

BEFORE THE COMMISSIONER OF LABOR AND INDUSTRY  
STATE OF MONTANA

IN THE MATTER OF UNIT CLARIFICATION NO. 3-86

MISSOULA ELEMENTARY EDUCATION )	
ASSOCIATION/MONTANA EDUCATION )	
ASSOCIATION, )	
) Petitioner, )	FINDINGS OF FACT;
) )	CONCLUSIONS OF LAW;
) )	AND RECOMMENDED ORDER
) vs. )	
) )	
MISSOULA COUNTY SCHOOL )	
DISTRICT NO. 1, )	
) Respondent. )	

\* \* \* \* \*

On March 7, 1986, the petitioner, Missoula Elementary Education Association, Montana Education Association, filed a petition for Unit Clarification with this board. The petitioner requests the board to clarify the bargaining unit of certain personnel in Missoula County School District No. 1 to include the position of school nurse.

The respondent, Missoula County School District No. 1, contends that the position of school nurse is not an employee but an independent contractor providing certain specified services to the School District and there is no basis for including an independent contractor in the bargaining unit.

A pre-hearing by telephone conference call in this matter was conducted on February 10, 1987 under authority of Section 39-31-207 MCA and in accordance with Montana Administrative Procedure Act (Title II, Chapter 4, MCA). Emilie Loring HILLEY AND LORING, P.C., Great Falls, Montana represented the petitioner. The respondent was represented by Michael W. Sehestedt, deputy county attorney.

At the pre-hearing conference the parties indicated that the school nurse position, to their knowledge, had not changed since the issuance of unemployment insurance tax

1 contribution case #19-85. In that decision issued June 10,  
2 1986 the position of school nurse was found to be that of an  
3 independent contractor. Judicial notice is taken of the  
4 Findings of Fact, Conclusions of Law and Decision issued in  
5 that case.

6 ISSUE

7 Whether the school nurse position should be included in  
8 the bargaining unit comprised of certain employees of  
9 Missoula Elementary Education Association/Montana Education  
10 Association.

11 FINDINGS OF FACT

12 1. The existing bargaining unit is comprised of  
13 certain employees.

14 2. The school nurse position provides service pursu-  
15 ant to a contract executed between the School District and  
16 the incumbent in that position.

17 3. The school nurse is an independent contractor not  
18 an employee. (UI Tax Contribution Case No. 19-85)

19 DISCUSSION

20 The collective bargaining act at Section  
21 39-31-103(2)(a) MCA defines a "public employee" as .... a  
22 person employed by a public employer in any capacity;....  
23 The Board of Personnel Appeals is authorized as provided in  
24 Section 39-31-104 MCA to adopt rules to carry out the  
25 provisions of Montana law regarding collective bargaining  
26 for public employees. The Board rules at 24.26.630 ARM  
27 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT provides  
28 in part:

29 (3) A petition for clarification of an existing  
bargaining unit shall contain the following:

30 (e) The job classification(s) of employees as to  
31 whom the clarification issue is raised, and the  
number of employees in such classification;

32 In as much as no "employees" are identified for

1 inclusion in the bargaining unit the Board cannot certify  
2 the position(s) identified as part of the unit identified.

3 RECOMMENDED ORDER

4 The unit clarification petition of Missoula Elementary  
5 Education Association/Montana Education Association is  
6 dismissed because no "employee" position is identified for  
7 inclusion in the bargaining unit.

8 SPECIAL NOTE

9 Pursuant to ARM 24.26.684, the above RECOMMENDED ORDER  
10 shall become the FINAL ORDER of this Board unless exceptions  
11 are filed within 20 days after service of these FINDINGS OF  
12 FACT; CONCLUSIONS OF LAW AND RECOMMENDED ORDER upon the  
13 parties.

14 DATED this 3 day of June, 1987.

15 BEFORE THE BOARD OF PERSONNEL  
16 APPEALS

17 By Joseph W. Maronick  
18 Joseph W. Maronick  
Hearing Examiner

19 CERTIFICATE OF SERVICE

20 The undersigned does certify that a true and correct  
21 copy of this document was served upon the following on the  
22 3rd day of June, 1987, postage paid and addressed as  
follows:

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27 Director of Personnel  
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30 Deputy County Attorney  
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Jennifer Jacobs

32 AB4:062vt