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.	)	**FINDINGS OF FACT; CONCLUSIONS OF LAW; RECOMMENDED ORDER**
MONTANA PUBLIC EMPLOYEES ASSOCIATION,	)	
Respondent.	)	

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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

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

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

Final briefs were received on June 15, 1993.

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

II. FINDINGS OF FACT

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

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

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

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

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

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

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

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

III. CONCLUSIONS OF LAW

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

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

> ...any individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to 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

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

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

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

6. The Petitioner has failed to show the positions identified reach the threshold required for supervisory exclusion.

IV. RECOMMENDED ORDER

IT IS ORDERED that the Petition for Exclusion of the seven positions identified be denied.

Entered and dated this 23 day of July, 1993.

Joseph V. Maronick
JOSEPH V. MARONICK
Hearing Examiner

SPECIAL NOTE: Pursuant to ARM 24.26.684, the above RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless written exceptions are filed with the Board 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:

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DATED this 23rd day of July, 1993.

Christine A. Roland

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