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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT)
DETERMINATION NO. 7-78:)

BUTTE TEAMSTERS UNION, Local No. 2,)
International Brotherhood of Teamsters,)
Chauffeurs, Warehousemen and Helpers)
of America,)

Petitioner,)

-vs-

BUTTE-SILVER BOW,)
Employer.)

O R D E R

Having considered the motion requesting withdrawal of
the Petition for new unit determination in the above-
captioned matter and good cause appearing therefor, said
withdrawal is granted.

IT IS ORDERED, that UD#7-78 is hereby dismissed.

Dated this 12th day of April, 1978.

BOARD OF PERSONNEL APPEALS

By Robert R. Jensen
Robert R. Jensen
Administrator

CERTIFICATE OF MAILING

I, Marilyn K. Hoffman, hereby certify and state that I
did, on the 12th day of April, 1978, mail a copy of the
above ORDER to the following persons:

D. Patrick McKittrick
Attorney at Law
315 Davidson Building
Great Falls, MT 59401

Barry L. Hjort
Attorney at Law
1420 Cedar Street
Helena, MT 59601

Mario Micone
Executive Officer
Government of Butte-
Silver Bow County
Courthouse
Butte, MT 59701

Jim Roberts
Butte Teamsters Union,
Local #2
P.O. Box 3745
Butte, MT 59701

Marilyn K. Hoffman
Marilyn K. Hoffman



RECEIVED

APR 7 1978

BEFORE THE BOARD OF PERSONNEL APPEALS

BOARD OF PERSONNEL APPEALS

IN THE MATTER OF U.D. # 7-78,
BUTTE TEAMSTERS, LOCAL #2

MOTION TO WITHDRAW WITHOUT PREJUDICE

COMES NOW Butte Teamsters, Local #2, by and through its attorney and moves the Board of Personnel Appeals to withdraw without prejudice the Petition for new unit determination and election in the above-captioned matter.

DATED this 6th day of April, 1978.

D. Patrick McKittrick

D. PATRICK MCKITTRICK
315 Davidson Building
P. O. Box 1184
Great Falls, Montana 59403

AFFIDAVIT

I, D. PATRICK MCKITTRICK, counsel for Butte Teamsters, Local No. 2, do hereby swear, depose and say as follows:

That I have read and am familiar with the contents of the Petition filed herein by Butte Teamsters, Local No. 2;

That I have read and am familiar with the contents of the attached Motion to Withdraw Without Prejudice, and the matters and facts contained therein are true, accurate and correct to the best of my knowledge, information and belief.

DATED this 6th day of April, 1978.

D. Patrick McKittrick

D. PATRICK MCKITTRICK
Counsel for Butte Teamsters, Local No. 2

STATE OF MONTANA)
 : ss.
County of Cascade)

SUBSCRIBED AND SWORN TO before me this 6th day of April, 1978.

[Signature]

Notary Public for the State of Montana
Residing at Great Falls, Montana
My Commission expires 7-15-80

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CERTIFICATE OF SERVICE

Barry L. Hjort
Attorney at Law
1420 Cedar Street
Helena, Montana 59601

This is to certify that the foregoing was duly served by mail upon the opposing attorneys of record of their address or addresses this 6th day of April, 19 78.

Robert R. Jensen
Administrator
Board of Personnel Appeals
Box 202, Capitol Station
Helena, Montana 59601

D. Patrick McKinrick
D. Patrick McKinrick

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MAR 31 1978

BOARD OF PERSONNEL APPEALS

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF U.D. #7-78,)
BUTTE TEAMSTERS, LOCAL #2,)
Petitioner.)

MOTION TO DISMISS

COMES NOW, The Montana Public Employees Association, Inc., by and through its Attorney, and moves the Board of Personnel Appeals or its lawful agent to suspend further proceedings with respect to the posting of Notice of New Unit Determination Proceedings by the Employer until a decision is rendered on this Motion to Dismiss, and further, to dismiss the above Petition for New Unit Determination for the following reasons:

1. That the Petition is obviously deficient on its face in that it fails to indicate the approximate number of employees in the proposed unit;

2. That the Petition is further deficient in that it is not accompanied by the necessary showing of proof-of-interest in that the unit described by the Petition includes 117 persons including 55 employees currently included within the existing MPEA clerical unit, 33 employees in the same MPEA unit who are employed at Silver Bow General Hospital, 21 employees currently included within the existing Teamsters clerical unit, and 8 employees currently employed in the Library.

3. That the Petition is further deficient in that it indicates that no other labor organization claims to represent employees in the proposed unit, whereas in fact, MPEA does claim to and in fact represents a majority of employees in the unit described in the Petition, and Petitioner as well as this Board, has notice of such fact by virtue of Petitioner's participation as a party in D.C. #22-77, currently pending before this Board.

1 4. That the Petition is further deficient in that it
2 indicates that there are no contracts covering any employees
3 in the proposed unit, whereas in fact, MPEA does have such
4 a contract as both Petitioner and this Board well know, and
5 its representatives are presently engaged in negotiations
6 with the Employer concerning proposed changes and alterations
7 thereto pursuant to a lawful bargaining order issued by this
8 Board in the matter of Unfair Labor Practice Charges #17-77
9 and #20-77, which this Board sought enforcement of in recent
10 proceedings in District Court in Silver Bow County;

11 5. That the Petition is further deficient in that
12 any issue of fact or law raised by such Petition on its face,
13 has been considered and decided by this Board in D.C. #22-77,
14 and therefore that decision is res judicata and hence desposi-
15 tive of the Petition filed herein;

16 6. That the Petition is further deficient in that its
17 acceptance by this Board creates multiple proceedings concerning
18 the same issues and the same subject matter which will proceed
19 simultaneously and cause unnecessary expense, duplication of
20 effort, and hardship to the parties;

21 7. That the Petition is further deficient in that it
22 attempts to exclude from the unit description all clerical
23 employees of Silver Bow General Hospital, whereas this Board
24 has previously recognized the existence of the single bargaining
25 unit composed of clerical employees in the Silver Bow County
26 Courthouse and clerical employees in Silver Bow General Hospital
27 by its bargaining order duly issued in the matter of Unfair
28 Labor Practice Charges #17-77 and #20-77, directing the Employer,
29 Government of Butte/Silver Bow to engage in negotiations with
30 The Montana Public Employees Association, Inc, as exclusive
31 representative.

32 ~~8. That the Petition is further deficient in that it.~~

1 attempts to redefine and exclude certain persons from an
2 existing bargaining unit which has been the subject of pro-
3 ceedings and an order in D.C. #22-77; and further, that the
4 composition of said bargaining unit in D.C. #22-77 (which,
5 parenthetically, is inconsistent with that bargaining unit
6 composition proposed by Petitioner herein) was in fact
7 proposed by the Petitioner's Attorney in the following terms:

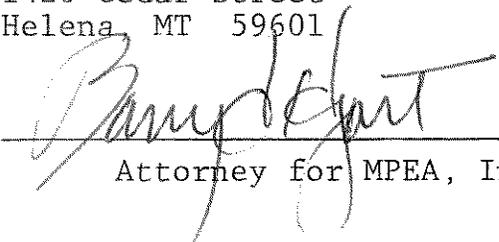
8 "McKITTRICK: Okay, uh, we would enter into the
9 second stipulation that should the Board decide
10 that a wall-to-wall unit is the appropriate unit
11 of employees to cast their ballots for repre-
12 sentation by a collective bargaining represen-
13 tative, the following wall-to-wall unit would be,
14 uh, the described unit. All clerical employees,
15 including bookkeepers; secretaries; meter maids;
16 deputies and chief deputies to elected officials;
17 library employees; and clerical employees of the
18 Silver Bow Hospital, and excluding those personnel
19 that are excluded as defined by the Act --- excuse
20 me, and also included in that would be the civilian
21 dispatcher."

22 WHEREFORE, the MPEA, Inc., moves this Board as follows:

- 23 1. To dismiss the Petition filed herein by Butte Teamsters,
24 Local #2;
- 25 2. To grant the MPEA, Inc., its Attorney's fees and
26 costs incurred in connection with participation in this matter;
27 and,
- 28 3. For such other and further relief as the Board or
29 its lawful agent may deem appropriate in the circumstances.

30 DATED this 30 day of March 1978.

31 BARRY L. HJORT
32 ATTORNEY AT LAW
1420 Cedar Street
Helena, MT 59601


Attorney for MPEA, Inc.

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF U.D. #7-78,)
BUTTE TEAMSTERS, LOCAL #2,)
Petitioner.)

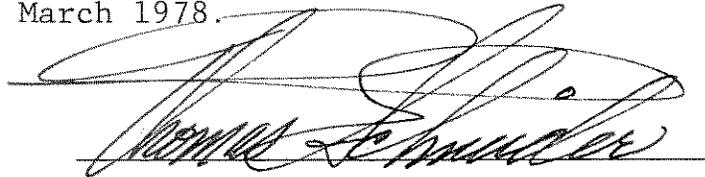
A F F I D A V I T

I, THOMAS E. SCHNEIDER, Executive Director of The Montana Public Employees Association, Inc., do hereby swear, depose and say as follows:

That I have read and am familiar with the contents of the Petition filed herein by Butte Teamsters Union, Local #2;

That I have read and am familiar with the contents of the attached Motion to Dismiss, and the matters and facts contained therein are true, accurate, and correct to the best of my knowledge, information and belief.

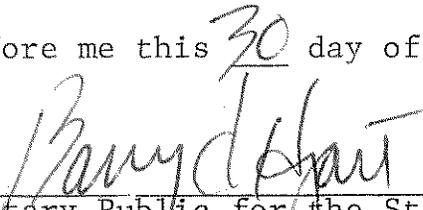
DATED this 30 day of March 1978.



THOMAS E. SCHNEIDER,
Executive Director

STATE OF MONTANA)
County of Lewis and Clark) ss:

SUBSCRIBED AND SWORN TO before me this 30 day of March 1978.



Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires Nov 25, 1980.

1 CERTIFICATE OF SERVICE BY MAIL

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3 This is to certify that the attached Motion to Dismiss

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6
7 was duly served upon all attorneys of record by mailing a copy thereof,
8 postage prepaid, to them at their addresses as set forth below, on
9 the 30 day of March, 1978;

10
11 D. Patrick McKittrick
12 Attorney at Law
13 315 Davidson Building
Great Falls, MT 59401

14 Jim Roberts
15 Butte Teamsters Union, Local #2
P. O. Box 3745
Butte, MT 59701

16 Robert R. Jensen
17 Administrator
18 Board of Personnel Appeals
Box 202, Capitol Station
Helena, MT 59601

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29 BARRY L. HJORT
ATTORNEY AT LAW
1420 Cedar Street
Helena, MT 59601

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31 By: 