

1 BOARD OF PERSONNEL APPEALS  
2 PO BOX 201503  
3 HELENA MT 59620-1503  
4 Telephone: (406) 444-0032  
5 Fax: (406) 444-7071

6 STATE OF MONTANA  
7 BEFORE THE BOARD OF PERSONNEL APPEALS

8  
9 IN THE MATTER OF UNFAIR LABOR PRACTICE 3-2017:

10 BARBARA M BAKKE,  
11 Complainant,

12 vs.

13  
14  
15 FEDERATION OF MONTANA VETERANS  
16 HOME EMPLOYEES, LOCAL #4697, MEA-MFT  
17 Defendant, )

RECOMMENDED ORDER  
STAYING PROCEEDINGS

18  
19  
20 I. INTRODUCTION

21  
22 On September 19, 2016, Barbara M Bakke filed an unfair labor practice charge with the  
23 Board of Personnel Appeals alleging that the Federation of Montana Veterans Home  
24 Employees, Local #4697, MEA-MFT, hereinafter Local, failed to properly represent her in  
25 matters pertaining to actions taken by the State of Montana, Montana Veterans Home  
26 (MVH). A violation of 39-31-402 (1)(a), MCA is alleged. Ms. Bakke is represented in this  
27 matter by Kim Christopherson, attorney at law, of Kalispell. Tom Burgess, MEA-MFT field  
28 representative, appeared on behalf of Local 4697 and denied that the Local had  
29 committed an unfair labor practice.

30  
31 Pursuant to Section 39-31-405 (1), MCA John Andrew was appointed by the Board of  
32 Personnel Appeals to investigate the charge. During the course of the investigation  
33 contact was made with representatives of both parties as was deemed necessary.

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35 II. FINDINGS AND DISCUSSION

36  
37 Ms. Bakke was terminated from her nursing position with the MVH in Columbia Falls.  
38 The termination occurred on September 7, 2016. Prior to her termination Ms. Bakke  
39 was subject to disciplinary actions taken by the MVH. The first action, a one day  
40 suspension without pay, occurred on November 2, 2015.<sup>1</sup> That matter was grieved by  
41 the Local up to the point of arbitration and resolved in a settlement agreement signed off  
42 on by Ms. Bakke on February 10, 2016. The agreement restored Ms. Bakke's pay.

43  
44 The second disciplinary action taken by MVH against Ms. Bakke occurred on March 3,  
45

46  
47 <sup>1</sup> Due process letters, actions taken by MVH, and their timing are documented in a November 14, 2016,  
48 letter to Tom Burgess from Deborah Sloat, MVH Director of Human Resources.

1 2016. At that time Ms. Bakke was suspended without pay for three days. That action  
2 was grieved by the Local as well and proceeded forward until such time as the Local  
3 learned Ms. Bakke was to be terminated. Discussions ensued between the Local and  
4 the MVH, including preparation of a last chance agreement. Language acceptable to  
5 Ms. Bakke could not be agreed upon, the last chance agreement was never  
6 implemented and the MVH followed through on the discharge of Ms. Bakke, doing so  
7 effective September 7, 2016.  
8

9 Ms. Bakke's discharge has also been grieved by the Local. It has been monitored by  
10 the investigator up to and including the point where the Board of Personnel Appeals has  
11 provided a list of arbitrators to hear the discharge grievance. At present an arbitrator  
12 has not been selected, but the investigator understands the grievance remains alive and  
13 continues to be processed.  
14

15 The position of Ms. Bakke is best summarized in her complaint:  
16

17 "I believe Defendant arbitrarily and without rational basis dropped the ball on my  
18 two previous grievances. Defendant has breached the duty of fair representation  
19 it owed to me, substantially injuring me since I have now lost the opportunity to  
20 challenge the incidents which formed the basis of the termination of my  
21 employment."  
22

23 Having reviewed this charge to date, the investigator finds that, contrary to her  
24 assertion, Ms. Bakke was made aware of the status of her initial grievance and the  
25 resulting agreement she signed. Although, in her view, her notification by the Local was  
26 inadequate, the end result certainly was not. I fail to see where anything the Local did  
27 pertaining to that incident breached the duty of fair representation.  
28

29 Concerning the remainder of her complaint, the Board of Personnel Appeals has long  
30 ago adopted the process of deferral when there is the possibility that an unfair labor  
31 practice charge could find resolution through a grievance process ending in final and  
32 binding arbitration as is the case here. In a similar vein, the Board has always been  
33 concerned about the possibility of inconsistent, or even opposite results if an arbitrator  
34 and the Board are reviewing and rule on common issues or potentially common issues.  
35 See for instance ULP 43-81, William Converse v Anaconda Deer Lodge County and ULP  
36 44-81 James Forsman v Anaconda Deer Lodge County, August 13, 1982, wherein the  
37 Board of Personnel Appeals adopted National Labor Relations Board precedent set forth  
38 in Collyer Insulated Wire, 192 NLRB 387, 77 LRRM 1931. In instances of this nature the  
39 Board defers to the grievance procedure.  
40

41 The Step III grievance denial letter of November 14, 2016, from Deborah Sloat to Tom  
42 Burgess clearly puts forward that MVH, in its view, met the just cause standards of the  
43 collective bargaining agreement, and again, in its view, MVH afforded Ms. Bakke due  
44 process. Therefore, according to MVH, the actions taken and processes utilized were  
45 appropriate and warranted. Included in this letter from Ms. Sloat are the two disciplinary  
46 actions that form the basis of Ms. Bakke's unfair labor practice complaint against the  
47  
48

1 Local.

2  
3 Based on the foregoing, and the likelihood that an arbitration, if it occurs, will address  
4 issues at the heart of the pending unfair labor practice, it is the view of the investigator  
5 that this matter should continue to be processed under the grievance procedure of the  
6 collective bargaining agreement. Deferral and a stay are appropriate and, even if not  
7 appealed at this time, upon proper motion, either party can request the stay in  
8 proceedings be lifted at a time in the future.  
9

10 **III. RECOMMENDED ORDER**

11  
12 It is hereby recommended that further action on unfair labor practice charge 3-2017 be  
13 stayed and the matter further deferred to the grievance procedure.  
14

15  
16 Dated this 21st day of December 2016.  
17

18  
19 **BOARD OF PERSONNEL APPEALS**  
20

21  
22  
23 By: \_\_\_\_\_  
24

25 John Andrew, Investigator  
26

27 **APPEAL NOTICE/LIFTING OF STAY:**

28 ARM 24.26.680(A). If during the course of the informal investigation of the unfair labor  
29 practice charge, the board's agent determines that the charge is one that may be  
30 resolved through deferral to the final and binding arbitration provisions contained in the  
31 collective bargaining agreement between the parties, the board's agent may issue a  
32 recommended order staying the board's proceedings.  
33

34 (2) A party may appeal the recommended order to stay proceedings by filing an appeal  
35 with the board within 14 days after service of the recommended order.

36 (3) An appeal of the recommended order to stay proceedings must clearly set forth the  
37 specific factual or legal reasons indicating error. At the discretion of the board,  
38 interested parties will be afforded an opportunity to respond to an appeal of the  
39 recommended order.

40 (4) The board or the board's agent has the discretion to dissolve the stay and continue  
41 with its investigation into the unfair labor practice if a party makes a proper showing  
42 that:

43 (a) the unfair labor practice charge has not been resolved in a reasonable amount of  
44 time;

45 (b) the arbitration decision has not resolved the unfair labor practice; or

46 (c) the decision to stay the proceedings was inconsistent with the laws that govern  
47 collective bargaining in Montana.  
48

1 (5) A decision by the board or the board's agent to dissolve a stay is not appealable.  
2 (6) If the board affirms and adopts the recommended order to stay proceedings, the  
3 stay remains in place until there is a subsequent request to review the stay or the  
4 board's order affirming and adopting the recommended order is removed by operation  
5 of court order.  
6

7 Any appeal of this Recommended Order Staying Proceedings must be filed with the  
8 Board of Personnel Appeals, P.O. BOX 201503, Helena, MT 59620-1503 within 14  
9 days after service of the recommended order.

10  
11 CERTIFICATE OF SERVICE  
12

13 The undersigned does hereby certify that a true and correct copy of the  
14 foregoing/attached "Recommended Order Staying Proceedings" was served upon the  
15 following on the 21<sup>st</sup> day of December, 2016, postage paid and  
16 addressed or delivered as indicated:  
17

18 BARBARA M BAKKE  
19 2370 FOOTHILL ROAD  
20 KALISPELL MT 59901  
21

22 KIM CHRISTOPHERSON  
23 CHRISTOPHERSON LAW OFFICE  
24 PO BOX 1817  
25 KALISPELL MT 59903

26 TOM BURGESS  
27 MEA MFT FIELD CONSULTANT  
28 1001 SW HIGGINS #101  
29 MISSOULA MT 59803  
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