

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE 42-81

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

Complainant,

vs.

HONORABLE L. C. ALLEN, MAYOR OF
GLENDIVE and ALL REPRESENTATIVES
THEREOF,

Defendant.

* * * * *

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

* * * * *

American Federation of State, County and Municipal Employees (Union, AFSCME) filed an unfair labor practice charge against the Honorable L.C. Allen, Mayor of Glendive and all representatives thereof (City) alleging that the City refused to comply with the settlement reached and failed to execute an agreement embodying the settlement reached. 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 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

1 v. District Court of the Eleventh Judicial District, 598
2 P.2d 1117, 36 State Reporter, 1531, 1979; Teamsters Local 45
3 v. Board of Personnel Appeals and Stuart Thomas McCarvel,
4 635 P.2d 1310, 38 State Reporter 1841, 1981).

5 At the hearing held February 9, 1982, the parties
6 stipulated that the Defendant is a public employer as defined
7 by the Collective Bargaining Act; that the Complainant is a
8 labor organization as defined by the Collective Bargaining
9 Act; and that the Board of Personnel Appeals has jurisdiction
10 of this Complaint.

11 I. FINDINGS OF FACT

12 After a thorough review of the testimony, exhibits,
13 post-hearing briefs and reply brief, I make the following
14 findings of fact:

15 1. The July, 1980 - June, 1981 collective bargaining
16 agreement between the parties contained the following relevant
17 article;

18 Article XVI - Health Safety and Welfare

19

20 B. Health and/or Accident Insurance - The Employer
21 shall pay the full premium of such insurance for
22 each employee desiring such coverage for himself
23 and/or his dependents. There shall be no reduction
24 of group insurance coverage, however, the group
25 insurance coverage may be increased or insurance
26 carriers may be charged with approval of the
27 Glendive City Council

(Joint Exhibit V)

28 The relevant sections of Montana statute in this dispute
29 are:

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31 2-18-702. Group insurance for public employees and
32 officers. (1) All counties, cities, towns, school
districts, and the board of regents shall upon approval
by two-thirds vote of their respective officers and
employees enter into group hospitalization, medical,
health, including long-term disability, accident,
and/or group life insurance contracts or plans for the
benefit of their officers and employees and their
dependents.

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7-32-4117. Group insurance for policemen - funding.
(1) Cities of all classes, if they provide insurance
for other city employees under Title 2, chapter 18,
part 7, shall:

(a) provide the same insurance to their respective
policemen;

(b) notwithstanding Title 2, chapter 18, part 7,
pay no less than the premium rate in effect as of July,
1980, for insurance coverage for policemen and their
dependents;

(c) provide for collective bargaining or other
agreement processes to negotiate additional premium
payments beyond the amount guaranteed by subsection
(1)(b).

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Compiler's Comments

1981 Amendment: Substituted the requirement that
cities are to pay no less than the premium rate in
effect as of July 1, 1980, for insurance coverage for
policemen and their dependents for the requirement that
cities pay 100% of the premium for insurance coverage
for each policeman and his dependents in (1)(b); added
subsection (1)(c).

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7-33-4130. Group insurance for firefighters - funding.
(1) Cities of the first and second class, if they
provide insurance for other city employees under Title
2, chapter 18, part 7 shall:

(a) provide the same insurance to their respective
firefighters;

(b) pay no less than the premium rate in effect
as of July, 1980, for insurance coverage for firefighters
and their dependents notwithstanding Title 2, chapter
18, part 7;

(c) provide for collective bargaining or other
agreement processes to negotiate additional premium
payments beyond the amount guaranteed by subsection
(1)(b).

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Compiler's Comments

1981 Amendment: Substituted the requirement that
first- and second-class cities are to pay no less than
the premium rate in effect as of July 1, 1980, for
insurance coverage for firefighters and their dependents
for the requirement that cities pay 100% of the premium
for insurance coverage for each firefighter and his
dependents in (1)(b); added subsection (1)(c).



1 4. A few days before June 26, 1981, at the fire hall,
2 a meeting was held between a few city workers, city depart-
3 ment heads, city elected officials, and two health insurance
4 group representatives - Blue Shield, Blue Cross. Mr. Wilber
5 Wallace, Public Works Director, informed the department
6 heads of the insurance meeting. The department heads were
7 instructed to inform the city workers of the insurance
8 meeting. Very few city workers attended the insurance
9 meeting. The representatives of Blue Shield and Blue Cross
10 presented their respective plans and cost. Shirley L. Mohr,
11 City Clerk, stated that the concept of the employees paying
12 part of the insurance premiums or all of the increase in
13 insurance premiums was not talked about at this meeting.
14 Mr. Mike Cash, City Worker/Meterman, stated that who paid
15 for the increased insurance costs was not an issue at this
16 meeting.

17 5. Before the special meeting of the City Council on
18 June 26, 1981, the Mayor had conversations first with a
19 person or persons from the Fire Department, second with a
20 person or persons from the Police Department, and finally
21 with Jim Hyatt, Vice President of AFSCME Union Local 852 and
22 Chairman of the negotiating committee, from the City crew.
23 The Fire and Police representatives both stated they will go
24 along with whichever insurance plan a majority of the employ-
25 ees preferred. During the conversation with Mr. Hyatt,
26 which took place at the City Shop area, Mr. Hyatt told the
27 Mayor that it sounded like the employees would go with Blue
28 Cross insurance group. The Mayor communicated these conver-
29 sations to the City Council.

30 The minutes of the special City Council meeting reflect
31 the following:

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Purpose of the meeting to determine which Hospitalization program for fiscal year 1981-1982.

Discussion was had to determine between Blue Shield or Blue Cross. Rates proposed are as follows:

	<u>BLUE SHIELD (NEW)</u>	<u>BLUE CROSS</u>	<u>BLUE SHIELD (OLD)</u>
Single	51.08	38.50	34.05
Couple	105.00	74.20	70.00
Family	122.27	90.95	81.51
Single over 65	20.76	28.90	16.83
Two party over 65	41.52	64.60	33.66

Majority of the employees favored Blue Cross. The past legislation passed a bill setting the maximum insurance premium which cities and towns have to pay as set last July, 1980. Whatever increase in premium could be paid by the cities and towns or negotiated when setting their salaries. Majority of the employees stated if the increase would reflect their salaries they would prefer Blue Cross with a less premium.

Motion by Kuester, second by Taylor and unanimously carried to award the insurance contract for Fiscal year 1981-1982 to Blue Cross as proposal was submitted.

(Joint Exhibit I).

At the City Council meeting some of the department heads and a few of the city workers were present. A majority of the city workers were not present. The department heads and city workers exercised an opportunity for public input at the City Council meeting. Mr. Hyatt stated that if the workers had to pay part of the insurance premiums, the workers would like Blue Cross because it would be cheaper; that to some extent there was an understanding on the part of the workers the City would have the workers pay part of the insurance premiums; and that he asked the Mayor if which insurance companies and who pays for the insurance was negotiable and the Mayor said "I don't know". Shirley L. Mohr could not recall any questions being asked of the Mayor as to the negotiability of which insurance companies or who pays the increased insurance premiums. Shirley L. Mohr and Mr. Hyatt both agree that the City employees and/or those



1 present at the City meeting did not vote on which insurance
2 they preferred. Shirley L. Mohr and Mr. Cash both agreed
3 that Mr. Hyatt was the spokesman but Mr. Hyatt stated he
4 could not speak for the Union membership. Mr. Cash adds
5 that Mr. Hyatt could not speak for the membership because
6 there was no meeting of the Union membership to formulate a
7 union opinion. When asked was the matter of deductions for
8 insurance premiums discussed, the Mayor answered "I do not
9 believe so."

10 6. A special meeting of the City Council was held on
11 July 27, 1981. The City Council minutes state the following:

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13 Budget was reviewed. Council directed Clerk to re-figure
14 all salaries at 10% and the additional hospitalization
premiums applied as payroll deductible.

15 (Joint Exhibit II).

16 Mr. Hyatt was present at the meeting but had no recall
17 of the above statement.

18 Unable to state with certainty because she does not do
19 the payroll, Shirley L. Mohr believes the City started
20 deducting the increased insurance premium cost from the July
21 or August paychecks of the workers. The City was informed
22 of the value of the tax mills about mid-July.

23 7. The August 17th meeting of the City Council minutes
24 reflect the following:

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26 AFSCME AFL-CIO #852 Nadeen Jensen representative for
27 AFSCME was present to finalize wage negotiations for
the crew. Mayor Allen stated the increase in wages for
28 the crew and all City Employees was 10%. He was aware
of their requesting a 10% increase for all employees.
29 The representative also inquired regarding the change
in language of the contract. Mayor Allen stated he was
30 not aware of any changes. She requested to meet with
the Union Employees and report back to the Council,
31 this was agreeable with the Council.

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MRS. JENSEN -- reported back to the council stating the
Union accepted the 10% increase in salaries as offered

1 plus adding a paragraph to Article #17 negotiations
2 with employer and employee to begin February, 1982.
3 Termination of Contract June 30, 1982. This was in
4 agreement with the Mayor and Council.
5 (Joint Exhibit III).

6 This was the second and final negotiations meeting of
7 the parties. Neither the Union nor the City Council presented
8 an insurance proposal. Shirley L. Mohr states that the City
9 did not point out at this meeting that the employees would
10 have to pay the increase in insurance premium cost. Mr.
11 Cash stated that when he left this meeting, he definitely
12 believed a verbal collective bargaining contract was approved
13 by both parties.

14 8. After the August 17th meeting, the Union prepared
15 copies of the new collective bargaining contract with the
16 changes that were agreed to at the August 17th negotiating
17 meeting. The new collective bargaining contract (AFSCME
18 Exhibit 1) contained the same Article XIV, B, as does the
19 old collective bargaining contract (Joint Exhibit V) and a
20 10% increase in wages in Wage Schedule Adendum "A". Both
21 Mr. Hyatt and the Mayor agree that the new collective bargain-
22 ing agreement was presented to the City. Mr. Hyatt stated
23 that the City would not sign the new collective bargaining
24 contract because of some proof reading problem in the insur-
25 ance article. Mr. Hyatt's statement is undisputed.

26 Shirley L. Mohr's assessment is that the City did not
27 believe the collective bargaining agreement had to be changed
28 to withhold insurance premiums from the employees' checks.
29 The Mayor's assesement is the same as Mohr's above plus the
30 City did not expect any changes in the collective bargaining
31 contract because the insurance premium cost was part of the
32 compensation or wage package.

9. The November 2, 1981 minutes of the City Council
reflect the following:

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2 UNION CONTRACT -- was discussed regarding the over-sight
3 in changing the language in the contract agreement for
4 1981-1982 that the employer pay full premium. The
5 language should have been changed to read the Employer
6 will pay the same premium as paid July, 1980. Any
7 increase in premium to be paid by the Employee. Mayor
8 Allen and the majority of the Council felt the Employees
9 were well aware that the increase in Insurance premiums
10 would not be paid by the City, and the increase in
11 premium would be borne by the the employee. Allen
12 Jimison was present representing the Union. Mayor
13 Allen asked Mr. Jimison if he felt the Employees were
14 aware that they were to pay the additional insurance
15 premiums prior to it being deducted from their salary.
16 He said he was not able to speak for the Union Employees,
17 that the Council should ask the union employees. The
18 Union felt the Contract was ratified when the representa-
19 tive appeared before the council accepting the 10%
20 increase and it was agreed that there was no change in
21 the language. Clerk Mohr checked in the previous
22 minutes reporting a Special Meeting on June 26, 1981 to
23 determine hospitalization between Blue Shield and Blue
24 Cross, which stated majority of the employees preferred
25 Blue Cross if it would reflect on their salaries, since
26 the premium would be less. A motion was then made to
27 award the hospitalization to Blue Cross. After consider-
28 able discussion, motion by Kuester to deny the Union's
29 request to pay the additional increase in hospitalization
30 insurance premium. Motion second by Taylor and unanimous-
31 ly carried.

(AFSCME Exhibit 2).

18 Shirley L. Mohr stated the meaning of "over-sight" is
19 that the City intended to alter the collective bargaining
20 agreement in reference to their insurance article.

21 10. The Mayor stated that he did not know if Nadiean
22 Jensen, the Union's Chief Negotiator, was ever told at
23 either meeting that the new insurance cost would be coming
24 out of the 10% increase. Shirley L. Mohr stated that she
25 cannot submit a statement that the Mayor or any agent of the
26 City ever told the Union that the employees would be paying
27 the increased insurance cost. Mr. Cash stated that he or no
28 one from the Union was ever informed by the City, the Mayor,
29 a Councilman or anyone representing the City that the employees
30 would be paying the increased insurance premium costs. When
31 Gerald Kuester was asked, do you know why the representative
32 of the Union was not told the employees would be paying the

1 increased insurance premium costs, he stated that, "We
2 thought the employees got 'the word' and they passed it on."
3 Mr. Kuester and Shirley L. Mohr both felt and stated that
4 the employees knew that they were to pay the increased
5 insurance premium cost.

6 II. DISCUSSION

7 The first question is, what was the offer?

8 By looking at Joint Exhibit III, we find the Mayor
9 stated the increase in wages was 10% with no language changes.
10 When looking at the meaning of an offer and when in doubt of
11 the offer's meaning, the offer should be interpreted against
12 the proposer of the offer. The City initially proposed a
13 10% wage increase. Using this principle, I cannot make the
14 logical jump to state that the 10% wage increase included
15 the paying of the increased insurance premiums by the employ-
16 ees because wages are wages. I know no other way of stating
17 such. Now, if the offer was a benefit package or wages and
18 benefits or total compensation or some variation thereof, I
19 could agree with the City. The above interpretation is also
20 in agreement with the November 2nd minutes of the City
21 Council. (AFSCME Exhibit 2).

22 Although I believe the employees knew that they were to
23 pay part of the costs (Mr. Hyatt's statement that there was
24 some understanding the workers were to pay part of the
25 insurance premiums and Mr. Gerald Kuester's and Shirley L.
26 Mohr's assesement that the employees knew they were to pay
27 the increased insurance premium cost), I disagree with the
28 City on the effect of such knowledge. I fully agree with
29 the informal, away from the collective bargaining table
30 discussions, for these discussions smooth over many otherwise
31 hard disagreements of the formal collective bargaining
32 table. But in negotiations, the conclusions of the

1 informal discussions must come back to the formal bargaining
2 table for formal presentation and acceptance. If this is
3 not required, neither party would know where the other party
4 stood and the collective bargaining arena would be total
5 chaos. This is exactly what we have here.

6 Also, by giving effect to away from the bargaining
7 table discussions I would have a situation where all the
8 parties questioning the authority of the participants and
9 possibly be violating the democratic requirements of a
10 Union. (See Section 39-31-206 MCA). The democratic require-
11 ments of a Union are generally thought of as adequate notice
12 of meetings, an opportunity for a full discussion of the
13 issue and a vote by majority rule.

14 Looking at Fact #5, we also find that Mr. Cash and
15 Shirley L. Mohr both agree that Mr. Hyatt stated he could not
16 speak for the Union membership. Therefore, the informal,
17 away from the collective bargaining table discussions has no
18 effect on negotiations until they are formally presented at
19 the collective bargaining table.

20 The second question is, was there a tentative agreement
21 on August 17, 1981?

22 Looking again at Joint Exhibit III, we find the City
23 offered a 10% wage increase with no wording changes. The
24 Union took the City's offer under advisement by requesting a
25 meeting with the Union employees. Shortly thereafter, the
26 Union reported back to the City Council, accepted the 10%
27 increase in salaries and offered additional wording to
28 Article 17. The City Council agreed. By looking at the
29 actions of the parties, I can only conclude that there was
30 an offer and an acceptance. Therefore, the standard of an
31 offer and the acceptance of that offer has been reached and
32 a tentative agreement exists.

1 By reviewing the same sequence of events, a second test
2 may be used to determine if a tentative agreement exists.
3 The second test, is was there a meeting of the minds? With
4 the last statement in Joint Exhibit III stating "this was in
5 agreement with the Mayor and City Council", and with Mr.
6 Cash's assessment of a tentative agreement in Fact #7, and
7 with the Union preparing and presenting a new collective
8 bargaining contract to the Mayor, I can only conclude by the
9 actions of the parties that they believed a meeting of the
10 minds had taken place.

11 The third question is, can a party to the negotiations
12 withdraw a tentative agreement?

13 In unfair labor practices charge 25, 26, 27, 36-1976,
14 Columbia Falls Education Association v. Columbia Falls School
15 District #6, the Board of Personnel Appeals upheld the
16 hearing examiner's recommended order where the hearing
17 examiner found the employer violated Montana Collective
18 Bargaining Act by withdrawing earlier concessions. The
19 hearing examiner cited San Antonio Machine Corp. v. NLRB,
20 363 F.2d, 633, 62 LRRM 2674, 1966, and cited American Seed-
21 ing Com. v. NLRB, 424 F.2d 106, 73 LRRM 2996, 1970, which
22 states,

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24 It is well established that withdrawal by the employer
25 of contract proposals, tentatively agreed to by both
26 the employer and the union in earlier bargaining sessions,
27 without good cause, is evidence of a lack of good faith
28 bargaining by the employer in violation of Section
29 8(a)(5) of the Act, regardless of whether the proposals
30 constituted valid offers subject to acceptance under
31 traditional law.

32 (73 LRRM at 2998).

Using the above NLRB case law and looking at the facts
at hand, the test becomes, did the City have good cause to
withdraw from the tentative agreement of August 17, 1981?

1 To this hearing examiner, good cause would have to be a
2 matter which is not in the control of one or more of the
3 parties. A few examples of such matters are the failure of
4 a school mill levy vote, a fire which destroys a school, or
5 a flood which destroys the City water plant. In this case,
6 we have cause being the over-sight in the change in language
7 plus an assessment by both Shirley L. Mohr and the Mayor
8 that no change is needed in the collective bargaining agree-
9 ment to withhold insurance premiums from the employees'
10 checks. I do not believe this is good cause because the
11 over-sight and the assessments are within the full control
12 of the City. Also, if I approve this type of action as good
13 cause, what would stop a party to the negotiations from
14 reviewing their past actions at the collective bargaining
15 table and withdrawing their concessions on the grounds of an
16 over-sight when the real reason for the withdrawal was a
17 better view of the facts from a 20/20, hind-sight position.

18 The fourth question is, what is the parties' obligation
19 to sign a collective bargaining contract?

20 Section 8(d) of the NLRA states:

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22 For the purposes of this section, to bargain collective-
23 ly is the performance of the mutual obligation of the
24 employer and the representative of the employees to
25 meet at reasonable times and confer in good faith with
26 respect to wages, hours, and other terms and conditions
27 of employment, or the negotiation of an agreement, or
any question arising thereunder, and the execution of a
written contract incorporating any agreement reached if
requested by either party, but such obligation does not
compel either party to agree to a proposal or require
the making of a concession.

28 (29 USC Section 158(d)).

29 The NLRB and the Courts have long held that for an
30 employer to refuse to execute an agreement incorporating the
31 terms of a negotiated contract when requested is a violation
32 of Section 8(a)(5) of the NLRA. (See H.J. Heinz Co. v. NLRB,
311 U.S. 514, 7 LRRM 291, 1941; NLRB v. Ogle Protection Service,

1 Inc., 375 F.2d 497, 64 LRRM 2792, CA 6th, 1967; NLRB v.
2 Ohio Car & Truck Leasing, Inc., 361 F.2d 404, 62 LRRM 2262,
3 CA 6th, 1966; NLRB v. Strong, 393 U.S. 357, 70 LRRM 2100,
4 1969). Section 8(a)(5) of the NLRA states "It shall be an
5 unfair labor practice for an employer . . . to refuse to
6 bargain collectively with a representative of his employees
7 . . . " (29 USC Section 158(5)). Section 39-31-401(5) MCA
8 states "It shall be an unfair labor practice for a public
9 employer to . . . refuse to bargain collectively in good
10 faith with an exclusive representative." The two above
11 sections appear to be substantially equal.

12 Furthermore, 39-31-305(2) MCA provides that,

13 For the purposes of this chapter, to bargain collective-
14 ly is the performance of the mutual obligation of the
15 public employer or his designated representatives and
16 the representatives of the exclusive representative to
17 meet at reasonable times and negotiate in good faith
18 with respect to wages, hours, and other terms and
19 conditions of employment, or the negotiation of an
20 agreement, or any question arising thereunder, and the
21 execution of a written contract incorporating any
22 agreement reached. Such obligation does not compel
23 either party to agree to a proposal or require the
24 making of a concession.

25 Section 39-31-306 MCA states:

26 (1) Any agreement reached by the public employer and
27 the exclusive representative shall be reduced to writing
28 and shall be executed by both parties.

29 Both Sections 39-31-305 MCA and 39-31-306 MCA are
30 equivalent to Section 8(d) of the NLRA with the exception
31 that Section 8(d) of the NLRA has the statement "if required"
32 while Montana's Collective Bargaining Act is silent in this
provision. But, to this hearing examiner, this difference
does not make the use of the NLRB's precedent unworkable if
I read the NLRA as one party always requesting that a collect-
ive bargaining contract be signed. Using the NLRA for
guidance, it is a violation of Montana's Collective Bargain-

1 ing Act, Section 39-31-401(5) MCA for an employer to refuse
2 to execute a completed collective bargaining contract.

3 With a collective bargaining contract in the form of a
4 tentative agreement on August 17th and with the undisputed
5 fact that the City refused to sign a collective bargaining
6 contract (See Fact #8, Hyatt's statement), I can only conclude
7 that the City violated Montana's Collective Bargaining Act
8 Section 39-31-401(5) MCA.

9 III. REMEDIES

10 Section 10(c) of the NLRA provides for the following
11 remedies:

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13 If upon the preponderance of the testimony taken
14 the Board shall be of the opinion that any person named
15 in the complaint has engaged in or is engaging in any
16 such unfair labor practice, then the Board shall state
17 its findings of fact and shall issue and cause to be
18 served on such person an order requiring such person to
19 cease and desist from such unfair labor practice, and
20 to take such affirmative action including reinstatement
21 of employees with or without back pay, as will effectuate
22 the policies of this Act

19 The U.S. Supreme Court in H.J. Heinz Co. v. NLRB,
20 supra, set forth the following teachings when enforcing an
21 NLRB order to sign a collective bargaining agreement:

22
23 It is conceded that although petitioner has reached
24 an agreement with the Union concerning wages, hours and
25 working conditions of the employees, it has nevertheless
26 refused to sign any contract embodying the terms of the
27 agreement. The Board supports its order directing
28 petitioner, on request of the Union, to sign a written
29 contract embodying the terms agreed upon on the ground,
30 among others, that a refusal to sign is a refusal to
31 bargain within the meaning of the Act.

28 In support of this contention it points to the
29 history of the collective bargaining process showing
30 that its object has long been an agreement between
31 employer and employees as to wages, hours and working
32 conditions evidenced by a signed contract or statement
in writing, which serves both as recognition of the
union with which the agreement is reached and as a
permanent memorial of its terms. This experience has
shown that refusal to sign a written contract has been
a not infrequent means of frustrating the bargaining
process through the refusal to recognize the labor

1 organization as a party to it and the refusal to provide
2 an authentic record of its terms which could be exhibit-
3 ed to employees, as evidence of the good faith of the
4 employer. Such refusals have proved fruitful sources
5 of dissatisfaction and disagreement. Contrasted with
6 the unilateral statement by the employer of his labor
7 policy, the signed agreement has been regarded as the
8 effective instrument of stabilizing labor relations and
9 preventing, through collective bargaining, strikes and
10 industrial strife.

11 Before the enactment of the National Labor Relations
12 Act it had been the settled practice of the administra-
13 tive agencies dealing with labor relations to treat the
14 signing of a written contract embodying a wage and hour
15 agreement as the final step in the bargaining process.
16 Congress, in enacting the National Labor Relations Act,
17 had before it the record of this experience, H. Rept.
18 No. 1147, 71st Cong., 1st Sess., p. 5, and see also pp.
19 3, 7, 15-18, 20-22, 24; S. Rept. 9, 13, 15, 17. The
20 House Committee recommended the legislation as "an
21 amplification and clarification of the principles
22 enacted into law by the Railway Labor Act and by Section
23 7(a) of the National Industrial Recovery Act." H. Rep.
24 1147, supra, P. 3, and stated, page 7, that Sections 7
25 and 8 of the Act guaranteeing collective bargaining to
26 employees was a reenactment of the like provision of
27 Section 7(a) of the National Industrial Recovery Act,
28 see Consolidated Edison Co. v. Labor Board, 305 U.S.
29 197, 236 [3 LRRM 645, 656]; Labor Board v. Sands Mfg.
30 Co. 306 U. S. 332, 342 [4 LRRM 530, 534].

31 We think that Congress, in thus incorporating in
32 the new legislation the collective bargaining require-
ment of the earlier statutes included as a part of it,
the signed agreement long recognized under the earlier
acts as the final step in the bargaining process. It
is true that the National Labor Relations Act, while
requiring the employer to bargain collectively, does
not compel him to enter into an agreement. But it does
not follow, as petitioner argues, that, having reached
an agreement, he can refuse to sign it, because he has
never agreed to sign one. He may never have agreed to
bargain but the statute requires him to do so. To that
extent his freedom is restricted in order to secure the
legislative objective of collective bargaining as the
means of curtailing labor disputes affecting interstate
commerce. The freedom of the employer to refuse to
make an agreement relates to its terms in matters of
substance and not, once it is reached, to its expression
in a signed contract, the absence of which, as experience
has shown, tends to frustrate the end sought by the
requirement for collective bargaining. A business man
who entered into negotiations with another for an
agreement having numerous provisions, with the reserva-
tion that he would not reduce it to writing or sign it,
could hardly be thought to have bargained in good
faith. This is even more so in the case of an employer
who, by his refusal to honor, with his signature, the
agreement which he has made with a labor organization,
discredits the organization, impairs the bargaining
process and tends to frustrate the aim of the statute
to secure industrial peace through collective bargaining.

1 said the NLRB has no power to compel a party to agree to
2 substantive terms of a collective bargaining contract.
3 Although an employer improperly repeatedly refused to bargain
4 on check-off of union dues, the NLRB could not order the
5 employer to grant the union a contract clause providing for
6 dues check-off. The NLRB in Mead Corp, 256 NLRB 108, 107
7 LRRM 1309, 1981, ordered the employer that unlawfully with-
8 drew a mid-term wage proposal just as the Union was about to
9 accept it to reinstate the proposal. In the Mead Corp.,
10 supra, the NLRB said:

11
12 The instant case is readily distinguishable from
13 H.K. Porter [supra]. Involved here is a proposal that
14 Respondent formulated and voluntarily offered, not one
15 offered to Respondent and consistently opposed by it.
16 It is this voluntary nature of Respondent's conduct
17 that demonstrates that we are not compelling agreement
18 or the making of a concession within the meaning of
19 Section 8(d). Respondent agreed to abide by the propo-
20 sal if accepted by the Union, but then reneged on that
21 agreement by unlawfully withdrawing the proposal just
22 as the Union was about to accept it. Unlike H.K.
23 Porter, the remedy that we order herein merely requires
24 Respondent to do what it had previously agreed to do.
25 Thus, we simply reestablish the status quo as it was
26 prior to Respondent's unlawful conduct.

(107 LRRM at 1310).

27 Section 39-31-406 MCA gives the following remedial
28 powers to the Board of Personnel Appeals:

29
30 If, upon the preponderance of the testimony taken,
31 the Board is of the opinion that any person named in the
32 complaint has engaged in or is engaging in an unfair
labor parctice, it shall state its findings of fact and
shall issue and cause to be served on the person an
order requiring him to cease and desist from the unfair
labor practice and to take such affirmative action,
including reinstatement of employees with or without
back pay, as will effectuate the policies of this
chapter

33 By comparing Section 10(c) of the NLRA to Section
34 39-31-406 MCA I view them as substantially equal and view
35 the Board of Personnel Appeals to have the same remedial
36 powers as does the NLRB. The District Court of the Eleventh



1 Judicial District of the State of Montana, in and for the
2 County of Flathead, in Board of Trustees of School District
3 #38, Flathead and Lake Counties v. Board of Personnel Appeals
4 and Bigfork Educational Association, DV-79-425, ULP 20, 22,
5 25, 26, 36-1978, 1980, enforced a Board of Personnel Appeals
6 order that judged the NLRB and the Board of Personnel Appeals
7 to have equal remedial powers.

8 To the case at hand and with the parties reaching a
9 tentative agreement on August 17th, for a 10% increase in
10 wages, with the parties tentatively agreeing only to the
11 wording changes in Article 17, and with the City refusing to
12 sign a collective bargaining agreement incorporating those
13 tentative agreements, I will order the City to sign the
14 collective bargaining agreement incorporating the tentative
15 agreement changes of August 17th, and will order the City to
16 pay all wages and fringe benefits required by the collective
17 bargaining contract to the employees covered by the collective
18 bargaining contract that are or have been employed by the
19 City from July 1, 1981 to the date of settlement of this
20 charge. I believe this order to be in full compliance with
21 Porter, supra, because the City offered a 10% increase in
22 wages and the Union offered a 10% increase in wages with the
23 wording changes to Article 17 which the City Council agreed
24 to. I have made no substantive additions to the collective
25 bargaining contract because both parties agreed to the 10%
26 increase in wages and the wording changes to Article 17. By
27 so ordering, I am in full agreement with and fully believe
28 in the teachings of Heinz, supra, Strong, supra, Porter,
29 supra, and Mead Corp., supra.

30 Because the record lacks any signs of an anti-union
31 attitude on the part of the defendants, an order requiring
32 such things as a reimbursement to the Union of expenses
associated with this charge, a quarterly calculation plus

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interest on wages and benefits the employees would have received, and posting of cease and desist notices would be inappropriate.

IV. CONCLUSIONS OF LAW

For reasons set forth above, the defendants did violate the Collective Bargaining for Public Employees Act, Section 39-31-401(5) MCA by not honoring the tentative agreement reached on August 17, 1981, and by not signing the collective bargaining contract incorporating the tentative agreement changes when requested by the plaintiff.

V. RECOMMENDED ORDER

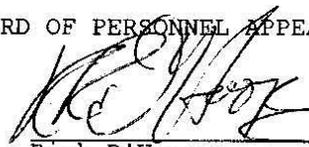
1. The defendants are ordered:

- a. to cease and desist from engaging in bad faith bargaining in violation of Section 39-31-401(5) MCA;
- b. to sign a collective bargaining contract with the plaintiffs incorporating all the tentative agreement changes of August 17, 1981;
- c. to pay all wages and fringe benefits required by the collective bargaining contract to the employees covered by the collective bargaining contract that are or have been employed by the City from July 1, 1981 to date of settlement of this charge; and
- d. to inform the Board of Personnel Appeals and the complainant of compliances with this Recommendation Order within thirty (30) days of receipt of the Recommended Order.

2. All other remedies requested by the complainant are denied.

Dated this 27th day of May, 1982.

BOARD OF PERSONNEL APPEALS

BY: 
Rick D'Hooge
Hearing Examiner



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NOTE: As stated in the Board of Personnel Appeals' rules, the parties shall have twenty (20) calendar days to file written exceptions to this Recommended Order. If no exceptions are filed, this Recommended Order becomes 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 27th day of May, 1982:

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

Honorable Mayor of Glendive
City Hall
Glendive, MT 59330

Gerald J. Nauratil
City Attorney
P.O. 1307
Glendive, MT 59330



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