

BEFORE THE BOARD OF PERSONNEL APPEALS

OF THE

STATE OF MONTANA

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, MISSOULA COUNTY DEPARTMENT OF WELFARE)

Employer,)

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO)

Exclusive Representative.)

40-25-1974

ORDER

* * * * *

The Board of Personnel Appeals having heard testimony at its' August 28, 1975 meeting from the Department of Social and Rehabilitation Services and the American Federation of State, County and Municipal Employees, AFL-CIO, regarding the exemption from bargaining unit activities of Audrey Thompson, Eligibility Technician; Colleen Finneman, Clerical Supervisor II; Daron Duncan, Social Services Supervisor I; Phyllis Mether, Homemaker Supervisor; and Mary Egle, Clerical Supervisor I; hereby ORDERS as follows:

1. That the position of Audrey Thompson, Eligibility Technician fails to meet the definition of "supervisory employee" in 59-1602(3) and is therefore included in the bargaining unit.

2. That the position of Colleen Finneman, Clerical Supervisor II fails to meet the definition of "supervisory employee" in 59-1602(3) and is therefore included in the bargaining unit.

3. That the position of Daron Duncan, Social Services Supervisor I fails to meet the definition of "supervisory employee" in 59-1602(3) and is therefore included in the bargaining unit.

4. That the position of Phyllis Mether, Homemaker Supervisor fails to meet the definition of "supervisory employee" in 59-1602(3) and is therefore included in the bargaining unit.

5. That the position of Mary Egle, Clerical Supervisor I fails to meet the definition of "supervisory employee" in 59-1602(3) and is therefore

1 included in the bargaining unit.

2 BOARD OF PERSONNEL APPEALS

3 BY Francis J. Raucci
4 Francis J. Raucci
5 Chairman

6 DATED: October 3, 1975

7
8 CERTIFICATE OF MAILING

9 I, Robert R. Jensen, Executive Secretary, Board of Personnel Appeals, hereby
10 certify that I did, on the 3rd day of October 1975, mail a true and correct
11 copy of the Board of Personnel Appeals' Order to the following people, at
12 their last known address, in an envelope securely sealed, with postage pre-
13 paid:
14

15 Theodore Carkulis, Director
16 Department of Social and Rehabilitative Services
17 836 Front Street
18 Helena, MT 59601

19 Mr. George Hammond, Executive Director
20 AFSCME, AFL-CIO
21 600 North Cooke
22 Helena, MT 59601

23 Mr. Donald Judge, Field Representative
24 AFSCME, AFL-CIO
25 600 North Cooke
26 Helena, MT 59601

27 Ms. Elizabeth Johnson, Director
28 Missoula County Welfare Department
29 Missoula County Courthouse
30 Missoula, MT 59801

31 Robert R. Jensen
32 Robert R. Jensen
Executive Secretary

BEFORE THE BOARD OF PERSONNEL APPEALS

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,)

40-25-1974

DEPARTMENT OF SOCIAL REHABILITATION SERVICES, MISSOULA COUNTY, DEPARTMENT OF PUBLIC WELFARE)

AMENDED ORDER

Employer.)

* * * * *

Although a unit determination was held, supervising determinations were not resolved at that time and therefore a hearing was held on the 17th day of March, 1975, to determine whether or not the employees in question are supervisors according to the definition of "supervisory employee" in Title 59, Chapter 16, Section 2, R.C.M. 1947. This hearing was held under authority of Title 59, Chapter 16, Section 6, R.C.M. 1947.

As a result of this hearing where depositions were taken the following determinations are hereby made:

1. Audrey Thompson, Eligibility Technician, shall be included in the unit as she fails to meet the definition of "supervisory employee" in Title 59, Chapter 16, Section 6, R.C.M. 1947, in that as revealed by direct testimony and cross examination she does not have the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, adjust their grievances, or effectively recommend such action. It was further established that any isolated exercise of the foregoing authority would be of a merely routine or clerical nature and would not require the use of independent judgment.

2. Colleen Finneman, Clerical Supervisor II shall be included in the unit as she fails to meet the definition of "supervisory employee" in Title 59, Chapter 16, Section 6, R.C.M. 1947, in that as revealed by direct testimony and cross examination she does not have the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, adjust their grievances, or effectively recommend such action. It was further established that any isolated exercise of the foregoing authority would be of a merely routine or clerical nature and would not require the use of independent judgment.

1 3. Daron Duncan, Social Service Supervisor I, shall be included in the
2 unit as he fails to meet the definition of "supervisory employee" in Title
3 59, Chapter 16, Section 6, R.C.M. 1947, in that as revealed by direct testimony
4 and cross examination he does not have the authority, in the interest of the
5 employer to hire, transfer, suspend, lay off, recall, promote, discharge,
6 reward, discipline, adjust their grievances, or effectively recommend such
7 action. It was further established that any isolated exercise of the foregoing
8 authority would be of a merely routine or clerical nature and would not require
9 the use of independent judgment.

10 4. Phyllis Mether, Homemaker Supervisor, shall be included in the unit
11 as she fails to meet the definition of "supervisory employee" in Title 59
12 Chapter 16, Section 6, R.C.M. 1947, in that as revealed by direct testimony
13 and cross examination, she does not have the authority, in the interest of
14 the employer to hire, transfer, suspend, lay off, recall, promote, discharge,
15 reward, discipline, adjust their grievances, or effectively recommend such
16 action. It was further established that any isolated exercise of the foregoing
17 authority would be of a merely routine or clerical nature and would not require
18 the use of independent judgment.

19 5. Mary Egle, Clerical Supervisor I, shall be included in the unit as
20 she fails to meet the definition of "supervisory employee" in Title 59, Chapter
21 16, Section 6, R.C.M. 1947, in that as revealed by direct testimony and cross
22 examination she does not have the authority, in the interest of the employer
23 to hire, transfer, suspend, lay off, recall, promote, discharge, reward,
24 discipline, adjust their grievances, or effectively recommend such action.
25 It was further established that any isolated exercise of the foregoing author-
26 ity would be of a merely routine or clerical nature and would not require the
27 use of independent judgment.

28 Dated this 15th day of August, 1975.

29 BOARD OF PERSONNEL APPEALS

30 BY 
31 Edward Kennedy
32 Hearing Examiner

1 CERTIFICATE OF MAILING

2 I, Edward Kennedy, hereby certify and state that I did, on the 15th day
3 of August, 1975, mail a true and correct copy of the Board of Personnel Appeals'
4 Amended Order by depositing a true and correct copy in the United States mail,
5 in an envelope securely sealed, with postage prepaid, addressed to them at
6 their last known address as follows:

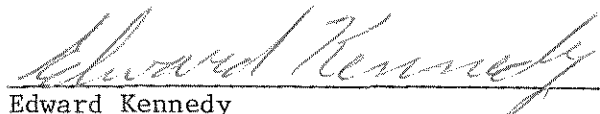
7
8 George Hammond
9 Executive Director
10 AFSCME
11 600 N. Cooke
12 Helena, MT 59601

13
14 Director
15 Missoula County Welfare Department
16 Missoula, MT 59801

17
18 Jack Stuart
19 Personnel Division
20 Department of S R S
21 1218 Sixth Avenue
22 Helena, MT 59601

23
24 Theodore Carkulis, Director
25 Department of SRS
26 836 Front Street
27 Helena, MT 59601

28
29 DATED this 15th day of August 1975.
30
31
32


Edward Kennedy
Hearing Examiner

BEFORE THE BOARD OF PERSONNEL APPEALS

40-25-1974

AMERICAN FEDERATION OF STATE, COUNTY)
AND MUNICIPAL EMPLOYEES, AFL-CIO,)
DEPARTMENT OF SOCIAL REHABILITATION)
SERVICES, MISSOULA COUNTY, DEPARTMENT)
OF PUBLIC WELFARE)
EMPLOYER.)

ORDER

Although a unit determination was held, supervising determinations were not resolved at that time and therefore a hearing was held on the 17th day of March, 1975, to determine whether or not the employees in question are supervisors according to the definition of "supervisory employee" in Title 59, Chapter 16, Section 2, R.C.M., 1947. This hearing was held under authority of Title 59, Chapter 16, Section 6, R.C.M., 1947.

As a result of this hearing where depositions were taken the following determinations are hereby made:

1. Audrey Thompson, Eligibility Technician , shall be included in the unit as she fails to meet the definition of "supervisory employee" in Title 59, Chapter 16, Section 6, R.C.M., 1947.

2. Colleen Finneman, Clerical Supervisor II shall be included in the unit as she fails to meet the definition of "supervisory employee" in Title 59, Chapter 16, Section 6, R.C.M., 1947.

3. Daron Duncan, Social Service Supervisor I, shall be included in the unit as he fails to meet the definition of "supervisory employee" in Title 59, Chapter 16, Section 6, R.C.M., 1947.

4. Phyllis Mether, Homemaker Supervisor, shall be included in the unit as she fails to meet the definition of "supervisory employee" in Title 59, Chapter 16, Section 6, R.C.M., 1947.

5. Mary Egle, Clerical Supervisor I, shall be included in the unit as she fails to meet the definition of "supervisory employee" in Title 59, Chapter 16, Section 6, R.C.M., 1947.

Dated this 7th day of August, 1975.

BOARD OF PERSONNEL APPEALS

By Edward Kennedy
Edward Kennedy
Hearing Examiner

CERTIFICATE OF MAILING

I, Edward Kennedy, hereby certify and state that I did, on the 8th day of August, 1975, mail a true and correct copy of the Board of Personnel Appeals Order by depositing a true and correct copy in the United States mail, in an envelope securely sealed, with postage prepaid, addressed to them at their last known address as follows:

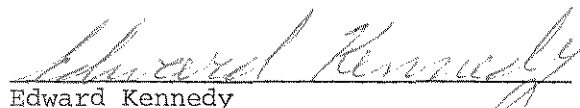
George Hammond
Executive Director
AFSCME
600 N. Cooke
Helena, Montana 59601

Director
Missoula County Welfare Dept.
Missoula, Montana 59801

Jack Stuart
Personnel Division
Dept. of Administration
1218 Sixth Avenue
Helena, Montana 59601

Theodore Carkulis, Director
Dept. of SRS
836 Front Street
Helena, Montana 59601

Dated this 8th day of August, 1975.


Edward Kennedy
Hearing Examiner

1 BEFORE THE BOARD OF PERSONNEL APPEALS

2 IN THE MATTER OF:)
)
 3 AMERICAN FEDERATION OF STATE, COUNTY, AND)
 MUNICIPAL EMPLOYEES, AFL-CIO,)
 4 Petitioners,)
)
 5 MONTANA PUBLIC EMPLOYEES ASSOCIATION,)
 Intervenor,)
 6)
 7 DEPARTMENT OF SOCIAL AND REHABILITATION)
 SERVICES,)
 8 Counter-petitioner,)
 Employer.)

UD-25-1974

DETERMINATION OF
APPROPRIATE UNIT

9
10 I FINDINGS OF FACT

11 1. American Federation of State, County, and Municipal Employees, AFL-CIO
 12 submitted petitions for unit determinations and elections for Cascade County Welfare
 13 Department (12/20/73), Lewis and Clark County Welfare Department (2/15/74), Missoula
 14 County Welfare Department (2/13/74), Lincoln County Welfare Department (7/15/74),
 15 Sweetgrass County Welfare Department (7/15/74), and Glacier County Welfare Depart-
 16 ment (7/15/74).

17 2. Thirty percent (30%) proof of interest requirement met by petitioner in
 18 all cases.

19 3. Montana Public Employees Association petitioned to intervene to be included
 20 on the ballot for Cascade County Welfare Department (2/20/74).

21 4. Ten percent (10%) proof of interest requirement met by intervenor.

22 5. There were no other intervenors; the time limit for intervention has
 23 expired in all cases.

24 6. Department of Social and Rehabilitation Services submitted counter-petitions
 25 for Cascade County Welfare Department (1/15/74), and for Missoula and Lewis and
 26 Clark County Welfare Departments (3/15/74) in which a statewide unit of all Depart-
 27 ment of Social and Rehabilitation Services employees was proposed.

28 7. Department of Social and Rehabilitation Services submitted counter-petitions
 29 for Lincoln, Glacier, and Sweetgrass County Welfare Departments (7/26/74) in which
 30 regional bargaining units of county welfare department employees were proposed.

31 8. In accordance with MAC 24-3.8(10)-S8070(7) hearings were held on the pro-
 32 posed units in Great Falls (Cascade County Welfare Department) on 2/5/74; in Missoula

1 (Missoula County Welfare Department) on April 10, 1974; in Big Timber (Sweetgrass
2 County Welfare Department) on August 14, 1974; in Libby (Lincoln County Welfare
3 Department) on August 14, 1974; hearings were waived for Lewis and Clark County
4 Welfare Department by stipulation dated May 6, 1974 and for Glacier County
5 Welfare Department by stipulation dated August 19, 1974.

6 9. Board of Personnel Appeals' order dated May 15, 1974 designated "all
7 eligible employees of Lewis and Clark County Welfare Department" as an appropriate
8 bargaining unit.

9 10. Board of Personnel Appeals' order dated May 15, 1974 designated "all
10 eligible employees of Missoula County Welfare Department" as an appropriate
11 bargaining unit.

12 11. Board of Personnel Appeals' order dated March 12, 1974 designated "all
13 eligible employees of Cascade County Welfare Department" as an appropriate
14 bargaining unit.

15 12. A secret ballot election was conducted by the Board of Personnel Appeals
16 (5/15/74) for eligible employees of the Missoula County Welfare Department and the
17 American Federation of State, County, and Municipal Employees, AFL-CIO was certified
18 as the exclusive representative of these employees on June 12, 1974.

19 13. A secret ballot election was conducted by the Board of Personnel Appeals
20 (5/31/74) for eligible employees of the Lewis and Clark County Welfare Department
21 and the American Federation of State, County, and Municipal Employees, AFL-CIO was
22 certified as the exclusive representative of these employees on June 7, 1974.

23 14. A secret ballot election was conducted by the Board of Personnel Appeals
24 (4/29/74) for eligible employees of the Cascade County Welfare Department with no
25 choice receiving a majority; a run-off election was conducted by the Board (9/23/74)
26 with the Montana Public Employees Association receiving a majority of the valid
27 ballots cast. Certification is pending.

28 15. In its order dated June 17, 1974, the Board of Personnel Appeals has
29 established a bargaining unit consisting of "all non-exempt employees of the Depart-
30 ment of Social and Rehabilitation Services excluding employees in the county welfare
31 departments."

32 16. There is a statewide standard classification and salary plan for all

1 divisions of the Department of Social and Rehabilitation Services.

2 17. Personnel matters for the entire Department of Social and Rehabilita-
3 tion Services are handled through the office of the director in Helena.

4 18. By signed stipulation dated December 16, 1974, the American Federation
5 of State, County, and Municipal Employees, AFL-CIO, the Department of Social and
6 Rehabilitation Services, and the Montana Public Employees Association agreed to
7 dissolve and void, *nunc pro tunc*, the previous Board orders (as described above
8 in Findings of Fact nos. 8, 9, and 10) and to abide by, and accept the unit
9 structure described in this order.

10 DISCUSSION

11 In the Board's earlier determinations affecting employees of the Department
12 of Social and Rehabilitation Services, the Board held that county welfare depart-
13 ment employees have a unique community of interest unto themselves, and should
14 be separate from all other Department of Social and Rehabilitation Service employees
15 for purposes of collective bargaining. To illustrate, unit determination #42
16 describes a unit of "all non-exempt employees of the Department of Social and
17 Rehabilitation Services excluding employees in the county welfare departments."
18 (See Finding of Fact #15.)

19 The Board reasoned, in establishing separate bargaining units for the three
20 individual county welfare departments (Findings of Fact nos. 9, 10, and 11) AFSCME
21 petitioned for originally, that to dismiss the petitions as inappropriate would,
22 in effect, deny employees in those three county welfare departments their right
23 to organize and bargain collectively. By providing individual county bargaining
24 units, the Board was assuring "fullest freedom" to those employees in exercising
25 their collective bargaining rights.

26 The degree of collective bargaining organization the Board presently observes
27 in the county welfare departments indicates that, in order to insure an efficient
28 negotiating relationship between the employer and the employee representatives,
29 the appropriate Board action would involve modification of the existing unit
30 structure. This modification would not endanger the assured "fullest freedom"
31 of employees to exercise their collective bargaining rights. Therefore, it is
32 the opinion of the Board that its earlier determinations (U.D. 10, 21, and 25)

1 are no longer appropriate, and that the appropriate unit structure for county
2 welfare department employees is as outlined in the following order.

3 II CONCLUSIONS OF LAW

4 1. The proposed bargaining units described in the petitions for unit
5 determinations filed by AFSCME (U.D. 45, 46, and 47) are not appropriate for
6 collective bargaining purposes.

7 2. Appropriate units for collective bargaining purposes are: One unit for
8 all county welfare departments the employees of which express a desire to be
9 members of AFSCME; one unit for all county welfare departments the employees
10 of which express a desire to be members of MPEA; and such additional units as
11 corresponds to the number of other labor organizations selected by employees in
12 individual county welfare departments.

13 III ORDER

14 In accordance with MAC 24-3.8(10)-S8070(7), the Board of Personnel Appeals
15 hereby determines and orders that the bargaining unit structure for all county
16 welfare department employees employed by the Department of Social and Rehab-
17 ilitation Services shall be as follows: "One unit of all county welfare depart-
18 ments the employees of which express a desire to be members of the American
19 Federation of State, County, and Municipal Employees, AFL-CIO (presently com-
20 prised of Lewis and Clark and Missoula County welfare departments); one unit of
21 all county welfare departments the employees of which express a desire to be
22 members of the Montana Public Employees Association (presently comprised of
23 Cascade County welfare department pending certification); and such additional
24 units as corresponds to the number of other labor organizations selected by
25 employees in individual county welfare departments. Membership of county welfare
26 department employees in one of the units shall be determined by elections
27 conducted by the Board of Personnel Appeals on a county by county basis."

28 Elections shall be held in the individual counties upon the showing of
29 an adequate proof of interest.

30
31 DATED this 16th day of December 1974.

32 BY:

Patrick F. Hooks
Patrick F. Hooks, Chairman
Board of Personnel Appeals