

1 Department of Labor and Industry
2 Board of Personnel Appeals
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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. 6-2014

13	MAGGIE PETAJA,)	
14	Complainant,)	
15	-vs-)	INVESTIGATIVE REPORT
16	MONTANA PUBLIC EMPLOYEES)	AND
17	ASSOCIATION,)	NOTICE OF INTENT TO DISMISS
18)	
19	Defendant.)	
20)	

21
22 **I. Introduction**

23
24 On October 4, 2013, Maggie Petaja filed an unfair labor practice charge with the Board
25 of Personnel Appeals alleging that the Montana Public Employees Association (MPEA
26 or Association) committed an unfair labor practice by breaching its obligation to fairly
27 represent her in dealings with her employer, Lewis and Clark County. Ms. Petaja is
28 represented by Valerie Wilson, attorney at law, of Helena, Montana. An answer
29 denying that the Association had committed an unfair labor practice was filed by
30 Quinton Nyman, MPEA Executive Director.
31

32
33 John Andrew was assigned to investigate the complaint, has reviewed the submissions
34 of the parties and has communicated with the parties in the course of investigating the
35 charge. With the consent of the parties, investigation into this matter was delayed
36 pending receipt of information from a District Court complaint, the substance of which
37 relates to the unfair labor practice charge. That information was received on March 10,
38 2014.
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41 **II. FINDINGS AND DISCUSSION**

42
43 There is a long and stable bargaining relationship between Lewis and Clark County
44 (County) and the MPEA with the current contract running from July 1, 2013 through
45 June 30, 2016. The complaining party, Maggie Petaja, is a member of the bargaining
46 unit represented by the Association.
47

48 Ms. Petaja began her employment with the County in September of 1998. In October of
49 2006 she became the Special Supplemental Nutrition Program for Women, Infants and
50

1 Children (WIC) Clinic Coordinator. It is issues surrounding that position that form the
2 basis of the charge lodged by Ms. Petaja.
3

4 There are several elements to the complaint with the culminating event being an
5 agreement to resolve a classification/pay differential issue was reached between the
6 Association and Lewis and Clark County which, from the perspective of Ms. Petaja, did
7 not provide her with adequate remedy and waived her rights in ongoing discrimination
8 complaints. The agreement in question was signed by the County and Quint Nyman.
9 The scanned agreement appears below:
10

11
12 SETTLEMENT AGREEMENT

13 This agreement made this [17th] day of [July] 2013, by and between Lewis & Clark County,
14 Employer, and the Montana Public Employees Association, Union, concerning certain disputes and
15 differences between the parties concerning wages due to Maggie Petaja, an employee of Employer and
16 a member of Union, for the purpose of resolving such disputes and differences; to wit:

17 The parties above-named, in order to resolve all differences in disputes concerning wages owed to
18 Maggie Petaja under and according to the terms of the Collective Bargaining Agreement between
19 Employer and Union for the period from February 6, 2012 to March 10, 2013, agree that Employer will
20 pay to Maggie Petaja the amount of \$1775.52, for and in consideration of all wages disputed between
21 the parties, and in full settlement thereof. Union agrees that all claims, demands, grievances, and
22 complaints concerning or arising out of said differences and disputes concerning wages for Maggie
23 Petaja covering the above referenced time period are fully settled, and forever withdrawn.

24 WHEREFORE, the parties above-named, having agreed as hereinabove set forth, and in the expectation
25 of the performance of the terms and conditions thereof, and the exchange of considerations recited,
26 have hereunto set their hands on the date first hereinabove written.

27 DATED this [17th] day of [July] 2013.
28

29 [signature lines and names for employer and for union appear on original]
30
31

32 Ms. Petaja further contends that this culminating event was evidence of a failure on the
33 part of MPEA to fairly represent her with other instances preceding the classification/pay
34 differential issue, those contentions being scanned and appearing below:
35

36 1. Maggie was terminated from her position of Clinic Coordinator on February 3, 2012.
37 On February 7, 2012, Maggie requested MPEA grieve her termination following
38 receipt of the County's temporary resolution letter: MPEA did nothing.
39

40 On March 16, 2012, Berg failed to attend a scheduled meeting concerning Maggie's
41 grievance, so on March 19, Charles Petaja hand delivered a letter to Berg requesting
42 MPEA either file a Step 2 grievance or send a note that MPEA had elected not to
43 pursue Maggie's case. Mr. Petaja even drafted the grievance for Berg to file.
44 However, once again, Berg did nothing. See Attached, letter from Petaja.. In fact, to
45 date, MPEA has failed to represent Maggie in her termination.
46
47

48 2. In April 2012, the County refused to grant Maggie training status to attend a WIC
49 conference. On April 17, 2012, Maggie filed a Step-1 grievance. At a meeting on
50 April 27, 2012, the County agreed to grant Maggie leave to attend training on the

1 condition she sign a 3 page Settlement Agreement. When Maggie refused to sign the
2 Agreement that did not reserve her right to pursue her termination claim the
3 grievance Berg refused to file- Berg told Maggie she had to sign the Settlement
4 Agreement, and threatened that if she would not sign the Agreement, he would sign.
5 While Quinton Nyman stopped Berg from signing the release in that instance, MPEA
6 refused to negotiate a settlement that reserved Maggie's rights, bullied Maggie into
7 withdrawing her grievance, and once again failed to represent her interest.
8 In this instance, Berg has usurped his authority, violated Maggie's trust and executed a document
9 that purports to waive her rights on her ongoing discrimination claims.
10

11
12 Essentially, a continuum is put forth by Ms. Petaja that, in her view, demonstrates an
13 ongoing failure by the Association to fairly represent her interests.
14

15 As mentioned, this case has taken time to evolve to this point. That is due to an
16 understanding to hold any investigation in abeyance while an age discrimination and
17 retaliation complaint lodged with the Human Rights Bureau (HRB) went forward.
18 Regarding that complaint, on November 25, 2013, the HRB investigator issued a final
19 investigative report finding no reasonable cause that discrimination had occurred.
20 Subsequent to this Ms. Petaja filed a complaint, and amended complaint (January 14,
21 2014) in the District Court of the First Judicial District. That complaint was answered by
22 Lewis and Clark County on March 3, 2014. All of this information has been reviewed by
23 the investigator in the course of issuing this report.
24

25
26 Before addressing the merits of the complaint an overview of the duty of fair
27 representation seems in order. In doing so, federal precedent will be used since the
28 Montana Supreme Court has approved the practice of the Board of Personnel Appeals
29 in using Federal Court and National Labor Relations Board (NLRB) precedent as
30 guidelines in interpreting the Montana Collective Bargaining for Public Employees Act,
31 State ex rel. Board of Personnel Appeals vs. District Court, 183 Montana 223 598 P.2d
32 1117, 103 LRRM 2297; Teamsters Local No. 45 vs. State ex rel. Board of Personnel
33 Appeals, 185 Montana 272, 635 P.2d 185, 119 LRRM 2682; and AFSCME Local No.
34 2390 vs. City of Billings, Montana 555 P.2d 507, 93 LRRM 2753.
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36

37 It is not the role of the investigator to determine whether or not there is merit to a
38 grievance. Rather, as set down by the U.S. Supreme Court in Vaca v Sipes 386 U.S.
39 171, 64 LRRM 2369 (1967) and as subsequently followed by the Board of Personnel
40 Appeals in Ford v University of Montana, 183 Mont. 112, 598 P.2d 604 (1979) the role
41 of the Board in an alleged breach of the duty of fair representation is to determine
42 whether the actions of a union, or lack of action, in some way are a product of bad faith,
43 discrimination or arbitrariness. To the extent the investigator discusses whether or not
44 there is merit to the grievance, it is in the context of determining the arbitrariness of
45 actions taken or not taken by the Association.
46

47
48 It is basic that the duty of fair representation does not require that all grievances be
49 taken to arbitration. "Though we accept the proposition that a union may not arbitrarily
50 ignore a meritorious grievance or process it in a perfunctory fashion we do not agree

1 that the individual employee has an absolute right to have his grievance taken to
2 arbitration regardless of the provisions of the applicable collective bargaining contract.”
3 The duty does not limit the legitimate right of the union to exercise broad discretion in
4 performing its duties because “union discretion is essential to the proper functioning of
5 the collective bargaining system.” See, for instance, International Brotherhood of
6 Electrical Workers v. Foust, 442 U.S. 42 (1979).
7

8
9 As it relates to grievance processing, the courts have held that to meet its obligations, a
10 “union must conduct some minimal investigation of grievances brought to its attention.”
11 Peters v. Burlington N. R. R. Co., 931 F.2d 534, 539 (9th Cir. 1990) (quoting Tenorio v.
12 NLRB, 680 F.2d 598, 601 (9th Cir. 1982) A union breaches its duty of fair representation
13 by handling a grievance “arbitrarily and perfunctorily.” Tenorio, 680 F.2d at 602. A
14 union’s actions are arbitrary only if, in light of the factual and legal landscape at the time
15 of the union’s actions, the union’s behavior is so far outside a wide range of
16 reasonableness as to be irrational. Air Line Pilots v. O’Neill, 499 U.S. 65 (1991). A
17 union processes a grievance in a perfunctory manner by treating the “union member’s
18 claim so lightly as to suggest an egregious disregard of her rights.” Wellman v. Writers
19 Guild of Am., West, Inc. 146 F.3d, 666, 671 (9th Cir. 1998).
20

21 When an employee claims that a union breached its duty of fair representation by failing
22 to grieve complaints, courts typically look to determine whether the union's conduct was
23 arbitrary. Clarke v. Commc'ns Workers of America, 318 F.Supp.2d 48, 56 (E.D.N.Y.
24 2004). A union acts arbitrarily when it “ignores or perfunctorily presses a meritorious
25 claim,” Samuels v. Air Transport Local 504, 992 F2d 12, 16, 143 LRRM 2177] (2d Cir.
26 1993), but not where it “fails to process a meritless grievance, engages in mere
27 negligent conduct, or fails to process a grievance due to error in evaluating the merits of
28 the grievance,” Cruz v. Local Union No. 3 of the Int'l Bhd. of Elec. Workers, 34 F.3d
29 1149, 1154-55, 147 LRRM 2176, (2d Cir. 1994). As part of determining whether a
30 grievance lacks merit the union must “conduct at least a ‘minimal investigation’ ... [b]ut
31 only an ‘egregious disregard for union members’ rights constitutes a breach of the
32 union’s duty’ to investigate.” Emmanuel v. Int'l Bhd. of Teamsters, Local Union No. 25,
33 426 F.3d 416, 420, 178 LRRM 2261 (1st Cir. 2005) (quoting Garcia v. Zenith Elec.
34 Corp., 58 F.3d 1171, 1176 , 149 LRRM 2740 (7th Cir. 1995); Castelli v. Douglas Aircraft
35 Co., 752 F.2d 1480, 1483 118 LRRM 2717] (9th Cir. 1985)).
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37

38 As to the incident that gave rise to the instant charge, Ms. Petaja received written notice
39 – a letter dated January 13, 2012 - that the WIC Clinic Coordinator position would be
40 eliminated by Lewis and Clark County effective February 3, 2012. The letter explained
41 that the action taken by the County was a result of monitoring done by the Montana
42 State WIC Department, the agency with oversight responsibility for county WIC
43 programs. The letter went on to describe the elimination of Ms. Petaja’s position as the
44 result of a reduction in force brought on by program restructuring needed to comply with
45 a corrective action plan in place for the County. The letter then explained that Ms.
46 Petaja was afforded hiring preference for open positions in the County, and her COBRA
47 benefits were available as well.
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49
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1 On January 29, 2012, Ms. Petaja wrote her supervisor, Dorothy Bradshaw, disputing the
2 action of the County, invoking the Step 1 grievance procedure under the collective
3 bargaining agreement and suggesting a resolution to her complaint. In this letter Ms.
4 Petaja referred to her "wrongful termination from WIC employment." The letter was
5 copied to Raymond Berg, MPEA Field Representative, Fred Rice, Human Resource
6 Director for the County, and Health Officer Melanie Reynolds. There is no apparent
7 written response generated by Ms. Bradshaw, however, on February 3, 2012, a meeting
8 was held with Ms. Reynolds, Mr. Rice, Ms. Petaja and Mr. Berg attending.
9

10
11 On February 7, 2012, Mr. Rice generated a memo (e-mailed to Mr. Berg) to those who
12 attended the February 3, 2012 meeting. In this memo Mr. Rice recommended Ms.
13 Petaja fill the newly created Administrative Secretary-Receptionist position as a
14 temporary status employee thus preserving her status as a County employee while not
15 forfeiting any rights Ms. Petaja might have under the collective bargaining agreement.
16 In turn, Mr. Berg forwarded this memo to Carter Picotte, MPEA counsel, indicating Mr.
17 Berg believed Mr. Rice's suggestion would work and asking Mr. Picotte's input. On
18 February 8, 2012, Mr. Picotte appears to have in turn forwarded the memo to Charles
19 Petaja, a practicing Montana attorney and Ms. Petaja's husband, for his information.
20 Eventually, Ms. Petaja did accept this temporary position. In doing so her pay was
21 reduced from \$19.60 per hour to approximately \$16.00 per hour. It is also noted that
22 originally her pay for this new position would have been approximately \$12.00 per hour,
23 but as acknowledged by Ms. Petaja, the Association did succeed in obtaining the
24 \$16.00 per hour rate. It is apparent that, in large part, Ms. Petaja instituted her
25 grievance and accepted the newly created position at least in part to demonstrate an
26 exhaustion of remedies under the collective bargaining agreement so as to allow for
27 further/additional legal remedies should she elect to take them.
28
29

30 As noted, Ms. Petaja did accept the Administrative Secretary-Receptionist position;
31 however, subsequent to February 8 there appear to have been additional discussions
32 involving Mr. Petaja and MPEA staff with a meeting scheduled for March 16, 2012,
33 apparently involving Mr. Petaja, Mr. Picotte, and Mr. Berg.
34
35

36 On March 15, 2012, Mr. Berg sent an e-mail, addressed to Charles Petaja although the
37 e-mail was actually sent to Ms. Petaja at her e-mail address. The e-mail contained a
38 link to the collective bargaining agreement and the grievance procedure. It also
39 indicated to Ms. Petaja, that future inquiries from Mr. Petaja should be directed to Mr.
40 Picotte. The e-mail also asked Ms. Petaja to notify Mr. Petaja that Mr. Berg was
41 instructed to cancel the March 16 meeting.
42
43

44 Apparently Mr. Petaja did not receive timely notice that the meeting was cancelled. He
45 went to the MPEA office only to discover Mr. Berg was not there. This is not a question
46 of Mr. Berg failing to attend a meeting. It is better described as a miscommunication
47 over the fact the meeting had been cancelled. Regardless, since the meeting did not
48 take place, Mr. Petaja hand delivered a letter to MPEA on March 19, 2012. The letter
49 included a complete draft second step grievance (citing sections of the contract
50 allegedly violated, including seniority and just cause provisions). It also expressed

1 concerns about the running of timeframes in the grievance procedure and requested
2 that MPEA advise in writing as to whether or not it was going to continue the grievance
3 so Ms. Petaja might know if she should pursue other potentially available remedies.
4 Again, a purpose for this was to demonstrate that remedies under the CBA had been
5 exhausted.
6

7
8 The investigator could find no written response to Mr. Petaja's request. Had Mr. Petaja
9 received one, perhaps this element of the complaint, and what happened would be
10 much clearer. It's sufficient to say that there were discussions involving Mr. Petaja and
11 Mr. Picotte over the particulars of Ms. Petaja's situation. Mr. Picotte indicated, in his
12 view at least, that with what was available in terms of evidence at that point in time, and
13 currently as well, there was nothing ever offered to him by Mr. Petaja or Ms. Petaja to
14 support a complaint of wrongful discharge. However, there were things that could be
15 done within the four corners of the contract, while still recognizing that the County was
16 under directive from the state to do what it did and that management rights as well gave
17 the County the authority to take the action it took. All this was in the additional context
18 that a human rights discrimination complaint was a possibility as well.
19

20
21 As previously noted by the investigator, the relationship between the County and the
22 Association is a long and stable one. In that light, both the County and the Association
23 have indicated that timeframes in the agreement were, and have been, mutually
24 extended in many instances in order to resolve matters short of more formal processes.
25 So far as can be determined, no formal step 2 grievance was ever filed by MPEA over
26 this first incident. It appears to the investigator that in large part this is due to the fact
27 that the County and the Association, on behalf of Ms. Petaja, were bargaining the
28 effects of the action taken by the County, and although no paper trail seems to exist to
29 say the matter was ever formally concluded it is clear that Ms. Petaja did accept a new
30 position and a new pay rate on March 5, 2012. A very real argument exists that MPEA
31 at this point in time had done all it could do to mitigate the effects of the action taken by
32 the County. Equally arguable, and regardless of whether or not MPEA had replied in
33 writing to Mr. Petaja's request, Ms. Petaja knew, or certainly should have known her
34 rights under the bargaining agreement were exhausted and she was free to pursue
35 whatever statutory rights were available to her. Nothing the investigator could find
36 would have prevented Ms. Petaja from filing her age discrimination complaint in the
37 early spring of 2012 had she decided to do so. Further, no language exists in the
38 collective bargaining agreement that even remotely hints that charges of discrimination
39 have to be taken to arbitration for resolution. Quite the contrary, the non-discrimination
40 provision of the collective bargaining agreement (Article 7) is unremarkable in its
41 content. It is not at all similar to provisions found in 14 Penn Plaza LLC v Pyett, 556
42 U.S. 247 (2009), where arbitration was an exclusive remedy. In fact, it was not until
43 December 28, 2012, that an age discrimination complaint was filed with the Human
44 Rights Bureau. That complaint was subsequently dismissed by the Human Rights
45 Commission in a final agency decision issued September 24, 2013.
46
47

48
49 The investigator further notes, although nothing in the bargaining agreement required
50 arbitration of discrimination complaints the Association offers that it always told Ms.

1 Petaja that she could have her own counsel involved in the discrimination allegations
2 against the County. Modifications to the collective bargaining agreement now in effect
3 make that crystal clear and are consistent with what the Association indicates it told Ms.
4 Petaja. Article 7 in the current agreement now contains a sentence that a bargaining
5 unit member may have their own counsel in discrimination related matters, with the cost
6 of counsel the responsibility of the employee. Additionally, the agreement effective July
7 13, 2013, also contains new language in the grievance procedure (Article 16)
8 addressing remedies taken by employees to enforce statutory rights. The effects on the
9 grievance procedure, again, are not inconsistent with the position advocated by the
10 Association vis-à-vis possible discrimination complaints by unit members.
11

12
13 As relates to filing a duty of fair representation complaint it can also be said that in the
14 same timeframe (March of 2012) when she was in her new position and she was not
15 getting a response from the Association, nothing would have prevented Ms. Petaja from
16 filing her complaint of breach of the duty of fair representation. As it were, she did not do
17 that until October 4, 2013, well past the statutory timeframe of 39-31-404, Montana
18 Code Annotated.
19

20
21 Addressing the second incident involving training and a WIC conference in Denver, on
22 March 23, 2012, Ms. Petaja requested authority from Dorothy Bradshaw to attend the
23 national WIC conference in Denver. The Montana Association of WIC Agencies,
24 (MAWA) had offered to pay the cost for Ms. Petaja to attend the event since she was
25 the President of MAWA. Ms. Petaja and Ms. Bradshaw discussed the request and on
26 April 4, 2012, Ms. Bradshaw e-mailed Ms. Petaja advising her the County WIC program
27 could not cover the cost of four paid training days in Denver, but Ms. Bradshaw did
28 authorize the use of three paid annual leave days by Ms. Petaja to attend the
29 conference.
30

31
32 On April 6, Ms. Petaja forwarded the Bradshaw response to Mr. Berg. It is uncertain
33 why there was a delay, but on April 17, 2012, Ms. Petaja again wrote to Ms. Bradshaw
34 with rationale for attendance at the conference. She concluded by saying her 4/17 letter
35 was Step 1 of the grievance procedure.
36

37
38 On April 27 a meeting was held to address Ms. Petaja's grievance. Present were Ms.
39 Petaja, Mr. Rice, Mr. Berg, Ms. Bradshaw and Ms. Reynolds. On the same date Ms.
40 Reynolds presented Ms. Petaja with a letter addressing the process of resolving the
41 grievance. The letter went on to discuss use of the chain of command in doing so. The
42 letter was signed off on by Ms. Petaja with Mr. Berg as a witness. At this same meeting
43 a three page agreement was presented to resolve the grievance. The document
44 specifically refers to terms and conditions settling a grievance filed by the Association
45 on behalf of Maggie Petaja. Included was a provision that would have authorized four
46 paid training days for Ms. Petaja to attend the conference. Also included was section
47 (13) providing:
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1 Employee does not have a claim under the Federal Age Discrimination in
2 Employment Act, the ADEA, or the Older Workers Protection Act. Employee
3 expressly waives any potential claim under those acts.
4

5 On April 30, Ms. Petaja wrote Dorothy Bradshaw advising her she would not sign the
6 proposed settlement agreement as she was advised that by signing the proposed
7 settlement agreement she would be relinquishing "all of my legal rights." She also said
8 she would attend the conference and use vacation time to do so per Ms. Bradshaw's
9 April 4 e-mail. The letter was copied to Ms. Reynolds, Mr. Berg, and Mr. Rice with an
10 e-mail sent to all the same day as well.
11

12
13 On May 8, 2012, Mr. Rice wrote to Ms. Petaja asking Ms. Petaja to sign off on the letter.
14 In doing so, Ms. Petaja could either accept the offer to settle the grievance by either
15 settling it with the County granting four days to attend the conference, or by providing
16 the county a letter withdrawing the grievance. Mr. Rice concludes the letter with:
17

18 In taking these steps you are agreeing this brings to conclusion the outstanding
19 issues related to your grievance. We are not asking you to "give up" any rights.
20 However, we are asking you to acknowledge that this settles this grievance and
21 to confirm, in you (sic) acceptance, that there are no outstanding issues related
22 to your attendance at the Denver meeting.
23

24
25 On May 14, 2012, at 8:51 a.m. Ms. Petaja e-mailed Mr. Berg with a proposed response
26 to Mr. Rice's letter. The e-mail stated:
27

28 Wanted you to read this before sending out to others Let me know what ya
29 think! Thanks Maggie
30

31 On the same day Mr. Berg responded with an e-mail reading:
32

33 Maggie, I am starting to be confused as to the standing of this grievance, are you
34 withdrawing the grievance?
35

36
37 Apparently Mr. Berg received no response from Ms. Petaja.
38

39 On May 15, Ms. Petaja responded to Mr. Rice, using the same language as in the e-
40 mail to Mr. Berg dated May 14, with copies to Ms. Bradshaw, Ms. Reynolds and Mr.
41 Berg advising she would not sign the May 8 letter; she would not sign the proposed
42 settlement agreement; and she would be taking her approved vacation days to attend
43 the training. The response goes on to say that her grievance for three training days "is
44 withdrawn while reserving my rights concerning all other issues, i.e., retaliation,
45 discrimination, etc. She concludes by saying:
46

47 If withdrawal of my grievance is not acceptable on these conditions, then I
48 suggest we proceed to arbitration.
49
50

1 There is no record of further communication between Ms. Petaja and Mr. Berg
2 concerning this incident yet the evidence shows that Ms. Petaja did attend the
3 conference in Denver and the solution she proposed – Ms. Bradshaw’s proposal – is
4 what happened.
5

6 Given this turn of events, it seems Ms. Petaja did accept a settlement, albeit somewhat
7 conditional, at least as directed toward Mr. Rice. Then, as with the first incident a
8 resolution was reached – or at least a remedy which was discussed was implemented.
9 Beyond that, there does not appear to have been any follow through insisting the matter
10 be pursued further by the Association. At best there is the “suggestion” to Mr. Rice that
11 “we proceed to arbitration.” Then, as with the first incident, and in this instance, by May
12 of 2012, Ms. Petaja must have known, or should have known, the Association did not
13 know what she wanted to do with her grievance, and/or the Association understandably
14 believed this grievance was resolved. Again, at that point in time, Ms. Petaja could well
15 have pursued a duty of fair representation case against the Association – something
16 she ultimately did in October of 2013.
17
18

19 Pertaining to the culminating event leading to this unfair labor practice charge, this
20 element of the complaint centers around a classification/pay differential issue and a
21 related job audit. Under the terms of the bargaining agreement,
22

23
24 a “grievance” shall mean an allegation by an employee resulting in a dispute or
25 disagreement between the employee and the Employer as to the interpretation or
26 application of terms and conditions in this Agreement *and the classification*
27 *system* (emphasis added).
28

29 In her position of Administrative Secretary-Receptionist Ms. Petaja believed she was
30 doing duties she had previously performed in her prior position as WIC Coordinator
31 and/or duties outside of her Administrative Secretary-Receptionist. In either case she
32 believed higher pay was in order. Additionally, according to Ms. Petaja, as early as
33 March of 2012 Fred Rice had committed to a job audit should it be the case that the
34 newly created Administrative Secretary-Receptionist had duties beyond what was
35 contemplated for the new position. In fact, Mr. Rice has acknowledged this was a
36 possibility and he has further acknowledged that given the turnover in the position
37 supervising Ms. Petaja, and given Ms. Petaja’s experience on the job, it was
38 understandable there may have been some blurring of responsibilities.
39
40

41 An e-mail dialogue over this issue began between Ms. Petaja and Mr. Berg in October
42 of 2012. Additional e-mails between the two fleshed out details as to duties performed
43 by Ms. Petaja which she had previously done as WIC Coordinator and/or she perceived
44 as higher paid duties . On December 3, 2012, Ms. Petaja wrote Mr. Berg insisting the
45 job audit process begin as her current pay rate was below her pay rate as the WIC
46 Coordinator. Specifically, she requested her previous pay rate of \$18.62 be reinstated.
47 She concluded by saying that if this could not be done “I will pursue legal remedies by
48 the first of the year.” Included in this were “DFR claims, ULP claims as well as other
49 statutory and administrative remedies.”
50

1 On December 4, 2012, Mr. Berg e-mailed Melanie Reynolds requesting a meeting to
2 discuss the duties assigned to Ms. Petaja. Eventually, a meeting was held on
3 December 12, 2012, with those attending being Mike Henderson, Melanie Reynolds,
4 Raymond Berg, and Maggie Petaja. It is not certain if Mr. Rice attended, but he too was
5 clearly involved in this issue.
6

7
8 From all this, a job audit was performed, the end result of which were documents
9 showing the nature of duties performed and the grade and pay rate assigned to each
10 duty. The duties were allocated across a 2080 hour work year with a percentage of
11 each of these duties assigned its portion of the year. Applicable pay rates were
12 assigned to each percentage and contrasted with Ms. Petaja's assigned rate of \$16.53
13 as an Administrative Secretary-Receptionist. From this, the pay differential was
14 calculated and a settlement offer made on that basis. It is noted that, although disputed
15 by Ms. Petaja's supervisor at the time, Ms. Petaja's representation of the extent of
16 higher level duties performed was accepted by the County in this settlement offer.
17

18
19 In May of 2013 a meeting was then held to review the job audit analysis and discuss
20 possible settlement. Present for that meeting were Raymond Berg, Carter Picotte,
21 Valerie Wilson, Maggie Petaja, Katie Jerstad, Drenda Niemann, Melanie Reynolds and
22 Fred Rice. Subsequent discussions ensued primarily involving Mr. Rice, Mr. Berg, and
23 Robin Trott, Mr. Berg's co-worker and his successor representing the unit at the County.
24 The end result was the findings were accepted by MPEA who in turn discussed them
25 with Ms. Petaja. MPEA believed they were accepted by her in order to resolve the
26 issue. In fact, it appears the results were acceptable to Ms. Petaja, although she
27 continues to believe the higher pay rate should apply to all the hours she worked and
28 not just the ones deemed payable at the higher rate. Beyond that not unsurmountable
29 hurdle, however, a bigger problem surfaced when the agreement drafted between the
30 County and the Association was not acceptable to Ms. Petaja because of her belief it
31 should have specifically reserved her rights to pursue additional remedies.
32 Nonetheless, MPEA did sign off on the agreement, the text of which appears earlier in
33 this decision, and the County tendered payment to Ms. Petaja through the Association.
34 That check, payable to Ms. Petaja, yet refused by her, remains in the possession of
35 MPEA.
36

37
38 In the course of all the above, Ms. Petaja filed a discrimination and retaliation complaint
39 with the Human Rights Bureau. That complaint was reviewed and a recommendation
40 issued on November 25, 2013, finding no merit to her complaint. Subsequent to this
41 Ms. Petaja filed her discrimination/retaliation complaint in District Court.
42

43
44 An overall concern of the investigator in this matter is the timeliness of the complaint of
45 Maggie Petaja. A very strong argument exists that the first two elements of her
46 complaint should be dismissed as a matter of law by virtue of 39-31-404, MCA.
47 Nonetheless, the investigator will address all three elements of her complaint with
48 applicable case law in mind while considering the facts.
49
50

1 One item of considerable significance in this case is the fact that there are no
2 allegations, nor is there any evidence to show, that MPEA discriminated against Maggie
3 Petaja as a member of a protected class or in any other fashion for that matter. It is
4 appropriate to note, however, that the undertone of possible age discrimination
5 complaints against the County was known by MPEA. The presence of such possible
6 complaints certainly complicated the situation and as an organization the Association
7 did not want to impede or frustrate any claims external to the four corners of the
8 bargaining agreement. The fact that Ms. Petaja had independent counsel – her
9 husband initially – puts an additional variable into the situation. It can also be said that
10 a certain amount of clarity was lacking in the collective bargaining agreement as relates
11 to external law and/or other possible remedies when this initial event occurred;
12 although, as mentioned, any doubt was later remedied with amendments to the
13 collective bargaining agreement.
14

15
16 Problematic in all three of these allegations is the language in the grievance procedure
17 of the collective bargaining agreement. It contains a first step that is quite open in
18 interpretation. Its obvious intent is to resolve grievances at the lowest possible level. In
19 practice it is clear that the County and the Association, in their long term relationship
20 subscribe to this concept, perhaps to a degree that causes problems in the instant
21 matter, particularly as relates to the first event. As relates to the first event,
22 understandably the grievant wanted to be certain to preserve her rights to the grievance
23 procedure as well as possible statutory remedies. In doing so she even went to the
24 point of drafting a second step grievance. Perhaps the Association could have handled
25 its response, or lack of response, to the second step with better communication.
26 Regardless, it simply cannot be said that MPEA did nothing about the first event.
27 Inherent in this first incident is the management right to layoff and/or restructure with the
28 obligation then being to bargain the effect of layoff or restructuring. Did the Association
29 bargain the effect of the layoff/restructure? Yes, as evidenced by the new job resulting
30 from the meetings over the layoff/restructuring and the attendant wage rate. Were the
31 seniority and just cause provisions of the CBA implicated in all this? Yes, and to the
32 extent they were, they were taken into account with the placement of Ms. Petaja in the
33 newly created position. Would arbitration have resulted in a different result, i.e.,
34 reinstatement of the previous position with its attendant pay? Highly unlikely. Could the
35 human rights complaint have resulted in that remedy? Possibly, and that avenue was
36 pursued and still is being pursued in District Court. In short, what the Association could
37 have done under the contract was limited, and what the Association did, met its
38 obligation for fair representation. There is insufficient evidence to show a lack of
39 diligence, arbitrary treatment or bad faith conduct on the part of the Association. What
40 the Association did – Ms. Petaja's continuing employment, albeit at a reduced level -
41 although not acceptable to Ms. Petaja, was not an unreasonable end given the nature of
42 the grievance, the contract language, and the fact that other remedies exist for what Ms.
43 Petaja deemed her wrongful discharge.
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47

48 As to the second element of her complaint, again, timeliness not being considered,
49 MPEA did not ignore her grievance. Whatever actions were taken culminated in her
50 grievance being resolved with a remedy Ms. Petaja suggested, albeit of an unknown

1 conditional nature as directed toward Mr. Rice, and also now more than likely subject to
2 court review on the basis of the retaliation allegation. If there is anything somewhat
3 troubling about the second incident it is the allegation that Mr. Berg bullied Ms. Petaja
4 and/or threatened to sign the agreement anyway regardless of whether Ms. Petaja
5 signed or not. That said, Mr. Berg denies this occurred. Further, the draft agreement
6 was very arguably limited to the incident in question only, and ultimately Ms. Petaja did
7 not sign it anyway. It must also be noted, that even if the threat were made, under
8 MPEA's operational format any such agreements are not to be signed by field staff, but
9 rather, only by Mr. Nyman upon his review. Nothing indicates the Association
10 discriminated against Ms. Petaja nor did it act arbitrarily or operate in bad faith.
11

12
13 In terms of the third incident the investigator specifically notes that nothing in the
14 collective bargaining agreement addresses pay differential for duties, assigned or
15 assumed, outside an employee's job classification. The Association not only
16 represented Ms. Petaja's interests, but it did so, perhaps even beyond the scope of the
17 language of the bargaining agreement. Ms. Petaja's consent to resolve this contractual
18 question was not even needed and the fact that she refused to sign it certainly does not
19 prejudice her right to contend this event was more evidence of discrimination by the
20 County. As with the other incidents there is no evidence of discrimination by the MPEA
21 nor did the Association act in an arbitrary fashion or in bad faith. Then, as with the
22 second incident, Ms. Petaja did not sign anything akin to a waiver. Even given her
23 interpretation of the meaning of the agreement, it is hard to see any prejudice done to
24 her in District Court other than consideration of value received, should she prevail in
25 that action.
26

27
28 **III. Recommended Order**

29
30 It is recommended that unfair labor practice charge 6-2014 be dismissed as without
31 probable merit.
32

33 DATED this 13th day of May 2014.
34

35
36 BOARD OF PERSONNEL APPEALS

37
38 By: 
39 _____
40 John Andrew
41 Investigator
42
43
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1
2 NOTICE
3

4 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
5 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
6 may be appealed to the Board. The appeal must be in writing and must be made within
7 10 days of the mailing of this Notice. The appeal is to be filed with the Board at P.O.
8 Box 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to dismiss
9 becomes a final order of the Board.
10

11
12 CERTIFICATE OF MAILING
13

14 I, Windy Krutson, do hereby certify that a true and
15 correct copy of this document was mailed to the following on the 14th day of
16 May 2014 postage paid and addressed as follows:
17
18

19 QUINTON NYMAN
20 MPEA
21 PO BOX 5600
22 HELENA MT 59604
23

24
25 VALERIE WILSON
26 WILSON LAW OFFICE
27 1085 HELENA AVENUE
28 HELENA MT 59601
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