

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE

**Montana Federation of Public Employees
(MFPE),**
Claimant,
and
Office of Public Instruction (OPI)
Respondent.

Case No.: 2021004619
INVESTIGATIVE REPORT
AND
NOTICE OF INTENT TO DISMISS

Introduction

On August 18, 2021, Megan Casey, on behalf of the Montana Federation of Public Employees, 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. The charge alleges the Office of Public Instruction violated MCA 39-31-401, 39-31-201, and 39-31-101 by failing to provide requested information to MFPE and its Representatives on a timely basis. The charge alleges the actions of OPI are interfering with MFPE's ability to provide representation to their members and delaying the bargaining process.

Matthew Mitchell, attorney for the Department of Administration, filed a timely answer on behalf of OPI denying an Unfair Labor Practice was committed.

Wendy Jackson 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

On June 7, 2021, MFPE Representative, Megan Casey, sent OPI a request for information regarding line-item expenditures for the past 2 years, line-item expenditure budget for the next 2 years, and all documentations regarding pay plan 25 transitions.

On June 14, 2021, Tom Antonick, OPI human resources manager, responded asking for clarification of the pay plan 25 transitions information request.

MFPE's response, sent on June 21, 2021, outlined several items of requested information related to the pay plan 25 transitions. The additional information requested included employee listings (both pre and post transition including wage information), agency position

codes, pay exceptions for new and existing employees, temporary pay adjustments, hours of overtime and compensatory time by position, and travel expenses.

On July 26, 2021, OPI informed Ms. Casey that this information was available via e-pass, however, Ms. Casey was unable to access the information. Following this, the OPI leadership team reviewed the information included in the request and noted it was potentially related to negotiations. OPI determined additional review of the information was necessary. The information was sent to MFPE in eleven (11) separate emails from August 11 through August 24, 2021.

A separate request for information regarding OPI's current COVID-19 policy and procedures was sent on July 27, 2021. OPI provided this information to MFPE on August 3, 2021.

MFPE maintains OPI's delay in providing the requested information constitutes an Unfair Labor Practice as it interferes with MFPE's ability to provide representation to their members and delays the bargaining process.

OPI denies the allegation and notes the delay in providing the requested information was necessary given the vagueness of the initial request, volume of information requested, and coordination of staff required to compile this information.

While the National Labor Relations Board does not have jurisdiction over public sector employers, their guidance is often used as a roadmap for labor relations in the public sector. The National Labor Relations Act (NLRA) generally requires employers to furnish to unions information relevant to the administration or negotiation of a collective bargaining agreement upon request. The acceptable time period, however, depends on the information requested. The standard for violation in this area can then be construed as "unreasonable delay". Based on this guidance, we must consider what a reasonable amount of time is for the request in question.

The COVID-19 policy information was provided to MFPE within 5 business days which represents a reasonable and timely fashion for this request.

Although there was an additional delay between when MFPE was notified the information was ready (on July 26, 2021) and the actual delivery of the requested pay plan 25 transition information (between August 11 and August 24, 2021), the union did receive the requested information within two months of the initial request. Considering the volume of information involved in this request and need for clarification, this does not constitute an unreasonable delay.

Additional emails reviewed during the course of this investigation demonstrate on ongoing dialogue where the parties continue to communicate, requesting and providing information.

Because OPI has provided the requested information in a reasonable amount of time and continues to work with MFPE to provide the information requested, there is no evidence to support a charge of Unfair Labor Practice.

III. Recommended Order

This investigator finds no merit to the charge of Unfair Labor Practice and encourages the parties to continue to work to maintain an ongoing, open dialogue where communication and information can be shared in a timely fashion. It is hereby recommended this Unfair Labor Practice charge be dismissed without merit.

Accordingly, pursuant to Section 39-31-405, MCA, the Board will issue a notice of hearings to the Office of Administrative Hearings on the Unfair Labor Practice complaint.

Dated this 15th day of September 2021

Board of Personnel Appeals

By: Wendy Jackson
Wendy Jackson
Investigator

IV. Supporting Documents

1. MFPE, Details of the Charge
2. OPI Response

NOTICE

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

Attn:
P.O. 201503
Helena, MT 59620-1503.
FAX: 406-444-4140
Email: dlierdbopa@mt.gov

If an appeal is not filed by September 29, 2021, the decision to dismiss becomes a final order of the Board.

CERTIFICATE OF SERVICE

The undersigned does certify a true and correct copy of this document was served upon the following on the 15th day of September 2021, postage paid and addressed and sent electronically as follows:

MFPE
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