I. INTRODUCTION

On February 28, 2017, Erin Foley, Business Agent for Teamsters Union Local No. 2 (Union or Local 2), filed an unfair labor practice charge with the Board of Personnel Appeals alleging that the Butte-Silver Bow Government (BSB) implemented a unilateral change in working conditions thereby bargaining in bad faith, a violation of Sections 39-31-201, 39-31-401(1) and (5), Montana Code Annotated (MCA). Leslie Clark, BSB Director of Human Resources, filed a timely answer with the Board denying BSB had committed an unfair labor practice.

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

II. FINDINGS AND DISCUSSION

This case is straightforward. On August 29, 2017, BSB and the Union met in mediation to resolve their open collective bargaining agreement. A tentative agreement was reached on that date. The tentative agreement was subsequently ratified by the parties to remain in full force and effect until May 31, 2017.

The agreement contains a grievance procedure culminating in final and binding arbitration. Article 15, Section 1 of the grievance procedure provides:

Any grievance or misunderstanding which cannot be settled between the Employer and the employee must be taken up with the Employer by the Business Representative of the Union or any one designated by the Union.
The parties agree that any differences involving the interpretation of this Agreement, which cannot be settled among themselves, may be submitted to arbitration upon the request of either party.

The issue in controversy between the Union and BSB centers around an agreed upon change in contract language pertaining to “boot pay.” As the Union points out, language pertaining to this issue was changed during mediation to eliminate language reading “replace every 2 years” with “to replace as needed.” It is important to read the full language of the section in question. It reads:

The employer shall provide the following safety equipment: (a) vests; (b) hard hats; (c) rubber boots; (d) gloves when needed; (e) safety goggles when necessary; (f) the employer will purchase one pair of steel/hard toed boots up to a maximum amount of $200.00 as needed and at the supervisor's discretion.” (emphasis added)

During the term of the agreement a bargaining unit member requested approval for new boots. That request was not denied, but rather the supervisor requested verification of the need for new boots as well as production of the boots needing replacement. BSB contends this supervisory action was well within its management rights and comports fully with the bargaining agreement. The Union disagrees and, as a result, Local 2 filed a grievance against BSB. Eventually, Local 2 also filed the instant charge with the Board contending that the actions taken by BSB constituted a unilateral change in a mandatory subject of bargaining.

With the grievance in place, the parties discussed possible resolution. As a result of these discussions a letter of agreement was drafted between BSB and Local 2 to resolve the dispute. The letter of agreement was taken to the membership and rejected, leaving the interpretation of the language of the contract in limbo and the problem unresolved.

BSB has advised the mediator that this matter was properly filed as a grievance since at its heart it involves contract interpretation. The investigator agrees with the position taken by BSB. This issue is clearly within the four corners of the bargaining agreement. Since the agreement is in effect, arbitration is available to interpret the contractual language. In this vein, BSB has informed the investigator that since the grievance was filed BSB would choose to follow the contractual language to resolve this matter. To that end, BSB has also said it would waive any procedural issues and proceed to arbitration.

The Union argues that the process BSB set up to verify the need for new boots is a mandatory subject and thus it is appropriate for the Board to process this charge. Regardless of the mandatory or permissive nature of the procedures put in place by BSB the language in the bargaining agreement needs to be interpreted by an arbitrator, not the Board as the term "supervisor's discretion" could encompass a variety of actions very arguably addressed at the table and embodied in the collective bargaining
agreement, issues all properly before an arbitrator, not the Board.

Based on the foregoing, and the likelihood that arbitration, if it occurs, will address
issues at the heart of the pending unfair labor practice, it is the view of the investigator
that this matter should continue to be processed under the grievance procedure of the
collective bargaining agreement. Deferral and a stay are appropriate to resolve this
dispute as it currently stands. Further, even if not appealed at this time, upon proper
motion, either party can request the stay in proceedings be lifted at a time in the future
should that be deemed necessary.

III. RECOMMENDED ORDER

It is hereby recommended that further action on unfair labor practice charge 8-2017 be
stayed and the matter further deferred to the grievance procedure.

Dated this 13th day of April 2017.

BOARD OF PERSONNEL APPEALS

By: John Andrew, Investigator

APPEAL NOTICE/LIFTING OF STAY:

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

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

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

(4) The board or the board's agent has the discretion to dissolve the stay and continue
with its investigation into the unfair labor practice if a party makes a proper showing
that:
(a) the unfair labor practice charge has not been resolved in a reasonable amount of
time;
(b) the arbitration decision has not resolved the unfair labor practice; or
(c) the decision to stay the proceedings was inconsistent with the laws that govern collective bargaining in Montana.
(5) A decision by the board or the board's agent to dissolve a stay is not appealable.
(6) If the board affirms and adopts the recommended order to stay proceedings, 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.

The Recommended Order of the board agent is an administrative decision appealable to the Board of Personnel Appeals. Unless there is a timely appeal to the Board of Personnel Appeals, the Recommended Order of the board agent becomes final and is not appealable to the district court. Any appeal of this Recommended Order Staying Proceedings must be filed with the Board of Personnel Appeals, P.O. BOX 201503, Helena, MT 59620-1503 within 14 days after service of the recommended order.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing/attached "Recommended Order Staying Proceedings" was served upon the following on the 15th day of April, 2017, postage paid and addressed or delivered as indicated:

HR DIRECTOR LESLIE CLARK
 BUTTE SILVER BOW
 155 WEST GRANITE STREET STE 209
 BUTTE MT 59701

BUSINESS AGENT ERIN FOLEY
 TEAMSTERS LOCAL NO 2
 PO BOX 3745
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Patty Anderson