

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE

Austin Norman

Claimant,

and

Teamsters Local 2 and Erin Foley

Respondent.

Case No.(s): **2022DRS00125, 2022DRS00126**

INVESTIGATIVE REPORT

AND

NOTICE OF INTENT TO DISMISS

Introduction

On June 22, 2022, Austin Norman filed an Unfair Labor Practice (ULP) 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 filed by Mr. Norman alleges Teamsters Local #2 (ULP 2022DRS00125) and Erin Foley (ULP 2022DRS00126) “is likely in violation of MCA. 39-31-201 and 39-31-402.” The charges also allege Ms. Foley authored a threatening memo that was posted at Mountain Line (MUTD Missoula Urban Transportation) which was intended “to stymie legitimate concerted activity among public employees at Mountain Line¹,” causing employees to feel threatened.

On July 11, 2022, Erin Foley filed a timely answer on behalf of Teamsters Local 2 denying an unfair labor practice was committed.

On July 20, 2022, Mr. Norman filed an amended complaint pursuant to MCA 39-31-407 after reviewing the responses that were provided by MUTD and the Teamsters to the original charge. Mr. Norman wanted to respond and hopefully add clarity to the charges.

On August 1, 2022, Erin Foley filed a timely answer to the Amended Charge on behalf of Teamsters Local #2 denying an unfair labor practice was committed.

Max Hallfrisch 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

¹ Mountain Line is a public transit system providing service to the community of Missoula, Montana and the University of Montana. The legal name of Mountain Line is the Missoula Urban Transportation District, (MUTD) which is governed by a board whose members are appointed by the City of Missoula and Missoula County.

This charge alleges a violation of MCA. 39-31-201 and 39-31-402 and provides the following evidence:

- (1) a separate letter outlining the details of the charge,
- (2) copy of a flyer,
- (3) letter with a separate list of Grievances Related to Local 2 Representation,
- (4) copy of the June 9, 2022, notice from Erin Foley and,
- (5) copies of 11 signatures from individuals supporting the letter titled “Grievances Related to Local 2 Representation.”

The letter outlining Details of the ULP Charge alleges the following.

1. A memo authored by Ms. Foley was posted in the drivers' non-working locker area and clearly shows restraint and coercion against valid concerted activities with public employees.
2. This memo might also imply bias representation where the Union may have decided not to represent terminated employees based on hearsay evidence of a work stoppage while the employee was engaged in protected concerted activities.
3. The timing of this memo points to a specific response to attempts by bargaining unit members to collect signatures for supporting a petition outlining dissatisfaction with current Union representation.
4. The memo may be the cause for an escalation of internal investigations and has stymied concerted protected activities.

Ms. Foley's responses to both the initial and amended ULP note the Teamsters Local #2 is the appropriate party for this ULP charge. The individual representative or Teamsters International are not appropriate parties. This investigator acknowledges these issues but will review the facts and rule accordingly.

Teamsters Local #2 and the Missoula Urban Transportation District, (MUTD) negotiated and signed a Collective Bargaining Agreement (CBA) for the period July 1, 2020 - June 30, 2023. During negotiations MUTD notified the Union it would be expanding service to 7 days, to be implemented during the contract term. While the initial intent was to implement expanded service in 2020, COVID halted the process. In November 2020, the District secured a grant and a mill levy to fund the expanded service. Expanded service implementation date was set for July 10, 2022. The Union was afforded the opportunity to bargain over the effects of the expansion. The Union's negotiation team came to an agreement which included some changes requested by the membership. June 6, 2022, text messages from Wendell Barnes to other negotiation team members stated, “Everyone remember we left the meeting with the MOU being taken back to the members with our recommendation of approval.”

Mr. Norman, who participated in the bargaining team, changed his mind and was not satisfied with the results of negotiations even though the negotiation team agreed to recommend the MOU. Efforts were made to convince the membership to vote “No” on the

Memorandum of Understanding (MOU) that was to be voted on at the union meeting June 12, 2022. When the MOU was presented to the membership it was voted down. The Employer declared impasse and imposed their latest offer.

On June 9, 2022, prior to the vote, Ben Sharbano, Teamsters Local #2 Representative, received an email from Jennifer Sweten, Director of Operations for MUTD that some Union members were discussing and soliciting participation from other members during working hours. Mr. Sharbano forwarded this email to Ms. Foley, which prompted Ms. Foley to send out the June 9, 2022, notice. Mr. Sharbano posted the notice on the Union Bulletin Board in the Drivers Non-Working locker area.

While the ULP charge alleges posting in this location “Clearly shows restraint and coercion against valid concerted activities with public employees.” This location is a common place for the Union to post notices. Ms. Foley’s notice addressed the Director of Operation’s concerns regarding activities during work hours. This was an informational notice to the Teamsters working at MUTD and included the applicable sections of the CBA for Article 20 - NO STRIKE: NO LOCK OUT.

Ms. Foley’s response to this ULP charge notes, “The Union had a duty to promptly inform employees concerning the information it obtained from the District, that the conduct reported by the District, if true, could result in Termination, (union may face DFR liability where it fails to accurately inform members of the consequences of engaging in strike activity that violates the CBA and exposes employees to termination).That was the sole purpose of the Notice posted by the Union.”

Considering the information outlined above, there is no evidence to support that the memo in question was posted by the Union with the intention of preventing the employees from engaging in protected concerted activities.

The memo itself does not accuse any member of misconduct or prohibit them from protected concerted activity. It simply reinforces employees should not be engaging in concerted activities during work hours.

There is no evidence to support the charges of bias representation or escalation of internal investigations as a result of this memo.

The memo cites the language from the CBA that prohibits certain conduct during the term of the agreement. If there is a dispute of a violation the Union has the right to utilize the grievance and arbitration provision. There is no evidence of a refusal by the Union to represent their members. While this ULP expresses some member’s discontent with current representation, no evidence has been presented to support any allegation the Teamsters have failed in their duty to represent employees.

Concerns from bargaining unit members regarding Union processes and communications should be addressed internally within the union.

All of the information provided has been considered even if they are not specifically addressed. Allegations are based on the charging parties' feelings and beliefs and are not an appropriate basis for an unfair labor practice charge.

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 18th day of August 2022.

Board of Personnel Appeals



By: _____
Max Hallfrisch
Investigator

IV. Supporting Documents

1. Unfair Labor Practice Charge (ULP)
2. July 11 2022 ULP Response Norman vs Teamsters2v-2
3. Teamsters_Amended ULP Amended Form July 20 2022
4. Aug 1 2022 ULP Teamsters Response to Amended (ULP)
5. 1A_Document
6. 1B_Document
7. 1C_Document
8. Signatures1
9. Signatures 2
10. Exhibit A Mountain Line 2020-2023 CBA
11. Exhibit C Possible ULP Email
12. Details of the Charges Teamsters Local 2
13. Exhibit D-Bargaining Notes
14. Exhibit E – Teamsters Local 2 Stewards group texts
15. Exhibit F – Austin Email
16. Teamsters_Amended ULP July 20 2022 Letter

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

If an appeal is not filed by Monday, August 29, 2022, the decision to dismiss becomes a final order of the Board.

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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 18th day of August 2022, postage paid and addressed and sent electronically as follows:

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