

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 3-89:

WOLF POINT SCHOOL DISTRICT)	
NO. 45 AND 45A,)	
)	
Petitioner,)	
)	RECOMMENDED
vs.)	ORDER
)	
WOLF POINT CUSTODIANS')	
ASSOCIATION, MEA, NEA)	
)	
Respondent,)	

* * * * *

I. INTRODUCTION

On February 24, 1989, the Petitioner filed a request for unit clarification with the Board of Personnel Appeals requesting that Merle Doornek be excluded from the unit defined as custodian and/or maintenance employees excluding custodian substitutes, maintenance substitutes, cooks, bus drivers, school nurses, teachers, teacher aids, secretaries, clerks, licensed professionals and those excluded by Title 39, Chapter 31, MCA.

The petition requested that Mr. Doornek be excluded as a supervisory employee under 39-31-103 (3) MCA.

The petition was served upon Tom Verwolf, President of the Wolf Point Custodians' Association on February 27, 1989.

On March 8, 1989, a Motion to Dismiss was filed by the Association on the grounds the petition did not comply with

1 Board rules.

2 The question has been briefed and with the Petitioner's
3 submission of April 11, 1989, the matter is submitted.
4

5 II. DISCUSSION

6 Board of Personnel Appeals rules concerning unit
7 clarification are found at ARM 24.26.630. The rules provide
8 that a petition can be filed with the Board only by a
9 bargaining representative of the unit in question or by a
10 public employer and only if:

- 11 (a) there is no question concerning representation;
12 (b) the parties to the agreement are neither engaged in
13 negotiations nor within 120 days of the expiration
14 of the agreement;
15 (c) a petition for clarification has not been filed
16 with the Board concerning substantially the same
17 unit within the past twelve months immediately
18 preceding the filing of the petition; and
19 (d) no election has been held in substantially the same
20 unit within the past twelve months immediately
21 preceding the filing of the petition.
22

23 From the pleadings and based upon the Board's records it
24 is apparent that the provisions of Sections (a), (c) and (d)
25 have been met in that there are no questions concerning
representation, no unit clarification over the same unit has

1 been filed within the preceding twelve months nor has an
2 election over the unit in question been held within the
3 previous twelve months. Moreover the Petitioner has standing
4 to file the petition. At issue is whether the petition
5 complies with 24.26.630 (1) (b).

6 The contract in question is "in effect until June 30,
7 1989" and remains in effect for additional one year periods
8 unless notice is given by either party in February prior to
9 the contract expiration date, (Attachment B of Petitioner's
10 Brief in Opposition to Motion to Dismiss).

11 The petition was filed with the Board on February 24,
12 1989. A contract that is effective from a certain date
13 "until" another date is construed as not including the date
14 named after the word "until" unless there is a specific
15 provision to the contrary, Hemisphere Steel Products, 131
16 NLRB 56, 47 LRRM 1595. (Also see ARM 24.26.203 and Rule 6(a)
17 M.R. Civ. Proc.) Thus, for purposes of time calculation the
18 petition was filed 126 days prior to contract expiration.
19 The petition is timely for purposes of the rule. The
20 remaining question then is whether the parties are "engaged
21 in negotiations".

22 On February 17, 1989, the Association gave notice to the
23 district by certified mail of its "desire to negotiate over
24 the terms of a successor agreement." (See attachments to
25 Respondent's Brief in Support of Motion to Dismiss.) The

1 request was filed within the time frame established in the
2 contract. There is no dispute that this occurred nor is
3 there any dispute that the request had to be made in
4 February.

5 The parties neither cite nor does it appear that the
6 Board has defined the phrase "engaged in bargaining" as
7 applied to filing a unit clarification petition. Relying in
8 part on 39-31-305(2) MCA and in part on the generally
9 accepted meaning of the word "engage" as defined in Black's
10 Law Dictionary the Petitioner contends that the parties have
11 to have had a meeting and/or exchanged proposals to be
12 "engaged in bargaining". This argument is not persuasive.

13 39-31-305 (2) MCA deals with bargaining in good faith.
14 To be "engaged in bargaining" has nothing to do with whether
15 it is good or bad faith bargaining.

16 The Black's Law definition of engage is "to employ or
17 involve one's self; to take part in; to embark on". The act
18 of sending a letter to begin the bargaining process certainly
19 meets the definition of "to involve one's self; to take part
20 in" or "embark on". The action of opening the contract is
21 akin to filing a lawsuit. Just as you are engaged in a
22 lawsuit when the papers are filed and served so too are you
23 "engaged in bargaining" when you give written notice you
24 desire to negotiate. It is the entire process which the
25 rules refer to, not just the physical act of holding meetings

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

and exchanging proposals.

III. RECOMMENDED ORDER

The unit clarification petition is dismissed as not conforming with ARM 24.26.630.(1) (b).

Entered and dated this 14th day of April, 1989.

BOARD OF PERSONNEL APPEALS

By: *John Andrew*
John Andrew
Hearing Examiner

NOTICE: Exceptions to this Recommended Order may be filed within twenty days of service. If no exceptions are filed the Recommended Order will become the final order of the Board Of Personnel Appeals.

CERTIFICATE OF MAILING

I, *Jennifer Jacobson*, do hereby certify that a true and correct copy of this document was mailed to the following on the 14th day of April, 1989.

Emilie Loring
Hilley and Loring
500 Daly Ave.
Missoula, MT 59801

Rick D'Hooge
Montana School Boards Association
1 South Montana
Helena, MT 59601

WLFPTUC.SAV