

BEFORE THE BOARD OF PERSONNEL APPEALS

1 IN THE MATTER OF UNIT DETERMINATION #55:)
2 MONTANA EDUCATION ASSOCIATION,)
3 Petitioner,)
4 NORTH CENTRAL MONTANA FEDERATION OF)
5 TEACHERS,)
6 Intervenor,)
7 AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,)
8 NORTHERN MONTANA COLLEGE CHAPTER,)
9 Intervenor,)
10 AMERICAN ASSOCIATION OF UNIVERSITY)
11 PROFESSORS, MONTANA STATE CONFERENCE,)
12 Intervenor,)
13 NORTHERN MONTANA COLLEGE,)
14 Counterpetitioner.)

UD-55-1974.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER AS
RECOMMENDED TO THE
BOARD OF PERSONNEL
APPEALS

INTRODUCTION

The Montana Education Association (MEA) filed a Petition for Unit Determination and Election with the Board of Personnel Appeals on November 1, 1974 and proposes a unit composed of "all full and half-time teaching faculty holding academic rank; excluding deans, vice president, executive assistant and the President" of Northern Montana College.

The North Central Montana Federation of Teachers (MFT) filed a Petition of Intervention with the Board on November 8, 1974 and seeks a unit comprised of "the teaching faculty and department heads at Northern Montana College".

The Northern Montana College Chapter of the American Association of University Professors (NMC-AAUP) filed a Petition of Intervention with the Board on November 25, 1974. The Petition contains no specific description of a bargaining unit.

The Montana State Conference of the American Association of University Professors (MSC-AAUP) filed a Petition of Intervention with the Board on November 25, 1974 and although the Petition contains no description of a bargaining unit, MSC-AAUP opposes a bargaining unit "consisting of all six units of the Montana University System" and expresses their belief that a bargaining unit limited to a single campus would be appropriate.

Northern Montana College (NMC) filed a Counterpetition with the Board November 18, 1974 and disagrees with the appropriateness of the Petitioner's proposed unit and proposes a bargaining unit consisting of "all full time teaching faculty and all

1 teaching faculty who teach one-half time (.5 FTE) or more, who are on individual
2 contract and who hold academic rank, exclusive of deans, vice presidents, executive
3 assistants, and presidents of the six units of the Montana University System.

4 Hearings were held in this matter before Peter O. Maltese, Esq., duly appointed
5 hearing examiner of the Board, on December 12, 1974 in Havre, Montana and on January
6 7, 1975 and January 24, 1975 in Helena, Montana.

7 The parties' representatives at the hearings were as follows:

8 MEA--Emilie Loring, Attorney at Law, Hilley & Loring, Great Falls, Montana;

9 MFT--Joseph Duffy, Attorney at Law, McKittrick & Duffy, Great Falls, Montana;

10 NMC-AAUP and MSC-AAUP--December 12, 1974 hearing, Charles J. McClain, Jr.,
11 Association Secretary of the American Association of University Professors, San
12 Francisco, California; January 7, 1975 and January 24, 1975 hearings, John E. Van de
13 Wetering, President, Montana State Conference of the American Association of University
14 Professors, Missoula, Montana;

15 NMC--Barry L. Hjort, Attorney at Law, Office of the Commissioner of Higher
16 Education, Helena, Montana.

17 During the hearings I took certain objections to evidence under advisement.
18 My rulings on those objections are as follows:

19 1. Counsel Hjort's objections to the admission of MFT exhibits numbers 1 and
20 2 (survey of NMC faculty) and James McGarvey's testimony relating thereto made at
21 the January 24, 1975 hearing is sustained. Therefore, the above exhibits and
22 testimony will be excluded and stricken from the record.

23 2. Counsel Loring, Duffy, and McClain's objections to Dr. Joseph R. Crowley's
24 testimony relating to bargaining units in other states, made at the December 12, 1974
25 hearing is sustained and therefore the above-mentioned testimony will be stricken
26 from the record. Because of this ruling I will exclude MFT exhibit number 3A (a list
27 of unit determinations of four year campuses in other states) from the record and
28 will strike the testimony of James McGarvey relating to campus bargaining units in
29 other states from the record, despite having overruled Counsel Hjort's objections
30 thereto at the January 24, 1975 hearing. Likewise, Dr. Lawrence Pettit's testimony
31 relating to bargaining units in other states made at the January 7, 1975 hearing
32 will be stricken from the record.

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ISSUE

The issue presented for determination here is whether or not the unit proposed by MEA is an appropriate unit for purposes of collective bargaining under section 59-1606(2), Revised Codes of Montana 1947.

Upon the entire record in this case, and upon substantial, reliable evidence, I make the following:

FINDINGS OF FACT

1. NMC, located in Havre, Montana is one of six institutions of the Montana University System (MUS). The overall government of the MUS is vested in the Board of Regents. The Board of Regents is defined as a public employer under the Public Employees Collective Bargaining Act (title 59, chapter 16, Revised Codes of Montana 1947) and has the authority and the duty to bargain collectively with the exclusive representative(s) of public employees of the MUS. The Commissioner of Higher Education is an agent of the Board of Regents and represents the Board in collective bargaining matters.

2. Dr. Lawrence Pettit, Commissioner of Higher Education, testified that his office is presently very understaffed and that therefore it would be more efficient and economical for his office to bargain with one bargaining unit comprised of all units of the MUS, as proposed in the Counterpetition.

3. There is no history of collective bargaining among professional instructors and teachers of the MUS. In support of this statement, I take notice of the following facts: Professional instructors and teachers of the MUS were granted collective bargaining rights effective July 1, 1974; MEA's Petition for Unit Determination and Election in this matter was the first petition filed with the Board of Personnel Appeals by a labor organization representing professional instructors and teachers of the MUS, the Board has not, as yet, certified any labor organization as the exclusive representative of a unit consisting of professional instructors and teachers of the MUS.

4. Northern Montana College has approximately sixty-five faculty members. Available evidence indicates that the faculty at NMC constitutes a cohesive,

1 close-knit unit. Professor W. E. Lisenby, a faculty member for twenty-seven
2 years at NMC, testified that there is a feeling of kinship and unity among the
3 faculty at NMC. He stated that the faculty members identified themselves with
4 NMC and that the faculty members' first loyalties were with the school rather
5 than with the MUS.

6 5. The colleges and universities of the MUS are not designed to perform
7 the same educational roles. Commissioner Pettit testified that the Board of
8 Regents, at the recommendation of the Commissioner of Higher Education, defines
9 a special role for each institution. Commissioner Pettit illustrated the differ-
10 ences in educational roles by comparing the University of Montana with NMC as
11 follows:

12 (a) NMC is authorized to offer bachelor degrees only in the disciplines of
13 English, history, education, and vocational education; the University of Montana
14 is authorized to offer a full range of baccalaureate degrees.

15 (b) In terms of graduate programs, NMC offers a limited masters degree
16 program in teachers training while the University of Montana maintains some pro-
17 fessional schools and offers masters and doctorate degrees in a variety of dis-
18 ciplines.

19 (c) The University of Montana has a more elaborate research and public
20 service function.

21 6. Although the six units of the MUS and its faculty members are super-
22 vised in an overall sense by the Board of Regents, NMC, through its administration
23 and faculty members, has final, effective control over its affairs.

24 (a) NMC has its own faculty handbook which contains certain policies, prac-
25 tices and statutes (for example promotion policy) which relate to the NMC faculty.
26 Through a faculty senate and a system of committees, the faculty at NMC assist
27 in the selection and promotion of faculty members and participate in educational
28 policy making and in the adjudication of faculty grievances.

29 (b) Most determinations which relate to the hiring, discharge, promotion,
30 appointment to tenure, or salary of faculty members are effectively made at the
31 campus level. Usually these types of determinations are made at the departmental
32 level of the college and then forwarded up a chain of command (which includes a

1 division dean and academic vice president) until it reaches the college president.
2 The president makes the final determination at the campus level and forwards the
3 determination to the Commissioner of Higher Education and the Board of Regents
4 for ratification.

5 Commissioner Pettit testified that in his tenure as Commissioner of Higher
6 Education the Board of Regents has never had occasion to disapprove contracts
7 which were forwarded to it by institutions of the MUS. Although Commissioner
8 Pettit said that he often makes inquiries about the forwarded contracts before
9 the Board of Regents examines them, his inquiries have never resulted in the
10 raising or lowering of a proposed salary. President Crowley testified that
11 during his eleven plus years as president of NMC he has made approximately a
12 thousand recommendations to the Board of Regents which relate to promotion, appoint-
13 ment, renewal, and promotions to tenure. None of these recommendations have ever
14 been overruled by the Board of Regents.

15 (c) President Crowley characterized his office as involving "Broad, prime,
16 administrative leadership and responsibility in the conduct of the college in its
17 each and every aspect". President Crowley testified that he received no inter-
18 ference from the Board of Regents with the day-to-day management of campus affairs.
19 Commissioner Pettit confirmed that the day-to-day management of the individual
20 units of the MUS rests with the president of the unit.

21 7. Testimony at the hearing indicates that the Board of Regents intends to
22 finance faculty salaries of the units of the MUS at different levels. Commissioner
23 Pettit testified that the budget proposed by his office for the next biennium would
24 raise salaries of faculty at the two universities of the MUS to the average paid
25 at similar institutions in the Rocky Mountain region and would raise salaries of
26 faculty at the four other schools of the MUS to ninety percent of the Rocky Moun-
27 tain average.

28 8. The rules for tenure in the MUS are established and promulgated by the
29 Board of Regents. However, testimony at the hearing indicates that within the
30 general framework of the rules, considerable variation may exist among institutions.
31 Dr. Pettit testified that, in actual practice, the criteria used in the determination
32 of tenure on each campus are not the same and that faculty members that have gained

1 tenure on some campuses would never have been hired on others. Dr. Crowley also
2 acknowledged that variations may exist among the institutions in the granting of
3 tenure.

4 The record clearly shows that tenure is with the institution, or with a
5 department of the institution, not with the MUS, and that tenure is not trans-
6 ferable among the institutions of the MUS. Commissioner Pettit explained that a
7 faculty member with tenure at one institution cannot necessarily teach at another
8 unit if his position is eliminated and a faculty opening exists at another unit.

9 9. There are few transfers of faculty between institutions of the MUS.
10 President Crowley testified that the only faculty transfers among institutions
11 that he was aware of occurred during the summer session. Professor Lisenby
12 testified that he could recall no faculty transfers in the past two years. Even
13 faculty transfers from one discipline to another within the same institution are
14 unlikely. President Crowley and Commissioner Pettit characterized such transfers
15 as unacceptable because they impair quality education.

16 10. The available evidence indicates that the NMC faculty desires a bargain-
17 ing unit separate from the other units of the MUS. Seventeen NMC faculty members
18 attended a faculty meeting on November 21, 1974 and unanimously voted in favor of
19 a single campus bargaining unit. I also take notice of the fact that no labor
20 organization who is a party to these proceedings seeks a unit larger than the
21 faculty members of NMC.

22 DISCUSSION

23 Section 59-1605, R.C.M. 1947 charges the Board of Personnel Appeals or its
24 agent with the duty to determine the unit appropriate for collective bargaining
25 purposes and sets forth the criteria to be used by the Board in making that deter-
26 mination. Section 59-1606(2) provides as follows:

27 "In order to assure employees the fullest freedom in exercising
28 the rights guaranteed by this act, the board shall decide the
29 unit appropriate for the purpose of collective bargaining, and
30 shall consider such factors as community of interest, wages
31 hours, fringe benefits, and other working conditions of the
employees involved, the history of collective bargaining, common
supervision, common personnel policies, extdnt of integration
of work functions and interchange among employees affected,
and the desires of the employees."

32 As an agent of the Board in this matter, it is my responsibility to determine

1 whether or not, under the circumstances of this case, the Petitioner's proposed
2 bargaining unit is appropriate for purposes of collective bargaining. There is
3 no statutory requirement that I determine the most appropriate unit and therefore
4 I do not intend to speculate about which of the variously proposed units would
5 be the most appropriate. My intention follows the National Labor Relations
6 Board's position with regard to the determination of an appropriate bargaining
7 unit. The NLRB, in construing language of the Federal Labor Management Relations
8 Act of 1947 (after which Montana's Public Employees Collective Bargaining Act
9 was modeled), has held that there is no requirement that the NLRB determine "the
10 ultimate unit, or the most appropriate unit; the Act requires only that the unit
11 be 'appropriate'." Morand Bros. Beverage Co., 91 NLRB 409, 26 LRRM 1501 (1950),
12 enforced 190 F2d 576, 28 LRRM 2364 (CA 7, 1951); Federal Electric Corp., Corp.,
13 157 NLRB 1130, 61 LRRM 1500 (1966); F.W. Woolworth Co. 144 NLRB 307, 54 LRRM 1043
14 (1963); Capital Bakers, Inc., 168 NLRB 1385, 66 LRRM 1385 (1967).

15 It is apparent in this case that there are some factors to support a finding
16 that a unit composed of faculty members of the MUS is appropriate. However, it is
17 also clear that the faculty members of NMC constitute a distinct and homogeneous
18 group and share a sufficient communitiy of interest to justify their formation into
19 a bargaining unit separate from the MUS. I base this conclusion on the following
20 factors:

- 21 (1) The cohesiveness of NMC's faculty and its identification with and its
22 loyalty to NMC;
- 23 (2) The differences among the educational roles of the institutions of the
24 MUS;
- 25 (3) NMC's effective control over its affairs;
- 26 (4) The Board of Regent's intentions to finance faculty salaries of the
27 units of the MUS at different levels;
- 28 (5) Variations among the institutions in the granting of tenure;
- 29 (6) The non-transferability of tenure among institutions of the MUS;
- 30 (7) The lack of faculty interchange among the institutions of the MUS;
- 31 (8) The desire of the NMC faculty for a bargaining unit separate from
32 other units of the MUS.

1 Accordingly, I make the following

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3 CONCLUSION OF LAW

4 The unit proposed by Montana Education Association, that is, a unit composed
5 of all full and half-time teaching faculty holding academic rank, excluding deans,
6 vice presidents, executive assistants and the President of Northern Montana
7 College, is appropriate for purposes of collective bargaining under section 59-
8 1606(2), Revised Codes of Montana 1947.

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10 RECOMMENDED ORDER

11 An election by secret ballot shall be conducted as early as possible under
12 the direction and supervision of the Board of Personnel Appeals, among the employees
13 in the bargaining unit described in the Conclusion of Law, above, who were em-
14 ployed at Northern Montana College on November 1, 1974, to determine whether or
15 not they desire to be represented, for purposes of collective bargaining, by the
16 Montana Education Association, the North Central Montana Federation of Teachers,
17 or the American Association of University Professors, Northern Montana College
18 Chapter.

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20 DATED this 11th day of March 1975.

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23 Peter O. Maltese
24 Peter O. Maltese, Esq
25 Hearing Examiner
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CERTIFICATE OF MAILING

I hereby certify that I mailed a true copy of the above Findings of Fact, Conclusions of Law, and Order as Recommended to the Board of Personnel Appeals to:

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on this 11th day of March 1975.

Peter O. Maltese
Peter O. Maltese
Hearing Examiner