

merit pay increase promised by the sheriff to two bargaining unit employees or (2) whether the sheriff's commitment to the merit increases was neither binding upon nor compulsory for the county, because pursuant to the applicable CBA, the county could but was not required to pay employees more than the pay rates included in Exhibit A to the CBA, and the county commissioners never approved the merit increases on behalf of the county.

III. FINDINGS OF FACT

1. The county is a "public employer." Mont. Code Ann. § 39-31-103(10).
2. The union is a "labor organization." Mont. Code Ann. § 39-31-103(6).
3. The county maintains a Sheriff's Department, under the supervision and direction of the Sheriff. In January 2005, Hugh Hopwood assumed the position of the elected Sheriff.
4. The union and the county entered into a series of collective bargaining agreements ("CBAs"). Each successive CBA contained the wage scale for the bargaining unit employees in its Exhibit "A."
5. Section 8.2 of the CBA for July 1, 2005, through June 30, 2006, Fiscal Year 2006 (Exhibit 2), provides that "Wages shall be paid in accordance with the schedule attached hereto as Exhibit 'A.' The wages set forth in Exhibit 'A' are the minimum which must be paid to employees and the Employer reserves the right to pay more than the minimum."
6. Sworn and non-sworn employees of the Sheriff's Department are bargaining unit employees, including Roni Phillips and Tim Hayes, two non-sworn employees.
7. In January 2005, Hopwood assigned Phillips as the head dispatcher and Hayes as the chief detention officer and promised to increase their base pay by \$1.00 per hour each in upcoming fiscal year 2006, as "merit pay." Hopwood submitted a preliminary budget for the Sheriff's Department to the county commissioners which reflected those pay increases. The budget was preliminary because the union and the county had not reached an agreement regarding the CBA for FY 2006.
8. In October 2005, the union and the county reached an agreement that non-sworn Sheriff's Department employees whose hourly rates did not appear on Exhibit A to the CBA would receive an increase of 2.7%, plus \$.50 per hour,

retroactive to September 1, 2005. That agreement was made part of Exhibit A to the FY 2006 CBA, as signed on November 7, 2005 (Exhibit 2).

9. In the course of bargaining to reach the agreement embodied in the CBA, the union's proposals did not reference Hopwood's promise to Phillips and Hayes. Nonetheless, Phillips, Hayes and Hopwood believed the CBA increase would be in addition to the merit pay increase.

10. When the county commissioners approved the final budget for the Sheriff's Department, they approved an overall pay increase for Phillips and Hayes of 2.7% plus \$1.00 per hour.

IV. DISCUSSION¹

The parties in this case entered into a CBA which specified a minimum hourly rate for non-sworn employees whose hourly rates were not addressed specifically. For those employees (such as Phillips and Hayes), their new hourly rate was 2.7% plus \$.50 an hour higher than in FY 2005. However, the county actually paid Phillips and Hayes 2.7% plus \$1.00 an hour higher than their FY 2005 wages. The question here is whether the county was within its authority in approving half of the merit increase submitted by Hopwood in addition to the general increase to which these two employees, pursuant to the CBA, were entitled.²

A written contract is interpreted according to its terms, if the terms are clear, explicit and do not result in an absurdity. Mont. Code Ann. § 28-3-401. *See, Morning Star Ent., Inc. v. R.H. Grover, Inc.* (1991), 247 Mont. 105, 805 P.2d 553; *followed in Nyquist v. Nyquist* (1992), 255 Mont. 149, 841 P.2d 515. If an ambiguity exists then the contract must be construed rather than simply applied according to its terms. An ambiguity only exists when the contract taken as a whole in its wording or phraseology is reasonably subject to two different interpretations. *Lemley v. Bozeman Comm. Hotel Co.* (1982), 200 Mont. 470, 651 P.2d 979, *followed in N.H. Ins. Group v. Strecker*, (1990), 244 Mont. 478, 798 P.2d 130.

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

² The evidence established that the commissioners made an informed decision to increase the wages of Phillips and Hayes by \$1.00 per hour (included the bargaining for \$.50 per hour) plus the bargained for percentage increase, not by \$1.00 per hour plus both the bargained \$.50 per hour and the bargained for percentage increase. This was neither a mistake nor a misunderstanding, but a conscious decision by the county commission in finalizing the county's budget after the CBA was in place and the wages of Phillips and Hayes had to be decided.

The CBA is clearly a written contract. No ambiguity exists in Section 8.2 to the CBA. The county can but is not required to pay more to employees than the CBA provides.

As a matter of black letter law, after county department heads, including the Sheriff, submit their preliminary budgets, the county commissioners, acting on behalf of the county, can amend the preliminary budget when they adopt the final county budget. Mont. Code Ann. §§ 7-6-4020 and 7-6-4031. The county is not bound by the spending any department head puts in his or her department's budget. The department head preliminary budget is not final until the commissioners adopt it, either as is or with amendments.

Putting together the statutes and the clear meaning of the CBA, the county commissioners had the authority to decide and did decide to increase the wages of Phillips and Hayes by half the merit increase promised by Hopwood in addition to the CBA increases. The union failed to establish that a department head, elected or otherwise, has the power to bind the county to a particular merit increase (over and above the CBA increases in wages) without the approval of the commissioners. The union failed to prove that Phillips and Hayes reasonably and detrimentally relied upon Hopwood's promise.³ The union also failed to prove that the pay decision regarding Phillips and Hayes in any way interfered with, restrained, or coerced employees in the exercise of their collective bargaining rights or involved a refusal to bargain collectively in good faith with the union.

For all of these reasons, the union failed to prove the county commissioners' pay decision regarding Phillips and Hayes constituted an unfair labor practice.

V. CONCLUSIONS OF LAW

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

2. Mineral County acted within its authority and the terms of the applicable CBA when it approved an overall pay increase for Phillips and Hayes of \$1.00 per hour plus 2.7%, rather than \$1.50 per hour plus 2.7%, effective retroactively as of September 1, 2005. Mont. Code Ann. §§ 7-6-4020 and 7-6-4031.

³ The union also cited no controlling or persuasive authority that (a) Hopwood had actual or ostensible authority to make such a promise on behalf of the county and (b) that Phillips and Hayes could bind the county commissioners to make good on the promise had they reasonably and detrimentally relied upon it.

3. The evidence does not support a conclusion that Mineral County engaged in an unfair labor practice in making the pay decision regarding Phillips and Hayes, by interfering with, restraining or coercing employees in the exercise of their collective bargaining rights or refusing to bargain collectively in good faith with the Teamsters Union Local No. 2. Mont. Code Ann. § 39-31-401(1) and (5).

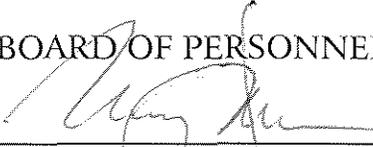
VI. RECOMMENDED ORDER

Teamsters Union Local No. 2, International Brotherhood of Teamsters, failed to prove that Mineral County committed an unfair labor practice when it approved the pay increase for Roni Phillips and Tim Hayes, and the Board dismisses the union's complaint.

DATED this 4th day of December, 2006.

BOARD OF PERSONNEL APPEALS

By:



Terry Spear, Hearing Officer
Hearings Bureau
Department of Labor and Industry

NOTICE: Exceptions to these Findings of Fact, Conclusions of Law and Recommended Order may be filed pursuant to Admin. R. Mont. 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. Mont. Code Ann. § 39-31-406(6). 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

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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, and addressed as follows:

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DATED this 4th day of December, 2006.

Sandy Duncan