STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 1-2001:

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN	)	**Case No. 214-2001**
AND HELPERS, LOCAL NO.2, affiliated with the	)	
International Brotherhood of Teamsters	)	
and Joint Council No. 3,	)	
Complainant,	)	
	)	**FINDINGS OF FACT;**
vs.	)	**CONCLUSIONS OF LAW;**
	)	**AND RECOMMENDED ORDER**
GREAT FALLS TRANSIT DISTRICT,	)	
	)	
Defendant.	)	

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I. INTRODUCTION

On July 28, 2000, the complainant filed an unfair labor practice charge with the Board of Personnel Appeals, alleging that defendant violated §§ 39-31-305(2), 39-31-306, 39?31?406(1) and (5), and 39-31-201, MCA. The complainant alleged that since on or about June 27, 2000, and continuing, the defendant refused to bargain collectively in good faith with the complainant. In particular, the complainant alleged that complainant had bargained for and agreed to a new collective bargaining contract. However, subsequently the defendant refused to execute and abide by all the terms of the agreement. The defendant has implemented all of the agreed upon terms except the agreed upon contract provisions involving "red circling" of two maintenance employees in the unit, and providing them with agreed upon pay increases, as set forth in Section 32-2 of the collective bargaining agreement. Therefore, the complainant alleges that the defendant has interfered with, restrained, and coerced its employees, and is interfering with, restraining, and coercing its employees regarding the exercise of the rights guaranteed them by law, including § 39-31-201, MCA.

Following an investigation by the Board concerning the unfair labor practice charges, the Board issued a determination concluding that if the facts alleged by complainant were proven, an unfair labor practice charge was supported, and that the facts stated by one party did not agree with the other.

Michael T. Furlong conducted a hearing in this matter on April 23, 2001, in Great Falls, Montana. John A. Manzer, business representative for the Chauffeurs, Teamsters, Warehousemen and Helpers, Local No. 2 , Great Falls, Montana, represented the complainant. James D.

Helgeson, Interim general manager, represented the defendant. Ed Johns, Chris Christiaens, Bill Reese, Jim Korst, Jim Quitmeyer, Linda Huddleston, and Deborah Kottel, appeared as joint witnesses by agreement of both parties. Nancy Weinzettel appeared as a defendant witness.

Complainant exhibits 1 through 10 and defendant exhibits A through C were admitted into evidence without objection.

II. ISSUES

Whether the Great Falls Transit District committed unfair labor practices in violation of §§ 39-31-201, 39-31-305 (2), 39-31-306, and 39-31-401 (1) and (5), MCA, by refusing to sign and execute a fully bargained collective bargaining agreement.

III. FINDINGS OF FACT

1. The Great Falls Transit District (District) operates a bus transit system throughout the Great Falls Area. The transit system was managed by a private sector agency through June 2000. Effective July 1, 2000, the employer assumed the status of a public entity, governed by a Board of Directors (Board), consisting of five appointed local citizens.
2. Chauffeurs, Teamsters, Warehousemen and Helpers, Local No. 2 (Union), is the bargaining representative for the defendant employees. Prior to July 1, 2000, the Union selected an employee negotiating committee to meet with designated District management personnel in order to negotiate a collective bargaining agreement. Bargaining took place between the parties for a new agreement. Both sides met at a series of meetings during which they explored numerous proposals to reach agreement. Chris Christiaens, general manager, and board of directors member Ed Johns participated in the bargaining sessions as District negotiating representatives. Christiaens and Johns had the apparent authority to negotiate an agreement and never told the representatives of the union that their agreement was subject to ratification by the full Board.
3. During the negotiations various proposals and counter proposals were exchanged. On June 12, 2000, following the last bargaining meeting, the union sent a letter to the District and enclosed a copy of the tentative work agreement, which included changes made during negotiations between the parties. The Union letter identified the one remaining outstanding bargaining issue that centered around the provision of medical insurance for employees. The Union requested that the District review the matter in order to see if it met with its final approval.
4. During the course of the bargaining sessions, representatives from both sides agreed to the proposal to provide raises for employees, including the mechanics, under Section 32.2 as follows:

Section 32.2 Wage Increases

Wages during the life of this Agreement will be adjusted as follows:

Job Title	**Current Rate**	**7/1/00 Rate**	**7/1/01 Rate**	**7/1/02 Rate**
DRIVER	$11.17	$12.17	$12.67	$13.01
SERVICEMAN	$10.97	$1197	$12.47	$12.81

MECHANIC	$12.54	$13.54	$14.04	$14.38
CLERK/SERVICEMAN	$11.47	$12.47	$12.97	$13.31

Previous Mechanic A and Lead Mechanic shall be red-circled for the first year of the Agreement at $13.77 per hour. They shall receive a fifty cent ($.50) per hour increase effective 7/1/01 and a thirty-four cent ($.34) per hour increase effective 7/1/02.

5. On June 20, 2000, employees representing the union voted to maintain and continue their participation in class 19, "medical only, health and welfare program". The Union sent copies of the new collective bargaining agreement, to which it added the language for maintenance of the class 19 for employees, to the District to see if it met with its approval. All other provisions, changes, additions, and corrections in the proposed contract had been tentatively agreed to during the negotiation sessions.
6. On June 28, 2000, the Board met and approved the proposed collective bargaining agreement with the exception implementing a change in Section 32.2. The Board's motion to implement the change in the contract provision included in Section 32.2 is as follows:

> Per Board motion, June 28, 2000:
> Motion to implement the Collective Bargaining Agreement by and between the Great Falls Transit district and the Teamsters Local No. 2 covering the period of July 1, 2000 through June 30, 2003 with the exception of item number 32.2 specifically the last paragraph with ratification contingent upon agreement between the Great Falls Transit district board of Directors and the Teamsters Local No. 2 on that item. Weinzettel moved/Johns seconded. The motion passed. (Exhibit 6)

7. The Board decided to change Section 32.2 of the previously negotiated contract so that all maintenance employees of the same skill level, performing the same job, would be compensated equally. Under the contract provisions negotiated during the bargaining sessions, such uniformity in pay would not be achieved.
8. The District wanted to increase the "red-circled" employees (senior mechanics) 27¢ effective July 1, 2001, and 34¢ effective July 1, 2002, to achieve parity with other department mechanic employees.
9. As a result, the District notified the Union that their Board had reviewed the proposed contract and voted not to ratify the agreement specifically because the Board found Section 32.2 to be unacceptable.
10. From the way Johns and the general manager presented themselves during bargaining sessions, the Union bargained issues with the understanding that Johns and the general manager had sufficient authority to carry out meaningful and binding negotiations. Numerous proposals were considered and discussed throughout the negotiation meetings before both sides could reach agreement to implement them into the contract. For those reasons, the Union bargaining team left the final session with the understanding that all provisions of the contract had been ratified with the exception of the health/medical/welfare proposal that was to go before a vote of the Union members.

IV. DISCUSSION/RATIONALE

Montana law requires a public employer to bargain collectively with labor organizations representing their employees on issues of wages, hours, fringe benefits, and other conditions of employment. § 39-3-305(1), MCA. The failure to bargain collectively in good faith is a violation of § 39-31-401(5), MCA.

The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using federal court and National Labor Relations Board (NLRB) precedent as guidance for interpreting the Montana Collective Bargaining for Public Employees Act. State ex rel Board of Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d 1117, 103 LRRM 2297 (1979); Teamsters Local No. 45 v. State ex rel Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young (Young III), 211 Mont. 13, 686 P.2d 185, 199 LRRM 2682 (1984).

The District argues in this case that it never violated its duty to bargain, contending that the contract was never fully negotiated without the approval of the full Board of Directors and a vote of acceptance by collective bargaining unit membership.

The Union counters the District's position, asserting that action by the District's negotiators bound the District to the terms of its final offer. The Union alleges that throughout the series of bargaining meetings they were led to believe that Board member Johns and the general manager had the District's approval to negotiate the final terms of the collective bargaining agreement. Therefore, the District's subsequent refusal to abide by and execute the agreement including the terms of Section 32.2, approved by both sides in the final bargaining meeting, constituted a violation of the Montana Collective Bargaining and Public Employee's Act.

At issue is whether the parties had arrived at a collective bargaining agreement when the union membership ratified the District's final offer. Germane to this issue is whether the District's designated bargaining team, consisting of a board member and the transit district general manager, had the apparent authority to carry out meaningful bargaining while negotiation took place. The following court cases have addressed the issue:

NLRB V. F. Strauss & Sons, 536 F.2d 60, 64 (5th Cir. 1976) states: "Finally, withdrawal by the employer of contract proposals tentatively agreed to by both the employer and the Union in earlier bargaining sessions, without good cause, is evidence of a lack of good faith bargaining by the employer in violation of § 8(a)(5) of the Act." See also Industrial Wire Products Corp., 177 NLRB 328, 333-334 (1969), enfd. 455 F.2d 673 (9th Cir. 1972); NLRB v. Alterman Transport Lines, 587 F.2d 212, 221 (5th Cir. 1979).

It is well established that a principal may limit its agent's negotiating authority by affirmative, clear, and timely notice to the other party that any tentative agreement is contingent upon subsequent ratification. E.g., University of Bridgeport, 229 NLRB 1074 (1977); Aptos Seascape Corp., 194 NLRB 540 (1971). An agent whose authority depends upon such a contingency may have the apparent authority, however, to convey its satisfaction. Walnut Hill Convalescent Center, 260 NLRB 258 (1982). "Apparent authority results when the principal does something or permits the agent to do something which reasonably leads another to believe that the agent had the authority he purported to have." Hawaiian Paradise Park Corp. v. Friendly Broadcasting Co., 414 F.2d 750, 756 (9th Cir. 1969). Ben Franklin National Bank, 278 NLRB 986 fn. 2 (1986).

The duty to bargain is also addressed in the edition "The Developing Labor Law, Third Edition, Volume I", Chapter 13, page 636, as follows:

4. **Representative With Inadequate Authority to Bargain**. The employer is under a duty to vest its negotiators with sufficient authority to carry on meaningful bargaining. Thus, non-availability of the employer's negotiator or its labor counsel has been held to manifest bad faith, as has the failure to provide a bargaining representative sufficiently knowledgeable about the company's operations and pay practices to permit fruitful, informed discussion of working conditions and employee pay. Further, an employer violates section 8(a)(5) when it sends representatives to the bargaining table who have no authority to enter into a contract or to advance binding contract proposals. The refusal to execute an agreement made by a representative having apparent authority is unlawful where the employer has not expressly reserved the right to ratify or reject it. But the Board found no bad-faith bargaining where an employer repudiated a tentative agreement that had not yet been ratified by the union where the employer's negotiator mistakenly assumed authority to agree.

Applying these principles to the facts of this case, the District committed an unfair labor practice when it refused to execute and abide by the agreement. Board Member Johns, along with the general manager, had the apparent authority to convey the District's final offer regarding the mechanics' wages under Section 32.2, of the collective bargaining agreement. It was always the understanding of the union negotiators and membership that the bargaining team the District sent to the table had the authority to enter into a contract or advance binding contract proposals. At the last bargaining session, negotiators from both sides had approved and drafted the proposed collective bargaining agreement including Section 32.2, related to the pay schedule for the two senior mechanics. Both sides left the table with only medical/health/welfare provisions, unrelated to mechanic wages, unapproved. The employer failed in its obligation, under the established principles of good faith collective bargaining, to send representatives to the bargaining table who had the authority to enter into a binding contract proposal. The District's actions to change the contract proposal agreed to by both parties in the earlier bargaining sessions is evidence of a lack of good faith bargaining and a violation of law.

V. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to § 39-31-405, et sec. MCA.
2. The employer violated §§ 39-31-305(2), 39-31-306, 39-31-401(1) and (5) and 39-31-201, MCA by its action refusing to implement the contract provisions agreed to in the negotiation sessions.

VI. RECOMMENDED ORDER

The Great Falls Transit District is hereby ORDERED:

A. to cease the practice of refusing to implement provisions agreed to in negotiation sessions and bargain in good faith in the future;
B. to execute the agreement negotiated in July, 2000;
C. to implement the contract provisions involving the two senior maintenance

employees in the unit, and providing them with the agreed-to pay increases as set forth in Section 32.2 of the collective bargaining agreement, including back pay to July 1, 2000;

D. to reinstate any leave taken by bargaining unit members to participate in these proceedings;

E. to post copies of the notice contained in Appendix A at conspicuous places, including all places where notices to employees are customarily posted, in work areas and offices of the Great Falls Transit District Headquarters building, for a period of 60 days, and to take reasonable steps to insure that notices are not altered, defaced, or covered by any other material.

DATED this 19th day of October, 2001.

BOARD OF PERSONNEL APPEALS

By: /s/MICHAEL T. FURLONG
Michael T. Furlong
Hearings Officer
Department of Labor and Industry

NOTICE: Exceptions to these Findings of Fact, Conclusions of Law and Recommended Order may be filed pursuant to ARM 24.26.215 within twenty (20) days after the day the decision of the hearing officer is mailed, as set forth in the certificate of service below. If no exceptions are timely filed, this Recommended Order shall become the Final Order of the Board of Personnel Appeals. § 39-31-406(6), MCA. Notice of Exceptions must be in writing, setting forth with specificity the errors asserted in the proposed decision and the issues raised by the exceptions, and shall be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 6518
Helena, MT 59624-6518

APPENDIX A
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE STATE OF MONTANA
BOARD OF PERSONNEL APPEALS

The Montana Board of Personnel Appeals has found that we violated the Montana Collective Bargaining for Public Employees Act and has ordered us to post and abide by this notice.

We will not fail to bargain in good faith with Local No. 2, Chauffeurs, Teamsters, Warehousemen, and Helpers.

We will execute and implement contract provisions agreed to in negotiation sessions.

We will reinstate all leave taken by bargaining unit members to participate in the hearing of ULP #1-2001.

DATED this _____ day of _____, 2001.

GREAT FALLS TRANSIT DISTRICT

BY: _____