STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 19-2000:

INTERNATIONAL BROTHERHOOD OF, TEAMSTERS LOCAL UNION NO. 2,	)	**Case No. 1903-2000**
Complainant,	)	
	)	**FINDINGS OF FACT;**
vs.	)	**CONCLUSIONS OF LAW;**
	)	**AND RECOMMENDED ORDER**
MONTANA DEPARTMENT OF CORRECTIONS, MONTANA STATE PRISON, and MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, MONTANA STATE HOSPITAL	)	
Defendants.	)	

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I. INTRODUCTION

Hearing Officer Gordon Bruce conducted a hearing in this matter on March 13, 2001 in Helena, Montana. The Complainant, International Brotherhood of Teamsters Local Union No. 2, was represented by D. Patrick McKittrick, Attorney at Law. The Defendants, Montana State Prison, Department of Corrections, and Montana State Hospital, Department of Public Health and Human Services, were represented by Arlyn Plowman, Labor Relations Specialist, State Personnel Division, Montana Department of Administration.

John Forkan, Jr., a union representative; Bill Rowe and Ron Yagnatowiz, union negotiators during the time period in question; Keith Wilson, employer negotiator; Paula Stoll, Bureau Chief, Labor Relations Bureau; Joe Mihelic, Assistant Food Director at Montana State Prison; and Beth McLaughlin, Chief Personnel Officer at the Department of Public Health and Human Services, gave sworn testimony.

The parties had no objections to any exhibits, and "U" Exhibits 1 through 13, "D" Exhibits 1 through 8, and "J" Exhibits 1 through 16 were admitted into the record.

The hearing was tape recorded and both parties requested reproductions of the tapes. The Defendants prepared a transcript of the tapes, which was furnished to the Hearing Officer and the Complainant. The parties agreed to file post-hearing findings and briefs, and the record was

deemed closed and fully submitted for decision after final argument was submitted on June 1, 2001.

II. ISSUE

Whether Defendants Montana State Hospital and Montana State Prison have and are continuing to violate §§ 39-31-401(1) and (5) or 39-31-201, MCA.

III. BACKGROUND

The Complainant filed this unfair labor practice complaint with the Montana Board of Personnel Appeals on March 3, 2000 alleging:

This employer has failed to give a timely response to the Union's Cook-Chill jurisdictional grievance that was filed on November 24, 1999. The Cook-Chill jurisdictional issue has been an issue since 1993.

Copies of this grievance, and other information pertinent to the jurisdictional issue are enclosed. Also enclosed is a copy of a resolution that was reached during our 1995 negotiations. The state is now taking the position that this agreement is not valid.

The Complainant's cover letter states:

[T]his letter will supplement and amend the Unfair Labor Practice charge above-captioned. The Defendant(s), State of Montana (Montana State Hospital and Montana State Prison) by their officers, agents, or representatives refused and continue to refuse to bargain collectively in good faith with Teamsters Local Union No. 2, a labor organization chosen by a majority of its employees in an appropriate unit. The Defendant(s) have and are continuing to violate Sections 39-31-401(1) and (5), and 39-31-201 M.C.A.

The Defendant(s) have interfered with, restrained and coerced its employees and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed to them by law. This is a continuing violation, which arose on or about November 10, 1999.

The investigator for the Board conducted an investigation and on March 16, 2000 issued a Notice of Intent to Dismiss with the following determination:

There may well have been discussion about the issue in question, however, an essential element in any agreement is a signed document which simply does not exist. The central question needing resolution is placement of the Cook-Chill position. A unit clarification is the proper procedure to resolve this matter.

The Complainant appealed the investigator's determination to the Board which heard argument on October 19, 2000. The Board reversed the investigator's Notice of Intent to Dismiss finding probable merit to the complaint. The Board directed a full evidentiary hearing in a November 3, 2000, Order of Remand.

The Defendants filed a Joint Petition for Unit Clarification (UC 4-2001) on November 2, 2000, requesting that the Board clarify that the Cook-Chill truck driver position is and remains within the Montana State Prison Drivers and Warehouse bargaining unit. The agent for the Board of Personnel Appeals issued an order on December 18, 2000 transferring that petition to the Hearings Bureau of the Montana Department of Labor and Industry for a contested case hearing.

On December 22, 2000, the Defendants filed a Motion to Consolidate the unit clarification petition and the unfair labor practice complaint for hearing. Both parties submitted argument on the motion. After final argument, the Hearing Officer denied the Motion to Consolidate on February 23, 2001.

IV. FINDINGS OF FACT

1. Effective July 1, 1995, the Legislature created a new Department of Public Health and Human Services and transferred certain functions to it. As a result, the Montana Department of Corrections and Human Services was restructured. Portions became the Montana Department of Corrections, and MSH became part of the Department of Public Health and Human Services. Montana State Prison (MSP) became part of the renamed and reorganized Department of Corrections.

2. In October of 1998, MSP initiated its Cook-Chill food preparation operation. It prepared meals for consumption at MSP and other locations. Three days each week, MSP Driver and Warehouse bargaining unit employees deliver Cook-Chill products to other state facilities, including Montana State Hospital (MSH). Because temperature control is critical to food safety during transport and storage, the Cook-Chill product is hauled from MSP to other facilities in a truck with sophisticated equipment to monitor and control temperatures prior to loading and during transit. The Cook-Chill Driver position is an employee of MSP and is included in a bargaining unit representing MSP employees.

3. In 1999, the Legislature amended § 39-31-202, MCA, permitting the Board to make a new determination of appropriate bargaining units when the employing agency is reorganized, as was the case when the Department of Public Health and Human Services was created in 1995. Subsequently, the Board certified new exclusive representatives for the four newly-defined bargaining units employed by MSH on September 22, 1999 (Reorganization Proceeding 2-2000).

4. As a result of Reorganization Proceeding 2-2000, the 16 bargaining units employed by MSH were combined into four bargaining units. What had been a MSH Transportation and Warehouse bargaining unit represented by the Complainant Teamsters Local Union No. 2 became part of a MSH Maintenance, Trades and Crafts Employees Maintenance and Security bargaining unit. The Warm Springs Montana State Hospital Craft Council (Craft Council) was then certified by the Board as its exclusive representative.

5. The Craft Council is made up of the following labor organizations:

1) Pacific Northwest Regional Council of Carpenters (PNWRCC) Local Union #112,

2) International Brotherhood of Electrical Workers (IBEW) Local Union #233,

3) International Association of Machinists (IAM) District Lodge #86,

4) International Union of Operating Engineers (IUOE) Local Union #400,

5) Painters Local Union #1,

6) United Association of Plumbers and Pipefitters (UA) Local Union #41,

7) International Brotherhood of Teamsters (IBT) Local Union #2 (Complainant/Teamsters), and

8) MEA-MFT, Local #5070 AFL-CIO.

6. Each of the members of the Craft Council had been recognized as exclusive representatives for specific MSH bargaining units prior to Reorganization Proceeding 2-2000.

7. After Reorganization Proceeding 2-2000, the Defendants entered into negotiations with the Craft Council for a collective bargaining agreement, and ultimately reached agreement. Throughout the negotiations, and up to the time that the various locals signed off on the collective bargaining agreement, the separate unions, through various representatives, including John Forkan (Chairman of the Craft Council and Manager of Plumbers and Pipefitters, Local 41) and Ron Yagnatowiz, representing the Complainant, made it clear to the employer representatives that the rights of the various local unions under their previous contracts remained in full force and effect.

8. The Defendants requested the agreement take effect in the fall of 2000 because the wage schedules could not be implemented until the Craft Council unions had ratified the collective bargaining agreement. With that understanding, each of the independent local unions signed off on the collective bargaining agreement, including the Teamsters Local Union No. 2. Paula Stoll's letter to Forkan dated September 11, 2000, Exhibit UX-10, states that "the representation issue raised by the State as a respondent in ULP 19-2000 will not be effected [sic] by the ratification of this contract."

9. Prior to Reorganization Proceeding 2-2000, the Complainant was the exclusive representative for the MSH Transportation and Warehouse bargaining unit. The reorganization proceedings dissolved this unit and the Complainant is no longer the exclusive representative for any bargaining unit at MSH.

10. The reorganization proceeding did not affect the MSP Drivers and Warehouse bargaining unit and the Complainant continues as the exclusive representative for the MSP Driver and Warehouse bargaining unit.

11. Pending throughout the certification process and the subsequent negotiation for the Craft Council contract at Warm Springs State Hospital, the Complainant had four outstanding grievances: one concerning the Cook-Chill position, and three others, one filed in August 2000

and two others filed in October 2000. Consistent with the agreement of the parties, the other three grievances were processed through the grievance/arbitration procedure of UX-1a. Those grievances were successfully resolved on their merits by the parties on March 5, 2001 without reaching arbitration.

12. The Complainant did not waive or relinquish any of its contractual rights as established and set forth pursuant to the Collective Bargaining Agreement dated November 24, 1997 (Exhibit UX-1a) when it entered into the certification process and when the Craft Council negotiated and signed a new collective bargaining agreement.

13. In 1993, the Complainant filed a grievance concerning a unit employee, Carl Lanes and a position transporting chemical dependency patients from Galen to Butte. The chemical dependency position was stationed in Butte. The basis of the grievance was that the seniority rights of Lanes had been violated when the State moved the position from Galen to Butte.

14. The grievance was resolved without reaching arbitration through negotiations between the union and the employer. Ron Yagnatowiz, Teamsters Business Representative, Dan Evans, Personnel Officer for the employer, Department of Corrections and Human Services, and Carl Lanes, union member, signed a Settlement Agreement and Release, Exhibit UX-3, dated December 12, 1994. The terms of the agreement were:

> 1. The Department pay Mr. Lanes the sum of $2,500 as full and final settlement of all claims he has against the Department.
>
> 2. Teamsters and Mr. Lanes will drop the grievance dated December 2, 1993, and will not file any related grievance.
>
> 3. Inclusion of the transportation officer position at the Chemical Dependency Center in Butte, along with the wages and working conditions associated with that position, will be a mandatory subject of bargaining between the Teamsters and the Department for the 1995-1997 contract. The Teamsters and the Department agree that all issues related to that position will be dealt with at the bargaining table.

The employer paid Lanes a sum of $2,500.00 as full and final settlement of all his claims. The Complainant dropped its grievance dated December 2, 1993, and agreed not to file any further related grievances.

15. Notes on contract negotiations occurring in October 1995, Exhibit UX-4, indicate that the inclusion of the chemical transportation position at the Chemical Dependency Center in Butte in the Warm Springs unit, along with the wages and working conditions associated with that position, would be a mandatory subject of bargaining between the union and the employer for the 1995-1997 contract, Exhibit UX-3.

16. In the October 26, 1995 meeting between the Complainant and Defendants, the Defendants offered to move the Cook-Chill position to the unit represented by the Complainant at MSH, Exhibit UX-2, and the terms of the settlement agreement were agreed to by the parties.

17. On October 26, 1995, the Complainant and Defendants finalized their negotiations and prepared a written document, Exhibit UX-5, entitled "Teamsters Negotiations." The employer, through Steve Johnson, Dan Evans, Woody Casey, and Keith Wilson, and the Complainant, through Ron Yagnatowiz and Bill Rowe, negotiated the terms of the agreement, including the opening paragraph which states: "The Department of Public Health and Human Services, Montana State Hospital, and Department of Corrections, Montana State Prison and the Teamsters Union Local #2 agree to the following. . . ." The agreement stated:

> (1.) The Teamsters Union Local No. 2 agrees to forever withdraw any and all jurisdictional claims regarding the Transportation Supervisor's position located at the Montana Chemical Dependency Center in Butte, Montana.
>
> (2.) In exchange for the action cited in Number 1 above, the Department of Public Health and Human Services and the Department of Corrections agree to guarantee placement in the Warm Springs Teamsters Union of any newly created position established to deliver meals to Montana State Hospital from Montana State Prison. It is the Employer's intent that this position will be created upon completion of implementation of the Cook/Chill Method at Montana State Prison.
>
> (3.) The parties agree to negotiate the factoring of this position as required by Article 2, Section E of the collective bargaining agreement within thirty 30 days after such position is created.
>
> (4.) If the Cook/Chill preparation method is not implemented at Montana State Prison, the Warm Springs Teamsters Union retains jurisdiction over food services delivered at Montana State Hospital.
>
> (5.) The State agrees to drop its work jurisdiction proposal (Article 2).

None of the parties signed the document.

18. Yagnatowiz, business agent for the Complainant, has been a professional union representative for over 15 years and is responsible for several dozen contracts. Within weeks after the parties reached the unsigned agreement to place the MSP Cook-Chill Driver in a MSH bargaining unit, Yagnatowiz signed a fully integrated collective bargaining agreement, which did not contain the agreed to language concerning the Cook-Chill Driver position.

19. The 1995-97 collective bargaining agreement included agreement to resolve questions of interpretation or application of the agreement through a grievance procedure.

20. The grievance/arbitration procedure in the collective bargaining agreement had a second step in which grievances were to be submitted in writing as follows:

Step 2 - If the grievance cannot be adjusted at Step 1, it shall be presented to the Chief Executive Officer, Warden, Corrections Program Manager, or other designated management official, in writing, stating the name of the grievant, when the incident occurred, the nature of the grievance

(being specific), the applicable Articles of the contract which were violated, the remedy sought, the signatures of the grievant and the business agent, and the dates of signing, within seven (7) working days of Step l and an attempt to settle the grievance shall be made. The Management official will respond in writing within ten (10) working days of receipt of the grievance.

21. On November 24, 1999, Yagnatowiz wrote a letter to Kimberly Chladek, MSH Human Resources Director, in which he expressed his union's disapproval of the Defendants' plans relating to the MSP Cook-Chill operation. The complaint alleged that negotiators for MSH agreed to place a MSP Driver and Warehouse bargaining unit Cook-Chill truck driver position in the MSH Transportation and Warehouse bargaining unit.

22. On December 30, 1999, Chladek wrote a letter responding to Yagnatowiz. Chladek wrote:

Clearly, cook chill food delivery has been an issue for you over past years. However, Montana State Hospital has no authority, either apparent or implied over the jurisdiction of newly created FTE or existing FTE at the Montana State Prison. Montana State Hospital intends to contract with Montana State Prison for the provision of cook chill food product. This transition is imminent and will be taking place upon completion of construction of the new hospital.

23. On January 18, 2000, Yagnatowiz wrote a letter to Beth McLaughlin, Chief Personnel Officer for the Montana Department of Public Health and Human Services, and requested that the complaint, as filed in his November 24, 1999 letter, be submitted to final and binding arbitration.

24. McLaughlin believed there was no violation of the collective bargaining agreement and that it was more proper to submit the dispute to the Board as a petition for a unit clarification. Accordingly, she declined the request to submit the dispute to arbitration.

25. On February 10, 2000, Paula Stoll, Labor Relations Bureau Chief, Montana Department of Administration, notified Yagnatowiz by letter that she believed the Defendants' decision concerning the Cook-Chill driver position did not constitute a violation of the collective bargaining agreements pertinent to the Montana State Hospital or the Montana State Prison.

26. Defendants refused to process the grievance under either grievance procedure. They informed Yagnatowiz they would not agree to arbitrate the dispute because they believed that a petition for unit clarification was the appropriate process to address the Complainant's grievance.

V. DISCUSSION

Montana law requires a public employer to bargain collectively in good faith with labor organizations representing their employees on issues of wages, hours, fringe benefits, and other conditions of employment. § 39-31-301(5), MCA. The failure to bargain collectively in good faith is a violation of § 39-31-401(5), MCA.

The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using federal court and National Labor Relations Board (NLRB) precedent as guidance in

interpreting the Montana Collective Bargaining for Public Employees Act. State ex rel. Board of Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d 1117 (1979); Teamsters Local No. 45 v. State ex rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310 (1981); City of Great Falls v. Young (Young III), 211 Mont. 13, 686 P.2d 185 (1984).

The Complainant asserts that the Defendant's refusal to submit to arbitration the question of whether the Cook-Chill Driver position would be placed at MSH is a failure to bargain collectively in good faith and therefore an unfair labor practice.

An employer has the same duty to bargain collectively over grievances as over the terms of the agreement and failure to hold a grievance hearing as provided in the contract is an unfair labor practice. City of Livingston v. Montana Council No. 9, 174 Mont. 421, 571 P.2d 374 (1977). The terms of the agreement determine the arbitrability of the dispute. Missoula County High School Education Ass'n v. Board of Trustees, 259 Mont. 438, 857 P.2d 696 (1993).

The Defendants contend that the unfair labor practice charge should be dismissed because: 1) the Complainant lacks standing to pursue the charge; 2) the purported grievance is in fact an issue of representation; 3) an arbitrator's award requiring a position to be moved from one agency to another would be contrary to law; 4) the Defendants' management rights control; 5) the letter of November 24, 1999 does not meet the contract requirements for filing a grievance; and (6) the purported agreement was never incorporated into the parties' collective bargaining agreement.

The question of whether the purported agreement was ever incorporated in the 1995-97 collective bargaining agreement is dispositive of the unfair labor practice claim. Before addressing this issue, however, this decision will address the other contentions of the Defendants.

Standing

The Defendants argue that the Complainant lacks standing to pursue an unfair labor practice claim because it is no longer the exclusive representative of employees at MSH due to the reorganization and Reorganization Proceeding 2-2000, which designated the Craft Council as the exclusive representative. The Complainant, however, maintains that the Defendants have committed an unfair labor practice by refusing to process a grievance over rights which arose under its 1995-97 collective bargaining agreement. Assuming that the matter is arbitrable in the first place, a party to a collective bargaining agreement may pursue a grievance over a dispute which arose under the contract based on events which occurred after the termination of the contract. Nolde Bros. v. Bakery Workers, 430 U.S. 243 (1977). The history of bargaining following Reorganization Proceeding 2-2000 establishes that the individual unions composing the Craft Council retained their rights under previous agreements. The Complainant continued to pursue other grievances under the expired agreements. It has standing to pursue any otherwise arbitrable grievance under the expired agreement.

Issue of Representation

The Defendants characterize the dispute as an issue of representation, and cite authority for the proposition that issues of representation are not matters for arbitration, but are within the exclusive province of the Board to determine. This argument is without merit for several reasons.

First, the Board has already rejected the argument of the Defendants that a unit composition procedure was the only appropriate avenue for redress under the circumstances. Indeed, it appears that the Board has found there was sufficient cause to hold a ULP fact finding hearing and remanded this matter to the Hearing Officer.

Second, the issue in this case is not whether an employee of MSP should be included in a unit as MSH. Rather, it is whether driving work associated with the Cook-Chill operation should be performed by employees of MSH. The Complainant contends it had an agreement for the work to be performed by employees of MSH, and wishes to grieve the Defendants' failure to comply with the agreement. This is not a representation question. Decisions about whether particular work is bargaining unit work are often subjects of bargaining, whether mandatory or permissive. If a labor agreement addresses what constitutes bargaining unit work, a failure to comply with the agreement is arbitrable according to the terms of the agreement. The issue in this case is whether the failure to arbitrate is an unfair labor practice.

Illegality of Possible Arbitrator's Award

Defendants contend that any arbitrator's award which requires reassignment of an MSP employee to MSH would be illegal. The theory of Defendants' contention is not clear from its briefs, and requires speculation about the content of any award. However, as noted in the discussion of the issue of representation, the placement of the position is not the issue here.

Management Rights

Defendants contend that any possible arbitrator's award would be contrary to its rights under state law to determine the manner, means and personnel by which it carries out its functions. Again, Defendants are speculating about the outcome of arbitration. However, if the placement of bargaining unit work is a permissible subject of bargaining, a violation of the terms of a collective bargaining agreement on that subject is arbitrable.

Technical Grievance Requirements

Defendants contend the Complainant's grievance is not arbitrable because of failure to comply with provisions of the collective bargaining agreement requiring that any grievance include an explanation and identification of the contract provision violated and remedy sought. Complainant's letter of November 24, 1999 was sufficient to identify the grievance. If the matter is otherwise arbitrable, this is not a basis to refuse arbitration.

Incorporation of the Agreement Concerning the Cook-Chill Driver Position into the Collective Bargaining Agreement

Section 39-31-305(2), MCA, permits public employers to enter into collective bargaining agreements containing final and binding grievance arbitration:

Except as provided in subsection (5), an agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

The fact that the Complainant alleges that a grievance has been filed does not by itself obligate MSH to arbitrate the dispute, however. The Montana Supreme Court held in Missoula County High School Education Association v. Board of Trustees, 259 Mont. 438, 857 P.2d 696 (1993):

Although the Agreement contains a grievance procedure culminating in arbitration, as allowed in sec. 39-31-306(2), MCA, the mere existence of this provision does not require all controversies to be arbitrated. By entering into a collective bargaining agreement that provides for arbitration, the parties to the agreement do not consent to submitting all disputes to arbitration. Indeed, sec. 39-31-306(3), MCA, expressly provides that a collective bargaining agreement shall be enforced "under its terms." Thus, the terms of the agreement determine the arbitrability of the dispute. . . .

We find support for our conclusion in International Union v. Acme Precision Prod. (E.D.Mich. 1981), 521 F.Supp. 1358. . . . The United States District Court observed that a mere allegation that a collective bargaining agreement has been violated is not sufficient to justify an order to arbitrate; a party must point to a specific provision of the contract to support its demand for arbitration, and the union failed to do so. International Union, 521 F.Supp. at 1361.

259 Mont. at 441 and 444.

The United States Supreme Court reached a similar conclusion in AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643 (1986):

The principles necessary to decide this case are not new. They were set out by this Court over 25 years ago in a series of cases known as the Steelworkers Trilogy: . . .

The first principle gleaned from the Trilogy is that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. . . ." This axiom recognizes the fact that arbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration. . .

The second rule, which follows inexorably from the first, is that the question of arbitrability -- whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance -- is undeniably an issue for judicial determination. Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator.

475 U.S. at 648-49 (emphasis added, citations omitted).

In this case, the terms of the collective bargaining agreement limits and defines grievances as follows:

Having a desire to create and maintain harmonious labor relations between them, the parties agree that they will promptly attempt to adjust all complaints, disputes, controversies or other grievances arising between them involving questions of interpretation or application of terms and provisions of this Agreement. (emphasis added)

The Complainant's grievance filed on November 24, 1999 clearly references an agreement that existed outside the collective bargaining agreement. The parties clearly agreed to have the Cook-Chill Driver work performed by MSH employees. The evidence does not establish why the agreement was not incorporated into the 1995-97 collective bargaining agreement but it was not. Accordingly, the terms of the agreement are controlling. Extra-contractual material cannot establish an agreement to arbitrate. There is not, nor has there ever been an agreement between the parties to arbitrate the dispute set forth in the Complainant's letter dated November 24, 1999.

Because the agreement concerning the Cook-Chill Driver position was not incorporated into the collective bargaining agreement, a violation of that agreement is not arbitrable. Therefore, Defendants were not required to process the grievance and their refusal to do so was not an unfair labor practice.

VI. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to § 39-31-405, MCA.

2. The Complainant has failed to show that Defendants had a duty to arbitrate the grievance filed on November 24, 1999 pursuant to their collective bargaining agreement. Therefore, Defendants did not commit an unfair labor practice by refusing to process the grievance.

VII. RECOMMENDED ORDER

It is hereby Ordered that this matter is Dismissed With Prejudice.

DATED this 9th day of October, 2001.

BOARD OF PERSONNEL APPEALS

By: /s/ GORDON D. BRUCE
GORDON D. BRUCE
Hearing Officer

NOTICE: You are entitled to review of this Order pursuant to § 39-31-406, MCA. Review may be obtained by filing a written notice of appeal with the Board of Personnel Appeals postmarked no later than November 1, 2001 . This time period includes the 20 days provided for in § 39-31-406(6), MCA, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 6518
Helena, MT 59624-6518