

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

IN THE MATTER OF UNIT CLARIFICATION NO. 21-92:

MONTANA FEDERATION OF STATE)	
EMPLOYEES, MFT/AFT, AFL-CIO,)	
)	
Petitioner,)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
- vs -)	AND PROPOSED ORDER
)	
CITY AND COUNTY OF BUTTE-)	
SILVER BOW, STATE OF MONTANA,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Prior to a formal hearing scheduled in this matter, the parties jointly agreed to determination of this unit clarification based upon submission of joint exhibits and concurrently submitted briefs. Joint Exhibits 1 through 7 and briefs were submitted. Final brief submission was received August 25, 1992.

II. FINDINGS OF FACT

1. On January 1, 1992 the City and County of Butte-Silver Bow, State of Montana (Respondent) assumed ownership of the formerly privately owned Butte Water Company. The Montana Federation of State Employees, MFT/AFT, AFL-CIO (Petitioner) is the certified representative for collective bargaining purposes for certain of the Respondent employees. Article 1 "Recognition" of the parties collective bargaining agreement provides:

Section 1. The employer recognizes the Federation as the exclusive representative for all Deputies and Assistants of the following elected officials of the City and County of Butte-Silver Bow, State of Montana: Auditor, Clerk and Recorder, Clerk of Court, Superintendent of Schools, and Treasurer; and all other secretarial, parking enforcement officers, bookkeeping, stenographic and clerical

1 employees of the Butte-Silver Bow Municipal
2 Government, with the exception of the positions
3 classified as secretary in the District Court
4 System, summer employee, and/or management
5 official, supervisory employee, or confidential
6 employee as defined by the Act 39-31-103, MCA.
7 (See addendum "A" for a list of covered positions.)

8 2. Following the Respondent's assumption of water company
9 control, the Petitioner indicated their intent to claim
10 jurisdiction over five customer service clerks, one computer
11 operator/secretary and one water meter reader. The parties agreed
12 upon inclusion of the five customer service clerks. The Respondent
13 contended the computer operator/secretary and water meter reader
14 did not belong in the unit.

15 3. The computer operator/secretary, prior to change in
16 ownership in January 1992, was the company president's secretary.
17 Thereafter, because the company president was no longer an
18 employee, the computer operator/secretary performed limited
19 clerical duties and dedicated more time apparently to computer
20 related duties. The position description for the computer
21 operator/secretary shows supervision from Dan Cox, the same person
22 who is the supervisor of the customer service representatives who
23 were made part of the unit following the change in ownership. The
24 following, in part, is part of the computer operator/secretarial
25 duties identified in her position description:

26 Perform duties of executive secretary which
27 includes word processing, correspondence control,
28 filing, petty cash control and other miscellaneous
functions...

Secretarial duties such as typing and filing of
documents for management officials. I also review
all incoming mail and date stamp and route it to
proper management official. I run monthly
delinquent statements on past due accounts for
credit departments. I have access to all files,
which includes contracts, management

1 correspondence, customer accounts receivable
2 information, etc.

3 4. The meter reader is supervised by Bob Edwards, the same
4 person who supervises the meter billing clerk, Bernie O'Neill who
5 is a unit member. The meter reader collects water meter readings
6 which are then given to the meter reader billing clerk who reviews
7 the meter readings for irregularities as a method of customer
8 service. The meter reader's responsibilities primarily involve
9 route meter reading or customer service on request. He takes final
10 or individual meter readings, advises customers and responds to
11 staff regarding meter readings or meter use indications including
12 large use or malfunctioning meters. He monitors the meter readings
13 in much the same manner as does the billing clerk.

14 5. Petitioner's brief indicates all current unit members as
15 well as both the computer secretary and meter reader are subject to
16 common personnel policies, work hours, and fringe benefits.

17 III. CONCLUSIONS OF LAW

18 1. The Board of Personnel Appeals has jurisdiction in this
19 matter pursuant to Section 39-31-202 MCA. Billings, Montana v.
20 Fire Fighters Local 529, 113 LRRM 3324, 651 P.2d 627, Montana
21 Supreme Court 1982.

22 2. The Montana Supreme Court has approved the practice of
23 the Board of Personnel Appeals in using Federal Court and NLRB
24 precedents as guidelines in interpreting the Public Employees
25 Collective Bargaining Act (the Act) as the State Act is so similar
26 to the federal Labor Management Relations Act (LMRA). State
27 Department of Highways v. Public Employees Craft Council, 165 Mont.
28 349, 529 P.2d 785 (1974), 87 LRRM 2101; AFSCME Local 2390 v. City

1 of Billings, 171 Mont. 20, 555 P.2d 507, 93 LRRM 2753 (1976); State
2 ex rel. Board of Personnel Appeals v. District Court, 183 Mont.
3 223, 598 P.2d 1117, 103 LRRM 2297 (1979); Teamsters Local 45 v.
4 State ex rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d
5 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young (Young
6 III), 221 Mont. 13, 683 P.2d 185, 119 LRRM 2682 (1984).

7 3. The information presented shows a community of interest,
8 fringe benefits, history of collective bargaining, common
9 supervision, common personnel policies, integration of work
10 functions and interchange among employees affected or commonality
11 of other working conditions. Community of interest among employees
12 has, and continues to be, the fundamental factor in determining the
13 appropriateness of bargaining units. Brown and Root Inc., 258 NLRB
14 1002, 108 LRRM 1188 (1981). The weight given to particular
15 bargaining history factor for inclusion/exclusion in bargaining
16 units is often determinative of community of interest. Dallas
17 Morning News, 285 NLRB No. 106, 126 LRRM 1346 (1987).

18 4. In the present case, the recognition clause clearly
19 identifies "all other secretarial employees" and the computer
20 operator/secretary is involved in secretarial duties."
21 Additionally the record shows that the computer operator/secretary
22 as well as the meter reader have common supervisors with unit
23 members (in their respective units). The positions in question
24 have in their respective units common supervision, common personnel
25 policies, same or integrated work functions and interchange among
26 affected employees, the computer operator/secretary and meter
27 reader are appropriately included in the bargaining unit. Such
28 commonality, which was not refuted by information offered by the

1 Respondent in this case, leads to the natural conclusion that the
2 two positions should be included in the bargaining unit.

3 IV. RECOMMENDED ORDER

4 The position of computer operator and meter reader shall be
5 included in the bargaining unit represented by the Montana
6 Federation of State Employees, MFT/AFT, AFL-CIO.

7 DATED this 28 day of September, 1992.

8 BOARD OF PERSONNEL APPEALS
9

10 By: Joseph V. Maronick
11 JOSEPH V. MARONICK
12 Hearing Examiner

13 Special Note

14 In accordance with Board Rule ARM 24.25.107(2), the above
15 RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless
16 written exceptions are filed within twenty (20) days after service
of these FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER
upon the parties.

17 CERTIFICATE OF MAILING
18

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

21 Kevin McCray, Field Representative
Montana Federation of State Employees
22 P.O. Box 6169
Helena, MT 59604

23 Tim Clarke
24 Butte-Silver Bow Courthouse
Butte, MT 59701

25 DATED this 28th day of September, 1992.

26
27 Christine P. Roland

28 SD321.4N