

BEFORE THE BOARD OF PERSONNEL APPEALS

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IN THE MATTER OF UNIT DETERMINATION #60:)
MONTANA FEDERATION OF TEACHERS, AFL-CIO)
Petitioner,)
MONTANA EDUCATION ASSOCIATION,)
Intervenor,)
DAWSON COLLEGE FACULTY SENATE,)
Intervenor,)
DAWSON COLLEGE,)
Counterpetitioner.)

40-60-1974.

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

I. INTRODUCTION

The Montana Federation of Teachers (MFT) filed a Petition for Unit Determination and Election with the Board of Personnel Appeals (Board) on November 25, 1974. MFT proposed a bargaining unit consisting of "the teaching faculty and department heads at the Dawson County Community College."

The Dawson College Faculty Senate filed a Petition of Intervention with the Board on December 10, 1974. However, I take notice that the President of the senate faculty (and their representative at the unit determination hearing) has notified the Board of Personnel Appeals by letter dated March 18, 1975 that the Dawson College Faculty Senate has withdrawn from these representation proceedings.

The Montana Education Association (MEA) filed a Petition of Intervention with the Board on December 16, 1974. MEA seeks a bargaining unit consisting of "All full and part-time Instructors, Librarians, and Counselors; excluding the President, Vice President, Registrar, and Research Officer".

Dawson Community College (DCC) filed a Counterpetition with the Board on December 23, 1974. DCC disagrees with the appropriateness of MFT's proposed bargaining unit and "believes that an appropriate bargaining unit ought to consist of all full-time and (or) full-time equivalency faculty...whose salaries originate from the community college district budget and are calculated from the faculty salary schedule.



1 Pursuant to the above-mentioned petitions a hearing was held January
2 20, 1975 in Glendive, Montana before Peter O. Maltese, Esq., duly appointed
3 hearing examiner of the Board. The parties representatives were as follows:

4 MFT--James G. McGarvey, Executive Director, Montana Federation of
5 Teachers, Butte, Montana;

6 SENATE--Joseph J. Friederichs, Faculty Senate President, Dawson
7 Community College, Glendive, Montana;

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

10 DCC--Bary L. Hjort, Attorney at Law, Office of the Commissioner of
11 Higher Education, Helena, Montana.

12 13 II. ISSUE

14 Two issues were raised in the January 20th hearing. The first issue
15 relates to the question of what would be an appropriate bargaining unit at
16 DCC. The second issue related to the Dawson College Faculty Senate's
17 status as a labor organization. This issue is moot because of the Faculty
18 Senate's withdrawal from these representation proceedings and so their
19 status as a labor organization will not be addressed here.

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

22 23 III. FINDINGS OF FACT

24 As described in the introduction, MFT proposes a bargaining unit
25 consisting of the "teaching faculty and department heads of DCC." After
26 the submission of MFT's evidence at the January 20th hearing, it is
27 apparent that by "teaching faculty" MFT means part-time teachers as well
28 as full-time teachers. It is also apparent that MFT's position in this
29 matter is substantially the same as MEA's position.

30 DCC disagrees with the appropriateness of MFT's proposed bargaining
31 unit and contends that an appropriate bargaining unit should exclude
32 part-time teachers, teachers with significant supervisory responsibilities.

1 and teachers wholly compensated with federal grant funds. Originally,
2 DCC contended that only those faculty members with masters degrees should
3 be included in an appropriate bargaining unit but they withdrew that con-
4 tention during the January 20th hearing.

5 A. Part-time teachers. The DCC catalogue lists twenty-one part-time
6 faculty members. Evidence adduced at the January 20th hearing shows that
7 only nine of those twenty-one are presently employed by DCC. The nine
8 part-time faculty members constitute about one-third of the total faculty
9 employed by DCC.

10 There are certain differences between the full-time faculty and the
11 part-time faculty. These differences are as follows:

12 --The average teaching load for the full-time faculty members is
13 approximately fifteen credit hours per quarter. The part-time faculty
14 member has a lighter teaching load. One part-time faculty member tes-
15 tified that she presently is teaching ten credit hours and usually teaches
16 about one-half of the average teaching load. Another testified that she
17 was presently teaching eight credit hours per quarter. The Vice President
18 of DCC, Richard Kettner, testified that some part-time faculty members
19 teach as few as three or four credit hours per quarter.

20 --The full time faculty members are compensated in a different manner
21 than the part-time faculty members. Full-time faculty members' wages are
22 based on the faculty salary schedule. This schedule is approved by
23 the Dawson Board of Trustees. It lists different pay grades which in-
24 corporate a base salary and increments for degree attainment, years of
25 teaching experience and years of longevity at DCC. The part-time faculty
26 members' wages are not based upon the faculty salary schedule. They are
27 paid \$150 per credit hour taught, regardless of degree attainment, teach-
28 ing experience or years of longevity at DCC.

29 --The full-time faculty members execute a formal written contract
30 which governs their employment relationship with DCC for the academic year.
31 The part-time faculty does not execute a formal instrument. Their em-
32 ployment contract is an oral contract and it is entered into on a quarter
by-quarter basis.

1 --The full-time faculty members are tenurable; the part-time faculty
members are not.

2 Despite the above differences, the available evidence indicates that
3 there is a community of interest between at least some part-time faculty
4 members and full-time faculty members. The evidence establishes that some
5 of these employees have the same educational background as their full-time
6 counterparts and engage in the same teaching activities. For example,
7 besides teaching, some part-time faculty members engage in formal advisor-
8 advisee relationships with students, sponsor student activities, attend
9 faculty and departmental meetings, and participate in professional workshops.
10 Part-time faculty members are eligible for membership in the Dawson College
11 Faculty Senate, the system of faculty governance at DCC. Part-time faculty
12 members are supervised by the central administration of DCC, as our full-
13 time faculty members. There is evidence that some part-time employees see
14 themselves as faculty members, and identify with the institution. Moreover,
15 the part-time faculty members and both labor organizations here have pro-
16 posed that part-time teachers be included in any appropriate bargaining
17 unit.

18 I cannot, however, conclude that all part-time faculty members should
19 be included in an appropriate bargaining unit because there is not enough
20 evidence on the record to establish that a community of interest exists
21 between *all* part-time faculty members and their full-time counterparts.
22 The testimony of two part-time faculty members, Myrna Kintz and Twylla
23 McPherson, did establish that they share the above-described community of
24 interest with the full-time faculty and that other part-time faculty mem-
25 bers may also. But it is quite possible to envisage a part-time faculty
26 member with such slight interaction with DCC, its faculty, and its students
27 as to have virtually no community of interest with the full-time faculty.
28 Accordingly, I conclude that Myrna Kintz and Twylla McPherson should be
29 included in any designated appropriate bargaining unit. I also conclude
30 that other part-time faculty members with duties similar to Kintz and
31 McPherson, that is, a part-time faculty member who teaches approximately
32 one-half of the teaching load for full-time faculty members, should be included in

1 a substantial degree of teacher-related activities, e.g. coaching,
2 counseling, library work, should be included in any designated bargaining
3 unit.

4 B. Supervisory, managerial, and administrative employees.

5 DCC contends that Jane Carey, Charles Perryman, Paul Fasting, Alma Ragar,
6 and Charles Kintz, all full-time faculty members, possess supervisory or
7 managerial responsibilities, or perform strictly administrative functions,
8 and should therefore be excluded from any appropriate bargaining unit.

9 Following is an examination of the status of these individuals, and their
10 community of interest, if any, with other full-time faculty members.

11 --Jane Carey. Jane Carey is listed in the DCC catalogue as a faculty
12 member and she is DCC's librarian. Evidence presented at the January 20th
13 hearing establishes that Carey has an assistant librarian as well as
14 several work study students working under her. The students obviously do
15 not have faculty status and no party in this matter has proposed that they
16 be included in any appropriate bargaining unit. Moreover, the record does
17 not establish the frequency with which Carey exercises supervisory author-
18 ity over the students--if she does at all. Therefore, Carey's supervisory
19 status depends on her relationship with the assistant librarian.¹

20 1. *The Board of Personnel Appeals has never addressed the issue*
21 *of supervisory status where the challenged employee exercises super-*
22 *visory authority over non-unit personnel as here. Because of the*
23 *patent similarity between the Montana Public Employees Collective*
Bargaining Act--particularly its definition of supervisor--and the
Federal Management Labor Relations Act of 1948, as amended, I have
looked to precedent of the National Labor Relations Board on this
issue.

24 *The National Labor Relations Board has held that an employee*
25 *whose principal duties are of the same character as other bargaining*
26 *unit employees should not be excluded from that unit because of his*
27 *infrequent exercise of supervisory authority over non-unit employees.*
They have reached this holding because the infrequent exercise of
such authority does not present a conflict of interest within the
unit nor does the exercise of such authority ally such an employee
with management so as to create a more generalized conflict.
Adelphi University, 195 N.L.R.B. 644, 79 LRRM 1552 (1972).

28 *Therefore, I conclude that if a supervisory employee ex-*
29 *ercises infrequent supervisory authority over non-unit employees, that*
30 *employee should not be excluded from a bargaining unit consisting of*
31 *employees whose principal duties are of the same character as the*
32 *supervisory employee.*

1 The assistant librarian is listed as a part-time faculty member in DCC's
2 catalogue. However, Carey, a credible witness, testified that she was not
3 responsible for hiring the assistant librarian. She testified that she was
4 not sure that she could even recommend a replacement for the assistant lib-
5 rarian. In answer to a question asked by DCC's counsel about whether she
6 had ever been consulted about the employment or discharge of employees under
7 her (by the administration of DCC) Carey responded, "I can't say yes or no;
8 I can say sort of." Although the Vice President of DCC, Donald Kettner,
9 testified that Carey was in a position to recommend the hiring or firing of
10 the people who work for her, he also testified that in Carey's tenure as
11 head librarian--at least nine years--DCC has had only two assistant librar-
12 ians. There was an absence of any evidence on the record which would indi-
13 cate that Carey exercised any supervisory authority over the assistant
14 librarian. Moreover, it is questionable that the assistant librarian would
15 even be included in an appropriate bargaining unit. She is a part-time
16 faculty member that, Carey testified, performs clerical and secretarial
17 tasks.

18 The record shows that Carey shares a community of interest with other
19 faculty members. Carey has a college degree. Although Carey does not
20 presently teach in a classroom setting, she does lecture to students about
21 certain aspects of library usage and she does prepare lesson outlines
22 for teachers and students which relate to library topics. She has, in
23 the past, taught formal classroom courses and would be presently except
24 for the fact that not enough students subscribed for her course. She is
25 a member of the faculty senate. Her salary is determined by the faculty
26 salary schedule applicable to all full-time faculty. She is supervised,
27 as are all other DCC faculty members, by the central administration of
28 DCC. And she identifies with the faculty and considers herself a teacher.
29 Accordingly, Carey should be included in any appropriate bargaining unit.

30 --Charles Perryman and Paul Fasting. Both Perryman and Fasting are
31 listed in DCC's catalogue as faculty members. The DCC catalogue lists
32 Fasting's positions as follows: Director, Student Services; Health, Phys-
ical Education and Recreation; Director, Admissions. The DCC catalogue

1 lists Perryman's positions as follows: Athletic Director; Health,
2 Physical Education and Recreation.

3 Vice President Kettner testified that Perryman's basic responsibility
4 is that of administrator of financial aids, and that his secondary respon-
5 sibility is that of athletic director and basketball coach. Vice President
6 Kettner testified that Perryman spent twenty-six percent of his time teach-
7 ing. In carrying out his duties, DCC contends that Perryman supervises a
8 secretary and several work study students. However, there is no evidence
9 on the record as to the frequency Perryman exercises supervisory authority
10 over the secretary and work study students and no party seeks to include
11 these people in any appropriate bargaining unit.

12 Vice President Kettner testified that Fasting's primary responsibility
13 is that of director of student affairs and that he is also an assistant
14 basketball coach and dormitory supervisor. Vice President Kettner said
15 that Fasting taught about twenty per cent of the time. Only one piece of
16 testimony on the record alluded to Fasting's role as a supervisor. Vice
17 President Kettner said that Fasting has the responsibility, as dormitory
18 supervisor, to hire a cook. There was no other evidence on the record as
19 to whether Fasting exercises any other supervisory authority over the cook.
20 No party seeks to include the cook in any appropriate bargaining unit.

21 Both Perryman and Fasting share a community of interest with other
22 faculty members of DCC. Not only are Perryman and Fasting involved in
23 teaching classes, but they both coach, and this function is closely re-
24 lated to teaching in that they impart their knowledge of basketball to
25 their students. Moreover, they both have masters degrees; their salaries are
26 determined by the faculty salary schedule; they are eligible for membership
27 in the faculty senate; and they are supervised by the central administra-
28 tion of DCC. Accordingly, Perryman and Fasting should be included in any
29 appropriate bargaining unit.

30 --Alma Ragar. Alma Ragar is listed as a faculty member in the DCC
31 catalogue. She teaches psychology courses and is a student counselor.
32 There is no evidence in the record that she engages in any supervisory,

1 managerial or administrative activities. There is evidence that she shares
2 a community of interest with other DCC faculty members. She teaches and
3 counsels students; she has a masters degree; she is a member of the faculty
4 senate; her salary is determined by the faculty schedule; and she sees her-
5 self as a full-time faculty member. Accordingly, Ragar should be included
6 in any appropriate bargaining unit.

7 --Charles Kintz. Charles Kintz is listed as a faculty member in the
8 DCC catalogue. He has two basic responsibilities--both strictly adminis-
9 trative in nature; he is the business manager and registrar of DCC. He
10 does not teach, nor does he engage in any other teacher-related activities.
11 Kintz therefore shares no community of interest with the rest of the fac-
12 ulty. Moreover, no party to this proceeding has expressly requested that
13 Kintz be included in any appropriate bargaining unit and two parties, MEA
14 and DCC, have expressly requested that he be excluded from any appropri-
15 ate bargaining unit. Therefore, Kintz should be excluded from any approp-
16 riate bargaining unit at DCC.

17 C. Faculty members financed by federal funds. Presently DCC receives
18 \$38,000 in federal funds which are used to finance five full-time faculty
19 positions. DCC contends that the faculty members financed by federal funds
20 should be excluded from any appropriate bargaining unit because their in-
21 clusion "would have difficult and unpredictable budgetary ramifications."

22 The evidence introduced into the record corroborates DCC's concern.
23 There are certain restrictions as to the use of the federal money which
24 relate to the salary and job description of the faculty member. Moreover,
25 the federal programs from which the funds are received may not always
26 coincide with the normal academic year. Aside from these factors, the
27 record establishes that the faculty financed by federal funds are not
28 presently eligible for tenure at DCC.

29 Despite the above-mentioned budgetary ramifications and the fact
30 that the federally funded faculty are not tenurable, certain of the five
31 faculty members do exhibit a community of interest with other faculty
32 members of DCC and should be included in any appropriate bargaining unit.

They are as follows:

1 --Dick Lange. Dick Lange is listed in the DCC catalogue as a faculty
2 member. Vice President Kettner testified that Lange is the director and
3 coordinator of the Retired Senior Volunteer Program, that he is a counselor
4 to veterans and that he teaches part-time in the business school. Presently
5 he spends fifty-seven per cent of his time teaching. Lange has a college
6 degree; he is supervised by DCC's central administration; he is eligible
7 for membership in the faculty senate; and he considers himself to be a
8 bona fide faculty member.

9 --Debbie Ahtone. Debbie Ahtone is listed in the DCC catalogue as a fac-
10 ulty member. Her major responsibility is that of Native American Studies
11 Coordinator. However, Ahtone is presently teaching two classes and is
12 developing a curriculum for use by DCC. Ahtone is eligible for membership
13 in the faculty senate and she is supervised by the central administration
14 at DCC.

15 --Carole Chandler. Carole Chandler is listed in the DCC catalogue as
16 a faculty member. She is the director of special services. Although
17 Chandler has no teaching responsibilities, she does counsel Native American
18 students and other economically, academically, physically, or culturally,
19 deprived students. Chandler has a college degree; she is probably eligible
20 for membership in the faculty senate; and she is supervised by the central
21 administration at DCC.

22 Chandler should not be excluded from any appropriate unit because she
23 does not teach. Counseling is closely related to teaching. Counselors are
24 required to have advanced knowledge; they perform an intellectual function
25 which relates to the welfare of the student; and they interact with the
26 college, the faculty and the student.

27 One other faculty member should be excluded from any appropriate
28 bargaining unit, although not necessarily because his position is financed
29 by federal funds.

30 --Mike Wolundek. Wolundek is listed as a faculty member in the DCC
31 catalogue. Vice President Kettner said that Wolundek is the Institutional
32

1 Research Officer for DCC and as such works strictly with DCC's administra-
2 tion on statistical analysis and interpretative data. He teaches no classes.

3 I note that no party has expressly requested that Wolundek be in-
4 cluded in any appropriate bargaining unit and that two parties, MEA and
5 DCC, have expressly requested that he be excluded from any appropriate
6 bargaining unit.

7 DCC also objected to Roberta Clincher's inclusion into any appropriate
8 bargaining unit because her position is financed by federal funds.

9 --Roberta Clincher. Roberta Clincher is Carole Chandler's off-campus
10 assistant. She works at Poplar, Montana and counsels off-campus extension
11 students and particularly Native American students who attend DCC. She
12 is listed as a part-time faculty member in the DCC catalogue. The record
13 reveals little else about this position. Therefore, Clincher's inclusion
14 into any appropriate bargaining unit here will depend on whether she meets
15 the requirements specified in the Conclusion of Law (see following) for
16 the inclusion of part-time teachers. If she meets these requirements, she
17 should be included in any appropriate bargaining unit; if she does not
18 meet these requirements she should be excluded from any appropriate bar-
19 gaining unit.

20 IV. CONCLUSION OF LAW

21 For the reasons stated above, I find that the following unit consti-
22 tutes a unit appropriate for the purposes of collective bargaining within
23 the meaning of section 59-1606(2), Revised Codes of Montana, 1947:

24 Full-time teaching faculty; part-time faculty members who teach
25 approximately one-half the teaching load of full-time teaching faculty
26 or engage in a substantial degree of teacher related activities, e.g.
27 coaching, counseling, library work; excluding the President, Vice-President,
28 Registrar and Institutional Research Officer of Dawson Community College.

29 V. RECOMMENDED ORDER

30 An election by secret ballot shall be conducted as early as possible
31 under the direction and supervision of the Board of Personnel Appeals,
32 among the employees in the bargaining unit described in the Conclusion

1 of Law, above, who were employed at Dawson Community College on November
2 25, 1974, to determine whether or not they desire to be represented, for
3 purposes of collective bargaining, by the Montana Federation of Teachers,
4 or the Montana Education Association.

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6 Dated this 1st day of April, 1975.

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8 Peter O. Maltese
9 Peter O. Maltese
10 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:

Patrick F. Hooks, Esq.
Chairman, Board of Personnel Appeals
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on this 1st day of April, 1975.

Pat O. Maltin