

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 7-89

MONTANA EDUCATION ASSOCIATION,)	
NEA,)	
) Petitioner,)	
MISSOULA COUNTY HIGH SCHOOL,)	FINDINGS OF FACT;
) Employer/Counter-Petitioner,)	CONCLUSIONS OF LAW;
	RECOMMENDED ORDER
MONTANA FEDERATION OF)	
TEACHERS, AFT, AFL-CIO,)	
) Intervener.)	

* * * * *

I. INTRODUCTION

A hearing on the above-captioned matter was held on May 5, 1989 in the Board Room of the Missoula County High School Administration Building at 915 South Avenue West in Missoula. Emilie Loring represented the Petitioner, Montana Education Association. Molly Shepherd represented the Employer/Counter-Petitioner, Missoula County High School District. Matt Theil represented the Intervener, Montana Federation of Teachers, AFT, AFL-CIO. Arlyn L. Plowman was the duly appointed Hearing Examiner for the Board of Personnel Appeals. The parties offered testimony and evidence, made argument and filed post-hearing briefs. The matter was deemed submitted on June 19, 1989. Material offered after that date was not considered.

1 II. BACKGROUND

2 On March 13, 1989 the Petitioner, Montana Education
3 Association, filed a petition for new unit determination and
4 election with the Board of Personnel Appeals. In that
5 petition the Petitioner proposed a bargaining unit with
6 approximately eighty members comprised of all classified
7 employees employed by Missoula County High School except
8 those excluded by the Montana Collective Bargaining for
9 Public Employees Act, Section 39-31-101 et seq., MCA, and
10 also excluding Food Service and Engineers/Custodians.

11 On March 22, 1989 the Employer/Counter-Petitioner,
12 Missoula County High School District filed a counter-
13 petition alleging that certain members of the proposed
14 bargaining unit were supervisory or confidential employees
15 and requested that a hearing be held.

16 On April 6, 1989 the Intervener, Montana Federation of
17 Teachers, AFT, AFL-CIO filed a petition to intervene. The
18 Intervener's petition proposed a bargaining unit composed of
19 all classified and paraprofessional employees of Missoula
20 County High School except Food Service, Engineers/Custodians
21 and those employees excluded by the Act, Section 39-31-103
22 MCA. The Intervener's petition alleged that the
23 Employer/Counter-Petitioner was proposing to exclude certain
24 classified employees from the bargaining unit who were not
25

1 supervisory or confidential as defined by the Act, Section
2 39-31-101 MCA.

3 Finding the matter unresolved the Board of Personnel
4 Appeals issued a Notice of Hearing on March 27, 1989. An
5 amended Notice of Hearing was issued April 11, 1989. By
6 mutual consent the date and location of the hearing was
7 changed on April 25, 1989.

8 During a pre-hearing conference held pursuant to the
9 Notice of Hearing the Employer/Counter-Petitioner explained
10 that the following exclusions from the bargaining unit were
11 sought: Head Engineer, Food Service Supervisor, Warehouse
12 Manager, three Central Office Administrative Secretaries,
13 seven people in the Computer Center, the Payroll Clerk, the
14 Bookkeeper, the Business Office Administrative Secretary, the
15 Purchasing Secretary, four building Principal Administrative
16 Secretaries, and all substitute and temporary employees. The
17 parties stipulated that the Superintendent's Secretary should
18 be excluded from the bargaining unit inasmuch as she is a
19 confidential employee pursuant to Section 39-31-103(2)(b)(v)
20 MCA.

21 Prior to the hearing the Employer/Counter-Petitioner
22 advised the Hearing Examiner that the bargaining unit
23 exclusion sought for the following had been withdrawn: one
24 Lead Programmer/Analyst position, two Computer Operators/User
25 Liaison positions and one Programmer/Analyst position all from

1 the Computer Center along with the four building Principal
2 Administrative Secretaries.

3 III. STATEMENT OF THE ISSUES

4 (A) Should the Secretary to the Assistant
5 Superintendent of Missoula County High School District be
6 excluded from the proposed bargaining unit because she is a
7 confidential employee?

8 (B) Should the Secretary to the Personnel Director of
9 Missoula County High School District be excluded from the
10 proposed bargaining unit because she is a confidential
11 employee?

12 (C) Should the Secretary to the Director of Business
13 Services of Missoula County High School District be excluded
14 from the proposed bargaining unit either because she is a
15 confidential employee or because she is a management
16 official?

17 (D) Should the Missoula County High School District
18 Purchasing Secretary be excluded from the proposed unit
19 because she is a management official?

20 (E) Should the Missoula County High School District
21 Warehouse Manager/Receiving Clerk be excluded from the
22 proposed unit because he is a management official?

23 (F) Should the Missoula County High School District
24 Payroll Clerk be excluded from the proposed unit because she
25 is a management official?

(G) Should the Missoula County High School District
Head Bookkeeper be excluded from the proposed unit because
she is a management official?

(H) Should the Missoula County High School District
Lead User Liaison/Computer Operator be excluded from the
proposed bargaining unit on any of three grounds, i.e., that
she is a supervisory employee, a management official, or a
confidential employee?

(I) Should the Missoula County High School District
Programmer/Analyst responsible for the salary simulation
program used in collective bargaining be excluded from the
proposed unit on the ground that she is a confidential
employee?

1 (J) Should substitutes, temporary and less than half-
2 time Missoula County High School District employees be
excluded from the proposed bargaining unit?

3 IV. FINDINGS OF FACT

4 1. The Assistant Superintendent along with the
5 Superintendent and Personnel Director make up the three
6 member team which provides management for Missoula County
7 High School District.

8 2. The Assistant Superintendent is part of the
9 Missoula County High School District management collective
10 bargaining team. He sits at the negotiating table. He
11 handles grievances for the Employer. He fills in during any
12 absence of the Superintendent. In view of his role as a
13 member of the School District management team, his
14 participation at the collective bargaining table and his
15 responsibilities vis-a-vis the grievance procedure, it is
16 determined that he has significant labor relations
17 responsibility. The Assistant Superintendent is involved in
18 formulating, determining and effectuating the Employer's
19 labor relations policy.

20 3. The primary duty of the Secretary to the Assistant
21 Superintendent is to assist the Assistant Superintendent. In
22 doing so she functions in a confidential capacity. She is
23 responsible for preparing and processing paperwork in
24 correspondence generated in the course of the Assistant
25

1 Superintendent's work including collective bargaining,
2 grievance matters and other labor relations activities.

3 4. The Missoula County High School District Personnel
4 Director is part of the District's management team. At times
5 she serves on the Employer's collective bargaining team and
6 sits at the negotiating table. She processes grievances,
7 administers discipline and prepares contract proposals. She
8 is directly involved in formulating, determining and
9 effectuating in the School District's labor management
10 policy.

11 5. The primary duty of a Secretary to the Missoula
12 County High School District Personnel Director is to assist
13 the Personnel Director. In doing so she functions in a
14 confidential capacity. She is responsible for preparing and
15 processing the paperwork and other correspondence generated
16 in the course of the Personnel Director's work including
17 collective bargaining, grievances and other labor relations
18 matters.

19 6. The Missoula County High School District Director
20 of Business Services serves as a resource person to the
21 Employer's management team and labor relations program. He
22 performs and provides fiscal analysis of contract proposals.
23 He has not sat at the negotiating table nor has he served as
24 a member of the School District bargaining team. Any labor
25 relations responsibilities or functions he has are as second-

1 tier management. He provides council and advice. His
2 involvement is not so significant as to warrant a finding
3 that he determines, formulates or effectuates the Employer's
4 labor relations policies.

5 The incumbent Director of Business Services practices a
6 "hands off" or "relaxed" management style which encourages
7 and allows his subordinates to exercise and expand their
8 initiative. While this management style may reduce the
9 amount and degree of supervision received by subordinates it
10 does not make them anything other than subordinates working
11 under his direction.

12 7. The primary duty of the Secretary to the Director
13 of Business Services for the Missoula County High School
14 District is to assist the Director of Business Services. In
15 doing so she also monitors and operates the Missoula County
16 High School District insurance program. During the
17 performance of her duties she has access to certain
18 confidential information. The incumbent in this position
19 testified that she was unaware, until shortly prior to the
20 hearing, that her job could, possibly, in the future, include
21 some labor relations functions.

22 The Employer/Counter-Petitioner would have us believe
23 that this Secretary is a management official, especially with
24 regard to her responsibilities regarding the Employer's
25 insurance program; that she formulates and effectuates

1 management policies exercising discretion with autonomy. The
2 record will not support such a finding. While the
3 incumbent's Secretary to the Business Manager may have
4 considerable flexibility monitoring and operating the
5 insurance program, her discretion is limited. She
6 administers School District policy. She performs her duties
7 within parameters determined by School District policy which
8 is formulated and effectuated by others. She is not
9 identified with management. The Notice of Job Vacancy for
10 the Incumbent's Position (Exhibit E-E) and the District's
11 Personnel Policies for Classified Employees (Exhibit MFT-A)
12 makes no effort to distinguish this position from other
13 classified positions or to identify it as managerial.

14 8. The Missoula County High School District Purchasing
15 Secretary, pursuant to her Job Description, (Exhibit E-F) at
16 the direction of the Director of Business Services, purchases
17 supplies and equipment. The record shows that the incumbent
18 works with little supervision, she exercises a good deal of
19 initiative and displays significant expertise. She operates
20 within the parameters of established School District policy
21 at the direction of the Director of Business Services. She
22 does not formulate and effectuate School District policy.

23 The incumbent's Job Description (Exhibit E-F) and the
24 District's Personnel Policies for Classified Employees
25 (Exhibit MFT-A) makes no effort to distinguish this position

1 from other classified positions or to identify it with
2 management.

3 9. No position or job description was submitted for
4 the Missoula County High School District Warehouse
5 Manager/Receiving Clerk. A position information
6 questionnaire¹ was submitted (Exhibit E-G) showing his
7 duties. The second page of this document under items IV, V
8 and VI shows that the Warehouse Manager/Receiving Clerk
9 occasionally supervises a crew when handling large shipments;
10 that he makes decisions to accept or reject materials; file
11 or not file claims; approve or not approve purchase orders
12 for payment. In doing the foregoing he follows policies of
13 the administration in performing various assignments. Item
14 VII shows that he is in daily contact with business office
15 personnel, the purchasing department, faculty and staff.

16 Like others the Employer/Counter-Petitioner seeks to
17 exclude, the incumbent Warehouse Manager/Receiving Clerk
18 receives little supervision and exhibits a great deal of
19 initiative. He also exercises some supervision.

20 This position is not included among the classifications
21 listed in the Missoula County High School District Personnel
22 Policies for Classified Employees (Exhibit MFT-A). He is an
23 exempt employee, is paid on a salary and is covered by the

24 _____
25 ¹ See page 27 of the Employer/Counter-Petitioner's
brief.

1 Missoula County High School District Personnel Policies for
2 Exempt Employees (Exhibit MFT-B). The major distinction
3 between Missoula County High School District personnel
4 policies for classified and exempt employees is found in
5 Section 4, page 2 of both documents. Classified employees
6 (Exhibit MFT-A) are paid overtime; exempt employees (Exhibit
7 MFT-B) are not.

8 The incumbent Warehouse Manager/Receiving Clerk displays
9 initiative and technical expertise. However, his discretion
10 is limited by School District policy, policy which he does
11 not formulate and effectuate. Although he may be identified
12 as an exempt employee, he is not identified as a management
13 official. His position is not listed in the Missoula County
14 High School District Personnel Policies for Management Team
15 (Exhibit MFT-C).

16 Although he, at times, may direct the work of janitors
17 who assist him with large shipments, such direction is
18 routine and sporadic, based more upon expertise than
19 independent judgment.

20 10. Exhibit E-H is a Notice of Vacancy which was used
21 in recruiting the incumbent Missoula County High School
22 District Payroll Clerk. That document and the testimony
23 received show that the Payroll Clerk's job is important and
24 technical, involves great detail and requires significant
25 knowledge and skills. The incumbent receives little

1 supervision. She is responsible for the Employer's payroll,
2 she determines deductions, severance pay, garnishments,
3 budget categories, vacation and sick pay, tax withholding,
4 workers' compensation premiums, etc.

5 Her work is circumscribed by rules, regulations, laws
6 and School District policy. She exercises little discretion
7 other than that allowed by applicable rules, regulations,
8 laws and School District policy. She does not formulate and
9 effectuate Employer policy. Her decision making is limited
10 to the routine discharge of professional duties.

11 This position is covered by Exhibit MFT-A, Personnel
12 Policies for Classified Employees rather than Exhibit MFT-C,
13 Personnel Policies for Management Team.

14 11. The Head Bookkeeper for Missoula County High School
15 District is responsible for maintenance of the school's
16 Double Entry Accounting System and Financial Records (Exhibit
17 E-L). She performs the accounting for all School District
18 funds, grants and projects utilizing the theory and
19 principals of accounting. She performs complex functions
20 based on acquired knowledge and experience. She investigates
21 and interprets data to solve problems. She takes and
22 recommends discretionary actions that implement district
23 policy. She does not formulate and effectuate district
24 policy. Her decision making is limited to the routine
25 discharge of professional duties. This position is covered

1 by Exhibit MFT-A, Personnel Policies for Classified Employees
2 rather than Exhibit MFT-C, Personnel Policies for Management
3 Team.

4 12. The Missoula County High School District Lead User
5 Liaison/Computer Operator position entails substantial
6 responsibility, and requires technical expertise. The
7 incumbent's three page position description (Exhibit E-J)
8 contains an impressive list of responsibilities and
9 qualifications. The Lead User Liaison/Computer Operator
10 coordinates all operational activities; operates the computer
11 and related equipment for academic and administrative
12 purposes. Her position is subject to the Personnel Policies
13 for Classified Employees (Exhibit MFT-A) as are other
14 Computer Center employees.

15 Nowhere in the three page position description referred
16 to above are duties listed that would include the
17 responsibility to hire, transfer, suspend, layoff, recall,
18 promote, discharge, assign, reward, discipline other
19 employees, have authority to direct them, to adjust their
20 grievances, or effectually recommend such action in any more
21 than a merely routine or clerical nature requiring little or
22 no independent judgment. She does not evaluate other
23 employees, she does not grant time off, nor does she
24 discipline or discharge. She has never transferred,
25 suspended, laid-off, recalled or promoted another employee

1 nor does she have the authority to do so. As her job title
2 indicates the incumbent is a lead worker following
3 established procedures to oversee the operation of the
4 Computer Center. Her work and working conditions are similar
5 to that done are experienced by other Computer Center
6 employees. Her authority flows from established procedures
7 and her technical expertise. She exercises little
8 independent judgment. She implements district policy, she
9 does not formulate or effectuate those polices. She has no
10 authority to take discretionary actions that control district
11 policy.

12 As computer systems manager, the incumbent Lead User
13 Liaison/Computer Operator, assigns user capabilities and
14 degrees of resources. She schedules and determines
15 applications. She trains users. She tests new programs and
16 products and updates the system. She trouble shoots
17 problems. She is responsible for system security and data
18 stored therein including confidential personnel information.
19 Conceivably, with the aid of another person, she could
20 achieve access to collective bargaining proposals stored in
21 micro computers in the offices of the Superintendent,
22 Assistant Superintendent or Personnel Director. The record
23 will not support a finding that this employee in the normal
24 course of her duties is required to process or handle
25 collective bargaining proposals or information in such a way

1 that would reveal the Employer's bargaining strategy.
2 Although the Lead User Liaison/Computer Operator may have
3 access to some confidential information, her primary duty is
4 not to assist and act in a confidential matter to a person
5 involved in formulating, determining, and effectuating the
6 Employer's labor relations policy.

7 13. The Programmer/Analyst is responsible for the
8 development and maintenance of computer applications,
9 including analysis, design and preparation of computer
10 programs. Her position description was introduced as Exhibit
11 E-K. This position is also covered by Exhibit MFT-A,
12 Missoula County High School District Personnel Policies for
13 Classified Employees.

14 The Employer seeks to exclude one of three
15 Programmer/Analysts because a small portion of her work
16 includes maintaining the salary simulation program the
17 Employer uses during collective bargaining. Her maintenance
18 of the salary simulation program means certain confidential
19 information may be available to her. However, this
20 employee's responsibility to maintain the salary simulation
21 program does not include operating the program when actual
22 collective bargaining proposals are processed.

23 This employee has had no involvement with contract
24 negotiations. The salary simulation program is a resource
25 tool used by management to determine the cost and effect of

1 salary proposals. The record will not support a finding that
2 this employee, in the normal course of her duties, is
3 required to process or handle collective bargaining proposals
4 or information in such a way that would reveal the Employer's
5 bargaining strategy. This employee does not function in a
6 confidential capacity to a management official who
7 formulates, effectuates and determines labor relations
8 policy.

9 14. From time to time the Employer will hire
10 substitutes to fill vacancies created by the absence of
11 regular employees. These employees are hired for sporadic
12 short term employment.

13 15. The School District has no employee in the proposed
14 bargaining unit who works less than one-half time or twenty
15 hours per week.

16 16. The School District has two temporary employees.
17 Exhibit MFT-A, Missoula County High School District Personnel
18 Policies for Classified Employees, defines temporary employee
19 as one assigned to a position created for a definite period
20 of time not to exceed nine months.

21 V. CONCLUSIONS OF LAW

22 1. The Board of Personnel Appeals has jurisdiction in
23 this matter pursuant to the Montana Collective Bargaining for
24 Public Employees Act, Section 39-31-101 et seq., MCA.
25

1 2. The Montana Supreme Court has approved the practice
2 of the Board of Personnel Appeals in using federal court and
3 National Labor Relations Board (NLRB) precedents as
4 guidelines in interpreting the Montana Collective Bargaining
5 for Public Employees Act as the State Act is similar to the
6 Federal Labor Management Relations Act, State ex rel. Board
7 of Personnel Appeals v. District Court, 183 Mont. 223, 1979,
8 598 P.2d 1117, 103 LRRM 2297; Teamsters Local No. 45 v. State
9 ex rel. Board of Personnel Appeals, 195 Mont. 272, 1981, 635
10 P.2d 1310, 110 LRRM 2012; City of Great Falls v. Young (Young
11 III), 686 P.2d 185, 1984, 119 LRRM 2682.

12 3. Pursuant to Section 39-31-202 MCA in order to
13 assure employees the fullest freedom and exercise of the
14 rights guaranteed by the Montana Collective Bargaining for
15 Public Employees Act, the Board of Personnel Appeals or an
16 agent of the Board shall determine the unit appropriate for
17 the purpose of collective bargaining and shall consider such
18 factors as community of interest, wages, hours, fringe
19 benefits, and other working conditions of the employees
20 involved, the history of collective bargaining, common
21 supervision, common personnel policies, extended integration
22 of work functions and interchange among employees affected,
23 and the desires of the employees. See Leedom v. Kyne, 358 US
24 184, 43 LRRM 2222, 1958; NLRB v. The New School For Social
25 Research, Parsons School of Design, 122 LRRM 2842, 2 CA 1986,

1 793 F.2d 503; Mosey Manufacturing Company v. NLRB, 112 LRRM
2 2832, 1983 CA 7, 701 F.2d 610.

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

7 A labor law text contains the following:

8 ...The unit is comprised of jobs or job
9 classifications and not of the particular
10 persons working at those jobs at any
11 given time. The bargaining unit does not
12 change simply because machinist Jones
13 retires and is replaced by machinist
14 Williams....What is commonly known as the
15 "appropriate bargaining unit" might more
16 accurately be denoted the appropriate
17 election unit....Robert A. Gorman, Basic
18 Text on Labor Law, West Publishing
19 Company, St. Paul 1976.

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

22 There is nothing in the statute which
23 requires that the unit for bargaining be
24 the only appropriate unit, or the
25 ultimate unit, or the most appropriate
unit; the Act requires only that the unit
be "appropriate". It must be appropriate
to ensure the employees in each case 'the
fullest freedom in exercising the rights
guaranteed by this Act'. ...[the term]
carries with it no overtones of the
exclusive or the ultimate or the
superlative. Morand Brothers, 91 NLRB
409, 26 LRRM 1501 (1950).

26 5. Section 39-31-103(2)(b)(iv) MCA excludes
27 "management officials" from the definition of public

1 employee. Section 39-31-103(4) MCA defines "management
2 official" as a representative of management having authority
3 to act for the agency in any manners relating to the
4 implementation of agency policy.

5 The Board of Personnel Appeals has consistently
6 construed this definition very narrowly, augmenting it with
7 the definition of management employee adopted by the National
8 Labor Relations Board. See UC 3-83, American Federation of
9 State, County and Municipal Employees v. City of Kalispell,
10 May 7, 1984; UC 6-85, Lolo Public Schools v. MEA, August 29,
11 1986; UC 1-77, City of Billings v. International Association
12 of Firefighters Local 521, January 19, 1979 (Billings v.
13 Firefighters Local 521, Board of Personnel Appeals, et al,
14 113 LRRM 3324, 651 P.2d 627, 39 State Reporter 1844,
15 September 28, 1982).

16 In NLRB v. Yeshiva University, 444 US 672, 103 LRRM
17 2526, February 20, 1980 the Court said "Managerial employees
18 are defined as those who formulate and effectuate management
19 policies...." They "...must exercise discretion within or
20 even independently of established employer policy and must be
21 aligned with management....normally an employee may be
22 excluded as managerial only if he represents a management
23 interest by taking or recommending discretionary actions that
24 effectively control or implement employer policy....employees
25 whose decision making is limited to the routine discharge of

1 professional duties...cannot be excluded...even if union
2 membership arguably may involve some divided loyalty....Only
3 if an employee's activities fall outside the scope of the
4 duties routinely performed by similarly situated
5 professionals will he be found aligned with management." See
6 also NLRB v. Textron, 85 LRRM 2945, 416 US 267, April 23,
7 1974 where the Court approved excluding from bargaining units
8 those employees who formulate, determine and effectuate an
9 employer's policies and those who have discretion in the
10 performance of their jobs, but not if that discretion must
11 conform to the employer's established policy. In ULP 29-82,
12 Logan Unified Teacher Association v. Logan School District
13 No. 1, September 23, 1983 a head teacher was denied
14 managerial status because she did not have discretionary
15 authority nor did she formulate policy. Routine work does
16 not merit a managerial exclusion.

17 The National Labor Relations Board determined that a
18 buyer for a paper products company was managerial and
19 therefore excluded from the bargaining unit since the buyer
20 had broad discretion in managerial matters and was not
21 restricted by fixed policies established by the employer. He
22 performed his duties without assistance of employer imposed
23 procurement policies; there was no employer approved list of
24 vendors; the buyer was authorized to initiate contact with
25 new suppliers and exchange suppliers unilaterally. Simplex

1 Industries, Inc. and Automobile Workers, UAW, 243 NLRB No.
2 13, 101 LRRM 1466, June 27, 1979.

3 However, where the National Labor Relations Board found
4 that procurement buyers purchased at prices prescribed by
5 management and use only limited discretion they were
6 determined not to be managerial and they were included in the
7 bargaining unit. Farmers Union Livestock et al and Local
8 239 Teamsters et al, 38 LRRM 1404, 116 NLRB No. 133,
9 September 12, 1956.

10 In UC 6-85, Lolo Public Schools v. Montana Education
11 Association, August 29, 1986 a Board of Personnel Appeals
12 Hearing Examiner in a factual situation similar to that here
13 determined (citing Lockheed Aircraft Corporation, 217 NLRB
14 No. 93, 89 LRRM 1287, April 29, 1975), that the Business
15 Assistant/Payroll Supervisor for the Lolo School District was
16 not a managerial employee, even though that employee served
17 as the employer's purchasing agent. The Hearing Examiner
18 found that the Business Assistant/Payroll Supervisor
19 (purchasing agent) displayed technical expertise but did not
20 exercise sufficient independent judgment and discretion since
21 her activities were circumscribed by policy, procedure, and
22 the review power of higher authority. It is for those same
23 reasons that the Missoula County High School District
24 Purchasing Secretary is not a managerial employee and is not
25 to be excluded from the bargaining unit.

1 The Board of Personnel Appeals has developed a test to
2 use with regard to the management official exclusion (UC 1-
3 77, Billings Firefighters and City of Billings, January 19,
4 1977 approved by the Montana Supreme Court in Billings v.
5 Firefighters Local 521, Board of Personnel Appeals, et al,
6 113 LRRM 3324, 651 P.2d 627, 39 State Reporter 1944,
7 September 28, 1982):

8 In determining whether...the positions in question
9 meet the statutory definition of "management
10 official" the following factors must be considered:

- 11 (1) The nature and effectiveness of any input into
12 departmental policy are managerial decisions;
- 13 (2) The types of any "policy" and "management"
14 decisions made;
- 15 (3) The type and amount of direction received,
16 either in the form of verbal instruction or
17 established rules, regulations or policies;
- 18 (4) The nature and degree of constraints and
19 reviews affecting any "policy" or "managerial"
20 decisions made; and
- 21 (5) The specific area of expertise in which
22 "policy" or "managerial" decisions or
23 recommendations may be made.

24 In UD 14-80 Teamsters Local No. 2 v. Missoula County
25 Airport, September 2, 1980 citing NLRB v. Retail Clerks
International Association, 62 LRRM 2837, 1966 CA DC, 366 F.2d
642 and General Dynamics, et al v. United Auto Workers, et
al, 213 NLRB No. 124, October 4, 1974, 87 LRRM 1705 federal
precedent was adopted denying managerial status to rank and

1 file workers and to those who perform routinely, reserving
2 the managerial exclusion to executive type positions, closely
3 aligned with management, on the theory that they are the ones
4 from whom the protections of the Act were designed to protect
5 those covered by the Act. See also UD 15 and 19-87 Board of
6 Regents and Montana Federation of Teachers, AFT, AFL-CIO, et
7 al, August 23, 1988.

8 The Employer/Counter-Petitioner would have the Board of
9 Personnel Appeals exclude as many as six employees or seven
10 and one-half percent of the proposed bargaining unit because
11 of their alleged managerial status. The Employer/Counter-
12 Petitioner seeks to apply the managerial exclusion with a
13 very broad stroke, much broader than ever applied by the
14 Board of Personnel Appeals or the National Labor Relations
15 Board. None of the managerial exclusions sought by the
16 Employer/Counter-Petitioner meets the definition of
17 management official as defined in the collective bargaining
18 statute [Section 39-31-103(4) MCA] or the test for managerial
19 exclusion from the bargaining unit as developed by the Board
20 of Personnel Appeals and federal precedent.

21 None of the incumbents holding positions sought to be
22 excluded as managerial officials by the Employer/Counter-
23 Petitioner formulates and effectuates management policies.
24 None represents management interests by taking or
25 recommending discretionary actions that effectively control

1 School District policy. Nor do any of them exercise
2 discretion independent of established School District policy.
3 Their discretion is limited to the routine discharge of
4 professional duties. None is included in the coverage of
5 Exhibit MFT-C, Missoula County High School District Personnel
6 Policy for Management Team. Their identification with
7 management is limited if it exists at all.

8 The Secretary to the Director of Business Services, the
9 Purchasing Secretary, the Warehouse Manager/Receiving Clerk,
10 the Payroll Clerk, the Bookkeeper and the Lead User
11 Liaison/Computer Operator all work with little supervision
12 (due in part to their supervisor's management style), all
13 exhibit laudable initiative, all benefit their employer with
14 their respective technical expertise. However, these
15 desirable attributes do not make them management officials.
16 All work within the parameters and the circumvention of
17 established School District policy. None of them formulates
18 and effectuates that policy. None of them exercises
19 independent discretion to control that policy.

20 6. Section 39-31-103(2)(b)(iii) MCA excludes
21 supervisory employee from the definition of public employee.
22 Section 39-31-103(3) MCA defines supervisory employee as one
23 having authority in the interest of the employer to hire,
24 transfer, suspend, layoff, recall, promote, discharge,
25 assign, reward, discipline other employees, having

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

6 Similar language is found in the National Labor
7 Relations Act at 29 USC 151(11). The existence or exercise
8 of any one of the above authorities enumerated in the above
9 definition of supervisory employee combined with
10 independent judgment is sufficient to confer supervisory
11 status regardless of how seldom the power is exercised.
12 However, the fact that an employee gives minor orders or
13 "supervises" the work of others in the common sense of the
14 word does not necessarily make that employee a "supervisor"
15 within the meaning of the statute, George C. Foss Company v.
16 NLRB, 118 LRRM 2746, 752 F.2d 1407, 1985 CA 9; See also NLRB
17 v. Yuba Natural Resources, 126 LRRM 2165, 1987 CA 9, 824
18 F.2d 706.

19 It is important not to construe supervisory status too
20 broadly, for workers deemed supervisors lose the rights the
21 Montana Collective Bargaining for Public Employees Act was
22 designed to protect. UD 9-83 Montana Association of Fish and
23 Wildlife Biologist v. Department of Fish, Wildlife and Parks,
24 April 4, 1984, citing NLRB v. Bell Aerospace Company, 416 US
25 267, 85 LRRM 2945, April 23, 1974; Williamson Piggley Wiggley

1 v. NLRB, 126 LRRM 2397, 827 F.2d 1098, 1987 CA 6;
2 Westinghouse Electric Corporation v. NLRB, 424 F.2d 1151, 74
3 LRRM 2070, 1970 CA 7, Cert. Denied 400 US 831, 75 LRRM 2379.

4 In order to be a supervisor one must be empowered to
5 exercise independent judgment, be more than a "mere conduit"
6 for the directions of the employer's actual supervisory
7 personnel, Machine Tool and Gear v. NLRB, 126 LRRM 2335, 652
8 F.2d 596, 1980 CA 6. Such independent judgment must be
9 exercised on behalf of management and not in a routine
10 manner. The exercise of authority to assign or direct work
11 when exercised in a merely routine, clerical, perfunctory, or
12 sporadic manner does not confer supervisory status. Delta
13 Mills, Inc., 287 NLRB No. 38, December 16, 1987, 127 LRRM
14 1170; NLRB v. McEver Engineering, 121 LRRM 3125, 752 F.2d
15 634, 1986 CA 5.

16 There is a distinction between employees vested with
17 some limited supervisory power, such as "straw bosses,
18 leadmen, set-up men and other minor supervisory employees,
19 and the supervisor vested with such genuine management
20 prerogatives as the right to hire, fire, discipline or make
21 effective recommendations with respect to such action. NLRB
22 v. Don's Olney Foods, 130 LRRM 3171, March 21, 1989 CA 7
23 enforcing Olney IGA Food Liner, 126 LRRM 1254, 286 NLRB No.
24 75, October 22, 1987.
25

1 In order to be supervisory, the direction of other work
2 must be responsible. To be responsible is to be answerable
3 for the discharge of a duty or obligation. In determining
4 whether "direction" is responsible, the focus is in on
5 whether the alleged supervisor is held fully accountable and
6 responsible for the performance and work product of the
7 employees he directs. NLRB v. KDFW-TV, Inc., 122 LRRM 2502,
8 790 F.2d 1273, 1986 CA 5.

9 Actual duties not merely job titles or classifications
10 are to be considered. The employee's actual job duties,
11 responsibilities, authority and relationship to are
12 determinative of supervisory status. NLRB v. Chicago
13 Metallic Corporation, 122 LRRM 3163, 794 F.2d 527, 1986 CA 9;
14 NLRB v. Health Care Logistics, Inc., 121 LRRM 2872, 784 F.2d
15 232, 1986 CA 6. Supervisor status based upon technical
16 expertise rather than a role in directing and disciplining
17 employees does not result in supervisory exclusion from the
18 bargaining unit. Misericordia Hospital Medical Center v.
19 NLRB, 104 LRRM 2666, 623 F.2d 808, 1980 CA 2, Judd Valve
20 Company, Inc., 284 NLRB No. 18, March 4, 1980, 103 LRRM 1380.

21 In UC 1-77, Billings Firefighters and City of Billings,
22 January 19, 1977 confirmed by the Montana Supreme Court in
23 Billings v. Firefighters Local 521, Board of Personnel
24 Appeals, et al, 113 LRRM 3324, 651 P.2d 627, 39 State
25 Reporter 1844, September 28, 1982, the Board of Personnel

1 Appeals adopted the following test to determine supervisory
2 status:

3 (1) Whether or not the employee has the
4 independent authority to hire, fire,
5 adjust grievances, discipline, or give
6 raises or other benefits. (Central
7 Buying Service, 223 NLRB 77 (1976), 92
8 LRRM 1145; Pinecrest Convalescent Home,
9 Inc., 222 NLRB 10 (1976), 91 LRRM 1082;
10 Mountain Manor Nursing Home, 204 NLRB 425
11 (1973), 83 LRRM 1337).

12 (2) Whether or not the employee's
13 exercise of authority, particularly in
14 the area of assignment and direction of
15 work, is routine in nature, i.e., follows
16 established procedures. (NLRB v. Monroe
17 Tube Company, Inc., 545 F.2d 1320 (CA 2)
18 (1976), 94 LRRM 2020; Emco Steel, Inc.,
19 227 NLRB 148 (1977), 94 LRRM 1747,
20 enforced 95 LRRM 3011 (CA 2) (1977);
21 Pinecrest Convalescent Home, Inc.,
22 supra.; Mountain Manor Nursing Home,
23 supra.; Harlen Rivers Consumers
24 Cooperative, Inc., 191 NLRB 314 (1971),
25 77 LRRM 1883; Precision Fabricator, 101
NLRB 1537 (1952), 31 LRRM 1248, enforced
204 F.2d 567 (CA 2) (1953), 32 LRRM
2268).

(3) Whether...the employee exercises
independent judgment, particularly in the
area of directing the activities of
others. (Central Buying Service, supra.;
Mountain Manor Nursing Home, supra.;
Harlen Rivers Consumers Cooperative,
Inc., supra.; Commercial Fleet Wash,
Inc., 190 NLRB 326 (1971), 77 LRRM 1156).

(4) Whether...the employee's
recommendations regarding personnel
matters are subject to independent
review/investigation by a higher
authority. (Emco Steel, Inc., supra.;
Mountain Manor Nursing Home, supra.;
Harlen Rivers Consumers Cooperative,
Inc., supra.).

1 (5) Whether...there are several layers
2 of supervision above the employee.
3 (Harlen Rivers Consumers Cooperative,
4 Inc., supra.)

5 (6) Whether...a substantial amount of
6 the employee's time is spent doing work
7 which is similar to the work of the
8 personnel he/she allegedly supervises.
9 (NLRB v. Monroe Tube Company, Inc.,
10 supra.; Central Buying Service, supra.;
11 Mountain Manor Nursing Home, supra.;
12 Harlen Rivers Consumers Cooperative,
13 Inc., supra.; Commercial Fleet Wash,
14 Inc., supra.)

15 (7) Whether...a determination that the
16 employee(s) in question were supervisory
17 would create an unrealistic and
18 excessively high ratio of supervisors to
19 employees (footnote omitted). (Emco
20 Steel, Inc., supra.; Central Buying
21 Service, supra.; Pinecrest Convalescent
22 Home, Inc., supra.; Harlen Rivers
23 Consumers Cooperative, Inc., supra.;
24 Commercial Fleet Wash, Inc., supra.)

25 In arguing for supervisory status for the Missoula
County High School District Lead User Liaison/Computer
Operator the Employer's post-hearing brief refers to Arizona
Public Service Company v. NLRB, 79 LRRM 2099, 453 F.2d 228,
1971 CA 9, where a National Labor Relations Board
determination regarding the supervisory status of the
utility's System Load Supervisors and Assistant System Load
Supervisors was overturned. The National Labor Relations
Board held that the employees in question did not responsibly
direct other employees and were, therefore, not supervisors.
In reversing the National Labor Relations Board the Court

1 found that these employees "...have the power to requisition
2 any man on the spot...to direct his movement....and the
3 ability to call lineman out for overtime...they do more than
4 assign jobs according to a list before them or relay orders
5 from their supervisors....(they) handle most emergencies on
6 their own: they do not implement instructions from
7 others....nor are there comprehensive regulations and
8 guidelines which limit the area of individual judgment...."

9 While Arizona Public Service Company is informative, it
10 is not persuasive. There the Court found:

11 ...Company's electrical system is often under the
12 sole and complete control of these employees. They
13 decide when and how much electricity to buy or
14 sell. They decide what priority is to be given to
15 repair requests. They choose which linemen are to
16 work, when and where. Field employees obey their
17 directives....after hours or in emergencies, the
18 supervisor is authorized to and does by-pass the
19 normal chain of command. "A footnote further
20 provides: practically speaking, there is no
21 superior officer present after five....so that
22 during the night...if these employees are not
23 supervisors, the...system operates without
24 supervision.

19 Neither the Missoula County High School Lead User
20 Liaison/Computer Operator nor any other employee in the
21 proposed bargaining unit including those the School District
22 would exclude, exercises similar authority. While the
23 incumbent in the Missoula County High School Lead User
24 Liaison/Computer Operator position may have overall
25 responsibility for the operation of the computer system,

1 that responsibility is exercised as a leadworker as her job
2 title indicates rather than as a supervisor.

3 7. Section 39-31-103(2)(v) MCA excludes confidential
4 employees from the definition of public employee. Section
5 39-31-103(12) defines confidential employee as a person found
6 by the Board of Personnel Appeals to be a confidential labor
7 relations employee....

8 The 1979 Legislature amended the Montana Collective
9 Bargaining for Public Employees Act to exclude confidential
10 employees with the above referenced language. In UD 15 and
11 19-87, Board of Regents and Montana Federation of Teachers,
12 AFT, AFL-CIO, et al, August 23, 1988 the criteria adopted by
13 the Board of Personnel Appeals to determine whether one is a
14 confidential employee is that set forth in Siemens
15 Corporation and Local 3, IBEW, 224 NLRB No. 216, 92 LRRM
16 1455, June 21, 1976. There the National Labor Relations
17 Board held that if the employee acts in a confidential
18 capacity, during the normal course of duties, to a person who
19 is involved in formulating, determining and effectuating the
20 employer's labor relations policy, he or she should be
21 excluded from the bargaining unit. See UC 4-79, Lewis and
22 Clark County v. Montana Public Employees Association, April
23 3, 1980 and UD 18-79, Montana Public Employees Association v.
24 Montana Department of Labor and Industry, October 22, 1979,
25

1 Terraillon Corporation IBEW Local 1922, 280 NLRB No. 37, June
2 18, 1986, 122 LRRM 1259.

3 In NLRB v. Hendricks County Rural Electric Membership
4 Corporation, 454 US 170, 108 LRRM 3105, September 2, 1981,
5 the Court upheld the National Labor Relations Board's policy
6 of excluding from bargaining units only those confidential
7 employees with a "labor nexus," i.e., those who assist and
8 act in a confidential capacity to persons who formulate,
9 determine, or effectuate management policies in the field of
10 Labor Relations and who regularly have excess to
11 confidential changes which may result from collective
12 bargaining.

13 Accordingly, the test for determining confidential
14 employee status is two pronged. To be excluded from the
15 bargaining unit as a confidential employee, the management
16 officials one assists must be involved in formulating,
17 determining and effectuating labor relations policies, and
18 one must have excess to confidential labor relations
19 information in the normal course of employment. See UD 8-83,
20 Montana Public Employees Association v. City of Great Falls,
21 February 7, 1984; UD 1-80, Montana Federation of Teachers v.
22 Kalispell School District No. 5, May 12, 1980; Prudential
23 Insurance Company v. NLRB, 126 LRRM 3038, 1987 CA 4, 832 F.2d
24 8557.

1 The term "Confidential Labor Relations Employee" must be
2 construed narrowly in order to ensure employees the fullest
3 freedom in exercising their rights (Section 39-31-202 MCA).
4 It should not apply unless the assisted management official
5 has significant involvement in formulating, determining and
6 effectuating labor relations policy and then only if the
7 employee's primary duty is to assist such a management
8 official. Where it is found that an employee, in the normal
9 course of duty acts in a confidential capacity to a person
10 involved in formulating, determining, and effectuating the
11 employer's relations policies such an employee is a
12 confidential employee excluded from the bargaining unit
13 regardless of how little time is spent in such confidential
14 labor relations related activity. Reymond Baking Company,
15 249 NLRB No. 156, June 6, 1980, 104 LRRM 1253. However,
16 incidental or occasional assistance does not warrant
17 confidential employee status nor does less than significant
18 involvement on the part of the assisted management official
19 warrant such status. UD 7 and 8-80, Montana Public Employees
20 Association v. Yellowstone County School District No. 2,
21 January 9, 1981.

22 The Secretary to the Assistant Superintendent functions
23 in a confidential capacity to assist the managerial official
24 who formulates, effectuates and determines labor relations
25 policy and is therefore excluded from the bargaining unit.

1 The Secretary to the Personnel Director functions in a
2 confidential capacity to a management official who
3 formulates, effectuates and determines labor relations
4 policy and therefore is excluded from the bargaining unit.

5 The Business Manager is not a management official who
6 formulates, effectuates and determines labor relations
7 policy. Therefore, his secretary does not meet the test for
8 confidential employee and she is therefore included in the
9 bargaining unit.

10 The Employer argues that certain Computer Center
11 personnel ought to be excluded from the bargaining unit since
12 they have access to confidential information. Pullman
13 Standard Division, et al v. United Steel Workers of America,
14 214 NLRB No. 100, November 7, 1974, 87 LRRM 1370 is cited to
15 support that argument. In that instance the National Labor
16 Relations Board found an entire unit of Material Estimators,
17 Spec Writers, Labor Estimators, Die Estimators, Data
18 Technician Estimators and Secretaries to be confidential
19 because all of them were entrusted with confidential
20 information, including the precise labor rates the employer
21 would be willing to agree to in future collective bargaining.
22 The National Labor Relations Board determined that premature
23 disclosure of this information would reveal the employer's
24 anticipated ultimate settlement figures and thereby prejudice
25

1 future bargaining strategy. The facts in the case at hand do
2 not fit the Pullman precedent.

3 The circumstances here more closely resemble those in
4 Union Oil Company of California v. NLRB, 102 LRRM 2673, 1979
5 CA 9, 607 F.2d 852 where confidential employee status was
6 denied to computer operators responsible for information
7 concerning the employer's customers, personnel matters, and
8 capital and operating expenses. Access to personnel or
9 statistical information upon which labor relations policy is
10 based is not sufficient to establish confidential status.
11 Mere access to personnel files alone is not sufficient to
12 confer confidential employee status. Eisenberg v. Honeycomb
13 Plastics Corporation, 125 LRRM 3257, DC New Jersey, January
14 9, 1987 and 288 NLRB No. 51, 130 LRRM 1511, April 8, 1988.
15 Access to information that may be used during collective
16 bargaining or responsibility for compiling labor relations
17 information is not sufficient to confer confidential employee
18 status. UD 24-79 American Federation of State County and
19 Municipal Employees State Council No. 9 v. Havre School
20 District 16-A, February 28, 1980. See also Westinghouse
21 Electric Corporation, 51 LRRM 1172, 138 NLRB No. 90,
22 September 21, 1962 where industrial relations assistants
23 were found to be neither confidential nor managerial
24 employees since they were permitted only routine deviations
25 in administering established procedures and were not in the

1 position to learn of matters relating to future policies and
2 were not consulted in that regard.

3 The Lead User Liaison\Computer Operator and the
4 Programmer\Analyst positions fail to meet the standard in
5 Pullman, supra. Their circumstances are more similar to
6 those of the computer operators in Union Oil of California,
7 supra. They are therefore included in the bargaining unit.

8 The Employer's proposal to exclude one of three
9 Programmer\Analyst positions presents another problem in that
10 an exclusion is sought for an individual rather than a
11 position. Such an exclusion would be in conflict with the
12 principle set forth in Gorman, Conclusions of Law No. 4,
13 above.

14 8. Casual or "sporadic and intermittent" employees are
15 generally excluded from the bargaining unit. See NLRB v.
16 Emro Marketing Company, 119 LRRM 3367, 1985 CA 7, 768 F.2d
17 151; Saint Elizabeth Community Hospital v. NLRB 113 LRRM
18 3157, 1983 CA 9, 708 F.2d 1436; National Posters v. NLRB, 114
19 LRRM 3240, 1983 CA 4, 720 F.2d 1358. Such a practice would
20 exclude substitutes from the bargaining unit inasmuch as
21 their employment is sporadic and intermittent. The nature of
22 their employment prevents a substantial community of interest
23 with regular employees. See NLRB v. Boston Beef Company,
24 Inc., 107 LRRM 3090, 1981 CA 1, 652 F.2d 223.

1 9. Refusing to be governed by an employer's
2 classification system which may allow an employer unilateral
3 control over voter eligibility, the National Labor Relations
4 Board has applied two standards to determine the eligibility
5 of temporary employees to vote in representational elections,
6 temporary employees being defined as workers hired as less
7 than permanent employees. Using the first standard the NLRB
8 has held that temporary employees employed on the eligibility
9 date and whose tenure of employment remains uncertain are
10 eligible to vote. Under the second standard, perhaps a
11 better test, known as the date certain test, an employee,
12 fully aware that his\her employment is short lived, but
13 having no definite termination date, is eligible to vote in
14 a representation election if he\she is employed on both the
15 eligibility date and the date of the election. See NLRB v.
16 New England Lithographic Company, 100 LRRM 2001, 1978 CA 1,
17 589 F.2d 29; Universal Paper Goods v. NLRB, 102 LRRM 2218,
18 1979 CA 9, 638 F.2d 1159.

19 10. The mere fact that a certain Missoula County High
20 School District employee's wages are paid with non-district
21 funds does not void their community of interest with
22 employees paid wages from the School District's general fund.
23 See UD 4-85, Montana Federation of Teachers, AFT, AFL-CIO v.
24 Flathead Valley Community College, August 22, 1985; Catholic
25 Community Services v. District 1199, 254 NLRB No. 90, January

1 26, 1981, 106 LRRM 1255; NLRB v. Columbus Hi, Inc., 108 LRRM
2 2342, 1981 CA 6, 652 F.2d 614.

3 11. In Berea Publishing Company, 140 NLRB No. 55,
4 January 7, 1963, 52 LRRM 1051 the National Labor Relations
5 Board stated:

6 In cases involving employees who work
7 only part-time for an employer, the Board
8 determines unit inclusion on the basis of
9 whether the employee is regularly
10 employed for sufficient periods of time
11 to demonstrate that he, along with the
12 full-time employees, has a substantial
13 interest in the units wages, hours and
14 conditions of employment (footnote
15 omitted).

16 Part-time employees who averaged four (4) hours per week
17 during the six (6) months prior to the eligibility date were
18 considered eligible to vote in NLRB v. Western Temporary
19 Services, 125 LRRM 2787, 1987 CA 7, 821 F.2d 1258. If
20 regular part-time employees share a sufficient community of
21 interest with their full-time counterparts, the number of
22 hours worked should not deny these employees the fullest
23 freedom to exercise their rights guaranteed in the Montana
24 Collective Bargaining For Public Employees Act. See Shepards
25 Uniform and Linen Supply, 274 NLRB No. 200, March 29, 1985,
118 LRRM 1607 and UD 7 and 8-80, Montana Public Employees
Association v. Yellowstone County School District No. 2,
January 9, 1981. The test for determining whether an
employee is a regular part-time employee or a casual employee

1 takes into account factors such as regularity and continuity
2 of employment and similarity of work duties. Tri State
3 Transportation Company v. Teamsters Local 25, 289 NLRB No.
4 38, June 27, 1988, 128 LRRM 1246. It would be arbitrary to
5 exclude part-time employees merely because they work less
6 than twenty (20) hours per week or less than half time
7 without first considering any community of interest they may
8 have with employees working more than half time.

9 12. Section 39-31-202 MCA requires that the Board of
10 Personnel Appeals consider certain factors when determining
11 an appropriate bargaining unit. In making that
12 determination the Board of Personnel Appeals must apply
13 those factors to conditions as they exist at the time of the
14 petition. It would be impossible for the Board to consider
15 and evaluate conditions that do not exist. To do so would
16 require the Board to separate out ghosts or dreams of what
17 may or may not ever exist. The Board has only considered
18 prospective circumstances under very rare exception, UD 19-
19 87, Board of Regents and Montana Federation of Teachers, AFT,
20 AFL-CIO et al, August 23, 1988. Therefore, no consideration
21 has been given to job duties or conditions that did not exist
22 at the time of the hearing. Accordingly, no determination is
23 made regarding part-time employees working less than half-
24 time since the bargaining unit as proposed by the petitioner
25 does not include any employees meeting that criteria. If

1 the parties determine that the job duties of particular
2 employees evolve as was predicated during the hearing, such
3 changes can be dealt with through the use of a unit
4 clarification petition.

5 13. Pursuant to Section 39-31-208 MCA, if the Board or
6 an agent of the Board finds that there is a question of
7 representation, there shall be an election by secret ballot
8 to determine whether the employees wish to be represented by
9 a labor organization. Further, the Board or an agent of the
10 Board shall determine who is eligible to vote in the election
11 and shall also establish the rules for the election.

12 14. Pursuant to the Administrative Rules of Montana at
13 24.26.655 the Board of Personnel Appeals shall direct any
14 election to be conducted by an agent of the Board where an
15 appropriate unit has been determined and a question of
16 representation exists or where a petition for an election has
17 been filed. The election shall be conducted under the
18 direction and the supervision of the Board with all
19 determinations made by an agent subject to review by the
20 Board of Personnel Appeals by an aggrieved party.

21 VI. RECOMMENDED ORDER

22 1. The Board of Personnel Appeals will conduct an
23 election to determine whether certain employees of the
24 Missoula County High School District in the bargaining unit
25 described below desire to be represented for purposes of

1 collective bargaining by the Montana Education Association,
2 NEA or the Montana Federation of Teachers, AFT, AFL-CIO.

3 2. Those eligible to vote shall be all classified
4 employees employed by the Missoula County High School
5 District on the date the petition was filed, March 13, 1989,
6 except Food Service and Engineers/Custodians, those temporary
7 employees who have completed their term of employment,
8 substitutes and those employees who have voluntarily
9 terminated their employment between the filing date and the
10 date of the election. Also excluded are the Secretary to the
11 Superintendent, the Secretary to the Assistant
12 Superintendent, the Secretary to the Personnel Director, and
13 other employees excluded by the Collective Bargaining for
14 Public Employees Act, Section 39-31-103, MCA,

15 3. The Board of Personnel Appeals has prepared a
16 Notice of Mail Ballot Election and Sample Ballot (copies
17 attached hereto) and will mail copies to the names and
18 addresses on the attached voter list. This shall constitute
19 the notice requirements of the election.

20 4. The appropriate bargaining unit shall be defined as
21 all classified employees except Food Service and
22 Engineers/Custodians employed by the Missoula County High
23 School District excluding the Secretary to the
24 Superintendent, the Secretary to the Assistant
25 Superintendent, the Secretary to the Personnel Director and

1 all employees excluded by the Montana Collective Bargaining
2 for Public Employees Act, Section 39-31-103 et seq., MCA.

3 5. The mail ballot election shall be conducted
4 according to the following schedule;

5 (a) A copy of the Notice of Mail Ballot Election
6 and Sample Ballot and necessary return mailing
7 envelopes will be mailed to all eligible voters on
8 September 1, 1989.

9 (b) The ballots will be picked up at the Election
10 Judge's Post Office Box at 9:00 a.m. September 22,
11 1989. The ballots will be counted at 10:00 a.m. on
12 the same day at the Office of the Board of
13 Personnel Appeals, Department of Labor and
14 Industry Building, 1327 Lockey, Helena, Montana.
15 The Employer and the employee organizations may
16 have authorized observers present when the ballots
17 are counted.

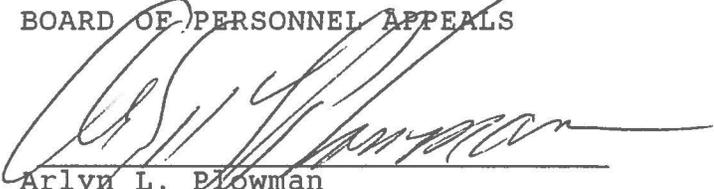
18 VII. SPECIAL NOTICE

19 Pursuant to the rules of Board of Personnel Appeals and
20 the Administrative Rules of Montana at 24.26.215(2) and
21 24.26.655 this Recommended Order shall become the order of
22 the Board of Personnel Appeals unless written exceptions are
23 filed with the Board of Personnel Appeals at P.O. Box 1728,
24 Helena, Montana 59624-1728 within twenty (20) days after
25 service of this Recommended Order upon the parties.

Entered and Dated this twenty-sixth day of July 1989.

BOARD OF PERSONNEL APPEALS

By:


Arlyn L. Plowman
Hearing Examiner

ATTACHMENTS

Voter List
Sample Ballot
Notice of Mail Ballot Election

EXHIBIT LIST

Employer Exhibits

E-A Position Analysis for Personnel Director
E-B Position Analysis for Personnel Secretary
E-C Vacancy Notice for Personnel Director's Secretary
E-D Position Description for Business Manager
E-E Vacancy Notice for Secretary to Business Manager
E-F Position Description for Purchasing Secretary
E-G Position Information Questionnaire for Warehouse
Manager\Receiving Clerk
E-H Vacancy Notice for Payroll Clerk
E-I Schematic of Computer Center
E-J Lead User Position Description
E-K Programmer Analyst Position Description
E-L Summary of Bookkeeper's Responsibility

Montana Federation Exhibits

MFT-A Missoula County High School District Personnel
Policies for Classified Employees
MFT-B Missoula County High School District Personnel
Policies for Exempt Employees
MFT-C Missoula County High School District Personnel
Policies for Management Team

CERTIFICATE OF MAILING

1 I Janifer Jacobson do certify
2 that a true and correct copy of this document was mailed to
3 the following on the 26th day of July, 1989:

4 Molly Shepherd,
5 Worden, Thane and Haines, P.C.
6 Attorneys at Law
7 P.O. Box 4747
8 Missoula, MT 59806-4747

9 Emilie Loring
10 Hilley and Loring
11 Attorneys at Law
12 500 Daily Avenue
13 Missoula, MT 59801

14 Matt Theil
15 Field Staff Representative
16 Montana Federation of Teachers,
17 AFT, AFL-CIO
18 P.O. Box 1246
19 Helena, MT 59624-1246

20 Shirley Rosengren,
21 Personnel Director
22 Missoula County High School District
23 915 South Avenue West
24 Missoula, MT 59801

25 SD417.8