

BEFORE THE BOARD OF PERSONNEL APPEALS

In the matter of Unit Determination No. 7-87

MONTANA FEDERATION OF)	
TEACHERS, AFT, AFL-CIO)	
)	
Petitioner)	
)	FINDINGS OF FACT;
vs.)	CONCLUSIONS OF LAW;
)	RECOMMENDED ORDER
HAMILTON SCHOOL DISTRICT)	
NO. 3)	
)	
Employer)	

* * * * *

I. INTRODUCTION

On May 6, 1987, Hamilton School District No. 3 filed what constituted a counter petition to the unit determination petition filed by the Montana Federation of Teachers. Pursuant to an agreement between the petitioner and the employer the votes of four individuals - Teresa Laine, Gail Watts, Cindy Weston and Michelle McChristian - classified as secretaries in the central office, were cast as challenged ballots. The election was held on June 1, 1987 and the unit subsequently certified.

A hearing to determine the status of the four secretaries was held on July 14, 1987 in Hamilton, Montana before John Andrew. The Montana Federation of Teachers was represented by Michael Dahlem. Hamilton School District No. 3 was represented by Dr. Fred Thompson.

II. ISSUES

1. Whether the individuals in question share a community of interest with other individuals in the bargaining unit.

2. Whether the position of administrative secretary in the central office is confidential as defined in 39-31-103(12).

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

III. FINDINGS OF FACT

1. Michelle McChristian is assigned directly to John Goligoski, the Director of Special Services. Michelle McChristian works on a half-time basis. Her schedule is commensurate with that of the Director.

The other secretaries in the central office are directly supervised by Jean Roberts, Clerk of the District. They each work twelve months per year.

All other secretaries in the district work a regular school year.

2. There is no evidence in the record to contrast the wage rates of central office secretaries with the wage rates of bargaining unit members. The record does reflect that in the past the rates of the central office secretaries and non-central office secretaries were all set by the Board.

3. All classified employees are subject to the same personnel policies.

4. There is no evidence in the record as to any difference in the fringe benefits received by central office secretaries versus non-central office secretaries.

5. There is no history of collective bargaining in this unit.

6. There is a daily interchange between the central office secretaries and other secretaries in the bargaining unit. Although there are specific differences in work performed by the central office secretaries versus work performed by bargaining unit members, overall the work is similar in nature.

7. The four secretaries all work in the central administration office building. Other secretaries and members in the unit work at the schools away from the central office.

1 8. The three secretaries who testified all indicated
2 that they did not want to be in the unit.

3 9. None of the secretaries have typed or been invol-
4 ved in the preparation of papers relevant to labor negotia-
5 tions. At best, one secretary, Teresa Laine, has typed
6 responses to teacher grievances. This typing was just
7 responses. It was not of a sensitive or confidential
8 nature. This is the only instance adduced at hearing where
9 any of the secretaries was even remotely involved in activi-
10 ties that might be considered confidential in nature.

11 10. The Superintendent does participate in negotiation
12 sessions. Neither the clerk nor Mr. Goligoski has partici-
13 pated in collective bargaining negotiations. None of the
14 secretaries has been involved in negotiations. None of the
15 secretaries has attended closed meetings of the Board.

16 11. Any involvement the secretaries might have in
17 negotiations would be strictly from the grapevine stand-
18 point. If they happen to hear the Superintendent or members
19 of a negotiating team discussing certain labor relations
20 matters they would be privy to negotiations only to that
21 extent. Such a grapevine scenario is not unique to these
22 secretaries or for that matter any other personnel in a
23 school district.

24 IV. CONCLUSIONS OF LAW

25 1. Section 39-31-202, MCA, sets the criteria used by
26 the Board to determine an appropriate bargaining unit. The
27 statute provides that such factors shall be considered as
28 community of interest; wages, hours, fringe benefits, and
29 other working conditions of the employees involved, the
30 history of collective bargaining, supervision, common
31 personnel policies, extent of integration of work functions
32 and interchange among employees affected, and the desires of

1 the employees.

2 At the least the evidence shows that Michelle
3 McChristian shares as great a community of interest with the
4 other bargaining unit members as with the central office
5 secretaries. The evidence does not stop there. It goes on
6 to show that the chain of command in the central office is
7 no different than that in the other areas of the district.
8 All employees of the district are governed by common employ-
9 ment policies. There is regular interchange among the
10 employees affected and there does not appear on the record
11 any convincing proof that the central office employees enjoy
12 greater fringe benefits or wages than the members of the
13 bargaining unit. In short, there is community of interest
14 between the central office secretaries and the other members
15 of the unit.

16 2. Section 39-31-103(12) defines a confidential
17 employee to mean:

18 "Any person found by the Board to be a confiden-
19 tial labor relations employee and any person
20 employed in the personnel division, department of
21 administration, who acts with discretionary
authority in the creation or revision of state
classification specifications."

22 The Personnel Division, Department of Administration,
23 as specified in Section 39-31-103(12), is the State Depart-
24 ment of Administration. Contrary to the employer's reason-
25 ing, the statute does not refer to other personnel divisions
26 within political subdivisions of the state. The Act is
27 specifically excluding only those employees employed by the
28 State Personnel Division. Thus, the central office secre-
29 taries do not gain the exemption merely by working in a
30 personnel related function of the Hamilton School District.
31 They must meet the criteria necessary to be considered in a
32 confidential status.

1 In determining whether an employee is a confidential
2 employee the Board has adopted a two pronged test set forth
3 in UD #27-79 and UD #8-83. The test is patterned after that
4 set forth in Siemens Corp., 224 NLRB 216, 92 LRRM 1455
5 (1976). The test provides that to be confidential, the
6 management official assisted by the confidential employee
7 must be involved in formulating, determining and effectuat-
8 ing labor relations policies and the employee must have
9 access to confidential labor relations information in the
10 normal course of employment. Mere access to confidential
11 personnel records is not sufficient grounds for exclusion,
12 UD #27-79. Clearly, none of the secretaries in question
13 meet the criteria for exclusion. They do not sit at the
14 bargaining table nor do any of their immediate supervisors.
15 At best the secretaries could be described as handling
16 information that is sensitive in nature, not related to
17 collective bargaining, and thus not covered by the exclusion
18 of 39-31-103(12), MCA.

19 IV. RECOMMENDED ORDER

20 It is recommended that the appropriate unit for purpos-
21 es of collective bargaining for Hamilton School District No.
22 3 include the secretaries in the central office building.

23 V. NOTICE

24 Exception to these Findings of Fact, Conclusions of Law
25 and Recommended Order may be filed within twenty (20) days
26 of service. If no exceptions are filed the Recommended
27 Order will become the Order of the Board of Personnel
28 Appeals.

29 Entered and dated this 13th day of August, 1987.

30
31 
32 _____
John Andrew
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned does certify that a true and correct copy of this document was served upon the following on the 13 day of August, 1987, postage paid and addressed as follows:

Dr. Fred Thompson
Attorney at Law
3009 Queen St.
Missoula, MT 59801

Mike Dahlem
Montana Federation of Teachers
Box 1246
Helena, MT 59624

Clifford Johnson, Superintendent
School District No. 3
411 Daly Ave.
Hamilton, MT 59840



FOF3:017vt