

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE #19-1979:

MONTANA PUBLIC EMPLOYEES
ASSOCIATION, INC., on behalf
of MARTIN STAFFORD and ELAINE
BROWN,

Complainants,

vs.

COUNTY COMMISSIONERS, CASCADE
COUNTY, MONTANA, and C.L.
O'CONNELL, CASCADE COUNTY
TREASURER,

Defendants.

FINAL ORDER

No exceptions having been filed, pursuant to ARM 24.26.107,
to the Findings of Fact, Conclusions of Law and Recommended Order
issued on April 7, 1980;

THEREFORE, this Board adopts that Recommended Order in this
matter as its FINAL ORDER.

DATED this 22nd day of August, 1980.

BOARD OF PERSONNEL APPEALS

BY: Brent Cromley
Brent Cromley
Chairman

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify and state
that I did on the 25th day of August, 1980 mail a true and correct
copy of the above FINAL ORDER to the following:

MPEA, Inc.
P.O. Box 5600
Helena, MT 59601

C.L. O'Connell, Treasurer
Cascade County Courthouse
Great Falls, MT 59401

Cascade County Commissioners
Cascade County Courthouse
Great Falls, MT 59401

Dennis McCafferty
430 Northwestern Bank Building
Great Falls, MT 59401

Gary M. Zadick
Alexandor and Baucus
Strain Building
Great Falls, MT 59401

Barry L. Hjort
111 North Last Chance Gulch
Helena, MT 59601

Jennifer Jacobson

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

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MONTANA PUBLIC EMPLOYEES)
ASSOCIATION, INC., on behalf)
of MARTIN STAFFORD and ELAINE)
BROWN,)

Complainants,)

vs.)

COUNTY COMMISSIONERS, CASCADE)
COUNTY, MONTANA, and C.L.)
O'CONNELL, CASCADE COUNTY)
TREASURER,)

Defendants.)

* * * * *

FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

* * * * *

I. INTRODUCTION

The Montana Public Employees Association (herein MPEA) has charged the Cascade County Commissioners and the Cascade County Treasurer with violating Montana's Collective Bargaining for Public Employees Act by refusing to submit a labor contract dispute to arbitration as set forth in the labor agreement. The labor contract dispute concerns the dismissal or not rehiring of Martin Stafford and Elaine Brown (herein Stafford, Brown), Deputy County Treasurers.

This RECOMMENDED ORDER is divided into the major areas of I, Introduction, II Findings of Fact, III The Constitution and Statutory Outline, IV Discussion, V Conclusions of Law and VI Recommended Order. The largest part of this Order deals with the County Treasurer's, C. L. O'Connell, issue; "Who is the Public Employer of Stafford and Brown?"

II. FINDINGS OF FACTS

A. The parties entered into the following stipulation:

For purposes of resolving the issues raised by the Answer of Defendant C. L. O'CONNELL, the parties stipulate as follows:

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2 1. At all times material hereto the Montana Public
3 Employees Association (herein MPEA) was certified as the ex-
4 clusive bargaining representative for affected employees of
5 Cascade County.

6 2. MPEA, the Cascade County Commissioners, George Schroeder,
7 as Cascade County Treasurer, and others signed an agreement (a
8 copy of which is attached hereto as Exhibit "A" and incor-
9 porated herein by this reference) entitled "Agreement Between
10 Montana Public Employees Association and Cascade County" which
11 was by its terms effective from the period of July 1, 1977
12 through June 30, 1979.

13 3. George L. Schroeder, was the duly elected Cascade
14 County Treasurer at the time he signed the agreement.

15 4. Defendant C. L. O'CONNELL was duly elected Cascade
16 County Treasurer on November 11, 1978 and took his oath of
17 office and assumed the office on March 5, 1979.

18 5. Defendant C. L. O'CONNELL is not a signature party to
19 the agreement.

20 6. On February 5, 1979, Defendant C. L. O'CONNELL advised
21 MARTIN STAFFORD and ELAINE BROWN, who at that time worked in
22 the Cascade County Treasurer's Office, by letter that they
23 would not be rehired after March 2, 1979 which was the end of
24 the term of office of George L. Schroeder, the then Cascade
25 County Treasurer.

26 7. MARTIN STAFFORD and ELAINE BROWN have not worked in
27 the Cascade County Treasurer's Office since 5:00 o'clock P.M.,
28 March 2, 1979.

29 8. MARTIN STAFFORD and ELAINE BROWN, through the MPEA
30 are asking for reinstatement, among other things, to their
31 positions in the Treasurer's Office under the terms of the
32 agreement.

33 9. That this Stipulation shall serve as the record for
34 purposes of resolving the issues raised by the Answer of
35 Defendant C. L. O'CONNELL, and that the parties shall have
36 thirty (30) days from the date of this Stipulation to file
37 briefs.

38 The parties later entered into the following stipulation:

39 The parties supplement the Stipulation previously filed
40 herein on August 30, 1979, as follows:

41 In addition to the stipulated facts set forth in the prior
42 Stipulation, the parties stipulate that MARTIN STAFFORD AND
43 ELAINE BROWN were duly appointed Deputy County Treasurers
44 during their employment in the Cascade County Treasurer's
45 Office.

46 B. MPEA, the Cascade County Commissioners, George R. Schroeder,
47 Cascade County Treasurer, and others signed a collective bargaining
48 agreement (Exhibit "A") effective from July 1, 1977 through

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June 30, 1979. The collective bargaining agreement contains the following significant articles:

PREAMBLE
[Page 1]

THIS AGREEMENT, made and entered into this _____ day of _____, 1977, at Great Falls, Cascade County, Montana, by and between THE MONTANA PUBLIC EMPLOYEES ASSOCIATION, hereinafter referred to as the "ASSOCIATION" and CASCADE COUNTY, hereinafter referred to as the "EMPLOYER" WITNESSETH:

ARTICLE 1
RECOGNITION
[Page 1]

The EMPLOYER recognizes the ASSOCIATION as the exclusive bargaining agent for the following employees:

- 1. All Deputies, and clerks and Assistants and other employees except those who are elected in the following offices of the Cascade County Courthouse: Clerk and Recorder, Treasurer, Auditor, County Commissioners, Surveyors, Superintendent of Schools, Clerk of the Court, Justice of the Peace, County Attorney except the legal staff, non-uniformed personnel in the Sheriff's Office, IBM, Switchboard, Probation Office, Public Defender except legal staff, one floating position. (Secs. 16-3701 to 16-3706, 75-5804 and 16-3301, R.C.M. 1947.)
- 2. Other secretarial, bookkeeping, stenographic and clerical employees of Cascade County, authorized by the Laws of Montana. (Sec. 16-2409 and 16-913.)
- 3. Other employees of Cascade County who choose to be represented by the ASSOCIATION.

ARTICLE 17
JOB SECURITY
[Pages 7 and 8]

Section 1: Probationary Period.

- A. The probationary period shall be utilized for the most effective adjustment of a new employee and for the elimination of any employee whose performance does not in the judgment of the appointing authority meet the required standards of performance.
- B. The probationary period shall be six (6) months.
- C. If the appointing authority determines at any time during the probationary period that the services of the probationary employee are unsatisfactory, the employee may be separated upon written notice by te Employer.

Section 2: Permanent Status.

- A. Any employee who has not been notified fifteen (15) days prior to the end of his probationary period shall automatically attain permanent status.

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2 Section 3: Dismissal:

3 A. The Employer may remove any employee with permanent
4 status only for cause, but not before furnishing the
5 employee and the Association personally or by registered
6 mail with a written statement of the statutory or other
7 grounds and the specific reasons for dismissal in suf-
8 ficient detail to apprise the employee of the facts. The
9 Employer shall include in the written statement to the
10 employee notice of the employee's right to appeal in
11 writing to the Executive Body within thirty (30) days from
12 the date of notice of dismissal.

13 This provision shall not, however, be construed as pre-
14 cluding the Employer from relieving an employee immediately
15 from his official position or from excluding him from his
16 post or place of duty or employment pending preparation
17 and giving notice of dismissal, but no pay shall be withheld
18 for such period.

19 B. An employee with permanent status may, in addition,
20 appeal his dismissal through the grievance procedure.

21 C. Any suspension which results in time off without pay
22 may be appealed through the grievance procedure. If
23 appealed, the suspension cannot begin until after the
24 final decision is given.

25 D. The change of Elected Official for political reasons
26 shall have no effect on the employees' status for longevity
27 or pay.

28 E. Employees shall retire at the end of the fiscal year
29 in which they reach age sixty-five (65). Continuation of
30 employment beyond age sixty-five (65) will be permitted at
31 the Employer's option when requested in writing at least
32 six (6) months prior to the end of the fiscal year in
which the employee reached age sixty-five (65). Employment
will be continued one (1) year at a time.

ADDENDUM A
GRIEVANCE PROCEDURE
[Pages 10 and 11]

23 Section 1: For the purposes of this grievance procedure,
24 a grievance exists whenever "an employees (SIC) feels his
25 employment has been adversely affected either by an action or
inaction of someone against him or her."

26 Section 2: For the purpose of this grievance procedure,
27 the Employer shall define in writing the following terms:

- 28 (1) Immediate Supervisor (if position exists)
29 (2) Elected Official
30 (3) County Commissioners

31 Section 3: All hearings on grievance appeals shall be
32 closed to the public. The employee shall have the right to
representation as follows:

- (1) The term "employee" shall also mean the employee's
representative.

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2 (2) MPEA shall, if requested by the employee, act as the
3 representative of the employee and so notify the employee
4 and the Employer.

5 (3) The employee may, at his own expense, or MPEA, at its
6 own expense, select any attorney to represent the employee.

7 Section 4: The parties hereby agree that informal discussion
8 is encouraged, however, if, through informal discussion an
9 employee's grievance is not resolved, he may seek relief by
10 following the steps below, in sequence shown:

11 (1) An employee who feels aggrieved and wishes to file a
12 formal grievance shall state his grievance in writing within
13 fifteen (15) days of the origin of the problem and shall give
14 his statement to the Immediate Supervisor.

15 This statement shall contain the following:

16 a) The employee's name, b) his position, classification,
17 or title, c) his department and section, d) his mailing
18 address, e) a brief statement of the nature of his grievance,
19 f) proposed solution to the grievance, g) signature of the
20 employee, and, h) date statement was signed by employee.

21 (2) If, within five (5) working days and after receiving
22 the written decision of the Immediate Supervisor, the employee
23 is still dissatisfied, he may forward his request to the Elected
24 Office Head.

25 (3) If, within five (5) working days and after receiving
26 the written decision of the Elected Office Head, the employee
27 has not received satisfactory relief, he may file his request
28 with the County Commissioners, who shall hold a hearing within
29 ten (10) working days after receiving the employee's request.
30 The County Commissioners shall render a decision within five
31 (5) working days following the hearing. Within the established
32 time limitation, the County Commissioners may appoint or utilize
an individual or a committee to assist and recommend a course
of action.

(4) If the employee is still dissatisfied, he may request
binding arbitration through the Board of Personnel Appeals,
Department of Labor and Industry.

(a) The request shall be for the names of five (5)
individuals qualified as arbitrators.

(b) With the employee choosing first, each side will
cross off one name alternately until a single name remains.
This will be the name of the binding arbitrator.

(c) The arbitrator shall have access to all of the materials
and information used in previous hearings and any other
information he may request.

(d) The arbitrator shall hold a hearing within fifteen
(15) working days of his receipt of the request for binding
arbitration. The decision of the arbitrator shall be made
within thirty (30) days and will be final and binding.

(e) Each side in the dispute will pay one-half ($\frac{1}{2}$) of the
cost of the binding arbitration.

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2 ADDENDUM B
3 ARTICLE 17
4 JOB SECURITY
5 [Page 12]

6 This Article does not apply to people employed under
7 specially funded programs as long as they remain on these
8 programs.

9 TERM OF AGREEMENT

10 THIS AGREEMENT is effective July 1, 1977, and shall continue
11 in full force and effect until the 30th day of June, 1979, at
12 which time thereafter, unless written notice is given by either
13 party to the other party before the 1st day of May of any year,
14 indicating that changes in the Agreement are desired of [or] for
15 termination of the Agreement. Such notice shall set forth the
16 changes requested to be made in the Agreement or termination of
17 the Agreement.

18 IN WITNESS WHEREOF, we have hereunto set our hands on the
19 day and year first above written:

20 CASCADE COUNTY, MONTANA AND
21 THE BOARD OF COUNTY COMMIS-
22 SIONERS OF CASCADE COUNTY,
23 MONTANA

24 THE MONTANA PUBLIC
25 EMPLOYEES ASSOCIATION,
26 INC.

27 s/BY: John St. Jermain
28 Chairman of the Board of County
29 Commissioners, Cascade County

30 s/BY: Thomas E. Schneider
31 Thomas E. Schneider
32 Executive Director

33 s/BY: J. L. Lennon
34 Clerk and Recorder

35 s/BY: James S. Wilson
36 Cascade Co. Chapter
37 President

38 s/BY: George R. Schroeder
39 Treasurer

40 s/BY: Lucille Evans
41 Member, Negotiating
42 Team

43 s/BY: _____
44 Auditor

45 s/BY: Mary Ann Butler
46 Member, Negotiating
47 Team

48 s/BY: Robert L. Batista
49 Surveyor

50 s/BY: Robert E. Bateman
51 Member, Negotiating
52 Team

53 s/BY: Gladys E. Harvey
54 Superintendent of Schools

55 s/BY: Florence McGiboney
56 Clerk of Court

57 s/BY: Patrick L. Paul
58 Justice of the Peace

59 s/BY: J. Fred Bourdea
60 County Attorney

61 s/BY: L.W. Fasbender
62 County Commissioner

63 s/BY: Franklin H. Steyart
64 County Commissioner

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C. On November 1, 1979, the Hearing Examiner took Administrative Note of Unit Determination No. 10-75, Cascade CountyMPEA election. A portion of the Unit Determination No. 10-75 file contains the following:

May 1, 1975

Mr. Patrick F. Hooks, Chairman
Board of Personnel Appeals
1434 Roberts
Helena, Montana 59601

Dear Mr. Hooks:

Pursuant to rule Sub Chapter 10-24-3.8(10-S8020 (3), the Montana Public Employees Association does hereby file this petition for a New Unit Determination:

- (i) All employees except those who are elected in the following offices of the Cascade County Courthouse. Clerk and Recorders, Treasurer's, Auditors, Surveyors, Supt. of Schools, Clerk of Court, Justice of the Peace, County Attorney except the legal staff, Non-uniform personnel in the Sheriff's office, IBM, Switchboard, Probation office, Public Defender except legal staff, one floating position.
- (ii) Non meeting has been held with the employer but to our knowledge all of these employees are courthouse employees and the unit is all inclusive of those who are eligible.
- (iii) Non other labor organization to our knowledge.
- (iv) There are no current or past contracts covering these employees.
- (v) There are 70 employees in this unit.

This petition is accompanied by authorization cards which total in excess of the required thirty percent (30%).

Thank you...

Sincerely yours,

s/Thomas E. Schneider
Executive Director

BEFORE THE BOARD OF PERSONNEL APPEALS
STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION
Unit Determination No. 10(1975)

* * *

8. The election shall be held on July 14, 1975 from 4:00 P.M. to 6:00 P.M., in Room 112, Cascade County Courthouse, Great Falls, Montana.

9. The appropriate Collective Bargaining Unit is a unit consisting of all non-exempt clerical and general office employees of Cascade County in the following offices: Clerk and Recorder,

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2 Treasurer, Auditor, Surveyor, County Attorney, Justice of the
3 Peace, IBM, Switchboard, Probation Office, Superintendent of
4 Schools, Clerk of Court, Public Defenders, Commissioners, and
5 Sheriff.

6 s/John St. Jermain
7 (EMPLOYER)

s/Thomas E. Schneider
(LABOR ORGANIZATION)

8 (ADDRESS)

Box 1184
(ADDRESS)

9 Cascade Co.
(NAME & TITLE)

MT. Public Employees Assoc.
(NAME & TITLE)

6-30-75
DATE

7/7/75
DATE

DATE APPROVED 7-11-75

s/Robert R. Jensen
Executive Secretary
Board of Personnel Appeals

July 21, 1975

Cascade County Commissioners
Cascade County Courthouse
Great Falls, Montana 59405

Dear Commissioners:

The purpose of this letter is to certify the results of the election conducted by the Board of Personnel Appeals on July 14, 1975 to determine the representative desired by employees of Cascade County.

There were seventy-two (72) employees eligible to vote of which forty-six (46) valid ballots were cast. Forty-two (42) ballots were cast in favor of representation by the Montana Public Employees Association; and four (4) ballots were challenged by the county under the provisions of MAC 24-3.8(18)-S8230(9) Challenges. (Three additional positions were to be challenged, but those employees did not cast ballots.)

Basis of challenges and Board rulings are as follows:

A. Elaine Brown (County Treasurer's office), Martin Stafford (County Treasurer's office), and Shirley Strand (County Auditor's office). These employees were challenged by Cascade County as "supervisory employees" and "management officials" as defined and exempted by section 59-1602 R.C.M., 1947.

These employees are eligible for collective bargaining representation. They do not possess sufficient supervisory authority or management responsibility to warrant their exclusion from the bargaining unit.

None of the above named employees has the authority to hire or fire subordinates, their chief responsibility being the direction and instruction of fellow employees.

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2 B. Joseph J. Schmidt (Chief Deputy Clerk and Recorder),
3 Margaret E. Lindstrand (Chief Deputy County Superintendent
4 of Schools), and Joseph E. Zupan (Chief Deputy Clerk of
5 Court). These employees were also challenged by the
6 county with reference to section 59-1602 R.C.M. 1947.

7 The Board has determined, based on its investigation, that
8 these employees do have sufficient supervisory authority
9 and management responsibility and are therefore exempt
10 from the bargaining unit.

11 C. Jean Ann Carlsen (secretary to the County Commis-
12 sioners). Cascade County challenged this position based
13 on the confidential nature of her work with respect to
14 labor-management relations. The Montana Public Employees
15 Collective Bargaining Act does not provide for a "confiden-
16 tial" exemption. Therefore, as the Board of Personnel
17 Appeals has no authority to exclude this employee from
18 collective bargaining representation, she is included in
19 the bargaining unit.

20 Because there is no mathematical possibility of their
21 effecting the results of the election, the challenged ballots
22 determined eligible will not be opened.

23 There being a clear majority, the Board of Personnel
24 Appeals hereby certifies the Montana Public Employees
25 Association as the exclusive representative for collective
26 bargaining purposes for the general office and clerical
27 employees of Cascade County in the following offices: Clerk
28 and Recorder, Treasurer, Auditor, Surveyor, County Attorney,
29 Justice of the Peace, IBM, Switchboard, Probation Office,
30 Superintendent of Schools, Clerk of Court, Public Defenders,
31 Commissioners, and Sheriff.

32 Thank you for your cooperation and assistance in this
matter.

Sincerely,

Robert R. Jensen
Executive Secretary

NOTE: This unit Determination file contains no objections to a
single multi office bargaining unit.

The attorney for Mr. O'Connell argues that the materials in the
Administrative Note..."is not relevant to and has no affect on the
issue of 'who is the public employer' as briefed by this defendant."

III. THE CONSTITUTION AND STATUTORY OUTLINE

A. The Constitution of Montana (Article XI Local Government Section
3, forms of Government) states the following in part:

(2) One optional form of county government
includes, but is not limited to, the election of

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2 three county commissioners, a clerk and recorder, a
3 clerk of district court, a county attorney, a sheriff,
4 a treasurer, a surveyor, a county superintendent of
5 schools, an assessor, a coroner, and a public admin-
6 istrator. The terms, qualifications, duties, and
7 compensation of those offices shall be provided by
8 law. The Board of county commissioners may consoli-
9 date two or more such offices.

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12 B. The County Commissioners' authority in relationship to this
13 matter appears to be as follows in MCA:

14 7-1-2103. County powers. A county has power
15 to:
16 (1) sue and be sued;
17 (2) purchase and hold lands within its limits;
18 (3) make such contracts and purchase and hold
19 such personal property as may be necessary to the
20 exercise of its powers;
21 (4) make such orders for the disposition or
22 use of its property as the interests of its inhabi-
23 tants require;
24 (5) levy and collect such taxes for the purposes
25 under its exclusive jurisdiction as are authorized
26 by this code or by special statutes.

27 7-1-2104. Exercise of county power. A county's
28 powers can only be exercised by the board of county
29 commissioners or by agents and officers acting under
30 their authority or authority of law.

31 7-4-2110. Supervision of county and other officers.
32 The board of county commissioners has jurisdiction
and power, under such limitations and restrictions
as are prescribed by law, to:

(1) supervise the official conduct of all
county officers and officers of all districts and
other subdivisions of the county charged with
assessing, collecting, safe-keeping, management, or
disbursement of the public revenues;
(2) see that they faithfully perform their
duties;
(3) direct prosecutions for delinquencies; and
(4) when necessary, require them to renew
their official bonds, make reports, and present
their books and accounts for inspection.

7-4-2402. Authorization to exceed limitation on
number of deputy officers. The board of county
commissioners in each county is hereby authorized to
fix and determine the number of county deputy officers
and to allow the several county officers to appoint
a greater number of deputies than the maximum number
allowed by law when, in the judgment of the board,
such greater number of deputies is needed for the
faithful and prompt discharge of the duties of any
county office.

7-4-2505. Amount of compensation for deputies and
assistants. (1) Except as provided in subsection
(2), the boards of county commissioners in the

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2 several counties in the state shall have the power
3 to fix the compensation allowed any deputy or assis-
4 tant of the following officers:

- 5 (a) sheriff;
- 6 (b) clerk and recorder;
- 7 (c) clerk of the district court;
- 8 (d) treasurer;
- 9 (e) assessor;
- 10 (f) county attorney;
- 11 (g) auditor.

12 (2) (a) Except as provided in subsection
13 (2)(b), the salary of no deputy or assistant shall
14 be more than 90% of the salary of the officer under
15 whom such deputy or assistant is serving.

16 7-5-2101. General authority of county commissioners.
17 (1) The board of county commissioners has jurisdiction
18 and power, under such limitations and restrictions
19 as are prescribed by law, to represent the county
20 and have the care of the county property and the
21 management of the business and concerns of the
22 county in all cases where no other provision is made
23 by law.

24 (2) The board has jurisdiction and power,
25 under such limitations and restrictions as are
26 prescribed by law, to perform all other acts and
27 things required by law not enumerated in this title
28 or which may be necessary to the full discharge of
29 the duties of the chief executive authority of the
30 county government.

31 C. The County Treasurer's authority in relationship to this matter
32 appears to be as follows in MCA:

33 7-4-2203. County officers. (1) There may be elected
34 or appointed the following county officers, who
35 shall possess the qualifications for suffrage pre-
36 scribed by the Montana constitution and such other
37 qualifications as may be prescribed by law:

- 38 (a) one county attorney;
- 39 (b) one clerk of the district court;
- 40 (c) one county clerk;
- 41 (d) one sheriff;
- 42 (e) one treasurer;
- 43 (f) one auditor if authorized by 7-6-2401;
- 44 (g) one county superintendent of schools;
- 45 (h) one county surveyor;
- 46 (i) one assessor;
- 47 (j) one coroner;
- 48 (k) one public administrator; * * * *

49 7-4-2401. Deputy officers. (1) Every county and township
50 officer, except justice of the peace, may appoint as many
51 deputies or assistants as may be necessary for the faithful
52 and prompt discharge of the duties of his office. All com-
53 pensation or salary of any deputy or assistant shall be as
54 provided in this code.

55 (2) The appointment of deputies, clerks, and subor-
56 dinate officers of counties, districts, and townships must
57 be made in writing and filed in the office of the county
58 clerk.

59 7-4-2403. Official mention of principal officer includes

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2 deputies. Whenever the official name of any principal
3 officer is used in any law conferring power or imposing
4 duties or liabilities, it includes his deputies.

5 7-6-2102. Limitation on number of deputy county treas-
6 urers. (1) Except as provided in subsection (2), the whole
7 number of deputies allowed the county treasurer must not
8 exceed:

- 9 (a) two in counties of the first class;
- 10 (b) one in counties of all other classes.

11 (2) The board of county commissioners may allow such
12 additional deputies as may be necessary during the months
13 of November and December of each year.

14 7-6-2103. Suspension of county treasurer in case of
15 misconduct. Whenever any action based upon official mis-
16 conduct is commenced against any county treasurer, the
17 board of county commissioners may in its discretion sus-
18 pend him from office until such suit is determined and may
19 appoint some person to fill the vacancy.

20 7-6-2111. Duties of county treasurer. The county
21 treasurer must:

22 (1) receive all money belonging to the county and
23 all other money directed to be paid to him by law, safely
24 keep the same, and apply and pay them out, rendering account
25 thereof as required by law;

26 (2) keep an account of the receipt and expenditures
27 of all such money in books provided for the purpose, in
28 which must be entered;

29 (a) the amount, the time when, from whom, and on what
30 account all money was received by him;

31 (b) the amount, time when, to whom, and on what ac-
32 count all disbursements were made by him;

(3) so keep his books that the amounts received and
paid out on account of separate funds or specific appropri-
ations are exhibited in separate and distinct accounts,
with the whole receipts and expenditures shown in one gen-
eral or cash account;

(4) enter no money received for the current year on
his account with the county for the past fiscal year until
after his annual settlement for the past year has been made
with the county clerk;

(5) disburse the county money only on county warrants
issued by the county clerk, based on orders of the board of
county commissioners, or as otherwise provided by law.

7-6-2112. Treasurer's report to county commissioners.

(1) Each county treasurer must make a detailed report, at
every regular meeting of the board of county commissioners
of his county, of all money received by him and the disburse-
ment thereof and of all debts due to and from the county
and of all other proceedings in his office, so that the
receipts into the treasury and the amount of disbursements,
together with the debts due to and from the county, appear
clearly and distinctly.

(2) On the first Monday of January, April, July, and
October of each year the county treasurer must settle with
the board of county commissioners for all money collected
and on said days must deliver to said board affidavits veri-
fying the reconciliation of the balance on hand in the county
treasury. After the approval of such statements and the
accompanying affidavits, one copy of such report shall be
filed with the county clerk of said county and one copy
shall be retained by the county treasurer.

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2 D. County Budget Law.

3 Title 7, Chapter 6, Part 23 MCA sets forth the budget proce-
4 dure for the county taxation and expenditures. In Budget prepara-
5 tion, the procedure requires each county official in charge of
6 an office to file with the county clerk and recorder a detailed
7 and itemized estimation of all probable revenues and expenditures,
8 including wages, required by the office for the next fiscal year.
9 (7-6-2311(2)(c)MCA). After the county clerk and recorder tabu-
10 lates all the estimated revenues and expenditures, the county
11 commissioners shall consider the estimated revenues and expendi-
12 tures. The County Commissioners may make any revisions to the
13 estimated revenues and expenditures. The tabulations of the esti-
14 mated revenues and expenditures plus any revisions made by the
15 County Commissioners is the preliminary budget. (7-6-2313--7-6-2315
16 MCA). After the preliminary budget has been subject to public
17 inspection and a public hearing, the first budget is approved and
18 adopted by the County Commissioners on the second Monday of August.
19 (7-6-2317 MCA). The County then determines cash flow and tax
20 levy. (7-6-2318--7-6-2319 MCA). The final budget is then approved,
21 adopted and entered in detail in the official minutes of the County
22 Commissioners. (7-6-2320 MCA).

23 IV DISCUSSION

24 On May 17, 1979, the MPEA on behalf of Stafford and Brown
25 filed the following unfair labor practice charge, in part:

26
27 That the Board of County Commissioners of Cascade County
28 has engaged in an unfair labor practice violation of Section
29 39-31-401(5) MCA, in that said employer has refused to engage
30 in collective bargaining in good faith with the exclusive
31 representative by refusing to participate in arbitration
32 concerning the dismissal of two employees from the office of
the County Treasurer of Cascade County, all as is required by
the collective bargaining agreement presently in effect between
the parties. Further, that said unfair labor practice occurred
on or about May 7, 1979, as more fully appears from the corre-
spondence of the Board of County Commissioners, dated May 7,
1979, attached hereto as Exhibit "A", and by this reference
made a part hereof.

1
2 Charge Exhibit "A"

3 . . . We [County Commissioners] would rather have the
4 matter decided in court than by an Arbiter.

5 Under current Montana law, if an arbitration process
6 resulted in the County Commissioners being required to reinstate
7 these individuals, it is questionable that we would have the
8 authority to do so. The Treasurer is an elected official and,
9 as such, it is probable that reinstatement of the individuals
10 in question by the Commissioners would end up in court anyway.

11 . . .
12 On May 30, 1979, the County Commissioners answer the above
13 charge as follows, in part:

14 I.

15 The Cascade County Commissioners and the former Cascade
16 County Treasurer, George Schroeder entered a collective bargain-
17 ing agreement with the Montana Public Employees Association,
18 Inc., for a term beginning July 1, 1977 and ending June 30,
19 1979. On March 5, 1979 a newly elected Treasurer, C. L. O'Connell
20 took office. Treasurer O'Connell is not a signatory to the
21 current agreement.

22 II.

23 The Board of County Commissioners of Cascade County will
24 abide by the terms of the Agreement, specifically Addendum A,
25 Grievance Procedure, and will submit to arbitration the current
26 dispute. The current Treasurer, C. L. O'Connell, has refused
27 to cooperate with or be bound by the Grievance Procedure of the
28 current Agreement.

29 III.

30 The Board of County Commissioners, by this ANSWER, does
31 not make any admissions nor denials on behalf of the current
32 Cascade County Treasurer.

On June 18, 1979, MPEA motioned to amend the above charge by
adding the present Cascade County Treasurer, C. L. O'Connell, as a
Defendant. After the motion was granted, and a summons and charge
were served, Mr. O'Connell filed the following answer, in part:

1. This defendant is not a party to the agreement referred to
in the Complaint and is therefore not a proper party to this
proceeding.

2. This defendant is entitled to reasonable costs and expenses,
including attorney's fees, which he has incurred and will incur
in connection with having to appear in this section.

3. The Board of Personnel Appeals does not have jurisdiction
or authority to decide whether or not this defendant is a party
to or bound by the agreement referred to in the Complaint.

4. The Complaint generally fails to state any claim against
this defendant upon which relief can be granted.

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A. JURISDICTION AND LEGAL COST

Mr. O'Connell in his answer states the Board of Personnel Appeals has no jurisdiction in this case. Mr. O'Connell's Brief in this case contains no reference or argument directed to the question of jurisdiction. Therefore, I believe Mr. O'Connell has abandoned that argument.

Like jurisdiction, Mr. O'Connell has not referenced or argued the question of legal cost in his Brief. The parties are directed to Section 39-31-406(4) and (3) MCA. The parties will note the remedies provided the Board of Personnel Appeals do not include awarding legal costs.

B. STAFFORD AND BROWN'S EMPLOYER

There is a labor agreement in effect between the County Commissioners and MPEA governing the employment of Stafford and Brown at the time the complainants were not "rehired". (FF A1, A2, A6, B Preamble, B Article 1, C). The newly elected County Treasurer, Mr. O'Connell, did not ratify or sign the labor agreement. (FF A4, A5, B). Along with other county officials, the former County Treasurer, George R. Schroeder, did sign the labor agreement while in office that is in effect between MPEA and the County Commissioners. (F A2, B).

Mr. O'Connell contends that he is not a party to the labor agreement and therefore is not bound by the labor agreement. Mr. O'Connell also contends that he is the separate, autonomous elected employer of Brown and Stafford.

Who is Stafford and Brown's public employer within the definition of Section 39-31-103(1) MCA?

The Montana Supreme Court in Local 2390 of American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) vs. City of Billings, Montana, et. al. and members of the Board of Trustees of the Billings City Library 555 P2d 507, 93 LRRM 2753 (1976) set forth the following test to find an employee's public employer:

1
2 The appellants [trustees of the Billings City Library] alleged
3 that the agreement between the City and the union was not
4 binding upon the appellants, because they had neither negotiated
5 it nor ratified it. However, the district court held contrary
6 to this position, and entered two judgments, one in favor of
7 the union and Ruth Ware against the City and the appellants,
8 the other in favor of the City on a cross-complaint against the
9 appellants. Appellants appeal both judgments.

6 The only issue determinative of this appeal is whether
7 Ruth Ware's "public employer" within the meaning of the
8 Collective Bargaining for Public Employees Act, sections
9 59-1601 et seq., R.C.M. 1947, [39-31-101 MCA] was the City or
10 the appellants. In the latter situation the agreement would
11 not be binding on the appellants, since a separate and
12 autonomous employer cannot be bound to a contract he has
13 neither negotiated or ratified. Fabijanac v. Sperry Gyroscope
14 Division, 370 F. Supp. 62, 85 LRRM 2666 (1974). On the other
15 hand, should her "public employer" be the City, the appellants
16 are bound by the agreement. [Emphasis added]

12 In the above Montana Supreme Court case, the court set forth
13 the following facts:

14 The appellants contend that they are the "public employer"
15 of Ruth Ware by way of section 44-223, R.C.M. 1947, which
16 states:

16 . . . With recommendation of the chief librarian the board
17 shall employ and discharge such other persons as may be necessary
18 in the administration of the affairs of the library, fix and
19 pay their salaries and compensation and prescribe their duties.

19 * * *

20 We cannot limit our examination of the legislative intent
21 of the Library Systems Act to the section cited by the appellants,
22 but we must consider the entire Act. When so analyzed the
23 library and its board of trustees is not wholly independent and
24 autonomous entity separate and apart from the local governing body.
25 The local governing body and its electors decide whether to
26 create a library (section 44-219, R.C.M. 1947); the mayor
27 appoints the members of the board of trustees (section 44-221,
28 R.C.M. 1947); the local governing body establishes the levy,
29 with certain limitations, for a special tax on the property
30 owners to create a library fund (section 44-220, R.C.M. 1947);
31 the governing body decides whether to issue bonds for the
32 erection and building of library building and the purchase of
land therefor (section 44-220, R.C.M. 1947); the board of
trustees must submit an annual financial statement to the local
governing body and also an annual budget indicating what support
and maintenance will be required from public funds (section
44-222, R.C.M. 1947); the treasurer of the city handles the
library fund in accord with the orders and warrants of the
board of trustees (section 44-220, R.C.M. 1947); and the local
governing body may create a library depreciation reserve fund
from moneys allocated to the library during the year but not
expended by the end of that year, and invest such moneys
(section 44-230, 44-231, R.C.M. 1947). Considering the entire
scheme of the Library Systems Act, the board of trustees of the
Billings City Library is granted independent powers to management
[manage] and operate the library, but they are still an adjunct
of the local government, the, City of Billings.

* * *

1
2 The economic realities show that the City, not the board
3 of library trustees, ultimately provides the salaries and wages
4 of the library personnel. The City has a substantial legitimate
5 interest in the operation of the library, which qualifies the
6 City as the "public employer" of the Billings City Library
7 personnel including Ruth Ware.

8 We hold there is no inconsistency between the Library
9 Systems Act and the Collective Bargaining for Public Employees
10 Act. Under the Library Systems Act, as a whole, the board of
11 trustees is given independent powers to manage and operate the
12 library. However, this does not qualify the Board as a "public
13 employer" within the meaning of the Collective Bargaining For
14 Public Employees Act, but merely as "supervisory employees" as
15 defined in section 59-1602(3), R.C.M. 1947 [39-31-103 (3) MCA].

16 Finding the City to be the "public employer" of Ruth Ware,
17 we also find the collective bargaining agreement between the
18 City and the union was binding upon the appellants. [Emphasis
19 added]

20 In the case at hand, I find the following:

21 1. One form of County Government may include, but not limit
22 to, an elected Treasurer but the Treasurer's office may be consolidated
23 with one or more other offices by the County Commissioners.

24 (Constitution of Montana).

25 2. The County has the power to enter into such contracts as
26 may be necessary to exercise the county's powers authorized by law.
27 (7-1-2103, 7-1-2104 MCA). The County may perform all other acts
28 required but not enumerated in this section or acts necessary to
29 fully discharge the duties of the chief executive of county
30 government. (7-5-2101 MCA).

31 3. The County Treasurer may be elected or appointed.
32 (7-4-2203 MCA). The County Commissioners has jurisdiction and power
to supervise all county officers including the Treasurer. (7-4-2402
MCA). The County Commissioners may in their discretion suspend the
County Treasurer for misconduct. The County Commissioners may
appoint a person to fill the vacancy until such suit is determined.
(7-6-2103 MCA).

4. The duties of the County Treasurer are set forth in detail
by law, including a required detailed report to the County Commis-
sioners at every regular meeting. (7-6-2111, 7-6-2112 MCA). The

1
2 County Treasurer must appoint his deputies, clerks and subordinate
3 officers in writing and file the appointment letter with the County
4 Clerk. (7-6-2103 MCA)

5 5. The law set forth a limitation on the number of deputies
6 allowed the County Treasurer. (7-6-2102 MCA). When in the judgment
7 of the County Commissioners a greater number of deputies are needed
8 to faithfully and promptly discharge the duties of the office, the
9 County Commissioners may allow the County Treasurer to appoint a
10 greater number of deputies than allowed by law. (7-4-2402 MCA).

11 6. The wages paid the deputies and assistants to the County
12 Treasurer is set by the County Commissioners within the limits set
13 by law. (7-4-2505 MCA). The County Commissioners set the final
14 budget for all county expenditures of the County Treasurer including
15 wages. (Title 7, Chapter 6, Part 23 MCA).

16 A close comparison of the AFSCME case with this case demonstrates
17 that the Trustees of the Billings City Library have the power to set
18 the wages paid the library personnel but the County Treasurer has no
19 power to set the wages paid his deputies; that both the Trustees of
20 the Billings City Library and the County Treasurer have the power to
21 select their respective deputies and assistants; that local or
22 County Government within the mandate of the electors decide whether
23 to create a library or whether or not to create a separate, elected
24 County Treasurer; that both the Billings Library and the County
25 Treasurer are financially controlled and subjected to local or
26 county government; and that the County Treasurer is subject to much
27 closer statutory directives and County Commissioner's supervision
28 than the Billings Library is subject to local government supervision.
29 Therefore, I conclude that the AFSCME case is substantially parallel
30 to this case and the principles of separate and autonomous as set forth
31 in AFSCME indicate that the Treasurer is not the public employer
32 under the Collective Bargaining for Public Employees Act.

C. BARGAINING UNIT

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2 A point where the AFSCME case is not parallel with this case is
3 the fact that the trustees of the Billings Library are appointed
4 while the County Treasurer, in this case, is elected. Because the
5 County Treasurer is an elected office, an examination of the collective
6 bargaining unit and the County Treasurer as the sole public employer
7 is in order.

8 One of the defendants argues that the administrative note of
9 the collective bargaining unit determination" . . . is not relevant
10 to * * * the issue of 'who is the public employer' as briefed by
11 this defendant." I disagree because the administrative note provides
12 the historical background of the unit determination and because an
13 order from this Board that stated the County Treasurer was the sole
14 public employer would vacate that unit determination.

15 For analysis, I would like to use the following example:
16

17 Brown, Stafford and other assistants to the County Treasurer
18 would be a separate collective bargaining unit with the County
19 Treasurer as the public employer for Brown, Stafford and other
20 Treasury assistants. The other elected county offices would each
21 have their separate bargaining unit with their respective public
22 employer.
23

24 Analysis of the above example:

25
26 1. What could each separate elected public employer effectively
27 negotiate with their respective deputies and assistants? The procedure
28 for scheduling and using vacation leave, taking sick leave, and
29 using other leaves? Yes. Wages? No, because the County Commissioners
30 set the budget and wages of the deputies and assistants. (7-4-2505;
31 title 7, chapter 6, Part 23 MCA). Insurance Benefits? No, because
32 the County Commissioners set the budget. Therefore a conclusion
that a separate elected official can only effectively negotiate on

1
2 non-monetary working conditions is in order. Under the above example,
3 the deputies and assistants to a separate elected public employer
4 would be totally frustrated trying to negotiate wages and monetary
5 benefits with an official who cannot resolve their problems.

6 2. With a few deputies and assistants to the County Treasurer
7 in one bargaining unit and with the deputies and assistants to the
8 other elected county officers in their respective separate bargaining
9 unit, each bargaining unit would have some different benefits than
10 the other bargaining units. Soon the deputies and assistants in one
11 bargaining unit would be trying to get a few new, different or
12 better benefits than the deputies and assistants in the next office
13 while the deputies and assistants in both offices are doing the same
14 basic work. This whipsawing of benefits would have a spiral affect
15 and the County Courthouse would never be tranquil because one group
16 of the deputies and assistants would always be negotiating.

17 Both of the above analyses demonstrate the example would not be
18 in harmony with the collective bargaining policy of the State of
19 Montana . . . " . . . To promote public business by removing certain
20 recognized sources of strife and unrest . . . " (39-31-101 MCA).

21 Comparing the above example with the facts at hand, I believe
22 the lack of ability to effectively negotiate with the employees
23 indicates that the treasurer is not the public employer and the same
24 principle applies to an alleged public employer whether he is elected,
25 appointed or employed.

26 A ruling that the County Treasurer is the public employer of
27 Brown and Stafford would produce the above example. The ruling
28 would not be in harmony with Pue vs. Lewis and Clark County 75 M
29 207, 243 P 573 (1926) and Hicks vs. Stillwater County 84 M 38, 274 P
30 296 (1929) in which the Montana Court held the County Commissioners
31 have the general supervision and control over the officers, affairs
32 and finances the County and it may be concluded that unless authority
therefor shall be found in the statutes, no other county officer may
bind the county by contract.

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D. RULING OF OTHER STATES.

I will cite a few other state's statutes and cases for guidance in the application of Montana's Collective Bargaining Act. The Montana Supreme Court in State Department of Highways vs. Public Employees Craft Council, 165 Mont. 249, 529 P2d 785 (1974) and other cases approved using the National Labor Relations Act, 29 USCA, Sections 151-166 (NLRA) for guidance.

Because of the profit reward differences between public and private sector collective bargaining employers, I believe public sector collective bargaining from other states will give better guidance to the question of who is Brown and Stafford's Public Employer within the definition of Montana's collective bargaining act.

Using the principles of comparison as stated in State Department of Highways, supra, I believe New York's Taylor Act and Pennsylvania's Public Employee Relations Act can give some guidance in applying Section 39-31-103(1) MCA which states in part..."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,***".

In modifying the judgment of a lower court, the New York Supreme Court appellate division, third department found the county and county sheriff are joint public employers. The sheriff is not the sole public employer under the Taylor Law of New York of deputy sheriffs he hires, fires and determines the conditions of employment other than salary which is fixed by the county. The New York court in Ulster County vs. CSEA Unit, Sheriff's Dept. 37 AD 2d 437, 79 LRRM 2265 (1971), interpreted paragraph (f) of subdivision 7 of section 201 of the Civil Service Law (Taylor Law) which defines a public employer in part as "(f) any***public corporation, agency or instrumentality of unit of government which exercises governmental

1
2 powers under the laws of the state." (79 LRRM at 2266). The New
3 York Court states the following in part:

4 It is conceded that Ulster County is a public
5 employer. The question on which the State [New York
6 State Public Employment Relations] Board and Special
7 [Court] Term disagreed was whether the county and the
8 Sheriff are joint employers or one alone should be
9 designated as the appropriate negotiation unit. ***

10 While a finding of joint employers is rare, the
11 appellants' determination of the practical necessity
12 for such a finding is supported by the record and
13 should not be disturbed. The Taylor Law was enacted
14 with the hope that it would insure tranquility in the
15 government's labor relations by protecting the rights
16 of employees and the public generally. The prohibition
17 of public strikes was continued, but the statute allowed
18 employees to redress their grievances by requiring that
19 the public employer negotiate and contract with employee
20 groups with respect to the terms and conditions of
21 employment. Implicit in the legislation is the concept
22 that if some accepted private labor practices are to be
23 prohibited in the case of public employees, effective
24 negotiations must supply a suitable alternative.

25 The statute mandates that employers negotiate with
26 respect to terms and conditions of employment. * * *
27 Obviously, these negotiations cannot be effective if
28 employees are obliged to negotiate with an employer who
29 is without power with respect to the matter in dispute.
30 The most notable example is salary, an item which the
31 Sheriff has no control over. The amounts and increments
32 are determined by the county. * * * The simple answer
to the argument that the Sheriff should be the sole
employer because he can make "effective recommendations
to other administrative authority or the legislative
body" * * * is that appellant's director found after
the hearing that this Sheriff tried to set up his own
salary plan and was unable to do so.

The statute is best implemented if the employees'
representatives negotiate directly with those who have
authority over all the essential terms of employment.
In this case that requires that separate legal entities
be named as a single employment unit. (cities removed)

* * * The appellant's [New York State Public
Employment Relations] determination that both Ulster
County and the Ulster County Sheriff are public employers
and that they are joint employers of the Deputy Sheriffs
has a rational basis on the record before us.

26 The Pennsylvania Supreme Court, Eastern District, restrained
27 the union from enforcing the grievance-arbitration procedure of a
28 contract because the contract was between the union and the pre-
29 decessor Register of Wills while the correct parties to the contract
30 are the city with the Register of Wills, as the employer, and the
31 union. The Pennsylvania Supreme Court in Costigan vs. Philadelphia
32 Finance Dept. Employees Local 696 341 A2d 456, 90 LRRM 2328 (1975)
applied the guidelines from County of Ulster, supra, and stated in

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part:

In the instant case, no single entity controls all of the terms of the employment relationship. The Register of Wills is conceded by all parties to have the exclusive power to hire, fire, promote, and direct the work of the employees. The City of Philadelphia pays most of the employee salaries and other compensation costs of the office and exercises considerable control over the fringe benefits accorded the employees, which include enrollment under the City's group life and health insurance plans and coverage by the City's pension plan. Thus the Register and the City each exercise control over important "conditions of the relation (which) are such that the process of collective bargaining may appropriately be utilized as contemplated by the Act," and both must be deemed employers for purposes of the Act. [Public Employee Relations Act (Act 195)]. ***

The Public Employee Relations Act (Act 195) in section 301 states in part..."(1)'Public employer' means the Commonwealth of Pennsylvania, its political subdivisions including school districts and any officer, board, commission, agency, authority, or other instrumentality thereof***".

In 1976 the Pennsylvania Legislature amended the Public Employee Relations Act (Act 195), to read as follows:

Provided, however, that with respect to representation proceedings before the Pennsylvania Labor Relations Board or collective bargaining negotiations involving any or all employees paid from the county treasury, the board of county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers over the affected employees. The exercise of such responsibilities by the county commissioners shall in no way affect the hiring discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers.

Montana has no equivalent section in the Collective Bargaining Law but the Pennsylvania court's view of this section is worthwhile. In Ellenbogen vs. Allegheny County 388 A2d 730, 99 LRRM 2481 (1978) the Pennsylvania Supreme court, Western District, states the following about the 1976 amendment:

* * * The amendment governing representation of managerial interests promotes several important public interests, including fiscal responsibility. County commissioners are charged with the responsibility of raising revenue and allocating funds among various county services* * * Thus, the amendment allows county commissioners to make managerial decisions affecting

1
2 tax dollars. This reflects the legislative judgment
3 that the officials charged with providing revenue for
4 budgets are best able to assess whether employee proposals
5 at the bargaining table are feasible and consistent
6 with the overall administration of county fiscal and
7 governmental affairs.

8 The Legislature's designation of county commissioners
9 as managerial representative also avoids the potential
10 difficulties of having too many decision-makers, none
11 with full authority to reach an agreement on the public
12 side of the bargaining table. The amendment thus
13 ensures that the managerial representative will have
14 full authority to reach early agreement. Such a setting,
15 legislatively designed to promote swift and efficient
16 bargaining proceedings, is not only attractive to
17 parties at the bargaining table, but also advances the
18 public interest in settlement of labor disputes.

19 For other like cases see Sweet vs. Pennsylvania Labor
20 Relations Board 388 A2d 740, 99 LRRM 2486 (1977); Buck County
21 Board of Judges vs. Buck County Commissioners 388 A2d 744, 99 LRRM
22 2489 (1978); County of Washington vs. PLRB 93 LRRM 2339 (1976); and
23 AFSCME, Local 1518 vs. Sheriff Meharg 258 Nw2d 168, 96 LRRM 3047
24 (1977).

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E. CONCLUSION OF STAFFORD AND BROWN'S EMPLOYER.

Judging from the AFSCME case and the bargaining unit Example plus using the rulings from other states as guidances, a conclusion that the Cascade County Commissioners are the public employer is appropriate. This conclusion is in order because the Cascade County Treasurer is not separate and autonomous and because the Cascade County Treasurer cannot effectively negotiate with his employees in the area of monetary matters. By ordering the County Commissioners as the public employer, the party with the control of the tax dollar income to the county and salary expenditure by the county is at the bargaining tables as indicated in the New York and Pennsylvania cases.

In the AFSCME case the court held the Library Board to be the "supervisory employee" having independent powers to manage and operate the Library. The Montana Collective Bargaining Act defined

1
2 supervisory employee as:

3 39-31-103 (3) MCA "'Supervisory employee' means
4 any individual having authority in the interest of the
5 employer to hire, transfer, suspend, lay off, recall,
6 promote, discharge, assign, reward, discipline other
7 employees, having responsibility to direct them, to
8 adjust their grievances, or effectively to recommend
9 such action, if in connection with the foregoing the
10 exercise of such authority is not of a merely routine
11 or clerical nature but requires the use of independent
12 judgment."

13 The sheriff in Ulster County, supra, the Register of Will in
14 Costigan, supra, and the judges in Ellenbogen, supra, as well as the
15 Cascade County Treasurer all have the same initial powers as set
16 forth in the definition of supervisory employee.

17 I will not order joint employers as in New York and Pennsylvania,
18 because this would add to the sources of strife and this would add
19 to the proliferation of small single office bargaining units as set
20 forth in the analysis of the bargaining unit. A joint employer
21 order would also subtract from the theory of one consistent overall
22 administration of county governmental affairs. (Ellenbogen, supra).
23 Therefore I conclude that the Cascade County Treasurer is a supervisory
24 employee.

25 F. THE EFFECT OF THE LABOR AGREEMENT

26 Can the public employer agree with a union on the procedure a
27 supervisory employee must follow in exercising his supervisory
28 powers?

29 Generally, by definition, the Public Employer can set forth how
30 he wishes a subordinate supervisory employee to act in the public
31 employers behalf. In the case at hand, the County Treasurer is not
32 your general subordinate supervisory employee.

In the AFSCME case, a collective bargaining agreement was in
effect between the union and the City of Billings. The Court found
the Library Board was bound by the provisions of the labor agreement.
The termination of a Library employee by the supervisory employee,
the library board, was in conflict with the terms of the labor

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agreement.

It appears that the court, in holding no inconsistency between the Library System Act, which gives the Library Board the power to employ and discharge employees, and the Collective Bargaining Act, approved the actions of the public employer in setting forth how the supervisory employee would use its powers. Because of the "economic realities" in ultimately providing the salaries, the court in AFSCME found ... "The City has substantial legitimate interest in the operation of the library", therefore allowing the city to set forth how the library board was to supervise the library personnel.

In the case at hand, the public employer, Cascade County Commissioners, and the MPEA set forth how the Treasurer was to use his supervisory power. The County has substantial interest in the operation of the Treasurer's Office not only because the County Commissioners provide tax dollars for the wage and set the wage, but also because the County Commissioners have the jurisdiction to supervise the official conduct of all county offices and because the County Commissioners need the Treasurer's detailed report at every regular meeting and the Treasurer's quarterly balance to effectively manage the county's fiscal affairs. (7-4-2505, 7-4-2110, 7-4-2112, and Title 7, chapter 6, part 23 MCA). I conclude that the Cascade County Commissioners have the power by way of a labor agreement to set forth how the County Treasurer is to exercise his supervisory powers.

From the fact that all the Cascade County Commissioners and some of the county elected officers signed the collective bargaining agreement between the County and MPEA, it appears that the management consisted of a team effort. I approve of this team effort but the duty to bargain is only that of the public employer, the county commissioners. This team effort allows a swift and efficient bargaining process by having all parties affected by the agreement present and allows for good management input.

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After the labor agreement was negotiated, a change in some of the elected offices has taken place. Can a public official bind his successor to a labor contract that extend beyond his term of offices?

In Reese vs Lombard 47 AD2d 327, 89 LRRM 2955 (1975), the New York Supreme Court, appellate Division, Fourth Department addressed the question in part as follows:

The Taylor Law does not specify or limit the period of public employment contracts. The statute only provides that the parties may make contracts which bind them "for the period set forth therein".* * * The term was left to the discretion of the contracting parties and nothing contained in the law suggests that the Legislature intended to restrict the period of such contracts to an elected public employer's time in office. Manifestly such periods have no necessary relationship to employees' terms and conditions of employment.

The policy and purpose of the Taylor Act have been rehearsed so frequently that they scarcely need to be repeated here.* * * Public employees were given the right to organize and contract upon subjects involving their employment because of the legislative desire to bring about harmonious employer-employee relationships, encourage professionalism and reduce work stoppages in government employment. It would be a peculiar statute which attempted to promote efficiency in government employment by conditioning managerial decisions on public referenda or which limited employer-employee agreements to artificial timetables dictated by the election calendar.

In summary, we hold that this contract was properly executed by the Sheriff and the county and that it bound not only the Sheriff who executed it but his successor in office.

Using the above New York case for guidance, the Montana Collective Bargaining Act contains the following important section, in part:

39-31-305 (2) MCA ***and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached.

39-31-104 MCA. Rules. The board shall adopt, amend, rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

Rule 24.26.501 ARM of the Board of Personnel Appeals states:

(2) Agreements reached between a public employer

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2 and a labor organization shall be a minimum of one year
3 in duration and shall not exceed two years.

4 Finding the labor agreement between MPEA and Cascade County is
5 in accord with the above rule, finding no statutory authority limiting
6 a labor agreement, and for the reasons set forth in Reese, supra, I
7 conclude the labor agreement is binding on MPEA and Cascade County
8 Commissioners even though some of the commissioners and some of the
9 supervisory employees may have changed. This Conclusion is in
10 harmony with Picket Publishing Co. vs. Board of County Commissioners
11 of Carbon County 36 M 188, 92 P 524 (1907) in which the Montana
12 Court held a contract made by the Board of County Commissioners, a
13 few weeks before the expiration of its term of office, and upon the
14 expiration of a prior contract, for county printing for the two
15 succeeding years, is valid in the absence of fraud or bad faith in
16 the making, and is not against public policy.

17 G. FAILURE TO GRANT A GRIEVANCE HEARING

18 From the unfair labor practice charge, exhibit and answers, the
19 complainant requested the start of the arbitration proceedings as
20 directed in the labor agreement. (FF B). The County Commissioners
21 agree to submit the dispute to arbitration but the Commissioners
22 would rather have a court decide the dispute. The County Treasurer
23 wished no part and would not be bound by the grievance proceedings.
24 The County Commissioners were caught in the delicate middle and side
25 stepped the issue. Did the defendant(s) commit an unfair labor
26 practice by not processing or taking part in the arbitration?

27 This board entertained an unfair labor practice charge against
28 the City of Livingston brought by the American Federation of State,
29 County and Municipal Employees. The charge claimed the City com-
30 mitted an unfair labor practice by not granting a grievance hearing
31 as directed by the labor agreement. This board agreed with the
32 charging party. The Montana Supreme Court in City of Livingston vs.
AFSCME, Council 9, 571 P2d 374, 100 LRRM 2528 (1977) set forth the

1 following.
2

3 The issued presented on appeal is whether the
4 city's failure to provide Dyer a dismissal hearing
5 constituted an unfair labor practice.

6 By failing to grant Dyer a grievance hearing: the
7 city breached its collective bargaining agreement, and
8 thereby committed an unfair labor practice in violation
9 of section 59-1605 (1) (a), R.C.M. 1947 [39-31-401
10 MCA]. That section provides in part:

11 "It is an unfair labor practice for a public
12 employer to:

13 "(a) interfere with, restrain, or coerce employees
14 in the exercise of the rights guaranteed in section
15 59-1603 [39-31-201 MCA] of this acts;" Section
16 59-1603 (1) [39-31-201 MCA] provides:

17 "Public employees shall have *** the right *** to
18 bargain collectively ***."

19 The phrase "to bargain collectively" is defined in
20 section 59-1605 (3) [39-31-305 (2) MCA] as:

21 "****the performance of the mutual obligation of
22 the public employer *** and the respresentatives
23 of the exclusive representative to *** negotiate
24 in good faith with respect to *** conditions of
25 employment, or the negotiation of an agreement, or
26 any question arising thereunder.***" (Emphasis
27 added.)

28 Thus, by statute, the duty to bargain "in good
29 faith" continued during the entire course of the contract.

30 The Supreme Court has held that "Collective bar-
31 gaining is a continuing process. Among other things it
32 involves *** protection of employee rights already
33 secured by contract." Conley v. Gibson, 355 U.S. 41, 2
34 L Ed 2d 80, 85, 78 S. Ct. 99 (1957). The processing of
35 grievances in grievance hearings is collective bargain-
36 ing. Timkin Roller Bearing Co. v. National Labor Rel.
37 Bd., 161 F. 2d 949, 954 (6th Cir. 1947). In Ostrofsky
38 v. United Steelworkers of America, 171 F. Supp. 782, 79
39 (D. Md. 1959), aff'd., 273 F.2d 614 (4th Cir. 1960),
40 cert. den., 363 U.S. 849, 4 L Ed 2d 1732, 80 S.Ct.
41 1628, (1950), the court stated: "*** the employer had
42 as the same duty to bargain collectively over grievances
43 as over the terms of the agreement

44 Under Montana's Collective Bargaining Act for
45 Public Employees a failure to hold a grievance hearing
46 as provided in the contract is an unfair labor practice
47 for failure to bargain in good faith.

48 In the case at hand, there is no question as to the existance
49 of a final and binding grievance procedure. (FF B-Addendum A).

50 There is no question that MPEA requested a grievance hearing. I
51 find the same question in this case as the court did in the Livingston,
52 supra, case and for reason set forth by the court, I conclude that

1
2 the Defendant(s) did commit a unfair labor practice.

3 V CONCLUSIONS OF LAW

4 1. The Cascade County Commissioners are the public employer of
5 Martin Stafford and Elaine Brown as defined in Section 39-31-103(1)
6 MCA.

7 2. The Cascade County Treasurer, C. L. O'Connell, is the
8 supervisory employee of Martin Stafford and Elaine Brown as defined
9 in Section 39-31-103(3) MCA.

10 3. The labor contract between Montana Public Employees Associa-
11 tion and the Cascade County Commissioners is binding on the County
12 Commissioners, the County Treasurer and the Montana Public Employees
13 Association.

14 4. The Defendant(s) did violate Section 39-31-401 (5), failure
15 to bargain in good faith, by refusing to participate in or refusing
16 to be bound by arbitration concerning the dismissal of Martin Stafford
17 and Elaine Brown.

18 5. By refusing to participate in or by refusing to be bound by
19 an arbitration as set forth in the labor agreement, the defendant(s)
20 restrained Martin Stafford and Elaine Brown in the exercise of their
21 rights guaranteed in Section 39-31-201 MCA.

22 VI RECOMMENDED ORDER

23 The Defendant(s) are ORDERED to cease and desist from res-
24 training Martin Stafford and Elaine Brown in the exercise of their
25 rights guaranteed in Section 39-31-201 MCA by refusing to part-
26 icipate in or by refusing to be bound by an arbitration.

27 The Defendant(s) are ORDERED to proceed and participate in the
28 arbitration as set forth in the labor contract between the Montana
29 Public Employees Association and Cascade County Commissioners.

30 It is further ORDERED that all motions, issues and charges not
31 addressed in this recommended order are hereby denied.

32 DATED this 27th day of April, 1980

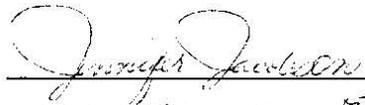
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BOARD OF PERSONNEL APPEALS

By 
Rick D'Hooge
Hearing Examiner

NOTE: As stated in Board of Personnel Appeals rule ARM 24.26.107
Exceptions the parties shall have 20 calender days to file written
exceptions to this recommended order. If no written exceptions are
filed; this recommended order shall become the FINAL ORDER of the
Board of Personnel Appeals.

CERTIFICATE OF MAILING

I, , do hereby certify
and state that I did on the 7th day of April,
1980 mail a true and correct copy of the above FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER to the following:

- MPEA, Inc.
P.O. Box 5600
Helena, MT 59601
- C. L. O'Connell, Treasurer
Cascade County Courthouse
Great Falls, MT 59401
- Cascade County Commissioners
Cascade County Courthouse
Great Falls, MT 59401
- Dennis McCafferty
430 Northwestern Bank Building
Great Falls, MT 59401
- Gary M. Zadick
Alexandor and Baucus
Strain Building
Great Falls, MT 59401
- Barry L. Hjort
111 North Last Chance Gulch
Helena, MT 59601



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