

BEFORE THE BOARD OF PERSONNEL APPEALS

1 IN THE MATTER OF:)
2 CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN)
3 AND HELPERS, LOCAL #45,)
4 Petitioner,)
5 MONTANA HIGHWAY DEPARTMENT,)
6 Employer.)

40-39-1974

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

6 Hearings were held on May 15, 1974 in Havre, Montana and August 16, 1974
7 in Great Falls, Montana pursuant to a petition for Unit Determination and Election
8 filed by the Chauffeurs, Teamsters, Warehousemen and Helpers, Local #45 (hereafter
9 called the Teamsters or the Petitioners). Petitioner contends that a unit com-
10 posed of maintenancemen I, II, III, IV, V, VI, and maintenance supervisor I's of
11 the Havre division of the Montana Department of Highways is an appropriate unit,
12 that no existing contract covers the employees of the proposed unit, and that
13 the American Federation of State, County, and Municipal Employees, AFL-CIO claim
14 to represent employees of the proposed unit. The Montana Department of Highways
15 (hereafter Employer) admits the Petitioner's proposed unit is appropriate and that
16 AFSCME claims to represent employees of the proposed unit but claims that the most
17 appropriate unit would be a single unit of all the Employer's maintenancemen I, II,
18 III, IV, V, VI, and maintenance supervisor I's. Montana Council #9, American
19 Federation of State, County, and Municipal Employees, AFL-CIO (hereafter AFSCME)¹,
20 contends that they represent the employees of the proposed unit; that the only way
21 they can be removed as the exclusive representative is by a decertification petition;
22 and that since Petitioner has not filed a decertification petition, Petitioner cannot
23 be recognized as the exclusive representative of the employees of the proposed unit.
24 The Petitioner was represented by Emilie Loring, Esquire of the law firm of Hilley
25 and Loring, Great Falls, Montana at the May 15th hearing and by Clifford Hueth,
26 Great Falls, Montana at the August 16th hearing. The Employer was represented by
27 Peter Byrnes, State Labor Negotiator, Helena, Montana and Donald D. Gruel, Adminis-
28 trator of the Maintenance Division, Montana Department of Highways, Helena, Montana
29 at both hearings. AFSCME was represented by George Hammond, Executive Director,
30 AFSCME, Missoula, Montana at both hearings.

31 ¹Although AFSCME did not properly intervene in this proceeding, the hearing
32 examiner included them as a party because he considered them an indispensable
party.

FINDINGS OF FACT

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2 1. The Petitioner filed a petition pursuant to MAC 24-3.8(10)-S8000 through
3 MAC 24-3.8(10)-S8070. Although their original petition described a forty-four
4 employee unit of maintenancemen I, II, III, IV, and V employed by the Havre division
5 of the Employer, this description was orally amended by the Petitioner at the May
6 16th hearing to read maintenancemen I, II, III, IV, V, VI, and maintenance super-
7 visor I's. There are approximately fifty employees of the Havre division so
8 classified. (Teamsters Petition for Unit Determination and Election; transcript
9 May 15, 1974 hearing, p. 20.)

10 2. The Maintenance Division of the Employer is divided into eleven mainte-
11 nance divisions. One of these divisions, the Havre division, is made up of ~~five~~^{four}
12 whole counties--Toole, Liberty, Hill, Blaine--and part of four other counties--
13 Glacier, Pondera, Teton, and Chouteau. The Division is subdivided into ten sections.
14 The Havre division is headed by a chief of field maintenance who supervises three
15 maintenance division foremen who in turn supervise nine section men and forty-one
16 helpers. The section men are classified as maintenance supervisor I's and the
17 helpers are classified as maintenancemen I, II, III, IV, V, and VI's. (Hereafter
18 section men and helpers will be designated maintenance employees.) While mainte-
19 nance employees usually work in their own section, there are frequent occasions
20 when employees of various sections are grouped together for certain operations.
21 The maintenance employees, however, seldom work outside of the division. (Employer's
22 Exhibit No. 1; transcript May 15, 1974 hearing, pp. 4 through 12, 19 and 20.)

23 3. Since 1963, most if not all of the maintenance employees of the Employer
24 have been represented by either AFSCME or the Public Employees Craft Council (here-
25 after PECC)--of whom the Petitioners are a member. Usually all maintenance employees
26 of a given division belong to one group or the other. For example, all maintenance
27 employees in the Great Falls division belong to the PECC; all section men and
28 helpers in the Billings division belong to AFSCME. AFSCME represents maintenance
29 employees in all but a few of the eleven maintenance divisions. The PECC represents
30 maintenance employees in five maintenance divisions. In the Havre division most
31 employees have, in the past, been represented by AFSCME although a few employees
32 in the Dupuyer section of the division are represented by the PECC.² (Employer's

²Employees in Glacier County have been represented by AFSCME in the past but presently are not represented by either AFSCME or the PECC.

1 Exhibit No. 1; transcript May 15, 1974 hearing, pp. 8, 9, and 11.)

2 4. AFSCME negotiated an agency-shop, automatic-renewal contract with the
3 Employer on behalf of all member maintenance employees -- which included most
4 employees of the proposed unit. (Hereafter this contract will be designated as
5 the 1970 contract.) The automatic-renewal clause of that contract reads as
6 follows:

7 This agreement shall become effective July 1, 1969 and shall
8 remain in full force and effect through June 20, 1971, and
9 yearly thereafter unless one of the parties, hereto shall
10 serve notice in writing upon the other party hereon, not less
11 than sixty (60) days prior to its expiration date, or any
12 anniversary thereafter.

13 The agency shop clause reads as follows:

14 To assist the employees covered by this agreement as a group
15 in meeting the costs of planning, negotiating, and adminis-
16 tering this agreement and of protecting and promoting their
17 interests, each employee as a condition of initial and con-
18 tinuing employment shall be required to either maintain
19 membership in, or to make equal contribution by paying to
20 the appropriate jurisdictional Union a sum equal to the
21 regular union initiation fee and regular union monthly dues
22 of such Union.

23 Pursuant to a memorandum of understanding dated June 27, 1972 and signed by
24 George Hammond, a representative of AFSCME, and Donald D. Gruel, a representative
25 of the Employer, a later contract dated December 25, 1971 was abandoned and the
26 parties reverted back to the 1970 contract. Gruel testified at the May 16th
27 hearing that the Employer agreed to continue the terms of the 1970 contract until
28 a new contract was negotiated and that the Employer was still working under the
29 1970 contract. However, in spite of the June 27, 1972 memorandum and the agency-
30 shop clause in the 1970 contract, most of the employees of the proposed unit, if
31 not all of them, submitted paperwork to the Employer in February, 1974 to revoke
32 the voluntary checkoff of dues to AFSCME and requested that these dues be trans-
ferred to the PECC. The Employer stopped the dues deductions to AFSCME but did
not transfer the dues to the PECC. (Intervenor's Exhibit Nos. 3 and 4; transcript
May 15, 1974 hearing, pp. 12 through 15, 32, 33, 35, 36, and 39.)

5. The collective bargaining contracts of both the PECC and AFSCME provide
for the "county-option" arrangement of recognizing collective bargaining repre-
sentatives although it is unclear how often, in fact, the county-option arrangement

1 has been used by either PECC or AFSCME. Under the county-option arrangement,
2 employees of a county within a division can choose which Union will represent
3 them. The clause in AFSCME's 1970 contract reads as follows:

4 The Union shall have jurisdiction of either (1) any county
5 located wholly within a Maintenance Division or, (2) that
6 portion of any county divided by a Division boundary, when-
ever satisfactory evidence is provided by the Union that
the majority in any of such areas are members of the Union.

7 Representatives of the Employer testified that numerous administrative difficulties
8 would occur if a single division were split between two unions as might be the case
9 under the county-option arrangement. Employer's representatives stated that most
10 difficulties would arise because of the possibility of administering two separate
11 contracts in the same division. Also, the county-option arrangement is not geared
12 to the administrative structure of the Employer. The Employer is structured by
13 divisions and sections which are not based on county boundary lines. All other
14 parties also characterized a county-sized unit as inappropriate at the hearings.
15 The Petitioner, the Employer, and AFSCME do agree, however, that the proposed unit
16 (division) is appropriate for collective bargaining purposes. While representatives
17 of the Employer testified that the most appropriate bargaining unit would be a
18 single bargaining unit for all maintenance workers in the Department of Highways,
19 they also testified that the employees of the proposed unit shared a community of
20 interest in wages, hours, fringe benefits, personnel policies, and other working
21 conditions. (Teamsters's Petition for Unit Determination and Election; Employer's
22 Counter-petition; Intervenor's Exhibit Nos. 3 and 5; transcript May 15, 1974 hearing,
23 pp. 2, 6, 16, 26, 27, 30; transcript August 16, 1974 hearing, pp. 6 through 8, 19,
24 28, 29, and 32.)

25 6. George Hammond, Executive Director of Montana Council #9, American Fed-
26 eration of State, County, and Municipal Employees, testified that when AFSCME negot-
27 iated with the Employer, they represent all member maintenance employees in the
28 state of Montana. Hammond also testified that only a majority vote of all AFSCME
29 maintenance employees in the state would authorize a strike; individual divisions
30 could not authorize a strike, although in the past they have taken strike votes
31 which did not carry state-wide. (Transcript, August 16, 1974 hearing; pp. 5, 6,
32 and 24.)

1 RESOLUTION AND RATIONALE

2 The question that must be resolved in this matter is whether or not the
3 unit proposed by the Petitioner is appropriate for purposes of collective bargaining.

4 The record firmly establishes that a contract was executed between AFSCME and
5 the Montana Highway Department in 1970 and that this contract was still in effect
6 at the time of the May 15, 1974 hearing. An automatic-renewal clause in this
7 contract provided for automatic renewal of the contract on an annual basis unless
8 one of the parties served timely notice on the other party that the contract was
9 to end. There is no evidence in the record that such notice was ever given by
10 either party. A memorandum of understanding dated June 27, 1972 shows that
11 both parties agreed to abandon a later contract and revert back to the 1970 contract.
12 And the testimony of Donald D. Gruel, Administrator of the Maintenance Division,
13 Montana Department of Highways shows that the contract was, in fact, in effect as
14 late as the hearing on May 15, 1974.

15 There is no evidence on the record that establishes that this contract is
16 invalid. While it is true that this contract is over two years old and that one
17 of our regulations (MAC 24-3.8(6)-S8060) provides that agreements between a
18 public employer and a labor organization shall not exceed two years, we must note
19 that the so-called "grandfather clause" of the Public Employees Collective Bargaining
20 Act³ requires us to recognize this contract, in spite of its age, because it was
21 in existence prior to July 1, 1973, the effective date of the Act.

22 The 1970 contract provides a method for change of representation on a county-
23 by-county basis--the county-option arrangement. And if the county-option arrange-
24 ment is strictly followed by the parties, the result would be, in effect, a group
25 of county-sized units. Since all parties unequivocally disclaim a county-sized
26 unit as an appropriate unit for collective bargaining purposes and since the
27 Petitioner has proposed a division-sized unit as an appropriate unit, we will not
28 dwell on the question of whether or not the grandfather clause requires us to
29 honor the county-option arrangement as a method of determining the appropriate

30 ³The grandfather clause provides as follows:
31 Nothing in this Act shall be construed to remove recognition of established
32 collective bargaining agreements already recognized or in existence prior to
the effective date of this Act. Section 59-1615, R.C.M., 1947.

1 bargaining unit. Suffice it to say that we tend to agree with all the parties here
2 that a county-sized unit is ^{? inappropriate?} appropriate.

3 The record shows, in our opinion, that a bargaining unit composed of all
4 maintenancemen I, II, III, IV, V, VI, and maintenance supervisor I's represented
5 by AFSCME in the state of Montana presently exists. We come to this conclusion
6 for two reasons:

7 (1) When AFSCME negotiated the 1970 contract with the Employer, it represented
8 all its member maintenance workers in the Montana Department of Highways.

9 (2) A subdivision of this unit, i.e. division maintenance employees or
10 county maintenance employees, cannot initiate an authorized strike. Only a vote of
11 a majority of all AFSCME maintenance employees in the state can authorize a strike.

12 If this Board determines that the Petitioner's proposed unit is the appropriate
13 unit and therefore orders an election, the result could be the partial disestablishment
14 of an existing bargaining unit. AFSCME, the labor organization currently being
15 recognized by the Employer as the bargaining representative of maintenance workers
16 throughout the state of Montana, could be sheared of part of its membership--
17 membership which is part of one bargaining unit. We feel sure that if we allowed
18 this to happen we would be setting a dangerous precedent for the future. To allow
19 the partial disestablishment or decertification of bargaining units could result in
20 extreme fragmentation and could destroy the very fabric of a stable labor relations
21 process.

22 We recognize that the record establishes many good reasons why a division-
23 sized unit would be an appropriate bargaining unit. Surely all employees of the
24 Petitioner's proposed unit share a community of interest in wages, hours, fringe
25 benefits, personnel policies, and other working conditions (although we hasten
26 to point out that the presently existing unit shares a quite similar community
27 of interest, though probably not so extensive). And a division-sized unit surely
28 allows for a more clearly defined bargaining unit: contrast the presently existing
29 bargaining unit which is located in all but a few of the eleven maintenance div-
30 isions of the Employer with a unit comprised of maintenance employees in one division.
31 Moreover, we recognize that AFSCME, the presently recognized bargaining representative
32 of most employees in the Havre division, thinks that a division-sized unit would be

1 appropriate. But, overriding all of these reasons is the fact that if we deter-
2 mine the Petitioner's proposed unit to be an appropriate unit we may be abetting
3 the partial disestablishment of an already existing unit. Accordingly, the
4 proposed unit of maintenance workers in the Havre division is inappropriate, and
5 for this reason we will dismiss Teamsters' Petition for Unit Determination and
6 Election.

7 CONCLUSIONS OF LAW

8 The unit of employees proposed by the Petitioner is not an appropriate
9 unit for purposes of collective bargaining.

10 ORDER

11 The Petition for Unit Determination and Election, dated April 2, 1974 and
12 filed by the Chauffeurs, Teamsters, Warehousemen, and Helpers, Local #45 is
13 hereby dismissed.

14 DATED this 16th day of October 1974.

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19 Patrick F. Hooks, Chairman
20 Board of Personnel Appeals
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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 to

Emilie Loring, Esq.
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Donald D. Gruel
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Helena, MT 59601

on this 16th day of October 1974.

BY

Robert R. Jensen