

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 13-83 (AMENDED):

GREAT FALLS EDUCATION)	
ASSOCIATION, MEA,)	
)	
Complainant,)	ORDER OF DISMISSAL
)	
-vs-)	
)	
CASCADE COUNTY SCHOOL DISTRICTS)	
ONE AND A, Great Falls, Montana,)	
)	
Defendants.)	

* * * * *

On January 20th, 1984, this Board issued an Order dismissing one allegation of this ULP proceeding. The remaining allegation of this ULP is the subject of this Order.

Pursuant to the above Order, both parties submitted briefs in support of their respective positions.

The Union makes several statements which we believe are the gravamen of its argument in opposition to the Motion to Dismiss.

The Union asserts on page 3 of its brief dated February 17th, 1984 that,

It does not follow, however, that refusal to discuss an item must be alleged and established by complainant before the agency may consider the permissive/mandatory problem.

The Union is correct in the above assertion. Perhaps the BPA may consider the permissive/mandatory problem, but the BPA is not required to for the reason that no violation of the Act has been alleged. See below.

On page 4 of its brief the Union asserts that,

A situation somewhat comparable to this case is presented by an employer who makes unilateral changes in mandatory subjects of bargaining without negotiating with the exclusive representative.

The fact situation at hand is not similar to an employer's unilateral changes in mandatory subjects of bar-

1 gaining without negotiating with the exclusive representa-
2 tive. The facts of the case at hand are these: (1) The
3 public employer is alleged to have taken the stance during
4 negotiations that some items were permissive. The Union
5 contends those items are mandatory. (2) Subsequently, the
6 Union negotiators declared a willingness to abide by any de-
7 cision which the factfinder would render. (3) The fact-
8 finder issued a report which deemed certain items to be per-
9 missive. The Defendent herein subsequently voted to accept
10 the factfinder's report and a collective bargaining agree-
11 ment, consistent with the factfinder's report, was signed by
12 both parties.

13 The unilateral "change" by the employer, even assuming
14 the items are mandatory, was the employer's stance that they
15 were permissive. The signed collective bargaining agreement
16 implemented any and all changes. Thus there was no "change"
17 without first bargaining and reaching agreement.

18 The Union, also on page 4 of its brief, asserts that,
19 Similarly, an employer's claim certain items are
20 merely permissive, if in fact they are mandatory,
21 is a refusal to bargain in good faith without the
22 need to allege the employer refused to discuss
23 them.

24 The Union cites no law in support of that assertion.
25 Indeed, the validity of that assertion was the question
26 asked to be briefed by the Administrator's Order of January
27 10, 1984.

28 The charge boils down to this: Whether the alleged
29 actions of the school districts in this case, in taking a
30 stance that certain items of negotiation were permissive, in
31 the absence of accompanying allegations that the school
32 districts refused to discuss those items, violated the Act.
We are not cited to any authority that the answer is in the
affirmative.

1 The GFEA waived its right to press the distinction bet-
2 ween permissive and mandatory by giving unlimited authority
3 to the factfinder. While this Board is not bound by the de-
4 cision of the factfinder regarding the labels of permissive
5 or mandatory attached to various items sought to be nego-
6 tiated, the parties are bound to the factfinder's decision
7 by their own choice. The GFEA acceded to the factfinder's
8 decision before it was written; the GFSD agreed to comply
9 with the decision after it was issued. We see no strong
10 arguments to disrupt the parties' agreement.

11 A decision by this Board on the permissive-mandatory
12 problem will change nothing in the current contract. Unlike
13 the cases cited by the Union in its two briefs in this case
14 (there are two cases cited by the Union in its February 17,
15 1984 brief which are an exception to the following statement
16 and they will be discussed infra) this case does not present
17 any allegations of bad faith bargaining conduct by the
18 school districts other than their stance regarding permis-
19 sive-mandatory. No outstanding factual situation involving
20 allegations of bad-faith conduct by the school districts
21 towards the Union or individual members remains that would
22 warrant a potential chastisement by this Board against the
23 school districts as a remedy.

24 The Union cites two cases which it believes are ins-
25 tructional regarding how cases such as the case at hand
26 should be handled. Those cases are: Chee-Craw Teachers
27 Ass'n v. Unified School District No. 247, 593 P. 2d 406
28 (Kansas, 1979); 101 LRRM 2774 State Employees Ass'n v.
29 PELRB, 397 A.2d 1035 (N.H. 1978).

30 The Kansas case involved an action originating in dis-
31 trict court to determine mandatory items of negotiation. No
32 ULP charge was mentioned.

CERTIFICATE OF MAILING

1
2 I, Jennifer Jacobson, do certify that a
3 true and correct copy of this document was mailed to
4 the following on the 8th day of March, 1984:
5

6 Leslie S. Waite, III
7 WAITE, SCHUSTER & LARSON, P.C.
8 400 First National Bank Building
9 P.O. Box 2071
10 Great Falls, MT 59403

11 Emilie Loring
12 HILLEY & LORING, P.C.
13 121 4th Street North - Suite 2G
14 Great Falls, MT 59401

15 BPA7:Hcw
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