BOARD OF PERSONNEL APPEALS
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STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE 3-2017:

BARBARA M BAKKE, Complainant, vs. FEDERATION OF MONTANA VETERANS HOME EMPLOYEES, LOCAL #4697, MEA-MFT Defendant,	RECOMMENDED ORDER STAYING PROCEEDINGS

I. INTRODUCTION

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

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

II. FINDINGS AND DISCUSSION

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

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

[1] Due process letters, actions taken by MVH, and their timing are documented in a November 14, 2016, letter to Tom Burgess from Deborah Sloat, MVH Director of Human Resources.

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

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

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

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

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

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

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

Local.

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

III. RECOMMENDED ORDER

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

Dated this 21st day of December 2016.

BOARD OF PERSONNEL APPEALS

By: _____
John Andrew, Investigator

APPEAL NOTICE/LIFTING OF STAY:

ARM 24.26.680(A). If during the course of the informal investigation of the unfair labor practice charge, the board's agent determines that the charge is one that may be resolved through deferral to the final and binding arbitration provisions contained in the collective bargaining agreement between the parties, the board's agent may issue a recommended order staying the board's proceedings.
(2) A party may appeal the recommended order to stay proceedings by filing an appeal with the board within 14 days after service of the recommended order.
(3) An appeal of the recommended order to stay proceedings must clearly set forth the specific factual or legal reasons indicating error. At the discretion of the board, interested parties will be afforded an opportunity to respond to an appeal of the recommended order.
(4) The board or the board's agent has the discretion to dissolve the stay and continue with its investigation into the unfair labor practice if a party makes a proper showing that:
(a) the unfair labor practice charge has not been resolved in a reasonable amount of time;
(b) the arbitration decision has not resolved the unfair labor practice; or
(c) the decision to stay the proceedings was inconsistent with the laws that govern collective bargaining in Montana.

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

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

CERTIFICATE OF SERVICE

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

BARBARA M BAKKE
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KALISPELL MT 59901

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STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 3-2017:

BARBARA M. BAKKE, Petitioner, vs. FEDERATION OF MONTANA VETERANS HOME EMPLOYEES, LOCAL 34697, MEA-MFT Respondent.	ORDER ADOPTING THE RECOMMENDED ORDER STAYING PROCEEDINGS

On September 19, 2016, Petitioner Barbara Bakke filed an unfair labor practice charge with the Board of Personnel Appeals. Pursuant to Mont. Code Ann. § 39-31-405(1), board agent John Andrew was assigned to investigate the charge. On December 21, 2016, Andrew issued a Recommended Order Staying Proceedings, thereby deferring the matter to the grievance process contained in the collective bargaining agreement between the parties.

Admin. R. Mont. 24.26.680(A) sets forth the grounds and process for a stay of the Board's proceedings. Since neither party exercised its right to appeal the Recommended Order Staying Proceedings, and with no indication of error in board agent Andrew's decision to recommend a stay, the Board HEREBY ADOPTS the Recommended Order Staying Proceedings.

Pursuant to Admin. R. Mont. 24.26.680(A)(6): "the stay remains in place until there is a subsequent request to review the stay or the board's order affirming and adopting the recommended order is removed by operation of court order."

DATED this 26th day of January, 2017.

BOARD OF PERSONNEL APPEALS

By: Anne L. MacIntyre
Anne L. MacIntyre, Presiding Officer

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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 26th day of January 2017:

Barbara M. Bakke
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Patty Anderson