

1 STATE OF MONTANA
2 BEFORE THE BOARD OF PERSONNEL APPEALS

3 IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 13-92

4 LUCINA DURKIN (In representation)
5 of School Bus Drivers),)
6 AMALGAMATED TRANSIT UNION #381,)

7 Complainant,)

8 vs.)

9 BUTTE SCHOOL DISTRICT #1,)

10 Defendant.)

RECOMMENDED

ORDER

11 * * * * *

12 I. BACKGROUND AND DISCUSSION

13 This matter comes on as a result of charges filed on October
14 9, 1991, alleging a violation of 39-31-401(5) MCA. The charges
15 allege that the Butte School District unilaterally changed
16 working conditions by contracting out charter work. The charge
17 has been denied by the District. The District has also requested
18 that the complaint be dismissed as the matter is already subject
19 to the contract grievance procedure and final and binding
20 arbitration.

21 Pursuant to 39-31-405 (1) the undersigned was appointed to
22 investigate the charge. The investigation has revealed that the
23 Complainant has filed a grievance and that the parties have
24 agreed to submit the dispute as to whether there was a violation
25 of the agreement to the grievance/arbitration procedure. It is
conceivable that a resolution of the contract dispute will also
decidewhether the Defendant committed an unfair labor practice.

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2 In ULP 43-81, William Converse v Anaconda Deer Lodge County
3 and ULP 44-81, James Forsman v Anaconda Deer Lodge County, the
4 Board of Personnel Appeals adopted National Labor Relations Board
5 precedent as set forth in Collyer Insulated Wire, 192 NLRB 387,
6 77 LRRM 1931, deferring certain unfair labor practice proceedings
7 to an existing negotiated grievance/arbitration procedure. In so
8 doing the Board removed a possible source of conflict between the
9 Board of Personnel Appeals and the dispute resolution mechanism
10 contained within the parties' collective bargaining agreement.
11 Such a removal is in the best interest of the Board and the
12 collective bargaining process.

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14 II. RECOMMENDED ORDER

15 Unfair Labor Practice Charge 7-92 is dismissed without
16 prejudice to any party and without deciding the merits of the
17 charge. The Board of Personnel Appeals retains jurisdiction over
18 this matter for the purpose of entertaining an appropriate and
19 timely motion for further consideration upon a proper showing
20 that either: the dispute has not, within a reasonable time, been
21 resolved pursuant to the parties' negotiated grievance/arbitra-
22 tion procedure; or the grievance/arbitration proceedings have not
23 been fair and regular or have reached a result which is repugnant
24 to the public policy considerations of the Montana Collective
25 Bargaining for Public Employees Act.

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2 NOTICE: Exceptions to this Recommended Order may be filed
3 within twenty (20) days of service thereof. If no exceptions are
4 filed, this Recommended Order shall become the Order of the Board
5 of Personnel Appeals. Address exceptions to the attention of the
6 Investigator at the Board of Personnel Appeals, P.O. Box 1728,
7 Helena, Montana 59624-1728.

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9
10 Dated this 1st day of November, 1991.

11 BOARD OF PERSONNEL APPEALS

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13 By: 

14 John Andrew
15 Investigator

16 CERTIFICATE OF MAILING

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

22 William Nachatilo, Superintendent
23 Butte School District No. 1
24 111 North Montana Street
25 Butte, Mt. 59701

Lucina Durkin
ATU Local #381
838 Hornet Street
Butte, Mt. 59701

Dated this 1st day of November 1991.

