

1 Department of Labor and Industry
2 Board of Personnel Appeals
3 PO Box 201503
4 Helena, MT 59620-1503
5 (406) 444-2718
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8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS
10

11 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 28-2009
12

13 MONTANA PUBLIC EMPLOYEES)
14 ASSOCIATION,)

15 Complainant,)

16 -vs-)

17)
18 MARIAS MEDICAL CENTER AND)
19 TOOLE COUNTY,)

20 Defendant,)
21)
22)

INVESTIGATIVE REPORT
AND
NOTICE OF INTENT TO DISMISS

23
24 **I. Introduction**
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26 On June 30, 2009, the Montana Public Employees Association, hereinafter MPEA or the
27 Association, filed an unfair labor practice charge with the Board of Personnel Appeals
28 alleging that Toole County and the County operated Marias Medical Center, hereinafter
29 MMC or the County, violated contractual and legal obligations by ceasing to collect dues
30 from "29 or more bargaining unit members without the knowledge of and without
31 notifying Complainant, the exclusive agent". MPEA further alleges that in doing this
32 MMC was "in effect, complicit in 'union busting'". Violations of the provisions of "Section
33 39-31-401 (1)-(5)" are alleged in the complaint. MMC, through its Chief Executive
34 Officer, Mark Cross, responded to the complaint on July 13, 2009, and has denied any
35 violation of either contract or law. Carter Picotte, MPEA staff attorney, is representing
36 the Association in this matter.
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39 John Andrew was assigned by the Board to investigate the charge and has reviewed
40 the information submitted by the parties and communicated with them as necessary in
41 the course of the investigation.
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44 **II. Findings and Discussion**
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46 MMC and MPEA have been in an ongoing bargaining relationship for many years.
47 MMC and MPEA are currently party to a bargaining agreement the term of which is
48 January 1, 2009 through June 30, 2010. The most recent collective bargaining
49 agreement was reached between the parties in April of 2009, after extensive
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1 negotiations and a strike notification on the part of MPEA. Article 2 of the current
2 agreement contains a union security clause the relevant parts of which provide:

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4 **B. ASSOCIATION SECURITY**

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6 **Section 1.** Employees covered by this Agreement shall pay a representation fee
7 and be represented by the ASSOCIATION with the exception of seasonal
8 employees who are employed December 15th through January 2nd and/or from
9 May 15th through September 15th of any work year. If an employee elects to not
10 be a member, such employee must, in writing waive his or her right to vote and
11 participate in elections and matters affected by the ASSOCIATION activities.
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14 **Section 2.** Upon Written authorization from an employee covered by this
15 Agreement the COUNTY shall deduct from the employee's pay the amount owed
16 to the ASSOCIATION by such employee for dues or representation fee. The
17 COUNTY will remit to the ASSOCIATION such sums within thirty (30) calendar
18 days. Changes in the ASSOCIATION membership dues rate and representation
19 fee will be certified to the COUNTY in writing over the signature of the authorized
20 officer or officers of the ASSOCIATION and shall be done at least 30 calendar
21 days in advance of such change.
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24 **Section 3.** The COUNTY, within 30 days of the signing of this Agreement, shall
25 present the ASSOCIATION with the list of the names and addresses of all
26 current employees covered by this Agreement, and shall update such list each
27 month for all new hires.
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29 Article 2 then goes on to indemnify the County against claims involving provisions of
30 Article 2 and defines access to County facilities by authorized representatives of MPEA.
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33 In November of 2008 MMC hired an employee named Brian Durham. Mr. Durham was
34 a dues paying member of MPEA. Suffice to say, Mr. Durham became dissatisfied with
35 the representation he believed he was receiving from the MPEA field representative.
36 This dissatisfaction grew, and when contract negotiations became particularly
37 contentious and the possibility of a strike became more real Mr. Durham began
38 questioning why, and whether, he should be paying dues to the Association and why
39 dues should be withheld from his wages. Mr. Durham approached management with
40 his concerns and to have his questions answered. According to Mr. Durham
41 management officials remained neutral in any discussions he initiated with them. In
42 fact, according to Mr. Durham, Mark Cross would not even discuss dues payment with
43 him. Eventually, and at Mr. Durham's request, Cindy Lamb, MMC Human Resource
44 Director, did provide Mr. Durham with a copy of the collective bargaining agreement,
45 although according to Ms. Lamb, he should have received one at the time he was hired.
46 Mr. Durham read the contract as it pertained to dues withholding. Based on his read of
47 the agreement Mr. Durham believed that he could elect to not have either rep fee or
48 Association dues withheld from his wages. He also conferred with an attorney who had
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1 assisted him on other matters and, according to Mr. Durham, the attorney confirmed this
2 belief.
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4 In March of 2009 Mr. Durham distributed a petition throughout MMC. The petition bears
5 a date of March 30, 2009, and is addressed "TO MONTANA PUBLIC EMPLOYEES
6 ASSOCIATION". The petition reads:
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8 WE THE FOLLOWING EMPLOYEES OF MARIAS CARE CENTER ARE
9 WRITING TO YOU TO INFORM YOU THAT WE NO LONGER WISH TO
10 PARTICIPATE IN THE UNION., AND WE WILL NOT BE STRIKING. WE ARE
11 NOTIFYING (sic) HUMAN RESOURCES TO NO LONGER TAKE UNION DUES
12 OUT OF OUR CHECKS. ACCORDING TO THE CONTRACT THIS IS ALL WE
13 ARE OBLIGATED TO DO. THANK YOU.
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16 The petition contains 27 signatures.
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18 During the course of obtaining these signatures the petition was posted in an employee
19 muster or break room. According to Mr. Durham the petition was taken down
20 repeatedly so at an unknown point in time, and out of frustration, Mr. Durham left the
21 petition in the office of Cindy Lamb. The petition remained in Ms. Lamb's office for an
22 unknown but apparently relatively short period of time. Ms. Lamb was not comfortable
23 with the petition being in her office and could only remember perhaps one time that
24 someone came into her office to sign the petition. Eventually someone in the dietary
25 section reclaimed the petition and posted or circulated it again for employee signatures.
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28 Toward the end of April the signed petition was presented to Cindy Lamb. Ms. Lamb
29 noted that the petition was addressed to MPEA, but apparently she did not notify the
30 Association that MMC had received the petition and was complying with the request of
31 the employees. Ms. Lamb forwarded the petition to County payroll to make the
32 requested changes in payroll withholding and payroll did so. When the April dues and
33 rep fee payment was forwarded to MPEA in the latter part of May MPEA discovered the
34 substantial decrease in dues and rep fee payment.
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37 In response to a request from the investigator Mr. Picotte forwarded the "paper trail"
38 showing the efforts of the Association to get to the bottom of the dues/rep fee
39 withholding question. No record or recounting of any oral communications was
40 presented to the investigator by the Association. What was offered by MPEA shows
41 that in late May Sara Dobbins of MPEA became aware of the reduced dues/rep fee
42 payment. Apparently she contacted someone at MMC, but received no response. As a
43 result of this, Quinton Nyman, Executive Director of MPEA, e-mailed Mark Cross and
44 Cindy Lamb at 2:12 pm on May 29, 2009, requesting a copy of the petition and/or a
45 response from either Ms. Lamb or Mr. Cross as to the dues/rep fee withholding issue.
46 Mark Cross responded via e-mail to Mr. Nyman at 2:41 pm on June 1, 2009, advising
47 Mr. Nyman that a copy of the petition was being mailed and sent by fax to MPEA. In
48 fact, at 11:15 a.m. on June 1, 2009, Ms. Lamb did fax a copy of the petition to Ms.
49 Dobbins. According to Ms. Lamb, the reason for the delay in forwarding a copy of the
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1 A member who has a change in job status which allows the member to drop membership
2 in the Association MUST NOTIFY THE PAYROLL DEPARTMENT AND IS
3 PERSONALLY RESPONSIBLE TO SEE THAT PAYROLL DEDUCTION FOR DUES
4 IS STOPPED. MPEA IS NOT LIABLE TO REFUND DUES WITHHELD AFTET (sic)
5 THE JOB STATUS CHANGE.
6

7 In short, MMC did not violate Montana statute or the terms of the collective bargaining
8 agreement by ceasing dues or rep fee withholding and by not notifying MPEA of the same.
9 Reasonably, MMC could well have assumed the employees notified MPEA of their own accord
10 when MMC was presented with a petition addressed to MPEA. Moreover, in the course of
11 investigating this complaint the investigator found nothing, and nothing was presented by MPEA
12 to show that MMC had "deliberately" and "surreptitiously" engaged in conduct to be "in effect
13 complicit in 'union busting'". There is simply insufficient evidence to show a violation of "39-
14 31-401(1)-(5)" as alleged by the Complainant.
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18 **III. Recommended Order**
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20 It is hereby recommended that Unfair Labor Practice Charge 28-2009 be dismissed.
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23 DATED this 5th day of October 2009.
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27 BOARD OF PERSONNEL APPEALS
28

29
30 By: 
31 John Andrew
32 Investigator
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35 NOTICE
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37 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
38 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
39 may be appealed to the Board. The appeal must be in writing and must be made within
40 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
41 Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to
42 dismiss becomes a final order of the Board.
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CERTIFICATE OF MAILING

I, L. Wendy Knutson, do hereby certify that a true and correct copy of this document was mailed to the following on the 5th day of October 2009, postage paid and addressed as follows:

CARTER PICOTTE
MPEA
PO BOX 5600
HELENA MT 59604

QUINTON NYMAN
MPEA
PO BOX 5600
HELENA MT 59604

MARK CROSS
MARIAS MEDICAL CENTER
PO BOX 915
SHELBY MT 59474 0915

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