

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE

LiUNA #1686, ) Case No.: 11016-2019  
Claimant, )  
and ) INVESTIGATIVE REPORT  
City of Hamilton, ) AND  
Respondent. ) FINDING OF PROBABLE MERIT

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**I. Introduction**

On May 10, 2019, Kim Rickard, on behalf of LiUNA#1686 (Union), filed an unfair labor practice complaint with the Board of Personnel Appeals. The claim was filed pursuant to Mont. Code Ann. (MCA) Title 39 Chapter 31 Part 401(5). The charge allege the City of Hamilton failed to meet for scheduled contract negotiations on May 6, 2019.

Cindy Walker, Attorney for City of Hamilton (City), filed a timely answer on behalf of the City denying an unfair labor practice was committed.

Theresa Sroczyk was assigned by the Board to investigate the charge and has reviewed the information submitted by the parties and communicated with them as necessary.

**II. Findings and Discussion**

The parties were scheduled to meet to negotiate a successor contract on May 6, 2019. When Ms. Rickard arrived for the meeting the room was empty. When she inquired about the status of the negotiations the City Clerk notified her the City received a request for decertification, so they decided not to participate in contract negotiations.

Ms. Walker responded stating the City received the notice of decertification and determined it was not in their best interest to incur the expense associated with bargaining a contract if the Union did not have majority support. She agrees the City will resume bargaining once the issue of the exclusive representative is resolved through the election process.

Section 39-31-305 of the MCA provides:

*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.*

And section 39-31-401(5) of the MCA states, “*...It is an unfair labor practice for a public employer to: (5) refuse to bargain collectively in good faith with an exclusive representative.*”

As of today, LiUNA #1686 is still recognized as the exclusive representative for the City of Hamilton employees. At a minimum, the City had a responsibility to discuss whether or not to continue negotiations with Ms. Rickard. To simply not show up for the scheduled meeting is unacceptable.

### III. Recommended Order

There is substantial evidence offered by the Union that the City refused to bargain in good faith. Accordingly, pursuant to Section 39-31-405, MCA, the Board will be issuing a notice of hearing on the unfair labor practice complaint.

Dated this 14 day of June, 2019

Board of Personnel Appeals

Theresa Sroczek  
Investigator

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### CERTIFICATE OF SERVICE

The undersigned does certify a true and correct copy of this document was served electronically upon the following on the June 14, 2019. Copies mailed, postage paid and addressed as follows:

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