

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 9-84:

LEWISTOWN EDUCATION ASSOCIATION, )  
MEA, )  
Complainant, )  
- vs - )  
FERGUS COUNTY SCHOOL DISTRICT #1, )  
LEWISTOWN, )  
Defendant. )

FINAL ORDER

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The Findings of Fact, Conclusions of Law and Recommended Order were issued by Hearing Examiner Stan Gerke on April 24, 1985.

Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order were filed by Emilie Loring, attorney for Complainant, on May 13, 1985.

Oral argument was scheduled before the Board of Personnel Appeals on Wednesday, July 31, 1985.

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

1. IT IS ORDERED that the Complainant's 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 14 day of August, 1985.

BOARD OF PERSONNEL APPEALS

By Alan L. Joscelyn  
Alan L. Joscelyn  
Chairman

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CERTIFICATE OF MAILING

I, Jennifer Jacobson, do certify that a true and correct copy of this document was mailed to the following on the 15 day of August, 1985:

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STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 9-84

LEWISTOWN EDUCATION ASSOCIATION,	)	
MEA,	)	
	)	FINDINGS OF FACT,
Complainant,	)	CONCLUSIONS OF LAW
	)	AND
-vs-	)	RECOMMENDED ORDER
	)	
FERGUS COUNTY SCHOOL DISTRICT #1	)	
LEWISTOWN,	)	
	)	
Defendant.	)	

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On April 9, 1984, the Lewistown Education Association, MEA (the Complainant) filed an unfair labor practice with this Board alleging that the Fergus County School District #1, Lewistown (the Defendant) violated Section 39-31-401(1) and (5) MCA by refusing to bargain in good faith. Specifically, the Complainant alleged that the Defendant refused to bargain in good faith by its unilateral action of discontinuing the practice of payroll deduction of teachers' voluntary contributions to the political action committee (PAC). The Complainant alleged further that during the current school year the Defendant refused to make the PAC payroll deduction and that the Complainant had exhausted its attempt to have the matter corrected under the contract grievance procedure. The School Board is the final step in the grievance procedure.

In ANSWER filed with this Board on April 13, 1984, the Defendant denied any violations of Section 39-31-401(1) and (5) MCA. This Board conducted an investigation in this matter and issued an Investigation Report and Determination on May 4, 1984. The Report found probable merit for the charge and concluded that a formal hearing in the matter was appropriate.

1           The Parties to this matter agreed not to hold a formal  
2 evidentiary hearing and to submit the matter on briefs. The  
3 Parties stated their contentions, stipulated the facts and  
4 certain exhibits and set a briefing schedule. The last  
5 document in this matter was received January 25, 1985.

6                           COMPLAINANT'S CONTENTION

7           1. Defendant has unilaterally changed a long estab-  
8 lished, accepted past practice in effect for a number of  
9 years, without bargaining with the Complainant. This  
10 constitutes a violation of Sections 39-31-401(1) and (5) and  
11 is a refusal to bargain in good faith.

12                           DEFENDANT'S CONTENTIONS

13           1. Defendant did not interfere, restrain or coerce  
14 any employee in exercising the right of self organization,  
15 to form, join or assist a labor organization. While Defen-  
16 dant recognizes the Association as a labor organization,  
17 NEA-PAC and MEA-PACE are not labor organizations nor are  
18 contributions to them considered dues.

19           2. Defendant did not refuse to bargain in good faith  
20 with the exclusive representative. The Association did not  
21 make a request to bargain, although notified of the change  
22 in deduction policy on October 17, 1984. (Exhibit "C" to  
23 Answer)

24                           STIPULATED FACTS

25           1. Complainant is the recognized exclusive represen-  
26 tative of professional staff employed by Defendant.

27           2. Defendant is the duly elected governing body of  
28 Fergus County School District #1, a body corporate school  
29 district with principal offices in Lewistown, Fergus County,  
30 Montana. The School District is a political subdivision of  
31 the State of Montana, and operates the elementary and high  
32 schools in Lewistown, Fergus County, Montana.

1  
2 3. Since at least 1977, the Parties' collective  
3 bargaining agreements have provided for deduction of "dues".  
4 The current contract provides as follows:

5 D. DUES CHECK OFF: The School Dis-  
6 trict shall deduct from the sal-  
7 aries of teachers, such monies for  
8 Association Dues as said teachers  
9 individually authorize the School  
10 District to so deduct. Commencing  
11 in October and each month thereaf-  
12 ter the School District shall  
13 deduct in equal installments the  
14 monies that the teacher has agreed  
15 to pay the Association during the  
16 period in the individual's author-  
17 ization. New authorizations, when  
18 received by the School District  
19 during the school year, will be  
20 deducted in equal installments over  
21 the remaining monthly payments of  
22 the teacher's current contractual  
23 salary.

14 1. The Association will certify  
15 to the School District the  
16 current rate of membership  
17 dues.

17 2. The Association will provide  
18 names of individuals who have  
19 joined the Association and  
20 will submit to the School  
21 District a card signed by the  
22 individual teacher authorizing  
23 the deduction by the School  
24 District. In order for a new  
25 deduction to be made for a  
26 given month, the authorization  
27 card must be received by the  
28 School District no later than  
29 the fifth day of said month.

24 3. The School District shall  
25 transfer all deducted monies,  
26 along with list of the names  
27 for whom deductions are made  
28 to the Executive Secretary of  
29 the MEA on a monthly basis.

28 4. All remaining unpaid dues or  
29 fees shall be deducted from  
30 the final paycheck of a person  
31 leaving the employment of the  
32 School District before the end  
of the school year.

31 4. Complainant, for a number of years, has used a  
32 deduction form, attached as Exhibit A, which provides for

1 deduction of dues and Political Action Committee (PAC)  
2 contributions.

3 5. Until the 1983-84 school year, Defendant has  
4 deducted both dues and PAC contributions from salaries of  
5 those teachers signing the deduction forms.

6 6. Defendant now refuses to make PAC deductions from  
7 the salaries of those teachers authorizing such deductions.  
8 This decision was reached without bargaining with Complain-  
9 ant.

10 7. Complainant grieved the problem and Defendant's  
11 Trustees, the final step in the grievance procedure, af-  
12 firmed the decision of the Superintendent that PAC deduc-  
13 tions would not be made from teachers' salaries. (Grievance  
14 Report Form Attached - Exhibit #1)

#### 15 DISCUSSION

16 The Montana Collective Bargaining for Public Employees  
17 Act was modeled closely after the National Labor Relations  
18 Act. The Montana Supreme Court, when called upon to inter-  
19 pret the Montana Act, 39-31-101 through 39-31-409 MCA, has  
20 consistently turned to the National Labor Relations Board  
21 (NLRB) and Federal Circuit Court precedent for guidance.  
22 State Department of Highways v. Public Employees Craft  
23 Council, 165 Mont. 349, 529 P.2d 785, 87 LRRM 2101 (1974);  
24 AFSCME Local 2390 v. City of Billings,, 171 Mont. 20, 555  
25 P.2d 507, 93 LRRM 2753 (1976); State ex rel. Board of  
26 Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d  
27 1117, 103 LRRM 2297 (1979); Teamsters Local 45 v. State ex  
28 rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d  
29 1310, 110 LRRM 2012 (1981).

30  
31 It is well settled that unilateral changes in mandatory  
32 bargaining subjects by an employer is an unfair labor  
practice [violation of Section 39-31-401(5)MCA]. NLRB v.

1           Katz, 369 US 736, 50 LRRM 2177 (1962). In contrast, a  
2 unilateral midcontract change relating to a permissive  
3 bargaining subject is not an unfair labor practice. Allied  
4 Chemical & Alkal Workers Local 1 v. Pittsburgh Plate Glass  
5 Co., 404 Us 157, 78 LRRM 2974 (1971). "The remedy for a  
6 unilateral midterm modification to a permissive term lies in  
7 an action for breach of contract,... not in an unfair labor  
8 practice proceeding..." Allied Chemical & Alkal Workers  
9 Local 1 v. Pittsburgh Plate Glass Co., 78 LRRM @ 2986. In  
10 the matter at hand, the practice of the Defendant deducting  
11 Political Action Committee (PAC) contributions from the  
12 salaries of teachers who authorized such deductions had been  
13 existing for a number of years. During the current school  
14 year (1984-85), the Defendant unilaterally discontinued this  
15 practice of deducting PAC contributions. To determine  
16 whether the Defendant committed an unfair labor practice we  
17 must first determine whether deducting PAC contributions is  
18 a mandatory or permissive bargaining subject.

19           To determine which subjects are mandatory subjects of  
20 bargaining this Board has utilized the balancing test  
21 adopted by the Kansas Supreme Court in 1973 (N.E.A. v.  
22 Shawnee Mission Board of Education, 512 P.2d 426, 84 LRRM  
23 2223) and followed by the Pennsylvania Supreme Court  
24 (Pennsylvania Labor Relations Board v. State College Area  
25 School District, 337 A2d 262, 90 LRRM 2081). The Kansas  
26 Supreme Court said:

27  
28           It does little good, we think, to  
29 speak of negotiability in terms of  
30 "policy" versus something which is not  
31 "policy". Salaries are a matter of  
32 policy, and so are vacation and sick  
leaves. Yet we cannot doubt the author-  
ity of the Board to negotiate and bind  
itself on these questions. The key, as  
we see it, is how direct the impact of  
an issue is on the well being of the

1                    individual teacher, as opposed to its  
2                    effect on the operation of the school  
3                    system as a whole. [Emphasis added] The  
4                    line may be hard to draw, but in the  
5                    absence of more assistance from the  
6                    legislature the courts must do the best  
7                    they can. The similar phraseology of  
8                    the N.L.R.A. has had a similar history  
9                    of judicial definition. See Fibreboard  
10                    Corporation v. Labor Board., 379 U.S.  
11                    203, 13 L.ED. 2d 233, 85 S. Ct. 398, 57  
12                    LRRM 2609 and especially the concurring  
13                    opinion of Steward, J. at pp. 221-222.

14                    See also ULP #5-77, Florence-Carlton Unit of the  
15                    Montana Education Association v. Board of Trustees of School  
16                    District #15-6, Florence-Carlton, Montana; ULP #34-80,  
17                    Circle Teachers' Association v. McCone County School  
18                    District #1.

19                    We must now compare the impact on the well being of an  
20                    individual teacher of deducting or not deducting PAC contri-  
21                    butions from his pay check to the effect this process of  
22                    deducting the contributions has on the operation of the  
23                    school system as a whole. I find that the convenience of  
24                    payroll deduction of voluntary PAC contributions has little  
25                    impact on an individual teacher. Surely, the PAC payroll  
26                    deduction would not impact hours of work, rates of pay,  
27                    fringe benefits or other conditions of employment. With or  
28                    without payroll deductions of PAC contributions an  
29                    individual could make voluntary PAC contributions  
30                    personally. The payroll deduction of PAC contributions is  
31                    nothing more than a mere convenience. The Defendant argues  
32                    that the process involved in making the payroll deductions  
                    of PAC contributions caused administrative problems. To  
                    solve the administrative problems, the Defendant ultimately  
                    determined what items were permitted for payroll deduction.  
                    The Defendant informed each teacher by letter that only  
                    those payroll deductions authorized by the Collective  
                    Bargaining Agreement and District (Defendant) Policy will be

1 made. The list of permitted payroll deductions included  
2 association membership (Complainants' dues) which is  
3 authorized by the Collective Bargaining Agreement and is  
4 also a mandatory bargaining subject (NLRB v. Reed & Prince  
5 Mfg. Co. 205 F.2d 131 (1st Cir. 1953) 32 LRRM 2225,  
6 cert.den. 346 U.S.887, 33 LRRM 2133; Steelworkers (H.K.  
7 Porter Co.) v. NLRB, 363 F.2d 272 (D.C. Cir. 1966), 62 LRRM  
8 2204) but excluded payroll deduction of PAC contributions.  
9 The effect of payroll deduction of PAC contributions did  
10 cause problems for the Defendant and ultimately caused the  
11 Defendant to develop a policy regarding payroll deductions.

12 In comparison, the payroll deduction of voluntary PAC  
13 contributions has virtually no impact on any individual  
14 teacher. However the payroll deductions caused administra-  
15 tive problems for the school district. I find the payroll  
16 deduction of voluntary PAC contributions to be a permissive  
17 subject of bargaining.

18  
19  
20 CONCLUSIONS OF LAW

21 The Defendant, Fergus County School District #1,  
22 Lewistown, has not violated Sections 39-31-401(1) or (5)  
23 MCA.

24  
25 RECOMMENDED ORDER

26 IT IS ORDERED that Unfair Labor Practice No. 9-84 be  
27 dismissed.

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29 SPECIAL NOTE

30 Pursuant to ARM 24.26.684, the above RECOMMENDED ORDER  
31 shall become the FINAL ORDER of this Board unless written  
32 exceptions are filed within 20 days after service of these

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER  
upon the parties.

DATED this 24 day of April, 1985.

BOARD OF PERSONNEL APPEALS

BY: *Stan Gerke*  
Stan Gerke  
Hearing Examiner

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CERTIFICATE OF MAILING

I, *Jennifer Jacobson*, do  
certify that a true and correct copy of this document was  
mailed to the following on the 24 day of April, 1985:

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