

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 24-90:

MONTANA PUBLIC EMPLOYEES	)	
ASSOCIATION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	FINDINGS OF FACT;
	)	CONCLUSIONS OF LAW;
	)	ORDER
LIBERTY COUNTY NURSING HOME,	)	
	)	
Employer.	)	

\* \* \* \* \*

I. INTRODUCTION

A hearing on the above matter was held on May 2, 1991 before Joseph V. Maronick, duly appointed hearing examiner of the Department of Labor and Industry. Parties present, duly sworn, and offering testimony included: Mel Wojcik, (Representative Montana Public Employees Association [MPEA]) Dave Stiteler, (Counsel MPEA) and Tim Gillingsrud (Chairman Liberty County Commissioners). The employer was assisted in case presentation by Hugh B. Brown, Liberty County Attorney. Documents admitted to the record included the contents of the Department of Labor and Industry Unit Determination 24-90 file, all unit determination correspondence including Election Challenge, Challenge Response and Rebuttal to Response, as well as a copy of the National Labor Relations Board vs. Cardox Division of Chemetron Corporation, 699 F.2d 148 (1983).

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II. FINDINGS AND CONCLUSIONS

1. On November 27, 1990 MPEA filed a petition for New Unit Determination and Election with the Board of Personnel Appeals for certain employees of Liberty County Nursing Home. The inclusions for the unit were "All nurses aides, L.P.N.s laundry workers, and cooks/aides,...Exclude any supervisory and managerial personnel."

2. On November 28, 1990 the Board of Personnel Appeals issued a Notice of Unit Determination Proceedings identifying the proposed unit as "all nurses aides, L.P.N.s, laundry workers and cooks/aides of Liberty County Nursing Home excluding supervisory, managerial personnel. Also included with the November 28, 1990 letter were the rules explaining to Liberty County Commissioners statutorily established election procedures. The letter stated in part:

The rules of the Board provide that an employer may counter-petition upon the petitioner.

ARM 24.26.614

- (1) The employer shall have five (5) working days from receipt of the petition in which to file counter-petition with the Board.
- (2) The employer shall file a counter-petition when the employer disagrees with the appropriateness of the proposed unit as described in the petition.
- (3) The employer shall serve a copy of the counter-petition on the petitioner.

The employer did not file a counter petition.

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3. The employer was asked in the November 28, 1990 letter from the Board of Personnel Appeals to provide the Board with the listing of the names and addresses of employees in the proposed unit. By letter dated December 19, 1990 the employer provided a list of proposed unit members which also included the names and addresses for housekeeping personnel.

4. By letter dated January 2, 1991 the Board of Personnel Appeals election judge issued a Stipulation For Certification Upon Consent Election which described the proposed bargaining unit as:

.... all nurses aides, licensed practical nurses, dietary, housekeeping, and laundry workers employed by Liberty County Hospital and Nursing Home excluding supervisory, managerial, and confidential employees and all others exempted by the Montana Collective Bargaining Act For Public Employees Act, Section 39-31-101 et seq. MCA.

5. The election judge was contacted by the petitioner and advised that the petitioner would not sign the stipulation because "housekeepers" had been in error included in the unit description.

6. A mail ballot election was conducted and ballots counted on January 25, 1991. Four housekeeping ballots were challenged, two ballots were challenged by MPEA because the employees in question were casual employees and one ballot was challenged by the Board because the voter did not sign the return envelope as required by the Board. The challenge to the casual employees was

1 withdrawn leaving five challenged ballots. Nineteen votes were  
2 cast for MPEA and sixteen cast for no representation.

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4 7. On January 30, 1991 the Board of Personnel Appeals  
5 notified the parties of the election results nineteen for MPEA and  
6 sixteen for no representation. The Board advised the parties that  
7 unless an election challenge was filed, MPEA would be certified as  
8 the unit's exclusive bargaining representative. The employer filed  
9 an election challenge on February 6, 1991 contending the challenged  
10 housekeeping ballots should be opened and included for election  
11 result determination.

12 8. The determinative issue in this matter rests on the four  
13 challenged housekeeping ballots. Because montana law, ARM  
14 24.26.614 specifically provides a procedure for counter-petition  
15 within five working days after receipt of the petition for unit  
16 determination, and the employer failed to petition within that  
17 period, the challenge ballots must not be counted.

18 9. At the hearing the employer argued that based on the  
19 precedent established in Cardox, supra, the Board must determine  
20 the appropriate bargaining unit prior to recognition of MPEA as the  
21 exclusive representative for the bargaining unit.

22 10. The present case is distinguishable from the facts in  
23 Cardox, supra. The Cardox case did not involve a petition for unit  
24 determination and an election challenge. In that case there were  
25 no specific state laws which particularly governed the issue

1 presented as does montana law describing counter-petitions found in  
2 ARM 24.26.614(1). The Cardox case involved an unfair labor  
3 practice charge filed by a union against the company alleging the  
4 company had violated Sections 8(a)(1) and 8(a)(5) of the National  
5 Labor Relations Act by withdrawing recognition of the union. The  
6 company had prior to the filing of ULP voluntarily recognized a  
7 bargaining unit. Thereafter, two unit members decided they no  
8 longer wished to be represented by the union. The company argued  
9 at the hearing that the unit they had voluntarily recognized was  
10 inappropriate because the two persons who had indicated they no  
11 longer wanted to be represented by the union lacked a community of  
12 interest with the unit and were distinct from the other unit  
13 members. The company also argued the union was inappropriate  
14 because it had been reduced in size to a single employee.  
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16 11. Because of specific Montana statute governing the  
17 situation encountered in this case and the differing fact situation  
18 identified in the Cardox supra, that case precedent is found  
19 inapplicable.

20 12. Based on the foregoing analysis the election challenge is  
21 found to be without merit. Pursuant to ARM 24.26.666, if no  
22 objections are filed within five working days of this order, the  
23 Board will certify Montana Public Employees Association as the  
24 exclusive bargaining agent for collective bargaining purposes for  
25 the unit described in the original petition for unit determination

1 as: "all nurses aides, L.P.N.s laundry workers and cooks/aides"  
2 excluding "any supervisory and managerial personnel."

3 III. ORDER

4 1. The election challenge filed on February 6, 1990 by the  
5 employer is hereby dismissed.

6 Entered and dated this 13 day of May, 1991.

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9 Joseph V. Maronick  
10 Joseph V. Maronick  
11 Hearing Examiner  
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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day served upon the following parties or such parties' attorneys of record by depositing the same in the U.S. Mail, postage prepaid, and addressed as follows:

Hugh B. Brown  
Attorney at Law  
P. O. Box C  
Chester, MT 59522

Mel Wocjik, Field Representative  
Montana Public Employees Association  
P. O. Box 5600  
Helena, MT 59604

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day, served upon the following parties or such parties' attorneys of record by means of the State of Montana's Deadhead mail service.

John Andrew  
Dispute Resolution Bureau  
P. O. Box 1728  
Helena, MT 59624-1728

DATED this 13<sup>th</sup> day of May, 1991.

Christine P. Roland

DA321.12n