

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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7

8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10
11 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 2-2010

12		
13	MAINTENANCE ENGINEERS)
14	ASSOCIATION, MEA-MFT, NEA, AFT,)
15	AFL-CIO,)
16	Complainant,)
17	-vs-)
18)
19	KALISPELL PUBLIC SCHOOLS,)
20	Defendant,)
21		
22		

INVESTIGATIVE REPORT
AND
NOTICE OF INTENT TO DISMISS

23
24 **I. Introduction**

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26 On July 7, 2009, the Maintenance Engineers Association, MEA-MFT, NEA, AFT, AFL-
27 CIO, hereinafter MEA or the Association, filed an unfair labor practice charge with the
28 Board of Personnel Appeals alleging that Kalispell Public Schools, hereinafter the
29 District, violated 39-31-401 (5) MCA by making unilateral changes in terms and
30 conditions of employment. The complaint was filed on behalf of MEA by Bill Howell,
31 MEA-MFT Field Representative. In Mr. Howell's absence, J.C. Weingartner, attorney at
32 law, and MEA-MFT Director of Member Rights, has also filed papers on behalf of MEA.
33 The District is represented by Jeff Hindoien, attorney at law, who responded on behalf
34 of the District and denied any violation of 39-31-401(5) by the District.
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37 John Andrew was assigned by the Board to investigate the charge and has reviewed
38 the information submitted by the parties and communicated with them as necessary in
39 the course of the investigation.
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42 **II. Findings and Discussion**

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44 It must be noted that there are two pending unfair labor practice complaints involving
45 the same parties. In the course of reviewing the complaints with the parties the
46 investigator suggested that the instant complaint be considered an amendment to an
47 earlier complaint, ULP 24-2009. The parties were amenable to this suggestion with the
48 belief of the investigator being that ULP 2-2010 constituted another element of ULP 24-
49 2009. However, subsequent correspondence confirmed that to not be the case and,
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1 again at the suggestion of the investigator, the parties agreed that it was appropriate to
2 separate the complaints.
3

4 The above said, the facts in this case are very straightforward with some of the
5 background information being drawn from ULP 24-2009.
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7 Billy Dean Killian is employed in the District Facility and Transportation section. Mr.
8 Killian is a member of the bargaining unit and President of the Association.
9 Mr. Killian's home site supervisor is Peter Fusaro, Flathead High School Principal.
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11 Principal Fusaro was slated to be away from the school from June 29, 2009, through
12 August 3, 2009. In his absence Chuck Cassidy, the Director of Facilities and
13 Transportation, was to be Mr. Killian's interim home site supervisor. Mr. Cassidy works
14 in a different location than Mr. Killian.
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17 On June 25, 2009, Mr. Cassidy sent Mr. Killian a memo via e-mail the entire substantive
18 body of which reads:
19

20 Billy, I am sure you and Pete have discussed this but on Monday, June 29th Pete
21 will be out of school until August 3rd. I will be your supervisor for that period of
22 time. Since we work in different locations currently, please give me a call on my
23 cell (406 871-0045) when you arrive at work each work day (I understand you are
24 working 4-10 hours days Tue thru Friday) and a call when you depart each work
25 day. If I don't answer please leave a message letting me know you are at work
26 or leaving work as the case may be. If you find you are sick and not coming to
27 work please call me in the hour before you start work. If you wish to take time off
28 please bring me a completed leave request at least 5 working days in advance.
29 Pete wishes you to work on FHS work orders primarily so that is what I want you
30 to focus on once the team (sic) boiler breakdowns are done. If you need to buy
31 any parts/materials/etc. in excess of \$25 please call and get approval first.
32
33

34 Let me know if you have any questions.
35
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37 From this memo, and through no other actions on the part of the District, the
38 Association contends that there was bad faith bargaining by the District in that unilateral
39 changes in terms and conditions of employment were made absent bargaining.
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41 Montana law requires public employers and labor organizations representing their
42 employees to bargain in good faith on issues of wages, hours, fringe benefits, and other
43 conditions of employment, 39-31-301(5) MCA. Failure to bargain collectively in good
44 faith is a violation of 39-31-401(5) MCA. The Montana Supreme Court has approved the
45 practice of the Board of Personnel Appeals of using federal court and National Labor
46 Relations Board (NLRB) precedent as guidance in interpreting Montana collective
47 bargaining laws. State ex rel. Board of Personnel Appeals v. District Court (1979), 183
48 Mont. 223, 598 P.2d 1117; City of Great Falls v. Young (Young III) (1984), 211 Mont.
49 13, 686 P.2d185.
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1 Not every change in working conditions or instruction from management to union
2 members has to be bargained. An indirect or incidental impact on unit employees is not
3 sufficient to establish a matter as a mandatory subject. Rather, mandatory subjects
4 include only those matters that materially or significantly affect unit employees' terms
5 and conditions of employment. The phrase "terms and conditions of employment" does
6 not include all subjects that may merely be of interest or concern to the parties. Star
7 Tribune Division and Newspaper Guild of Twin Cities, et. al. 295 NLRB No. 543,547, 13
8 LRRM 1404 (1089). Also see Ekalaka Unified Board of Trustees and Wade Northrup,
9 Superintendent v. Ekalaka Teachers' Association, MEA-MFT, NEA, 2006 MT 337,
10 wherein the Court affirmed a decision of the Board of Personnel Appeals defining
11 mandatory subjects, and the obligation to bargain any changes to such subjects, to
12 include those subjects that "materially or significantly affect unit employees' terms and
13 conditions of employment". Also see, for instance, ULP 06-97, Browning Federation of
14 Teachers Local #2447 vs. Browning Public Schools, Roger Helmer, Superintendent as
15 well as Litton Microwave Cooking Products, 300 NLRB 324 (1990).
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17

18 Here there is a case where a supervisor is to be away for a known period of time and
19 another supervisor steps in for him. In the course of assuming the new role the interim
20 supervisor sends out a routine note establishing a protocol so as to insure beforehand
21 that necessary tasks are performed and accountability maintained. Hand in hand with
22 the protocol are reporting requirements not out of line with existing standards and
23 procedures and certainly not so onerous, or substantially different and significant as to
24 require bargaining.
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27 All things considered, the e-mail from Mr. Cassidy to Mr. Killian does not constitute
28 substantial evidence to warrant a finding of probable merit that the District committed an
29 unfair labor practice.
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32 **III. Recommended Order**
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35 It is hereby recommended that Unfair Labor Practice Charge 2-2010 be dismissed.
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38 DATED this 5th day of November 2009.
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41
42 BOARD OF PERSONNEL APPEALS
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44
45 By: _____
46 John Andrew
47 Investigator
48

49
50 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. 201503, Helena, MT 59620-1503. 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:

BILL HOWELL
MEA-MFT
1001 SW HIGGINS STE 101
MISSOULA MT 59803

JEFF HINDOIEN
ATTORNEY AT LAW
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