

Board of Personnel Appeals: Montana Public Employee Collective Bargaining

HALEY NELSON & TORI KOCH, AGENCY COUNSEL



Montana Department of
LABOR & INDUSTRY

What is BOPA?

The Board of Personnel Appeals (BOPA)

- Quasi-judicial board, created by statute. Mont. Code Ann. § 2-15-1705.
- Five-member panel appointed by the governor representing both labor organizations and management.
- Exists mainly to enforce and apply the statutory provisions of the Montana Collective Bargaining for Public Employees Act.

BOPA hears appeals of:

- State employee classification and wage appeals.
- Public employee collective bargaining issues including Union Elections and Unfair Labor Practice Charges.

Administratively attached and staffed by the Montana Department of Labor and Industry.

Applicable Laws and Jurisdiction

Montana Code Annotated, Title 39, chapter 31

Administrative Rules of Montana (ARM) Title 24, chapter 26

BOPA follows National Labor Relations Board (NLRB) precedent

Montana Collective Bargaining Act (MCBA) Other

- Largely modeled after the National Labor Relations Act (NLRA).
- Only applies to public employees in Montana (municipal, county, state, public school, and law enforcement employees).

Other collective bargaining laws in the US largely depend upon the Employer:

- The Railway Labor Act – railroad employees and airline employees
- National Labor Relations Act - private sector employees
- Federal Service Labor-Management Relations – federal employees

Other State/municipal collective bargaining laws vary greatly across the United States

Board Agents

Department staff person who works on behalf of BOPA at all levels and serve as:

- Mediators for grievances and negotiations of CBAs
- Election Judges for Petitions for Union Certification, Decertification, etc.
- Investigators for Unfair Labor Practice (ULP) Charges
- Investigators for State Employee Classification and Compensation Grievances
- Board Agents at the initial level may refer a matter for a Hearing

Hearing Officers who conduct hearings on BOPA matters are also considered Board Agents

Board Agents do Administrative duties for the Board itself including:

- Collects administrative record and appeal materials
- Complies with Montana's Open Meeting Laws, e.g., posting agenda, etc.

BOPA Website

Part of the Department of Labor and Industry's Website

- <https://erd.dli.mt.gov/labor-standards/collective-bargaining/board-of-personnel-appeals/>
- Or Google “Montana Board of Personnel Appeals”

Website includes important BOPA Information:

- Upcoming and prior meeting information
- Board member information
- Forms to request mediation, arbitration, or factfinding
- Forms to file an Unfair Labor Practice Charge or Election Petition
- Roster of Arbiters
- BOPA Decisions
- Links to applicable statutes and rules

Unfair Labor Practice Charges

A ULP is a violation of state law, defined in the MCBA.

- Mont. Code Ann. § 39-31-401 Unfair labor practices of public employer.
- Mont. Code Ann. § 39-31-402 Unfair labor practices of labor organization.

Specific procedures are in the Administrative Rules – Title 24, chapter 26, subchapter 12

Basic steps for informal ULP investigation:

Step 1: Filing the Charge with a Board Agent - Be Specific!*

Step 2: Summons Sent and Response requested.

Step 3: Rebuttal requested.

Step 4: Additional Questions to both parties (if needed),

Step 5: Preliminary Investigatory Decision Issued:

Merit Found- Transferred to OAH for Hearing.

No Merit- May be appealed directly to BOPA. BOPA may affirm, or if BOPA reverses the ULP is referred to OAH for a Hearing.

*Helpful Hint- provide evidence!

Elections

Collective Bargaining Election Types Include the Following:

- Unit Determinations
- Decertifications
- Unit Clarifications

**Specific procedures for Elections are in the Administrative Rules –
Title 24, chapter 26, subchapter 10**

Unit Determination (UD) Petitions – Basic Steps

Step 1: Unit Determination Petition Filed

- Must include description of bargaining unit
- Must include proof of interest/authorization cards

Step 2: Notice of UD Petition Sent to Parties

Step 3: Notice of UD Petition at Posted at Workplace, Confirmation of Posting, and Excelsior List

Optional Step 4: Employer Counter Petition

Optional Step 5: Petition to Intervene

Step 6: Pre-Election Conference

Step 7: Notice of Election/Ballots Mailed

Step 8: Notice of Election Posted at Workplace

Step 8: Election Ballot Count

Step 9: Certification of Election Results

Card Check Election – Unit Determinations

BOPA's rules specifically allow for “card check” elections if certain criteria are met:

1. To qualify for a card check election, a Petition for Unit Determination must include:
 - a. Proof of Interest Cards that include the “card check” language (ARM 24.26.1002(e)); and,
 - b. the number of cards must represent more than 50% of the employees in the bargaining unit;
2. AND if no Employer Counter Petition or Petition to Intervene is received within the allotted time frames under the rules; THEN . . .
3. AN ELECITON IS NOT REQUIRED, and the board agent shall promptly issue certification of representation. (ARM 24.26.1012 (3)(a)).

Questions?

Board Administrative Rules are available on the Montana Secretary of State website:

[Admin. R. Mont. Chapter 23.26](#)

Board statutes are available on the Montana State Legislature website:

[Mont. Code Ann. Title 39, Chapters 31-33](#)