

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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8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 4-2016

11 ARLEE CLASSIFIED EMPLOYEES)
12 ASSOCIATION, MEA-MFT,)
13 Complainant,)
14 -vs-)
15 ARLEE PUBLIC SCHOOLS, DISTRICT)
16 NO. 8 AND SUPERINTENDENT DAVID)
17 WHITESELL,)
18 Defendant,)
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INVESTIGATIVE REPORT
AND
NOTICE OF INTENT TO DISMISS

23
24 **I. Introduction**

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26 On August 21, 2015, the Arlee Classified Employees Association, MEA-MFT,
27 hereinafter ACEA or Association, filed an unfair labor practice charge with the Board of
28 Personnel Appeals alleging that the Arlee Public Schools, District No. 8, hereinafter the
29 District, committed an unfair labor practice by failing to bargain in good faith, a violation
30 of 39-31-401 (5), MCA. Tom Burgess, MEA-MFT Field Consultant, filed the charge on
31 behalf of the Association. Elizabeth O'Halloran, attorney at law, appeared on behalf of
32 the District and timely answered the complaint denying that the District violated
33 Montana law.
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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.¹
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40 **II. Findings and Discussion**

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42 The parties to this matter have engaged in negotiation for in excess of two years in an
43 attempt to reach a successor contract to one which expired on June 30, 2013. Unlike
44 many unfair labor practices involving bad faith bargaining allegations, the instant matter
45 has no allegations that anyone failed to meet to bargain, delayed bargaining, sent
46 teams to the table without authority to bargain, made unreasonable proposals,
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50 ¹ The investigator notes that although there were settlement discussions to resolve this complaint, no
agreement was reached. Thus, this report is issued.

1 demonstrated animus toward one another, or otherwise engaged in a “totality of
2 conduct” standard often utilized by the Board of Personnel Appeals in examining bad
3 faith bargaining complaints.² In fact, over this time period the parties have met often,
4 including with mediators from the Board of Personnel Appeals. Although other issues,
5 e.g. insurance and issues surrounding the pay matrix, were sticking points, the main
6 sticking point to settlement was, and is, a 1% pay increase and whether that amount
7 should be applied to the base of the pay matrix or whether it should go to each cell of
8 the matrix.³
9

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11 Finally, on or about March 10, 2015, a tentative agreement was reached.⁴ This
12 agreement was ratified by both parties and seemingly brought the matter to a close.
13 That was the case, at least, until final language put together by the District, including
14 how the 1% was to be allocated, was sent to the ACEA. Upon receiving that
15 information the ACEA was immediately in touch with the District about what it saw as an
16 error. The 1% had been applied to the base, not to each cell of the matrix as the
17 Association believed was the understanding. A series of e-mails ensued between the
18 chief spokespersons for the District and the Association, both of whom are experienced
19 negotiators, the end result of which remains no agreement. The District has not
20 declared impasse and continues to pay at the rates contained in the expired contract.
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23 Negotiations for a new bargaining agreement between the District and the ACEA have
24 been difficult, protracted, and with that, frustrating. Both sides want a contract and have
25 worked to reach agreement. In reviewing this matter, including discussions with
26 spokespersons for each party as well as reviewing Board minutes and e-mail
27 communications, the investigator believes that each side has a reasonable
28 interpretation for their “side of the story.” Based on all this, the investigator further
29 believes there was no true “meeting of the minds.” The end result of the totality of
30 possibilities discussed in the give and take that lead to a tentative agreement was never
31 mutually comprehended by either party.⁵ Absent a finding there was a totality of
32 conduct demonstrating bad faith, the reasonable disagreement between the parties in
33 this matter does not rise to the level of an unfair labor practice.
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35 36 **III. Recommended Order**

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38 In the absence of substantial evidence to warrant a finding of probable merit it is hereby
39 recommended that Unfair Labor Practice Charge 4-2016 be dismissed.
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43 ² See, for instance, Smith Valley Teachers Association v Smith Valley Elementary School District, ULP
44 61-94.

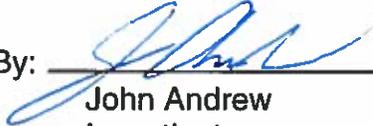
45 ³ Put another way, would each of the six unit members see 1% on top of their current pay rate, or would
46 1% be spread through the matrix the result of which would be less than a 1% increase for each of the
47 unit members?

48 ⁴ By this time there was a new superintendent and the most recent of three MEA-MFT field consultants
49 was now at the table.

50 ⁵ Perhaps, as suggested, had the agreement been written up at the time a tentative agreement was
reached any misunderstanding would have been avoided. That did not happen.

1 DATED this 10th day of February 2016.
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8 BOARD OF PERSONNEL APPEALS
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11 By: 
12 John Andrew
13 Investigator
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16 NOTICE
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18 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
19 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
20 may be appealed to the Board. The appeal must be in writing and must be made within
21 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
22 Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to
23 dismiss becomes a final order of the Board.
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29 CERTIFICATE OF MAILING
30

31 I, Wendy Knutson, do hereby certify that a true and correct copy
32 of this document was mailed to the following on the 10th day of February
33 2016, postage paid and addressed as follows:
34
35

36
37 TOM BURGESS FIELD CONSULTANT
38 MEA MFT
39 1001 SW HIGGINS 101
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