

1 for inclusion in the unit.

2 C- The County takes exception to the inclusion in to the
3 unit, the incumbents of the following positions because
4 they contend they are supervisory and/or managerial in
5 nature:

- 6 1. Sanitarian III, incumbent Clifford J. Forge
- 7 2. Public Health Nutritionist II, incumbent Martha Lowery
- 8 3. Air Pollution Control Officer II, incumbent
9 Roland G. Sameul
- 10 4. Administrative Assistant, incumbent Betty Jo Vance
- 11 5. Health Educator II, incumbent Frances Alvas

12 6. Both M.P.E.A. and the County stipulated that the Health Officer and the
13 Community Health Nurse III positions should be excluded.

14 7. M.P.E.A. contends that the above positions do not meet the intent of
15 Section 59-1602(3) or 59-1602(4) R.C.M. 1947.

16 8. The County further takes exception to having professionals and non-professionals
17 in one unit and therefore proposed for determination two units, one clerical
18 and the other professional.

19 9. Management testified that positions 1, 2, 3 and 4 as listed in findings of
20 fact #5c, have the following supervisory responsibilities:

- 21 They assign and direct the work of another or other employees.
- 22 They have recommendation for hiring and firing personnel
23 under them.
- 24 They evaluate job performance.
- 25 They schedule time off.
- 26 They effectively recommend disciplinary action.

27 10. The County further testified that positions 1, 2, 3, 4, 5 as listed in
28 findings of fact #5c have the authority to act for the agency on any matters
29 relating to the implimentation of agency policy.

30 11. The County feels that professional employees differ in the following manner
31 and therefore lack enough community interest so as to exclude them from the
32 clerical unit as proposed by the M.P.E.A.:

- differ in wages
- differ in hours worked
- no integration in work functions
- professional employees pursue different goals than
non-professional employees
- professional employees are "primary income generaters"
where as non-professional tend to be "secondary income
generations."
- professional employees will dominate the non-professional
employees in the bargaining unit and therefore their
interest will be served not the clerical or non-professional
employees
- The history of unit determination tells us that professional

1 employees are excluded from the unit. I assume the County
2 is referring to precedent set by the NLRB.

3 12. M.P.E.A. testified to the following:

- 4 - The community of interest is the same.
- 5 - That the difference in hours and wages is traditional,
6 and will not present a problem in negotiations.
- 7 - That fringe benefits are the same.
- 8 - Common supervision is present.
- 9 - Common personnel policies exist.
- 10 - There is an interchange among employees
- 11 - That the desire of employees is for one unit.
- 12 - That in Montana many units have both professional and
13 non-professional employees.

14 DISCUSSION

15 Section 59-1606(1)(b) R.C.M. 1947, authorizes the Board to conduct unit
16 determination hearings when an employer disputes the scope of the proposed
17 bargaining unit.

18 As the agent appointed by the Board, it is my responsibility to determine
19 the appropriate unit for collective bargaining purposes at the Missoula City-
20 County Health Department.

21 The County argues that there are five positions that should be excluded
22 for supervisory and/or managerial reasons. They testified that four of the
23 positions have supervisory authority as set forth in Section 59-1602(3) R.C.M.
24 1947; and in exercising that authority they use independent judgement. They
25 further testified that the fifth position, Health Educator II, is a management
26 official under the definition set forth in Section 59-1602(4) R.C.M. 1947,
27 and therefore should be excluded from the unit. M.P.E.A. did not present any
28 evidence or testimony to refute management's contentions concerning these
29 positions. Based on the entire record I have no reason to doubt that these
30 positions are supervisory and/or managerial in nature and should be excluded
31 from the unit.

32 The Counties' argument concerning professional and non-professional
employees is two-fold; (1) That the criteria for determining the appropriate
unit as set forth in Section 59-1606(2) R.C.M. 1947 has not been met and;
(2) That professional employees will dominate the non-professional employees
of the unit. To summarize the counties' position on this point their representa-
tive, Chuck Painter stated: "It is the strongest position of Missoula County

1 that the delineation of the two units into clerical and professional cannot
2 be defeated, but infact must be created to guarantee the rights, the authority
3 and the benefits of the two groups. To preclude the possiblity that one group
4 will overshadow the other would be to the detriment of all employees."

5 As set forth in Section 59-1606(2) R.C.M. 1947, there are some nine
6 factors to be considered in determining units for the purpose of collective
7 bargaining.

8 Missoula County testified that the main differences, in reference to
9 Section 59-1606(2), lay in the areas of wages, hours, integration of work,
10 and working conditions.

11 I find that the difference in wages are historical in nature and should
12 not present any problems to the Collective Bargaining process.¹

13 The County argues that much of the professional work cannot be done during
14 the "eight to five" shift of the non-professional employee and therefore would
15 present a problem to the bargaining process. However, the problem to collective
16 bargaining would be one of overtime and that would relate to both groups of
17 employees. The real issue would, more than likely, be one of an 8 hour work
18 day and that could be adjusted to accomodate both employee and management needs.

19 The differences in the integration or work and working conditions are of a
20 minor nature and would not interfere with collective bargaining at all.

21 It appears, upon review of the record that the differences in the factors,
22 listed in Section 59-1606(2) R.C.M. 1947, between professional and non-professional
23 employees are not of such a degree as to present a major problem to the collective
24 bargaining process.

25 It should be recognized that much of the language that appears in the
26 Montana Public Employees Collective Bargaining Law is identical in nature to
27 that found in the National Labor Relations Act. I would be remiss if I did not
28 at least consider precedent established by the National Labor Relations Board.
29 However, it must be kept in mind that Montana's law is for the public sector

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31 ¹The wages for these employees are historically fixed and appear on a salary
32 schedule or compensation plan. It presents no difficulty to the bargaining
procedure to negotiate wages on a pay plan.

1 and therefore differs in many respects from the National Labor Relations Act.
2 The professional, non-professional issue is one such difference. The NLRB
3 has ruled many times that professional employees should not be included in a
4 non-professional unit unless they vote for inclusion in a self-determination
5 election. The reason for that ruling is quite clear; Section 9(b)(1) of the
6 NLRA states: "That the Board shall not (1) decide that any unit is appropriate
7 for such purposes if such unit includes both professional employees and employees
8 who are not professional employees unless a majority of such employees vote
9 for inclusion in such unit;".

10 The problem we face in this determination is that the Montana Public
11 Employee's Collective Bargaining Law has no such provision and I must be wary
12 of over-stepping enabling legislation. We then have to consider the exceptions
13 to the appropriateness of the unit as it relates to Section 59-1602(2) R.C.M.
14 1947, of Montana Collective Bargaining Law for Public Employees.

15 Management's argument over exclusion of professional employees on the basis
16 of their concern for the "rights and benefits of all employees" is at best
17 specious. The employees have the opportunity and right under law to determine
18 their own destiny as to their collective bargaining future. The desire of
19 employee's is evident in that the petition for new unit determination was
20 accompanied by more than 30% proof of interest. As of this time no where on
21 record is there any indication that the employees desire anything but a single
22 unit. Furthermore, we have many bargaining units throughout Montana consisting
23 of both professional and non-professional employees.²

24 CONCLUSIONS OF LAW

25 A unit consisting of all employees of the Missoula City-County Health
26 Department including professional and non-professional employees and excluding
27 administrative staff, members of the Montana Nurses Association and those
28 supervisory and managerial employees listed in this decision, (see finding of
29

30 ²I certainly could not list all professional, non-professional single bargaining
units in under the act. However, some examples are:

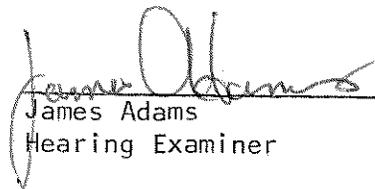
31 State Department of Agriculture M.P.E.A.
State Department of Health & Environmental Sciences M.P.E.A.
32 Department of Institutions Swan
River Youth Forest Camp A.F.S.C.M.E.
Lincoln County Welfare Department A.F.S.C.M.E.
Missoula County Welfare Department A.F.S.C.M.E.

1 fact number 5c), is an appropriate unit for purpose of collective bargaining
2 under Section 59-1606(2), R.C.M. 1947, and 59-1602(3),(4) R.C.M. 1947.

3 RECOMMENDED ORDER

4 It is ordered that an election by secret ballot shall be conducted as early
5 as possible, in accordance with the rules and regulations of the Board of Personnel
6 Appeals, among the employees, in the above described bargaining unit, employed
7 at the Missoula City-County Health Department as of October 14, 1975 to determine,
8 whether or not, they desire to be represented for purposes of collective
9 bargaining.

10 Dated this 30th day of January, 1976.

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13 James Adams
14 Hearing Examiner
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CERTIFICATE OF MAILING

I, Vonda Brewster, hereby certify and state that I did, on the 30th day of January, 1976, mail a true and correct copy of the Board of Personnel Appeals Determination of Appropriate Unit, by depositing a true and correct copy in the United States Mail, in an envelope securely sealed with postage prepaid, addressed to them at their last known address as follows:

Mr. Jack Calhoun
Personnel Officer
Missoula County Courthouse Annex
Room 213
Missoula, Montana 59801

Mr. Tom Schneider
Executive Director
Montana Public Employees Association
P. O. Box 1184
Helena, Montana 59601

Dated this 30th day of January, 1976.


Vonda Brewster