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2
3 BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,
4 STATE OF MONTANA

5 *****

6
7 BOARD OF TRUSTEES OF ANACONDA)
8 SCHOOL DISTRICT NO. 10,) OSPI 317-09
9 Appellant,) **DECISION AND ORDER**
10 vs.)
11 MANAGEMENT TEAM OF ANACONDA)
12 SCHOOL DISTRICT NO. 10,)
13 Respondent.)

14 *****

15 Having reviewed the record and considered the parties' briefs, the Superintendent of
16 Public Instruction issues the following decision and order:

17 **DECISION AND ORDER**

18 The County Superintendent lacked jurisdiction to hear this matter. The Findings,
19 Conclusions and Order of the County Superintendent are dismissed.

20 **PROCEDURAL HISTORY**

21
22 1. The Board of Trustees of Anaconda School District No. 10, (the Board), and the
23 Management Team of Anaconda School District #10, (Management Team), entered into a
24 Management Team Agreement on July 13, 2006.

25 2. Pursuant to the Management Team Agreement, the management team consists of
the administrators of the Anaconda Schools: the principals, vice-principals, clerk/business

1 manager and executive director. The Agreement states that the "team is responsible to the
2 Superintendent who, in turn, is responsible to the Board of Trustees."

3 3. On July 11, 2007, James Whealon, Superintendent of Anaconda Public Schools,
4 issued an annual letter to members of the Management Team indicating the number of days of
5 sick leave each member had accrued as of June 30, 2007. Historically, these annually issued
6 letters to each member of the Management Team stated the number of days of sick leave
7 accumulated and a separate statement that "under the terms of the management agreement"
8 members of the Management Team "accrue two days per month to a maximum of 200 days."
9

10 4. James Whealon retired as Superintendent of the Anaconda Public Schools in
11 August of 2008 and Dr. Tom Darnell was hired as the new Superintendent.

12 5. On October 24, 2008, as a member of and the representative for the Management
13 Team, Stan Blaz filed a formal grievance with Superintendent Darnell, alleging that the
14 calculation of sick leave accumulation and accrual for the Management Team members had been
15 erroneously changed.

16 6. By letter dated November 7, 2008, Superintendent Darnell denied the
17 Management Team's grievance, specifying the Management Team's right to appeal his decision
18 to the Board.

19 7. The Management Team appealed Superintendent Darnell's decision to the Board.
20

21 8. The Board heard the Management Team's appeal at their regularly scheduled
22 meeting on December 10, 2008. A motion was made to approve the grievance, but on a vote of
23 the Board, the motion failed.

24 9. The Management Team appealed the Board's decision to deny their grievance to
25 the Deer Lodge County Superintendent of Schools, who heard the matter on Tuesday, Feb. 17,

1 2009.

2 10. On March 3, 2009 the Deer Lodge County Superintendent of Schools issued
3 Findings in Appeal, wherein he accepted jurisdiction and ruled in favor of the Management
4 Team.

5 11. On March 31, 2009 the Board of Trustees filed its Notice of Appeal with the
6 Superintendent of Public Instruction.

7 **STANDARD OF REVIEW**

8 The State Superintendent of Public Instruction's review of a county superintendent's
9 decision is based on the standard of review of administrative decisions established by the
10 Montana Legislature in Mont. Code Ann. § 2-4-704 and adopted by the State Superintendent in
11 Admin. R. Mont. 10.6.125.

12 The State Superintendent may reverse or modify the County Superintendent's decision if
13 substantial rights of the District have been prejudiced because the conclusions of law and order
14 are (a) in violation of constitutional or statutory provision; (b) in excess of the statutory
15 authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly
16 erroneous in view of the reliable probative and substantial evidence on the whole record; (f)
17 arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of
18 discretion; or (g) affected because findings of fact upon issues essential to the decision were not
19 made although requested. Admin. R. Mont. 10.6.125(4).

20 The County Superintendent's decision that he had jurisdiction to hear the matter appealed
21 to him was a conclusion of law. Conclusions of law are reviewed to determine if the
22 interpretation of the law is correct. *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, 474, 803 P.2d
23 601, 603 (1990); *Baldrige v. Bd. of Trs.*, 264 Mont. 199, 205, 870 P.2d 711, 714 (1994).

24 **MEMORANDUM AND OPINION**

1 Because there was reversible error of law in one of the three issues presented on appeal,
2 the decision will be limited to a discussion of that issue alone.

3 **Issue: Did the County Superintendent lack jurisdiction to hear this matter?**

4 Yes, the county superintendent lacked jurisdiction to consider the appeal of the Board's
5 denial brought before him by the Management Team. This conclusion does not reflect in any
6 way on the decision of the County Superintendent.

7 The county superintendent's authority to consider matters of controversy or disputes is
8 derived from and limited by Montana statutory and administrative law. Montana Code
9 Annotated § 20-3-210 delineates county superintendents' jurisdiction over appeals and hearings.
10

11 **Controversy appeals and hearings.** (1) Except for disputes arising under the terms of a
12 collective bargaining agreement or as provided under 20-3-211 or 20-4-208, the county
13 superintendent shall hear and decide all matters of controversy arising in the county as a
14 result of decisions of the trustees of a district in the county. . . .

15 This statutory language specifically limiting a county superintendent's authority to hear a
16 dispute arising under the terms of a collective bargaining agreement is clear and unambiguous.

17 "Where the legislative intent is clearly contrary to agency interpretation, the courts will not
18 hesitate to reverse on the basis of "abuse of discretion." *City of Billings v. Billings Firefighters*
Local No. 521, 200 Mont. 421, 431, 651 P.2d 627, 632 (1982).

19 Regardless of the county superintendent assuming jurisdiction over the dispute without
20 initial objection or appeal from either party, subject matter jurisdiction cannot be waived and
21 may be raised at any stage of a judicial proceeding. *Sage v. Gamble*, 279 Mont. 459, 464, 929
22 P.2d 822, 824 (1996).

23 The labor dispute at issue relates to interpretation and application of language in the
24 Anaconda School District's #10 Management Team's 2006 negotiated employment agreement
25 with the school district. Section 39-31-306(5), MCA, requires that "[a]n agreement to which a

1 school is a party must contain a grievance procedure culminating in final and binding arbitration
2 of unresolved and disputed interpretations of agreements. The aggrieved party may have the
3 grievance or disputed interpretation of the agreement resolved either by final and binding
4 arbitration or by any other available legal method and forum, but not by both. . . ." There is no
5 grievance procedure in the Management Team's employment agreement with the school district.
6 The parties relied upon the Anaconda School District's personnel policy grievance procedure.
7 That policy provides that a party not satisfied with the decision of the superintendent may appeal
8 the superintendent's decision to the Board of Trustees. The policy states that a decision of the
9 Board is final, unless appealed within the allowed period. An appeal from the Board's decision
10 may go to the county superintendent "[i]f the case falls within the jurisdiction of the County
11 Superintendent of Schools . . ." This matter does not fall within the county superintendent's
12 jurisdiction.
13

14 Pursuant to Section 20-3-210, MCA, the county superintendent lacked jurisdiction to hear
15 the Management Team's appeal of the Board's denial of their grievance. The county
16 superintendent's decision is dismissed for lack of jurisdiction.
17

18 DATED this _____ day of September, 2009.

19 _____
20 Denise Juneau,
21 Superintendent of Public Instruction

22 **CERTIFICATE OF SERVICE**

23 THIS IS TO CERTIFY that on this _____ day of September, 2009, I caused a true and
24 exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the
25 following:

26 **Debra A. Silk**
27 **Tony C. Koenig**
28 **Montana School Boards Association**
29 **863 Great Northern Blvd, Suite 301**

1 **Helena, Montana 59601**

2 **David M. McLean**
3 **McLean & McLean PLLP**
4 **PO Box 220**
5 **Anaconda, MT 59711**

6 **Michael O'Rourke**
7 **County Superintendent of Schools**
8 **Deer Lodge County**
9 **Anaconda, Montana 59711**

Beverly J. Marlow

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