

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF DECERTIFICATION PETITION NO. 1-2005::

<b>Cascade County Corrections/Detention Officer's Association,</b>	)	Case No. 31-2005
	)	
Complainant,	)	
and	)	FINDINGS OF FACT;
<b>Teamsters Union Local No. 2,</b>	)	CONCLUSIONS OF LAW;
<b>International Brotherhood of Teamsters,</b>	)	AND RECOMMENDED ORDER
	)	
Respondent,	)	
and	)	
<b>Cascade County Sheriff's Office,</b>	)	
	)	
Employer,	)	

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**I. INTRODUCTION**

On July 7, 2004, the Cascade County Corrections/Detention Officer's Association filed a petition for decertification of Teamsters Union Local No. 2, International Brotherhood of Teamsters, as the exclusive representative for the bargaining unit to which the members of the association belonged. The Montana Board of Personnel Appeals held notice of decertification proceedings in abeyance pending receipt of copies of the applicable collective bargaining agreement ("CBA") and the extension agreement for that CBA. The association requested that the Board reinstate and proceed on the petition for decertification. The Board ordered the hearing officer to conduct a hearing to determine whether the petition met the applicable procedural requirements of Admin. R. Mont. 24.26.643(2), which states:

The petition must be filed during the 30 day window period which starts on the 90th day and ends on the 60th day prior to the termination date of the collective bargaining agreement, or upon the terminal date thereof.

Hearing Officer Terry Spear held the contested case hearing in this matter on September 21, 2004, in Great Falls, Montana. Rod Beall and Shane Cooper participated on behalf of the petitioner association, D. Patrick McKittrick, McKittrick Law Firm, P.C., represented the respondent union (Max Hallfrisch attended as designated representative for the union) and Gregory L. Bonilla and Steven B. Bolstad, Cascade County Attorney's Office, represented the employer county (Tom Meech attended as designated representative for the county). The hearing officer heard oral arguments, received the testimony of Rod Beall and admitted exhibits A-1

through J-1 (for the Association) and U-A through U-H (for the Union) into evidence. The parties submitted the case for decision after the close of the presentation of evidence.

Having considered the evidence of record and the applicable law, the hearing officer now reaches the following findings of fact and conclusions of law and recommends the Board issue the following order.

## **II. ISSUE**

Whether the decertification petition has met the procedural requirements pursuant to Admin. R. Mont. 24.26.643(2), specifically whether it was filed within the window period or upon the termination of the collective bargaining agreement.

## **III. FINDINGS OF FACT**

1. Petitioner Cascade County Corrections/Detention Officer's Association is an incorporated association whose members are employees of the employer Cascade County, working under the ultimate supervision of the Cascade County Sheriff, and also currently members of a bargaining unit for which the exclusive representative is respondent Teamsters Union Local No. 2, International Brotherhood of Teamsters. The respondent's CBA with the employer had an expiration date of June 30, 2004. The CBA included designation of the county employees within the bargaining unit.

2. On April 11, 12 and 13, 2004, members of the bargaining unit "voted" whether to retain the respondent as their exclusive representative. The mechanics of the "voting" are not clear from the record in this case.

3. In June 2004, the incumbent sheriff lost the primary election to the undersheriff. The winner of the primary would run unopposed in the general election held in November 2004. The respondent requested that the winner of the primary participate in negotiations regarding a new CBA. This delayed negotiations.

4. On June 29, 2004, the employer and the respondent entered into an extension agreement of the CBA, extending the CBA until August 27, 2004, ratification of a new CBA or termination of the extension by either party, in writing.

5. On June 30, 2004, the petitioner adopted a constitution and bylaws, becoming a formal association.

6. On July 7, 2004, the petitioner filed a petition for decertification of the respondent as exclusive representative of the bargaining unit, together with 29 "letters of intention" supporting decertification.

## **IV. DISCUSSION<sup>(1)</sup>**

The only question the Board ordered this hearing to determine was whether the decertification petition met the requirements of Admin. R. Mont. 24.26.643(2) that it be filed either during the 30 day window period from 90 to 60 days prior to the CBA's termination date or upon that termination date. Under the plain language of the regulation, the petition, filed 7 days after the original termination date and while the extension of the CBA was still in full force and effect, did not meet those requirements.

Admin. R. Mont. 24.26.643(2) mirrors the requirements of federal law. After the "window" between two and three months before termination of a CBA closes, allowance of a decertification petition can paralyze negotiations, interfere with prompt resolution of disputes and destabilize labor relations. *Local 3075 v. Shore* (W.D.Pa. 1974), 386 F. Supp. 600, 601. Decertification petitions while the CBA is still in force are timely only during the window. Clearly, petitioners missed the window in this case.

When the term of the CBA is extended, the filing of a decertification petition may be untimely during the extension, because it is before the termination of the CBA. Ordinarily, an agreement to extend a CBA in order to bargain will immunize the exclusive representative from decertification proceedings if (1) the Board imposes or at least approves the extension or (2) the employer agrees to extend the bargaining period to settle a union unfair labor charge of refusal to bargain in good faith. *See, N.L.R.B. v. Accurate Web, Inc.* (2<sup>nd</sup> Cir. 1987), 818 F.2d 273, 274. Here, the delay in bargaining resulted from a primary election during negotiations. That primary election would decide who would be the next sheriff. The union reasonably wanted to assure that the incoming sheriff was committed to the negotiations and any agreement.

There was no evidence that the union engineered the extension to defeat possible decertification. The evidence showed a good faith basis for the extension, necessitated by the impact of the primary.

This case did not involve either of the normal bases for a bar against a decertification petition during the extension. However, the rationale for both bases to promote effective and timely negotiations, prompt resolution of disputes and stable labor relations does apply to this situation. Therefore, the extension of the CBA rendered the decertification petition untimely.<sup>(2)</sup>

## **V. CONCLUSIONS OF LAW**

1. The decertification petition was not filed within the window period or upon termination of the collective bargaining agreement. Admin. R. Mont. 24.26.643(2).

## **VI. PROPOSED BOARD ORDER**

1. The decertification petition failed to meet the procedural requirements of Admin. R. Mont. 24.26.643(2), because it was not filed within the window period or upon termination of the collective bargaining agreement, and therefore the Board should dismiss the decertification petition as untimely.

DATED this 4th day of October, 2004.

BOARD OF PERSONNEL APPEALS

By: /s/ TERRY SPEAR

Terry Spear  
Hearing Officer

NOTICE: Pursuant to Admin. R. Mont. 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than October 27, 2004. This time period includes the 20 days provided for in Admin. R. Mont. 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

1. Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.
2. Because the petition was untimely for this reason, the decision does not address whether failure to file the petition until after the actual original termination date would also render it untimely.