STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 34-2005:

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES LOCAL UNION #260, AFL-CIO,	)	Case No. 1731-2005
Complainant,	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER**
vs.	)	
MONTANA DEPARTMENT OF TRANSPORTATION,	)	
Defendant.	)	

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I. INTRODUCTION

On February 24, 2005, the International Union of Painters and Allied Trades Local Union #260, AFL-CIO ("the union"), filed an unfair labor charge asserting that the employer Montana Department of Transportation ("the department") violated Mont. Code Ann. § 39-31-401(5) by failing and refusing to bargain in good faith regarding the demand by the union to upgrade the Sign Shop Painters following the arbitration determination upgrading the Sign Shop Painter Foreman's position. The department denied the charge. On August 10, 2005, the Board of Personnel Appeals ("BOPA"), acting through its investigator, completed its investigation, found probable merit, and referred the case to the Hearings Bureau.

Hearing Officer Terry Spear held a contested case hearing in this matter on November 17, 2005. Terry Lins, General President's Representative, participated on behalf of the union, with designated representative Harlan Davis. Arlyn Plowman, Specialist, State Office of Labor Relations, Montana Department of Administration, participated on behalf of the department, with designated representative Mike Bousliman. The Hearing Officer admitted the union's exhibits "1" through "10" and the department's exhibits "a" through "g" into evidence. Frank Fleisner, Harlan Davis, Jean Bond, John Blacker and Mike Bousliman testified. On January 12, 2006, the union filed the last brief and the matter was submitted for decision.

II. ISSUE

The issue in this case is whether the department committed unfair labor practices in violation of Mont. Code Ann. § 39-31-401, by unilaterally and without bargaining refusing to upgrade the Helena Sign Shop Painters to grade 12 after increasing the Sign Shop Painter Foreman to grade 13, in violation of Article 2, Section 5[6] of the applicable Blue Collar Inventory Agreement.

III. FINDINGS OF FACT

1. The Montana Department of Transportation ("the department") is a "public employer." Mont. Code Ann. § 39-31-103(10).

2. The International Union of Painters and Allied Trades Local Union #260, AFL-CIO ("the union") is a "labor organization." Mont. Code Ann. § 39-31-103(6).

3. The union and four other labor organizations constitute the Public Employees Craft Council ("the PECC"). The PECC is the exclusive bargaining representative for approximately 375 Maintenance Division employees of the department.

4. A maintenance carpenter, three Sign Shop Painters and a Sign Shop Painter Foreman, all employed in the department's Helena Sign Shop, use payroll deductions to submit what appear to be dues payments to the union.

5. The PECC and the department have entered into a Collective Bargaining Agreement ("CBA").[1] Article 15, Section 9 of the CBA references an Inventory Review Agreement, stating, in pertinent part, that the PECC and the department will establish a "Blue Collar Classification Committee" whose purpose will be "to factor Blue Collar classifications according to the inventory review agreement."

6. The preamble to the Inventory Review Agreement provides that the procedures established in that agreement are the exclusive mechanisms to reclassify bargaining unit positions:

> This Agreement shall initiate a procedure for updating the established Blue Collar Classification Plan as it relates to the job classifications covered by the

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[1] Exhibits "a" and "1" are both copies of the 2003-2005 CBA. The 2005-2007 CBA appears on the internet at http://discoveringmontana.com/doa/spd/EmployeeLaborRelations/2005/002.doc.

> [PECC]. The procedure shall be used to review the classification inventory and, when necessary, develop new classifications and/or reclassify existing positions. No other method or procedure shall be used by the parties to this Agreement to make adjustments to the classification inventory.

7. Article 2, Section 5, Item 6 of the Inventory Review Agreement provides that "Job descriptions for foreman positions shall be granted a one-grade differential above the journeyman job grade and will not be factored separately." This clause explicitly imposes two requirements regarding the positions involved in this dispute: (1) the Sign Shop Painter Foreman would be one pay grade above the Sign Shop Painters and (2) the Sign Shop Painter Foreman position would be factored together with the Sign Shop Painters. The express language of that clause makes it a unified mandate that both requirements be met.

8. The contract also provides for arbitration of disputes regarding either job descriptions or factoring of jobs under the Blue Collar Plan (*i.e.*, under the Inventory Review Agreement). Article 3, Section 1 of the Inventory Review Agreement provides:

> Should the parties be unable to reach agreement on either job descriptions or factoring of jobs under the Blue Collar Plan, either party shall be allowed to submit such dispute to arbitration. The parties agree that arbitration is the exclusive method of settling disputes under the Blue Collar Plan.

9. The parties used the arbitration process during a 1995 dispute involving Sign Shop Painters. An arbitrator was on site and prepared to commence a hearing when a settlement was reached and effectuated by an October 20, 1995, Settlement and Release Agreement. The settlement upgraded the Sign Shop Painters to grade 10 and the Sign Shop Painter Foreman to grade 11, noting (paragraph number 2) that the upgrade for the painters "will result in an upgrade for the foreman position–as outlined in the existing labor contract that applies to the parties."

10. The October 20, 1995, Settlement and Release Agreement also specified (paragraph number 8) that the settlement "is to be viewed as an isolated divergence from strict application of the contractual agreement and does not establish any precedent for resolution of future conflicts" and (paragraph number 11) that "any conflicts that arise from interpretation or application of this agreement will be addressed through the grievance procedure, negotiated in good faith and in the spirit in which this agreement was forged, and that, if necessary, a final determination may be sought through arbitration." In short, even in the context of settlement, the

parties mutually agreed when they chose not to follow the "contractual agreement" that the departure would apply only to the particular dispute in that instance.

11. Subsequent to the 1995 conflict and its settlement on the brink of arbitration, a Maintenance Supervisor with responsibilities for the Helena Sign Shop retired. Rather than fill the resultant vacancy, the department reassigned the vacant position's duties and responsibilities to other positions. The department reassigned some of those duties to the Sign Shop Painter Foreman.

12. The Sign Shop Painter Foreman was granted a pay differential to compensate for the added duties assigned after the retirement of the Maintenance Supervisor. Such pay differentials are prohibited for certain maintenance employees at or below grade 9, and permitted for employees performing "work in a higher-grade classification outside the maintenance career ladder" and for "journey level employees" (CBA, Article 7 Section 1, Subsection 2, Paragraph C and Article 15, Sections 2 and 3). The evidence is unclear about whether the parties intended that the Sign Shop Painter Foreman fit into either category of employees permitted to receive differential pay. Since there is no evidence of any dispute about the differential pay grant, the parties apparently agreed either that the foreman's differential pay fit within the provisions of the CBA or that they would depart from the CBA and allow this differential pay.

13. On April 26, 2002, the parties met to factor Sign Shop Painters without including factoring of the Sign Shop Painter Foreman (contrary to the Inventory Review Agreement). The union had requested this separate factoring. Following preliminary efforts to agree upon the proper job description and factor the wage rate, the union recessed the meeting, asserting that the job description needed additional work. Subsequently, there has been no additional bargaining. Neither party has requested arbitration.

14. In 2003, the union requested separate factoring of the Sign Shop Painter Foreman Position. Despite the language of the Inventory Review Agreement (***cf.*** Finding No. 7, ***supra***), the department agreed.

15. The parties met in December 2003 to begin separate factoring of the Sign Shop Painter Foreman position. They could not agree about the Blue Collar wage rate applicable. The union advocated grade 14. The department conceded that grade 13 would be reasonable (3 grades above the painters, rather than 1 grade above them). The parties submitted the dispute to arbitration.

16. On August 31, 2004, Arbitrator Howell Lankford conducted a hearing to resolve factoring of the Sign Shop Painter Foreman. His September 3, 2004, Findings, Discussion and Award applied grade 13. Arbitrator Lankford noted that separate factoring of the foreman position was independent and distinct from the earlier (April 2002) effort to factor the Sign Shop Painters separately. He found that the separate factoring of the foreman position was prohibited by the Inventory Review Agreement and was not subject to the contractual arbitration provisions, but that the parties had reached an extra-contractual verbal agreement to arbitrate.

17. On September 28, 2004, the union requested an upgrade of the Sign Shop Painters to grade 12 because the arbitration award had upgraded the Sign Shop Painter Foreman to grade 13. The union asserted that application of the one-grade differential requirement in Article 2, Section 5, Item 6 of the Inventory Review Agreement (*cf.* Finding No. 7, ***supra***) required the upgrade for the painters.

18. The department responded in an October 20, 2004, letter, refusing to upgrade the Sign Shop Painters. The department asserted that the parties had agreed to separate the foreman's position from the painters' positions for bargaining, contrary to the Inventory Review Agreement. The department quoted a comment in the arbitration award, that the union had benefitted from the department's agreement to separate the bargaining about position description and factor bargaining for the foreman, obtaining as a result the foreman's upgrade to 3 grades above the painters. The quotation from the arbitration award went on to note that because the union accepted the benefit of departure from the Inventory Review Agreement, the union could not claim that the same agreement made the foreman's upgrade retroactive to the commencement of the original Blue Collar Committee proceeding addressing pay grades for the sign shop employees generally.

19. The union neither requested resumption of the separate factoring for the painters nor requested arbitration. Instead, the union filed the present Unfair Labor Practice charge with the Board of Personnel Appeals ("BOPA"), alleging that the department's rejection of the September 2004 upgrade request for the painters constituted a failure to bargain.

20. The parties voluntarily and mutually consented to depart from the terms of their CBA when they (1) embarked upon separate uncompleted collective bargaining about upgrading the painters' positions, (2) embarked upon separate collective bargaining about upgrading the foreman position, until they reached a dispute and (3) participated in extra-contractual arbitration that resolved the foreman upgrade dispute. Their mutual and voluntary departures from the terms of their CBA

relieved both parties of the contractual obligation to follow Article 2, Section 5, Item 6 of the Inventory Review Agreement in resolving whether the painters were entitled to an upgrade because the foreman got an upgrade.[2]

IV. DISCUSSION[3]

A. Dismissal or Deferral of this ULP Pending Arbitration.

Montana law provides that a CBA between a public employer and a labor organization, to which no public school is a party, may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and of "disputed interpretations of agreements." Mont. Code Ann. § 39-31-306(2). Every provision in a CBA is to be enforced "according to its terms." Mont. Code § 39-31-306(3). That includes any arbitration provision. "[T]he terms of the agreement determine the arbitrability of a dispute." *Missoula County H. Sch. Ed. Assoc. v. Bd. of Trustees* (1993), 259 Mont. 438, 857 P.2d 696, 698;[4] ***citing*** *Local 1334 v. City of Great Falls* (1988), 233 Mont. 432, 760 P.2d 99.

Because of the similarity between the National Labor Relations Act (NLRA) and Montana's public employees' collective bargaining law, federal administrative and judicial construction of the NLRA is instructive and often persuasive regarding the meaning of Montana's labor relations law. ***E.g.***, *Great Falls v. Young* (1984) (*Young III*), 211 Mont. 13, 686 P.2d 185; *State ex rel. B.P.A. v. District Court* (1979), 183 Mont. 223, 598 P.2d 1117. The Montana Supreme Court looks to the construction placed on the National Labor Relations Act (NLRA) by the federal courts as an aid in interpretation of the Montana Public Employees Collective Bargaining Act. *Small v. McRae* (1982), 200 Mont. 497, 651 P.2d 982; ***followed in*** *Brinkman v. State* (1986), 224 Mont. 238, 729 P.2d 1301.

Arbitration clauses in CBAs do not result in rigid requirements of exhaustion of arbitrative contract remedies before access to the NLRB for unfair labor practice claims. Instead, the NLRB exercises its discretion, deferring or refusing to defer ULP proceedings pending arbitration, as appropriate. *Collyer Insulated Wire* (1971),

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[2] To the extent that this is a mixed finding and conclusion, it is hereby incorporated by reference in the conclusions of law. It is explicated in the discussion section of this decision.

[3] Statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

[4] Public school CBAs must contain an arbitration clause. Mont. Code Ann. § 39-31-306(5). The language of both subsections describing such arbitration clauses is identical. Thus, judicial holdings involving such arbitration clauses, under either subsection, are applicable to this case.

220 N.L.R.B. 1173; ***see generally***, *The Developing Labor Law* (BNA, 4th Ed., 2001 ***and*** 2004 Supp.), Chap. 18, §§ I.C.2 through I.E., pp. 1378-1391, ***and cases cited therein***. The federal courts uphold the NLRB's applications of *Collyer* if they are reasonable and consistent with the NLRA. ***E.g.***, *DaimlerChrysler Corp. v. NLRB* (D.C. Cir. 2002), 288 F.3d 434, 444.

Thus, the NLRB exercises the authority to adjudicate unfair labor practice charges even though they might have been the subject of an arbitration proceeding and award. *International Harvester Co.* (1962), 138 N.L.R.B. 923, 925. The Supreme Court's decisions recognize this authority, whether or not the Court approves deferral in specific cases. *NLRB v. Acme Indus. Co.* (1967), 385 U.S. 432; *Carey v. Westinghouse Elec. Corp.* (1964), 375 U.S. 261.

Like the NLRB, BOPA applies *Collyer* and exercises its discretion regarding deferral to subsequent arbitration. BOPA makes these discretionary decisions before hearing an unfair labor practice complaint. ***See, e.g.***, *AFSCME v. Dawson County*, ULP No. 40-2005, "Investigative Report and Determination" (12/14/2005), pp. 2-5 (copy attached). Deciding this ULP requires interpretation of the CBA and the Inventory Review Agreement, if only to determine what impact separate factoring of the foreman and the painters' positions had upon the agreement's mandatory one-grade differential between the foreman and the painters. Nonetheless, BOPA exercised its discretion, by referring this matter to the Hearings Bureau, not to defer this ULP pending an opportunity to arbitrate the dispute.[5]

B. The Parties Agreed Not to Apply the One-Grade Differential.

As already discussed, federal administrative and judicial construction of the NLRA can illuminate the meaning of Montana's labor relations law. The NLRB can interpret the provisions of a CBA where necessary to decide an unfair labor practice charge. *NLRB v. C&C Plywood Corp.* (1967), 385 U.S. 421, 430; ***see also*** *The Developing Labor Law*, op. cit. at Chap. 18, § I.B, p. 1375 ("the Court's disposition of a 1991 case confirmed that the power of the Board to interpret collective agreements in the exercise of its unfair labor practice jurisdiction is wholly settled"), ***citing*** *Litton Financial Printing Division v. NLRB* (1991), 501 U.S. 190 ***and noting*** "[E]ven though the Court refused to enforce an order of the Board because it rejected the Board's interpretation of the agreement in issue, the Court did not disturb the principles it

[5] This discussion of *Collyer* is necessary because whether a particular dispute is subject to arbitration may itself be subject to arbitration under the CBA and the Inventory Review Agreement. As discussed in Section "B," this dispute arose outside the CBA and the Inventory Review Agreement.

had laid to rest in [*C&C Plywood Corp.*]." Like the NLRB, acting under the NLRA, BOPA can interpret CBAs where necessary to resolve an unfair labor practice claim arising under Montana collective bargaining law.

The parties in this case entered into a CBA which specified a procedure for factoring; a Blue Collar Committee would do the factoring in accord with the Inventory Review Agreement. The Inventory Review Agreement explicitly stated that when the parties were unable to reach agreement on either job descriptions or factoring of covered jobs, either party could require arbitration, and arbitration was the exclusive method of settling such disputes.

The arbitration award regarding the foreman position clearly identifies the problem this case presents–separate factoring of the foreman position was in violation of the procedure required by the Inventory Review Agreement. Since the parties agreed not to follow the agreement in separately factoring the painters and in separately factoring the foreman, the arbitration provision of that agreement did not apply to disputes about the extra-contractual factoring. The arbitration on upgrading the Sign Shop Foreman occurred because the parties reached what the arbitration award termed a "non-contractual verbal agreement" to arbitrate this extra-contractual dispute. Without that extra-contractual verbal agreement, the foreman upgrade dispute would not have been subject to arbitration, because the contract arbitration clause applied to "either job descriptions or factoring of jobs under the Blue Collar Plan." Article 3, Section 1, Inventory Review Agreement.

When the parties agreed to depart from the CBA, they were acting in harmony with the underlying principle of Montana collective bargaining law–to "arrive at friendly adjustment of all disputes between public employers and their employees." Mont. Code Ann. § 39-31-101. The problem that can result from extra-contractual resolution of one dispute is that it can engender more disputes that are outside the four corners of the CBA.

Neither party to this dispute has been consistent regarding how the CBA applies to the current request to upgrade the painters' positions. The union argues, on the one hand, that Article 2, Section 5, Item 6 of the Inventory Review Agreement automatically triggers upgrading of the painters' positions to grade 12 upon the upgrade of the foreman's position to grade 13. On the other hand, the union did not seek arbitration of this disputed interpretation of the Inventory Review Agreement, as would be proper if this dispute were actually controlled by that agreement. The department argues, on the one hand, that this dispute is subject to arbitration pursuant to the Inventory Review Agreement. On the other hand, the department

vehemently denies that Article 2, Section 5, Item 6 of the Inventory Review Agreement applies to trigger the automatic upgrade.

Both sides want to apply the CBA, including the Inventory Review Agreement, where it might be to their benefit, while disregarding it where its application is to their detriment. They never reached any extra-contractual agreement to arbitrate the issue of whether the painters are entitled to an automatic upgrade based on the foreman's extra-contractual upgrade. They never reached any agreement to return to the contract to resolve the unfinished separate factoring of the painters.

A written contract is interpreted according to its terms, if the terms are clear, explicit and do not result in an absurdity. Mont. Code Ann. § 28-3-401. ***See***, *Morning Star Ent., Inc. v. R.H. Grover, Inc.* (1991), 247 Mont. 105, 805 P.2d 553, ***followed in*** *Nyquist v. Nyquist* (1992), 255 Mont. 149, 841 P.2d 515. If an ambiguity exists then the contract must be construed rather than simply applied according to its terms. An ambiguity only exists when the contract taken as a whole in its wording or phraseology is reasonably subject to two different interpretations. *Lemley v. Bozeman Comm. Hotel Co.* (1982), 200 Mont. 470, 651 P.2d 979, ***followed in*** *N.H. Ins. Group v. Strecker*, (1990), 244 Mont. 478, 798 P.2d 130.

No ambiguity exists in the clause in question in the Inventory Review Agreement, which is made part of the CBA under Article 15, Section 9. The foreman can only be one pay grade above the journeymen supervised and there can be no separate factoring of the foreman position.

The clause does not address what happens if the foreman is not one pay grade above the journeymen supervised, because that cannot occur under the agreement. The one-grade separation fixed the wages the supervisor can earn above those the supervisees earned, subject to any pay exceptions. The whole point of keeping the foremen and the journeymen supervised together in factoring is to maintain the one-grade separation between them.

In 2002, the parties agreed to ignore the Inventory Review Agreement by factoring the painters without the foreman. This same kind of extra-contractual bargaining had led, in 1995, to <u>an extra-contractual settlement agreement</u> that gave the painters an upgrade and included an upgrade for the foreman to maintain the one-grade differential. In 2002, the extra-contractual bargaining did not lead to any agreement. Instead, in 2003, the parties agreed to ignore the Inventory Review Agreement again by separate factoring of the foreman position.

The conduct of the parties (now relevant, despite the clarity of the contract, because they had agreed to disregard the contract) clearly establishes that they agreed to disregard both requirements of Article 2, Section 5, Item 6 of the Inventory Review Agreement when they agreed in 2002 and 2003 to separate factoring first of the painters' positions and later of the foreman's position.

In departing from the Inventory Review Agreement, the parties gave up their absolute right to insist upon the express terms of that same agreement in resolving disputes arising while they were bargaining outside the agreement. The arbitration award expressly recognized this consequence. Although both parties, in this proceeding, have variously attempted to use parts of the contract and to reject other parts, the plain truth is that both parties knowingly and voluntarily departed from their CBA and the Inventory Review Agreement with regard to these upgrades.

In agreeing to factor and then to arbitrate the foreman's upgrade separately, the union gave up its contract right to demand that the foreman remain one grade above the painters.[6] The union agreed to depart from Article 2, Section 5, Item 6 and separately factor the foreman position, thereby agreeing that the one-grade separation between foreman and painters would no longer apply. The department relied upon the union's agreement that the contract provision (in its entirety) no longer applied to this bargaining. The union expected the department to rely upon its agreement to depart from the contract provision in factoring the foreman's position, which the department did. The upgrade to the foreman's position certainly changed the department's position for the worse if, contrary to its agreement, the union could assert (as it is in this proceeding) that the painters now get a mandatory upgrade based on Article 2, Section 5, Item 6. Thus, the union cannot now assert that the department must upgrade these Sign Shop Painters because the Inventory Review Agreement requires a one-grade differential with the Sign Shop Foreman.[7]

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[6] In exactly the same fashion, the department gave up any right it had to require arbitration of the dispute regarding factoring and upgrading the painters' positions.

[7] This agreement to depart from the contract also invokes statutory equitable estoppel, pursuant to Mont. Code Ann. § 26-1-601(1), MCA; ***see also*** *Selley v. Liberty Northwest Ins. Co.*, ¶ 10, 2000 MT 76, 299 Mont. 127, 998 P.2d 156 (***and cases cited therein***). The union did not waive its right to bargain collectively, ***cf.*** *Metro. Edison Co. v. NLRB* (1983), 460 U.S. 693, ***cited and followed,*** *Bonner Ed. Assoc. v. Bonner S.D.* (2005) ULP No. 32-2004. Instead, the manner of collective bargaining was changed, by mutual agreement, regarding the issue of upgrades for the foreman and the painters, thereby estopping the union from claiming that the one-grade differential applied for the benefit of the painters. The right to bargain collectively was not itself waived, the parties simply agreed to change the method of collective bargaining for this particular issue.

In agreeing to factor the foreman's position separately, after first embarking upon separate factoring of the painters' positions, the union effectively agreed that it would not later assert that the foreman's ultimate upgrade would mandate upgrades for the painters to restore the one-grade differential between the supervisor and his supervisees. Therefore, the department did not commit an unfair labor practice by refusing to upgrade the painters to restore that one-grade differential after the upgrade granted to the foreman in the arbitration award.

C. Further Collective Bargaining Regarding the Painters' Positions.

The parties can mutually agree, at this point, to resume extra-contractual separate factoring of the painters' positions. BOPA, however, can and should make clear that if either the department or the union elects at this point to return to the CBA to address that issue, then both parties must resume following the entire CBA, with one exception. That exception will be that Article 2, Section 5, Item 6 of the Inventory Review Agreement cannot apply to collective bargaining regarding the pay grade of the Sign Shop Painters' positions until after the one-grade differential with the Sign Shop Foreman is restored, either by an agreement of the parties or by a subsequent arbitration award. Since that will be the sole exception, the arbitration provisions of the CBA will apply to any collective bargaining dispute regarding the pay grade of the Sign Shop Painters' positions that arises after the parties resume following the CBA.

D. Irrelevant Outside Issues.

During the hearing, the union offered evidence regarding issues other than this unfair labor charge. Although the Hearing Officer admitted some of that evidence, it was ultimately not useful in deciding this matter, and therefore is not referenced in this decision.

V. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction over this case and controversy. Mont. Code Ann. § 39-31-207.

2. The Department of Transportation did not fail or refuse to bargain collectively in good faith when it rejected the demand by the International Union of Painters and Allied Trades Local Union #260, AFL-CIO, to upgrade the Sign Shop Painters based on the 2004 arbitration award upgrading the Sign Shop Painter Foreman's position. Mont. Code Ann. § 39-31-401.

VI. RECOMMENDED ORDER

The International Union of Painters and Allied Trades Local Union #260, AFL-CIO has failed to prove that Department of Transportation failed or refused to bargain collectively in good faith when it rejected the union's demand to upgrade the Sign Shop Painters based on the September 3, 2004, Findings, Discussion and Award upgrading the Sign Shop Painter Foreman's position. There being no unfair labor practice, the Board dismisses the union's complaint and the Board refers the parties to Section C of the "Discussion" herein, discussing further collective bargaining regarding the painters' positions.

DATED this 2nd day of March, 2006.

BOARD OF PERSONNEL APPEALS

By: /s/ TERRY SPEAR
Terry Spear, Hearing Officer
Hearings Bureau
Department of Labor and Industry

NOTICE: Exceptions to these Findings of Fact, Conclusions of Law and Recommended Order may be filed pursuant to Admin. R. Mont. 24.26.215 within twenty (20) days after the day the decision of the hearing officer is mailed, as set forth in the certificate of service below. If no exceptions are timely filed, this Recommended Order shall become the Final Order of the Board of Personnel Appeals. Mont. Code Ann. § 39-31-406(6). Notice of Exceptions must be in writing, setting forth with specificity the errors asserted in the proposed decision and the issues raised by the exceptions, and shall be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 6518
Helena, MT 59624-6518