

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
 )  
INTERNATIONAL UNION OF OPERATING ) CASE 16147-E-01-2677  
ENGINEERS, LOCAL 286 )  
 ) DECISION 7615-A - PECB  
Involving certain employees of: )  
 ) ORDER DETERMINING  
LAKEWOOD WATER DISTRICT ) ELIGIBILITY ISSUES  
 )  
 )  
\_\_\_\_\_ )

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On December 13, 2001, International Union of Operating Engineers, Local 286 (union) filed a petition with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain maintenance employees of the Lakewood Water District (employer). Following an investigation conference at which the eligibility of three employees was reserved for subsequent determination, a cross-check was conducted on January 14, 2002. An interim certification was issued on January 24, 2002, designating the union as exclusive bargaining representative.<sup>1</sup> A hearing on the reserved eligibility issues was held on August 2, 2002, before Hearing Officer Vincent M. Helm. The parties filed briefs. Authority to determine the eligibility issues has been delegated by the Executive Director to the Hearing Officer under WAC 391-25-390(2).

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<sup>1</sup> *Lakewood Water District, Decision 7615 (PECB, 2002).*

Based on the evidence and arguments presented by the parties, the Hearing Officer rules that the disputed employees are properly included in bargaining unit.

#### BACKGROUND

The employer is a water district operating under the ultimate control of a board of commissioners. As the manager, Randy Black reports directly to that board and is responsible for the employer's day-to-day operations. Immediately subordinate to the manager in the employer's hierarchy is Superintendent Budd Greco. This decision concerns three individuals designated as department heads who report directly to the superintendent: David Hall oversees pumping and water treatment operations; Miles Landon oversees service and operations maintenance; Bobby Gaskin oversees construction and systems maintenance. Those positions have been in existence since 1997.

#### POSITIONS OF THE PARTIES

The union contends the disputed employees should be included in the bargaining unit. It relies upon Commission precedents distinguishing between supervisors (whose labor relations authority over subordinates creates a potential for conflicts of interest) and lead workers or working foremen (whose limited authority to impact the terms and conditions of employment of subordinate employees does not preclude their inclusion in a bargaining unit with their subordinates).

The employer maintains the disputed individuals are supervisors who should not be included in the same bargaining unit with their

subordinates. The employer contends the evidence shows that the duties, responsibilities, and authority of the three department heads meet Commission criteria and statutory definitions of supervisor, based upon either authority to effect substantive changes in the terms and conditions of employment of subordinates or to effectively recommend such changes.

## DISCUSSION

### Standards for Determining Supervisor Issues

Supervisors have bargaining rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries* 88 Wn.2d 925 (1977).

The determination and modification of bargaining units is a function delegated by the legislature to the Commission. RCW 41.56.060 provides:

The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.

Because of the potential for conflicts of interest inherent in having both supervisors and their subordinates in the same bargaining unit, the Commission has routinely exercised its unit

determination authority to place supervisors in separate units and to exclude them from bargaining units which include their subordinates. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd* 29 Wn. App. 599 (1981), *review denied* 96 Wn.2d 1004 (1981).

In the absence of a definition of "supervisor" within Chapter 41.56 RCW, the Commission has looked to the definition contained in the Educational Employees Relations Act (EERA), Chapter 41.59 RCW, as indicating the types of authority that pose a potential for conflicts of interest. RCW 41.59.020(4)(d) provides:

[S]upervisor . . . means any employee having authority, in the interest of the employer, to *hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such actions*, if in connection with the foregoing the exercise of such authority is *not merely routine or clerical in nature but calls for the consistent exercise of independent judgment* . . . The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

(emphasis added.) The Commission has applied that definition in cases such as *City of Battleground*, Decision 7046-A (PECB, 2001) and *Seattle School District*, Decision 7407 (PECB, 2001).<sup>2</sup> With the exception of the "preponderance" test, the EERA definition tracks Section 2(11) of the National Labor Relations Act.

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<sup>2</sup> The employer cites *City of Wenatchee*, Decision 4872 (PECB, 1994) for the proposition that a person is always a supervisor if they spend a majority of his or her work time on one or more supervisory duties. To the extent the Wenatchee decision includes such a pronouncement, it appears to be contradicted by numerous subsequent decisions effecting a balancing and a more global view of the indicators of supervisory status.

Separate analysis of functions and responsibilities is required for each disputed position. It must be determined whether the position in fact requires the consistent exercise of independent judgment to act or effectively recommend personnel actions on behalf of the employer. *Thurston County*, Decision 1064 (PECB, 1980). Job titles are not controlling. For example, in *City of Gig Harbor*, Decision 4020-A (PECB, 1992), the Commission held persons with titles of supervisor should be included in a bargaining unit in which there was no demonstrated potential for a conflict of interest.

The Commission has used the "lead worker" label for persons who merely have authority to direct subordinates in their daily job assignments, or ministerial administration of programs or procedures without possessing authority to make meaningful changes in the employment relationship, and refused to exclude them from bargaining units. *City of Aberdeen*, Decision 4174 (PECB, 1992); *Federal Way Water and Sewer District*, Decision 3794 (PECB, 1991). In *Morton General Hospital*, Decision 3521-B (PECB, 1991), the Commission noted:

A distinction has been drawn between individuals with sufficient authority to qualify as "supervisors" and those with authority akin to working foremen. The latter have authority to direct subordinates in their job assignments, without possessing authority to make meaningful changes in the employment relationship.

In evaluating unit placement, the Commission concerns itself with the factual situation which exists at the time, rather than speculating upon future job components. In the event there are future changes in job duties and responsibilities, the procedures of the Commission provide a mechanism for revisiting the issue. *Snohomish Health District*, Decision 4735-A (PECB, 1995).

Job descriptions are considered in determining supervisory issues, but more credence is given to evidence of actual job performance, particularly where there exists conflict between duties set forth in the job description and what the evidence shows relative to actual duties performed. *Benton County*, Decision 6990 (PECB, 2000); *King County*, Decision 7053 (PECB, 2000). Moreover, where revised or newly executed job descriptions are involved, the bona fides of such descriptions will be carefully scrutinized. *Snohomish County Health District*, Decision 6478-A (PECB, 1998).

#### Application of Standards

##### Job Descriptions for the Disputed Positions -

Two sets of job descriptions were received in evidence in this record, and problems are noted as to both of them:

The first set was prepared and published in 1997, when the jobs were created. The employer contends, however, that those job descriptions do not accurately reflect the duties and responsibilities of the positions as they currently exist.

The second set was developed beginning some time in August or September of 2001. The employer contends that the revised job descriptions reflect both the actual duties and intended changes in duties of these positions, but the new job descriptions had not been published or implemented by the employer prior to the onset of this proceeding.<sup>3</sup>

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<sup>3</sup> When questioned by the employer's counsel as to why the second set of job descriptions had not been published, the employer's manager said they were not complete and did not include changes in duties contemplated by the employer. Under further questioning by the employer's counsel, that explanation was modified to indicate that the manager had requested his secretary to prepare the revised job descriptions but that, through oversight, this was not done until January of 2002.

Except for the various job titles, the job descriptions in the first are identical with respect to the particulars set forth below:

## LAKEWOOD WATER DISTRICT

## Job Description

JOB TITLE: [omitted]

SUMMARY: The statements contained herein reflect general details . . . to describe the principal functions of this job, the level of knowledge and skills typically required and the scope of responsibility, . . . *Individuals may perform other duties as assigned, to cover absences or relief, to equalize peak work periods or otherwise to balance the workload.*

ESSENTIAL DUTIES: Under the supervision of the Superintendent, *lead field employees* through daily duties and provide technical support for each specified job: follow-up of completed jobs; check list from beginning to end; paperwork completed daily; inform Superintendent on projected needs to complete work; help with inventory count at year end; notify customers of scheduled water outages and flushing if needed; preparation for seasonal emergencies (freezing, etc); ordering materials for weekly Wednesday pickup; responsible for ordering and stocking materials and checking and matching with receipts; *back-up other Lead positions as needed.*

Communicate on a daily basis with Superintendent regarding activities and with handing out of paperwork and orders. Follow-up meeting at end of day with discussion of next day's work.

. . . .  
REASONING ABILITY: *Ability to . . . carry out detailed but involved written or oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations.*

LICENSES, CERTIFICATES, REGISTRATIONS: . . . A . . . .  
*certified flagging card will be required.*

OTHER SKILLS AND ABILITIES: Must be willing to go ON CALL ROTATION and live within the 30-minute response area, when qualified as determined by Management. . . .

PHYSICAL DEMANDS: . . . *The employee must occasionally lift and/or move up to 75 pounds.*

WORK ENVIRONMENT: . . . *Exposure to water purification chemicals, noise and traffic hazards as a worker or flagger.*

(emphasis added). While not identical, the first set of job descriptions also contained provisions along the following lines:

SUPERVISORY RESPONSIBILITIES: Directly supervises SEVERAL employees in the Service & Operations Maintenance Department. . . .

SUPERVISORY RESPONSIBILITIES: Directly supervises employees in the Pumping and Water Treatment Operations Department. . . .

SUPERVISORY RESPONSIBILITIES: Directly supervises several employees in the Construction & System Maintenance Operations Department. . . .

Each of the job descriptions in the first set contains the following detailed description under the "Supervisory Responsibilities" heading:

Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws. Responsibilities include interviewing, hiring, and training employees; planning, assigning, and directing work; appraising performance; rewarding and disciplining employees; addressing complaints and resolving problems.

The remainder of each of the job descriptions in the first set outlines duties germane to the particular department as well as common educational requirements, responsibilities such as dealing with customer complaints, maintenance of vehicles or equipment, compliance with safety requirements, and preparation of written reports.

With respect to the distinguishing duties set forth in the first set of job descriptions, the testimony of employer witnesses



indicated that those items are, in the main, still performed by the department heads. Some specific tasks have been switched from one department head to another.

The revised job descriptions are more detailed than the first set with regard to job functions and responsibilities. With respect to salient features bearing upon supervisory responsibilities, they are, however, remarkably similar to the first set of job descriptions. For example, the phrase "lead field employees . . ." under the "Essential Duties" heading has only been modified to "lead *and direct* employees . . ." (emphasis added).

With respect to the specific category of supervisory responsibilities, each job description has been modified in the following manner:

SUPERVISORY RESPONSIBILITIES: Directly and independently supervises employees in the [name of department]. Carries out supervisory responsibilities in accordance with the organization's resolutions, policies, and applicable laws. Responsibilities include participating in the hiring process, including interviewing of applicants, evaluating potential hires and providing input on hiring decisions; training employees; planning, assigning, and directing work; appraising work performance of department employees; rewarding employees, issuing both verbal and written warnings and discipline; addressing complaints; and resolving problems and grievances. Department Head will work to resolve employee differences or problems as they arise. He/she shall maintain confidentiality and trust with all employees when handling personnel issues. Department Head shall maintain and keep records and advise management as needed of suggestions and information regarding personnel issues and corrective criticism for subordinate employees.

Further, two of the revised job descriptions (for the department heads of Pumping & Water Treatment Operations and Service & Operations Maintenance) contain the following provisions:

The Department Head shall:

- . . . . .  
supervise department employees and ensure that department employees, at all times while working on behalf of the District, maintain appropriate behavior, conduct, and standards in relation to District resolutions and policies as they pertain to the department and its employees;
- act in accordance with District resolutions and policies and decision-making, direction of personnel, and use of facilities that are in the best interest of the District's customers and employees;
- have the authority to make decisions in the handling of emergencies with regards to necessary purchases and involvement of personnel;
- participate in the annual District budget by way of making recommendations and suggestions to improve the District's operations and activities;
- discipline department employees as appropriate, including issuing verbal and/or written warnings and discipline, and recommending suspension or termination;
- approve overtime work of department employees, as appropriate;
- participate in the annual review process of department employees; and
- recommend and make purchases from vendors or consultants.

The revised job description for Construction & System Maintenance Operations Head also contains the following:

- work in various work environments and *independently* handle and resolve situations that may occur in the administration of District activities;
- *in the absence of the Superintendent*, access the Superintendents [sic] office computer and schedule daily crew assignments;
- . . . . .  
act as the District's contractor coordinator in working with contractors and other public entities;
- oversee on-call rotation;

Remaining portions of the revised job descriptions are basically unchanged from the first set of job descriptions, including specific duties of the department, education and/or experience, reasoning ability, licenses, certificates, registrations, other skills and ability, physical demands and work environment. An "on-call" requirement is deleted in the second set.

#### Examination of Supervisory Criteria

##### Authority to Hire or Effectively Recommend Hire -

Most hiring within the bargaining unit is for entry level positions, with most openings occurring in the Construction & Systems Maintenance Department. The department heads have a role in the initial phase of the hiring process, but the evidence falls short of establishing that they make effective recommendations:

When an opening occurs, Superintendent Greco and the department head whose area of responsibility is involved review applications and select eight to ten individuals for an initial interview. Each develops questions to pose to the applicants in interviews conducted jointly by the department head and superintendent. The applicants are graded by the interviewers.

The top two or three candidates are selected for a second interview with the employer's manager and superintendent. In response to a question from the Hearing Officer, the manager stated he makes the final hiring decision based on an independent evaluation of the applicants. The superintendent testified that, on occasion, he has made the selection with the concurrence of the manager. The superintendent testified that the manager has hired an employee over his objections.

The manager testified that he has never hired an applicant over the objection of a department head, but he acknowledged that he has not always hired the persons favored by the department heads.

Authority to Assign or Effectively Recommend -

Manager Black testified the department heads assign work to employees under their supervision, including overtime in the absence of the superintendent. Both Black and Greco noted that they leave work before the scheduled end of the work day for bargaining unit employees because their work day starts earlier. Estimates varied widely as to the amount of time both of the senior officials were absent simultaneously for other reasons, such as vacations, illnesses, conferences, and off-site matters requiring their attention, but it appears that such instances are relatively rare.

Some confusion exists among the department heads as to who is responsible when both Black and Greco are absent. Both Hall and Landon identified themselves as the person in charge of the employer's operations at such times.

Superintendent Greco conducts a 15-minute meeting with department heads at the beginning of each workday. At that time, he assigns tasks to be performed, often indicating assignments to particular bargaining unit employees. As the result of input from the department heads at this meeting, the original assignments may be modified to accommodate situations unknown to Greco. In the event of a disagreement among the department heads as to which bargaining unit employee(s) should be assigned to a particular task, Greco makes the decision. Subsequent to the daily meeting, the department heads communicate work assignments to the bargaining unit employees. During the course of the workday, department heads make necessary adjustments to facilitate work flow. Department Head Hall approves overtime for his crew as required and within budget parameters. Department Head Gaskin will assign overtime at the conclusion of the workday, or call out employees off shift to respond to emergencies such as a broken water main. It is a

commonly accepted practice for such emergency responses to be initiated by Gaskin without prior notification to the Superintendent. The third department head does not appear to have any requirement for overtime.

The amount of time spent performing work similar to that performed by bargaining unit employees varies among the department heads:

- Landon estimates he spends no more than 10 percent of his time performing such work, 20 percent of his time directing his subordinates, and 70 percent of his time in other activities such as safety issues, dealing with contractors, or resolving customer complaints. Landon spends between 40 and 100 percent of his time in his office, depending upon the mix of activities at any given time.
- Hall stated that he spends a portion of his work time performing such work. He spends close to one half of his work time in his office, dealing with contractors, and developing an instruction manual. His one subordinate performs repetitive work requiring little supervision.
- Gaskin estimates he spends 40 percent of his time performing such work. Greco specifically assigns Gaskin to tasks such as vacation relief. He spends varying periods, ranging from two to four hours daily, in his office processing paperwork.

Employees must report absences to the superintendent. Department heads approve leaves of less than one day, for medical appointments and other short-duration absences. Vacations are only approved by the superintendent.

Promote or Effectively Recommend -

There is no evidence that any of the disputed employees have any authority to promote employees. Nor is there any evidence that any

specific recommendations for promotion have resulted in promotions, although Manager Black stated he had requested or received input on promotions and answered affirmatively to the inquiry of employer counsel as to whether the department heads made effective recommendations. Where Superintendent Greco is not familiar with the work of a bargaining unit employee, he will request input from a department head to assist in making performance evaluations.

Transfer or Effectively Recommend -

The testimony relative to permanent transfers showed one instance where an employee requested by Hall was transferred to him. That did not occur until some two years later, however, and the testimony indicates that the manager and superintendent actually made the decision after discussion and independent review. Gaskin recalled one instance where his input was sought concerning who to transfer, and he thought the person he recommended was selected. There was no indication in testimony by the manager or superintendent as to the significance of Gaskin's recommendation. There was reference to another instance, but no details were provided as to the circumstances behind that transfer.

Layoff/Recall or Effectively Recommend -

The employer has not had a layoff or an occasion to recall employees from layoff. No testimony was offered as to the role of the department heads should such an eventuality arise.

Suspend or Effectively Recommend -

No evidence was introduced on this subject.

Discipline or Effectively Recommend -

The manager and the department heads other than Gaskin each stated that the department heads have the authority to issue verbal

warnings. Landon testified he has given numerous reprimands for safety infractions, and that he believes he has the authority to issue a written warning.

Discharge or Effectively Recommend -

The record includes information about two instances in which the employment of subordinate employees was terminated. One involved an employee who the department head deemed to be incompetent; the other involved an employee who was alleged to be threatening serious bodily harm to employees. In both instances, the problem was brought to the attention of the superintendent and manager by a department head. Importantly, it does not appear that a department head recommended discharge in either instance, or even that the department head was asked for a recommendation. In both instances, an investigation was made by the manager and superintendent independent of whatever action was initiated by a department head, and the ultimate decision rested with the manager.

Adjust Grievances or Effectively Recommend -

Both the manager and the superintendent testified that department heads have authority to adjust grievances, but the testimony of the department heads indicates they have only acted on minor disputes between employees. Greco also cited only disputes between employees when explaining grievance adjustment by the department heads. A written grievance procedure adopted by the employer's board in 1997 provides for most employee complaints or grievances to be reduced to writing and filed with the manager. If the manager is the subject of the grievance, the papers are to be filed with the Board. There is no occasion for employees to file a grievance with a department head or even with the superintendent, and the manager is the only person authorized by the Board to resolve a grievance filed under the procedure.

Other Factual Considerations -

In instances where there may be discrepancies between the testimony of the individuals in the disputed job classifications and one or both of their supervisors with respect to the duties performed, time involved, or magnitude of responsibilities or authority, the testimony of the department heads is credited upon the premise they are in the best position to testify with respect to such matters.

There was testimony from the manager and the superintendent as to the continuing evolution of the positions in question since they were created in 1997, with emphasis upon anticipated expansion of employer's service areas and the supervisory responsibilities of employees in the disputed positions. Such testimony has only limited probative value here, since determination of this case must be on the basis of the facts as they currently exist, rather than upon on speculation about possible future permutations. *City of Lakewood*, Decision 6401 (PECB, 1998) and *Lakehaven Utility District*, Decision 5401 (PECB, 1995), cited by the employer as support for considering employer assertions about future supervisory authority, do not dictate a different analysis. Those cases arose in the context of newly-created positions or new employees, where no evidence was available as to the actual exercise of authority.

Asserted "Unique" Characteristics Irrelevant -

Each of the disputed employees has an office, where they spend varying periods of their work time. The disputed employees are furnished with trucks which they use to transport themselves and tools and equipment incidental to their work functions. Having an office or an assigned vehicle is not, however, an indicator of supervisory status.



The disputed employees testified of their belief that their inclusion in the bargaining unit would weaken their effectiveness. There is no precedent for concluding the subjective reactions of the department heads and their supervisors as to the deleterious effects of their being included in the bargaining unit furnish a basis for exclusion.

The disputed employees are paid \$300 per month more than the employees they supervise. While a substantial wage differential might corroborate evidence that the employer places a great deal of responsibility on a position, the differential in this case is so small as to reinforce an inference of "lead worker" status.

The disputed employees provide input in the budget process, have interaction with or supervision of subcontractors and vendors, make purchases, and approve change orders. The employer cites *City of Deer Park*, Decision 4237 (PECB, 1993) and reasserts *Lakehaven Utility District* as authority for the proposition that the Commission has recognized preparation of budgets, oversight of contractors, and purchasing authority as supervisory criteria. A careful reading of these cases shows that, while the performance of such administrative functions was noted, they were *not* held to meet the criteria for establishing supervisory status.

Having a role in the training of subordinates is ambiguous, because training in a colleague/coaching/apprenticeship mode does not connote any exercise of authority, while training in a teach/evaluate mode may corroborate an exercise of supervisory authority. The training roles of the employees at issue in this case appear to fit in the former, rather than the latter, category.

Although the new job descriptions will not require the disputed employees to be part of the "on-call" rotation imposed on other

employees, nothing is cited or found which would require an employer to maintain absolute uniformity of job duties among its employees. Moreover, the lack of "on-call" obligations does not indicate that the disputed employees have or exercise any authority over the employees who are on the "on-call" rotation.

Confidential Exclusion Not Established -

No issue was framed during the investigation conference as to whether the department heads should be excluded as "confidential employees" under RCW 41.56.030(2) and WAC 391-35-320, but the employer's manager and superintendent testified that they regarded the disputed employees as part of their management team, whom they entrust with "confidential" information. The disputed employees also testified that they receive "confidential" information. There is, however, no evidence that the information described as "confidential" in that testimony relates to labor relations matters. Rather, it is information concerning operational matters such as civil litigation and planning. It suffices to note that the type of confidential information posed herein is not of the nature that would warrant exclusion from the bargaining unit as confidential employees. *City of Lynden*, Decision 7509 (PECB, 2001).

Conclusion Regarding Supervisory Status -

This case presents questions of degree as to the weight given by the employer to recommendations made by the department heads, and the degree to which there is a consistent exercise of independent judgment. Accordingly, the conclusion herein represents the Hearing Officer's determination after reviewing the exhibits, weighing the credibility of witnesses and evaluating their testimony, and thereby coming to a conclusion consistent with the statute and Commission precedent: The disputed employees do not qualify for exclusion under WAC 391-35-340 as supervisors.

The department heads have neither the authority to hire nor to effectively recommend hire. The authority to hire is reserved to the manager, or at most is delegated to the superintendent. The department heads' participation in initial interviews with the superintendent and ranking of applicants by consensus does not constitute an effective recommendation, because of the independent evaluation by the employer's manager.

The department heads have a role in assigning employees, but that role is severely limited by the active involvement of the superintendent in making daily job assignments to individuals in the bargaining unit. Further, the superintendent receives reports at the end of each workday concerning the status of work for which the department heads are responsible. At most, input from a department head at the morning meeting may cause the superintendent to modify the daily work plan. As to the consistent exercise of independent judgment, it is noted that both the original and revised job descriptions for the disputed positions only call for them to use a "common sense understanding to carry out detailed but uninvolved written or oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations." This appears to accurately describe the nature of the judgment required by the department heads in the assignment of work. Indeed, one of the department heads said bargaining unit work required little direction because the work was repetitive. A second indicated he was a conduit passing on work assignments from the superintendent to bargaining unit employees. The authority of the department heads to permit employees to vary their lunch hours or leave work early is minimal, and absences of a full day or more are approved by senior officials.

The authority of the department heads to assign overtime is limited to emergency situations and by budget constraints. Even when a

water main bursts after the superintendent and manager have left work for the day, the department head assigning employees to make repairs will inform the superintendent of the situation.

There was no evidence that department heads actually exercised any authority in either selecting or recommending employees for promotions or transfers. The only tangential impact a department head might have had upon promotions or transfers is the result of input provided at the request of the superintendent in connection with evaluating employees.

The employer's manager testified that the authority of the department heads with respect to discipline was limited to verbal warnings, and that comports with the existing job descriptions. There was no testimony as to whether a suspension has ever occurred, or what the authority of the department heads would be with respect to this matter. Testimony involving the two discharges in recent memory indicates that the problems precipitating the discharges were initially brought to the employer's attention by a department head, but that the manager and superintendent made independent decisions in both situations. The pending job descriptions provide the authority to issue warnings and to recommend suspensions and discharges, but the existing job descriptions are silent on those subjects. Further, the testimony of the senior employer officials limit the disciplinary authority of department heads to verbal warnings. Accordingly, the department heads do not have the authority to act on or effectively recommend discipline or discharge.

The evidence does not support a conclusion that the department heads have authority to adjust grievances. Even though the pending job descriptions reference authority to resolve grievances, the

existing employer policy on grievances excludes the department heads from any role in that process.

Viewing the evidence as a whole, the evidence falls far short of the preponderance necessary to establish that the disputed employees are properly excluded, as supervisors, from the bargaining unit. Their role is akin to that of lead workers or working foremen who are routinely included in bargaining units of employees whom they lead.

#### FINDINGS OF FACT

1. Lakewood Water District is an employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. International Union of Operating Engineers, Local 286, a bargaining representative within the meaning of RCW 41.56.030(3), has been certified as the exclusive bargaining representative of all full-time and regular part-time maintenance employees of the Lakewood Water District excluding supervisors, confidential employees, and all other employees.
3. The three department heads remaining at issue in this proceeding have limited authority to assign work to employees within explicit daily directions from the employer's superintendent, to authorize overtime work on an emergency basis, and to issue oral warnings to employees.
4. The employer's manager and superintendent have and exercise the authority to hire, assign, promote, transfer, lay off, recall, suspend, discipline, and discharge employees, and adjust their grievances. To the extent that any of the

disputed employees participate in any of those areas or make any recommendations on such matters, the manager and/or superintendent make independent reviews and decisions on the matters.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The three so-called department heads at issue in this proceeding are public employees within the meaning of RCW 41.56.030(2), and are not supervisors whose duties warrant their exclusion from the bargaining unit under RCW 41.56.060 and WAC 391-35-340.

ORDER

The employees heading the Construction & Systems Maintenance Operations Department, the Service & Operations Maintenance Department, and the Pumping & Water Treatment Operations Department are included in the bargaining unit certified in the above-captioned proceeding.

Issued at Olympia, Washington, on this 17<sup>th</sup> day of December, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, Hearing Officer

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.