

1 Department of Labor and Industry
2 Board of Personnel Appeals
3 PO Box 201503
4 Helena, MT 59620-1503
5 (406) 444-2718
6
7

8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10
11 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 2-2012

12
13 MARIAS MEDICAL CENTER,)
14 Complainant,)
15 -vs-) INVESTIGATIVE REPORT
16) AND
17 MONTANA PUBLIC EMPLOYEES) NOTICE OF INTENT TO DISMISS
18 ASSOCIATION,)
19 Defendant,)
20)
21
22

23
24 **I. Introduction**

25
26 On July 12, 2011, the Marias Medical Center, hereinafter MMC, through its Chief
27 Executive Officer, Mark Cross, filed an unfair labor practice charge against the Montana
28 Public Employees Association, hereinafter MPEA or the Association, alleging that
29 MPEA violated Section 39-31-402(2), MCA, by bargaining in bad faith. MPEA
30 responded to the charge through its Executive Director, Quinton Nyman and has denied
31 any violation of Montana law.
32

33
34 John Andrew was assigned by the Board to investigate the charge and has reviewed
35 the information submitted by the parties and communicated with them as necessary in
36 the course of the investigation.
37

38
39 **II. Findings and Discussion**

40
41 The parties to this matter have an ongoing bargaining relationship with the most
42 recently bargained agreement (tentatively agreed to on May 31, 2011, and
43 subsequently ratified by both parties) running through June 30, 2012.
44

45
46 In its complaint MMC contends that actions of Dick Letang, Director of Field Services for
47 MPEA, constitute bad faith bargaining in that Mr. Letang, rather than following the
48 grievance provision of the collective bargaining agreement, has intervened in workplace
49 issues resulting in circumvention of the informal resolution provisions of the collective
50 bargaining agreement. In doing so MMC contends that what is now occurring at MMC

1 “is that *some(emphasis added)* employees no longer engage in informal discussions
2 with their supervisors over a complaint. Instead employees are going directly to their
3 union representative, Mr. Letang, who has asserted himself as a sort of pseudo
4 manager at the Center thus destroying the intent of the language of the first step of the
5 grievance procedure”.

6
7
8 Article 17 of the grievance procedure provides:

- 9
10 A. It is the intent of the County to encourage employees to bring to the attention of
11 management their complaints about work-related situations. An employee should
12 feel free to communicate his/her concerns of complaints. An employee shall
13 initially attempt to resolve the grievance informally with the individual with whom
14 he/she has a problem. If his/her complaint is unresolved, a formal grievance
15 procedure is provided to appeal any decision made by management.
16
17 B. A grievance is defined as any dispute between the County and employee
18 concerning the effect, interpretations and application of this Agreement.
19
20

21
22 Section D of Article 17 then goes on to provide for an informal resolution process and
23 Section E of Article 17 then defines the formal process with Step 1 providing:

- 24
25 1. When an employee cannot resolve the complaint informally, the employee should
26 bring the matter in writing to the attention of the department head within ten (10)
27 working days of the event, giving rise to the grievance or of the time the
28 employee could reasonably expect to have knowledge of the event. The
29 department head will give a written response within (5) working days.
30

31 Article 17 then describes the remainder of the grievance process.

32
33 Two examples of Mr. Letang’s conduct are cited as the basis for this complaint.
34 Interestingly enough, the first one, a May 23, 2011, letter addressed to Marcia Heydon,
35 Business Office Manager, has a subject line of “Cindy Frydenlund Concerns” ends by
36 saying “There is no need for you to respond to this letter. It is written as constructive
37 criticism.” Of this first situation several observations seem in order. First, nothing in this
38 letter even remotely suggests that the subject matter of the letter relates to something
39 even remotely grievable under the contract. Thus, this letter has nothing to do with the
40 grievance procedure. Second, for Mr. Letang to have even written this letter, the matter
41 was obviously brought to his attention by Ms. Frydenlund, so for whatever reason, she
42 felt it important enough for him to be aware of the situation, and understandably she
43 may have anticipated he take action of some sort on the situation. Third, *some*
44 *(emphasis added)* employees, for whatever reason/s, have difficulties bringing items to
45 the attention of their supervisors and fellow employees. That’s why they have an
46 exclusive representative, to do this for them, when they feel that is appropriate. And
47 fourth, nothing in the contract, nor nothing done in a perceived attempt to establish or
48 maintain good labor relations for that matter, forbids an exclusive bargaining agent from
49
50

1 endeavoring to improve workplace working conditions by making “constructive”
2 criticisms to whomever. Doing so is not inserting oneself into a management role, but
3 for what it might be worth, Mr. Letang also provided notice to Mr. Cross when he copied
4 him on the letter to Ms. Heydon.
5

6 The second instance cited in the complaint, a letter from Mr. Letang to the Director of
7 Nursing, is once again, not a grievable matter under the bargaining agreement. Mr.
8 Letang acknowledges that in his letter. Rather, it can be described as an appeal from
9 an agent of the exclusive bargaining representative that a management decision be
10 reconsidered in light of the impact of that decision on the bargaining unit member. As
11 with the first instance, this letter is also copied to Mr. Cross as well as to the employee,
12 Ruby Davis. And, as with the first instance, one would have to assume it was Ms. Davis
13 who, in this case, brought the matter to the attention of Mr. Letang, again anticipating
14 some type of action on his part. This investigator has no idea whether or not Mr.
15 Letang’s request was honored by MMC, but one would have to ask whether Mr. Letang
16 was doing his job, particularly in the eyes of a member, had he done nothing. I fail to
17 see how this letter infringes on management prerogative or in some fashion circumvents
18 the bargaining agreement.
19
20

21 Informal resolution of workplace issues is vital to good labor relations and few, if any,
22 practitioners would dispute that. However, incidents as cited by MMC happen in almost
23 every workplace. The the flip side of the coin is the distinct possibility that for every
24 instance where an exclusive agent brings situations to the attention of an employer at
25 the request of a member, there are more than likely many times where the bargaining
26 agent has dealt with them directly without any management involvement. That should
27 not be discouraged anymore than should be employees bringing situations to the
28 attention of their supervisors. In either instance, achieving balance is never easy, but
29 these incidents do not rise to the level of bad faith bargaining. Ultimately, if the
30 language in the bargaining agreement is not working as contemplated, that is something
31 to be addressed at the table, or in the case of actual grievable situations, through the
32 formal stages of the grievance procedure.
33
34

35
36 **III. Recommended Order**
37

38 It is hereby recommended that Unfair Labor Practice Charge 2-2012 be dismissed as
39 without merit.
40

41 DATED this 15th day of August 2011.
42
43

44 BOARD OF PERSONNEL APPEALS
45

46 By: _____/S/
47 John Andrew
48 Investigator
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 _____ 2011, postage paid and addressed as follows:

QUINTON NYMAN
MPEA
PO BOX 5600
HELENA MT 59604

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