

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

IN THE MATTER OF UNIT DETERMINATION NO. 8 - 91

MONTANA DISTRICT COUNCIL)
OF LABORERS, AFL-CIO,)
)
Petitioner,)
)
vs.) OPINION AND ORDER
)
CITY OF HAMILTON,)
)
Employer.)

This matter came before the Board on a series of three election challenges filed by employees of the City of Hamilton after a majority of eligible employees voted to be represented by the Petitioner for collective bargaining purposes. These challenges will be discussed separately.

The first challenge was received by way of a letter dated February 28, 1992, from a group of eight employees of the City of Hamilton, who protested the election vote on the following grounds:

1. No employee representative was ever voted on;
2. Employees never saw a list of eligible voters;
3. Employees were unaware of union spokesman;
4. Employees were unaware Petitioner was involved in negotiations regarding employees needs for union; and
5. Employees were unaware of documents submitted this Board by the Petitioner.

The second challenge was received from city employee David

1 Szeszycki by way of his letter of March 2, 1992. Mr. Szeszycki
2 felt the election process was unfair because individuals who no
3 longer worked for the city were permitted to vote in the
4 election, while two present employees were not permitted to vote.

5 The third challenge was submitted by city employee Tom
6 Fallows in his letter of March 2, 1992. Mr. Fallows set forth
7 the same objections as Mr. Szeszycki. In addition, Mr. Fallows
8 also objected to allowing part-time employees to vote in the
9 election and to the failure of the employees to be provided
10 information on the unit determination process.

11 The Board carefully reviewed the entire file in this matter,
12 including all the above exceptions, the Petitioner's answer to
13 these challenges and the challenging employees rebuttal entitled
14 "Answer to Petitioner's Response to Election Challenges". After
15 the above review the Board finds that the objections should be
16 dismissed for the reasons set forth below.

17 The objections outlined in the letter of February 28, 1992,
18 simply reflect a lack of communication between the impacted
19 employees and either the Petitioner or the City of Hamilton.
20 There can be no doubt that the employees were well aware of the
21 efforts to unionize a certain portion of the city employees. It
22 was in their best interest to take an active, participatory
23 interest in the proceedings. The impacted employees could have
24 received all the information they claim was denied them had they
25 requested it of the Petitioner, the Employer or the Board. They
did not do so until after the results of the election were

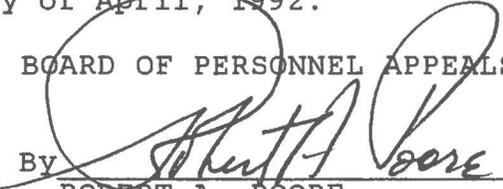
1 published. In effect, the grounds specified in the February 28,
2 1992, group challenge do not state any impropriety in the conduct
3 or results of the election warranting reversal of the majority
4 vote.

5 The March 2, 1992, challenges by Mr. Szeszycki and Mr.
6 Fallows as to the inclusion of certain individuals within the
7 bargaining unit must be dismissed because such objections
8 constitute a collateral attack upon a final unit determination
9 order to which no timely exceptions were filed or appeal taken.
10 Moreover, ARM Rule 24.26.658 makes it clear that only those
11 individuals who were employees within the unit on the date the
12 petition was filed are eligible to vote in the election.
13 Consequently, the full-time employees hired after the filing of
14 the petition were properly excluded.

15 WHEREFORE, IT IS HEREBY ORDERED that the objections filed
16 herein are dismissed and the Petitioner is certified as the
17 exclusive collective bargaining representative for the unit
18 described as the City Treasurer, seasonal employees and full time
19 employees of the City of Hamilton excluding management employees,
20 confidential employees, law enforcement employees, the City
21 Attorney, City Judge and all others excluded by the Collective
22 Bargaining Act for Public Employees.

23 Dated this 17th day of April, 1992.

24 BOARD OF PERSONNEL APPEALS

25 BY 
ROBERT A. POORE
CHAIRMAN

* * * * *

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a petition for Judicial Review with the District Court no later than thirty (30) days from the service of this Order. Judicial Review is pursuant to the provisions of Section 2-4-701, et seq., MCA.

* * * * *

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do certify that a true and correct copy of this document was mailed to the following on the 21st day of April, 1992:

Karl J. Englund
Attorney at Law
401 North Washington Street
P.O. Box 8142
Missoula, MT 59807

Linda Higgenbotham
P.O. Box 163
Darby, MT 59829

Don K. Klepper
The Klepper Company
P.O. Box 4152
Missoula, MT 59806

William Peters
4574 Hoover Lane
Stevensville, MT 59870

Tom Fallows
181 Wyant Lane
Hamilton, MT 59840

Dave Szeszycki
519 Wilcox
Corvallis, MT 59828

Wanda Porter
237 Russell Drive
Hamilton, MT 59840

Eugene Fenderson
Montana Dist. Laborers
P.O. Box 1173
Helena, MT 59624

William Bennish
Northwest 601 Evergreen
Hamilton, MT 59840

James Whitlock, Mayor
City of Hamilton
175 Third South
Hamilton, MT 59840

Doris Widder
160 Potham Lane
Corvallis, MT 59828

Grace Rixen-Handford
P.O. Box 1014
Hamilton, MT 59840

Richard Garrod
216 East Ravalli
Hamilton, MT 59840

Richard Kittel
160 Hawker Lane
Corvallis, MT 59828

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

IN THE MATTER OF UNIT DETERMINATION NO. 8-91:

MONTANA DISTRICT COUNCIL OF)	
LABORERS, LIUNA, AFL-CIO,)	
)	
Petitioner,)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
-vs-)	RECOMMENDED ORDER
)	
CITY OF HAMILTON,)	
)	
Employer.)	

* * * * *

I. INTRODUCTION

On June 3, 1991, Montana District Council of Laborers, LIUNA, AFL-CIO (Petitioner) filed a petition for unit determination and election for a unit described as

all part-time, seasonal, temporary and full-time employees of the Employer. Exclusions were listed as; management employees, confidential employees, law enforcement employees and all others excluded by the Act.

On June 30, 1991, the Employer filed a counter petition proposing the unit to include certain listed employees and exclude all other employees.

On August 13, 1991 the Petitioner, having been unable to resolve unit composition with the employer, requested a hearing for

1 unit determination. Positions concerning which the parties were
2 unable to agree as properly included in the unit were:

- 3 1. City Attorney
- 4 2. City Judge
- 5 3. City Treasurer
- 6 4. Seasonal employees

7 On November 1, 1991 a hearing was held in Hamilton, Montana
8 before Joseph V. Maronick duly appointed hearing examiner of the
9 Labor Commissioner. Parties present, duly sworn and offering
10 testimony included Mayor Don Williams, Loren Risinger, David
11 Trihey, Robert Vanlier, Harry Yenne, Charles Lambert, Cliff Willis,
12 Dick Weber, Wanda Porter and Jamie Whitlock. The Petitioner was
13 represented by Don K. Klepper, Ph.D. and the Employer by Carl J.
14 Eglund, Attorney at Law.

15 II. FINDINGS AND CONCLUSIONS

16 The Petitioner union requests inclusion of seasonal employees
17 and the exclusion of the City Attorney, City Judge and City
18 Treasurer. These positions are individually examined below.

19 A. **City Attorney**

20 The City Attorney works on an individually
21 negotiated contract basis and does not work regular
22 hours. His work includes advising the Employer
23 regarding collective bargaining matters which may
24 include actions for or against proposed unit
25 members. Because this type of work responsibility
involves working in a confidential capacity and in
such a case clearly the attorney may not have a
community of interest with other proposed unit
members, the City Attorney is not properly included
in the proposed unit.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

B. City Judge

The City Judge is appointed to a term in conformance with Montana codes, does not work an established said work schedule as do other proposed unit members and while working in conformance with established judicial procedure is not or cannot be supervised in her work duty performance. Under application of Section 39-31-202, MCA a community of interest, wages, hours, fringe benefits and other working conditions is not found between the City Judge and other proposed unit members. Therefore, the City Judge is not properly included in the proposed unit.

C. City Treasurer

During the course of the hearing, the parties agreed this position properly belongs in the proposed bargaining unit. Based on information offered at the hearing this position is found properly included in the proposed unit.

D. Seasonal employees

The four seasonal employees who work for the Employer do so in the street department during the warm weather months. These seasonal employees work with regular employees performing substantially the same work as regular full-time employees. The majority of these employees regularly work for the employer. Three of the four have worked two years and two of the four employees have worked three years.

The test used to determine eligibility of seasonal employees to vote in representative elections includes:

1. performing substantially the same work and
2. a significant rate of reemployment.

Based on application of this standard, the seasonal employees are found properly included in the unit.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

III. CONCLUSIONS OF LAW

The unit including the City Treasurer and seasonal employees of the Employer excluding the City Attorney and the City Judge is an appropriate unit for purposes of collective bargaining under Section 39-31-103(2) MCA and Section 39-31-202 MCA.

IV. RECOMMENDED ORDER

It is ordered that an election by secret ballot be conducted as early as possible, in accordance with the rules and regulations of the Board of Personnel Appeals among the employees in the above described bargaining unit, employed by the City of Hamilton to determine whether or not they desire to be represented for purposes of collective bargaining.

NOTE

In accordance with the Board's rule ARM 24.26.107(2), the above RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless exceptions are filed within twenty (20) days after service of these Findings of Fact, Conclusions of Law and Recommended Order upon the parties.

DATED this 18 day of December, 1991.

BOARD OF PERSONNEL APPEALS

By: Joseph V. Maronick
JOSEPH V. MARONICK
Hearing Examiner

