

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

IN THE MATTER OF UNIT DETERMINATION NO. 9-99:

INTERNATIONAL UNION OF)
OPERATING ENGINEERS, LOCAL 400,)

Petitioner,)

vs.)

PHILLIPS COUNTY,)

Respondent.)

RECOMMENDED ORDER
NUNC PRO TUNC
Previous order of
December 29, 1998

* * * * *

I. INTRODUCTION:

On October 19, 1998, Petitioner International Union of Operating Engineers, Local 400, filed a petition for a unit determination with the Board of Personnel Appeals for certain employees of Phillips County. The Respondent, Phillips County, filed a counter petition on November 3, 1998, which disagreed with the proposed bargaining unit and proposed a different unit as appropriate.

The matter was transferred on November 20, 1998, to the Hearings Bureau with a request for an expedited hearing. At a November 24, 1998, pre-hearing conference, the parties agreed to a determination based upon concurrent submission of position descriptions and memoranda of argument on December 7, 1998, final rebuttal arguments concurrently submitted on December 17, 1998 and a decision issued by December 31, 1998.

II. ISSUE:

What is an appropriate unit for collective bargaining purposes of Phillips County sheriff office employees?

1 **III. FINDINGS OF FACT:**

2 1. The sheriff and undersheriff directly supervise the
3 deputies, dispatchers and secretary. The undersheriff provides
4 administrative direction for the sheriff's policies and plans,
5 enforces office rules and orders, represents the sheriff in
6 meetings when necessary and has authority to hire, fire, recall,
7 suspend and transfer subordinate office staff.

8 2. The Respondent pays the deputy sheriffs a salary based
9 on a percentage of the sheriff's salary. They do not supervise.
10 Their responsibilities include patrolling, investigation, public
11 relations, prisoner control, service of legal papers, reporting,
12 special duties such as, photography, evidence control, jailer
13 duties, supply, equipment and facility use, and other duties as
14 assigned.

15 The sheriff and undersheriff schedule the deputies. The
16 deputies work a 28 day work schedule. The Respondent pays
17 overtime if hours worked exceed 171 in the 28 day period, and
18 holiday pay at a rate of 10 hours straight time if the day is
19 worked and 8 hours straight time if the day is not worked. They
20 work 10 hour shifts: days 7 a.m. to 5 p.m.; evenings 5 p.m. to
21 3 a.m.; or night 8 p.m. to 6 a.m. The deputies work weekends and
22 holidays.

23 The Respondent pays part-time deputies an hourly wage and
24 schedules them to work two 10 hour shifts per week. Their
25 holiday pay is prorated. All deputies are eligible for
26 retirement and longevity benefits if they work 20 or more hours
27 per week.

1 3. Dispatchers report to the sheriff and undersheriff.
2 They handle phone, radio, teletype and public contact
3 communications and referrals. They type correspondence for the
4 sheriff and deputies. Their work hours are calculated on a 40
5 hour week. The dispatchers work set, non-rotating 8 hour shifts;
6 day 6:30 a.m. to 2:30 p.m., swing 2:30 p.m. to 10:30 p.m. and
7 night 10:30 p.m. to 6:30 a.m. All dispatchers may be scheduled
8 to work weekends and holidays.

9 Part-time dispatchers are scheduled for two eight hour
10 shifts per week and fill in for vacations and sick leave when
11 needed.

12 Full-time dispatchers are salaried and eligible for
13 retirement and health benefits. Their salary is equal to the
14 salary of the clerks in other county offices with an increase for
15 shift differential. The Respondent pays part-time dispatchers an
16 hourly wage. They are eligible for retirement and health
17 benefits if they work 20 or more hours per week.

18 4. The secretary manages the sheriff's office. Her duties
19 include review of correspondence for program, policy or
20 procedural changes and new office responsibilities, conferences
21 with personnel to obtain data and project completion dates,
22 planning office activities and work projects, assigning
23 supervisory staff to complete projects and duties, and
24 coordinating activities of various office units for optimum
25 efficiency and accuracy. The secretary also informs supervisory
26 personnel regarding laws, programs or procedures, prepares
27 reports of office activities, and writes up the office bulletin
28 board. She maintains case files, including newspaper articles,

1 performs bookkeeping and county claims work, reports case files
2 to assigned officers, enters computer data, performs secretarial
3 duties for the administration board, and maintains files. She
4 also orders supplies, controls petty cash fund, computes payroll
5 for the sheriff's approval, records and credits officer
6 activities, transcribes information as requested and prepares the
7 mail.

8 The secretary works 40 hours per week, is paid a salary
9 equal to clerks salary in other county offices and is eligible
10 for retirement and health benefits.

11 **IV. DISCUSSION**

12 Montana law recognizes the right of public employees to
13 organize for the purpose of bargaining collectively
14 §39-31-201, MCA. The law assigns the Board of Personnel Appeals
15 the responsibility to determine the appropriate bargaining units.
16 §39-31-202, MCA.

17 Generally speaking, supervisory employees are not considered
18 public employees for the purpose of the right to bargain
19 collectively. §39-31-103(a)(b)(iii), MCA.

20 §39-31-103(11), MCA, identifies a "supervisory employee" as
21 follows;

22 "Supervisory employee" means any individual having
23 authority in the interest of the employer to hire,
24 transfer, suspend, lay off, recall, promote, discharge,
25 assign, reward, discipline other employees, having
26 responsibility to direct them, to adjust their
27 grievances, or effectively to recommend such action, if
28 in connection with the foregoing the exercise of such
authority is not of a merely routine or clerical nature
but requires the use of independent judgment. (emphasis
added)

1 In addition to the areas of authority exercised as
2 identified in §39-31-103(11), MCA, the Board of Personnel Appeals
3 has identified secondary tests for use in determining whether a
4 position is supervisory. The secondary tests as identified in UD
5 6-88 are as follows:

6 [t]he employee being designated a supervisor; the fact
7 that he is regarded by himself and others as a
8 supervisor; the exercise of privileges accorded only to
9 supervisors; attendance at instructional sessions or
10 meeting held for supervisory personnel; responsibility
11 for a shift or phases of operations; authority to
12 interpret or transmit employer's instructions to other
13 employees; responsibilities for inspecting the work of
14 others; instruction of other employees; authority to
15 grant or deny leave of absence to others;
16 responsibility for reporting rule infractions; keeping
17 of time records on other employees; receiving
18 substantially greater pay than other employees, not
19 based solely on skill and failure to receive overtime.

14 The Petitioner proposed a unit composed of those individuals
15 employed part-time and full-time by the Respondent for the
16 sheriff's office including but not limited to; secretary,
17 dispatchers, undersheriff and deputies - excluding the sheriff.
18 (UD Petition)

19 The Respondent counter-petitioned a unit composed of those
20 individuals employed full-time by the respondent sheriff office
21 excluding the sheriff, the undersheriff, the secretary, the
22 dispatchers and part-time employees. The Respondent contends:
23 the undersheriff and secretary are supervisory and statutorily
24 excluded and the part-time deputies, the dispatchers and the
25 secretary do not have sufficient community of interest for
26 inclusion in the unit.

27 The undersheriff has authority to hire, fire, transfer and
28 direct staff. The position uses independent judgment in the

1 interest of the Respondent in non-routine or clerical actions.
2 The undersheriff is designated as a supervisor, attends
3 supervisory meetings, interprets and transmits instructions to
4 subordinate staff and inspects or directs subordinates' work.
5 The undersheriff is a supervisory employee and by operation of
6 statute excluded from the unit.

7 The secretary's work is routine or clerical. The position
8 does not meet either the statutory or secondary definition of a
9 supervisor.

10 The law also requires the Board to consider community of
11 interest, wages, hours, fringe benefits and other working
12 conditions, history of collective bargaining, common supervision,
13 common personnel policies, integration of work functions, and the
14 desires of employees in determining the composition of a
15 bargaining unit. Community of interest has been and continues to
16 be a fundamental factor in determining the appropriateness of a
17 bargaining unit.

18 The full-time and part-time deputies, the dispatchers and
19 the secretary have common supervision, common pay authority,
20 personnel policies and work location. They have integrated work
21 duties and a similar or common basic unit work authority -
22 maintenance of law and order in the county as required or
23 authorized by law.

24 The information presented shows a community of
25 interest, fringe benefits, common supervision, common personnel
26 policies, integration of work functions, and interchange among
27 employees affected or a commonality of other working conditions
28 among the staff in the sheriff's office. Such commonality leads

1 to the natural conclusion that these positions are properly
2 included in the bargaining unit.

3 **V. CONCLUSIONS OF LAW**

4 1. The Board of Personnel Appeals has jurisdiction in this
5 matter pursuant to § 39-31-202, MCA. Billings, Montana v. Fire
6 Fighters Local No. 521, 200 Mt. 421, 651 P.2d 627, 113 LRRM 3324
7 (1982).

8 2. The totality of all of the factors as identified in the
9 law and by the Board leads to the conclusion that all the
10 deputies, dispatchers and the secretary are properly included in
11 the unit. The undersheriff is a supervisor and must be excluded
12 from the unit.

13 **VI. RECOMMENDED ORDER**

14 It is ordered that an election by secret ballot shall be
15 conducted as early as possible, in accordance with the rules and
16 regulations of the Board of Personnel Appeals, among the
17 employees in the bargaining unit described as those individuals
18 employed part-time and full-time by Phillips County for the
19 sheriff's office including the deputies, dispatchers and
20 secretary and excluding the sheriff and undersheriff.

21
22 DATED this 7th day of January, 1999.

23 BOARD OF PERSONNEL APPEALS

24 By: Joseph V. Maronick
25 Joseph V. Maronick
26 Hearing Officer
27
28

* * * * *

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:

Carol Keinenberger, Chairperson
Phillips County
PO Box 360
Malta MT 59538-0360

Cassandra Curriero
Operating Engineers Local 400
PO Box 5929
Helena, MT 59604- 5929

Richard Larsen
1733 Parkhill Dr.
Billings, MT 59102

DATED this 29th day of January, 1999.

Jennifer Jacobson.

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5 (1982).

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10 from the unit.

11 VI. RECOMMENDED ORDER

12 It is ordered that an election by secret ballot shall be
13 conducted as early as possible, in accordance with the rules and
14 regulations of the Board of Personnel Appeals, among the
15 employees in the bargaining unit described as those individuals
16 employed part-time and full-time by Phillips County for the
17 sheriff's office including the deputies, dispatchers and
18 secretary and excluding the sheriff and undersheriff.

19
20 DATED this 29th day of December, 1998.

21 BOARD OF PERSONNEL APPEALS

22 By: Joseph V. Maronick
23 Joseph V. Maronick
24 Hearing Officer

25 NOTICE: Pursuant to ARM 24.26.215, the above RECOMMENDED ORDER
26 shall become the Final Order of this Board unless written
27 exceptions are postmarked no later than January 21, 1999.
28 This time period includes the 20 days provided for in ARM
24.26.215, and the additional 3 days mandated by Rule 6(e),
M.R.Civ.P., as service of this Order is by mail.
The notice of appeal shall consist of a written appeal of the
decision of the hearing officer which sets forth the specific

1 This time period includes the 20 days provided for in ARM
2 24.26.215, and the additional 3 days mandated by Rule 6(e),
3 M.R.Civ.P., as service of this Order is by mail.
4 The notice of appeal shall consist of a written appeal of the
5 decision of the hearing officer which sets forth the specific
6 errors of the hearing officer and the issues to be raised on
7 appeal. Notice of appeal must be mailed to:

8 Board of Personnel Appeals
9 Department of Labor and Industry
10 P.O. Box 6518
11 Helena, MT 59604

12 * * * * *

13 CERTIFICATE OF MAILING

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

19 Carol Keinenberger, Chairperson
20 Phillips County
21 PO Box 360
22 Malta MT 59538-0360

23 Cassandra Curriero
24 Operating Engineers Local 400
25 PO Box 5929
26 Helena, MT 59604- 5929

27 Richard Larsen
28 1733 Parkhill Dr.
Billings, MT 59102

DATED this 29th day of December, 1998.

Carol A. Larkin