STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

In the matter of Unit Clarification No. 4-86

STATE OF MONTANA, DEPARTMENT OF INSTITUTIONS, Petitioner,	)	FINDINGS OF FACT; CONCLUSIONS OF LAW; RECOMMENDED ORDER
vs.	)	
MONTANA FEDERATION OF STATE EMPLOYEES, Respondent.	)	

I. INTRODUCTION

On July 11, 1986 Petitioner, State of Montana, Department of Institutions filed a unit clarification petition with the Board of Personnel Appeals requesting that the position of Secretary I be excluded from the collective bargaining unit.

A hearing on the unit clarification was conducted on September 28, 1987 in Helena, Montana before John Andrew, hearing examiner. The State of Montana, Department of Institutions, was represented by Doug Denler, Labor Relations Specialist. The Montana Federation of State Employees was represented by Paul Melvin, Field Representative.

Tom Gooch, Director of Personnel and Labor Relations for the Department of Institutions, and Jim Pomroy, Chief of the Community Corrections Bureau, were called as witnesses by the Petitioner. Virginia Bork was called as a witness by the Respondent.

II. ISSUES

Prior to hearing it was stipulated that the Secretary I positions in the field units had been reclassified as Administrative Aide II's. It was further stipulated that the Administrative Aide I position assigned to the Helena

THURBER'S HELENA

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

III. FINDINGS OF FACT

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

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

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

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

5. Virginia Bork has typed job evaluations and conceivably would type grievance responses and recommendations for promotions if the need arose.

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

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

THURBER'S HELENA

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

8. Neither Virginia Bork nor any of the other Administrative Aides have sat at the bargaining table or attended bargaining or strategy sessions. None of the immediate supervisors of the Aides have sat at the table. It is not until the level of Jim Pomroy that one finds personnel actually involved in bargaining or formulation of bargaining strategy.

III. CONCLUSIONS OF LAW

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

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

Generally, the NLRB has identified those persons who "formulate, determine and effectuate policies in the field of labor relations" as those people who actually sit at the bargaining table, (Victor Industries, 87 LRRM 1537; Beatrice Foods, 92 LRRM 1402; and Taft Broadcasting, 94 LRRM 1089). Clearly the Regional Supervisors do not sit at the bargaining table and thus their real impact on labor relations is much in doubt. As the Petitioner says in its brief, the supervisors, "To a degree", formulate, effectuate and determine labor relations policy in the region. The

testimony simply fails to show that the Regional Supervisors influence labor relations to an appreciable degree.

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

This question of changes in the future brings up a matter of no small signifigance. The Petitioner has indicated that much of its argument as to the duties expected of the Administrative Aides is prospective in nature. This prospective argument does not help the Petitioner's position (UD #21-77) but in and of itself certainly is not fatal. However, much of the Petitioners argument as to what is anticipated of the Regional Supervisors is also prospective in nature. Such a position of making a prospective argument within a prospective argument is untenable. At this point it has not been shown by the Petitioner that the duties of Regional Supervisor influence labor relations to an appreciable degree and thus it cannot follow that the Aides are confidential employees.

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

IV. RECOMMENDED ORDER

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

offices excluding supervisory, managerial, and confidential employees.

IV. NOTICE

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

Dated this 10th day of November, 1987.

By: John Andrew
Hearing Examiner

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

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.

Paul Melvin
Field Representative
Montana Federation of
State Employees
P.O. Box 1246
Helena, MT 59624

Doug Denler
Labor Relations Specialist
State Labor Relations and
Employee Benefits Bureau
Room 130, Mitchell Building
Helena, MT 59620

Sara Shepherd