

1 Department of Labor and Industry
2 Board of Personnel Appeals
3 PO Box 6518
4 Helena, MT 59604-6518
5 (406) 444-2718
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8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 14-2008

11 BILL J. SPANNRING,)
12)
13 Complainant,) INVESTIGATIVE REPORT
14) AND
15 -vs-) NOTICE OF INTENT TO DISMISS
16)
17 INTERNATIONAL ASSOCIATION OF)
18 FIRE FIGHTERS, LOCAL 630,)
19)
20 Defendant.)
21)
22)
23)

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25 *****

26 **I. Introduction**

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28 On March 25, 2008, Bill Spannring, filed an unfair labor practice charge with the Board
29 of Personnel Appeals alleging violations of 39-31-306, 39-31-205 and 39-31-402 MCA.
30 The complaint was filed against Mike Chambers, President of Local 630 as well as
31 against Kevin Harrington, Doug Lobaugh, and Jeremy Jacobsen, members of Local 630
32 as well as members of a grievance committee reviewing a grievance filed by Bill
33 Spannring against the City of Livingston. Mr. Spannring contends he was not fairly
34 represented by Local 630 in that the grievance was not taken to arbitration. Neither
35 party is represented by counsel. Mr. Spannring is representing himself and Local 630 is
36 represented by Mike Chambers. The defendant has answered the charge and denied
37 any violation of Montana law.
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40 John Andrew was assigned to investigate the charge, has reviewed the submissions of
41 the parties and has communicated with the parties in the course of investigating the
42 charge.
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44 **II. FINDINGS AND DISCUSSION**

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46 Before turning to the facts of this case a jurisdictional issue first needs to be addressed.
47 Bill Spannring's complaint names individual members of the bargaining unit as
48 defendants as opposed to naming the exclusive bargaining representative as the
49 defendant. No evidence was offered, nor does any appear, that the individuals named
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1 in the original charge operated outside the usual scope of their responsibilities. As such
2 personal liability does not apply. See for instance, Williams v. U.S. Postal Service, 834
3 F. Supp 350, 148 LRRM 2764, *aff'd sub nom Williams v. Letter Carriers*, 35 F.3d 575
4 (10th Cir. 1994), *cert. denied*, 513 U.S. (1995), and Evangelista v. Inland Boatmen's
5 Union of the Pac. 777 F.2d 1390, 121 LRRKM 2570 (9th Cir. 1985). When the
6 investigator discussed this with Mr. Spannring he agreed that the charge should have
7 specified Local 630, the exclusive bargaining agent, as the defendant. As such the
8 captioning in this matter reflects the correct defendant, IAFF Local 630.
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11 The Board of Personnel Appeals has jurisdiction over this matter. The Montana
12 Supreme Court has approved the practice of the Board of Personnel Appeals in using
13 Federal Court and National Labor Relations Board (NLRB) precedent as guidelines in
14 interpreting the Montana Collective Bargaining for Public Employees Act, State ex rel.
15 Board of Personnel Appeals vs. District Court, 183 Montana 223 598 P.2d 1117, 103
16 LRRM 2297; Teamsters Local No. 45 vs. State ex rel. Board of Personnel Appeals, 185
17 Montana 272, 635 P.2d 185, 119 LRRM 2682; and AFSCME Local No. 2390 vs. City of
18 Billings, Montana 555 P.2d 507, 93 LRRM 2753. As cited in the previous paragraph,
19 and to the extent cited in this decision, federal precedent is considered applicable.
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21
22 Bill Spannring was an employee in the Livingston Fire Department for over 21 years
23 with the past 13 years at the rank of Captain. Although the unfair labor practice charge
24 concerns one grievance that IAFF 630 did not take to arbitration it is noted that in fall of
25 2007 there were two serious disciplinary actions commenced by the City of Livingston
26 against Mr. Spannring. Both of these actions were grieved under the applicable
27 provisions of the collective bargaining agreement. The steps in each grievance were
28 handled in a timely manner by both the City and Local 630. One grievance involved a
29 suspension without pay. The second grievance involved a demotion in rank from
30 Captain to Firefighter with a resultant reduction in pay, adverse impact on future
31 earnings, and potential reduction of retirement earnings based on lower rank and lower
32 pay. Both grievances were presented to a duly appointed grievance committee of Local
33 630. After investigating the grievances the committee unanimously voted to take the
34 suspension grievance to arbitration. The committee also voted unanimously to not take
35 the demotion to arbitration. It is the decision to not arbitrate the second grievance that
36 forms the basis of this unfair labor practice charge against Local 630.
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39 Although his complaint lacks much specificity, from what can garnered by the
40 investigator in conversations with Mr. Spannring and Local 630 members Mr. Spannring
41 contends that the City did not follow its own policies on progressive discipline, nor did it
42 follow a policy requiring performance appraisals. This resulted in discipline – demotion -
43 that either was not called for, or was too extreme. In this regard Mr. Spannring
44 indicates that “past practice” was not given proper accord since the discipline was too
45 severe given his overall work history. From this then flows a belief on the part of Mr.
46 Spannring that Local 630 failed to recognize that proper procedure was not followed by
47 the City either in its investigation or in the discipline taken. Additionally Local 630 failed
48 to follow its own procedures for handling grievances and because of this Mr. Spannring
49 was not afforded due process by either the City or Local 630. Finally, throughout all this
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1 Mr. Spannring was singled out for disparate treatment, or in his words there was a bias
2 shown against him by the City, by other individuals in general, and Local 630
3 specifically. Bias was the word used by Mr. Spannring when contacted by the
4 investigator, not discrimination. Mr. Spannring did mention that he was bi-polar,
5 seemingly in the context of why he may have been treated differently than others,
6 however, Mr. Spannring did not request any accommodation from the City as a result of
7 his bi-polar diagnosis. Mr. Spannring also mentioned that because of his age and time
8 with the Department his presence essentially blocked younger members of the
9 Department from upward progression. Mr. Spannring did settle any disputes he had
10 with the City as part of an overall agreement that he would retire from the Livingston
11 Fire Department. Thus, the City is not named as a co-defendant in the unfair labor
12 practice charge.
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15 The above noted, it is not the role of the investigator to determine whether or not there
16 is merit to the grievance of Bill Spannring. Rather, as set down by the U.S. Supreme
17 Court in Vaca v Sipes 386 U.S. 171, 64 LRRM 2369 (1967) and as subsequently
18 followed by the Board of Personnel Appeals in Ford v University of Montana, 183 Mont.
19 112, 598 P.2d 604 (1979) the role of the Board in an alleged breach of the duty of fair
20 representation is to determine whether the actions of a union, or lack of action, in some
21 way are a product of bad faith, discrimination or arbitrariness. Some discussion of the
22 nature of reason for the demotion is necessary in order to provide the framework for the
23 actions taken by Local 630.
24

25
26 For several reasons documented by the parties the City of Livingston believed that
27 through his actions Captain Spannring was insubordinate and that he created a hostile
28 work environment in which work unit members felt intimidated and fearful of retaliation
29 by Captain Spannring. In attempting to determine if their belief was true, and in order to
30 determine what action, if any, to take against Captain Spannring the City documented a
31 series of events involving Captain Spannring. The history of those events and the
32 actions taken by the City, both orally and in written form, is documented in a three ring
33 binder provided by Captain Spannring to the investigator. As part of that documentation
34 it is clear that in its investigation the City confirmed that individual members of the work
35 unit did fear retaliation by Captain Spannring. All members of the bargaining unit were
36 contacted by the City and only one member expressed no concerns about Captain
37 Spannring's actions. The other members expressed concerns of one form or another,
38 including concerns about a hostile work environment and fear of retaliation. Given that
39 Captain Spannring was in a command position this information was particularly troubling
40 to the City. Of particular note, by the time the actual demotion occurred the City had
41 placed Captain Spannring on paid administrative leave and had ordered him to undergo
42 psychological evaluation to assess his fitness for duty, an assessment which Captain
43 Spannring indicated to the investigator did not come out well for him.
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47 When an employee claims that a union breached its duty of fair representation by failing
48 to grieve his complaints, courts typically look to determine whether the union's conduct
49 was arbitrary. Clarke v. Commc'ns Workers of America, 318 F.Supp.2d 48, 56 (E.D.N.Y.
50 2004). A union acts arbitrarily when it "ignores or perfunctorily presses a meritorious

1 claim," Samuels v. Air Transport Local 504, 992 F.2d 12, 16 [143 LRRM 2177] (2d Cir.
2 1993), but not where it "fails to process a meritless grievance, engages in mere
3 negligent conduct, or fails to process a grievance due to error in evaluating the merits of
4 the grievance," Cruz v. Local Union No. 3 of the Int'l Bhd. of Elec. Workers, 34 F.3d
5 1148, 1154-55 [147 LRRM 2176] (2d Cir. 1994). As part of determining whether a
6 grievance lacks merit the union must "conduct at least a 'minimal investigation' ... [b]ut
7 only an 'egregious disregard for union members' rights constitutes a breach of the
8 union's duty' to investigate." Emmanuel v. Int'l Bhd. of Teamsters, Local Union No. 25,
9 426 F.3d 416, 420 [178 LRRM 2261] (1st Cir. 2005) (quoting Garcia v. Zenith Elec.
10 Corp., 58 F.3d 1171, 1176 [149 LRRM 2740] (7th Cir. 1995); Castelli v. Douglas Aircraft
11 Co., 752 F.2d 1480, 1483 [118 LRRM 2717] (9th Cir. 1985)).

12 Did Local 630 conduct "at least a minimal investigation" or did it act arbitrarily or in bad
13 faith when it decided to not take the demotion grievance to arbitration? In deciding this
14 question Bill Spannring first points to a grievance guide he contends was not followed
15 by the Local. The guide in question is one prepared by the International Association of
16 Fire Fighters as a recommended process. This guide is just that, a guide indicating how
17 grievances might be handled. It is a guide that probably has far more meaning in, for
18 instance, Chicago or New York where locals are far larger and communication can be a
19 problem because of the volume of grievances and the number of employees. The guide
20 is not all controlling and strict adherence to the grievance guide by Local 630 was
21 neither a denial of due process, nor does it demonstrate bad faith or arbitrariness.

22 In terms of the actual investigation, with 13 or so members in the Local 630 bargaining
23 unit much of what happens in the work place is known by everyone. Communication
24 with the employer occurred between management and the bargaining unit and the
25 grievance committee had a good understanding of the charges made by the City as well
26 as the actions of Captain Spannring. This was not a case where a grievant was blind
27 sided either by the City, the Local, or the two acting in concert. Past practice was not
28 an issue, nor was the absence of regular evaluations. This was an example of serious
29 events, of recent origin, that were troubling to management as well as bargaining unit
30 members. Traditional progressive discipline was not ignored, but rather was fast
31 tracked given the serious nature of the situation. Things were out on the table and
32 seemingly known to all. Perhaps nowhere is this more evidenced than in the
33 completeness of the documentation retained by Captain Spannring and presented to
34 the investigator. Based on this documentation as well as in conversations with Mr.
35 Spannring and others in the Local, it is apparent to the investigator that by and large
36 everyone knows, or is aware of what is happening in the workplace. The charges
37 against Captain Spannring were well known and well understood. From what the
38 investigator was able to determine Mr. Spannring was apprised not only of his rights
39 throughout these disciplinary actions, but he was fully aware of the nature of allegations
40 made, where the allegations came from, and his right to respond to the allegations.
41 This is not a case where due process was not afforded by the City, nor is it a case
42 where the Local failed to offer its services to Mr. Spannring. Given the base of
43 knowledge it possessed the fact that Captain Spannring was not interviewed by the
44 grievance committee does not mean that the investigation conducted by the committee
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1 was deficient in some way. The investigation was adequate given the circumstances
2 and the decision to not arbitrate the grievance is a supportable decision on the part of
3 the Local.
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5 In addressing the question of why the Local elected to not take the demotion grievance
6 to arbitration two U.S. Supreme Court decisions are helpful in analyzing the duty of fair
7 representation. In Vaca v. Sipes, supra, the Court allowed a union a wide range
8 of discretion in processing grievances, all subject to a requirement that the union act
9 in good faith. The Court in language contained in Hines v. Anchor Freight
10 Motors, 424 U.S. 554, stated that "the burden of demonstrating breach of duty by the
11 Union . . . involves more than demonstrating mere errors in judgment . . .". In a Ninth
12 Circuit case, Price v. Southern Pacific Transportation Company, 586 F2d. 550 (1978),
13 again addressing the processing of grievances the court stated:
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16 "The record provides no showing of ill will, prejudice, or deliberate bad faith on
17 the part of the Union . . . Nor does it show unintentional conduct "so egregious,
18 so far short of minimum standards of fairness to the employee and so unrelated
19 to legitimate union interests to be arbitrary".
20

21
22 Here Local 630 appointed a grievance committee to determine the merits of the
23 grievances. As previously mentioned the committee recommended that one grievance
24 proceed to arbitration. In and of itself this demonstrates that a grievance filed by Bill
25 Spannring would not be dismissed out of hand or through some arbitrary process.
26 Rather, in the case of the demotion the Local was faced with substantial evidence
27 supporting the action taken by the City. In addition, the actions of the City seemed to
28 be well taken and supported by members of the Local. Even when his case was
29 essentially taken to the body, the rank and file rejected the option to arbitrate. Given the
30 competing interests of an individual with those of the body, the individual did not prevail,
31 see for instance, ULP 15-87, Mary Pahut v. Butte School District and Butte Teachers
32 Unoin, Local No. 332 , but the reason he did not prevail was founded neither in bad faith
33 nor arbitrary action. Whether he recognized it or not, Captain Spannring did not enjoy
34 the support of either the City or the vast majority of his fellow workers. His position in a
35 leadership position was eroded by his actions and was particularly problematic to both
36 the City and to the members of Local 630.
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39 Since discrimination is a key element considered by both the federal and Montana
40 courts that allegation needs to be addressed in addition to the elements of bad faith and
41 arbitrariness. Bill Spannring did file a charge of discrimination with the Montana human
42 rights bureau. The human rights investigator assigned to that case issued a final
43 investigative report on June 10, 2008. The Board of Personnel Appeals investigator
44 received a copy of the report on June 27, 2008, and takes notice of its content. The
45 report did not find reasonable cause to the charge of Mr. Spannring that he was
46 discriminated against because of a disability/perceived disability. The findings of the
47 human rights investigator were that "throughout the entire investigatory process by the
48 grievance committee, Spannring was not forthcoming with the information and refused
49 any and all assistance from Local 630 prior to actually filing the grievances". This
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1 finding is consistent with the evidence reviewed by this Board of Personnel Appeals
2 investigator. And, although Mr. Spannring was certainly accommodating and
3 forthcoming with the Board investigator his reticence to cooperate with the Local did not
4 help his cause. However, there was no demonstrated link between the medical
5 condition of Mr. Spannring and the actions taken by Local 630. To be sure, there were
6 what could be termed generational style differences and/or work place differences
7 between Mr. Spannring and some of the other members of Local 630 but they did not
8 rise to the level of discrimination either on the basis of age or disability. There simply is
9 insufficient evidence to find that either type of discrimination occurred.
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12 **III. Recommended Order**

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14 It is recommended that unfair labor practice charge 14-2008 be dismissed.
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16 DATED this 1st day of July 2008.
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18
19 BOARD OF PERSONNEL APPEALS
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24 By: 
25 John Andrew
26 Investigator
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30 NOTICE

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32 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
33 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
34 may be appealed to the Board. The appeal must be in writing and must be made within
35 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
36 Board at P.O. Box 6518, Helena, MT 59604-6518. If an appeal is not filed the decision
37 to dismiss becomes a final order of the Board.
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CERTIFICATE OF MAILING

I, Sharon Norley, do hereby certify that a true and correct copy of this document was mailed to the following on the 1st day of July 2008 postage paid and addressed as follows:

BILL SPANRING
323 S 8TH
LIVINGSTON MT 59047

PRESIDENT MIKE CHAMBERS
IAFF LOCAL 630
113 S K STREET
LIVINGSTON MT 59047