

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 23-2011

MEA-MFT, MONTANA PUBLIC EMPLOYEES
ASSOCIATION, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL NO. 9,

Complainants,

FINAL ORDER

- vs -

STATE OF MONTANA,

Respondent.

INTRODUCTION

On May 25, 2011, MEA-MFT, Montana Public Employees Association, American Federation of State, County and Municipal Employees, Council No. 9, (Unions) filed an unfair labor practice charge against the State of Montana. The matter proceeded to a contested case proceeding before the Department of Labor and Industry's Hearings Bureau. At these proceedings, the "State of Montana" responded through Paula Stoll, Chief of the Department of Administration's State Office of Labor Relations (Executive). Staff Attorney, Daniel J. Whyte, Legal Services Office, Montana Legislative Services Division, responded on behalf of the Montana Legislature (Legislature).

On August 29, 2011, the Legislature filed a motion for summary judgment seeking to dismiss the complaint on the ground that the unfair labor practice charge was "beyond the reach of the collective bargaining provisions of Title 39, chapter 31, MCA." *Legislature Motion and Brief for Summary Judgment at 6.* The parties briefed the motion. On September 28, 2011, the hearing officer issued an Order Recommending Dismissal on Summary Judgment. (Recommended Order)

The Unions filed exceptions with the Board of Personnel Appeals (Board) and the Board considered the matter on December 15, 2011. Karl England, attorney at law, appeared on behalf of the Unions and Daniel Whyte, attorney at law, appeared on behalf of the Legislature. There was no appearance by the Executive. The Board remanded the matter to the hearing officer for further consideration for the purpose of determining whether the Legislature is a public employer under Title 39, chapter 31, which therefore had a duty to bargain in good faith pursuant to Montana's collective bargaining law.

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The Unions and the Legislature briefed the question on remand. On March 9, 2012, the hearing officer issued a Proposed Order on Remand (Proposed Order) concluding that "the Legislature is not ... a 'public employer' for the purposes of Montana collective bargaining law" and therefore does not have a duty to bargain in good faith. *Proposed Order on Remand at 3.*

The Unions again filed exceptions with the Board. The Board considered the matter on May 17, 2012. Karl England again appeared on behalf of the Unions and Daniel Whyte, appeared on behalf of the Legislature to offer briefs and oral argument. Again, there was no appearance by the Executive. The Board consisted of Presiding Officer Anne L. MacIntyre, permanent members Steve Johnson, Jay Reardon and Karla Stanton, as well as alternate member Max Halfrisch.

DISCUSSION

In the Recommended Order, the hearing officer determined that given the language of the collective bargaining statutes, specifically § 39-31-305(3), MCA, and § 39-31-102, MCA, the State of Montana met its duty of bargaining in "good faith" once the Executive submitted the negotiated settlement to the Legislature. *Recommended Order at 5.* Once this "good faith" is established through the submission of the negotiated settlement, the Board is precluded from considering subsequent actions by the Legislature. *Id.*

Although the central issue is whether to grant the Legislature's motion for summary judgment, the Board sent back to the hearing officer a preliminary question of whether the Legislature is a public employee and therefore bound by the duty of good faith bargaining. In answering this question on remand, the hearing officer concluded that the Legislature is not a public employer and the Board has no authority to review the legislative process as a means of determining whether the Legislature bargained in good faith. *Proposed Order at 3.* A review of the legislative process by the Board would directly contradict the plain language of § 39-31-102, MCA. *Id.* "Montana collective bargaining law for public employees does not impose any duty to bargain in good faith upon the Legislature, in its handling of such a negotiated settlement once it has been submitted" to the Legislature. *Id.*

Upon consideration of the parties' briefs and oral arguments, the Board finds the hearing officer's above-cited conclusions to be correct applications of the law. § 39-31-102, MCA excludes the Legislature from any duty to bargain in good faith pursuant to § 39-31-305(3), MCA. The duty to bargain in good faith is met by the State of Montana once the Executive has submitted a negotiated settlement to the Legislature for consideration. However, the Board notes that § 39-31-102, MCA is interpreted narrowly and applies only to the Legislature. The exception set forth in § 39-31-102, MCA does not apply to other political subdivisions. The hearing officer reached a similar conclusion regarding the scope of this exception. *Recommended Order at 5 and 6.*

The Board concludes that it is the Executive's duty to bargain in good faith, and that duty does not extend to the Legislature, therefore, the Board adopts, in full, both the hearing officer's Recommended Order and the Proposed Order.

ORDER

Pursuant to Admin. R. Mont. 24.26.224(3), the Board adopts the hearing officer's Order Recommending Dismissal on Summary Judgment and Proposed Order on Remand. Thus, the Complainants' unfair labor practice charge is hereby dismissed.

DATED this 10th day of June, 2012.

BOARD OF PERSONNEL APPEALS

By: *Anne L. MacIntyre*
Anne L. MacIntyre, Presiding Officer

Board members Johnson and Stanton concurred.

NOTICE: You may be entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for judicial review with the district court no later than thirty (30) days from the service of this Order. Judicial Review is pursuant to the provisions of Section 2-4-701, et seq., MCA.

CERTIFICATE OF MAILING

I, *Windy Kneeton*, do hereby certify that a true and correct copy of this document was mailed to the following on the *10th* day of June, 2012:

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