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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION #18, 1976:)	
)	
CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN, AND HELPERS,)	
LOCAL #45,)	
)	FINDINGS OF FACT,
Petitioner,)	
)	CONCLUSIONS OF LAW,
CITY OF GREAT FALLS,)	
)	AND PROPOSED ORDER.
Counter-Petitioner,)	
)	
MONTANA PUBLIC EMPLOYEES ASSOCIATION, INC.,)	
)	
Intervenor.)	

On September 17, 1976 the Petitioner filed a petition for Unit Determination and Election with the Board of Personnel Appeals and described the proposed unit as, "All Administrative Clerks, Clerk-Stenos, Clerk Typists, City Service Foreman, Executive Secretaries, and Administrative Assistants employed in Public Works, Finance, Manager, Park and Recreation, Clerks Office, and Personnel Departments of Employer." On September 24, 1976 the City of Great Falls filed a Counter-Petition which stated: "It is the position of the city that the unit described in the petition is appropriate, provided that the following classifications are excluded: 'All other employees, guards, confidential secretaries, and supervisors.' Particularly the City contends that the three City Service Foreman II, Roger Harris, Ed Murphy, and Dominic Vocler, are supervisions and further lack any commonality factors with the petitioned for employees. Three persons, Georgia Beaulieu, Elaine Balagic and Nancy Skoog are respectively; the executive secretary, secretary for the Director of Park and Recreation and secretary for the Director of Public Works. They should be excluded as confidential employees for the reason that they assist the city manager and the two directors in matters relating to labor negotiations, grievance processing, and other personnel matters."

On October 7, 1976 the Montana Public Employees Association filed a Petition To Intervene with the Board of Personnel Appeals and described the proposed unit as, "All Administrative Clerks, Clerk-Stenos, Clerk-Typists, Executive Secretaries and Administrative Assistants employed in Public Works, Finance, Manager, Park

1 and Recreation, Clerks Office, Personnel Departments, Fire Department, and
2 Police Department and Library 'and' excluding all superising and managerial."
3 On November 9, 1976, the City of Great Falls amended their Counter-Petition to
4 add the following issues: "Library: The proper classifications for the library
5 clerical personnel are library clerks and library assistants. Two individuals,
6 Barbara Courtney and Dorothy McGee, are supervisors and should be excluded from
7 any unit found to be appropriate. They were mistakenly included on the list sent
8 to your office. Fire Department: Lillian Knutson is the personal secretary for
9 Chief Lindstrand and must be excluded as a confidential secretary. Police Court:
10 Neither Union requested the Police Court employees. They were mistakenly included
11 on the list furnished your office. The City's position is that the Police Court
12 should be excluded from any unit since they were not requested by either Union
13 and because the Department is under the unique and separate supervision of the
14 Police Magistrate and the Police Commission. Second, Elsie Rice is a supervisor
15 and must be excluded. Police Department: Pat Banin is the secretary for Chief
16 Anderson and must be excluded as a confidential secretary. MPEA Unit: The City
17 agrees with the broader MPEA petitioned for Unit. All of the employees share a
18 sufficient community of interest to be included in one unit. Teamsters' Petition -
19 Park and Recreation: In my letter of 23 September, 1976, and I mentioned that
20 Elaine Balagic was a confidential employee. In addition, she exercises supervising
21 authority and must be excluded for that basis also."

22 A hearing was held on November 15, 1976. After the hearing, briefs were
23 submitted by all parties. After a close review of the briefs, and the testimony
24 presented at the hearing, the following are my findings of fact:

25 FINDINGS OF FACT

- 26 1. All proper parties to this matter stipulated that the position of
27 "City Service Foreman II" would be excluded from any unit determined.
28 2. The representative of the Teamsters and the representative of the City
29 of Great Falls stipulated that the Executive Secretary to the City Manager,
30 Georgia Beaulieu, should be excluded from any unit determined. MPEA would not
31 agree to this exclusion.
32

1 3. All proper parties stipulated that in addition to the exclusions at
2 issue, "all other employees, guards, and supervisors as defined in the act"
3 should be excluded.

4 4. All proper parties stipulated that all Police Court employees would be
5 excluded from any unit determined.

6 5. All proper parties stipulated that the proper classifications sought
7 after for the library employees were "library clerks" and "library assistants".

8 6. Based on a careful review of the record, the Public Employees Collective
9 Bargaining Act, and the legal argument presented by the representative of the
10 City of Great Falls, I find that there is no basis for exclusion of a "confidential
11 employee" under the Public Employee's Collective Bargaining Act. An examination
12 of the Montana Supreme Court decision cited by the City of Great Falls in their
13 brief (See Local 2390 of AFSCME vs. City of Billings _____ MONT _____,
14 _____ P. 2d _____; 33 ST. REP. 1020) reveals that it was not meant to dictate
15 that the Board of Personnel Appeals be bound by National Labor Relations Board
16 precedents in all areas as inferred in the City's argument. The Board of Personnel
17 Appeals views this decision as having application only to the specific area
18 addressed therein. The Board of Personnel Appeals does not view this decision as
19 dictating that it must adopt the policy of the National Labor Relations Board as
20 regards "confidential employee". The Board of Personnel Appeals has established
21 ample precedent as noted in the City's post-hearing brief that there is no basis
22 for exclusion of a "confidential employee" under the Public Employee's Collective
23 Bargaining Act. I therefore find that there has been no basis established for
24 excluding the following positions as "confidential employees": (1) Fire Department
25 - Lillian Knutson; (2) Police Department - Pat Banis; (3) Park and Recreation
26 Department - Elaine Balagic; (4) Public Works Department - Nancy Skoog;
27 (5) Executive Secretary - Georgia Beaulieu.

28 7. Based on a careful review of the record I find that there is no basis
29 for exclusion of the following positions as "supervisors" per the definition in
30 Section 59-1602(3), R.C.M., 1947: (1) Library - (a) Barbara Courtney; (b)
31 Dorothy McGee; (2) Park and Recreation - Elaine Balagic. The record reveals
32 that in the case of Courtney and McGee their only supervisory responsibilities

1 are to perform evaluations, assign duties, and perform certain training functions.
2 These positions are more lead worker positions than supervisory. In the case of
3 Elaine Balagic the employees for which she has been assigned supervisory
4 responsibility are students and would not be a part of any unit determined and
5 therefore this does not establish a basis for excluding her from the unit.

6 8. Section 59-1606(2) delineates the facts which must be considered in
7 determining an appropriate unit. Considering those factors separately relative
8 to whether or not the Library, Fire Department, and Police Department should
9 be included in the unit, my findings are as follows:

10 (1) Community of Interest

11 (a) Wages, hours, fringe benefits, and other working conditions. The
12 record established that all the petitioned for employees with the exception of
13 the library employees operate under a common pay plan. It was further established
14 that the Library employees have a pay plan which is quite similar to that of the
15 other city employees.

16 In the area of hours worked it was established that all employees except the
17 Library Police Department work the same scheduled shifts. All petitioned for
18 employees work an eight hour regular shift. All petitioned for employees work a
19 forty hour work week. Although the Police Department employees operate on a
20 twenty-four hour basis, they do have an assigned shift that is not rotated.
21 This is also true for the library employees.

22 In the area of fringe benefits it was established that there is no sub-
23 stantive differences for any of the petitioned for employees. All employees
24 enjoy the same vacation, sick leave, and holidays. All employees are under the
25 same hospitalization plan.

26 In the area of working conditions it was established that all of the employees
27 work in an office setting with certain minor differences in the case of the
28 library employees.

29 (b) Common supervision and common personnel policies - A review of the
30 record establishes that all the positions petitioned for operate under common
31 personnel policies with the exception of the library. It was not established
32 on the record that these policies differed to such an extent as to preclude the

1 inclusion of the library employees in a unit for collective bargaining purposes.

2 As regards the subject of common supervision, it should first be pointed
3 out that the Montana Supreme Court in the case cited in finding of fact six (6)
4 stated: "We hold there is no inconsistency between the Library Systems Act and
5 the Collective Bargaining for Public Employees Act. Under the Library Systems
6 Act, as a whole, the board of trustees is given independent powers to manage
7 and operate the library. However, this does not qualify the Board as a 'public
8 employer' within the meaning of the Collective Bargaining for Public Employees
9 Act, but merely as 'supervisory employees' as defined in section 59-1602(3),
10 R.C.M., 1947". In this same decision the Montana Supreme Court further stated:
11 "The City has a substantial, legitimate interest in the operation of the library,
12 which qualified the City as the 'public employer' of the Billings City Library
13 personnel" Based on this decision and the record of this hearing I find
14 that the "public employer" of the library personnel petitioned for is the City
15 of Great Falls and the Library Commission is a "supervisory employee" as
16 defined in section 59-1602(3), R.C.M., 1947.

17 The record of this proceeding establishes the fact that the Library
18 Commission and the department heads of the Department of Finance, Police Department,
19 Fire Department, Department of Park and Recreation, Department of Public Works,
20 Clerks Office and Personnel Department exercise similar authority as regards
21 to hiring, firing, lay-off, suspension, promotion, assignments, discipline,
22 and adjust grievances of employees within their respective departments. The
23 only substantive difference established on the record was that the Clerks Office
24 and Library Commission report directly to the City Commission rather than to the
25 City Manager. The Library Commission and the department heads of the other
26 petitioned for departments also have the responsibility of developing the budgets
27 for their respective areas of responsibility.

28 (c) Extent of integration of work functions and interchange among employees.
29 The record of this proceeding establishes that the extent of integration of work
30 functions and interchange among employees of any of the petitioned for departments
31 is minimal. The record does establish that the skills required for all of the
32 petitioned for employees are similar enough in nature to allow for more extensive

1 interchange if such was the desire of management.

2 (2) History of collective bargaining - It was established that there is no
3 previous history of collective bargaining in regards to the petitioned for
4 employees.

5 (3) Extent of union organization - The record of this proceeding does not
6 establish the extent of union organization present in the petitioned for units.

7 (4) Desire of employees - Since there was no testimony submitted by any of the
8 petitioned for employees, there can be no definitive finding of fact in this
9 area.

10
11
12 CONCLUSION OF LAW

13 In applying my Findings of Fact to 59-1606(2), the section delineating
14 the factors to be considered in determining an appropriate bargaining unit,
15 I conclude that the bargaining unit proposed by the intervenor is an appropriate
16 unit.

17 ORDER

18 IT IS THEREFORE ORDERD:

- 19 1. That a Unit Determination Election be held.
20 2. That those employees eligible to vote will be all positions employed by
21 the City of Great Falls as of September 17, 1976, as administrative clerks, clerk-
22 stenos, clerk-typists, executive secretaries, administrative assistants, library
23 clerks, and library assistants in Public Works, Finance, Manager, Park and
24 Recreation, Clerks Office, Personnel Department, Fire Department, Police
25 Department, and Library excluding the position of "City Service Foreman II"
26 and all other employees, guards, and supervisors as defined in the act.

27 Dated this 7TH day of February, 1977.

28 BOARD OF PERSONNEL APPEALS

29
30 BY Edward Kennedy
31 Edward Kennedy
32 Hearing Examiner

CERTIFICATE OF MAILING

I, Vonda Brewster, hereby certify and state that I did on the 7th day of February, 1977, mail a copy of the above Findings of Fact, Conclusions of Law, and Recommended Order to the following people:

Montana Public Employees Association
P. O. Box 5600
Helena, MT 59601

Chauffeurs, Teamsters, Warehousemen, & Helpers
Local #45
P. O. Box 2648
Great Falls, MT 59403

Burton and Coder
Attorneys
502 Strain Building
Great Falls, MT 59403

Richard Thomas
City Manager
Civic Center
Great Falls, MT 59401

Emilie Loring
Hilley & Loring
1713 Tenth Avenue South
Great Falls, MT 59405


Vonda Brewster

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION #18-76:

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS,)
 #45,)
)
 Petitioner,)
)
 CITY OF GREAT FALLS,)
)
 Counter-Petitioner,)
)
 MONTANA PUBLIC EMPLOYEES ASSOCIATION,)
)
 Intervenor.)

FINAL ORDER

On February 7, 1977, a Proposed Findings of Fact, Conclusion of Law, and Order (Proposed Order) was issued in the above entitled matter. In the Proposed Order, the hearing examiner provided that there was no basis for the exclusion of confidential employees. Specifically, the hearing examiner denied the proposed exclusion of five secretaries from the bargaining unit. The City of Great Falls took exception to the hearing examiner's inclusion of the five secretaries in the bargaining unit. Briefs were filed by the City of Great Falls and Petitioner Chauffeurs, Teamsters, Warehousemen & Helpers, Local #45; oral arguments were made by all parties involved.

At the hearing an oral stipulation was entered into by all parties which provided for the exclusion of Georgia Beaulieu, executive secretary for the City Manager.

In view of that stipulation, and after reviewing the briefs presented and hearing oral argument this Board sustains the hearing examiner's Proposed Order.

IT IS THEREFORE ORDERED that the exceptions of the City of Great Falls to the Proposed Order be denied and this Board adopts the Findings of Fact, Conclusions of Law, and Order issued on February 7, 1977, and it is incorporated by reference as the Final Order of this Board.

DATED this 6th day of April, 1977.

BOARD OF PERSONNEL APPEALS

by Brent Cromley
 BRENT CROMLEY
 Chairman of the Board
 of Personnel Appeals

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CERTIFICATE OF MAILING

I, Vonda Brewster, hereby certify and state that I did on the 8th day of April, 1977, mail a copy of the above FINAL ORDER to the following people:

Hilley & Loring
Attorneys at Law
1713 Tenth Avenue South
Great Falls, MT 59405

MPEA
P. O. Box 5600
Helena, MT 59601

Leslie S. Waite
Special Counsel for City of Great Falls
P. O. Box 2265
Great Falls, MT 59403


Vonda Brewster

5/20/77

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE
OF MONTANA, IN AND FOR THE COUNTY OF CASCADE

RECEIVED

CITY OF GREAT FALLS,)
)
Plaintiff,)
)
v.)
)
BOARD OF PERSONNEL APPEALS;)
CHAUFFEURS, TEAMSTERS, WAREHOUSE-)
MEN AND HELPERS LOCAL #45 (a labor)
organization); and MONTANA PUBLIC)
EMPLOYEES ASSOCIATION (a labor)
organization),)
)
Defendants.)

MAY 23 1977

BOARD OF PERSONNEL APPEALS

Case No. 83051 C

MOTION FOR ORDER STAYING
FINAL ORDER PENDING HEARING

The City of Great Falls, the Plaintiff, moves the Court for an order temporarily staying the final order of the Board of Personnel Appeals and all further proceedings pending hearing on the matter by the District Court. Attached hereto and incorporated by reference herein are the affidavit of special counsel for the City of Great Falls which relates that the Board of Personnel Appeals has directed that an election be held on the 31st of May, 1977. This direction of an election involves the "confidential employees" which are the subject of this appeal. In the event that the final order and election proceedings are not stayed, the City of Great Falls will suffer irreparable harm and will be forced to initiate proceedings involving these employees through the administrative agency itself involving the same issues involved in the petition for review. Absent the staying of the Board's proceedings, the City will be forced to initiate objection to the election and challenge ballot proceedings before the administrative agency which will be ultimately subject to judicial review. Such proceeding would involve the same "confidential" status of certain "confidential employees".

For these reasons, the City respectfully requests the Court to issue an order staying the final order proceedings of the Board of Personnel Appeals pending hearing.

Dated this 20th day of May, 1977.

BURTON & WAITE

By:



Leslie S. Waite, III
502 Strain Building
P.O. Box 2265
Great Falls, Montana 59403
Special Counsel for City of Great Falls

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that the foregoing was duly served upon the respective attorneys for each of the other parties entitled to service by depositing a copy in the United States mails, first class, postage prepaid, addressed to each at the last known address (as shown on this page) on the 20th day of May, 1977

BURTON AND WAITE

By [Signature]
502 Strain Building
P. O. Box 2265
Great Falls, Montana 59403

Board of Personnel Appeals
State of Montana
1417 Helena Avenue
Helena, Montana 59601

Hilley & Loring
1713 Tenth Avenue South
Great Falls, Montana 59405
Attorneys for Chauffeurs, Teamsters,
Warehousemen & Helpers Local #45

Mr. Barry L. Hjort
1231 - 11th Avenue
Helena, Montana 59601
Attorney for Montana Public Employees
Association

5/31/77.

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE
OF MONTANA, IN AND FOR THE COUNTY OF CASCADE

CITY OF GREAT FALLS,)
)
 Plaintiff,)
)
 v.)
)
 BOARD OF PERSONNEL APPEALS;)
 CHAUFFEURS, TEAMSTERS, WAREHOUSE-)
 MEN AND HLEPERS LOCAL No. 45 (a)
 labor organization); and MONTANA PUBLIC)
 EMPLOYEES ASSOCIATION (a labor)
 organization),)
)
 Defendants.)

RECEIVED
MAY 24 1977
BOARD OF PERSONNEL APPEALS

Case No. 83051 C

ORDER

The City of Great Falls, the Plaintiff, having filed a petition for judicial review requesting, inter alia, that the District Court stay the decision of the Board of Personnel Appeals with respect to certain "confidential employees" and further having filed a motion for temporary stay of the Board's Final Order and Proceedings, and there appearing good cause therefor,

IT IS HEREBY ORDERED that the Board of Personnel Appeals certify all of its records of these proceedings to the Clerk of Court of Cascade County on or before 31st May, 1977, and,

IT IS FURTHER ORDERED that the decision and all further election proceedings of the Board of Personnel Appeals concerning this matter be and hereby are stayed pending hearing on this matter,

IT IS YET FURTHER ORDERED that all of the parties appear at 9:00 AM on the 31st day of May, 1977, in the Courtroom of the Cascade County Courthouse for a hearing on whether the Board of Personnel Appeals' final order be permanently stayed pending resolution of the petition for judicial review, and,

IT IS YET FURTHER ORDERED that the Board of Personnel Appeals, Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 45 (a labor organization), and Montana Public Employees Association (a labor organization) each file an answer to the petition for judicial review on or before 31st May, 1977.

JOEL G. ROTH

Honorable District Court Judge, Joel Roth

6/1/77.

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE
OF MONTANA, IN AND FOR THE COUNTY OF CASCADE

* * * * * ~~BY~~ * * * DEPUTY

CITY OF GREAT FALLS,)

Plaintiff,)

v.)

BOARD OF PERSONNEL APPEALS;)

CHAUFFEURS, TEAMSTERS, WAREHOUSE-

MEN AND HELPERS LOCAL NO. 45 (a)

labor organization); and MONTANA)

PUBLIC EMPLOYEES ASSOCIATION (a)

labor organization),)

Defendants. :

Case No. 83051 C

* * * * *

ORDER

* * * * *

The parties having entered into a stipulation and good cause appearing therefor,

IT IS HEREBY ORDERED that the 20 May, 1977, order of this Court staying the Final Order of the Board of Personnel Appeals and all further election proceedings relating thereto, be and hereby is dissolved.

IT IS FURTHER ORDERED that all further action regarding the petition for judicial review be and hereby is stayed pending issuance by the Board of Personnel Appeals of a certification of representative or certification of results of the election.

Dated this 2 day of June, 1977.

JOEL G. ROTH
Honorable District Court Judge, Joel G. Roth

LAW OFFICE OF
RECEIVED
JUN 13 1977
HOWARD C. BURTON

1 City filed an action in State District Court in Cascade County
2 appealing the order of the Board and seeking to stay the election.
3 The matter was set for oral argument on May 31, 1977, at which
4 time the attorneys for the Board, the City, and Teamsters Local
5 #45 worked out an agreement which was approved by the attorney
6 for the MPEA in a telephone conversation. This provided for the
7 election to be held the last week in June and the City reserved
8 the right to seek judicial review of the Board's decision to in-
9 clude the "confidential secretaries" in the bargaining unit if
10 either of the labor organizations won the election. The election
11 was subsequently scheduled for June 30, 1977.

12 Following the election the Teamsters filed objections based
13 on the fact they had no eligibility list. A hearing on this issue
14 was scheduled for July 20, 1977. At that time the City moved to
15 expand the hearing, asking the Board to rule on the challenged
16 ballots. This was opposed by counsel for the Teamsters and the
17 representative of the MPEA and was denied by the Hearing Examiner.

18 The Teamsters demanded that the election be re-run, with a
19 list of names and addresses of eligible voters timely supplied by
20 the City to the labor organizations. At the hearing, the MPEA
21 representative supported this position. At the request of the
22 City, all parties were given until July 25, 1977, to mail briefs
23 to the Board.

24 FINDINGS OF FACT

25 After reviewing the evidence, testimony, and briefs in this
26 matter I make the following findings of fact:

27 1. On May 18, 1977, this Board sent a letter noticing a
28 May 31st election in this matter to the City of Great Falls Mayor,
29 John Bulen. In that letter this Board stated:

30 "At least seven (7) days prior to the election the
31 employer shall furnish the labor organization concerned
32 with a list of names and addresses of employees eligible

1 to vote. (MAC 24-3.8(18)-S8180)"

2 2. On June 20, 1977, a similar letter noticing the upcoming
3 June 30th election in this matter was sent to the mayor but no
4 reference was made to MAC 24-3.8(18)-S8180.

5 3. On June 20, 1977, this Hearing Examiner received a
6 letter from Leslie Waite, attorney for the City dated June 17,
7 1977, requesting that absentee ballots be provided for six eligible
8 voters who would be on vacation at the time of the scheduled
9 election

10 4. On June 23, 1977, the City mailed a list of the eligible
11 voters to the Board of Personnel Appeals. The Board received that
12 list on the same day.

13 5. On June 24, 1977, Montana Public Employee Association
14 requested a list of the eligible voters from the Board of Person-
15 nel Appeals. MPEA came to the office of the Board of Personnel
16 Appeals and picked up a copy of the list on that same day.

17 6. It was Earl Brandt's uncontroverted testimony that Team-
18 sters did not get a copy of a list of eligible voters from the
19 City. On June 30, 1977, this Board received a letter addressed
20 to Kathryn Walker from the Montana Public Employee Association
21 challenging both the timeliness and the accuracy of the list of
22 voters as sent out by the City.

23 7. On June 30, 1977, a pre-hearing conference was held by
24 this Board in this matter. Present at the pre-hearing conference
25 were Kathryn Walker and Jerry Painter from the Board of Personnel
26 Appeals, Earl Brandt, from the Teamsters, Leslie Waite, Georgia
27 Beaulieu, and Betty Noble from the City. There were no represent-
28 atives from MPEA.

29 8. At the pre-election conference each party present was
30 shown a copy of the June 30, 1977, letter from MPEA referred to
31 in finding of fact number 6.

32 9. At the pre-election conference, the matter of the City's

1 suggestion that absentee ballots be allowed because six of the
2 eligible voters were on vacation or in the alternative the
3 election be postponed was discussed.

4 10. Earl Brandt, Teamster Representative, moved to have the
5 election as scheduled. The representatives from the Board decided
6 to hold the election as scheduled.

7 11. The result of the election was:

8 MPEA	2
9 Teamsters	16
10 No Representation	23

11 with 9 employer-challenged ballots.

12 12. Following the election, Teamsters filed objections to
13 the election on the grounds that they had not been given an
14 eligibility list which is in violation of MAC 24-3.8(18)-S8180.

15 DISCUSSION

16 There is no dispute that the Teamsters were not provided
17 with a copy of the names and addresses of the eligible voters by
18 the City seven days before the date of the election as is required
19 by MAC 24-3.8(18)-S8180 (4) (b). In fact there is no dispute that
20 the Teamsters did not receive a copy of the names and addresses
21 of the eligible voters at all. IN THE MATTER OF THE MONTANA
22 PUBLIC EMPLOYEES ASSOCIATION'S PETITION FOR REPRESENTATION ELECTION
23 IN THE YELLOWSTONE COUNTY WELFARE DEPARTMENT, U.D. #5, 1977, this
24 Board adopted the reasoning of the National Labor Relations Board
25 in the Excelsior Underwear Inc., decision, 156 NLRB 1236, 61 LRRM
26 1217. In that decision the NLRB states that "access to employee
27 names and addresses is fundamental to a fair and free election
28 regardless of whether the employer has sent campaigning propoganda to
29 employees' homes".

30 The City argues that, ". . . the Teamsters' objections are
31 without merit and that the Board should not apply a mechanical
32 rule regarding the filing of eligibility lists where all of the

1 parties are afforded fully opportunity to communicate with the
2 employees prior to the election". It is true that this Board
3 ought not to apply MAC 24-3.8(18)-S8180 mechanically. The rule is
4 there to serve a purpose: to give the Union an opportunity to
5 communicate with the eligible voters and explain its point of view.
6 If that opportunity is provided and the Union is not prejudiced,
7 then perhaps the strict compliance with this Board's rule is not
8 essential. But that is not at all what has taken place in this
9 fact situation. There was absolutely no attempt on the part of
10 the City to comply with this Board's rule. And without the names
11 and addresses of the eligible voters, the Teamsters were not
12 afforded opportunity to communicate with the employees prior to
13 the election.

14 The City cites several NLRB decisions in which the Excelsior
15 Rule was not mechanically enforced. This Hearing Examiner does
16 not find any of the cited cases to be analogous to the fact
17 situation now before me. In the Pole-Liet Industries, Ltd., 229
18 NLRB No. 6, 95 LRRM 1080 (1977) the facts show that the employer
19 provided a list of names and addresses of eligible voters 14 days
20 prior to the election and in view of the small number of employees
21 involved the Board considered the employer's compliance satisfac-
22 tory. That is not at all what we are dealing with here. There
23 was no list provided at all by the employer in the fact situation
24 now before us.

25 Similarly, the other cases cited by the City where the NLRB
26 did not mechanically enforce the Excelsior Rule are not applicable
27 to the fact situation now before us:

28 Program Aids Company, Inc., 163 NLRB 145, 65 LRRM 1244: The list
29 was supplied 10 days prior to the election and the unit was re-
30 latively small.

31 Taylor Publishing company, 167 NLRB 228, 66 LRRM 1049: The
32 list was one day late and the Union had it in its possession 9

1 days prior to the election.

2 Peerless Eagle Co., 220 NLRB NO. 62, 90 LRRM 1229: Union had
3 the list eight days before the election and the delay was caused
4 by the Union's own conduct.

5 Commercial Air Conditioning Co., d/b/a Spray King, Inc.,
6 226 NLRB No. 158, 94 LRRM 1141: the Union had the list 4 or 5
7 days prior to the election and the unit was relatively small (10
8 persons).

9 As can be seen, none of the cases cited by the City deals
10 with a set of facts in which no Excelsior list was provided at
11 all by the Employer.

12 The City points out that the Teamsters failed to object at
13 the pre-election conference that they had not received an Excelsior
14 list and failed to ask for a postponement of the election. This
15 Board does not want to place a union in the position of having to
16 move to postpone an election in order to preserve a right guaran-
17 teed it by the rules of this Board. It is true that the Teamsters
18 were remiss in failing to notify this Board or the Employer that
19 it had not received a list of the eligible voters. That fact
20 alone, however, is not sufficient for this Board to not grant the
21 Teamsters' Motion to set aside the election conducted in this
22 matter and to schedule a new election.

23 CONCLUSION OF LAW

24 The Chauffeurs, Teamsters, Warehousemen, and Helpers, Local
25 #45 was aggrieved by not receiving the names and addresses of
26 eligible voters and accordingly is entitled to a new election.

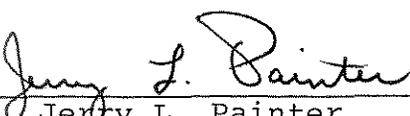
27 PROPOSED ORDER

28 It is hereby ordered that the representation election of
29 June 30, 1977, held among the employees of the office clerical
30 and library unit of the City of Great Falls be set aside and a
31 new election be held.

32 Dated this 5th day of August, 1977.

BOARD OF PERSONNEL APPEALS

BY


Jerry L. Painter
Hearing Examiner

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CERTIFICATE OF MAILING

I, Kay Harrison, hereby certify that on the 5th day of August, 1977, I mailed a true and correct copy of the attached FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

Emilie Loring, Attorney
Hilley & Loring
1713 Tenth Avenue South
Great Falls, MT 59405

Leslie S. Waite
Special Counsel for City of Great Falls
P. O. Box 2265
Great Falls, MT 59403

Barry Hjort, Attorney
1420 Cedar
Helena, MT 59601



Kay Harrison

LAW OFFICES OF
BURTON AND WAITE
502 STRAIN BUILDING
GREAT FALLS, MONTANA 59403

HOWARD C. BURTON
LESLIE S. WAITE III

CHARLES M. CRUIKSHANK III

TELEPHONE (406) 452-6457
P. O. BOX 2265
OUR FILE 76-0087 A
YOUR FILE

10 November, 1977

Emilie Loring, Esq.
Hilley & Loring
1713 Teath Avenue South
Great Falls, Montana 59405

Berry Hjort, Esq.
Attorney at Law
1231 - 11th Avenue
Helena, Montana 59601

Jerry Painter, Esq.
Board of Personnel Appeals
1417 Helena Avenue
Helena, Montana 59601

Re: City of Great Falls v. Board of Personnel Appeals, Teamsters Local #45 and MPEA,
Cascada County District Court Civil Cause No. 83051 C

Dear Ms. Loring, Mr. Hjort and Mr. Painter:

By letter dated 31 October, 1977, Mr. Robert Jensen, the Administrator of the Board of Personnel Appeals, has notified us that the results of the office clerical election are that neither Union received a majority of votes. The certification of results effectively closes the election proceeding matter.

As a result of the certification, the City's petition for judicial review issues involving the confidential status of certain employees should likewise be closed. As long as neither labor organization was certified as the collective bargaining representative, there is no practical need to pursue the issue.

Enclosed you will find a proposed motion to dismiss and order. Unless I receive objections within the next week, I will present the order to the Judge for his signature.

Very truly yours,

BURTON & WAITE

Leslie S. Waite, III

LSW:jlm

Enclosures

cc City Manager
City Attorney

RECEIVED

NOV 14 1977

BOARD OF PERSONNEL APPEALS