STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 31-2004:	
HEART BUTTE EDUCATION ASSOCIATION, MEA-MFT, Complainant, vs. HEART BUTTE SCHOOL DISTRICT NO. 1, Defendant.	Case No. 2249-2004 **Findings of Fact, Conclusions of Law and Proposed Order**

I. Introduction

On April 7, 2004, the Heart Butte Education Association filed a charge with the Board alleging that Heart Butte Public Schools, District No. 1, committed unfair labor practices in violation of Mont. Code Ann. § 39-31-401, by appealing directly to non-bargaining members of the HBEA to drop pending unfair labor practice charges against the district and encouraging the HBEA to remove its bargaining proposals.

On October 22, 2004, an investigator for the Board found that the charges had probable merit and transferred the case to the Hearings Bureau for a hearing.

On March 3, 2005, Hearing Officer Terry Spear conducted the hearing, with Richard Larson, Harlan, Chronister, Parish & Larson, P.C., representing the HBEA and Tony C. Koenig, Montana School Boards Association, representing the district. Forestina Calf Boss Ribs, Hugh "Marty" Martin and Leonard Guardipee testified. There were no exhibits. The parties filed post-hearing briefs on March 14, 2005, submitting the case for decision.

II. Issue

At hearing, the parties jointly agreed that the sole issue in this case was whether the district committed an unfair labor practice when its superintendent asked the HBEA's president, in a private meeting, whether the HBEA would consider foregoing retroactive pay increases in a new collective bargaining agreement.

III. Findings of Fact

1. Heart Butte Education Association, MEA-MFT/AFT (HBEA) is a "labor organization" within the meaning of Mont. Code Ann. § 39-31-103(6).

2. Heart Butte Public Schools, District No. 1 (the district) is a "public employer" within the meaning of Mont. Code Ann. § 39-31-103(10).

3. At all relevant times, the district recognized the HBEA as the exclusive bargaining representative of the district's teachers.

4. Between February and June of 2003, the parties met on several occasions in an unsuccessful attempt to reach a successor agreement to the collective bargaining agreement which expired on June 30, 2003.

5. On June 5, 2003, the negotiation teams jointly agreed upon a proposed successor agreement, subject to ratification by the HBEA's membership and the district's Board of Trustees.

6. The HBEA's membership ratified the proposed agreement. The district's Board of Trustees rejected it on July 14, 2003.

7. On August 6, 2003, the HBEA filed an unfair labor charge with the Board alleging that acceptance of the proposed successor agreement by the district's negotiating team followed by rejection of the proposal by the district's Board of Trustees constituted an unfair labor practice.

8. Bargaining then stopped until after the start of the 2004-2005 school year. Both parties acted as if (and apparently believed) that they could not bargain until the unfair labor practice charge was finally decided.

9. On March 22, 2004, during the hiatus in bargaining, HBEA President and district employee (teacher) Forestina Calf Boss Ribs attended a staff meeting in the course of her employment. As the staff meeting ended, District Superintendent Leonard Guardipee directed Calf Boss Ribs, whom he supervised, to come to his office for a meeting.

10. During the meeting, Guardipee asked Calf Boss Ribs whether the HBEA would consider foregoing retroactive pay increases in a new collective bargaining agreement. This question was, in substance, an inquiry about whether the HBEA

would consider accepting a prior district proposal in the bargaining that had ceased with the district's rejection of the proposed successor agreement endorsed by both negotiating teams.

11. Guardipee believed at the time that negotiations were impossible until the pending unfair labor practice was resolved. Nonetheless, he made the inquiry with the intention that Calf Boss Ribs would communicate it to the HBEA negotiating team and membership. He did not intend to influence or force a favorable outcome for the district.

12. Calf Boss Ribs felt she was in an unequal position to discuss negotiations, having been called to her supervisor's office during regular business hours. However, she did not feel compelled either to make concessions or to advocate that the HBEA abandon its demand for retroactive pay increases.

IV. Discussion[1]

Montana law requires public employers and labor organizations representing their employees to bargain in good faith on issues of wages, hours, fringe benefits, and other conditions of employment. Mont. Code Ann. § 39-31-301(5). Failure to bargain collectively in good faith with an exclusive representative is a violation of Mont. Code Ann. § 39-31-401(5). The Montana Supreme Court has approved the practice of the Board of Personnel Appeals of using federal court and National Labor Relations Board (NLRB) precedents as guidance in interpreting the Montana collective bargaining laws. *State ex rel. Board of Personnel Appeals v. District Court* (1979), 183 Mont. 223, 598 P.2d 1117; *City of Great Falls v. Young (Young III)* (1984), 211 Mont. 13, 686 P.2d 185. Pursuant to Section 8(a)(5) of the NLRA, 29 U.S.C. § 158(a)(5), it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees." Thus, case law under this provision can shed light on the meaning of Mont. Code Ann. § 39-31-401(5), and the applicable case law addresses direct dealing by the employer with employees rather than with the representative union.

The HBEA was an exclusive representative bargaining with the district at the time of the meeting between Guardipee and Calf Boss Ribs. The district had a legal obligation to bargain in good faith exclusively with the union; any attempt to bypass

---

[1]Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

the union would constitute illegal direct dealing. *Facet Enterprises, Inc. v. N.L.R.B.* (10th Cir. 1990), 907 F.2D 963, 969.

Guardipee's communication to Calf Boss Ribs was noncoercive, presented to the HBEA's president and a member of its bargaining unit, and was not illicitly outcome-determinative. Therefore, his inquiry to Calf Boss Ribs was proper. ***See***, *N.L.R.B. v. Pratt & Whitney Air Craft Div., United Technology Corp.* (2nd Cir. 1986), 789 F.2d 121, 135.

The tenor and circumstances of the communication do not support the claim of an unfair labor practice. Speaking in his office, to a teacher under his supervision, Guardipee's communication could have been coercive, but (as a matter of fact in these circumstances) it was not. Directed to the HBEA (through its President, a member of its bargaining unit), the inquiry was not outcome-determinative. Given that no negotiations were on-going, the inquiry to the HBEA through its President did not require prior notice to the union. Finally, the inquiry was not an attempt to steer negotiations through intimidation of an individual member of the union bargaining team.

V. Conclusions of Law

1. The Board of Personnel Appeals has jurisdiction over this case and controversy. Mont. Code Ann. § 39-31-207.

2. A public employer may not refuse to bargain collectively in good faith with an exclusive representative of its employees. Mont. Code Ann. § 39-31-401(5).

3. The inquiry on March 22, 2004, by Guardipee to HBEA President and bargaining team member Calf Boss Ribs, about whether the HBEA would abandon its demand for retroactive pay increases, was not an unfair labor practice in violation of Mont. Code Ann. § 39-31-401(5).

VI. Recommended Order

The complaint of the Heart Butte Education Association is **DISMISSED.**

Dated: May 11, 2005

/s/ TERRY SPEAR
Terry Spear, Hearing Officer
Board of Personnel Appeals

NOTICE: Pursuant to Admin. R. Mont. 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than June 3, 2005. This time period includes the 20 days provided for in Admin. R. Mont. 24.26.215, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

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

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