

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 25-2000:

|                                       |   |                             |
|---------------------------------------|---|-----------------------------|
| <b>ANACONDA POLICE PROTECTIVE</b>     | ) | Case No.1959-2000           |
| ASSOCIATION, OR OFFICERS, AGENTS,     | ) |                             |
| REPRESENTATIVES, AND/OR MEMBERS OF    | ) |                             |
| <b>THE ANACONDA POLICE PROTECTIVE</b> | ) |                             |
| <b>ASSOCIATION,</b>                   | ) | <b>RECOMMENDED ORDER</b>    |
|                                       | ) | <b>ON REMAND FROM BOARD</b> |
| Complainants                          | ) | <b>OF PERSONNEL APPEALS</b> |
|                                       | ) |                             |
| vs.                                   | ) |                             |
| <b>ANACONDA-DEER LODGE COUNTY,</b>    | ) |                             |
| <b>Defendant,</b>                     | ) |                             |

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IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 2-2001:

|   |   |                             |
|---|---|-----------------------------|
| <b>ANACONDA-DEER LODGE COUNTY,</b>        | ) | Case No.1044-2001           |
|   | ) |                             |
| <b>Petitioner,</b>                        | ) |                             |
|   | ) | <b>RECOMMENDED ORDER</b>    |
| vs.                                       | ) | <b>ON REMAND FROM BOARD</b> |
| <b>ANACONDA POLICE PROTECTIVE</b>         | ) | <b>OF PERSONNEL APPEALS</b> |
| <b>ASSOCIATION, OR OFFICERS, AGENTS,</b>  | ) |                             |
| <b>REPRESENTATIVES, AND/OR MEMBERS OF</b> | ) |                             |
| <b>THE ANACONDA POLICE PROTECTIVE</b>     | ) |                             |
| <b>ASSOCIATION,</b>                       | ) |                             |
| <b>Defendant,</b>                         | ) |                             |

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**I. INTRODUCTION**

On April 5, 2002, Hearing Officer Michael T. Furlong issued his Findings of Fact; Conclusions of Law; and Recommended order in the above matter. On September 27, 2002, the matter came before the Board for consideration of the "Union's Exception to Finding and Conclusion on Attorney Fees and Costs" dated April 23, 2002 and "Anaconda-Deer Lodge County's Exceptions

to Findings of Fact, Conclusions of Law and Recommended Order" dated April 24, 2002. Timothy McKittrick was present and represented the Anaconda Police Protective Association. Michael Dahlem was present and represented the Anaconda-Deer Lodge County.

On October 3, 2002, the Board issued an Order of Remand and remanded the case to the Hearing Officer to determine the following:

A. The Hearing Officer must reconsider his decision in light of the case of N.L.R.B. v. MacMillan Ring-Free Oil Co., Inc., 394 F.2d 26, 33 (9th Cir. 1968), wherein the circuit court held:

To recapitulate, then, we hold that while evidence of events occurring more than six months before the filing of a charge may be used to "shed light" upon events taking place within the six-month period, the evidence of a violation drawn from within that period must be reasonably substantial in its own right. Where, as here, that condition is not met, it is impermissible under the policies embodied in section 10(b) for a finding of an unfair labor practice to be justified by primary reliance on the earlier events. Thus the Board's conclusion that MacMillan improperly refused to bargain with the union during the applicable limitations period cannot be upheld.

B. Specifically, the Hearing Officer must determine whether actions which occurred more than six months prior to the filing of the charge were considered to "shed light" on the case and whether using the above guidance of MacMillan Ring there was a basis for the unfair labor practice charge.

## **II. FINDINGS OF FACT**

The Hearing Officer adopts and incorporates by reference Findings of Fact 1 through 85 in the April 5, 2002 decision for the reasons stated in the discussions therein.

## **III. CONCLUSIONS OF LAW**

1. The Board of Personnel Appeals has jurisdiction over this matter pursuant to § 39-31-405, MCA.
2. Statements made by Anaconda-Deer Lodge County representatives that layoffs would occur due to a budget shortfall because of the arbitrator's award of wages and the Association's bargaining positions did not violate § 39-31-401 (1) and (2), MCA.
3. Anaconda-Deer Lodge County violated § 39-31-401 (5), MCA, by failing to bargain in good faith while using bargaining strategies designed to prevent reaching a CBA, including surface bargaining, inconsistent reports of County finances, misrepresenting police officer salaries, and misrepresenting the Attorney General opinion regarding holiday pay.
4. The record shows that the surface bargaining tactics used by the County in their "if", the "if if" and "if, if, if" proposals including mandatory subjects of bargaining during the course of negotiations clearly suggests that the County had no intention of entering into a collective

bargaining agreement with the Association. This strategy was designed by the County for no other reason than to allow them the advantage to virtually change its mind at a later date even when the parties had reached a tentative agreement on collective issues. It had a significant impact leading to the stalemate and impasse in the negotiation process. The hearings officer concluded that by using this surface bargaining strategy, the County's conduct during negotiations went beyond hard bargaining and is not indicative of participation in negotiations in good faith. This type of bargaining tactic used by the County during deliberations occurred prior to and following September 13, 1999 until the Association complaint was filed on March 14, 2000 which reveals a violation by the County in their statutory obligation to bargain in good faith. Therefore, the County's conduct prior to September 13, 1999 did in fact "shed light" upon the events taking place within the six-month period prior to the filing of the charge which violated Mont. Code Ann. § 39-31-401(5).

5. The County's act of putting the Association in a position of accepting a partial resolution of the wage issue on February 23, 2000 (Finding of Fact 32) without a collective bargaining agreement and without addressing the underlying contract disagreements including mandatory subjects of bargaining was substantial evidence of the County's failure to apply the principles of good faith bargaining within the six months period prior to the filing of the charge on March 14, 2000.

6. The Anaconda Police Protective Association did not violate § 39-31-402 (1), MCA, by contacting members of the County Commission who were not bargaining team representatives.

7. The Association did not bargain to impasse over a permissive subject of bargaining, and therefore did not violate §§ 39-31-303 or 39-31-402 (2), MCA.

8. An unfair labor practice charge is not the appropriate procedure to address the presence of Captains on the Association bargaining team contrary to the terms of the CBA.

9. The appropriate remedy for the County's violation of § 39-31-401 (5), MCA, is a cease and desist order, an order to return to the bargaining table, and an order to post and publish the notice set forth in Appendix A.

10. The Association may not recover attorneys fees in an unfair labor practice charge.

#### **IV. RECOMMENDED ORDER**

1. Anaconda-Deer Lodge County is hereby ordered:

a. To cease the practice of bargaining in bad faith with the Association and of bargaining with no intention of entering into a collective bargaining agreement.

b. To return to the bargaining table immediately and commence good faith negotiations.

c. To post copies of the notice contained in Appendix A at conspicuous places, including all places where notices to employees are customarily posted, including City Hall and all police

stations for a period of 60 days and to take reasonable steps to insure that the notices are not altered, defaced, or covered by any other material.

2. ULP 2-2001 is DISMISSED.

DATED this 20th day of December, 2002.

BOARD OF PERSONNEL APPEALS

By: /s/ MICHAEL T. FURLONG

MICHAEL T. FURLONG

Hearing Officer

NOTICE: Exceptions to these Findings of Fact, Conclusions of Law and Recommended Order may be filed pursuant to ARM 24.26.215 within 20 days after the day the decision of the hearing officer is mailed, as set forth in the certificate of service below. If no exceptions are timely filed, this Recommended Order shall become the Final Order of the Board of Personnel Appeals. § 39-31-406(6), MCA. Notice of Exceptions must be in writing, setting forth with specificity the errors asserted in the proposed decision and the issues raised by the exceptions, and shall be mailed to:

Board of Personnel Appeals

Department of Labor and Industry  
P.O. Box 6518  
Helena, MT 59624-6518