

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 23-80

MONTANA PUBLIC EMPLOYEES ASSOCIATION,)
INC.)
Petitioner,) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) & RECOMMENDED ORDER
-v-)
SCHOOL DISTRICT NO. 6, COLUMBIA FALLS,)
MONTANA)
Respondent.)

* * * * *

On November 17, 1980, the Montana Public Employees Association filed a petition for unit determination with this Board. It proposed a unit consisting of all maintenance workers, custodial workers, food service employees and cooks, bus drivers, mechanics, secretaries, clerks and bookkeepers in School District No. 6, excluding all supervisory and managerial employees as per state statute.

Respondent filed a counter-petition contending that the workers in the proposed unit do not share a community of interest. Further, the positions of clerk and deputy clerk of the board should be excluded as managerial or confidential. They also contend that the position of bookkeeper is a confidential one and that the position held by Donovan Phillips is supervisory.

A hearing to determine the appropriate unit in this matter was held on February 25, 1981 before hearing examiner Linda Skaar. It was held under the authority of 39-31-207 MCA and in accordance with the Administrative Procedure Act, Title 2, Chapter 4, MCA.

At the hearing, respondent added to the counter petition the positions of building leader held by James Loser and Glenn Lynn and the position of automotive mechanic Al Greene.

Subsequent to the hearing, the parties stipulated that the

1 proposed unit would not include secretaries. This stipulation
2 was admitted as a part of the record in a conference telephone
3 call on April 23, 1981. Consequently the issues dealt with
4 in this decision are whether or not the positions of building
5 leader, maintenance person and automotive mechanic are supervisory
6 and excluded from the proposed unit or whether as non-
7 supervisory positions they should be included.

8 Conflicting testimony was presented at the hearing. In
9 resolving these conflicts the hearing examiner has given more
10 weight to the testimony of those individuals closest to the position
11 in question. The testimony of these individuals verifies the
12 information on the written job descriptions.

13 Having carefully reviewed the entire record including sworn
14 testimony and evidence, these are the findings of fact:

15 FINDINGS OF FACT

16 1. Building leaders, James Loser and Glenn Lynn, act as
17 leadworkers to the building custodians in the Columbia Falls
18 Schools. Each has an area to maintain which is the same size
19 as that maintained by the custodians they lead. In addition,
20 the building leader checks to see if the custodians need supplies
21 and helps them solve problems they might have. Before they go
22 off shift the building leaders check to see that the custodians
23 have completed their work. Loser leads a crew of five, presumably
24 Lynn's crew is of like size.

25 Building leaders do not have the authority to hire. Their
26 supervisor (Building and Grounds Supervisor Sam Ellman) interviews
27 applicants and makes recommendations to Business Manager G. W.
28 Jacobi who in turn recommends to the Superintendent who recommends
29 to the Board of Trustees.

30 Building leaders do not have the authority to discharge
31 employees. Discipline of employees, including suspension or
32 discharge, would be accomplished by the building leader recommending

1 to the Supervisor of Buildings and Grounds. The Supervisor would
2 then make an independent investigation and make recommendations
3 up the chain of command.

4 In the Columbia Falls School District there never has been
5 an occasion when it was necessary to lay-off employees and
6 consequently no need to recall employees.

7 There is no position to which custodians could be promoted
8 so the question of authority in this area is moot. In addition,
9 there is little question of authority to assign since custodians
10 work in fixed, established work areas.

11 The Supervisor of Buildings and Grounds, not the building
12 leader, calls in substitutes for absent custodians, authorizes
13 vacation leave and overtime.

14 Of those traditional indices of supervisory authority the
15 building leader receives a larger hourly wage than the
16 custodian (65¢ an hour spread for starting employees); keeps
17 time sheets for employees; inspects the work of the custodians
18 and might send an employee home if the occasion ever arose. Since
19 the school system has no formal grievance procedure the building
20 leaders may adjust grievances only in an informal manner.

21 2. Maintenance person Donovan Phillips and two utility
22 men work under Supervisor of Buildings and Grounds Sam Ellman.

23 Phillips' job is to repair and maintain the buildings in the
24 school district. In this task he is assisted by 2 utility men.
25 Phillips has more skills than the two utility men and is paid
26 a higher hourly rate: \$6 per hour compared to \$4.55.

27 The maintenance person does not have the authority to hire.
28 The Supervisor of Buildings and Grounds interviews applicants for
29 utility man and makes recommendations up the chain of command.
30 Phillips may be asked if he knows someone.

31 Phillips does not have the authority to discipline or discharge.
32 If Phillips feels that one of the utility men is not performing well

1 he can recommend discipline or discharge to Ellman. However,
2 Supervisor Ellman will make an independent investigation and
3 make recommendations up the chain of command.

4 As in other areas in the school district there has been no
5 need to lay-off or recall utility men.

6 Assignments are made to the maintenance person and the
7 utility men by the Supervisor of Buildings and Grounds. Phillips
8 does not make major assignments to the utility men, but under his
9 direction, they may assist him on a specific project.

10 If a utility man is sick he will call the Supervisor. When
11 the utility men wish to request vacation leave, they will also make
12 the request to Sam Ellman.

13 Since Phillips is in charge of plowing the schools' driveways,
14 parking lots and walks his work day may be flexible, i.e. on his
15 own initiative he will go to work early on the morning of a heavy
16 snowfall. He may also keep the utility men overtime if an
17 emergency situation arises.

18 3. Al Green, auto mechanic, works under the Transportation and
19 Receiving Supervisor. In his absence, Green assumes the duties of
20 Transportation and Receiving Supervisor Allred. Green works an
21 8 hour day which terminates at 5 p.m. Allred's day terminates
22 at 4 p.m. Green will handle any problems that occur during the
23 period from 4 to 5 p.m. He also substitutes for Allred when he
24 is off premises, during vacation periods and when Allred is sick.

25 Mr. Green spends most of his work day repairing and maintaining
26 automotive and other equipment for the district. He is head-
27 quartered in the garage with two of the district's bus drivers.
28 One of the bus drivers is out of the garage on the hot lunch "run"
29 to other schools for approximately 3½ hours per day in addition
30 to the time he drives his normal "run". One washes and cleans
31 the busses when not driving. The third driver works away from
32 the garage in the supply room.

1 the recommended increases were merited. The group
2 leaders, therefore, could not make effective recommendations
3 within the definition of Section 2(11) of the Act. The
4 record demonstrates that their assignment and direction
of work was of a routine nature and did not require the
exercise of independent judgment.¹

5 The position of building leader held by James Loser and
6 Glenn Lynn is a classic example of a lead worker position rather
7 than a supervisory position. Generally, the NLRB terms positions
8 with some leadership responsibilities, such as those held by
9 Lynn and Loser, as lead workers when the employees who do not
10 have the authority to hire or discharge, transfer, suspend, lay-off,
11 recall etc. also spend most of their time working alongside other
12 employees performing the same duties.² This determination holds
13 even if the employees in question are paid a higher hourly rate
14 than the workers they lead, and when employees receive extra pay
15 for keeping time sheets on the work crew.³

16 The position of building leader is not a supervisory position
17 within the meaning of the Act.

18 The nonsupervisory status of maintenance person Donovan
19 Phillips is indicated by the fact that he has no authority to
20 hire, discharge, discipline etc. Phillips' relationship to the
21 utility men is more akin to that of a journeyman in relation
22 to his helpers than that of supervisor.⁴ Although the utility
23 men may from time to time assist Phillips, Ellman makes the
24 work assignments. The higher pay Phillips receives is indicative
25 of his greater skill level rather than his supervisory status.⁵

26 ¹Elliot-Williams Co., 149 NLRB No. 107, Nov. 30, 1964, 57 LRRM 1452

27 ²Legion Utensils Co., 109 NLRB No. 187, 34 LRRM 1580 (1954); Aspen Skiing
28 Corporation, 143 NLRB No. 76, 53 LRRM 1397 (1963).

29 ³United States Gypsum Co., 148 NLRB No. 154 57, LRRM 1203 (1964); Proctor-Silex
30 Corp., 131 NLRB No. 9, 47 LRRM 1594 (1961); Burlington Roadbuilders, Inc., 149
NLRB No. 75, 57 LRRM 1376 (1964).

31 ⁴Hamilton Tool Co., 61 NLRB 1361, 16 LRRM 156 (1945).

32 ⁵Higgins Industries, Inc., 150 NLRB No. 25, 58 LRRM 1059 (1964).

1 Although Phillips may make recommendations to Ellman his
2 recommendations will be independently investigated before action
3 is taken.

4 In the day to day exercise of his duties, auto mechanic
5 Al Green does not hire, discharge, discipline, transfer, suspend,
6 lay-off, recall, promote, reward employees or adjust their
7 grievances. These things are done by Transportation and Receiving
8 Supervisor Allred. The school district argues that Green who
9 ordinarily may make temporary assignments to bus drivers and who
10 substitutes for Allred in his absence is a supervisor. The evidence
11 shows that Green may not alter the bus drivers permanent assignments
12 and indicates that the temporary assignments he makes are of a
13 routine nature; they do not require the use of independent judgment.
14 Green may recommend to his supervisor as do Loser, Lynn and Phillips
15 but these recommendations are not put into effect without
16 an independent investigation.

17 Although testimony on the point is sketchy it seems probable
18 that the bus drivers are driving during the period from 4 to
19 5 p.m. each day when Green is in charge. In addition to this
20 daily period, there is no doubt that Green substitutes for Allred
21 during Allred's absences from the workplace, vacation and sick
22 leave. There is no evidence that during these periods Green
23 has exercised the authority he assumes. In a National Labor
24 Relations Board decision upheld by the Court of Appeals, an
25 employee who spasmodically (including vacation periods) acted
26 as superintendent of a plant was judged to be a non-supervisory
27 employee. The Court said, "The Board has held, we think correctly,
28 that such spasmodic and infrequent assumption of a position of
29 command and responsibility does not transform an otherwise rank
30 and file worker into a "supervisor".¹ Such is the case here.

31
32 ¹NLRB v Quincy Steel Casting Co., CA 1, No. 4662, 31 LRRM 2148 (1952), See
also NLRB v. Monroe Tube, CA 2, No. 76-4104, 94 LRRM 2020 (1976) and
Bonwit Teller, Inc., 84 NLRB No. 50, 24 LRRM 1283 (1949).

1 Whatever authority Green exercises over the bus drivers on a
2 day to day basis appears to be routine and does not require
3 the use of independent judgment. His substitution for Allred
4 is too sporadic for Green to be labeled a supervisor. Green is
5 properly included in the unit.

6 CONCLUSIONS OF LAW

7 1. The positions of building leader, automotive mechanic
8 and maintenance person in Columbia Falls School District No. 6
9 are not supervisory positions as defined in section 39-31-103
10 (3) MCA.

11 2. For the purpose of collective bargaining, the appropriate
12 unit in this matter is one comprised of all maintenance workers,
13 custodial workers, food service employees and cooks, bus drivers,
14 mechanics excluding all supervisory and managerial employees as
15 per state statute.

16 RECOMMENDED ORDER

17 Under the authority of section 39-31-208 MCA it is hereby
18 ordered that an election by secret ballot be conducted among the
19 members of the bargaining unit defined above in accordance with
20 ARM 24.26.55 et seq.

21 NOTICE

22 Written exceptions to these Findings of Fact, Conclusions
23 of Law and Recommended Order may be filed within twenty days.
24 If no exceptions are filed with the Board of Personnel Appeals
25 within that time, the Recommended Order shall become the Order
26 of the Board. Exceptions shall be addressed to the Board of
27 Personnel Appeals, Capitol Station, Helena, MT 59601.

28 Dated this 30th day of April, 1981.

30 BOARD OF PERSONNEL APPEALS

31 By Linda Skaar
32 LINDA SKAAR
Hearing Examiner

CERTIFICATE OF MAILING

I, Jennifer Jacobson, hereby certify that a true copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER on the proceeding above captioned was mailed at Helena, Montana on the 4 day of ~~April~~^{May}, 1981, postage paid and addressed as follows:

MPEA
Box 5600
Helena, MT 59601

Charles W. Kuether
Office of Flathead County Attorney
Box 1516
Kalispell, MT 59901

Robert J. Souhrada, Superintendent
Columbia Falls School District #6
Box 1259
Columbia Falls, MT 59912

Jennifer Jacobson

PAD1:m

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32