

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 16-89:

1
2 MONTANA FEDERATION OF)
3 TEACHERS, AFT, AFL-CIO,)
4)
5 Petitioner,)
6)
7 - vs -)
8)
9 FLATHEAD VALLEY COMMUNITY)
10 COLLEGE,)
11)
12 Employer/)
13 Counter Petitioner.)

FINAL ORDER

* * * * *

14 The Findings of Fact, Conclusions of Law and Recommended
15 Order was issued by Hearing Examiner Arlyn L. Plowman on January
16 15, 1990.

17 Exceptions to the Proposed Recommended Order were filed by
18 LeRoy H. Schramm, attorney for employer/counter petitioner
19 Flathead Valley Community College on February 2, 1990.

20 Oral argument was scheduled before the Board of Personnel
21 Appeals on February 28, 1990.

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

24 1. IT IS ORDERED that the Findings of Fact, Conclusions of
25 Law and Recommended Order be amended so that the eligible vote
shall be all part-time faculty employed by Flathead Valley
Community College who taught during spring quarter 1989 (April
1989 through June 1989), autumn quarter 1989 and winter quarter
1990 (September 1989 through March 1990).

2. IT IS ORDERED that this Board therefore adopt the Amended Findings of Fact, Conclusions of Law and Recommended Order of Hearing Examiner Arlyn L. Plowman as the Final Order of this Board.

DATED this 9th day of March, 1990.

BOARD OF PERSONNEL APPEALS

BY *Robert A. Poore*
ROBERT A. POORE
CHAIRMAN

* * * * *

CERTIFICATE OF MAILING

I, *Jennifer Jacobson*, do certify that a true and correct copy of this document was mailed to the following on the 13th day of March, 1990:

LeRoy H. Schramm
Montana University System
33 South Last Chance Gulch
Helena, MT 59620

John Bhend
Montana Federation of State Employees
P.O. Box 1246
Helena, MT 59624-1246

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 16-89:

MONTANA FEDERATION OF)	
TEACHERS, AFT, AFL-CIO,)	
)	
Petitioner,)	
)	
vs.)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
)	RECOMMENDED ORDER
FLATHEAD VALLEY COMMUNITY)	
COLLEGE,)	
)	
Employer/Counter Petitioner.)	

* * * * *

I. INTRODUCTION

A hearing on the above captioned matter was held on August 9, 1989 in the Kalispell, Montana City Council Chambers. The petitioner was represented by John Bhend, Field Staff Representative, Montana Federation of Teachers, AFT, AFL-CIO. LeRoy Schramm, Chief Legal Counsel, Montana University System, represented the employer/counter petitioner, Flathead Valley Community College. Arlyn L. Plowman was the duly appointed hearing examiner for the Board of Personnel Appeals. Testimony was offered and the exhibits were received. Post hearing submissions were filed. The matter was being submitted September 1, 1989.

II. BACKGROUND

On May 24, 1989 the petitioner, Montana Federation of Teachers, AFT, AFL-CIO filed a petition for a new unit determination and election with the Board of Personnel Appeals.

1 In that petition the petitioner defined the proposed bargaining
2 unit as all part-time faculty employed at the Kalispell Campus of
3 Flathead Valley Community College who was scheduled to teach over
4 the last year excluding part-time retired teachers, full-time
5 teachers, managerial, supervisory and confidential personnel.

6 On June 7, 1989 the Board of Personnel Appeals received a
7 counter petition from Flathead Valley Community College. In that
8 counter petition the employer proposed a bargaining unit of all
9 part-time instructors who were scheduled to teach classes the
10 past year in both Flathead and Lincoln counties excluding part-
11 time retired instructors, full-time instructors, managerial,
12 supervisory and confidential personnel.

13 Finding the matter unresolved the Board of Personnel Appeals
14 issued a Notice of Hearing and appointed a hearing examiner on
15 June 12, 1989.

16 III. ISSUES

17 The parties agreed that the proposed bargaining unit should
18 include all part-time instructors who actually taught courses
19 during the past year in both Lincoln and Flathead counties and
20 exclude part-time retired instructors, full-time instructors,
21 managerial, supervisory and confidential personnel.

22 At issue is whether community education instructors are to
23 be included in the proposed bargaining unit. The bargaining
24 unit as proposed by the petitioner would include approximately
25 160 people excluding non-credit community education instructors.

1 The employer/counter petitioner proposes a unit of approximately
2 200 including non-credit community education instructors.

3 IV. FINDINGS OF FACT

4 1. The employer/counter petitioner, Flathead Valley
5 Community College, holds classes in various locations throughout
6 Flathead and Lincoln counties.

7 2. The employer/counter petitioner has approximately 32
8 full-time faculty who are members of a bargaining unit
9 represented by the Montana Education Association.

10 3. The employer/counter petitioner also employs
11 approximately 160 part-time faculty and approximately 40
12 community education instructors. The community education
13 instructors work part-time.

14 4. The salaries paid part-time faculty are calculated
15 differently from those paid to community education instructors.

16 5. Neither part-time faculty nor community education
17 instructors receive fringe benefits, ie. sick leave, insurance,
18 etc..

19 6. While community education courses have been offered for
20 academic credit, that is not the general rule. Grades are not
21 always required for community education courses.

22 7. Community education instructors are supervised and
23 evaluated by the community education director. Part-time faculty
24 are supervised by their respective division chair and evaluated
25 by the Dean of Educational Services.

1 8. Part-time faculty members frequently teach community
2 education courses. Community education instructors seldom teach
3 non-community education courses.

4 9. Part-time faculty members are required to hold
5 advanced degrees. A graduate degree is not required for
6 community education instructors.

7 V. CONCLUSIONS OF LAW

8 1. The Board of Personnel Appeals has jurisdiction in
9 this matter pursuant to the Montana Collective Bargaining For
10 Public Employees Act, Section 39-31-101 et. seq., MCA.

11 2. The Montana Supreme Court has approved the practice of
12 the Board of Personnel Appeals in using Federal Court and
13 National Labor Relations Board (NLRB) precedents as guidelines in
14 interpreting the Montana Collective Bargaining For Public
15 Employees Act as the State Act as similar to the Federal Labor
16 Management Relations Act, State ex rel. Board of Personnel
17 Appeals v. District Court, 183 Montana 223, 1979, 598 P.2d 1117,
18 103 LRRM 2297; Teamsters Local No. 45 v. State ex rel Board of
19 Personnel Appeals, 195 Montana 272, 1981, 635 P.2d 1310, 110 LRRM
20 2012; City of Great Falls v. Young (Young III), 686 P.2d 185,
21 1984, 119 LRRM 2682.

22 3. Pursuant to Section 39-31-202 MCA in order assure
23 employees the fullest freedom in exercise of their rights
24 guaranteed by the Montana Collective Bargaining For Public
25 Employees Act, the Board of Personnel Appeals or an agent of the

1 Board shall determine the unit appropriate for the purpose of
2 collective bargaining and shall consider such factors as
3 community of interest, wages, hours, fringe benefits, and other
4 working conditions of the employees involved, the history of
5 collective bargaining, common supervision, common personnel
6 policies, extended integration of work functions and interchange
7 among the employees affected, and the desires of the employees.
8 See Leedom v. Kyne, 358 U.S. 184, 43 LRRM 2222, 1958; NLRB v. the
9 New School For Social Research, Parsons School of Design, 122
10 LRRM 2842, 2 CA 1986, 793 F.2d 503; Mosey Manufacturing Company
11 v. NLRB, 112 LRRM 2832, 1983 CA 7, 701 F.2d 610.

12 4. Section 39-31-103(11) MCA defines "appropriate unit" as
13 a group of public employees banded together for collective
14 bargaining purposes as designated by the Board of Personnel
15 Appeals.

16 A labor law text contains the following:

17 ...the unit is comprised of jobs or job
18 classifications and not of the particular persons
19 working at those jobs at any given time. The
20 bargaining unit does not change simply because
21 machinist Jones retires and is replaced by machinist
22 Williams....what is commonly known as the "appropriate
23 bargaining unit" might more accurately be denoted the
24 appropriate election unit....Robert A. Gorman, Basic
25 Text on Labor Law, West Publishing Company, St. Paul
1976.

The National Labor Relations Board has offered this
construction of the meaning of the term "appropriate":

There is nothing in the statute which requires that the
unit for bargaining be only appropriate unit, or the

1 ultimate unit, or the most appropriate unit; the Act
2 requires only that the unit be "appropriate". It must
3 be appropriate to insure the employees in each case
4 'the fullest freedom in exercising the rights
5 guaranteed by this Act'. ...[the term] carries with it
6 no overtones of the exclusive or the ultimate or the
7 superlative. Morand brothers, 91 NLRB 409, 26 LRRM
8 1501 (1950).

9 The NLRB later said:

10 It has not been the Board's policy to compel labor
11 organizations to represent the most comprehensive
12 grouping. It is clear that ...a unit of less than all
13 employees may be appropriate....a union is not required
14 to seek representation in the largest possible unit.
15 Therefore, the crucial question in each case is
16 whether the unit sought is appropriate, and the Act
17 requires the Board to make unit determinations which
18 will 'assure to employees the fullest freedom in
19 exercise in the rights guaranteed by this Act'.
20 Vallentine Packing Company, Inc., 132 NLRB 175, 48 LRRM
21 1451, August 10, 1961.

22 5. The mere fact that all of the employees in question
23 work part-time is not sufficient to establish a community of
24 interest. See Goddard College, 216 NLRB 81, 88 LRRM 1228,
25 February 4, 1975; Kendall College v. NLRB, 97 LRRM 2878, 7 CA
1978, 570 F.2d 216.

6. The fact that there is some interchange among
employees (part-time faculty sometimes teach non-credit community
education courses) does not solidify a community of interest
between part-time faculty and community education instructors.
Their work for different divisions within the employer/counter
petitioner's organization and the lack of common supervision
overrides any limited interchange that exists. See B. Siegel
Company v. NLRB, 109 LRRM 2843, 6 CA 1982; J. Ray McDermott and

1 Company, Inc., 240 NLRB 87, 100 LRRM 1401, February 23, 1979.

2 7. The bargaining unit as petitioned for by the petitioner
3 is appropriate.

4 VI. RECOMMENDED ORDER

5 1. The Board of Personnel Appeals will conduct an election
6 to determine whether certain employees of the Flathead Valley
7 Community College in the bargaining unit described below wish to
8 be represented for purposes of collective bargaining by the
9 Montana Federation of Teachers, AFT, AFL-CIO.

10 2. Those eligible to vote shall be all part-time faculty
11 employed by the Flathead Valley Community College who taught
12 during the 1988-1989 school year except full-time faculty, part-
13 time retired teachers, community education instructors,
14 supervisors, managerial personnel, confidential personnel, those
15 employees who have voluntarily terminated their employment
16 between the filing date, May 24, 1989, and the date of the
17 election, and employees excluded by the Collective Bargaining For
18 Public Employees Act, Section 39-31-103 MCA.

19 3. The employer shall provide the Board of Personnel
20 Appeals with the names and addresses of all eligible voters
21 on/before February 15, 1990.

22 4. The Board of Personnel Appeals has prepared a Notice of
23 Mail Ballot Election and Sample Ballot (copies attached hereto)
24 and will mail copies to the names and addresses on the Voter
25 List. This shall satisfy the notice requirements of the

1 election.

2 5. The appropriate bargaining unit shall be defined as all
3 part-time faculty employed by Flathead Valley Community College
4 excluding community education instructors, full-time faculty,
5 part-time retired teachers, confidential employees, supervisory
6 and managerial personnel, and all employees excluded by the
7 Montana Collective Bargaining for Public Employees Act, Section
8 39-31-103 et seq., MCA.

9 6. The Mail Ballot Election shall be conducted according
10 to the following schedule:

11 a) A copy of the Notice of Mail Ballot Election and Sample
12 Ballot and necessary return mailing envelopes will be mailed to
13 all eligible voters on February 26, 1990.

14 b) The ballots will be picked up at the Election Judge's
15 post office box at 9:00 a.m. March 19, 1990. The ballots will be
16 counted at 10:00 a.m. on the same day in the offices of the Board
17 of Personnel Appeals, Peg Condon Building, 5 South Last Chance
18 Gulch, Helena, Montana. The employer and the employee
19 organization may have authorized observers present when the
20 ballots are counted.

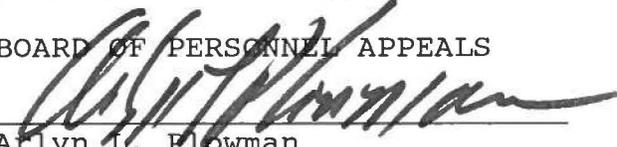
21 VII. SPECIAL NOTICE

22 Pursuant to the rules of the Board of Personnel Appeals in
23 the Administrative Rules of Montana at 24.26.215(2) and 24.26.655
24 this Recommended Order shall become the Order of the Board of
25 Personnel Appeals unless written exceptions are filed with the

1 Board of Personnel Appeals at P.O. Box 1728, Helena, Montana
2 59624-1728 within twenty (20) days after service of this
3 Recommended Order upon the parties.

4 Entered and dated this 15th day of January, 1990.

5 BOARD OF PERSONNEL APPEALS

6 
7 Arlyn L. Flowman
Hearing Examiner

8 Attachments: Sample Ballot
9 Notice of Mail Ballot Election

10 EXHIBIT LIST

11 Exhibit MFT-1 Flyer for fall quarter 1988
12 Exhibit MFT-2 Flyer for winter quarter 1989
13 Joint Exhibit No. 1 Flathead Valley Community College 1988-
14 89 Catalog
15 Joint Exhibit No. 2 Portions of the Collective Bargaining
16 Agreement Between Flathead Valley
17 Community College and the Flathead
18 Valley Education Association
19 Joint Exhibit No. 3 Policy and Procedures Manual Page 720
20 Joint Exhibit No. 4a 1989 Spring Quarter Schedule
21 Joint Exhibit No. 4b 1989 Summer Quarter Schedule
22 Joint Exhibit No. 5 Spring 1989 Business and Professional
23 Development Program
24 Joint Exhibit No. 6 Summer 1989 Business and Professional
25 Development Program

CERTIFICATE OF SERVICE

The undersigned does certify that a true and correct copy of this document was served upon the following on the 15th day of January, 1990, postage paid and addressed as follows:

LeRoy H. Schramm
Legal Counsel
Montana University System
33 S. Last Chance Gulch
Helena, MT 59620

John Bhend
Field Staff Representative
Montana Federation of Teachers,
AFT, AFL-CIO
P.O. Box 1246
Helena, MT 59624-1246

A handwritten signature in blue ink, reading "Sami Votendahl", is written over a horizontal line. The signature is cursive and includes a long, sweeping flourish on the left side.

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