

1 office should be included in the bargaining unit leaving the
2 only unresolved issue to be whether the other Administrative
3 Aide II positions in the regional field units (3 in total)
4 should be excluded from the bargaining unit. All testimony
5 and evidence being considered the hearing examiner now makes
6 the following:
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9 III. FINDINGS OF FACT

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11 1. The bargaining unit in question is a new unit
12 certified on November 25, 1985, (UD-16-85). Since that date
13 negotiations have ensued and a tentative agreement has been
14 reached.

15 2. There is no previous history of collective
16 bargaining for the unit or the positions in question.

17 3. Administrative Aide II positions are directly
18 supervised by a Regional Supervisor if they work in regional
19 offices in either Great Falls, Missoula or Billings. The
20 Regional Supervisors are supervised by Mike Ferriter who in
21 turn is supervised by Jim Pomroy.

22 4. At least 90% of the work performed by Virginia
23 Bork, an Administrative Aide in the Great Falls regional
24 office, is for bargaining unit members. Any remaining work
25 is done for her supervisor.

26 5. Virginia Bork has typed job evaluations and
27 conceivably would type grievance responses and recommend-
28 ations for promotions if the need arose.

29 6. Ms. Bork does not have direct access to personnel
30 files. They are controlled by her supervisor.

31 7. All letters from the Helena office to Virginia
32 Bork's supervisor are opened by the supervisor-not by

1 Virginia Bork. Ms. Bork's supervisor does all of his own
2 filing.

3 8. Neither Virginia Bork nor any of the other Admin-
4 istrative Aides have sat at the bargaining table or attended
5 bargaining or strategy sessions. None of the immediate
6 supervisors of the Aides have sat at the table. It is not
7 until the level of Jim Pomroy that one finds personnel
8 actually involved in bargaining or formulation of bargain-
9 ing strategy.

10 III. CONCLUSIONS OF LAW

11 1. Section 39-31-103(12) MCA provides for exclusion
12 from a bargaining unit for individuals employed as confiden-
13 tial employees.

14 A two prong test has been applied by the Board to
15 determine whether an employee should be excluded from the
16 unit. For the employee to be excluded, the management
17 official assisted by the employee must be involved in
18 formulating, determining and effectuating labor relations
19 policies. Secondly, the employee must have access to
20 confidential labor relations information in the normal
21 course of employment, (NLRB v. Hendricks, 108 LRRM 3105).

22 Generally, the NLRB has identified those persons who
23 "formulate, determine and effectuate policies in the field
24 of labor relations" as those people who actually sit at the
25 bargaining table, (Victor Industries, 87 LRRM 1537; Beatrice
26 Foods, 92 LRRM 1402; and Taft Broadcasting, 94 LRRM 1089).
27 Clearly the Regional Supervisors do not sit at the bargain-
28 ing table and thus their real impact on labor relations is
29 much in doubt. As the Petitioner says in its brief, the
30 supervisors, "To a degree", formulate, effectuate and
31 determine labor relations policy in the region. The
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1 testimony simply fails to show that the Regional Supervisors
2 influence labor relations to an appreciable degree.

3 As to the second prong of the test, the evidence simply
4 fails to demonstrate that the Aide positions have in the
5 past worked with confidential information. If anything
6 Virginia Bork's testimony shows that her Regional Supervisor
7 controls most if not all of the information that could be
8 considered of a confidential nature for labor relations
9 purposes. This may or may not change in the future.

10 This question of changes in the future brings up a
11 matter of no small significance. The Petitioner has indi-
12 cated that much of its argument as to the duties expected of
13 the Administrative Aides is prospective in nature. This
14 prospective argument does not help the Petitioner's position
15 (UD #21-77) but in and of itself certainly is not fatal.
16 However, much of the Petitioner's argument as to what is
17 anticipated of the Regional Supervisors is also prospective
18 in nature. Such a position of making a prospective argument
19 within a prospective argument is untenable. At this point
20 it has not been shown by the Petitioner that the duties of
21 Regional Supervisor influence labor relations to an appre-
22 ciable degree and thus it cannot follow that the Aides are
23 confidential employees.

24 The position of Administrative Aide II is not confiden-
25 tial as defined in Section 39-31-103(12) MCA.

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27 IV. RECOMMENDED ORDER

28 It is recommended that the position of Administrative
29 Aide II be included in the collective bargaining unit
30 defined as all Community Corrections Specialists I, II and
31 III and Office Support Staff in regional and district

1 offices excluding supervisory, managerial, and confidential
2 employees.

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4 IV. NOTICE

5 Exceptions to these Findings of Fact, Conclusions of
6 Law and Recommended Order may be filed within 20 days of
7 service. If no exceptions are filed the recommended order
8 will become the order of the Board of Personnel Appeals.

9 Dated this 10th day of November, 1987.

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By: 
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Hearing Examiner

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CERTIFICATE OF SERVICE

The undersigned does certify that a true and correct
copy of this document was served upon the following on the
10th day of November, 1987.

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