

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 21-93

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GLENDIVE EDUCATION ASSOCIATION, )  
MEA/NEA, )  
Complainant, )  
vs. )  
GLENDIVE ELEMENTARY SCHOOL )  
DISTRICT NO. ONE: TRUSTEES )  
AND SUPERINTENDENT, DAN MARTIN, )  
Defendant. )

FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
ORDER

\* \* \* \* \*

I. INTRODUCTION

On October 15, 1992, the Glendive Education Association filed this charge with the Board alleging the Glendive Elementary School District No. 1, Trustees and Superintendent Dan Martin had violated Sections 39-31-201, 39-31-203, 39-31-401(1),(2) and (5), MCA. At pre-hearing conducted in this matter on January 14, 1993, the Parties agreed to submission of the issues involved in the above-cited charges through Brief submission. Final Brief was received February 24, 1993.

II. FINDINGS OF FACT

1. The Defendant had employed Debbie Olson-Sevier during school year 1991-92 as an adaptive physical education teacher. Ms. Olson-Sevier was to provide adaptive physical education services to certain of Defendant district students. For the 1992-93 school year Ms. Olson-Sevier performed the same services but, according to the Defendant, as an independent contractor. The Defendant refused to recognize Ms. Olson-Sevier as a bargaining unit member. On September 21, 1992, Ms. Olson-Sevier submitted written

1 authorization to the defendant clerk of schools to deduct union  
2 dues in the amount certified by the complainant's secretary. On  
3 September 21, 1992, Defendant's clerk refused to deduct or transmit  
4 the certified dues amount to the complainant. The Complainant  
5 contends such refusal constitutes a violation of Montana Labor Law  
6 under Sections 39-31-201, 39-31-203, 39-31-401(1),(2) and (5), MCA.

7 2. The Defendant negotiated independently an independent  
8 contract with Ms. Olson-Sevier contending she was an independent  
9 contractor. Ms. Olson-Sevier's duties and responsibilities did not  
10 change during either of the school terms. The complainant is  
11 recognized as the exclusive bargaining representative for all  
12 employees in the Glendive Education Association. The complainant  
13 moved for summary judgement on the pleadings based upon the  
14 position that no material fact existed and the charges are capable  
15 of determination based upon Briefs.

### 16 III. ISSUES

17 1. Was or is Ms. Olson-Sevier an independent contractor in  
18 her association with the defendant?

19 2. If not an independent contractor did the Defendant  
20 violate Montana Labor Laws as identified.

### 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. As  
25 correctly pointed out in the Complainant's Brief, an independent  
26 contractor association exists only when the contractor is free from  
27 control and direction by the employer and the contractor is  
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1 | independently established in a business with work similar to that  
2 | performed for the employer.

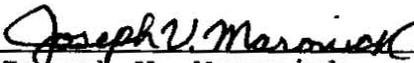
3 |         3. Ms. Olson-Sevier was subject to control and direction and  
4 | not independently established in a business.

5 |         4. The Defendant does not deny the Complainant is the  
6 | exclusive bargaining agent for certain school employees as defined  
7 | in the collective bargaining agreement. Ms. Olson-Sevier is  
8 | included in the group of persons described as in the unit covered  
9 | by the collective bargaining agreement. Under the express terms  
10 | of the collective bargaining agreement and Montana Labor Law the  
11 | Defendant must not individually bargain with unit members and must  
12 | also respond to unit member's requests to have dues appropriately  
13 | transferred to the Complainant association.

14 | V. ORDER

15 |         The Motion for summary judgment on the pleadings is  
16 | appropriate. The Defendant is found to have violated Section  
17 | 39-31-305(1), 39-31-201, 203, and 401(1), (2) and (5). The  
18 | Defendant must bargain as required in the collective bargaining  
19 | agreement with the complainant association regarding the employment  
20 | of Ms. Olson-Sevier.

21 |         Entered and dated this 26 day of May, 1993.

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24 | \_\_\_\_\_  
24 | Joseph V. Maronick  
24 | Hearing Examiner

25 | NOTICE: Under application of Board Rule ARM 24.25.107(2), the  
26 | above RECOMMENDED ORDER shall become the FINAL ORDER of this Board  
27 | unless written exceptions are filed within twenty (20) day after  
27 | service of these FINDINGS OF FACT; CONCLUSIONS OF LAW; AND  
27 | RECOMMENDED ORDER upon the parties.

28 | \* \* \* \* \*

CERTIFICATE OF MAILING

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

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DATED this 26<sup>th</sup> day of May, 1993.

Christine L. Roland

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