

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION No. 5-88

AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL)
EMPLOYEES,)

Petitioner)

vs.)

CARBON COUNTY,)

Respondent)

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND
RECOMMENDED ORDER

* * * * *

I. INTRODUCTION

A hearing on the above matter was held on July 29, 1988, in Red Lodge, Montana before John Andrew, hearing examiner.

The American Federation of State, County and Municipal Employees was represented by George Hagerman. Carbon County was represented by Mike Alterowitz, Carbon County Attorney. Briefs were filed and and the matter was submitted on August 19, 1988. All evidence being considered the hearing examiner now makes the following:

II. ISSUE

Whether the landfill position presently is in or should be in the bargaining unit, certified by the Board of

1 Personnel Appeals (BOPA) and recognized by the parties as
2 road maintenance employees.

3 III. FINDINGS OF FACT

4 1. The unit in question was recognized by the BOPA as
5 being all employees of Road Maintenance employed by Carbon
6 County, Montana, excluding appointed and elected officials,
7 and supervisors as defined by the Montana Public Employees
8 Collective Bargaining Act (Title 39, Chapter 31, MCA). See
9 UD No. 10-85 and Stipulation for Certification Upon Consent
10 Election therein.

11 2. At the time the initial unit determination was
12 conducted in 1985 the landfill position was part-time.
13 Landfill work was performed by Geary Boggio and Eugene
14 Sticka. Both individuals voted in the original unit deter-
15 mination proceedings. Neither the Board's certification nor
16 the current collective bargaining agreement specifically
17 address whether the landfill position is included in the
18 unit. Thus the need for hearing.

19 3. The Carbon County Commissioners are each in charge
20 of a district within the county. The landfill operation is
21 in District No. 1.

22 4. The current landfill position is occupied by Jim
23 Englert. Mr. Englert has worked for Carbon County since
24 August of 1985. He was hired by Bob Rowland the
25

1 Commissioner in charge of District No. 1. The current
2 District No. 1 Commissioner is Don Taylor.

3 5. The Commissioner in charge of the landfill opera-
4 tion is also in charge of road maintenance in District
5 No. 1. There are a total of four road maintenance employees
6 in District No. 1. There is a separate shop for District
7 No. 1. Maintenance and repair of landfill equipment is done
8 in this shop. The landfill position and the road maintenance
9 employees thus share common supervision and at times a
10 common building.

11 6. Carbon County personnel policies apply to all
12 county employees.

13 7. The landfill position receives the same rate of
14 pay as the road maintenance employees. Landfill and mainte-
15 nance employees also receive the same benefits, e.g., leave
16 and insurance. At present, and pending the outcome of this
17 matter, they receive the same longevity.

18 8. Shortly after Don Taylor became District No. 1
19 Commissioner (October 15, 1987) it became necessary to make
20 the landfill position permanent. Mr. Englert assumed the
21 landfill duties and the junk vehicle collection duties on a
22 permanent basis.

23 9. The landfill needs to be open on weekends. As a
24 result, the landfill position works different days and a
25 slightly different hourly schedule than does road

1 maintenance. Road maintenance employees currently work four
2 ten hour shifts. In winter months, at the option of the
3 Commissioners, the four ten hour shifts are changed to five
4 eight hour shifts.

5 The landfill position currently works five eight hour
6 days running Friday through Tuesday. When working four tens
7 the road crew works Monday through Thursday. If working
8 five eights, road maintenance works Monday through Friday.

9 10. As full-time employees the landfill and road
10 maintenance employees work a forty hour workweek. In the
11 event weather is inclement or there is insufficient work at
12 the landfill, the landfill position works at the District
13 No. 1 shops to reach the forty hours per week. Conversely
14 employees who work at the shop, e.g., Eugene Sticka, work at
15 the landfill if there is not enough work at the shop or
16 additional help is needed at the landfill or in junk vehicle
17 collection.

18 11. Equipment is interchanged between the landfill
19 operation and District No. 1 road maintenance. A certain
20 amount of coordination is needed between the positions and
21 thus there is an interchange between the employees.

22 12. If Mr. Englert is not available because of vaca-
23 tion, illness, etc. road maintenance employees are assigned
24 the landfill and junk vehicle work.
25

1 13. Jim Englert wishes to be in the bargaining unit.
2 Bargaining unit members wish to have Mr. Englert in the
3 Unit.

4 14. The landfill and road maintenance functions are
5 both funded with county tax money. They differ in that the
6 landfill position is funded from general fund and junk
7 vehicle tax. Road maintenance is funded from the general
8 fund and the road and bridge fund. Regardless of funding
9 source, the landfill position is paid on a county warrant.

10 IV. DISCUSSION

11 1. 39-31-202 MCA provides:

12 In order to provide employees the
13 fullest freedom in exercising their
14 rights guaranteed by this chapter, the
15 Board or an agent of the Board shall
16 decide the unit appropriate for the
17 purpose of collective bargaining and
18 shall consider such factors as: commu-
19 nity of interest, wages, hours, fringe
20 benefits, and other working conditions
21 of the employees involved, the history
22 of collective bargaining, common super-
23 vision, common personnel policies,
24 extent of integration of work functions
25 and interchange among employees affect-
ed, and the desires of the employees.

 In reviewing these factors, the facts adduced at
hearing demonstrate that the road maintenance and landfill
positions have common supervision, wages, hours (forty per
week), fringe benefits, and personnel policies. The facts
further demonstrate that there is an interchange of

1 employees and equipment between the two areas. Moreover,
2 the desires of the employees are that the landfill position
3 be included in the unit in the event it is not already
4 included.

5 At the time the road maintenance unit was recognized
6 the landfill position was not full-time. The landfill
7 duties were merely part of the duties performed by mainte-
8 nance employees. Thus, the landfill position never was
9 excluded or included because it did not exist as a position.
10 It exists as a position now and is appropriately included in
11 the road maintenance unit.

12 V. CONCLUSIONS OF LAW

13 The appropriate unit for collective bargaining purposes
14 under 39-31-202 MCA includes the landfill position.

15 V. RECOMMENDED ORDER

16 It is recommended that the Board modify the unit
17 description to be all Road Maintenance and Landfill Employ-
18 ees of Carbon County excluding all appointed and elected
19 officials and supervisors as defined by the Montana Public
20 Employee's Bargaining Act, Title 39, Chapter 31, Montana
21 Code Annotated.

22 Dated this 22nd day of August, 1988.

23 BOARD OF PERSONNEL APPEALS

24 By: _____
25

John Andrew
John Andrew
Hearing Examiner

1 * * * * *

2 CERTIFICATE OF SERVICE

3 The undersigned does certify that a true and correct
4 copy of this document was served upon the following on the
5 23rd day of August, 1988, postage paid and addressed
6 as follows:

7 George Hagerman
8 AFSCME
9 P. O. Box 5356
10 Helena, MT 59604

11 Mike Alterowitz
12 Carbon County Attorney
13 Drawer U
14 Red Lodge, MT 59068



15 FOFR2:099da

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- vs -

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FINAL ORDER

The Findings of Fact, Conclusions of Law and Recommended Order was issued by Hearing Examiner John Andrew on August 22, 1988.

Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order were filed by Michael G. Alterowitz, attorney for the Respondent, on September 8, 1988.

Oral argument was scheduled before the Board of Personnel Appeals on October 24, 1988.

After reviewing the record, considering the briefs and oral argument, the Board orders as follow:

1. IT IS ORDERED that the Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order are hereby denied.

2. IT IS ORDERED that this Board therefore adopt the Findings of Fact, Conclusions of Law and Recommended Order of Hearing Examiner John Andrew as the Final Order of this Board.

DATED this 3rd day of November, 1988.

BOARD OF PERSONNEL APPEALS

By Alan L. Joscelyn
Alan L. Joscelyn, Chairman

CERTIFICATE OF MAILING

I, Jennifer Jacobson, hereby certify that
a true and correct copy of this document was mailed to the
following on the 4th day of November, 1988.

Michael G. Alterowitz
Carbon County Attorney
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George Hagerman
Montana Council No. 9
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P.O. BOX 5356
Helena, MT 59604

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