

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 1-99:

GLENDIVE FEDERATION OF)
TEACHERS, AFT, LOCAL #3402,)
)
Petitioner,)
)
vs.)
)
DAWSON COMMUNITY COLLEGE,)
)
Respondent.)

**FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

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I. INTRODUCTION

Hearing Officer Stan Gerke conducted a telephone hearing in this matter on August 12, 1999. Petitioner, Glendive Federation of Teachers, AFT, Local #3402, was represented by Michael Hunter, President. Respondent, Dawson Community College, was represented by Terry Hetrick, President, and Donald H. Kettner, retired President. Exhibit Nos. 1 through 19 were entered into the record without objection. Patricia "Trish" Matteson, Susan Carlson, Connie Long, Kent Dion, and Diane Dohrmann appeared as witnesses and gave sworn testimony. The record was held open for 30 days following hearing by request of the parties to allow pending settlement discussions. The record was closed September 13, 1999 and the matter was deemed fully submitted.

II. ISSUE

The issue in this matter is to determine whether the positions of Career and Placement Advisor/Recruiter (Incumbent Trish Matteson), Learning Center Tutor and Instructor (Incumbent Susan Carlson), and Learning Center Tutor and

Instructor/Assistant Softball Coach (Incumbent Connie Long) should be included in the existing collective bargaining unit consisting of full-time teaching faculty; part-time faculty members who teach approximately one-half the teaching load of full-time teaching faculty or engage in a substantial degree of teacher-related activities, e.g. coaching, counseling, library work; excluding the President, Vice-President, Registrar, and Institutional Research Officer.

III. FINDINGS OF FACT

1. On May 7, 1975, the Board of Personnel Appeals certified the Glendive Federation of Teachers, AFT, Local #3402 as the exclusive bargaining agent for full time teaching faculty; part time faculty members who teach approximately one-half the teaching load of full-time teaching faculty or engage in a substantial degree of teacher-related activities, e.g. coaching, counseling, library work; excluding the President, Vice-President, Registrar, and Institutional Research Officer employed by Dawson Community College. On October 14, 1998, the Federation filed a petition with the Board seeking to include the positions of Career and Placement Advisor/Recruiter, Learning Center Tutor and Instructor, and Learning Center Tutor and Instructor/Assistant Softball Coach to the unit.

2. Full time faculty is defined in the existing Master Agreement (Exhibit 19) between the Federation and College as, "Those faculty teaching at least 15 credit hours per semester, unless otherwise waived pursuant to Sec. 13.1 and with consideration to "student credit hours" and whose major role is in classroom instruction and academic advising of students, or teaching faculty on released time for para curricular or administrative duties and whose duties constitute a full-time position during the life of this contract. Student credit hours are defined as the number of credits times the number of students in that class. A two-hour lab will count as two student credit hours" (Sec. 1.9.1). Sec. 13.1 provides, "For the purposes of placement on the Salary Schedule, the maximum placement will be at Step 3.

Credit for prior experience will be awarded for two full years' experience to Step 2 and a one for three basis for an additional year to Step 3. Only work experience or teaching experience pertinent to teaching assignment will be counted. Work experience for vocational instructors in a profession or occupation other than teaching will be evaluated at the time of initial hiring. This record will be made a permanent part of the faculty member's file." Part time faculty is defined as, "Those faculty whose duties are instructional, para-curricular, or administrative, and who are employed by the college at least one-half time but not full time" (Sec. 1.9.2).

3. The mission of the Student Support Services of the College is to serve disadvantaged students (i.e., low income, handicapped). Employees of the Learning Center work under the Student Support Services in tutoring students and teaching sub-100 classes on a one to one basis in the Center. Students are not credited with college credits for classes taken in the Learning Center. The director of the Learning Center hires tutors and is responsible for them. The pay scale for tutors is \$7.00 per hour for those with academic degrees and minimum wage without degrees.

4. Connie Long works in the Learning Center teaching sub-100 English classes, tutoring reading skills, and advising three to six students. Based on a 35 hour work week, Long teaches ten credit hours or less, spending the remainder of the week tutoring or assisting students.

5. Susan Carlson teaches math classes on a one to one basis in the Learning Center. In addition, Carlson tutors math. Based on a 39 hour work week, Carlson teaches credit math classes on a one to one basis 25% of her time and spends 75% tutoring math.

6. Patricia "Trish" Matteson works in the Career Advising Center and spends 50% of her time career advising. She also provides admissions information, does some academic advising, and performs recruitment work. Matteson teaches classroom three credit hours per week out of a 35 hour work week.

IV. DISCUSSION

Montana law gives the Board of Personnel Appeals the responsibility to define appropriate collective bargaining units for public employees. § 39-31-202, MCA. Here, Petitioner has sought a ruling from the Board on whether this unit appropriately includes three additional positions. The statute requires the Board to consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using federal court and National Labor Relations Board (NLRB) precedent as guidelines interpreting the Montana Collective Bargaining for Public Employees' Act due to the similarity between state and federal laws. State ex rel Board of Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d 1117, 103 LRRM 2297 (1979); Teamsters Local No. 45 v. State ex rel Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young III, 211 Mont. 13, 686 P.2d 185, 119 LRRM 2682 (1984).

In The Sun and Communication Workers of America, Local 14671, 329 NLRB No. 74, 1999 WL 958485 (1999), the NLRB recently developed a new standard in unit clarification proceedings where bargaining units are defined based on the work performed. In The Sun, supra, the NLRB held that new employees should be added to a bargaining unit that is defined by work performed if: (1) the new employees perform job functions similar to those performed by unit employees as defined in the unit description and (2) the unit functions performed by the new employees are not merely incidental to their primary work functions or otherwise an insignificant part of their work. Once this standard has been met, the party seeking

to exclude the new employees has the burden to show that the new group of employees is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate. In determining whether the presumption of inclusion has been rebutted, community-of-interest factors will be considered.

Here, the existing bargaining unit is defined by the work performed to include those employees who teach college classes either full or half time or engage in a substantial degree of teacher-related activities, such as coaching, counseling, or library work, are included in the unit. The duties that Long, Carlson, and Matteson perform certainly fall within the bargaining unit description in that they "engage in a substantial degree of teacher-related activities, e.g. coaching, counseling, library work" Long, Carlson, and Matteson spend every assigned hour of work either teaching, tutoring, counseling, or advising students. The unit work functions performed by Long, Carlson, and Matteson are not merely incidental to their primary work functions or otherwise an insignificant part of their work. The College failed to present any evidence of community-of-interest factors to show that the existing bargaining unit would no longer be appropriate with the inclusion of Long, Carlson, and Matteson. Therefore, the positions should be added to the unit.

V. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction over this matter pursuant to § 39-31-207, MCA.

2. The positions occupied by Connie Long, Susan Carlson, and Patricia "Trish" Matteson are appropriately included in the existing bargaining unit comprised of full-time teaching faculty; part-time faculty members who teach approximately one-half the teaching load of full-time teaching faculty or engage in a substantial degree of teacher-related activities, e.g. coaching, counseling, library work; excluding

the President, Vice-President, Registrar, and Institutional Research Officer employed by Dawson Community College pursuant to § 39-31-202, MCA.

VI. RECOMMENDED ORDER

Unit Clarification No. 1-99 is hereby **GRANTED**.

DATED this 7th day of March, 2000.

BOARD OF PERSONNEL APPEALS

By:



STAN GERKE
Hearing Officer

NOTICE: Pursuant to ARM 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than March 27, 2000. This time period includes the 20 days provided for in ARM 24.26.215, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 6518
Helena, MT 59624-6518

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:

Glendive Federation of Teachers Local #3402
c/o Michael Hunter
Box 421
Glendive, MT 59330-9976

Terry Hetrick, President
Dawson Community College
Montana University System
Box 421
Glendive, MT 59330-9976

DATED this 8th day of March, 2000.

Sandy Duncan