

IN THE MATTER OF UNIT DETERMINATION:

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The matter was transferred to the Office of Administrative Hearings on August 25, 2026, pursuant to Mont. Code Ann. § 39-31-207, and Admin. R. Mont. 24.26.1008, 24.26.1016. After a scheduling conference held on September 1, 2026, the hearing was held September 11, 2026. Sarah Boss appeared as the representative for SGTA. Nyles Greer represented the District. His associate, Ms. Curtin, appeared and observed. Boss, Gary Mattheis, and Phil Hathaway testified for SGTA. Corey Austin, Superintendent of the District, testified for the District. The parties stipulated to admission of the administrative record transmitted by the department consisting of Documents 1 through 30. The parties also stipulated to SGTA Exhibits 1 through 7, submitted September 4, 2026, and the District's Exhibits A

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through W, submitted September 4, 2026. The District requested post-hearing briefing at the Scheduling Conference, but was denied because Admin. R. Mont. 24.26.1008 generally requires an informal hearing and an expedited decision. Further, the District submitted substantial briefing in its counter petition which was included in the administrative record and submitted substantial briefing in its final contentions which were both considered by the Hearing Officer. The matter was submitted for decision at the end of the hearing.

II. ISSUE

Whether a unit consisting of full-time and part-time bus drivers and substitute bus drivers who drive at least 50 hours per year, proposed for collective bargaining purposes, is appropriate pursuant to Mont. Code Ann. § 39-31-202.

III. FINDINGS OF FACT²

1. The bus drivers provide transportation services for the high school, the elementary school, and other area schools.
2. For the 2025-2026 school year, there were four regular drivers who drove routes, and who worked approximately 1060 hours per year.
3. For the 2025-2026 school year, there was one substitute bus driver who worked 586 hours, one who worked 225 hours, one who worked 69 hours, and three who worked 40 or less hours.
4. Regular bus drivers are paid \$20.60 per hour for under 5 years of experience. This increases in 5 year and approximately \$2.00 an hour increments, up to \$28.55 for over 21 years of experience. Substitute bus drivers are paid \$20.00 per hour.
5. Regular bus drivers and substitute drivers are required to meet the same qualifications, including a Commercial Driver's License (CDL) with passenger, school bus, and air brake endorsements, current Department of Transportation (DOT) Medical Examiners certificates, and drug testing when required.
6. For November 2025, February 2026, and May 2026, the bus driver schedule included 88 days, which includes seven days a week. Of those 88 days, no driving was required for approximately 17 days. Of the remaining 71 days, substitutes were used on 45 days. Of the 45 days substitutes were used, on approximately 15 days more than one substitute was used.

² Any proposed finding of fact offered by a party not specifically addressed herein is deemed not supported by substantial competent evidence in the record.

7. Substitute drivers are used for the same driving as regular drivers, including regular routes, early releases, and extracurricular trips.

8. All bus drivers and substitute bus drivers submit their timesheets to the Superintendent.

9. The Transportation Maintenance Coordinator is a position that coordinates servicing of the buses. This position is a separate position from a bus driver position, but has historically been held by a bus driver and been paid through a monthly stipend. The position has no supervisory authority and reports to the Superintendent.

10. The Bus Driver Scheduling Coordinator is a position that coordinates the scheduling of bus drivers. This position is a separate position from a bus driver position, but has historically been held by a bus driver who is not the maintenance coordinator. This position has also historically been paid through a monthly stipend. The position has no supervisory authority and reports to the Superintendent, but is required to report chronic attendance issues or scheduling conflicts to the Superintendent.

11. After the unit petition was filed, the District posted a Transportation Maintenance Supervisor position instead of the Transportation Maintenance Coordinator position.

12. Prior to the end of the 2024-2025 school year, the District had a provision in the bus driver contracts that indicated a substitute driver who had 50 or more hours in a year would be credited with one year of experience. Fifty hours amounts to approximately 5% of the hours of a regular bus driver.

13. In the summer of 2025, the District changed the experience criteria for substitute bus drivers. The new criteria gives credit of one year of experience for 360 hours and one-half year of experience for 180 hours. Three hundred sixty hours amounts to approximately 34% of the average annual hours of a regular bus driver. One hundred eighty hours amounts to 17% of the average annual hours of a regular bus driver. The bus drivers were not notified of this change.

14. One of the regular bus drivers did not renew his contract for the 2026-2027 school year. He also served as the Transportation Maintenance Coordinator. He subsequently submitted a resignation letter. The letter stated in part, "...I can no longer continue in my roles because I believe the [District] has refused to negotiate in good faith regarding matters affecting my employment." This driver is at retirement age and intends to work as a substitute driver for the 2026-2027 school year.

IV. DISCUSSION³

Montana law recognizes and protects public employees' right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities. Mont. Code Ann. § 39-31-201. Public employees may collectively bargain if they are part of an "appropriate unit" as defined by Mont. Code Ann. § 39-31-103(1). A public employee is defined in part as "a person employed by a public employer in any capacity." Mont. Code Ann. § 39-31-103(9)(a).

The Board of Personnel Appeals (Board) has the authority to "decide the unit appropriate for the purpose of collective bargaining." Mont. Code Ann. § 39-31-202(1). The Board or its agent shall decide the unit appropriate for collective bargaining, considering such factors as community of interest, which includes 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). 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. *See State ex rel. Board of Personnel Appeals v. District Court*, 183 Mont. 223, 598 P.2d 1117 (1979); *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. "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).

Generally the standard for determining the appropriateness of a bargaining unit is whether the employees in the unit share a community of interest. *NLRB v. Great Western Produce, Inc.*, 839 F.2d 555, 557 (9th Cir. 1988). The term "community of interest" is determined by considering several factors as listed in Admin. R. Mont. 24.26.1005, which reads:

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;

³ Any statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece*, 110 Mont. 541, 105 P.2d 661 (1940).

- (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. *See also Great Western Produce*, 839 F.2d at 559 (In determining whether a sufficient community interest exists among employees, the following is considered: “(1) similarity in employee skills, duties, and working conditions; (2) integration of function and personnel; (3) employees’ organizational framework; (4) employee choice; (5) extent of union organization; (6) bargaining history.”). “[T]he most reliable indicium of common interests among employees is similarity in their skills, duties and working conditions.” *NLRB v. Carson Cabe TV*, 795 F.2d 879, 885 (9th Cir. 1986).

A. The Parties Arguments

SGTA argues it has met its burden to present an appropriate unit. SGTA asserts substitute bus drivers should be included in the proposed unit because the District policy provided that 50 hours would equal one year of work for experience rating purposes. SGTA asserts this threshold provides an objective, verifiable standard for unit definition that is rooted in the District’s policy and contracts. SGTA also asserts the regular and substitute drivers share a community of interest because they are required to have the same qualifications of a CDL, mandatory DOT physicals, CPR/First Aid certification, and mandatory random drug testing. SGTA argues all the drivers work in close coordination with each other and do the same work under the same conditions. SGTA also points out the transportation functions would be impossible without the substitute drivers. SGTA asserts the substitute drivers who drive 50 or more hours a year should be included because they are subject to the same working conditions and should have a say in those conditions. SGTA also contends that to the extent the transportation coordinator and bus schedule coordinator positions are held by staff who are also bus drivers, those positions are not supervisory and should be included in the unit.

SGTA asserts the bargaining unit should be defined as follows:

“All full-time, part-time, and substitute school bus drivers, route drivers, driver scheduling coordinators, and transportation maintenance coordinators employed by Sweet Grass County High School District No. 49 who hold a valid Montana School Bus Driver Certificate pursuant to MCA § 20-10-103 and ARM 10.7.111.

Substitute drivers are included in the bargaining unit under the following threshold criteria:

- Returning Substitutes: Any substitute driver who completed fifty (50) or more paid hours of transportation work for the District during the preceding school year shall be included in

the bargaining unit effective the first day of the current school year.

- New Substitutes: Any newly hired substitute driver shall enter the bargaining unit effective on the exact date they complete their fiftieth (50th) paid hour of transportation work for the District during the current school year.

Excluded from the unit: All administrative employees and supervisory employees as defined by MCA§ 39-31-103.”

The District asserts there is no appropriate unit and that SGTA’s petition should be denied. The District cites *In The Matter of Unit Determination No. 14-2007: MEA-MFT, NEA, AFT, AFL-CIO vs. Dillon Elementary School District*, Case No. 1738-2007, in support of its position that the proposed unit is not comprised of a community of interest. The District asserts there is no community of interest between the regular drivers and the substitute drivers because of the times of day of driving and the fact that substitutes do not have a regular schedule and are not guaranteed work. The District also asserts the Transportation Coordinator and Bus Scheduling Coordinator are supervisors and therefore cannot be included in the bargaining unit. Finally, the District argues a specific employee who did not renew his contract for the 2026-2027 school year and then submitted a letter of resignation cannot be considered part of the proposed unit because he is not an employee.

B. Analysis

Regarding the substitute bus drivers, the drivers qualify as persons “employed by a public employer in any capacity” and are therefore eligible under Mont. Code Ann. § 39-31-103(9)(a) to participate in collective bargaining. As noted, the District asserts substitutes do not share a community of interest and are therefore distinguishable from the regular bus drivers. The District asserts the substitutes do not share the same schedules, regular routines, and assurance of work and therefore do not share a community of interest. The District cites the *Dillon Elementary School District* case in support of a lack of community of interest because in that case, the Board agent determined the petitioner’s initial proposed unit did not share a community of interest. The final unit in that case included all classified and paraprofessional personnel holding the positions of Alternative Classroom Aides, Resource Classroom Aides, ESL Tutors, Scheduling Liaison, Migrant Aides and Instructors, Title I Aides and Instructors, Title I Tutors, and Special Aides. The positions found to not share a community of interest were Grounds, Building, Maintenance, Janitorial, Custodial and Crosswalk Personnel. The Board agent analyzed the community of interest factors to separate out of the unit all the positions that were not in a classroom involved in instruction.

Here, the community of interest factors do not weigh in favor separating the regular bus drivers and the substitute drivers. Rather, the two groups of permanent and temporary employees are similar. The issue of temporary

employment was recently addressed in unit determination case, *Teamsters Union Local #2 vs. City of Plains*, Case No. 760-2023. In that case, the petitioners sought to only include permanent full-time officers in the proposed unit. The City's counter petition sought to include the reserve officers who were under temporary contracts and filled in on an on call basis. The analysis of community of interest in that case determined that the full-time permanent officers closely shared a community of interest with the on call reserve officers. The appropriate unit was determined to consist of the full-time officers and the reserve officers.

City of Plains specifically pointed out temporary employees will be included in a bargaining unit under certain circumstances. For example, where they are "drawn from the same labor force, are employed every year in substantial numbers for substantial periods of time, are composed primarily of former employees, and work with and do the same kind of work as the permanent employees," such employees are included. *F. A. Bartlett Tree Expert Co.*, 137 NLRB 501 (1962). Here, the preponderance of the evidence established that the substitute bus drivers are temporary employees such that they work for substantial periods of time, come from the same labor force, and do that same work as the regular drivers. The substitutes also share a community of interest with the regular bus drivers. The substitutes are routinely employed and integrated into the function of the transportation services, in that substitutes were relied on 45 of 71 driving days. They work with and often do the same work as the regular bus drivers. The preponderance of the evidence showed the substitutes are integral to the functioning of the District's transportation needs. Consequently, unlike a temporary employee with no expectation of future employment, the substitute drivers are routinely used and have a reasonable expectation they will be regularly called. One of the substitutes worked over half the hours of a regular full-time driver. The substitute drivers are able to do any of the work of the full-time drivers, and are called to fill in for the full-time drivers for routes, early release, and special events. The substitute drivers meet the same qualifications and have the same skill and abilities as regular drivers and the requirements to drive are the same. The District policies that apply to the substitute drivers are essentially the same. Further, the experience credit that is given to substitute drivers is an acknowledgment of drivers who regularly perform services for the District. The drivers all report their time to the same individual, are subject to the same working conditions, and receive similar pay. While there is no history of collective bargaining of the bus drivers, that factor is not relevant for this inquiry because the individuals are seeking to form a new unit. In other words, there is no history to show that substitute drivers have not usually been included. The Hearing Officer concludes the substitute drivers share a community of interest and are included in an appropriate unit.

However, the preponderance of evidence also shows that the District updated its experience requirement from 50 hours per year to require at least 180 hours per year before a substitute driver is credited with rated experience.

Fifty hours is no longer in policy and only includes approximately 5% of annual work. However, 180 hours is in District policy and includes approximately 17% of annual work. Further the preponderance of the evidence shows that two substitute drivers worked significantly more than 180 hours. Those drivers are routinely relied on for transportation services. SGTA included the substitutes in the proposed unit based on District policy. To form the unit based on a policy that no longer exists would not base the unit on District practice. A unit does not have to be the most appropriate unit for collective bargaining purposes, simply an appropriate unit. Therefore, the preponderance of the evidence shows an appropriate unit includes substitute drivers who work at least 180 hours a year. Similar to *City of Plains* that included temporary officers who worked regularly in a unit with permanent officers, the substitute drivers who work more than 180 hours are included in an appropriate unit.

The District next asserts that the Transportation Maintenance Coordinator and the Bus Driver Scheduling Coordinator should not be included in the proposed unit because the positions are supervisory. Citing *In the Matter of Unit Clarification No. 10-2005, Case No. 1192-2005, Mont. Dept. of Corrections et. al v. Federation of Montana State Prison Employees*, the District points out the scheduling position assigns routes and oversees the entire schedule and the transportation coordinator oversees bus maintenance. Based on these tasks, the District asserts the positions qualify under Mont. Code Ann. 39-31-103(11) as supervisory or under Mont. Code Ann. § 39-31-103(7) as management officials.

The definition of “supervisory employee” means “an individual having the authority on a regular, recurring basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to effectively recommend the above actions if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.” Mont. Code Ann. § 39-31-103(11). “Management official” means “a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.” Mont. Code Ann. § 39-31-103(7). Here, the preponderance of the evidence shows the scheduling coordinator’s duty assigning routes is of a routine or clerical nature. Further, the preponderance of evidence shows these two positions have no meaningful supervisory authority over other drivers. None of the substitutes report to the scheduling coordinator or submit their time worked to the scheduling coordinator. The two coordinators are not involved in the personnel management of the other drivers in any meaningful way. In *Dept. of Corrections*, the decision determined that supervising requires the exercise of independent judgment as noted in the definition and working only as a lead worker does not constitute supervision. Similar to the records supervisor who was determined to be in the unit in that case, the coordinators are not supervisory and can be included in this unit. Further, the positions

themselves are not required to be bus drivers. Historically, the positions are held by individuals who also hold bus driving positions, but the positions are separate and require separate duties and are paid separately. To exclude a bus driver because they hold two different positions simultaneously removes the driver's collective bargaining rights. Therefore, any person who happens to hold both a bus driver position and coordinator position is not excluded from the unit by virtue of holding a coordinator position.

Finally, to the extent the District asserts the employee who submitted a resignation cannot be included in the proposed unit, that employee may be included because the employee meets the definition of a full-time driver for the 2025-2026 school year and intends to work as a substitute driver for the 2026-2027 school year. Further, the definition of "public employee" includes "an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action." Mont. Code Ann. § 39-31-103(9)(a)(ii). The Hearing Officer does not determine if an unfair labor practice occurred for purposes of an appropriate unit. However, an employee who meets the definition of the unit, intends to continue working, and alleges an unfair labor practice, is determined to be included in the proposed unit. To exclude a person who meets the definition of the appropriate unit under these circumstances would defeat the definition of public employee in Mont. Code Ann. § 39-31-103(9)(a)(ii) for collective bargaining purposes.

V. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to Mont. Code Ann. § 39-31-207.
2. The parties hereto are both subject to Title 39, Chapter 31 of the Montana Code Annotated.
3. The full-time, part-time, and substitute bus drivers who drove at least 180 hours as determined by their prior year's service share a community of interest and make up an appropriate unit for collective bargaining purposes.
4. A substitute bus driver who reaches 180 hours within one school year after the unit is formed may be included in the unit upon reaching 180 hours.
5. The transportation coordinator and bus scheduling coordinator positions are not supervisory. The individuals who also hold the transportation coordinator and bus scheduling coordinator positions are included in the unit if they are also employed as qualified bus drivers.
6. The regular bus driver who resigned and intends to work as a substitute driver for the 2026-2027 school year is a member of the unit for purposes of subsequent proceedings.

VI. RECOMMENDED ORDER

Based on the foregoing, the Hearing Officer orders that the Sweet Grass Transportation Association unit be composed of the full-time, part-time, and substitute bus drivers who drove at least 180 hours for the 2025-2026 school year. An election by secret ballot shall be conducted as soon as possible, in accord with the rules and regulations of the Board of Personnel Appeals, among the employees in the bargaining unit.

DATED this 24th day of September, 2026.

BOARD OF PERSONNEL APPEALS

By: /s/ JUDY BOVINGTON
JUDY BOVINGTON
Hearing Officer

NOTICE: Pursuant to Admin. R. Mont. 24.26.1016(4)(a), the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are filed with the Department no later than 10 days after service of this decision. (Please note: Admin. R. Mont. 24.26.254 provides a party 20 days to file exceptions. For purposes of this appeal, the specific reference of ten days in Admin. R. Mont. 24.26.1016 applies.)

Any exception must include all the party's specific exceptions and reasons for the exceptions. Exceptions must be mailed to:

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