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STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION #6-81:

MONTANA EDUCATION ASSOCIATION, )  
 )  
 Petitioner, )  
 )  
 - vs - )  
 )  
 ROOSEVELT COUNTY SCHOOL )  
 DISTRICT 9 & 9B, )  
 )  
 Respondent. )

FINAL ORDER

\* \* \* \* \*

The Findings of Fact, Conclusions of Law and Recommended Order were issued by Hearing Examiner Linda Skaar on July 29, 1981.

Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order were filed by Don Klepper of the Montana School Boards Association, on behalf of the Respondent, on August 12, 1981.

After reviewing the record and considering the briefs and oral arguments, the Board orders as follows:

1. IT IS ORDERED, that the Exceptions of Respondent to the Findings of Fact, Conclusions of Law and Recommended Order are hereby denied.

2. IT IS ORDERED, that this Board therefore adopts the Findings of Fact, Conclusions of Law and Recommended Order of Hearing Examiner Linda Skaar as the Final Order of this Board.

DATED this *4th* day of September, 1981.

BOARD OF PERSONNEL APPEALS

By *John Kelly Addy*  
John Kelly Addy  
Chairman

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CERTIFICATE OF MAILING

The undersigned does certify that a true and correct copy of this document was mailed to the following on the 8 day of September, 1981:

Emilie Loring  
HILLEY & LORING, P.C.  
Executive Plaza, Suite 2G  
121 4th Street North  
Great Falls, MT 59401

Duane Johnson  
Montana School Boards Association  
501 North Sanders  
Helena, MT 59601

Robert R. Jensen

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 6-81:

MONTANA EDUCATION ASSOCIATION )	)	
)  Petitioner,                  )	)	
)  vs.                          )	)	FINDINGS OF FACT,
)  ROOSEVELT COUNTY SCHOOL      )	)	CONCLUSIONS OF LAW,
DISTRICT 9 & 9B,                  )	)	AND
)  Respondent.                  )	)	RECOMMENDED ORDER

\* \* \* \* \*

The petition for unit determination filed by the Montana Education Association has proposed a unit comprised of all full time and regular part time custodial staff of Roosevelt County School District 9 & 9B. In response, the school district has proposed a unit which would include (a) aides, (b) clerical, (c) bus drivers and custodial employees, and (d) cooks and lunch personnel, excluding supervisory, confidential and occassional and temporary employees. The parties are in agreement that the Buildings and Grounds Supervisor is a supervisor within the meaning of the Act and is properly excluded from the unit. In addition, the school district would not include the Transportation Supervisor in the large unit should it be found appropriate.

The determination of the appropriate unit in this matter revolves around a determination of community of interest. The Montana Public Employees Collective Bargaining Act sets forth the following criteria which has been used in making this determination. Do the employees have the same hours of work, the same fringe benefits, the same working conditions, common supervision, common personnel policies and are they paid by the same method? Are the employees' work functions integrated and is there inter-

1 change among employees? What is the history of collective  
2 bargaining and the desires of the employees?

3 The hearing in this matter was held on June 29, 1981 in  
4 Poplar, Montana. Emilie Loring represented the Montana  
5 Education Association and Don Klepper represented the School  
6 District. The hearing was held under the authority of  
7 Section 39-31-207 MCA and in accordance with the Admini-  
8 strative Procedure Act, Title 2, Chapter 4, MCA.

9 Having carefully reviewed the entire record including  
10 sworn testimony and evidence, I make the following findings  
11 of fact:

#### 12 FINDINGS OF FACT

13 1. The non-certified employees in the Poplar School  
14 District receive those statutory benefits provided to all  
15 public employees: vacation and sick leave (Title 2, Chapter  
16 18, part 6 MCA); Workers' Compensation (Title 39, Chapter 71  
17 MCA); Public Employees Retirement (Title 19, Chapter 3 MCA).  
18 In addition they are covered by the District's liability  
19 insurance policy.

20 2. Non-certified employees receive Good Friday in  
21 addition to the statutory holidays of New Years Day, Memorial  
22 Day, Independence Day, Labor Day, Thanksgiving Day and  
23 Christmas Day.

24 3. The Poplar School District has a general policy of  
25 granting vacation time to non-certified employees only in  
26 the summer. In addition, all these employees punch a time  
27 clock and are given individual written employment contracts.  
28 There appear to be no other personnel policies which apply  
29 to non-certified employees.

30 4. All non-certified employees earn an hourly wage  
31 and are paid every two weeks.

32

1           5.    The types of non-certified employees in the Poplar  
2 School District are:

- 3           a)    aides who assist teachers in the classroom;  
4           b)    custodians who are responsible for the clean-  
5                ing and maintenance of the school buildings;  
6           c)    secretaries who do the clerical work in the  
7                schools;  
8           d)    hot lunch personnel who are responsible for  
9                cooking and serving meals to the students;  
10          e)    bus drivers who drive the school busses.

11           The education and types of training for these jobs  
12 varies. Secretaries are expected to have clerical training  
13 before they are hired. Aides must have a high school diploma,  
14 a G.E.D. or some college.

15           6.    Custodians are the only group of non-certified  
16 employees to work an 8 hour day 12 months of the year.  
17 Other employees work a substantially shorter day or only 9  
18 months a year: the bus drivers work 3 to 4 hours a day (9  
19 months); hot lunch personnel work from 4 to 7 hours a day (9  
20 months); aides work only during the school year (9 months).  
21 One of the clerical staff works a full 12 months and the  
22 rest work 10 months.

23           During the school year the custodians work in shifts;  
24 no other employees do shift work.

25           7.    Non-certified employees in the Poplar School  
26 District are based in a number of different buildings in the  
27 district. The hot lunch personnel all work in the primary  
28 building; the secretaries are each stationed in different  
29 schools; the custodians are stationed in different schools;  
30 the aides work mainly in the primary building; when not  
31 driving the bus drivers are stationed in the bus barn.  
32

1           8.    In the past, there have been occassional times  
2 when one of the school lunch workers or a secretary has been  
3 hired to do janitorial work in the summer.

4           9.    The immediate supervisor of the custodians is the  
5 Superintendent of Buildings and Grounds. The Transportation  
6 Supervisor supervises the bus drivers, the Lunch Supervisor  
7 supervises the hot lunch personnel, the aides are supervised  
8 by the teachers with whom they work and the clerical staff  
9 is supervised by the individual for whom they work, a build-  
10 ing principal, the special ed director or the Superintendent  
11 as the case may be.

12           Even though in the Poplar School District, as in other  
13 Montana School Districts, the School Board retains the total  
14 power to hire and fire personnel the Building and Grounds,  
15 Lunch and Transportation supervisors make effective recom-  
16 mendations on hiring and firing. These recommendations are  
17 made to the Superintendent who relays them to the Board of  
18 Trustees with his recommendations.

19           10. The Superintendent and/or the Board has informally  
20 "negotiated" with the different groups of non-certified  
21 employees. These meetings have been by category of employee,  
22 i.e. there have been separate meetings with custodians and  
23 lunch personnel, etc.

24           11. Three of the custodians also work as bus drivers.  
25 Bus drivers get a higher hourly wage than the custodians.  
26 Those custodians who also drive a bus perform this work in  
27 addition to their eight hour shift as custodians. In going  
28 on shift as a bus driver the custodian will "clock out" as  
29 janitor and "clock in" as a driver. The process is then  
30 reversed at the end of the bus run.

DISCUSSION

1  
2 Non-certified employees in the Poplar School District  
3 share a number of working conditions. They are all hourly  
4 paid on the same pay day, they have the same statutory  
5 fringe benefits, they have the same holidays. However,  
6 there are many things they do not have in common: they  
7 generally work in different locations, they do different  
8 types of work with different educational and training require-  
9 ments, they work different hours. The non-certified staff  
10 are employed only 9 or 10 months a year with the exception  
11 of the janitors who are employed for 12 months. The types  
12 of work the employees perform are so distinct from one  
13 another that there is little integration of work functions.  
14 Further, the work sites are so spread out that there is  
15 little opportunity for interchange among employees performing  
16 these diverse types of work. For example, in the middle and  
17 high school buildings there will be one building secretary,  
18 a custodian or two (custodians work on different shifts), no  
19 hot lunch personnel, no bus drivers and few if any aides.  
20 Interchange between the secretaries and the janitors in  
21 these buildings and the other groups who work in different  
22 buildings will be essentially non-existent. Interchange  
23 between the secretary and janitor can be expected to be  
24 casual. There is no evidence that a janitor in one building  
25 will have any contact with the secretaries, aides, hot lunch  
26 personnel or bus drivers in the other buildings. The primary  
27 building houses some members of four of the five groups of  
28 non-certified personnel. Even in this building it can be  
29 expected that there will be no integration of work functions  
30 and little interchange among employees performing diverse  
31 types of work.

32

1           As evidence of integration of work functions the School  
2 District raises the point that three of the custodians also  
3 work as bus drivers. It is true that these custodians  
4 appear to be the only link that any of the non-certified  
5 employees have with the bus drivers. However, it also  
6 appears that the janitors' function as bus drivers is as a  
7 totally separate job not as part of their duties as custo-  
8 dians. This conclusion is supported by the fact that the  
9 three janitors work a full eight hours shift as custodians  
10 in addition to driving the buses. The occasions when hot  
11 lunch or clerical personnel have served as custodians during  
12 the summer after having completed their nine months service  
13 also appear to be a case of an employee working two positions  
14 rather than integration of work functions of positions.

15           The School District also contends that non-certified  
16 employees receive common supervision from the Superintendent.  
17 There is no doubt that Superintendent Kober is the ultimate  
18 management supervisor, however, direct supervision of the  
19 non-certified employees is provided at a lower level. Mr.  
20 Kober's supervision of these positions is analogous to the  
21 supervision the president of a company gives employees. To  
22 take the analogy one step further we can compare the School  
23 Board to the board of directors and Mr. Kober to the presi-  
24 dent of a corporation. Neither perform the kind of super-  
25 vision envisioned by the Act.

26           In the past the school district has "negotiated" sepa-  
27 rately with the custodians and with the other groups of non-  
28 certified employees. Apparently the custodians desire to  
29 formalize these past negotiations into actual collective  
30 bargaining. There is no evidence that the other non-certi-  
31 fied employees in the school district have such desires.  
32

1 On balance there are more differences between the  
2 groups of non-certified employees than there are similari-  
3 ties. Consequently, we must conclude that the appropriate  
4 bargaining unit in this case is one composed of only the  
5 custodians.

6 CONCLUSION OF LAW

7 All full time and regular part time custodial staff in  
8 Roosevelt County School District 9 & 9B constitute an approp-  
9 riate unit for the purpose of collective bargaining.

10 RECOMMENDED ORDER

11 Under the authority of section 39-31-208 MCA it is  
12 hereby ordered that an election by secret ballot be con-  
13 ducted among the members of the bargaining unit defined  
14 above in accordance with ARM 24.26.555 et seq.

15 NOTICE

16 Written exceptions to these Findings of Fact, Conclu-  
17 sions of Law and Recommended Order may be filed within  
18 twenty days. If no exceptions are filed with the Board of  
19 Personnel Appeals within that time, the Recommended Order  
20 shall become the Order of the Board. Exceptions shall be  
21 addressed to the Board of Personnel Appeals, Capitol Station,  
22 Helena, Montana 59620.

23 Dated this 29<sup>th</sup> day of July, 1981.

24  
25 BOARD OF PERSONNEL APPEALS

26  
27 By Linda Skaar  
28 Linda Skaar  
Hearing Examiner

29 CERTIFICATE OF MAILING

30 The undersigned does certify that a true and correct  
31 copy of this document was sent to the following on the  
32 29 day of July, 1981.

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Don Klepper  
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*Jennifer Jacobson*

PAD5:1/8