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STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 15-86:

CITY OF KALISPELL,)
)
 Complainant,)
)
 -vs-) ORDER
)
 AMERICAN FEDERATION OF STATE,)
)
 COUNTY AND MUNICIPAL)
 EMPLOYEES, LOCAL NO. 256,)
)
 AFL-CIO,)
)
 Defendant.)

* * * * *

On June 23, 1986 the Complainant, City of Kalispell, filed an unfair labor practice charge with the Board of Personnel Appeals alleging that the Defendant, American Federation of State, County and Municipal Employees, Local No. 256, AFL-CIO violated Section 39-31-402(2) MCA by refusing to negotiate in good faith.

In its answer filed with the Board on July 2, 1986 the Defendant denied any violation of Section 39-31-402(2) MCA. This Board conducted an investigation in this matter and issued an investigation report on August 18, 1986. The report found probable merit for the charge and concluded that the formal hearing in the matter was appropriate.

After the investigation report was issued the Defendant, on December 24, 1986, moved that the matter be deferred to arbitration under the Collyer doctrine. See Collyer Insulated Wire, 192 NLRB 837, 77 LRRM 1931 (1971).

A review of the pleadings and other documents on file in this case compels the conclusion that the matter be deferred to arbitration. In 1982 the Board of Personnel Appeals in William M. Converse, IAFF Local No. 436 v. Anaconda-Deer Lodge County, ULP 43-81 and James F. Forsman,

1 IAFF Local No. 436 v. Anaconda-Deer Lodge County, ULP 44-81,
2 upheld the policy of deferring unfair labor practice charges
3 such as the one raised here to the parties contract grievance
4 machinery. The Board held specifically that deferral
5 was appropriate where:

- 6 1. the dispute arises within the
7 confines of a stable collective
8 bargaining relationship without any
9 assertion of enmity by the parties;
- 10 2. the parties are willing to arbitrate the issue and waive any
11 procedural defense that the matter
12 was not timely filed; and
- 13 3. the dispute centers on an interpretation
14 of the contract.

15 In the instant case there is no indication that the
16 dispute does not arise within the confines of a stable
17 collective bargaining relationship. There is nothing to
18 suggest that the parties' relationship, either past or
19 present, would render the use of the grievance-arbitration
20 process futile. Both parties have indicated a willingness
21 to have an arbitrator decide the matter; therefore, any
22 procedural issues of timeliness should not be raised. The
23 issue in dispute is covered by the collective bargaining
24 agreement between the parties dated July 1, 1985. The
25 agreement contains a grievance procedure which culminates a
26 final and binding arbitration. The dispute centers on the
27 interpretation of the parties' collective bargaining
28 agreement and resolution of the contract issue dispute by an
29 arbitrator will dispose of the unfair labor practice issue.

30 The Board of Personnel Appeals has the authority to
31 hear this case under the provisions of Section 39-31-403
32 MCA. However, the policies and provisions of the act,
specifically Sections 39-31-101 and 39-31-306 MCA, will be
best effectuated if the matter is deferred to arbitration

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under the parties' collective bargaining agreement. The Board will retain jurisdiction of this matter for purposes of insuring that the arbitration takes place and for determining whether the procedures were fair.

IT IS THEREFORE ORDERED that this dispute be deferred to arbitration under the provisions of the parties' collective bargaining agreement.

Dated this 8th day of January, 1987.

BOARD OF PERSONNEL APPEALS

By: Jack H. Calhoun
Jack H. Calhoun, Chief
Appeals Bureau

CERTIFICATE OF SERVICE

I, Jennifer Jacobson do certify that a true and correct copy of this document was mailed to the following on the 8th day of January, 1987:

George F. Hagerman
Field Representative
Montana Council No. 9
AFSCME, AFL-CIO
P. O. Box 5356
Helena, MT 59604

Don Klepper, Representative
City Council Kalispell
P. O. Box 4152
Missoula, MT 59806

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