

8/16/74

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
MONTANA, IN AND FOR THE COUNTY OF LEWIS & CLARK.

MONTANA PUBLIC EMPLOYEES
ASSOCIATION,

No. 37997

Petitioner,

40-8-74

Vs.

OPINION and ORDER

MONTANA STATE UNIVERSITY,

RECEIVED

Respondent,

AUG 19 1974

LABORER'S INTERNATIONAL UNION OF NORTH
AMERICA, AFL-CIO, LOCAL # 1334,

BOARD OF PERSONNEL APPEALS

Intervenor.

On the application of the Intervenor, this Court issued a temporary restraining order an order to show cause directed to the Board of Personnel Appeal restraining an election to be held by the Board to determine the collective bargaining agent for the physical plant employees of Montana State University.

This Court has heard the oral argument on the order to show cause and has considered the briefs of the parties and this cause was submitted for decision.

The underlying issue in this case is as to which organization, the Montana Public Employees Association or the Laborers International Union of North America is to be the collective bargaining agent for the physical plant employees at Montana State University.

The Board of Personnel Appeals ordered an election to be held to determine the underlying issue. This election was called in pursuance to the Collective Bargaining for Public Employees Act. This act provides for administrative procedures to be effected by the Board of Personnel Appeals.

Section 59-1606, R.C.M. 1945 of the Collective Bargaining Act Subdivision 1 (a) provides that

"Whenever in accordance with such rules as may be

1 prescribed by the board, a petition has been
2 filed:

3 (a) by an employee or group of
4 employees or any labor organization acting
5 in their behalf alleging that thirty (30)
6 percent of the employees ***

7 (ii) assert that the labor organization
8 which has been certified or is currently being
9 recognized by the public employer as bargaining
10 representative is no longer the representative of
11 the employees in the unit, *** the board or agent
12 of the board shall investigate the petition, and if
13 reasonable cause to believe that a question of
14 representation exists, it shall provide for an
15 appropriate hearing upon due notice. If the board
16 or agent of the board finds that there is a
17 question of representation, it shall direct an
18 election by secret ballot to determine whether, and
19 by which labor organization the employees desire to
20 be represented or whether they desire to have no
21 labor organization represent them and shall certify
22 the results thereof.***"

23 The facts appear as follows: On March 1, 1974, the Montana
24 Public Employees Association filed a decertification petition.

25 On March 29, 1974, the Laborer's International Union of North
26 America filed a motion to intervene and dismiss.

27 On April 2, 1974, the Montana Public Employees Association
28 filed a "re-petition for de-certification."

29 On May 30, 1974, the Laborer's International Union of North
30 America filed a motion to dismiss the April 2nd re-petition.

31 On June 10, 1974, the Laborer's International Union of North
32 America filed a motion for hearing.

1 On June 14, 1974, the Montana Public Employees Association
2 amended its petition for decertification.

3 On June 17, 1974, the Board denied the Laborer's International
4 Union of North America's May 30, 1974 motion to dismiss and the June
5 10, 1974 motion for a hearing.

6 Thereafter the Board gave notice of election to be held June 27,
7 1974.

8 The Laborer's International Union of North America have asked
9 this Court to dismiss the petition for decertification of the Montana
10 Public Employees Association as being founded on improper or illegal
11 procedure or, in the alternative, order a hearing before the Board of
12 Personnel Appeals.

13 The Board of Personnel Appeals contends that this Court lacks
14 jurisdiction in this matter because the order of the Board is not a
15 final order for which review may be had under Section 82-4216, R.C.M.
16 1947.

17 Section 82-4216 provides as follows:

18 "(1) a person who has exhausted all administrative
19 remedies and who is aggrieved by a final decision
20 in a contested case is entitled to judicial review
21 under this act. This section does not limit
22 utilization of or the scope of judicial review
23 available under or other means of review, redress,
24 relief, or trial de novo provided by statute. A
25 preliminary, procedural, or intermediate agency
26 action or ruling is immediately reviewable if review
27 of the final agency decision would not provide an
28 adequate remedy."
29

30 In this case the final order of the Board which would aggrieve
31 the Laborer's International Union of North America would be an order
32 of the Board under the powers granted to it by Section 59-1606, R.C.M.

1 1947 that the employees would be de-certified from the Laborer's
2 International Union of North America. In making that decision the
3 Board by the same statute is by the legislature directed to consider
4 such factors as "common unity of interest, wages, hours, fringe
5 benefits and other working conditions of the employees, the history of
6 collective bargaining, common supervision, common personnel policies,
7 extent of integration of work functions and interchange among
8 employees affected, and the desires of the employees" Section 59-1606,
9 Subsection 2.

10 The Laborer's International Union of North America relies for
11 this proceeding on the latter language of Section 82-4216 wherein it is
12 stated as follows:

13 "A preliminary, procedural or intermediate
14 agency action is immediately reviewable if
15 review of the final agency decision would
16 not provide an adequate remedy."

17 It is the view of this Court that all matters of which the
18 Laborer's International Union of North America complains are reviewable
19 by the District Court on appeal from the final decision of the Board.

20 It is therefore

21 ORDERED:

22 1. That the temporary restraining order heretofore
23 issued be and is hereby dissolved, and

24 2. That the petition of Laborer's International
25 Union of North America be and is hereby dismissed.

26 Dated this 16th day of August, 1974.

27
28 PETER G. MELOY
29 District Judge
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1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
2 STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARK

3 MONTANA PUBLIC EMPLOYEES
4 ASSOCIATION,
5 Petitioner,

6 MONTANA STATE UNIVERSITY,
7 Respondent,

8 LABORER'S INTERNATIONAL UNION OF
9 NORTH AMERICA, AFL-CIO, LOCAL #1334,
10 Intervenor.

No. 37997

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER.

11 The Petitioner, Laborer's International Union of North America, AFL-CIO,
12 Local #1334 (Hereinafter the Laborers seeks judicial review of an order of the
13 Board of Personnel Appeals in a representation proceeding and a stay of an
14 election scheduled by the Board. A hearing was held on July 3, 1974 in which
15 the Laborers and the Board orally argued their positions. Subsequent thereto,
16 counsel submitted briefs to the Court.

17 The Court having considered the oral argument, and the pleadings and briefs
18 submitted in this matter, makes the following Findings of Fact and Conclusions
19 of Law:

20 FINDINGS OF FACT

21 1. The Board of Personnel Appeals received a decertification petition
22 and authorization cards from the Montana Public Employees Association on March 1,
23 1974 for the purpose of decertifying the Laborers as the representatives of
24 certain employees of Montana State University. MPEA's decertification petition
25 was refiled on April 2, 1974 and the description of the unit to be decertified
26 was amended by MPEA on June 14, 1974 and by the Board orally at a pre-election
27 conference held on June 18, 1974.

28 2. The Laborers filed a motion to dismiss MPEA's petition on May 30, 1974
29 and on June 10, 1974 the Laborers filed a motion for hearing.

30 3. The Laborers's motion to dismiss and motion for hearing were dismissed
31 by order of the Board dated June 17, 1974.

32 4. The Board of Personnel Appeals ordered that an election be held to
determine the representative for collective bargaining purposes desired by certain
employees of Montana State University presently represented by the Laborers.

1 5. The Laborers filed a petition under section 82-4216, R.C.M., 1947
2 seeking judicial review of the Board's June 17, 1974 order denying the Laborer's
3 motion to dismiss and motion for hearing, and a stay of the Board's election
4 order.

5 6. MAC 24-3.8(18)-S8260(12) provides that "any party may file with the
6 Board objections to the conduct of the election or conduct affecting the results
7 of the election." The Laborers have not availed themselves of this remedy.

8 CONCLUSIONS OF LAW

9 The Laborers have not exhausted all administrative remedies available
10 within the Board of Personnel Appeals and are not aggrieved by a final decision
11 in a contested case and therefore this Court does not have jurisdiction to jud-
12 icially review the Board's June 17th order.

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