

1 BOARD OF PERSONNEL APPEALS
2 PO BOX 201503
3 HELENA MT 59620-1503
4 Telephone: (406) 444-0032
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6 STATE OF MONTANA
7 BEFORE THE BOARD OF PERSONNEL APPEALS
8

9 IN THE MATTER OF UNFAIR LABOR PRACTICE 3-2017:

10 BARBARA M BAKKE, }
11 Complainant, }
12 }
13 vs. }
14 }
15 FEDERATION OF MONTANA VETERANS }
16 HOME EMPLOYEES, LOCAL #4697, MEA-MFT }
17 Defendant,)
18

RECOMMENDED ORDER
STAYING PROCEEDINGS

19 I. INTRODUCTION
20

21 On September 19, 2016, Barbara M Bakke filed an unfair labor practice charge with the
22 Board of Personnel Appeals alleging that the Federation of Montana Veterans Home
23 Employees, Local #4697, MEA-MFT, hereinafter Local, failed to properly represent her in
24 matters pertaining to actions taken by the State of Montana, Montana Veterans Home
25 (MVH). A violation of 39-31-402 (1(a), MCA is alleged. Ms. Bakke is represented in this
26 matter by Kim Christopherson, attorney at law, of Kalispell. Tom Burgess, MEA-MFT field
27 representative, appeared on behalf of Local 4697 and denied that the Local had
28 committed an unfair labor practice.
29

30 Pursuant to Section 39-31-405 (1), MCA John Andrew was appointed by the Board of
31 Personnel Appeals to investigate the charge. During the course of the investigation
32 contact was made with representatives of both parties as was deemed necessary.
33

34 II. FINDINGS AND DISCUSSION
35

36 Ms. Bakke was terminated from her nursing position with the MVH in Columbia Falls.
37 The termination occurred on September 7, 2016. Prior to her termination Ms. Bakke
38 was subject to disciplinary actions taken by the MVH. The first action, a one day
39 suspension without pay, occurred on November 2, 2015.¹ That matter was grieved by
40 the Local up to the point of arbitration and resolved in a settlement agreement signed off
41 on by Ms. Bakke on February 10, 2016. The agreement restored Ms. Bakke's pay.
42

43 The second disciplinary action taken by MVH against Ms. Bakke occurred on March 3,
44

45
46
47 ¹ Due process letters, actions taken by MVH, and their timing are documented in a November 14, 2016,
48 letter to Tom Burgess from Deborah Sloat, MVH Director of Human Resources.

1 2016. At that time Ms. Bakke was suspended without pay for three days. That action
2 was grieved by the Local as well and proceeded forward until such time as the Local
3 learned Ms. Bakke was to be terminated. Discussions ensued between the Local and
4 the MVH, including preparation of a last chance agreement. Language acceptable to
5 Ms. Bakke could not be agreed upon, the last chance agreement was never
6 implemented and the MVH followed through on the discharge of Ms. Bakke, doing so
7 effective September 7, 2016.

8
9 Ms. Bakke's discharge has also been grieved by the Local. It has been monitored by
10 the investigator up to and including the point where the Board of Personnel Appeals has
11 provided a list of arbitrators to hear the discharge grievance. At present an arbitrator
12 has not been selected, but the investigator understands the grievance remains alive and
13 continues to be processed.

14
15 The position of Ms. Bakke is best summarized in her complaint:

16
17 "I believe Defendant arbitrarily and without rational basis dropped the ball on my
18 two previous grievances. Defendant has breached the duty of fair representation
19 it owed to me, substantially injuring me since I have now lost the opportunity to
20 challenge the incidents which formed the basis of the termination of my
21 employment."

22
23 Having reviewed this charge to date, the investigator finds that, contrary to her
24 assertion, Ms. Bakke was made aware of the status of her initial grievance and the
25 resulting agreement she signed. Although, in her view, her notification by the Local was
26 inadequate, the end result certainly was not. I fail to see where anything the Local did
27 pertaining to that incident breached the duty of fair representation.

28
29 Concerning the remainder of her complaint, the Board of Personnel Appeals has long
30 ago adopted the process of deferral when there is the possibility that an unfair labor
31 practice charge could find resolution through a grievance process ending in final and
32 binding arbitration as is the case here. In a similar vein, the Board has always been
33 concerned about the possibility of inconsistent, or even opposite results if an arbitrator
34 and the Board are reviewing and rule on common issues or potentially common issues.
35 See for instance ULP 43-81, William Converse v Anaconda Deer Lodge County and ULP
36 44-81 James Forsman v Anaconda Deer Lodge County, August 13, 1982, wherein the
37 Board of Personnel Appeals adopted National Labor Relations Board precedent set forth
38 in Collyer Insulated Wire, 192 NLRB 387, 77 LRRM 1931. In instances of this nature the
39 Board defers to the grievance procedure.

40
41 The Step III grievance denial letter of November 14, 2016, from Deborah Sloat to Tom
42 Burgess clearly puts forward that MVH, in its view, met the just cause standards of the
43 collective bargaining agreement, and again, in its view, MVH afforded Ms. Bakke due
44 process. Therefore, according to MVH, the actions taken and processes utilized were
45 appropriate and warranted. Included in this letter from Ms. Sloat are the two disciplinary
46 actions that form the basis of Ms. Bakke's unfair labor practice complaint against the

1 Local.

2

3 Based on the foregoing, and the likelihood that an arbitration, if it occurs, will address
4 issues at the heart of the pending unfair labor practice, it is the view of the investigator
5 that this matter should continue to be processed under the grievance procedure of the
6 collective bargaining agreement. Deferral and a stay are appropriate and, even if not
7 appealed at this time, upon proper motion, either party can request the stay in
8 proceedings be lifted at a time in the future.

9

10 **III. RECOMMENDED ORDER**

11

12 It is hereby recommended that further action on unfair labor practice charge 3-2017 be
13 stayed and the matter further deferred to the grievance procedure.

14

15

16 Dated this 21st day of December 2016.

17

18

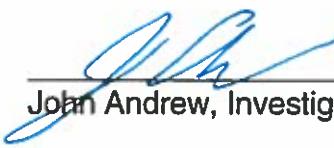
19 **BOARD OF PERSONNEL APPEALS**

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21

22 By:

23

24 
John Andrew, Investigator

25

26 **APPEAL NOTICE/LIFTING OF STAY:**

27

28 ARM 24.26.680(A). If during the course of the informal investigation of the unfair labor
29 practice charge, the board's agent determines that the charge is one that may be
30 resolved through deferral to the final and binding arbitration provisions contained in the
31 collective bargaining agreement between the parties, the board's agent may issue a
32 recommended order staying the board's proceedings.

33 (2) A party may appeal the recommended order to stay proceedings by filing an appeal
34 with the board within 14 days after service of the recommended order.

35 (3) An appeal of the recommended order to stay proceedings must clearly set forth the
36 specific factual or legal reasons indicating error. At the discretion of the board,
37 interested parties will be afforded an opportunity to respond to an appeal of the
38 recommended order.

39 (4) The board or the board's agent has the discretion to dissolve the stay and continue
40 with its investigation into the unfair labor practice if a party makes a proper showing
41 that:

42 (a) the unfair labor practice charge has not been resolved in a reasonable amount of
43 time;

44 (b) the arbitration decision has not resolved the unfair labor practice; or

45 (c) the decision to stay the proceedings was inconsistent with the laws that govern
46 collective bargaining in Montana.

47

1 (5) A decision by the board or the board's agent to dissolve a stay is not appealable.
2 (6) If the board affirms and adopts the recommended order to stay proceedings, the
3 stay remains in place until there is a subsequent request to review the stay or the
4 board's order affirming and adopting the recommended order is removed by operation
5 of court order.

6
7 Any appeal of this Recommended Order Staying Proceedings must be filed with the
8 Board of Personnel Appeals, P.O. BOX 201503, Helena, MT 59620-1503 within 14
9 days after service of the recommended order.

10
11 CERTIFICATE OF SERVICE
12

13 The undersigned does hereby certify that a true and correct copy of the
14 foregoing/attached "Recommended Order Staying Proceedings" was served upon the
15 following on the 21st day of December, 2016, postage paid and
16 addressed or delivered as indicated:

17
18 BARBARA M BAKKE
19 2370 FOOTHILL ROAD
20 KALISPELL MT 59901

21
22 KIM CHRISTOPHERSON
23 CHRISTOPHERSON LAW OFFICE
24 PO BOX 1817
25 KALISPELL MT 59903

26 TOM BURGESS
27 MEA MFT FIELD CONSULTANT
28 1001 SW HIGGINS #101
29 MISSOULA MT 59803

30
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32 Wendy Knutson
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STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 3-2017:

BARBARA M. BAKKE,

Petitioner,

vs.

FEDERATION OF MONTANA
VETERANS HOME EMPLOYEES,
LOCAL 34697, MEA-MFT

Respondent.

ORDER ADOPTING THE
RECOMMENDED ORDER
STAYING PROCEEDINGS

On September 19, 2016, Petitioner Barbara Bakke filed an unfair labor practice charge with the Board of Personnel Appeals. Pursuant to Mont. Code Ann. § 39-31-405(1), board agent John Andrew was assigned to investigate the charge. On December 21, 2016, Andrew issued a Recommended Order Staying Proceedings, thereby deferring the matter to the grievance process contained in the collective bargaining agreement between the parties.

Admin. R. Mont. 24.26.680(A) sets forth the grounds and process for a stay of the Board's proceedings. Since neither party exercised its right to appeal the Recommended Order Staying Proceedings, and with no indication of error in board agent Andrew's decision to recommend a stay, the Board HEREBY ADOPTS the Recommended Order Staying Proceedings.

Pursuant to Admin. R. Mont. 24.26.680(A)(6): "the stay remains in place until there is a subsequent request to review the stay or the board's order affirming and adopting the recommended order is removed by operation of court order."

DATED this 26th day of January, 2017.

BOARD OF PERSONNEL APPEALS

By: Anne L. MacIntyre
Anne L. MacIntyre, Presiding Officer

CERTIFICATE OF MAILING

I, Patty Anderson, do hereby certify that a true and correct copy of this document was mailed to the following on the 20th day of January 2017:

Barbara M. Bakke
2370 Foothill Road
Kalispell, MT 59901

Kim Christopherson
Christopherson Law Firm
P.O. Box 1817
Kalispell, MT 59903

Tom Burgess
MEA-MFT Field Consultant
1001 SW Higgins #101
Missoula, MT 59803

Patty Anderson