

**MEETING MINUTES  
BOARD OF PERSONNEL APPEALS  
Zoom Meeting  
Helena, Montana  
9:00 a.m.  
November 17, 2022**

**Call to Order – Establish Quorum – Introduction of Board & Staff Members Present:  
(00:00:39)**

**Members Present via Zoom:**

Brian Hopkins, Board Chair  
Jenny Stringer, Management Member  
Brooke Shelley, Labor Member  
Curtis Schomer, Alt Labor Member

**Staff Present via Zoom:**

Theresa Sroczyk, Dispute Resolution Section Manager  
Trisha Shupe, Board Secretary  
Ben Williams, Attorney, Department of Labor  
Wendy Jackson, Dispute Resolution Mediator

**Approval of Minutes for September 15, 2022, meeting (03:19)**

Member Stringer moved to approve meeting minutes and Board Chair Hopkins seconded the motion. September 15, 2022, meeting minutes were approved.

**Public Opportunity to Comment (2-3-103 MCA) (04:31):**

There were no comments by the Public.

**Staff/Attorney Comments (05:21):**

Attorney Ben Williams addressed ex parte communications that pertains to Administrative Rule 24-26-229. The Board has this rule that ex parte communications are prohibited and may be allowed for purely procedural questions for the Board or Department Staff, such as discussing extensions of time, scheduling administrative matters or questions of procedure. They are not permitted for any substantive matter, and Board Staff are not permitted to provide legal advice to the parties.

Board Chair Hopkins suggested that Board Staff copy both parties on an email when communicating with one party, this will promote transparency and fairness.

**Board Action – Case for Oral Argument (14:57):**

**Petitioner: Ravalli County  
Counter Petitioner: LiUNA  
Case#2022DRS00118**

Board Chair Brian Hopkins confirmed that all documents provided to the Board were reviewed by Board Members.

Ravalli Co. filed a ULP charging LiUNA with bad faith bargaining by intentionally withholding material information from the County, conveyed false information to union members, and ratified the collective bargaining agreement (CBA) prior to material provisions of the CBA were addressed.

Clay Leland representing (Petitioner) Ravalli County presented his oral argument. Leland states the County is simply seeking a determination the county's ULP is supported by probable merit, the matter should be remanded to a hearing officer, and the charge should not be dismissed. Ravalli County's argument in this case matter is to have the Board Agent's finding of no merit reconsidered.

Matt Thiel representing the Counterpetitioner(s) LiUNA presented his oral argument in this matter. Thiel argues a ULP was not committed and asks that the Board uphold the Investigator's decision of no merit found.

**Board Discussion of Case for Oral Argument (1:22:19)**

Members of the Board asked follow up questions regarding the information presented. Chair Hopkins called for discussion on observations by the Board. Chair Hopkins made a motion to uphold and affirm the investigator's finding that there is insufficient evidence to support a finding of probable merit for the Ravalli County Unfair Labor Practice Charge. The motion was seconded by Member Stringer. Vote: 4-0. The motion passed.

**Board Action – Case for Oral Argument (1:27:05):**

**Petitioner: Montana Federation of Public Employees**

**Respondent: State of Montana, Department of Justice-Montana Highway Patrol**

**Case#2022DRS00035**

Board Chair Brian Hopkins confirmed that all documents provided to the Board were reviewed by Board Members.

This ULP alleges the Department of Justice, Montana Highway Patrol, unilaterally changed MHP physical fitness testing requirements and related bonuses. These allegations include direct dealings with union membership, unilateral implementation of a policy affecting a mandatory subject of bargaining, and failure to bargain a mandatory subject of bargaining

Michelle Dietrich representing (Respondent) State of Montana, Department of Justice-Montana Highway Patrol presented her oral argument. Dietrich did not dispute MHP committed a ULP when they changed the MPAT fitness test without consulting the union. However, she argues the OAH Findings of Fact erred when it awarded one Trooper damages, because he was compensated for one fitness test. She contends he should not be compensated a second time for the MPAT fitness test, which the Trooper did not take. Dietrich asked that the Board change the Hearing Officers proposed order, so that one trooper is not getting paid twice as much as anyone else.

Nate McConnell representing (Petitioner) Montana Federation of Public Employees presents his oral argument. McConnell argues the Trooper was persuaded not to take the previous fitness test and was encouraged to take the rowing test. Because the existing fitness test was what was bargained in the contract, the Trooper who requested the MPAT fitness test should be awarded damages. The rowing test was never under contract, where the MPAT is. For this reason, McConnell asks the Board to adopt the Hearing Officers decision entirely.

**Board Discussion of Case for Oral Argument (2:14:35)**

Members of the Board asked follow up questions regarding the information presented. Chair Hopkins called for discussion on observations of the Board. Chair Hopkins made a motion to adopt the Hearing Officer's Recommended Order with the exception of paragraph six specifically because Trooper was paid the incentives provided to the other Troopers for taking the rowing test. The Trooper did not take the MPAT test. Member Schomer seconded the motion. Vote: 4-0. The motion was passed.

**Scheduling of Next Meeting**

December 15, 2022

**Meeting adjourned. (02:34:35):**

There being no further business to come before the Board, Board Chair moved to adjourn the meeting. Member Stringer seconded the motion, and the meeting was adjourned.