

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 12-88:

MONTANA PUBLIC EMPLOYEES)
ASSOCIATION,)
)
) Petitioner,)
)
) -vs-) FINDINGS OF FACT;
) CONCLUSIONS OF LAW;
) RECOMMENDED ORDER
)
) YELLOWSTONE COUNTY,)
)
) Respondent,)
)
) TEAMSTERS LOCAL 190)
)
) Recognized Bargaining Agent.)

* * * * *

I. INTRODUCTION

A hearing on the above matter was held on February 21, 1989 in Billings, Montana before John Andrew, hearing examiner. David Stitler represented the Montana Public Employees Association, (MPEA). Yellowstone County was represented by Anne Sheehy. Teamsters Local Number 190 was represented by Pat McKittrick. The parties waived the filing of post hearing briefs and the matter was submitted on the date of hearing. Based on the foregoing the hearing examiner now makes the following:

II. ISSUE

Whether the position of Detention Secretary should be included in the MPEA bargaining unit, or whether the position of Detention Secretary should be included in the Teamsters bargaining unit.

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2 II. FINDINGS OF FACT

3 1. The contract between Yellowstone County and
4 Teamsters Local 190 recognizes a unit defined as all
5 Detention Officers, Detention Sergeant/Inmate Labor
6 Supervisors, Licensed Practical Nurse/Booking Clerks,
7 Detention Secretaries, Control Operators and Control
8 Supervisors in the Sheriff's Department excluding the
9 Detention Facility Commander, Assistant Detention Facility
10 Commander and Maintenance Personnel.

11 2. MPEA is the exclusive representative for a unit
12 defined as all employees in the following departments and
13 offices:

14 Clerk and Recorder, Auditor, Treasurer, Civil Defense,
15 Justice of the Peace, Custodian/Maintenance, Corner,
16 Superintendent of Schools, Elections, Central Services,
17 Clerk of Court, Surveyor, County Attorney's
18 Secretarial/Clerical, Animal Control, and all Non-sworn
19 Deputies and Clerical Employees in the Sheriff's Office,
20 Extension Office Secretary(s) and Weed Department
21 Secretary(s) and Court Services excluding all
22 Managerial, Supervisory and Confidential Personnel,
23 Sworn Deputy Sheriffs and Dispatchers, District Court
24 and Deputy County Attorneys, County Commissioners
25 Personnel, Health Department Personnel, Road and Bridge

1 Personnel, Public Welfare Personnel, Library Personnel,
2 Yellowstone Exhibition and Metra Personnel, Extension
3 Agents and Weed Department Field Workers.

4 3. Prior to July of 1987 all prisoners were housed in
5 the 8th Floor of the Yellowstone County Courthouse in
6 downtown Billings, Montana. In July of 1987 the new
7 Detention Facility opened and prisoners were transferred
8 there from the Courthouse. The Detention Facility is located
9 on King Avenue, removed from the Courthouse.

10 4. The Detention Division is one division of
11 approximately six divisions within the Yellowstone County
12 Sheriffs Department. The Detention Division is the only
13 division housed at the Detention Facility. All other
14 divisions of the Sheriffs Department are based out of the
15 Courthouse.

16 5. The current commander of the Detention Facility is
17 Dennis McCave. He became commander in January of 1989 and
18 currently supervises the employees in the Teamsters
19 bargaining unit, including the one Detention Secretary.

20 6. Custodial personnel at the Detention Facility are
21 represented by MPEA. Their supervisor is Harvey Rogers. Mr.
22 Rogers' office is located in the Courthouse.

23 7. At the time the Detention Facility was opened in
24 July of 1987, positions were created based on the particular
25 needs and requirements of the new facility. The positions

1 consisted of Control Personnel, Nurse/Booking Clerks,
2 Movement Officer, Transport Officer, and Detention Secretary.
3 Lou Babovich, Personnel Director, and a member of the
4 negotiating team for Yellowstone County testified that at the
5 time these positions were created the County viewed the
6 Detention Secretary position as a new position and negotiated
7 over that position accordingly.

8 8. Sue Davis became the Detention Secretary on July 6,
9 1987. Ms. Davis had previously worked for the Sheriff at the
10 Courthouse from October of 1982 until July of 1985 at which
11 time she worked for Manpower as a temporary assigned to the
12 Sheriff.

13 When employed by the Sheriff Ms. Davis' duties consisted
14 primarily of secretarial work for the Patrol Division. She
15 never worked in the jail but since she worked on Sundays, Ms.
16 Davis occasionally did work for Rickard Ross, the officer in
17 charge of the jail at the Courthouse.

18 9. Since she became full time at the Detention
19 Facility Ms. Davis' duties consist of those enumerated in her
20 job description, (Joint Exhibit #5). On occasion she does
21 perform work for the Sheriff. However, the majority of her
22 work is done for the Commander of the Detention Facility and
23 consists of duties relating exclusively to Detention Facility
24 matters under the Commanders control. She has little if any
25 involvement with those employees supervised by Harvey Rogers

1 and covered by the MPEA contract and little if any contact
2 with personnel outside the Detention Facility. Although many
3 of Ms. Davis' duties are similar to those performed by other
4 secretaries covered by MPEA her situation is distinguishable
5 in that she compiles and maintains records concerning the
6 Detention Facility exclusively. Moreover, her situation is
7 unique in that she is physically separated from other MPEA
8 secretaries employed by the Sheriff. Any interchange she has
9 with other employees is primarily with those covered by the
10 Teamsters rather than those covered by MPEA.

11 IV. CONCLUSIONS OF LAW

12 1. Under 39-31-201 MCA the Board of Personnel Appeals
13 is charged with determining the appropriate unit for
14 collective bargaining purposes. The factors to be considered
15 by the Board are community of interest, wages, hours, fringe
16 benefits, and other working conditions of the employees
17 involved, the history of collective bargaining, common
18 supervision, common personnel policies, extent of integration
19 of work functions and interchange among employees affected,
20 and the desires of the employees.

21 This is not the run of the mill unit clarification
22 question concerning accretion or employee status in that this
23 matter centers around two unions contending that their
24 existing contracts apply to the same position.

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1 MPEA has a valid claim to the position based on the fact
2 that it represents secretaries in the Sheriff's office.
3 Teamsters 190 has a valid claim in that it negotiated with
4 the County over what it and the County perceived as a new
5 position and succeeded in getting that position included in
6 the unit. Either union could represent the position,
7 however, the Teamster's claim is the stronger of the two.

8 As previously found, there is little interchange of
9 employees between the Detention Facility and the MPEA
10 employees at the Courthouse; the Detention Secretary is
11 supervised by the same person who supervises the Teamster's
12 unit members; the Detention Facility is physically separate
13 from the Courthouse; and the Detention Secretary works almost
14 exclusively on work covered by the Teamster's contract and
15 unique to the Detention Facility. All of this enforces the
16 Teamster's claim to the position.

17 As the NLRB has recognized, individual divisions of the
18 same employer may be in different units provided that each
19 division has a degree of autonomy and independence; transfers
20 and interchange of employees between the divisions is
21 negligible; employees in the division are in the same
22 geographical area; and tasks performed under a basic job
23 classification are adapted to the needs of the local
24 facility, Catholic Community Services, 106 LRRM 1255. Such
25 is the case at the Detention Facility. There is properly an

1 individual unit at the Detention Facility and based on the
2 appropriate unit criteria the Detention Secretary is
3 appropriately included in the Teamster's unit. There is no
4 need for the Board of Personnel Appeals to disturb the status
5 quo.

6 V. RECOMMENDED ORDER

7 It is recommended that the unit clarification petition
8 be dismissed and that the Detention Secretary position remain
9 in the Teamsters bargaining unit.

10 Entered and dated this 28th day of February,
11 1989.

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13 
14 John Andrew
Hearing Examiner

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16 NOTICE: Exceptions to these Findings of Fact, Conclusions of
17 Law and Recommended Order may be filed within 20 days of
18 service. If no exceptions are filed the recommended order
19 will become the order of the Board of Personnel Appeals.
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CERTIFICATE OF MAILING

I, Kara Christianson, do hereby certify that a true and correct copy of this document was mailed to the following on the 28th day of February, 1989.

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