

1 STATE OF MONTANA
2 BEFORE THE BOARD OF PERSONNEL APPEALS

3 IN THE MATTER OF UNIT CLARIFICATION NO. 2-88:

4 MONTANA PUBLIC EMPLOYEES)
ASSOCIATION,)
5)
Petitioner,)
6 vs.) FINDINGS OF FACT;
CONCLUSIONS OF LAW;
7) RECOMMENDED ORDER
DEPARTMENT OF HIGHWAYS, STATE)
8 OF MONTANA,)
9 Employer.)

10 * * * * *

11 I. INTRODUCTION

12 A hearing on the above matter was conducted on
13 September 19, 1988 in Helena, Montana before John Andrew,
14 hearing examiner. The Montana Public Employees Association
was represented by David Stiteler. The Department of
15 Highways, State of Montana, was represented by Carole Colbo.
Briefs were filed subsequent to hearing. The matter was
16 submitted on October 25, 1988. All argument and evidence
being considered, the hearing examiner now makes the
following:

17 II. ISSUES

18 1. Whether the unit defined as non-maintenance
employees of the Department of Highways, inclusive of GVW
19 Enforcement Officers is an appropriate unit under 39-31-202
MCA.

20 2. Whether a process exists within Montana law and
21 under Board rules to grant the relief requested by MPEA -
specifically that GVW Officers be in a separate unit
22 represented by MPEA.

23 III. FINDINGS OF FACT

24 1. The history of this unit traces back to November of
25 1973. At that time AFSCME filed a unit determination with
the Board of Personnel Appeals. The requested unit was
other-than-maintenance employees of the Department of

1 Highways. MPEA counter-petitioned requesting three
2 bargaining units - the GVW Division; Planning and Research
3 Bureau; and the Butte Division. After a hearing held on
4 January 31, 1974, the Board issued an order dated March 13,
5 1974. The order determined the appropriate unit to be the
6 "wall to wall" unit requested by AFSCME consisting of all
7 eligible "other-than-maintenance employees of the Department
8 of Highways". After an election MPEA was certified by the
9 Board as the exclusive representative for the unit on January
10 7, 1975.

11 2. The non-maintenance unit consists of approximately
12 750 FTE's and as many as 1200 staff positions during the
13 summer months. This number of positions closely
14 approximates the number of positions in the unit at the time
15 of the original unit determination in 1975. There are 83 GVW
16 Officers now as opposed to approximately 47 at the time of
17 the unit determination.

18 3. The non-maintenance unit includes such positions
19 as engineering technicians, GVW Enforcement Officers, lab
20 technicians, secretaries, and photogrammetry. These and
21 similar positions were in the unit at the time of the unit
22 determination.

23 4. The GVW Officers operate scales which may be open
24 seven days a week 24 hours per day. This was also the case
25 at the time of the unit determination.

26 5. As they did prior to 1974, the GVW Officers operate
27 scales from distinct offices throughout the state. The
28 extent of interchange between other members of the unit and
29 the GVW Officers is as great as or greater than it was at
30 the time of the unit determination.

31 6. Prior to the unit determination the GVW Officers
32 (then Weigh Station Operators) began attending the Montana
33 Law Enforcement Academy. They also wore distinguishable
34 uniforms and badges; could make arrests; could issue notices
35 to appear; and made court appearances. This is still the
36 case today.

37 7. GVW Officers as part of their duties issue trip
38 permits, collect GVW fees, issue combine permits, LPG
39 licenses, and collect compliance bonds. They also do
40 Department of Transportation safety inspections, brand
41 inspections and generally assist all other law enforcement
42 officers. The GVW Officers additionally have Public Service
43 Commission duties. With the exception of the safety work,

1 brand inspections and the Public Service Commission work,
2 the other duties of the GVW Officers including those
3 mentioned above are the same or substantially the same as
those performed by the GVW Officers at the time of the unit
determination.

4 8. The overall structure of supervision in the GVW
5 Bureau has not changed substantially since 1975. There is a
6 different structuring of supervision and more supervisors but
this is a question of there being more GVW Officers than
there were in 1974.

7 9. MPEA appears to contend that the GVW Officers have
8 either no or little impact on the overall bargaining process
9 because of the small size of their group and because of their
10 particular circumstances. In fact, the State has language
within the MPEA supplement that is to the benefit of the GVW
Officers. Therefore, the Petitioner's argument fails.

11 10. The grade level of GVW Officers has increased over
12 the years. This may be indicative of more duties and
13 responsibilities for the GVW Officers, however it is not
necessarily indicative of a change in the relationship
between GVW and the rest of the overall unit.

14 IV. CONCLUSIONS OF LAW

15 Section 39-31-202 MCA provides:

16 Board to determine an appropriate bargaining unit-
17 factors to be considered. In order to assure
18 employees the fullest freedom in exercising the
19 rights guaranteed by this chapter, the Board or an
20 agent of the Board shall decide the unit
21 appropriate for the purpose of collective bargain-
22 ing and shall consider such factors as community
of interest, wages, hours, fringe benefits, and
23 other working conditions of the employees
involved, the history of collective bargaining,
24 common supervision, common personnel policies,
25 extent of integration of work functions and
interchange among employees effected, and the
desires of the employees.

I can find no prohibition against the Board determining
an appropriate unit more than once. Moreover, it is hard to
characterize this matter as a decertification question when
it is the incumbent union requesting the alteration in the
bargaining unit. As times change, so do units. To force
status quo when it is no longer representative of the needs

1 of the unit or a major part of the unit could foster turmoil
2 and work against the desired goal of labor stability. Thus,
3 MPEA's request to have this matter considered as a unit
4 clarification using the criterion of 39-31-202 MCA is
5 appropriate. The requested remedy is another question - a
6 question that cannot be answered until it is determined
7 whether the unit originally certified is still appropriate.

8 The original unit determination proceedings conducted by
9 the Board and the certification issued thereon considered the
10 appropriate bargaining unit for collective bargaining
11 purposes. The Board considered the factors of 59-1601(2) RCM
12 in reaching its decision. The Board also considered the
13 counter-petition of MPEA. Although it is hard to say at this
14 date all of the factors that went into the Board's
15 determination it is sufficient to say that the Board did not
16 accede to MPEA's request and ruled that the wall to wall non-
17 maintenance unit consisting of GVW Officers was an
18 appropriate unit. The question then is did MPEA show that
19 the unit originally certified by the Board was no longer
20 appropriate under 39-31-202 MCA. The answer is no. The
21 facts adduced at the time of hearing fail to show a
22 substantial change in the unit and in GVW specifically since
23 the original unit determination.

24 At best, MPEA did show that a more appropriate non-
25 maintenance unit would not include GVW Enforcement Officers.
It is well settled that it is not the function of the Board
to determine the most appropriate bargaining unit, only an
appropriate bargaining unit." See DR#2-76 and Morand Bros.
Beverage Co., 91 NLRB 409, 26 LRRM 1501 (1950), enf'd 190
F.2d 576 (7th Cir. 1951), 28 LRRM 2364. The wall to wall
unit originally certified by the Board is still appropriate.

Since the GVW Officers are appropriately included in
the non-maintenance unit of the Department of Highways, the
question of whether the Board of Personnel Appeals has a
procedure to grant the relief requested by MPEA is moot and
warrants no further comment.

V. RECOMMENDED ORDER

The unit clarification filed with the Board on March 11,
1988 is dismissed.

1 Dated this 17th day of November, 1988.

2 BOARD OF PERSONNEL APPEALS

3
4 By: *John Andrew*
5 John Andrew

6
7 VI. NOTICE

8 Exceptions to these findings, conclusions and
9 recommendation must be filed within twenty days of service.
If exceptions are not filed the recommended order will become
the final order of the Board.

10 CERTIFICATE OF SERVICE

11 The undersigned does certify that a true and correct
12 copy of this document was served upon the following on the
18th day of Nov., 1988, postage paid and addressed
as follows:

13 Carole Colbo
14 Labor Relations Specialist
15 Department of Administration
Helena, MT 59620

16 David Stiteler
17 MPEA
P.O. Box 5600
18 Helena, MT 59604

19 *Tara Christianson*

20 AB5:016sp