

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
LEGAL SERVICES DIVISION  
HEARINGS BUREAU

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 10-90

INTERNATIONAL BROTHERHOOD )  
OF ELECTRICAL WORKERS, LOCAL )  
UNION 623, )

Complainant, )

-vs-

STATE OF MONTANA, DEPARTMENT )  
OF ADMINISTRATION, )

Defendant. )

FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
ORDER

\* \* \* \* \*

I. INTRODUCTION

A hearing was held in the above cited matter on November 26, 1990 before Joseph V. Maronick, duly appointed hearing officer of the Labor Commissioner. The complainant was represented by Jay McDonald and the defendant was represented by Steve Johnson. Parties present, duly sworn and offering testimony included Carl Thompson and Steve Johnson.

II. ISSUE

Whether the defendant, State of Montana, Department of Administration, violated Section 39-31-401(5) MCA by withdrawing from the complainant, Local Union 623, International Brotherhood of Electrical Workers (IBEW) on January 17, 1990, recognition for all electrical workers at Montana Developmental Center (MDC).

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2 III. FINDINGS OF FACT

3 1. By final order of the Montana Board of Personnel Appeals  
4 dated October 19, 1990, the MDC was found to be a separate and  
5 distinct bargaining unit. The order of October 19, 1990 was  
6 appealable within twenty (20) days of issuance. The order was not  
7 appealed.

8 2. The unit at MDC is composed of one maintenance electrical  
9 worker, Carl R. Thompson. On April 27, 1989, Mr. Thompson filed a  
10 decertification petition with the Montana Board of Personnel  
11 Appeals alleging all electrical maintenance employees represented  
12 by Local 623 IBEW at MDC no longer wished to be represented by IBEW  
13 as their exclusive bargaining representative. An election was held  
14 but no votes were cast. Thereafter on December 28, 1989, Mr. Jack  
15 Calhoun, Chief, Appeals Bureau, advised the defendant of the  
16 election results and indicated that the complainant union remained  
17 the exclusive representative for bargaining purposes for all  
18 maintenance electrical workers employed at MDC.

19 3. On January 17, 1990, the defendant notified the  
20 complainant that, based on objective considerations, the defendant  
21 was withdrawing recognition from the complainant as the exclusive  
22 representative for the MDC unit. The objective considerations  
23 listed were:

- 24 1. The bargaining unit comprises only one employee;  
25 2. The filing of a decertification position by that  
employee;  
3. Employee dissatisfaction with the union communicated by

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- 2 the employee during testimony in a decertification hearing;
- 3 4. The only employee in the bargaining unit is not a member of the union; and
- 4 5. The employee's testimony regarding union inactivity in the MDC unit.

5 As a result of the state's withdrawal of recognition, it will be necessary to delete all references to the Montana Developmental Center unit in the 1989-1991 agreement which the parties are still negotiating.

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9 4. The complainant contends that in violation of Article II, Section 2 and 3 of the union contract, the defendant did not discharge Mr. Carl Thompson who did not apparently pay the union each month a representation fee.

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13 5. The defendant contends the December 28, 1989 letter from Mr. Calhoun does not extend official Board of Personnel Appeals certification to the defendant for the unit at MDC. Additionally, the defendant points out that on April 27, 1989, Mr. Thompson petitioned to be decertified from representation by Local 623, IBEW. At a hearing on October 4, 1989, Mr. Thompson testified he was unrepresented by the Local for the entire time of his employment at MDC and did not wish continued representation by the Local. During the hearing in this matter on November 26, 1990, Mr. Thompson indicated he continued not to wish representation by Local 623 of IBEW.

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2 IV. CONCLUSIONS OF LAW

3 1. The record presented shows the union does not enjoy  
4 majority status.

5 2. In Thomas Industries, Inc., v. LNRB, CA 6, 111 LRRM 2233,  
6 2235, (1982), the Court ruled that:

7 the employer must and may collectively bargain only  
8 with a representative who represents a majority of the  
9 employees; it is an Unfair Labor Practice...to bargain  
10 with an union which does not have majority support. See  
11 NLRB v. West Sand and Gravel Company., 612 F.2d 1326,  
12 1328, 103 LRRM 2255 (1st Cir. 1979).

13 The defendant is prohibited from bargaining with the  
14 complainant if the complainant does not enjoy majority status. The  
15 record clearly shows that the complainant does not enjoy majority  
16 status and therefore, the current Unfair Labor Practice Charge is  
17 without merit.

18 V. ORDER

19 Unfair Labor Practice Charge #10-90 is hereby dismissed.

20 Entered and dated this 31 day of December, 1990.

21 BOARD OF PERSONNEL APPEALS

22   
23 JOSEPH V. MARONICK  
24 Hearing Officer  
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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day served upon the following parties or such parties' attorneys of record by depositing the same in the U.S. Mail, postage prepaid, and addressed as follows:

Jay McDonald, Business Manager  
IBEW, Local 623  
P.O. Box 3251  
Butte, MT 59702

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day, served upon the following parties or such parties' attorneys of record by means of the State of Montana's Deadhead mail service.

Steve Johnson  
Labor Relations & Employee Benefits Bureau  
Room 130  
Mitchell Bldg.  
Helena, MT 59620

DATED this 31st day of December, 1990.

Steve Johnson

SP321.11