

BOARD OF PERSONNEL APPEALS
MINUTES – MAY 17, 2012 MEETING

PRESENT:

Anne MacIntyre, Presiding Officer
Max Hallfrisch, Alternate Board Member
Karla Stanton, Board Member
Jay Reardon, Board Member
Steve Johnson, Board Member
Quint Nyman, Board Member

STAFF ATTENDING:

Mark Cadwallader, Board Attorney	Paul Melvin
Tim Little, Board Attorney	John Andrew
Pam McDaniel	

BOARD BUSINESS

APPROVAL OF MINUTES (.13-2:15):

Member Reardon moved to approve the December 15, 2011 minutes. Member Stanton seconded the motion. Board Chair MacIntyre and Board Member Hallfrisch recused themselves from this motion as they were not present at that meeting. Motion passed 3-0

Board Member Reardon moved to approve the March 17, 2012 minutes with correction of the date to March 15, 2012. Member Johnson seconded the motion. Board Member Stanton recused herself as she was not present at that meeting. Motion passed 4-0.

NEXT MEETING DATE (2:24-2:49):

The next meeting is scheduled for June 21, 2012.

PUBLIC COMMENT (2-3-103 MCA) (2:50-3:40):

No comments were made.

ATTORNEY COMMENTS – BOARD ATTORNEY MARK CADWALLADER (3:41-9:22):

Board Attorney Mark Cadwallader introduced the newly hired Attorney Tim Little. Mr. Little will replace Board Attorney Marieke Beck and will be in attendance today to see how the Board operates. He will be the Board Attorney for the June meeting.

Board Attorney Mark Cadwallader also addressed the Miscellaneous topic listed below.

Board Attorney Tim Little addressed the Board about the case Sue Thomas vs. Montana Public Employees Association. This case has been appealed for judicial review and is in District Court. The Board was not named as a party in the case but he will be monitoring the case.

MISCELLANEOUS

Updating BOPA Rules – Fact Finders 24.26.697 ARM to coincide with 39-31-309 MCA. Board Attorney Mark Cadwallader addressed the issue to the Board. The Board approved that when he files the Collyerization Rule change he will add this to the hearing notice as well. The rule was changed awhile back and was not updated to the current Montana Codes Annotated. Board Member Reardon motioned that the Board Attorney to modify the rule 24.26.697 ARM in particular subsection 8 to comply with 39-31-309 MCA. Member Johnson seconded the motion. Motion passed 5-0.

ORAL ARGUMENT – UNFAIR LABOR PRACTICE 23-2011

Montana Public Employees Association, AFSCME, MEA-MFT vs. the State of Montana, Order on Remand from Hearings Officer

Anne MacIntyre was the Presiding Officer in this matter. Board Member Nyman recused himself since he represents Montana Public Employees Association and Alternate Member Max Hallfrisch took his place. Dan Whyte appeared before the Board to represent the State of Montana; Karl England appeared before the Board to represent the unions.

The matter before the Board was to determine if the Hearings Officer Terry Spear erred in his Order on Remand that the Legislature was not deemed as the employer for collective bargaining purposes and to determine if the State bargained in good faith. Argument was heard, questions were asked by Board Members. The first motion was made by Member Reardon that the Board rejects the Hearings Officer’s Summary Judgment and remands it to Hearings for an evidentiary hearing. Member Hallfrisch seconded the motion. Motion fails 2-3. Board Chair MacIntyre and Members Stanton and Johnson dissented. The second motion made by Member Johnson is that the Remand Order be adopted by the Board. Member Stanton seconded the motion. Motion passed 3-2. Members Reardon and Hallfrisch dissented. The third motion from Board Member Johnson moved to modify the Remand and Summary Judgment be adopted by the Board and combine the two orders into one Final Order and reference 39-31-105 of the Montana Codes Annotated and not reference 39-31-102 of the Montana Codes Annotated. Adopt the full rationale of both orders. During discussion, the Board noted that the language on pages 5-6 of the Order Recommending Dismissal on Summary Judgment satisfactorily differentiates between the Legislature and other political subdivisions in the application of 39-31-102. Member Stanton seconded the motion. Motion passed 3-2. Members Reardon and Hallfrisch dissented.

BOARD DISCUSSION- UNFAIR LABOR PRACTICES 18, 19, 33-35-2010 –DECLARATORY RULING

Anaconda Deer Lodge County vs. Anaconda Police Protective Association, Recommended Declaratory Judgment Order issued by Hearings Officer, Terry Spear on February 24, 2012. No briefs submitted.

Anne MacIntyre was the Presiding Officer in this matter. Board Member Hallfrisch excused himself and Member Quint Nyman took his place. Member Reardon excused himself. The parties did not appear before the Board but would be available by telephone if needed.

The matter that came before the Board was asking for a Declaratory Ruling about how to proceed with mediations when they have been recorded without authorization.

Board Member moved to not issue a declaratory ruling since the matter is moot and send it back to Hearings to proceed with the evidentiary hearings on the unfair labor practices. Member Johnson seconded the motion. Motion passed 3-0.

Discussion also took place to review the rules regarding mediation sessions and for the Board to be proactive about the issue. Board Attorney Mark Cadwallader was directed by the Board Chair MacIntyre to research 24.16.7506 (1) ARM and 26-1-813 MCA for its overall intent and the legislative history from 1999. The mediation topic will be scheduled to come before the Board in June. The Board needs a rule that answers and addresses the issue of recording without the parties’ authorization. It may be good for the Board to brainstorm with other staff for options regarding this process.
