

1 STATE OF MONTANA
2 BEFORE THE BOARD OF PERSONNEL APPEALS

3 IN THE MATTER OF UNIT DETERMINATION NO. 13-87

4 THE MONTANA EDUCATION)
5 ASSOCIATION, NEA,)
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-vs-

RECOMMENDED ORDER

RAU ELEMENTARY SCHOOL)
DISTRICT NO. 21,)
Employer.)

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11 INTRODUCTION

12 As a result of stipulations reached between the parties
13 and with Arlyn L. Plowman, duly appointed Hearing Examiner
14 for the Board of Personnel Appeals, during a Pre-Hearing
15 Conference on October 26, 1987 the November 6, 1987 hearing
16 in the above-captioned matter was vacated, briefs were filed
17 and the matter was deemed submitted on November 20, 1987.

18 BACKGROUND

19 The Petitioner, Montana Education Association, filed a
20 petition for new unit determination and election with the
21 Board of Personnel Appeals on August 25, 1987 for certain
22 employees of the employer, Rau Elementary School District
23 No. 21. The Petitioner proposed an appropriate bargaining
24 unit to consist of all certified K-6 teachers employed by
25 the district excluding school district clerk, school admin-
26 istrator, supervisory employees, management officials and
27 confidential employees as defined by the Montana Collective
28 Bargaining for Public Employees Act, all substitutes and
29 itinerate employees of the Special Education Cooperative.

30 The Employer filed a counter-petition with the Board of
31 Personnel Appeals which disagreed with the proposed bargain-
32 ing unit. The employer proposed an appropriate bargaining

1 unit which would include certified K-6 teachers employed by
2 the school district as teachers, excluding the school
3 district clerk, school administrator, supervisory employees,
4 management officials and confidential employees as defined
5 by the Montana Collective Bargaining for Public Employees
6 Act and excluding substitute teachers, part-time teachers
7 (teachers who work less than 16 hours per week), any spe-
8 cialists, itinerant employees of the Special Education
9 Cooperative and all other employees.

10 FINDINGS

11 1. The bargaining unit as petitioned by the Petition-
12 er and as counter-petitioned by the employer includes all
13 seven of the certified K-6 teachers employed by the employer
14 as teachers.

15 2. At this time the Rau Elementary School District
16 No. 21 has no teachers employed as teachers for less than 16
17 hours per week.

18 3. At this time the Rau Elementary School District
19 No. 21 does not employ any specialists.

20 CONCLUSIONS

21 1. Pursuant to Section 39-31-202 MCA, in order to
22 assure employees the fullest freedom in exercising their
23 rights guaranteed by the Montana Collective Bargaining for
24 Public Employees Act, the Board of Personnel Appeals is
25 required to determine the appropriate bargaining unit.

26 2. The Montana Supreme Court has approved the prac-
27 tice of the Board of Personnel Appeals in using Federal
28 Court and National Labor Relations Board precedents as
29 guidelines in interpreting the Montana Public Employees
30 Collective Bargaining Act as the state act is so similar to
31 the Labor Management Relations Act (LMRA), State ex rel.
32 Board of Personnel Appeal v District Court, 183 Mont. 223,

1 598 P.2d 1117, 103 LRRM 2297; Teamsters Local 45 v State ex
2 rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d
3 1310, 110 LRRM 2012; City of Great Falls v. Young (Young
4 III), 686 P.2d 185, 119 LRRM 2682.

5 3. In cases considering whether part-time employees
6 should be included within a bargaining unit, the National
7 Labor Relations Board determines unit inclusion on the basis
8 of whether the employee is regularly employed for sufficient
9 periods of time to demonstrate that he, along with full-time
10 employees, has a substantial interest in the unit's, wages,
11 hours, and conditions of employment, National Labor Rela-
12 tions Board v. Western Temporary Services, 125 LRRM 2787, CA
13 7 (1987).

14 The employer made no persuasive argument that certified
15 teachers employed as teachers for less than 16 hours per
16 week do not share, with other members of the proposed
17 bargaining unit, a substantial interest in wages, hours and
18 conditions of employment.

19 4. The employer's counter-petition requests the Board
20 to exclude "specialists" and "part-time teachers (teachers
21 who work less than 16 hours per week)". The Rau Elementary
22 School District No. 21 presently employees no one who fits
23 into either of these categories. As these categories or
24 positions are nonexistent in Rau Elementary School District
25 No. 21 it is not possible, and therefore, not appropriate
26 for the Board to make any determination regarding the
27 interests of "specialists" and "part-time teachers (teachers
28 who work less than 16 hours per week)".

29 5. The employer's proposal to exclude "itinerant
30 employees of the Special Education Cooperative" is superflu-
31 ous as they are not employed by the Rau Elementary School
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1 District No. 21. The Petitioner's petition named only one
2 employer and makes no mention of other employers.

3 6. The employer's counter-petition proposed that the
4 catch all phrase "all other employees" be included in the
5 list of exclusions. The petitioner argues that the term is
6 redundant since the petitioned unit includes only profes-
7 sional employees. It is also redundant to include within the
8 exclusions, those persons exempted from the definition of
9 public employee in Section 39-31-101(2)(b) MCA. However,
10 such redundancy is harmless and may assist to clarify the
11 unit description.

12 7. The petitioner petitioned only certified K-6
13 teachers employed by the employer. The employer's counter
14 petition narrows the unit inclusions further to limit the
15 bargaining unit to certified K-6 teachers employed as
16 teachers. The employer's counter-petition is more appropri-
17 ate in this instance since it defines the bargaining unit in
18 terms of duties rather than individuals. The Rau Elementary
19 School District No. 21 may, and perhaps already has, em-
20 ploy(ed) a certified teacher in some position which shares
21 no interest with the bargaining unit.

22 RECOMMENDED ORDER

23 1. The Board of Personnel Appeals will conduct an
24 election to determine whether certain employees of the Rau
25 Elementary School District No. 21 in the unit defined below
26 desire to be represented for the purposes of collective
27 bargaining by the Montana Education Association, NEA. The
28 election will be by secret ballot and will be conducted by
29 mail. The election will be conducted in accordance with the
30 Montana Public Employees Collective Bargaining Act (Title
31 39, Chapter 31, MCA) and the applicable procedures and
32 policies of the Board of Personnel Appeals.

1 2. The eligible voters will be those employees
2 included in the unit described below who were employed on
3 August 25, 1987, the date the petition was filed.

4 3. The Board of Personnel Appeals will prepare a
5 Notice of Mail Ballot Election (Appendix A) and Sample
6 Ballot and supply copies to the parties and all eligible
7 voters. This shall constitute the posting requirements of
8 the election.

9 4. The appropriate bargaining unit shall be defined
10 as all certified K-6 teachers employed by the Rau Elementary
11 School District No. 21 as teachers excluding school district
12 clerk, school administrator, management officials, supervi-
13 sory employees and confidential employees as defined by the
14 Montana Collective Bargaining for Public Employees Act,
15 substitutes and all other employees. The Mail Ballot
16 Election will be conducted according to the following
17 schedule:

18 A. A copy of the Notice of Mail Ballot Election and
19 Sample Ballot and necessary return mailing enve-
20 lopes will be mailed to all eligible voters at the
21 addresses listed on Appendix B on December 24,
22 1987.

23 B. The ballots will be picked up at the post office
24 at 9:00 a.m., January 11, 1988. The ballots will
25 be counted at 10:00 a.m. on the same day and the
26 Board of Personnel Appeals office, Department of
27 Labor and Industry Building, 1327 Lockett, Helena.
28 MT. The employer and the employee organization
29 may have an authorized observer or observers
30 present when the ballots are counted.
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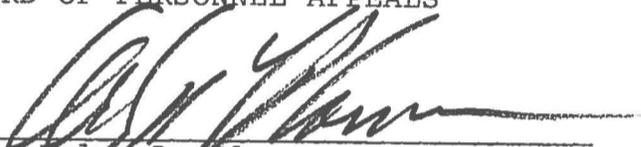
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SPECIAL NOTICE

Pursuant to the Board of Personnel Appeals Rule, Administrative Rules of Montana 24.25.102(2), the above Recommended Order shall become the final Order of the Board of Personnel Appeals unless written exceptions are filed within twenty (20) days after service of this Recommended Order upon the parties.

Entered and dated this 27th day of November, 1987.

BOARD OF PERSONNEL APPEALS

By: 
Arlyn L. Plowman
Hearing Examiner

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CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify that a true and correct copy of this document was mailed to the following on the 27th day of November, 1987.
Al Bellister, UniServ Director
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