

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

1 IN THE MATTER OF UNIT DETERMINATION NO. 3-86:

2 MONTANA EDUCATION ASSOCIATION,)
3 NATIONAL EDUCATION ASSOCIATION,)
4 Petitioner,)
5 - vs -)
6 YELLOWSTONE-WEST/CARBON COUNTY)
7 SPECIAL SERVICES COOPERATIVE,)
8 Employer.)

FINAL ORDER

9 * * * * *

10 No exceptions having been filed to the Hearing
11 Examiner's June 25, 1986 Recommended Order, the Board of
12 Personnel Appeals therefore adopts the Hearing Examiner's
13 Findings of Fact, Conclusions of Law and Recommended Order
14 as the Final Order of this Board.

15 DATED this 8th day of September, 1986.

16 BOARD OF PERSONNEL APPEALS

17 By Alan L. Joscelyn
18 Alan L. Joscelyn
19 Chairman

20 * * * * *

21 CERTIFICATE OF MAILING

22 I, Jennifer Jacobson, do hereby certify and
23 state that a true and correct copy of this document was
24 mailed to the following on the 8th day of September, 1986:

25 David Sexton, UniServ Director
26 Service Area No. 3
27 Montana Education Assoc., NEA
28 1111 24th Street West
29 Billings, MT 59102

30 Vernon D. Barkell, Director
31 Yellowstone-West Carbon County
32 Special Services Cooperative
West Elementary School
502 Eighth Avenue, Room 111
Laurel, MT 59044

Duane Johnson
Management Associates
P.O. Box 781
Helena, MT 59624

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 3-86:

MONTANA EDUCATION ASSOCIATION,))
NATIONAL EDUCATION ASSOCIATION))
Petitioner,)) RECOMMENDED
vs.)) ORDER
YELLOWSTONE-WEST/CARBON COUNTY))
SPECIAL SERVICES COOPERATIVE))
Employer.))

* * * * *

The Petitioner, in the above captioned matter, filed a Petition for New Unit Determination and Election with this Board on February 14, 1986, for certain employees of the Yellowstone-West/Carbon County Special Services Cooperative. The Petitioner proposed the appropriate unit to consist of all professional employees, including, but not limited to, teachers, consultants, psychologists, clinicians and aides excluding the Director, clerk, secretary and contracted physical therapist.

On March 12, 1986, this Board received a counter-petition from the Employer which disagreed with the proposed bargaining unit. The Employer proposed an appropriate bargaining unit which would also exclude consultants and classroom instructional aides.

The Petitioner responded to the Employer's counter-petition on March 18, 1986. The Petitioner moved that Employer's counter-petition be dismissed because of timeliness and disagreed with the exclusion of the consultants and classroom instructional aides.

A formal hearing was conducted in this matter May 13, 1986, in the Board Room, Middle School, 410 Colorado Avenue, Laurel, Montana. The formal hearing was conducted under

1 authority of Section 39-31-207 MCA and in accordance with
2 the Administrative Procedure Act (Title 2, Chapter 4 MCA).

3 MOTION

4 During preliminary matters at the onset of the formal
5 hearing the Petitioner renewed its Motion to Dismiss the
6 Employer's counter-petition. The Petitioner contended that
7 the Employer failed to meet the required timeline for filing
8 counter-petitions and failed to serve the Petitioner with
9 the counter-petition.

10 By letter dated February 20, 1986, this Board served
11 the Employer with the Petition for New Unit Determination
12 and Election as filed with this Board by the Petitioner.
13 The Board's letter stated ARM 24.26.614:

14 (1) The Employer shall have five (5) working days
15 from receipt of the petition in which to file a
16 counter-petition with the Board. (2) The employ-
17 er shall file a counter-petition when the employer
18 disagrees with the appropriateness of the proposed
19 unit as described in the petition. (4) The
20 employer shall serve a copy of the coun-
21 ter-petition upon the petitioner.

22 The Employer admitted to receiving the Board's letter and a
23 copy of the petition on February 21, 1986. On March 12,
24 1986, this Board received the counter-petition from the
25 Employer disagreeing with the appropriateness of the
26 proposed bargaining unit. This Board mailed a copy of the
27 Employer's counter-petition to the Petitioner which was
28 received by the Petitioner on March 14, 1986. The
29 Petitioner responded to the Employer's counter-petition by
30 letter received by this Board on March 18, 1986. The
31 Petitioner requested a dismissal of the Employer's
32 counter-petition based upon timeliness and failure to serve
the Petitioner as provided in ARM 24.26.614 and maintained
the proposed bargaining was appropriate.

By letter received by this Board on March 26, 1986, the
Employer responded to the Petitioner's Motion to Dismiss.

1 The Employer (Vernon D. Barkell, Director) argued that he
2 had been preoccupied with personal matters and that he would
3 have had difficulty scheduling a Cooperative Management
4 Board meeting to address the Petition for New Unit Deter-
5 mination and Election within time provisions of ARM
6 24.26.614. He argued that he had sent a copy of his coun-
7 ter-petition to all members of his staff and believed that
8 action fulfilled the service requirement of ARM 24.26.614.

9 DISCUSSION

10 Considering time necessary for mail service, the
11 Employer was thirteen days late in filing a coun-
12 ter-petition. The Employer did not request an extension for
13 time in which to file a counter-petition nor did the Employ-
14 er give convincing reasons for his lateness. The Petition-
15 er's name, address and telephone number are clearly noted in
16 the Petition for New Unit Determination and Election which
17 was supplied to the Employer and I find no reason for
18 non-service of counter-petition on the Petitioner.

19 RECOMMENDED ORDER

20 The Employer's counter-petition in this matter is
21 hereby dismissed. The appropriate unit shall be defined as
22 all professional employees (including but not limited to
23 teachers, consultants, psychologists, pathologists, clini-
24 cians, and aides) employed by the Yellowstone-West/Carbon
25 County Special Services Cooperative excluding the Director,
26 clerk, secretary, contracted physical therapist. An
27 election by secret ballot shall be conducted to determine
28 whether the employees in the appropriate unit desire to be
29 represented for collective bargaining purposes by the
30 Montana Education Association, National Education Asso-
31 ciation.

