

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	
Against the Montana Education)	SUMMARY OF FACTS
Association – Montana)	AND
Federation of Teachers, and)	STATEMENT OF FINDINGS
The Bozeman Education)	
Association)	

Richard Bennett filed a complaint alleging that the Montana Education Association – Montana Federation of Teachers (MEA-MFT) and the Bozeman Education Association (BEA) violated Montana campaign finance and practices laws.

SUMMARY OF FACTS

1. Richard Bennett is the husband of Laura Bennett, a resource aide at Irving Elementary School (Irving School) in the Bozeman School District #7 (the School District).

2. Richard Bennett’s complaint alleges that Laura Bennett received in her school mailbox a handbill listing candidates recommended by the MEA-MFT and the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). The complaint alleges that Laura Bennett is not a union member and that her receipt of the handbill was unsolicited. Mr. Bennett contends that the distribution of the handbill to Laura Bennett violated several Montana statutes.

3. The MEA-MFT is a union representing employees working in Montana public schools, the university system, and state and local governments. The MEA-MFT is affiliated with the AFL-CIO.

4. Marco Ferro is the President of the BEA. The BEA is the collective bargaining representative for member employees of the Bozeman Public Schools, and is affiliated with the MEA-MFT.

5. At the time of the events forming the basis of the complaint, Laura Bennett was employed as a resource aide at Irving School. Ms. Bennett was not a member of the MEA-MFT, the AFL-CIO, or the BEA.

6. Laura Bennett stated that during the week of October 10, 2004 she received in her school mailbox at Irving School a copy of a green list of candidates recommended by the MEA-MFT. Ms. Bennett said she did not request a copy of the candidate list from anyone. She does not know why it was placed in her mailbox or who placed it there.

7. Hillary Johnson, a teacher at Irving School, was the BEA's "building officer" for Irving School. She views herself as a liaison between the BEA and its members who work at Irving School. One of Ms. Johnson's responsibilities as the building officer was to attend union meetings and disseminate literature distributed by the union.

8. At a BEA union meeting on October 14, 2004, Marco Ferro distributed to the building officers copies of a list of the MEA-MFT's and the AFL-CIO's recommended candidates for public office for the November, 2004 election. The list was printed on green paper. At the top of the list was the phrase: "MEA-MFT / AFL-CIO Recommended Candidates." The list included recommended candidates for the following races: U.S. House, Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, State Auditor, Supreme Court Seat 5, PSC District 3, Senate District 33, and House Districts 62, 63, 64, 65, 66, 67, and 68.

9. Hillary Johnson attended the October 14, 2004 BEA meeting and received copies of the candidate lists. Mr. Ferro instructed the building officers to distribute the candidate lists to union members before school, during their lunch hour, or after school. According to the minutes of the October 14, 2004 BEA meeting, building officers were instructed that the lists could not be placed in school mailboxes, but had to be hand delivered to members.

10. Marco Ferro stated that the collective bargaining agreement (CBA) between the BEA and the School District generally permits the BEA to place union communications in members' mailboxes, but due to the political nature of this particular communication he specifically instructed the building officers not to do that. Mr. Ferro stated that School District policy does not permit school mailboxes to be used for political purposes. Mr. Ferro stated that under the CBA the BEA also has the authority to hand out union literature before school, during the lunch hour, or after school. Mr. Ferro stated that to the best of his knowledge none of the candidate lists were placed in school staff members' mailboxes.

11. Section 3.3 of the CBA permits the BEA and its designated representatives to transact BEA business on school property, provided that such activities do not conflict with a teacher's assigned duties. Section 3.4 of the CBA permits the BEA and its representatives to use school buildings for meetings. Section 3.5 of the CBA permits the BEA to use school equipment when such equipment is not otherwise in use. Section 3.6 of the CBA permits the BEA to post notices of BEA activities in the schools, and to use the School District interschool mail delivery service, email, telephones, and employees' mailboxes for BEA business.

12. Hillary Johnson was able to distribute most of the candidate lists to BEA members at Irving School before the school day started, when she found a number of members in the staff lounge and handed them copies of the list. Ms. Johnson knew which persons at Irving School were union members and which persons were not. As she distributed the candidate lists she wrote down the names of those who had received copies from her.

13. Hillary Johnson had some copies of the candidate lists left over after the school day ended. She asked several persons who were not union members whether they were interested in receiving a copy. She recalls handing out five or six copies to those persons who indicated a willingness to receive a copy. Ms. Johnson stated she did not

offer a copy of the candidate list to Laura Bennett. Moreover, Ms. Johnson stated she did not place any of the candidate lists in staff mailboxes at Irving School.

STATEMENT OF FINDINGS

The complaint alleges that the MEA-MFT and the BEA violated §§ 13-35-225(1), 13-35-226(4), and 13-37-201, MCA. § 13-35-225(1), MCA requires paid political communications advocating the success or defeat of a candidate to state who paid for the communication. § 13-35-226(4), MCA prohibits a public employee from soliciting support for or opposition to candidates and ballot issues while on the job or at the place of employment. § 13-37-201, MCA requires a political committee to file a certification with the office of the Commissioner of Political Practices (Commissioner) within five days of making an expenditure.

§ 13-35-225, MCA

§ 13-35-225, MCA provides, in relevant part:

(1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication.

The statute regulates paid political advertising. The BEA's intent was to create the candidate list at issue in this case as a membership communication, to be distributed only to the members of the BEA. § 13-1-101(11)(b)(iv), MCA provides that "expenditure" does not mean "the cost of any communication by any membership organization or corporation to its members or stockholders or employees." There is a similar exemption for the term "contribution." § 13-1-101(7)(b)(iii), MCA.

The membership communication exemption may be lost if the membership organization sends the communication unsolicited to persons other than its members. See Commissioner Argenbright's decision in Matter of the Complaint Against Montanans for

Common Sense Water Laws/Against I-122, April 30, 1998. In this case Hillary Johnson distributed five or six copies of the candidate list to persons who were not members of the BEA after asking each person whether they were interested in receiving a copy. Thus, to the extent that several copies of the communication were distributed “unsolicited” to non-members, the exemption does not apply with respect to those copies. Because there was a small “expenditure” for the distribution of those few copies of the BEA communication, the provisions of § 13-35-225(1), MCA apply and the communication should have included the required attribution.

§ 13-35-226, MCA

§ 13-35-226, MCA provides in relevant part:

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

Hillary Johnson distributed the BEA candidate lists in the school building and on school grounds (“at the place of employment”). As noted in Fact 11, the CBA permits the BEA and its designated representatives to “transact [BEA] business” on school property, including the use of school equipment for such business. Parties to a CBA, however, may not agree to conduct that would violate state law. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 212 (1985). Moreover, the BEA’s determination that the CBA permits the distribution of political material on school grounds is not necessarily supported by the language of the CBA. The CBA does not expressly authorize the distribution of political material at the schools. Rather, it authorizes the BEA and its representatives to transact union business on school property. This language in the CBA must be applied consistent with state law, particularly § 13-35-226, MCA’s restriction on political activities of public employees.

§ 13-35-226(4), MCA prohibits a public employee from soliciting support for candidates while on the job or at the place of employment. Distribution of candidate lists showing the candidates recommended by the union constitutes solicitation of support for those candidates. Hillary Johnson was instructed by Marco Ferro, the President of the BEA, to distribute the candidate lists at the school, either before or after regular school hours or during the lunch break. Mr. Ferro believed those activities were permissible under the terms of the CBA, based on the provisions cited in Fact 11. Thus, although Ms. Johnson's activities contravened § 13-35-226, MCA, her actions must be viewed under the circumstances discussed above in determining whether a civil prosecution is justified.

§ 13-37-201, MCA

§ 13-37-201, MCA provides:

Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which shall include an organizational statement and set forth the name and address of all other officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee shall be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225.

The complaint alleges that the MEA-MFT became a political committee when it printed and distributed the candidate lists, and that consequently it was required to file the information required by § 13-37-201, MCA within five days. The Commissioner's office has designated the form containing the information required in § 13-37-201, MCA a "statement of organization."

As discussed above, to the extent that several copies of the BEA candidate list were distributed "unsolicited" to non-members of BEA, the membership communication

exemption does not apply with respect to those copies. In that limited respect the BEA became a political committee and was required to file a statement of organization.

CONCLUSION

There is a dispute regarding how Laura Bennett received a copy of the candidate list that was intended to be distributed to BEA members. It is unclear whether a copy of the list was placed in Ms. Bennett's mailbox and, if so, who put it there. See Facts 6-13.

As noted above however, there is evidence that §§ 13-35-225(1) and 13-37-201, MCA were violated to the extent that copies of the communication were distributed to non-members. There is also evidence § 13-35-226(4), MCA was violated, in that public employees engaged in political activities while on the job or at the place of employment.

A successful civil action under § 13-37-128, MCA could result in the imposition of a civil penalty of not to exceed \$500 or "three times the amount" of an illegal contribution or expenditure, whichever is greater. The minimal value of the five or six excess copies of the candidate list that were distributed to non-members of the BEA make it unlikely that a substantial civil penalty would be assessed under § 13-37-128, MCA.

Moreover, when distributing the candidate lists Hillary Johnson was following the instructions of Marco Ferro, the President of the BEA. Mr. Ferro believed that the language of the CBA permits the distribution of any documents prepared by the BEA (including political documents) on school property, despite the fact that § 13-35-226(4), MCA prohibits public employees from engaging in political activities while on the job or at the place of employment.

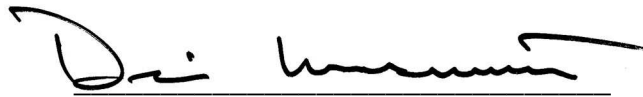
§ 13-35-124(1), MCA requires the Commissioner to notify the county attorney "[w]henver the Commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution" The determination of whether a prosecution is justified must take into account the law and the particular factual circumstances of each case.

In this particular case, in consideration of the conduct of the BEA members, the amount of a potential civil penalty that could be imposed, and the costs associated with a prosecution, it would not be in the best interests of the State of Montana to pursue a civil prosecution.

However, I urge the BEA and other unions and labor organizations to interpret and apply the provisions of their respective collective bargaining agreements consistent with the provisions of state campaign finance and practices laws.

In addition, I urge the BEA and other membership organizations to carefully analyze the potential repercussions of distributing what are intended as membership communications to persons other than members.

DATED this 5th day of October, 2006.

A handwritten signature in black ink, appearing to read "Dennis Unsworth", written over a horizontal line.

Dennis Unsworth
Commissioner