

1 Department of Labor and Industry  
2 Board of Personnel Appeals  
3 PO Box 201503  
4 Helena, MT 59620-1503  
5 (406) 444-0032  
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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. 13-2016  
12

13 GLENDIVE FEDERATION OF )  
14 TEACHERS, MEA-MFT, )  
15 Complainant, )  
16 -vs- )  
17 )  
18 DAWSON COMMUNITY COLLEGE; )  
19 KATHLEEN ZANDER, VICE PRESIDENT )  
20 AND VINCENT NIX, PRESIDENT. )  
21 Defendant. )  
22

INVESTIGATIVE REPORT  
AND  
NOTICE OF INTENT TO DISMISS

23  
24 **I. Introduction**  
25

26 On October 23, 2015, the Glendive Federation of Teachers, MEA-MFT, (GFT) filed an  
27 unfair labor practice charge with the Board of Personnel Appeals alleging that agents  
28 acting on behalf of Dawson Community College (DCC) failed to bargain in good faith, a  
29 violation of 39-31-305, MCA. The contention of GFT is that DCC “unilaterally and  
30 without bargaining implemented a substantial and material change to working  
31 conditions”, a violation of 39-31-401(5), MCA. DCC is represented in this matter by  
32 Matthew Cuffe and Shane Vannatta, attorneys at law. In Answer filed in a timely  
33 manner DCC denied it committed an unfair labor practice.  
34

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.  
39

40 **II. Findings and Discussion**  
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42 The charge filed by GFT alleges that language added to individual teacher contracts  
43 constituted a unilateral change in a mandatory subject of bargaining. The language  
44 additions were done, or became known to GFT, either on September 29, 2015, or  
45 October 7, 2015. The language in question reads:  
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47  
48 Terms of this contract are subject to changes depending upon the resolution of  
49 the financial exigency/faculty cutbacks as provided in 12.4 of the Master  
50 Agreement.

1 Because of the above language GFT asks the Board of Personnel Appeals to order a  
2 return to the status quo and reissue all individual contracts with the language at issue  
3 removed. A posting notice is also requested as are any other remedies BOPA might  
4 deem appropriate.  
5

6 There was a collective bargaining agreement in effect at the time this language was  
7 added to the individual contracts. That contract remains in force as of the date of this  
8 report. Thus, this is an allegation of a unilateral change during the life of the collective  
9 bargaining agreement as opposed to an allegation of a unilateral change in an expired  
10 agreement. In either instance though, language in the bargaining agreement, cited by  
11 both parties, addresses faculty cutbacks and financial exigency.  
12

13  
14 In its response DCC points out that regardless of what language may or may not be in  
15 the individual contract the provisions of the existing collective bargaining agreement are  
16 controlling. Having considered and reviewed the submission of both parties, the  
17 investigator agrees with DCC. Specifically, additional language in the individual  
18 contract provides:  
19

20 All terms and conditions of employment shall be governed by the Master  
21 Agreement referred above, and your acceptance of this letter of appointment  
22 constitutes an acknowledgement and acceptance of all provisions and conditions  
23 contained therein.  
24  
25

26 In short, by the plain meaning of the language in the "individual contract", or "letter of  
27 acceptance" as the document is also referred to, there is a process to resolve issues of  
28 "financial exigency/faculty cutbacks." Thus, if there currently is such an issue, or for that  
29 matter, if it should become an issue, there is a remedy for anyone so aggrieved.  
30

31 The parties to this matter have differing views on the meaning and purpose of the  
32 language at issue. Regardless of the purpose or meaning of the language, the status  
33 quo was not changed in the view of the investigator. However, recognizing the  
34 disagreement that exists, the Answer filed by DCC in response to the unfair labor  
35 practice should allay any concerns about the fact that the master agreement, and with it  
36 the grievance procedure therein, is controlling.<sup>1</sup>  
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### 39 **III. Recommended Order**

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41 It is hereby recommended that Unfair Labor Practice Charge 13-2016 be dismissed as  
42 there is not substantial evidence to warrant a finding of probable merit.  
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48 <sup>1</sup> The investigator further notes that if there are issues that arise about the meaning of the disputed  
49 language and its relationship to the bargaining agreement an arbitrator should be the sole voice deciding  
50 such questions. It is the province of an arbitrator do to so and best carries of the purpose of the collective  
bargaining act for public employees.

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DATED this 8<sup>th</sup> day of December 2015.

BOARD OF PERSONNEL APPEALS

By:   
John Andrew  
Investigator

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.

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CERTIFICATE OF MAILING

I, Windy Knutson, do hereby certify that a true and correct copy of this document was mailed to the following on the 8<sup>th</sup> day of December 2015, postage paid and addressed as follows:

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