



April 12, 2024

Montana Department of Justice
June Henderson
Jhenderson@mt.gov

Montana Department of Administration
Christian MacKay
Christian.mackay@mt.gov

RE: Case Number: 2024DRS00181
Unfair Labor Practice filed by MFPE v. Montana Department of Justice, Highway Patrol

Dear Ms. Henderson and Mr. MacKay,

This letter serves as the Board of Personnel Appeals' (BOPA) formal notice to you of an Unfair Labor Practice charge filed against Montana Department of Justice, Highway Patrol. A copy of the complaint is enclosed for your reference. Also attached is a witness list. Please provide the names and contact information for any witnesses with direct knowledge about the events you would like the board agent to consider during the informal investigative process.

Please provide a written response no later than April 22, 2024. In your response, please include:

1. Your position regarding the Unfair Labor Practice charge.
2. Any documentation you may have to support this position.
3. A complete copy of the parties' CBA (if any).

Your written response must include a specific reply to each allegation made in the complaint as well as any facts you wish BOPA to consider.

A response must be received by no later than April 22, 2024. The response should be sent to the address on this letterhead or emailed to me at the address below. Electronic documents can be sent via File Transfer Service (the State's free document sharing platform). Provide a copy of your response to the complainant.

After a response is received, the matter will be investigated and a determination regarding the complaint will be issued according to Section 39-31-405, Montana Code Annotated.

Feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Wendy Jackson".

Wendy Jackson
Board Agent
(406) 444-0564
wendy.jackson@mt.gov

Cc: Onyman@mfpe.org



Montana Department of
LABOR & INDUSTRY
Employment Standards Division

BOARD OF PERSONNEL APPEALS

UNFAIR LABOR PRACTICE CHARGE

Submit this charge to: THE BOARD OF PERSONNEL APPEALS
PO BOX 8011
HELENA MT, 59604-8011
Email dlierbopa@mt.gov

1. NAME OF CHARGING PARTY (Complainant):

TELEPHONE:

EMAIL ADDRESS:

2. NAME OF CHARGING PARTY'S ATTORNEY:

TELEPHONE:

EMAIL ADDRESS:

3. MAILING ADDRESS OF COMPLAINANT: (Number, Street, City and Zip Code)

MFPE, 1232 East Sixth Avenue, Helena, MT 59601 qnyman@mfpe.org (406)4424250

4. AFFILIATION (Parent/National Organization, if any):

NEA/AFT

5. NAME OF PARTY AGAINST WHOM THE CHARGE IS MADE: (Defendant)

TELEPHONE:

EMAIL ADDRESS:

Montana Department of Justice, Highway Patrol (406)444-5528 JHenderson@mt.gov

6. MAILING ADDRESS OF DEFENDANT: (Number, Street, City and Zip Code)

804 Helena Avenue, Helena MT 59601

7. AFFILIATION (Parent/National Organization, if any):

8. DETAILS OF CHARGE: A clear and concise statement of facts constituting the alleged violations. Include the time and place of occurrence of particular acts **and a specific statement describing the laws or rules allegedly violated.**

The Montana Department of Justice, Montana Highway Patrol Division is in violation of MCA 30-31-401 (1) by interfering with, restraining and coercing, through intimidation and employment threats, in the exercise of rights guaranteed in 39-31-201. Additionally, it is the Federation's contention MCA 30-31-401 (2) by interfering with the administration of MFPE and the Association of Montana Highway Patrol Troopers local.

9. If the charge alleges a violation of Section 39-31-401 (5) MCA, or Section 39-31-402 (2) MCA, has the charging party requested the Board of Personnel Appeals to provide mediation assistance, pursuant to ARM 24.26.695 of the Board's rules?

Yes _____ No ☒ _____

10. Other information (attach additional pages if required):

The above information is true and complete as to the best of my knowledge.

By: Quinton E. Nyman

Date: 04/11/2024

On April 9, 2024 the Montana Department of Justice, Montana Highway Patrol Division has placed the MFPE Association of Montana Highway Patrol Troopers local on administrative leave following an investigatory hearing on April 9, 2024 where truthful testimony was given. In addition to the administrative leave, the letter gives notice of an additional hearing in which discipline up to and including termination has been threatened. The local president, in her capacity as an elected local union president, shared important working condition information with her assigned MFPE staff field consultant. It is the Federation's position that information contained documentation of the working conditions of troopers, is a public document given that it was the product of a 'climate survey' that was paid for with public funds and is not a confidential document. The actions of DOJ are meant to intimidate troopers and the local president to not exercise their rights as union members.

As the filer of this charge, I anticipate that additional information and amended charges will be coming.

MFPE's initial ULP filing -- April 11, 2024 (after Bragg's initial investigatory hearing)



April 25, 2024

Montana Department of Justice
June Henderson
Jhenderson@mt.gov

Montana Department of Administration
Christian MacKay
Christian.mackay@mt.gov

RE: Case Number: 2024DRS00181
Amended Unfair Labor Practice filed by MFPE v. Montana Department of Justice, Highway Patrol

Dear Ms. Henderson and Mr. MacKay,

This letter serves as the Board of Personnel Appeals' (BOPA) formal notice to you of an Amendment to the Unfair Labor Practice charge filed against Montana Department of Justice, Highway Patrol. A copy of the amended complaint is enclosed for your reference.

Please provide a written response no later than May 6, 2024. In your response, please include:

1. Your position regarding the Unfair Labor Practice charge.
2. Any documentation you may have to support this position.
3. A complete copy of the parties' CBA (if any).

Your written response must include a specific reply to each allegation made in the complaint as well as any facts you wish BOPA to consider.

A response must be received by no later than May 6, 2024. The response should be sent to the address on this letterhead or emailed to me at the address below. Electronic documents can be sent via File Transfer Service (the State's free document sharing platform). Provide a copy of your response to the complainant.

After a response is received, the matter will be investigated and a determination regarding the complaint will be issued according to Section 39-31-405, Montana Code Annotated.

Feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Wendy Jackson".

Wendy Jackson
Board Agent
(406) 444-0564
wendy.jackson@mt.gov

Cc: Onyman@mfpe.org

Montana Federation of Public Employees

1232 E 6th Ave Helena, MT 59601

406.442.4250 | 800.398.0826

Fax 406-443-5081



April 25, 2024

Montana Board of Personnel Appeals
c/o Wendy Jackson
P.O. Box 201503
Helena, MT 59620-1503

RE: MFPE v. DOJ/MHP, Case No. 2024DRS00181

Dear Wendy:

On behalf of MFPE, I am submitting this amendment to the above referenced ULP.

On April 19, 2024, the Montana Department of Justice, through Colonel Sager, terminated Alicia Bragg, a member of MFPE Association of Montana Highway Patrol Troopers local. Trooper Bragg is the President of this local union. Bragg was terminated, in part, because of communications she had with her Union, MFPE. The underlying communication concerned working conditions. Conditions of employment are bargained-for issues that are part of the current CBA between the Local and MHP/DOJ, and communications between the Local President and her Union must be preserved in a way that does not result in a chilling effect on Union members, especially officers of those unions. Thus, MHP/DOJ violated MCA 39-31-401 when it terminated Bragg for communicating with her Union.

Sincerely,

A handwritten signature in black ink, appearing to read "Quinton E. Nyman", is written over a horizontal line.

Quinton E. Nyman
Deputy Executive Director
MFPE

**COLLECTIVE BARGAINING AGREEMENT
BETWEEN
THE STATE OF MONTANA**

AND

**MONTANA FEDERATION OF PUBLIC EMPLOYEES
Montana Highway Patrol Troopers Unit**

July 1, 2023 – June 30, 2025

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COLLECTIVE BARGAINING AGREEMENT
BETWEEN
STATE OF MONTANA
AND
MONTANA PUBLIC EMPLOYEES' FEDERATION

THIS AGREEMENT is made and entered into this, July 1, 2023, between the State of Montana, by and through the Department of Justice, Highway Patrol Division, hereinafter referred to as the "Employer", and the Montana Federation of Public Employees, hereinafter referred to as the "Federation."

Purpose

It is the intent and purpose of this Agreement to:

- assure sound and mutually beneficial working relationships between the Employer and its employees,
- provide an orderly and peaceful means of resolving grievances,
- prevent interruption of work and interference with the efficient operation of the Highway Patrol Division, and
- set forth herein a basic and complete agreement between the parties concerning terms and conditions of employment which are not otherwise mandated by statute.

It is understood that the Employer is engaged in furnishing an essential public service which vitally affects health, safety, comfort and general well-being of the public and both parties hereto recognize the need for continuous and reliable service to the public.

ARTICLE 1.
TERM

- 1.1 This Agreement runs through June 30, 2025. If either party wishes to renegotiate this Agreement, it shall give written notice to the other party, at least 60 days and no more than 90 days before its expiration date, of its intention to terminate, amend, or modify the Agreement. If the Federation gives such notice, it agrees to notify the Chief Labor Negotiator, State Office of Labor Relations, in writing of such requested negotiations at the same time such notice is given to the agency.
- 1.2 The State and Federation will reopen negotiations on applicable economic issues sufficiently in advance of the executive budget submittal to ensure time for negotiations to take place. Such budgetary negotiations will be deemed completed in good faith when the negotiated results are submitted to the next legislature in the executive budget, by bill or resolution.

Both parties hereby agree to support unequivocally at the legislative level, all of those items agreed to in such budgetary negotiations.

- 1.3 Salary Survey meeting. Management will meet and confer with MFPE once the Department of Administration (DOA) begins the salary survey in even numbered years. The purpose of this meeting is to share information, assist and collaborate in efforts to produce an accurate and up to date salary survey.

ARTICLE 2.

RECOGNITION

- 2.1 The Employer recognizes the Montana Federation of Public Employees as the exclusive collective bargaining representative for those highway patrol troopers that the Federation is authorized to represent for the purpose of collective bargaining with respect to rates of pay, hours of employment and other conditions of employment. "Highway Patrol Troopers" includes all sworn personnel employed by the Employer up to, but not including the rank of Sergeant.
- 2.2 It is further understood and agreed that the Executive Director or an alternate of the Montana Federation of Public Employees, will be the official spokesperson for said Federation in any matter between the Federation and the Employer. The alternate shall be selected from one of the Federation's representatives.
- 2.3 Any alternate designated by the Federation President shall be designated in writing within seven calendar days of his/her designation and the period of time covered by such designation shall be included in such written notification.
- 2.4 A written list of the accredited officers and representatives of the Federation, Highway Patrol Chapter, shall be furnished to the Colonel immediately after their designation and the Colonel shall be notified of any changes of said representatives within seven calendar days. A copy of the published personnel roster of the Montana Highway Patrol Division (HQ-276) will be furnished to the Federation upon request.
- 2.5 Upon receipt of a written authorization from a trooper covered by this Agreement, the Employer will deduct from the trooper's pay the amount owed to the Federation by such trooper for dues. It is understood that this provision will provide for 24 deductions per year. The Employer will remit to the Federation such sums within 30 calendar days. Changes in the Federation membership dues rate and representation fee will be certified to the Employer in writing over the signature of the authorized officer or officers of the Federation and shall be done at least 30 calendar days in advance of the effective date of such change. The Employer's remittance will be deemed correct if the Federation does not give written notice to the Employer within two calendar weeks after a remittance is received, of its belief with reason(s) stated thereof, that the remittance is incorrect.

- 2.6 The Federation will indemnify, defend, and hold the Employer harmless against any claim made and against any suit instituted against the Employer, including attorneys' fees and costs of defense thereof, on account of any provision of this Article.
- 2.7 No deduction shall be made from the pay of any trooper for any payroll period in which the trooper's net earnings for that payroll period, after other deductions, are less than the amount of dues to be checked off.
- 2.8 Troopers may request the presence of a Federation representative during investigatory meetings and interviews if the trooper reasonably believes that discipline or discharge may result arising from the trooper's response to questions during this interview.

ARTICLE 3. **MANAGEMENT RIGHTS**

- 3.1 The Employer retains all rights, powers, functions and authority it had prior to the signing of this Agreement except as such rights are specifically relinquished in this Agreement.
- 3.2 The Employer's rules and regulations shall outline the duties and responsibilities for which the trooper is held accountable.
- 3.3 The Employer, in order to maintain efficient government operations, has the sole and exclusive right to set standards of service and to exercise control and discretion over its operations. The Employer also has an exclusive right to:
- direct its troopers,
 - hire, promote, demote, assign work, and transfer troopers,
 - relieve its troopers from duty because of lack of work, or for other legitimate reasons,
 - discipline, suspend, discharge for cause,
 - establish the number and starting time of shifts, work week, workday, and control and regulate the use of all equipment and other property of the Employer and to require troopers to observe the Employer's rules and regulations except as such rights are specifically relinquished in this Agreement
- 3.4 If the Attorney General determines that civil emergency conditions exist, including riots, civil disorders, natural catastrophes, insurrection or war, or like circumstances, and federal, state or local authorities request assistance, the provisions of this agreement may be suspended by the Attorney General during the time of the declared emergency. The Employer may take whatever actions may be necessary to carry out its missions of the Employer in such situations.

- 3.5 It is the exclusive right of management to formulate policy. Management agrees, however, to administer policies equitably to all members of the bargaining unit. The Federation will be given the opportunity to comment on and respond to proposed policy changes. The Employer will notify the Federation of proposed policy changes via e-mail.

ARTICLE 4.

MANAGEMENT - FEDERATION SECURITY

- 4.1 Neither the Federation, any of its officers, agents, nor any trooper covered by this Agreement will instigate, promote, engage in and/or condone any strike, picketing, boycott, sit down or slow down strike, or any other concerted refusal to render services during the term of this Agreement.

In the event of any such concerted activity as defined above, a responsible official of the Federation, after determining that members of the Federation are participating in such activity, will order such members to return to work and attempt to resolve the problems which led to the concerted activity. Troopers who refuse such an order may be subject to discipline.

The Employer agrees not to lockout any trooper or group of troopers covered by this Agreement during the term of this Agreement.

The Federation shall have the right to engage in concerted activities over economic matters while the Legislature is in session.

ARTICLE 5.

NON-DISCRIMINATION CLAUSE

- 5.1 No member of the Federation shall be discharged or discriminated against for upholding Federation principles, insofar as any such actions are protected by the Public Employees Collective Bargaining Act. Employer and the Federation affirm their joint opposition to any discriminatory practices in connection with employment, promotion or training, remembering that the public interest requires the full utilization of the troopers' skill and ability without regard to any traits, characteristics or classifications protected by state and federal law.
- 5.2 The Employer shall recruit, appoint, assign, train, evaluate and promote troopers on the basis of merit and qualification, and in a manner consistent with the requirements of state and federal laws prohibiting discrimination in the workplace.
- 5.3 All references to troopers in this Agreement designate both sexes, and whenever one gender is used it shall be construed to include both, where appropriate.

ARTICLE 6.

FEDERATION ACTIVITIES

- 6.1 The internal business of the Federation shall be conducted by the troopers during their non-duty hours.
- 6.2 In cases of arbitration, a limited number of troopers, on paid time, as agreed to by the Federation and the Colonel, shall be allowed to be present and assist or be witnesses. The number of troopers and days shall be on an individual case basis. Travel expenses to and from the hearing are not reimbursable by the Employer.
- 6.3 It is recognized that troopers representing the Federation for purposes of negotiations or other activities relating to the administration of this Agreement, are acting on behalf of the Federation and its members and not in their capacity as troopers of the Employer.
- 6.4 The Employer shall allow one meeting prior to commencement of negotiations to be attended by one representative from each district to settle contract proposals. A total of eight (8) District representatives, one from each field district and one from special teams (CIT, SETT, EPD, CapSec or HQ), shall be allowed to travel to and from such meetings on-duty in an issued marked patrol vehicle. Representatives traveling on-duty will be expected to respond to calls for service and initiate traffic stops. On the day of the meeting, representatives may claim up to 10 hours of regular pay for travel time and the meeting duration. Per diem may be claimed. At least 15 days prior to this meeting, the Federation shall notify the Colonel in writing of the meeting date, time, location and the names of the troopers who will be attending.
- 6.5 The Employer and the Federation agree to the establishment of a Labor-Management Committee (LMC).
 1. The purpose of this LMC is to discuss any item of concern to either party and foster good communications between the Employer and the members of the bargaining unit. The LMC will not, however, take the place of the grievance procedure or contract negotiations.
 2. The LMC will be comprised of one MFPE representative, one MHP Trooper from each District, and four or more MHP Managers. LMC meetings shall constitute paid time worked for troopers and troopers may travel on-duty to and from the location of the LMC meeting in their issued patrol vehicle with the expectation those troopers will respond to calls for service and initiate traffic stops. Per Diem may be claimed.
 3. The LMC will meet at a mutually agreeable time, place, and date once per quarter or more often if needed by mutual agreement. Meetings may be canceled by mutual agreement. LMC training will be utilized at the request of either labor or management.

- 6.6 A written list of the accredited officers and representatives of the bargaining unit shall be furnished to the Colonel immediately after their election and the Colonel shall be notified of any changes of said representatives within seven calendar days.
- 6.7 The Employer agrees to fund a pool of up to 64 hours of paid release time (combined total) to compensate Federation bargaining team members for actual hours spent in biannual contract negotiation sessions.

ARTICLE 7.

PAY AND HOURS OF WORK

- 7.1 The probationary period for all Highway Patrol troopers begins on the date the trooper takes the oath of office following completion of the curriculum at the MHP Advanced Academy and continues for one full year thereafter. The probationary period can be extended for extenuating circumstances or performance-based concerns. Probationary period extensions will not exceed six months. Troopers will be notified of their probationary period extension, the reason for the extension and the extension length, in writing.
- 7.2 Nothing in this Agreement shall be construed as a guarantee or limitation of the number of hours to be worked per day, days per week, or for any other period of time except as may be specifically provided herein.
- 7.3 The normal work hours and work week of troopers shall remain within the discretion of the Employer to establish. It is understood and agreed that the Employer is a 24 hour per day and seven-day per week operation and that nothing in this Agreement prohibits the rescheduling of manpower to suit the Employer's needs and requirements as they may change from time-to-time.
- 7.4 Pay for troopers covered by this agreement will be in accordance with Addendum A.
- Troopers who serve as Field Training Officers (FTO) will be compensated an additional \$2.00 per hour in addition to their base salary for each hour that they perform assigned FTO duties.
 - Troopers certified as Traffic Homicide Investigators (THI) will be compensated at an additional \$1.00 per hour on their base rate of pay. When and if a Trooper is no longer classified as a THI, they will no longer be compensated the additional \$1.00 per hour.
 - Troopers who serve in the Executive Protection Detail (EPD) will be compensated an additional \$1.00 per hour on their base rate of pay. When and if a Trooper is no longer assigned to the EPD, they will no longer be compensated the additional \$1.00 per hour.

- Troopers certified as Drug Recognition Experts (DRE) will be compensated at an additional \$1.00 per hour on their base rate of pay. When and if a Trooper is no longer certified as a DRE, they will no longer be compensated the additional \$1.00 per hour.

Troopers assigned as canine handlers will be compensated a flat fee of \$510 per month for the care of his/her assigned canine during off-duty hours. If the Trooper goes on leave and kennels the canine, the Trooper will bear the cost of such kenneling out of the \$510 off-duty care compensation. Any kenneling arrangements must be approved by the canine program supervisor in advance. The Employer will furnish the Trooper with all the necessary uniforms, gear, equipment, and transportation for the canine and canine handler position.

7.5 The Federation recognizes the Employer's right to schedule. Nothing in this Agreement shall prohibit the Employer from establishing alternative work schedules. Troopers shall be placed on a regular work schedule and unless otherwise specifically provided in this contract, a trooper's work schedule shall not be changed unless first being given a minimum of 24 hours' notice of the change. No troopers will be required to work any hours into scheduled days off if the schedule is based on five consecutive eight-hour workdays. No troopers will have their schedule changed on less than 24 hours' notice, except in cases of manpower shortage due to illnesses or vacation, cases of emergency, or when required to finish an assigned task begun on a previous shift. Additionally, the 24-hour notice provision will apply to troopers who request a change in scheduled days off.

7.6 Pay rules promulgated by the Department of Justice and approved by the Department of Administration shall be in effect for all members of the bargaining unit.

7.7 The Employer shall pay overtime compensation as follows:

Highway Patrol Troopers are in a position for which hours of duty cannot be controlled administratively and which requires a certain amount of irregular, scheduled and unscheduled overtime duty. Troopers are generally responsible for recognizing circumstances which require them to remain on duty or be called back to duty during a work day or work week

1. Basis for determining periods of work for which overtime compensation is authorized:
 - a. An uncontrollable job situation which is required in the normal performance of duty that requires the troopers to remain on duty or be called back to duty.
 - b. The trooper must remain on duty or be called back to duty because of compelling reasons related to continuation of duty. Failure to carry out such

duty would constitute negligence.

2. Rates of overtime compensation.

- a. Troopers shall be paid at the rate of one and one-half times their regular rate of pay for all authorized time worked in excess of the regularly scheduled shift as designated by management or over 10 hours in one day.
 - b. Upon mutual agreement between the trooper and the Employer, compensatory time at one and one-half hours for each hour worked may be substituted for overtime pay in this Section.
3. It is understood that the Employer has a limited amount of money to spend for overtime purposes per fiscal year, and that the money in this fund will only be spent for overtime purposes. Should this money be spent prior to the end of the fiscal year for which it was allocated, it is agreed that the troopers will continue to perform all duties of their jobs as required, including necessary overtime. It is further understood that overtime earned after the fund is exhausted in any fiscal year will not be paid by the Employer or absorbed by funds from other programs.
 4. Upon exhaustion of the monies available for overtime, compensatory time shall be granted at the rate of one and one-half hours for each hour worked in excess of the regular scheduled shift as designated by management or over 10 hours in one day.
 5. If a trooper banks the maximum allowance of 240 hours of compensatory time earned, overtime shall be paid at the rate of one and one-half hours for each hour worked in excess of the regularly scheduled shift as designated by management or over 10 hours in one day. Overtime funds are subject to article 7.7 subsection 3 of this agreement.

7.8 Compensation for mandatory education and training sessions ordered by the Employer shall be in accordance with policy P-14, Training Hours in the MHP, Regulations, Policies and Procedures Manual.

Compensation for voluntary education and training sessions shall be uniform for all troopers but shall be subject to requirements posted at the time of application.

7.9 The job requires troopers to respond to calls outside scheduled work hours consistent with the trooper position description and Highway Patrol General Regulations. A call out of a trooper while the trooper is in "off-duty" status shall be paid for a minimum of three hours at one and one-half time. No more than one three-hour claim in a 24-hour period will be accepted unless prompted by distinct and separate events and the original three-hour paid time has elapsed. Troopers

who are required by their job to appear in court outside their regular work shift will be compensated for a minimum of three hours at time and one-half pay.

- 7.10 Troopers shall receive compensation at the rate of ½ hour at the overtime rate of pay for phone calls answered from dispatch during the trooper's off-duty hours if the call does not require a full response in a uniform and patrol car. To receive this compensation, troopers shall include the CFS number in the comments of the reported time. If the call does require a full response, compensation will be governed by section 7.9 above.

ARTICLE 8.

GRIEVANCE PROCEDURE

- 8.1 Having a desire to create and maintain labor relations harmony between them, the parties agree that they will promptly attempt to adjust all complaints, disputes, controversies, or other grievances arising between them involving questions of interpretation or applications of terms and provisions of the Agreement.
- 8.2 Steps to the grievance procedure. "Days" or "working days" as used in this Article are defined as Monday through Friday excluding holidays.
- Step 1. Any grievance, controversy or dispute relative to this Agreement shall first be taken up with the trooper's or troopers' immediate supervisor, within 10 days of such grievance.
- Step 2. If the grievance is not settled at the first step, the aggrieved trooper, within ten days thereafter, shall present the signed grievance in writing to the District Commander. The District Commander shall investigate the facts concerning the alleged grievance and shall within 10 days of receipt of the written grievance conduct a meeting with his/her representatives if needed, and the aggrieved trooper. The District Commander shall notify the aggrieved trooper of the decision not later than 10 days following the meeting date.
- Step 3. If the grievance is not settled at the second step, the aggrieved trooper, within ten days thereafter shall present the written grievance to the Lieutenant Colonel, the Lieutenant Colonel shall investigate the facts concerning the alleged grievance and may within ten days following receipt of the written grievance conduct a meeting between him/herself, his/her representatives if needed, and the aggrieved trooper, or shall in the alternative respond to the grievance in writing. If a meeting is held, the Lieutenant Colonel shall notify the aggrieved trooper of his/her decision not later than 10 days following the meeting date.

Step 4. If the grievance is not settled at the third step, it shall be presented to the Colonel in writing within 10 days. The Colonel shall have ten days to respond to the grievance.

Step 5. If the aggrieved trooper is still dissatisfied, the trooper may request binding arbitration.

8.3 Rules of Grievance Processing

1. The time limits at any stage of the grievance procedure may be extended by written mutual agreement of the parties involved in that step.
2. A grievance presented at Step 2 and above shall be dated and signed by the aggrieved trooper presenting it. A decision rendered shall be written to the aggrieved trooper and shall be dated and signed by the Employer's representative at that Step.
3. A grievance not advanced to the next higher step within the time limit provided shall be deemed permanently withdrawn and as having been settled on the basis of the decision most recently given. Failure on the part of the Employer's representative to answer within the time limit set forth in any step will entitle the trooper to the next step.
4. When the grievance is presented in writing there shall be set forth all of the following:
 - a. A complete statement of the grievance and facts upon which it is based;
 - b. The section or sections of this Agreement claimed to have been violated;
 - c. and the remedy or correction requested.

8.4 Rules of Arbitration

1. Should the aggrieved trooper or troopers and the Federation consider the decision of the Colonel unsatisfactory, the Federation shall, within 10 working days of receipt of such decision, notify the Colonel in writing, of its intention to have such grievance referred to arbitration.
2. Within 10 working days after receipt of the Federation's intent to arbitrate has been delivered to the Colonel, the parties shall select a fair and impartial arbitrator from a panel that has been predetermined as mutually acceptable by the Federation and the Chief Labor Negotiator, State Office of Labor Relations.

3. If mutual agreement cannot be reached from this list, each party is entitled to strike names from the list in alternate order and the name so remaining shall be the arbitrator.
4. Each party shall share equally the cost of the impartial arbitrator. In the event one of the parties wants a transcript from the proceedings of the arbitration, the party requesting the transcript shall pay all costs. If each party requests transcripts, they shall equally share the cost.
5. During the processing of any matter under this or the preceding steps, the Federation agrees not to strike, render unfair reports, or cause slow down, and the Employer agrees not to lock out troopers represented by the Federation.
6. The trooper may request the Federation to act as his/her representative or to assist in any way desired in following the recourse of the grievance procedure and shall so notify the Employer.
7. The arbitrator's authority shall be limited to the interpretation and application of the express terms and provisions of this Agreement. No arbitrator shall have the power to add to, detract from, or modify the terms of this Agreement.

ARTICLE 9.

SENIORITY

- 9.1 Seniority means a trooper's length of continuous service, as a trooper, with the Employer since the last date of hire.

When more than one trooper is hired on the same date, seniority shall be determined by graduation order from the MHP Advanced Academy.

- 9.2 Seniority shall be computed from the date the trooper takes the oath of office following completion of the curriculum at the MHP Advanced Academy:
1. To be absent from the job due to layoffs will be considered lost time for the purpose of seniority, however, previous employment shall count toward seniority.
 2. To be absent from the job due to an approved leave of absence without pay that exceeds 30 calendar days, excepting leave for active military duty or authorized leave under the Family and Medical Leave Act or the Montana Maternity Leave Act, will be considered lost time for the purposes of seniority; however, previous service upon reemployment shall count toward seniority.
 3. The Employer will comply with the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301 et seq. and the Montana Military Service Employment Rights Act, §§ 10-1-1001 et

seq., MCA with respect to any trooper who performs duty, voluntarily or otherwise, in the uniformed services as defined in those laws.

4. A trooper's continuous service for purposes of seniority shall be broken by voluntary resignation, discharge or retirement.
5. Time spent in a job with the Employer outside the bargaining unit shall be considered lost time for purposes of seniority, however, upon a trooper's return to the bargaining unit, previous time spent in the bargaining unit shall count toward the trooper's seniority.

9.3 Layoffs caused by reduction in force shall be in order of seniority within the bargaining unit; that is, the trooper last hired shall be the first released.

1. Permanent and probationary troopers who are scheduled to be released shall be given at least 10 working days' notice.
2. All recalls to employment shall likewise be in order of seniority within the bargaining unit; that is, the last trooper released as a result of a reduction in force shall be the first rehired when the Employer needs additional troopers. The Employer shall notify such troopers who meet the minimum qualifications in Section 44-1-401, M.C.A., to return to work; and if the troopers fail to notify the Employer within 10 calendar days of his/her intention to return to work or does not meet the qualifications provided in Section 44-1-401, M.C.A., the trooper shall be considered as having forfeited his/her right to reemployment.
3. No permanent trooper shall be laid off while there are probationary troopers serving in the bargaining unit.
4. After a general layoff, any trooper whose position is to be abolished and who has more seniority than a trooper of equal rank, may replace that trooper provided he/she meets the minimum occupational qualifications referred to in 9.3. Such transfer shall be considered a voluntary transfer for the purposes of Article 17.
5. If the Employer determines that it is necessary to reduce the hours of troopers or initiate a layoff, the Employer agrees to meet and confer with the Federation prior to implementing the reduction in hours of layoff. The eight district representatives shall be allowed to travel on-duty in their issued patrol vehicle to and from the meeting, with the expectation the representatives will respond to calls for service and initiate traffic stops. Pier Diem shall be paid by the Employer for those eight representatives.

ARTICLE 10.

UNIFORMS AND EQUIPMENT

- 10.1 The Employer shall furnish all troopers with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts, provided that any such equipment and uniforms shall remain the property of the State of Montana, and provided that the Employer shall have authority to destroy, sell, or dispose of any and all obsolete equipment or uniforms in whatever manner it deems appropriate.
- 10.2 Uniforms and equipment furnished all troopers as stated above will be replaced at no charge to the trooper unless lost or destroyed through the carelessness or neglect of such trooper. The Employer shall take all precautions necessary to ensure all uniforms are properly fitted to each individual trooper at the time of delivery. For the purpose of this Article, equipment does not include vehicles.
1. Equipment allowance- Troopers will be allowed a maximum of \$300 under this contract for authorized and receipted purchases.
 2. Under belts will be added to the approved equipment allowance list.
- 10.3 Troopers covered by this Agreement are eligible for the statutory meal allowance (per diem) provided in 2-18-501 MCA when traveling within the state of Montana. Troopers must also meet the eligibility requirements provided in 2-18-502 MCA regarding travel time, including being in a travel status for more than three continuous hours during specific time periods in order to claim the allowed meal allowances. Meal allowances and time periods are listed below for informational purposes only. Specific rates are subject to 2-18-501 MCA.

Morning meal	\$8.25 - between the hours of 12:01 a.m. and 10:00 a.m.
Midday meal	\$9.25 - between the hours of 10:01 a.m. and 3:00 p.m.
Evening meal	\$16.00 - between the hours of 3:01 p.m. and 12 midnight

State trooper travel rules (MOM employee Travel Policy) have been written to reflect the type of travel circumstances most office-based state employees encounter. Application of these rules to duties and work situations is difficult. Due to the unique nature and type of duties troopers perform, including being at their workstation when they enter their patrol cars, and working or performing job duties while in a travel status, troopers will be deemed in a travel status when the trooper, during a work shift, is away from the trooper's home for more than three consecutive hours in one of the time periods specified above. In addition, a trooper's home shall be deemed to mean headquarters for per diem purposes.

Troopers who are called out or work overtime will be eligible for additional meal allowances, as established in statute, if they begin work more than one hour

before or terminate work more than one hour after their normally assigned work shift. Troopers, who travel on overnight assignments, away from their duty stations, will be eligible for meals and lodging as provided in statute.

ARTICLE 11.

HOLIDAYS

11.1 For pay purposes the following are recognized holidays for troopers:

New Year's Day	January 1st
Martin Luther King Day	3rd Monday in January
Lincoln/Washington Birthday	3rd Monday in February
Memorial Day.....	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veterans' Day	November 11th
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25th

11.2 The Election Day holiday for state employees that occurs in even years will be replaced with an annual floating holiday, effective January 1, 2024. Each full-time employee is entitled to one floating holiday each calendar year. Each part-time employee is entitled to one floating holiday each calendar year that must be calculated proportionately to the floating holiday allowed to a full-time employee. An unused floating holiday leave expires at the end of each calendar year, does not accrue, and is not paid out to employees on termination of employment. Short-term workers or student interns may not receive a floating holiday.

11.3 This section shall in no way interfere or infringe upon the Employer's right to schedule trooper's hours and workdays. When a trooper is scheduled to work and works a recognized holiday as part of a regular work week, except for Memorial Day, the Fourth of July holiday, Labor Day and Thanksgiving, (Big 4 Holiday), the Employer shall allow the trooper to bank one and a half times the actual hours worked, not to exceed 15 hours as holiday leave to compensate for working the holiday, in addition to regular compensation for actual hours worked, up to 10 hours. Any time worked above 10 hours would be claimed as overtime. Troopers who are required to work Memorial Day, the Fourth of July holiday, Labor Day, or Thanksgiving (Big 4 Holiday) will be compensated at the rate of two and one-half times their regular rate of pay for all hours worked on the holiday; this cannot be converted to banked days off.

If a holiday (non-Big 4 Holiday) falls on a trooper's regular day off and they work a call out or special overtime, they will be compensated by banking 10 holiday hours as well as receiving overtime for the hours worked.

If a Big 4 holiday falls on a trooper's regular day off and they work a callout or special overtime, the trooper will be compensated by banking 10 holiday hours as well as receiving two and one-half times their regular rate of pay for all hours worked on the holiday.

- 11.4 Whenever a trooper's scheduled day off falls on a recognized holiday, the Employer shall allow the trooper to take a day off at another date as holiday leave to equalize the recognized legal holiday. Should any holiday not be used due to scheduling or other reasons, then that trooper shall be allowed to accrue holiday leave. Banked holiday hours earned (including the Christmas holiday) as of December 31 will carry forward into the next calendar year. Troopers will have the option of using the banked holiday hours through June 30. Any excess prior year banked holiday hours on the books as of June 30 will be cashed out by paying the trooper's regular rate of pay for each hour banked on the pay period that includes June 30. Banked holiday benefit hours are cashed out as a lump sum payment as supplemental income and taxed accordingly. The maximum amount of holiday hours to be cashed out will be 60 hours per calendar year.

ARTICLE 12. SICK LEAVE

- 12.1 Troopers of the bargaining unit are entitled to sick leave benefits as set forth for state employees in the Montana Code Annotated 2-18-618 and MOM Sick Leave Policy.

ARTICLE 13. ANNUAL LEAVE

- 13.1 Troopers of the bargaining unit are entitled to annual leave benefits as set forth for state employees in the MOM Annual Vacation Leave Policy.
- 13.2 Troopers shall not be scheduled to work a holiday during their scheduled vacation except in case of an emergency.
- 13.3 Vacation requests must be made in writing 30 days in advance except such 30-day requirement may be waived by mutual agreement or in case of family emergency.
- 13.4 The Employer shall keep records of vacation leave allowances and shall schedule vacation leave with particular regard to the seniority of troopers, but seniority will be a consideration only when leave requests are submitted in writing prior to February 1st of each calendar year. When a trooper transfers into a different detachment, the approved vacation request does not follow the transfer. The transferred trooper must compete for available leave openings. All vacation requests are conditioned upon the Agency's operating requirements. The trooper may make written inquiry at any time regarding annual leave.

- 13.5 Leave without pay: A leave of absence without pay may be granted by the Colonel upon written request of the trooper. The request shall state the reason for the leave and the approximate length of time off the trooper desires. Accrued vacation leave may be retained by the trooper.

ARTICLE 14.
RIGHTS ON PROMOTION

- 14.1 A trooper shall have the right to turn down a promotion and maintain the present rank and station without fear of reprisal.

ARTICLE 15.
MOVING AND RELOCATION

- 15.1 The Employer's Moving and Relocation Policy shall be governed by the Highway Patrol policy on moving and relocation.

ARTICLE 16.
VOLUNTARY TRANSFER

- 16.1 All voluntary transfers shall be in accordance with Policy P13 of the Highway Patrol Regulations, Policies and Procedures Manual and shall be mutually agreed upon by the employer and the trooper.
- 16.2 When a request for voluntary transfer has been made, in accordance with general order P13, and approved by the Employer, that trooper will not be eligible for any further transfer requests for a period of 90 calendar days. The 90-day limitation begins on the date the trooper assumes the duties in the new station assignment. This date is specified in the Trooper's transfer orders as signed by Colonel.

ARTICLE 17.
COMMITTEE MEMBERSHIP

- 17.1 The Employer shall grant membership on all committees governing the administration of rules and regulations, accident review board and disciplinary board.

The Employer agrees that said members shall have full voting status on the committees. The Federation agrees to appoint members of the bargaining unit to such committees as required and further agrees that the Employer has the sole right to convene such committees.

ARTICLE 18.
PERSONNEL RECORDS

- 18.1 A trooper may request and receive a copy of their current position description at any time.
- 18.2 No information reflecting critically upon a trooper shall be placed in the permanent personnel file that does not bear either the signature or initials of the trooper who has been shown the material, or a statement by the supervisor that the trooper has been shown or mailed the material and refused to affix their signature or initials. Upon written request by the trooper, a copy of the material shall be furnished to the trooper, or with said trooper's written permission, the original will be shown to a designated union representative.
- 18.3 A trooper desiring that material which he/she feels is incorrect towards him/her and should be removed from the permanent personnel record shall make such request in writing to Human Resources, Central Services Division, and describe the reason for the request. If such request is refused, the trooper has the right to pursue his/her complaint through the Employer's grievance procedure.

ARTICLE 19.
SAFETY AND HEALTH

- 19.1 Protective devices, wearing apparel, and other equipment necessary to protect troopers from injury shall be provided by the Employer in accordance with practices now prevailing by the Employer. Such practices may be improved from time-to-time by the Employer upon recommendation from the Colonel and the Federation. Such protective devices, apparel and equipment, when provided, must be used and the Federation agrees that willful neglect and failure by a trooper to obey safety regulations and to use safety devices shall be just cause for disciplinary actions.
- 19.2 Protective devices, wearing apparel and other equipment necessary to protect troopers from injury as provided for in this article shall be and remain the property of the Employer. Such articles must be clean and maintained at all times and, if upon inspection it is determined that any such article is not maintained as required, cost of such article shall be charged to the trooper to whom it was issued.
- 19.3 If the Employer requires annual medical exams, the Employer shall pay the full cost over and above what is paid by the State Employee Benefits Program.
- 19.4 The Health Care and Benefits Division is managing the State Employee Group Health Plan to contain costs and minimize member cost impacts. Member-paid employee health benefit coverage costs for single member will not increase through plan year 2025. The cost of single-member health benefit coverage will be covered by the state share contribution, after the health incentive is applied. Member

contributions, copay amounts, deductibles, coinsurance levels, and maximum out-of-pocket levels for employee-only coverage will not increase through plan year 2025.

ARTICLE 20. JOB SECURITY

- 20.1 The Employer may suspend, demote, or discharge any trooper with permanent status pursuant to applicable statute. In the event such actions are taken, the employer shall furnish the affected trooper with written reasons for that action. A trooper with permanent status may appeal the dismissal, suspension, or demotion through the grievance procedure.

ARTICLE 21. SEVERABILITY

- 21.1 In the event that any provision of this Agreement shall be declared invalid at any time or unenforceable by any court of competent jurisdiction or through government regulations or decree, such decision shall not invalidate the entire agreement, it being the expressed intention of the parties hereto that all other provisions not declared invalid or unenforceable, shall remain in full force and effect.

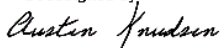
ARTICLE 22. ENTIRE AGREEMENT

- 22.1 The parties acknowledge that during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Federation for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter specifically referred to or covered in this Agreement, or not specifically referred to or covered in this Agreement, even though such subjects or matters may, or may not, have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. This Article shall not be construed to in any way restrict parties from commencing negotiations under the applicable law on any succeeding agreement to take effect upon termination of this Agreement.

IN WITNESS WHEREOF, the parties hereby affix their signatures as of this September 11, 2023.

FOR: STATE OF MONTANA

DocuSigned by:



859E901182A1400
Austin Knudsen, Attorney General
Department of Justice

DocuSigned by:



7934A7DB23224AC
Colonel Steve Lavin
Chief, Highway Patrol

DocuSigned by:



7C2E70EA45C846D
Karol Anne Davis, Chief
State Office of Labor Relations

FOR: MFPE

DocuSigned by:



CD581BE6F37043A
Amanda Curtis, President
MFPE

DocuSigned by:



8FEA6D437AB243A
Alicia Bragg, Trooper
MFPE

ADDENDUM A

MFPE-Montana Highway Patrol 2021-2023

This addendum represents the parties' entire agreement with respect to Troopers' base pay in accordance with 2-18-303(5), Montana Code Annotated (MCA). The parties share a mutual interest in maintaining a competitive salary schedule for troopers at all years of service. To that end the parties will compare relevant survey information every two years in an effort to maintain a competitive compensation package.

For the term of this contract, it is agreed that the Troopers' years of service will determine placement within Section 1 (below). Troopers' years of service will be computed using their swearing-in date and July 1, 2023. Career progression or future movement will be a priority for discussion by the Montana Highway Patrol Labor-Management Committee.

Section 1- Pay Schedules

Troopers base pay shall increase to the following levels effective July 1, 2023.

Entry (Probationary) - \$26.98

Upon completion of probation - \$28.30

All other troopers 6.06%

No trooper will be paid less than \$26.98 per hour.

No trooper who has completed probation will be paid less than \$28.30 per hour.

Section 3-Trooper Career Ladder

Career Ladder Advancement. This section provides the system for advancing MHP Troopers within the following Career Ladder. Troopers will be promoted when they have met the requirements for advancement. This career progression ladder is separate from and in addition to salary survey base increases. The percentage increases are cumulative over the course of a Trooper's career.

The purpose of this Career Ladder is to provide troopers the opportunity to advance in their careers, to increase Trooper retention by providing opportunity for periodic professional and economic growth, and to demonstrate the Employer's commitment to increasing Trooper competency through training. Sergeants may approve Trooper's training requests. Trooper's training requests that are denied, may appeal the determination to their respective Majors or the HR Business Partner.

Promotion within the Career Ladder is allowed without a vacancy. A Trooper will be eligible for promotion when s/he has met the requirements of the career ladder progression. Promotion is not based on race, sex, age, religion, national origin, handicap, marital status, political beliefs, or any other factor that would be in violation of federal or state civil rights laws. The effective date for promotion will be the first pay period after the trooper has met all promotion requirements. Promotion cannot be withheld based upon evaluation ratings or disciplinary action.

Title	Education/Experience	% Increase to Base
Probationary Trooper	Meets minimum qualifications through competitive recruitment	--
Trooper I	Successful completion of duties assigned as Probationary Trooper through the end of year 6. Performs at an acceptable level as reflected in performance appraisals	--
Trooper II	<ul style="list-style-type: none"> • Minimum of 6 years completed MHP service • POST Intermediate Certificate 	2%
Trooper III	<ul style="list-style-type: none"> • Minimum of 10 years completed MHP Service • Technical Crash Certificate—or- First Line Supervisor Certificate —or- • Certified POST Instructor —or — Field Training Officer Certification 	2%
Trooper IV	<ul style="list-style-type: none"> • Minimum of 16 years completed MHP Service • POST Advanced Certificate 	3%
Trooper V	<ul style="list-style-type: none"> • 20 years or more completed MHP Service • Provides formal and informal mentoring and leadership within the District 	2%

ADDENDUM D

MFPE agrees with the Department of Justice Highway Patrol Division to implement and continue a voluntary physical fitness program. Both parties agree to the following:

The Rowing Physical Fitness Test (RPFT) will be the standard used to gauge physical fitness levels of Troopers. Participation is voluntary and Troopers will have the opportunity to complete the test once a year.

The RPFT is a 2,000-meter row set at damper 5 on the Concept 2 rowing machines.

Rules governing the RPFT are as follows:

1. Troopers may participate in the RPFT once annually during the months of July, August, September, October, November and December. The first opportunity to take the test will be in July.
 - a. It will be the responsibility of each trooper to schedule the date and time they will complete the RPFT. Troopers will go directly through their immediate supervisor when scheduling their test.
 - b. Participation in the RPFT will be done in an on-duty status. Troopers will be compensated for driving to and from the test, as well as for time incurred at the test site.
 - c. District Commanders will be responsible to schedule testing opportunities.
2. After completion of the RPFT, troopers will be compensated by receiving pay or compensatory (comp) time.
 - a. At the time the test is taken, each Trooper will complete an election form choosing pay or compensatory time as a completion incentive as listed in 'b' below.
 - b. The incentive matrix for voluntarily completed RPFT is as follows:

Percentile (Vo2 Max)	Pay Award	Comp Time Award
40 th – or more	\$1000	40 Hours
35 th – 39 th	\$750	30 Hours
30 th – 34 th	\$500	20 Hours
25 th – 29 th	\$250	10 Hours
29 th or below	\$0	0 Hours

- c. If comp time is elected, any comp time earned by a trooper shall be used prior to

July 1 of the following calendar year.

- i. The comp time may not be rolled over from year to year, but the deadline for using the comp time may be extended on a case-by-case basis in a fashion similar to excess vacation time usage.
- ii. The comp time may not be converted to cash. If it is not used, it will be forfeited.
- iii. District Commanders, along with Detachment Sergeants, will monitor their respective troops to ensure any comp-time earned is used prior to July 1.



April 29, 2024

Wendy Jackson
Department of Labor and Industry
P.O. Box 8011
Helena, MT 59604

RE: Unfair Labor Practice Case No. 2024DRS00181 MFPE v. DOJ MHP

Dear Ms. Jackson,

The Department of Justice (Respondent) denies the allegations set forth in the above captioned Unfair Labor Practice charge (ULP), as amended on April 25, 2024. Respondent acknowledges a citation error in the submitted complaint form. Complainant cites MCA § 30-31-401(1) and -401(2). Respondent assumes, however, that Complainant intended to cite MCA § 39-31-401(1) and -401(2). Respondent accordingly provides the following response:

Respondent generally denies all the allegations of the Complaint, and asserts that all alleged actions, to the extent they were actually taken as alleged, were warranted responses to employee misconduct.

I. Respondent Did Not Violate MCA § 39-31-401(1) – Interfere with, Restrain or Coerce

Respondent did not interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in MCA § 39-31-201. A climate survey document was distributed to a small committee. Members of the committee, all of whom were MHP employees and subject to MHP policies and procedures, were ordered by commanding officers, both in writing and verbally, not to disseminate the document until it was authorized for release. (See enclosure.) When it became apparent that someone had disseminated the document after it was published online, each committee member was asked if they shared the document. Only one member, Alicia Bragg, the officer referenced in the Complaint herein,¹ admitted to disseminating the document in violation of direct orders by commanding officers.

Neither the recipient of the document nor whether or not it was ultimately subject to public disclosure have any bearing on the actions taken by Respondent. If Ms. Bragg wished to disseminate the document, she could have gone through proper channels to make that request. Without having done so, however, even dissemination of the document to herself at a private e-mail address outside MHP was a violation of direct orders. MHP Troopers, as law enforcement officers, are subject to strict rules regarding orders of commanding officers and obeying the same. The fact that Ms. Bragg violated direct orders of commanding officers was the reason for the employment action; not with whom the document was shared or the reasons for doing so.

Nothing about the orders limiting dissemination of the document or the actions complained of interfered with, restrained, or coerced any employee in the exercise of any right of self-organization, collective bargaining, or other mutual aid or protection related thereto. See MCA § 39-31-201. Although the

¹ Respondent takes issue with the characterization that Alicia Bragg was the local union president. Ms. Bragg has admitted she was never elected into that position or formally recognized as such.

Complaint alleges a violation of MCA § 39-31-401(1), it states no actual facts showing on what basis a violation supposedly occurred.

II. Respondent Did Not Violate MCA § 39-31-401(2) – Interference of Administration

Respondent did not dominate, interfere, or assist in the formation or administration of the Montana Federation of Public Employees (MFPE) or the Montana Highway Patrol (MHP) Troopers Local. Complainant has failed to make any argument or to allege any facts showing the relevancy of this statute, making it impossible for Respondent to respond in more detail beyond this general denial.

III. MFPE Incorrectly Conflates Mandatory Subjects of Bargaining with Interference

In making its claims, MFPE not only wrongfully labels a climate survey as a “working condition,” but then further incorrectly conflates that with interference with communications involving bargaining. A public employer is obligated to bargain in good faith with respect to wages, hours, fringe benefits, and “other conditions of employment.” MCA § 39-31-401(5). These are mandatory subjects of bargaining. The parties were not, however, in the process of bargaining at any relevant time herein. Furthermore, a document which concerns opinions of working conditions is not a “condition of employment” either by common sense meaning or as that term is used in statute. See *Bonner Sch. Dist. No. 14 v. Bonner Educ. Ass’n*, 2008 MT 9, ¶¶ 20-23, 341 Mont. 97, 176 P.3d 262 (“other conditions of employment” subject to mandatory bargaining involve conditions such as telephone access, break policies, and employee transfers and reassignments). Nothing about the order of a ranking officer regarding dissemination of the document interfered with communications with the union regarding a condition of employment or with bargaining generally in any way.

IV. Respondent Has a History and Precedent of Noninterference

During an April 9, 2024 investigatory interview, Ms. Bragg stated that she frequently sent information, e-mails and communication to MFPE. Respondent was aware of this practice from its past interactions with MFPE and never interfered with such communications, nor has Respondent interfered with any union member’s ability to communicate with the union. Respondent has no desire to interfere with union communication, and did not do so here. Indeed, as had been intended, Colonel Kurt Sager ultimately authorized the document for release to all MHP employees without restriction a short while after its initial limited circulation.

V. Respondent Has the Right to Direct and Discipline Employees

Respondent has not committed a ULP by engaging in an employment action. MCA § 39-31-303 allows for Respondent to direct its employees and to establish the methods and processes by which work is performed. MCA § 44-1-704 allows for Respondent to order a hearing for charges that may be grounds for suspension or discharge. Additionally, MCA § 44-1-612(2), which specifically applies to MHP Troopers, states, “gross neglect of duty or willful violation or disobedience of orders or regulations” is “[c]ause for suspension, demotion or discharge.” Respondent has not committed a ULP by conducting its business operations and holding a law enforcement officer accountable.

V. Respondent Did Not Terminate Bragg for Union Communication

DOJ ULP Response
April 29, 2024
Page 3

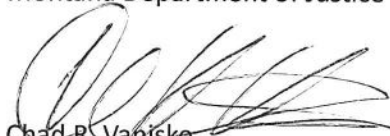
Ms. Bragg was directed not to share the document for the time being. If Ms. Bragg wanted to share the document with MFPE prior to its broader release by MHP, she could have requested to do so or simply waited until the document was available to share. Conversely, if MFPE desired the document because they believed it concerned "working conditions," they could have requested the document through DOJ. Ms. Bragg, however, instead chose disseminate the document in violation of a direct order, the officer code of ethics, and the oath of office.

For all the above reasons, Complainant has failed to meet its burden and provide evidence to meet the standard of probable merit as required by ARM 24.26.1204. Complainant has attempted to make a correlation between an employment action and a ULP where there is none, and is incorrectly construing an employment action. Respondent respectfully requests the investigator find the Complaint to be without probable merit and to dismiss the same.

Sincerely,



Melissa Gardner
Chief Human Resource Officer
Montana Department of Justice



Chad R. Vanisko
General Counsel
Montana Department of Justice

Encl.

From: [Bragg, Alicia](#) **From:** ambragg@mt.gov
To: [Alicia Bragg](#) **To:** bizet912@gmail.com
Subject: FW: A few items for Monday
Date: Thursday, March 21, 2024 4:23:00 PM
Attachments: [MHP Organizational Climate-Executive Summary.pdf](#)

From: Braun, Justin <JBraun@mt.gov>
Sent: Thursday, March 7, 2024 2:31 PM
To: Benson, Chris <Christopher.Benson@mt.gov>; Bragg, Alicia <ambragg@mt.gov>; Braun, Justin <JBraun@mt.gov>; French, Joshua <JFrench@mt.gov>; Hartenstein, Judah <Judah.Hartenstein@mt.gov>; Hayter, Kyle <KHayter@mt.gov>; Knapp, Justin <Justin.Knapp@mt.gov>; Obergfell, Nyle <NObergfell@mt.gov>; Schneider, James <JSchneider@mt.gov>; Tuszynski, Jackie <JTuszynski@mt.gov>; Werner, Derek <DWerner@mt.gov>; Winter, Genii <Genii.Winter@mt.gov>
Subject: A few items for Monday

Good afternoon,

Attached is the climate assessment executive summary. Outside of the uniformed command staff you are the first to get this report. There is a planned and phased release of this document. Do not disseminate further until it is authorized for further release. Please review the analysis, findings and recommendations before we meet on Monday the 11th.

Megan had some personal things come up this week and is still working on your orders. We will start at 0800 in the cadet classroom at HQ in Boulder. We have breakfast planned for us at 0800 and will start the work at 0830-0845.

Lastly, to familiarize ourselves with each other we will be doing a brief DiSC session to understand how we all can work more effectively with each other. You all have either previously taken the assessment or have been sent an access code. Please print your DiSC report and bring it to the session on Monday. If you no longer have your report let me know and I can get it for you.

Please let me know if there is anything I've failed to address. See you on Monday!

Justin