

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

IN THE MATTER OF UNIT CLARIFICATION NO. 5-93:

CASCADE COUNTY, GREAT FALLS,)
MONTANA,)
Petitioner,)
vs.)
MONTANA PUBLIC EMPLOYEES)
ASSOCIATION,)
Respondent.)

**FINDINGS OF FACT;
CONCLUSIONS OF LAW;
RECOMMENDED ORDER**

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I. INTRODUCTION

On February 19, 1993, Cascade County, Great Falls, Montana hereinafter the Petitioner, filed a petition for unit clarification with the Board of Personnel Appeals hereinafter the Board. The petition proposal would result in removal from the bargaining unit of the record supervisor, county attorney office secretary, motor vehicle supervisor, the real estate administrative officer, the justice court office manager, the accounting supervisor, and the tax deed supervisor. On March 10, 1993, the Respondent, contending the positions failed to meet the required supervisory elements adopted by the Board, objected to removal of the positions.

A hearing was conducted on May 11, 1993, in Great Falls, Montana before Hearing Officer, Joseph V. Maronick. Parties present, duly sworn, and offering testimony were Judge, Brant Light; Judge, Gladys Vance; Records Supervisor, Margaret Carrico; County Attorney Office Secretary, Mary Berg (Boice); Motor Vehicle Supervisor, Hulda Tade; Real Estate Administrative Officer, Sheila

1 Torgeson; Justice Court Office Manager, Susan Stevenson; Tax Deeds
2 Supervisor, Jeff Anderson; Commissioner, Harry Mitchell; County
3 Attorney Patrick L. Paul and Montana Public Employee's Field
4 Representative, Cathy Mason. Case presentation was offered by
5 Petitioner counsel Patrick Paul and Respondent counsel Carter
6 Picotte.

7 Administrative Notice was taken of the Petition for Unit
8 Clarification, the Response and Investigation Report. Documents
9 admitted to the record were Petitioner Exhibits 1 through 9.

10 Final briefs were received on June 15, 1993.

11 At the beginning of the hearing, the parties asked, in the
12 interest of Board notification through this Hearing Officer, that
13 these findings include the fact that the contracting parties agree
14 and request notice be taken by the Board that three computer
15 specialists are properly part of the Great Falls MPEA bargaining
16 unit involved in this case.

17 **II. FINDINGS OF FACT**

18 1. The Petitioner requests the seven positions identified
19 above be excluded from the bargaining unit on the basis of
20 supervisory responsibilities. No other basis was offered for
21 exclusion.

22 2. Justice Court Office Manager, Mrs. Stevenson, (Exhibit
23 P1) works in the justice court. In post-hearing brief, the
24 Petitioner withdrew the request to have Mrs. Stevenson excluded,
25 conceding testimony showed she is not a supervisor as defined by
26 the Board.

27 4. County Attorney Office Secretary, Mary Berg (Boice) works
28 in the county attorney's office. Her supervisory responsibilities

1 include recommendations for hiring, discipline and discharge of
2 four co-workers. Final hire/fire disciplinary authority rests with
3 the county attorney. Staff work assignments and coordination work
4 with other related local and state offices are the responsibility
5 of this position. Distributing incoming cases on an established
6 rotation basis is also performed. This position orders and
7 maintains supplies as well as coordinating and assisting staff.
8 She also assists the attorneys in court calendaring. This position
9 monitors time and leave requests and resolves staff conflicts, if
10 possible. Ultimate or final conflict resolution authority rests
11 with the county attorney.

12 4. Accounting Supervisor, Rita Haddack (Exhibit P4) and
13 Records Supervisor, Margaret Carrico, (Exhibit P3) work in the
14 Birth and Death Register Office of the Clerk and Recorder. The
15 office is staffed by Mrs. Haddack, Mrs. Carrico, two staff
16 assistants in the Birth and Death Registry work and one full-time
17 as well as one part-time accounting employee. The work product
18 and work process of their work section is regulated by law,
19 voluminous and requires all staff to process the work. Ninety five
20 percent of Ms. Haddack and Ms. Carrico's time is used doing the
21 same work as the other persons they supervise or work with. The
22 Clerk and Recorder does not supervise the day to day office
23 activities. In post-hearing brief the Petitioner indicated the
24 staff members:

25 hire and fire, train, assign work and delegate
26 responsibilities, work and coordinate with the
27 staff, meet with the clerk and recorder for
28 matters relating to their supervisory
responsibilities, make unilateral decisions in
the absence of the clerk and recorder, make
necessary decisions for minor problems,

1 enforce the dress code and punctuality as well
2 as coordinate staff leave and break time.

3 6. Real Estate Administrative Officer, Sheila Torgeson, Tax
4 Deed Department Supervisor, Jeff Anderson; and Motor Vehicle
5 Department Supervisor, Hulda Tade; work in the County Treasurer's
6 Office. All recommend hire, fire, promotion, and disciplinary
7 actions to the Treasurer for ultimate decision. They attend
8 supervisor meetings with the Treasurer, implement changes directed
9 by the Treasurer, inspect quality and quantity of staff work,
10 regulate staff leave and break time, and input regarding
11 disciplinary action taken by the Treasurer.

12 III. CONCLUSIONS OF LAW

13 1. A Board of Personnel Appeals has jurisdiction in this
14 matter pursuant to Section 39-31-202, MCA. Billings, Montana vs.
15 Fire Fighters Local 529, 113 LRRM 3324, 651 P2d 627 Montana Supreme
16 Court 1982.

17 2. The Petitioner argues that the positions identified are
18 supervisory and should therefore be exempted. Section 39-31-103,
19 MCA exempts "supervisory employees" from the definition of an
20 "employee" covered under the collective bargaining agreement for
21 public employees. A "supervisory employee" is defined as:

22 ...any individual having authority in the
23 interest of the employer to hire, transfer,
24 suspend, layoff, recall, promote, discharge,
25 assign, reward, discipline other employees,
26 having responsibility to direct them, to
27 adjust their grievances, or effectively to
28 recommend such action, if in the connection
with the foregoing the exercise of such
authority is not of a merely routine or
clerical nature but requires the use of
independent judgment.

3. The Montana Supreme Court has approved the practice of
the Board of Personnel in using Federal Court and National Labor

1 Relations Board precedence as guide points for interpreting the
2 Montana Collective Bargaining Act for Public Employees Act as the
3 State Act is similar to the Federal Employment Management Relations
4 Act. State ex. rel. Board of Personnel Appeals vs. District
5 Court, 183 Mont. 223 (1979) 598 P2d 1117, 103 LRRM 2297; Teamsters
6 Local No. 45 vs. State ex. rel. Board of Personnel Appeals, 195
7 Mont. 272 (1981), 635 P2d 1310, 110 LRRM 2012; City of Great Falls
8 vs. Young (III), 686 P2d 185, 119 LRRM 2682, (1984).

9 4. In existence or exercise of the identified supervisory
10 functions as well as the substantial use of independent judgment is
11 required for exemption as a supervisory employee. See, George C.
12 Foss Company v. NLRB, 752 F2d 1407, 118 LRRM 2746, CA9 (1985) where
13 the court denied supervisory designation because the "supervisory"
14 work was routine in nature. The supervisor acted as a conduit of
15 orders or instructions and he did not exercise substantial
16 independent judgement.

17 5. The persons identified do limitedly perform in some cases
18 some of the duties for which exemption as a supervisor is allowed.
19 The parties recommend suspension, transfer, hire, fire, promotion,
20 adjustment of grievances and at times make recommendations in such
21 matters. Two of the parties for whom exemption is asked do the
22 same work as coworkers 95% of the time. Time, work circumstances
23 and substantial independent judgement must be considered when
24 exemption is addressed. The recommendations made are found to be
25 more routine and clerical in nature and do not require the use or
26 the exercise of substantial independent judgment. In each case,
27 the final authority is dependent on the supervisor or elected
28 official in the individual department.

