

1 Department of Labor and Industry
2 Board of Personnel Appeals
3 PO Box 201503
4 Helena, MT 59620-1503
5 (406) 444-0032
6
7

8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 20-2016

11
12
13 JOEL STEINMETZ,)
14 Complainant,)
15 -vs-) INVESTIGATIVE REPORT
16) AND
17 TERRY TEACHERS ASSOCIATION,) NOTICE OF INTENT TO DISMISS
18 MEA-MFT,)
19 Defendant.)

20
21
22 **I. Introduction**
23

24 On May 26, 2016, Joel Steinmetz filed a complaint with the Board of Personnel Appeals
25 naming the MEA-MFT (hereinafter TTA or Union) as the defendant in an unfair labor
26 practice complaint. Concurrent with this, Mr. Steinmetz filed a charge with the Board
27 naming the Terry Public Schools, (hereinafter District)¹ as the defendant in a separate
28 unfair labor practice complaint. Both charges were served on the defendants and the
29 complaints assigned to John Andrew for investigation.²
30

31
32 Before initial answers were filed by either of the defendants, Mr. Steinmetz copied the
33 investigator with an email sent to a Human Rights Bureau (HRB) investigator. That
34 email advised the HRB investigator that Mr. Steinmetz's teaching contract with the
35 District had not been renewed. Although he did not formally amend his unfair labor
36 practice complaint to include the nonrenewal, that issue is a part of the continuum of
37 this complaint and has been addressed by both defendants.³
38

39
40 ¹ On its face the complaint filed by Mr. Steinmetz names the MEA-MFT as the defendant. On its face, the
41 charge against the employer names Terry Public Schools as the defendant. The collective bargaining
42 agreement referred to in this matter is between the Terry K-12 School District No. 5, Prairie County, and
43 the Terry Teachers' Association, affiliated with the MEA-MFT. Accordingly, the captioning in the original
44 summons is amended to reflect that.

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

50 ³ Mr. Steinmetz also alleges that nonrenewal was done improperly, including how notice of nonrenewal
was accomplished.

1 Maggie Copeland, MEA-MFT Field Consultant, appeared on behalf of the TTA and in
2 Answer filed with the Board denied that an unfair labor practice had been committed by
3 the Union.
4

5 **II. Findings and Discussion**

6
7
8 Joel Steinmetz was employed as an industrial arts teacher by the District for the 2015-
9 2016 school year. It was his first year of employment with the District. Mr. Steinmetz is
10 not a tenured teacher under Montana law.

11
12 The action leading to this complaint is captured in a letter dated February 16, 2016,⁴
13 from Superintendent Casey Klasna to Joel Steinmetz. The letter placed Mr. Steinmetz
14 on paid administrative leave. He remained in that status until such time as the District
15 elected to not renew his teaching contract in the spring of 2016. The issues that revolve
16 around this letter include, amongst other allegations, whether or not the TTA refused to
17 process, or improperly processed, a grievance concerning this letter and matters related
18 to it.

19
20 As this case has evolved, and Mr. Steinmetz has further defined and expanded his
21 complaint, he has cited considerable case law including decisions addressing the duty
22 of fair representation by a union. The investigator will not cite applicable precedent, but
23 will note that the duty of fair representation is breached if the actions of a union are in
24 bad faith, arbitrary in nature, or discriminatory.

25
26 Mr. Steinmetz argues he was denied membership in the TTA. Seemingly, the denial of
27 membership was discriminatory, and/or subsequent actions of the TTA in not
28 processing grievances were discriminatory. Whether this alleged discrimination was
29 because he was not a union member, or whether it was because he was a member of a
30 protected class is unclear, so both will be addressed. Mr. Steinmetz asserts this
31 discrimination, be it subject to the jurisdiction of the Human Rights Bureau, or the Board
32 of Personnel Appeals, occurred because he was engaged in protected activities.

33
34 It is fundamental that a union has an obligation to represent all members of the
35 *bargaining unit* (emphasis added) equally, including an obligation to process
36 grievances, whether the grievant is a union member or not. If Mr. Steinmetz believes
37 that because he was not a union member he somehow did not enjoy the same
38 representation rights as union members, he is incorrect in that belief. Regardless, there
39 is no evidence offered by Mr. Steinmetz that he was ever denied membership in the
40 Union, let alone that any form of discrimination was involved in him not becoming a
41 member of the TTA. The issue then becomes whether or not the Union failed to
42 process a grievance and discriminated against him because he was not a union
43 member, or whether the TTA failed to process a grievance based on some other form of
44 discrimination.

45
46 In reviewing this matter, the investigator can find no evidence that the TTA failed to
47 process a grievance because Mr. Steinmetz was not a union member. Beyond this,
48 there is no evidence that the TTA refused to process a grievance because Mr.

49
50 ⁴ Although dated February 16, 2016, the letter was actually issued on February 11, 2016, as reflected in
signature lines on the document.

1 Steinmetz was a member of a protected class. In fact, if he is a member of a protected
2 class, the investigator cannot identify what class that is other than through information
3 filed with the Human Rights Bureau which was supplied to the investigator in the course
4 of processing the complaints against the District and the Union. There are overtones in
5 the unfair labor practice complaint that Mr. Steinmetz was treated differently than a
6 female employee working for the District. This allegation was addressed by the HRB
7 and a "no merit" finding made on that issue. Applying the test to determine if the duty of
8 fair representation was beached for discriminatory reasons, there is no substantial
9 evidence to show that discrimination occurred, either because Mr. Steinmetz was a
10 member of a protected class, or because he engaged in activities protected under the
11 collective bargaining act.
12

13 Turning to the grievance process and the duty of fair representation, the question of
14 processing grievances involves two issues. One is whether or not Mr. Steinmetz was
15 aware of applicable grievance procedures. The second is whether or not the TTA failed
16 to process a grievance either in bad faith, or arbitrary fashion, the remaining standards
17 applied to duty of fair representation allegations.
18

19 In the District there are two possible grievance procedures available to Mr. Steinmetz.
20 A grievance could be filed under District policy, or a grievance could be filed alleging a
21 violation of terms of the bargaining agreement between the District and the TTA. When
22 there are matters not subject to the collective bargaining agreement, District policy and
23 its grievance procedure will govern.
24

25 Two things are clear in this case. The first is no grievance was filed under the collective
26 bargaining agreement either by the Union or Mr. Steinmetz. The second is no grievance
27 was ever actually filed by Mr. Steinmetz under District policy.⁵ Equally clear, Mr.
28 Steinmetz was fully aware of the grievance procedure applicable to the bargaining
29 agreement. He had access to the bargaining agreement so he knew the procedure for
30 filing a grievance under that agreement. Mr. Steinmetz knew a grievance was not filed
31 by the TTA under District policy. He argues that should have been done.
32

33 Pertaining to the grievance procedure applicable to District policy, Mr. Steinmetz
34 provided the investigator with what he represents to be a transcript of a meeting⁶
35 involving Superintendent Klasna, TTA President Greg Mendenhall, and Mr. Steinmetz.
36 If the transcription is accurate on its face, it is clear that Mr. Steinmetz asked for
37 information about filing a grievance, presumably under District policy. In response
38 Superintendent Klasna referred Mr. Steinmetz to the District website. The investigator
39
40

41 ⁵The Uniform Complaint Procedure of the District sets three levels of appeal culminating with the Board of
42 Trustees. At level 2 the process provides for a signed and dated complaint to be filed with the
43 administrator (superintendent) specifying the nature of the complaint; a description of the event or
44 incident, giving rise to the complaint, including school personnel involved; and, the remedy or resolution
45 requested. Any such complaint must be filed within 30 calendar days of the incident, or within 30 days of
46 the time the individual could reasonably be aware of such event or incident. The District asserts in
47 answer to the charge against it that no grievance was ever filed. The investigator can find no evidence a
48 grievance was filed either.
49

50 ⁶ This transcription was taken from audio recordings made by Mr. Steinmetz of his meetings with
Mendenhall and Klasna also attending.

1 has accessed the website⁷ and finds, in MTSBA policy format, the Terry Public Schools
2 Policy Manual – some 403 pages in length containing all one would need to know about
3 the grievance procedure and how to file a grievance. Very simply, no grievance
4 involving District policy was ever filed by Mr. Steinmetz. There is no reason offered,
5 and none can be ascertained by the investigator, why Mr. Steinmetz did not file a
6 grievance under District policy, even if the TTA did not. The TTA cannot be faulted for
7 the failure of Mr. Steinmetz to file a grievance under District policy.
8

9 Beyond this, there is a failure on the part of Mr. Steinmetz to establish in any fashion
10 why a failure to process a grievance under District policy, as opposed to a failure to
11 process a grievance under the collective bargaining agreement, is in any manner an
12 unfair labor practice. This is particularly the case, as will be further discussed below,
13 given the nature of the actions taken by the District. In short, and as will also be further
14 discussed, the Union did not act in bad faith, nor did it arbitrarily fail to file or process a
15 grievance, be it under District policy, or the bargaining agreement.
16

17 Related to whether or not the TTA acted in bad faith or in arbitrary fashion is the
18 perception and allegation of Mr. Steinmetz that the Union and the District retaliated
19 against him for engaging in protected activities and generally acted in concert to deny
20 him rights guaranteed under the collective bargaining act. It is not surprising to the
21 investigator that both defendants share a certain amount of common purpose and,
22 therefore, similar or common defenses, but that does not mean they acted in concert to
23 do anything. Additionally, in the myriad of allegations made by Mr. Steinmetz, it is all
24 but impossible to establish much of a nexus to the collective bargaining act other than
25 the fact that a failure to bring a grievance by a union, or a failure by an employer to
26 process the same, can be an unfair labor practice⁸. Rather, much of what Mr.
27 Steinmetz asserts is founded in constitutional arguments that he was denied due
28 process and/or equal protection, be it under District policy or the contractual grievance
29 procedure. All of this relates to the decision of the District to not renew his teaching
30 contract under Montana law. The reality is, regardless of whether he thinks it denied
31 him equal protection or certain procedural due process standards, in Montana a non-
32 tenured teacher can be non-renewed without any reason.
33

34 The District and the Union both understood the terms of the bargaining agreement.
35 Both defendants know that administrative leave, and the ability to grieve the same,
36 cannot be grieved under the bargaining agreement between the TTA and the Union.
37 Both also know, arguendo, that if administrative leave were disciplinary, as Mr.
38 Steinmetz contends, it would not be subject to the just cause standard under the
39 bargaining agreement. Both also understand that under the bargaining agreement only
40 a tenured teacher can challenge nonrenewal under the just cause standard of the
41 agreement. Both also know that notice of nonrenewal by certified mail is proper notice
42 and that, even if there were questions about whether there was proper notice to Mr.
43

44
45 ⁷[https://issuu.com/montanaschoolboardsassociation/docs/terry_public_schools_policy](https://issuu.com/montanaschoolboardsassociation/docs/terry_public_schools_policy_manual?e=16838009/12505566)
46 [manual?e=16838009/12505566](https://issuu.com/montanaschoolboardsassociation/docs/terry_public_schools_policy_manual?e=16838009/12505566)

47 ⁸ A union is not obligated to file a grievance, see, for instance International Brotherhood of Electrical
48 Workers v. Foust, 442 U.S. 42 (1979). That said, filing a grievance under the bargaining agreement is a
49 protected activity and to that extent the Board does have jurisdiction. However, it is well established that
50 administrative agencies, including the Board of Personnel Appeals, do not make constitutional
interpretations, *Jarussi v Board of Trustees of School District No. 28*, 664 P.2d 316, 318 (Mont 1983).

1 Steinmetz, service of the notice by a deputy sheriff is more than adequate.⁹ In short,
2 there is no evidence either the District or the TTA acted to deny access to the grievance
3 procedure or that either retaliated against Mr. Steinmetz for engaging in protected
4 activities. The appearance of the TTA and the District working in concert once charges
5 were filed is entirely understandable, but nothing indicates the same happened or that in
6 any manner Mr. Steinmetz was denied any rights under the collective bargaining act.
7

8 As a final note on the allegation that the Union and the District somehow acted in
9 concert to deny his rights, Mr. Steinmetz points to what he describes as inconsistencies
10 in the argument of the District pertaining to the reasons he was not renewed. Mr.
11 Steinmetz seems to believe that the District, in particular, argued before the HRB
12 investigator that there was cause for nonrenewal and that therefore he should have
13 received a hearing and/or some form of further due process. Mr. Steinmetz argues the
14 Union was somehow at fault for not recognizing this. Separate and apart from the fact
15 that the investigator cannot see what this has to do with the collective bargaining act, it
16 warrants comment since it is of significance to Mr. Steinmetz.
17

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

31 The burden is on the complainant in an unfair labor practice complaint to produce
32 substantial evidence that an unfair labor practice was committed. There is no evidence
33 of retaliation by the TTA, because Mr. Steinmetz engaged in protected activities. There
34 is no substantial evidence to show the TTA acted in bad faith, arbitrary fashion, or in
35 discriminatory fashion for whatever it did, or did not do, in regard to the actions taken by
36 the District, up to and including nonrenewal of Mr. Steinmetz's teaching contract with
37 the District. Having reviewed all the evidence that was submitted, and in full
38 consideration of the arguments of the parties, it is the view of the investigator that there
39 is insufficient evidence to warrant a finding of probable merit.
40
41
42
43
44
45
46
47

48 ⁹ Again, this issue of proper service of nonrenewal has seemingly nothing to do with the bargaining act,
49 but if it does, Mr. Steinmetz argues the document a deputy delivered was not the notice of nonrenewal.
50 Given its efforts and concerns in affording nonrenewal notice to Mr. Steinmetz it defies logic that the
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 6th day of September 2016.
7
8
9

10
11
12
13 BOARD OF PERSONNEL APPEALS

14
15 By: 
16 _____
17 John Andrew
18 Investigator
19

20
21 NOTICE

22
23 Pursuant to 39-31-405(2), MCA, if a finding of no probable merit is made by an agent of
24 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
25 may be appealed to the Board. The appeal must be in writing and must be made within
26 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
27 Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to
28 dismiss becomes a final order of the Board.
29
30
31
32
33

34
35 *****
36 CERTIFICATE OF MAILING

37 I, Windy Luntzen, do hereby certify that a true and correct copy
38 of this document was mailed to the following on the 14th day of September
39 2016, postage paid and addressed as follows:
40
41

42 JOEL STEINMETZ
43 3013 MYRTLE DRIVE
44 BILLINGS MT 59102
45

46 MAGGIE COPELAND
47 MEA-MFT FIELD OFFICE
48 PO BOX 1008
49 GLENDIVE MT 59330 1008
50