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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION #2-80

LABORERS' INTERNATIONAL UNION	)	
OF NORTH AMERICA, LOCAL #254,	)	
	)	
Petitioner,	)	
	)	
vs.	)	FINDINGS OF FACT;
	)	CONCLUSIONS OF LAW;
	)	AND RECOMMENDED ORDER.
CITY OF HELENA,	)	
	)	
Employer.	)	

The Petitioner in this matter filed a Petition for New Unit Determination and Election with the Board of Personnel Appeals on February 1, 1980. That Petition proposed a unit of all employees in City Sewer Maintenance, Sewer Plant, Water Maintenance, and Water Accounting excluding all supervisors as outlined in Montana's Collective Bargaining Act for Public Employees.

On February 15, 1980, this Board received the Employer's Counter-Petition. The Counter-Petition proposed a unit to include Utility Plant Operators I and II; City Service Workers I, II, III, and IV; Equipment Operators I, II, III, and IV; and Water Service Representatives I, II, and III. It proposed to exclude from the unit all supervisory employees, all clerical employees, all employees living in City-owned housing rent free, all part-time employees, and all employees working in the Water Accounting Department.

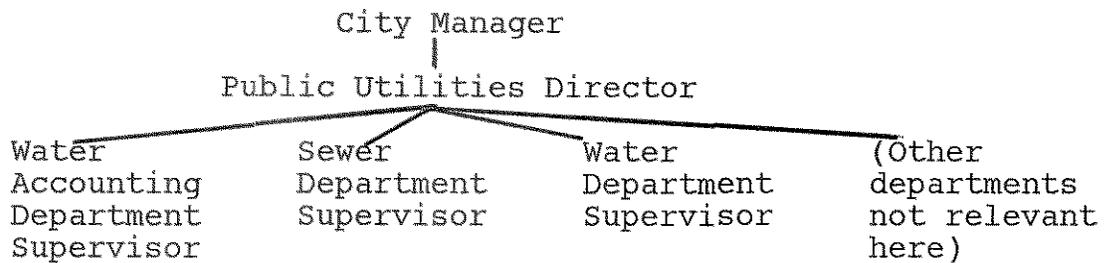
The hearing to determine the appropriate unit was held April 4, 1980, at 9:00 a.m. in Room 326 of the City-County Building, Helena, Montana. The hearing was held under the authority of section 39-31-207 MCA and in accordance with the Administrative Procedure Act, Title 2, Chapter 4, MCA.

Kathryn Walker was the hearing examiner. Gene Fenderson, business manager, Laborers' Local #254, represented the Petitioner. Jeff Sherlock, Helena City Attorney, represented the City.

1 Having reviewed the entire record, including sworn testimony,  
2 exhibits, and briefs, these are the findings of fact:

3 FINDINGS OF FACT

4 1. As relevant to these findings, the City's staffing  
5 pattern is:



11 2. Inclusion of these positions in the unit is not contested:  
12 Utility Plant Operators I and II; City Service Workers I, II, III,  
13 and IV; Equipment Operators I, II, III, and IV; and Water Service  
14 Representatives I and II; EXCEPT for Lyle Griffiths, a Utility  
15 Plant Operator II, whose inclusion in the unit is contested on  
16 grounds other than his classification. Incumbents to these positions:

- 17 a. are employed in either the City's Water or Sewer Depart-  
18 ments;  
19 b. work in areas of construction, operation, maintenance,  
20 or repair of water or sewer lines;  
21 c. work under either the Water or Sewer Department supervi-  
22 sors;  
23 d. are paid according to the City's classification plan;  
24 e. work at the water or sewer plants or, in the case of the  
25 Water Distribution or Sewer Distribution employees,  
26 throughout the City;  
27 f. may be on call-back for emergency situations;  
28 g. are regularly scheduled to work eight hour  
29 shifts five days per week (the City's brief asserts that  
30 these five days are Monday through Friday).

31 3. By stipulation of the parties, neither supervisors,  
32 Utility Plant Operator III's, nor the Wather Accounting Department's  
bookkeepers (Administrative Clerk III's) will be included in this  
unit.

1           4.     Inclusion of these positions in the bargaining unit is  
2     disputed: the employee living in City-owned housing, three water  
3     meter readers employed by the Water Accounting Department, and  
4     part-time employees.

5     Employee living in City-owned housing

6           5.     Lyle Griffiths, employed by the City as a Utility Plant  
7     Operator II (grade 14, City classification schedule), is responsible  
8     for the operation and maintenance of the Ten-Mile Water Plant,  
9     located near the base of McDonald Pass approximately ten miles  
10    west of Helena.

11          6.     Mr. Griffiths is the only City employee assigned to work  
12    at that plant on a regular basis, with other City employees only  
13    being assigned to work there in emergency situations (Mr. Griffiths  
14    testified other City employees were sent to help him twice last  
15    year). The plant is Mr. Griffiths' sole work site.

16          7.     Mr. Griffiths' regularly scheduled shift is Wednesday  
17    through Sunday, apparently for eight hours per day. He is on call  
18    twenty-four hours per day to respond to emergency situations at  
19    the plant.

20          8.     Because the person assigned to work at this plant is  
21    expected to respond to any emergency situations that might occur  
22    there, the City provides housing, including utilities, at this  
23    work site. Mr. Griffiths and his family live in this house.

24          9.     Jim Campbell, City Personnel Director, testified that  
25    Mr. Griffiths would be asked to leave his City-provided house if  
26    he were ever to participate in a strike against the City because  
27    (a) it is the City's policy that all wages and benefits cease when  
28    an employee participates in a strike against the City, and (b) the  
29    City must have an employee at the plant for emergency situations.

30    Part-time employees

31          10.    The primary function of the City's part-time employees  
32    is to take care of the water and sewer plants' grounds in the

1 summer (to paint buildings and to mow grass) and to shovel out the  
2 flume at the reservoir in the winter.

3 11. Part-time summer help is involved with the actual opera-  
4 tion of the water plant only if the regular crew is shorthanded.  
5 A part-time summer employee might perform this work for a total of  
6 approximately one week during the three to four months of his/her  
7 employment.

8 12. Part-time summer employees work regular eight hour  
9 shifts and regular five day workweeks for three to four months per  
10 year.

11 13. Sixty percent of the part-time summer employees are  
12 selected through a lottery system and forty percent may be rehired  
13 from the previous summer.

14 14. According to Mr. Campbell, some differences in employment  
15 between the City's regular full-time employees and its part-time  
16 summer employees are:

- 17 a. regular full-time employees are on the City's classifica-  
18 tion schedule, part-time summer employees are not;
- 19 b. regular full-time employees are paid on a monthly basis,  
20 part-time summer employees are paid on an hourly basis;
- 21 c. regular full-time employees receive July 1 pay increases,  
22 part-time summer employees are paid \$3-4 throughout the  
23 summer with no July 1 pay increases;
- 24 d. regular full-time employees are governed by City personnel  
25 policies, part-time summer employees are governed by  
26 such policies as work rules and hours but not by such  
27 policies as recruitment and selection;
- 28 e. regular full-time employees receive a benefit package  
29 which includes health and dental insurance, vacation,  
30 sick leave, and retirement; part-time summer employees  
31 do not receive this benefit package under normal circum-  
32 stances (under state law, an employee is eligible to

1 receive sick leave after ninety days employment; also,  
2 some of the City's part-time employees have received  
3 insurance benefits under certain circumstances usually  
4 related to prior CETA employment).

5 Water Meter Readers

6 15. The City's Water Accounting Department employs three  
7 water meter readers who read water meters throughout the City.  
8 They also work in the office setting up routes for reading the  
9 meters, dating books, working up the routes that have been read,  
10 typing plates, and performing general bookkeeping and clerical  
11 duties (e.g., waiting on customers, sorting mail, printing bills,  
12 posting and balancing accounts). Testimony indicated they spend  
13 from 45-50% of their time in the field and from 50-55% of their  
14 time in the office.

15 16. The meter readers are classified at grade 9 on the  
16 City's classification schedule, are directly supervised by the  
17 supervisor of the Water Accounting Department, work regular eight  
18 hour shifts for five days per week with no call-out for emergencies,  
19 and are headquartered in the Water Accounting Department office in  
20 the City-County Building, Helena.

21 17. Besides the water meter readers and the supervisor, two  
22 bookkeepers (Administrative Clerk III's, grade 8 on the City's  
23 classification schedule) are employed by the Water Accounting  
24 Department. The primary function of the bookkeepers is to post all  
25 payments, run the mail, wait on customers, and do general bookkeeping.

26 18. Neither the water meter readers nor the bookkeepers or  
27 any other "clerical" employees of the City are now or have ever  
28 been organized for purposes of collective bargaining.

29 19. Contact between employees of the Water Accounting Department  
30 and the Water and Sewer Departments usually consists of (a) employees  
31 of the Water and Sewer Departments coming into the Water Accounting  
32 Department's office to collect mail, and (b) phone calls, usually

1 made by the supervisor of the Water Accounting Department, to the  
2 water maintenance crew regarding installing or replacing water  
3 meters, turning water off, etc. Reports of malfunctioning water  
4 meters may be made to the Water Accounting Department supervisor  
5 by the water meter readers.

6 DISCUSSION

7 Employee living in City-owned housing

8 The record in this matter establishes that Mr. Griffiths is  
9 classified the same as several other employees whose inclusion in  
10 this bargaining unit is not contested; that he, like those other  
11 employees, is on the City's classification schedule and is paid in  
12 the same range as they are; that he performs work similar in  
13 nature to that of those other employees; and that his work function  
14 is integral to the operation of the City's Water Department. There  
15 is no contention or evidence that any of the statutory exclusions  
16 are applicable to the type of work he performs. Therefore the  
17 hearing examiner must conclude that Mr. Griffiths' work status is  
18 essentially the same as other employees who will be included in  
19 this unit with no objection.

20 The City's argument that Mr. Griffiths should not be included  
21 in this unit because he lives in a house provided by the City is  
22 not persuasive. The record shows that the City provides this  
23 house because its operation requires that an employee be in close  
24 proximity of the water plant to respond to emergency situations  
25 that might arise. Therefore, because his living in the City-provided  
26 house is integrally related to his work function, it may not be  
27 considered "extra" or "special" remuneration for purposes of this  
28 unit determination.

29 Nor is the hearing examiner persuaded by the other reasons  
30 advanced by the City for Mr. Griffiths' exclusion. It was not  
31 shown that his working approximately ten miles from the City  
32 serves as any barrier to his working relationship with his super-  
visor or other employees of the water department. While he does

1 not work with other Water Department employees on a regular basis,  
2 he does work with them in certain situations. The fact that he  
3 has different days of the week off than the other employees is  
4 insignificant, especially considering the on-call nature of his  
5 and several other employees' jobs. Any hardship that he might  
6 experience in the eventuality of a labor dispute is not a concern  
7 legitimate to this unit determination.

8 Part-time employees

9 In determining whether the City's part-time employees should  
10 be included in this unit, it must be noted that there is no evidence  
11 on the record indicating that the City employs any "regular part-time  
12 employees". Rather, the record indicates that the employees referred  
13 to herein as "part-time" are technically "seasonal" or "temporary"  
14 employees. The National Labor Relations Board practice of including  
15 seasonal or temporary employees in the bargaining unit only if  
16 they share a sufficient community of interest with the regular  
17 employees or if they have a reasonable expectation of reemployment  
18 from year to year <sup>1</sup> will serve as guidance on this question.

19 The findings indicate that there is little interchange,  
20 integration, or similarity in the nature of the part-time employees'  
21 and the regular employees' work. The record also establishes that  
22 the part-time employees are not paid in a manner similar to the  
23 regular employees (they are paid on an hourly rather than a monthly  
24 basis and are not on the City's classification schedule). Except  
25 in infrequent and unusual situations, part-time employees do not  
26 receive the benefit package accorded to regular employees. Neither  
27 are City personnel policies applied to the employment of part-time  
28 employees in the same manner as they are applied to the employment  
29 of regular employees.

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<sup>1</sup> NLRB cases which have given guidance to this hearing examiner have included  
32 NLRB v. Belcher Towing Co., 47 LRRM 2118 (1960); NLRB v. George Groh & Sons,  
55 LRRM 2729 (1964); Baumer Foods, 77 LRRM 1270 (1971).

1           The record does not indicate that the likelihood of reemploy-  
2 ment from summer to summer is so significant as to justify the  
3 assumption that these part-time employees would eventually become  
4 sufficiently identified in employment to have a community of  
5 interest with the regular employees.

6 Water Meter Readers

7           In determining whether the water meter readers should be  
8 included in this bargaining unit, the hearing examiner has not  
9 been persuaded by the City's arguments that they should be excluded  
10 because their wages are "drastically different than the wages of  
11 the other employees in the Water and Sewer Departments" (they,  
12 like the other members of the proposed bargaining unit, are on the  
13 City's classification schedule -- it is immaterial that their  
14 actual wages differ in amount); that their hours are "drastically  
15 different" because they are not on call-back; that they lack  
16 common supervision because they, and only they, are supervised by  
17 the supervisor of the Water Accounting Department (employees whose  
18 inclusion in the bargaining unit is not contested do not share a  
19 common first-line supervisor); or that they work at a different  
20 location (employees to be included in this unit with no objection  
21 work at various locations throughout the City).

22           However, this hearing examiner is concerned that the interests  
23 of these employees are not so similar to those of the other members  
24 of the unit as to facilitate a workable collective bargaining  
25 relationship. Unlike the employees of the Water and Sewer Departments  
26 whose work involves the construction, operation, maintenance, or  
27 repair of water or sewer lines, these employees perform a signifi-  
28 cant amount of work which is clerical in nature and work side by  
29 side with employees whose jobs are basically clerical (the book-  
30 keepers in the Water Accounting Department office). The record  
31 clearly shows that these employees' jobs are more closely related  
32 to those of the bookkeepers, whose inclusion in this unit is not

1 sought, than to those of the employees of the Water or Sewer  
2 Departments. It is the opinion of the hearing examiner that the  
3 water meter readers are not appropriately included in this bargaining  
4 unit.

5  
6 CONCLUSIONS OF LAW

7 1. The Board of Personnel Appeals' jurisdiction and author-  
8 ity in this matter is derived from sections 39-31-103(1) and  
9 39-31-202 MCA.

10 2. In accordance with the criteria set forth in section  
11 39-31-202 MCA, the employee living in City-owned housing is found  
12 to be properly included in this bargaining unit.

13 3. In accordance with the criteria set forth in section  
14 39-31-202 MCA, the part time employees, whose work is of an irregular  
15 or seasonal nature, are not found to have sufficient community of  
16 interest with members of this bargaining unit and are therefore  
17 excluded from the unit.

18 4. In accordance with the criteria set forth in section  
19 39-31-202 MCA, the water meter readers in the Water Accounting  
20 Department are not found to have sufficient community of interest  
21 with the members of this bargaining unit and are therefore excluded  
22 from the unit.

23 5. For the purpose of collective bargaining, the appropriate  
24 unit in this matter is one comprised of all employees in the City  
25 Sewer Maintenance, Sewer Plant, Water Maintenance, and Water Plant  
26 excluding all supervisors, Utility Plant Operator III's, and part  
27 time employees whose employment is of an irregular or seasonal  
28 nature.

29 RECOMMENDED ORDER

30 Under the authority of section 39-31-208 MCA it is hereby  
31 ordered that an election by secret ballot be conducted among the  
32 members of the above-defined bargaining unit in accordance with  
ARM 24.26.555 et.seq.

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NOTICE

Written exceptions to specific Findings of Fact, Conclusions of Law, and Recommended Order may be filed within twenty days after service thereof. If no exceptions are filed with the Board of Personnel Appeals within that time, the Recommended Order shall become the Order of the Board. Exceptions shall be addressed to the Board of Personnel Appeals, Capitol Station, Helena, Montana, 59601.

DATED this 19<sup>th</sup> day of June, 1980.

BOARD OF PERSONNEL APPEALS

By Kathryn Walker  
KATHRYN WALKER  
Hearing Examiner

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify and state that I did on the 19 day of June, 1980 mail a true and correct copy of the above Findings of Fact; Conclusions of Law; and Recommended Order to the following:

Mr. Eugene Fenderson  
Laborers' International Union  
of North America, Local #254  
P.O. Box 702  
Helena, MT 59601

Mr. Richard L. Brown, Mayor  
City of Helena  
City-County Building  
316 North Park  
Helena, MT 59601

Jennifer Jacobson

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