STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE NO. 4-2017:

POLSON CLASSIFIED EMPLOYEES ASSOCIATION, MEA-MFT:	) Case No. 758-2017
Petitioner,	) **FINAL AGENCY DECISION**
vs.	)
POLSON SCHOOL DISTRICT	)
Respondent	)

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BACKGROUND AND PROCEDURAL HISTORY

1. On June 7, 2017, the Department of Labor and Industry's Office of Administrative Hearings held a contested case regarding an alleged unfair labor practice in the above-captioned case. On September 14, 2017, the Office of Administrative hearing issued its proposed Findings of Fact, Conclusions of Law, and Recommended Order. Both parties, Complainant Polson Classified Employees, MEA-MFT ("Association") and Defendant Polson Schools Districts' ("Polson Schools") timely filed exceptions with the Board of Personal Appeals ("the Board").

2. On December 22, 2017, the Board met to consider the exceptions to the September 14, 2017, "Findings of Fact, Conclusions of Law, and Recommended Order", filed by both parties. Alternate chair Schramm served as the Presiding Officer for the Board. Member Moore was absent, and could not be replaced with an alternative member on short notice.

3. Prior to hearing oral argument, Board member Nyman stated that there was a potential for the appearance of a conflict of interest in the case due to his employment with the Montana Public Employee Association ("MPEA"). As a matter of general knowledge, MPEA and the Montana Education Association-Montana Federation of Teachers ("MEA-MFT") were discussing a possible merger of the two labor organizations. At the time of the hearing, neither MPEA nor MEA-MFT had formally approved a decision to merge. Following a discussion among Board members, member Nyman stated that he did not believe that he had an actual conflict of interest in this case. The presiding officer of the Board asked each party whether it objected to the

participation by member Nyman in the case. Counsel for the Association stated he did not object to member Nyman. Counsel for the Polson Schools stated that because the matter had not been discussed with his client, he was unwilling to waive any possible conflict of interest due to member Nyman's participation in the case.

4. Each party then made their oral argument regarding the merits. The Polson Schools generally argued that the administrative hearing officer made errors of fact and law by concluding that the parties did not bargain regarding insurance. Polson Schools stated that the subject of insurance was conclusively addressed within the party's contract, and that the hearing officer erred by accepting parol evidence, contrary to §§ 28-2-904 and 28-2-905(1), MCA. The Association generally argued that the employer had a duty to bargain, pursuant to § 39-31-401(5), MCA, notwithstanding the fact that the written contract addressed insurance matters. The Association also argued that the proposed remedy was inadequate. Following the oral arguments made by the parties, the Board posed various questions to each of the parties, and then the Board proceeded to its deliberations.

STANDARD OF REVIEW

5. When reviewing a hearing officer's decision, the Board is bound by § 2-4-621(3), MCA. The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Id.* The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

DISCUSSION

6. Following oral argument, the Board discussed and considered the arguments raised by the parties and deliberated on whether to overrule the objections and exceptions and adopt the hearing officer's decision. In this cross-appeal, the essential issue is whether Polson Schools had a continuing duty to talk with, and provide information to, the Association regarding health insurance, despite the fact that the contract expressly addressed health insurance. Montana law requires that a public employer and the designated labor representatives bargain in good faith:

> **39-31-305. Duty to bargain collectively -- good faith.** (1) The public employer and the exclusive representative, through appropriate officials or their representatives, have the authority and the duty to bargain collectively. This duty

extends to the obligation to bargain collectively in good faith as set forth in subsection (2).

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or the public employer's designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising under an agreement and the execution of a written contract incorporating any agreement reached. The obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

An employer commits an unfair labor practice by refusing to collectively bargain in good faith. Section 39-31-401(5), MCA.

7. Polson Schools argued that by having bargained in good faith with the Association, and by signing the collective bargaining agreement ("CBA"), Polson Schools satisfied its duty to bargain in good faith. The question is whether having bargained, can Polson Schools later refuse to meet with and provide information to the Association regarding health insurance? The Board concludes that pursuant to the plain language of § 39-31-305(2), MCA, Polson Schools cannot refuse to provide information, and meet and discuss a matter that relates to wages, hours, or fringe benefits. The health insurance matters at issue are a fringe benefit within the meaning of §39-31-305(2), MCA.

8. The Board also notes the exact language of paragraph 12.1 of the 2016-2018 CBA, which was drafted by Polson Schools, expressly contemplates that the parties would engage in further negotiations regarding health insurance:

> **12.1 Effective Period**
>
> This Agreement shall be effective as of the first date following the day on which this Agreement is ratified by the Association, approved by the Board, and signed, by each party and shall continue in effect through June 30, 2018, **except that either party may give notice to the other to no later than March 1, 2017 to negotiate over wages and health insurance**. The economic benefits provided for in this Agreement in the form of increases in wages and health insurance contributions shall be effective as of July I, 2016 and the District will pay those portions of said economic benefits that are effective retroactively in one lump sum to each respective employee within thirty (30) days of the effective date of this Agreement.
>
> (emphasis added)

The Association timely gave notice to Polson Schools that it wanted to negotiate about health insurance. Under § 39-31-305(2), MCA, and the provisions of the CBA, the parties had a duty to negotiate (talk to one another) regarding health insurance. Polson Schools refusal to provide information to, and to talk to, the Association about health insurance constitutes an unfair labor practice pursuant to § 39-31-401, MCA. The Board concludes, as a matter of law, that the hearing officer's conclusion of law that Polson Schools committed an unfair labor practice is correct, and therefore affirms that conclusion.

9. The Board also considered the argument of the Association that Finding of Fact no. 11 was clearly erroneous and did not accurately portray the facts in the record. While this finding would not change the ultimate conclusion on the disputed issue, the Board considered the argument because it was raised by a party. Upon a motion (and second) to uphold the hearing officer's Findings of Fact, Conclusions of Law, and Recommended Order, the Board discussed Finding of Fact no. 11. Each Board member stated that he had reviewed the entire record in the matter. Presiding Officer Schramm stated that the hearing officer's Finding of Fact no. 11 did not properly convey the circumstances regarding the Association's drafting error about increasing the insurance contribution for all employees. The motion was then modified to also amend the second sentence in Finding of Fact no. 11, as follows: "Diehl testified at hearing that she made a mistake in that her draft only dealt with changing the District's contribution to keep employee contributions constant in ~~for~~ the highest deductible plan, but it did not include ~~any changes in the District's contribution amount for the other plans by the insurance carrier to District employees~~ the increases necessary to hold employee contributions constant in plans other than the highest deductible plan." (New material underlined, deleted material interlined.) The Board found, based on a review of the entire record, that substantial credible evidence did not support portions of Finding of Fact no. 11 as originally drafted by the hearing officer. The Board members approved the motion 4-0, stating that the findings of fact, as amended were supported by substantial, credible evidence. The Board's minor amendment of Finding of Fact no. 11 does not change the result of the decision nor does it affect the ultimate outcome of the case.

ORDER

10. Pursuant to Rule 24.26.224, ARM, the Board adopts the findings of fact, conclusions of law, and recommended order, as set forth in the hearing officer's Recommended Order dated September 14, 2017 in their entirety, except that Finding of Fact no. 11 is amended to read as follows:

"11. By simply updating the insurance numbers in the 2014-16 CBA, Diehl only updated the District's contribution for one of the insurance plans offered by the District's third party carrier to the employees – the highest deductible plan. Diehl testified at hearing that she made a mistake in that her draft only dealt with changing the District's contribution to keep employee contributions constant in the highest deductible plan, but it did not include the increases necessary to hold employee contributions constant in plans other than the highest deductible plan."

DATED this 22 day of March, 2018.

BOARD OF PERSONAL APPEALS

By: LeRoy H. Schramm
LeRoy Schramm, Presiding Officer

Members Nyman, Johnson, and Soumas concur in this decision.

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the Final Agency Decision to the following on the 22 day of MARCH, 2018, postage paid and addressed as follows:

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