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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF ULP NOS. 29, 31,
32 and 34-1976:

MARIE MILLER, et al., former)
members of Billings School Bus)
Drivers Assn.,)

Complainants,)

-VS-

ORDER

ROY MORIN, SCHOOL DISTRICT)
TRANSPORTATION DIRECTOR, BILLINGS)
SCHOOL DISTRICT NO. 2,)

Defendants.)

A Findings of Fact, Conclusion of Law and Proposed Order was issued in the above-entitled matter on February 17, 1977, dismissing the Petition for Unfair Labor Practic charges.

Exceptions to the Order of Jerry L. Painter, Hearing Examiner, were filed by Petitioner's Attorney, Rosemary C. Boschert.

Oral argument was presented on May 10, 1977, by Ms. Rosemary Boschert on behalf of Petitioner Marie Miller, et al, and by Mr. Todd Baugh on behalf of School District No. 2.

After reviewing the record and considering the briefs and oral arguments, the Board makes the following Order:

IT IS ORDERED, that the Findings of Fact, Conclusions of Law and Proposed Order issued in the above entitled matter be affirmed.

NOTE: Defendant requested that this Board explain why this appeal was accepted after the twenty (20) days provided for filed exception to a proposed decision or order as stated in MAC 24-3.8(26)-S8320. It is true that our rules contemplates the filing of exception within 20 days. Since the issue involved in this decision involved jurisdiction and not the issues in the case, this Board felt that Defendant would not be

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BEFORE THE BOARD OF PERSONNEL APPEALS

MARIE MILLER, et al., former members of)
Billings School Bus Drivers Assn.,)
Complainants,)
V)
ROY MORIN, SCHOOL DISTRICT TRANSPORTATION)
DIRECTOR, BILLINGS SCHOOL DISTRICT NO. 2,)
Defendants.)

ULP-29-31-32-34-1976

O R D E R

FACTS

Marie Miller, a former bus driver for B. W. Jones and Sons, Inc., the company having the contract for school bus service for School District #2. Billings, filed an unfair labor practice charge with this Board alleging in essence that she was not rehired by B. W. Jones and Sons, Inc., because of her union activities which is in violation of section 59-1605, R.C.M. 1947. Ms. Miller further alleged, "Also, I feel that Mr. Roy Morin, who is the transportation director for School District #2, had something to do with my not being re-hired".

A summons was served on Roy Morin by this Board directing him to file a written answer concerning the charge. On October 3, 1976, Mr. Morin made a special appearance before this Board for the "special and sole purpose of objecting to the jurisdiction of this Board in this matter...." Briefs were submitted by both parties concerning the question of whether or not this Board has the jurisdiction to hear this unfair labor practice charge.

DISCUSSION

There are two issues which must be decided:

- 1. Is B. W. Jones and Sons, Inc., a public employer as defined in section 59-1602(1)?
- 2. Is School District #2 a public employer of Marie Miller?

The first issue is easily disposed of. Section 59-1602(1) in pertinent part reads:

"59-1602. Definitions. When used in this act: (1) "public employer"



1 means the state of Montana or any political subdivision thereof,
2 including but not limited to,...school board..."

3 There is no dispute that B. W. Jones and Sons, Inc. is a Kansas corporation
4 that provides bus service to the school district on a contractual basis. It
5 is not a political subdivision of the state of Montana, and therefore cannot
6 be a public employer.

7 Complainant asserts in her brief that B. W. Jones and Sons, Inc., is a
8 "representative or agent designated by the public employer to act in its interest
9 in dealing with public employees" quoting from 59-1602(1), and thus bringing
10 this complain within the act. There has been, however, no showing that B. W.
11 Jones and Sons, Inc. is anything more than an independent contractor and that
12 the employees in question are anything else but B. W. Jones and Sons, Inc.
13 own employees.

14 Since there can be no doubt that a school board is a public employer, for
15 it is specifically mentioned in the above-quoted statute, the second issue is
16 then whether or not the school board is the public employer of Marie Miller.

17 Under the Public Employees Collective Bargaining Act, specifically section
18 59-1603(1), public employees have the right to bargain collectively on
19 "questions of wages, hours, fringe benefits, and other conditions of employment".
20 It logically follows, therefore, in order for a public employer to be considered
21 the employer of an employee under this act, it must have some control
22 over those items which are negotiable, namely wages, hours, fringe benefits,
23 and other conditions of employment.

24 The relationship that exists between the School District, B. W. Jones and
25 Sons, Inc. and Ms. Miller is set out in the contract that exists between the
26 School District and B. W. Jones and Sons, Inc. (Appendix A).

27 An analysis of that contract shows us that the contract very specifically
28 sets out the type and quality of vehicles which are required by the School
29 District. The contract also states the qualifications of the bus drivers to be
30 hired by the bus company. Most of those qualifications are required by
31 statute. (SEE: 75-7003). The contract also delineates special safety clinics
32 which the drivers are required to attend.

1 The contract further states that the routes and operating time schedules
2 shall be furnished by the School District to the operator.

3 Nowhere, however, in the contract is there any control given by B. W.
4 Jones and Sons, Inc., to the School District as to hiring and firing, wages,
5 and hours, fringe benefits, and other conditions of employment of its employees.
6 The contract itself is limited to equipment, safety, and scope of service. It
7 is logical that a school district should be concerned and therefore specifically
8 contract on those matters.¹

9 It should be noted that a representation petition was filed under section
10 9(c) of the National Labor Relations Act involving the same parties involved in
11 this dispute. The Regional Director for the National Labor Relations Board found
12 that the NLRB had no jurisdiction. (SEE: Appendix #8) The regional director
13 stated on page 3:

14 "I find that, pursuant to their above-described contractual
15 agreements, the school districts with whom the Employer has contracts
16 exercise such a degree of control over the labor relations and daily
17 operations of the Employer that the latter is left without sufficient
18 autonomy over its employees' working conditions to enable it to
19 bargain efficaciously with Petitioner. Accordingly, I find it would
20 not effectuate the purposes of the Act to assert jurisdiction herein.
21 Ohio Inns, Inc., 205 NLRB 528; Servomation Mathias Pa., Inc., 200
22 NLRB 1063; and Slater Corporation, 197 NLRB 1282. I shall, therefore,
23 dismiss the petition."²

24 This hearing examiner, however, does not find that the School District has
25 any control over the labor relations and daily operations of the Employer other
26 than minimal, necessary controls. It therefore appears that we have a situation

27 *1. It ought to be pointed out that the statutory law for pupil transportation both
28 federal and state, is quite extensive. See for example:*

29 *Pupil Transportation Standard 17*

30 *75-5805, 75-5932, 75-5933, 75-6808, 75-6809, 75-6809.1, 75-6810, 75-7001 thru*
31 *75-7024, 32-2102, 32-2108, 32-21-132, 23-21-133, 32-21-148, 32-21-149,*
32 *32-21-152, 32-21-155, 32-21-155.1, and 32-21-156.*

*It therefore becomes necessary for a school district to see that these statutory
obligations are met.*

33 *2. Having reviewed the case cited by the regional director in dismissal of the*
34 *representation petition filed with the NLRB, this hearing examiner finds that the*
35 *School District exercises nowhere near the type of amount of control over the*
36 *employees of the bus company that existed in the cited cases. The specific examples*
37 *of control by the School District cited by the regional director affects only*
38 *marginally if at all the hiring, firing, wages, hours, fringe benefits, and other*
39 *conditions of employments of the employees in question. The examples given were*
40 *either statutorily mandated or concerned with safety with the exception of the*
41 *right of the School District to develop bus routes and schedules and the one time*
42 *recommendation of the School District to fire an employee was acted upon by the*
employer. There is still, however, significant matters left for collective bar-
gaining between the employer and employee.

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where the National Labor Relations Board has refused jurisdiction, and where this Board is unable to establish jurisdiction. Unfortunately, are there no statutes in Montana for control of collective bargaining in the private sector.

ORDER

Having found that this Board has no jurisdiction in the matters alleged in the petition filed with this Board by the Petitioner, it is ordered that the petition be dismissed.

Dated this 17th day of February, 1977.

BOARD OF PERSONNEL APPEALS

BY Jerry L. Painter
Jerry L. Painter
Hearing Examiner

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CERTIFICATE OF MAILING

I, Vonda Brewster, hereby certify and state that I did on the 17th day of February, 1977, mail a copy of the above ORDER to the following:

J. Mayo Ashley
Special Assistant Attorney General
Labor Standards Division
State of Montana
Dept. of Labor and Industry
Helena, MT 59601

G. Todd Baugh
Davidson, Veeder, Baugh & Broeder
Midland National Bank Building
Billings, MT 59101


Vonda Brewster