



# Legislative Background Brief

for the  
Economic Affairs Interim Committee

October 2011

## Board of Personnel Appeals

Prepared by Pat Murdo, Legislative Research Analyst

**Administrative Attachment:** Department of Labor and Industry

**Statutorily Established** - 2-15-1705, MCA. Enacted in 1973.

### Purposes:

- Serve as an impartial decisionmaker for employment-related grievances, regardless of an appointment as a representative of a group.
- Handle collective bargaining issues related to public employees, including determining appropriate collective bargaining unit, determining nonassociation rights, investigating questions about representation and hearing disputes, directing elections for representation, determining if complaints are unfair labor practices, conducting factfinding and investigations in disputes, issuing subpoenas when necessary, training fact finders and arbitrators, conducting hearings on unfair labor practices, and filing for enforcement of orders by district court.
- Serves any state employee with a grievance related to pay classification or compensation under Title 2, chapter 18, parts 1 through 3 and part 10 or any retaliation for filing a grievance or attempting to file a grievance. The Department of Transportation and the Department of Fish, Wildlife, and Parks employees are specifically referenced by separate statutes for employment-related grievances based on work conditions, supervision, or the result of an administrative action as well as any interference or retaliation by a supervisor against an employee who has filed or tried to file a grievance.
- Serves teachers or school districts under collective bargaining agreements. May provide a list of arbitrators upon request.
- Serves police officers and their employers by appointing mediators, fact finders, or arbitrators for disputes.
- Serves nurses and their health care facility employers with collective bargaining functions similar to those for public employees as provided in Title 39, chapter 32.
- Serves firefighters and their public employers with collective bargaining functions as provided in Title 39, chapter 34, including providing a list of arbitrators.

**Board** - 5 Members and 3 Substitute Members, appointed by the Governor as provided by statute and subject to Senate confirmation.

Members/Address	Representing	Term Expires
Jack Holstrom, Helena (presiding officer)	Member with general labor-management experience - attorney	Jan. 1, 2012
Steve Johnson, Missoula County	Full-time management employee in organization with a collective bargaining agreement or who represents management in collective bargaining	Jan. 1, 2015
Karla Stanton, City of Billings	Full-time management employee in organization with a collective bargaining agreement or who represents management in collective bargaining	Jan. 1, 2013

James Reardon, Laborers Union Local No. 1686, Helena	Full-time employee or elected official of a labor union or association recognized by the board	Jan. 1, 2013
Quinton Nyman, MT Public Employees Assn., Helena	Full-time employee or elected official of a labor union or association recognized by the board	Jan. 1, 2013
Amy Verlanic, Anaconda	Full-time management employee in organization with a collective bargaining agreement or who represents management in collective bargaining - substitute	Jan. 1, 2015
Jerry Rukavina, Great Falls	Full-time employee or elected official of a labor union or association recognized by the board - substitute	Jan. 1, 2015
Rick Parish, Helena (attorney)	Member with general labor-management experience - substitute	Jan. 1, 2015

### Topics of Interest

	Type	Outcome			
Unfair Labor Practice Dec.	2011	Medical Center v. MPEA MPEA v State, MDOT MPEA v. State, MDOT U.Faculty Assn v. UM Cascade County v. Labor Employees v. Arlee Schools Butte Employee v. Unions	Dismissal Recommended  Dismissal Recommended		
		2010	Teamsters v. Bozeman Employee v. Park County, Union Employee v. Lame Deer Sch. Employee v. Public Defenders Laborers v. Helena Firefighters v. Great Falls Employee v. Helena Educ.Assn Teamsters v. Great Falls	Dismissal Recommended Dismissal Recommended <i>Arbitration Recommended</i> Dismissal Recommended Dismissal Recommended Dismissal Recommended Dismissal Recommended <i>Arbitration Recommended</i>	
	2009		Firefighters v. Kalispell Firefighters v. Billings Firefighters v. Bozeman Unions v. Kalispell Schools Employee v. Unions Unions v. Butte-Silver Bow Unions v. Anaconda School Dist.	Dismissal Recommended Dismissal Recommended Dismissal Recommended Dismissal Recommended Dismissal Recommended Dismissal Recommended <b>Notice of Hearing Issued</b> Dismissal Recommended <b>Notice of Hearing Issued</b>	
			2010	Firefighters v. Billings Employee v. Park County, Union	Cease & Desist/Order Charge Dismissed

### 2011 Legislation Impacting Board of Personnel Appeals

- HB 57, by Rep. Cynthia Hiner at the request of the Department of Labor and Industry, allowed services of process and notices to be sent by regular mail. Enacted.
- HB 527, by Rep. James Knox, revised specific criteria for arbitrator to use as a basis for findings and opinions. Bill tabled in House Business and Labor.

### Audits

- Financial Compliance Audit in June 2007 noted that governor, rather than the Board of Personnel Appeals, was appointing substitute members. Statutory changes made in 2009 provided governor with duty to appoint substitute members.

### Budget, FY 2012-2013 (coming)

FTE	General Fund	State Special
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***Information on Employee Pay Plan Dispute:***

As the committee may recall, MEA/MFT and other unions brought a complaint before the Board of Personnel Appeals, contending that the State of Montana committed unfair labor practices related to the treatment of the collective bargaining agreement in the form of HB 13. The unfair labor charges have been filed against the "State of Montana" pursuant to the Collective Bargaining Act, Title 39, chapter 31, MCA. The Act requires that the governor or the governor's representative negotiate with the labor unions to attempt to come to an agreement for wages and benefits. If a collective bargaining agreement results from those negotiations, it is presented to the Legislature for its consideration. During the 2011 Session, a collective bargaining agreement was signed by the governor and the unions, and was presented to the Legislature in the form of HB 13. It was introduced, debated in the House Appropriations Committee, but tabled. It was eventually reconsidered, passed out of committee and debated on the House floor before failing on a vote of 58-42.

After the session, the unions brought the unfair labor practice charges arguing that (1) the Legislature delayed consideration of HB 13 until a time too late in the session for the unions to renegotiate with the Executive Branch, and (2) the Legislature has always passed a pay plan, and because the revenues were available, should have passed HB 13 this session.

The complainants argue that while there are two separate branches of government that are part of the collective bargaining process, that under the Act, the Legislature and Governor are a "public employer" collectively. Therefore, the branches must not act in conflict. As a result of this argument, the Legislative Services Division filed a motion to sever the defendant "State of Montana" into two separate defendants, the Executive Branch, and the Legislative Branch. That motion was denied.

LSD has also filed a motion for summary judgment on the grounds that there are no issues of material fact that must be tried and that the hearing officer (and the Board) can determine as a matter of law that the unfair labor practice charges are groundless and therefore should be dismissed. Oral argument on this motion is set for September 20. If this motion is denied the case is to be tried on October 6 and 7. Subsequent to the October hearing, the hearing office will give the parties an opportunity to file post-hearing briefs, after which the hearing officer will make recommended findings to the Board, who has five months in which to file a final order.

Subsequent to the decision of the Board, either party may appeal the case to a district court.