

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. 8-2010

12
13 INTERNATIONAL ASSOCIATION OF)
14 FIREFIGHTERS, LOCAL 547,)
15 Complainant,)
16 -vs-)
17)
18 CITY OF KALISPELL,)
19 Defendant,)
20)
21)

INVESTIGATIVE REPORT
AND
NOTICE OF INTENT TO DISMISS
WITHOUT PREJUDICE

22
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24 **I. Introduction**

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26 On October 16, 2009, the International Association of Firefighters, Local 547,
27 hereinafter Local 547, filed an unfair labor practice charge with the Board of Personnel
28 Appeals alleging that the City of Kalispell, hereinafter the City violated 39-31-401 (1)
29 and (5) MCA by making unilateral changes in mandatory subjects of bargaining. The
30 complaint was filed by F. Ray Ruffatto, Secretary/Treasurer of the Local 547. Karl
31 Englund, attorney at law, represents Local 547. Richard Hickel, Adjutant City Attorney,
32 responded on behalf of the City and denied that the City had committed an unfair labor
33 practice.
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35
36 John Andrew was assigned by the Board to investigate the charge and has reviewed
37 the information submitted by the parties and communicated with them as necessary in
38 the course of the investigation.
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41 **II. Findings and Discussion**

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43 The City and Local 547 have a long bargaining history with the most recent collective
44 bargaining agreement running through June 30, 2009. The parties are currently
45 engaged in negotiating a successor agreement and they are not at impasse.
46

47 By way of notice dated on September 15, 2008, (the year was actually 2009), Acting
48 Fire Chief Dan Diehl notified Local 547 that the City was exercising its management
49 prerogative and preparing to create a new position titled Firefighter/EMT-B.
50

1 In October of 2009, the City announced it was posting an announcement for the new
2 position. The contention of Local 547 is that the salary to be paid to this position was
3 for a "fire fighter to be paid below the minimum amount stated in the collective-
4 bargaining agreement." In taking this action Local 547 contends that "The City's
5 decision to create a new fire fighter position and pay that position a salary below the
6 minimum salary stated in the collective bargaining agreement constitutes a unilateral
7 change in wages, benefits and working conditions while the parties are engaged in
8 bargaining . . ."

9
10 The contention of the City is that the creation of the new position is within the
11 management rights of the City and that the salary for the position is not subject to any
12 stated minimum of the collective bargaining agreement. The City does acknowledge its
13 obligation to bargain over the salary of the position and is willing to do so. In fact, the
14 City has made a comprehensive bargaining offer to Local 547 that contains a salary
15 proposal for the Firefighter/EMT-B.
16

17 Approximately 80 applications were received for the position. Applicants have now
18 been interviewed. The position remains unfilled and no job offer has been made to any
19 applicant. Although the position will most likely be filled, it remains unknown whether
20 that will actually occur let alone whether it will be paid within any established norms of
21 the collective bargaining agreement, assuming the contract language applies to the
22 position, an apparent disputed issue of contract interpretation. What is known is that the
23 City has made a salary offer to Local 547 and there is no impasse.
24

25 In light of the fact that the position remains unfilled; the possibility that this may be a
26 question of contract interpretation susceptible to the grievance procedure; an offer is on
27 the table addressing the salary of the Firefighter/EMT-B; and, there is no apparent
28 refusal to bargain on the part of the City, it is the opinion of the investigator that the
29 unfair labor practice charge is filed prematurely.
30

31 **III. Recommended Order**
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33 It is hereby recommended that Unfair Labor Practice Charge 8-2010 be dismissed
34 without prejudice.
35
36

37 DATED this 22nd day of December 2009.
38
39
40

41 BOARD OF PERSONNEL APPEALS
42

43 By: _____
44 John Andrew
45 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. 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:

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