

1 in the matter and directing the Community College to submit the
2 necessary affidavits to support its motion pursuant to ARM 24.16.106.
3 On May 13, 1980, the Community College filed a Supplemental Memor-
4 andum in Support of Motion to Dismiss for Lack of Jurisdiction.
5 Accompanying the Supplemental Memorandum were certified copies of
6 the Charter and bylaws of the Fort Peck Community College and the
7 Constitution of the Fort Peck Assiniboine and Sioux Tribes. An
8 affidavit signed and sworn to by the Tribal Councilman, Caleb
9 Shields, accompanied the Supplemental Memorandum.

10 From the accompanying affidavits, it is established that the
11 Fort Peck Tribes are not organized under the Indian Reorganization
12 Act. Rather, from Article II of the Tribe's Constitution the
13 jurisdiction of the Tribe comes from an agreement entered into
14 December 28 and 31, 1888 between the Tribe and the United States
15 Government, and confirmed by the Act of May 1, 1888 (25 Stat. Sec.
16 113, Ch. 212). Under Article VII, section 4, the Tribe has given
17 the Executive Board the power "To promote . . . education, . . ."
18 Pursuant to that Power the Fort Peck Community College was estab-
19 lished. Article II, section 1 of the Charter for the Community
20 College states that the Board of Directors for the Community
21 College shall be appointed by the Fort Peck Tribal Executive Board
22 except for one, which shall be the Student Body President. Article
23 V, section 1 provides that a Copy of the budget for the Community
24 College shall be delivered and explained to the Tribal Executive
25 Board before it is adopted. Article V, Section 2 provides that at
26 least every six months the Board of Directors of the Community
27 College shall report the business activities of the College for
28 the preceding six months, including a complete financial statement.

29 From the above information there appears to be no question
30 that the control of the Community College rests with the Fort Peck
31 Tribal Executive Board; that the Community College is an entity of
32 the Tribe.

1 Section 39-31-103 (1) MCA defines public employer as the
2 state of Montana or any political subdivision thereof. This Board
3 is certain the Complainant is not alleging that the Tribe is a
4 subdivision of the State of Montana. Section 39-31-103 (2) MCA
5 defines a public employee as a person employed by a public employer
6 in any capacity. From the affidavits, an individual employed at
7 the Community College is an employee of the tribe and therefore
8 not a public employee. Therefore it is determined that this Board
9 does not have jurisdiction in this matter as the Complainant is
10 not a public employee as defined by 39-31-103 (2) MCA and the
11 Defendent is not a public employer as defined by 39-31-103 (1)
12 MCA.

13 IT IS ORDERED that this matter be dismissed for lack of
14 jurisdiction.

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16 DATED this 4th day of June, 1980.

17
18
19 BOARD OF PERSONNEL APPEALS

20
21 By Linda Skaar
22 LINDA SKAAR
Hearing Examiner

23 NOTICE

24 Pursuant to ARM 24.26.107, either party to this matter may file
25 written exceptions to this Order stating specifically what issues are
26 being excepted to and present briefs and oral argument to the Board
27 of Personnel Appeals at a monthly meeting. If neither party files
28 exceptions to this Order, then this Order shall become the FINAL
29 Order of this Board. Said exceptions must be filed within twenty
30 days after service of this Order.

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CERTIFICATE OF MAILING

I, Linda Skaar, do hereby certify and state
that I did on the 4th day of June, 1980, mail a
true and correct copy of the above ORDER on ULP #50-79
to the following:

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LINDA SKAAR
Hearing Examiner

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