

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION REQUEST NO. 6-94:

UNIFIED SCHOOL BOARD OF TRUSTEES,)
GARFIELD COUNTY HIGH SCHOOL DISTRICT #1)
AND JORDAN ELEMENTARY SCHOOL DISTRICT #1,)

Petitioner,)

- vs -)

FINAL
ORDER

JORDAN ELEMENTARY EDUCATION ASSOCIATION,)
GARFIELD COUNTY EDUCATION ASSOCIATION,)
MEA/NEA,)

Respondent.)

* * * * *

INTRODUCTION

A Unit Determination Petition was filed by the Unified Board of Trustees, Garfield County High School District No. 1 and Jordan Elementary School District No. 1 of Jordan, Montana, alleging the following:

1. Pursuant to the unification of the Garfield County High School and Jordan Elementary Schools, the separate Jordan Elementary Education Association and Garfield County High School Education Association were no longer appropriate.

2. The new Unified School Board of Trustees did not question its obligation to bargain, but questioned the identity of the exclusive representative.

3. The Unified School Board of Trustees was not bound by the collective bargaining agreements with the Jordan Elementary Education Association and the Garfield County High

School Education Association.

On December 6, 1993, a Recommended Order was prepared by Election Judge Jennifer Jacobson, finding that the Petition be dismissed as being improperly filed. On December 17, 1993, the Unified Board filed its exceptions to that recommended order.

The parties briefed their respective positions and made oral argument before the Board on January 26, 1994. The Board decided to take the matter under advisement pending additional research by the Board's attorney.

On January 31, 1994, the Unified Board filed a second petition for a new unit determination and election. This petition, though more detailed than the original filing, was premised upon the same underlying facts as the initial petition.

Subsequent to this action, the parties agreed to submit a stipulation of facts to assist the Board and its attorney. The stipulation came from an accompanying series of unfair labor practice charges currently pending at the administrative hearing level. It was received by the Board on February 28, 1994, and incorporated into the Board's record.

Having reviewed both petitions filed by the Unified Board, considered the briefs, stipulated facts and oral arguments of the parties, the discretion of the Board is moved as follows:

DISCUSSION

The statutory authority empowering this Board to resolve public employee collective bargaining issues is found in Chapter 31 of Title 39. Section 39-31-207 of that chapter addresses the Board's responsibility in unit determination cases. This statute reads, in pertinent part, as follows:

(1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

. . . (b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

In an effort to further define the statutory criteria for an employer petition, the Board has adopted Administrative Rule 24.26.622. With respect to the filing of the employer's initial petition this rule provides, in part, that:

(5) The employer petition must be filed:

(a) not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or after the termination of the existing collective bargaining agreement. An employer petition of a bargaining unit comprised of school employees may only be filed in January of the year the existing collective bargaining agreement is scheduled to terminate, or after the termination of the existing collective bargaining agreement; or

(b) when the incumbent bargaining representative gives notice to the employer that it desires to begin negotiations of a successor agreement.

In the instant case, Ms. Jacobson's Recommended Order cited the untimely filing of the petition, under the rationale of 24.26.622(5)(a), as one of the procedural reasons for dismissing the appeal. The employer, in subsequent briefs before the Board, argued that its petition was not submitted under subsection (5)(a), but rather under subsection (5)(b). This clarification, however, does not save the employer's petition from being procedurally deficient. Specifically, there is nothing in the employer's petition or the Board's file to even suggest that either labor organization has demanded the negotiation of a new contract. Rather, it appears that the labor organizations in question have simply demanded that their respective districts honor the previously negotiated contracts. See Stipulated Facts #'s 24 and 26.

In addition to the Petitioner's procedural problem, there are substantive legal difficulties as well. Initially, there is the question of whether the unified board is the proper entity for requesting a unit determination. This issue can only be resolved after considering whether the unified board or the individual school districts (with their separate trustees) are the appropriate "public employer" under Montana's public employee collective bargaining statutes. The definition of "public employer" is set forth at 39-31-103(10), MCA, which states:

(10) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

As is clear from this expansive and noninclusive definition both the unified board and the individual districts (with their separate trustees) fit the definition of "public employer". Like the District Court in Local 2390 of Amer. Fed., Etc. v. City of Billings, 171 Mont. 20, 555 P. 2d 507 (1976) it is the responsibility of the Board in this case to determine which entity is the proper "public employer" for purposes of the Collective Bargaining For Public Employees Act. In the City of Billings case a terminated City Library employee sued both the city and library board of trustees for being improperly fired. As part of its defense, the city counterclaimed against the library board of trustees. In his decision Justice Harrison ruled that even though the library trustees had independent power to manage and operate the library, it was an adjunct of the city (which paid the salaries of the library personnel). Consequently, Justice Harrison concluded that the city, and not the library board of trustees, was the "public employer" under the Act.

In this case, the Board finds the school districts to be the proper "public employer" for the following reasons:

1. The stipulated facts clearly establish that both the high school and grade school districts existed independently prior to unification. Moreover, following unification both districts continued independently - for example, both districts have separate real and personal property, budgets and separate trustees. See MCA sections 20-6-313(e), 20-6-313(d), 20-6-313(b) and 20-3-351. The trustees are limited by law to utilize their statutory power only as to the district they represent. See 20-3-324(1), MCA.

2. The school trustees' power and responsibility stems not from being on a board, but rather from the district they have been either elected or appointed to represent.

3. As in the City of Billings case, the proper employer was found to be the entity that paid the salaries of the employees. In that case it was the city, not the library board of trustees. In this case, it is the respective districts, via their independent district trustees, and not the unified board.

4. Maintaining separate employers following unification also appears consistent with other related statutory provisions. For example, the statute protecting teacher tenure when school districts are reorganized only applies when two or more school districts are either consolidated or

annexed. This makes sense, because the employer (the original districts/district) are different following either of these reorganization methods. Consequently, the tenure protection statute is designed to ensure the continued employment of tenured teachers when their employer changes as a result of either consolidation or annexation. Conversely, this statute is totally silent with respect to unification - which also makes sense. There is no need to statutorily protect tenure when the original districts have not been changed.

It is the Board's conclusion that the unified board is not the "public employer" of either the high school or elementary districts for purposes of the relevant collective bargaining statutes. Rather, the uniform board is merely a management method whereby separate, though complimentary, entities (which operate with many of the same trustees) hold meetings at the same time in order to promote a "unified school system". See MCA section 20-6-312(3).

In this case, the above "public employer" determination is dispositive of the Unified Board's petition. Since two separate employers continue to exist, i.e., the high school and elementary districts - then there is no justification for the employer to request a new unit determination. If there are two separate employers, with two separate bargaining units, and neither bargaining unit is seeking to usurp the other's unit members - then there is no reasonable cause for

the employer to "believe that a question of representation exists" as is required by 39-31-207(1).

The legal grounds which warrant dismissal of the initial unit determination are equally applicable to the unified board's second petition filed on January 31, 1994.

ORDER

The Jordan Elementary Education Association and Garfield County High School Education Associations remain recognized by the Board of Personnel Appeals as the exclusive bargaining representatives for the Garfield County High School District and the Jordan Elementary District No. 1.

To the degree inconsistent with this Order, the Unified Board's Exceptions to the Recommended Order in Unit Determination Request No. 6-94 are hereby denied on the legal and procedural grounds discussed above.

The Unified Board's second petition filed on January 31, 1994, is also denied upon the legal rationale discussed above.

DATED this 1st day of April, 1994.

BOARD OF PERSONNEL APPEALS



WILLIS M. MCKEON
CHAIR

Board members Klepper, Talcott, Henry and Schneider concur.

* * * * *

CERTIFICATE OF MAILING

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.

* * * * *

I, *Janifer Jacobson*, do hereby certify that a true and correct copy of this document was mailed to the following on the 18th day of April, 1994:

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Petitioner,)

- vs -)

JORDAN ELEMENTARY EDUCATION ASSOCIATION,)
GARFIELD COUNTY EDUCATION ASSOCIATION, MEA/NEA,)

Respondent.)

RECOMMENDED
ORDER

INTRODUCTION

A Unit Determination Petition was filed by the Unified Board of Trustees, Garfield County High School District No. 1 and Jordan Elementary School District No. 1 of Jordan, Montana, alleging the following:

1. Pursuant to the unification of the Garfield County High School and Jordan Elementary Schools, the separate Jordan Elementary Education Association and Garfield County High School Education Association are no longer appropriate.

2. The new Unified School Board of Trustees does not question its obligation to bargain but questions the identity of the exclusive representative.

3. The Unified School Board of Trustees is not bound by the collective bargaining agreements with the Jordan Elementary Education Association and the Garfield

1 *County High School Education Association.*

2 **DISCUSSION**

3 *The Jordan Elementary Education Association and Garfield County High School*
4 *Education Associations are recognized by the Board of Personnel Appeals as the exclusive*
5 *bargaining representatives for the Garfield County High School District and the Jordan*
6 *Elementary District No. 1. The consolidation of the school districts into a unified school*
7 *board does not terminate or nullify the existing collective bargaining agreements. In*
8 *determining bargaining obligation in successorship, the following criteria are to be met:*
9 *continuity of holdover membership and intent of employer to retain employees and timely*
10 *request to bargain by the union. Extensive precedent exists with the NLRB and the Board*
11 *of Personnel Appeals supporting the successor employer's duty to recognize and bargain*
12 *with the recognized bargaining representative.*

13 *This petition was improperly filed as ARM 24.26.612 provides for the filing of a*
14 *new Unit Determination and Election petition by a labor organization or group of*
15 *employees.*

16 *The petition is also unacceptable under Board rules assuming the Petitioner*
17 *intended to file under an Employer Petition. ARM 24.26.622 EMPLOYER PETITION (4)*
18 *(b) states: If there is a recognized or certified representative the petition shall contain a*
19 *statement by the employer of what criteria it bases its doubt that the incumbent, exclusive*
20 *representative does not have the majority support of the members of the bargaining unit*
21 *in question. ARM 24.26.622 (5) (a) states: . . . An employer petition of a bargaining unit*

1 comprised of school employees may only filed in January of the year the existing collective
2 bargaining agreement is scheduled to terminate, or after the termination of the existing
3 collective bargaining agreement;

4 **RECOMMENDED ORDER**

5 Accordingly, pursuant to ARM 24.26.622(5)(a) and for the criteria outlined in this
6 Order, this Unit Determination Petition is improperly filed and hereby dismissed.

7 DATED this 6th day of December, 1993.

8 BOARD OF PERSONNEL APPEALS

9
10 By Jennifer Jacobson
11 Jennifer Jacobson
12 Election Judge
13

14 * * * * *

15 **NOTICE**

16
17 ARM 24.26.622(7) provides: The refusal to serve a petition is appealable to the full board
18 if written exception to the refusal is filed with this board within 20 days after the date of
19 the notification of the refusal to serve the petition. The written exception shall set forth
20 the specific factual/or or legal reasons indicating how the Recommended Order is in error
21 and mailed to the Board of Personnel Appeals, P.O. Box 1728, Helena, MT 59624-1728.
22

23 * * * * *

24
25 **CERTIFICATE OF MAILING**

26 I, Jennifer Jacobson, do hereby certify that a true and correct copy
27 of this document was mailed to the following on the 6th day of December, 1993.
28

29 Jack Murnion, Chairman
30 Unified School Board of Trustees
31 P.O. Box 409
32 Jordan, MT 59337-2259
33

1 **Catherine M. Swift**
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3 **1134 Butte Avenue**
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6