

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 UNFAIR LABOR PRACTICE CHARGE NO. 6-2017

11 JEFFREY R. MEDLER,
12 Complainant,

13 -vs-

14 MONTANA EDUCATION ASSOCIATION-
15 MONTANA FEDERATION OF
16 TEACHERS, NEA/AFT,
17 Defendant.

18 INVESTIGATIVE REPORT
19 AND
20 NOTICE OF INTENT TO DISMISS

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23 **I. Introduction**

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25 On December 14, 2016, Jeffrey R. Medler filed an unfair labor practice charge with the
26 Board of Personnel Appeals alleging a violation of 39-31-401, Montana Code Annotated
27 (MCA) by the Montana Education Association-Montana Federation of Teachers,
28 affiliated with the National Education Association and the American Federation of
29 Teachers, hereinafter referred to as MEA-MFT, or Association. Tom Burgess, field
30 representative with the MEA-MFT, filed a timely Answer to the complaint and denied
31 that an unfair labor practice had been committed.
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34 John Andrew was assigned by the Board to investigate the charge and has
35 communicated with the parties in the course of the investigation.
36

37 **II. Findings and Discussion**

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39 As pointed out in the Answer filed by the Association, the section of law cited by Mr.
40 Medler in his complaint is incorrect. Mr. Medler cites a violation of 39-31-401, MCA. In
41 his pleadings Mr. Medler contends the Association "breached their duty of fair
42 representation and the defendant acted in bad faith during the course of events
43 described in the following narrative." With that explanation by Mr. Medler, it is clear that
44 the correct section of law allegedly violated is 39-31-402, MCA and/or 39-31-201, MCA.
45 The error in his complaint should not be fatal to his case, nor does the Association
46 contend it should be.
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49 The investigator also notes that the collective bargaining agreement applicable to Mr.
50 Medler is between the Board of Trustees of Evergreen School District No. 50 and the

1 Evergreen Education Association (EEA), affiliated with the MEA-MFT. Thus, although
2 naming MEA-MFT only, the complaint actually concerns the EEA. Therefore, in using
3 the term Association, the investigator refers both to the EEA and the MEA-MFT unless
4 specified otherwise.¹
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6 The facts in this case are straightforward. Mr. Medler began his employment as a
7 teacher in 1998. At the time of his termination effective June 30, 2016, Mr. Medler was
8 a behavior support specialist. From the time he began his career until his termination,
9 Mr. Medler was employed by either Crossroads School and/or the Evergreen School
10 District. Mr. Medler had been involved in union activities as an officer as well as in
11 contract negotiations.
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14 Although the investigator is unsure of the exact relationship between Crossroads and
15 the Evergreen School District, beginning in the academic year 2014-2015 it was
16 determined that educational services provided by Crossroads would be brought under
17 the control of Evergreen. Due to this restructuring, the EEA, in conjunction with
18 Evergreen School District, entered into a Memorandum of Understanding (MOU) on
19 April 14, 2015. The MOU modified the recognition clause of the collective bargaining
20 agreement between the District and the EEA to encompass former Crossroad's
21 employees, including Mr. Medler and Sara Bigelow.
22

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24 In addition to modifying the recognition clause and making the EEA the exclusive
25 representative for collective bargaining, the MOU further recognized that as employees
26 of the Evergreen District, Ms. Bigelow and Mr. Medler would need sufficient credentials
27 to be certified by the Office of Public Instruction. The MOU further required that former
28 Crossroads employees, including Ms. Bigelow and Mr. Medler, get the necessary
29 certification by June 15, 2016. Ms. Bigelow was already working to obtain the
30 necessary credentials for certification. Mr. Medler was not doing so, nor, did he attempt
31 to do so. Thus, ultimately Mr. Medler was terminated.
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34 Mr. Medler alleges that the Association acted in bad faith and thus breached its duty of
35 fair representation. A union violates its duty of fair representation to the employees it
36 represents only if its actions are "arbitrary, discriminatory or in bad faith . . ." Vaca v.
37 Sipes, 386 U.S. 171,190 [64 LRRM 2369] (1967). To determine if the duty to fairly
38 represent has been breached each element in the three part standard must be
39 examined, Airline Pilots Ass'n, Int'l v. O'Neill, 499 U.S. 65, 77 [136 LRRM 2721] (1991).
40 The Board of Personnel Appeals has adopted the Vaca standard and in Ford v.
41 University of Montana and Missoula Typographical Union No. 277, 183 MT 112, 598
42 P.2d 604, (Mont 1979) the Montana Supreme Court in reviewing an unfair labor
43 practice charge brought before the Board held:
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46 In short, the Court has to find that the Union's action was in some way a product
47 of bad faith, discrimination, or arbitrariness. The mere fact that Bonnie Ford
48 disagrees with the decision of the Union [in determining that her grievance was
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51 ¹ This error too should not be fatal to his complaint in the view of the investigator, nor does the
Association, although aware of the deficiency, contend it should be either.

1 without merit] is not sufficient basis for a finding of breach of the duty of fair
2 representation absent these factors.
3

4 Mr. Medler never filed a grievance over his termination nor were any grievances filed
5 over any of the events eventually leading to his termination. Nonetheless, the
6 standards set forth above are still applicable. In that regard, Mr. Medler does not
7 contend that the Association discriminated against him, nor does he assert that the
8 actions of the Association were arbitrary. The investigator can find no basis that the
9 conduct of the Association was either discriminatory or arbitrary. Mr. Medler's complaint
10 is thus founded in his allegation that the Association acted in bad faith.
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13 In any unfair labor practice complaint the burden is on the complainant to come forward
14 with substantial evidence that there is probable merit to the charge. Specific to this
15 complaint, in order to show bad faith Mr. Medler must produce "substantial evidence of
16 fraud, deceitful action or dishonest conduct", Amalgamated Ass'n of Street, Elec. Ry.
17 And Motor Carrier Employees of Am. v. Lockridge, 403 U.S. 299 (1971).
18

19 It is clear that the MOU entered into by the EEA was done to address positions engaged
20 in bargaining unit related work. The MOU with the District was entirely appropriate and
21 necessary for both the Association and the District. Further, the MOU recognized that
22 positions occupied by Mr. Medler and Ms. Bigelow needed certification, a common
23 objective of the District and the Association, and entirely appropriate and necessary. It
24 was also appropriate and necessary that a time be set to gain certification. Much as a
25 commercial driver needs a CDL to engage in commercial driving, so too do professional
26 school district employees need certification for their occupation. There was no bad faith
27 surrounding the MOU.
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30 Once the MOU was in place, it is abundantly clear that the Association set about to
31 ensure notification to Mr. Medler and Ms. Bigelow. There is no doubt both were notified
32 of the MOU and its potential consequences. There is also no doubt that the Association
33 diligently sought input from both, including encouraging both to attend Association
34 meetings. Ms. Bigelow did attend Association meetings, and she did pursue her
35 needed credentials.² Mr. Medler did neither.
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38 Mr. Medler contends it was not practical, or even possible for that matter, for him to
39 obtain the necessary credentials and certification before the June 15, 2016, the time set
40 in the MOU. Seemingly, having this timeframe in the MOU was part of the bad faith
41 exhibited by the Association. Further, it was Mr. Medler's contention that it was not until
42 Mr. Burgess made him aware in April of 2016, that if he began to obtain credentials the
43 possibility remained that Mr. Medler could retain employment with the District. As to this
44 latter contention, even though there is evidence that Mr. Medler was aware of this
45 possibility before talking to Mr. Burgess, it simply strains credibility that someone in the
46 education arena for any amount of time, let alone almost 20 years, would not know of
47 exceptions being made on a provisional basis while credentials are obtained. It is
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50 ² Although she began this process prior to the MOU, nonetheless she did actively pursue getting
certification.

1 common practice. Beyond that, when he was told credentials were needed, the burden
2 was on Mr. Medler to obtain them, and either by himself, or with the help of the
3 Association, to explore options so he could remain employed.³
4

5 Concerning any difficulty in meeting the June 15, 2016 date, the investigator takes
6 notice of an email exchange Mr. Medler provided. That exchange between Mr. Medler
7 and Diane Muller, EEA President, occurred on March 3, 2015, (emphasis added). In it,
8 Ms. Muller writes to Mr. Medler, in relevant part:
9

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11 "We [the Association] are negotiating a year for you to get OPI recognized
12 certification. During that year you will receive all benefits of a fully certified staff
13 member in a certified position. Our membership was concerned that you would
14 need more time. Do you? We need to know so we can best serve your interest."
15

16 In communication with the investigator, Mr. Medler contends he answered this email,
17 not by email, but by phone, where, according to Mr. Medler, he told Ms. Muller he would
18 need three years.
19

20 Ms. Muller is now retired and residing out of state yet the investigator was able to talk
21 with her on January 25, 2017. Ms. Muller did recall the email exchange. She did not
22 recall talking with Mr. Medler for certain but on reflection indicated that Mr. Medler could
23 have called. She did not recall him mentioning three years. She went on to say that,
24 perhaps, he mentioned it would *take* him three years to get the necessary credentials,
25 but never did Mr. Medler say he will *need* three years to get the credentials. The
26 significance to Ms. Muller, and the investigator, was that had he said he would *need*
27 three years to get the credentials the Association would have been fully prepared to
28 bargain for that with the District. Further, Ms. Muller added that if Mr. Medler had said
29 he would *need* three years to get his credentials, she would have insisted that he
30 provide a plan as to how, and when, he intended to do so, in order to present that to the
31 District. Ms. Muller's statements are entirely consistent with the obvious intent and
32 actions of the Association, as well as Ms. Muller's obvious interest in doing all she could
33 to assist members in getting the necessary certification.
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37 Based on all the investigator has reviewed it is apparent that Mr. Medler never intended
38 to obtain the necessary credentials be it a matter of cost, the time needed, his age, a
39 combination of the above, or something else entirely. Rather than do what was
40 necessary, or even diligently inquire as to options, Mr. Medler instead, and on his own,
41 tried to go other routes, including a request to lower the required level of certification⁴.
42 This is drawn from all the information supplied to the investigator and is further
43 reinforced with Mr. Medler's request to Mr. Burgess for the name of outside counsel
44 who might assist him. Mr. Medler never attempted to work with the Association. That is
45 not the fault of the Association, be the Association the EEA or the MEA-MFT. Mr.
46 Medler never took the Association up on its offers of assistance; he did not attend
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49 ³ The adage/scripture the Lord helps those who help themselves comes to mind as does "The law helps
50 the vigilant before those who sleep on their rights", 1-3-218, MCA.

⁴ Mr. Medler requested this of the Trusees late in the process the request was rejected.

1 Association meetings when given the option; and, he never developed any plan as to
2 how he would obtain the needed credentials. Then, at the point in time when the
3 situation was down to the wire and the District began the statutory process of
4 notification to a tenured teacher in April of 2016, the horse was well out of the barn,
5 again through no fault of the Association. Nothing done by either the EEA or the MEA-
6 MFT rises to the level of bad faith. Nothing done by either the EEA or the MEA-MFT
7 constitutes an unfair labor practice. There is no substantial evidence offered by Mr.
8 Medler to warrant a finding of probable merit.
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12 **III. Recommended Order**
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14 It is hereby recommended that the complaint of Jeffrey Medler be dismissed.⁵
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17 DATED this 26th day of January 2017.
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23 BOARD OF PERSONNEL APPEALS
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27 By:  _____
28 John Andrew
29 Investigator
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45 ⁵ Related to the allegation of bad faith, the investigator notes 39-31-404, MCA providing for a six month
46 period for filing of unfair labor practice complaints. The Association, although it knew it could, did not
47 assert possible time bars to the complaint of Mr. Medler. Ultimately, even though some portions of his
48 complaint might be time barred, June 30, 2016, was the effective date of his termination, so perhaps all of
49 the complaint was timely. Regardless, the Association did want Mr. Medler's employment with the District
50 to continue and it did not want his complaint potentially dismissed, in whole or in part, on timeliness
51 grounds. Taking such a position further counters the allegation of bad faith by Mr. Medler.

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NOTICE

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

CERTIFICATE OF MAILING

I, Patty Anderson, do hereby certify that a true and correct copy of this document was mailed to the following on the 27th day of January 2017, postage paid and addressed as follows:

TOM BURGESS
MEA MFT
1001 SW HIGGINS #101
MISSOULA MT 59803

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