

1 STATE OF MONTANA
2 DEPARTMENT OF LABOR AND INDUSTRY
3 BEFORE THE BOARD OF PERSONNEL APPEALS

4 IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 3-96:

4 ANNE M. CARPITA,)
5)
5 Complainant,)
6)
6 vs.)
7 ANACONDA TEACHERS' UNION)
7 LOCAL #502,)
8)
8 Defendant.)

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER

9 * * * * *

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11 **I. INTRODUCTION**

12 Stan Gerke, Hearing Officer, conducted a telephone hearing in
13 the above-entitled matter on December 4, 1996, under authority of
14 §39-31-406, MCA, and in accordance with the Montana Administrative
15 Procedures Act, Title 2, Chapter 4, Part 6, MCA. Complainant, Anne
16 M. Carpita, was represented by Virginia Knight, Attorney at Law.
17 Defendant, Anaconda Teachers' Union Local #502, was represented by
18 David McLean, Attorney at Law. Witnesses present and offering
19 testimony included Dan Ricci, current and past President of
20 Defendant, and Maureen Watt, past President of Defendant.
21 Complainant's Exhibits Nos. 1 through 15 and Defendant's Exhibits
22 Nos. A and B were entered into the record. After the hearing, both
23 parties filed briefs.

24 **II. ISSUE**

25 The issue in this matter will be to determine whether
26 Defendant violated §§39-31-402(1) and 39-31-201, MCA.
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1 **III. FINDINGS OF FACT**

2 1. Complainant worked as a teacher for approximately 23½
3 years and was a member of the Montana Teachers' Retirement System.
4 For the last six of those years, Complainant worked as a teacher
5 for the Anaconda School District No. 10.

6 2. Complainant was a member of Defendant through the end of
7 August 1994. After that date, Complainant was no longer a member
8 of Defendant and no longer paid any union membership dues.

9 3. Complainant submitted a letter of resignation to the
10 Anaconda School District No. 2 on May 2, 1994, which announced her
11 intention to retire early from teaching effective June 10, 1994.
12 Complainant's letter of resignation and announcement of retirement
13 was accepted by the Anaconda School District No. 10.

14 4. When Complainant announced her retirement from teaching,
15 she did not inform the administrators of the Anaconda School
16 District No. 10 that she had any intention of returning to teaching
17 in another school district.

18 5. The collective bargaining agreement in effect between
19 Anaconda School District No. 10 and Defendant for the period
20 August 31, 1992 to August 31, 1995, contained a clause in
21 Article V, Section P, which provided:

22 The School District shall assume the District's
23 costs of health insurance for early retirees, until
24 such teachers become eligible for Medicare
25 benefits.

26 6. Following her early retirement in July 1994, Complainant
27 began drawing retirement benefits from the Montana Teachers'
28 Retirement System. In addition, Anaconda School District No. 10
continued to pay its costs for Complainant's health insurance.

1 7. On or about August 29, 1994, Complainant came out of
2 retirement and signed a teaching contract with the Missoula County
3 School District for the 1994-95 school year. From August 1994
4 through the end of June 1995, Complainant did not receive
5 retirement benefits from the Montana Teachers' Retirement System.

6 8. After the expiration of the one-year teaching contract
7 with the Missoula County School District, Complainant again became
8 eligible for, and began receiving retirement benefits from the
9 Montana Teachers' Retirement System.

10 9. After learning that Complainant had signed a teaching
11 contract with the Missoula County School District on August 29,
12 1994, Anaconda School District No. 10 refused to continue paying
13 her health insurance benefits under Article V, Section P, of the
14 Collective Bargaining Agreement.

15 10. In late August 1994 and in September 1994, Complainant's
16 counsel, Virginia Knight, contacted Dan Ricci, an officer of
17 Defendant, to discuss whether Complainant had a valid grievance
18 under the terms of the existing collective bargaining agreement as
19 the result of the refusal of the Anaconda School District No. 10 to
20 continue paying her health insurance benefits. Ricci told Knight
21 that Defendant had been involved in a previous
22 grievance/arbitration case for a teacher named Kathy Laslovich (who
23 had been laid off from employment) in which the arbitrator ruled
24 that a grievance could not be filed for a person who was not an
25 employee of the Anaconda School District No. 10 and also not a
26 union member. Ricci also indicated that Complainant would need to
27 file a written request for a grievance pursuant to the collective
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1 bargaining agreement and Defendant's constitution should she wish
2 to proceed.

3 11. On September 30, 1994, Knight sent a letter to Ricci
4 requesting that the grievance procedure be immediately instituted
5 on behalf of Complainant. The letter indicated that the
6 Complainant contended that a teacher who took early retirement was
7 entitled to health insurance benefits paid by Anaconda School
8 District No. 10 until she became eligible for Medicare benefits
9 regardless of whether the teacher came out of retirement.

10 12. On October 3 and 5, 1994, the executive committee of
11 Defendant and the membership as a whole addressed the matter
12 pursuant to its Constitution and decided that it would not file a
13 grievance on Complainant's behalf because the grievance possessed
14 no merit. Defendant maintained that in order for a teacher to be
15 deemed "retired," she had to be eligible for and receiving Montana
16 Teachers' Retirement System benefits.

17 13. In December 1994, Complainant filed a lawsuit against
18 Anaconda School District No. 10 in district court. The lawsuit
19 claimed a breach of contract for the Anaconda School District
20 No. 10's failure to pay Complainant's health insurance until she
21 became eligible for Medicare benefits pursuant to the union
22 contract. Anaconda School District No. 10 requested Complainant's
23 lawsuit be dismissed for failure to exhaust the grievance procedure
24 contained in the union contract, or, alternatively that Complainant
25 be required to proceed with the grievance procedure.

26 14. On January 4, 1995, Knight wrote a second letter to
27 Ricci requesting that Defendant be involved in Complainant's
28 grievance as an advocate. Knight suggested that the Defendant

1 | could assist with attorneys' fees or provide Complainant with an
2 | independent attorney.

3 | 15. On January 10 and 11, 1995, Defendant's executive council
4 | and membership as a whole addressed the issue of filing a grievance
5 | on behalf of Complainant in meetings. Again Defendant decided that
6 | Complainant's grievance had no merit because Defendant had
7 | consistently taken the position that to be eligible for health
8 | insurance benefits upon retirement the teacher must be actively
9 | drawing retirement benefits from the Montana Teachers' Retirement
10 | System. Secondly, Defendant believed that because Complainant was
11 | not an employee of Anaconda School District No. 10 and not a union
12 | member, the earlier adverse arbitration decision prevented pursuing
13 | a grievance under the terms of the collective bargaining agreement.
14 | Lastly, Defendant maintained that Complainant did not file a
15 | grievance properly pursuant to Defendant's Constitution. By letter
16 | dated January 19, 1995, Defendant reported its position to Knight.

17 | 16. On June 5, 1995, the district court rendered its decision
18 | regarding Complainant's lawsuit and ordered Complainant and the
19 | Anaconda School District No. 10 to proceed to arbitration.
20 | Defendant was not a party to the lawsuit.

21 | 17. On July 3, 1995, Complainant, through her legal counsel,
22 | Knight, again contacted Defendant and requested that Defendant pay
23 | for all legal expenses incurred and offered to allow Defendant to
24 | represent Complainant during arbitration.

25 | 18. Defendant replied that it would participate in the
26 | arbitration ordered by the district court by offering testimony on
27 | behalf of Complainant but it would not play any other active role.
28 | It reiterated its belief that it was bound by the earlier adverse

1 arbitration award that indicated it could not pursue an arbitration
2 claim for a person who was not an employee under the collective
3 bargaining agreement. Defendant refused to pay attorneys' fees for
4 Complainant's personal attorney because it had never hired
5 attorneys in the past to process grievances through arbitration and
6 had never paid for personal attorneys hired by other members of
7 Defendant.

8 19. Martin Henner, Arbitrator, conducted a hearing in the
9 court ordered arbitration March 20 and 21, 1996. A representative
10 of Defendant was present and offered testimony at the hearing.

11 20. Arbitrator Henner issued his decision on June 7, 1996
12 which held that early retirement health insurance benefits provided
13 by Anaconda School District No. 10 pursuant to the collective
14 bargaining agreement were conditioned upon the retiring teacher
15 actually receiving Montana Teachers' Retirement System retirement
16 benefits. The arbitrator denied Complainant's claim for the health
17 insurance benefits while she was employed by Missoula County School
18 District and not receiving retirement benefits.

19 IV. DISCUSSION

20 Complainant alleged that Defendant failed to represent her by
21 its refusal to process her grievance and such refusal constitutes
22 an unfair labor practice in violation of §§39-31-201 and
23 39-31-402(1), MCA.

24 The Montana Supreme Court has held that if a union violates
25 its duty of fair representation, the breach of that duty is an
26 unfair labor practice. Teamsters Local 45 v. State ex. rel. Bd. of
27 Personnel Appeals, 195 Mont. 272, 635 P.2d 1301 (1981). Therefore,
28 in order for Complainant to prevail on her charge of an unfair

1 labor practice, she must prove that Defendant violated or breached
2 its duty of fair representation.

3 In Ford v. University of Montana, 183 Mont. 112, 598 P.2d 604
4 (1979), the Montana Supreme Court clearly established the standard
5 that must be met to establish whether or not a union has breached
6 its duty of fair representation. The Montana Supreme Court held
7 that before a breach of the duty of fair representation can be
8 reached, the union's action must in some way be a product of bad
9 faith, discrimination, or arbitrariness. (See Ford v. University
10 of Montana, supra; Ruzicka v. General Motors Corp., 523 F.2d 306
11 [6th Cir., 1975]).

12 The record shows that Defendant did not act arbitrarily,
13 discriminatorily, or in bad faith. Defendant seriously considered
14 the grievance of Complainant and decided that the grievance did not
15 possess merit based on substantial grounds. At the time
16 Complainant attempted to file the grievance, she was not an
17 employee of Anaconda School District No. 10 nor was she a member of
18 Defendant. Defendant had previously taken a grievance through the
19 grievance and arbitration procedure in which the arbitrator ruled
20 that the grievance had no merit because the grievant was not an
21 employee nor a union member at the time of the hearing. Defendant
22 believed it was bound by this previous adverse arbitration decision
23 and prevented from prosecuting a grievance for Complainant. In
24 addition, Defendant's interpretation of the contested health
25 insurance benefit clause in the collective bargaining agreement
26 differed substantially from the position taken by Complainant.
27 Defendant believed Complainant was incorrect in her interpretation
28 and could not support her contentions. The court ordered

1 arbitration proved Defendant correct in its interpretation.
2 Lastly, Complainant requested that Defendant pay for her personal
3 attorney. Defendant had never hired or paid for a personal
4 attorney to represent a grievant in a grievance in the past and
5 declined to make an exception in Complainant's grievance.

6 **V. CONCLUSIONS OF LAW**

7 1. The Board of Personnel Appeals has jurisdiction over this
8 unfair labor practice charge pursuant to §39-31-406, MCA.

9 2. Defendant did not violate §§39-31-201 or 39-31-402(1),
10 MCA.

11 **VI. RECOMMENDED ORDER**

12 The unfair labor practice charge of Anne M. Carpita against
13 Anaconda Teachers' Union Local No. 502 is hereby **DISMISSED**.

14 DATED this 11th day of March, 1998.

15 BOARD OF PERSONNEL APPEALS

16 By: Stan Gerke

17 STAN GERKE
18 Hearing Officer
19

20 NOTICE: Pursuant to ARM 24.26.215, the above RECOMMENDED ORDER
21 shall become the Final Order of this Board unless written
22 exceptions are postmarked no later than April 3, 1998.
23 This time period includes the 20 days provided for in ARM
24 24.26.215, and the additional 3 days mandated by Rule 6(e),
25 M.R.Civ.P., as service of this Order is by mail.

26 The notice of appeal shall consist of a written appeal of the
27 decision of the hearing officer which sets forth the specific
28 errors of the hearing officer and the issues to be raised on
29 appeal. Notice of appeal must be mailed to:

30 Board of Personnel Appeals
31 Department of Labor and Industry
32 P.O. Box 6518
33 Helena, MT 59604

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2 CERTIFICATE OF MAILING

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

7 Virginia Knight
8 Attorney at Law
9 546 East Kagy Boulevard
10 Bozeman, MT 59715

11 David M. McLean
12 Attorney at Law
13 P.O. Box 727
14 Anaconda, MT 59711

15 DATED this 11th day of March, 1998.

16 Sandra K Page
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