

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF AFFILIATION PETITION NO. 2-2002:

BOULDER TEACHERS ASSOCIATION/)	Case No. 808-2002
BOULDER ASSOCIATION OF CLASSIFIED)	
PERSONNEL, MEA-MFT,)	
Petitioner,)	FINDINGS OF FACT;
vs.)	CONCLUSIONS OF LAW;
BOULDER ELEMENTARY DISTRICT/)	AND RECOMMENDED ORDER
JEFFERSON COUNTY HIGH SCHOOL DISTRICT,)	
Respondent,)	

* * * * *

I. INTRODUCTION

On October 18, 2001, the Boulder Teacher's Association and the Boulder Association of Classified Employees (the Locals) filed a petition to affiliate with each other and requested that the Board of Personnel Appeals recognize the new entity, the Boulder Education Association/MEA-MFT as the exclusive representative for the Local's bargaining unit employees.

The Boulder Elementary District and the Jefferson County High School District (the Districts) filed an answer to the petition on November 15, 2001, objecting to the merger on the basis that it posed significant questions regarding the community of interests. Additionally, the Districts contended that its counter petition to divide the current two bargaining units into four units better defined the units.

On behalf of the Board of Personnel Appeals, Department of Labor and Industry Hearing Officer Bernadine Warren conducted a contested case hearing on July 10, 2002. The hearing concluded on July 19, 2002. Richard Larson, attorney, represented the Locals. Deborah Silk, attorney, represented the Districts.

Lance Peeler, Bob Ekblom and Jane Bilodeau (aka Jane Fields) testified on behalf of the Locals. Gary Craft, Gerald Craft, Andy Sever, and Stan Senechal testified on behalf of the Districts. The Hearing Officer admitted the Districts' exhibits 1, 2, 4, 5, 7 and 8 into the record without objection. She admitted the Districts' exhibit 3 into the record over the Local's objection that it was a new form and irrelevant to the issue. The Locals were to provide the Hearing Officer a copy of its exhibit A no later than August 2, 2002. The Districts had no objection to the admission of the proposed exhibit A. However, the Hearing Officer did not receive the exhibit. Thus, the record closed without the admission of Locals exhibit A.

The Districts filed a petition for clarification on November 15, 2001, Case No. 883-2002. Due to the close relationship to the instant case, the parties agreed to combine both the unit affiliation petition and the unit clarification petition in one hearing. However, the two issues will be decided separately.

II. ISSUE

Whether the Board of Personnel Appeals may recognize the affiliation of the Boulder Teacher's Association and the Boulder Association of Classified Personnel as a new unit, the Boulder Education Association/MEA-MFT.

III. FINDINGS OF FACT

1. The MEA/MFT is a "labor organization" within the meaning of § 39-31-103(6), MCA.
2. School Districts 1 and 7, are comprised of the Boulder Elementary School (District 7) and the Jefferson County High School (District 1). Each entity has a separate school board.
3. Employees of each entity are currently represented by one of two bargaining units. The certified bargaining unit, which covers teaching employees, is the Boulder Teacher's Association. The classified bargaining unit, which covers non-teaching staff, is the Boulder Association of Classified Employees. Both units have elected to be represented by the MEA/MFT.
4. The two school boards communicate and interact to a substantial degree. Each year, the two boards negotiate with the Locals on contracts for either certified or classified employees. Sometimes the two contracts expire in alternate years, and other times the two contracts expire during the same year.
5. The two school boards have a shared committee, in place for more than nine years, called the "negotiation committee." The negotiation committee is comprised of two members from the High School board, and two members from the Elementary School board. The negotiation committee meets with representatives from each local to renegotiate a contract. Historically, the two bargaining units negotiate separately with the negotiation committee, but frequently during the same time period. The Elementary School typically has a much smaller budget than the High School. Because the school boards combine for contract negotiation purposes, the smaller budget is used to determine any salary or benefit increases or decreases. At times the High School Board has wanted to approve ratification of a particular contract, which the Elementary School Board has not. This has caused substantial delays of final ratification. The certified employee contract is typically ratified first. The classified Local usually applies the same pay raises or benefit increases ratified on the certified contract to the classified contract. Other contractual issues, such as working terms and conditions, are bargained for separately.
6. Some certified employees and some classified employees work for both the High school and the Elementary school. Each entity pays the worker for the portion of work provided by the

worker to the entity. These "shared employees" are supervised by each entity during the time the worker is providing services to each entity.

7. Gary Craft is the clerk for both the High School and the Elementary School. Each entity pays for half his salary. Dr. Linthicum is the Superintendent for both schools. He also is paid partly by the High School and partly by the Elementary School. Until recently, both Craft and Linthicum received checks from both entities. However, new software has allowed issuance of one paycheck, but charges the appropriate salary amount to each entity. Craft and Linthicum receive instructions and supervision from both boards. They each attend both board meetings.

8. Certified employees work 187 days a year. Classified employees generally work under a work agreement, depending upon the type of work required. A classified employee may work full time, work part time, work only when school is in session, or work more days than school is in session.

9. The Districts provide the same faculty handbook to certified staff of both Districts. The Districts provide the same personnel manual to both certified and classified staff of both Districts.

10. Certified employees of both Districts are paid according to the employee's level of education and years of service, as outlined in the certified employee collective bargaining agreement. Certified employees do not receive holiday pay.

11. Classified employees of both Districts are paid according to the type of work performed, such as cooking or custodial work, and longevity. Classified employees receive payment for specified holidays.

12. Certified employees of both Districts receive 10 days of sick leave, five days of bereavement leave, professional leave, and three days personal leave, all paid at full salary. Classified employees of both Districts earn sick leave as provided by state law for public employees.

13. The Districts provide a higher paid premium for insurance coverage for certified employees than for classified employees.

14. Reduction in force procedures for certified employees differ from those for classified employees.

15. In late 2001, certified and classified employees of both Districts voted to consolidate the two existing bargaining units into one unit. They subsequently filed an affiliation petition with the Board.

IV. DISCUSSION

The Locals seek a determination that the two existing bargaining units be merged into one unit representing all employees, both classified and certified, of the two school districts.

Montana law gives public employees the right of self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities. § 39-31-201, MCA. The Montana Supreme Court has approved the use of federal court and National Labor Relations Board (NLRB) decisions as precedent when 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, 103 LRRM 2297 (1979); Teamsters Local No. 45 v. State ex rel Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young (Young III), 2110 Mont. 13, 686 P.2d 185, 119 LRRM 2682 (1984).

The Local's citation to *State ex rel. Board of Personnel Appeals v. District Court*, 183 MT. 223, 598 P.2d 1117(1979) is misplaced. Unlike the situation in that case, the Locals here have failed to identify any rule, statute, or NLRB precedent that would permit the affiliation of the bargaining units sought in this case. Further, ARM 24.26.651 allows recognition of national, regional or statewide labor organization mergers or affiliations, but specifically leaves out any language that would allow mergers or affiliations of bargaining units. The specific failure to include bargaining units in the affiliation language leads to the conclusion that the Board does not have the authority to allow bargaining units to affiliate. The laws, instead, focus on determining an appropriate bargaining unit, a unit clarification rather than affiliation. In light of the above, the hearing officer must conclude that the Board may not recognize the affiliation petition of two or more bargaining units.

V. CONCLUSIONS OF LAW

The Board of Personnel Appeals has jurisdiction over this matter pursuant to § 39-31-207, MCA.

The Board of Personnel Appeals may not recognize the affiliation petition of two or more bargaining units.

VI. RECOMMENDED ORDER

The request of the Locals that the current bargaining units affiliate or merge into a new entity is denied.

DATED this 28th day of October, 2002.

BOARD OF PERSONNEL APPEALS

By: /s/ BERNADINE E. WARREN

Bernadine E. Warren
Hearing Officer
Department of Labor and Industry

NOTICE: Pursuant to ARM 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than November 20,

2002. This time period includes the 20 days provided for in ARM 24.26.215, 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