STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNIT CLARIFICATION #1-87 BILLINGS EDUCATION ASSOCIATION, INC., MEA/NEA,	)	
Petitioner,	)	FINDINGS OF FACTS; CONCLUSIONS OF LAW; AND RECOMMENDED ORDER
vs.	)	
BILLINGS SCHOOL DISTRICT II, BILLINGS HIGH SCHOOL DISTRICT,	)	
Respondent.	)	

* * * * * * * * * *

I. INTRODUCTION

A hearing on the above-captioned matter was held on November 13, 1987 in the Billings East Job Service Office. Arlyn L. Plowman was the duly appointed hearing examiner for the Board of Personnel Appeals. The Petitioner was represented by Emilie Loring. The Respondent was represented by Laurence Martin. The parties presented evidence and testimony, cross examined witness and made argument. Posthearing briefs were filed and the matter was deemed submitted December 23, 1987.

II. BACKGROUND

On September 8, 1987 the Petitioner, Billings Education Association, filed, with the Board of Personnel Appeals, a petition for unit clarification. In that petition the Petitioner proposed to add nurses to an existing bargaining unit.

The Respondent, Billings School District #2 and Billings High School District, submitted a timely response with the Board of Personnel Appeals in which it disagreed with the Petitioners proposal and stated that the petition should be denied.

Subsequently the matter was scheduled for hearing and Arlyn L. Plowman was appointed hearing examiner.

ARM 24.26.630(1) permits a Petition for Unit Clarification only under certain conditions. No question was raised regarding those conditions.

The parties stipulated that the school nurse coordinator position is supervisory and therefore excluded pursuant to Section 39-31-103(2)(b)(iii).

III. FINDINGS OF FACT

1. There exists, between the parties in this matter, a collective bargaining agreement (Joint exhibit #1). In that agreement the Respondent recognizes the Petitioner as exclusive representative for a bargaining unit. That bargaining unit contains 1,062 people and includes certified teachers, home bound teachers, summer school teachers, curriculum workers, speech therapists, speech clinicians, audiologists, audiometrists, psychologists, social workers, psychometrists, librarians and substitute teachers in the same position for thirty or more consecutive days, and others as stipulated in the hearing and order regarding unit clarification case 714615.

2. Up until the 1987-1988 school year, the Respondent contracted with the City-County Health Department to provide nursing services to the school district.

3. The Respondent, in order to improve services and for reasons of economy, chose to discontinue the practice of contracting for nursing services. The Respondent decided to employ its own nurses and incorporate nursing services within the existing Department of Pupil Services.

4. Prior to the start of the 1987-1988 school year, the Respondent hired approximately 10 nurses for less than full-time. The aggregate cumulative hours of those hired equals 5.5 full time equivalent positions.

5. Most members of the existing bargaining unit are college educated professional/certified employees. The nurses hired by the Respondent are registered nurses. All except one (Rafferty) have baccalaureate degrees. Many, if not most, of the nurses hired were previously employed by the City-County Health Department and were among those City-County Health nurses who had provided nursing services to the Respondent.

6. The school nurse job description (exhibit P-1) provides that the nurse participates selectively in class room instruction under the supervision of the teacher.

7. The wages paid to the nurses are calculated on an hourly basis. Bargaining unit members are paid a salary. If the nurses were to be placed on the same salary schedule as contained within the collective bargaining agreement, they would receive wage increases in excess of $2.25 per hour or more than 20%.

8. The nurses, like some classifications within the bargaining unit are not certified teachers. The nurses' job classification, skills and functions, while unique, are similar to some within the bargaining unit.

9. The nurses work in the same buildings as members of the bargaining unit. The nurses, like some members of the bargaining unit perform work related tasks in more than one of the Respondent's buildings.

10. The nurses, like some forty to fifty members of the bargaining unit work less than full time.

11. The nurses were hired to work a work year very similar to that worked by members of the bargaining unit.

12. The nurses have the same medical benefits as the members of the bargaining unit (see Attorney General's Opinion Vol. 42 #37). Pursuant to Section 19-4-302 MCA the nurses share membership in the teacher retirement system.

13. The nurses participate in Child Study Teams. The nurses, like members of the bargaining unit perform duties and services related to the education of students within the Respondent's school system.

14. The accretion of ten nurses into the 1,062 member bargaining unit would not substantially change the character of the bargaining unit. The nurses would represent less than one per cent of the total bargaining unit membership.

15. Although there is a substantial difference in wages between the nurses and the existing bargaining unit, the nurses share a community of interest with the existing bargaining unit, especially with those members who are not certified teachers.

IV. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to Section 39-31-202 MCA.

2. Pursuant to Section 39-31-104 MCA the Board of Personnel Appeals has adopted rules regarding unit clarifications. Those rules are found in the Administrative Rules of Montana at ARM 24.26.630.

3. The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using federal court and National Labor Relations Board precedents as guidelines in interpreting Montana Collective Bargaining for Public Employees Act as the state act is so similar to the Federal Labor Management Relations Act, State ex rel Board of Personnel Appeals v. District Court, 183 Montana 223 (1979), 598 P.2d 117, 103 LRRM 2297; Teamsters Local #45 v. state ex rel Board of Personnel Appeals, 195 Montana 272 (1981), 635 P.2d 1310, 110 LRRM 2012; City of Great Falls v. Young (Young III), 686 P.2d 185 (1984) 119 LRRM 2682.

4. There exists in labor law what is known as the accretion doctrine. Under that doctrine, groups of new employees or present employees in new jobs, can be added to an existing bargaining unit without holding a vote on their representation. Essentially, the doctrine is designed to preserve stability by allowing adjustments in bargaining units to conform to new conditions without requiring an election every time job are created, see NLRB v. Stevens Ford, Inc., 120 LRRM 2595, CA 7 (1985) 773 F.2d 468.

5. When considering an accretion, several factors including: 1) similarity of working conditions; 2) job classification; 3) skills and functions; 4) similarity of products; 5) interchangeability of employees; 6) geographical proximity; 7) centralization or managerial control; 8) functional integration of the business; and 9) collective bargaining history, must be considered. However, there is no requirement that all of these factors must be present, see Universal Security Instruments v. NRLB, 107 LRRM 2518, 649 F.2d 247, CA 4 (1981).

6. A group of employees is properly accreted to an existing bargaining unit when they have such close community of interests with the existing bargaining unit "that they have no true identity distinct from it". The test is not whether the proposed accreted employees have a community of interests among themselves. The proper test is whether the proposed accreted employees share a community of interests with the existing bargaining unit, see NLRB v. DMR Corporation , 123 LRRM 2253, 795 F.2d 472, CA5 (1986).

7. The fact that the nurses sometimes participate in classroom instruction under the supervision of a teacher should not preclude them from being in the same bargaining unit. The evidence does not show that the teachers have or exercise supervisory authority over the nurses, see NLRB v. First Union Management Inc., 120 LRRM 3437, 77 F.2d 330, CA6 (1985).

V. RECOMMENDED ORDER

The Petitioner's petition to include nurses within the existing bargaining unit is granted.

VI. SPECIAL NOTICE

Exceptions to these finding, conclusions and recommended order maybe filed within 20 days of service thereof. If no exceptions are filed, this recommended order shall become the final order of the Board of Personnel Appeals. Address exceptions to the Board of Personnel Appeals, P.O. Box 1728, Helena, Montana 59624.

Dated this 2nd day of February, 1988.

BOARD OF PERSONNEL APPEALS

Arlyn L. Plowman
Hearing Examiner

* * * * * * * * * * * * * * * *

CERTIFICATE OF MAILING

I, Nora Shepherd, do hereby certify that a true and correct copy of this document was mailed to the following on the 2nd day of February, 1988

David Sexton
UniServ Director
Montana Education Association
510 North 9th
Billings, MT 59101

Laurence Martin
P.O. Box 2558
Billings, MT 59103- 2558

Katherine Kelker, Chairperson
Billings School District #2
Billings High School District
Board of Trustees
101 10th Street West
Billings, MT 59102

Emilie Loring
Executive Plaza, Suite 2 G
121 4th Street North
Great Falls, MT 59401

FOFR:088amb