

STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

1			
2			
3	IN THE MATTER OF UNIT DETERMINATION NO. 66:)	
)	
4	MONTANA EDUCATION ASSOCIATION,)	
	Petitioner,)	
5)	
6	EASTERN MONTANA COLLEGE FACULTY BARGAINING)	O R D E R
	COALITION (AAUP and AFT),)	
7	Intervenor,)	
)	
8	EASTERN MONTANA COLLEGE,)	
	Counterpetitioner.)	

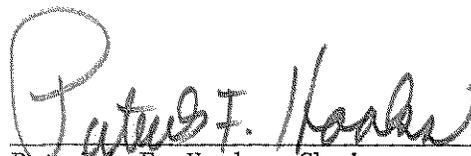
The Board of Personnel Appeals having reviewed the record in the above entitled matter hereby orders as follows:

1. That the Respondent's Exceptions to Findings of Fact, Conclusions of Law and Order as Recommended to the Board of Personnel Appeals be dismissed.

2. That the Findings of Fact, Conclusions of Law, and Recommended Order to the Board of Personnel Appeals on May 6, 1975, by the Board's duly appointed Hearing Examiner, be adopted as the Board's own Findings of Fact, Conclusions of Law, and made a part of this Order by reference as though fully set forth herein. It is expressly held that Erick Erickson, Director of the Campus School, Victor Signori, Director of Admissions, and Charles Kittock Registrar, be excluded from the bargaining unit in question.

3. That the unit determination election scheduled for May 30, 1975 be held as so scheduled.

DATED this 28th day of May 1975.



 Patrick F. Hooks, Chairman
 Board of Personnel Appeals

CERTIFICATE OF MAILING

I hereby certify that I mailed a true copy of the above Order to the following persons on May 28, 1975:

Emilie Loring, Esq.
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Great Falls, MT 59405

C. Rockne Copple, President
National Society of Professors
Montana Education Association
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Billings, MT 59101

George Madden & Alan Newbury
Co-chairmen, Eastern Montana College
Faculty Bargaining Coalition
Eastern Montana College
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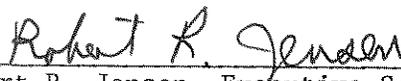
James McGarvey, Executive Director
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515 Sanders #207
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315 Davidson Building
Great Falls, MT 59401

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Stanley J. Heywood, President
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Robert R. Jensen, Executive Secretary
Board of Personnel Appeals

1 BEFORE THE BOARD OF PERSONNEL APPEALS

2 IN THE MATTER OF UNIT DETERMINATION NO. 66:)
3 MONTANA EDUCATION ASSOCIATION,)
4 Petitioner,)
5 EASTERN MONTANA COLLEGE FACULTY BARGAINING)
6 COALITION,)
7 Intervenor,)
8 EASTERN MONTANA COLLEGE,)
9 Counterpetitioner.)

UD-66-1974.

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

10 I. INTRODUCTION

11 The National Society of Professors, affiliated with the Montana Education
12 Association and the National Education Association (hereafter MEA), filed a
13 petition for unit determination and election with the Board of Personnel Appeals
14 on December 26, 1974. MEA proposes a bargaining unit consisting of "All faculty
15 holding academic rank and a contract with the Montana University System whose
16 current assignment is with Eastern Montana College." MEA also proposes that
17 the president, vice president, deans, division chairpersons and business manager
18 be excluded from any bargaining unit.

19 The Eastern Montana College Faculty Bargaining Coalition (hereafter Coalition),
20 affiliated with the Eastern Montana Chapter of the American Association of University
21 Professors and the United Faculty Organization, Eastern Montana College American
22 Federation of Teachers, filed a petition of intervention with the Board on January
23 10, 1975. The Coalition proposes a bargaining unit consisting of "...those persons
24 employed at Eastern Montana College who hold faculty rank and have a Board of
25 Regents contract. Administrators with the title of Division Administrator or
26 higher are excluded. Other administrators, especially those who carry classroom
27 teaching responsibilities, are included."

28 The Eastern Montana College Federation of Teachers, affiliated with the Montana
29 Federation of Teachers and the American Federation of Teachers, AFL-CIO, also filed
30 a petition of intervention with the Board of Personnel Appeals on January 24, 1975.
31 This petition, however, was withdrawn on April 4, 1975.

32 Eastern Montana College (hereafter EMC), through the Commissioner of Higher
Education, filed a counterpetition with the Board on January 21, 1975. The

1 The bargaining unit proposed by EMC in its counterpetition was amended by oral
2 motion at the unit determination hearing. As amended, EMC proposes a bargaining
3 unit consisting of "...all full-time teaching faculty, of all teaching faculty
4 who teach at least one-half time (.5 FTE) or more, who are on an individual
5 contract issued by the Board of Regents of Higher Education, and who hold one of
6 the following academic ranks: lecturer, instructor, assistant professor, and/or
7 professor, exclusive of the President, Vice-Presidents, Business Manager, Deans,
8 Division Chairmen, Registrar, certain Directors and/or Coordinators of Programs,
9 Head Librarian, Head of Counseling, and Director of Athletics."

10 The counterpetition made clear that the Commissioner of Higher Education did
11 not waive or repudiate its position in unit determination no. 55 (Northern Montana
12 College), that is, that an appropriate faculty collective bargaining unit within
13 the Montana University System ought to appropriately consist of all qualified
14 faculty members at the six campuses of the system.

15 A hearing was held in this matter before me, as the duly appointed hearing
16 examiner of the Board, on February 13, 1975 in Billings, Montana.

17 Appearances at the hearing were as follows:

18	MEA	Emilie Loring
19		Attorney at Law
20		Hilley & Loring
		Great Falls, Montana
21	Coalition	Joseph Duffy
22		Attorney at Law
		McKittrick & Duffy
		Great Falls, Montana
23	EMC	Barry Hjort
24		Attorney at Law
25		Office of the Commissioner
		of Higher Education
		Helena, Montana

26 II. FINDINGS OF FACT

27 1. The parties are in substantial agreement as to what would constitute an
28 appropriate bargaining unit here except for the Commissioner of Higher Education's
29 contention that an appropriate bargaining unit ought to consist of eligible faculty
30 members of all six units of the Montana University System. The record indicates
31 that there are four issues which must be resolved. These issues are as follows:

32 (A) Whether or not an appropriate bargaining unit should consist of eligible

1 faculty members of only EMC, or of eligible faculty members of all six units of
2 the Montana University System;

3 (B) Whether or not an appropriate bargaining unit should include or exclude
4 individuals with the academic title of "lecturer";

5 (C) Whether or not an appropriate bargaining unit should include or exclude
6 certain directors and/or coordinators of programs who may have some teaching
7 responsibilities as well as supervisory or managerial responsibilities;

8 (D) Whether or not an appropriate bargaining unit should include only those
9 faculty members who teach at least one-half time, or more.

10 2. I note that as a result of a decision issued in unit determination no. 55
11 (Northern Montana College) issue A above is moot. It was held in that unit deter-
12 mination that a unit of Northern Montana College faculty members, separate from
13 the Montana University System, was an appropriate bargaining unit. Accordingly,
14 an election was directed in that unit. Therefore, this decision effectively
15 precludes the formation of a bargaining unit consisting of all eligible faculty
16 of the Montana University System.

17 3. During the course of the hearing, EMC introduced counterpetitioner's exhibits
18 numbers one and two (hereafter CP ex #1 and CP ex #2) into evidence. CP ex #1 is
19 a list of personnel EMC believes should be included in, and CP ex #2 is a list of
20 personnel EMC believes should be excluded from, any appropriate bargaining unit.
21 After the introduction of CP ex #1 and #2 into evidence, EMC amended them by de-
22 leting the names of John Dodd, Director, Institute for Habilitative Services, and
23 Melvin Roe, Associate Director Summer Session, from CP ex #2 and adding them to
24 CP ex #1. But for a few exceptions, which will be discussed in detail below, the
25 parties here substantially agree that the personnel listed in CP ex #1 should be
26 included in, and that the personnel listed in CP ex #2 should be excluded from, any
27 appropriate bargaining unit.

28 (A) The evidence on the record establishes that two of the personnel listed
29 in CP ex #1, Ron Dupre, head football coach, and Dana Woodring, assistant football
30 coach, equipment manager and trainer, are on faculty contract and hold the title of
31 lecturer. MEA does not seek to represent any faculty not holding academic rank. MEA
32 contends that those individuals with the title of lecturer do not hold academic

1 rank, and that therefore Dupre and Woodring should be excluded from any appro-
2 priate bargaining unit. The Coalition and EMC disagree with MEA. They contend
3 that lecturer is an academic rank and that therefore Dupre and Woodring should be
4 included in any appropriate bargaining unit.

5 Dr. Stanley Heywood, president of EMC, testified that faculty ranks are those
6 ranks which are listed on the back of faculty contracts with the Board of Regents
7 and that under the existing faculty contract, lecturer is listed as an academic
8 rank.

9 Therefore, it is my opinion that Dupre and Woodring qualify for inclusion into
10 any appropriate bargaining unit under the terms set forth in the MEA petition.

11 (B) EMC believes that directors and/or coordinators listed in CP ex #2 should
12 be excluded from any appropriate bargaining unit because they teach less than
13 half-time, exercise supervisory authority, and possess significant managerial
14 responsibility. The Coalition also believes that directors and/or coordinators
15 listed in CP ex #2 should be excluded from any appropriate bargaining unit with
16 one exception: The Coalition asserts that Victor Signori, director of admissions,
17 director of placement, and assistant to students, should be included in any appro-
18 priate bargaining unit because he holds academic rank; his supervisory duties are
19 limited to the supervision of employees who are not part of any proposed bargain-
20 ing unit; and his responsibilities are student-oriented. MEA asserts that all
21 eight directors and/or coordinators listed in CP ex #2 should be included in any
22 bargaining unit because they all hold faculty rank; their supervisory duties are
23 limited to the supervision of employees who are not part of any proposed bargain-
24 ing unit; and because many of them engage in class-room instruction.

25 The record speaks only to three of the eight directors and/or coordinators
26 listed in CP ex #2 and is silent as to any similarity of duties or other commonality
27 between those three and the other five. Therefore, any ruling as to the inclusion
28 or exclusion of the three the record speaks to will not necessarily apply pro forma
29 to the other five. However, any such ruling may be a helpful guide as to the
30 inclusion or exclusion of the other five directors and/or coordinators.

31 I do not believe it necessary to address all of the above contentions raised
32 by the parties. The examination of one matter--the supervisory status of the

1 directors and/or coordinators--will sufficiently dispose of the issue of whether
2 or not the directors and/or coordinators should be included in or excluded from
3 any appropriate bargaining unit.

4 Signori testified that he has administrative assistants and clerical employees
5 working under him in his office, none of which possess faculty rank. He further
6 testified that he has the authority to recommend either the hiring or the dis-
7 charge of these employees and the administration of EMC has always followed his
8 recommendations.

9 Signori said that the job description for his position, as contained in the
10 faculty handbook for EMC, indicates that he is responsible for the management of
11 the office of admissions, for the hiring and supervision of staff, and for the
12 supervision of office practice and routine.

13 Signori testified that he teaches one class in the summertime but that he
14 considers his principal responsibility to be his function as director of admissions.

15 Charles Kittock is the registrar and director of continuing education. He
16 testified that he supervises six clerical employees; that he may and has recommended
17 their employment or discharge and that the administration of EMC has agreed with
18 all of his recommendations in that regard. None of the employees he supervises,
19 Kittock said, are eligible for inclusion into any of the proposed bargaining units
20 here.

21 Kittock testified that the job description for his position, as contained in
22 the faculty handbook for EMC, indicates that he is to direct the activities and
23 supervise the work of an office of records, to recommend the appointment, pro-
24 motion, and termination of all personnel in the office of the registrar, and to
25 supervise the work of such personnel.

26 Kittock said that although he has taught extension courses in the past, he
27 hasn't had occasion to teach one in the past three years. He also said that he
28 does no class-room teaching.

29 Harry Erickson is the director of the campus school. Erickson testified that
30 as the director of the campus school he supervises seven teachers, one teacher's
31 aide, and a librarian--all employees of a Billings school district--a kinder-
32 garten teacher, a pre-kindergarten teacher, and a secretary--all employees of

1 EMC but without faculty rank--and four other employees. He said that he is in a
2 position to recommend the hiring or discharge of the personnel employed by EMC,
3 that he has done so, and that the EMC administration has never vetoed one of his
4 recommendations. According to Erickson, he performs the same function as a
5 principal of a local school district. Erickson does engage in class-room teaching
6 at EMC, but teaches less than one-half of a normal teaching load of twelve credits.
7 Erickson said he is presently teaching five credit hours, that he taught five
8 credit hours last fall, and that he expects to teach three credit hours this
9 spring.

10 In an earlier unit determination (unit determination no. 60, Dawson Community
11 College), I had occasion to rely on the National Labor Relations Board's decision
12 Adelphi University, 195 NLRB 644, 79 LRRM 1552 (1972). That decision held, in
13 part, that an employee whose principal duties are of the same character as other
14 bargaining unit employees should not be excluded from that unit because of his
15 infrequent exercise of supervisory authority over non-unit employees. They have
16 reached this holding because the infrequent exercise of such authority does not
17 present a conflict of interest within the unit nor does the exercise of such
18 authority ally such an employee with management so as to create a more generalized
19 conflict.

20 However, it is apparent here, from the above facts, that Signori, Kittock,
21 and Erickson engage in more than infrequent supervisory responsibilities. There-
22 fore, I believe that the Adelphi holding which allows for the inclusion of certain
23 supervisors is not applicable here and that Signori, Kittock, and Erickson should
24 be excluded from any appropriate bargaining unit because of their supervisory
25 status.

26 4. EMC contends in its counterpetition that only teaching faculty who teach
27 at least one-half time or more should be included in any appropriate bargaining
28 unit. Neither MEA nor the Coalition feel that this should be a standard for the
29 determination of an appropriate bargaining unit.

30 Evidence on the record indicates that the faculty at EMC engage in many
31 academic duties--of which teaching may only be one. Faculty at EMC may engage
32 in research or public service, participate on faculty committees, advise and

1 counsel students, and perform myriad administrative duties. Moreover, there is
2 no showing that teachers who teach less than one-half time do not share a community
3 of interest with the rest of the faculty. To the contrary, the record does estab-
4 lish that they share a community of interest with the teaching faculty. For
5 example, many of their conditions of employment are similar; they are supervised
6 by the same central administration; they participate in the campus' system of
7 faculty governance, and they closely identify with EMC.

8 Therefore, I conclude that the one-half time teaching criterion set forth
9 in EMC's counterpetition should not be used in determining an appropriate bargain-
10 ing unit.

11 III. CONCLUSION OF LAW

12 A unit composed of all faculty holding rank and a contract with the Montana
13 University System whose current assignment is with Eastern Montana College, ex-
14 cluding the president, vice president, deans, division chairpersons, business
15 manager, and directors and/or coordinators of programs who supervise personnel
16 on more than an infrequent basis, is appropriate for the purposes of collective
17 bargaining within the meaning of section 59-1606(2), R.C.M. 1947.

18 IV. RECOMMENDED ORDER

19 An election by secret ballot shall be conducted as early as possible under
20 the direction and supervision of the Board of Personnel Appeals, among the
21 employees in the bargaining unit described in the Conclusion of Law, above, who
22 were employed at Eastern Montana College on December 26, 1974, to determine whether
23 or not they desire to be represented, for purposes of collective bargaining,
24 by MEA or the Coalition.

25 DATED this 6th day of May 1975.

26
27 Peter O. Maltese
28 Peter O. Maltese
29 Hearing Examiner
30
31
32

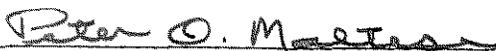
CERTIFICATE OF MAILING

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 the following persons on May 6, 1975:

Emilie Loring, Esq.
Representing Montana Education
Association
1713 Tenth Avenue South
Great Falls, MT 59405

Joseph Duffy, Esq.
Representing Eastern Montana College
Faculty Bargaining Coalition
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Barry Hjort, Esq.
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1231 Eleventh Avenue
Helena, MT 59601


Peter O. Maltese
Hearing Examiner