

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

IN THE MATTER OF UNFAIR LABOR CHARGE NO. 40-93:

MONTANA EDUCATION ASSOCIATION,)
MEA,)

Complainant,)

vs.)

LAUREL SCHOOL DISTRICT NOS. 17)
AND 7-70,)

Defendant.)

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER

* * * * *

I. INTRODUCTION

On February 26, 1993 Complainant, Montana Education Association, MEA filed an unfair labor practice charge alleging Laurel School District Numbers 7 and 7-70, Laurel, Montana was violating Section 39-31-305 and 39-31-401 (2) and (5), MCA, by bargaining to impasse over the Complainant organizational name. On March 9, 1993, Defendant denied any violation as alleged and requested the charge be dismissed. An Investigation Report and Determination of March 25, 1993 found sufficient factual and legal issues raised by the charge and the matter was referred to hearing. On December 10, 1993 the Complainant filed a Motion for Summary Judgment or Administrative Equivalent. Following receipt of briefs, by order of March 31, 1994 the Motion for Summary Judgment or Administrative Equivalent was denied.

The hearing was held on July 8, 1994. Parties present, duly sworn and offering testimony included John Berg, Arlyn Plowman, Rick D'Hooge, Norma Cleveland, David Sexton, John Stratton, Pat

1 Harrison, and Trudy Downer. Complainant was represented by Counsel
2 Kelly Addy and the Defendant by Counsel Larry Martin.

3 Documents admitted into the record included: Complainant's
4 Exhibits C-A through C-D, 1 through 16, 18 through 30, and
5 Defendant's D-A, Exhibits 1 through 9, 11, 12, 15, and 16.
6 Defendant's Exhibits 1, 2, 2A and 3 were admitted over objection
7 for what they are worth and Complainant's Exhibits C, D, 19 through
8 25 were also admitted over objection for what they are worth.
9 Proposed Findings of Fact, Conclusions of Law and Order, Briefs,
10 and Reply Briefs were submitted by the parties. Final post-hearing
11 submission was received November 15, 1994.

12 II. ISSUES

- 13 1. Was impasse reached?
- 14 2. Did the Defendant refuse to bargain in good faith?

15 III. FINDINGS OF FACT

16 1. In early 1992 negotiations began between the Defendant
17 and the certified staffs' bargaining representative, Laurel
18 Educational Association, "LEA". LEA had never been certified as
19 the representative of the Defendant teaching certified staff but
20 had been recognized by the Defendant as the certified staff
21 bargaining representative. Also in early 1992, negotiations
22 continued, having commenced in the fall of 1990, between the
23 Defendant and the classified staff bargaining representative, the
24 Laurel Classified Employees Association, "LCEA". From October
25 1990, the Defendant understood LCEA was the representative of the
26 classified employees. Collective bargaining agreements between the
27 parties for the 1992-93 school year identified the contract parties
28

1 as the Defendant and LEA, MEA/NEA and LCEA, MEA/NEA. Exhibit C-A
2 and C-B.

3 2. In November 1991, both LCEA and LEA, individually by
4 membership vote almost with no opposition, voted to change the unit
5 names and combine the two units into one unit identified as Laurel
6 Unified Education Association, "LUEA".

7 3. In February 1992, a new constitution was installed for
8 LUEA. John Stratton, a certified teacher and LEA president, became
9 LUEA president and Norma Sisk, a classified employee and LCEA
10 president became LUEA vice president. The Defendant accurately
11 related in their Proposed Findings of Fact the following
12 information relating to the LUEA constitution.

13 ... The constitution provides that membership in the LUEA
14 is open not only to the certified staff but also to the
15 classified staff. Both certified and classified staff
16 voted for the officers of the LUEA. Officers of the
17 combined organization included both certified and
18 classified employees. Trudy Downer (chief spokesperson
19 for the classified staff) - hearing transcript page 12 -
20 was elected as negotiator for the certified staff but the
21 classified staff was entitled to and did vote on who
22 would be negotiating the certified contact. The
23 president of LUEA, by the LUEA constitution, represents
24 the LUEA with respect to matters not only for the
25 certified staff but also the classified staff. That was
26 also true of the vice president. The vice president was
27 also chairperson of the negotiation committee which
28 establishes policy for both certified and classified
negotiations. The vice president is also chairperson of the
grievance committee, and the grievance committee
establishes policy and makes decision with respect to
grievances for both classified and certified personnel.
Building representatives are jointly elected by both
certified and classified staff in each building and their
numbers based on the total number of both classified and
certified employees in every building. Article VIII of
the constitution provides for one single negotiations
committee with membership from both classified and
certified staffs. This committee sets guidelines for a
single negotiating team which is comprised of both
classified and certified staff members. Tr 34. The
negotiating team consists of three members of the
certified staff and three members of the classified staff

1 plus the president, and the duty of the negotiating team
2 is to represent the LUEA as a whole in negotiations with
the District.

3 26. The organizational document of the LUEA, its
4 constitution, reflects that indeed two bargaining unions
5 had merged into one with membership open to both and with
6 representatives of both former unions jointly setting
policy and representing both classified and certified
7 employees. (Defendant's Proposed Findings of Fact, and
8 Conclusions of Law, page 10-11 lines 16 to 25, lines 1 to
9 24)

10 4. During the on going course of negotiations after the two
11 units had combined to form LUEA, negotiators requested in
12 bargaining that LEA and LCEA now be referred to as LUEA. The
13 Defendant did not agree to refer to either LEA or LCEA as LUEA and
14 LUEA did not abandon its desire to receive a new name designation
15 but the parties did agreed to continue bargaining other subjects.
16 The Defendant continued to inquire regarding the "name change" and
17 what was actually involved regarding unit composition and affect.
18 The Defendant in an April 23, 1992 letter from the Montana School
Board Association (MSBA) Defendant witness Arlyn Plowman - Labor
Relations Specialist, (Exhibit D-5) requested as follows:

19 "Your memorandum of April 5, 1992 is appreciated.
20 However it does not resolve all the concerns the Laurel
21 School District has relative to the LEA's proposal to
change all references to the Laurel Education Association
22 in the Collective Bargaining Agreement to the Laurel
Unified Education Association.

23 First: The MEA Today article discussed during several
24 bargaining sessions referenced the new Laurel "Wall-to-
25 Wall Unit". In private sector labor relations jargon
26 "Wall-to-Wall Unit" means a bargaining unit including all
of the employer's non-exempt employees. The Board is and
27 remains convinced that the Laurel School District
Classified and Certified employees must remain separate
28 bargaining units. There is no community of interest
between certified and the classified staff.

Second: Changing the District's name in the collective
bargaining agreement had no impact on the parties

1 bargaining relationship. The name change proposed by the
2 Association could have a serious and significant impact
on that relationship.

3 Third: The school district will resist any effort to
4 combine the certified and classified bargaining unit into
a "Wall-to-Wall Unit". We are not convinced that this is
5 not the intent behind the Associations' proposal.

6 Fourth: To date the Association has failed to offer
7 sufficient and convincing assurances that the "name
change" is only that and not an attempt to change the
bargain unit.

8 The Complainant refused to provide detailed information as
9 requested on the basis that the name change was just a name change
10 and no additional information was needed. In a May 2, 1992 letter
11 LEA president pointed out that his position was that the units had
12 properly voted to unify on May 15, 1992. LUEA officers would be
13 installed, LEA would cease to exist and how LEA chose to name
14 itself is not the Defendant's business and further attempts to
15 interfere with unit internal affairs is a ULP. (Exhibit C-12)

16 In a May 6, 1992 letter (Exhibit D-7) the Montana School Board
17 Association (MSBA) Defendant witness Arlyn Plowman - Labor
18 Relations Specialist, addressed the LEA president as follows:

19 Dear Mr. Stratton:

20 As I stated in my April 23, 1992 response to your
21 memorandum of April 5, 1992, the Laurel School District
22 7 and 7-70 Board of Trustees is opposed to any "wall-to-
23 wall" bargaining unit which would include both classified
24 and certified employees. The Trustees believe that there
25 is insufficient community of interests between the
26 classified and certified employees to have them included
27 in the same bargaining unit. The Trustees will resist
any effort to combine certified and classified employees
into a single bargaining unit. As has been stated across
the bargaining table on several occasions and in my April
23, 1992 memorandum, the School District's concern
regarding the Association's proposal to change the
recognized bargaining representative is based upon a
concern such a change could mean regarding the bargaining
unit.

1 The School District's bargaining committee has repeatedly
2 requested explanations and assurances from the
3 Association that the "name change" is only that and not
4 an attempt to combine or expand the bargaining units. To
5 date, the Association has either failed or refused to
6 offer sufficient and convincing assurances that the "name
7 change" proposal is not an attempt to change the
8 bargaining unit. The Association's position could be
9 clearly stated by responding directly to the Trustee's
10 concern: What present or future effect does or will the
11 "name change" have upon the bargaining units and their
12 relationship to the School District?

13 Section IB of the current collective bargaining agreement
14 requires the Board of Trustees to recognize the Laurel
15 Education Association as the exclusive representative of
16 certain teachers for the "duration of the agreement".
17 The Board will do so.

18 However, before the board can recognize some other labor
19 organization as the exclusive representative, several
20 questions should be answered. See NLRB v. Financial
21 Institution Employees, 121 LRRM 2741, 475 US 192; May
22 Department Stores, 289 NLRB 88, 128 LRRM 1299; Chas S.
23 Winner Inc., 289 NLRB 13, 130 LRRM 1348; and Western
24 Chemical Transport, Inc., 288 NLRB 27, 127 LRRM 1313.

25 1) Will the current Laurel Education Association's
26 autonomy continue or will it disappear to be replaced by
27 the Laurel Unified Education Association's control?

28 2) Will the current leaders of the Laurel
Education Association continue to have a major role in
the direction of the labor organization or will they be
replaced by other members of the Laurel Unified Education
Association?

3) Will the rights of the Laurel Education
Association members be substantially diminished as a
result of the formation of the Laurel Unified Education
Association?

4) What changes can be expected from past Laurel
Education Association practices and procedures from the
Laurel Unified Education Association in the areas of:

- a. contract negotiations;
- b. administration; and
- c. grievance processing?

Your quick response will be appreciated.

Sincerely,

Arlyn L. Plowman

Labor Relations Specialist

5. Bargaining between the parties continued. The Defendant
advised the Complainant at an April 1, 1992 meeting that they would
not bargain a name change proposal because it is a permissive

1 subject. The Defendant also notified the LEA Complainant unit
2 negotiating team of the Board of Personnel Appeals' procedure for
3 addressing a name change. At hearing, Mr. Plowman, stated he had
4 informed the Complainant as follows;

5 Well by this time, I, I, I believe that we were
6 convinced, at least I was convinced, that, that this is
7 not an issue of a name change. This was an issue of
8 whether there was a new labor organization which was a
9 legitimate successor to a previous organization. We took
10 the position at the bargaining table, once again, that it
11 was a permissive subject of bargaining that the Board of
12 Personnel Appeals was the appropriate place to resolve
13 this issue. It was not a bargaining issue. It was an
14 issue to be resolved at the Board of Personnel Appeals
15 and by the time we get to the table here for the next
16 contract, this matter had been, these charges had been
17 filed so we're, we're telling them that its, it's in the
18 mill. It's, it's before administrative agency,
19 permissive subject. We'd rather not, in fact we refused
20 to negotiate over the issue. This represents a proposal
21 that we received from the association proposing that we
22 agree to whatever the Board of Personnel Appeals decides
23 on this issue and, and I believe we rejected that.

24 ... Yes. The Board of Personnel Appeals has a procedure
25 in place and as long as I've been knowledgeable about the
26 Board of Personnel Appeals going back then at least eight
27 or nine years, where a labor organization could petition
28 to have its certification amended or changed. And those
are known generically as affiliation petitions. (Hearing
transcript pp. 138-240)

6. In the charge filed February 26, 1993, the Complainant
stated, in part:

The name by which the exclusive representative chooses to
call itself is not a mandatory subject of bargaining nor
is it a permissive subject of bargaining for the school
districts. To demand that the union use a name preferred
by the employer is a violation of the duty to bargain in
good faith....

7. The agreement of the parties relating to the name change
was that:

In order to continue the process tonight and bargain in
good faith, we agree that tonight's meeting will not
infer [sic] nor imply any specific recognition on the

1 part of the District nor that the Association has in any
2 way given up its right to determine its name. (Claimant's
Exhibit C-2)

3 8. Negotiations ultimately led to the use of mediation, a
4 strike and final settlement of two contracts - an initial contract
5 for the classified staff and a successor contract for the certified
6 staff. Two separate bargaining teams negotiated the contracts.
7 The Complainant did not at any time request or suggest any change
8 in the definition of the units which comprise the certified or
9 classified staff as they had been identified in earlier contracts
10 or negotiations. The Complainant argues in post hearing brief that
11 only the name of the units not the composition or the contractual
12 definition of the bargaining units had changed. The Complainant
13 filed this Unfair Labor Practice Charge alleging refusal to bargain
14 in good faith by bargaining to impasse over the name change which
15 is, according to the Complainant, neither a mandatory nor a
16 permissive subject of bargaining.

17 9. The Defendant pointed out that no impasse occurred. The
18 parties regularly exchanged proposals for about two years, resolved
19 issues as well as identified and executed contracts. The Defendant
20 continued to point out that the name change is a permissive subject
21 of bargaining but also discussed and inquired regarding the matter.
22 The Defendant agreed to a stipulation under which the parties
23 agreed to negotiations without resolution of the name change issue.
24 The parties did not end negotiations because of the name change
25 issue. They continued to meet, exchange proposals and resolve
26 disagreements.

27 10. The Complainant did not ask to change the recognition
28 clause of the contract for either the certified LEA or the

1 classified LCEA staff units. In December 1991 a joint LEA/LCEA
2 task force drew up a new constitution which was adopted in February
3 1992. (Exhibit D-A) The constitution provides for certain officers
4 and requires that both certified and classified staff be
5 represented in the officers elected. The constitution in
6 Section 2. NEGOTIATING TEAM provides as follows;

7 a. Membership

8 The Negotiating Team shall consist of three (3) members
9 from the certified staff and three (3) members from the
10 classified staff, plus the president. Negotiators shall
11 be elected by the members of the LUEA for three (3) year
12 term.

13 b. Duties

- 14 1. Be responsible for making the membership aware
15 of the Master Agreement provision regarding
16 the reopener clause.
- 17 2. Delegate duties to the Negotiations
18 Committee for research and study.
- 19 3. Tabulate results of the negotiations
20 survey.
- 21 4. Develop negotiations proposals in accordance
22 with the guidelines set by the Negotiations
23 Committee.
- 24 5. Represent the Association in negotiations
25 with the District.
- 26 6. Keep the Negotiations Committee informed
27 during negotiations.
- 28 7. Publish the Table Talk for all members.
8. Submit reports and recommendations to the
membership for consideration at a regular
or special meeting called by the
President.

21 The Complainant indicated the following in its Brief in Support of
22 Complainant's Proposed Findings of Fact, Conclusions of Law and
23 Order, in part,

24 The LUEA fielded two bargaining teams, one to
25 negotiate a successor contract with the
26 Defendant school district for certified
27 employees, and one to negotiate a contract for
28 classified employees. There was no intention
to change the definition of either bargaining
unit or to negotiate one consolidated master
agreement covering both classified and
certified employees. (Brief p.2)

1 The negotiation committee is made up of one representative per
2 classified job classification and one member per 15 certified
3 members. (Defendant's Exhibit A, p.7)

4 11. In Defendant's Proposed Findings of Fact; Conclusions of
5 Law; and Order, counsel requests attorney fees and costs incurred
6 in defending this charge.

7 IV. CONCLUSIONS OF LAW

8 1. The Board of Personnel Appeals has jurisdiction over this
9 charge under Section 39-31-404, MCA and under Implementation Rules
10 of Section 24.26.601 and 24.26.680-685 ARM.

11 2. Impasse did not occur. The Board has adopted a five part
12 test to determine when impasse exists. In the Board of Personnel
13 Appeals Index of Decisions and Orders, vol. II, (1986-1992),
14 "impasse" is identified as follows:

15 "In Montana five (5) factors have been utilized to
16 determine whether impasse exists. They were originally
17 laid down by the NLRB and the NLRB v. Taft Broadcasting,
64 LRRM 1387 and adopted by the BOPA in ULP 20-78... ULP
7-89.

18 Impasse has been defined as a situation where the
19 negotiators could reasonably conclude "that there is no
20 realistic prospect that continuation of discussion, at
21 that time, would have been fruitful", NLRB v. Independent
Association of Steel Fabractors, 582 F.2d 135, (1978).
Whether there is impasse is a matter of judgment." ULP
7-89.

22 The elements considered by the Board in a determination of
23 whether impasse exists are as follows:

- 24 1. The bargaining history;
- 25 2. The bargaining faith of the parties in negotiations;
- 26 3. The length of negotiations "frequency, numerous,
27 exhausting - exploring all grounds for settlement"
- 28 4. The importance of the issue or issues as to which
there is disagreement (mandatory or permissive
subject of bargaining), and

1 5. The contemporary understanding of the parties as to
2 the state of negotiations. (Defendant's Post
Hearing Brief page 27)

3 The parties in this case had a long history of bargaining
4 which eventually led to two settled contracts, one for LEA and one
5 for LCEA. The fact that proposals were exchanged which ultimately
6 led to contracts shows a bargaining history as well as
7 demonstrating the bargaining faith of the parties. Good faith is
8 demonstrated where both parties agreed to set aside the name
9 designation issue and continue negotiations. The parties had been
10 negotiating since 1990 and ultimately agreed on collective
11 bargaining agreements, albeit without the name change issue
12 resolved. The parties considered the name changing issue
13 significant, as evidenced by their negotiations as well as this
14 Unfair Labor Charge and charge responses. This, however, was only
15 one issue and did not preclude resolution of any other issue which
16 would have prevented ultimate contract execution. The parties
17 contemporaneously agreed to set aside the name change in order to
18 continue negotiations. Not only did negotiations continue but the
19 fruit of the negotiations were two contracts. Impasse did not
20 occur.

21 3. The requirement of good faith bargaining is outlined in
22 Volume 1, Patrick Hardin, Charles J. Morris, Developing Labor Law,
23 page 608-10 (1989) as follows:

24 The Board and the Courts recognized at an early date that
25 simply compelling the parties to meet was insufficient to
26 promote purposes of the act.¹ Early attempts by
employers to satisfy the bargaining obligation by merely
going through the motions without actually seeking to

27
28 ¹NLRB, 1936 Annual Report 85.

1 adjust differences were condemned.² The concept of
2 "good faith" was brought into the law of collective
3 bargaining as a solution to the problem of bargaining
4 without substance.³ In 1947 Congress explicitly
5 incorporated the "good faith" requirement in to Section
6 8(d).

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A. Totality of Conduct Assessed: *General Electric* and
the Proper Roles of the Parties.

The duty to bargain in good faith is an "obligation... to
participate actively in the deliberations so as to
indicate a present *intention* to find a basis for
agreement...⁴ This implies both "an open mind and a
sincere desire to reach an agreement" ⁵ The presence or
absence of intent "must be discerned from the record".
⁶ Except in case where the conduct fails to meet the
minimum obligation imposed by law or constitutes an
outright refusal to bargain,⁷ relevant facts of a case
must be studied to determine whether the employer or the
union is bargaining in good or bad faith. The "totality
of conduct" is the standard by which the "quality" of
negotiations is tested.⁸ Thus even though some specific
actions viewed alone, might not support a charge of bad
faith bargaining, the parties overall course of conduct
in negotiations may reveal a violation of the Act.⁹

Because the Board considers the entire course of conduct
in bargaining, isolated misconduct will not be viewed as
a failure to bargain in good faith. Thus, an employer's
withdrawal of tentative agreements, standing alone, does
not constitute bad faith contravention of the bargaining

²NLRB v. Montgomery Ward & Co., 133 F.2d 676, 12 LRRM 508 (CA
9, 1943); Benson Produce Co, 71 NLRB 888, 19 LRRN 1060 (1946).

³Cox, *The Duty to Bargain in Good Faith*, 71 HARV. L. Rev.
1401, 1413 (1958).

⁴NLRB v. Montgomery Ward & Co., *supra*.

⁵(NLRB v. The Truitt Mfg. Co., 351 US 149, 38 LRRM 2042
(1956)).

⁶General Elec. Co., 150 NLRB 192, 194, 57 LRRM 1491 (1964)

⁷Intent will not even be an issue if the outward conduct
amounts to a refusal to bargain. See NLRB v. Katz, 369 US 736, 50
LRRM 2177 (1962)

⁸B.F. Diamond Constr. Co., 163 NLRB 161, 64 LRRM 1333 (1967).

⁹See NLRB v. Cable Vision, 660 F.2d 1, 108 LRRM 2357 (CA 1,
1981).

1 obligation.¹⁰ In Roman Iron Works,¹¹ for example, the
2 employer violated section 8 (a) (5) by its unilateral wage
3 increase during negotiations. The employer also engaged
4 in hard bargaining including a reduction of the wage
5 offer during bargaining, denial of the union's request
6 for employee addresses, insistence on a right to
7 subcontract, and a demand for significant cost
8 reductions. However, the Board found the employer meet
9 frequently with the union, made complete contract
10 proposals, and made several significant concessions.
11 Under all these circumstances, the Board found that the
12 employer did not engage in bad-faith bargaining.¹²

13 The record presented in this case will not support a
14 conclusion that the Defendant refused to bargain with the
15 Complainant. This is especially true given the fact that contracts
16 resulted from negotiations. Defendant did not refuse to bargain in
17 good faith. They displayed an open mind, separated out the name
18 change issue by stipulation and reached an agreement. The
19 "totality of conduct" especially resulting in executed agreements,
20 does not show or even approach the threshold of refusing to bargain
21 in good faith.

22 4. Name change is a permissive subject of bargaining. In
23 NLRB v. Borg-Warner Corp., Wooster Div., 356 US 342, 42 LRRM 2034,
24 remanded, 260 F2d 785, 43 LRRM 2116 (CA 6, 1958) the Supreme Court
25 adopted the Board's analysis of the distinction between mandatory
26 and permissive subjects of bargaining. The Court reviewed the
27 National Labor Relations Act Sections 8(a) (5) and 8(d) stated, in
28 part;

Read together, these provisions establish the
obligation of the employer and the representative

26 ¹⁰Williams, 279 NLRB 82, 121 LRRM 1313 (1986).

27 ¹¹275 NLRB 449, 119 LRRM 1144 (1985)

28 ¹²Roman Iron Works, supra note 164.

1 of its employees to bargain with each other in good
2 faith with respect to wages, hours, and other terms
3 and conditions of employment....The duty is limited
4 to those subjects, and within that area neither
5 party is legally obliged to yield....As to other
6 matters, however, each party is free to bargain or
7 not to bargain, and to agree or not agree. (356 US
8 at 349)

9 The name change does not involve wages, hours, and other terms and
10 conditions of employment. Therefore it is a permissive subject of
11 bargaining. No legal authority was offered by the Complainant
12 which identifies a third subject of bargaining which is not
13 mandatory or permissive. In the Brief in Support of Complainant's
14 Proposed Findings of Fact, Conclusions of Law and Order, the
15 Complainant identified the "name change" as "...not even a
16 permissible subject of bargaining." In the charge the Complainant
17 identified the "name change" as "not a mandatory subject of
18 bargaining nor is it a permissive subject of bargaining for the
19 school districts." Research¹³ did identify a third subject
20 "illegal" but the "name change" certainly does not fall into that
21 group.

22 5. The School District did not unlawfully interfere with the
23 union's right to self organization or internal affairs. They
24 reasonably inquired regarding an issue the Complainant brought to
25 the table. The School District did not violate Section 39-31-401
26 (2) MCA. They did not interfere with, restrain or coerce employees
27 in their exercise of the rights guaranteed in Section 39-31-201,
28 MCA. The School District also did not violate Section 39-31-401
(5). They did bargain in good faith. The Defendant displayed an

¹³see Second Edition, Fifth Supplement, Patrick Hardin, Charles
J. Morris, Volume Developing Labor Law, 1982-1988, pp. 297-298.

1 open mind and a sincere desire to reach agreement. The Defendant
2 met the obligation to bargain as imposed by law. Standing alone,
3 especially given the ending contract agreements reached, the
4 refusal to negotiate or accept the "name change" which is a
5 permissive subject of bargaining does not support a bad faith
6 bargaining charge. As concluded above impasse was not reached.
7 The Defendant did not commit an Unfair Labor Practice as alleged.

8 6. The Board of Personnel Appeals in several cases addressed
9 the awarding of attorney fees. In Index of Decisions and Orders
10 Montana Board of Personnel Appeals, (1974-1986) the following is
11 provided:

12 **74.352: Types of Orders - Punitive Damages - Attorney's Fees**

13 "[T]his board has no authority to award
14 attorney fees at the administrative level. In
15 Their vs. The Commission of Labor and
16 Industry, the Montana Supreme Court spoke to
17 this specific issue." ULP #24-77

18 "The Union shall not be reimbursed for legal
19 or other expenses incurred as a result of
20 bringing these charges." ULP #3-79

21 "The Montana Supreme Court has long adhered to
22 the rule that attorney's fees may not be
23 awarded to the successful party unless there
24 is a contractual agreement or unless there
25 is a specific statutory authorization... [U]nder
26 these cases an award could not be made in the
27 absence of specific statutory authorization.
28 Moreover, even if this Board had the equity
power of a District Court, the claims here are
not of the type which would bring this case
within Foy vs. Anderson, ...an equitable
exception to the general rule." ULP #11-79

"Mr. O'Connell has not referenced or argued
the question of legal cost in his brief...
[T]he remedies provided the Board of Personnel
Appeals do not include awarding legal costs."
ULP #19-79

1 In accordance with the above reference, attorney fees are not
2 found appropriate in this case.

3 7. The Board rules at Section 24.26.560 ARM provide the
4 appropriate process to be used to reflect a change in the name of
5 an exclusive bargaining representative. This process should be
6 used by the unions.

7 **V. ORDER**

8 Based on the forgoing analysis Unfair Labor Practice Charge
9 40-93 is hereby DISMISSED.

10 Entered and dated this 7th day of February, 1995.

11
12 
13 Joseph V. Maronick
Hearing Officer

14 NOTICE: You are entitled to review of this Order pursuant to
15 Section 39-31-406(6) MCA. Review may be obtained by filing a
16 notice of appeal to the Board of Personnel Appeals postmarked
17 within 20 days after the day the decision of the hearing officer is
18 mailed, (February 27, 1995). The notice of
19 appeal shall consist of a written appeal of the decision of the
20 hearing officer, must set forth the specific errors of the hearing
21 officer and the issues to be raised on appeal. Notice of Appeal
22 shall be mailed to:

23
24
25
26
27
28 Administrator, Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, MT 59624

* * * * *

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:

John K. Addy
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DATED this 7th day of February, 1995.

Christine A. Roland