

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 11-92:

MONTANA FEDERATION OF TEACHERS,)
AFT, AFL-CIO,)
Petitioner,)
vs.)
DARBY PUBLIC SCHOOLS, DISTRICT)
NO. 9,)
Respondent.)

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
RECOMMENDED ORDER

* * * * *

I. INTRODUCTION

At a May 7, 1992, pre-hearing conference, the parties agreed to determination of the issue(s) in this matter based upon stipulated facts and subsequent briefs. Final submission was received July 2, 1992.

II. BACKGROUND

1. On February 20, 1992, the Petitioner filed a petition with the Board of Personnel Appeals for Unit Clarification of the Bargaining Unit. The Petitioner contended the "Sign Language Interpreter" non-certified, one employee, should be included in the Bargaining Unit described as:

Classified Employees Bargaining Unit including teachers aides (non-certified) bus aides, janitors, lunchroom employees, excluding supervisors, teachers, management employees as defined in 30-31-303.

2. On March 23, 1992, the respondent/employer filed a response with the Board disagreeing with the request for inclusion

1 of the Sign Language Interpreter in the unit. The respondent/
2 employer contended the job requirement of specialized skills, the
3 need for flexibility in possible future incumbent salary
4 negotiation, legally mandated client service needs and environment
5 as well as the difference between the interpreter and unit
6 instructional aide positions precludes inclusion of the Sign
7 Language Interpreter in the unit.

8 III. FINDINGS OF FACT

9 1. Agreed fact stipulation reads as follows:

- 10 1) The Montana Federation of Teachers is the
11 exclusive bargaining representative of
12 the Darby Federation of Support Staff,
13 Local No. 4695,
- 14 2) The Darby Support Staff is a unit consisting of all
15 non-certified employees including Special Education
16 Aides, Resource Aides, Self-Contained Special
17 Education Aide, Mobility Special Education Aide,
18 Bus Aides, Chapter 1 Aides, and Female Physical
19 Education Aides,
- 20 3) The position in question is a new position titled
21 "Sign Language Interpreter" which is a non-
22 certified position,
- 23 4) The following position descriptions are submitted
24 as exhibits A-E, Sign Language Interpreter,
25 Resource Aides (H.S./M.S.), Mobility Special
26 Education Aide, Self-Contained Special Education
27 Aide, Chapter 1 Aide,
- 28

1 5) The position is not a management or supervisory
2 position as defined in MCA 39-31-103,

3 2. The position qualifications for the aide positions as
4 well as the Sign Language Interpreter are almost identical. The
5 Mobility Specialist and Self-Contained Special Education Aide must
6 be able to physically lift or assist students, the Sign Language
7 Interpreter must know sign language. Other than these limited
8 qualification requirement differences, the positions are almost
9 identical. All aide positions as well as the Sign Language
10 Interpreter report to the room teacher or the principal. The job
11 goal for all aides and the Sign Language Interpreter is to work
12 with students to assist with educational programs provided.

13 Performance responsibilities for all aides and the Sign
14 Language Interpreter involve providing student assistance in
15 specific classroom or study related activities. Evaluation of all
16 aides and the Sign Language Interpreter is conducted annually in
17 accordance with Board policy. The Sign Language Interpreter and
18 aide positions work the same hours, have the same benefits and
19 working conditions, are non-certified positions supervised by the
20 same personnel under application of the same personnel policies.

21 IV. DISCUSSION

22 1. Section 24.26.611 ARM provides:

23 APPROPRIATE UNIT (1) In considering
24 whether a bargaining unit is
25 appropriate, the Board shall
26 consider such factors as:
27 (a) community of interest;
28 (b) wages;
 (c) hours;
 (d) fringe benefits and other working conditions;
 (e) the history of collective bargaining;
 (f) common supervision;
 (g) common personnel policies;

1 (h) extent of integration of work functions and
2 interchange among employees affected; and
3 (i) desires of the employees.

4 2. The possibility the respondent at some time in the future
5 may need flexibility in negotiating to fill the Sign Language
6 Interpreter position is not relevant. The legally mandated client
7 service needs and environment do not change if the Interpreter
8 position is or is not certified or in or out of the bargaining
9 unit. The question for determination is whether the position as
10 currently filled belongs in the unit. Under application of the
11 above listed factors, the Sign Language Interpreter position is
12 appropriately included in the unit.

13 V. CONCLUSIONS OF LAW

14 The position of Sign Language Interpreter should be included
15 with the unit comprised of certified employees.

16 VI. RECOMMENDED ORDER

17 The position of Sign Language Interpreter shall be immediately
18 included in the existing unit comprised of Classified Employees
19 Bargaining Unit including teacher aides (non-certified), business
20 aides, janitors, lunchroom employees, excluding supervisors,
21 teachers, management employees as defined in 30-31-303 MCA.

22 SPECIAL NOTE: Pursuant to ARM 24.26.684, the above RECOMMENDED
23 ORDER shall become the FINAL ORDER of this Board unless written
24 exceptions are filed within twenty (20) days after service of these
25 FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER upon the
26 parties.

1 Entered and dated this 7 day of August, 1992.

2
3 Joseph V. Maronick
4 JOSEPH V. MARONICK
5 Hearing Examiner

6 CERTIFICATE OF MAILING

7 The undersigned hereby certifies that true and correct copies
8 of the foregoing documents were, this day served upon the following
9 parties or such parties' attorneys of record by depositing the same
in the U.S. Mail, postage prepaid, and addressed as follows:

10 Jack Eggensperger, Superintendent
11 of Schools
12 Darby School District #9
13 209 School Drive
14 Darby, MT 59829

15 Tom Burgess, Field Representative
16 Montana Federation of Teachers, AFT, AFL-CIO
17 Box 1246
18 Helena, MT 59624

19 DATED this 7th day of August, 1992.

20 Christine P. Roland

21 SP321.1