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STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION #22-81:

MONTANA EDUCATION	)	
ASSOCIATION, NEA,	)	
	)	FINDINGS OF FACT,
Petitioner	)	CONCLUSIONS OF LAW,
	)	RECOMMENDED ORDER
vs.	)	
	)	
BILLINGS INDEPENDENT	)	
SCHOOL DISTRICT No. #52,	)	
	)	
Employer	)	

\* \* \* \* \*

On November 5, 1981, The Montana Education Association filed a petition (UD #22-81) for a new unit determination and election with the Board of Personnel Appeals (BPA) for certain employees of the Independent School District No. 52. The Montana Education Association proposed that the appropriate bargaining unit should consist of all classroom teachers (6 teachers). On November 17, 1981, the BPA received a counter petition from the employer. The employer proposed a bargaining unit consisting of all classroom teachers whose position requires certification under Montana law excluding supervising teachers and all other employees (5 teachers). The employer's petition excludes the position held by Mrs. Edith McCann, lead teacher. The issue to be decided by this Recommended Order is whether Mrs. Edith McCann is a supervisor as defined by the Collective Bargaining Act at Section 39-31-101(3), MCA. At the hearing held February 12, 1982, the parties stipulated that the employer is a public employer as defined by the Collective Bargaining Act, that the Montana Education Association is a labor organization as defined by the Collective Bargaining Act, and that the Board of Personnel Appeals has jurisdiction to hear this issue.

I. FINDINGS OF FACT

1. Mr. Dick D. Emborg has been a member of the School



1 Board for six years and Chairman of the School Board for the  
2 past five of the six years. Mr. Emborg states that the  
3 Board Policy, School Rules and Operation booklet adopted  
4 April 14, 1981 is the current and accurate policies of the  
5 Independent School District No. 52. The School Board policy  
6 defines the function of lead teacher as "the lead teacher  
7 will be a line member of management and is charged with  
8 advising the Board of Trustees and supervising and coordi-  
9 nating all activities pertaining to the operation and main-  
10 tanance of the education program" (Joint Exhibit I, page 5).  
11 In practice Mr. Emborg states that the School Board follows  
12 a lead teacher's suggestions solely. Mr. Emborg has no recall  
13 of double checking or of an independent review of the lead  
14 teacher's suggestions.

15 2. The County Superintendent of Schools or someone  
16 from that office conducts a yearly teacher evaluation of all  
17 the teachers. One witness states no knowledge of the County  
18 teacher's evaluation going to the School Board. This is the  
19 only statement on the use of the County's Teacher evaluations  
20 contained in the record.

21 Mr. Emborg states that the County Superintendent does  
22 not assist in the day by day administration of the school.  
23 Mr. Emborg also states that in his years on the school  
24 board, he has had only two meetings with the County Superin-  
25 tendent of Schools. The first meeting was about the school  
26 building tax funds and the second meeting was about the  
27 special education cooperative.

28 3. Mrs. Edith McCann has been a teacher for the  
29 employer for the past 16 years. For 15 of the past 16  
30 years, she has been lead teacher. Mrs. McCann currently  
31 oversees five other teachers, a secretary, a cook and a  
32 janitor. For these administrative duties, she receives an

1 additional \$1000 per year. Mrs. McCann holds a standard  
2 class II teaching certificate and she has no administrative  
3 certificate or endorsement.

4 4. Mrs. McCann's work day starts at 7:30 a.m. and  
5 continues until about 4:00 or 5:00 p.m. From 8:45 a.m. to  
6 11:30 a.m. and from 1:30 p.m. to 1:50 p.m., Mrs. McCann  
7 spends teaching. The remainder of Mrs. McCann's work day is  
8 spent doing administrative duties. The normal teachers'  
9 work day is from 8:00 a.m. to 4:00 p.m. The students'  
10 instructional day is from 8:45 a.m. to 3:00 p.m.

11 Mrs. McCann also attends all child study team meetings.

12 5. Mrs. McCann plans the school year including the  
13 opening date, PIR days, vacation days and closing date. She  
14 submits her plan to the school board for final approval. In  
15 the past 15 years, the School Board has never modified her  
16 school year plan. (Joint Exhibit I, Page 7, Item 19).

17 6. Mrs. McCann checks all 9 week reports of all  
18 teachers which contain attendance records and grades for the  
19 students. Mrs. McCann has sent the report back to the  
20 teachers for modifications. The 9 week reports are then  
21 filed with the County Superintendent of Schools. Mrs.  
22 McCann inspects and maintains a detailed current weekly  
23 lesson plan for all teachers. (Joint Exhibit I, Page 7, Item  
24 6).

25 7. Mrs. McCann conducts teacher evaluations. School  
26 District Exhibit I was devised by Mrs. McCann and has been  
27 used by Mrs. McCann for five or six years. The teachers'  
28 evaluations are sent to the School Board. The School Board  
29 has never changed or modified the teacher evaluations. Mrs.  
30 McCann's teacher evaluations have never been discussed with  
31 the County Superintendent of Schools.

32 The record is unclear if Mrs. McCann conducts the

1 teacher evaluations once a year or at the request of the  
2 School Board. Mrs. Zimmerman is a teacher/librarian with  
3 four years of employment with the employer. Mrs. Zimmerman  
4 has been only evaluated by Mrs. McCann during her first year  
5 of employment. Mrs. Zimmerman has been evaluated by the  
6 County Superintendent of Schools Office each year.

7 8. Mrs. McCann sits with the School Board when they  
8 conduct employment interviews. Mrs. McCann helps with the  
9 questioning during employment interviews and calls the  
10 prospective employees' references. No other teacher parti-  
11 cipates in employment interviews. About four times, Mrs.  
12 McCann has recommended to the School Board not to hire  
13 and/or not to rehire a teacher. Each time Mrs. McCann's  
14 recommendations were followed by the School Board. The  
15 County Superintendent of Schools has no input into the  
16 hire/rehire decision. Also Mrs. McCann is included with the  
17 School Board when they meet in executive session.

18 Mrs. Zimmerman did her student teaching at Billings  
19 Independent School District No. 52. In March, Mrs. Zimmerman  
20 interviewed for a Teacher's Aide position. Mrs. McCann  
21 participated in Mrs. Zimmerman's Teacher's Aide interview.  
22 Mrs. Zimmerman was hired as a Teacher's Aide. Shortly  
23 thereafter a teaching position became available at the  
24 Billings Independent School District No. 52. Mrs. Zimmerman  
25 could not remember if Mrs. McCann participated in her teaching  
26 interview.

27 Also, Mrs. McCann hires all substitute teachers.

28 9. Mrs. McCann has recommended transfer of teachers  
29 from one teaching position to another teaching position.  
30 The Board has never denied her transfer recommendations.

31 10. Mrs. McCann handles all discipline of teachers.  
32 Mrs. McCann only contacts the School Board in extreme cases

1 of teacher discipline.

2 11. Mrs. McCann approves all early leaves for doctor  
3 appointments, dentist appointments and the like. Mrs. McCann  
4 approves all leaves of absences. But, the School District  
5 would approve how the teacher is to be paid during the leave  
6 of absence - leave with full pay or leave with full pay less  
7 substitute teacher's pay. Most of the time, Mrs. McCann  
8 successfully recommends her views of teacher's leave pay.

9 12. Mrs. McCann orders all supplies and materials. If  
10 the order is for less than \$100, Mrs. McCann places the  
11 order without the School Board's approval. If the order is  
12 greater than \$100 Mrs. McCann seeks the School Board's  
13 approval before placing the order.

14 In ordering books for the library, Mrs. Zimmerman asks  
15 both Mrs. McCann and the County Superintendent of Schools  
16 for the amount of dollars allocated for the purchase of  
17 library books. Mrs. Zimmerman compiles the library book  
18 order, seeks the County Superintendent's approval of the  
19 book list and gives the order to Mrs. McCann for transmit to  
20 the School Board for final approval.

21 13. The School Board policy, Joint Exhibit I, is  
22 implemented through Mrs. McCann. The School Board is not  
23 involved in the day by day operations of the school. The  
24 lead teacher operates the school on the day by day basis.  
25 The school district expects the lead teacher to use her  
26 independent judgment in operating the school.

27 14. The School Board sees Mrs. McCann as the "Boss" of  
28 the school. Several times over the past years the School  
29 Board has referred to Mrs. McCann as Superintendent. Mrs.  
30 McCann sees herself as a supervisor. Mrs. Zimmerman sees  
31 Mrs. McCann as a co-worker. Although if Mrs. Zimmerman has  
32 a problem, she would first seek Mrs. McCann's advise and

1 then if not satisfied go to the School Board.

2 II. DISCUSSION

3 Section 39-31-103(3) MCA states, "Supervisory employee  
4 means any individual having authority in the interest of the  
5 employer to hire, transfer, suspend, lay off, recall, promote,  
6 discharge, assign, reward, discipline other employees,  
7 having responsibility to direct them, to adjust their griev-  
8 ances, or effectively to recommend such action, if in con-  
9 nection with the foregoing the exercise of such authority is  
10 not of a merely routine or clerical nature but requires the  
11 use of independent judgment."

12 A comparison of Section 39-31-103(3) MCA to the findings  
13 of fact produces a verdict that Mrs. McCann:

- 14 1. Effectively recommends the hiring of teachers (FF  
15 #8),
- 16 2. Effectively recommends the transfer of teachers  
17 (FF #9),
- 18 3. Effectively recommends the discharge (not to  
19 rehire) of teachers (FF #8),
- 20 4. Disciplines teachers (FF #10), and
- 21 5. Has the responsibility to direct the operation of  
22 the school and teachers (FF #1, 3, 4, 5, 6, 7, 11,  
23 13).

24 The hearing examiner does find Mrs. Zimmerman's testi-  
25 mony credible but at no time did Mrs. Zimmerman testify that  
26 Mrs. McCann did not:

- 27 1. Successfully recommend to the school board about  
28 four times not to hire/rehire a particular teacher,
- 29 2. Successfully recommend the transfer of teachers  
30 from one teaching position to a second teaching  
31 position, and
- 32 3. Discipline teachers.

1           The Montana Education Association also argues that Mrs.  
2 McCann's position at Billings Independent School District is  
3 equivalent to a position of a department chairperson at a  
4 large school district. The department chairperson in the  
5 large school districts are included in the collective bar-  
6 gaining units. This argument may have some value but the  
7 record of the hearing lacks any sworn testimony of what the  
8 duties and responsibilities of a department chairperson are.  
9 This hearing examiner also has a perception that a chair-  
10 persons duties and responsibilities are more in the area of  
11 program and curriculum development than affectively recom-  
12 mending who is hired, not rehired and transferred.

13                           III. CONCLUSION OF LAW

14           For the reasons stated above, a conclusion of law that  
15 Mrs. McCann's, lead teacher, duties and responsibilities are  
16 included in the definition of supervisory employee, Section  
17 39-31-101(3) MCA, is in order. Therefore, the position of  
18 lead teacher is excluded from collective bargaining unit.

19                           IV. RECOMMENDED ORDER

20           The Board of Personnel Appeals orders that an election  
21 is to be held at the Billings Independent School District  
22 #52 in a collective bargaining unit consisting of all class-  
23 room teachers requiring certification excluding the position  
24 of lead teachers currently occupied by Mrs. McCann.

25           Dated this 8<sup>th</sup> day of March, 1982.

26  
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28                           BOARD OF PERSONNEL APPEALS

29  
30                             
31                           BY: Rick D. Hodge  
                              Hearings Examiner

32           NOTE: As stated in the Board of Personnel Appeals Rules,  
the parties shall have twenty (20) days to file written excep-

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tions to this Recommended Order. If no written exceptions are filed, this Recommended Order will become the ORDER of the Board of Personnel Appeals.

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of this document was sent to the following on the 8<sup>th</sup> day of March, 1982.

Montana Education Association  
1232 East 6th Avenue  
Helena, MT 59601

Montana School Board Association  
501 North Sanders  
Helena, MT 59601

Jennifer Jacobsen.

PAD4:A/8

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION #22-81:

MONTANA EDUCATION ASSOCIATION, )  
MEA, )  
Petitioner, )  
vs. )  
INDEPENDENT SCHOOL DISTRICT )  
NO. 52, )  
Employer. )

NOTICE OF  
RESCHEDULED HEARING

\* \* \* \* \*

In light of the fact that the employer's representative was unable to travel to Billings because of inclement weather, the hearing of December 15, 1981, in the above entitled matter is rescheduled for February 12, 1982, commencing at 9:00 a.m. at the Independent School District No. 52.

Dated this 12th day of February, 1982.

BOARD OF PERSONNEL APPEALS

By

  
Rick D'Hooge

\* \* \* \* \*

CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of this document was mailed to the following on the 12th day of February, 1982.

Montana Education Association  
1232 East 6th Avenue  
Helena, MT 59601

Montana School Board Association  
501 N. Sanders  
Helena, MT 59601



PAD2:I