

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 23-90

LABORERS LOCAL NO. 254, )  
AFL-CIO, )  
Complainant, )  
vs. )  
STATE OF MONTANA, )  
DEPARTMENT OF ADMINISTRATION, )  
Defendant. )

RECOMMENDED  
ORDER

\* \* \* \* \*

On September 11, 1990 the Complainant, Laborers Local 254 filed an Unfair Labor Practice Charge with the Board of Personnel Appeals alleging that the Defendant, State of Montana, Department of Administration, refused to bargain whether the Defendant has a right to subcontract the work of security guards, members of a bargaining unit, represented by the Complainant, and in so doing committed an Unfair Labor Practice as defined in Section 39-31-401 (1) and (5) MCA. On September 28, 1990 the Defendant filed a response with the Board denying the allegation(s) in the above captioned Unfair Labor Practice Charge.

Pursuant to Section 39-31-405 (1) the undersigned was appointed to investigate the above captioned matter on October 3, 1990. During the course of the investigation contact was made with representatives of both parties.

1           The investigation has revealed that the Complainant has  
2 filed a grievance pursuant to an existing Collective Bargaining  
3 Agreement with the Defendant. In that grievance the Complainant  
4 alleges that the Defendant's action subcontracting the work of  
5 security guards was a violation of the negotiated contract.  
6 That grievance is scheduled for hearing before an arbitrator.

7           The above captioned Unfair Labor Practice Charge alleges  
8 that the Defendant violated the Montana Collective Bargaining for  
9 Public Employees Act, Section 39-31-101 et seq. MCA when the  
10 Defendant subcontracted the work of security guards. The  
11 aforementioned grievance alleges that the Defendant violated the  
12 Collective Bargaining Agreement when the Defendant subcontracted  
13 the work of security guards. The parties have agreed to submit  
14 the dispute as to whether there was a violation of the Collective  
15 Bargaining Agreement to that agreement's grievance/arbitration  
16 procedure. An arbitrator has been selected and a hearing  
17 scheduled. It is conceivable that a resolution of the contract  
18 dispute will also decide whether the Defendant committed an  
19 Unfair Labor Practice. It is in the interest of the Board of  
20 Personnel Appeals and the grievance/arbitration process that  
21 conflict between that process and the Board be held to a minimum.

22           The Montana Supreme Court has approved the practice of the  
23 Board of Personnel Appeals using Federal Court and National  
24 Labor Relations Board (NLRB) precedents as guidelines in inter-  
25 preting the Montana Collective Bargaining for Public Employees

1 Act as the State act is so similar to the Federal Labor Manage-  
2 ment Relations Act, State ex rel. Board of Personnel Appeals v.  
3 District Court, 183 Mont 223, 598 P.2d 1117, 103 LRRM 2297;  
4 Teamster's Local Union No. 45 v. State ex rel. Board of Personnel  
5 Appeals, 195 Mont 272, 635 P.2d 1310, 110 LRRM 2012; City of  
6 Great Falls v Young (Young III) 211 Mont 13, 686 P.2d 185, 119  
7 LRRM 2682.

8 In ULP 43-81, William Converse v Anaconda Deer Lodge County  
9 and ULP 44-81 James Forsman v Anaconda Deer Lodge County, August  
10 13, 1982, the Board of Personnel Appeals adopted National Labor  
11 Relations Board precedent set forth in Collyer Insulated Wire,  
12 192 NLRB 387, 77 LRRM 1931, August 20, 1971 deferring certain  
13 Unfair Labor Practice proceedings to an existing negotiated  
14 grievance/arbitration procedure. In so doing the Board removed a  
15 possible source of conflict between the Board of Personnel  
16 Appeals and the dispute resolution mechanism contained within the  
17 parties' Collective Bargaining Agreement.

18 RECOMMEND ORDER

19 Pursuant to the principles of Collyer Insulated Wire, supra,  
20 and Forsman/Converse v Anaconda-Deer Lodge County, supra, without  
21 prejudice to any party and without deciding the merits of the  
22 Complainant's Unfair Labor Practice Charge, the above captioned  
23 matter is hereby dismissed. However, the Board of Personnel  
24 Appeals retains jurisdiction. Being aware that the parties have  
25 not yet resolved their dispute through their Collective Bargain-

1 ing Agreement's grievance/arbitration procedure it is not now  
2 possible to inquire whether resolution of this dispute through  
3 that procedure will meet the standards established in Spielburg  
4 Manufacturing Company, 112 NLRB 1080, 36 LRRM 1152, June 8,  
5 1955.<sup>1</sup> In order to eliminate the risk of prejudice to any party  
6 the Board of Personnel Appeals retains jurisdiction over this  
7 matter for the purpose entertaining an appropriate and timely  
8 motion for further consideration upon a proper showing that  
9 either: (a) the dispute has not, within a reasonable time, been  
10 resolved pursuant to the parties' negotiated grievance/arbitra-  
11 tion procedure; or (b) the grievance/arbitration proceedings have  
12 not been fair and regular or have reached a result which is  
13 repugnant to the Montana Collective Bargaining for Public  
14 Employees Act.

15 SPECIAL NOTICE

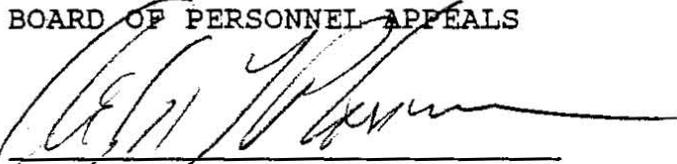
16 Exceptions to the this Recommended Order may be filed within  
17 twenty (20) days of services thereof. If no exceptions are  
18 filed, this Recommended Order shall become the Order of the  
19 Board of Personnel Appeals. Address exceptions to the Board of  
20 Personnel Appeals, P.O. Box 1728, Helena, Montana 59624-1728.

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22  
23 <sup>1</sup>See Olin Corporation 268 NLRB 573, 115 LRRM 1056, January  
24 19, 1984; Ad Art, Inc. v NLRB 645 F.2d 667, 106 LRRM 2010, 9 CA  
25 1981; Darr v NLRB 801 F.2d 1404, 123 LLRM 2548 and 3051, DC CA  
1986; and Garcia v NLRB, 785 F.2d 807, 121 LRRM 3349, 9 CA 1986

1 Entered and dated this thirtieth day of October 1990.

2 BOARD OF PERSONNEL APPEALS

3  
4 By:

  
ARLYN L. PLOWMAN, Investigator

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7 CERTIFICATE OF SERVICE

8 The undersigned does hereby certify that a true and correct  
9 copy of the foregoing/attached "Recommended Order" was served  
upon the following on the 31<sup>st</sup> day of October 1990, postage  
paid and addressed or delivered as indicated:

10 Steve Johnson, Chief  
11 Labor Relations Bureau, State Personnel Division  
12 Department of Administration  
Room 130 Mitchell Building  
Helena, MT 59620

13 Eugene Fenderson, Business Manager  
14 Laborer's Local No. 254, AFL-CIO  
15 P.O. Box 702  
Helena, MT 59624-0702

16 Karl J. Englund, Attorney  
17 Rossbach and Whiston Law Offices  
P.O. Box 8988  
18 Missoula, MT 59807-8988

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