

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION NOS. 10-2006 AND 12-2006:

AMERICAN FEDERATION OF)	Case Nos. 1778-2006 and 1953-2006
STATE, COUNTY AND MUNICIPAL)	
EMPLOYEES, MONTANA COUNCIL)	
NO. 9, AFL-CIO,)	
)	
Petitioner,)	
)	
vs.)	
)	
OFFICE OF THE STATE PUBLIC)	ORDER FOR CONSENT ELECTION
DEFENDER,)	
)	
Respondent,)	
)	
and)	
)	
INTERNATIONAL BROTHERHOOD)	
OF TEAMSTERS and its affiliated)	
Locals 2 and 190, TEAMSTERS)	
JOINT COUNCIL 3,)	
)	
Intervenor and)	
Counter-Petitioner.)	

* * * * *

On March 1, 2006, the American Federation of State, County and Municipal Employees, Montana Council 9, AFL-CIO (AFSCME) filed a petition for new unit determination (UD 10-2006) with the Board seeking establishment of a unit for collective bargaining comprised of:

All attorneys employed as public defenders and research attorneys in all Regions for the Office of the State Public Defender, excluding confidential employees and supervisors as defined by the Act and attorneys employed as independent contractors.

On March 15, 2006, the Office of the State Public Defender (OSPD) filed a response to the petition, asking that it be dismissed on the ground that it was premature, but concurring with the proposed unit description.

On March 27, 2006, International Brotherhood of Teamsters Joint Council 3 filed a petition to intervene in the proceeding.

On March 27, 2006, International Brotherhood of Teamsters Local No. 190 filed a petition for new unit determination (UD 12-2006) with the Board seeking establishment of a unit for collective bargaining comprised of:

All attorneys employed as public defenders and research attorneys in Region 9 for the Office of State Public Defender, excluding confidential employees and supervisors as defined by the Act, attorneys employed as independent contractors, and all attorneys employed as public defenders and research attorneys in Regions 1 - 8, 10, and 11.

On March 30, 2006, the Board transferred UD 10-2006 to the Hearings Bureau for further proceedings in the case.

On April 4, 2006, the OSPD filed a response asking that the petition be dismissed because it was premature and contending that the unit proposed by Local 190 was not appropriate for collective bargaining. It maintained that an appropriate unit would be comprised of all attorneys employed as public defenders and research attorneys.

Following a scheduling conference on April 13, 2006 on UD 10-2006, the hearing officer set a briefing schedule concerning planned motions and consolidated UD 10-2006 and UD 12-2006 effective April 20, 2006 (the day following the deadline for intervention in UD 12-2006). On April 21, 2006, the Board transferred UD 12-2006 to the Hearings Bureau.

On May 11, 2006, AFSCME and Teamsters Joint Council 3 and Local 190 filed a motion for immediate hearing. On May 15, 2006, OSPD filed a motion for summary judgment. On May 19, 2006, OSPD filed a response to the motion for immediate hearing. On May 23, 2006, AFSCME and Teamsters Joint Council 3 and Local 190 filed responses to the motion for summary judgment.

On May 23, 2006, the hearing officer held a prehearing conference with counsel to discuss the pending motions and the schedule in the case. At the

conference, counsel for the parties indicated that they had arrived at an agreement in principle about how to proceed. The OSPD withdrew its motion for summary judgment. Counsel sought an immediate hearing on the issue of the appropriate unit in this matter so that a mail ballot election could be held by June 15, 2006. Accordingly, the parties set a schedule of proceedings for expedited completion of the hearing, which was scheduled to commence on June 6, 2006.

On June 5, 2006, counsel for Teamsters Joint Council 3 and Local 190 withdrew its petition for a separate unit consisting of Region 9. In a conference with the hearing officer, counsel for all parties agreed that a hearing was unnecessary as a result of the agreement of all parties that a statewide unit was the appropriate unit. The hearing officer therefore vacated the scheduled hearing. The parties reached a consent agreement and consented to the order memorializing the provisions of the order set forth below.

Based upon the agreement of the parties, a consent election is now appropriate pursuant to Admin. R. Mont. 24.26.620(1)(b)(iii) and (3). The parties agreed that the affected employees have had actual notice of the petitions in this case since March 2006, and because the election will be by mail ballot, all parties waive the notice requirements of Admin. R. Mont. 24.26.659 so that ballots can be mailed on June 12, 2006, and that any notices sent can be done by e-mail. The parties have also agreed that both AFSCME and Teamsters Joint Council 3 should appear on the ballot, that the Board may use the work addresses of the eligible voters, and that ballots should be mailed to eligible voters during the week beginning June 12, 2006, but not later than June 15, 2006.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All public defenders and research attorneys employed by the Office of the State Public Defender share a community of interest.
2. Pursuant to Mont. Code Ann. § 39-31-202, the appropriate unit for collective bargaining in the Office of the State Public Defender is:

All public defenders and research attorneys employed by the Office of the State Public Defender in all regions, excluding attorneys employed as appellate defenders, confidential employees and supervisors as defined by the Act, and attorneys employed as independent contractors.

3. A secret ballot election pursuant to Mont. Code Ann. § 39-31-208 among those employees in the appropriate bargaining unit is hereby directed.

a. The Office of State Public Defender must provide its Excelsior list of employees in the bargaining unit and their addresses to the Board no later than June 9, 2006. In accordance with the agreement of the parties, the employer may use the work addresses of the employees.

b. Both the American Federation of State, County and Municipal Employees, Montana Council 9, AFL-CIO, and Teamsters Joint Council 3 of the International Brotherhood of Teamsters will appear on the ballot.

c. Ballots must be mailed to eligible employees during the week of June 12, 2006, but not later than June 15, 2006.

DATED this 8th day of June, 2006.

BOARD OF PERSONNEL APPEALS

By:



ANNE L. MACINTYRE
Hearing Officer

* * * * *

CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, and addressed as follows:

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The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by means of the State of Montana's Interdepartmental mail service.

David Ohler (Counsel for Respondent)
Department of Administration
P.O. Box 200101
Helena, MT 59629-0101

DATED this 8th day of June, 2006.

Sandy Duncan