

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 6-82:

LAUREL EDUCATION ASSOCIATION,)
AFFILIATED WITH THE MONTANA) FINDINGS OF FACT,
EDUCATION ASSOCIATION,) CONCLUSIONS OF LAW
Petitioner,)
- vs -) AND
LAUREL SCHOOL DISTRICTS NOS.) RECOMMENDED ORDER
7 AND 7-70, LAUREL, MONTANA,)
Employer)

* * * * *

On November 19, 1982, the Petitioner, Laurel Education Association, affiliated with the Montana Education Association (hereafter the LEA), filed a petition with this Board for Unit Clarification of Bargaining Unit. The LEA contended that the position of Activities Director/Librarian should be included in the existing bargaining unit comprised of certified teachers employed by the Employer, Laurel School Districts Nos. 7 and 70 (hereafter the District).

On December 9, 1982, the District filed a response with this Board disagreeing with the LEA as to the composition of the bargaining unit. The District maintained that the position of Activities Director/Librarian should be excluded from the existing bargaining unit.

A formal hearing was conducted on February 25, 1983, in the Board Room, Laurel School District, 410 Colorado Avenue, Laurel, Montana. The formal hearing was conducted under authority of Title 39, Chapter 31, MCA, pursuant to ARM 24.26.630(5) and in accordance with the Montana Administrative Procedure Act (Title 2, Chapter 4, MCA).

Joyce Butler, UniServ Director, Montana Education Association, Billings, Montana, represented the LEA. Duane

1 Johnson, Management Associates, Helena, Montana, represented
2 the District.

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4 ISSUE

5 Whether or not the position of Activities Director/
6 Librarian should be included in the existing bargaining
7 unit.

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9 FINDINGS OF FACT

10 After a thorough review of the record, including the
11 testimony of witnesses, the demeanor of witnesses and the
12 exhibits, I make the following:

- 13 1. After the District experienced a school mill levy fail-
14 ure in the Spring of 1980, the District was compelled
15 to reduce the number of positions throughout the school
16 district. Duties and responsibilities of eliminated
17 positions were reassigned or combined into one position.
18 In some cases, job descriptions were rewritten to re-
19 flect the realignment of duties and responsibilities.
- 20 2. At the start of school year 1981-82, Mr. Joe Russell
21 applied for and was appointed to the position of Activi-
22 ties Director/Librarian. The job descriptions for both
23 the Activities Director function and the Librarian
24 function had been modified to reflect the recent changes
25 in the alignment of duties and responsibilities and the
26 two functions were combined into one position. Mr.
27 Russell was to assume this newly created position
28 functioning one-half time as Activities Director and
29 one-half time as Librarian.
- 30 3. During the 1981-82 school year, as Mr. Russell was
31 performing as Activities Director/Librarian, he was a
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1 member of the bargaining unit and a member of LEA.

2 There was no question as to Mr. Russell's status.

3 4. Mr. Russell, during his first year as Activities Director/
4 Librarian (1981-82 school year), did not fulfill all
5 the responsibilities of that position as outlined in
6 the respective job descriptions. Mr. Robert Singleton,
7 Superintendent of Laurel Schools, and Mr. Russell both
8 gave convincing testimony that indicated this first
9 year as Activities Director/Librarian was a training
10 period. Mr. Singleton emphasized that during this
11 first year (1981-82 school year) Mr. Russell had coaching
12 duties (bargaining unit work) and he was not considered
13 as a member of management. In addition, Mr. Russell
14 did not assume the total supervisory responsibilities
15 assigned to the position.

16 5. The testimony of Mr. Russell and Mr. Singleton indicated
17 that in the second year of performing as Activities
18 Director/Librarian (1982-82) Mr. Russell would be
19 exercising the total duties and responsibilities of the
20 position. Mr. Russell would not be performing any
21 coaching duties.

22 6. At the start of the 1982-83 school year Mr. Russell
23 made written application to the District requesting
24 that his position of Activities Director/Librarian be
25 determined as either a management position or a bargain-
26 ing unit position. The District, on August 19, 1982,
27 determined the position to be an administrative position.
28 A formal grievance was filed by the LEA with the District
29 concerning the District's action on Mr. Russell's
30 position. To resolve the issue, the District and LEA
31 agreed to submit the matter to this Board for final
32 determination.

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7. Relating to Mr. Russell's duties and responsibilities as Activities Director, the testimony of Mr. Singleton and Mr. Russell established that:
- a) Mr. Russell effectively participates in the recruitment and selection of coaches;
 - b) effectively recommends individuals for promotions within the coaching staff and such recommendations have been accepted;
 - c) supervises approximately forty Head and Assistant Coaches;
 - d) using independent judgment, handles disputes between members of the coaching staff and independently effects transfers or assignments of duties to correct problems;
 - e) has authority to recommend the discharge of coaches;
 - f) independently evaluates Head Coaches (approximately eight) and presents his formal written evaluations directly to the Board of Trustees;
 - g) schedules all events within the school district;
 - h) prepares and administers a budget and is answerable directly to Mr. Singleton on budget matters; and,
 - i) regularly attends administrative meetings (held usually once per week) and effectively participates in policy making.
8. Relating to Mr. Russell's duties and responsibilities as Librarian, the testimony of Mr. Ray Feichtner, Principal, Laurel Junior High School (Mr. Russell's immediate supervisor for library purposes) and Mr. Russell established that:

- 1 a) Mr. Russell supervises one one-half time Library
2 Aide;
- 3 b) effectively participates in the recruitment and
4 selection of Library Aides;
- 5 c) independently directs and assigns duties to the
6 Library Aide; and,
- 7 d) is responsible for the Library Aide in his absence.
- 8 9. Neither Mr. Singleton nor Mr. Feichtner have the author-
9 ity to hire or discharge employees. That responsibility
10 rests solely with the Board of Trustees. Mr. Singleton
11 and Mr. Feichtner may, however, effectively recommend
12 such action.

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14 DISCUSSION

15 The issue in this matter, as framed by the parties, is
16 straightforward: Whether or not the position of Activities
17 Director/Librarian should be included in the existing bargain-
18 ing unit. This matter became an issue upon the application
19 of the incumbent of the position in question at the start of
20 the 1982-83 school year. The history of this matter is con-
21 tained in Findings of Fact Nos. 1 through 6. Those findings,
22 although not completely relevant to the issue at hand, are
23 intended to give the background as to how the supervisory
24 status of the position of Activities Director/Librarian
25 became the question in this issue.

26 Section 39-31-103(3) MCA defines "Supervisory employee"
27 as:

28 ...any individual having authority, in the interest of
29 the employer to hire, transfer, suspend, lay off,
30 recall, promote, discharge, assign, reward, discipline
31 other employees, having responsibility to direct them,
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1 to adjust their grievances, or effectively to recommend
2 such action, if in connection with the foregoing the
3 exercise of such authority is not of a merely routine
4 or clerical nature, but requires the use of independent
5 judgment.

6 The Montana Act's definition of a "supervisory employee"
7 is nearly identical to the National Labor Relation Act's
8 definition [NLRA, Sec. 2(11)]. The National Labor Relations
9 Board, which administers the NLRA, has consistently held
10 that the definition "is written in the disjunctive, and so
11 just the possession of any one of the listed powers is
12 sufficient to cause the possessor to be classified as a
13 supervisor...." [NLRB v. Metropolitan Life Insurance Co.,
14 405 F.2d 1169, 1173, (CA2)(1968); 70 LRRM 2029].

15 The NLRB does distinguish between true supervisors and
16 minor supervisory employees (i.e. subforemen, crew leaders,
17 gang pushers, set-up men or straw bosses). Some of the
18 major considerations developed by the NLRB used to make this
19 distinction are:

- 20 (1) Whether or not the employee has the independent
21 authority to hire, fire, adjust grievances, disci-
22 pline, or give raises or other benefits. (Central
23 Buying Service, 223 NLRB 77 (1976), 92 LRRM 1145;
24 Pinecrest Convalescent Home, Inc., 222 NLRB 10
25 (1976), 91 LRRM 1082; Mountain Manor Nursing Home,
26 204 NLRB 425 (1973), 83 LRRM 1337).
- 27 (2) Whether or not the employee's exercise of authority,
28 particularly in the areas of assignment and direc-
29 tion of work, is routine in nature, i.e., follows
30 established procedures. (NLRB v. Monroe Tube Co.,
31 Inc., 545 F.2d 1320 (CA 2) (1976), 94 LRRM 2020;

1 Emco Steel, Inc., 227 NLRB 148 (1977), 94 LRRM
2 1747, enf. 95 LRRM 3011 (CA 2) (1977); Pinecrest
3 Convalescent Home, Inc., supra.; Mountain Manor
4 Nursing Home, supra.; Harlem Rivers Consumers
5 Cooperative, Inc., 191 NLRB 314 (1971), 77 LRRM
6 1883; Precision Fabricator, 101 NLRB 1537 (1952),
7 31 LRRM 1248, enf. 204 F.2d 567 (CA 2) (1953), 32
8 LRRM 2268).

9 (3) Whether or not the employee exercises independent
10 judgment, particularly in the area of directing
11 the activities of others. (Central Buying Service,
12 supra.; Mountain Manor Nursing Home, supra.;
13 Harlem Rivers Consumers Cooperative, Inc., supra.;
14 Commercial Fleet Wash, Inc., 190 NLRB 326 (1971),
15 77 LRRM 1156).

16 (4) Whether or not the employee's recommendations
17 regarding personnel matters are subject to inde-
18 pendent review/investigation by a higher authority.
19 (Emco Steel, Inc., supra.; Mountain Manor Nursing
20 Home, supra.; Harlem Rivers Consumers Cooperative,
21 Inc., supra.).

22 (5) Whether or not there are several layers of super-
23 vision above the employee. (Harlem Rivers Consumers
24 Cooperative, Inc., supra.).

25 (6) Whether or not a substantial amount of the employee's
26 time is spent doing work which is similar to the
27 work of the personnel he/she allegedly supervises.
28 (NLRB v. Monroe Tube Co., Inc., supra.; Central Buying
29 Service, supra.; Mountain Manor Nursing Home,
30 supra.; Harlem Rivers Consumers Cooperative, Inc.,
31 supra.; Commercial Fleet Wash, Inc., supra.).

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1 (7) Whether or not a determination that the employee(s)
2 in question were supervisory would create an un-
3 realistic and excessively high ratio of supervisors
4 to employees. (Emco Steel, Inc., supra.; Central
5 Buying Service, supra.; Pinecrest Convalescent Home,
6 Inc., supra.; Harlem Rivers Consumers Cooperative,
7 Inc., supra.; Commercial Fleet Wash, Inc., supra.).

8 This Board has adopted the guidelines developed by the
9 NLRB concerning the determination of a "supervisory employee"
10 (see Billings Firefighters Local 521 v. City of Billings,
11 UC 1-1977; American Federation of State, County and Municipal
12 Employees, AFL-CIO v. City of Miles City, UD 7-1979; and,
13 Butte Teamsters Union Local No. 2 v. County of Missoula, UD
14 14-1980).

15 Subjecting the duties and responsibilities of the
16 Activities Director/Librarian position to the major "tests",
17 I find that Mr. Russell is not a minor supervisory employee
18 (see Findings of Fact Nos. 7, 8 and 9). Mr. Russell effec-
19 tively recommends the hiring of Library Aides and coaches.
20 He has done so on several occasions. The Board of Trustees
21 has the ultimate authority to hire or fire. Mr. Russell's
22 authority to recommend hiring or firing is equal to his
23 immediate supervisors, Mr. Singleton (Superintendent of
24 Laurel Schools) and Mr. Feichtner (Principal, Laurel Junior
25 High School). No evidence was produced that indicated that
26 Mr. Russell followed strict established procedures. Uncon-
27 troverted testimony indicated that Mr. Russell used indepen-
28 dent judgment in his duties both as the Activities Director
29 and as the Librarian. It is clear that Mr. Russell can
30 independently adjust personnel disputes without prior appro-
31 val of higher authority and his performance evaluations of
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1 coaches are reported directly to the Board of Trustees.
2 There are not several layers of supervision above Mr. Russell;
3 he does not perform a substantial amount of work of those he
4 supervises; and, there is no indication that there exists an
5 unrealistic and excessively high ratio of supervisors to
6 employees.

7 Subjecting the duties and responsibilities of the
8 position of Activities Director/Librarian to the primary
9 test, it is clear that Mr. Russell possesses at least one of
10 the powers listed in the definition of "supervisory employee".
11 The position of Activities Director/Librarian does meet the
12 requirements of a supervisory position.

13 The Petitioner argued that Mr. Russell held the position
14 of Activities Director/Librarian during the 1981-82 school
15 year and was considered a member of the bargaining unit and,
16 presently, is performing the same duties and should remain a
17 member of the bargaining unit. Testimony indicated that Mr.
18 Russell did not fulfill all the duties and responsibilities
19 of the position during the 1981-82 school year. He was not
20 considered a "supervisor" during his first year in the
21 position. In addition, the issue in this matter does not
22 indicate retroactive determination. Whether or not Mr.
23 Russell was a supervisor during the 1981-82 school year is
24 not at issue.

25 The Petitioner further argued that Mr. Russell held
26 membership in the Laurel Education Association for a certain
27 period of time. Mere membership in any organization is not
28 relevant to determine eligibility in a proper and appropriate
29 bargaining unit.
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CONCLUSIONS OF LAW

The position of Activities Director/Librarian should not be included in the existing bargaining unit.

RECOMMENDED ORDER

The existing bargaining unit shall be modified to exclude the position of Activities Director/Librarian.

SPECIAL NOTE

In accordance with Board's Rule ARM 24.26.107(2), the above RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless written exceptions are filed within 20 days after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER upon the parties.

DATED this 1st day of April, 1983.

BOARD OF PERSONNEL APPEALS

BY Stan Gerke
Stan Gerke
Hearing Examiner

* * * * *

The undersigned does certify that a true and correct copy of this document was mailed to the following on the 1st day of April, 1983:

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