

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 64-89

THURLOW L. MASON,)
)
 Complainant,)

-vs-

R. NADIEAN JENSEN, JIM MAYES,)
JULIE DAHLEN, KARI CAMPBELL,)
WANDA STAFFORD, ORIN MARSH,)
THE AMERICAN FEDERATION OF)
STATE, COUNTY AND MUNICIPAL)
EMPLOYEES MONTANA STATE COUN-)
CIL NO. 9, AND AMERICAN FED-)
ERATION OF STATE, COUNTY AND)
MUNICIPAL EMPLOYEES LOCAL 971,)
)
 Defendants.)

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER

* * * * *

I. INTRODUCTION¹

Pursuant to a stipulation reached during a January 26, 1990 per-hearing conference the Hearing Examiner issued an order setting briefing schedule on January 29, 1990. In that order the above-captioned matter was to be submitted as follows:

- (1) There will be no hearing in the above captioned matter;
- (2) The parties will provide the Hearing Examiner and each other with copies of their exhibits and a statement explaining those exhibits and setting forth their respective position postmarked no later than February 16, 1990;

¹It should be noted that the Hearing Examiner considered this matter simultaneously with ULP 62-89: Myrick, Sevors and Berry V. Jensen, American Federation of State, County and Municipal Employees, et al.

1 (3) The parties have the opportunity to provide the
2 Hearing Examiner and each other with a rebuttal
3 statement which is to be postmarked no later than
4 February 28, 1990.

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II. BACKGROUND

1. On December 6, 1989 the Complainant, Thurlow L. Mason, filed an unfair labor practice charge with the Board of Personnel Appeals alleging that the defendants R. Nadiean Jensen, Jim Mayes, American Federation of State, County and Municipal Employees Local 971 et al violated Section 39-31-402(1) MCA and 39-31-201 MCA when the defendants initiated internal union charges against the Complainant accusing him of violating the American Federation of State, County and Municipal Employees International Constitution by attempting to decertify the American Federation of State, County and Municipal Employees Local 971 as the exclusive bargaining representative for certain employees at the Montana Developmental Center (Boulder River School and Hospital).

2. The American Federation of State, County and Municipal Employees Montana State Council No. 9 filed a Response denying the charge asserting that the defendants were acting within their rights invoking internal union disciplinary action against the Complainant.

3. On December 13, 1989, Joseph V. Maronick was assigned to investigate the matter. On December 15, 1989, an Investigation Report and Determination was issued finding probable merit.

1 4. On December 19, 1989, Arlyn L. Plowman was appointed
2 Hearing Examiner. On January 5, 1990, a Pre-hearing Notice was
3 issued. A January 26, 1990 Pre-hearing Conference resulted in
4 the aforementioned stipulation and Order Setting Briefing
5 Schedule.

6 III. ISSUE

7 Whether the Defendants, R. Nadiean Jensen, Jim Mayes,
8 American Federation of State, County and Municipal Employees
9 Local 971 et al violated the Complainant, Thurlow Mason's
10 Section 39-31-201 rights and committed an Unfair Labor Practice
11 as defined in Section 39-31-402 MCA.

12 IV. FINDINGS OF FACT

13 1. The American Federation of State, County and Municipal
14 Employees, Montana State Council No. 9/American Federation of
15 State, County and Municipal Employees Local 971 is the exclusive
16 bargaining representative for certain employees of the Montana
17 Department of Institutions at the Montana Developmental Center
18 (Boulder River School and Hospital).

19 2. The Complainant is an employee of the State of Montana
20 and a member of the Montana Developmental Center bargaining unit
21 represented by the American Federation of State, County and
22 Municipal Employees.

23 3. During the spring of 1989 the Complainant and other
24 members of American Federation of State, County and Municipal
25 Employees Local 971 were active in an unsuccessful attempt to

1 decertify the American Federation of State, County and Municipal
2 Employees as the exclusive bargaining representative for their
3 bargaining unit.

4 4. Following the defeat of the decertification effort the
5 Defendants brought internal union disciplinary action against the
6 Complainant. In a December 12, 1989 letter to John Seferian,
7 Chairman of the American Federation of State, County and Muni-
8 cipal Employees Judicial Panel, the Defendants charged the Com-
9 plainant with violating the American Federation of State, County
10 and Municipal Employees International Constitution in that the he
11 filed a decertification petition on April 24, 1989 against
12 American Federation of State, County and Municipal Employees
13 Local 971 and called for an independent union of his own crea-
14 tion. The defendants requested that the Judicial Panel assume
15 jurisdiction and that the Complainant, if found guilty, be (a)
16 fined an amount equal to one year's dues; (b) be suspended from
17 the right to hold office or seek any elected position at any
18 level of the union for a period of four years, and; be suspended
19 from membership for a period of two years.

20 5. The Defendants' charges against the Complainant were
21 the subject of an American Federation of State, County and
22 Municipal Employees Judicial Panel proceeding on November 30,
23 1989 in Butte. The Complainant left the judicial panel proceed-
24 ing without presenting a defense after raising legal and due
25 process objections and moving for dismissal.

1 6. In a decision dated January 9, 1990, Jeane Lambie,
2 American Federation of State, County and Municipal Employees
3 Judicial Panel Member found the Complainant guilty of violating
4 American Federation of State, County and Municipal Employees
5 International Constitution and expelled him from membership.

6 V. CONCLUSIONS OF LAW

7 1. The Board of Personnel Appeals has jurisdiction in this
8 matter pursuant to Section 39-31-405 et. seq., MCA.

9 2. The Montana Supreme Court has approved the practice of
10 the Board of Personnel Appeals using Federal Court and National
11 Labor Relations Board (NLRB) precedents as guidelines in inter-
12 preting the Montana Collective Bargaining For Public Employees
13 Act as the state act is so similar to the Federal Labor Manage-
14 ment Relations Act, State ex rel. Board of Personnel Appeals v.
15 District Court, 183 Mont. 223, 598 P.2d 1117, 103 LRRM 2297;
16 Teamsters Local No. 45 v. State ex rel. Board of Personnel
17 Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012; City of
18 Great Falls v. Young (Young III), 211 Mont. 13, 686 P.2d 185,
19 119 LRRM 2682.

20 3. Pursuant to Section 39-31-406 MCA, the Complainant's
21 case must be established by a preponderance evidence before an
22 Unfair Labor Practice may be found, Board of Trustees v. State of
23 Montana, 103 LRRM 3090, 604 P.2d 1770, 185 Mont. 89. See also
24 Indiana Metal Products v. NLRB, 1953 CA 7, 31 LRRM 2490, 202 F.2d
25

1 613 and NLRB v. Kaiser Aluminum and Chemical Corporation, 24 LRRM
2 2412, 217 F.2d 366, 1954 CA 9.

3 4. Pursuant to Section 39-31-201 public employees shall
4 have and shall be protected in the exercise of the right of self
5 organization, to form, join, or assist any labor organization, to
6 bargain collectively through representatives of their own
7 choosing on questions of wages, hours, fringe benefits, and other
8 conditions of employment, and to engage in other concerted
9 activities for the purpose of collective bargaining or other
10 mutual aid or protection free from interference, restraint, or
11 coercion.

12 Pursuant to Section 39-31-402 MCA, it is an Unfair Labor
13 Practice for a labor organization or its agents to: (1) restrain
14 or coerce employees in the exercise of the rights guaranteed in
15 39-31-201 or a public employer in the selection of his represent-
16 ative for the purpose of collective bargaining or the adjustment
17 of grievances; (2) refuse to bargain collectively in good faith
18 with the public employer if it has been designated as the
19 exclusive representative of employees; (3) use agency shop fees
20 for contributions to political candidates or parties at state or
21 local levels.

22 5. National Labor Relations Board precedent holds that a
23 labor organization restrains or coerces employees in the exercise
24 of their Section 39-31-201 rights when it fines a member for
25 supporting a decertification effort. However, it is also well

1 established that a labor organization may expel a member for
2 bringing a petition for its decertification. See Tawas Tube
3 Products, Inc., 58 LRRM 1330, 151 NLRB 9, February 15, 1965;
4 National Labor Relations Board v. Molders Local 125, 77 LRRM
5 2067, 442 F.2d 92 1971 CA 7; and Steelworkers Local 4028, 60
6 LRRM 1008, 154 NLRB 692, August 25, 1965 affirmed in Price v.
7 National Labor Relations Board, 64 LRRM 2495, 373 F.2d 443, 1967
8 CA 9, cert denied, 68 LRRM 2408, 392 US 904, June 10, 1968.

9 In International Molders' and Allied Workers Local
10 No. 125, AFL-CIO (Blackhawk Tanning Co., Inc.) the
11 Board (National Labor Relations Board) held that while
12 a labor organization may properly seek to defend its
13 status as collective-bargaining representative by
14 expelling employee-members who filed decertification
15 petitions or participated in activities in support
16 thereof, it may not fine a member for filing a decerti-
17 fication petition since that action is punitive and
18 improper rather than defensive and, therefore, in
19 violation of the Act:

20 "In short, where the union member is seeking to
21 decertify the union, the Board has said that the public
22 policy against permitting a union to penalize a member
23 because he seeks the aid of the Board should give way
24 to the union's right to self-defense. But when a union
25 only fines a member because he has filed a decertifica-
tion petition, the effect is not defensive and can only
be punitive - to discourage members from seeking such
access to the Board's processes; the union is not one
whit better able to defend itself against decertifica-
tion as a result of the fine. The dissident member
could still campaign against the union while remaining
a member and therefore be privy to its strategy and
tactics. Teamsters Local 165, 86 LRRM 1433, 211 NLRB
707, June 18, 1974 (citations and italics omitted).

6. Pursuant to the foregoing, it was an Unfair Labor
Practice for the Defendants to discipline the Complainant with a
fine for supporting the decertification effort. However, that

1 matter was rendered moot when the American Federation of State,
2 County and Municipal Employees internal procedures denied the
3 Defendants' request for a fine. Steelworkers Local 4028, 60
4 LRRM 1008, 154 NLRB 692, August 25, 1965 affirmed in Price v.
5 National Labor Relations Board, 64 LRRM 2495, 373 F.2d 443, 1967
6 CA 9, cert denied, 68 LRRM 2408, 392 US 904, June 10, 1968. See
7 also Wiglesworth v. Teamsters, 93 LRRM 2801, 552 F.2d 1027, 1976
8 CA 4 cert denied, 95 LRRM 2575, 41 US 955, June 6, 1977.

9 It was not an Unfair Labor Practice for the Defendants to
10 seek the Complaint's expulsion.

11 VI. RECOMMENDED ORDER

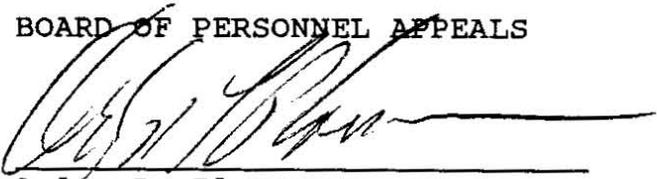
12 The above captioned matter is hereby dismissed.

13 VII. SPECIAL NOTICE

14 Exceptions to these Findings of Fact, Conclusions of Law and
15 Recommended Order may be filed within twenty (20) days of
16 service thereof. If no exceptions are filed, this Recommended
17 Order shall become the final order of the Board of Personnel
18 Appeals. Address exceptions to the Board of Personnel Appeals,
19 P.O. Box 1728, Helena, MT 59624-1728.

20 DATED this 2nd day of October 1990.

21 BOARD OF PERSONNEL APPEALS

22
23
24 By: 

25 Arlyn L. Plowman
Hearing Examiner

CERTIFICATE OF MAILING

1
2 I, Anna Christman do hereby certify that a true and
3 correct copy of this document was mailed to the following on the
4 2nd day of October 1990:

5 George Hagerman
6 P. O. Box 5356
7 Helena, MT 59604-5356

8 Thurlow L. Mason
9 P. O. Box 518
10 Boulder, MT 59632-0518

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