

12/18/74



State of Montana

Board of Personnel Appeals

1406 Gallatin Avenue, Helena, Montana 59601

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JOSEPH B. REBER  
FRANCIS J. RAUCCI

December 18, 1974

Harold McLaughlin, Director  
Cascade County Welfare Department  
109 9th Avenue South  
Great Falls, MT 59401

Dear Mr. McLaughlin:

Enclosed is a stipulation signed by all parties to unit determinations for employees of the Department of Social and Rehabilitation Services in the county welfare departments, which dissolves the Board of Personnel Appeals orders which had established bargaining units for individual county welfare departments.

Also, enclosed is the recent Order of the Board which establishes bargaining units for county welfare departments based on employees' choice of bargaining representatives. This recent order replaces the dissolved orders referred to in the stipulation.

Sincerely,

*Robert R. Jensen*

Robert R. Jensen  
Executive Secretary

RRJ:gk

ENCLOSURES

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THE UNDERSIGNED PARTIES STIPULATE AND AGREE AS FOLLOWS:

That the appropriate bargaining units designated by orders of the Board of Personnel Appeals dated March 12, 1974 and May 15, 1974, which are comprised of "all eligible employees of the Cascade County Welfare Department", "all eligible employees of the Lewis and Clark Welfare Department", and "all eligible employees of the Missoula Welfare Department", shall be realigned into new bargaining units as described by the Board of Personnel Appeals in its unit determination order of December 16, 1974. The new bargaining order shall be effective *nunc pro tunc*.

DATED this 16th day of December 1974.

Montana Council No. 9, American Federation of State, County, and Municipal Employees, AFL-CIO.

BY: George L. Hammond

Montana Public Employees Association

BY: Thomas Schreiber

Montana Department of Social and Rehabilitative Services,

BY: Theodore Carkulis

BEFORE THE BOARD OF PERSONNEL APPEALS

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

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.

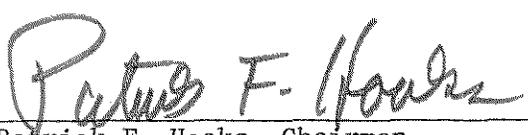
7 2. Appropriate units for collective bargaining purposes are: One unit for  
8 all county welfare departments the employees of which express a desire to be  
9 members of AFSCME; one unit for all county welfare departments the employees  
10 of which express a desire to be members of MPEA; and such 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, Chairman  
Board of Personnel Appeals

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DATED this 16th day of December 1974.

Montana Council No. 9, American Federation of State, County, and Municipal Employees, AFL-CIO,

BY: George L. Hammond

Montana Public Employees Association

BY: James Schauder

Montana Department of Social and Rehabilitative Services,

BY: Heaven Curulis

BEFORE THE BOARD OF PERSONNEL APPEALS

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IN THE MATTER OF:	)	
	)	
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO,	)	FINDINGS OF FACT,
Complainant,	)	CONCLUSIONS OF LAW,
	)	AND ORDER
-vs-	)	
	)	
MONTANA PUBLIC EMPLOYEES ASSOCIATION,	)	
Defendant.	)	

The above-entitled matter came on for hearing before me as hearing examiner for the Board of Personnel Appeals (hereafter Board) on October 28, 1974 pursuant to an objection to conduct affecting the results of an election filed by Donald R. Judge, field representative of the American Federation of State, County, and Municipal Employees, AFL-CIO (hereafter AFSCME). Copies of the objection and notice of hearing were duly served on both parties. AFSCME was represented by Donald R. Judge, Helena, Montana and Montana Public Employees Association (hereafter MPEA) was represented by Thomas E. Schneider, executive director of MPEA.

Upon the entire record in this case I make the following findings of fact and conclusions of law:

FINDING OF FACTS

1. I judicially note that on December 20, 1973 AFSCME filed a petition for unit determination and election with the Board seeking to represent employees of the Cascade County Welfare Department (hereafter Department) and that MPEA filed a petition of intervention with the Board seeking to represent the same employees.

2. I judicially note that the Board conducted a representative election among Department employees on April 29, 1974 and that the results of that election were as follows:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES . . . . .	.23
MONTANA PUBLIC EMPLOYEES ASSOCIATION. . . . .	.19
NO REPRESENTATION . . . . .	4

Because no labor organization received a majority of the votes cast by the employees, the Board conducted a runoff election on September 23, 1974. The results of that

1 election were as follows:

2 MONTANA PUBLIC EMPLOYEES  
ASSOCIATION . . . . .30

3 AMERICAN FEDERATION OF STATE,  
4 COUNTY AND MUNICIPAL EMPLOYEES . . . . .17

5 3. After the runoff election AFSCME filed a letter with the Board (which  
6 was characterized as an objection to conduct affecting the results of an election  
7 in the opening paragraph of this determination) which expressed AFSCME's allegations  
8 that MPEA's campaign literature for the September 23rd runoff election contained  
9 "deliberately false and misleading information" and that MPEA's campaign literature  
10 was distributed to the employees so soon prior to the election that AFSCME did not  
11 have a sufficient amount of time to rebut the false and misleading information.  
12 AFSCME's letter implies that this campaign literature affected the September 23rd  
13 election.

14 In its letter, AFSCME prays that the September 23rd election be set aside,  
15 that a new election be held, and that MPEA publicly acknowledge that it distri-  
16 buted campaign literature that contained false and misleading information. (Com-  
17 plainant's Exhibit #3.)

18 4. At least two pieces of campaign literature were distributed by MPEA to  
19 Department employees just prior to the election. One of the Department employees  
20 testified that she received at least two pieces of MPEA's campaign literature  
21 through the mails three or four days prior to the election. The executive director  
22 of MPEA testified that the campaign literature in question was mailed from MPEA's  
23 office approximately a week before the election although he was not sure. (Tran-  
24 script, pages 6, 7, and 30.)

25 One piece of the campaign literature was a one page mimeographed circular.  
26 AFSCME contends in their letter to the Board that two statements in this circular  
27 are either false or misleading. The first statement that AFSCME objects to is a  
28 statement that immediately follows a large handwritten statement "Doesn't it  
29 seem more sensible to assume that" and reads as follows:

30 "1. MPEA has always represented public employees better,  
31 After all, AFSCME admits that they have only supported  
32 benefit legislation while MPEA researched, wrote, and  
lobbied most of the present benefits you receive..."

1 AFSCME, in their letter to the Board, deny ever admitting "that they have only  
2 supported benefit legislation" because such an admission would be untrue. However,  
3 there was no evidence offered at the hearing which would establish that AFSCME did  
4 deny making the admission or that the statement in the MPEA's circular was untrue.  
5 (Complainant's Exhibit Nos. 1 and 3 and Transcript.)

6 The second statement that AFSCME objects to is a large handwritten statement  
7 at the bottom of the page: "MPEA IS CERTIFIED." AFSCME contends that this statement  
8 is misleading in that Department employees received the impression that MPEA could  
9 immediately be certified as their exclusive bargaining representative and act on  
10 their behalf if MPEA won the election when, in fact, a court order precluded MPEA  
11 from being certified in any new units and from bargaining for any new units. (Com-  
12 plainant's Exhibit Nos. 1 and 3.)

13 I judicially note that at the time of the September 23rd election and at the  
14 time the employees received MPEA's campaign literature, a judge in the first  
15 judicial district of the state of Montana issued an order in a case in which the  
16 Board was involved which did preclude MPEA from being certified in any new units  
17 and from bargaining for any new unit where negotiations had not, at the date of the  
18 order, commenced. I judicially note also that MPEA was, at the time the Department  
19 employees received the campaign literature, certified by the Board as the exclusive  
20 representative of eleven employee bargaining units.

21 The other piece of campaign literature at issue here is a six page newsletter  
22 that was simultaneously mailed to Department employees and all state employees.  
23 Most of the newsletter deals with MPEA's annual meeting. AFSCME objects to the  
24 emphasized language of the following paragraph contained in the newsletter:

25 "Fourteen collective bargaining elections have been held to this  
26 point in which MPEA participated. *Results of these elections show*  
27 *that a large majority of Montana Public Employees favor collec-*  
28 *tive bargaining and also favor MPEA representing them. The dues*  
29 *difference is part of the reason, but the big reason tends to be*  
30 *the national control of the unions and the fact that a majority*  
31 *of their dues leave the state. We, at MPEA, feel that we have the*  
32 *best possible staff with the money available and that MPEA mem-*  
*bers will receive the best representation."*

30 AFSCME contends that the first sentence of the above-emphasized language is untrue  
31 because in the elections MPEA refers to, approximately two thousand employees voted  
32

1 and two thousand employees does not establish that "a large majority of Montana  
2 public employees" favor MPEA. There is no evidence which was offered at the hearing  
3 which would establish that the first sentence of the above-emphasized language is  
4 true or false. (Complainant's Exhibit Nos. 2 and 3 and Transcript.)

5 AFSCME contends that the second sentence of the above-emphasized language  
6 is also untrue. But again there was no evidence offered at the hearing which would  
7 establish that the second sentence is true or false. (Complainant's Exhibit No. 3  
8 and Transcript.)

#### 9 DISCUSSION

10 It is elementary in cases such as this that the Complainant has the burden  
11 of proof, that is the burden of producing evidence of a particular fact in issue  
12 and the burden of persuading the hearing examiner that the alleged fact is true.  
13 It is also elementary that findings of fact can only be based on matters within  
14 the four corners of the record, including testimony of witnesses, exhibits, matters  
15 officially noticed, jurisdictional papers, etc.

16 The Complainant here has not met their burden of proof. They have not estab-  
17 lished that the statements contained in MPEA's campaign literature were false and  
18 misleading. It may seem obvious to the Complainant that their allegations are true  
19 but it is incumbent upon them to introduce into the record the evidence that leads  
20 to the proof of their allegations. The hearing examiner cannot assume that mere  
21 allegations are fact even though he may have more than a healthy suspicion that  
22 the allegations are probably true.

23 Specifically, I will comment about two of the sentences in MPEA's campaign  
24 literature objected to by AFSCME.

#### 25 1. "MPEA IS CERTIFIED."

26 Although the Complainant asserts that this statement is misleading, and one witness  
27 testified that she was misled by this statement, it is my opinion that this simple  
28 sentence would have to be read completely out of context to be misleading. Indeed,  
29 the statement is literally correct. At the time the offensive campaign literature  
30 was distributed, the Board of Personnel Appeals had certified MPEA as the exclusive  
31 bargaining representative of eleven employee bargaining units. MPEA, as the author  
32 of this sentence, is entitled to presume that the sentence's words will convey their

1 common and ordinary meaning.

2 2. "The dues difference is part of the reason, but the big reason  
3 tends to be the national control of the unions and the fact  
4 that a majority of their dues leave the state."

4 It is my opinion that even if AFSCME had proven the falsity of the other sentences  
5 that they contended were false and misleading, it is very doubtful that they would  
6 have been serious enough misstatements to require a new election. However, I  
7 believe that AFSCME's allegations with regard to the above sentence are quite  
8 serious, and had they established that the statement was indeed false, a new  
9 election may have been required. But AFSCME did not prove that this sentence was  
10 false. There was no evidence whatsoever which explained the distribution of AFSCME's  
11 dues or any other labor organization's dues.

12 CONCLUSIONS OF LAW

13 The allegations contained in the objection to conduct affecting the results of an  
14 election have not been sustained by the American Federation of State, County, and  
15 Municipal Employees, AFL-CIO.

16 ORDER

17 It is ordered, upon the basis of the foregoing findings of fact, conclusions  
18 of law, and upon the entire record in this case, that the Complainant's objection  
19 to conduct affecting the results of an election be dismissed in its entirety.

20  
21 DATED this 5<sup>th</sup> day of December 1974.

22  
23 Peter O. Maltese  
24 Peter O. Maltese, Esq.  
25 Hearing Examiner  
26 Board of Personnel Appeals  
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