

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
CITY OF KIRKLAND) CASE 17366-C-03-1082
)
For clarification of an existing) DECISION 8504 - PECB
bargaining unit represented by:)
)
WASHINGTON STATE COUNCIL OF) ORDER CLARIFYING
COUNTY AND CITY EMPLOYEES) BARGAINING UNIT
)
)
_____)

Gail Gorud, City Attorney, by *William R. Evans*, Assistant City Attorney, and *Alexander F. Ransom*, Civil Intern, for the employer.

David M. Kanigel, WSCCCE Legal Counsel, for the union.

On April 1, 2003, the City of Kirkland (employer) filed a petition for clarification of an existing bargaining unit with the Public Employment Relations Commission, under Chapter 391-35 WAC, seeking to exclude positions which the employer had reclassified from lead worker positions to supervisory positions. On April 14, 2003, the employer filed an amended petition adding another position. On April 28, 2003, Local 1837 of the Washington State Council of County and City Employees (union), filed a petition seeking inclusion of additional positions. Nine positions were initially at issue, of which the parties resolved all but four positions. A hearing was held on October 22 and 23, 2003, before Hearing Officer Sally B. Carpenter. Both parties submitted briefs. Authority to determine this eligibility dispute has been delegated to the Hearing Officer pursuant to WAC 391-35-390.

Based on the evidence and argument submitted, the Hearing Officer concludes the position of lead permit technician shall remain

included within the existing bargaining unit, and concludes the lead building inspector, lead plans examiner, and GIS administrator shall be excluded from the bargaining unit.

BACKGROUND

The union is the exclusive bargaining representative of all full-time and regular part-time employees of the employer, excluding police, fire and public works, and also excluding managers, supervisors, casual and confidential employees. The unit has about 129 employees. The bargaining relationship between the parties has existed since approximately November 20, 1996.

During contract negotiations for the 2003-2005 period, the employer proposed removing several positions from the bargaining unit asserting that these positions had evolved into supervisory positions, and had been reclassified to reflect that change in duties. The union proposed adding several positions to the bargaining unit. By the time of the hearing, the only positions in dispute were the following:

Lead Building Inspector,
Lead Plans Examiner,
Lead Permit Technician, and
Geography Information System (GIS) Administrator.

POSITIONS OF THE PARTIES

The employer contends that all of the incumbents in the disputed positions perform supervisory tasks which far exceed the duties set forth in their prior job description as lead employees. Over time, greater authority and increased tasks were assigned to these positions. The employer asserts that all of the incumbents in

these positions are now supervisors who should be excluded from the bargaining unit. These assertions rely on the employer's perception that the incumbents in these positions have the authority to independently perform, or effectively recommend, a preponderance (either under a time spent or type of authority analysis) of the supervisory acts specified in Commission precedents and statutes.

The union contends that all of the contested positions should remain within the bargaining unit. The union asserts that all of the employees in question perform substantial amounts of bargaining unit work and all of the employees in question are lead workers rather than supervisors. Because of this, the union asserts that there is not a strong potential for conflict of interest and the employees in question do not have distinct duties, skills and working conditions warranting their removal from the rank-and-file bargaining unit.

DISCUSSION

Applicable Legal Standards

Supervisory Exclusion -

Under long-standing Commission precedent affirmed by the courts, the Commission has routinely implemented its unit clarification authority to separate supervisors from rank-and-file employees. The current treatment of supervisors under Chapter 41.56 RCW originated from a petition filed by the City of Tacoma shortly after the Commission commenced operations in 1976. That petition concerned a bargaining unit of employees who would have qualified as "supervisors" under Section 2(11) of the National Labor Relations Act (NLRA). In *City of Tacoma*, Decision 95-A (PECB, 1977), the Commission noted that Chapter 41.56 RCW does not contain

exclusionary language similar to the NLRA, and that none of the supervisors were excludable on the narrow grounds set forth in RCW 41.56.030(2). The Commission thus rejected policies and precedents developed by its predecessor agency, the Washington State Department of Labor and Industries, and affirmed the propriety of the separate unit of supervisors.

When *City of Tacoma*, Decision 95-A was decided by the Commission, an appeal from a Labor and Industries decision concerning another separate unit of supervisors was pending before the Supreme Court of the state of Washington. The Commission notified the Supreme Court of the change of administrative interpretation of the statute, and supplied a copy of the *Tacoma* decision. In a unanimous decision, the Supreme Court then embraced the Commission's *Tacoma* reasoning in *Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries*, 88 Wn.2d 925 (1977). As a result, persons who would be excluded from the coverage of the NLRA as "supervisors" have full bargaining rights under Chapter 41.56 RCW.

Due to the inherent potential for conflicts of interest which arises in mixed units, employees who exercise authority over other employees are routinely excluded from the bargaining unit(s) containing their subordinates. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd.*, 29 Wn. App 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). Excluded supervisors remain "employees" covered by the collective bargaining statute, and can form separate bargaining units of supervisors under RCW 41.56.060.

The Commission codified the *METRO* and *Richland* precedents with the adoption of a rule on the subject as follows:

WAC 391-35-340 UNIT PLACEMENT OF SUPERVISORS--BARGAINING RIGHTS OF SUPERVISORS. (1) It shall be presumptively

appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.

That rule became effective on August 1, 2001, but merely recognized years of precedent under which the exercise of authority on behalf of the employer over subordinate employees has provided a basis for excluding the supervisor from a rank-and-file bargaining unit.

Supervisory Status -

There is no definition of a supervisor in the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. However, in determining whether a particular individual or classification should be considered to be "supervisory" under that Act, the Commission looks to the types of authority listed in the Educational Employment Relations Act, RCW 41.59.020(4)(d), as follows:

[S]upervisor, which means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, *or to recommend effectively such action*, 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). In deciding the "preponderance" issue, evidence concerning time actually spent on a supervisory task is a factor to be considered. However, it is not, in and of itself, dispositive of the issue. A supervisor of a small number of good employees may not have a need to perform any disciplinary functions. "The potential for conflicts of interest exists whenever supervisory

authority exists, regardless of whether the particular type of authority has actually been exercised." *Granite Falls School District*, Decision 7719 (PECB, 2002). Similarly, a supervisor with a very small number of employees may not spend a large amount of time on evaluations. Yet, the simple fact that the actual amount of time spent performing these supervisory duties is low does not mean that a person is not a supervisor.

The more important factors in determining whether a position is a supervisory one are whether the position has independence and authority, in the interest of an employer, to perform a preponderance of the types of supervisory tasks listed in RCW 41.59.020(4)(d). *Seattle School District*, Decision 2380-A (PECB, 1988) (supervisors must have the authority to exercise discretion or independent judgement, or the authority to effectively recommend such personnel actions); *see also Whitman County*, Decision 1967 (PECB, 1983) (lead workers and working foremen have been left in units where the evidence demonstrates that the "supervisor" does not possess independent authority to direct work activities and does not exercise independent judgment in fundamental personnel matters). Further, the independent authority possessed must involve the ability to make meaningful changes in the employment relationship so as to involve a conflict of interest between the supervisor and rank and file employees. The Commission has drawn a distinction between "supervisors" and employees who are more aptly classified as "lead workers." While lead workers may possess authority to direct subordinates in their daily job assignments, they generally do not have the authority necessary to make meaningful changes in the employment relationship. *Grant County*, Decision 4501 (PECB, 1993).

As stated in the statute, this supervisory authority must be more than merely routine or clerical in nature. RCW 41.59.020(4)(d).

Further, the "supervisor" at issue need not be the final authority on such actions -- recommending effectively such actions to a higher authority is sufficient under the test. *Grant County*, Decision 4501; see also *Granite Falls School District*, Decision 7719 (PECB, 2002).

The union is correct that the Commission has stated that:

Where there is substantial similarity in duties and working conditions shared by the disputed "supervisor" and the bargaining unit employees, there is reduced potential for the types of conflicts of interest which the Commission and courts have sought to avoid through unit determination decisions.

Union Brief at 14. However, the critical issue is not the *similarity* of duties *shared* by the employees, rather it is the existence and degree of *dissimilar* duties that are *not shared* by the purported supervisor and employees. Similarities in duties and working conditions are almost certain to exist in any "working supervisor" situation. In the context of distinguishing between a lead worker and a supervisor, looking at the similarities provides little aid in determining whether there are such differences in the duties and working conditions which would lead to the "potential for the types of conflicts of interest which the Commission and courts have sought to avoid . . ." For example, in *Morton General Hospital*, Decision 3521-B (PECB, 1991), the Commission concluded that, although a billing supervisor performed some duties similar to those of subordinates in the department, the position exercised independent judgment in numerous personnel matters and would therefore be excluded from the unit.

By looking at the differences, one can more accurately determine whether there is a potential for a conflict of interest. Where

purported supervisory duties do exist, but are merely routine and clerical in nature, there likely is not a potential for a conflict of interest. However, where the purported supervisory duties are more than merely routine and clerical, there is a substantial dissimilarity and there does exist the potential conflict of interest.

In *Whitman County*, Decision 1697 (PECB, 1983), the employer had divided the county into three districts, and each district was headed by a district supervisor, who in turn supervised two working foremen. Although each foreman was assigned to a piece of heavy equipment, they also exercised independent judgment over numerous personnel matters. The foremen participated in the interviewing process for new hires, effectively recommending the acceptance or rejection of applicants. The foremen had authority to transfer employees under certain circumstances from one operation to another, and could make effective recommendations concerning promotions. Foremen determined whether employees could have time off as requested, and initiated disciplinary actions. The foremen participated in step one of the parties' grievance procedure, and attended supervisory meetings where labor relations issues were discussed. Even though the foremen performed similar work as did rank and file employees, they also performed substantial supervisory functions. The position of "working foreman" in the Public Works Department was therefore excluded from the unit.

Finally, insofar as the employer and the union cite to the position titles given to the employees at issue, "[t]he Commission is reluctant to make determinations based upon categories or labels. Even a 'working foreman' can be determined to be a supervisor, where such a person can participate in hiring decisions and is paid a wage higher than subordinate employees." *City of Mukilteo*,

Decision 2202-A (PECB 1986); *City of Royal City*, Decision 2490 (PECB, 1986); *Inchelium School District*, Decision 2395-A (PECB, 1987).

Application of Standards

Lead Building Inspector Position -

Clell Mason was promoted to the position of Lead Inspector in 1999. There are four and one half full-time-equivalent (FTE) employees also working as building inspectors. The employer has undergone a reorganization that has resulted in Mason's supervisor, Division Manager Ken Carlson, having increased managerial duties along with a shift in duties from Carlson to Mason. Carlson's supervisor, the Director of the Fire and Building Department, Jeffrey Blake, testified that Carlson has taken on new and increasing roles in other areas that have led to a shift of supervisory duties delegated to Mason.

Hiring. The testimony of Mason and Carlson show that Mason now has the primary role in the hiring process. The testimony also shows that the process has shifted from Carlson mainly running the hiring process to Mason now running the process. Mason contacts the employer's human resource department to put out the necessary notice. Human resources forwards applications received to Mason. Mason screens these applications to determine which candidates meet the position's minimum qualifications. After the qualified applicants are tested, Mason grades the electrical inspector's examinations and sometimes the building inspector's examinations. Mason sets up and composes an interview panel of which he is also a participant. Based on the panel's findings, Mason makes the final recommendation to Carlson as to who should be hired. Mason has used this process to hire both temporary and full-time

employees. Carlson has always followed Mason's recommendations and Mason expects that Carlson will continue to follow his hiring recommendations. Carlson testified that, in regard to the hiring process, Mason's role was to "run the process."

Hiring occurs at an "appointing authority" level above Mason, but that is typical for public employers. The authority to recommend is thus of great significance. However, it is clear from the testimony presented that Mason is the main actor in the hiring process and that he has the authority to "effectively recommend" the need to hire additional employees. As discussed above, Mason's participation in the hiring process is significantly more than "routine or clerical." "Absolute hiring authority is frequently vested with the executive head of an employing entity in the public sector, so that hiring authority is limited at subordinate levels of management to the making of effective recommendations." *Seattle School District*, Decision 2380-A (PECB, 1988).

Mason is the primary actor in the hiring process for inspectors, his participation is more than routine or clerical in nature and he effectively recommends who should be hired at the end of this process. The Hearing Officer finds both Mason and Carlson's testimony to be credible on this issue. This type of authority over other employees in the work unit presents an inherent potential for conflicts of interest. This factor weighs in favor of a finding that Mason is a supervisor.

Assigning work. Mason assigned work to the employees as a lead inspector and continues to do so now. However, his duties in this area have increased to include directly receiving and handling complaints from contractors and making independent decisions to assign specific inspectors and/or reassign an inspector based on

these complaints and other considerations. Mason also has the authority to approve such personnel scheduling matters as vacation leave, sick leave and training requests. Albert McHargue, a building inspector under Mason, testified that training, vacation and sick leave requests are made to and approved by Mason.

Mason has the independence and authority to assign the work of those employees in his charge. His responsibility in this area has increased in scope since first being hired as a lead inspector. The Hearing Officer finds both Mason's and Carlson's testimony to be credible on this issue. This type of authority over other employees in the work unit presents an inherent potential for conflicts of interest. This factor weighs in favor of a finding that Mason is a supervisor.

Promotions/Evaluations. Mason has never promoted an employee. However, this is not because he does not have the authority to promote, or to effectively recommend a promotion. It is because there are no promotion opportunities available. However, if promotions were to be available in the future, the testimony of Carlson was that it would be Mason who "fundamentally" made that decision. This would indicate that Mason would have the authority to effectively recommend a promotion, if one were available.

Additionally, it is Mason who evaluates the inspectors in his charge. Mason notifies the employee of an upcoming evaluation and instructs the employee to fill out the necessary paperwork. Mason evaluates the employees' strengths and weaknesses, identifies training needs and sits down with the employees to go over their evaluations. Carlson's only role in the process is to review the evaluation, possibly make minor modifications, and sign it. The main role in evaluating the inspectors is performed by Mason and his evaluation of an employee is an effective recommendation to

Carlson. If a promotion opportunity were to arise in this work unit, these evaluations would play a role in making that determination and are thus a further indication of Mason's supervisory authority over the employees in his charge.

Mason has the authority to effectively recommend a promotion, if and when one becomes available in the unit. Mason is also responsible for the evaluation of the employees in his charge, a critical component of any possible future promotions. The Hearing Officer finds both Mason's and Carlson's testimony to be credible on this issue. This type of authority over other employees in the work unit presents an inherent potential for conflicts of interest. This factor weighs in favor of a finding that Mason is a supervisor.

Transfers/Layoffs/Recalls. Mason testified that he would expect Carlson to take his recommendation concerning promotions, transfer, layoffs and recall.¹ Mason has, in fact, participated in transferring employees from one position to another. Mason has been involved in layoffs and Carlson expects that any decision as to whom to layoff, or whom to recall, would be made by Mason. The union argues that the collective bargaining agreement always controls layoffs and recalls. However, this is not always true, as in the case of employees with equal seniority. In that case, under contract section 9.5.2, the employer would have the discretion to make the decision. It is here that Mason's recommendation would be relied upon.

¹ Insofar as the employer has discretion under the collective bargaining agreement, for example, under the contract's section 9.5.2, which states, in pertinent part that "[i]f all of the seniorities are equal, then Management shall make the final decision based on performance and job skills."

Mason has the authority to effectively recommend transfers, layoffs and recalls. This type of authority over other employees in the work unit presents an inherent potential for conflicts of interest. The Hearing Officer finds both Mason's and Carlson's testimony to be credible on this issue. This factor weighs in favor of a finding that Mason is a supervisor.

Discipline, suspensions or discharge. The union states in its brief that "Mr. Mason has never been involved in any capacity in the formal disciplinary process of the City with other employees . . . never written a letter of reprimand . . . suspended anyone . . . [or] been involved with a termination. That process would be instigated by Carlson who would give consideration to Mason's opinion on such action." Union Brief at 4. However, the fact is that the group in question has never had any disciplinary problems, hence Mason has not had the need to perform any discipline. Further Mason did not testify that *all* disciplinary problems would be performed by Carlson, only the final disciplinary step of a termination. The exchange in question is as follows:

- Q: [By Mr. Kanigel] So you've never written a letter of reprimand?
- A: [By Mr. Mason] No, I've never had to with the group I have, that's working for me. A bunch of very opinionated people.
- Q: And you've never suspended anybody or anything like that?
- A: No.
- Q: Okay. Has anybody been fired out of this group?
- A: No.
- Q: If somebody had to be fired would that go to Carlson and above?
- A: At this point, yes. I would give him my recommendation of what I felt happened and what needed to be done. And I'm sure it would weigh heavy on his decision.

Further, Carlson confirmed that, in reference to discipline, "[t]o the extent that they're able to, I would expect them to do it. They're precluded from certain steps." For low level discipline, Mason testified that there has been a shift from Carlson providing direction on various situations to Mason handling the situation himself. Carlson testified that, as to corrective actions, coaching and counseling, Mason is performing these tasks at a much higher level than he was as a lead.

The testimony shows that Mason is responsible for imposing any minor discipline and recommending any major discipline that might become necessary. Mason's independence and authority is more than routine or clerical in nature. This type of authority over other employees in the work unit presents an inherent potential for conflicts of interest. The Hearing Officer finds both Mason's and Carlson's testimony to be credible on this issue. This factor weighs in favor of a finding that Mason is a supervisor.

Summary. Mason, in a more than routine or clerical nature, has the independent authority in and/or the authority to effectively recommend: hiring, evaluations/promotions, discipline, work assignments, transfers, layoffs and recalls. Mason also performs duties not listed in the statute, including conflict management on construction sites between his employees and contractors, meetings with contractors, owners and developers, preparing (versus simply providing input as he previously did as a lead) and managing his unit's budget and approving vacation leave, sick leave and training requests for his unit. Mason had performed some of these duties as a lead inspector. However, the degree of his involvement in, as well as his independence and authority for, these duties has subsequently increased. This was confirmed by the testimony of Carlson, Mason's direct supervisor as well as by the Director of the Fire and Building Department, Jeffrey Blake. Taking into

account the types and number of duties, as well as his degree of involvement in them, Mason performs a preponderance of the duties listed in RCW 41.59.020(4)(d) and is therefore a supervisor.

Lead Plans Examiner -

Grace Steuart's current position title is Plans Examiner Supervisor. She has four and one half FTEs plus a temporary light duty person working for her. Like Mason, she was previously designated as a lead employee. However, her duties have similarly increased in degree, independence and authority due to her supervisor, Division Manager Ken Carlson, having increased managerial duties along with a shift in duties from Carlson to Steuart.

Steuart's supervisory role, similar to Mason's as discussed above, has also increased in degree, independence and authority. This includes the independent authority to effectively recommend in the following areas: hiring, evaluations, promotions, work assignments and discipline.

Hiring. Similar to Mason, Steuart runs the entire hiring process. Her supervisor, Carlson is not involved. Steuart has used this process to effectively recommend the hiring of several employees. Again, "[a]bsolute hiring authority is frequently vested with the executive head of an employing entity in the public sector, so that hiring authority is limited at subordinate levels of management to the making of effective recommendations." *Seattle School District*, Decision 2380-A (PECB, 1988).

Promotions/Evaluations. Steuart performs all of the employee evaluations, with Carlson only reviewing and signing them. Steuart was also involved in the promotion of Tom Radford, who was promoted from an inspector to a senior code specialist.

Discipline. In low level disciplinary matters, Steuart has shifted from seeking Carlson's aid to handling these matters herself. Steuart and Carlson testified that her recommendation would be followed for higher level discipline. Carlson confirmed Steuart's increased role, testifying that as to corrective actions, coaching and counseling, Steuart is performing these tasks at a much higher level than she was as a lead.

Assigning Work. While Steuart testified that her role in assigning work is more "hands off" than others, she is still ultimately responsible for the work being assigned and completed by her group. An employee working under her, Philip Vartanian, testified that while she uses a hands off approach in assigning work, Steuart "has the last say so." Supervisors employ different methods in performing their supervisory duties and the choice of a supervisory style is not determinative.

Summary. Steuart, in a more than routine or clerical nature, has the independent authority and/or the authority to effectively recommend: hiring, evaluations, promotions, work assignments and discipline. Steuart also performs duties not listed in RCW 41.59.020(4). These include handling customer complaints that the non-supervisory staff cannot handle (a task previously handled by her supervisor) and preparing and managing her unit's budget. Steuart had performed some of these duties as a lead. However, the degree of her involvement in, as well as her independence and authority for, these duties has increased. This was confirmed by the testimony of Carlson, Steuart's direct supervisor, as well as by the Director of the Fire and Building Department, Jeffrey Blake. Taking into account the types and number of duties, as well as her degree of involvement in them, Steuart performs a preponderance of the duties listed in RCW 41.59.020(4)(d) and is therefore a supervisor.

Lead Permit Technician -

Eleanor Warren's current position title is Lead Permit Technician. She has six FTEs working with her. Unlike Mason and Steuart, Warren's duties have not changed significantly since being hired as a lead. Warren testified that "not a great deal actually" had changed. Warren further testified that Susan Baer, Warren's supervisor, has not had a change in responsibilities that have resulted in an increase in Warren's supervisory duties. Warren also testified that her role in the day to day work has not changed from when she was hired as a lead to the present. This is in contrast to the changed circumstances of Mason and Steuart.

Hiring. Warren testified that her involvement in the hiring process has not changed from when she was hired as a lead to the present. Jeffrey Blake, Baer's supervisor, testified that his expectation is that Baer would do the actual hiring, but thought that Baer would rely on Warren to recommend who to hire. Baer, however, did not testify in this hearing.

Evaluations/Promotions. Warren testified that performance evaluations are normally done together with her manager, Baer, in a collaborative process. This does not indicate the level of independence and authority that would cause a conflict of interest and lead to a finding that Warren was a supervisor.

Discipline. Warren testified that she expected that her recommendation for discipline would be followed. However, she also testified that discipline is handled jointly with Baer. When discipline issues have arisen, both Warren and Baer have met with the employee, not Warren independently. This does not indicate the level of independence and authority that would cause a conflict of interest and lead to a finding that Warren was a supervisor.

Assignment of Work. Warren assigns work in the same manner as when she took the lead position. The system that has been in place for the past three years involves little to no discretion -- the employees, including Warren, rotate through the various duties on a day to day basis. Further, this system was decided upon by the group of involved employees. Warren testified that "what we decided to do *as a group* was to rotate functions every day." (emphasis added). It was not an independent decision by Warren on how work would be assigned but rather a group decision of the affected employees. This system has not changed from when she started as a lead to the present. In addition, according to the testimony of Lorrie Moore, one of the permit technicians in the unit, it is Baer, not Warren, who approves leave requests, requests for training and other time off. Warren's involvement in assigning work and approving time off does not indicate the level of independence and authority that would cause a conflict of interest and lead to a finding that Warren was a supervisor.

Finally, Warren provides input to Baer on the unit's budget, as opposed to preparing and controlling the budget as do Mason and Steuart. It is Baer who is responsible for preparing the unit's budget, not Warren.

Summary. Warren does not have the independent authority and/or the authority to effectively recommend a preponderance of the duties listed in RCW 41.59.020(4)(d). Warren's participation in these duties is routine or clerical in nature and the degree of her involvement in, as well as the degree of her independence and authority for, these duties does not rise to the level of a supervisor. Taking into account the types and number of duties, as well as her degree of involvement in them, Warren does not perform a preponderance of the duties listed in RCW 41.59.020(4)(d) and is therefore not a supervisor.

GIS Administrator -

When originally hired, Xiaoning Jiang was the only person working in the Geography Information Systems (GIS) division. Jiang's supervisor, Brenda Cooper, testified that Jiang's position has "changed significantly" since first being hired because of an increase in the scope of the GIS division's work. Her role has changed from the sole staff member of the division, who performed all of the GIS work, to that of the supervisor of the division, responsible for supervising GIS division employees, as well as others. In addition, Cooper testified that the GIS division has been growing and will continue to grow in the future.

Hiring. Since Jiang began at the employer, two permanent full-time GIS analysts and one temporary full-time analyst have been hired. There is also one consultant and various vendors that Jiang is responsible for supervising. The hiring process for the two full-time permanent positions were performed entirely by Jiang. When the GIS work load increased, Jiang's supervisor, Brenda Cooper, testified that it was Jiang, not Cooper, who set up and ran the hiring process for a temporary employee. Cooper testified that Jiang also made the hiring decision and made the offer to the employee. Cooper testified that Jiang's recommendation about who to hire would be followed and indeed had been followed in the cases of the two full-time employees now on staff. The hiring process used was a panel interview similar to that used by Mason and Steuart.

Assigning Work. The GIS department is a subsection of the Information Technology (IT) Department, which is headed by Cooper. Cooper testified that not only did she not supervise the GIS personnel, but she is not qualified to do so, testifying as follows:

Q: [By MR. EVANS] Have you ever -- do you supervise the GIS function at all?

A: [By MS. COOPER] No, I actually couldn't. I don't have the technical expertise to provide it. I mean, I go every year to the annual conference and I have a high level understanding of GIS and how to use it. I've been managing, even in my previous job, *but I don't understand the day-to-day work in a way that I could provide direction to staff or even very much direction to Xiaoning.*

(emphasis added). Jiang also testified that she assigns and reviews all of the work of the employees of the GIS department. Training, annual and sick leave requests are approved by Jiang. Jiang also cross supervises a GIS analyst assigned to the employer's public works department. Her role with this employee is described as involving the joint development of a work plan for that analyst.

Evaluations/Promotions. Jiang conducts all of the performance evaluations of the employees in the GIS department. Her supervisor, Cooper, is only involved at the final sign off of the evaluation. Jiang has conducted all of the performance evaluations since 2002. Further, Jiang would recommend, and Cooper testified she would follow, any decision to promote an employee. If there were a promotion opportunity in the GIS department, Jiang would make a recommendation and expects that it would be followed. This is supported by the testimony of Cooper who, as cited above, does not feel that she has enough knowledge of GIS to make such a decision.

Lay-off/Recall. To the extent allowed by the collective bargaining agreement, Jiang would make a recommendation as to who would be laid off and/or recalled. Jiang testified that she expected that recommendation would be followed.

Grievance Resolution. Jiang testified she expected that her recommendation on the resolution of grievances would be followed.

Discipline. Jiang testified that she would be responsible for initiating any discipline, if it were necessary, at the lower levels and that she would consult with, and recommend to, Cooper any higher level discipline. Cooper confirmed that she would expect Jiang to handle the first steps of any discipline and to make recommendations, which she would follow, concerning any higher level discipline.

In addition to the duties listed above, Jiang also manages and monitors the GIS department's budget. Cooper testified that Jiang is responsible for the GIS division and for its budget. Jiang also performs GIS analyst work. However, the work that she does is at a more senior level of analysis. The employees that work for her do relatively simpler tasks, such as entering data, while she performs more information processing types of tasks.

Further, because the GIS system is used by many departments within the employer, as well as clients and the public, Jiang is directly involved with planning and coordination with these departments. Jiang attends and participates in the employer wide GIS steering committee and provides an annual GIS plan to this committee for approval.

Summary. Jiang performs, or has the authority to effectively recommend: hiring, evaluations/promotions, discipline, work assignments, layoffs and recalls. Jiang has the independent authority to perform and/or the authority to effectively recommend these duties and her involvement is more than routine or clerical in nature. Jiang also performs duties not listed in the statute, including working closely and coordinating with other departments

and clients, coordinating with an analyst in another department, management and responsibility for her divisions's budget and participating in a employer wide GIS steering committee. Further, Jiang is the only senior level employee who has enough of an understanding of the GIS division to perform these duties. The degree of her involvement in, as well as the degree of her independence and authority for, these duties is well above that of a lead employee. This was confirmed by the testimony of Cooper, Jiang's direct supervisor. Taking into account the types and number of duties, as well as her degree of involvement in them, Jiang performs a preponderance of the duties listed in RCW 41.59.020(4)(d) and is therefore a supervisor.

FINDINGS OF FACT

1. The City of Kirkland (employer) is a public employer within the meaning of RCW 41.56.030(1).
2. The Washington State Council of County and City Employees, Local 1837 (union) is a bargaining representative within the meaning of RCW 41.56.030(3) and is the exclusive bargaining representative of the unit which includes the positions of Lead Inspector, Lead Plans Examiner, Lead Permit Technician, and GIS Administrator.
3. The position variously titled as "Lead Inspector" or "Inspector Supervisor" as currently held by Clell Mason has the independence and authority to perform, and/or to effectively recommend, a preponderance of the following duties: hiring, assignment of work, promotions, transfers, layoffs, recalls, suspensions, discipline, discharge or the adjustment of grievances. His involvement is more than routine or clerical

in nature. Mason's performance of these duties, the degree of his involvement in, as well as the degree of his independence and authority for, these duties has increased since being hired as a lead. Taking into account the types and number of duties, as well as his degree of involvement in them, Mason performs a preponderance of the supervisory duties listed and is therefore a supervisor.

4. The position variously titled as "Lead Plans Examiner" or "Plans Examiner Supervisor" as currently held by Grace Steuart has the independence and authority to perform, and/or to effectively recommend, a preponderance of the following duties: hiring, assignment of work, promotions, transfers, layoffs, recalls, suspensions, discipline, discharge or the adjustment of grievances. Her involvement is more than routine or clerical in nature. Steuart's performance of these duties, the degree of her involvement in, as well as the degree of her independence and authority for, these duties has increased since being hired as a lead. Taking into account the types and number of duties, as well as her degree of involvement in them, Steuart performs a preponderance of the supervisory duties listed and is therefore a supervisor.

5. The position variously titled as "Lead Permit Technician" or "Permit Technician Supervisor" as currently held by Eleanor Warren does not have the independence and authority to perform, and/or to effectively recommend, a preponderance of the following duties: hiring, assignment of work, promotions, transfers, layoffs, recalls, suspensions, discipline, discharge or the adjustment of grievances. Her involvement is routine or clerical in nature. Warren's performance of these duties, the degree of her involvement in, as well as the degree of her independence and authority for, these duties has

not increased since being hired as a lead. Taking into account the types and number of duties, as well as her degree of involvement in them, Warren does not perform a preponderance of the supervisory duties listed and is therefore not a supervisor.

6. The position of "GIS Administrator" as currently held by Xiaoning Jiang has the independence and authority to perform, and/or to effectively recommend, a preponderance of the following duties: hiring, assignment of work, promotions, transfers, layoffs, recalls, suspensions, discipline, discharge or the adjustment of grievances. Her involvement is more than routine or clerical in nature. Jiang's performance of these duties, the degree of her involvement in, as well as the degree of her independence and authority for, these duties has increased since being hired as a lead. Taking into account the types and number of duties, as well as her degree of involvement in them, Jiang performs a preponderance of the supervisory duties listed and is therefore a supervisor.

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 position variously titled as "Lead Inspector" or "Inspector Supervisor" is a supervisory position exercising supervisory authority over employees in the bargaining unit described in paragraph 2 of the findings of fact. The inclusion of this position in the same unit as the other employees would create the potential for a conflict of interest and would not be appropriate under RCW 41.56.060.

3. The position variously titled as "Lead Plans Examiner" or "Plans Examiner Supervisor" is a supervisory position exercising supervisory authority over employees in the bargaining unit described in paragraph 2 of the findings of fact. The inclusion of this position in the same unit as the other employees would create the potential for a conflict of interest and would not be appropriate under RCW 41.56.060.
4. The position of "GIS Administrator" is a supervisory position exercising supervisory authority over employees in the bargaining unit described in paragraph 2 of the findings of fact. The inclusion of this position in the same unit as the other employees would create the potential for a conflict of interest and would not be appropriate under RCW 41.56.060.
5. The position variously titled as "Lead Permit Technician" or "Permit Technician Supervisor" is not a supervisory position exercising supervisory authority over employees in the bargaining unit described in paragraph 2 of the findings of fact. The inclusion of this position in the same unit as the other employees would not create the potential for a conflict of interest and therefore is appropriate under RCW 41.56.060.

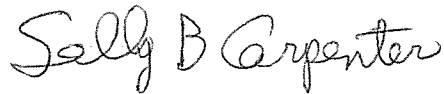
ORDER CLARIFYING BARGAINING UNIT

1. The position variously titled as "Lead Inspector" or "Inspector Supervisor" shall be excluded from the bargaining unit of non-supervisory employees.
2. The position variously titled as "Lead Plans Examiner" or "Plans Examiner Supervisor" shall be excluded from the bargaining unit of non-supervisory employees.

3. The position of "GIS Administrator" shall be excluded from the bargaining unit of non-supervisory employees.
4. The position of Lead Permit Technician shall remain in the bargaining unit of non-supervisory employees.

DATED at Olympia, Washington, this 12th day of April, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Sally B Carpenter".

SALLY B. CARPENTER, Hearing Officer

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.