

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION:

IUOE LOCAL 400,

Petitioner,

vs.

LAME DEER PUBLIC SCHOOL,

Respondent.

Case No. 814-2025

**FINDINGS OF FACT; CONCLUSIONS
OF LAW; AND ORDER**

I. INTRODUCTION

On April 14, 2025, the Board of Personnel Appeals (Board) received a petition for Unit Determination (Petition), filed by Petitioner, IUOE Local 400 (Union), pursuant to Admin. R. Mont. 24.26.1012. The Petition proposed a bargaining unit consisting of Paraprofessionals, Counselors, Security, Bus Monitors, Bus Drivers, Maintenance Staff, Custodians, and Kitchen Staff employed by Lame Deer Public School (School District). The Petition specifically excluded Teachers, Administrators, and Department Heads.

The board agent served a copy of the Petition on the School District, pursuant to Admin. R. Mont. 24.26.1020, and on May 5, 2025, the School District confirmed that it posted notice of the Petition in writing pursuant to Admin. R. Mont. 24.26.1014. The School District did not file an Employer Counter Petition by the deadline in Admin. R. Mont. 24.26.1016(a), and no party filed a Petition to Intervene by the deadline in Admin. R. Mont. 24.26.1018(1). On May 13, 2025, the board agent determined additional review was required and forwarded the matter for a unit determination hearing before the Office of Administrative Hearings. In particular, the board agent indicated questions remained about the applicability of the community of interest factors to counselors.

On May 27, 2025, Hearing Officer Jeffrey Doud convened a unit determination hearing. Nyles Greer and Lawrence Martin represented the School District. Victoria Falls Down and Bethany Snow-Strange Owl attended as representatives of the School District. Tracee Raymond, the Union's field representative, and Steve Gross, appeared on behalf of the Union.

Neither party introduced any exhibits. Tracee Raymond, Victoria Falls Down, and Bethany Snow-Strange Owl testified under oath.

II. ISSUE

Whether a unit, consisting of Paraprofessionals, Counselors, Security, Bus Monitors, Bus Drivers, Maintenance Staff, Custodians, and Kitchen Staff proposed for collective bargaining purposes is appropriate pursuant to Mont. Code Ann. § 39-31-202.

III. FINDINGS OF FACT

1. The School District is a “public employer” as defined in Mont. Code Ann. § 39-31-103(10).

2. The Union is a “labor organization” as defined in Mont. Code Ann. § 39-31-103(6), and eligible to be the exclusive representative of the employees specified in its petition for a new unit determination and election.

3. The Union filed the Petition for recognition of a unit for collective bargaining consisting of Paraprofessionals, Counselors, Security, Bus Monitors, Bus Drivers, Maintenance staff, Custodians, and Kitchen Staff, but excluding Teachers, Administrators, and Department Heads. The approximate number of employees in the proposed unit is 40.

4. Neither party presented any evidence as to the manner in which each position is paid or the method by which each employee’s pay is determined.

5. Paraprofessionals are individuals who assist teachers in the classroom with direction, instruction of lessons, and implementation of the curriculum. They typically work only when the teachers are in the classroom, which is generally 8:00 a.m. to 4:00 p.m. They do not work nights, weekends, or during any period where school is not in session such as holidays or breaks. The Paraprofessionals are directed by the teacher whom they work with and are supervised by the principals in the individual schools where they work. However, the Special Education Paraprofessionals are supervised by the Special Education Director.

6. There are two types of Counselors in the School District: Guidance Counselors and Drug and Alcohol Counselors. Both Counselors are supervised by the principal. Neither type of Counselor is responsible for giving educational instruction or implementation of the curriculum.

7. A Guidance Counselor is credentialed in the same manner as a teacher, and is responsible for assisting students with course selection, preparing students for careers or college, at-risk students, and emotional support. The Guidance Counselor works when students are in session, meaning that they do not work nights, weekends, or school breaks.

8. A Drug and Alcohol Counselor deals with students who have a substance abuse issue. If necessary, they will direct the student to behavioral health. Given their responsibilities, they have to maintain the same credentialing as any other drug and alcohol counselor. Just as with the guidance counselor, they do not work nights, weekends, or school breaks.

9. Security Staff are those employees hired to ensure the safety of the school grounds. They monitor the interior and exterior school grounds, and address any safety issues that arise. Security Staff work different shifts, meaning some work during the school day, others work on nights, weekends, and are present during school breaks. They do not assist in the implementation of the curriculum. Security Staff are supervised by the Maintenance Supervisor.

10. Bus Monitors ride on the buses and observe students to ensure that they are complying with bus rules. They work for a couple of hours in the morning and a couple of hours in the afternoon. They generally do not work nights, weekends, or school breaks unless they sign up for extracurricular school activities. Bus Monitors are supervised by the Transportation Director.

11. Bus Drivers are responsible for driving assigned bus routes to transport students to and from school. They generally work a couple of hours in the morning and a couple of hours in the afternoon, and only work during school hours, nights, weekends, or breaks if they are transporting students to specific activities. Bus Drivers must maintain a Commercial Driver's License, and are supervised by the Transportation Director.

12. Maintenance Staff are responsible for maintaining the exterior school grounds and repairing the main systems of the school. They are also responsible for scheduling and working with approved vendors for projects that require specialized skills. Maintenance workers work from 7:00 a.m. to 3:30 p.m., and typically do not work nights or weekends unless an emergency arises. They do work during school breaks. Maintenance staff are supervised by the Maintenance Director.

13. Custodians are primarily responsible for cleaning the buildings and maintaining the sightliness of the exterior of the School District buildings. Custodians work two shifts: one from 7:00 a.m. to 3:00 p.m. and another from 3:00 p.m. to 11:00 p.m. They do not work weekends, but may come in

over the summer break to assist with events. Custodians do not help implement the curriculum. They are supervised by the Maintenance Director.

14. Kitchen Staff are those who help prepare and serve meals to the students on a daily basis. They are also responsible for cleaning the kitchen and ordering supplies as needed. Their shift is usually from 6:00 a.m. to 2:00 p.m., and they do not work nights, weekends, or school breaks, except they may sign up for summer events. Their supervisor is the Food Services Director.

15. The School District engages in collective bargaining with those who are members of the certified union, which are typically the teachers.

IV. DISCUSSION

Montana law governing collective bargaining provides that the Board of Personnel Appeals (Board) or its agent shall decide the unit appropriate for collective bargaining, considering such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees. Mont. Code Ann. § 39-31-202(1). Similarly, the rules of the Board implementing Mont. Code Ann. § 39-31-202 provide, “[t]he board may consider a bargaining unit that consists of all the employees in any department, division, bureau, section, or combination thereof.” Admin. R. Mont. 24.26.1004. In analyzing this case, it is appropriate to consider cases decided under federal law. Section 9(b) of the National Labor Relations Act gives the National Labor Relations Board (NLRB) comparable authority to determine appropriate bargaining units. Thus, the Montana Supreme Court and the Board follow federal court and NLRB precedents in interpreting Montana public employee collective bargaining cases. *State ex rel. Board v. District Court* (1979), 183 Mont. 223, 598 P.2d 1117; *Teamsters Local 45 v. State ex rel. Board* (1981), 195 Mont. 272, 635 P.2d 1310; *City of Great Falls v. Young (Young III)* (1984), 211 Mont. 13, 686 P.2d 185.

The role of the Board is not to determine the most appropriate unit, but only an appropriate unit, pursuant to the statutes and regulations. “Under the Act, our task is to determine not the most appropriate or comprehensive unit, but simply an appropriate unit.” *Dezcon, Inc.*, 295 N.L.R.B. 109 (1989). Like the federal law, Montana law requires the Board to consider “community of interest” in determining an appropriate unit. Mont. Code Ann. § 39-31-202(1); see also Admin. R. Mont. 24.26.1005. The term “community of interest” is determined by considering several enumerated factors.

The board shall determine whether a bargaining unit is appropriate by determining whether the employees share a community of interest. A community of interest is determined by considering the following factors:

- (a) wages;
- (b) hours;
- (c) fringe benefits and other working conditions;
- (d) the history of collective bargaining;
- (e) common supervision;
- (f) common personnel policies;
- (g) extent of integration of work functions and interchange among employees affected; and,
- (h) desires of the employees.

Admin. R. Mont. 24.26.1005. “Community of interest” subsumes the other factors—wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees. All the aforementioned factors have to be weighed together and no one factor is controlling. *Montana Public Employees’ Association v. Cascade County* (2000), UC 1-2000. “Unlike federal labor law, Montana law contains no restriction on including professional employees in units with other employees. Professional employees can be included in a unit with other employees if there is a sufficient community of interest. Unit Clarification 4-79.” *MPEA v. Great Falls* (2005), UC 8-2005, “Discussion,” p. 10.

The initial burden of proof is on the Union to establish that the proposed bargaining unit is an appropriate unit. Here, the Union failed to carry its burden of establishing that the proposed unit is appropriate because it failed to show that there was a community of interest between the separate positions. The Union failed in this regard because it did not present any evidence on several of the “community of interest” factors. Notably, the Union did not provide any evidence with respect to wages, fringe benefits, and other working conditions, personnel policies, extent of integration of work functions and interchange among employees affected, or desires of the employees. Rather, the Union’s only argument was that anyone who was not a supervisor or administrator, or who was not already a union member, should be allowed to join the bargaining unit.

The only evidence regarding any of the “community of interest” factors was presented by the School District, which illustrated differences in the work functions, supervision, and hours of the proposed unit members depending on their roles.

Due to the Union's failure to present evidence to carry its burden, there is inadequate evidence in the record to support a finding of a community of interest among all the positions within the proposed bargaining unit. While there is evidence regarding the community of interest factors based on what the School District presented, because the Union did not present sufficient evidence or arguments as to its position to include all positions together, it is premature to designate a collective bargaining unit at this time. Further, the School District's presentation that the positions are so different as to not support any bargaining unit at all is also not supported by the evidence. Such an interpretation defeats the purpose of the collective bargaining act. Therefore, absent sufficient evidence, the Union's petition must be denied, but without prejudice and subject to renewal.

V. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Mont. Code Ann. § 39-31-207.

2. The Union failed to carry its burden of proving that the proposed unit shared a community of interest.

3. The Union did not present any evidence as to the community of interest, hours, wages, fringe benefits and other working conditions, history of collective bargaining, common supervision, personnel policies, extent of integration or work functions and interchange among employees, or the desires of the employees.

VI. ORDER

Based on the foregoing, the Hearing Officer hereby orders that the Union's Petition for Unit Determination is denied, without prejudice, as the Union failed to carry its burden of establishing that that proposed unit supported a community of interest.

DATED this 10th day of June, 2025.

BOARD OF PERSONNEL APPEALS

By: /s/ JEFFREY M. DOUD
JEFFREY M. DOUD
Hearing Officer