

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. 16-2009

12
13 JAMES MILLIGAN)
14 Complainant,)
15 -vs-) INVESTIGATIVE REPORT
16) AND
17 MONTANA FEDERATION OF STATE) NOTICE OF INTENT TO DISMISS
18 PRISON EMPLOYEES LOCAL 4700,)
19 MEA-MFT, AFL-CIO)
20 Defendant,)
21
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24 **I. Introduction**

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26 On March 3, 2009, James Milligan, a Correctional Officer at the Montana State Prison
27 (MSP) filed an unfair labor practice charge with the Board of Personnel Appeals against
28 the Montana Federation of State Prison Employees Local 4700, MEA-MFT, AFL-CIO,
29 hereafter MFSPE, MEA-MFT or Local 4700, alleging that “The executive board was
30 suppose (sic) to give me a registered letter stating why they chose not to take it [a
31 grievance] to arbitration. I then would have a right to appeal their decision. They
32 committed an unfair labor practice for not allowing me to appeal their decision.” Mr.
33 Milligan is not represented by counsel.
34

35
36 Tom Burgess, Field Representative with the MEA-MFT, filed a response to the charge
37 on behalf of Local 4700. The response denied any violation of the Montana law by
38 either MFSPE or MEA-MFT.
39

40 John Andrew was assigned by the Board to investigate the charge and has
41 communicated with the parties in the course of the investigation.
42

43
44 **II. Discussion**

45
46 James Milligan has been a Correctional Officer (CO) at the MSP for approximately 21
47 years. During his employment CO Milligan has been a member and officer in the
48 MFSPE, MEA-MFT so he is very familiar with MFSPE, MEA-MFT workings and
49 processes.
50

1 Article 14 of the collective bargaining agreement (cba) between the MSP and MFSPE,
2 MEA-MFT provides for a grievance procedure to resolve disputes over contract
3 interpretation. The grievance procedure culminates in final and binding arbitration.
4

5 In September of 2008, CO Milligan filed a step one grievance contending that he was
6 required to work mandatory overtime even though he had submitted medical information
7 relieving him from overtime requirements. The step one grievance was denied on
8 September 15, 2008, with the management response citing provisions of Article 11,
9 Subsection 4 of the cba relating to mandatory overtime. CO Milligan appealed that
10 response.
11

12 On September 24, 2008, Warden Mike Mahoney responded to the grievance at step 2.
13 He provided additional rationale for the denial. As per the understanding between the
14 parties as to how communications on grievances were to be handled this response was
15 copied to the MFSPE, MEA-MFT and to Tom Burgess. CO Milligan appealed the
16 decision of Warden Mahoney.
17
18

19 On October 15, 2008, Department of Corrections Director Mike Ferriter denied the
20 grievance at step three with a copy of his response sent to Mr. Burgess as well as
21 MFSPE, MEA-MFT.
22

23 Attached to the unfair labor practice complaint filed with the Board of Personnel Appeals
24 is a document containing what appears to be an original signature of CO Milligan. That
25 document purports to be one addressed to the "Grievance Committee" dated October
26 17, 2008, requesting that the committee "Please consider taking this to step 4
27 (arbitration)". From what can be garnered by the investigator through an unsigned
28 MFSPE Constitution (submitted to the investigator by CO Milligan and referencing the
29 year 1996) as well as through conversations with the parties, what actually is meant to
30 transpire (and apparently the formal names of the committees) is that a member's
31 grievance is to be reviewed by the Stewards' Council. If step three is complete the
32 grievance is taken by the chair of the Stewards' Council, who is also a member of the
33 Executive Council of Local 4700, to the Executive Council so that body might determine
34 whether or not a grievance should proceed to binding arbitration. According to CO
35 Milligan he never received a response from the Executive Council, or executive board
36 as he refers to it in his complaint. Furthermore, CO Milligan contends he never received
37 a hearing before the Executive Council so he could argue the merits of proceeding to
38 arbitration on his grievance, nor for that matter did he receive a certified letter from the
39 Council denying either his request for an opportunity to be heard, or in the alternate
40 denying his request that his grievance proceed to arbitration. CO Milligan contends that
41 this lack of action is a breach of established grievance practice handling procedures and
42 is the basis of his unfair labor practice.
43
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47 During the pendency of the James Milligan grievance the MFSPE, MEA-MFT was also
48 grieving the imposition of mandatory overtime on bargaining unit members as a whole.
49 Suffice to say, the MFSPE, MEA-MFT disagreed with management over the
50 interpretation of Article 14, Subsection 4 of the cba, the section at the very heart of CO

1 Milligan's grievance as well. All of this leads to the fact that from Step 2 on someone –
2 most likely on the Stewards' Council - in MFSPE, MEA-MFT was sent copies of the
3 management responses of MSP. Additionally, through the grapevine if through nothing
4 else, there was an awareness that James Milligan had a grievance specific to his
5 requested medical relief from mandatory overtime. It is also abundantly clear that there
6 was an overall awareness that a more global grievance on mandatory overtime was
7 pending at the MSP. With this background, there was a series of conversations,
8 including a conference phone call, involving CO Milligan, Eric Feaver, Erik Burke and
9 Tom Burgess, all of MEA-MFT, pertaining to the specific Milligan grievance as well as
10 the more global mandatory overtime grievance. Ultimately, on January 23, 2009, Eric
11 Feaver wrote to James Milligan advising him that after thorough review and after
12 consulting with counsel the decision was made that the interpretation of when
13 mandatory overtime could be imposed was going to final and binding arbitration. Mr.
14 Feaver also advised CO Milligan:
15

16
17 "If the arbitrator concludes overtime can only be imposed during emergency
18 situations, it will not be necessary in this grievance to resolve whether a
19 correctional officer can be excused from mandatory overtime because of a
20 disability. That issue, however, will remain unanswered if the arbitrator rules
21 against us."
22

23
24 Eric Feaver's letter was copied to members of the MFSPE, MEA-MFT Stewards'
25 Council, and Executive Council as well as to MEA-MFT staff and outside counsel
26 retained to handle the arbitration. In short, this letter is not saying that the Milligan
27 grievance is being ignored. It is saying that the decision was to essentially include it in
28 the overall mandatory overtime grievance where it may find resolution. Of particular
29 note to the investigator is the fact that Article 14, Section 2, C in addressing grievance
30 and arbitration procedures provides:
31

32 "A grievance not filed or advanced by the grievant within the time limits provided
33 shall be considered to be withdrawn; however, a grievance that is a recurring
34 grievance may be refilled (sic) by the employee."
35
36

37 Of additional import to the investigator is an e-mail exchange (a portion of which is cited
38 verbatim below) between the investigator and CO Milligan. When asked for further
39 detail on his efforts to get the Executive Council to review his grievance CO Milligan
40 responded as follows:
41

42 "On December 12, 2009 I received an e-mail from CO Bruce Straughn (currently
43 president of local 4700 as of April 2009). In the e-mail he states that he has been in
44 communication with Mike Mcgaughy (a current e-board member and an e-board member
45 during my grievance time frame.) McGaughy told Straughn that he had just got off the
46 phone with Tom burgess you know what I will just paste the content of the e-mail
47
48 *I asked Mike McCaughey yesterday morning what the status of the grievance was. He*
49 *told me he didn't know but he would call Tom Burgess and find out. At about 1400 Mike*
50 *said he just got off the phone with Tom and Tom assured him that the grievance is going*

1 *to arbitration and that they have hired an outside attorney to handle it. They are also*
2 *going to include the situation with the medical excuses in the arbitration.*

3
4 *Bruce*

5 After hearing this, I felt that at least they are proceeding with my grievance to
6 arbitration. Although I disagreed with the two grievance being tied to one, it was
7 acceptable to me.”
8

9
10 The Montana Supreme Court has approved the practice of the Board of Personnel
11 Appeals in using Federal Court and National Labor Relations Board (NLRB) precedent
12 as guidelines in interpreting the Montana Collective Bargaining for Public Employees
13 Act, State ex rel. Board of Personnel Appeals vs. District Court, 183 Montana 223 598
14 P.2d 1117, 103 LRRM 2297; Teamsters Local No. 45 vs. State ex rel. Board of
15 Personnel Appeals, 185 Montana 272, 635 P.2d 185, 119 LRRM 2682; and AFSCME
16 Local No. 2390 vs. City of Billings, Montana 555 P.2d 507, 93 LRRM 2753. To the
17 extent cited in this decision, federal precedent is considered for guidance and to
18 supplement state law when applicable.
19

20
21 The gravamen of James Milligan’s complaint is that by not allowing him to appear
22 before the union to argue why his case should go to arbitration and by therefore not
23 proceeding to arbitration Local 4700 did not fairly represent him, a violation of 39-31-
24 402 MCA. A union violates its duty of fair representation to the employees it represents
25 only if its actions are “arbitrary, discriminatory or in bad faith . . .” Vaca v. Sipes, 386
26 U.S. 171,190 [64 LRRM 2369] (1967). To determine if the duty to fairly represent has
27 been breached each element in the three part standard must be examined, Airline Pilots
28 Ass’n, Int’l v. O’Neill, 499 U.S. 65, 77 [136 LRRM 2721] (1991). The Board of
29 Personnel Appeals has adopted the Vaca standard and in Ford v. University of
30 Montana and Missoula Typographical Union No. 277, 183 MT 112, 598 P.2d 604, (Mont
31 1979) the Montana Supreme Court in reviewing an unfair labor practice charge brought
32 before the Board held:
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35 In short, the Court has to find that the Union’s action was in some way a product
36 of bad faith, discrimination, or arbitrariness. The mere fact that Bonnie Ford
37 disagrees with the decision of the Union [in determining that her grievance was
38 without merit] is not sufficient basis for a finding of breach of the duty of fair
39 representation absent these factors.
40

41
42 The Montana Supreme Court has also recognized that “it is well settled in federal labor
43 law and therefore under Montana labor law that a union may not arbitrarily ignore a
44 meritorious grievance or process it in a perfunctory manner”. Teamsters Local #45,
45 Affiliated with International Brotherhood of Teamsters vs. State of Montana ex. rel Board
46 of Personnel Appeals and Stuart McCarvel, 635 P.2d 1310, 38 St.Rep 1841 (1981),
47 43 St Rep 1555 (1986).
48

49 Applying the arbitrary prong to the allegations made by James Milligan CO Milligan has
50 argued that Local 4700 violated the methodology used to process grievances. He is
correct to some degree as apparently there was a method wherein the Stewards’

1 Council and/or the Executive Council had, at least in the past, afforded a member the
2 opportunity to appear and argue why their grievance should move forward. That did not
3 happen, at least in any formal fashion. In the same vein, apparently in the past, the
4 Executive Council sent a registered letter to a grievant advising the grievant of their
5 decision to not proceed to arbitration and affording an opportunity to be heard. In this
6 case the letter was not sent although it is not clear that a letter was required other than
7 it did happen during the tenure of the previous MEA-MFT field representative.

8
9 Regardless of these possible procedural shortcomings the fact remains that there was
10 extensive dialogue between MEA-MFT and CO Milligan on the pros and cons of his
11 grievance. The opportunity to express his views was never denied to CO Milligan nor
12 was the grievance handled in a perfunctory manner. The MEA-MFT staff and officers
13 and representatives of the local appear to have fully communicated with one another
14 and CO Milligan about not only his grievance but the overall grievance on mandatory
15 overtime as well. CO Milligan suffered no prejudice in this as under the contract there
16 does not appear to be a prohibition from pursuing his grievance again if not otherwise
17 resolved. Moreover, there is no evidence he has suffered any disciplinary action as a
18 result of this question of contract interpretation and at present, so far as the investigator
19 has determined, CO Milligan has been required to work but two overtime shifts by MSP.
20 In short, should Local 4700 prevail before the arbitrator selected to hear the mandatory
21 grievance case CO Milligan will also prevail on his grievance. Although CO Milligan
22 may disagree with the actions taken to date it simply is not the case that they were
23 taken in an arbitrary fashion nor was CO Milligan treated in an arbitrary manner.
24
25

26 The second prong of the test for a breach of the duty of fair representation is
27 discrimination. There are no allegations made, nor is there any evidence found by the
28 investigator that the MFSPE, MEA-MFT discriminated against James Milligan in any
29 fashion. That prong of the test is satisfied.
30

31 In terms of the third prong of the test, bad faith, the good-faith conduct of a union is
32 preserved unless it can be demonstrated that the conduct is sufficiently outside a "wide
33 range of reasonableness" so as to be considered irrational. To establish a lack of good
34 faith there must be evidence of fraud, deceitful action, or dishonest conduct by the
35 union, Schmidt v. Electrical Workers (IBEW) Local 949, 980 F.2d 1167, 141 LRRM 3004
36 (8th Cir. 1992) and Aguinaga v. Food & Commercial Workers, 993 F.2d 1167, 143
37 LRRM 2400 (10th Cir 1993) Cert. Denied 510 U.S. 1072, 145 LRRM 2320 (1994). And,
38 as the Ninth Circuit held, there is a mandated deferential standard of review in
39 evaluating union actions and they can be challenged successfully only if wholly irrational
40 and even "unwise" or "unconsidered" union decisions will not rise to the level of
41 irrational conduct, Stevens v. Moore Bus. Forms, 18 F3d. 1443, 145 LRRM 2668 (9th
42 Cir. 1994). Here there is no evidence of bad faith on the part of MFSPE, MEA-MFT.
43 There may well be a disagreement between CO Milligan and the union as to how best
44 to proceed, but there was, and is, a rational basis for the MFSPE, MEA-MFT to address
45 the global issue of mandatory overtime in the belief that a successful outcome in that
46 arbitration will resolve CO Milligan's issue as well. It is not for the Board of Personnel
47 Appeals to second guess such a decision as that strategy may well work. The union is
48 in a far better position than the Board of Personnel Appeals to make that call. To be
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1 certain, addressing the global dispute with the MSP over mandatory overtime has
2 advantages, including arguing circumstances similar to CO Milligan's before the
3 arbitrator, than does taking on individual issues with their separate peculiarities. And
4 again, there seems to be no bar to CO Milligan filing another grievance should Local
5 4700 lose on the global issue.
6

7
8 A specific note by the investigator is in order. During the pendency of this matter
9 consideration was given to defer this matter to the arbitration procedure. See Collyer
10 Insulated Wire, 192 NLRB 387, 77 LRRM 1931 adopted by the Board of Personnel
11 Appeals in ULP 43-81, William Converse v Anaconda Deer Lodge County and ULP 44-81
12 James Forsman v Anaconda Deer Lodge County, August 13, 1982. Two problems exist if
13 that were done. First, CO Milligan's grievance is not moving forward on its own so there
14 is no arbitration process to which to defer nor is it known whether the employer or the
15 union would abide by such a determination. Second, the real nature of CO Milligan's
16 complaint is an allegation of a breach of the duty of fair representation. Arbitration
17 would not resolve that issue. Rather the question is whether there is substantial
18 evidence to warrant a finding of probable merit and ultimately a preponderance of
19 evidence to prove that an unfair labor practice was committed by the union. There is a
20 lack of substantial evidence to warrant a finding of probable merit. Even though CO
21 Milligan's complaint is correct that the apparent grievance process may not have been
22 followed to the letter, the nature of James Milligan's complaint does not rise to the level
23 of a breach of the duty of fair representation. This matter warrants dismissal, not
24 deferral.
25

26
27 **III. Recommended Order**
28

29 It is hereby recommended that Unfair Labor Practice Charge 16-2009 be dismissed.
30

31
32 DATED this ___6th___ day of ___May___ 2009.
33
34

35
36 BOARD OF PERSONNEL APPEALS
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39 By: _____/S/
40 John Andrew
41 Investigator
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NOTICE

Pursuant to 39-31-405 (2) MCA, 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 _____ 2009, postage paid and addressed as follows:

JAMES MILLIGAN
1501 SOUTH WARREN
BUTTE MT 59701

TOM BURGESS FIELD REP
MEA MFT
1232 EAST 6TH AVENUE
HELENA MT 59601

Brad Newman
District Judge, Department No. II
Butte-Silver Bow County Courthouse
155 West Granite Street
Butte, Montana 59701
(406) 497-6420

COPY FILED
APR 02 2010
by: Lori Maloney, Clerk
Deputy Clerk

MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW COUNTY

JAMES P. MILLIGAN,)
Petitioner,)
vs.)
MONTANA FEDERATION OF STATE)
PRISON EMPLOYEES LOCAL #4700,)
MEA-MFT, AFL-CIO,)
Respondent.)

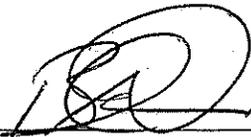
Cause No. DV-09-373

**ORDER GRANTING
SUMMARY JUDGMENT**

This matter is before the Court on Respondent's Motion for Summary Judgment. The motion has been fully briefed. The Court conducted a hearing on the motion on March 25, 2010. Based upon the record and the applicable law,

IT IS ORDERED that Respondent's Motion for Summary Judgment is granted. The final order of the Montana Board of Personnel Appeals dismissing Petitioner's unfair labor practice complaint against Respondent is affirmed.

DATED this 2nd day of April, 2010.



Brad Newman
District Judge

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MEMORANDUM

Summary judgment should never be a substitute for trial when there is an issue of material fact. *McDonald v. Anderson* (1993), 261 Mont. 268, 272, 862 P.2d 402, 404. However, summary judgment is proper when no genuine issues of material fact exist and the moving party

is entitled to judgment as a matter of law. Rule 56(c), M.R.Civ.P. The moving party has the burden to show that no genuine issues of fact exist. *McDonald*, 261 Mont. at 272, 862 P.2d at 404. "Once the movant has presented evidence to support his or her motion, the party opposing summary judgment must present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact." *Howard v. Conlin Furniture No. 2 Inc.* (1995), 272 Mont. 433, 436-37, 901 P.2d 116, 119. Finally, "all reasonable inferences that might be drawn from the offered evidence should be drawn in favor of the party who opposed summary judgment." *Heiat v. Eastern Montana College* (1996), 275 Mont. 322, 327, 912 P.2d 787, 791.

FINDINGS OF FACT

Based upon the pleadings, oral argument and the record, the Court makes the following findings of fact:

1. Petitioner James Milligan is a correctional officer employed at Montana State Prison. Milligan is a member of Respondent Montana Federation of State Prison Employees Local #4700 (the Union).
2. The collective bargaining agreement between Montana State Prison and the Union provides a grievance procedure for resolution of disputes concerning contract interpretation.
3. In September 2008, Milligan filed a grievance contending that he was compelled to work mandatory overtime shifts even though he previously had submitted medical information to the prison administration excusing him from overtime requirements. The prison warden denied Milligan's grievance. Milligan appealed the warden's decision. The director of the Montana Department of Corrections subsequently denied Milligan's grievance. Milligan and the Union received copies of the denials.

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4. In mid-October 2008, Milligan requested the Union to “consider taking this (his grievance) to step 4” (binding arbitration). Milligan contends that he never received a formal written response from the Union denying his request that his grievance be taken to arbitration, or denying him the opportunity to appear before the Union to argue why his claim should be taken to arbitration.

5. At the same time Milligan’s grievance was pending, the Union also was grieving the prison’s imposition of mandatory overtime on its bargaining unit members as a whole. The Union contends that the broader grievance incorporated Milligan’s specific concerns, and that Milligan was not precluded from re-filing his individual grievance in the event the general grievance was unsuccessful.

6. On March 3, 2009, Milligan filed an unfair labor practice charge against the Union with the Montana Board of Personnel Appeals (the Board). Milligan alleged that the Union breached its duty to fairly represent him.

7. The Board assigned John Andrew to investigate Milligan’s claim. On May 6, 2009, Andrew issued his Investigative Report and Notice of Intent to Dismiss. In summary, Andrew found that the Union had substantially complied with its policies on handling grievances and that the Union’s decision not to advance Milligan’s individual grievance was reasonable under the circumstances. Accordingly, Andrew found that there was no probable merit to Milligan’s unfair labor practice charge.

8. Milligan appealed Andrew’s findings to the Board. The parties submitted briefs and the Board heard oral argument on July 16, 2009. By final order dated July 30, 2009, the Board affirmed and adopted Andrew’s findings and dismissed Milligan’s unfair labor practice charge.

9. Milligan then filed a timely petition for judicial review of the Board’s decision.

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10. During the agency investigation, Milligan provided evidence that in some past cases the Union afforded a member an opportunity to appear and argue that a grievance be advanced or issued a letter advising a member that it would not proceed with a grievance. Investigator Andrew noted “possible procedural shortcomings” based on Milligan’s complaint that he was not allowed to appear before the Union’s executive council or was not provided notice of the Union’s intent not to proceed with his grievance. The record, however, supports Andrew’s finding that there was “extensive dialogue between MEA-MFT and CO Milligan on the pros and cons of his grievance.” That dialogue clearly included the Union’s position that Milligan’s individual grievance could be resolved in the general grievance concerning mandatory overtime brought on behalf of all of the members.

11. The record supports Andrew’s finding that Milligan was not denied an opportunity to express his views to the Union. The record describes communications between Milligan and Union representatives about his individual grievance and the general grievance on the prison’s mandatory overtime policy.

12. The record also supports Andrew’s findings that Milligan suffered no undue prejudice as the result of the Union’s decision to advance the general grievance rather than with his individual grievance. While the arbitrator ultimately ruled that the prison’s mandatory overtime policy did not violate the collective bargaining agreement, Milligan’s ability to renew his individual grievance under the contract was not impaired. In fact, Milligan revived his claim concerning his medical excuse from mandatory overtime in a November 2009 grievance as noted by the parties during the March 25, 2010 hearing before this Court.

CONCLUSIONS OF LAW

Based upon the above-stated findings of the fact and the record, the Court makes the following conclusions of law:

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1. Judicial review of decisions of the Montana Board of Personnel Appeals is governed by Sections 39-31-409 and 2-4-701 *et seq.*, MCA.

2. Section 39-31-409(4), MCA, provides that “the findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.”

3. Under Section 2-4-704(2), MCA, a court reviewing an agency decision may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may not reweigh the evidence but rather must defer to the hearings examiner if the court determines that substantial credible evidence exists to support the findings of the trier of fact. *Benjamin v. Anderson*, 2005 MT 123, ¶37, 327 Mont. 173, 112 P.3d 1039. The agency’s findings of fact, particularly as to witness credibility, are entitled to great deference. *Moran v. Shotgun Willies, Inc.*, 270 Mont. 47, 51, 889 P.2d 1185, 1187 (1995). The reviewing court’s role is limited to determining whether the agency’s findings of fact are clearly erroneous and whether the agency correctly interpreted the law. *City of Billings Police Department v. Owen*, 2006 MT 16, ¶12, 331 Mont. 10, 127 P.3d 1044.

4. Section 39-31-402(2), MCA, provides that it is an unfair labor practice for a labor organization or its agents to refuse to bargain collectively in good faith with a public employer.

5. A breach of the duty of fair representation is an unfair labor practice, particularly where a labor organization processes a grievance in an arbitrary manner. *Teamsters Local #45 v. State ex rel. Board of Personnel Appeals*, 195 Mont. 272, 277, 635 P.2d 1310, 1313 (1981).

6. A union violates its duty of fair representation to its members only if its action is the result of bad faith, discrimination or arbitrariness. *Ford v. University of Montana and Missoula Typographical Union No. 277*, 183 Mont. 112, 121, 598 P.2d 604, 609 (1979).

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7. In light of the above-stated findings of fact, the Board and its investigator correctly applied the law to Milligan's unfair labor practice charge. With respect to the element of bad faith, there is a complete absence in the record of any evidence that the Union engaged in deceitful or fraudulent conduct toward Milligan. With respect to the element of discrimination, there are no allegations or evidence that the Union discriminated against Milligan. With respect to the element of arbitrariness, Milligan did provide some evidence that the Union departed from past practice in the manner in which it considered his request that his grievance be submitted to arbitration. The agency decision, however, correctly interprets applicable law. The agency concluded that the Union's determination not to proceed on Milligan's individual grievance, while lacking some formality, was reasonable under the circumstances. The Union clearly advised Milligan that its general grievance concerning the prison's mandatory overtime would relate to his individual situation as well. Pursuant to *Teamsters Local #45* and other relevant authority, a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner. In the instant case, the Union did not ignore Milligan's grievance or process it in an arbitrary manner. Milligan's disagreement with the Union's manner of handling his grievance does not amount to a showing of unreasonable and arbitrary representation of him.

SUMMARY

Based on the above-stated findings of fact and conclusions of law, Respondent is entitled to summary judgment as a matter of law. The Board of Personnel Appeals' findings of fact are not clearly erroneous and have substantial support in the record. The agency also correctly applied the law to Petitioner's unfair labor practice charge against Respondent.

DATED this 2nd day of April, 2010.



Brad Newman
District Judge

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