

4/5/78

BEFORE THE BOARD OF PERSONNEL APPEALS

1 IN THE MATTER OF UNIT DETERMINATION #21-77:

2 UNIVERSITY TEACHERS UNION, LOCAL )  
119, Affiliated with MFT, AFT, AFL- )  
3 CIO, )

4 Petitioner, )

5 UNIVERSITY OF MONTANA, )  
6 Counter-Petitioner, )

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER

7 UNIVERSITY OF MONTANA, CHAPTER, )  
8 AAUP, )

9 Intervenor, )

10 MONTANA EDUCATION ASSOCIATION )  
affiliated with the National )  
Education Association, )

11 Intervenor, )

12 \* \* \* \* \*

13 The University Teachers Union filed a petition for Unit Deter-  
14 mination and Election with the Board of Personnel Appeals for a unit  
15 of "all faculty members of the University of Montana holding academic  
16 rank and teaching 0.5 full-time or equivalent or more, including  
17 department chairmen, library staff holding academic rank, replacement  
18 faculty and persons on terminal contract."

19 Intervenor, University of Montana Chapter of the American  
20 Association of University Professors and the Montana Education  
21 Association have proposed the identical unit.

22 Counter-Petitioner, University of Montana would include "all  
23 members of the faculty of the University of Montana on academic  
24 appointment one-half time (.50 FTE) or more in the rank of  
25 lecturer, instructor, assistant professor, or professor, in-  
26 cluding library staff, replacement faculty or faculty on terminal  
27 contract." It would exclude "President, Vice Presidents, and  
28 their Administrative Staff, Deans, Associate and Assistant Deans,  
29 Department Chairmen, Program Directors, Counselors in the Center  
30 for Student Development and faculty in the School of Law and the  
31 Reserve Officers Training Corps".

32 Petitioner and intervenors would include departmental chair-

1 men (including division coordinators in the School of Education)  
2 and program directors while the University would exclude these  
3 people. The Petitioner has petitioned for a unit identical to  
4 that determined by this Board in Unit Determination 67 in 1975.

5 A hearing in this matter was held on December 9, 1977 at the  
6 University of Montana. After a careful review of the record, I  
7 make the following:

8 FINDINGS OF FACT

9 1. "Faculty Advancement Standards and Procedures" (FASAP)  
10 is a new system which governs the promotion of all  
11 academic personnel at the University of Montana. It  
12 was developed by a joint committee of the administration  
13 and faculty set up by President Richard Bowers. After  
14 revision the proposal was adopted by the Faculty Senate  
15 and accepted by the President.

16 FASAP has the following goals:

- 17 (a) To recognize and reward superior achievement by members  
18 of the University community.
- 19 (b) To ensure the participation of his peers in a faculty  
20 members evaluation.
- 21 (c) To keep the evaluation process open to scrutiny.
- 22 (d) To provide for appeals of recommendations.
- 23 (e) To ensure the establishment and review of unit and  
University standards and procedures.

24 This document sets forth certain standards which apply to the  
25 advancement of all academic personnel in the University. It  
26 mandates that each unit (Department or Division) develop  
27 specific criteria by which its members will be evaluated.  
28 The units must also implement procedures which guarantee  
29 peer review of individual performance and ensure consul-  
30 tation between faculty members and chairpersons or deans

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Section III, A, 8 has not been accepted by the President.

1 before the unit recommendations are made final.

2 FASAP requires a University Wide Faculty Review Committee  
3 which reviews all "other-than-normal" recommendations. Any  
4 party which disagrees with the determination of the Review  
5 Committee may appeal to the Faculty Appeals Committee.  
6 These committees are composed of tenured faculty members.  
7 Chairpersons, deans and administrative staff members are  
8 specifically excluded. Appeals from the Faculty Appeals  
9 Committee may be made to the Academic Vice President and the  
10 President. The President and the Board of Regents have  
11 final authority.

- 12 2. Dean Richard Solberg of the College of Arts and Sciences in  
13 his policy statement on the Department "Chairer" says:

14 "The Chairer is the only faculty member authorized to  
15 speak for and in behalf of the collective views and  
16 actions of the departmental faculty. He/she has primary  
17 responsibility to serve as primus inter pares [first  
18 among equals.] in matters of leadership, scholarship, and  
19 teaching. Whether through consensus, advice, majority  
20 vote, or other means, the chairer must weigh departmental  
21 issues and arrive at decisions on final actions. He/she  
22 is primarily an advocate of legitimate academic interests  
23 of the faculty in the department, especially in curriculum  
24 matters wherein faculty responsibility pertains. With  
25 that advocacy comes the responsibility and authority to  
26 make discerned judgments. That is to say, once an issue  
27 is to be taken beyond the confines of intradepartmental  
28 faculty review, the chairer should assume a posture of  
29 advocacy for he/she is first and foremost a member of the  
30 faculty. Prior, internal deliberations may involve a non-  
31 advocative stance by the Chairer. If, for whatever reason,  
32 the Chairer will not support the majority position, he/she  
is obliged to make known to the Dean the decision of depart-  
ment colleagues and his/her own position."

and later,

"He/she is the representative of the department rather  
than the representative of the administration, but he/  
she must be able to present accurately to his/her  
colleagues the positions of the administration."

in speaking of personnel matters:

"He/she will be expected to consult with members of  
the faculty in a manner which seems most appropriate  
(1) in maintaining constructive personnel relationships  
(2) in furthering professional development of the faculty,  
and (3) in furthering the best interests of the Department,  
the College, and the University."

1 In his paper Dean Solberg quotes the AAUP as reflecting his  
2 views "rather accurately":

3 "The chairman or head of a department, who serves as  
4 the chief representative of his department within an  
5 institution, should be selected either by departmental  
6 election or by appointment following consultation with  
7 members of the department and of related departments;  
8 appointments should normally be in conformity with  
9 department members' judgment. The chairman or department  
10 head should not have tenure in his office, his tenure as  
11 a faculty member is a matter of separate right. He should  
12 serve for a stated term but without prejudice to re-  
13 election or to reappointment by procedures which involve  
14 appropriate faculty consultation. Board, administration,  
15 and faculty should all bear in mind that the department  
16 chairman has a special obligation to build a department  
17 strong in scholarship and teaching capacity."<sup>2</sup>

#### 11 THE CHAIRMEN

12 3. It was the Uncontroverted testimony of Dean Kiley of the  
13 School of Fine Arts and Chairmen Fetz and Lawry that there  
14 has been no major change in the duties of department chair-  
15 men in the last 2 or 3 years. Departmental Chairmen are,  
16 like the rest of the faculty, on academic year contracts.  
17 In addition to their normal faculty salaries, chairmen  
18 receive an additional stipend of \$400-\$800 to  
19 compensate for additional duties they perform. In order to  
20 allow time for their duties as Chairmen they have reduced  
21 teaching loads.

22 Departmental chairmen acquire tenure as faculty members, not  
23 as chairmen. Performance in their administrative role is  
24 evaluated by the Dean. Their performance as teachers is  
25 evaluated by their peers. In the College of Arts and Sciences  
26 Chairmen are reviewed as Chairmen every 3 or 4 years.

27  
28 The Chairman has responsibility for evaluating faculty  
29 members for purposes of promotion, tenure, termination and  
30 for making recommendations for salary categories. Under  
31 FASAP all faculty members are involved in the peer review

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<sup>2</sup> AAUP, Policy Documents and Reports (Redbook), 1973 edition.

1 of their colleagues for these purposes.

2 The Chairman may make an initial determination that a new  
3 faculty member is needed. If given approval to hire he starts  
4 the recruitment process in consultation with the EEO officer.  
5 Faculty may or may not be involved in recruiting. Hiring is  
6 done in consultation with the faculty. The Chairman submits  
7 the recommendation to the Dean (or, in the School of Business,  
8 the Academic Vice President). After approval the candidate  
9 is offered the job. Practice varies as to who actually  
10 tenders the offer initially. The President of the University  
11 has the final hiring authority.  
12

13 The Chairman has responsibility for developing departmental  
14 budgets. The budget is divided into 3 parts:

- 15 1. salaries - neither the chairman nor the faculty  
16 members have any say about the amounts allocated  
for salaries.
- 17 2. travel - testimony indicates that travel requests  
18 are a compilation of faculty travel plans arrived  
at in departmental committee.
- 19 3. equipment and supplies - projected needs are  
20 usually in ratio with past expenditures and  
arriving at a figure is basically a clerical  
21 function.

22 The Dean appoints the Chairman but appoints one who has the  
23 backing of the faculty. This backing is sometimes gained by  
24 the election process. That is, those faculty members who  
25 wish to be Chairman stand for election. If there is no  
26 majority, a run-off election may be held. The survivor  
27 becomes the official choice (candidate) of the department.

28 Departmental Chairpersons compute the number of years of prior  
29 service to be credited to each new faculty member. The  
30 provision for computation of prior service is the one section  
31 of the FASAP document which has not been approved by the  
32

1 President. The procedure is, consequently, subject to change.

2  
3 Departmental Chairmen hire and supervise the nonacademic  
4 secretarial staff for the Department. They bear the primary  
5 responsibility for discharge of these employees. Testimony  
6 establishes that they bear some responsibility for adjustment of  
7 their grievances (presumably in accordance with the union  
8 contract).

9 Richard Solberg, Dean of the College of Arts and Sciences  
10 testified that the Departmental chairmen in Arts and Sciences  
11 report that their day to day duties are very clerical but that  
12 the chairmens' duties also involve the use of independent  
13 judgment.

14  
15 4. Gerald Fetz, Assistant Professor and Chair of the Department  
16 of Foreign Languages, testified that:

17 a. Personnel decisions on promotions, tenure, and salary  
18 increases are made by an elected advisory committee.  
19 The unit criteria developed (under FASAP) by the  
20 department as a whole are used to measure proposals  
21 on promotions and salary. All personnel decisions  
22 made by this committee must be reported to the Dean  
23 with the number of concurring votes, dissenting  
24 votes and abstentions. Decisions on promotions,  
25 tenure and salaries are appealable.

26 b. The Foreign Language Department is the largest on  
27 campus (31 faculty members) and internally is  
28 broken down into different subprograms. Each  
29 one of these sections works up its own class  
30 schedule and submits it to the Department office  
31 where the Secretary does the organizing. The  
32 Chairman makes sure the faculty are teaching an  
even number of courses.

c. The Foreign Language departmental advisory  
committee makes the decisions on what is  
taught in summer school and the section heads  
make recommendations on who is to teach those  
courses. Summer salaries are based on a  
University wide formula.

d. The Chairman does not make decisions on who  
teaches what courses. The section head (e.g.  
German) makes those decisions.

e. He views himself as first and foremost a member  
of the faculty and an advocate of the faculty

1 position. He stated that he stressed his in-  
2 tention to act as an advocate in his pre-election  
3 position paper. Professor Fetz stressed that he  
4 would not report an independent opinion to the  
5 Dean which differed from the position of the  
6 majority of the faculty. This would be his  
7 stance even though he might have originally  
8 advocated a position contrary to the majority.  
9 If he was unable to sway his colleagues during  
10 departmental deliberations he would then  
11 adopt the position of the majority as his own.  
12 He would advocate that position.

13 f. The Foreign Language Department has generally  
14 followed the same decision making process for  
15 some years.

16 5. John Lawry, Professor and Chairman of the 14 member Depart-  
17 ment of Philosophy testified to a departmental governance  
18 procedure equally as democratic or collegial as that in the  
19 Department of Foreign Languages. Professor Lawry stated  
20 that in the Philosophy Department:

- 21 a. Personnel decisions on promotion, tenure and  
22 salaries are made by the Department as a whole  
23 applying criteria (unit standards) in accordance  
24 with the mandates of FASAP.
- 25 b. Decisions on what courses are to be taught, when  
26 they are to be taught and where they are to be  
27 taught are made by the Department acting as a  
28 committee of the whole.
- 29 c. The Chairman of the Philosophy Department does not  
30 assign advisors to students. This task is performed  
31 by the undergraduate and graduate officers who are  
32 elected by the Department.
- 33 d. The Department acting as a committee of the whole  
34 makes the decisions on who will teach summer  
35 classes. They apply these criteria in making  
36 the decisions 1) who taught summer school last,  
37 2) who wishes to teach, and 3) who needs to teach  
38 the most. Summer salaries are based on a  
39 University wide formula.
- 40 e. During faculty deliberations in the Department  
41 freedom of dissent within the peer group is  
42 absolute. However, after a vote is taken,  
43 as chairman he must advocate the majority  
44 position. In a case where his personal opinion  
45 differs from that of the majority of the faculty  
46 he would mention his own position to the Dean  
47 only if asked. At the same time he would urge  
48 the Dean to act on the recommendation of the  
49 faculty. Professor Lawry further testified that  
50 if he felt that he could not advocate the  
51 majority position of the department faculty he  
52 would resign.

1 6. Testimony and evidence established the following course of  
2 events in hiring new faculty in the School of Business

3 Administration:

- 4 1. The Dean gains permission to hire from the  
5 higher administration.  
6 2. The chair works on recruitment with the EEO  
7 officer.  
8 3. The chair consults with the faculty. The  
9 candidate(s) is brought in for an interview  
10 if finances permit.  
11 4. The department makes the choice.  
12 5. The Dean approves the department choice  
13 (but does not review the vitae of the  
14 other candidates).  
15 6. The Chair requests and receives official  
16 permission to hire from the Vice President  
17 for Academic Affairs.  
18 7. The Chair then offers the position to  
19 the candidate (by letter).  
20 8. The President of the University confirms  
21 the offer.

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DIVISION COORDINATORS IN THE  
SCHOOL OF EDUCATION

7. a. Division coordinators in the School of Education are  
on Academic Year contracts and are compensated an  
extra \$200 for their additional duties as coordinators.  
b. In the School of Education Division Coordinators hold  
positions analagous to that of departmental chairman  
elsewhere on the campus.  
c. Divisions within education are less discrete units than  
are departments. For example, recommendations under  
FASAP are made for the school as a whole; assigning  
students to advisors is a centralized function of the  
Dean's office; budgeting is a centralized function  
of the Dean's office; there is one travel committee  
for the school rather than one for each division.

THE DIRECTORS

8. Directors have the same supervisory authority over non-  
academic staff as do departmental chairmen.  
9. The Wildlife Program is an interdisciplinary program in  
the School of Forestry. For the 3 faculty in the school

1 it functions as a department. These faculty  
2 members have developed unit standards and apply these  
3 criteria to faculty personnel decisions.

4 The Director of the Wildlife Program acts in the role of  
5 Chairman toward those faculty members in the School of  
6 Forestry. Other faculty members involved in the program  
7 are responsible to their own departments.  
8

9 The Director generally performs the same duties as the  
10 chairmen of other academic departments on campus. However,  
11 there are some decisions which are made by all 6 faculty  
12 members involved in the program sitting as the Wildlife  
13 Biology Committee, e.g. this committee makes decisions on  
14 teaching assignments.

15 The Director has the same supervisory authority over non-  
16 academic staff as do departmental chairmen.

17 10. There are three program directors in the College of Arts and  
18 Sciences. They are:

19 the Director of the Biological Station,  
20 the Director of the Native American Studies program, and  
21 the Director of Environmental Studies.

22 All three directors have budget, curricular and space, and  
23 facility responsibilities. Dean Solberg testified that the  
24 functions of these program directors are analogous to those of  
25 departmental chairmen. They have responsibilities for some  
26 nonacademic staff.

27 11. The Bureau of Business and Economic Research is in the School  
28 of Business. The Director negotiates contracts for the Bureau  
29 to perform research and contracts with individuals to do  
30 specified projects. With the exception of the Director  
31 there are no permanent professional employees in the Bureau.  
32

1 The Director is on a fiscal year contract, is eligible for  
2 tenure and teaches one course a year.

3  
4 12. The Division of Educational Research and Services is in the  
5 School of Education. The Division budget is made up of grant  
6 and contract money gained from contracting research projects  
7 from organizations and agencies. The Division also contracts  
8 with individuals to perform specified pieces of research.

9 The Director holds a fiscal year contract as a professor.  
10 He is paid out of the University budget and spends 25% of  
11 his time teaching in the School of Education.

12  
13 13. The National Center for Career Education is funded by a  
14 federal grant and performs research under that grant. The  
15 research is done either by permanent professional employees  
16 or is contracted out. The Director holds a fiscal year  
17 contract and has a "tenure stream" appointment. His salary  
18 is higher than those of other Assistant Professors and he  
19 is paid out of the grant.

20 14. RESOLUTION AND RATIONALE

21 Internal University governance not only varies substantially from  
22 University to University it also varies between college and even  
23 within the same college in a single institution. D.W. Leslie writing  
24 in the AAUP Bulletin remarked, "It is extremely important to  
25 recognize that existing evidence does not permit a generalized  
26 description of the department chairmanship, even within a single  
27 institution."

28 At the University of Montana within the framework of University  
29 governance known as FASAP, there is considerable variation in

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31 <sup>3</sup>  
32 Leslie, D.W., AAUP BULLETIN, Winter 1973, p. 423, as quoted  
in "The Department Chairer College of Arts and Sciences University of Montana,  
Office of the Dean, Aug. 1976.

1 perception of the role of chairman as well as a variety of re-  
2 sponses in carrying out that role.

3 Dean Arnold Bolle testified that he served as Acting Academic  
4 Vice President from July 1, 1976 to July 31, 1977. During his  
5 tenure the administration had a number of meetings about the  
6 changing role of the chairman. There was concern that the responsi-  
7 bilities of the chairmen had been increasing but the compensation  
8 had not. The administration wanted to pay more and get people  
9 with better leadership qualities. Dean Bolle testified:

10 "We worked out several programs in consultation with  
11 the various Deans who have Department Chairmen and we  
12 had worked out a proposed method of changing them to  
13 a different system than we presently, than we have had  
14 in the past. I think it is very clear that the  
15 arrangements are very strange and very different and  
16 quite varied around the University, and that the  
17 compensation for Department Chairmen and the assignment  
18 of duties and so on are rather varied and, of course,  
19 the conditions vary too and so we spent a considerable  
20 amount of time trying to develop a program, the President  
21 was very much concerned that this be done."

17 Dean Bolle continued that in their study they found that in most  
18 universities Chairmen were compensated more and their duties were  
19 more clearly defined than at the University of Montana. The  
20 administration planned to move in this direction but change was  
21 precluded by lack of funds.

22 The basic framework of academic governance which supports  
23 this variety is a new system called "Faculty Advancement Standards  
24 and Procedures"<sup>4</sup>(FASAP). FASAP sets forth certain University  
25 standards in relation to promotions, salaries, tenure, and ter-  
26 mination. It provides for the development of unit standards  
27 (department standards) to be used in peer review of faculty  
28 members. All faculty members were involved in developing the

29 \_\_\_\_\_  
30 <sup>4</sup>  
31 FASAP replaces "Policy and Procedure Faculty Advancement" (PAPFA).  
32 The main substantive difference between the two systems is FASAP's clearer  
delineation of the faculty role in decision making on faculty personnel matters,  
e.g. no faculty involvement in tenure decisions was specified in PAPFA.

1 criteria by which faculty promotions, tenure and salary decisions  
2 are to be made. The exact procedure used in this peer review  
3 process varies from Department to Department. The crucial point  
4 is that FASAP sets forth a peer review process which must be  
5 attested to and which is appealable. The process not only assures  
6 faculty participation in all the major faculty personnel decisions  
7 but, by setting forth an appeals procedure virtually precludes  
8 uncontested unilateral action on the part of the chairman or the  
9 Dean.

10 THE "CHAIRER" IN THE COLLEGE  
11 OF ARTS AND SCIENCES

12 The College of Arts and Sciences is composed of 23 academic  
13 departments and a number of programs. There are 287 teaching  
14 faculty within the college.

15 Dr. Richard Solberg, Dean of the College, has written a  
16 position paper on the "chairer" within that college. (see  
17 finding of fact #2) Dr. Solberg's last revision of this paper was  
18 in August, 1976. Each new "chairer" is given a copy of this  
19 document. Dean Solberg testified that this policy statement  
20 contains information on how he wants Department "Chairers" to  
21 function.

22 In the paper Dean Solberg refers to the "chairer" as primus  
23 inter pares [first among equals] and states that the chairperson  
24 is first and foremost a member of the faculty. The Dean feels  
25 that the "Chairer's" "authority ought to be more functional than  
26 formal". The Dean goes on to say that certain aspects of de-  
27 partmental administration may be delegated by the "Chairer" to  
28 faculty members and staff and others may not. The responsibility  
29 and authority for personnel administration rests primarily with  
30 the "chairer" although he must consult with members of the  
31 faculty in a manner which seems most appropriate.

32 Combined with FASAP (or PAPFA) and past and current practice

1 in the various departments, Dean Solberg's policy statement seems  
2 flexible enough to be reconciled with the extremely democratic  
3 modes of departmental government which have been shown to exist  
4 within the College of Arts and Sciences.

#### 5 THE CHAIRPERSON IN THE SCHOOL OF FINE ARTS

6 The School of Fine Arts is composed of 3 departments. There  
7 is no written policy statement defining the role of chairperson  
8 within the school. Dean Robert Kiley testified that all 3  
9 departmental chairpersons were recruited from without the University.  
10 In the Departments of Arts and Drama the chairpersons are serving  
11 their second year. In the Music Department the chairperson is  
12 serving his 5th year in that position. Dean Kiley testified that  
13 there have been no major changes in the duties of the chairperson  
14 in the last 2 or 3 years.

15 In his testimony Dean Kiley stated that he must assume that  
16 when a Chairman reports to him that he is reporting faculty  
17 opinion as well as his own personal opinion. It is the chair-  
18 man's job to achieve consensus within the Department. If consensus  
19 is not achievable it is the chairperson's duty to report this to  
20 the Dean.

21 The Dean testified that although it is the ultimate re-  
22 sponsibility of the chairperson to assign teaching loads, de-  
23 termine hours that classes will be taught, assign academic  
24 advising duties, develop the budget, etc., he makes these decisions  
25 in consultation with the faculty.

26 Dean Kiley places great emphasis on the opinions and recom-  
27 mendations of the Chairman. He views the Chairperson as an  
28 advocate of the program.

#### 29 THE CHAIRPERSON IN THE SCHOOL OF BUSINESS ADMINISTRATION

30 The School of Business Administration is composed of 2  
31 academic departments (16 faculty members) and the Bureau of  
32 Business and Economic Research. Dean Paul Blomgren testified

1 that the job of chairperson is not merely clerical but involves  
2 the use of independent judgment. The chairs are responsible for  
3 the day to day operations of their departments.

4 In making decisions on such matters as promotions, tenure,  
5 non-renewal, and sabbaticals the chairperson consults with the  
6 faculty.

7 Dean Blomgren meets with the chairs and the Director of the  
8 Bureau weekly. In those meetings he expects the chairs to  
9 represent the feelings of the faculty but they must use their own  
10 judgment when they have not had the opportunity to consult the  
11 faculty.

12 Faculty Personnel decisions are made in accordance with  
13 FASAP as in other departments of the University.

#### 14 THE DIVISION COORDINATORS IN THE SCHOOL OF EDUCATION 15

16 The School of Education is composed of four divisions headed  
17 by division coordinators and two programs headed by Directors.  
18 Dean David Smith testified that the position of division co-  
19 ordinator is parallel to that of departmental chairman. The  
20 division coordinator is responsible directly to the Dean.  
21 Generally, the coordinators and faculty play the same role vis-  
22 a'-vis one another as do departmental chairmen and faculty else-  
23 where in the University. Exceptions are:

- 24 1. There is only one promotion and tenure committee  
25 for the School of Education. Members are elected but  
26 all 4 division coordinators are ex-officio members of  
this committee. By inference the School of Education  
developed only one set of unit standards.
- 27 2. Assigning students to faculty advisors is not  
28 done in the divisions but rather as a centralized  
clerical function from the Dean's office.
- 29 3. Budgeting is done in the Dean's office for  
30 the School of Education as a whole. Dean Smith  
31 testified that the Division coordinator's responsi-  
bilities for budgeting are not as extensive as those  
of the Department Chairman.
- 32 4. Faculty members may hold appointments in more  
than one division, but are identified primarily with  
one division.



1 1602(3) defines "supervisory employee" as an individual who has  
2 authority to hire, transfer, suspend, lay-off, recall, promote,  
3 discharge, assign, reward, discipline other employees, having  
4 responsibility to direct them, to adjust their grievances, or  
5 effectively recommend such action, if in connection with the  
6 foregoing the exercise of such authority is not of a merely  
7 routine or clerical nature, but requires the use of independent  
8 judgment.

9 At the University of Montana effective recommendations on  
10 major personnel decisions on promotion, tenure, and salary are  
11 made by the faculty under the aegis of rules set forth in FASAP  
12 (Faculty Advancement, Standards and Procedures). A merit salary  
13 increase (reward) or a less than normal salary increase (discipline)  
14 must be made in this manner. As stated earlier the crucial point  
15 is that FASAP sets forth a peer review process which must be  
16 attested to and which is appealable. The process not only assures  
17 faculty participation in all major personnel decisions but, by  
18 setting forth an appeals procedure virtually precludes uncon-  
19 tested unilateral action on the part of the chair or the Dean.

20 Testimony and evidence established that major decisions or  
21 recommendations on hiring faculty are also made in a collegial  
22 atmosphere.

23 The record establishes that although departmental chair-  
24 persons have certain formal responsibilities with respect to  
25 decisions on appointment, salary, promotions and tenure they act  
26 primarily as instruments of the faculty and stand largely on the  
27 same footing as the faculty.

28 Testimony indicated that departmental chairmen supervise  
29 secretarial staff who are in a separate bargaining unit. (see  
30 finding of fact #3) The University contends that this supervision  
31 of nonbargaining unit employees is sufficient to bring the chair-  
32 men under the definition of "supervisory employee" in Section 59-

1 1602(3) of the Public Employees Collective Bargaining Act.  
2 Petitioner claims that supervision exercised over non-bargaining  
3 unit employees is not pertinent to the question.

4 There is marked similarity in definition of the term super-  
5 visor in the Montana Public Employee Collective Bargaining Act  
6 and the Federal Labor Management Relation Act of 1948. Because  
7 of this similarity precedent established by the NLRB in Adelphi  
8 University, 195 NLRB 644, 79 LRRM 1552 (1972) is pertinent. In  
9 that case the NLRB said:

10 "The Board has not previously considered whether,  
11 in a university setting, professional employees are  
12 rendered supervisors if they have authority to hire  
13 and fire, as well as to direct students as part-time  
14 employees. In other settings, however, we have held  
15 that professional employees who, although supervising  
16 non-professional employees part of their time, had  
17 devoted 50 percent or more of their working time to  
18 their professional, non-supervisory, duties during the  
19 12 months preceding our Decision were properly included  
20 in a professional unit and were eligible to vote in an  
21 election therein, [Westinghouse Electric Corporation,  
22 163 NLRB 723, 727, 64 LRRM 1440.] The record herein  
23 does not establish the type of work which the student  
24 employees will perform, the regularity of such employment,  
25 or the proportion of time, during one academic year,  
26 which the director will devote to supervising them.  
27 It is clear that he will continue to perform profes-  
28 sional duties, and no showing has been made that over  
29 50 percent of his time will be required by his super-  
30 visory duties. Under the circumstances, we shall  
31 include the director of motion picture studies in the  
32 unit at this time. As in Westinghouse, supra, if a  
bargaining representative is selected it may not repre-  
sent Mr. Pitcoff with respect to his supervisory duties.  
We believe our rationale also makes clear that whether or  
not he may properly continue to be included in the unit  
in the future will depend upon the amount of time he  
regularly spends in the performance of supervisory  
duties.

26 In this case, as in the Adelphi case the record does not establish  
27 the frequency with which supervision is exercised. However,  
28 Employer's Exhibit No. 9 establishes a range of time spent by  
29 Chairmen in administrative duties. This range varies from 15 to

30 \_\_\_\_\_  
31 5

31 *This issue was addressed in Unit Determination #60-1974,, Dawson*  
32 *Community College and Montana Federation of Teachers, AFL-CIO (Montana*  
*Education Association and Dawson College Faculty Senate intervenors).*

1 90% with the majority of chairmen spending 50% or less of their  
2 total time on administrative duties of any sort. Testimony  
3 indicates that the chairman's administrative duties vis-a'-vis  
4 the faculty are quite time consuming. It is unreasonable to  
5 think that those chairmen who do spend over 50% of their time on  
6 administration spend such an amount of time supervising the  
7 secretarial staff that those duties consume more than half of  
8 their total time.

9 Applying the Adelphi principle I find that the supervision  
10 over secretaries exercised by the chairperson is not extensive  
11 enough to affect the outcome of this decision.

12 At the University of Montana the role of chairperson is not  
13 the role of supervisor as defined in the Act. Departmental  
14 chairpersons are properly included in the unit.

15 Division coordinators in the School of Education have less  
16 authority than do departmental chairs. They, too, are properly  
17 included in the unit.

#### 18 THE DIRECTORS

##### 19 THE DIRECTOR OF THE WILDLIFE PROGRAM

20 The Wildlife Program is an interdisciplinary program admin-  
21 istratively part of the School of Forestry. Of the six faculty  
22 members involved in the program three are in the School of  
23 Forestry, two are in the Department of Zoology and one is in the  
24 Department of Botany. The Departments of Zoology and Botany are  
25 in the College of Arts and Sciences. For those three faculty in  
26 the School of Forestry the Wildlife Program functions as a  
27 department. Those three members have developed their own unit  
28 standards and apply their own criteria to faculty personnel  
29 decisions.  
30

31 The Director of this program is on a Fiscal Year contract  
32 and teaches fewer courses than other faculty members involved in

1 the program.

2 The governance of the total Wildlife Biology Program is  
3 somewhat more complex than that of programs which are not inter-  
4 disciplinary in nature. However, testimony draws a clear analogy  
5 between the duties of the director and those of the departmental  
6 chairman. The same rationale applies, the Director of the Wildlife  
7 Biology Program is included in the unit.

8 THE DIRECTORS IN THE COLLEGE OF ARTS AND SCIENCES

9 Dean Solberg testified that the functions of the Directors  
10 of the Native American Studies program, the Biological Station,  
11 and the interdisciplinary Environmental Studies program are  
12 analogous to those of departmental chairmen. Even though they  
13 have responsibilities for budgets, curricula, and space and  
14 facilities the Directors have less hiring authority than do  
15 chairmen. Dean Solberg characterized the position of Director of  
16 the Native American Studies program as close to that of depart-  
17 mental chairperson. Since those faculty members involved in the  
18 interdisciplinary environmental studies program are all members  
19 of other academic departments, the position of Director is not  
20 close to that of chairperson.

21 Testimony indicates that the sum of responsibilities of  
22 these Directors is somewhat less than those of the Departmental  
23 chairmen. They are appropriately included in the bargaining  
24 unit.

25 THE DIRECTOR OF THE BUREAU OF  
26 BUSINESS AND ECONOMIC RESEARCH

27 The Director of the Bureau of Business and Economic Research  
28 holds academic rank and is eligible for tenure. She is employed  
29 on a fiscal year contract and teaches one course each year.

30 The work of the Bureau is considerably different than that  
31 of academic departments. It publishes the Montana Business  
32 Quarterly and does specified research projects on contract for

1 organizations or businesses. As needed the Director contracts  
2 with individuals outside the Bureau for specified pieces of work.  
3 This work may include a particular research project or other  
4 activities such as computer programing. The Director negotiates  
5 both types of contracts which are, of course, subject to approval  
6 by the University administration. The individuals the Director  
7 contracts with may be faculty members within the University. If  
8 so, these faculty members perform the contracted work in addition  
9 to their regular University duties. If faculty members contract  
10 with the Bureau the Director will evaluate the work and report to  
11 the chairs of their respective departments. However, the personnel  
12 decisions applying to these faculty members will be made by the  
13 FASAP procedures within their own departments. I find that,  
14 within the meaning of the Act, the Director does not supervise  
15 any employees in the bargaining unit.

16 The Bureau has only one permanent professional employee, the  
17 rest of the employees are staff and technical employees. There  
18 is insufficient evidence on the record to make it possible to  
19 test the supervision of these employees by the principle developed  
20 in Adelphi, supra. There appears to be a possibility that the  
21 Director spends more than 50% of her time supervising non-bargain-  
22 ing unit employees. Accordingly, the Director may vote in the  
23 election subject to challenge.

#### 24 THE DIRECTORS IN THE SCHOOL OF EDUCATION

25 The Division of Educational Research and Services has a  
26 budget of \$80,000 from grants and contracts. It is headed by a  
27 Director who holds the rank of Professor with a "tenure stream"  
28 appointment. He has a fiscal year contract and receives an  
29 additional \$200 per year for his services as Director. He is  
30 paid out of the ordinary University budget. Seventy-five percent  
31 of the Director's time is assigned to the Division and 25% to  
32 teaching.

1 This Division appears to operate in much the same manner as  
2 the Bureau of Business and Economic Research. It may, for  
3 example, contract with a school district to perform a specific  
4 research project. In order to perform this research it may  
5 contract with faculty members for specific projects or it may  
6 employ doctoral candidates to do the research.

7 As in the case of the Director of the Bureau, the Director  
8 of this Division will evaluate the work performed by faculty  
9 members and mention this to their division coordinators or  
10 departmental chairmen. The work these individuals perform is in  
11 addition to their normal University duties. Personnel decisions  
12 applying to these faculty members will be made by the FASAP  
13 procedures within their own units. I find that, within the  
14 meaning of the Act, the Director does not supervise any employees  
15 in the bargaining unit.

16 There is insufficient evidence on the record to make it  
17 possible to test the supervision of nonacademic employees in the  
18 Division by the principle developed in Adelphi, supra. Accordingly,  
19 the Director may vote in the election subject to challenge.

20 THE DIRECTOR OF THE  
21 NATIONAL CENTER FOR CAREER EDUCATION

22 The National Center for Career Education is funded by a  
23 grant of \$300,000 from the federal government. Its Director is  
24 an Assistant Professor on a fiscal year contract with a "tenure  
25 stream" appointment. The Director's salary is paid out of the  
26 grant and is higher than that of the usual assistant professor.

27 The Center has full-time professional personnel with doctoral  
28 degrees as well as nonacademic personnel. The professional  
29 personnel employed by the Center are not faculty members and are  
30 not members of the proposed bargaining unit. The Center like the  
31 Division of Educational Research and Services and the Bureau of  
32 Business and Economic Research contracts with faculty members to

1 perform specified pieces of work. The same arrangements with  
2 these faculty members apply and they will not be repeated here.

3 The crucial point here is the salary of the Director. His  
4 salary is above that of the usual assistant professor and is paid  
5 by a federal grant. Although there is some doubt whether the  
6 Director shares the same community of interest as the rest of the  
7 members of the bargaining unit as specified in Section 59-  
8 1607(2), there is insufficient evidence on the record to establish  
9 that fact. Therefore, the Director of the National Center for  
10 Career Education may vote in the election subject to challenge.

#### 11 CONCLUSION OF LAW

12 For the reasons stated above I find that with the following  
13 exceptions, the unit determined by the Board in Unit Determination  
14 67 in 1975 is an appropriate unit for purposes of collective  
15 bargaining under Section 59-1606(2), R.C.M. 1947.

16 The unit shall consist of all faculty members of the University  
17 of Montana holding academic rank and teaching 0.5 full-time  
18 equivalent or more, including department chairmen, divisional  
19 coordinators in the School of Education, library staff holding  
20 academic rank, replacement faculty, and law faculty, and excluding  
21 the Reserve Officers Training Corp faculty, persons on terminal  
22 contract, part-time teaching faculty, professional counselors of  
23 the Center for Student Development, deans, vice-presidents,  
24 president, and other administrative staff members of the University.  
25 No determination is made about the Director of the National  
26 Center for Career Education or the Directors of the Division of  
27 Educational Research and Services and the Bureau of Business and  
28 Economic Research. These three directors may vote subject to  
29 challenge.

#### 30 RECOMMENDED ORDER

31 An election by secret ballot shall be conducted as early as  
32 possible under the direction and supervision of the Board of

1 Personnel Appeals among the employees in the bargaining unit  
2 described above who were employed at University of Montana on  
3 November 7, 1977, to determine whether or not they desire to be  
4 represented for purposes of collective bargaining.

5 Dated this 3rd day of January, 1978.

6 BOARD OF PERSONNEL APPEALS

7  
8 BY

  
Linda Skaar  
9 Hearing Examiner  
10

11 NOTICE: Parties have 20 days after the service of the above  
12 Proposed Findings of Facts, Conclusions of Law, and Recommended  
13 Order in which to file written exceptions. If no exceptions are  
14 filed, the Proposed Findings of Fact, Conclusions of Law, and  
15 Order become the Final Order of this Board.  
16  
17  
18  
19  
20  
21  
22  
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24  
25  
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28  
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32

CERTIFICATE OF MAILING

I, Kay Harrison, hereby certify that on the 4th day of January, 1978, I mailed a true and correct copy of the above FINDING OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

James McGarvey  
University Teachers Union  
Local #119  
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Helena, MT 59601

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MEA  
1232 E. 6th Ave.  
Helena, MT 59601

George Mitchell  
University of Montana  
Missoula, MT 59812

Larry Pettit  
Commissioner  
Higher Education  
33 South Last Chance Gulch  
Helena, MT 59601

Dr. Tom Huff  
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University of Montana  
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Emilie Loring  
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Great Falls, MT 59405

Joe Duffy  
Attorney  
315 Davidson Bldg.  
Great Falls, MT 59401

  
Kay Harrison

1                   BEFORE THE BOARD OF PERSONNEL APPEALS

2   IN THE MATTER OF UNIT DETERMINATION #21-77:

3   UNIVERSITY TEACHERS UNION, LOCAL    )  
4   119, Affiliated with MFT, AFT, AFL- )  
5   CIO,                                    )

6                    Petitioner,                    )

7   UNIVERSITY OF MONTANA,                    )

8                    Counter-Petitioner,        )

  ADDENDUM

9   UNIVERSITY OF MONTANA CHAPTER AAUP,    )

10                   Intervenor,                    )

11   MONTANA EDUCATION ASSOCIATION,        )  
12   affiliated with the National        )  
13   Education Association,                )

14                   Intervenor.                    )

15   \* \* \* \* \*

16           An error appeared in the Conclusion of Law in the Proposed  
17   Findings of Fact, Conclusions of Law, and Recommended Order  
18   issued by Hearing Examiner Linda Skaar, January 3, 1978. The  
19   law faculty was improperly included in the unit and persons on  
20   terminal contract were improperly excluded. Program directors  
21   with the exception of the 3 mentioned below are included in the  
22   unit. Therefore the Conclusion of Law is amended to read as  
23   follows:

24                                   CONCLUSIONS OF LAW

25           For the reasons stated above I find that with the  
26   following exceptions the unit determined by the Board in  
27   Unit Determination 67 in 1975 is an appropriate unit for  
28   purposes of collective bargaining under Section 59-1606(2),  
29   R.C.M. 1947.

30           The unit shall consist of all faculty members of the  
31   University of Montana holding academic rank and teaching  
32   0.5 full-time equivalent or more, including department  
33   chairmen, divisional coordinators in the School of  
34   Education, program directors, library staff holding  
35   academic rank, replacement faculty, persons on terminal  
36   contract, and excluding the Reserve Officers Training  
37   Corp faculty, part-time teaching faculty, professional  
38   counselors of the Center for Student Development, law  
39   faculty, deans, vice-presidents, president, and other  
40   administrative staff members of the University. No  
41   determination is made about the Director of the National  
42   Center for Career Education or the Directors of the  
43   Division of Educational Research and Services and the  
44   Bureau of Business and Economic Research. These three  
45   directors may vote subject to challenge.

1 Dated this 5th day of January, 1978.

2 BOARD OF PERSONNEL APPEALS

3  
4 BY 

Linda Skaar  
Hearing Examiner

6 CERTIFICATE OF MAILING

7 I, Kay Harrison, hereby certify that on the 5th day of  
8 January, 1978, I mailed a true and correct copy of the above  
9 ADDENDUM to the following:

10 James McGarvey  
11 University Teachers Union  
12 Local #119  
13 P.O. Box 1246  
14 Helena, MT 59601

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13 George Mitchell  
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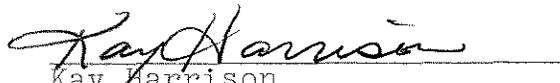
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21   
22 Kay Harrison