

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 27, 1983

The meeting of the Labor Committee was called to order by Chairman Gary C. Aklestad on January 27, 1983, at 1:00 p.m. in Room 404, State Capitol.

ROLL CALL: All members of the Committee were present with the exception of Senator Galt who was excused.

CONSIDERATION OF SENATE BILL NO. 198: Chairman Aklestad introduced Senator Larry Tveit, sponsor of Senate Bill No. 198, to the Committee, and Senator Tveit explained the bill to the Committee.

Senate Bill No. 198 is an act to clarify that school district employees covered under a collective bargaining agreement are not entitled to receive salary increment increases after the agreement expires.

Senator Tveit distributed an amendment to the Committee, and this amendment is attached to the minutes. (Exhibit No. 1)

Senator Tveit also submitted printed testimony to the Committee. Senator Tveit's testimony is attached. (Exhibit No. 2)

Sue Romney, representing Montana School Boards Association, stated they are in support of Senate Bill No. 198. Her printed testimony is attached to the minutes. (Exhibit No. 3)

Jake Block from Missoula, representing the School Administrators of Montana, stated they are in support of Senate Bill 198. Mr. Block's printed testimony is attached. (Exhibit No. 4)

Ryan Taylor from Forsyth, Montana, representing Forsyth Public Schools, stated they support Senate Bill 198. Mr. Taylor distributed two tables regarding salary schedules to the Committee. These tables are attached. (Exhibits 5 and 6)

Mr. Taylor stated that their last negotiations went on for twenty months, and it was very difficult.

Mr. Taylor also stated they had never used the same salary schedule for more than one year. They feel the salary schedule is part of the contract. Mr. Taylor discussed the tables which he distributed with the Committee.

OPPONENTS OF SENATE BILL NO. 198:

Dave Sexton, representing MEA, stated they are in opposition to Senate Bill 198. They feel the bill is an unnecessary piece of legislation, and that it is a basic erosion of labor law.

Mr. Sexton's printed testimony is attached to the minutes.
(Exhibit No. 7)

Terry Minow, representing Montana Federation of Teachers,
stated they oppose Senate Bill 198.

QUESTIONS FROM THE COMMITTEE ON SENATE BILL NO. 198:

Senator Lynch: Regarding earned experience--how can you take
away something that has been earned?

Ryan Taylor: The teacher would always drop down one step.

Senator Lynch: Is that Association composed of superintendents
and administrators?

Jake Block: All administrators in the state.

Senator Lynch: In some districts are there some administrators
who have earned increments?

Jake Block: I expect that could be true.

Senator Gage: Have you issued checks without giving the teachers
an increment that was earned under the previous year's contract
and agreement?

Dave Sexton: The terms continue until a new agreement is agreed
to.

Senator Gage: Teachers and administrators could negotiate an
agreement in contract. Continue to pay salary on the basis of
last year's schedule.

Dave Sexton: The parties would be free to use any kind of
conditions they wanted.

Senator Keating: Is this base schedule standard in the state?

Ryan Taylor: No, it is only a sample. Some schools do not even
use an MEA salary schedule.

Senator Keating: Can any school district bargain for any
increment they want?

Jake Block: Yes, they can.

Senator Keating asked Mr. Taylor if he had ever been involved
in the contract bargaining.

Ryan Taylor: I wasn't last year, but I am going to be this year.

Senator Keating: Is it easy to obtain a "no-increment clause" in contracts?

Ryan Taylor: It is possible, but it would be very difficult.

Senator Blaylock: You have a bargaining unit in Forsyth. Did the people who were bargaining make that request?

Ryan Taylor: No, they didn't.

There was discussion on the proposed amendment that was submitted by Senator Tveit. The Committee's Staff Attorney, John MacMaster, will work with Senator Tveit on language clarification in the amendment.

Senator Aklestad called the hearing closed on Senate Bill No. 198.

ACTION ON SENATE BILL NO. 133:

Senator Lynch moved that Senate Bill No. 133 Do Pass. Senator Goodover made a substitute motion that Senate Bill No. 133 Do Not Pass. A Roll Call Vote was taken on the substitute motion. The motion failed by a 5-2 vote. This Roll Call Vote is attached. Senator Aklestad asked the Committee if they wished to reverse the vote on the motion that Senate Bill No. 133 Do Pass. The Committee agreed. SENATE BILL NO. 133 was voted a DO PASS by a 5-2 vote.

ACTION ON SENATE BILL NO. 143:

Senator Keating moved that the amendment to Senate Bill No. 143 submitted by the Committee Do Pass. The Committee voted that the amendment Do Pass by a unanimous voice vote.

Senator Keating moved that Senate Bill No. 143 Do Pass As Amended. On a Roll Call Vote, the Committee voted 4-3 that SENATE BILL 143 DO PASS AS AMENDED. This Roll Call Vote is attached.

ACTION ON SENATE BILL NO. 154:

Senator Lynch moved that SENATE BILL NO. 154 BE TABLED IN COMMITTEE. The Committee unanimously agreed to this.

ACTION ON SENATE BILL NO. 169:

Senator Lynch moved that Senate Bill No. 169 Do Pass. On a voice vote the Committee voted unanimously, with the exception of Senator Goodover, that SENATE BILL NO. 169 DO PASS. Senator Goodover abstained from voting because he was absent during the hearing for Senate Bill No. 169.

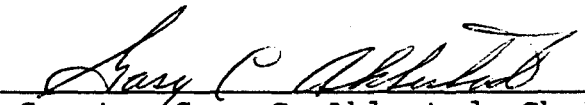
ACTION ON SENATE BILL NO. 69:

Senator Crippen discussed aspects of the penalty clause in Senate Bill No. 69 with the Committee.

Senator Goodover moved that the proposed amendment to Senate Bill No. 69 submitted by Jim Sewell Do Pass. The Committee voted unanimously by voice vote to adopt the amendment.

Senator Keating moved that Senate Bill No. 69 Do Pass As Amended. On a voice vote, the Committee voted unanimously that SENATE BILL NO. 69 DO PASS AS AMENDED.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 2:30 p.m.



Senator Gary C. Aklestad, Chairman

ROLL CALL

LABOR

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 1/27/8

[illegible]

SENATE COMMITTEE LABOR

Date Jan. 27, 1983 Senate Bill No. 133 Time 2:05

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN		✓
JACK GALT (excused)	—	—
PAT GOODOVER	✓	
DELWYN GAGE		✓
CHET BLAYLOCK		✓
JOHN LYNCH		✓
DICK MANNING		✓
GARY AKLESTAD, CHAIRMAN	✓	

Margorie Nichols
Secretary

Gary C Aklestad
Chairman

Motion: Senator Goodover made a substitute motion
that Senate Bill No. 133 Do Not Pass.

Motion failed by a 5-2 vote.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR

Date Jan. 27, 1983 Senate Bill No. 143 Time: 2:10

NAME	YES	NO
TOM KEATING, VICE-CHAIRMAN	✓	
JACK GALT (excused)	—	—
PAT GOODOVER	✓	
DELWYN GAGE	✓	
CHET BLAYLOCK		✓
JOHN LYNCH		✓
DICK MANNING		✓
GARY AKLESTAD, CHAIRMAN	✓	

Marjorie Nichols
Secretary

Gary C. Aklestad
Chairman

Motion: Senator Keating moved That Senate Bill No. 143
Do Pass as amended.

Motion carried by a 4-3 vote

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

January 27, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **SENATE** Bill No. **69**

Respectfully report as follows: That **SENATE** Bill No. **69**

Introduced bill be amended as follows:

1. Page 2, line 1.

Following: **"\$25"**

Strike: **"or 25% of the contributions due, whichever is greater,"**

2. Page 2, line 2.

Following: **"whenever"**

Insert: **", as the result of a willful refusal of an employer
to furnish wage information or pay contributions on time,"**

3. Page 2, line 3.

Strike: **"applies for"**

Insert: **"issues"**

And, as so amended,

DO PASS

STANDING COMMITTEE REPORT

January 27, 19 83

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **SENATE** Bill No. **133**

Respectfully report as follows: That **SENATE** Bill No. **133**

DO PASS

STANDING COMMITTEE REPORT

January 27, 1983

MR. **PRESIDENT:**

We, your committee on **LABOR & EMPLOYMENT RELATIONS**

having had under consideration **SENATE** Bill No. **143**

Respectfully report as follows: That **SENATE** Bill No. **143**

Introduced bill be amended as follows:

1. Title, line 9.

Following: "PERIOD;"

Insert: "DELETING A PENALTY PROVISION;"

2. Page 7, line 16.

Strike: section 5 in its entirety

And, as so amended,

DO PASS

W/C.

STANDING COMMITTEE REPORT

January 27, 19 83

MR. PRESIDENT:

We, your committee on LABOR & EMPLOYMENT RELATIONS

having had under consideration SENATE Bill No. 169

Respectfully report as follows: That SENATE Bill No. 169

DO PASS

A/C

1/27/83

VISITORS' REGISTER

(Please leave prepared statement with Secretary.)

NAME: Sue Romney

DATE: 1/27/83

ADDRESS: 702 Highland Helena, MT

PHONE: 443-3578

REPRESENTING WHOM? Montana School Boards Assoc

APPEARING ON WHICH PROPOSAL: 198

DO YOU: SUPPORT? X AMEND? X OPPOSE? _____

COMMENTS: See prepared statements

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jacob Block DATE: 1-27-53

ADDRESS: 215 S. 6th West

PHONE: 728-4000

REPRESENTING WHOM? School Administrators of Montana

APPEARING ON WHICH PROPOSAL: SB 198

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ryan Taylor DATE: 1-27-83

ADDRESS: P.O. Box 319 - Forsyth, Mt. 59327

PHONE: 406-356-2796

REPRESENTING WHOM? Forsyth Public Schools

APPEARING ON WHICH PROPOSAL: #198

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: As presented-

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: David Sexton DATE: 1/27/83

ADDRESS: Helena

PHONE: 442-4419

REPRESENTING WHOM? MEA

APPEARING ON WHICH PROPOSAL: SB198

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: unnecessary special interest
legislation. Erodes the
legitimate collective
negotiating process.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

INTRODUCED BY Senator Tveit BILL NO. 198
Payson

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT SCHOOL DISTRICT EMPLOYEES COVERED UNDER A COLLECTIVE BARGAINING AGREEMENT ARE NOT ENTITLED TO RECEIVE SALARY INCREMENT INCREASES AFTER THE AGREEMENT EXPIRES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Incremental increases under collective bargaining agreements not allowed. Upon the expiration of a collective bargaining agreement and until a successor agreement is reached, school district employees covered by the agreement ^{may} ~~must~~ continue to receive the exact salary as was received during the previous year. ~~Increments--provided for--if--an--expired--agreement--may--not--be--granted--except--by--mutual--agreement--of--the--parties--~~

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 20.

-End-

Mr. Chairman, members of the committee, I am Senator Larry Tveit, District 27. I am sponsoring this bill on behalf of the Montana School Board Association.

Most school districts compensate their teachers using a salary schedule which provides for different rates of pay depending on the experience and education of the teacher. (A typical teacher's salary schedule may have 10-15 horizontal education steps and 5 vertical education columns.) Even before collective bargaining was authorized by the Public Employees' Collective Bargaining Act, such salary schedules were common in Montana and elsewhere.

School districts have recently found out that when such salary schedules are part of a collective bargaining agreement, even if that collective bargaining agreement has expired, teachers are entitled and must be granted the experience and education steps which were part of the previous year's salary schedule. Otherwise the school district is guilty of an unfair labor practice. These "automatic" raises can be quite sizeable. In Fairview School District, for instance, the experience steps alone range from \$750 - \$1,400.

Senate Bill 198 is intended to reverse the requirement to grant any increments or any raise in salary unless it is specifically negotiated and the School Board and the teachers' union agree on the raise or the granting of the increment.

During prosperous times, the increments agreed to in past years may be justified and affordable. But in times of escalating costs and diminishing funding, many school districts simply may not be able in good faith to continue to pay automatic increments to their employees.

Automatic increments lock employees into a guaranteed gain position. By requiring that increments be paid even after expiration of the

collective bargaining agreement, the employees are given a big edge going into negotiations and that makes negotiations of salaries even more difficult.

Although collective bargaining enables teachers (and others) to seek more, the system should not provide any guarantees that teachers will necessarily receive more.

The automatic granting of increments upsets the delicate balance of the parties at the negotiating table.

It is poor fiscal policy and inequitable labor relations practice to require the employer to grant automatic increases after the agreement has expired.

I, therefore, urge a do pass recommendation on SB 198.

Thank you.

FAIRVIEW SCHOOL DISTRICT SALARY SCHEDULE

1982-83

Effective July of each year, the salary schedule for all teachers covered by this agreement shall be set in operation for the coming school term. Teaching experience is given full credit for the first five years.

An official transcript will be required of each teacher before he will be granted a salary increment for additional training.

Contracts are issued upon the basis of the amount of training and experiences at the time of signing the contract, not necessarily the amount of training and the experience which a teacher will have when beginning work under the contract, except, in such cases, when the administration has been notified in advance of the teacher completing requirements for advanced salary standing or a degree.

When a teacher is completing requirements toward a M.A. plus 1 and the M.A. is in his teaching field, the additional 12 credits earned after receiving the degree may be earned in related areas approved by the Administration.

Teachers obtaining additional college credits for advancement on the salary schedule must obtain said credits in the area(s) of their teaching endorsement. Notification of intent to pursue summer course work, and subsequent higher placement on the schedule, shall be made to the Superintendent before April 1 of the year in which said credits will be earned.

SALARY SCHEDULE

Experience	B.S.	B.S.+12	B.S.+24	B.S.+36	M.S.
0	14,747	15,113	15,482	15,852	16,220
1	16,154	16,579	16,917	17,280	17,619
2	16,815	17,175	17,558	17,918	18,312
3	17,380	17,775	18,177	18,558	19,015
4	17,962	18,374	18,883	19,296	19,782
5	18,621	19,056	19,503	19,949	20,491
6	19,203	19,658	20,128	20,604	21,162
7	19,871	20,351	20,859	21,339	21,963
8	20,454	20,953	21,485	21,995	22,672
9	21,040	21,561	22,110	22,652	23,369
10		22,164	22,835	23,400	24,175
11		22,784	23,369	24,047	24,920
12		23,407	24,020	24,706	25,586
13			24,652	25,383	26,393
14				26,057	27,136
15					27,887

Steps are frozen at 15 until 1985

*Exhibit No. 3
Submitted by Sue Romney
January 27, 1983*

TESTIMONY OF SUE ROMNEY REPRESENTING MONTANA SCHOOL BOARDS
ASSOCIATION IN SUPPORT OF SB #198 BEFORE SENATE LABOR AND
EMPLOYMENT RELATIONS COMMITTEE, January 27, 1983

Chairman Aklestad and Senators:

The issue addressed in SB 198, the automatic granting of experience and other incremental pay raises provided in an expired collective bargaining agreement, has also been addressed by the Board of Personnel Appeals. Their findings are attached.

In summary, the Board of Personnel Appeals found that, absent an impasse in negotiations, teachers are entitled to receive pay increments which were provided for in their expired collective bargaining agreement. Presumably, this same principle would be applied to any other employee group that has negotiated a experience based salary schedule. Impasse is a technical labor relations term which means an absolute deadlock in negotiations after all reasonable efforts at settlement have been exhausted. The Board of Personnel Appeals also determines when an impasse exists, and it is very difficult to prove. For instance, a Board of Personnel Appeals hearing examiner recently found in a dispute involving state institution teachers and the State Labor Relations Bureau, (ULP #33-81), that a impasse did not exist even after mediation, fact finding adjournment of the legislature, and finally the issuance of an Executive Order. The practical effect of the Board of Personnel Appeal's decision is required automatic payment of the longevity salary increases commonly used in school districts.

We do not dispute the underlying labor law principle which was interpreted (we believe incorrectly) to require the automatic payment of salary increases provided for in an expired contract. This principle requires the employer to maintain the existing wage levels and employment conditions during bargaining and make no unilateral changes. The problem is when a prohibition against change is interpreted to require automatic payment of substantial wage increases. And it is that specific requirement which we oppose.

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JAN 19 1983

MT. SCHOOL BOARDS
ASSOCIATION

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 37-81:

FORSYTH EDUCATION ASSOCIATION,)
MEA, NEA,)

Complainant,)

- vs -)

ROSEBUD COUNTY SCHOOL DISTRICT)
NO. 14, FORSYTH, MONTANA,)

Defendant.)

AMENDED
RECOMMENDED ORDER

* * * * *

By ORDER dated September 27, 1982, the Board of Personnel Appeals adopted the hearing examiner's Findings of Fact in this matter. The Board did not adopt the hearing examiner's Conclusion of Law or Recommended Order. The Board concluded that the Rosebud County School District No. 14, Forsyth, Montana, did violate Section 39-31-401 (5) MCA, by not paying the increments provided for in the expired collective bargaining agreement. The Board remanded the matter to the hearing examiner to establish a remedy consistent with the above Conclusion of Law.

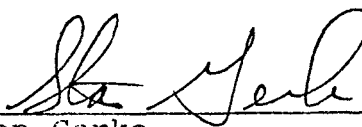
During the oral argument before the Board it developed that the parties in this matter had reached agreement on a collective bargaining agreement and the retroactive pay pursuant to that agreement. Because the retroactive pay, at issue in this matter, had been paid, no monetary relief is possible for a remedy. Therefore;

IT IS ORDERED that the Defendant, Rosebud County School District No. 14, Forsyth, Montana, cease not paying the increments provided for in a collective bargaining agreement upon the expiration of that agreement. Such action, short of impasse, constitutes unilateral changes in working conditions

1 and a violation of Section 39-31-401(5) MCA.

2 DATED this 18 day of January, 1983.

3 BOARD OF PERSONNEL APPEALS

4
5 By 
6 Stan Gerke
7 Hearing Examiner

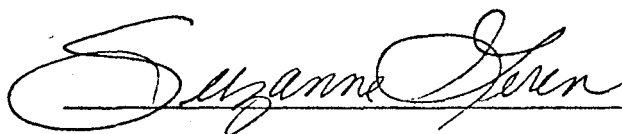
8 * * * * *

9 CERTIFICATE OF MAILING

10 The undersigned does certify that a true and correct copy
11 of this document was mailed to the following on the 18th day
12 of January, 1983:

13 Emilie Loring
14 HILLEY & LORING, P.C.
15 Executive Plaza - Suite 2G
16 121 4th Street North
17 Great Falls, MT 59401

18 Sue Romney
19 Montana School Boards Association
20 501 North Sanders
21 Helena, MT 59601

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STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 37-81:

FORSYTH EDUCATION ASSOCIATION,)
MEA, NEA,)

Complainant,)

- vs -)

ROSEBUD COUNTY SCHOOL DISTRICT)
NO. 14, FORSYTH, MONTANA,)

Defendant.)

ORDER

* * * * *

The Findings of Fact, Conclusions of Law and Recommended Order were issued by Hearing Examiner Stan Gerke on May 17, 1982.

Exceptions to Findings of Fact, Conclusions of Law and Recommended Order were filed by Complainant's Attorney Emilie Loring on May 20, 1982.

After reviewing the record and considering the briefs and oral arguments, the Board orders as follows:

1. IT IS ORDERED, that this Board adopts the Findings of Fact of the hearing examiner.

2. This Board does not adopt the hearing examiner's conclusion of law or the recommended order.

3. The Board concludes that the Rosebud County School District No. 14, Forsyth, Montana, did violate 39-31-401(5), MCA, by not paying the increments provided for in the expired collective bargaining agreement.

4. This case is remanded to the hearing examiner to establish a remedy consistent with the above conclusion of law.

DATED this 27th day of September, 1982.

BOARD OF PERSONNEL APPEALS

By

John Kelly Addy
John Kelly Addy, Chairman

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS
IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 37-81:

FORSYTH EDUCATION ASSOCIATION,)	
MEA, NEA,)	
)	FINDINGS OF FACT,
Complainant,)	
)	CONCLUSIONS OF LAW
-vs-)	
)	AND
ROSEBUD COUNTY SCHOOL DISTRICT)	
No. 14, FORSYTH, MONTANA,)	RECOMMENDED ORDER
)	
Defendant.)	

* * * * *

On October 13, 1981, the Complainant, in the above captioned matter, filed an unfair labor practice complaint with this Board charging the Defendant of violation of Sections 39-31-401(1) and (5) MCA. More specifically, the Complainant alleged that the Defendant, by its action of not implementing salary increment provisions of an expired collective bargaining agreement while the parties were engaged in negotiations for a successor agreement, unlawfully made unilateral changes in previously negotiated wages.

The Defendant, on October 27, 1981, filed an ANSWER to the unfair labor practice complaint with this Board denying violation of Sections 39-31-401(1) and (5) MCA.

By STIPULATION signed on December 21, 1981, the parties agreed upon the facts in this matter, defined the issue and set a briefing schedule. The last brief in this matter was received on March 23, 1982.

The Complainant, Forsyth Education Association; MEA, NEA was represented by Emilie Loring, HILLEY & LORING, P.C., Great Falls, Montana. The Defendant, Rosebud County School District No. 14, was represented by Duane Johnson and Sue Romney, Montana School Boards Association, Helena, Montana.

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ISSUE

Whether failure of a school district to pay experience and additional education credit increments provided in an expired collective bargaining contract, while the parties are negotiating for a successor agreement, is a unilateral change in wages constituting a refusal to bargain in good faith, in violation of Section 39-31-401(5) MCA.

STIPULATED FACTS

1. The Forsyth Education Association, affiliated with the Montana Education Association, is the duly recognized exclusive representative for collective bargaining of the faculty employed by Defendant.

2. Defendant, Rosebud County School District No. 14, is a body corporate, political subdivision, of the State of Montana, operating the elementary and high schools in Forsyth, Montana.

3. The parties had a Professional Negotiations Agreement, Master Contract which expired on June 30, 1981.

4. There was no provision in the expired contract to extend its provisions beyond its expiration date.

5. The parties are in negotiations for a successor collective bargaining contract; agreement has not been reached.

6. The expired agreement contained a teachers' salary schedule which provided for increments based on experience and increments contingent on additional educational credits.

7. Defendant has issued individual contracts to the teachers and is making 1981-82 salary payments based on teachers' salaries for 1980-81, without any additional experience and education increments provided in the old contract.

1 DISCUSSION

2 The issue in this matter has been narrowed because of
3 the factual situation. The Master Contract between the
4 parties, which contained a teachers' salary schedule providing
5 for automatic increments based upon experience (years of
6 service) and education (additional credits), expired June 30,
7 1981. No provision existed to extend the contract beyond
8 the expiration date. The parties were in negotiations for a
9 successor contract and, although agreement had not been
10 reached, they were not at impasse. The Defendant, Rosebud
11 County School District No. 14, issued individual contracts
12 in the Fall of 1981 to the teachers for the 1981-82 school
13 year containing salaries based upon the expired Master
14 Contract without additional automatic increments. The
15 Complainant, Forsyth Education Association, MEA, NEA, alleged
16 that this action of not implementing the increased salary
17 increments constituted a unilateral change in wages in
18 violation of Sections 39-31-401(1) and (5) MCA.

19 There is no dispute that, as a general rule, an employer
20 may not unilaterally alter wages or other employment condi-
21 tions that are mandatory subjects of bargaining. Such an
22 action may constitute a refusal to bargain in good faith in
23 violation of the Act. (See NLRB v. Katz, 369 U.S. 736, 50
24 LRRM 2177 (1962). The parties do not disagree that the
25 experience and education increments are mandatory subjects
26 of bargaining. The question in this matter simply becomes
27 whether or not the "status quo" of the increments was unila-
28 terally changed by the Defendant.

29 The Complainant cites Galloway Board of Education v.
30 Galloway Education Association, 395 A. 2d 218 (N.J. Sup. Ct.
31 1978) 100 LRRM 2250 as being a case almost in point. In
32 this New Jersey case a one-year contract containing a salary
schedule for the 1974-75 school year plus annual salary

1 increments expired June 30, 1975. At the start of the
2 1975-76 school year the parties, the Galloway Township
3 Education Association (the Association) and the Galloway
4 Township Board of Education (the Board) were in negotiations
5 for a successor agreement. The Association filed an unfair
6 labor practice charge alleging the Board refused to negotiate
7 in good faith by its action of unilaterally withholding the
8 annual salary increment due at the beginning of 1975-76
9 school year. The facts of this case are nearly identical to
10 the matter at hand. However, in New Jersey a specific state
11 statute (N.J.S.A. 18A:29-4.1) dictates that school boards
12 shall adopt salary schedules for two-year durations. Thus,
13 in the Galloway case, the Board by its agreement with the
14 1974-75 collective bargaining contract, adopted a salary
15 schedule that would, by state statute, extend into the
16 1975-76 school year. The New Jersey Supreme Court did
17 affirm that the Board unilaterally withheld the annual
18 salary increments which constituted a refusal to bargain in
19 good faith. However the Court stated, "We need not consider
20 the general issue of whether the terms and conditions of
21 employment which prevailed under a previous collective
22 agreement constitute the "status quo" after its expiration
23 because in this case a specific statute applies to command
24 that conclusion with respect to the payment of increments
25 according to the salary schedule."

26 The issue and facts in Board of Coop. Educational
27 Servs. of Rockland County v. New York State Public Employment
28 Relations Bd., 41 N.Y. 2d 753, 395 N.Y.S. 2d 439, 363 N.E.
29 2d 1174, 95 LRRM 3046 (hereafter referred to as BOCES) are
30 similar, if not identical, to the case at hand. In BOCES,
31 the collective bargaining agreement between the parties had
32 expired prior to a successor agreement being adopted. The
expired agreement had contained a salary schedule and provi-

1 sions for automatic step increments. In previous years upon
2 expiration of the collective bargaining agreement, the
3 public employer had paid returning unit employees the automa-
4 tic step increments before a successor agreement was reached.
5 However, on June 19, 1974, after being advised that the unit
6 employees wished to negotiate a successor agreement to the
7 1972-74 contract, the public employer adopted a resolution
8 affecting the status of salaries during the course of negoti-
9 ations. The resolution provided that pending the execution
10 of a new agreement or September 1, 1974, whichever came
11 earlier, the provisions of the agreement expiring June 30,
12 1974, would be recognized, including salary and salary rates
13 in effect on June 30, 1974. Pursuant to the resolution,
14 which had the same effect of the individual teaching contracts
15 in the present matter, the public employer maintained the
16 salaries at the rate in effect on June 30, 1974, during
17 negotiations for the successor agreement, but refused to pay
18 the automatic step increments to returning unit members.
19 Because of the refusal, the labor organization filed an
20 unfair labor practice charge alleging that the public employer
21 had unilaterally withdrawn a previously enjoyed benefit -
22 automatic step increments.

23 In its reasoning of the BOCES case, the Court reviewed
24 the principles of labor law relating to maintaining the
25 "status quo" during negotiations. Unilateral changes to
26 wages and conditions of employment by the employer during
27 the course of negotiations indicates lack of good faith
28 bargaining. The Court stated, "While such a principal may
29 apply where an employer alters unilaterally during negotia-
30 tions other terms and conditions of employment, it should
31 not apply where the employer maintains the salaries in
32 effect at the expiration of the contract but does not pay
increments." The Court also reasoned, "To say that the

1 'status quo' must be maintained during negotiations is one
2 thing; to say that the 'status quo' includes a change and
3 means automatic increases in salary is another." The Court
4 concluded, "We hold that, after the expiration of an employ-
5 ment agreement, it is not a violation of a public employer's
6 duty to negotiate in good faith to discontinue during the
7 negotiations for a new agreement the payment of automatic
8 annual salary increments, however long standing the practice
9 of paying such increments may have been."

10 The question addressed in Wyandanch Union Free School
11 District, Board of Education v. Wyandanch Teachers Association,
12 58 AD 2d 475, 396 NYS 2d 702, 96 LRRM 2652 [NY App.Div.
13 (1977)] is identical to the matter at hand and the BOCES,
14 supra, case. However, the Court in WYANDANCH dealt with a
15 factual matter that presents a curious difference to the
16 case at hand. Unlike the fact in BOCES, supra, and the
17 present matter that the employment agreement had expired and
18 no provisions were made to extend the agreement through the
19 period of negotiations, in WYANDANCH, supra, a survivorship
20 clause was contained in the employment agreement. The
21 clause stated:

22 "ARTICLE XXII SUCCESSOR AGREEMENTS

23 "A. On or after February 1, 1976, either
24 party may notify the other, in writing,
25 that negotiations are required on neg-
26 tiable items for the collective bargain-
27 ing agreement for the succeeding school
28 year. The notice shall set forth the
times which that party desires to negotiate.
Negotiating sessions shall commence within
ten days of the notice initiating negotia-
tions.

29 "B. In the event a successor contract or
30 provisions are not agreed upon on or before
31 the termination date of the present contract
32 or provisions, all terms of the present con-
tract and all working conditions will remain
in effect until the successor contract or
provisions have entered into. Upon agreement
all salaries, benefits and working conditions

1 will be retroactive to the termination date
2 of the present contract or provisions."

3 In WYANDANCH, supra, the Court addressed this factual
4 difference:

5 While, as we have noted, the [unit members] in
6 the [BOCES] case sought to collect salary in-
7 crements after the expiration of a survivor-
8 ship clause, and here the contract does have
9 such a clause, we interpret the broad language
10 of the Court of Appeals to void any attempt to
11 compel the payment of increments under an
12 expired contract even though that contract is
13 deemed, for other purposes, to continue in effect.

14 The facts in CORBIN v. COUNTY OF SUFFOLK, 54 AD2d 698,
15 387 NYS2d 295, 95 LRRM 2030 [NY App.Div. (1976)] are on all
16 forms with the matter at hand. The contract had expired and
17 the parties were in negotiations for a successor collective
18 bargaining agreement. The public employer maintained the
19 "status quo" by honoring the terms of the expired contract
20 except with respect to the salary increment provisions. The
21 bargaining unit employees charged that the employer unilateral-
22 ly altered salaries which constituted a refusal to bargain
23 in good faith. The Court succinctly stated, "We disagree
24 with [the bargaining unit employees'] contentions. The
25 contracts having expired, the provisions for salary increments
26 and longevity payments are no longer in effect."

27 It is clear that the courts have continued to maintain
28 the findings in KATZ, supra. An employer's unilateral
29 change in conditions of employment during negotiations,
30 short of true impasse, is generally held to be a refusal to
31 bargain in good faith. Maintaining the "status quo" upon
32 the expiration of a collective bargaining agreement has been
deemed proper during the period of negotiations for a succes-
sor agreement. Maintaining the "status quo", however, does
not include "change". Increasing salaries by the use of
increments based upon educational or experience credits
surely constitutes change. The Courts have determined that

1 an employer's refusal to pay increments based upon an expired
2 contract during the period of negotiations is not a refusal
3 to bargain in good faith.

4 I agree with the reasoning in BOCES, supra, "The matter
5 of increments can be negotiated and, if it is agreed that
6 such increments can and should be paid, provision can be
7 made for payment retroactively."

8
9 CONCLUSIONS OF LAW

10 The Rosebud County School District No. 14, Forsyth,
11 Montana, did not violate Sections 39-31-401(1) or (5) MCA.

12
13 RECOMMENDED ORDER

14 It is hereby ordered that Unfair Labor Practice No.
15 37-81 be dismissed.

16
17 SPECIAL NOTE

18 In accordance with Board's Rule ARM 24.25.107(2), the
19 above RECOMMENDED ORDER shall become the FINAL ORDER of this
20 Board unless written exceptions are filed within 20 days
21 after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW,
22 AND RECOMMENDED ORDER upon the parties.

23 DATED this 17 day of May, 1982.

24
25 BOARD OF PERSONNEL APPEALS

26
27 By Stan Gerke

28 STAN GERKE
29 Hearing Examiner

30 CERTIFICATE OF MAILING

31 The undersigned does certify that a true and correct
32 copy of this document was mailed to the following on the
17th day of May, 1982:

Some may argue that this type of issue is properly decided by the courts. While that position may be understandable, the Montana School Board Association would prefer to see this issue resolved by the legislature. There is no constitutional right to negotiate. That right was bestowed by an act of this legislature. If collective bargaining rights, when combined with longstanding school district compensation practices have unintended results, it seems more logical for the intent of the legislature to be clarified by legislature than by the courts. It is also hoped that this recourse will be less costly. When one public agency, such as a school district, appeals the decision of another public agency, the taxpayer is the one who foots the bill.

It is simply unfair to school boards, who are responsible for their school districts budgets, to require automatic payment of salary increases after any agreement to do so has expired. Just as with any other large expenditure in a school district, any salary increases should have specific school board approval.

The Montana School Board Association supports SB 198, however, we think it could be improved by making it less specific. Since some boards of trustees may want to consider the increments automatic and grant them as a matter of practice, we would suggest a modification to SB 198 be introduced which would allow them to do so. The proposed amendment is attached.

Thank you for your consideration of our opinions. The Montana School Board Association urges your support of SB 198 and of the proposed amendment.

TESTIMONY OF JAKE BLOCK, SUPERINTENDENT, Missoula, School District #1

Chairman Aklestad, Senators:

The School Administrators of Montana support Senate Bill #198. Collective bargaining rights in Montana guarantee that teachers, along with other public employees, can ask for higher wages, fewer hours, and better working conditions. And when collective bargaining agreements are up for renewal, employees through their unions usually ask for more. Although collective bargaining enables employees to ask for more, the system should not guarantee that they will receive more. While unions can bargain over changes in an expired salary grid, school districts can similarly bargain over what they are to pay teachers. Districts can insist that a grid should be contracted by decreasing the number of lanes and/or steps or that steps be granted only for merit instead of longevity. Moreover, if a district finds itself in a financial bind, the district may propose no wage increase. While it is extremely rare in Montana for school districts to refuse to grant any increase in salary, the fact remains there should be no requirement which guarantees automatic increases to employees. The School Administrators believe that Senate Bill #198 is a good bill and a necessary bill. We urge a "do-pass" recommendation. Thank you.

INFORMATION SHEET

1.	14½	staff would get a \$460.00 raise		\$ 6670.00
2.	11	"	" 500.00 "	5500.00
3.	4	"	" 540.00 "	2160.00
4.	3	"	" 580.00 "	1740.00
5.	4	"	" 610.00 "	2440.00
6.	7	"	" 620.00 "	4340.00
7.	11	"	" -0-.00 "	-0-.00

TOTAL: \$22,850.00

SALARY SCHEDULE - 1982-83

Base - \$13,600

Attainment Level 3.0

Yr. Exp.	B	C	D	E	F	G
0	^{////} 13,600	14,010	14, [/] 430	14,840	15,040	15,250
1	^{///} 14,060	14,510	14,970	15,420	15,650	15,870
2	^{//} 14,520	15,010	15,520	16,010	16,270	16,500
3	^{//} 14,990	15,520	16,060	16,590	16,880	17,120
4	^{//} 15,450	^{///} 16,020	16,610	17,180	17,490	17,750
5	15,910	^{////} 16,520	17, [/] 150	17,760	18,100	18, ^{1/2} 370
6	^{1/2} 16,370	17,030	17,690	18,350	18, [/] 710	19,000
7	16,840	^{///} 17, ¹ 530	18,240	18,930	19,330	19, [/] 620
8	17,300	18, [/] 030	18, [/] 780	19, [/] 520	19, [/] 940	20, ^{1/2} 250
9	17, [/] 760	18,540	19,330	20, ^{//} 100	20,550	20, [/] 880
10	18,220	19, [/] 040	19,870	20,690	21, ^{//} 160	21,500
11		19,540	20,410	21,270	21,770	22, ^{1/2} 130
12		^{////} 20,050	20,960	21,860	22,390	22,750
13			21, [/] 500	22,440	23,000	23, [/] 380
14			22, ^{//} 050	23,020	23,610	24, [/] 000
15				23, [/] 610	24, ^{//} 220	24, ^{1/2} 630

- B - Bachelor's degree: Maximum 10 years experience paid.
- C - Bachelor's degree plus 15 quarter credits - maximum 12 years experience paid.
- D - Bachelor's degree plus 30 quarter credits - these credits must be toward an approved program.
- E - Bachelor's degree plus 45 quarter credits - same credit limitation as "D".
- F - Class One Certificate or 60 quarter credits - same credit limitation as "D".
- G - Master's Degree