

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. 19-2016

12
13 JOEL STEINMETZ,)
14 Complainant,)
15 -vs-) INVESTIGATIVE REPORT
16) AND
17 TERRY K-12 SCHOOL DISTRICT NO. 5,) NOTICE OF INTENT TO DISMISS
18 Defendant.)
19

20
21 **I. Introduction**

22
23 On May 26, 2016, Joel Steinmetz filed a complaint with the Board of Personnel Appeals
24 alleging that Terry Public Schools (hereinafter District) committed an unfair labor
25 practice. Concurrent with this, Mr. Steinmetz filed a charge with the Board alleging that
26 the Montana Education Association/American Federation of Teachers (hereinafter TTA
27 or Union)¹ had committed an unfair labor practice. Both charges were served on the
28 defendants and the complaints assigned to John Andrew for investigation.²
29

30
31 Before initial answers were filed by either of the defendants, Mr. Steinmetz copied the
32 investigator with an email sent to a Human Rights Bureau (HRB) investigator. That
33 email advised the HRB investigator that Mr. Steinmetz's teaching contract with the
34 District had not been renewed. Although he did not formally amend his unfair labor
35 practice complaint to include the non-renewal, that issue is a part of the continuum of
36 this complaint and has been addressed by both defendants.
37

38 Jeffrey Weldon, attorney at law, appeared on behalf of the District and requested a copy
39 of the complaint from the investigator. The same was supplied as was a copy of the
40

41
42 ¹ On its face the complaint filed by Mr. Steinmetz names the Terry Public Schools as the defendant. On
43 its face the charge against the Union names MEA-MFT as the defendant. In reality, the collective
44 bargaining agreement referred to in this matter is between the Terry K-12 School District No. 5, Prairie
45 County, and the Terry Teachers' Association, affiliated with the MEA-MFT. The caption on this report is
46 amended from the summons to reflect the correct name of the employer.

47 ² The investigator notes that allegations made by Mr. Steinmetz against each defendant were so
48 intertwined as to necessitate sharing allegations against the District with the Union and vice versa. As
49 further information was submitted by Mr. Steinmetz this became more and more the case. Consolidation
50 of the charges was suggested by the investigator but rejected by Mr. Steinmetz. Nonetheless evidence
and argument submitted on each charge were considered by the investigator as common to both cases.

1 complaint against the TTA as, in the view of the investigator, the two charges
2 overlapped. In response to this Mr. Weldon filed an initial answer to the complaint on
3 behalf of the District. In this answer the District asked that the charge be dismissed as
4 too vague for proper response. The investigator did not recommend dismissal at that
5 point but rather attempted to better define the complaint against the District – ARM
6 24.26.680(3)(c). That has now occurred and the District, in response of August 8, 2016,
7 again requested the matter be dismissed.
8

9
10 In the course of processing this charge the investigator attempted to summarize Mr.
11 Steinmetz's complaint to be allegations that the District retaliated against him when he
12 requested union representation and that the District and the Union acted in concert to
13 deny him access to the grievance procedure. Further correspondence from Mr.
14 Steinmetz dated July 12, 2016, summarizes his position:
15

16 My fundamental argument is that the Terry Public School and Terry Teachers
17 Association in affiliation with MEA-MFT failed to provide access to and
18 throughout the grievance procedure (representation of all levels in which I was
19 guaranteed through school board policies, the CBA, and contract. When I was
20 denied due process procedure (equal protection of law), the District and the
21 Union engaged in an unfair labor practice that has led to severe harm.
22

23
24 In his correspondence to the investigator dated June 28, 2016, Mr. Steinmetz also
25 alleges a violation by the District of the commonly referred to *Weingarten Rule* 420 U.S.
26 251 (1975). Further, during the pendency of this investigation, Mr. Steinmetz has also
27 alleged discrimination played a role in his treatment by the District and the Union.
28

29 Following all this, and up to and including when this report was prepared, there has
30 been an ongoing attempt to further afford Mr. Steinmetz full opportunity to submit
31 information and argument in support of his charge.
32

33 II. Findings and Discussion

34
35 Joel Steinmetz was employed as an industrial arts teacher by the District for the 2015-
36 2016 school year. It was his first year of employment with the District. Mr. Steinmetz is
37 not a tenured teacher under Montana law.
38

39 The action leading to this complaint is captured in a letter of dated February 16, 2016,³
40 from Superintendent Casey Klasna to Joel Steinmetz. That letter placed Mr. Steinmetz
41 on paid administrative leave. He remained in that status until such time as the District
42 elected to not renew his teaching contract in the spring of 2016.
43

44 In reviewing this matter, the question of processing grievances involves two issues.
45 One is whether or not Mr. Steinmetz was aware of applicable grievance procedures.
46 The other is whether or not the District refused to process a grievance or grievances
47 filed by Mr. Steinmetz or his duly authorized representative.
48

49
50 ³ Although dated February 16, 2016, the letter was actually issued on February 11, 2016, as reflected in
signature lines on the document.

1
2 There are two possible grievance procedures applicable to Mr. Steinmetz. A grievance
3 could be filed under the grievance procedure applicable to District policy, or a grievance
4 could be filed alleging a violation of terms of the bargaining agreement between the
5 District and the TTA. Arguably, there could be some overlap in the items subject to one
6 or the other of the grievance processes with District policy being that board policy will
7 govern when a matter is not specifically subject to the bargaining agreement.
8

9 The District grievance procedure is found beginning at page 41 of the Terry Public
10 Schools Policy Manual. It is titled the Uniform Complaint Procedure (UCP) and codified
11 as policy #1700. The UCP provides that all individuals may use the complaint
12 procedure when the individual believes the Board, or its agents have violated the
13 individual's rights under (1) Montana constitutional, statutory, or administrative law; (2)
14 United States constitutional, statutory, or regulatory law; or, (3) Board policy.
15

16 The UCP sets three levels of appeal culminating with the Board of Trustees.⁴ At level 2
17 the process provides for a signed and dated complaint to be filed with the administrator
18 (superintendent) specifying the nature of the complaint; a description of the event or
19 incident giving rise to the complaint, including school personnel involved; and, the
20 remedy or resolution requested. Any such complaint must be filed within 30 calendar
21 days of the incident, or within 30 days of the time the individual could reasonably be
22 aware of such event or incident.
23

24 No grievance was filed under the collective bargaining agreement by either the Union or
25 Mr. Steinmetz. In addition, no grievance was filed by Mr. Steinmetz under District policy
26 – the UCP. There is no evidence the District had any hand in preventing a grievance
27 from being filed in either forum. In the case of the grievance procedure in the collective
28 bargaining agreement, it is clear Mr. Steinmetz was fully aware of the grievance
29 procedure. Mr. Steinmetz knew no grievance was filed by the TTA. That is the basis of
30 his complaint against the Union. If a grievance was not filed, that is not the fault of the
31 District and there is no evidence offered to show the District acted in concert with the
32 Union to deny Mr. Steinmetz the ability to file a grievance under the bargaining
33 agreement. To believe otherwise is speculative at best and the District certainly cannot
34 be accused of failing to process a grievance when none was filed.
35

36 Pertaining to the grievance procedure applicable to District policy, Mr. Steinmetz
37 provided the investigator with what he represented to be a transcript of a meeting
38 involving Superintendent Klasna, TTA President Greg Mendenhall, and Mr. Steinmetz.
39 If the transcription is accurate on its face it is clear that Mr. Steinmetz asked for
40 information about filing a grievance, presumably under District policy. In response
41 Superintendent Klasna referred Mr. Steinmetz to the District website.
42

43 The investigator has accessed the District website.⁵ On that site is found, in MTSBA
44 policy format, the Terry Public Schools Policy Manual – some 403 pages in length-
45 containing all one would need to know about the grievance procedure and how to file a
46 grievance. Very simply, no grievance involving District policy was ever filed by Mr.
47

48 ⁴ Unless the complaint might involve the county superintendent in which case that process is described.

49 ⁵Found at:

50 https://issuu.com/montanaschoolboardsassociation/docs/terry_public_schools_policy_manual?e=16838009/12505566.

1 Steinmetz. There is no reason offered, and none can be ascertained by the
2 investigator, why Mr. Steinmetz did not file a grievance under District policy. Since no
3 grievance was properly before it, there was nothing for the District to process, and thus,
4 no refusal to do so. Equally important, no information about the grievance procedure
5 was denied to Mr. Steinmetz by the District. Beyond this, there is a failure on the part of
6 Mr. Steinmetz to establish in convincing fashion why a failure to process a grievance
7 under District policy, as opposed to a failure to process a grievance under the collective
8 bargaining agreement, is in any manner an unfair labor practice.
9

10 Since it relates to potential grievances and representation rights, Mr. Steinmetz appears
11 to assert his Weingarten rights were violated by the District. In actual fact, the District
12 went out of its way to ensure Mr. Steinmetz had union representation. Mr. Mendenhall
13 attended the discussions with Superintendent Klasna and Mr. Steinmetz. Mr. Steinmetz
14 may not be satisfied with the representation he received, but, again, as with a failure to
15 file a grievance under either District policy or under the bargaining agreement, that is
16 not the fault of the District.
17

18 Addressing the allegation of discrimination in some fashion playing a role in denying his
19 rights under the collective bargaining act for public employees Mr. Steinmetz cites
20 section 39-31-401(3), MCA, providing in part that an employer cannot discriminate in
21 regard to hire or tenure of employment or any term of condition of employment in order
22 to encourage or discourage membership in any labor organization. He also cites
23 section 39-31-401(4), MCA, making it an unfair labor practice to discharge or otherwise
24 discriminate against an employee for filing an affidavit, petition or complaint or to
25 provide information or testimony. The investigator notes that the HRB did not find merit
26 to charges filed by Mr. Steinmetz against the District alleging discrimination based on
27 his age, gender, and disability. Similarly, the BOPA investigator has seen no evidence
28 of discrimination on the part of the District. That in itself is sufficient to find no merit to
29 the charge there was an unfair labor practice, but the investigator further notes that
30 even if discrimination were shown there would have to be some demonstrated nexus
31 between the discrimination and a violation of the collective bargaining act. No
32 substantial evidence has been offered that demonstrates discrimination occurred, let
33 alone that because of it rights were denied under the bargaining act.
34

35 In terms of the perception of Mr. Steinmetz that the Union and the District acted in
36 concert to deny him rights guaranteed under the collective bargaining act, it is not
37 surprising that both defendants share a certain common purpose and common
38 defenses. This does not mean the District and the TTA acted in concert to deny Mr.
39 Steinmetz rights guaranteed in the bargaining act. In the myriad of allegations made by
40 Mr. Steinmetz it is all but impossible to establish any nexus to the collective bargaining
41 act other than a failure to bring a grievance by a union, or a failure by an employer to
42 process the same, can be an unfair labor practice.⁶ In this regard the Union and the
43 District share a common belief, so again, their responses share a common theme.
44

45
46 ⁶ Filing a grievance under the bargaining agreement is a protected activity and to that extent the Board
47 does have jurisdiction. However, it is well established that administrative agencies, including the Board of
48 Personnel Appeals, do not make constitutional interpretations, *Jarussi v Board of Trustees of School*
49 *District No. 28*, 664 P.2d 316, 318 (Mont 1983). If equal protection/due process denial alleged by Mr.
50 Steinmetz finds its roots in the language of the nonrenewal statutes, as seems the case, that issue is not
for the Board to decide.

1 Regardless of his belief that he was denied equal protection under the law, or certain
2 procedural due process standards, Montana law provides that a non-tenured teacher,
3 Mr. Steinmetz included, can be non-renewed without any reason. The District and the
4 Union know this. The District and the Union both understood the terms of the
5 bargaining agreement. Both defendants know that administrative leave, and the ability
6 to grieve the same, cannot be grieved under the bargaining agreement between the
7 TTA and the Union. Both also know, arguendo, that if administrative leave were
8 disciplinary, as Mr. Steinmetz contends, it would not be subject to the just cause
9 standard under the bargaining agreement. Both also understand that administrative
10 leave is a management right and that under the bargaining agreement only a tenured
11 teacher can challenge nonrenewal under the just cause standard of the agreement.
12 Both also know that notice of nonrenewal by certified mail is proper notice and that,
13 even if there were questions on proper notice, service of the notice by a deputy sheriff is
14 more than adequate.⁷
15

16 As further concerns his allegation that the TTA and the District acted in concert to deny
17 him access to the grievance procedures Mr. Steinmetz points to what he describes as
18 inconsistencies in the argument of the District pertaining to the reasons he was not
19 renewed. Mr. Steinmetz offers that the District argued before the HRB investigator that
20 there was cause for nonrenewal and that therefore he should have received a hearing
21 and/or some form of further due process. Separate and apart from the fact that the
22 investigator cannot see what this has to do with the collective bargaining act, it warrants
23 repeating what was also found in the complaint Mr. Steinmetz filed against the TTA.
24
25

26 There are significant differences between a discrimination complaint and the
27 nonrenewal statutes. In the HRB proceeding Mr. Steinmetz did sustain a reasonable
28 inference burden regarding his discrimination allegation. As such, the District needed to
29 rebut the discrimination claim. The District did so by articulating legitimate, non-
30 discriminatory reasons why Mr. Steinmetz was not renewed. Understandably, this
31 included providing information that students, parents and his fellow workers had issues
32 with Mr. Steinmetz. Because of that, the District decided there was "not a good fit" for
33 Mr. Steinmetz in the District. Mr. Steinmetz may well disagree with whatever students,
34 fellow workers and parents did or not do or say, but this is immaterial when it comes to
35 nonrenewal for a non-tenured teacher when there is no demonstrated discrimination.
36 Most importantly, there is no established nexus between any of this and the collective
37 bargaining act for public employees.
38

39 There is no substantial evidence that either the District or the TTA acted to deny access
40 to the grievance procedure. Further, the appearance of the District and the TTA
41 working in concert with one another is entirely understandable given the commonality of
42 their defenses and the melding by Mr. Steinmetz of the charges filed against each
43 defendant. For those areas within the jurisdiction of the Board of Personnel Appeals
44 there is a lack of substantial evidence to warrant a finding of probable merit.
45
46

47 ⁷ Again, this issue of proper service of nonrenewal has seemingly nothing to do with the bargaining act,
48 but if it does, Mr. Steinmetz argues the document a deputy delivered was not the notice of nonrenewal.
49 Given its efforts and concerns in affording nonrenewal notice to Mr. Steinmetz it defies logic that the
50 District inadvertently had the deputy serve the wrong document on Mr. Steinmetz.

1
2 **III. Recommended Order**
3

4 It is hereby recommended that Unfair Labor Practice Charge 19-2016 be dismissed.
5

6 DATED this 7th day of September 2016.
7
8

9
10 BOARD OF PERSONNEL APPEALS
11

12 By: 
13 _____
14 John Andrew
15 Investigator
16

17
18 NOTICE
19

20 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
21 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
22 may be appealed to the Board. The appeal must be in writing and must be made within
23 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
24 Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to
25 dismiss becomes a final order of the Board.
26
27

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29 *****
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31 CERTIFICATE OF MAILING

32 I, Wanda Knutson, do hereby certify that a true and correct copy
33 of this document was mailed to the following on the 7th day of September
34 2016, postage paid and addressed as follows:
35
36

37 JOEL STEINMETZ
38 3013 MYRTLE DRIVE
39 BILLINGS MT 59102
40

41 JEFFREY WELDON
42 ATTORNEY AT LAW
43 PO BOX 2558
44 BILLINGS MT 59103 2558
45
46
47
48
49
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