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R. Scott Currey
Department of Labor and Industry
Capitol Station
Helena, MT 59620

Attorney for Defendants

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF SILVER BOW

* * * * *

CITY COUNTY OF BUTTE-SILVER)
BOW and all representatives)
thereof; DONALD R. PEOPLES,)
CHIEF EXECUTIVE; ROBERT)
BUTOROVICH, SHERIFF; and the)
BUTTE-SILVER BOW LAW ENFORCE-)
MENT COMMISSION,)

Petitioners,)

-vs-

MONTANA STATE BOARD OF)
PERSONNEL APPEALS, and LOCAL)
NO. 2033, MONTANA COUNCIL NO.)
9 AMERICAN FEDERATION OF STATE)
COUNTY AND MUNICIPAL EMPLOYEES)
AFL-CIO,)

Defendants.)

No. 85-C-276

STIPULATION

* * * * *

Parties to this matter hereby stipulate as follows:

- 1) That the Order entered in this action on or about July 3, 1985, is set aside.
- 2) That service shall be considered acknowledged by the defendants in the above-captioned matter on July 8, 1985.

1 DATED this ____ day of July, 1985.
2
3

4 ROSS RICHARDSON
5 Chief Deputy County Attorney
6 County of Butte-Silver Bow
7 155 W. Granite
8 Butte, MT 59701

9 R. SCOTT CURREY
10 Department of Labor & Industry
11 Capitol Station
12 Helena, MT 59620
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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF MONTANA
 IN AND FOR THE COUNTY OF SILVER BOW

* * * * *

CITY COUNTY OF BUTTE-)
 SILVER BOW and all represent-)
 atives thereof; DONALD R. PEOPLES,)
 CHIEF EXECUTIVE; ROBERT BUTOROVICH,)
 SHERIFF; and the BUTTE-SILVER BOW)
 LAW ENFORCEMENT COMMISSION,)

Petitioners)

MONTANA STATE BOARD OF PERSONNEL)
 APPEALS, and LOCAL NO. 2033,)
 MONTANA COUNCIL NO. 9 AMERICAN)
 FEDERATION OF STATE COUNTY AND)
 MUNICIPAL EMPLOYEES)
 AFL-CIO)

Defendants,)

* * * * *

JUL 5 1985
 By: _____
 DEPT. CLERK

No. 85-C-276

RECEIVED

JUL - 5 1985

APPEALS

O R D E R

Having reviewed the Petition For Judicial Review on file herein, the applicable statutes, and law on this matter, and good cause appearing;

IT IS HEREBY ORDERED that the Final Order issued by the Board of Personnel Appeals on April 29, 1985, is reversed and Judgment is entered for the Plaintiffs herein. The complaint filed by Local No. 2033, Montana Council No. 9 of the American Federation of State, County, and Municipal Employees AFL-CIO is dismissed.

DATED this 3 day of July, 1985.

MARK P. SULLIVAN

 DISTRICT COURT JUDGE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF MONTANA
 IN AND FOR THE COUNTY OF SILVER BOW

FILED

JUL 5 1985

DAN BURTON

RECEIVED

JUL - 5 1985

APPEALS

CITY COUNTY OF BUTTE-)
 SILVER BOW and all represent-)
 atives thereof; DONALD R. PEOPLES,)
 CHIEF EXECUTIVE; ROBERT BUTOROVICH,)
 SHERIFF; and the BUTTE-SILVER BOW)
 LAW ENFORCEMENT COMMISSION,)

Petitioners)

85-C-276

MONTANA STATE BOARD OF PERSONNEL)
 APPEALS, and LOCAL NO. 2033,)
 MONTANA COUNCIL NO. 9 AMERICAN)
 FEDERATION OF STATE COUNTY AND)
 MUNICIPAL EMPLOYEES)
 AFL-CIO)

Defendants,)

* * * * *

AFFIDAVIT IN SUPPORT OF MOTION FOR ENTRY OF JUDGMENT BY DEFAULT

STATE OF MONTANA)
 : ss.
 County of Silver Bow)

COMES NOW ROSS RICHARDSON, attorney for the Petitioners,
 being first duly sworn upon oath deposes and says:

That the Petition for Judicial Review was filed on May 17,
 1985, and a copy of the same was mailed to Defendants on that
 date. Pursuant to Section 2-4-702(4), MCA, Defendants have 30
 days after service of the Petition to file a response. In
 addition, Defendant Board must also transmit to the reviewing
 Court the original, or a certified copy, of the record of the
 proceedings under review. To date neither the record, nor a
 response, has been filed by the Defendants, and the time allowed
 for a response has expired.

DATED this 3 day of July, 1985.

Ross Richardson
 ROSS RICHARDSON
 CHIEF DEPUTY COUNTY ATTORNEY

SUBSCRIBED AND SWORN to before me this 3 day of

July, 1985.

Catherine Shea
 NOTARY PUBLIC FOR THE STATE OF MONTANA
 RESIDING AT BUTTE, MONTANA
 MY COMMISSION EXPIRES 1/10/88

FILED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF SILVER BOW

JUL 8 1985
DAN BLIKOCH, CLERK
I. LYONS
D. PUTY CLERK

* * * * *

CITY COUNTY OF BUTTE-)
SILVER BOW and all represent-)
atives thereof; DONALD R. PEOPLES,)
CHIEF EXECUTIVE; ROBERT BUTOROVICH,)
SHERIFF; and the BUTTE-SILVER BOW)
LAW ENFORCEMENT COMMISSION,)

Petitioners)

No. 85-C-276

MONTANA STATE BOARD OF PERSONNEL)
APPEALS, and LOCAL NO. 2033,)
MONTANA COUNCIL NO. 9 AMERICAN)
FEDERATION OF STATE COUNTY AND)
MUNICIPAL EMPLOYEES)
AFL-CIO)

Defendants,)

* * * * *

MOTION FOR ENTRY OF JUDGMENT BY DEFAULT

COMES NOW ROSS RICHARDSON, Chief Deputy County Attorney and attorney for Petitioners herein, and moves this Court for an Order reversing the decision of the Board of Personnel Appeals, as set out in the Petition on file herein. The grounds for this motion are set out in the Affidavit attached hereto.

Wherefore, I would respectfully request this Court to enter a Judgment reversing the Final Order of the Board of Personnel Appeals and directing the complaint by Local No. 2033, Montana Council No. 9 of the American Federation of State, County, and Municipal Employees AFL-CIO be dismissed.

DATED this _____ day of July, 1985.

ROSS RICHARDSON
CHIEF DEPUTY COUNTY ATTORNEY

STATE OF MONTANA
BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 18-83:

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

Complainant,

- vs -

FINAL ORDER

CITY AND/OR COUNTY OF BUTTE-SILVER
BOW and all representatives thereof;
DONALD R. PEOPLES, CHIEF EXECUTIVE;
ROBERT BUTOROVICH, SHERIFF; and the
BUTTE-SILVER BOW LAW ENFORCEMENT
COMMISSION,

Defendants.

* * * * *

The Findings of Fact, Conclusions of Law and Recommended Order were issued by Hearing Examiner Stan Gerke on February 5, 1985.

Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order were filed by Defendants' representative Ross Richardson on February 22, 1985.

Oral argument was scheduled before the Board of Personnel Appeals on Friday, April 12, 1985.

After reviewing the record and considering the briefs and oral arguments, the Board orders as follows:

1. IT IS ORDERED that the Defendants' Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order are hereby denied.

2. IT IS ORDERED that this Board therefore adopts the Findings of Fact, Conclusions of Law and Recommended Order of Hearing Examiner Stan Gerke as the Final Order of this Board.

DATED this 29 day of April, 1985.

BOARD OF PERSONNEL APPEALS

By Alan L. Joscelyn
Alan L. Joscelyn
Chairman

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do certify that a true and correct
copy of this document was mailed to the following on the 29 day of
April, 1985.

Ross Richardson
Chief Deputy County Attorney
Butte-Silver Bow Courthouse Building
155 West Granite Street
Butte, MT 59701

Sharon Donaldson
Montana Council No. 9, AFSCME, AFL-CIO
789 Carter Drive
P.O. Box 5356
Helena, MT 59604

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1 complaint. The Employer contended that since Gale Wood had
2 filed an action in District Court pursuant to Section 7-32-
3 4164 MCA, he had elected his remedy and the District Court
4 has exclusive jurisdiction in this matter.

5 This Board conducted an investigation in this matter
6 and issued an Investigation Report and Determination on
7 May 4, 1984. The Report reasoned that if the relevant
8 alleged facts (1) the grievant still wants to go to arbitra-
9 tion pursuant to the grievance procedure contained in the
10 Parties' collective bargaining agreement, and (2) the Employer
11 refuses to process the grievance, are proved or stipulated,
12 then it appears that appropriate order by this Board would
13 be one compelling the Employer to abide by the collective
14 bargaining agreement and go to arbitration. As to the
15 jurisdictional matter, the Report determined that the Em-
16 ployer could present its defense to this Board or to the
17 courts on judicial review pursuant to Section 2-4-204(2)
18 MCA. The Report ultimately found probable merit for the
19 charge and concluded that a hearing in the matter is appro-
20 priate.

21 A pre-hearing conference was conducted on September 26,
22 1984, in the Butte-Silver Courthouse Building, Butte, Montana,
23 at which time the Parties agreed not to hold a formal evident-
24 iary hearing and to submit the matter on briefs. The Parties
25 stipulated to the issue, the facts, the record and a briefing
26 schedule. The last document in this matter was received
27 December 17, 1984.

28 ISSUE

29 Whether the City and/or County of Butte-Silver Bow
30 violated Section 39-31-401 (5) MCA by its action of refusing
31 to process a grievance pursuant to the then existing collec-
32 tive bargaining unit?

1 no grievance right and that District Court review was the
2 exclusive remedy available to Gale Wood.

3 RECORD

4 The Parties agree that the record in this matter shall
5 contain the collective bargaining agreement in existence at
6 the time of Mr. Gale Wood's termination.

7 DISCUSSION

8 The facts in this matter are clear: (1) a collective
9 bargaining agreement existed between the American Federation
10 of State, County and Municipal Employees, AFL-CIO (the
11 Union) and the City and/or County of Butte-Silver Bow (the
12 Employer), (2) the collective bargaining agreement contained
13 a grievance procedure culminating in final and binding
14 arbitration, (3) Mr. Gale Wood was a police officer employed
15 by the Employer and was subject to the collective bargaining
16 agreement, (4) Mr. Gale Wood filed a grievance in a timely
17 manner pursuant to the collective bargaining agreement, and
18 (5) the Employer refused to process the grievance pursuant
19 to the grievance procedure contained in the collective bar-
20 gaining agreement.

21 The refusal to process a dispute concerning a labor
22 contract, if it is in violation of the contract, is an
23 unfair labor practice recognized by the Montana Board of
24 Personnel Appeals, the State District Court and the Montana
25 Supreme Court. Board decisions: ULP #1-75, International
26 Brotherhood of Painters and Allied Trades, Local #1023 vs.
27 Montana State University and Barry Hjort; and ULP #3-76,
28 Local #521 of the International Association of Fire Fighters
29 v. City of Billings. District court decisions: Board of
30 Trustees of Flathead County School District No. 5 v. Board
31 of Personnel Appeals and AFSCME, Cause No. DV-80-600, Flathead
32 County; and City of Livingston v. Board of Personnel Appeals

1 Secondly, the Employer argued that the Union should not
2 be allowed two remedies to address the same issue. The
3 grievance procedure provides for final and binding arbitra-
4 tion and Section 7-32-4164 MCA provides for District Court
5 review:

6 7-32-4164. District court review. The
7 district court of the proper county shall have
8 jurisdiction to review all questions of fact and
9 all questions of law in a suit brought by any
10 officer or member of the police force, but no suit
11 to review such hearing or trial or for reinstatement
12 to office shall be maintained unless the same
13 is begun within a period of 60 days after the
14 decision of the police commission or order of the
15 mayor has been filed with the city clerk.

16 The Employer argued that both avenues should not be avail-
17 able to the Union - they should not have two bites from the
18 same apple. The Employer alleges that Section 7-32-4164 MCA
19 is the Union's exclusive remedy. The Board cannot agree
20 with the Employer's assertion of exclusivity because it
21 would limit the rights of public employees under the Collec-
22 tive Bargaining Act for Public Employees (see above discus-
23 sion).

24 The two remedies - final and binding arbitration and
25 Section 7-32-4164 MCA - may not be exclusive remedies. An
26 arbitrator chosen to hear Gale Wood's grievance may determine
27 that in fact Gale Wood was terminated for misconduct and
28 that issue would be properly addressed under Section 7-32-
29 4164 MCA. The arbitrator, in that case, has made a final
30 and binding determination in the matter in accordance with
31 the negotiated grievance procedure. Collective bargaining
32 rights have not been jeopardized and the Act has not been
violated. Other possible aspects of Gale Wood's grievance
such as back-pay, seniority rights or any other items which
may be at issue could be determined by the arbitrator if
under his authority to decide.

1 CONCLUSIONS OF LAW

2 The Defendants, City and/or County of Butte-Silver Bow
3 and all representatives thereof; Donald R. Peoples, Chief
4 Executive; Robert Butorovich, Sheriff; and the Butte-Silver
5 Bow Law Enforcement Commission have violated Section 39-31-401
6 (5) MCA.

7 RECOMMENDED ORDER

8 The Defendants shall immediately cease and desist from
9 refusing to bargain in good faith. The Defendants shall
10 immediately begin to process the grievance filed by Gale
11 Wood pursuant to the grievance procedure contained in the
12 collective bargaining agreement.

13 SPECIAL NOTE

14 Pursuant to ARM 24.26.684, the above RECOMMENDED ORDER
15 shall become the FINAL ORDER of this Board unless written
16 exceptions are filed within 20 days after service of these
17 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER
18 upon the parties.

19 DATED this 5 day of February, 1985.

20 BOARD OF PERSONNEL APPEALS

21
22 By: Stan Gerke

23 Stan Gerke
24 Hearing Examiner

25 CERTIFICATE OF MAILING

26 I, Stan Gerke, do certify that a
27 true and correct copy of this document was mailed to the
28 following on the 5 day of February, 1985.

29 Sharon Donaldson
30 Montana Council #9, AFSCME, AFL-CIO
31 789 Carter Drive
32 P.O. Box 5356
Helena, MT 59604

Ross Richardson
Chief Deputy County Attorney
Butte-Silver Bow Courthouse Building
155 West Granite Street
Butte, MT 59701

BPA6:Dmd

No. 86-141

IN THE SUPREME COURT OF THE STATE OF MONTANA

1987

CITY COUNTY OF BUTTE-SILVER BOW,
et al.,

Petitioners and Appellants,

-vs-

MONTANA STATE BOARD OF PERSONNEL
APPEALS, et al.,

Defendants and Respondents.

APPEAL FROM: District Court of the Second Judicial District,
In and for the County of Silver Bow,
The Honorable Mark Sullivan, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Robert McCarthy, County Attorney, Butte, Montana
Ross Richardson & Brian Holland argued, Deputy County
Attorneys, Butte, Montana

For Respondent:

Mary Anne Simpson argued, Dept of Labor & Industry,
Helena, Montana

Submitted: November 20, 1986

Decided: February 5, 1987

Filed:

FEB 5 - 1987

Ethel M. Harrison

Clerk

Mr. Justice John Conway Harrison delivered the Opinion of the Court.

This is an appeal from the District Court of the First Judicial District in and for the City/County of Butte-Silver Bow, Montana. The District Court upheld a decision by the Montana Board of Personnel Appeals that the City/County of Butte-Silver Bow refused to abide by the parties' collective bargaining agreement in violation of § 39-31-401(5), MCA. We reverse and remand.

The Butte-Silver Bow Law Enforcement Commission heard charges brought against police officer Gale Wood pursuant to § 7-32-4155, MCA, which is part of the Metropolitan Police Act, and Butte-Silver Bow Ordinance 14, which in pertinent parts is identical to the state act. Following the hearing, the Commission found the officer guilty of neglect of duty, misconduct in office, and conduct unbecoming an officer. His termination as an officer was approved by the chief executive of Butte-Silver Bow, pursuant to § 7-32-4161, MCA. The officer then filed a petition in District Court pursuant to § 7-32-4164, MCA, seeking judicial review of the law enforcement commission's decision. The District Court affirmed the decision and we upheld in *Wood v. Butorovich* (Mont. 1986), 716 P.2d 608, 43 St.Rep. 546.

Concurrently, Officer Wood pursued remedies through his union under the grievance procedure, Article 14, of the Collective Bargaining Agreement between the officer and Butte-Silver Bow. Butte-Silver Bow (appellant) refused to grieve the matter as being outside the grievance procedure, contending Wood's exclusive remedy was pursuant to § 7-32-4164, MCA. The union filed an unfair labor practice complaint against Butte-Silver Bow for refusal to bargain in

good faith in violation of § 39-31-401(5), MCA, with the Board of Personnel Appeals.

The parties stipulated to certain facts and to the issue to be decided, namely, whether appellant violated § 39-31-401(5), MCA, by refusing to process Officer Wood's grievance. The hearing examiner concluded the statute had been violated, and ordered appellant to process the grievance. Appellant filed exceptions and a hearing was held before the Board of Personnel Appeals, which adopted the hearing examiner's findings, conclusions, and recommended order. Appellant petitioned for judicial review. Following a hearing, the District Court affirmed the holding of the Board of Personnel Appeals. Appellant's motion to amend and a motion for a new trial were denied. This appeal followed.

We are asked to decide whether the District Court erred in affirming the findings of the Board of Personnel Appeals that Butte-Silver Bow violated § 39-31-401(5), MCA, by refusing to process Officer Wood's grievance. When the issue is one of law, the Court is free to reach its own conclusions from the evidence presented. Section 25-7-102, MCA.

Resolution of the issue turns on whether the grievance procedure in the then existing collective bargaining agreement between Officer Wood and appellant provides a remedy for a police officer which is in addition to that set out in § 7-32-4155 of the Metropolitan Police Act. The Metropolitan Police Act, § 7-32-4101 et seq., MCA, enacted in 1907, fixes the conditions under which a policeman may be appointed, may continue to enjoy the office, and may be removed therefrom. A police commission, § 7-31-4151, MCA, has the duty and the exclusive jurisdiction to hear, try and decide all charges brought by any person against any officer or member of the police department. See *State ex rel. Mueller v. District Court* (1930), 87 Mont. 108, 113, 285 P.

928, 930; In the Matter of Dewar (1976), 169 Mont. 437, 443, 548 P.2d 149, 153. The officer then has the right of appeal to the District Court pursuant to § 7-32-4164, MCA:

District court review. The district court of the proper county shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of 60 days after the decision of the police commission or order of the mayor has been filed with the city clerk.

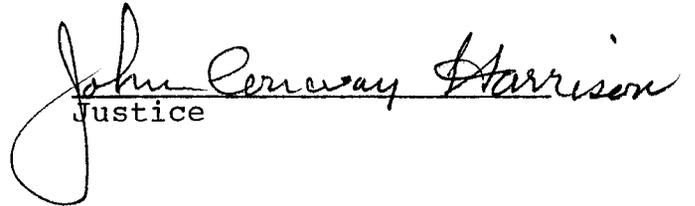
The collective bargaining agreement between appellant and Officer Wood provides in Article 3, Sec. 2 that after a thirty day probationary period and confirmation of appointment by the police commission, an "applicant becomes a member of the police force and holds such position during good behavior unless suspended or discharged as provided by law." The agreement specifically incorporates the Metropolitan Police Act in Article 31, in which the parties "agree and recognize that the [Butte-Silver Bow] law enforcement department is subject to the regulations of the Metropolitan Police Law of the State of Montana" Therefore Butte-Silver Bow's method for discharge is that found in the Metropolitan Police Act. Article 14, Sec. 4, of the agreement defines grievance as "a complaint by an employee that he/she has been treated unfairly or unjustly in the interpretation or application of [the agreement's provisions]." Thus a grievance arises only on a misapplication of a provision of the agreement. Neither party claims a misapplication of the method of discharge.

By the agreement's own terms, the Act is applicable. It was applied. The agreement, pursuant to the Act, provides

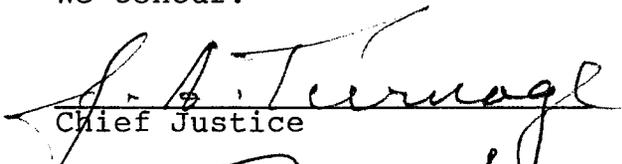
adequate administrative and judicial determination and review when an officer is discharged. It does not provide a grievance procedure for termination. The parties to this agreement are bound by these terms.

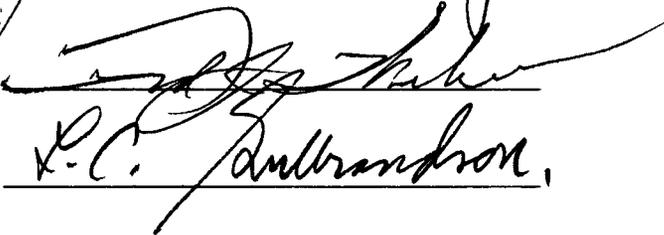
Officer Wood seeks further review of the same conduct by a different body. Such an attempt could result in contradictory holdings. More importantly, however, the terms of the agreement do not permit this course of action.

We find appellant did not commit an unfair labor practice because the terms of the agreement were followed. Therefore, we reverse and remand to the District Court for an order consistent with this opinion.


Justice

We concur:


Chief Justice


R. C. Anderson,

Justices

Mr. Justice John C. Sheehy, dissenting.

The majority are in grievous error when they conclude that the metropolitan police law (Title 7, Ch. 32, Part 41, MCA) precludes the grievance procedures allowable to a terminated policeman under his union's collective bargaining agreement.

The majority members ascribe "exclusive" jurisdiction to the police commission under § 7-32-4155, MCA. The words "exclusive" or "exclusive remedy" are not to be found in § 7-32-4155, or any other part of the statute which is a part of the Metropolitan Police Law. The assertion that procedure before the police commission is "exclusive" is a legislative amendment to the Metropolitan Police Act beyond the power of this Court to adopt.

Under § 39-31-305, MCA, collective bargaining includes the performance of the mutual obligation of the public employer and the representatives of the workers to negotiate in good faith with respect to wages, hours, fringe benefits, "and other conditions of employment or the negotiation of an agreement or any question arising thereunder." This Court said in *City of Livingston v. Montana Council No. 9* (1977), 174 Mont. 421, 425, 571 P.2d 374:

The Supreme Court has held "collective bargaining is a continuing process." Among other things it involves . . . protection of employees rights already secured by contract. *Connelly v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80, 85 (1957). The processing of grievances in grievance hearings is collective bargaining. *Timken Roller Bearing Company v. National Labor Relations Board*, 161 F.2d 949, 954 (U.S.C.A. 6th, 1947). In *Ostrosky v. United Steel Workers of America*, 171 F.Supp. 782, 790 (D.M.D. 1957) aff'd 273 F.2d 614 (U.S.C.A. 4th, 1960), cert.den. 363 U.S. 849, 80 S.Ct. 1628, 4 L.Ed.2d 1732 (1950), the Court stated:

". . . the employer had the same duty to bargain collectively over grievances as over the terms of the agreement."

When the Union and Butte-Silver Bow recognized in their collective bargaining agreement that the law enforcement department is subject to the regulations of the Metropolitan Police Law, it was a recognition of all of the provisions of that Act, including limits on salary, provisions for retirement, as well as the provisions contained in the Act for the termination of a policeman. Nothing in the collective bargaining agreement excluded, withdrew or cancelled the right of the employee to found a grievance on the termination proceedings before the police commission within § 4, Art. 14, of the Collective Bargaining Agreement:

§ 4: A grievance shall mean a complaint by the employee that he she has been treated unfairly or unjustly in the interpretation and application of the provisions of this agreement or of established policy or practice.

When the terminated police officer in this case filed his grievance, he was proceeding under the Collective Bargaining Agreement but Butte-Silver Bow refused to process his grievance. The refusal by Butte-Silver Bow to follow the grievance procedure which it had bargained for amounted to a failure to bargain in good faith and constituted an unfair labor practice. See *Savage Public Schools v. Savage Education Association* (1982), 199 Mont. 39, 647 P.2d 833.

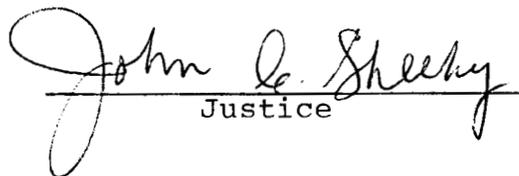
The Collective Bargaining Agreement further provided that even the interpretation of the agreement might give rise to a grievance which would have to be processed under the agreement. Section 6, Art. XIV, provided:

Section 6: Any grievance or dispute which may arise between the parties including the application, meaning or interpretation of this

agreement shall automatically proceed to the next step. (Emphasis added.)

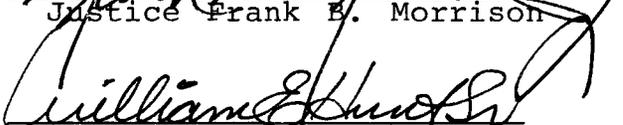
Under the Collective Bargaining Agreement, if Butte-Silver Bow disagreed with the application of the Collective Bargaining Agreement to the termination proceedings before the Commission, under the grievance procedure it could refer that question to an arbitrator. It was that step that should have been taken under the agreement by Butte-Silver Bow. Instead it chose to breach its grievance procedure agreement which it had bargained for, and it was thereby guilty of an unfair labor practice.

Finally, terminated Officer Wood is not a party to this action. The parties are Butte-Silver Bow, the Montana State Board of Personnel Appeals, which has determined that Butte-Silver Bow committed an unfair labor practice, and the local union of the American Federation of State, County and Municipal employees (AFL-CIO). The union is before this Court claiming that Butte-Silver Bow, in refusing to process a grievance, has violated its Collective Bargaining Agreement. That sole issue should be decided by us, and not the prospective or speculative possibility that "Officer Wood seeks further review of the same conduct by a different body." That is what Butte-Silver Bow bargained for and it should be held to its agreement. The union is correct in maintaining that an unfair labor practice occurred here, and the Board of Personnel Appeals should be affirmed in this action.


Justice

We concur in the foregoing dissent:


Justice Frank B. Morrison


Justice William B. Hunt, Sr.