

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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7

8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10
11 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 10-2009

12
13 INTERNATIONAL UNION OF)
14 OPERATING ENGINEERS, LOCAL 400,)
15 AFL-CIO,) INVESTIGATIVE REPORT
16) AND
17 Complainant,) NOTICE OF INTENT TO DISMISS
18 -vs-)
19)
20 ASHLAND PUBLIC SCHOOLS)
21)
22 Defendant.)
23

24
25 * * * * *

26 **I. Introduction**

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28 On December 8, 2008, Tracee Raymond, Business Agent of Local 400 of the
29 International Union of Operating Engineers, AFL-CIO, hereafter IUOE, or Union, filed
30 and unfair labor practice charge with the Board of Personnel Appeals. The Union
31 alleged that Ashland Public Schools, hereafter the District, violated Montana law when
32 "On Friday, November 21, 2008, at approximately 4 p.m. Mr. Haggard was notified that
33 he had been terminated from employment. Mr. Haggard was inappropriately and
34 unjustly fired due to the fact that they voted to go Union". The District responded in
35 timely fashion through its counsel, Aaron Bouschor, Staff Attorney with the Montana
36 School Boards Association, and denied any violation of Montana law.
37
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39 John Andrew was assigned by the Board to investigate the charge; has reviewed the
40 submissions of the parties; and, has communicated with them as necessary in the
41 course of investigating the complaint.
42

43 **II. Findings and Discussion**

44 The Board of Personnel Appeals has jurisdiction over this matter.
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47 In responding to the complaint the District noted that the complaint lacked specificity so
48 as to be able to completely respond to the allegations. Nonetheless the District did
49 understand the complaint sufficiently so as to deny that any actions taken against John
50

1 Haggard were the result of the union activities of Mr. Haggard or in response to Union
2 organizing activities in general. This denial, filed on December 22, 2008, was further
3 confirmed on January 5, 2009, in discussions between counsel for the District and the
4 investigator.
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6 Based on conversations between the Union and the investigator it is clear that there is
7 no written evidence to substantiate the allegations in the complaint. For that matter the
8 Union can offer no oral statements to further supplement the record and substantiate
9 the charge. In fact, from what has been ascertained by the investigator there is not
10 even circumstantial evidence sufficient to substantiate the charge.
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13 The facts of this case are that on August 24, 2008, the IUOE filed a unit determination
14 petition with the Board of Personnel Appeals for a bargaining unit composed of District
15 custodians. There were two custodians at the time the petition was filed. A vote was
16 held and the bargaining unit was certified on September 30, 2008. The election went
17 forward without incident and the Union and the District are currently bargaining for an
18 initial agreement.
19

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21 Prior to the time the Union was even involved in organizing in the District there were
22 issues with custodial services. An outside survey and study was conducted and as a
23 result of that study Mr. Haggard and Travis Seminole, the other custodian in the District,
24 were placed on a performance plan. This plan involved a probationary period and the
25 potential that unsuccessful performance could result in further action on the part of the
26 District up to and including termination of employment with the District. Suffice to say,
27 Mr. Haggard did not meet expectations and he was terminated on November 21, 2008.
28 Mr. Seminole remains employed by the District.
29

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31 There is simply no substantial evidence offered by the Union to establish a nexus
32 between Union activities of any nature and the dismissal of Mr. Haggard.
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34 **III. Recommended Order**

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36 It is hereby recommended that Unfair Labor Practice Charge No. 10-2009 be dismissed
37 as without merit.
38

39
40 DATED this 6th day of January 2009.
41

42
43 BOARD OF PERSONNEL APPEALS
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46 By: _____/S/_____
47 John Andrew
48 Investigator
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NOTICE

Pursuant to 39-31-405 (2) MCA and ARM 24.26.680B(4), if a finding of no probable merit is made by an agent of the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss may be appealed to the Board. The appeal must be in writing and must be made within 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the Board at P.O. Box 6518, Helena, MT 59604-6518. If an appeal is not filed the decision to dismiss becomes a final order of the Board.

* * * * *

CERTIFICATE OF MAILING

I, _____, do hereby certify that a true and correct copy of this document was mailed to the following on the _____ day of January 2009, postage paid and addressed as follows:

TRACEE RAYMOND
IUOE LOCAL 400
PO BOX 1921
COLSTRIP MT 59323

AARON BOUSCHOR
MTSBA
863 GREAT NORTHERN BLVD STE 310
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