34. BARGAINING UNIT

34.12: Types of Units – Crafts [See also 41.132.]

"I find that historically, for the last ten years before filing of this petition, there have been two labor organizations which have represented all of the Maintenance Men I through V and Supervisors in all of the eleven divisions of the Montana Department of Highways…. There has been the Craft Council unit and the AFSCME unit." **DC #5-75**

"Beginning in approximately 1964 Defendant Department [of Highways] recognized the Craft Council as representative of some of its maintenance employees…." **DC #5-75 District Court (1979)**

"The issue is whether the Plumbers and I.B.E.W. are bound by the craft council contract. This hearing examiner finds the complainants bound by the craft council contract." **ULP #26-79**

"In May, 1959, the Craft Council made a formal request to the Highway Commission to be recognized as the sole bargaining agent for their union members. It is obvious that the Employer agreed to the request, for a written agreement between the Craft Council and the Employer was executed October 29, 1959." **DC #2-81**

See **UDs #15-74, #49-74, and #42-75**.

In Unit Determination No. 20-85, "[t]he Hearing Examiner employed a craft severance test used by the NLRB pursuant to the authority of Section 9(b)(2) of the LMRA amendments of 1947. This Board has never employed the craft severance principle in deciding cases and finds that there are insufficient facts warranting the use of the craft severance test in this case. We therefore do not reach the issue of whether this Board has the authority to adopt the craft severance test in the absence of specific statutory language in the Montana Act similar to Section 9(b)(2) of the LMRA." **UD #20-85**.

34.13: Types of Units – Departmental

See **UDs #6-74, #9-74, #10C-74, #11-74, #14-74, #21-74, #25-74, #26-74, #31-74, #36-74, #42-74, #45-74, #50-74, #53-74, #58-74, #66S-74, #31-75, #5-77, #22-77, #21-78, #18-79, and #27-79**; **DCs #5-75 and #2-81**; and **DC #5-75 District Court (1979)**.

34.15: Types of Units – Office and Clerical [See also 15.18, 15.26, 15.3, 15.54, 15.63, 15.84, and 15.932.]

See **UDs #18-76, #18-77, #1-79, and #24-79** and **DC #5-75 District Court (1979).**

See **UC #3-91**.

34.16: Types of Units – Professional [See also 15.12, 15.21, 15.27, 15.6, 34.4, and 46.91.]

See **UD #56S-74**.

34.18: Types of Units – Service and Maintenance [See also 15.17, 15.25, 15.53, 15.83, and 15.933.]

See **UD #29-79**; **DC #5-75**; and **DC #5-75 District Court (1979).**

34.21: Types of Units – Wall -to - Wall

"There was no wall-to-wall unit and such a unit could be established only in accordance with the law and the board's regulations. Thus such a unit would not be 'appropriate' for an election…. The Montana Public Employees Association thought the question was whether there could be an election in the wall-to-wall unit and the Teamsters and Butte-Silver Bow thought the question was whether there should be such an election." **DC #22-77 District Court (1978)**

See also **UD #22-77** and **DC #22-77**.

"The Board issued an order dated March 13, 1974.... [that] determined the appropriate unit to be the 'wall to wall' unit requested by AFSCME consisting of all eligible 'other-than-maintenance employees of the Department of Highways'." **UC #2-88**.

34.31: Employee Categories – Certificated

See **UM #1-75**.

See **UC #5-86**.

34.32: Employee Categories – Classified

See **UDs #62-74 and #64S-74**.

See **UDs #15-87, #7-89**; **UCs #2-87, #9-88, #3-91, and #8-91**; and **ULP #29-86**.

34.33: Employee Categories – Probationary [See also 16.45.]

"Margaret Nye was terminated from her probationary status position as an office clerk V for performance deficiencies related to that position…. The fact that she chose to attempt to advance within the Department did not eliminate her permanent status in the permit clerk position." **Nye v. Department of Livestock (1982)**

See also **UD #26-79**.

34.34: Employee Categories – Part-Time [See also 16.43.]

See **UD #4-74, #13-74, #56S-74, #60S-74, #18-79, and #26-79**.

See **UDs #4-85, #5-89, #7-89, and #16-89** and **ULP #67-89**.

34.35: Employee Categories – Federally-Funded [See also 15.121, 15.35, 15.45, 15.55, 15.64, and 15.85.]

See **UD #26-79**.

34.39: Employee Categories – Temporary [See also 16.44 and 16.46.]

"It is well established principle of labor law that parties to a collective bargaining agreement may negotiate the composition of their bargaining unit, and the record in this matter indicates this is exactly what the Montana University System and the International Brotherhood of Painters have done regarding temporary employees." **DC #8-81**

"The requirement that the temporary employees pay agency shop fees to the exclusive representative by itself leads to the conclusion that temporary employees (after 347 hours) are in the bargaining unit. Only when a person is in a bargaining unit can that person be required to pay agency shop fees to the exclusive representative…. The availability of the contractual grievance procedure for use by temporary employees after 347 hours also proves that they are being represented by the exclusive representative. Only the exclusive representative can negotiate with the employer. Only the exclusive representative and the employer can enter into a collective bargaining agreement. The fact that the contract gave grievance procedure rights to temporary employees after 347 hours mean that the rights of temporary employees were being negotiated by the exclusive representative…. The fact that the temporary employees wage rates are established under the contract also shows that the temporary employees are in the bargaining unit." **DC #8-81 District Court (1982)**

"At the time of the hearing Flathead Valley Community College employed no temporary employees as defined in its personnel policies handbook.... The

principles governing the inclusion or exclusion of positions into or from bargaining units must be applied to specific fact situations..... [T]hose employees who regularly work approximately 16 to 30 hours per week, who have the same expectancy of continued employment as do other employees, who share in benefits as do comparable employees, who are subject to the same policies as others share a community of interest with those other employees and should, therefore, be included with them in a collective bargaining unit." **UD #4-85**.

"If in the future the College employs a temporary position and it cannot reach agreement with the exclusive representative on the position's inclusion or exclusion from the unit, a unit clarification petition can be filed to invoke the Board's published administrative procedures for handling such matter s." **UD #4-85**.

34.4: Professional [See also 33.336.]

See **UD #5-89**.

34.41: Professional – Definition [See also 33.336.]

See **UD #36-74**.