

1 BEFORE THE BOARD OF PERSONNEL APPEALS

2 IN THE MATTER OF UNIT DETERMINATION NO. 67:)
3 MONTANA FEDERATION OF TEACHERS,)
4 Petitioner,)
5 AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,)
6 Intervenor,)
7 MONTANA EDUCATION ASSOCIATION,)
8 Intervenor,)
9 UNIVERSITY OF MONTANA,)
10 Counterpetitioner,)
11 THOMAS P. HUFF,)
12 Intervenor,)
13 FACULTY OF THE UNIVERSITY OF MONTANA)
14 SCHOOL OF LAW,)
15 Intervenor.)

40-67-1974.

ORDER

16 The Faculty of the University of Montana School of Law
17 (hereinafter law faculty) and the Montana Education Association
18 having filed exceptions to the hearing examiner's report in
19 the above-captioned matter, and due consideration having been
20 given these exceptions, it is ordered that:

21 1. The conclusion of law, as set forth on page fourteen,
22 lines five through fifteen of the hearing examiner's report,
23 be amended to read as follows:

24 A unit consisting of all faculty members of the University
25 of Montana holding academic rank and teaching 0.5 full-time
26 equivalent or more, including department chairmen, library
27 staff holding academic rank, replacement faculty, and law
28 faculty, persons on terminal contract, and excluding the law
29 faculty, the Reserve Officers Training Corp faculty, persons
30 on-terminal-contract, part-time teaching faculty, professional
31 counselors of the Center for Student Development, deans, vice-
32 presidents, president, and other administrative staff members

1 of the University, is an appropriate unit for purposes of
2 collective bargaining under section 59-1606(2), R.C.M. 1947.

3 2. The conclusion of law, as amended above, is adopted
4 as the final conclusion of law by the Board of Personnel Appeals.

5 3. The recommended order, as set forth on page fourteen,
6 lines seventeen through twenty-five of the hearing examiner's
7 report, is adopted as the final order of the Board of Personnel
8 Appeals.

9 DISCUSSION

10 The amended conclusion of law changes the University of
11 Montana faculty bargaining unit in two ways: Persons on ter-
12 minal contract are included in the bargaining unit; Law school
13 faculty are excluded from the bargaining unit.

14 1. Persons on Terminal Contract

15 It is apparent from reading finding of fact D, as set
16 forth on page five, lines eleven through nineteen of the hearing
17 examiner's report, that the hearing examiner intended to in-
18 clude persons on terminal contract in the University of Montana
19 faculty bargaining unit. We have reviewed the record here and
20 can find no evidence which would warrant their exclusion.
21 Accordingly, we have amended the hearing examiner's conclusion
22 of law to conform to his findings of fact.

23 2. Law School Faculty

24 After analyzing the entire record in this matter including
25 pleadings, briefs, transcript, and documentary evidence, we do
26 not believe that the hearing examiner gave enough weight to the
27 following considerations:

28 --The autonomy of the law school. The law school is more
29 autonomous than other schools and departments of the University.
30 Standards promulgated by the American Bar Association and the
31 Association of American Law Schools, the accrediting organizations
32 of the law school, require that the law school possess the primary

1 responsibility for determining its own policy. Indeed, the
2 Board of Regents has endorsed a University statement to the
3 accreditation organizations which, in effect, insures the law
4 school's autonomy. Presently, the dean of the law school has
5 direct access to the University president when he deems it
6 necessary, unlike other schools and departments of the Uni-
7 versity. The University administration has given the law
8 school special latitude in matters of promotion and tenure.
9 Moreover, the law school administers its own admissions pol-
10 icies separate from the rest of the University.

11 --The Special Relationship between the Law School and
12 the Montana Supreme Court. In Montana, the statutorily enacted
13 "diploma privilege" exempts graduates of the law school from
14 taking the bar examination prior to their admission to the
15 Montana Bar. The law school, therefore, has the responsibility
16 to determine the student's moral fitness to practice law and
17 to prepare the student for the practice of law in Montana.
18 However, the Montana Supreme Court has direct control over
19 the law school because of its original, exclusive, and in-
20 herent jurisdiction in all matters involving admission of per-
21 sons to the practice of law in Montana. In the case of Huffman
22 v. Montana Supreme Court, 372 F. Supp. 1175 (D. Mont., 1974)
23 a federal court recognized the Montana Supreme Court's control
24 over the law school. The federal court intimated in one portion
25 of its opinion that that Montana Supreme Court could withdraw
26 the diploma privilege from graduates of the law school if the
27 law school's legal education did not meet the Supreme Court's
28 "expectations" or if the law school graduates did not possess
29 the "requisite proficiency." (Id. at 1183) Thus the law
30 school, unlike other schools and departments of the University,
31 is subject to the direct control of an external branch of
32 state government.

1 --Friction between the University of Montana Faculty
2 Senate and the Law School. The dean of the law school tes-
3 tified that there has been "abrasive dialogue" and "con-
4 frontation" between the faculty senate and the law school
5 in recent years. This friction has revolved around such
6 matters as the law school's admission policies, curriculum,
7 faculty salaries, and use of law student fees (levied after
8 the law school had received special permission from the Board
9 of Regents) specifically and solely for law school purposes.
10 Indeed, a joint accreditation team of the American Bar
11 Association and the American Association of Law Schools noted
12 what they characterized as attempts by the faculty senate to
13 interfere with the operation of the law school. This friction
14 illustrates that the law school could be harmed, as it per-
15 ceives its interests, if it were immersed in a larger faculty
16 bargaining unit.

17 --The Desires of the Law School Faculty. Nine members of
18 the ten person law faculty submitted affidavits with the law
19 faculty's petition in intervention wherein they stated, upon
20 belief and information, that the law faculty does not desire
21 to be included in the University faculty bargaining unit.

22 Thus, with these considerations and the hearing examiner's
23 findings in mind, the law school:

24 (1) is housed in its own building which is used ex-
25 clusively for law school purposes,

26 (2) has its own library managed by a law librarian
27 accountable to the dean of the law school,

28 (3) maintains a different academic calendar than the
29 rest of the University,

30 (4) complies with special accreditation standards which
31 apply only to law schools,

32 (5) has an average faculty salary which is, on the
average, higher than the salaries of other faculty members,

1 (6) possesses a degree of autonomy not enjoyed by other
2 schools and departments of the University, including special
3 latitude in certain personnel matters;

4 (7) maintains a special relationship with the Montana
5 Supreme Court and the Montana Bar,

6 (8) has a recent history of friction with the University
7 faculty senate, and

8 (9) desires to be excluded from the larger faculty bar-
9 gaining unit.

10 Based on the foregoing, we conclude that the law school
11 faculty constitutes an identifiable group of employees who
12 possess a separate community of interest and whose separate
13 community of interest is not "irrevocably submerged" in the
14 broader community of interest they share with the university-
15 wide bargaining unit. The operation of the law school is not
16 so highly integrated as to require a finding that only the
17 universitywide bargaining unit would be appropriate. We do
18 not mean to intimate by our finding here that a separate unit
19 limited to the law school would be inappropriate. We believe
20 that a bargaining unit consisting of the law faculty alone
21 would be appropriate for purposes of collective bargaining.

22 We have been guided in our deliberations by the following
23 decisions of the National Labor Relations Board: Fordham
24 University, 193 NLRB 134, 78 LRRM 1177, (1970); Catholic
25 University, 201 NLRB 145, 82 LRRM 1385, (1973); Syracuse
26 University, 204 NLRB No. 85, 83 LRRM 1373, (1973); New York
27 University, 205 NLRB No. 16, 83 LRRM 1549 (1973); University
28 of San Francisco, _____ NLRB _____, 84 LRRM 1403 (1973); and
29 University of Miami, _____ NLRB _____, 87 LRRM 1635 (1974).
30 Although we are not bound by this precedent, we recognize
31 the value of their experience.

32 We have not addressed all exceptions raised by the law

1 faculty although we have addressed those exceptions necessary
2 to the disposition of this matter.

3 Dated this 15th day of December, 1975.

5 BOARD OF PERSONNEL APPEALS

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9 Francis J. Raucci
Chairman

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CERTIFICATE OF MAILING

1
2 I, ROBERT R. JENSEN, hereby state and certify that I mailed a true and
3 correct copy of the foregoing ORDER of the Board of Personnel Appeals on the
4 15th day of December, 1975 to the following persons:

5 Thomas P. Huff
6 Department of Philosophy
7 University of Montana
8 Missoula, Mt 59801

9 Joseph W. Duffy
10 Attorney
11 McKittrick & Duffy
12 315 Davidson Bldg.
13 Great Falls, Mt 59401

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18 Hugh V. Schaefer
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20 University of Montana School of Law
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25 1231 Eleventh Avenue
26 Helena, Mt 59601

27 John Van de Wetering
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Robert R. Jensen
Executive Secretary
Board of Personnel Appeals

1 BEFORE THE BOARD OF PERSONNEL APPEALS

2
3 IN THE MATTER OF UNIT DETERMINATION NO. 67:)
4 MONTANA FEDERATION OF TEACHERS,)
5) Petitioner,)
6 AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,) FINDINGS OF FACT,
7) Intervenor,) CONCLUSIONS OF LAW,
8 MONTANA EDUCATION ASSOCIATION,) AND ORDER AS
9) Intervenor,) RECOMMENDED TO
10 UNIVERSITY OF MONTANA,) THE BOARD OF
11) Counterpetitioner,) PERSONNEL APPEALS
12 THOMAS P. HUFF,)
13) Intervenor,)
14 FACULTY OF THE UNIVERSITY OF MONTANA)
15 SCHOOL OF LAW,)
16) Intervenor.)

17 I INTRODUCTION

18 On December 30, 1974, the University Teachers Union, Local No. 497 of the
19 American Federation of Teachers, (herein called AFT) filed a petition for unit
20 determination and election seeking to represent certain employees of the
21 University of Montana (herein called UM or University).¹ The Board of Personnel
22 Appeals directed a hearing before Reverend Emmett O'Neill on February 11, 1975.
23 This hearing was recessed and reconvened on March 10, 1975 at which time additional
24 testimony was heard. Thereafter, AFT, AAUP, MEA, and the UM filed briefs.

25 II EVIDENTIARY OBJECTIONS

26 During the February 11th portion of the hearing, AFT, AAUP, MEA, and the UM
27 objected to the admission of law faculty exhibit A and law faculty exhibits A-1

28
29 ¹The University of Montana Chapter of the American Association of University
30 Professors (herein called AAUP) and the Montana Education Association (herein called
31 MEA) intervened on the basis of a showing of interest. The faculty of the University
32 of Montana School of Law (herein called law faculty) intervened for the purpose of
excluding the law faculty from any UM bargaining unit. Thomas P. Huff, a faculty member
at the UM and the representative of a group of faculty members, intervened for the
purpose of speaking to the issue of collective bargaining at the UM. The University
filed a counter-petition and disagreed with the appropriateness of the bargaining
unit proposed by AFT.

1 through A-11 as evidence. Law faculty exhibit A is an affidavit of Robert E.
2 Sullivan, Dean of the University of Montana School of Law. Exhibits A-1 through
3 A-11 are various pieces of documentary evidence which are attached to exhibit A.²
4 The parties objected to law faculty exhibit A on the basis that they did not have
5 an opportunity, at the time of their objection, to cross-examine Dean Sullivan.
6 The parties objected to law faculty exhibits A-1 through A-11 on the basis that
7 the law faculty did not lay a proper foundation for their admission. The bases
8 for these objections, with one exception, were removed during the March 10th portion
9 of the hearing when Dean Sullivan testified at length and all parties were given
10 an opportunity to cross-examine him. The exception is the original law faculty
11 exhibit A-10--an information sheet which contained a general description of the
12 objectives of the law school. There is nothing in the record to show that the
13 law faculty laid a proper foundation for this exhibit at either the February 11th
14 or March 10th portion of the hearing. Therefore, the original law faculty exhibit
15 A-10 shall be excluded from the record here and law faculty exhibits A and A-1,
16 A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, and A-11, as designated in the
17 March 10th portion of the hearing, shall be admitted into the record as evidence.

18 The AFT, AAUP, MEA, and the UM also objected to the admission of law faculty
19 exhibit C--minutes of faculty senate meetings--as evidence on the grounds that a
20 proper foundation had not been laid for its admission. This objection is sus-
21 tained. There is nothing on the record to show that a proper foundation has been
22 laid for this exhibit. Therefore, it shall be excluded from the record here.

23 The AFT also objected to the admission of law faculty exhibits D, E, and F
24 as evidence, but because these objections were withdrawn during the March 10th
25 portion of the hearing, they will not be addressed here.

26 The UM objected to the admission of AFT exhibit 2--a handwritten document
27 listing courses taught by Dr. Fred Weldon of the Center for Student Development
28

29 ²During the March 10th portion of the hearing, law faculty exhibit A-6 was
30 redesignated exhibit A-10, exhibit A-7 was redesignated exhibit A-6, exhibit A-9
31 was redesignated exhibit A-7, and exhibit A-11 was redesignated exhibit A-9, by
32 the law faculty. What was designated exhibit A-10 during the February 11th
portion of the hearing was not redesignated during the March 10th portion of
the hearing and therefore the original law faculty exhibit A-6 and A-10 are
both presently designated as exhibit A-10.

1 and purportedly prepared by him--on the basis that a proper foundation had not
2 been laid for its admission and that the maker of the document was not available
3 for examination. Because Dr. Weldon did not testify at the hearing, the UM's
4 objection is sustained. Therefore, AFT exhibit 2 will be excluded from the
5 record here.

6 III FINDINGS

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

9 A. The AFT proposes a bargaining unit consisting of all University faculty
10 members (0.5 full-time equivalent, or greater) including department chairmen and
11 including those faculty holding the rank of instructor, lecturer, assistant professor,
12 associate professor, or professor, and in addition the library staff having faculty
13 status and professional counselors of the Center of Student Development. AFT
14 proposes that the administrative staff of the University, including the deans,
15 the vice-presidents, and the president, should be excluded from the bargaining unit.

16 An examination of the petitions and briefs filed by the parties, and the
17 evidence adduced at the hearing, shows that the parties differ as to what would
18 be an appropriate bargaining unit. These differences raise the following issues:

- 19 1. Whether an appropriate bargaining unit should include faculty members
20 of all six units of the Montana University System;
- 21 2. Whether an appropriate bargaining unit should include faculty on terminal
22 contract;
- 23 3. Whether an appropriate bargaining unit should include part-time faculty;
- 24 4. Whether an appropriate bargaining unit should include replacement
25 faculty;
- 26 5. Whether an appropriate bargaining unit should include deans;
- 27 6. Whether an appropriate bargaining unit should include professional
28 counselors; and
- 29 7. Whether an appropriate bargaining unit should include law school
30 faculty members.

31 B. In its counterpetition the UM did not waive the position propounded by
32 the Commissioner of Higher Education, as representative of Northern Montana College,

1 in unit determination number fifty-five. The Commissioner's position in unit
2 determination number fifty-five was that a bargaining unit consisting of the
3 faculty members of a single campus of the Montana University System is in-
4 appropriate, and that an appropriate bargaining unit should consist rather of
5 the faculty members of all six units of the Montana University System. I take
6 notice that since unit determination number fifty-five the Board of Personnel
7 Appeals has certified three labor organizations as the exclusive representatives
8 of single-campus bargaining units. These bargaining units are located at Northern
9 Montana College, Western Montana College, and Eastern Montana College. The Board's
10 certification of these labor organizations obviously disposes of the single-campus,
11 multi-campus unit issue which existed during the pendency of the hearing in this
12 matter.

13 C. The record shows that AFT, AAUP, MEA, and the UM stipulated that the Reserve
14 Officers Training Corps faculty be excluded and that the librarians with academic rank
15 be included in any appropriate bargaining unit. No party opposed these stipulations.
16 Therefore, the Reserve Officers Training Corps faculty shall be excluded and the
17 librarians with academic rank included in the bargaining unit to be determined here.

18 D. Although the AAUP proposes that "otherwise eligible persons who are on
19 terminal contract" be excluded from any appropriate bargaining unit, neither they
20 nor any other party addressed the issue of whether these persons should be excluded
21 during the hearing. Thus, there is no evidence to show that otherwise eligible
22 persons on terminal contract should be excluded from any appropriate bargaining
23 unit. Accordingly, otherwise eligible persons on terminal contract will not be
24 excluded from the bargaining unit to be determined here.

25 E. The MEA expressly proposes that part-time teaching faculty should be in-
26 cluded in any appropriate bargaining unit. No other party to these proceedings has
27 addressed the issue of whether part-time teaching faculty should be included in any
28 bargaining unit although the AFT, AAUP, and the UM propose that faculty members teach-
29 ing 0.5 full-time equivalency or more should be included and therefore imply that
30 faculty members teaching less than 0.5 full-time equivalency be excluded.³

31
32 ³Presumably, a faculty member teaching less than 0.5 full-time equivalency
would be a part-time teaching faculty member.

1 MEA, as the sole proponents for the inclusion of part-time teaching faculty,
2 has the burden to show by a preponderance of evidence that part-time teaching
3 faculty should be included in any appropriate bargaining unit. However, they
4 introduced no evidence during the course of the hearing which supported their
5 position. In fact, the only piece of evidence which I can glean from the record
6 which may relate to part-time teaching faculty tends to show that part-time
7 teaching faculty may not share a community of interest with their full-time
8 counterparts. Evidence was presented by AAUP which established that faculty
9 members teaching less than 0.5 full-time equivalence, unlike those teaching 0.5
10 full-time equivalence or more, are not eligible to vote in faculty senate
11 elections nor eligible to be elected to the faculty senate. Accordingly, I
12 can only conclude that MEA has not sustained their burden in showing that part-
13 time faculty should be included in any bargaining unit. Part-time teaching
14 faculty will not, therefore, be included in any bargaining unit to be determined
15 here.

16 F. The UM expressly proposes that "one-year replacement faculty" be excluded
17 from any appropriate bargaining unit. The MEA contends that replacement faculty
18 should be included in any appropriate bargaining unit. According to Dr. Richard
19 C. Bowers, President of the University of Montana, the replacement faculty are
20 visiting faculty who substitute for permanent faculty members on sabbatical leave
21 or on leave without pay.

22 Dr. Bowers testified that the replacement faculty, unlike the permanent
23 teaching faculty, are appointed for a limited term of one year and are neither
24 eligible for tenure nor subject to the individual contract rules and regulations
25 which govern tenure. And because of their limited one year term, the replacement
26 faculty cannot serve the complete three year term of the faculty senator. Thus,
27 their ability to fully participate in faculty governance could be impaired.

28 However, the evidence shows that a community of interest does exist between
29 the permanent teaching faculty and the replacement faculty. The testimony of
30 Dr. Bowers established that the permanent teaching faculty and the replacement
31 faculty are entitled to the same types of fringe benefits. And according to
32 Dr. Bowers, the replacement faculty, like the permanent teaching faculty, can

1 vote in faculty senate elections and can participate on faculty committees.
2 Their duties, as well as their supervision, are, according to Dr. Bowers,
3 generally the same as the permanent faculty they replace. Therefore, replacement
4 faculty will be included in any bargaining unit to be determined here.

5 G. Only one party--Thomas P. Huff--contends that deans should be included
6 in any appropriate bargaining unit. All other parties who have addressed this
7 issue--including all labor organizations and the employer--agree that deans
8 should be excluded.

9 Huff, as representative of a group of faculty members, contends that the
10 deans should be included because their supervisory responsibilities do not
11 necessarily exceed the supervisory responsibilities of department heads--a group
12 of employees no party objects to being included in any appropriate bargaining unit.

13 Dr. Bowers testified that "Although individuals holding deans positions also
14 have faculty rank, they are clearly more involved in supervisory and managerial
15 activities than in the traditional faculty responsibilities of teaching, research,
16 and public service. Also, collectively, they form the primary advisory body, the
17 deans' council, to the chief academic officer of the University. And they are
18 part, therefore, of the academic management team."

19 Dr. Bowers further elaborated that the deans' council had been in operation
20 for the past year and meets on a regular basis with the academic vice-president
21 and occasionally with the president on administrative matters such as, for example,
22 the coordination of the academic administration.

23 During cross-examination by Mr. Huff, Dr. Bowers said it was possible for
24 some of the department heads--most likely those in the larger departments--to
25 possess as much if not more supervisory and managerial responsibility than certain
26 deans. However, this fact does not change the deans' supervisory-managerial
27 orientation. They are still supervisory and managerial employees and therefore
28 must be excluded from the bargaining unit to be determined. Moreover, the fact
29 that the labor organizations and the public employer oppose the deans inclusion
30 must be given weight. The labor organizations, after all, have intervened on
31 the basis of a showing of interest and may eventually be charged with the
32 responsibility of representing the entire bargaining unit. And the employer has

1 an obvious interest in seeing that supervisory-managerial employees are excluded.

2 H. The petitioner, AFT, and the MEA propose thatt the professional counselors
3 of the Center for Student Development should be included in any appropriate bar-
4 gaining unit. AAUP and the UM contend that they should be excluded.

5 The Center for Student Development consists of seven professional counselors.
6 The counselors' primary function is different from the primary function performed
7 by the faculty members. Testimony at the hearing established that the counselors'
8 primary function is to counsel students concerning personal problems, career
9 choices, and vocational placement whereas the faculty's primary function is to
10 teach, conduct research, and perform public services. This difference is under-
11 scored by the fact that the Center for Student Development is part of the
12 administrative--not academic--arm of the University.

13 There was testimony from Carolyn Jennings, a counselor at the Center for
14 Student Development, that counselors do, in fact, engage in the same types of
15 activities as faculty members, i.e. teaching, research, and public service.
16 However, Dr. Bowers testified that although counselors may engage in teaching,
17 research, and public service, it is not necessary that they perform these
18 activities, as it is with faculty members. Indeed, the testimony of Ms. Jennings
19 established that, normally, counselors do not teach for credit nor are their
20 offerings listed in the University catalogue. Moreover, according to Ms. Jennings,
21 counselors are required to perform these activities on their own time. The
22 counselors are either required to takeanannual leave for the time expended on
23 these activities or to be on a leave without pay status--unless, of course,
24 these activities are performed outside of their regular duty hours.

25 The counselors are neither eligible to vote in faculty senate elections
26 nor eligible to serve in the faculty senate. Thus, they are denied a voice in
27 the central body for faculty participation in the governance of the University.
28 They are also denied the use of the faculty senate's grievance procedure and
29 have recourse instead to a grievance procedure established for non-academic
30 employees of the University.

31 There are other marked differences between the counselors and the faculty.
32 Testimony adduced at the hearing shows that counselors, unlike faculty, do not

1 hold academic rank; that counselors are not eligible for tenure as are faculty
2 members; that counselors are classified state employees within the state classi-
3 fication and pay plan whereas faculty members are not and that therefore the
4 counselors' wages are affected by operation of the state classification and wage
5 plan; that counselors are on a fiscal year contract while faculty members are on
6 an academic year contract; and finally that many fringe benefits set by the
7 board of regents are applicable to faculty but not to counselors, as for example,
8 sabbatical leave.

9 Therefore, the professional counselors of the Center for Student Development
10 will be excluded from any bargaining unit to be determined here.

11 All labor organizations and the UM contend that the law faculty should be
12 included in any appropriate bargaining unit. The law faculty contends that they
13 should be excluded.

14 1. The labor organizations and the UM assert that the evidence shows that
15 the law faculty share a community of interest with the rest of the University
16 faculty. In this regard, evidence adduced at the hearing established the
17 following:

18 The law faculty bear the standard academic ranks that other faculty members
19 bear and engage in the same primary functions of teaching, research, and public
20 service.

21 The law faculty enjoys the same tenure rights other faculty members enjoy,
22 and must meet the same requirements in order to be eligible for tenure.

23 The law faculty, like other faculty members of the University, fully
24 participate in faculty governance. They are eligible to vote in faculty senate
25 elections and to serve in the faculty senate. They are also eligible to serve
26 on faculty committees.

27 Promotion procedure and guidelines applicable to faculty members of the
28 University of Montana are also generally applicable to the law school. These
29 guidelines are contained in the Policy and Procedure Faculty Advancement document.
30 The dean of the law school testified that the law school attempts to accomodate
31 this document.

32 The supervision of the law school is similar to the supervision of other

1 faculty members in that the responsibility is first to the dean, then to the
2 academic vice-president, and then to the president.

3 Board of Regents policy, as implemented by the University administration,
4 is applicable to the law faculty as well as to other faculty members of the
5 University.

6 There is some faculty interchange between the law school and the other schools
7 and departments of the University. There have been a few instances where the law
8 faculty has participated, on an informal basis, in seminars or taught classes in
9 other schools and colleges of the University. At the time of the hearing, a
10 professor of philosophy was teaching an experimental philosophy of law course
11 to law students. And the dean of the law school coordinated an experimental,
12 inter-disciplinary, environmental seminar.

13 2. Additional evidence established the following:

14 Like other schools of the University, the law school is housed in its own
15 separate building on the University of Montana campus. The law building is,
16 however, used exclusively by the law school. The law school also has its own
17 library which is managed by a law librarian accountable to the dean of the law
18 school.

19 Differences exist between the academic calendar of the law school and the
20 rest of the University. The law school operates under a semester calendar while
21 the remainder of the University operates under a quarter calendar.

22 The salaries of the law school are, on the average, higher than the salaries
23 of other faculty members. The law school's competition with the private market
24 place for its faculty members accounts, in part, for the higher salaries.

25 The dean of the law school has received permission, in a few special cases,
26 to grant tenure to a member of the law faculty earlier than tenure rules and
27 regulations specify. The dean, however, has never exercised this authority.

28 Law faculty promotion is generally more rapid than in other parts of the
29 University. There have been occasions where promotion recommendations made by
30 the dean of the law school were not concurred with by faculty committees charged
31 with review of promotion recommendations. The dean's recommendations were none-
32 theless approved by the University administration.

1 The law school maintains a liaison with the practicing bar in Montana through
2 its Board of Visitors and through its continuing legal education program. The
3 Board of Visitors consists of legal practitioners in the state of Montana who meet
4 periodically with the dean and faculty of the law school and investigates the
5 operation of the law school. They may offer advice and recommendations to the
6 law school. The law school sponsors a continuing legal education program,
7 in concert with the Montana Bar Association, for lawyers in the state.

8 The law school is responsible to special accreditation standards. The law
9 school is accredited by the American Bar Association (ABA) and the Association
10 of American Law Schools (AALS). These organizations promulgate accreditation
11 standards which apply exclusively to law schools. However, testimony adduced at
12 the hearing established that the psychology department of the University is also
13 responsible to special accreditation standards.

14 Standards promulgated by the accrediting organizations require that the law
15 school possess the primary responsibility for determining its own policy. A
16 joint accreditation team of the ABA and the AALS, which recently visited the law
17 school, called attention to violations of these standards. The accreditation
18 team noted a proposed reorganization of the University whereby the dean of the
19 law school was to be placed under the dean of graduate studies, who in turn was
20 to be placed under the dean of graduate studies, who in turn was to be under the
21 academic vice-president. The accreditation team feared that the new reorganization
22 would remove the law school from access to the University president, and would
23 increase interference with the operation of the law school. The accreditation
24 team also noted what they characterized as attempts by the faculty senate to
25 interfere with the operation of the law school in matters which related to the
26 law school's student admission policy, curriculum, and, faculty salaries. The
27 University addressed a statement to the accreditation organizations which stated
28 that certain steps would be taken to observe the accreditation standards. For
29 example, the dean of the law school was to be given direct access to the University
30 president when he deemed it necessary. The Board of Regents passed a resolution
31 which approved this statement.

32 The law school provides special clinical education to law students whereby

1 the students, under the supervision of the law faculty, assume a virtual attorney-
2 client relationship. I note that under the student practice rule recently adopted
3 by the Supreme Court of Montana, students will actually practice law and will be
4 subject to the same standards of professional ethics applicable to other fully
5 qualified lawyers. Testimony of the chairman of the psychology department showed
6 that the psychology department, too, has clinical instruction for its students
7 under the supervision of doctor psychologists. The psychology students are also
8 bound by canons of professional ethics in their clinical instruction.

9 It is apparent to me, from an analysis of the above facts, that the law school
10 shares a community of interest with the rest of the University. It may be said
11 that they share a more specialized community of interest among themselves, and
12 I believe that the evidence amply demonstrates this, but the same could probably
13 be said of any department or school of the University. In any event, my purpose
14 here, according to section 59-1606(2), R.C.M. 1947 is to determine the unit
15 appropriate for the purpose of collective bargaining. That section of the law
16 does not require that I determine the most-appropriate bargaining unit. See
17 Unit Determination No. 55, Northern Montana College, p. 7.

18 Moreover, the paramount consideration in determining an appropriate bargaining
19 unit is the identification of the bargaining unit which "assures employees the
20 fullest freedom in exercising" their collective bargaining rights. Section
21 59-1606(2). In this regard, I note that all labor organizations seek to include
22 the law school in the bargaining unit; No labor organization seeks to represent
23 the law school separately. Therefore, if I recognize the law school's plea to be
24 excluded from the bargaining unit, I would effectively preclude the law faculty's
25 exercise of their collective bargaining rights. This, in my opinion, contravenes
26 the intent of section 59-1606(2). Therefore, the law faculty will be included
27 in any appropriate unit to be determined here.

28 IV CONCLUSION OF LAW

29 A unit consisting of all faculty members of the University of Montana
30 holding academic rank and teaching 0.5 full-time equivalent or more, including
31 department chairmen, library staff holding academic rank, replacement faculty,
32 and law faculty, and excluding the Reserve Officers Training Corp faculty, persons

1 on terminal contract, part-time teaching faculty, professional counselors of the
2 Center for Student Development, deans, vice-presidents, president, and other
3 administrative staff members of the University, is an appropriate unit for purposes
4 of collective bargaining under section 59-1606(2), R.C.M. 1947.

5 V RECOMMENDED ORDER

6 Accordingly, an election by secret ballot shall be conducted as early as
7 possible under the direction and the supervision of the Board of Personnel Appeals,
8 among the employees in the bargaining unit described in the Conclusion of Law,
9 above, who were employed at the University of Montana on December 30, 1974, to
10 determine whether or not they desire to be represented for purposes of collective
11 bargaining, by the labor organizations who have intervened on the basis of a
12 showing of interest here.

13
14 Notice: By practice of the Board of Personnel Appeals, exceptions may be filed
15 to these Findings of Fact, Conclusion of Law, and Recommended Order within
16 twenty days service thereof. If no exceptions are filed within this period of
17 time, the Recommended Order shall become a Final Order. Exceptions shall be
18 addressed to the Board of Personnel Appeals, 1417 Helena Avenue, Helena, Montana
19 59601.

20
21 DATED this 24 day of October 1975.

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26 BOARD OF PERSONNEL APPEALS

27
28 BY: Emmett P. O'Neill
29 Father Emmett O'Neill
30 Hearing Examiner
31
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