

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 8, 1977

TEAMSTERS UNION Local No. 448, )  
 )  
Petitioner, )  
 )  
-vs- )  
 )  
COLUMBIA FALLS SCHOOL DISTRICT )  
No. 6, )  
 )  
Employer. )

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

\* \* \* \* \*

On May 16, 1977, Teamsters Union Local No. 448 filed a petition for a new unit determination and election proposing a bargaining unit to include all employees of the employer working in the Columbia Falls area including but not limited to hot lunch personnel, cooks and janitors; but excluding office clerical, supervisory and guards. The employer filed a counter petition on May 25, 1977, disagreeing with the petitioner's proposed unit.

Under authority of Title 59, Chapter 16, R.C.M. 1947 a hearing was held at 2:30 p.m. August 10, 1977, at 840 13th Street, Columbia Falls to determine the appropriate unit for the purpose of collective bargaining. Mr. Robert Skelton represented the petitioner. Mr. Charles Kuether represented the employer. No exhibits were offered into evidence by either party.

FINDINGS OF FACT

Based upon a review of the record including the sworn testimony of witnesses, I make the following findings:

1. The petitioner proposed one bargaining unit comprised of the following personnel:

- Letha Dudley, Hot Lunch Worker
- Judy Bell, Hot Lunch Worker
- Robin Crouch, Hot Lunch Worker
- Donna Diemert, Hot Lunch Worker
- Flo Edwards, Hot Lunch Worker
- Wanda Hotz, Hot Lunch Worker
- Shirley Nelson, Hot Lunch Worker
- position formerly occupied by Jean Sedivy
- Joan Syme, Hot Lunch Worker

1 Rose Jorgeson, Hot Lunch Worker  
Lydia Beck, Custodial Worker  
2 Freda Buck, Custodial Worker  
Chon Hui Bruce, Custodial Worker  
3 Neal Childress, Custodial Worker  
Altabell Darling, Custodial Worker  
4 John Davis, Custodial Worker  
Mike Dougherty, Custodial Worker  
5 position formerly occupied by Gene Fox  
Valesta Hanson, Custodial Worker  
6 Ida Johnson, Custodial Worker  
James Sheehan, Custodial Worker  
7 William Osborne, Custodial Worker  
Carolyn Rosenbaum, Custodial Worker  
8 Sung Sorenson, Custodial Worker  
Dorothy Nelson, Custodial Worker  
9 Louise Sundberg, Custodial Worker

10 and any other persons working in the hot lunch program or as custodians.

11 2. The petitioner did not propose to include office clerical  
12 workers, Sam Ellman, Maintenance and Grounds Supervisor, or Don  
13 Phillips in the bargaining unit.

14 3. The employer proposed three bargaining units as follows:

- 15 A. Hot lunch personnel  
16 B. Cooks  
C. Custodial

17 4. The employer proposed to exclude from any bargaining unit  
18 the positions occupied by Letha Dudley, John Davis and Mike Dougherty  
19 because they are supervisory.

20 5. The Superintendent of School District No. 6 believed that  
21 one bargaining unit comprised of hot lunch and custodial would be  
22 easier, from management's point of view, to deal with because of  
23 negotiations; but that two units would allow more flexibility with  
24 respect to personnel administration and would place the labor organ-  
25 ization in a less advantageous position.

26 6. Mike Dougherty performs sweeping, scrubbing and minor repair  
27 duties; he oversees the work of four other persons; he does not  
28 have the authority to hire or fire those persons; he has not filled  
29 out performance evaluations on any of those persons but expects to;  
30 he does not requisition or order supplies; and his supervisor hires  
31 and fires those persons whom he oversees.

32 7. John Davis has been a building leader for approximately one

1 year; his duties and responsibilities are similar to those of Mike  
2 Dougherty; he oversees five other persons; and he fills out, initials  
3 and submits to his immediate supervisor for review performance  
4 evaluations on those persons whom he oversees.

5 8. Both Mike Dougherty and John Davis occupy positions which  
6 require that they personally perform custodial type work and that  
7 they assign and check work done by other personnel.

8 9. Letha Dudley works under the immediate supervision of the  
9 Superintendent of Schools; she performs duties related to the  
10 supervision of hot lunch personnel and as a hot lunch worker; she  
11 interviews prospective employees and makes recommendations for  
12 hiring; she does not have authority to fire personnel but believed  
13 she could make recommendations should the occasion arise; she  
14 evaluates employee performance, signs the form as supervisor and  
15 submits it to her supervisor for review; and she is paid on a  
16 monthly basis.

17 10. All other personnel in the proposed bargaining unit who  
18 were called as witnesses perform general custodial or hot lunch  
19 work; they desire one unit comprised of hot lunch and custodial  
20 personnel; they receive similar fringe benefits, they are paid an  
21 hourly wage; and they are governed by the same personnel policies.

#### 22 OBJECTIONS TO TESTIMONY

23 The testimony of John Davis, which was allowed over the objection  
24 of the petitioner, concerning his opinion of possible differences  
25 in pay negotiated by an exclusive representative was accepted for  
26 what it was worth. The testimony on that point was not substantial;  
27 therefore, it has been disregarded.

#### 28 DISCUSSION

29 The issues to be decided are: (1) whether one or more than one  
30 bargaining unit is appropriate for the purpose of collective bar-  
31 gaining for those employees of the employer who work in the hot  
32 lunch program or as custodians, and (2) whether certain employees

1 are supervisory and should, therefore, be excluded from any bar-  
2 garining unit.

3 Section 59-1606(2), R.C.M. 1947 sets forth certain factors  
4 which must be considered in deciding the appropriate unit for  
5 the purpose of collective bargaining; ". . . community of interest,  
6 wages, hours, fringe benefits, and other working conditions of the  
7 employees involved, the history of collective bargaining, common  
8 supervision, common personnel policies, extent of integration of  
9 work functions and interchange among employees affected, and the  
10 desires of the employees."

11 The testimony of the employees, both hot lunch and custodial,  
12 shows a common interest in securing a single bargaining unit which  
13 would operate for the mutual benefit of all. A mutuality of inter-  
14 est in wages, hours and working conditions is a determinant of  
15 whether a given group of employees constitutes an appropriate unit.

16 Employees in both groups, except Mrs. Dudley, are paid an hourly  
17 wage. All wage rates are not the same; however. There is no  
18 evidence to show that their wages are similar, nor is there evidence  
19 to show dissimilarity. Therefore, no conclusion can be drawn with  
20 respect to that factor.

21 It was established that the hours of the employees in the two  
22 groups are not similar. Custodians work a different shift than do  
23 the hot lunch personnel.

24 The evidence shows that employees of both groups receive the same  
25 fringe benefits such as vacation, sick leave, retirement plan and  
26 holidays. Other working conditions are similar in that they per-  
27 form routine cleaning or lunch preparation duties inside school  
28 buildings which may be characterized as unskilled, manual work.

29 No evidence was offered to show a history of collective bar-  
30 gaining among those employees who are affected.

31 The Superintendent of Schools testified that the School Board  
32 has the ultimate responsibility for hiring and firing all employees

1 of the District based upon recommendations from him and that he  
2 has delegated some of that authority to make recommendations to  
3 various supervisors. All employees in both groups are under the  
4 general supervision of the Superintendent; however, that relationship  
5 is too remote to warrant a conclusion that common supervision  
6 exists. The evidence shows that hot lunch personnel are super-  
7 vised by one individual and custodial personnel are supervised by  
8 another.

9 Personnel policies of the employer appear to be common to  
10 both groups of employees, i.e., all are subject to the same perfor-  
11 mance evaluations and overtime policies. No evidence was offered  
12 to show that different policies apply.

13 There is no intergration of work functions between the two  
14 groups, nor is there a significant degree of interchange among the  
15 employees affected. Custodial personnel perform duties related  
16 to building cleaning and upkeep. Hot lunch personnel perform duties  
17 related to the preparation of food and maintaining a clean work area.  
18 Employees are not shifted from custodial to hot lunch work or from  
19 hot lunch to custodial work.

20 All employees in the petitioner's proposed unit who testified  
21 said they desired one bargaining unit.

22 Where, as here, a consideration of the factors listed in the  
23 statute indicates that the employees may be placed in a single unit  
24 or multiple units the determining factor should be the desires of  
25 the employees. Section 59-1606(2), R.C.M. 1947 says, in part,  
26 "In order to assure employees the fullest freedom in exercising  
27 the rights guaranteed by this act . . .". (emphasis added) The  
28 desires and interests of the employees was revealed through the  
29 testimony of several custodial and hot lunch personnel. Without  
30 exception, all wanted a single unit. All of the criteria mandated  
31 for consideration by the act do not have to be met by all employees  
32 in a proposed unit. In fact, seldom would one expect that to be

1 found.

2 Section 59-1602 (3), R.C.M. 1947 defines supervisory employee  
3 as "any individual having authority, in the interest of the employer  
4 to hire, transfer, suspend, lay off, recall, promote, discharge,  
5 assign, reward, discipline other employees, having responsibility  
6 to 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."

10 There are three positions, occupied by Mrs. Dudley, Mr. Davis  
11 and Mr. Dougherty, which the employer contends should be excluded  
12 because they are supervisory. The evidence shows that none of the  
13 three has ". . . authority, in the interest of the employer, to  
14 hire, transfer, suspend, lay off, recall, promote, discharge, . . .  
15 reward, discipline other employees, . . ."; however, there is  
16 evidence which raises the question of whether any or all of the  
17 three can effectively recommend such action.

18 Mrs. Dudley interviews persons and makes effective recommendations  
19 to the Superintendent on hiring. She evaluates the performance of  
20 subordinates and signs the form as the supervisor. Her salary is  
21 on a monthly basis as opposed to the hourly rate of other hot lunch  
22 personnel. She has the responsibility of directing hot lunch workers  
23 and assigning their duties. There is no intermediate level of super-  
24 vision between Mrs. Dudley and the management official to whom  
25 she is directly responsible (the Superintendent). Although she has  
26 never had to terminate an employee, it can reasonably be inferred,  
27 from the fact that she effectively recommends the hiring of personnel,  
28 that authority to effectively recommend such action exists. The  
29 existence of authority of an employee to act in the interest of the  
30 employer by making effective recommendations on the matters and in  
31 the manner specified in the act, rather than the exercise of that  
32 authority, determines supervisory status. The weight of the evidence

1 supports a conclusion that the position currently occupied by Mrs.  
2 Dudley should be excluded from a bargaining unit. Although she  
3 performs the same duties as the regular hot lunch workers during the  
4 course of her employment, she also exercises significant super-  
5 visory responsibilities over those personnel.

6 The findings of fact show that Messrs. Davis and Dougherty  
7 perform almost identical duties; therefore, for purposes of  
8 discussion they will be treated as one. They do not exercise the  
9 same supervisory responsibilities over other custodians as does  
10 Mrs. Dudley over her subordinates. There is an intermediate level  
11 of supervision between their positions and the Superintendent (Mr.  
12 Sam Ellman, Maintenance and Grounds Supervisor). They do not sign  
13 performance evaluations as the supervisor, but rather initial them  
14 and forward them to Mr. Ellman for his signature. They are paid on  
15 an hourly basis as are other custodial personnel. Their recom-  
16 mendations on personnel actions go to the Maintenance and Grounds  
17 Supervisor; those of Mrs. Dudley are made directly to the Super-  
18 intendent. For these reasons it is clear that the positions occupied  
19 by John Davis and Mike Dougherty should be included in an appropriate  
20 unit.

#### 21 CONCLUSIONS OF LAW

22 One unit comprised of all hot lunch workers, including cooks,  
23 and all custodians is the appropriate unit for the purpose of  
24 collective bargaining under Title 59, Chapter 16, R.C.M. 1947.

25 The position presently occupied by Mrs. Dudley is supervisory  
26 as defined by Section 59-1602(3), R.C.M. 1947 and is excluded from  
27 the unit.

28 The positions presently occupied by Mr. Davis and Mr. Dougherty  
29 are not supervisory as defined by Section 59-1602(3), R.C.M. 1947  
30 and are included in the unit.

#### 31 RECOMMENDED ORDER

32 That an election by secret ballot be conducted as early as

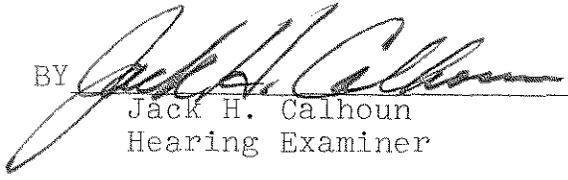
1 possible, in accordance with the Rules and Regulations of this  
2 Board, M.A.C. 24-3.8(18)-S8150 through S8260, among the employees  
3 in the appropriate bargaining unit described above to determine  
4 whether they desire to be represented for the purpose of collective  
5 bargaining.

6 That any exceptions to these Findings of Fact, Conclusions of  
7 Law and Recommended Order be filed within twenty (20) days of  
8 service with the Board of Personnel Appeals, 1417 Helena Avenue,  
9 Helena, Montana, 59601 and that if no exceptions are so filed  
10 within that time, this Recommended Order shall become the Final  
11 Order.

12 Dated this 22nd day of August, 1977.

13  
14 BOARD OF PERSONNEL APPEALS

15  
16 BY

  
17 Jack H. Calhoun  
18 Hearing Examiner  
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CERTIFICATE OF MAILING

I, Kay Harrison, hereby certify that on the 22nd 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:

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Kay Harrison