

1 BOARD OF PERSONNEL APPEALS  
2 PO BOX 201503  
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6

7 STATE OF MONTANA  
8 BEFORE THE BOARD OF PERSONNEL APPEALS  
9

10 IN THE MATTER OF UNFAIR LABOR PRACTICE 14-2014:  
11

12 MONTANA PUBLIC EMPLOYEES )  
13 ASSOCIATION, )  
14 Complainant, )  
15 )  
16 vs ) INVESTIGATIVE REPORT AND  
17 ) NOTICE OF INTENT TO DISMISS  
18 YELLOWSTONE COUNTY )  
19 Respondent, )  
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22 I. Introduction  
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24 On March 18, 2014, the Montana Public Employees Association (MPEA or Association)  
25 filed an unfair labor practice charge with the Board of Personnel Appeals alleging that  
26 Yellowstone County (County) bargained in bad faith by engaging in regressive and  
27 conditional bargaining. The charge was filed by Darcy Dahle, MPEA field representative,  
28 on behalf of the Yellowstone County Deputy Sheriff's Unit. In answer to the charge filed  
29 by Kevin Gillen, Deputy Yellowstone County Attorney, the County denied it committed an  
30 unfair labor practice.  
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33 Pursuant to Section 39-31-405 (1), John Andrew was appointed by the Board of Personnel  
34 Appeals to investigate the charge. At the request of the Complainant, and with the  
35 concurrence of the Respondent, the investigation was held in abeyance while the parties  
36 continued their efforts to bargain a successor agreement with the same being now ratified  
37 and in force. As of August 15, 2014, the complainant had not withdrawn the complaint,  
38 and the County requested that the investigation be completed.  
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42 II. Findings and Discussion  
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44 MPEA begins its recitation of events leading to the instant charge beginning on October  
45 17, 2013, the date the County issued its last, best and final offer. Other events transpired  
46 prior to that and are recited in the Answer filed by the County on April 4, 2014.  
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48 This charge centers around the negotiations that occurred to reach a successor  
49 agreement to a contract that expired in June of 2013. Prior to contract expiration the  
50

1 County and MPEA conducted bargaining sessions on June 10 and June 21, 2013.  
2 Additional bargaining sessions were held on August 3, 20, and 23, 2013. Mediation was  
3 then requested of the Board of Personnel Appeals with mediation sessions held on  
4 September 12 and September 18, 2013. Mediation did not lead to agreement and, in fact,  
5 no tentative agreements were signed off on by either party during mediation.  
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8 Throughout negotiations and mediation the composition of the County bargaining team  
9 remained the same and has remained the same through the process that eventually led to  
10 final agreement. The composition of the Association bargaining team has changed  
11 throughout the process, a factor that, in the eyes of the County at least, frustrated  
12 communications and the bargaining process in general.  
13

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15 As previously found, absent agreement after five direct bargaining sessions and two  
16 mediation sessions, the County issued a last, best and final offer on October 17, 2013. On  
17 October 24, 2013, the Association notified the County that the last, best and final offer of  
18 the County was rejected and further notified the County that the unit had authorized a  
19 strike.  
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21  
22 Also on October 24, 2013, the Association filed a factfinding request with the Board of  
23 Personnel Appeals. The Board provided a roster of factfinders to the parties on October  
24 25, 2013. Because of illness of the initial arbitrator selected by the parties, a second list  
25 was provided by the Board and from that list Ms. Sarah Adler was selected to conduct the  
26 factfinding.  
27

28  
29 The initial factfinding session was held on January 16, 2014. As allowed in statute, the  
30 factfinding morphed into mediation with Ms. Adler presiding over discussions. Progress by  
31 both parties must have occurred as in an e-mail accompanying her bill to the County and  
32 MPEA Ms. Adler noted to both that "it was a pleasure to work with you in resolving this  
33 complaint." No actual factfinding recommendation came from the January session,  
34 because clearly Ms. Adler perceived progress was made and agreement close at hand.  
35 Between January 16 and March 4, representatives of the County, including Deputy County  
36 Attorney Gillen, Human Resource Director Dwight Vigness, Sheriff Mike Linder and  
37 Finance Director Scott Turner continued to meet with Darcy Dahle to iron out differences  
38 between the parties. However, they were not able to overcome their differences, so the  
39 factfinder/mediator was again brought into the process on March 4. Again, there was no  
40 success in mediation, and again, no factfinding report was issued.  
41  
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43  
44 On March 6, 2014, the Commissioners met with their HR Director for an update on  
45 negotiations. During the course of that meeting, one commissioner read a prepared letter  
46 addressed to Ms. Dahle and Quint Nyman, MPEA Executive director. The letter  
47 references an offer to be made by the County on March 11 and the action to be taken by  
48 the County should that offer not be accepted by the Association. Included in this letter is  
49 word that if not accepted by March 18, 2014, the County Commissioners will vote at their  
50 March 25, 2014, meeting as to whether they will implement their last, best and final offer of

1 October 17, 2013.  
2

3 With the results of the March 6, 2013 meeting being public, the parties nonetheless met  
4 again on March 7 and March 10. Still there was no agreement. On March 11, 2014, the  
5 Commissioners met again to hear the results of the most recent efforts. On that date, the  
6 Commission affirmed its intent expressed in the March 6, 2014 letter. At the same time,  
7 Commissioner Ostlund stated, "We're offering what I believe is a very lucrative contract.  
8 I'm done negotiating."  
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11 Since neither the conference call with the factfinder/mediator, nor additional meetings  
12 between the parties on March 7 and March 10 produced agreement this led to a  
13 Commission meeting of March 18 in which, according to the County, after questioning the  
14 Association representative about items still to be bargained, the Commission left still not  
15 understanding which issues were left to bargain about. It was then on March 21, 2014,  
16 that the unfair labor practice charge was filed.  
17  
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19 Subsequent to the charge being filed, communications continued between the MPEA and  
20 the County. In actuality, at the March 25, 2014 Commission meeting, the Board of  
21 Commissioners voted unanimously to continue with the factfinding. Discussions continued  
22 between the parties with agreement to again convene the factfinding process on April 21,  
23 2014. Before the April 21 date the parties again met and on April 17 found common  
24 ground on issues in dispute. As of the date of this decision a new bargaining agreement is  
25 in place between MPEA and the County.  
26  
27

28 The gravamen of the complainant's charge is that the County engaged in conditional,  
29 regressive and bad faith bargaining. No specifics are stated as to what constituted bad  
30 faith and none were seen by the investigator so the basis of the "conditional and  
31 regressive" instances must be those cited in the complaint. As a matter of certainty,  
32 nothing shows that the County ever refused to bargain, refused to meet, come to the table  
33 absent the ability to negotiate in meaningful fashion and certainly never failed to engage in  
34 the factfinding process. In fact, the complainant in its charge asks the Board to "assist in  
35 bringing the parties together with the factfinder to complete the process."  
36 Factfinding/mediation by the factfinder did happen and as far as the investigator can find,  
37 was never resisted by the County.  
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41 Citing the specifics of the charge, there is no evidence that the comment of Commissioner  
42 Ostlund was ever carried out in practice, either before the comment, and certainly not after  
43 the comment. The comment was just that – a comment of one Commissioner. It is a  
44 stretch to assert that one comment reflected the position of the entire Commission.  
45 Certainly the actions of the County subsequent to that comment do not demonstrate any  
46 intent, or practice of bad faith bargaining.  
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49 As to the regressive bargaining allegation, again referring to the substance of the  
50 complaint, the Commission did take a hard line position on a "new" last, best, and final

1 offer as well as setting a deadline for acceptance or rejection of that offer by the  
2 Association. The Commission further asserted the consequences if rejected – reversion to  
3 the October last, best and final offer, and implementation of the same. Implementation is a  
4 right reserved for any employer in the presence of impasse as is the ability to strike a  
5 protected right for a labor organization. However, assertions that either action will be  
6 taken are just that – assertions. Neither posturing to strike or posturing to implement  
7 constitute an unfair labor practice. Moreover, reversion to a previous position, when  
8 clearly enunciated, and clearly spelled out, as was done by the County, is also not an  
9 unfair labor practice and does not constitute conditional or regressive bargaining. There  
10 simply is insufficient evidence offered to warrant a finding of probable merit to this charge.  
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14 **III. Recommended Order**

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16 There being no substantial evidence to warrant a finding of probable merit, it is the  
17 recommendation of the investigator that unfair labor practice complaint 14-2014 be  
18 dismissed.  
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23 Dated this 26th day of August 2014.  
24

25  
26 **BOARD OF PERSONNEL APPEALS**  
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31 By: \_\_\_\_\_  
32 John Andrew, Investigator  
33

34 **SPECIAL NOTICE**

35 Exceptions to this Recommended Order may be filed within twenty (20) days of service  
36 thereof. If no exceptions are filed, this Recommended Order shall become the Order of  
37 the Board of Personnel Appeals. Address exceptions to the Board of Personnel Appeals,  
38 P.O. Box 201503, Helena, Montana 59620-1503.  
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing/attached "Recommended Order" was served upon the following on the \_\_\_\_\_ day of \_\_\_\_\_, postage paid and addressed or delivered as indicated:

QUINT NYMAN  
MPEA  
PO BOX 5600  
HELENA MT 59604 5600

KEVIN GILLEN  
DEPUTY YELLOWSTONE COUNTY ATTORNEY  
217 NORTH 27<sup>TH</sup> ROOM 701  
BILLINGS MT 59101

YELLOWSTONE COUNTY COMMISSIONERS  
PO BOX 35000  
BILLINGS MT 59107