

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE
CHARGES 20-86 and 18-87

TEAMSTERS LOCAL UNION)	
NO.190)	
)	
Complainant,)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
vs.)	RECOMMENDED ORDER
)	
YELLOWSTONE COUNTY,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

A hearing on the above matter was conducted on April 13, 1988, in Billings, Mt. before John Andrew, hearing examiner. D. Patrick McKittrick represented the complainant. The defendant was represented by David Hoefer, Deputy Yellowstone County Attorney.

II. ISSUES

Whether the defendant violated 39-31-201 MCA, 39-31-401(1) MCA and 39-31-401(5) MCA by refusing to abide by a decision rendered by Harlan Lund, County Surveyor, holding Harold Becker and Floyd Tronstad entitled to a pay differential for services performed as acting road superintendent.

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III. FINDINGS OF FACT

1. Teamsters Local 190 is a labor organization within the meaning of Section 39-31-103(5) MCA.

2. Yellowstone County is a political subdivision of the State of Montana. Yellowstone County acts through its duly elected Board of County Commissioners and authorized agents.

3. The Union and the County entered into a collective bargaining agreement (Exhibit B) for the period of July 1, 1985, through June 30, 1987. The agreement was in force and effect for all times relevant to these causes of action.

4. Complainant union is the collective bargaining representative for all nonexempt, full-time, permanent employees of Yellowstone County bridge department, except the road superintendent and the shop superintendent. See Article II of the collective bargaining agreement.

5. Harold Becker and Floyd Tronstad are full time permanent employees of Yellowstone County road and bridge department. Both are classified as foreman under the collective bargaining agreement and are members of the union.

6. Upon separate occasions Harlan Lund, acting in his capacity as county surveyor, temporarily assigned Harold Becker and Floyd Tronstad as road superintendent. Harold Becker was first temporarily assigned in January of 1986.

1 Floyd Tronstad was first temporarily assigned in March
2 of 1987.

3 7. On March 3, 1986, Harold Becker filed a grievance
4 concerning his temporary assignment. The grievance cited
5 Article V, Section 2, Subdivision 1 and Article V, Section 3
6 Subdivision 3 of the collective bargaining agreement.

7 8. On May 13, 1987, Floyd Tronstad filed a grievance
8 concerning his temporary assignment. The grievance cited
9 Article V, Section 2, Subdivision 1 of the bargaining agree-
10 ment.

11 9. On March 7, 1986, and May 15, 1987, Harlan Lund
12 rendered decisions holding Harold Becker and Floyd Tronstad
13 respectively to be entitled to the pay differential between
14 road foreman and road superintendent.

15 10. Yellowstone County refused to abide by the deci-
16 sions of Harlan Lund.

17 11. Harlan Lund acted in a management capacity in
18 negotiating the collective bargaining agreement applicable
19 to the complainant.

20 12. By statute, 7-4-2812(2)(i), and under the con-
21 tract, Article IV, Section 4, Harlan Lund, as county survey-
22 or retains the right to "employ deputies, men and teams and
23 discharge at his pleasure such deputies, men and teams and
24 determine how, when and where such deputies, men and teams
25 shall work."

1 13. Article V, Section 2, Subdivision 1, of the
2 contract (Exhibit B) provides:

3 In cases where individuals are assigned to temporary
4 work in a higher classification, they shall be paid
5 for the higher classification only for the number of
6 hours worked in that classification. In cases where
7 individuals are assigned to temporary work in a higher
8 paying classification for a continuous extended period
9 of time, after 90 days they shall be paid for all
10 compensable hours beyond the 90 days while in that
11 assignment at the higher rate of pay. There shall be
12 no duplication or pyramiding in these situations.

13
14 14. In the past, road foremen assigned to the road
15 superintendent's position have received the higher rate of
16 pay. See Lund Deposition, Joint Exhibit #1. Past practice
17 thus supports the Union's position.

18 15. Road foremen, when performing as acting road
19 superintendents are still members of the bargaining unit.
20 See Lund deposition.

21 16. Article VIII, Section 2, Subdivision 2 of the
22 July 1, 1985 through June 30, 1987 agreement (Exhibit B)
23 regarding the grievance procedure provides:

24 The county surveyor shall hold a hearing within ten
25 (10) working days after receiving the employee's

1 request and render a decision within five (5) working
2 days following a hearing ...

3
4 The grievance procedure goes on to provide in (b) that:

5 Parties will next attempt to choose an
6 arbitrator agreeable to both sides.

7 Subsection (c) then provides:

8 If the union is still dissatisfied, it may
9 request binding arbitration through the Board
10 of Personnel Appeals.

11 The record before the hearing examiner fails to show
12 whether arbitration was pursued by the county in part (b)
13 or, in fact, if the county could pursue arbitration.
14 Assumedly, the county could not. The Union did not pursue
15 arbitration as it had prevailed before the county surveyor.

16 In Exhibit C-1 (the successor agreement to Exhibit B)
17 covering the period July 1, 1987 - June 30, 1988 the grievance
18 language has been changed. Article VIII, Section 2,
19 Subdivision 2(b), at the apparent insistence of the county,
20 now reads:

21 In the event that either the Union or the
22 Board of County Commissioners is not satisfied with the disposition of the grievance in
23 the initial hearing [the one before the
24 surveyor] a Grievance Board will be selected
25 as follows:

26 Exhibit C-1 then delineates a hearing procedure not
27 contained in the predecessor contract, Exhibit B. Exhibit
28 C-1 at Subdivision 2(c) then provides:

1 If either party is still dissatisfied, it may
2 request binding arbitration through the Board
of Personnel Appeals, ...

3 The significance of this language change is manifested
4 in the testimony of Bud Henman and Harlan Lund, both of whom
5 were at the bargaining table when the contracts were negoti-
6 ated and both of whom testified that under the old language
7 it was understood that the decision of the surveyor at step
8 two was final and binding. The new language is supportive of
9 and consistent with that testimony. Even if it were not,
10 the old language is vague enough that the testimony of Lund
11 and Henman as to intent must be controlling.

12 III. CONCLUSIONS OF LAW

13 It is well settled that the processing of a grievance
14 is part of the duty to bargain in good faith and that a
15 failure to process a grievance is an unfair labor practice.
16 See City of Livingston v. Montana Council No. 9, 571 P.2d
17 374, (Mont. 1977).

18 Yellowstone County cites Montana Supreme Court cases
19 from 1926 and 1923 in support of the proposition that the
20 surveyor acted outside the authority granted to him by the
21 commissioners. The county further contends that the union
22 knew this, the surveyor knew this, and consequently the
23 county cannot be held liable. This is not persuasive. The
24 union and the county entered into an enforceable contract
25 the terms of which were known by the surveyor, the union,

1 and the commissioners. One part of that contract called for
2 a grievance procedure with a decision to be rendered by the
3 surveyor. The surveyor complied with the terms of the
4 contract by holding a hearing and rendering a decision. Had
5 he not done so there would have been an unfair labor prac-
6 tice. As it were, the decision issued by the surveyor was
7 adverse to the county. Based on the understanding of the
8 people who negotiated the contract, that decision was final
9 and binding. Further, based on past practice the decision
10 was well founded. The county cannot now abrogate the
11 contract because the surveyor, an elected official, did not
12 follow the dictates of the commissioners. That is a problem
13 between the elected officials. Moreover, any problem there
14 was appears to be resolved with the new contract language.
15 In any event the complainant should suffer no harm from
16 managements internal problems.

17 Yellowstone County violated 39-31-201, 39-31-401(1) and
18 39-31-401(5).

19 IV. RECOMMENDED ORDER

20 It is hereby ordered that after this order becomes
21 final, Yellowstone County, its officers, agents, and repre-
22 sentatives shall:

23 1. cease and desist its violation of 39-31-201,
24 39-31-401(1) and 39-31-401(2), MCA;

1 2. implement and abide by the decisions of Harlan Lund
2 concerning the grievances of Harold Becker and Floyd;

3 3. meet with the union representatives of Floyd
4 Tronstad and Harold Becker to determine the amount due under
5 number two above. If a mutual determination cannot be made
6 within ten (10) days after this order becomes final notify
7 this Board so that a hearing may be held and a detailed
8 remedial order issued;

9 4. notify this Board in writing within twenty (20)
10 days what steps have been taken to comply with this order.

11 Dated this 28th day of June, 1988.

12 NOTICE: Exceptions to these Findings of Fact, Conclusions
13 of Law and Recommended Order may be filed within twenty (20)
14 days of service. If no exceptions are filed the Recommended
15 Order will become the Order of the Board of Personnel
16 Appeals.

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19 John Andrew
20 Hearing Examiner
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John Andrew
Hearing Examiner