STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 21-92:

MONTANA FEDERATION OF STATE EMPLOYEES, MFT/AFT, AFL-CIO, Petitioner,	)	FINDINGS OF FACT; CONCLUSIONS OF LAW; AND PROPOSED ORDER
-vs-	)	
CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA, Respondent.	)	

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I. INTRODUCTION

Prior to a formal hearing scheduled in this matter, the parties jointly agreed to determination of this unit clarification based upon submission of joint exhibits and concurrently submitted briefs. Joint Exhibits 1 through 7 and briefs were submitted. Final brief submission was received August 25, 1992.

II. FINDINGS OF FACT

1. On January 1, 1992 the City and County of Butte-Silver Bow, State of Montana (Respondent) assumed ownership of the formerly privately owned Butte Water Company. The Montana Federation of State Employees, MFT/AFT, AFL-CIO (Petitioner) is the certified representative for collective bargaining purposes for certain of the Respondent employees. Article 1 "Recognition" of the parties collective bargaining agreement provides:

> Section 1. The employer recognizes the Federation as the exclusive representative for all Deputies and Assistants of the following elected officials of the City and County of Butte-Silver Bow, State of Montana: Auditor, Clerk and Recorder, Clerk of Court, Superintendent of Schools, and Treasurer; and all other secretarial, parking enforcement officers, bookkeeping, stenographic and clerical

> employees of the Butte-Silver Bow Municipal Government, with the exception of the positions classified as secretary in the District Court System, summer employee, and/or management official, supervisory employee, or confidential employee as defined by the Act 39-31-103, MCA. (See addendum "A" for a list of covered positions.)

2. Following the Respondent's assumption of water company control, the Petitioner indicated their intent to claim jurisdiction over five customer service clerks, one computer operator/secretary and one water meter reader. The parties agreed upon inclusion of the five customer service clerks. The Respondent contended the computer operator/secretary and water meter reader did not belong in the unit.

3. The computer operator/secretary, prior to change in ownership in January 1992, was the company president's secretary. Thereafter, because the company president was no longer an employee, the computer operator/secretary performed limited clerical duties and dedicated more time apparently to computer related duties. The position description for the computer operator/secretary shows supervision from Dan Cox, the same person who is the supervisor of the customer service representatives who were made part of the unit following the change in ownership. The following, in part, is part of the computer operator/secretarial duties identified in her position description:

> Perform duties of executive secretary which includes word processing, correspondence control, filing, petty cash control and other miscellaneous functions...
>
> Secretarial duties such as typing and filing of documents for management officials. I also review all incoming mail and date stamp and route it to proper management official. I run monthly delinquent statements on past due accounts for credit departments. I have access to all files, which includes contracts, management

correspondence, customer accounts receivable information, etc.

4. The meter reader is supervised by Bob Edwards, the same person who supervises the meter billing clerk, Bernie O'Neill who is a unit member. The meter reader collects water meter readings which are then given to the meter reader billing clerk who reviews the meter readings for irregularities as a method of customer service. The meter reader's responsibilities primarily involve route meter reading or customer service on request. He takes final or individual meter readings, advises customers and responds to staff regarding meter readings or meter use indications including large use or malfunctioning meters. He monitors the meter readings in much the same manner as does the billing clerk.

5. Petitioner's brief indicates all current unit members as well as both the computer secretary and meter reader are subject to common personnel policies, work hours, and fringe benefits.

III. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to Section 39-31-202 MCA. Billings, Montana v. Fire Fighters Local 529, 113 LRRM 3324, 651 P.2d 627, Montana Supreme Court 1982.

2. The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using Federal Court and NLRB precedents as guidelines in interpreting the Public Employees Collective Bargaining Act (the Act) as the State Act is so similar to the federal Labor Management Relations Act (LMRA). State Department of Highways v. Public Employees Craft Council, 165 Mont. 349, 529 P.2d 785 (1974), 87 LRRM 2101; AFSCME Local 2390 v. City

of Billings, 171 Mont. 20, 555 P.2d 507, 93 LRRM 2753 (1976); State ex rel. Board of Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d 1117, 103 LRRM 2297 (1979); Teamsters Local 45 v. State ex rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young (Young III), 221 Mont. 13, 683 P.2d 185, 119 LRRM 2682 (1984).

3. The information presented shows a community of interest, fringe benefits, history of collective bargaining, common supervision, common personnel policies, integration of work functions and interchange among employees affected or commonality of other working conditions. Community of interest among employees has, and continues to be, the fundamental factor in determining the appropriateness of bargaining units. Brown and Root Inc., 258 NLRB 1002, 108 LRRM 1188 (1981). The weight given to particular bargaining history factor for inclusion/exclusion in bargaining units is often determinative of community of interest. Dallas Morning News, 285 NLRB No. 106, 126 LRRM 1346 (1987).

4. In the present case, the recognition clause clearly identifies "all other secretarial employees" and the computer operator/secretary is involved in secretarial duties." Additionally the record shows that the computer operator/secretary as well as the meter reader have common supervisors with unit members (in their respective units). The positions in question have in their respective units common supervision, common personnel policies, same or integrated work functions and interchange among affected employees, the computer operator/secretary and meter reader are appropriately included in the bargaining unit. Such commonality, which was not refuted by information offered by the

Respondent in this case, leads to the natural conclusion that the two positions should be included in the bargaining unit.

IV. RECOMMENDED ORDER

The position of computer operator and meter reader shall be included in the bargaining unit represented by the Montana Federation of State Employees, MFT/AFT, AFL-CIO.

DATED this 28 day of September, 1992.

BOARD OF PERSONNEL APPEALS

By: Joseph V. Maronick
JOSEPH V. MARONICK
Hearing Examiner

Special Note

In accordance with Board Rule ARM 24.25.107(2), the above RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless written exceptions are filed within twenty (20) days after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER upon the parties.

CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day served upon the following parties or such parties' attorneys of record by depositing the same in the U.S. Mail, postage prepaid, and addressed as follows:

Kevin McCray, Field Representative
Montana Federation of State Employees
P.O. Box 6169
Helena, MT 59604

Tim Clarke
Butte-Silver Bow Courthouse
Butte, MT 59701

DATED this 28th day of September, 1992.

Christine P. Roland

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