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

IN THE MATTER OF UNFAIR LABOR PRACTICE NUMBER1-2008:

MONTANA PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. LEWIS AND CLARK COUNTY, Defendant,	)	RECOMMENDED ORDER

I. INTRODUCTION

On July 18, 2007, the Complainant, Montana Public Employees Association, hereafter the Association, filed an unfair labor practice charge with the Board of Personnel Appeals alleging that Lewis and Clark County, hereafter the County, failed to implement a cost of living increase contained in a collective bargaining agreement between the Association and the County. The Association alleged a violation of 39-31-306 MCA. On July 31, 2007, the County filed a response with the Board denying that an unfair labor practice had been committed and that, in fact, the County had complied with the terms of the collective bargaining agreement.

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

II. DISCUSSION

The Association alleges that the County violated the Montana Collective Bargaining for Public Employees Act, Section 39-31-306 MCA by failing to provide a cost of living increase. The contract at issue is a multi year agreement with an expiration date of June 30, 2008. A limited reopener is allowed as a part of the agreement. In Addendum B of the contract provides:

> <u>Second Year</u>
>
> July 1, 2007 – All employees will receive a minimum 2.0% or higher, based on the COLA adjustment as determined by the University of Montana effective the

first full pay period of the fiscal year. Pay schedule effective June 25, 2006 will be adjusted by the COLA. The Employer and MPEA agree to open the contract in the second year of the contract to review and make market adjustments for all positions based on market survey conducted by the County.

The parties differ on what this language means. The Association contends the adjustment should have been made and the County contends that, "The language of the collective bargaining agreement is open to interpretation". In fact, the Association advises the investigator that a grievance or grievances concerning an alleged violation of the contract are at Step 2 in the grievance/ arbitration procedure.

The Montana Supreme Court has approved the practice of the Board of Personnel Appeals using Federal Court and National Labor Relations Board (NLRB) precedents as guidelines in interpreting the Montana Collective Bargaining for Public Employees Act as the State act is so similar to the Federal Labor Management Relations Act, State ex rel. Board of Personnel Appeals v. District Court, 183 Mont 223, 598 P.2d 1117, 103 LRRM 2297; Teamster's Local Union No. 45 v. State ex rel. Board of Personnel Appeals, 195 Mont 272, 635 P.2d 1310, 110 LRRM 2012; City of Great Falls v Young (Young III) 211 Mont 13, 686 P.2d 185, 119 LRRM 2682.

In ULP 43-81, William Converse v Anaconda Deer Lodge County and ULP 44-81 James Forsman v Anaconda Deer Lodge County, August 13, 1982, the Board of Personnel Appeals adopted National Labor Relations Board precedent set forth in Collyer Insulated Wire, 192 NLRB 387, 77 LRRM 1931, deferring certain unfair labor practice proceedings to an existing negotiated grievance/arbitration procedure. In so doing the Board removed a possible source of conflict between the Board of Personnel Appeals and the dispute resolution mechanism contained within the parties' Collective Bargaining Agreement

III. RECOMMENDED ORDER

Pursuant to the principles of Collyer Insulated Wire, supra, and Forsman/Converse v Anaconda-Deer Lodge County, supra, without prejudice to any party and without deciding the merits of the Complainant's unfair labor practice charge, the above captioned matter is hereby dismissed. However, the Board of Personnel Appeals retains jurisdiction. Being aware that the parties have not yet resolved their dispute through their Collective Bargaining Agreement's grievance/arbitration procedure it is not now possible to inquire whether resolution of this dispute through that procedure will meet the standards established in Spielburg Manufacturing Company, 112 NLRB 1080, 36 LRRM 1152, June 8, 1955.[1] In order to eliminate the risk of prejudice to any party the Board of Personnel Appeals retains jurisdiction over this matter for the purpose entertaining an appropriate and timely motion for further consideration upon a proper showing that either: (a) the dispute has not, within a reasonable time, been resolved pursuant to the parties' negotiated grievance/arbitration

[1]See Olin Corporation 268 NLRB 573, 115 LRRM 1056, January 19, 1984; Ad Art, Inc. v NLRB 645 F.2d 667, 106 LRRM 2010, 9 CA 1981; Darr v NLRB 801 F.2d 1404, 123 LLRM 2548 and 3051, DC CA 1986; and Garcia v NLRB, 785 F.2d 807, 121 LRRM 3349, 9 CA 1986

procedure; or (b) the grievance/arbitration proceedings have not been fair and regular or have reached a result which is repugnant to the Montana Collective Bargaining for Public Employees Act.

SPECIAL NOTICE

Exceptions to this Recommended Order may be filed within twenty (20) days of service thereof. If no exceptions are filed, this Recommended Order shall become the Order of the Board of Personnel Appeals. Address exceptions to the Board of Personnel Appeals, P.O. Box 65182, Helena, Montana 59604-6518.

Entered and dated this 14th day of August 2007.

BOARD OF PERSONNEL APPEALS

By: ____/S/_____
John Andrew, Investigator

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing/attached "Recommended Order" was served upon the following on the 14th day of August, 2007, postage paid and addressed or delivered as indicated:

STACEY BIRD, FIELD REPRESENTATIVE
MPEA
PO BOX 5600
HELENA MT 59604 5600

FRED RICE, HR DIRECTOR
LEWIS AND CLARK COUNTY
316 NORTH PARK
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Amy Smith