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personnel or the existing bargaining unit comprised of non-certified personnel.

FINDINGS OF FACT

After a thorough review of the record, including the testimony of witnesses, the demeanor of witnesses and the exhibits, I make the following Findings of Fact:

1. The existing bargaining unit comprised of certified personnel is defined as all permanent full-time district employees whose positions require Class 1, 2, 4, or 5 certificates or specialists certificates under applicable Montana law, excluding and excepting supervisors and management officials as defined by law. This bargaining unit represented by the Petitioner, has been in existence for some time; has been covered by collective bargaining agreements in previous years; and, is currently working under a collective bargaining agreement.

2. The existing bargaining unit comprised of non-certified personnel is defined as all non-certified staff (bus driver-custodian, maintenance engineer, aides, cooks, cook's helper, secretary and tutors) excluding all managerial and supervisory personnel. The Petitioner was certified as the exclusive collective bargaining representative for this unit by the Board of Personnel Appeals on June 19, 1986. At date of formal hearing on this matter, September 23, 1986, this bargaining unit had not yet secured its first collective bargaining agreement with the Respondent.

3. The school nurse position, presently occupied by Caryl Lockett, provides health care and education to the students. Duties include attending to injuries and illnesses and instructing students on general health, nutrition, sex and alcohol and drug abuse. Ms. Lockett prepares and gives classroom presentations, participates on "Child Study

1 Teams" (a team of professionals and a student's parent or
2 guardian that plan a program for the development of a
3 student), attends faculty meetings, and participates in
4 parent-teacher conferences.

5 4. Ms. Lockett holds a Masters Degree plus 25 cre-
6 dits, and a teaching certificate and is licensed as a
7 Registered Nurse.

8 5. Hours worked by Ms. Lockett are identical to those
9 worked by the certified employees. Both Ms. Lockett and the
10 certified employees work 8 a.m. to 4 p.m. and work 187 days
11 per year.

12 6. Non-certified employees prepare and submit time
13 sheets. Neither Ms. Lockett nor certified employees submit
14 time sheets.

15 7. Ms. Lockett's salary was determined by applying
16 her years of experience on the salary matrix contained in
17 the certified employees' collective bargaining agreement.
18 Ms. Lockett's salary is similar to certified employees and
19 nearly twice the salary earned by an average non-certified
20 employee. Ms. Lockett and the certified employees earn
21 monthly salaries whereas the non-certified are paid per hour
22 worked.

23 8. Ms. Lockett participates in the Teachers' Retire-
24 ment System as do the certified employees. The non-certif-
25 ied employees participate in the Public Employees Retirement
26 System.

27 9. Ms. Lockett, the certified employees, and the
28 non-certified employees have common supervision.

29 10. Ms. Lockett desires to be included in the bargain-
30 ing unit comprised of certified employees. Duane Lavinder,
31 President of the Harlem Education Association, MEA, NEA
32 (certified employee bargaining unit) testified that the

1 certified employees desire to have Ms. Lockett's position of
2 school nurse included in their unit.

3 DISCUSSION

4 Two bargaining units exist in the Harlem Elementary and
5 High School District No. 12. One unit is comprised of
6 certified employees, mainly teachers, and has been in
7 existence for some time. The other unit comprised of
8 non-certified employees came into existence June 19, 1986
9 through certification by this Board. It is not clear why
10 the position of school nurse was not addressed during the
11 formation of these two bargaining units.

12 The Respondents argue that the position of school nurse
13 should be included in the unit of non-certified employees.
14 The Respondent's primary argument was that the school nurse
15 position was more similar to the non-certified positions
16 because neither had collectively bargained for wages, hours
17 and working conditions. Respondent's argument is confusing
18 in light of the fact that the unit of non-certified employ-
19 ees had recently been designated as a bargaining unit and
20 will be bargaining collectively for wages, hours, and
21 working conditions. Any similarity between the school nurse
22 position and the non-certified employees relating to the
23 history of collective bargaining ended when the unit of
24 non-certified employees was designated a collective bargain-
25 ing unit by this Board.

26 Testimony indicated that the school nurse position was
27 more similar to those positions in the unit comprised of
28 certified employees in consideration of the factors con-
29 tained in Section 39-31-202 MCA.

30 CONCLUSIONS OF LAW

31 The position of school nurse should be included with
32 the unit comprised of certified employees.

