

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

IN THE MATTER OF UNIT CLARIFICATION NO. 14-95:

HOTEL EMPLOYEES AND RESTAURANT )  
EMPLOYEES INTERNATIONAL UNION )  
LOCAL 427, AFL-CIO, )

Petitioner, )

vs. )

MONTANA FEDERATION OF STATE )  
EMPLOYEES, WARM SPRINGS )  
INDEPENDENT UNION NO. 5070, )  
MFT, AFT, AFL-CIO, )

Petitioner )

FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
RECOMMENDED ORDER

\* \* \* \* \*

I. INTRODUCTION

On March 6, 1995, Hotel Employees and Restaurant Employees International Union (HERE), Local 427 filed a petition for unit clarification seeking to add one new custodial position No. 32281 to the Food Service Unit. Prior to action by the Board, Montana Federation of State Employees, Warm Springs Independent Union Local No. 5070, MFT, AFT, AFL-CIO petitioned the Board contending the position 32281 should be included in their respective bargaining unit.

The matter was transferred for hearing to the Legal Services Division Hearing Unit. At a telephone pre-hearing conducted May 19, 1995, the parties agreed to submission of the conflict for decision based upon concurrent offer, postmarked May 31, 1995, of respective party documents and memorandum of argument.

1 Based upon information and arguments submitted, the below-  
2 signed Hearing Officer makes the following findings of fact,  
3 conclusions of law, and recommended order.

4 II. FINDINGS OF FACT

5 1. The position involved in this matter, Position No. 32281,  
6 performs primarily (90%) custodian work duties. These duties were  
7 formerly performed by one or several "detailed"/food service worker  
8 II(s) and the position was formerly included in the HERE unit,  
9 Local 427. The work duties currently include cleaning and  
10 maintaining: dining room area; dining room bathrooms; dining room  
11 floors and windows as well as wiping dining room tables after  
12 meals. The custodial duties assigned to "detail" positions were  
13 reassigned to Position 32281 and the position title changed from  
14 "detail"/food service worker II to "Residential Custodian". On  
15 weekends, relief work for Position 32281 is performed by food  
16 service workers represented by HERE, Local 427 not by other  
17 housekeeping custodian staff. The incumbent in this position works  
18 and takes breaks at the same time and location as other food  
19 service staff. The "detail"/food service worker II(s) performing  
20 the custodial duties were formerly supervised by a food service  
21 department supervisor.

22 2. The Collective Bargaining Agreement pertaining to Warm  
23 Springs Independent Union Local 5070, MFT, AFT, AFL-CIO recognizes  
24 Local 5070 as the sole and exclusive bargaining agent for  
25 "custodians". Based upon this recognition clause, covering  
26 custodians at Montana State Hospital, Local 5070 believes the  
27 position should be included in their unit. This position is taken  
28

1 while admitting the work duties have historically been performed by  
2 employees who are members of HERE, Local 427.

3 III. CONCLUSIONS OF LAW

4 1. The Board of Personnel Appeals has jurisdiction in this  
5 matter pursuant to Section 39-31-202, MCA. Billings, Montana v.  
6 Fire Fighters Local 529, 131 LRRM 3324, 651 P.2d 627, Montana  
7 Supreme Court, 1982. The Montana Supreme Court has approved the  
8 practice of the Board of Personnel Appeals in using Federal Court  
9 and NLRB precedence as guidelines in interpreting the Public  
10 Employees Collective Bargaining Act (the Act) as the State Act is  
11 so similar to the Federal Labor Management Relations Act (LMRA).  
12 State Department of Highways v. Public Employees Craft Council, 165  
13 Mont. 349, 529 P.2d 785 (1974), 87 LRRM 2101; AFSCME Local 3290 v.  
14 City of Billings, 171 Mont. 20, 555 P.2d 507, 93 LRRM 2753 (1976);  
15 State ex rel. Board of Personnel Appeals v. District Court 183  
16 Mont. 223, 598 P.2d 1117, 103 LRRM 2297 (1979); Teamsters Local 45  
17 v. State ex rel. Board of Personnel Appeals, 195 Mont. 272, 635  
18 P.2d 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young  
19 (Young III), 221 Mont. 13, 683 P.2d 185, 119 LRRM 2682 (1984).

20 2. Section 24.26.611 ARM (1993) provides:

21 APPROPRIATE UNIT (1) In considering  
22 whether a bargaining unit is  
23 appropriate, the Board shall  
24 consider such factors as:  
25 (a) community of interest;  
26 (b) wages;  
27 (c) hours;  
28 (d) fringe benefits and other working conditions;  
(e) the history of collective bargaining;  
(f) common supervision;  
(g) common personnel policies;  
(h) extent of integration of work functions and  
interchange among employees affected; and  
(i) desires of the employees.

1 As indicated above, the determination as to the appropriate  
2 bargaining unit is based upon community of interest, wages, hours,  
3 fringe benefits, working conditions, the history of collective  
4 bargaining, common supervision, common personnel practices, the  
5 extent of work function integration, and the desire of effected  
6 employee.

7 3. The Petitioner Local 5070 presented no arguments  
8 specifically regarding community of interest, fringe benefits,  
9 history of collective bargaining, common supervision, common  
10 personnel policies, extent of integration of work functions and  
11 interchange among employees affected, or commonality of other  
12 working conditions. Community of interest among employees has, and  
13 continues to be, the fundamental factor in determining the  
14 appropriateness of bargaining units. Brown & Root, Inc., 258 NLRB  
15 1002, 108 LRRM 1188 (1981). The Custodial Position may have basic  
16 day-to-day custodial duties which are similar to other custodial  
17 positions. The thrust of the position is to support the food  
18 service work or department. The focus of the community of interest  
19 factor lies with the involvement in the food service not with the  
20 position's custodial type work duties. Significant weight is  
21 given to the prior bargaining history factor for  
22 inclusions/exclusions to bargaining units. Dallas Morning News,  
23 285 NLRB No. 106, 126 LRRM 1346 (1987). In this matter, the  
24 custodial duties have historically been included in the HERE Local  
25 427 bargaining unit.

1           4.    The record presented shows the work performed by the  
2 position identified in this case has a community of interest with  
3 all food service workers.  If placed in either unit, the wages  
4 would be determined by the respective collective bargaining  
5 agreement.  The hours of work for the food service custodian would  
6 coincide, in general terms, to the hours of other food service  
7 workers.  The history of collective bargaining relating to the work  
8 duties of this position show the work duties have been performed by  
9 members of the HERE unit.  The integration of work functions among  
10 food workers and the food area custodian would follow normally from  
11 working with other food service employees in the same area  
12 performing, in general, food service related activities.  No  
13 information was offered by either party relating to the desires of  
14 the incumbent in this position.

15           5.    The Collective Bargaining Agreement of the Warm Springs  
16 Independent Union Local 5070 does particularly identify custodians  
17 as appropriate members of that bargaining unit.  The community of  
18 interest, wages, fringe benefits, common supervision and  
19 integration of work functions would to some extent be the same  
20 between members of the Warm Springs Independent Union Local 5070.  
21 The record offered, however, indicates a higher degree of  
22 commonality between the food service workers and the food service  
23 area custodian position.  Additionally, integration of the work  
24 functions and the past collective bargaining history favors  
25 assignment of this position to the HERE Unit, Local 427.

26           6.    Under application of the factors as addressed above, the  
27 position of Food Service Custodian No. 32281 at Montana State  
28

1 Hospital Warm Springs is found properly included in the HERE Local  
2 427.

3 IV. RECOMMENDED ORDER

4 It is HEREBY RECOMMENDED the Custodian Position No. 32281 be  
5 immediately included in the unit comprised of the members of HERE  
6 Local 427.

7 SPECIAL NOTE: Pursuant to ARM 24.26.215, the above RECOMMENDED  
8 ORDER shall become the FINAL ORDER of this Board unless written  
9 exceptions are filed within twenty (20) days after service of these  
10 FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER upon the  
11 parties.

12 ENTERED AND DATED this 9<sup>th</sup> day of June, 1995.

13 DEPARTMENT OF LABOR & INDUSTRY  
14 HEARINGS BUREAU

15 Joseph V. Maronick  
16 Joseph V. Maronick  
17 Hearing Officer  
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CERTIFICATE OF MAILING

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 in the U.S. Mail, postage prepaid, and addressed as follows:

Secky Fascione, Union Representative  
Hotel & Restaurant Employees and Bartenders Union  
208 East Main Street  
Missoula, MT 59802

Bill Bentley  
Montana Federation of Hotel Care Employees, AFL-CIO  
810 Hialeah Court  
Helena, MT 59601

Mike Haldane, President  
Warm Springs Independent Union MFT, AFT, AFL-CIO  
% Montana State Hospital  
Warm Springs, MT 59756

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 means of the State of Montana's Deadhead mail service.

Steve Johnson, Chief  
Labor Relations Bureau  
State Personnel Division  
Dept of Administration  
Room 130 - Mitchell Bldg  
Helena, MT 59620

DATED this 9th day of June, 1995.

Christine A. Roland