

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 3-2005:

JEFFERSON COUNTY ROAD &) Case No. 302-2005
BRIDGE DEPARTMENT,)
BOULDER, MONTANA,)
)
Petitioner,)
)
vs.)
)
TEAMSTERS LOCAL UNION NO. 2,)
IBT, AFL-CIO,)
)
and)
)
MT FEDERATION OF STATE)
EMPLOYEES, MEA-MFT, AFL-CIO,)
)
Respondent.)

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

I. INTRODUCTION

On August 13, 2004, Jefferson County filed a petition for unit clarification with the Board contending that the position of administrative assistant to the road and bridge department supervisor should be included in the Teamsters Local No. 2 bargaining unit representing all drivers, operators, mechanics, maintenance employees, and other personnel employed by the County in its Road and Bridge Department. The petition named Teamsters Local No. 2 as the affected bargaining representative.

On August 16, 2004, the Board served a copy of the petition on Teamsters Local No. 2. On August 20, 2004, Paul Melvin, Board agent, served a copy of the petition on Montana Federation of State Employees, MEA/MFT, indicating that the petition erroneously failed to include the MEA/MFT as an additional employee organization certified to represent the employee in question. On August 23, 2004, Teamsters Local No. 2 filed a response to the petition in which it agreed that the unit clarification petition should be granted. On October 7, 2004, by electronic mail message to Melvin, the MEA/MFT requested that the case be sent to the Hearings Bureau for hearing, citing disputed facts.

On October 15, 2004, Melvin issued an order that a hearing should be held in the case. Staff for the Board transferred the case to the Hearings Bureau on October 20, 2004.

Hearing Officer Anne L. MacIntyre conducted a hearing in the case on January 5, 2005. Matthew J. Johnson represented the petitioner, Jefferson County. Stephen C. Bullock represented the respondent, Montana Federation of State Employees, MEA-MFT. Mark W. Brandt represented the respondent, Teamsters Local Union No. 2. Tom Lythgoe, Ben Sautter, Jeannette Smith, Cathy Dubois, Sherry Cargill, and Cynthia Kreiswald testified as witnesses in the case. Exhibits 201 through 215, including 211A, were admitted into evidence, pursuant to the stipulation of the parties. The hearing officer took official notice of the Board's determination establishing the unit in the Jefferson County Road and Bridge Department represented by the Teamsters Local No. 2. For purposes of the record, that document is labeled Exhibit 216.

II. ISSUE

The issue in this case is whether a unit established for collective bargaining purposes is appropriate pursuant to Mont. Code Ann. § 39-31-202. Specifically, the issue is whether the position of administrative assistant in the county road and bridge department is properly included in the unit for which the exclusive representative is the Montana Federation of State Employees, or is properly included in the unit for which the exclusive representative is Teamsters Local No. 2.

III. FINDINGS OF FACT

1. The Montana Federation of State Employees and Teamsters Local No. 2 are “labor organizations” within the meaning of Mont. Code Ann. § 39-31-103(6).

2. Jefferson County is a “public employer” within the meaning of Mont. Code Ann. § 39-31-103(10).

3. On December 31, 1986, the Board of Personnel Appeals certified and defined Jefferson County Public Employees as follows:

[T]he Board hereby certifies the Montana Federal [sic] of State Employees/MFT, AFT, AFL CIO as the exclusive representative for collective bargaining purposes for all non exempt employees of Jefferson County, State of Montana including but not limited to administrative assistant, administrative secretary, assistant janitor, clerk, deputy clerk of court, deputy clerk and recorder, deputy county attorney, deputy treasurer, dispatcher, head custodian, head librarian, legal secretary, librarian, nurse, probation officer, sanitarian, secretary, solid waste employee [sic] excluding elected officials, sheriff’s deputies, and all supervisory, managerial and confidential employees as defined in 39-31-303 MCA.

4. Article I of the collective bargaining agreement entered into between the County and Local 4538 of the Montana Federation of State Employees provides:

The employer recognizes the Federation as the Sole and exclusive bargaining agent for all employees within the bargaining unit as defined and certified by the Board of Personnel Appeals. . . . When new job classifications are created which are not clearly exempt from coverage by the contract, the Employer agrees to meet with the Federation in order to determine if those positions should be included within the bargaining unit.

5. On July 20, 1988, the County and Local 4538 reached a Memorandum of Understanding exempting the administrative assistant to the county commissioners, solid waste employees, district court employees, the deputy county attorney, and library employees from the bargaining unit. The Memorandum of

Understanding did not exempt the Road Department employees from the bargaining unit, nor did it exempt administrative assistant positions generally.

6. With the exception of administrative assistants employed by the county attorney and the county commissioners, who are not members of Local 4538 because they are deemed confidential employees, all other administrative assistants employed by Jefferson County are members of Local 4538.

7. The Board's unit determination order for the unit represented by Teamsters Local No. 2 provides:

[T]he Board of Personnel Appeals does hereby certify the Chauffeurs, Teamsters, Warehousemen, and Helpers, Local #45 as the exclusive representative for collective bargaining purposes for all non-exempt Jefferson County Road and Bridge Department employees.

8. Article 1 of the collective bargaining agreement between the County and Teamsters Local No. 2¹ for the Road and Bridge Department states:

The Employer recognizes the Union as the exclusive representative of all drivers, operators, mechanics, maintenance employees and other personnel working for Employer in its Road and Bridge Department (excluding the supervisors, working foreman, professional employees and management members) who are or may become members of the bargaining unit, subject to the conditions hereinafter contained, and for such period of time as the Union may continue to be certified by the State Board of Personnel Appeals as the exclusive representative of the above described employees.

9. Prior to the events giving rise to this petition, the employees in the bargaining unit represented by Teamsters Local No. 2 included seven employees who worked as master mechanic/operators, driver/operators, and laborers.

10. Jeanette Smith is an employee of Jefferson County. The County first employed her in 1983. She worked as administrative assistant to the county commissioners for a period of time. She began working as an administrative

¹Although not explained in the evidentiary record, Teamsters Local No. 2 is presumably a successor to Chauffeurs, Teamsters, Warehousemen, and Helpers, Local #45.

assistant in the Road and Bridge Department in 1996. She worked there until retiring in February 2004. During the course of her employment in the Road and Bridge Department, Smith was a member of the Montana Federation of State Employees and the collective bargaining unit represented by that union.

11. In 1996, Smith's position was administrative assistant to the Road Department. Her duties included rural addressing. She worked in the courthouse annex with other members of the "courthouse group." She had regular contact with the Road Department supervisor by radio, but limited interaction with other employees in the department.

12. In about 2001, the County completed a new central shop building. The County changed the physical location of Smith's position to the central shop building. It changed her duties so that she provided administrative support to the Central Shop supervisor in addition to her duties for the Road and Bridge Department. She performed work for the Central Shop approximately 25% of her work time. Her position title was changed to Road Department Administrative Assistant/Central Shop Administrator.² Most of her rural addressing duties were transferred to the Planning Department.

13. After Smith retired, the County revised her former position into a half-time position. Smith then applied for the half-time position and was again hired by the Road and Bridge Department in April 2004. Her duties and responsibilities were substantially unchanged from those she performed prior to her retirement, except that she worked fewer hours.

14. For approximately 3 years, Smith's supervisor has been Ben Sautter, head of the Road and Bridge Department. He supervises the other employees in the Department as well. When Smith was hired for the half-time position, Sautter encouraged her to seek membership in Teamsters Local No. 2. He believed that the collective bargaining agreement between the County and Teamsters Local No. 2 required this. He also believed that having a single bargaining unit in the Road and Bridge Department would promote unity in the workplace and would simplify his administrative tasks.

²Exhibit 207 states Smith's position title is "Road Department/Central Shop Administrator" but the testimony established that her title is "Road and Bridge Department Administrative Assistant/Central Shop Administrator."

15. Smith joined Teamsters Local No. 2. She paid dues to Teamsters Local No. 2 on a self-pay basis. She did not join or pay dues to Local 4538 despite the opinion of the county personnel officer and county attorney that her position remained in the unit represented by Local 4538.

16. Smith's duties in her position for the Road and Bridge Department and Central Shop were clerical in nature. She performed general office work, processed claims, performed bookkeeping, maintained time sheets and leave records for crew members, prepared invoices, ordered supplies and materials, and acted as liaison with members of the crew by maintaining radio contact with them.

17. The duties of the employees of the Road and Bridge Department who were members of Teamsters Local No. 2 before the rehire of Smith were "blue collar" in nature. They included performing mechanical work, operating heavy machinery, and laborer duties in field locations away from the central shop.

18. Smith's position was classified as grade 9 in the County's pay grade system. Most of the positions in the unit represented by Local 4538 were grades 8, 9, and 10. The collective bargaining agreement between the County and Teamsters Local No. 2 provided that the master mechanic/operator position was classified as grade 12, the driver/operator position was classified as grade 11, and the laborer position was classified as grade 10. The benefits for County employees were generally the same regardless of bargaining unit except that the Teamsters employees have a better life insurance plan.

19. When Smith was rehired for the half-time position in the Road and Bridge Department and Central Shop, the County continued to classify her as grade 9. It did not place her on the pay scale provided for in the collective bargaining agreement with Teamsters Local No. 2.

20. Teamsters Local No. 2 or its predecessor has represented the drivers, operators, mechanics, and laborers in the Jefferson County Road and Bridge Department since approximately 1975. It also represents a unit of employees who work in the Solid Waste Department. There is no evidence that it has ever represented any clerical employees.

21. Local 4538 has represented the administrative and clerical employees of the County, including the administrative assistant for the Road and Bridge Department since 1986. The unit is comprised of personnel in a number of different

departments who work in diverse locations throughout the county. In several departments, including the Road and Bridge Department, a single clerical employee is the only Local 4538 employee in a work location.

22. The County has common personnel policies for all employees, including the members of both bargaining units.

23. Smith has limited interaction with other members of Local 4538 because her position is physically located in the central shop building, approximately one mile from the courthouse. Smith has daily interaction with the other Road and Bridge Department employees.

24. Smith wishes to be a member of Teamsters Local No. 2 because she has limited interaction with the employees represented by Local 4538, because she believes the position “just belongs” in the unit represented by Teamsters, and because she believes Teamsters Local No. 2 has more effectively represented the County employees who are Teamsters members.

IV. DISCUSSION³

Jefferson County seeks clarification of the unit represented by Local 4538 of the Montana Federation of State Employees and contends that the administrative assistant position held by Jeannette Smith is properly included in the unit represented by Teamsters Local No. 2. The Montana Federation of State Employees contends that the position is properly in the Local 4538 bargaining unit, while Teamsters Local No. 2 supports the position of the County in this matter. The Board’s unit determinations for the two units in question place the position in both units.

Montana law governing collective bargaining for public employees provides:

In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the [Board of Personnel Appeals] or an agent of the board shall decide the unit appropriate for collective bargaining and shall consider such factors as community of interest,

³Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

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.

Mont. Code Ann. § 39-31-202(1). The rights guaranteed by the act include the right of self organization, protection in the exercise of self organization, the right to form, join or assist any labor organization, the right to bargain collectively through representatives of the employees' choosing, and the right to engage in other concerted activities free from interference, restraint, or coercion. Mont. Code Ann. § 39-31-201.

The rules of the Board implementing Mont. Code Ann. § 39-31-202 provide:

A unit may consist of all of the employees of the employer or any department, division, bureau, section, or combination thereof if found to be appropriate by the board.

Admin. R. Mont. 24.26.610.

In analyzing this case, it is appropriate to consider cases decided under federal law. Section 9(b) of the National Labor Relations Act gives the National Labor Relations Board (NLRB) comparable authority to determine appropriate bargaining units. Thus, the Montana Supreme Court and the Board of Personnel Appeals follow federal court and NLRB precedent to interpret the Montana Act. *State ex rel. Board of Personnel Appeals v. District Court* (1979), 183 Mont. 223, 598 P.2d 1117; *Teamsters Local No. 45 v. State ex rel. Board of Personnel Appeals* (1981), 195 Mont. 272, 635 P.2d 1310; *City of Great Falls v. Young (Young III)* (1984), 211 Mont. 13, 686 P.2d 185.

The role of the Board is not to determine the most appropriate unit, but only **an** appropriate unit.

In determining an appropriate bargaining unit . . . the Board seeks to fulfill the objectives of ensuring employee self-determination, promoting freedom of choice in collective bargaining, and advancing industrial peace and stability. Under the Act, our task is to determine

not the most appropriate or comprehensive unit, but simply an appropriate unit.

Dezcon, Inc. (1989), 295 NLRB 109.

Like federal law, Montana law requires the Board to consider “community of interest” in determining an appropriate unit. Mont. Code Ann. § 39-31-202(1). However, the Montana statute enumerates a number of factors in addition to community of interest to be considered in determining when a unit is appropriate. Those factors, such as wages, hours, benefits, working conditions, history of collective bargaining and so on, are not enumerated in the federal statute but are by case law the factors evaluated to determine whether a community of interest exists. Thus, in this decision, the phrase “community of interest” is used as a shorthand to address all of the statutory factors.

In a case in which a party seeks to clarify a unit by moving a position from one existing bargaining unit to another, the most significant community of interest factor is the history of collective bargaining. The party challenging a historical unit bears the burden of showing that the unit is no longer appropriate. *AC Management, Inc.* (2001), 335 NLRB 38, 39, *enf. granted sub nom. 3750 Orange Place Ltd. v. NLRB* (6th Cir. 2003), 333 F.3d 646. The evidentiary burden is a heavy one. *See, e.g., Children's Hospital* (1993), 312 NLRB 920, 929 (“compelling circumstances’ are required to overcome the significance of bargaining history”); *P. J. Dick Contracting* (1988), 290 NLRB 150, 151 (“units with extensive bargaining history remain intact unless repugnant to Board policy”). The administrative assistant position in the Road and Bridge Department has historically been part of the unit represented by Local 4538, which has bargained on behalf of the position. Thus, the County and Teamsters Local No. 2 have the burden in this case of proving compelling circumstances to show that the position is no longer properly included in the collective bargaining unit represented by Local 4538.

Several additional community of interest factors reinforce the history of collective bargaining to find Local 4538 to be an appropriate unit for the administrative assistant position. Smith has duties which are comparable to those of other members of Local 4538, and which are substantially different from the duties performed by the employees in the unit represented by Teamsters Local No. 2. She is an office employee, unlike the other Road and Bridge Department employees who work in the field.

The factor of wages strongly points to retaining Smith's position in Local 4538. Even though the County and Sautter maintain that Smith's position was properly placed in the unit represented by Teamsters Local No. 2, they continued to treat Smith for wage purposes in the same manner as they treated other clerical and administrative personnel by classifying her at grade 9. In fact, there is no classification in the Teamsters Local No. 2 collective bargaining agreement for a clerical employee. However, if Smith was in fact properly included in the unit, she should have been classified at the wage levels provided for in that collective bargaining agreement. The failure of the County and Teamsters Local No. 2 even to consider such a possibility is an extremely strong indicator that Smith's position has a community of interest with and is properly included in a unit with the other administrative and clerical positions represented by Local 4538.

Fringe benefits, hours, and personnel policies are essentially the same for Smith's position regardless of whether she is represented by Local 4538 or Teamsters Local No. 2. Thus, these factors do not change the ultimate decision.

All of the Road and Bridge Department employees are supervised by Sautter. Although Smith also performs work for the Central Shop supervisor, she reports to Sautter for purposes of supervision. Most of Smith's interaction with other employees is with the Road and Bridge Department employees, and her work functions are integrated with those employees. Thus, the factors of common supervision and extent of integration of work functions and integration among affected employees favor a finding of community of interest in the unit represented by Teamsters Local No. 2. However, these factors by themselves are insufficient to overcome the presumption against disturbing historical units in this case.

The final community of interest factor is desires of the employees. At hearing, much was made of Smith's desire to be a member of Teamsters Local No. 2. However, the factor of desires of the employees as used in the statute is intended to address the desires of the employees regarding their collective interests, as, for example, when a group of employees believe a different labor organization would better represent their interests. Although Smith, as an individual, believes Teamsters Local No. 2 would better represent her, these personal beliefs have no weight in identifying the community of interest in a workplace.

At hearing, Sautter also testified to his desires concerning the placement of the position and maintained that he was entitled to a say in what union should represent the administrative assistant position. He wanted to have all of his

employees represented by one union for ease of contract administration and to promote unity in the workplace. Sautter's testimony, although sincere, reflects a misunderstanding of labor law. The views and desires of management are not appropriately considered in determining whether a unit is appropriate.⁴

Before even addressing the community of interest of the administrative assistant position with the other employees of the Department, the County and Teamsters Local No. 2 had to show by compelling circumstances that the position was no longer properly included in the unit represented by Local 4538. They have failed to sustain this burden. The position occupied by Jeanette Smith has a community of interest with the other employees represented by Local 4538 and properly remains in the unit represented for collective bargaining purposes by Local 4538.

V. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction of this case. Mont. Code Ann. § 39-31-207.

2. Jefferson County and Teamsters Local No. 2 have failed to show by compelling circumstances that the Road and Bridge Department Administrative Assistant/Central Shop Administrator position employed by Jefferson County is no longer properly included in the collective bargaining unit represented by the Montana Federation of State Employees, Local 4538.

3. The Road and Bridge Department Administrative Assistant/Central Shop Administrator position employed by Jefferson County has a community of interest with the employees in the collective bargaining unit represented by the Montana Federation of State Employees, Local 4538.

4. The collective bargaining unit represented by the Montana Federation of State Employees, Local 4538, including the Road and Bridge Department Administrative Assistant/Central Shop Administrator position employed by Jefferson

⁴In fact, the effort to direct the placement of the position in one unit or another could constitute improper domination of a labor organization and a violation of Mont. Code Ann. § 39-31-401(2) on the part of the employer.

County is an appropriate unit for collective bargaining pursuant to Mont. Code Ann. § 39-31-202.

VI. RECOMMENDED ORDER

The petition for unit clarification filed by Jefferson County is denied and therefore dismissed.

DATED this 24th day of March, 2005.

BOARD OF PERSONNEL APPEALS

By: *Anne L. MacIntyre*
Anne L. MacIntyre, Chief
Hearings Bureau
Department of Labor and Industry

NOTICE OF APPEAL RIGHTS

NOTICE: Pursuant to Admin. R. Mont. 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than April 18, 2005. This time period includes the 20 days provided for in Admin. R. Mont. 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 document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, and addressed as follows:

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DATED this 24th day of March, 2005.

Sandy Duncan