

BEFORE THE BOARD OF PERSONNEL APPEALS  
STATE OF MONTANA

IN THE MATTER OF UNIT DETERMINATION NO. 12-88:

MONTANA EDUCATION ASSOCIATION/)  
NATIONAL EDUCATION ASSOCIATION)

Petitioner, )

vs. )

EUREKA PUBLIC SCHOOLS, )  
ELEMENTARY AND HIGH SCHOOL )  
DISTRICT NO. 13, LINCOLN )  
COUNTY, )

Employer. )

FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
RECOMMENDED ORDER

\* \* \* \* \*

I. INTRODUCTION

On October 24, 1988 the Montana Education Association filed a unit determination petition for a unit defined as all aides, office workers, custodians, maintenance personnel and kitchen workers employed by the employer excluding bus drivers and those employees excluded by the Act.

A counter-petition was filed by the district on November 2, 1988, proposing a unit defined as all aides, office workers, custodians, maintenance personnel, kitchen workers, and bus drivers excluding supervisory personnel, specifically the transportation/maintenance supervisor, head custodian, and head cook as well as the central office assistant to the superintendent and business manager/clerk.

A unit determination hearing was held on February 15, 1989 in Eureka, Montana before John Andrew. The Petitioner

1 was represented by Emilie Loring. Eureka Public Schools was  
2 represented by Daniel Johns. Prior to hearing the parties  
3 stipulated to inclusion of bus drivers in the proposed unit.  
4 Briefs were filed on the remaining issues. The matter was  
5 submitted on March 16, 1989.

6  
7 II. ISSUES

8 1. Whether the transportation/maintenance supervisor,  
9 head custodian, and head cook are supervisory employees as  
10 defined in 39-31-103(3) MCA.

11 2. Whether the central office assistant to the  
12 superintendent and business manager/clerk is a confidential  
13 employee as defined in 39-31-103(12) MCA.

14  
15 III. FINDINGS OF FACT

16 CENTRAL OFFICE ASSISTANT

17 1. In a previous unit determination involving Eureka  
18 elementary school district, #6-87, the MEA stipulated to the  
19 exclusion of the superintendent's secretary from the  
20 proposed bargaining unit. At the time of that unit  
21 determination Ron Blake was the superintendent of the  
22 elementary district.

23 2. In July of 1988 the elementary and high school  
24 districts consolidated and Ron Blake was named  
25 superintendent of the district. Mr. Blake's office, the

1 central administrative office is in the basement of the high  
2 school building. Located in the central office space are Mr.  
3 Blake, Pam Meeker, business manager/clerk, and Marilyn  
4 McKenzie, the current central office assistant. Marilyn  
5 McKenzie acts as secretary to Mr. Blake and Ms. Meeker.

6 3. Ron Blake sits at the bargaining table and is  
7 responsible for formulation of collective bargaining  
8 proposals. He is the chief spokesperson for the district at  
9 contract negotiations. He is assisted by Ms. Meeker.

10 4. Ron Blake is the chief personnel officer for the  
11 district and is responsible for all personnel matters  
12 including administration of the collective bargaining  
13 agreements. He handles grievances, disciplinary concerns and  
14 financial matters.

15 5. The central office assistant to the Superintendent  
16 is responsible for all filing and mail distribution within  
17 the central office. Since the consolidated district is  
18 relatively new the central office assistant (a position  
19 created in July of 1988) has not faced any situations  
20 involving the collective bargaining process. However, due to  
21 her close proximity to the superintendent and the business  
22 manager/clerk it would be very difficult for the central  
23 office assistant to not be privy to management decisions  
24 regarding personnel and collective bargaining matters.  
25 Further, it is expected by management that as the position

1 evolves the central office assistant will play a role in  
2 assisting the superintendent and business manager in  
3 preparation of proposals.  
4

5 SUPERINTENDENT OF TRANSPORTATION/MAINTENANCE  
6

7 1. The current transportation/maintenance supervisor  
8 is Dale Holder. Mr. Holder has been in the position since  
9 May of 1987. He is paid \$12.27 per hour - over three  
10 dollars per hour more than his closest subordinate. Mr.  
11 Holder receives the same fringe benefits as his subordinates.

12 2. As maintenance supervisor Mr. Holder supervises  
13 nine bus drivers, three custodians, and one assistant  
14 maintenance supervisor. Mr. Holder regularly assigns their  
15 work duties. Mr. Holder's duties are varied enough that he  
16 regularly exercises discretion and judgment in performing his  
17 job.

18 3. Mr. Holder sits on hiring committees. His  
19 recommendations on hiring and promotion have been followed by  
20 the superintendent and the school board.

21 4. Mr. Holder has issued letters of reprimand and has  
22 had them placed in employee files. If employee performance  
23 is not satisfactory Mr. Holder can recommend disciplinary  
24 action, including dismissal, subject to approval by the  
25 superintendent and the board.

5. Mr. Holder approves time slips and leave requests.

1 He also approves overtime subject to budget constraints.

2 6. Contrary to his job description (ER #2), Mr.  
3 Holder does not do annual employee evaluations. He does,  
4 however, evaluate probationary employees and recommend them  
5 for permanent status if warranted. His recommendations are  
6 followed.

7 7. At the time of hearing Mr. Holder testified that it  
8 was his desire to be a member of the proposed bargaining  
9 unit.

10  
11 HEAD CUSTODIAN

12 1. The head custodian supervises two part time  
13 custodians in the elementary building. The elementary  
14 building is in close proximity with the high school building.

15 2. Frank Haughn is the current head custodian. He has  
16 been in the position since September of 1985. Mr. Haughn is  
17 paid \$8.70 per hour - three dollars over his subordinates.  
18 Mr. Haughn receives the same fringe benefits as his  
19 subordinates. Mr. Haughn did not testify at the hearing.

20 3. Mr. Haughn does not attend supervisors' meetings.

21 4. Mr. Haughn does do some of the same things as Mr.  
22 Holder. He approves leave and time slips and assigns duties  
23 to employees to the extent that he ensures work is  
24 accomplished in designated areas. Since Mr. Haughn is  
25 responsible for only the elementary school and works only at

1 that location his duties are not nearly as extensive as Mr.  
2 Holder's. Nowhere in his job description is it mentioned  
3 that he disciplines, evaluates, promotes (if that's possible  
4 for two part time employees), transfers or suspends. At best  
5 it can be said he is involved in the hiring process but his  
6 extent of involvement is questionable at best.  
7

8 HEAD COOK

9 1. The present head cook is Shirley Roberts. This is  
10 her first year as head cook. Ms. Roberts is paid \$8.20 per  
11 hour. Her highest paid subordinate receives \$5.00 per hour.  
12 Part of Ms. Roberts' higher pay rate is attributable to her  
13 longevity. When she was promoted to head cook Ms. Roberts  
14 received a one dollar per pay differential. She receives the  
15 same fringe benefits as her subordinates.  
16

17 2. Shirley Roberts does not have a written job  
18 description. From the testimony it is apparent that her  
19 primary duties are hands on preparation of meals and menus.  
20 She is also charged with purchasing and record keeping for  
21 the kitchen.

22 3. Shirley Roberts supervises three kitchen  
23 assistants who work from four to seven hours per day. She  
24 also supervises two to three student assistants.

25 4. Almost all of Shirley Roberts' time is spent doing  
bargaining unit work. It is work that does not require

1 discretion and independent judgment.

2 5. Shirley Roberts does not attend supervisors  
3 meetings.

4 6. Shirley Roberts does assign work but it is work of  
5 a routine nature, e.g. cooking and cleaning.  
6

7 VI. CONCLUSIONS OF LAW

8 1. The central office assistant position is as the  
9 respondent states an evolving position. However, there is no  
10 doubt that the position presently assists and will be  
11 assisting supervisors, particularly the superintendent, who  
12 are involved in personnel matters and the collective  
13 bargaining process. As the cases cited by the employer point  
14 out, the NLRB has recognized such positions as being  
15 confidential. Moreover, it would be the rare instance where  
16 the superintendent's secretary would not be confidential. In  
17 fact, in UC 2-87, cited by the Petitioner, the  
18 superintendent's secretary was already excluded. It was only  
19 the secretary to the business manager who was not excluded.  
20 The facts in UC 2-87 are distinguishable. The central office  
21 assistant is a confidential employee under 39-31-103(12) MCA.

22 2. Under 39-31-103 (3) MCA a supervisory employee is  
23 any individual having authority in the interest of the  
24 employer to hire, transfer, suspend, lay off, recall,  
25 promote, discharge, assign, reward, discipline other

1 employees, having responsibility to direct them, to adjust  
2 their grievances, or effectively to recommend such action, if  
3 in connection with the foregoing the exercise of such  
4 authority is not of a merely routine or clerical nature but  
5 requires the use of independent judgment.

6 In the case of Dale Holder, the record demonstrates that  
7 Mr. Holder regularly exercises independent judgment in  
8 assigning work and generally supervising his subordinates.  
9 There is no doubt that his judgment is relied upon by  
10 management in hiring decisions and in day to day operations  
11 of the transportation/maintenance section. Mr. Holder is a  
12 bona fide supervisory employee.

13 Frank Haughn and Shirley Roberts are distinguishable  
14 from Mr. Holder. These individuals are engaged in primarily  
15 run of the mill operations involving little discretion and  
16 judgment. Their involvement in personnel matters is of a  
17 routine almost bookkeeping nature. This coupled with the  
18 fact that they oversee part time workers, and few of them at  
19 that, leads to the conclusion that they are lead workers (see  
20 UD 14-80 and UD 23-80) rather than supervisors as defined in  
21 39-31-103(3) MCA.

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24 V. RECOMMENDED ORDER

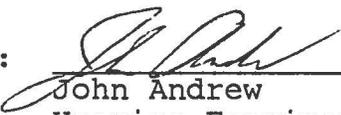
25 It is ordered that the appropriate unit for purposes of  
election be recognized as all aides, office workers,

1 custodians, maintenance personnel, kitchen workers, and bus  
2 drivers employed by the employer excluding the central office  
3 assistant to the superintendent and business manager/clerk,  
4 transportation/maintenance supervisor and those employees  
5 excluded by the Act.

6 It is further ordered that an election by secret ballot  
7 shall be conducted as early as possible, in accordance with  
8 the rules and regulations of the Board of Personnel Appeals,  
9 among the employees of the above described bargaining unit,  
10 employed by Eureka Public Schools on October 24, 1988, to  
11 determine whether they desire to be represented for  
12 collective bargaining purposes.

13  
14 Dated this 30th day of March, 1989.

15  
16 Board of Personnel Appeals

17  
18 By:   
19 \_\_\_\_\_

20 John Andrew  
Hearing Examiner

21 NOTICE: Exceptions to these Findings of Fact, Conclusions of  
22 Law and Recommended Order may be filed within twenty days of  
23 service. If no exceptions are filed the Recommended Order  
24 will become the Order of the Board of Personnel Appeals.  
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CERTIFICATE OF SERVICE

The undersigned does certify that a true and correct copy of this document was served upon the following on the 30<sup>th</sup> day of March, 1989, postage paid and addressed as follows:

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