I. SUMMARY

II. DETAILS OF INVESTIGATION

This investigation report is presented based on the authority appointed to the department under Section 39-31-405 MCA.

Montana Federation of Public Employees (MFPE) is a statewide labor organization of state and local government public employees, public school employees, higher education employees, Head Start employees and health care workers.

Livingston School District filed a response asserting they did not commit a ULP. They further argue the ULP was filed outside the 6-month statute of limitations, in accordance with section 39-31-404 of the MCA.

Background:

In 2019 the District investigated the conduct of a member of the MFPE teacher’s bargaining unit.

During the investigation, the School District sent an email to staff and a letter to parents of the member’s students which explained she had been placed on leave for purposes of an investigation (Document 2).

On May 16, 2019 MFPE representative, Megan Casey, sent a letter to Superintendent Viegut outlining her expectations that the District issue a notice explaining the suspension was done “out of an abundance of caution and no assumptions should be made that the teacher engaged in any bad behavior or malfeasance” once the member was exonerated (Document 1).
On August 9, 2019 the District announced the results of the investigation. The Investigator concluded the member had violated the School District’s Policy 3226 by engaging in bullying behavior prohibited by the policy. While no disciplinary action was taken, remedial actions were recommended to support the union member’s future teaching career (Document 2).

Superintendent Viegut adopted the findings and recommendations of the investigation report and agreed to work with MFPE and the member to develop a letter for distribution to School District staff and parents addressing the outcome of the investigation that would be “mutually satisfactory” to both MFPE and the school district. (Document 2)

In response to an email invitation from Superintendent Viegut to work together to draft this communication, MFPE representative Julie Bartz noted her expectations for this letter were outlined in Ms. Casey’s May 16, 2019 letter (referenced above). The District maintains a letter of exoneration would be contrary to the investigative report (Document 2).

On August 20, 2019 Superintendent Viegut met with Ms. Bartz and stated, if MFPE was willing to “put the issues behind them, meaning accepting the investigation report and remedial actions and not maintain an insistence on an exonerating letter,” he would be willing to work with them to produce a mutually agreeable letter. The Superintendent then stated that, if they were unable to put these issues behind them, the letter at issue may be “premature”. Ms. Bartz then informed the Superintendent that a grievance would be formally filed the next Friday (Document 2).

The District maintains Superintendent Viegut’s comments could not have been in retaliation for the filed grievance because he was unaware a grievance would be filed until after he made the comments (Document 2).

In addition, the District argues that any grievance which challenged the investigation could potentially alter the status of the investigation. As such, the issuing of any letter regarding the outcome of the investigation would be “premature” because the ultimate findings of the investigation are uncertain and subject to change, pending the grievance decision (Document 2).

In their response the District asserts, because the request for assistance contains no filing date and the ULP itself only mentions one date of August 12, 2019, the charge may have violated the six-month limitation period for filing a ULP as outlined in §39-31-404, MCA.

Statute of Limitations:

MFPE’s ULP grievance stems from an August 12, 2019, meeting, where Mr. Viegut and Ms. Bartz discussed sending a letter “exonerating” the grievant. A party has 6 months from the date of the offense to file a grievance with BOPA, which would be February 13, 2020. The District also contends the meeting took place on August 9, 2019, in which case the 6-month period to file the claim ended February 10, 2020.

The Employee Relations Division (ERD) “date received” stamp on the ULP charge verifies this charge was filed on February 5, 2020. As such, this charge is not outside of the filing date requirements outlined in §39-31-404 and is open for review by the Board, regardless of the date the meeting was held.

Unfair Labor Practice:
Based on the available documentation, this investigator finds insufficient evidence to support that Superintendent Viegut committed an Unfair Labor Practice by failing to author a letter exonerating the MFPE member.

The District notes the Superintendent’s comments, characterizing the requested letter as “premature”, occurred before he was aware that a grievance would be filed. Because this comment was made prior to any mention of a grievance, it could not have been made in retaliation to the grievance (Document 2).

Furthermore, even if Superintendent Viegut’s characterization of the letter in question occurred after he learned a grievance would be filed, it still would not constitute a ULP. A grievance filed regarding the outcome of the investigation places into question the outcome of that investigation, whose conclusion could be determined to be in error. Because of the uncertainty of the investigatory outcome once a grievance has been filed, any correspondence addressing the outcome of the investigation would be “premature” (Document 2).

During Step II of the grievance process, the union and district reached a resolution, which included the parties working together to draft a letter. Ms. Meador rejected this proposal, so no letter was drafted. However, this shows, even after the grievance was filed, Mr. Viegut was willing to send a letter to parents explaining the situation.

III. RECOMMENDED ORDER

For the reasons outlined above, this investigation finds insufficient evidence of probable merit to this Unfair Labor Complaint and recommends dismissal without merit.

IV. APPEAL RIGHTS

Pursuant to 39-31-405 (2), MCA, if a finding of no probable merit is made by an agent of the Board, it may be appealed to the Board of Personnel Appeals. The appeal must be in writing and must be made within 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the Board at:

Board of Personnel Appeals
PO Box 201503
Helena, MT 59620-1503
FAX: 406-444-4140
Email: dlierdbopa@mt.gov

If an appeal is not filed by the deadline provided above, this decision will become the final decision of the Board of Personnel Appeals.

VI. SUPPORTING DOCUMENTS

1. MFPE v. Livingston School District 4 & 1 ULP
2. Livingston School District 4 & 1 Response to ULP

Wendy Jackson, Investigator
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CERTIFICATE OF SERVICE

The undersigned does certify a true and correct copy of this document was served upon the following on the 4th day of March, 2020, postage paid and addressed as follows:

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