

1 Department of Labor and Industry  
2 Board of Personnel Appeals  
3 PO Box 6518  
4 Helena, MT 59604-6518  
5 (406) 444-2718  
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9 STATE OF MONTANA  
10 BEFORE THE BOARD OF PERSONNEL APPEALS

11  
12 IN THE MATTER OF UNIT CLARIFICATION PETITION NO. 4-2007  
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14 BOULDER ELEMENTARY SCHOOL )  
15 DISTRICT AND JEFFERSON HIGH )  
16 SCHOOL DISTRICT, )  
17 Petitioners )  
18 )  
19 -vs- )  
20 )  
21 BOULDER ASSOCIATION OF )  
22 TEACHERS AND BOULDER )  
23 ASSOCIATION OF CLASSIFIED )  
24 EMPLOYEES, MEA-MFT )  
25 Respondents. )  
26

RECOMMENDED ORDER

27  
28 **I. BACKGROUND AND DISCUSSION**  
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30 On February 23, 2007, the petitioners in the above matter filed a request for unit  
31 clarification with the Board of Personnel Appeal. Debra Silk, Associate Executive  
32 Director/General Counsel of the Montana School Boards Association represents the  
33 petitioners and the respondents are represented by Richard Larson, Esq.  
34

35 In answering the petition the respondents opposed the filing of the petition in part  
36 because the matter had been addressed previously in September of 2002 and in further  
37 part because the parties were engaged in negotiations.  
38

39 ARM 24.26.630 (1) provides that a unit clarification petition can be filed only if certain  
40 conditions are met and/or the parties mutually agree to waive the requirements of the  
41 administrative rule. 24.26.630 (1) (b) ARM specifically provides:  
42

43 (b) the parties to the agreement are neither engaged in negotiations nor within  
44 120 days of the expiration date of the agreement, unless there is mutual  
45 agreement by the parties to permit the petition;  
46

47 In the course of reviewing this petition the agent assigned by the Board to review this  
48 matter discovered that, in fact, the Boulder Association of Teachers engaged in  
49 bargaining as of January 4, 2007, considerably before the unit clarification petition was  
50 filed.

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ARM 24. 26.630 (4) provides:

Should an agent of the board determine that the petition is defective in time or form as set forth in ARM 24.26.630(1) and (2), the agent may issue a recommended order that the petition be dismissed. The recommended order is subject to review by the board provide an appeal is timely filed within 10 business days of the date the recommended order is mailed.

Given that at least one of the respondents in this matter is engaged in bargaining the petition is defective in form.

**II. RECOMMENDED ORDER**

It is recommended that the Unit Clarification 4-2007 be dismissed.

DATED this 2nd day of April 2007.

BOARD OF PERSONNEL APPEALS

By:   
John Andrew  
Board Agent

NOTICE:

Pursuant to ARM 24.26.630(4) this Recommended Order will become the Final Order of the Board of Personnel Appeals unless appealed within 10 business days of the date this Recommended Order is mailed.

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify that a true and correct copy of this document was mailed to the following on the 2<sup>nd</sup> day of April 2007, postage paid and addressed as follows:

Richard Larson, Esq.  
Harlen, Chronister, Parish & Larson, P.C.  
P.O. Box 1152  
Helena, MT 59624-1152

Debra Silk, General Counsel  
Montana School Boards Association  
1 South Montana  
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