

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 6-86:

TEAMSTERS LOCAL NO. 2,)	
INTERNATIONAL BROTHERHOOD OF)	
TEAMSTERS, CHAUFFEURS,)	
WAREHOUSEMEN AND HELPERS OF)	FINDINGS OF FACT;
AMERICA,)	CONCLUSIONS OF LAW;
)	AND
Complainant,)	RECOMMENDED ORDER
)	
vs.)	
)	
CITY OF MISSOULA,)	
)	
Defendant.)	

* * * * *

BACKGROUND

On March 18, 1986 the complainant filed an unfair labor practice charge with this Board alleging the defendant had violated Section 39-31-401(1) and (5), MCA. Specifically, the complainant charges that the employer has refused to comply with a grievance settlement.

The defendant denied the charges, filed an answer on March 27, 1987, and requested the unfair labor practice charge be dismissed on the basis that there were insufficient facts to constitute an unfair labor practice, the grievance was not settled as alleged and the complainant failed to proceed with the grievance in a timely fashion.

This Board conducted an investigation in this matter and issued an investigation report and determination on November 5, 1986. The report found probable merit for the charge and concluded that a formal hearing in the matter was appropriate.

A pre-hearing conference was held on April 20, 1987 and a formal hearing on this matter was conducted April 27, 1987, in Missoula City Hall, Missoula, Montana. The hearing was conducted under authority of Section 39-31-406, MCA,

1 pursuant to ARM 24.26.682, and in accordance with the
2 Administrative Procedure Act (Title 2, chapter 4, MCA). The
3 purpose of the hearing was to determine whether the defen-
4 dant violated Section 39-31-401 (1) and (5), MCA. The
5 hearing examiner was Joseph V. Maronick.

6 D. Patrick McKittrick, attorney at law, represented the
7 complainant. Jim Nugent, city attorney, represented the
8 defendant. Also present were: Jack McDonough, aggrieved
9 party, Greg Superneau, shop steward; Jim Roberts, secre-
10 tary/treasurer Local No. 2; Jack Cutler, business agent,
11 Local No. 2; Joe Aldegarie, city public work director and
12 Kathy Mitchell, personnel officer.

13 ISSUE

14 Whether the City of Missoula violated Sections
15 39-31-201 and 39-31-401 (1) and (5), MCA, by refusing to
16 abide by the terms of a February 19, 1987 grievance settle-
17 ment.

18 FINDINGS OF FACT

19 1. Teamsters Local #2, International Brotherhood of
20 Teamsters, Chauffeurs, Warehousemen, and Helpers of American
21 is recognized as the exclusive representative for certain
22 employees of the City of Missoula including the complainant,
23 Jack McDonough. The parties' contract provides a procedure
24 for emergency call back and overtime based on seniority. On
25 February 15, 1986 the employer called back numbers of
26 employees for snow removal. Jack McDonough, although senior
27 to some persons called, was not called.

28 2. On the morning of February 19, 1987, Jack
29 McDonough grieved the matter as provided in the parties'
30 collective bargaining agreement. In the afternoon of
31 February 19, 1987 in the presence of Mr. McDonough and his
32 shop steward, Greg Superneau; John Cook, Mr. McDonough's

1 supervisor, admitted he had made a mistake in failing to
2 call Mr. McDonough for snow removal, agreed to pay Mr.
3 McDonough 12 hours premium pay and instructed him to sign
4 the payroll time sheet so he would receive pay for the hours
5 he was not called to work.

6 3. Under the terms of the collective bargaining
7 agreement, the supervisor has authority to resolve grie-
8 vances orally at step 1 and has done so in the past.
9 Undisputed testimony was offered by Mr. McDonough and Mr.
10 Superneau that the parties agreed the matter was resolved
11 following their meeting on February 19, 1986.

12 4. The contract grievance procedure provides:

13 Article XVII. Grievance Procedure

14 A grievance is defined as any dispute involv-
15 ing the interpretation, application or alleged
16 violation of a provision of this agreement.
17 Grievances or disputes which may arise shall be
18 settled in the following manner:

19 Step One:

20 Within three (3) working days after its
21 occurrence, the aggrieved party shall discuss his
22 complaint with his supervisor and/or division
23 head. Within three (3) additional working days
24 the supervisor or division head will reply to the
25 complaint. The employee may have his union
26 representative present.

27 Step Two:

28 If the grievance is not settled satisfactori-
29 ly at Step One, the grievance shall, within ten
30 (10) additional working days, be submitted in
31 writing, through the union to the division head
32 and mayor. The written grievance shall set forth
the nature of the grievance, the facts on which it
is based, provisions of the agreement allegedly
violated, and the relief requested. The mayor
shall within ten (10) additional working days
after receipt of said letter respond to the
complaint in writing. If the matter is not
resolved at this point, a conciliation meeting
will be held with the parties involved as a final
attempt to settle dispute prior to proceeding with
arbitration.

33 5. On February 20, 1986 John Cook sent a letter to
34 Mr. McDonough which read, in part:

1 "Even though I discussed this problem with
2 you on the afternoon of February 19; after further
3 discussion with the city attorney, Jim Nugent, I
4 was advised to continue this matter in a grievance
5 procedure. This constitutes step one of the
6 grievance procedure. We do not feel we need to
7 pay you and here are the reasons why:

- 8 A. When you were asked if you wanted to be
9 called for overtime work, you said no.
10 (This conversation was verbal only, I
11 have nothing in writing. We discussed
12 this sometime in June of 1985.) You
13 stated you could not afford to come in
14 for just four hours.
- 15 B. Response time from Ronan would have been
16 at least 45 minutes in good weather
17 conditions. Operators were needed as
18 soon as possible because of heavy snow.
- 19 C. The street division does not have your
20 home phone number. We have a message
21 phone number only (Rich Evans). ...

22 Other issues raised at the hearing or in defendant,
23 City of Missoula, brief are hereby rejected as not relevant
24 to the issue raised by this unfair labor practice charge.

25 DISCUSSION

26 The grievance of Jack McDonough was resolved at step
27 one by a representative of the city who had authority to
28 resolve grievances orally at step one. He had acted in this
29 same capacity and method in the past. Following resolution
30 of the grievance at step one the city is precluded from
31 unilaterally withdrawing agreement or refusing to proceed
32 with the resolution agreement. See Beard Company, 231 NLRB
No. 41, 96 LRRM 1123 (1977).

In Standard Oil Company (Indiana), 13 LA799 at p. 800,
the Board of Arbitrators stated a principle applicable in
the present case.

It is essential to good labor management
relations in this plant that grievance settlements
not be disturbed in the absence of conclusive
showing of changed conditions. The union failed
to show sufficient evidence that the condition ...
has changed in such a material manner as to
warrant the Board of Arbitration setting aside the
grievance settlement.

1 In City of Livingston vs. Montana Council No. 9, 174
2 Mont. 417, 571 P.2d 374 (1977), the Montana Supreme Court
3 held that processing a grievance is part of the duty to
4 bargain in good faith. The court at 174 Mont. 421, 425, 571
5 P.2d 374 stated:

6 "The Supreme Court has held 'collective
7 bargaining is a continuing process.' Among other
8 things it involves ... protection of employees'
9 rights already secured by contract."

10 Connelly vs. Gibson, 355 U.S. 41, 78 S.Ct.
11 99, 2 L.ed.2d 80, 85 (1957). The processing of
12 grievances in grievance hearings is collective
13 bargaining. Timken Roller Bearing Company vs.
14 National Labor Relations Board, 161 F.2d 949, 954
15 (USCA 6, 1947). In Ostrofsky vs. United Steel
16 Workers of America, 171 F.Supp. 782, 790 (D.M.D.
17 1957) affirmed 273 F.2d 614 (USCA 4 1968) cert.
18 denied, 368 U.S. 849, 80 S.Ct. 1628, 4 L.Ed. 2d
19 1732 (1950), the court stated:

20 "... The employer has the same duty
21 to bargain collectively over grievances
22 as over the terms of the agreement."

23 In post hearing brief, the City of Missoula argues that
24 the record presented does not support a violation of
25 39-31-201 and 39-31-401(1), MCA. Section 39-31-401(1),
26 indicates it is an unfair labor practice to interfere, etc.
27 with "rights guaranteed in 39-31-201." If the City of
28 Missoula violated Section 39-31-401(5) which is the equiva-
29 lent of 8(a)(5) of the NLRA, it is elementary that a viola-
30 tion of 8(a)(5) entails derivatively a violation of Section
31 8(a)(1), but the converse is not necessarily true. R.Gorman
32 Labor Law 132 (1976).

 This matter is not deferred to the party's grievance-
arbitration procedure under the holding of the NLRB in
United States Postal Service and Northwest Louisiana Area
Local, Postal Workers, AFL-CIO, 15-CA-7762 (p) 1984, 270
NLRB 149, because the City of Missoula refused to comply
with the grievance settlement. Such refusal amounts to a
renunciation of the entire collective bargaining process in

1 violation of Section 39-31-401(5), MCA and therefore the
2 matter is not appropriate for deferral.

3 CONCLUSIONS OF LAW

4 The defendant, City of Missoula violated Section
5 39-31-401 (1) and (5), MCA by refusing to abide by the terms
6 of the February 19, 1987 grievance settlement.

7 RECOMMENDED ORDER

8 IT IS ORDERED that the City of Missoula cease and
9 desist from refusing to abide by the terms of the Febru-
10 ary 19, 1987 grievance settlement and pay Jack McDonough 12
11 hours premium pay as agreed.

12 SPECIAL NOTE

13 In accordance with Board's Rule ARM 24.25.107(2), the
14 above RECOMMENDED ORDER shall become the FINAL ORDER of this
15 Board unless written exceptions are filed within 20 days
16 after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW,
17 AND RECOMMENDED ORDER upon the parties.

18 DATED this 13 day of July, 1987.

19 BOARD OF PERSONNEL APPEALS

20
21 By:

Joseph V. Maronick
Joseph V. Maronick
Hearing Examiner

22
23 CERTIFICATE OF MAILING

24 I, Jennifer Jackson do certify that a true and correct
25 copy of this document was mailed to the following on the
13th day of July, 1987:

26 Jim Nugent
27 City Attorney
28 City of Missoula
29 201 South Spruce Street
30 Missoula, MT 59802

31 D. Patrick McKittrick
32 Attorney at Law
P.O. Box 1183
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