STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 2-88:

MONTANA PUBLIC EMPLOYEES ASSOCIATION, Petitioner,	)	
vs.	)	FINDINGS OF FACT; CONCLUSIONS OF LAW; RECOMMENDED ORDER
DEPARTMENT OF HIGHWAYS, STATE OF MONTANA, Employer.	)	

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I. INTRODUCTION

A hearing on the above matter was conducted on September 19, 1988 in Helena, Montana before John Andrew, hearing examiner. The Montana Public Employees Association was represented by David Stiteler. The Department of Highways, State of Montana, was represented by Carole Colbo. Briefs were filed subsequent to hearing. The matter was submitted on October 25, 1988. All argument and evidence being considered, the hearing examiner now makes the following:

II. ISSUES

1. Whether the unit defined as non-maintenance employees of the Department of Highways, inclusive of GVW Enforcement Officers is an appropriate unit under 39-31-202 MCA.

2. Whether a process exists within Montana law and under Board rules to grant the relief requested by MPEA - specifically that GVW Officers be in a separate unit represented by MPEA.

III. FINDINGS OF FACT

1. The history of this unit traces back to November of 1973. At that time AFSCME filed a unit determination with the Board of Personnel Appeals. The requested unit was other-than-maintenance employees of the Department of

Highways. MPEA counter-petitioned requesting three bargaining units - the GVW Division; Planning and Research Bureau; and the Butte Division. After a hearing held on January 31, 1974, the Board issued an order dated March 13, 1974. The order 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". After an election MPEA was certified by the Board as the exclusive representative for the unit on January 7, 1975.

2. The non-maintenance unit consists of approximately 750 FTE's and as many as 1200 staff positions during the summer months. This number of positions closely approximates the number of positions in the unit at the time of the original unit determination in 1975. There are 83 GVW Officers now as opposed to approximately 47 at the time of the unit determination.

3. The non-maintenance unit includes such positions as engineering technicians, GVW Enforcement Officers, lab technicians, secretaries, and photogrammetry. These and similar positions were in the unit at the time of the unit determination.

4. The GVW Officers operate scales which may be open seven days a week 24 hours per day. This was also the case at the time of the unit determination.

5. As they did prior to 1974, the GVW Officers operate scales from distinct offices throughout the state. The extent of interchange between other members of the unit and the GVW Officers is as great as or greater than it was at the time of the unit determination.

6. Prior to the unit determination the GVW Officers (then Weigh Station Operators) began attending the Montana Law Enforcement Academy. They also wore distinguishable uniforms and badges; could make arrests; could issue notices to appear; and made court appearances. This is still the case today.

7. GVW Officers as part of their duties issue trip permits, collect GVW fees, issue combine permits, LPG licenses, and collect compliance bonds. They also do Department of Transportation safety inspections, brand inspections and generally assist all other law enforcement officers. The GVW Officers additionally have Public Service Commission duties. With the exception of the safety work,

brand inspections and the Public Service Commission work, the other duties of the GVW Officers including those mentioned above are the same or substantially the same as those performed by the GVW Officers at the time of the unit determination.

8. The overall structure of supervision in the GVW Bureau has not changed substantially since 1975. There is a different structuring of supervision and more supervisors but this is a question of there being more GVW Officers than there were in 1974.

9. MPEA appears to contend that the GVW Officers have either no or little impact on the overall bargaining process because of the small size of their group and because of their particular circumstances. In fact, the State has language within the MPEA supplement that is to the benefit of the GVW Officers. Therefore, the Petitioner's argument fails.

10. The grade level of GVW Officers has increased over the years. This may be indicative of more duties and responsibilities for the GVW Officers, however it is not necessarily indicative of a change in the relationship between GVW and the rest of the overall unit.

IV. CONCLUSIONS OF LAW

Section 39-31-202 MCA provides:

> Board to determine an appropriate bargaining unit-factors to be considered. In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the Board or an agent of the Board shall decide the unit appropriate for the purpose of collective bargaining and shall consider 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 effected, and the desires of the employees.

I can find no prohibition against the Board determining an appropriate unit more than once. Moreover, it is hard to characterize this matter as a decertification question when it is the incumbent union requesting the alteration in the bargaining unit. As times change, so do units. To force status quo when it is no longer representative of the needs

of the unit or a major part of the unit could foster turmoil and work against the desired goal of labor stability. Thus, MPEA's request to have this matter considered as a unit clarification using the criterion of 39-31-202 MCA is appropriate. The requested remedy is another question - a question that cannot be answered until it is determined whether the unit originally certified is still appropriate.

The original unit determination proceedings conducted by the Board and the certification issued thereon considered the appropriate bargaining unit for collective bargaining purposes. The Board considered the factors of 59-1601(2) RCM in reaching its decision. The Board also considered the counter-petition of MPEA. Although it is hard to say at this date all of the factors that went into the Board's determination it is sufficient to say that the Board did not accede to MPEA's request and ruled that the wall to wall non-maintenance unit consisting of GVW Officers was an appropriate unit. The question then is did MPEA show that the unit originally certified by the Board was no longer appropriate under 39-31-202 MCA. The answer is no. The facts adduced at the time of hearing fail to show a substantial change in the unit and in GVW specifically since the original unit determination.

At best, MPEA did show that a more appropriate non-maintenance unit would not include GVW Enforcement Officers. It is well settled that it is not the function of the Board to determine the most appropriate bargaining unit, only an appropriate bargaining unit." See DR#2-76 and Morand Bros. Beverage Co., 91 NLRB 409, 26 LRRM 1501 (1950), enf'd 190 F.2d 576 (7th Cir. 1951), 28 LRRM 2364. The wall to wall unit originally certified by the Board is still appropriate.

Since the GVW Officers are appropriately included in the non-maintenance unit of the Department of Highways, the question of whether the Board of Personnel Appeals has a procedure to grant the relief requested by MPEA is moot and warrants no further comment.

V. RECOMMENDED ORDER

The unit clarification filed with the Board on March 11, 1988 is dismissed.

Dated this 17th day of November, 1988.

BOARD OF PERSONNEL APPEALS

By:
John Andrew

VI. NOTICE

Exceptions to these findings, conclusions and recommendation must be filed within twenty days of service. If exceptions are not filed the recommended order will become the final order of the Board.

CERTIFICATE OF SERVICE

The undersigned does certify that a true and correct copy of this document was served upon the following on the 18th day of Nov., 1988, postage paid and addressed as follows:

Carole Colbo
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