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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNIT DETERMINATION #17-77:

INTERNATIONAL UNION OF OPERATING )  
ENGINEERS, LOCAL #400, )  
 )  
Petitioner, )  
 )  
-vs- )  
 )  
CITY OF HELENA, )  
 )  
Counter-Petitioner. )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER

\* \* \* \* \*

On September 12, 1977, Local 400 of the International Union of Operating Engineers filed a petition for unit determination with this Board describing the proposed unit as "All Employees Waste Water Treatment and Water Plant (Hourly)". Employers Counter-Petition excluded 10 positions as supervisory.

A hearing was held in the matter on November 8, 1977.

After a careful review of testimony and evidence presented at the hearing, I make the following findings of fact:

1. The parties stipulated that the following positions be included in the unit:

- a. Utility Plant Operators I
- b. Utility Plant Operators II
- c. City Service Worker III
- d. City Service Worker IV
- e. Equipment Operator III
- f. Water Service Representative I
- g. Water Service Representative II
- h. Water Service Representative III
- i. The positions of Utility Plant Operator III currently held by Lyman Scott, Pat Ernst, Clement Brent

2. The parties stipulated that the Assistant Superintendents of City Service Workers II would be excluded from the unit.

3. The parties disagree on the inclusion of the position held by Larry Longfellow, Utility Plant Operator III and the positions of City Service Foreman II held by Alan Griffiths and Elmer Cole. The City and Union disagree on whether these are supervisory positions which are excluded from the bargaining unit

1 by the Act.

2 4. The Act defines supervisory employee as an "individual  
3 having authority, in the interest of the employer to hire,  
4 transfer, suspend, lay off, recall, promote, discharge, assign,  
5 reward, discipline other employees, having responsibility to  
6 direct them, to adjust their grievances, or effectively to  
7 recommend such action, if in connection with the foregoing the  
8 exercise of such authority is not of a merely routine or clerical  
9 nature, but requires the use of independent judgment [emphasis  
10 added]. 59-1602(3), R.C.M. 1947.

11 5. Mr. Longfellow testified that he lines up shifts and  
12 duties. When asked if his duties were the same as those of Lyman  
13 Scott and Pat Ernst, Mr. Longfellow replied, "I do the work but  
14 I'm also, I think, I have a little more say in what is going be  
15 done, you know than just doing the work--lining up the shifts,  
16 the duties."

17 In response to a direct question Mr. Longfellow stated that  
18 he assigns duties to the other men at the plant.

19 6. Mr. Longfellow testified that he makes recommendations  
20 to his Supervisor for hiring and firing individuals. Mr.  
21 Longfellow's Supervisor does not work at the plant site. No  
22 other employee at the Waste Water Treatment Plant has authority  
23 to make recommendations on hiring and firing.

24 7. Mr. Longfellow testified that he verbally chastises the  
25 other employees at the plant and makes recommendations for  
26 further discipline to his Supervisor.

27 8. Mr. Longfellow testified that he does performance  
28 evaluations on the other employees at the Waste Water Plant.

29 9. Mr. Elmer Cole, City Service Foreman II testified that  
30 he has the power to hire and fire employees. Evidence introduced  
31 supported his testimony.

32 10. Mr. Cole does performance evaluations of employees in

1 the sewer maintenance department. No other person in the  
2 department does such evaluations.

3 11. Mr. Cole assigns duties and directs the activities of  
4 employees in the Sewer Maintenance Department.

5 12. Mr. Cole testified that his salary is higher than other  
6 employees in the Sewer Maintenance Department because of his  
7 supervisory responsibilities as well as the length of his service  
8 with the City.

9 13. Mr. Alan Griffiths, Distribution Foreman in the Water  
10 Department has been in his present position only 1 week. Mr.  
11 Griffiths did not testify.

12 14. "Personnel Manning" charts introduced by the City  
13 indicate that the position of Water Distribution Foreman is  
14 equivalent to that held by Mr. Elmer Cole.

15 15. Uncontroverted testimony by Mr. Dick Nisbit, Director  
16 of Utilities, indicates that the Water Distribution Foreman has  
17 the power to hire and fire (or make effective recommendations for  
18 such).

19 16. Mr. Nisbit testified that the Water Distribution  
20 Foreman makes performance evaluations.

21 17. Mr. Nisbit testified that Mr. Griffith will have the  
22 same duties in relation to personnel as those of Assistant  
23 Supervisor for City Service Workers, Loranz. Mr. Loranz was  
24 stipulated out of the unit.

25 18. Resolution and Rationale.

26 Using the definition of supervisor contained in Section 59-  
27 1602(3) (see Finding of Fact #4) we find that Mr. Longfellow  
28 makes effective recommendations for hiring and firing other  
29 employees. He assigns duties and directs employees. He dis-  
30 ciplines employees. He does performance evaluations of employees.  
31 No testimony or evidence was offered in the following areas:  
32 transferring, suspending, lay-off, recall, reward, promotion and

1 ability to adjust grievances. It would follow logically that a  
2 worker who can make effective recommendations for hiring and  
3 firing would also have the authority to make effective recom-  
4 mendations for promotion, transfer or suspension. The per-  
5 formance evaluations done by Mr. Longfellow would lead to such  
6 recommendations. Although there was no testimony or evidence on  
7 the other points there was no testimony and no evidence which  
8 controverts the City's contention that Mr. Longfellow is a  
9 Supervisor.

10 Mr. Larry Longfellow, Utility Plant Operator III is a  
11 supervisory employee and is excluded from the unit.

12 Mr. Elmer Cole, City Service Foreman II has the power to  
13 hire and fire employees in the Sewer Maintenance Department. He  
14 also assigns duties and directs employees. He does performance  
15 evaluations of employees. No testimony or evidence was offered  
16 in the following areas: transferring, suspending, lay-off,  
17 recall, reward, promotion and ability to adjust grievances. As  
18 in the case of Mr. Longfellow, it would follow logically that a  
19 worker who can hire and fire also has the authority to make  
20 effective recommendations for promotion, transfer or suspension.  
21 The performance evaluations done by Mr. Cole would lead to such  
22 recommendations. Although there was no testimony or evidence to  
23 indicate that Mr. Cole has authority in the other areas there was  
24 no testimony or evidence to controvert the City's contention that  
25 Mr. Cole is a Supervisor.

26 Mr. Elmer Cole, City Service Foreman II is a supervisory  
27 employee and is excluded from the bargaining unit.

28 Testimony and evidence on the position of City Service  
29 Foreman II now occupied by Mr. Alan Griffiths was slight. Mr.  
30 Griffiths will have the power to hire and fire and will make  
31 performance evaluations. Mr. Nisbit, Director of Utilities gave  
32 uncontroverted testimony that Mr. Griffiths will have the same

1 duties, relative to personnel, as does Assistant Supervisor,  
2 Loranz. Mr. Loranz was stipulated out of the unit. In the  
3 absence of any testimony or evidence to the contrary it must be  
4 assumed that Mr. Griffiths personnel duties will be equivalent  
5 to those of Mr. Loranz and Mr. Cole.

6 Mr. Alan Griffiths, City Service Foreman II is a supervisory  
7 employee and is excluded from the bargaining unit.

8 CONCLUSIONS OF LAW

9 A unit consisting of all non-clerical employees in the Water  
10 and Sewer Departments with the exception of the following  
11 supervisory positions is an appropriate unit for the purposes of  
12 collective bargaining under Section 59-1606(2) and 59-1602(2)  
13 R.C.M. 1947. Those positions to be excluded are:

14 Assistant Superintendents for CSW II (positions  
15 currently occupied by Larson, Brown and Loranz.)

16 Utility Plant Operator III (one position cur-  
17 rently occupied by Larry Longfellow)

18 City Service Foreman II (2 positions currently  
19 occupied by Elmer Cole and Alan Griffiths)

20 RECOMMENDED ORDER

21 It is ordered that an election by secret ballot shall be  
22 conducted as early as possible, in accordance with the rules and  
23 regulations of the Board of Personnel Appeals, among the e  
24 employees, in the above described bargaining unit, employed by  
25 the City of Helena Water and Sewer Department on September 12,  
26 1977 to determine whether or not they desire to be represented  
27 for purposes of collective bargaining.

28 Dated this 15th day of November, 1977.

29 BOARD OF PERSONNEL APPEALS

30   
31 BY Linda Skaar  
32 Hearing Examiner

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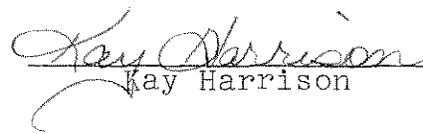
CERTIFICATE OF MAILING

I, Kay Harrison, hereby certify that on the 15th day of November, 1977, I mailed a true and correct copy of the above FINDINGS OF FACT CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

Mayor Kathleen Ramey  
Civic Center  
Helena, MT 59601

Vincent Bosh  
2737 Airport Road  
I.U.O.E.  
Helena, MT 59601

Jim Campbell  
Personnel Director  
Civic Center  
Helena, MT 59601

  
Kay Harrison