

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NO. 10-2000:

UNITED ASSOCIATION OF)	
JOURNEYMEN AND APPRENTICES)	
OF THE PLUMBING AND PIPE)	
FITTING INDUSTRY,)	
)	FINDINGS OF FACT,
Petitioner,)	CONCLUSIONS OF LAW,
)	AND RECOMMENDED
vs.)	ORDER
)	
MONTANA DEPARTMENT OF)	
COMMERCE,)	
)	
Employer.)	

* * * * *

I. INTRODUCTION

On December 10, 1999, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (Association) filed a petition with the Board seeking a new unit determination and election seeking to create a unit for collective bargaining purposes consisting of eight inspectors in the Montana Department of Commerce's Building Codes Division, Inspection Services Bureau (Department). On January 3, 2000, the Department filed a counter-petition contending that the unit proposed by the Association was not appropriate. On February 17, 2000, the Board transferred this matter to the Department's Hearings Bureau for a hearing on the petition.

Hearing Officer Anne L. MacIntyre conducted a hearing in this matter on Tuesday, April 25, 2000. John T. Forkan, Jr. represented the Association. Kevin McRae represented the Department. William Jellison, Dan Rademacher, and Don Cellmer testified. Exhibits A through F were admitted into evidence based on the stipulation of the parties.

II. ISSUE

The issue in this case is whether a unit proposed for collective bargaining purposes is appropriate pursuant to § 39-31-202, MCA. A complete statement of the issues appears in the prehearing order.

III. FINDINGS OF FACT

1. The mission of the Building Codes Division of the Montana Department of Commerce is “the responsibility to establish and enforce the statewide building code to safeguard the public and employees from hazards inherent in the construction of buildings.” (Stipulated fact)

2. The Building Codes Division has two bureaus – the Plan Review Services Bureau and the Inspection Services Bureau. The relevant bureau in this case is the Inspection Services Bureau. (Stipulated fact)

3. The Inspection Services Bureau has 35 positions that are titled and classified as “building codes inspectors.” Two of the 35 positions were vacant when the Petitioner filed the petition seeking to represent eight of the inspectors. (Stipulated fact)

4. The Inspection Services Bureau is divided into five sections. It has a Plumbing/Mechanical Section, three Electrical Sections, and a Building Section. Each section is headed by a supervisor, and the inspectors in the section report to the supervisor. The two elevator inspectors and the three boiler inspectors report directly to the Inspection Services Bureau Chief. All of the inspectors submit activity reports to the Bureau Chief. All of the inspectors are essentially unsupervised in their day to day activities. (Exhibits A and D, addendum; testimony of William Jellison)

5. The building codes inspectors help ensure safety in structural, nonstructural, electrical, plumbing, mechanical, boiler and elevator components of construction, plus factory-built buildings manufactured or offered for sale in Montana. The 35 inspectors are professional-level code compliance officers, classified at grade 14 on the State of Montana classification system. The 35 inspectors interpret and apply state statute, administrative rules and various codes, including the investigation of complaints and the conduction of inspections and the filing of reports. (Stipulated fact)

6. The 35 building codes inspectors are located throughout the state. They inspect buildings in regard to plumbing and mechanical codes, electrical codes, elevator codes, boiler codes and building codes. (Stipulated fact)
7. The five inspectors for plumbing/mechanical codes live in Belgrade, Missoula, Great Falls, Lakeside (south of Kalispell on U.S. Highway 93) and Glendive. (Stipulated fact)
8. The 18 inspectors for electrical codes live in Helena, Whitehall, two in Bozeman, Hamilton, Big Timber, and Florence (south of Missoula on U.S. Highway 93), Marion (west of Kalispell on U.S. Highway 2), Missoula, Bigfork, Kalispell, Plains, Deer Lodge, Miles City, Moore, Havre, Great Falls and Glasgow. (Stipulated fact)
9. The two inspectors for elevator codes live in Cardwell (west of Three Forks) and Dayton (south of Kalispell). (Stipulated fact)
10. The three inspectors for boiler codes live in Lewistown, Florence and Fort Benton. (Stipulated fact)
11. The seven inspectors for building codes live in Billings, Lewistown, West Yellowstone, Columbia Falls, Black Eagle, Helena and Missoula (Missoula area position vacant at time of hearing). (Stipulated fact)
12. The Department requires inspectors for plumbing/mechanical codes to have a) completed high school; b) either completed a plumbing apprenticeship and 3 years experience as a plumber or 10 years experience as a plumber; and c) a journeyman or master plumber's license. (Exhibit B-3)
13. The Department requires inspectors for electrical codes to have a) completed high school; b) either completed an electrical apprenticeship and 3 years experience as an electrician or 10 years experience as an electrician; and c) a journeyman or master electrician's license. (Exhibit B-4)
14. The Department requires inspectors for elevator codes to have a) completed high school; and b) either completed an elevator maintenance/repair apprenticeship (or equivalent) and 3 years experience as an elevator installer/repair/maintenance person or 10 years experience as a passenger elevator installer/repair/maintenance person. (Exhibit B-2)

15. The Department requires inspectors for boiler codes to have a) completed high school; b) 10 years experience in the operation of steam engines, steam boilers, and steam machinery; and c) a first-class Montana stationary engineer's license. (Exhibit B-5)

16. The Department requires inspectors for building codes to have a) completed high school; b) 8 years of experience at a journeyman level or equivalent in the building trades; c) at least 3 years experience at a level of project superintendent or equivalent; d) actual experience dealing with plans, specifications, and building codes; and e) working knowledge of the Uniform Building Code (UBC) and companion codes. In addition, the Department prefers an engineering, architectural, or engineering technician degree or technical school graduation with a building code related major, ICBO certification as a plans examiner or inspector, considerable UBC or CABO training, and regulatory plans examiner or inspector experience. (Exhibit B-1)

17. Although the inspector positions require advanced building trades licensure and experience, the inspectors do not perform building trades work. Building codes inspectors perform inspection work and only in their specific areas of expertise. Inspectors for plumbing/mechanical codes inspect for compliance with the Uniform Plumbing Code and Uniform Mechanical Code. Inspectors for electrical codes inspect for compliance with the National Electrical Code. Inspectors for elevator codes inspect for compliance with ASME A17.1 Safety Code for Elevators and Escalators. Inspectors for boiler codes inspect for compliance with ASME boiler codes. Inspectors for building codes inspect projects for compliance with the UBC and companion codes. In addition, all building codes inspectors inspect for compliance with administrative rules and state laws. (Exhibit B)

18. All inspectors are subject to the state classification and pay plan and are classified at grade 14. They receive the same fringe benefits, work the same hours, and are subject to the same working conditions and personnel policies. (Testimony of William Jellison)

19. The Department has an Operations and Procedures Manual which applies to all inspectors. It contains operational policies and procedures, general inspection procedures, enforcement policies and procedures, and a training plan which apply to all employees. It also contains specific inspection procedures for plumbing, mechanical, electrical, elevator, boiler, and building inspections. (Exhibit D and addendum) Building codes inspectors use similar forms and reports in the completion of their work. (Exhibits E and F)

20. The inspection functions performed by the inspectors are performed in the field. The inspectors do not share office space. They perform any office functions from their homes. The work of members of the proposed unit is not integrated with that performed by other inspectors in the Inspection Services Bureau and little interchange between employees occurs in the performance of the work. Occasionally, inspectors in different types of inspections will meet informally or will work together to coordinate their inspections on a single project. The Department also occasionally sponsors training for all inspectors. (Testimony of William Jellison and Don Cellmer)

21. Employees in the electrical codes sections and the building codes section have section meetings from time to time. Inspectors for plumbing and mechanical do not have section meetings apparently due to geographic considerations. (Testimony of William Jellison)

22. There is no history of collective bargaining in the Inspection Services Bureau. (Testimony of William Jellison)

23. The majority of employees in the proposed unit desire the unit proposed by the Association. (Testimony of Don Cellmer)

IV. DISCUSSION

The Association contends that a unit consisting of eight inspectors in the Department's Building Codes Division, Inspection Services Bureau is an appropriate unit for collective bargaining purposes. The positions in question are the five inspectors for plumbing/mechanical codes and the three inspectors for boiler codes. The Association seeks a determination that the requested unit is an appropriate unit so that a representation election can be held.

The Department contends that the unit requested by the Association is not an appropriate unit and that the appropriate unit for the Department's Inspection Services Bureau personnel would include all 35 inspectors in the Bureau. The Department seeks a determination denying the unit requested by the Association and a determination that a unit consisting of 35 inspectors is appropriate.

Montana law governing collective bargaining for public employees provides:

In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the [Board of Personnel Appeals] or an agent of the board shall decide the unit appropriate for collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

§ 39-31-202(1), MCA. The rights guaranteed by the act include the right of self organization, protection in the exercise of self organization, the right to form, join or assist any labor organization, the right to bargain collectively through representatives of the employees' choosing, and the right to engage in other concerted activities free from interference, restraint, or coercion.
§ 39-31-201, MCA.

The rules of Board implementing § 39-31-202, MCA, provide:

A unit may consist of all of the employees of the employer or any department, division, bureau, section, or combination thereof if found to appropriate by the board.

ARM 24.26.610.

The term "section" is defined by state law as the "principal unit of a bureau." § 2-15-104(2)(c), MCA. The plumbing/mechanical section is a principal unit of the Inspection Services Bureau, and therefore may be a unit for collective bargaining if found to be appropriate. The phrase "or combination thereof" in ARM 24.26.610 appears to authorize a unit which combines a section with other sections or parts of a bureau.

To determine whether a unit is appropriate, then, consideration must be given to each of the statutory factors and how they apply to the facts of this case:

Community of interest.

It is undisputed that the employees proposed for inclusion in the unit requested by the Association have a community of interest based on their skills and training and the type of inspections being performed. Although the Association maintains that it does not seek a "craft" unit, it appears that the

Association seeks the creation of this unit because of the affiliation between the plumbing/mechanical and boiler inspectors with the craft generally represented by the Association. Plumbing/mechanical inspectors and boiler inspectors have similar skills and knowledge because the systems they inspect are mechanical systems and involve integrated piping systems. Further, the employer's organizational structure follows craft lines, with the Bureau being divided into sections for plumbing/mechanical, electrical and building.

Wages, hours, fringe benefits, and other working conditions of the employees involved

These factors are similar for all inspectors, whether in the unit proposed by the Association or by the Department.

History of collective bargaining

There is no history of collective bargaining in either of the proposed units.

Common supervision

Most of the employees proposed for inclusion in the Association's unit report to a field level supervisor. The field level supervisor and the boiler inspectors report directly to Bureau Chief. All of the inspectors, to some degree, report to the Bureau Chief. All of the inspectors work alone and are unsupervised in performing their day to day work.

Common personnel policies

All employees in the Bureau are subject to common personnel policies.

Extent of integration of work functions

The integration of work functions between employees in the Bureau is extremely limited. Employees live and work in separate cities around the state. The completion of inspections by one employee is not related to completion of inspections by another. Inspectors from the different sections sometimes informally coordinate their work when they can, but they are not dependent on each other to complete their work. Although the employer attempted to emphasize that its mission was to provide well rounded code compliance, the work functions are not integrated in any way that would affect the unit established for collective bargaining.

Interchange among employees affected

This factor is similar to the integration of work factor. Due to geography, interchange among employees in the Bureau is limited. The Department's organization structure neither requires or promotes regular employee contact. Interchange between employees occurs informally, such as with breakfast meetings of inspectors from different sections and the deputy state fire marshall working in the same area, or when the Bureau conducts training for all inspectors.

Desires of the employees

The majority of the plumbing/mechanical inspectors and the boiler inspectors desire the unit proposed by the Association.

Considering all of the factors set out in the statute together with the purposes of the Public Employees Collective Bargaining Act, the unit proposed by the Association is appropriate. The key factor is community of interest, and all of the other factors are subsidiary in determining the overall community of interest. The Association has established a community of interest among the employees in its proposed unit. The affected employees have similar skills and training and perform related work. In addition, the factors of common supervision, integration of work functions, interchange among employees and desires of the employees support the factor requested by the Association. The Department has organized the Inspection Services Bureau around craft lines, and a unit which relies on those organizational lines is appropriate.

The factors of wages, hours, fringe benefits, and other working conditions of the employees involved, and common personnel policies are of limited significance in determining units within state agencies. Most of these factors are governed by state statute or policies adopted for all agencies. Further, because there has been no history of collective bargaining, this factor provides no guidance in the determining the appropriate unit in this workplace.

The Department maintains that a unit consisting of only the plumbing/mechanical inspectors and boiler inspectors is inappropriate because their interests are not sufficiently distinct from those shared with other inspectors in the Inspection Services Bureau to justify a separate unit for collective bargaining.

In analyzing the Department's argument, it is appropriate to consider cases decided under federal law. Section 9(b) of the National Labor Relations Act gives the National Labor Relations Board (NLRB) comparable authority to determine appropriate bargaining units. Thus, the Montana Supreme Court and the Board of Personnel Appeals follow federal court and NLRB precedent to interpret the Montana Act. State ex rel. Board of Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d 1117(1979); Teamsters Local No. 45 v. State ex rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310 (1981); City of Great Falls v. Young (Young III), 211 Mont. 13, 686 P.2d 185 (1984).

There are several flaws in the Department's position. First, the law is clear that the role of the Board is not to determine the most appropriate unit, but only an appropriate unit.

In determining an appropriate bargaining unit . . . the Board seeks to fulfill the objectives of ensuring employee self-determination, promoting freedom of choice in collective bargaining, and advancing industrial peace and stability. Under the Act, our task is to determine not the most appropriate or comprehensive unit, but simply an appropriate unit. In doing so, we look first to the unit sought by the petitioner. If it is appropriate, our inquiry ends. If, however, it is inappropriate, the Board will scrutinize the employer's proposals.

Dezcon, Inc., 295 NLRB 109 (1989).

Second, the cases on which the Department relies for the proposition that the proposed unit must have a distinct community of interest are distinguishable from this case. The primary cases relied on by the Department are Kalamazoo Paper Box Corp., 134 NLRB 134 (1962), Dow Chemical Co., 202 NLRB 17 (1973), and International Union of Elevator Constructors, Local #60 v. Montana University System, UD 20-85 (1987). These are craft severance cases. A craft severance case is one in which a proposal is made to sever a craft unit from a previously established collective bargaining unit.

A craft unit is one "consisting of a distinct and homogeneous group of skilled journeyman craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment." Burns and Roe Services Corp., 313 NLRB 1307 (1994). The present case does not present a craft severance issue. Despite the Department's organization around craft lines and requirement of

craft licensing, the employees in the unit are not engaged in the performance of tasks requiring substantial craft skills and specialized tools and equipment. More importantly, no previously established collective bargaining unit exists. Thus, craft severance principles do not apply. The Association need not establish a distinct community of interest, only that the unit proposed is appropriate.

The other previous Board decision involving inspectors from various crafts was International Brotherhood of Electrical Workers Local No. 122 v. City of Great Falls, UD 49-74 (1975). In that case, the Board rejected an argument by the employer that the crafts must be separate, even though the affected employees wanted a combined unit. The facts of UD 49-74 are distinguishable from this case because it is the employees who are seeking the separate unit.

In summary, the unit proposed by the Association is appropriate. Therefore, it is unnecessary to address the unit proposed by the Department.

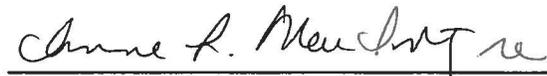
V. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction over this matter pursuant to § 39-31-207, MCA.
2. The unit proposed by the Association which seeks to represent the plumbing/maintenance and boiler inspectors in the Department's Inspection Services Bureau is an appropriate unit for collective bargaining purposes.

VI. RECOMMENDED ORDER

An election by secret ballot shall be conducted as early as possible, in accordance with the rules and regulations of the Board of Personnel Appeals, among the employees in the bargaining unit consisting of the plumbing/mechanical inspectors and boiler inspectors in the Inspection Services Bureau, Building Codes Division, Department of Commerce, excluding direct supervisors of those inspectors.

DATED this 2nd day of June, 2000.


Anne L. MacIntyre, Hearing Officer
Board of Personnel Appeals

Pursuant to ARM 24.26.215, this RECOMMENDED ORDER will become the Final Order of the Board unless written exceptions are postmarked no later than June 28, 2000. 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 errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

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

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:

JOHN FORKAN
BUSINESS MANAGER
UA 41
P O BOX 3172
BUTTE MT 59702

MICHAEL LANGE
P O BOX 30616
BILLINGS MT 59107

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 Interdepartmental mail service.

KEVIN McRAE
LABOR RELATIONS BUREAU
ROOM 130 MITCHELL BUILDING
HELENA MT 59601

DATED this 5th day of June, 2000.

Sandy Duncan