

1 BOARD OF PERSONNEL APPEALS  
2 PO BOX 201503  
3 HELENA MT 59620-1503  
4 Telephone: (406) 444-0032  
5 Fax: (406) 444-7071

6 STATE OF MONTANA  
7 BEFORE THE BOARD OF PERSONNEL APPEALS

8  
9 IN THE MATTER OF UNFAIR LABOR PRACTICE 8-2017:

10 TEAMSTERS UNION LOCAL NO. 2,  
11 Complainant,

12 vs.

13  
14 BUTTE-SILVER BOW LOCAL  
15 GOVERNMENT

16 Defendant,  
17

18  
19 } RECOMMENDED ORDER  
20 } STAYING PROCEEDINGS

21 I. INTRODUCTION

22 On February 28, 2017, Erin Foley, Business Agent for Teamsters Union Local No. 2  
23 (Union or Local 2), filed an unfair labor practice charge with the Board of Personnel  
24 Appeals alleging that the Butte-Silver Bow Government (BSB) implemented a unilateral  
25 change in working conditions thereby bargaining in bad faith, a violation of Sections 39-31-  
26 201, 39-31-401(1) and (5), Montana Code Annotated (MCA). Leslie Clark, BSB Director of  
27 Human Resources, filed a timely answer with the Board denying BSB had committed an  
28 unfair labor practice.

29 Pursuant to Section 39-31-405 (1), MCA, John Andrew was appointed by the Board of  
30 Personnel Appeals to investigate the charge. During the course of the investigation  
31 contact was made with representatives of both parties as was deemed necessary.  
32

33 II. FINDINGS AND DISCUSSION

34 This case is straightforward. On August 29, 2017, BSB and the Union met in mediation  
35 to resolve their open collective bargaining agreement. A tentative agreement was  
36 reached on that date. The tentative agreement was subsequently ratified by the parties  
37 to remain in full force and effect until May 31, 2017.

38 The agreement contains a grievance procedure culminating in final and binding  
39 arbitration. Article 15, Section 1 of the grievance procedure provides:

40  
41 Any grievance or misunderstanding which cannot be settled between the  
42 Employer and the employee must be taken up with the Employer by the Business  
43 Representative of the Union or any one designated by the Union.  
44  
45  
46  
47  
48

1 The parties agree that any differences involving the interpretation of this  
2 Agreement, which cannot be settled among themselves, may be submitted to  
3 arbitration upon the request of either party.  
4

5 The issue in controversy between the Union and BSB centers around an agreed upon  
6 change in contract language pertaining to "boot pay." As the Union points out, language  
7 pertaining to this issue was changed during mediation to eliminate language reading  
8 "replace every 2 years" with "to replace as needed." It is important to read the full  
9 language of the section in question. It reads:

10  
11 The employer shall provide the following safety equipment: (a) vests; (b) hard  
12 hats; (c) rubber boots; (d) gloves when needed;( e) safety goggles when  
13 necessary; (f) *the employer will purchase one pair of steel/hard toed boots up to*  
14 *a maximum amount of \$200.00 as needed and at the supervisor's discretion."*  
15 *(emphasis added)*  
16

17 During the term of the agreement a bargaining unit member requested approval for new  
18 boots. That request was not denied, but rather the supervisor requested verification of  
19 the need for new boots as well as production of the boots needing replacement. BSB  
20 contends this supervisory action was well within its management rights and comports  
21 fully with the bargaining agreement. The Union disagrees and, as a result, Local 2 filed  
22 a grievance against BSB. Eventually, Local 2 also filed the instant charge with the  
23 Board contending that the actions taken by BSB constituted a unilateral change in a  
24 mandatory subject of bargaining.  
25

26 With the grievance in place, the parties discussed possible resolution. As a result of  
27 these discussions a letter of agreement was drafted between BSB and Local 2 to  
28 resolve the dispute. The letter of agreement was taken to the membership and  
29 rejected, leaving the interpretation of the language of the contract in limbo and the  
30 problem unresolved.  
31

32 BSB has advised the mediator that this matter was properly filed as a grievance since at  
33 its heart it involves contract interpretation. The investigator agrees with the position  
34 taken by BSB. This issue is clearly within the four corners of the bargaining agreement.  
35 Since the agreement is in effect, arbitration is available to interpret the contractual  
36 language. In this vein, BSB has informed the investigator that since the grievance was  
37 filed BSB would choose to follow the contractual language to resolve this matter. To  
38 that end, BSB has also said it would waive any procedural issues and proceed to  
39 arbitration.  
40

41 The Union argues that the process BSB set up to verify the need for new boots is a  
42 mandatory subject and thus it is appropriate for the Board to process this charge.  
43 Regardless of the mandatory or permissive nature of the procedures put in place by  
44 BSB the language in the bargaining agreement needs to be interpreted by an arbitrator,  
45 not the Board as the term "supervisor's discretion" could encompass a variety of actions  
46 very arguably addressed at the table and embodied in the collective bargaining  
47  
48

1 agreement, issues all properly before an arbitrator, not the Board.  
2

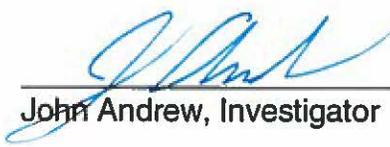
3 Based on the foregoing, and the likelihood that arbitration, if it occurs, will address  
4 issues at the heart of the pending unfair labor practice, it is the view of the investigator  
5 that this matter should continue to be processed under the grievance procedure of the  
6 collective bargaining agreement. Deferral and a stay are appropriate to resolve this  
7 dispute as it currently stands. Further, even if not appealed at this time, upon proper  
8 motion, either party can request the stay in proceedings be lifted at a time in the future  
9 should that be deemed necessary.  
10

11 **III. RECOMMENDED ORDER**  
12

13 It is hereby recommended that further action on unfair labor practice charge 8-2017 be  
14 stayed and the matter further deferred to the grievance procedure.  
15

16  
17 Dated this 13<sup>th</sup> day of April 2017.  
18  
19

20 **BOARD OF PERSONNEL APPEALS**  
21

22  
23  
24 By:   
25 John Andrew, Investigator  
26  
27

28 **APPEAL NOTICE/LIFTING OF STAY:**  
29

30 ARM 24.26.680(A). If during the course of the informal investigation of the unfair labor  
31 practice charge, the board's agent determines that the charge is one that may be  
32 resolved through deferral to the final and binding arbitration provisions contained in the  
33 collective bargaining agreement between the parties, the board's agent may issue a  
34 recommended order staying the board's proceedings.  
35

36 (2) A party may appeal the recommended order to stay proceedings by filing an appeal  
37 with the board within 14 days after service of the recommended order.

38 (3) An appeal of the recommended order to stay proceedings must clearly set forth the  
39 specific factual or legal reasons indicating error. At the discretion of the board,  
40 interested parties will be afforded an opportunity to respond to an appeal of the  
41 recommended order.

42 (4) The board or the board's agent has the discretion to dissolve the stay and continue  
43 with its investigation into the unfair labor practice if a party makes a proper showing  
44 that:

45 (a) the unfair labor practice charge has not been resolved in a reasonable amount of  
46 time;

47 (b) the arbitration decision has not resolved the unfair labor practice; or  
48

1 (c) the decision to stay the proceedings was inconsistent with the laws that govern  
2 collective bargaining in Montana.  
3 (5) A decision by the board or the board's agent to dissolve a stay is not appealable.  
4 (6) If the board affirms and adopts the recommended order to stay proceedings, the  
5 stay remains in place until there is a subsequent request to review the stay or the  
6 board's order affirming and adopting the recommended order is removed by operation  
7 of court order.  
8

9 The Recommended Order of the board agent is an administrative decision appealable  
10 to the Board of Personnel Appeals. Unless there is a timely appeal to the Board of  
11 Personnel Appeals, the Recommended Order of the board agent becomes final and is  
12 not appealable to the district court. Any appeal of this Recommended Order Staying  
13 Proceedings must be filed with the Board of Personnel Appeals, P.O. BOX 201503,  
14 Helena, MT 59620-1503 within 14 days after service of the recommended order.  
15  
16

17 CERTIFICATE OF SERVICE

18  
19 The undersigned does hereby certify that a true and correct copy of the  
20 foregoing/attached "Recommended Order Staying Proceedings" was served upon the  
21 following on the 13<sup>th</sup> day of April, 2017, postage paid and  
22 addressed or delivered as indicated:  
23

24 HR DIRECTOR LESLIE CLARK  
25 BUTTE SILVER BOW  
26 155 WEST GRANITE STREET STE 209  
27 BUTTE MT 59701  
28

29 BUSINESS AGENT ERIN FOLEY  
30 TEAMSTERS LOCAL NO 2  
31 PO BOX 3745  
32 BUTTE MT 59701  
33

34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
