

BEFORE THE BOARD OF PERSONNEL APPEALS

1 IN THE MATTER OF THE MONTANA PUBLIC) FINDINGS OF FACT,
2 EMPLOYEES ASSOCIATION'S PETITION FOR) CONCLUSIONS OF LAW
3 REPRESENTATION ELECTION IN THE) AND RECOMMENDED ORDER
4 YELLOWSTONE COUNTY WELFARE DEPARTMENT.) IN OBJECTION TO ELECTION.
5 U.D. #5, 1977.

6 * * * * *

7 A hearing was held on June 21, 1977, in the Conference Room
8 of the Labor and Industry Building, 1331 Helena Avenue, Helena,
9 Montana, to determine the validity of an objection made to an
10 alleged irregularity in a representation election held among the
11 employees of the Yellowstone County Department of Public Welfare
12 on May 26, 1977. The hearing was held pursuant to the authority
13 granted under Section 59-1606, R.C.M. 1947. Duly appointed
14 hearing Examiner of the Board of Personnel Appeals was Barry F.
15 Smith.

16 The election was held to determine whether the employees of
17 the Department desire to be represented by the Montana Public
18 Employees Association (MPEA) for the purpose of collective bar-
19 gaining. MPEA sent a formal objection to the election to the Board
20 on June 2, 1977, alleging that it was not furnished with a voters'
21 eligibility list with addresses until the date of the election,
22 May 26, 1977. MAC 24-3.8(18)-S8180(4)(b) provides, "At least
23 seven (7) days prior to the election, the employer shall furnish
24 to each labor organization which is party to the proceeding, a
25 list of names and addresses of the employees eligible to vote."

26 MPEA was represented by Cordell R. Brown, its Chief of
27 Operations, and the State of Montana as public employer was
28 represented by David W. Stiteler of the Labor Relations Bureau
29 of the Personnel Division, Department of Administration. Mr.
30 Brown called Tim Jones of the Social and Rehabilitation Services
31 as a witness and introduced into evidence Petitioner's Exhibit 1,
32 the list of voters' names and addresses that MPEA received the
day of the election.

Based on a thorough review of pertinent decisions and the

1 entire record in this matter, including the exhibit and sworn
2 testimony, the hearing examiner has made the following:

3 FINDINGS OF FACT

4 1. The Montana Public Employees Association, Inc. (MPEA)
5 filed a petition for new unit determination and election with the
6 Board of Personnel Appeals, (hereinafter referred to as the Board)
7 on March 15, 1977, requesting a unit determination among all
8 employees of the Yellowstone County Department of Public Welfare,
9 excluding the director, an administrative assistant III, and a
10 social service supervisor. An amendment to the petition on April
11 28 also excluded an eligibility technician supervisor and clerical
12 supervisor II pursuant to the employer's counter-petition of
13 March 22. The Board determined that the election would be held
14 May 26.

15 2. On March 15 Robert R. Jensen, Administrator of the Board,
16 sent to Duane Johnson, Administrator of the Department of Adminis-
17 tration, Personnel Division, a letter referring to the rules of the
18 Montana Administrative Code relative to a public employer filing
19 a counter-petition and posting election notices. The letter
20 requested Mr. Johnson to provide the Board with a list of names
21 of employees in the proposed unit. A list of addresses of em-
22 ployees was not specifically requested.

23 3. A list of employees of the Yellowstone County Department
24 of Public Welfare was sent, without addresses, to Mr. Jensen on
25 March 22 by Jack Stuart, Chief of the Personnel Bureau of the
26 Social and Rehabilitation Services (SRS). A copy of the list was
27 sent to Mr. Brown at MPEA.

28 4. Mr. Jensen sent a subsequent letter to Mr. Johnson May
29 9, with which he enclosed a copy of the notice of election and a
30 sample ballot. The letter said that public employers are required
31 to furnish the labor organizations concerned with a list of names
32 and addresses of employees eligible to vote in representation
elections, citing MAC 24-3.8(18)-S8180.

1 the National Labor Relations Board (NLRB) as a key reason for
2 requiring employers to submit lists of voters and their addresses
3 to labor unions concerned in the election. (Excelsior Underwear
4 Inc., 156 NLRB 1236, 61 LRRM 1217 (1966).)

5 The NLRB said at 61 LRRM 1221 that "access to employee names
6 and addresses is fundamental to a fair and free election regardless
7 of whether the employer has sent campaign propaganda to employees'
8 homes." Furthermore, the labor organizations concerned generally
9 have no access to employees' addresses but through lists sup-
10 plied by the employer. The NLRB said at 61 LRRM 1218:

11 As a practical matter, an employer, through his possession
12 of employee names and home addresses as well as his ability
13 to communicate with employees on plant premises, is assured
14 of the continuing opportunity to inform the entire elector-
15 ate of his views, with respect to union representation.
16 On the other hand, without a list of employee names and
17 addresses, a labor organization, whose organizers normally
18 have no right of access to plant premises, has no method
19 by which it can be certain of reaching all the employees
20 with its arguments in favor of representation, and, as a
21 result, employees are often completely unaware of that
22 point of view. (Footnote omitted.)

23 The NLRB held in British Auto Parts, Inc., 160 NLRB 40, 62
24 LRRM 1591, (1966), that the complaining union should be granted a
25 new election where it was furnished with names of the employees
26 and the employees were given the option of furnishing their addresses.
27 This was a clear violation of the rule set forth in Excelsior,
28 the NLRB said. In Gray Drug Stores, Inc., 197 NLRB 924, 80
29 LRRM 1449 (1972), it was held that the employer was required to
30 submit an "Excelsior list" even though the union already posses-
31 sed some of the names and addresses and had made efforts to
32 secure others.

It therefore seems the NLRB will strictly uphold the require-
ments of the Excelsior list, and although not bound to do so, this
decision adopts the NLRB interpretations of the requirement.
The propriety of this strict interpretation is clearly illustrated
in MPEA's situation. As soon as Mr. Brown discovered the omission

1 of the addresses from the list, he requested that they be sent
2 immediately. Testimony at the hearing revealed that this occurred
3 May 20 at the latest, by which time the addresses should have been
4 received, according to the MAC requirement (in Section 24-3.8
5 (18)-S8180 (4)(b)) that such list be furnished seven days before
6 the election.

7 It is true that the omission could have been discovered
8 sooner if Mr. Brown or other employees of MPEA had checked the
9 list, but the record discloses no negligence in their not so check-
10 ing, and the MAC provision just cited clearly sets forth the right
11 of MPEA to have the list. And while SRS's employees may also
12 not be guilty of any negligence in deadheading the list May 20
13 instead of hand delivering it, to hold against MPEA here would be
14 to deprive it of exercising its right to send information to
15 the voters at the first opportunity its agent chose to take.
16 Furthermore, since Mr. Jensen's letter of May 9 unequivocally
17 set forth the requirements of the MAC, the failure of MPEA's
18 employees to check the list sooner cannot be considered relevant.

19 RECOMMENDED ORDER

20 It is hereby ordered that the representation election of May
21 26, 1977, held among the employees of the Yellowstone County
22 Department of Public welfare be set aside and a new election be
23 held.

24 Respectfully submitted this 27th day of June, 1977.

25 BOARD OF PERSONNEL APPEALS

26 By Barry F. Smith
27 Barry F. Smith
28 Hearing Examiner
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CERTIFICATE OF MAILING

I, Trenna Scoffield, hereby certify and state that I did on the 27th day of June, 1977, mail a true and correct copy of the Findings of Fact, Conclusions of law and Recommended Order in Objection to Election of U.D. #5, 1977 to the following persons:

Mr. Cordell R. Brown
Chief of Operations
MPEA
P. O. Box 5600
Helena, Mt 59601

Mr. Duane Johnson
Administrator
Personnel Division
Dept. of Administration
Mitchell Bldg
Helena, Mt 59601

Mr. Jack Stuart
Dept. of SRS
111 Sanders
Helena, Mt 59601

Yellowstone County Welfare Department
Yellowstone County Courthouse
Billings, Mt 59101


Trenna Scoffield