

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

IN THE MATTER OF UNIT DETERMINATION NO. 4-93:

TEAMSTERS LOCAL NO. 190,)	
)	
Petitioner,)	ORDER FROM
)	WITHDRAWAL OF
-vs-)	PETITION
)	
CUSTER COUNTY, MONTANA,)	
)	
Employer.)	

* * * * *

To the below listed parties:

In August 26, 1993 correspondence, notice of petition withdrawal was received by this Hearing Officer from Petitioner counsel, Timothy J. Whalen. The Petitioner on February 16, 1993, filed an election objection contending the employer had engaged in prohibited conduct prior to a February 12, 1993 vote and ballot count. The matter was heard on April 7, 1993, and a determination issued on April 30, 1993, finding the employer had engaged in prohibited conduct. The determination was appealed to the Board of Personnel Appeals which remanded the matter on August 13, 1993, for rehearing.

Prior to rehearing, as indicated above, the notice of withdrawal was received. Based on the foregoing, the February 12, 1993 "no representation" vote result is unchallenged. Further Board action will not be taken.

1 Entered and Dated this 31 day of August, 1993.

2 BOARD OF PERSONNEL APPEALS

3
4 By: Joseph V. Maronick
5 JOSEPH V. MARONICK
6 Hearing Examiner

7 CERTIFICATE OF MAILING

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

11 TIMOTHY J. WHALEN
12 ATTORNEY AT LAW
13 SUITE 504 - D A DAVIDSON BLDG.
14 2825 THIRD AVENUE NORTH
15 BILLINGS MT 59101

16 DUANE JOHNSON
17 EMPLOYER REPRESENTATIVE
18 MANAGEMENT ASSOCIATES INCORPORATED
19 PO BOX 781
20 HELENA MT 59624

21 JOE DWYER
22 BUSINESS REPRESENTATIVE
23 TEAMSTERS UNION LOCAL NO 190
24 PO BOX 1017
25 BILLINGS MT 59103-1017

26 JANET R KELLEY CHAIR
27 CUSTER COUNTY COMMISSIONERS
28 1010 MAIN
CUSTER COUNTY COURTHOUSE
MILES CITY MT 59301

DATED this 31st day of August, 1993.

By [Signature]

SP321.4n

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 4-93:
TEAMSTERS LOCAL NO. 190,

Complainant,

- vs -

CUSTER COUNTY, MONTANA,

Defendant.

ORDER OF REMAND

* * * * *

The Findings of Fact; Conclusions of Law; and Proposed Order were issued by Joseph V. Maronick, Hearing Examiner, on April 30, 1993.

Exceptions to the were filed by Duane Johnson, Employer/Defendant Representative on May 14, 1993.

Oral arguments were scheduled before the Board of Personnel Appeals on July 8, 1993.

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

IT IS ORDERED that this case is remanded back to the Hearing Examiner to conduct a new hearing on the merits.

DATED this 22nd day of July, 1993.

BOARD OF PERSONNEL APPEALS

BY Willis M. McKeon
WILLIS M. MCKEON
CHAIRMAN

1 * * * * *

2 CERTIFICATE OF MAILING

3 I, Jennifer Jacobson, do hereby certify
4 that a true and correct copy of this document was mailed to the
following on the 27th day of July, 1993:

5 Janet R. Kelley, Chair
6 Custer County Commissioners
7 Custer County Courthouse
1010 Main
Miles City, MT 59301

8 Duane Johnson
9 Employer Representative
10 Management Associates, Inc.
P.O. Box 781
Helena, MT 59624

11 Joe Dwyer
12 Business Representative
13 Teamsters Union Local No. 190
P.O. Box 1017
Billings, MT 59103-1017

14 * * * * *

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

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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION 4-93:

TEAMSTERS LOCAL NO. 190,)
)
Petitioner,)
)
vs.)
)
CUSTER COUNTY, MONTANA,)
)
Public Employer,)

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
PROPOSED ORDER

* * * * *

I. INTRODUCTION

1. A hearing was conducted in this matter on April 7, 1993 before Joseph V. Maronick, duly appointed hearing officer. Parties present duly sworn and offering testimony included Petitioner representative Joe Dwyer and Employer representative Duane Johnson. Documents admitted to the record included Petitioner 1 through 5 and Employer 1. Exhibits P 2 through 4 were admitted over a hearsay objection raised.

II. FINDINGS OF FACT

1. On September 28, 1992, Teamsters Local No. 190, hereinafter the Petitioner, filed a Petition for Unit Determination and Election. Thereafter on January 20, 1993, the Parties were notified regarding a Mail Ballot Election. Appropriate notices and forms were attached to the Board of Personnel Appeals notification. Mail Ballots were mailed out on January 29, 1993, and set for counting on February 12, 1993.

2. On February 2, 1993, after official notice and posting of the Notice of Mail Ballot Election, Mr. Duane Johnson from Management Associates, Inc., representing the employer met with

1 eligible voters to answer questions. At that time he advised
2 voters during several meetings which were attended by one or
3 several prospective voters that, among other things, while he did
4 not care which way the persons voted the commissioners would prefer
5 they were not unionized. This, according to Mr. Johnson, would
6 allow the commissioners the opportunity to work with them on a one
7 to one basis. The meetings on the availability to meet with Mr.
8 Johnson was noticed to the employees by the employer. (Exhibit 1)
9 The meetings were conducted during work hours on company property.

10 3. The election was conducted by mail ballot and the union
11 did not receive a majority of votes cast.

12 4. On February 16, 1993, the union filed an objection to the
13 election on the basis that the employer engaged in prohibited
14 conduct. The law prohibits the employer through its
15 representatives from openly campaigning or giving election speeches
16 on company time to employees subject to the election.

17 III. DISCUSSION

18 The Board of Personnel Appeals has jurisdiction over this
19 matter and follows National Labor Relations Board precedent in
20 determining election challenges. As pointed out in Oregon
21 Washington Telephone Company and Local 125, International
22 Brotherhood of Electrical Workers, AFL-CIO, Petitioner, Case No.
23 36-RC-1343, 1959 at page 341:

24 Employers and Unions alike are prohibited from making
25 election speeches on company time to massed assemblies of
26 employees within the period set in the Notice, i.e. from
27 the time and date on which the "mail-in" ballots are
28 scheduled to be dispatched by the regional office until
the terminal time and date prescribed for their return.
Violations of this rule by employers or unions will cause
an election to be set aside whenever valid objections are
filed.

1 IV. RECOMMENDED ORDER

2 The employer engaged in prohibited conduct and for that reason
3 the election is hereby set aside.

4 Entered and dated this 30 day of April, 1993.

5 BOARD OF PERSONNEL APPEALS

6 Joseph V. Maronick
7 Joseph V. Maronick
8 Hearing Examiner

9 NOTICE: In conformance with ARM 24.26.684, the above recommended
10 order shall become the final order of this Board unless written
11 exceptions are filed within twenty (20) days after service of this
12 recommended order on the parties.

11 * * * * *

12 CERTIFICATE OF MAILING

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

16 Joe Dwyer
17 Business Representative
18 Teamsters Local No. 190
19 P. O. Box 1017
20 Billings, MT 59103-1017

19 Duane Johnson
20 Management Associates, Inc.
21 P. O. Box 781
22 Helena, MT 59624

21 Janet R. Kelley, Chair
22 Custer County Commissioners
23 Custer County Courthouse
24 1010 Main
25 Miles City, MT 59301

24 DATED this 30th day of April, 1993.

25 Christine R. Roland
26

27 dk321.4n
28

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

IN THE MATTER OF UNIT DETERMINATION NO. 4-93:

TEAMSTERS LOCAL NO. 190,)
)
 Petitioner,)
)
 vs.) ORDER
)
CUSTER COUNTY, MONTANA,)
)
 PUBLIC EMPLOYER/EMPLOYER.)

* * * * *

The parties entered into an agreement pursuant to which the petitioner agreed to accept the employer's proposed unit description which reads as follows:

Hourly and salaried employees of the county to exclude the following:

1. Supervisors and/or Management employees as defined by the Act.
2. Temporary employees. "Temporary employee" to be defined as employment in a position that operates three (3) months (520 hours) or less during a fiscal year.
3. Intermittent employees. "Intermittent employee" to be defined as one who does not work on a scheduled, ongoing basis and whose total work hours do not exceed three (3) months (520 hours) during a fiscal year.
4. Elected Officials, Employees paid by the State of Montana.
5. Confidential employee in the person Eileen Clark who is employed as a Clerk in the office of Clerk and Recorder.

The approximate number of employees in the bargaining unit is 40-45.

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:

Janet Kelly, Chair
Custer County Commissioners
Custer County Courthouse
1010 Main
Miles City, MT 59301

Joe Dwyer
Chauffeur, Teamsters & Helpers Local 190
P. O. Box 1017
Billings, MT 59103

Duane Johnson
Employer Representative
Management Associates, Inc.
P. O. Box 781
Helena, MT 59624

DATED this 15th day of December, 1992.

Christine A. Roland

DA321.7