

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
LEGAL SERVICES DIVISION
HEARINGS UNIT

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE 16-93,

GLENDIVE EDUCATION ASSOCIATION,)
MEA/NEA,)

Claimant,)

vs.)

GLENDIVE ELEMENTARY SCHOOL)
DISTRICT NO. 1: TRUSTEES AND)
SUPERINTENDENT, DAN MARTIN,)

Defendant.)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
RECOMMENDED ORDER

* * * * *

I. INTRODUCTION

The Complaint filed an Unfair Labor Practice Charge on September 28, 1992, alleging the Defendant had violated Section 39-31-305(1) MCA, in that they had not dealt with the exclusive representative for collective bargaining purposes in compliance with the Complaint's master agreement. At pre-hearing the Parties agreed to submission of this matter based upon briefs. Final brief was received February 24, 1993.

II. FINDINGS OF FACT

1. The Defendant had employed Debbie Olson-Sevier during the school year 1991-92 to provide adaptive physical education services to certain of the Defendant school district's students. For the 1992-93 school year Ms. Olson-Sevier performed the same service but, according to the Defendant as an independent contractor. She had been a member of the bargaining unit. The Defendant refused to recognize her as a member of the unit as requested.

1 2. The Defendant negotiated a contract individually with Ms.
2 Olson-Sevier. Under that contract according to the Defendant, she
3 is an independent contractor and they have no duty to bargain with
4 the Complaint regarding the terms or conditions of that employment
5 association. The Complaint is recognized as the exclusive
6 representative for collective bargaining purposes for all employees
7 in the Glendive Education Association.

8 3. The Complaint moved for judgment based on the position
9 that no material issue of fact existed and the charges capable of
10 determination based upon briefs.

11 4. Ms. Olson-Sevier was an employee prior to beginning
12 service with the Defendant under contract identified by the
13 Defendant as creating an independent contractor relationship. The
14 Defendant supervised and controlled Ms. Olson-Sevier duties. She
15 has not and does not have an independently established adaptive
16 physical education business.

17 III. ISSUE

18 Did the Defendant violate Section 39-51-305(1) MCA, by
19 individually bargaining with Ms. Olson-Sevier regarding her
20 employment contract.

21 IV. CONCLUSIONS OF LAW

22 1. The Board of Personnel Appeals has jurisdiction over this
23 matter.

24 2. Ms. Olson-Sevier was not an independent contractor.

25 3. To be considered an independent contractor, as pointed
26 out in Complaint's brief, an associate must be free from control
27 and direction and the worker independently established in a
28 business with work duties similar to that performed for the

1 independent contractor employer. Ms. Olson-Sevier was subject to
2 control and direction by the Defendant and was not independently
3 established in business.

4 4. The Defendant does not deny the Complaint is the
5 exclusive bargaining representative for certain school employees,
6 as defined in the collective bargaining agreement. Ms. Olson-
7 Sevier is included in those persons described as in the unit
8 covered by the collective bargaining agreement. Under the express
9 terms of the collective bargaining agreement and Montana labor law
10 the Defendant must not individually bargain with employees. The
11 Defendant's action was an unfair labor practice. The Defendant
12 must deal with the Complaint as provided under current labor law
13 and contract terms regarding the association of Ms. Olson-Sevier.

14 IV. RECOMMENDED ORDER

15 The motion for summary judgment upon the pleading is
16 appropriate. The Defendant is found to have violated
17 Section 39-31-305(1) MCA. The Defendant must bargain as required
18 in the collective agreement and applicable Montana labor law with
19 the complaint regarding the association of Ms. Olson-Sevier.

20 **SPECIAL NOTE:**

21 In accordance with Board Rule ARM 24.25.107(2) the above
22 RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless
23 written exceptions are filed within twenty (20) days after service
24 of these FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED
25 ORDER upon the Parties.

1 Dated this 26 day of MAY, 1993.

2 LEGAL SERVICES DIVISION
3 HEARINGS UNIT

4 By: Joseph V. Maronick
5 Joseph V. Maronick
6 Hearing Examiner

7 * * * * *

8 CERTIFICATE OF MAILING

9 The undersigned hereby certifies that true and correct copies
10 of the foregoing documents were, this day served upon the following
11 parties or such parties' attorneys of record by depositing the same
12 in the U.S. Mail, postage prepaid, and addressed as follows:

12 Donna Davis
13 MATOVICH, ADDY & KELLER
14 2812 First Avenue North
15 225 Petroleum Building
16 Billings, MT 59101

17 Richard A. Simonton
18 SIMONTON, HOWE & SCHNEIDER, P.C.
19 102½ West Bell
20 P.O. Box 1250
21 Glendive, MT 59330

22 DATED this 26th day of May, 1993.

23 Christine A. Roland

24 pw321.10