

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. 8-2016

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13 TEAMSTERS LOCAL UNION 190,)
14 Complainant,)
15 -vs-) INVESTIGATIVE REPORT
16) AND
17 CITY OF BILLINGS,) NOTICE OF INTENT TO DISMISS
18 Defendant,)
19)

20
21 **I. Introduction**

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23 On September 23, 2015, Teamsters Local Union 190, (Local 190 or Union), filed an
24 unfair labor practice charge with the Board of Personnel Appeals alleging that the City
25 of Billings (City) refused to bargain in good faith, a violation of 39-31-401(5) MCA. The
26 City has responded to the complaint and denied any violation of Montana law. Bonnie
27 Sutherland, Assistant City Attorney, appeared on behalf of the City. Local 190 is
28 represented by Vicki Nelson McDonald, attorney at law.
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31 John Andrew was assigned by the Board to investigate the charge and has reviewed
32 the information submitted by the parties and communicated with them as necessary in
33 the course of the investigation.
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35 **II. Findings and Discussion**

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37 The City and the Union have a long history of collective bargaining. At the point in time
38 when the instant matter was filed the parties were negotiating a successor collective
39 bargaining agreement. A new agreement is now in effect running until June 30, 2018.
40 There is no animus between the parties and no allegations against the City other than
41 bad faith bargaining.
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44 The charge concerns allegations that the City makes unilateral changes in working
45 conditions absent bargaining or impasse. No specific instance is mentioned nor any
46 particular individual named to have been adversely effected. Rather the charge avers
47 that the City posts vacancy announcements indicating a work schedule of certain
48 specific days and then, when the applicant is hired, the City changes the days of work to
49 days other than those initially posted. The City has denied the charge objecting to lack
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1 of specificity, but then addressing the generic allegations with an encompassing denial
2 asserting management rights and contract language.
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4 Absent specificity in the complaint, coupled with its nature, the position of the City is well
5 taken. It seems speculative that a change in days of work from that originally indicated
6 to a different schedule is necessarily of an adverse nature. In fact, in some
7 circumstances a change may be beneficial¹. Beyond this, however, and most
8 importantly, the remedy for an issue like this one is found in the language of the
9 bargaining agreement - an agreement currently in effect, and one that contains final and
10 binding arbitration. Given the nature of this complaint and the seeming need for
11 interpretation of contract language as well as bargaining history, the grievance
12 procedure is the proper forum for determining not only the meaning of the language and
13 intent of the parties, but also, whether any remedy is in order. Given the above,
14 substantial evidence is lacking for a finding of probable merit and the need for hearing.
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17 **III. Recommended Order**
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19 It is hereby recommended that Unfair Labor Practice Charge 8-2016 be dismissed.
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21 DATED this 30th day of MARCH 2016.
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23
24

25 BOARD OF PERSONNEL APPEALS
26

27 By: 
28 _____
29 John Andrew
30 Investigator
31
32

33 NOTICE
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35 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
36 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
37 may be appealed to the Board. The appeal must be in writing and must be made within
38 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
39 Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to
40 dismiss becomes a final order of the Board.
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50 ¹ In either situation, and dependent on circumstances, including contract language, a necessity to bargain
may still exist.

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CERTIFICATE OF MAILING

I, Wendy Krutson, do hereby certify that a true and correct copy of this document was mailed to the following on the 30th day of March 2016, postage paid and addressed as follows:

VICKI NELSON MCDONALD
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