

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 13-89:

LIVINGSTON EDUCATION ASSOCIATION, )  
MEA/NEA, )

Complainant, )

vs. )

FINAL ORDER

LIVINGSTON PUBLIC SCHOOLS (PARK )  
COUNTY ELEMENTARY SCHOOL DISTRICT )  
#4 AND HIGH SCHOOL DISTRICT #1), )

Respondent. )

\* \* \* \* \*

The Findings of Fact, Conclusions of Law; and Recommended Order were issued by Jack H. Calhoun on November 30, 1990.

Exceptions to the Hearing Examiner's Finding of Fact; Conclusions of Law; and Recommended Order were filed by Emilie Loring on behalf of the Complainant on December 18, 1990.

The Board reviewed the record and information submitted and considering the oral arguments, the Board orders as follows:

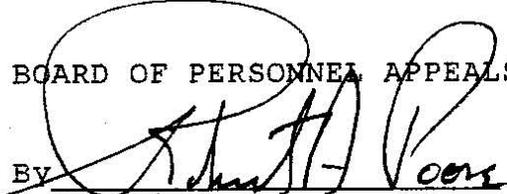
1. IT IS ORDERED that the Exceptions to the Findings of Fact; Conclusions of Law; and Recommended Order are hereby denied.

2. IT IS ORDERED that this Board therefore adopts the Findings of Fact; Conclusions of Law; and Recommended Order of the Hearing Examiner Jack H. Calhoun as the Final Order of this Board.

1 NOTICE: You are entitled to Judicial Review of this Order.  
2 Judicial Review may be obtained by filing a petition for Judicial  
3 Review with the District Court no later than thirty (30) days  
4 from service of this Order. Judicial Review is pursuant to the  
5 provisions of Section 2-4-701, et seq., MCA.

6 DATED this 3<sup>rd</sup> day of May, 1991.

7 BOARD OF PERSONNEL APPEALS

8 BY   
9 Robert A. Poore  
10 Chairman

11 \* \* \* \* \*

12 CERTIFICATE OF MAILING

13 I, *Hera Christensen*, do certify that a true and  
14 correct copy of this document was mailed to the following on the  
15 7<sup>th</sup> day of May, 1991.

16 Emilie Loring  
17 HILLEY & LORING  
18 500 Daly Avenue  
19 Missoula, MT 59801

20 Laurence Martin  
21 FELT, MARTIN, FRAZIER & LOVAS, P.C.  
22 P.O. Box 2558  
23 Billings, MT 59103  
24  
25



represented the LEA. Larry Martin represented the District.  
Briefs were filed and the case was submitted August 27, 1990.

ISSUE

The issue to be determined is whether the District violated section 39-31-401(1) and (5) MCA when it assigned teachers to supervise study halls and lunch periods during their preparation periods.

FACTS

Based on the evidence on the record, including the sworn testimony of witnesses, I make the following findings of fact.

1. Prior to the second semester of the 1984-85 school year the District's middle school teachers - those teaching grades 6, 7 and 8 - were on a schedule that was based on a seven-period day, they taught six periods and had one period of preparation time. This was referred to as the 6/1 schedule.

2. At the beginning of the second semester of the 1984-85 school year the middle school principal changed the schedule to an eight-period day. Teachers were required to teach six periods each day, and they had two periods for preparation time. This was referred to as the 6/2 schedule.

3. Under the seven-period schedule teachers taught 55-minute periods, under the eight-period schedule they taught 45-minute periods.

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4. The collective bargaining agreement in existence at the time of the change from the seven-period day to the eight-period day provided that middle school teachers have no less than 50 minutes of preparation time each day; therefore, two preparation periods were necessary to comply with the terms of the agreement.

5. In 1985 the middle school was destroyed by fire causing middle school grades 6, 7 and 8 to be shifted to Lincoln School, where they remained until the beginning of the 1987-88 school year. Lincoln School was declared unsafe by the fire marshall, consequently the middle school grades had to be moved. The sixth grade class was moved to an elementary building. The seventh and eighth grades were moved to Park High School.

6. The 6/2 eight-period schedule that the seventh and eighth grades were on did not coincide with the seven-period high school schedule. Confusion was created because bells rang at various times and the length of periods was different.

7. The District decided to change the middle school schedule to coincide with the high school schedule starting with the 1988-89 school year. Middle school teachers then taught five periods each day and had two periods for preparation. This was referred to as a 5/2 schedule.

8. In February of 1988 the LEA filed a grievance against the District alleging a violation of the collective bargaining

1 agreement when the District used aides to cover study hall and  
2 lunchroom supervision. The grievance went to arbitration and the  
3 arbitrator ruled that the use of aides violated the agreement by  
4 transferring work out of the bargaining unit. The District was  
5 ordered to cease the practice effective the second semester of  
6 the 1988-89 school year.

7 9. The District did not have sufficient funds to hire  
8 additional teachers to handle the study hall and lunchroom duties  
9 that aides had performed prior to the arbitrator's order. To  
10 cover the duties, the superintendent changed work schedules of  
11 some of the middle school teachers by assigning them study hall  
12 duties in lieu of a preparation period.

13 10. The changed schedule left the middle school teachers  
14 with at least 50 minutes of preparation time each day in  
15 accordance with the terms of the collective bargaining agreement.

16 11. At the time the District changed the middle school  
17 teachers schedule by reducing their preparation period from two  
18 to one, contract negotiations were going on between the District  
19 and the LEA. Their collective bargaining agreement had expired  
20 on June 30, 1987. A new agreement was reached in September of  
21 1989.

22 12. After the District announced the change in the schedule  
23 for middle school teachers in January of 1989, the LEA attempted  
24 to negotiate a provision in the collective bargaining agreement  
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1 to guarantee middle school teachers two preparation periods daily  
2 and to limit their teaching to five periods each day.

3 13. The District did not agree to the proposal changes.  
4 The new agreement did not contain the scheduling proposals the  
5 LEA made.

6 14. On September 7, 1989 the middle school teachers filed a  
7 grievance over the schedule change that the District made in  
8 January alleging the District was required by the contract to  
9 negotiate such changes.

10 15. At the time the hearing was conducted in this matter,  
11 the LEA grievance was scheduled to be heard by an arbitrator, who  
12 would issue a final and binding decision.

13 16. There was nothing in the parties' collective bargaining  
14 agreement, which expired June 30, 1987, that limited the  
15 District's authority to change middle school teachers' schedules  
16 from two preparation periods to one as long as 50 minutes of  
17 preparation time was provided each day.

18 DISCUSSION

19 The LEA contends the District unilaterally changed a working  
20 condition, which was a mandatory subject of bargaining, without  
21 bargaining. It is basic that unilateral changes by an employer  
22 in wages, hours and other mandatory subjects of bargaining are  
23 violations of the employer's legal duty to bargain in good faith  
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1 with the exclusive representative, NLRB v. Katz, 369 U.S. 736, 50  
2 LRRM 2177. In the instant case, however, the parties had  
3 previously bargained over the matter of preparation time for the  
4 middle school teachers, and they included a provision in their  
5 agreement that governed specifically preparation time. The  
6 provision in the agreement was clear and without ambiguity:  
7 elementary teachers were entitled to 50 minutes daily. There is  
8 no dispute that middle school teachers are elementary teachers,  
9 not high school teachers. Upon expiration of the agreement the  
10 District's duty was to maintain the status quo. Making a  
11 schedule change that was explicitly in accordance with the  
12 preparation provision of the expired agreement did not change the  
13 status quo.

14 There was nothing in evidence to show conclusively that  
15 practices of the District should be interpreted as amending the  
16 specific language of the agreement on preparation time. There  
17 was no unequivocal, clearly annunciated and acted upon mutual and  
18 definite decision to grant middle school teachers two preparation  
19 periods. On the contrary, the District changed the schedule a  
20 number of times beginning in 1984-85.

21 It is unnecessary to address the deferral and mootness  
22 arguments raised by the District, since I have decided the matter  
23 on the basis of the question raised by the LEA when the complaint  
24 was filed.  
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CONCLUSION OF LAW

The District did not violate sections 39-31-401(1) or (5) MCA when it assigned teachers to supervise study halls and lunch periods during their preparation periods.

RECOMMENDED ORDER

Unfair labor practice charge no. 13-89 is dismissed.

NOTICE

Exceptions to these findings of fact, conclusion of law and recommended order may be filed within twenty days of service. If exceptions are not filed within such time, the recommended order will become the final order of the Board of Personnel Appeals.

DATED this 30<sup>th</sup> day of November, 1990.

BOARD OF PERSONNEL APPEALS

By *Jack H. Calhoun*  
Jack H. Calhoun  
Hearing Examiner

\* \* \* \* \*

CERTIFICATE OF MAILING

I, *Jennifer Jacobson*, do certify that a true and correct copy of this document was mailed to the following on the 30<sup>th</sup> day of November, 1990:

Emilie Loring  
HILLEY & LORING  
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