo Andersen in the board room of Robins School. With calculations on the blackboard, Hugo Andersen explained to Keeler, Rhinehart and Horab that the tentative agreement cost out was \$18,315.00 not \$15,504.85 as the union figured. At the beginning of the explanation, the ladies did not understand the school district's cost out and the ladies had no knowledge that the school district had prorated their last contract raise. Hugo Andersen confirmed the above lack of understanding and knowledge. Hugo Andersen gave the ladies the following cost out:

	HRS.	PAY	YEARLY
Snow	2080	5.90	12,272
Seely	2080	5.90	12,272
Rhinehart	2080	5.04	10,484
Horab	2080	5.29	11,004
Ambler	2080	4.77	9,922
	10,400		55,954 - 1981 - 1982
			51,490 - 1980 - 1981
			4,464 Increase

Keeler	2080	4.95	10,296	
Warrington	1904	4.30	8,188	
Harelton	2080	4.40	9,152	
Snoddy	2080	4.30	8,944	
George	1666	4.75	7,914	
Bult	1784	4.40	7,850	
			<u>52,344</u>	- 1981 - 1982
			<u>46,805</u>	- 1980 - 1981
			<u>5,539</u>	Increase
Remus - Dorcheus	1784	4.30	7,672	
Nord	1784	4.30	7,672	
Grant	1784	4.30	7,672	
Wagner	1784	4.30	7,672	
Kuka	1561	4.35	6,791	
Sheldon	1561	4.35	6,713	
Hanson	1561	4.30	6,713	
Gehlin	714	4.30	3,071	
Stockdill	1218	4.30	5,238	
Real World Sec	576	4.30	2,477	
Hofeltdt			<u>61,691</u>	- 1981 - 1982
			<u>53,379</u>	- 1980 - 1981
			<u>8,312</u>	Increase

\$18,315 new dollars needed to fund these salaries.

= 18,316 (if using real figure)  
 169,999 = 15,516 (if paid at new rate all yr.)

(JOINT EXHIBIT VIII).

Sharon Donaldson along with Judy Rhinehart called Hugo Andersen who provided the same information.

Hugo Andersen states that calculations contained on the tentative agreement (Union proposal, Joint Exhibit VI) are correct. The differences between the tentative agreement and the school district's cost out (Joint Exhibit VIII) are the prorated raises for the last contract year.

9. On July 17, 1981, a meeting was held between Russell Carlson and the union negotiating committee. Russell Carlson stated, among other things, that the tentative agreement reached in mediation did not cost out within the \$15,516 new dollars he had to spend; that he did not intend to honor the tentative agreement reached in mediation because the tentative did not cost out; and that he would not take the tentative agreement to the school board. The union stated, among other things, that the school district's cost out figures were incorrect; that the tentative agreement was \$11.00 less than \$15,516, and that the union was totally surprised

by this prorated cost out.

10. Union witnesses Linda Keeler, Judy Rhinehart and Kathy Sheldon all stated that they were never informed that the negotiations were being conducted on any other wage base than the wage rate paid January 1981 through June 1981. Management witness Hugo Andersen states that the union was never informed that negotiations were being conducted on a prorated base or reduced base or an average base wage rate. Both Judy Rhinehart and Linda Keeler stated that at no time did any school district official inform them that they would only be negotiating from the January 1981 through June 1981 wage base. Union witness Kathy Sheldon states that the School District never made any commitment at any time to negotiate only from the January 1981 - June 1981 wage rate. Hugo Andersen states the school district never intended to negotiate from the January 1981 - June 1981 wage rate.

Hugo Andersen was not sure when the school district made an increased salary offer above the May 6 offer.

11. Union witness Gloria Horab states that teachers aides and two secretaries received two different wage rates in the 1980-81 year; and that the wage raise for the employees was not based on a prorated wage base. Therefore, the teachers aides and secretaries received the full 10% increase. Gloria Horab presented a four page document, union exhibit #3 which contains:

(Page 1) Initial employment records of a Donaldson Hall teachers aide being paid at \$3.10 per hour wage rate,  
(Page 2) Employment contract for a Donaldson Hall teachers aide from August 1980 to June 1981 at a wage rate of \$3.10 per hour,  
(Page 3) An amendment to the above 1980-81 employment contract of a Donald Hall teachers aide contract which changes the hourly wage rate from \$3.10 per hour to \$3.45 per hour effective January 1981 to June 1981, and  
(Page 4) an employment contract for a Donaldson Hall teachers aide from August 24, 1981 to June 1982 at \$3.795 per hour wage rate.

Hugo Andersen states that the Donaldson Hall teachers aide position is one of several federally funded positions in the school district, that the federal minimum wage changed to \$3.35 per hour wage rate effective January 1, 1981; that the school district

must comply with the federal minimum wage if federal funds are involved; and that the teachers aides are not represented by a collective bargaining agent.

## I. DISCUSSION

1. The first count of the union's unfair labor practice states:

### COUNT I

July 15, 1981, Montana State Council #9, American Federation of State, County and Municipal Employees, Local #336, Clerical Workers of Havre, Montana School District 16 and A, entered into Mediations in the Negotiation process with Dr. Russel S. Carlson, Superintendent of Schools, the Bargaining Agent for Havre School District 16 and A.

Throughout negotiations, when salary increases were discussed by both parties the current salary was used to base proposals and counterproposals on. In each instance where written proposals were exchanged, the current salary of the group was written or typed on the proposals of both the Union and the School District. During Mediations the School District made an offer of \$15,516.00 to be distributed as the Union Negotiating Committee saw fit to establish equity in pay within the various Classifications, so long as it was reasonable.

The Union went into caucus and worked up the distribution of the offered dollars, reduced it to writing and presented it to the School District's Bargaining Agent, Dr. Russel S. Carlson. The total amount of dollars in the Union's proposal was \$15,504.85, \$11,15 less than the amount of money offered by the School District. Tentative agreement was reached at the negotiating table at approximately 6:30 p.m.

July 16, 1981, Representatives of the School District said that they would not honor the agreement reached through Mediations on July 15, 1981.

The above stated facts are accurate but fail to give a complete picture. This statement is based on the fact, for example, that three witnesses stated that Russell Carlson repeatedly said the school district was willing to pay \$15,516 new dollars which is not reflected above.

In reviewing and enforcing a bad faith bargaining order the 5th Circuit Court of Appeals in NLRB v. Herman Sausage Co. 275 F.2d 229, 45 LRRM 2829, 1960, viewed bad faith bargaining cases as follows:

The heart of this type of case [bad faith bargaining] is the fact question of good faith. To be sure, since it is seldom capable of patent demonstration and good or bad faith flows from the way in which subtle and elusive factors are treated, we must, as we do in [NLRA Section] 8(a)(3) discharge cases, make certain that the record actually and substantially supports the charge. . .

Probably in few other instances is the task of judging so difficult. Of this we have remarked before that "there is a duty on both sides, though difficult of legal enforcement, to enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement \* \* \*." *Globe Cotton Mills v. NLRB*, 5 Cir., 1959, 103 F.2d 91, 94, 4 LRRM 621. Perhaps it would have been more accurate to say "difficult of legal determination" for once the decision is made, the sanctions of the Act are undoubted potent, swift, and adequate. The truth is that objective standards are generally either unavailable or unavailing. And conduct done at one time judicially ascertained to manifest good faith, may, under other circumstances, be a mere pretense.

In the very process of bargaining, both the statute by its plain terms and the Court decisions affirm that the making of the labor agreement is not for either Board or Court. The Act spells this out by providing that the mutual good faith "obligation does not compel either party to agree to a proposal or require the making of a concession. \* \* \*." Again, as in somewhat analogous problem of [NLRA Section] 8(a)(3), discriminatory discharges, the employer may have either good or bad reasons, or no reasons at all, for insistence on the inclusion or exclusion of a proposed contract term. If the insistence is genuinely and sincerely held, if it is not mere window dressing, it may be maintained forever though it produce a stalemate. Deep conviction, firmly held and from which no withdrawal will be made, may be more than the traditional opening gambit of a labor controversy. It may be both the right of the citizen and essential to our economic legal system, thus far maintained, of free collective bargaining. The Government, through the Board, may not subject the parties to direction either by compulsory arbitration or the more subtle means of determining that the position is inherently unreasonable, or unfair, or impracticable, or unsound.

The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained. It does not permit the Board, under the guise of finding of bad faith, to require the employer to contract in a way the Board might deem proper. Nor may the Board " \* \* \* directly or indirectly, compel concessions or otherwise sit in judgment upon substantive terms of collective bargaining contracts, \* \* \*" for the Act does not "regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement." *NLRB v. American National Ins. Co.*, 1952, 343 U.S. 395, 402, 404, 72 S.Ct. 824, 96 L.Ed. 1027, 1036, 1037, 30 LRRM 2147, affirming *American National Ins. Co. v. NLRB*, 5 Cir., 1951, 187 F.2d 307, 27 LRRM 2405.

On the other hand while the employer is assured these valuable rights, he may not use them as a cloak. In approaching it from this vantage, one must recognize as well that bad faith is prohibited though done with sophistication and finesse. Consequently, to sit at a bargaining table, or to sit almost forever, or to make concessions here and there, could be the very means by which to conceal a purposeful strategy to make bargaining futile or fail. Hence, we have said in more colorful language it takes more than mere "surface bargaining," or "shadow boxing to a draw," or "giving the Union a runaround while purporting to be meeting with the Union for purpose of collective bargaining."

Surface bargaining - totality of conduct is the catchall of the NLRA's section 8(a)(5) cases which states: "It shall be an unfair labor practice for an employer. . . .to refuse to bargain collectively with a representative of his employees. . . ." (29 U.S.C. Section 158(5)). *Montana's Collective Bargaining for*

Public Employees Act has an equivalent section which states "It shall be an unfair labor practice for a public employer to. . . . refuse to bargain collectively in good faith with an exclusive representative." (Section 39-3-401(5) MCA). Because of the parallel of the above two acts, the Board of Personnel Appeals looks to the NLRA for guidance in interpreting the Montana Act.

Surface Bargaining-totality of conduct includes such areas as but not limited to:

- a. Sufficiency of the company's counterproposal,
- b. Dilatory or evasive tactics,
- c. Inconsistent position taking and/or withdrawal of offers or concessions, and
- d. Misrepresentation or concealment of facts by an employer.

In the area of sufficiency of the company's counterproposals, the NLRB found that Deena Artware, Inc., 86 NLRB No. 124, 24 LRRM 1675, 1949, violated section 8(a)(5) of the NLRA by making an insufficient counterproposal. The NLRB stated: "In response to the union's definite wage proposal, . . . . [management] orally offered a wage schedule which was so incomplete and complex that even other members of the management committee could not agree at the hearing as to its broad aspects." (At 24 LRRM 1676). The 6th Circuit Court of Appeals enforced the above portion of the NLRB order. (198 F.2d 645, 30 LRRM 2479, 1952).

Using the above case as a yardstick, did the school board offer contain adequate information on what the school board was offering? Looking at the following facts: (1) With two union witnesses and a management witness, all stating that Russel Carlson said \$15,516 new dollars; (2) With two union witnesses stating that throughout negotiations Russel Carlson repeatedly stated the maximum new dollars the school board would approve is \$15,516; (3) by costing out management's May 6th offer and multiplying the proposed hourly wage rate by their respective hours listed on

management's cost out of the union's first proposal (management exhibit B, page two), you produce a total cost to the school district of \$165,375.50 in wages; by subtracting the wage cost of the last contract year (\$151,672.53, management exhibit B, page one) from the new proposed wage cost of management's proposal (\$165,375.50) the school district's proposal produces a new dollars cost of \$13,702.97; (4) By increasing the School District's offer of May 6 by 5¢ per hour for all employees as stated on May 13, the new wage proposal would produce a new cost to the school district of \$15,519.02 which is \$3.02 above the \$15,516 new dollars maximum cost; and (5) on May 13th the union membership questioned Russell Carlson about but not limited to, the \$15,516 - roughly 10% new dollars statement, I believe the school district's offer contains sufficient information to adequately judge its value.

In Allis Chalmers Manufacturing Co. 106 NLRB No. 151, 32 LRRM 1585, 1953, the NLRB found the employer had engaged in dilatory or evasive tactics and violated section 8(a)(5) by failing to give the union a complete picture of the employer's contract proposal until more than a year after the union had presented its own proposal. The 7th Circuit Court of Appeals denied enforcement of other parts of the NLRB order. (213 F.2d 374, 34 LRRM 2202, 1954).

With the School District making a contract proposal some nine days after the union made their first contract proposal, with the School District informing the union that the maximum new dollar increase the school district would approve is \$15,516 and with the School District stating that any increase in insurance, holidays, longevity and/or other benefits would come out of the \$15,516 new dollars, I find the School District was neither dilatory or evasive in its dealings with the union.

Looking at inconsistent position taking and/or withdrawal of offers or concessions, the 5th Circuit Court of Appeals in NLRB v.

Herman Sausage Co., supra, agreed that the employer violated section 8(a)(5) of the NLRA. The employers. . . "main thesis was the need for comparative, competitive equality with Lyles [the competitor]. When that was offered, the employer then shifted to some new - absence of Saturday overtime, and no check off." (At 45 LRRM 2831). The 7th Circuit Court of Appeals in NLRB v. Hibbard, 273 F.2d 565, 45 LRRM 2459, 1960, stated:

The Board, found that Respondent's actions, through more than a year of purported bargaining, have been marked by evasiveness, deliberate delay, re-opening of discussion of points on which agreement had been reached, and insistence on new and different proposals patently unacceptable. For example, when negotiations appeared to be reaching a conclusion, Respondent's suddenly established a wage incentive system without consulting the Union, and proposed a ten-year contract with a minimum wage five cents over the Fair Labor Standards Act national minimum with no re-opening clause. When the Union agreed to a five-year contract, renegotiable on wages after three years, then Respondent demanded a five-year "no strike" provision. . . . (at 45 LRRM 2460).

Using the above cases for guidance I find no evidence that the School District made any switch in any positions. At the May 6th meeting, Russell Carlson indicated the School District would approve a maximum increase cost for the collective bargaining contract of \$15,516 new dollars. At the meeting held on July 17 and throughout negotiations, Russell Carlson stated the same. I also find the School District never made any commitment to negotiate from the January 1981-June 1981 base when the parties were negotiating the first contract or negotiating a renewal contract. Therefore the School District never switched negotiation bases. Some question was raised during the hearing that the School District, after the fact, put the cost out condition on the tentative agreement. For the reasons stated in finding number 7, I find the School District did not switch positions on the cost out of the tentative agreement.

In the area of misrepresentation or concealment of facts, the 7th Circuit Court of Appeals in NLRB v. My Stores, Inc. 345 F.2d 494, 58 LRRM 2775, 1965, agreed that the employer violated section 8(a)(5) of the NLRA. The employer had refused ". . . to bargain

on wages based on a job classification on the grounds that there were none, when the respondent's records show otherwise." (At 58 LRRM 2777). The 5th Circuit Court of Appeals in NLRB v. Mayer Bros., Inc. 383 F.2d, 242, 66 LRRM 2031, 1967, enforced and modified a finding that the employer violated section 8(a)(5) of the NLRA by misleading the union into believing that the complete terms of a collective bargaining contract had been agreed upon. But in Mount Hope Finishing Co. v. NLRB 211 F.2d 365, 33 LRRM 2742, 1954, the 4th Circuit Court of Appeals set aside and denied enforcement of an NLRB order on the grounds that the NLRB order lacked substantial evidence. The order had found the employer violated section 8(a)(5) of the NLRA by misleading the union into believing that the plant shut down was temporary rather than permanent.

Did the School District mislead the union? By comparing the listed number of hours worked for each employee in management's cost out of the union's first proposal (management exhibit B, page two)

TO

Union's proposal of July 15th, 2:20 p.m. (Joint Exhibit V)

TO

Union's proposal of July 15th, 6:15 p.m. (Joint Exhibit VI)

TO

Management's cost out of the tentative agreement (Joint Exhibit VII), I find no difference in the number of hours listed. The only difference I can find is comparing the above to the union's proposal of May 6th (management's exhibit A). Because the union's proposals made after May 6th have the same listed number of hours worked in union's proposals of July 15th, 2:20 p.m. and July 15th, 6:15 p.m. as does the two management's cost out, I can only believe the parties were able to reconcile any disagreement over the number of hours worked. Therefore, the union was not misled during negotiations as a whole on the number of hours

worked by each employee.

By comparing the total salary (\$151,672.53) plus longevity (\$4,290, totalling \$155,962.53) from management's cost out of the old contract.

TO

Russell Carlson's informational statement of May 6th of \$155,962.53 total wage and longevity cost.

TO

The union's proposal of July 15th, 2:20 p.m. which states "School District's figures,  $\$155,962.53 \times 10\% = ?\$15,516$ "

TO

The union's proposals of July 15th, 6:15 p.m. which also states "School District's figures,  $\$155,962.53 \times 10\% = ?\$15,516$ ", I can conclude the School District did provide the union with information on which the School District was basing its negotiations. In arriving at this conclusion I have taken into full account the fact that the union never saw the School District's cost out of the old contract (management exhibit B). But I'm fully aware of the fact that the School District did inform the union of the cost out figures of \$155,962.53 at the second negotiations meeting held May 6th.

The last question in this area is, did management mislead the union by negotiating from a prorated base? When I balance the fact that all the witnesses stated that the union was not informed that the school district was working from a prorated wage base or total cost of the old contract and the fact that all witnesses agree that all proposals were presented with the January 1981 - June 1981 base wage listed

AGAINST

The fact that Russell Carlson informed the union that the old contract's total wage and longevity cost was \$155,962.53; the fact that Russel Carlson repeatedly stated the school board would

approve \$15,516 new dollar costs; the fact that the union offer of May 6th (management Exhibit A) was made in present total cost figures of \$152,205.60; the fact that the parties never agreed to which base they were to work from in the future; and the fact that the two union offers of July 15th, which both contained the union's cost out figures of \$153,871.72 and management's cost out figures of \$155,962.53 illustrates that the parties never agreed to the cost of the old contract; I cannot conclude by the preponderance of the evidence that the school district misled or hid facts from the union.

But this conclusion and the immediately preceding conclusion does not come without some deep thoughts to the fact that the record is silent on such questions as: Did the union ask management how they arrived at \$155,962.53 cost figures or did the union ask management how they arrived at that cost figure and management refused to answer or did the union ask management how they arrived at that cost figure and the union chose not to use that figure. If the union asked these questions, the union could have quickly understood that management was working from a prorated base or a total cost of the old contract base. This hearings examiner believes that the above questions are not an unreasonable set of questions to expect a union to ask and management to answer. The union representative has argued that the union could have understood how the school district was basing its negotiations and the new tentative agreement by seeing a copy of the school district's budget. I cannot perceive how the union would have arrived at this answer on how the School District was costing out negotiations by reviewing the budget.

The school district, by working from a total cost of the old contract or a prorated base instead of the current cost, is minimizing the effect of a mid-contract raise or last month of the contract raise or the last day of the contract raise or back end loading.

This is not an unfair labor practice as long as management conduct is fair.

This hearing examiner fully realizes that in considering this type of a charge he should not substitute his judgment of what he thinks a fair offer is for the offers of one or both of the parties. Also, this hearing examiner fully realizes that he is not to substitute his twenty/twenty hindsight and/or substitute his possible expertise to bail out one or the other party from a tough, good faith bargaining situation. The hearing examiner is only to judge the conduct of the parties. In this case I would not use these negotiations as an illustration of good or ideal negotiations because of the conduct of one or more of the parties. I do find the fact that the tentative agreement was not signed off like the agreements of May 13 (Joint Exhibits IV & VII) and the fact that the management proposal of May 13 was not in writing, both contrary to the Ground Rules for negotiation, as not controlling in this matter.

2. The second count of the union's unfair labor practice charge is based on the meeting between Linda Keeler and Russel Carlson on July 16th at about 3:40 p.m. The charge specifically states:

COUNT II

The School District Representatives failed to contact the Certified, Exclusive Bargaining Agent for the Union, to discuss the changes the School District is attempting to make after agreement had been reached.

The School District fully admits to the meeting but argues it is not an unfair labor practice. With the fact that Linda Keeler was the chairman of the 1980-81 negotiating committee, with the fact Linda Keeler is a member of the 1981-82 negotiating committee, with the fact that Linda Keeler characterized the meeting as conversation, with the fact that the union was holding its contract ratification meeting later in the day and with the fact Russel Carlson went past two members of the negotiating committee to speak to Linda Keeler, I again look to the NLRB for guidance. I

read the charge as a complaint because management failed to contact the union's chief bargaining representative, Sharon Donaldson, field representative. The District of Columbia Circuit Court of Appeals in Safeway Trails, Inc. v. NLRB, 102 LRRM 2328, 1979, enforced an NLRB order of refusing to bargain in good faith where the employers away-from-the-table conduct was aimed at undermining and circumventing the authorities of the union's chief bargaining representative. The Circuit Court of Appeals cited the General Electric, 150 NLRB 192, 57 LRRM 1491 1964, case which states:

for an employer to mount a campaign. . .for the purpose of disparaging and discrediting the statutory representative in the eyes of its employee constituents, to seek to persuade the employees to exert pressure on the representative to submit to the will of the employer, and to create the impression that the employer rather than the union is the true protector of the employees' interests.

(At 102 LRRM 2329).

Because Linda Keeler is part of the union negotiating committee, because of the time factor with the upcoming union meeting, because of the classification of the meeting as conversation, and because there is no fact that the School District was trying to leave the impression that the employees would be better off without the union, I find no violation of Montana's Collective Bargaining Act. I give no value to the fact that Russell Carlson bypassed two members of the negotiating committee to speak with Linda Keeler.

3. The third count of the union's unfair labor practice charge states:

#### COUNT III

Last year agreements were reached with other School District employees that were similar to the agreement made with AFSCME, again this year other agreements made are similar to the agreement made with AFSCME, except, the School District is basing the other employee's salary increases on their existing base salary, but are now saying that the Clerical employees base salary is to be pro-rated to a lesser amount before the increase is to be applied.

The School District admits paying some employees by a different formula than the clerical union members.

Looking at the facts set forth in finding No. 11, and because the union sets forth no authority or case law to support its

contentions and because this hearing examiner is unable to find any authority or case law which states that one employer has to pay all groups of employees, union and non-union, by the same pay rate formula, I find no violation of the Collective Bargaining Act.

### III. CONCLUSIONS OF LAW

For the reasons stated above, a conclusion of law finding no violation of Montana's Collective Bargaining for Public Employees Act, Section 39-31-101 seq. MCA is in order.

### IV. RECOMMENDED ORDER

I recommend that unfair labor practice charge 30-81 against Havre School District #16 and A, Havre, Montana be dismissed.

Dated this 17<sup>th</sup> day of May, 1982.

BOARD OF PERSONNEL APPEALS

By   
RICK D. HOOGE  
Hearings Examiner

NOTE: As stated in the rules for the Board of Personnel Appeals, the parties shall have twenty calendar days to file a written exception to this recommended order. If no exceptions are filed, this recommended order will become the full and final order of the Board of Personnel Appeals.

### CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of this document was mailed to the following on the 18<sup>th</sup> day of

May, 1982:

American Federation of State,  
County and Municipal Employees  
600 North Cooke Street  
Helena, Montana 59601

Joan Richardson  
Chairman of School Board  
Havre School District #16 and A  
P.O. Box 791  
Havre, Montana 59501

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

PAD2:B

