

1 Department of Labor and Industry  
2 Board of Personnel Appeals  
3 PO Box 6518  
4 Helena, MT 59624-6518  
5 (406) 444-2718  
6  
7

8 STATE OF MONTANA  
9 BEFORE THE BOARD OF PERSONNEL APPEALS  
10

11 IN THE MATTER OF UNIT CLARIFICATION NO. 2-2000  
12

13 KALISPELL SCHOOL DISTRICT NO. 5 )  
14 )  
15 Petitioner, )  
16 vs. )  
17 KALISPELL FEDERATION OF )  
18 CLASSIFIED PERSONNEL, LOCAL NO. )  
19 4164, MFT, AFT, AFL-CIO )  
20 )  
21 Respondent )  
22

ORDER

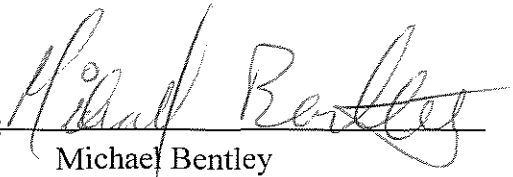
23  
24 Pursuant to ARM 24.26.630 et seq., Jeff J. Minkler, acting on behalf of public employer  
25 Kalispell School District No. 5, filed a petition for unit clarification with this Board on October  
26 8, 1999. Petitioner has satisfied all of the prerequisites of ARM 24.26.630 (1), therefore the  
27 Petition is valid. Respondent has failed to file any timely response in accordance with ARM  
28 24.26.630 (4).

29 Petitioner is requesting that a certain position with one incumbent, Payroll Clerk, now  
30 within Respondent's bargaining unit be removed. The position has been assigned duties that  
31 include assisting the District's labor relations consultant and Business Manager directly in  
32 formulating management policies and handling confidential information relating to the District's  
33 collective bargaining proposals and supporting data prior to transmission to affected labor  
34 organizations. Based upon these duties, Petitioner contends that the Payroll Clerk position is a  
35 true "confidential employee" as defined by section 39-31-103 (3), MCA and by numerous Board  
36 of Personnel Appeals, NLRB and Supreme Court decisions under the "labor nexus" doctrine.  
37 See E & L Transport Co., 160 LRRM 1115 (1998); Montana Education Association, NEA and  
38 Missoula County High School and Montana Federation of Teachers, AFT, AFL-CIO, UD No. 7-  
39 89 (1989); NLRB v. Hendricks County Rural Electric Corp., 454 U.S. 170, 189 [108 LRRM  
40 3105] (1981); and Lewis and Clark County vs. Montana Public Employees Association, UC No.  
41 4-79 (1979).

42 There being no argument made to the contrary of Petitioner's motion, no question of fact  
43 exists under ARM 24.26.630 (5). Therefore, Petitioner is granted relief by this Board. The  
44 position of Payroll Clerk, Kalispell School District No. 5 is a bonafide confidential employee  
45 position under section 39-31-103 (3), MCA and is now removed from the above-mentioned  
46 bargaining unit.  
47

48 DATED this 29th day of November, 1999.  
49  
50

BOARD OF PERSONNEL APPEALS

By:   
Michael Bentley  
Board Agent

**CERTIFICATE OF MAILING**

I, Windy Knutson, do hereby certified that the above document  
was mailed to the following on the 30th day of November, 1999:

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