

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
CITY OF YAKIMA)	CASE 19142-C-05-1221
)	
For clarification of an existing)	DECISION 9646 - PECB
bargaining unit represented by:)	
)	
WASHINGTON STATE COUNCIL OF)	ORDER CLARIFYING
COUNTY AND CITY EMPLOYEES,)	BARGAINING UNIT
LOCAL 1122)	
)	
)	
)	

Menke Jackson Beyer Elofson Ehliis & Harper, by Anthony F. Menke, Attorney at Law, appeared for the employer.

David Kanigel, Attorney at Law, appeared for the union.

On January 21, 2005, the City of Yakima (employer) filed a unit clarification petition with the Public Employment Relations Commission asking to clarify the unit status of the lead application systems designer, sewer maintenance crew leader, and pretreatment crew leader in the public works department. Washington State Council of City and County Employees, Local 1122 (union) now represents these employees. The bargaining unit at issue has historically been defined as "all permanent City employees . . ." with the unit description describing deletions, exceptions, and other bargaining units in the City of Yakima. Currently the bargaining unit numbers about 300 employees in maintenance, clerical, administrative, professional, and technical job classifications.

A hearing was conducted before Hearing Officer J. Martin Smith on November 10, 2005, and March 24, 2006, at Yakima, Washington. Both parties filed briefs.¹

ISSUE

Should the positions designated as sewer maintenance crew leaders and pretreatment crew leaders working in the wastewater division at the City of Yakima be excluded as supervisors from the bargaining unit?

The Executive Director concludes that the above-stated positions should not be excluded as supervisors, but should remain in the bargaining unit.

ANALYSIS

Applicable Legal Standards

The union has contended in this matter that the employees in question are "lead workers" but not supervisors. The employer maintains that these employees possess supervisory duties and therefore should be excluded as supervisors under WAC 391-35-020.

The Public Employment Relations Commission has exercised its unit determination authority in the past to exclude "supervisors" from bargaining units containing their rank-and-file subordinates. This practice serves to limit or prevent conflicts of interest arising within the bargaining unit due to the authority supervisors have over their subordinates. *City of Richland*, Decision 279-A (PECB,

¹ At the beginning of the hearing, the employer withdrew its claim that the lead application systems designer was a supervisor.

1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The Supreme Court of Washington agreed that these conflicts should be avoided, and that separation of supervisors was appropriate. *Metro v. Dept. of Labor and Industries*, 88 Wn. 2d 925 (1977). These considerations are also codified in WAC 391-35-340 and stress separate bargaining units for "supervisors."

Chapter 41.56 RCW is the collective bargaining statute that applies to maintenance employees of the City of Yakima. That statute, however, does not contain definitions for "lead" or supervisory employees. The Commission has referred to the definition found in RCW 41.59.020(4)(d), which provides:

"[S]upervisor" . . . 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.

Supervisors Compared to Lead Workers - Supervisors and lead workers have been distinguished from each other by Commission precedent. Lead workers exercise certain management duties, but do not have sufficient independent authority to warrant their separation from the rank-and-file employees they lead. See *City of Puyallup*, Decision 5639-B (PECB, 1997); *Mukilteo School District*, Decision 5896-A (PECB, 1997). In order for a finding that "lead workers" exercise actual supervisory authority to recommend hiring and effect discipline of employees, the duty must be more than just "routine or clerical." *City of Kirkland*, Decision 8504 (PECB, 2004); *City of Lynnwood*, Decision 8080-B (PECB, 2006). Discretion-

ary authority in administrative matters, or having the ability to direct employees in daily job assignments, may not rise to the level of possessing independent authority to act on, or effectively recommend, personnel actions. *City of Gig Harbor*, Decision 4020-A (PECB, 1992). Although job descriptions give a broad outline of duties for purposes of pay differentials and promotions, they do not determine supervisory status at the work site. *King County*, Decision 7053 (PECB, 2000). In order to determine whether an individual possesses sufficient supervisory authority to be excluded from a rank-and-file bargaining unit, an employee's actual duties and job tasks must be examined.

Application of Standards

The City of Yakima provides municipal services, including wastewater treatment and fresh water systems, for residences and commercial institutions. Wastewater is divided into two basic functions: street maintenance of the underground sewer system, and wastewater treatment and pretreatment. The wastewater functions are administered by a manager, who appoints an assistant wastewater manager. In turn, these managers appoint a sewer maintenance supervisor to direct and lead routine maintenance and monitoring of the lines of the city's sewage/wastewater system. These managerial positions are all excluded from the bargaining unit due to the nature of their responsibilities, some established in prior cases of this Commission. The positions impacted by this clarification include the sewer maintenance crew leaders and pretreatment crew leaders in the wastewater functions.

Sewer Maintenance Crew Leaders - The six sewer maintenance crew leaders are Martin Biehl, Lionel Guajardo, Gary Hill, Rich Benfiet, James Day, and Robert Brown. They report to Sewer Maintenance Supervisor Kim Webster. Each of the crew leaders works in the

field, usually with one maintenance specialist. The crew leaders work side by side with the maintenance specialists, each performing certain elements of the day's work.

The job description for the sewer maintenance crew leader refers to certain duties which describe the position at issue:

The Sewer Maintenance Crew Leader . . . organizes, schedules, directs and coordinates the work of a crew of sewer line specialists . . . *conducts* training on safety procedures and equipment . . . *directs* the work of a field crew . . . exercises judgment in the field regarding scheduled work assignments . . . [*demonstrates*] ability to perform strenuous physical work . . . [*demonstrates*] ability to direct the work of others and to train crew members as needed.

(emphasis added).

Role in Grievance Handling - The employer argues that certain changes in the language of the 2005 - 2007 collective bargaining agreement's grievance procedure enhance the role of the sewer maintenance crew leaders in the grievance procedure, and are an indication of supervisory authority. The prior contract designated the division manager to hear grievances at Step I, while the new language provides for an informal discussion with the crew leader as the first step.

Even with the addition of the new step, the grievance process appears nearly identical to the informal resolution and counseling steps which have been accomplished by lead workers in a number of situations. For example, the Commission decided in *Whatcom County*, Decision 9271 (PECB, 2006), that lead workers were not supervisors despite their role in attempting to resolve problems informally, discussing the issue with the employee, and counseling them. In *Whatcom County* the lead workers were part of the "pre-grievance"

procedure, but their authority was at an end once an employee filed a grievance. That is the case here.

The Public Employment Relations Commission is guided by the record made in hearings pursuant to RCW 41.56.060. Although the employer here may have intended to create supervisors, they did not do it by changing the collective bargaining agreement. The record is clear that decisions as to whether to sustain or deny a grievance remain with the division managers. The crew leaders are not supervisors because of the grievance procedure.

Assigning Work - The crew leaders meet with the maintenance specialists each shift to get their work assignments and, in fact, testimony shows that they drive to the work site in the same vehicle or maintenance apparatus. These contacts seem akin to the "shop-floor" type of discussions that are typical of lead workers or foremen duties, but not supervisor duties. In this situation, the shop floor is the front seat of a large truck, and the shop consists of one crew leader and one maintenance specialist.

Role in Approving Time Worked - Webster testified that there were six crew leaders, but actually there is a seventh crew that consists of trainees and temporary employees. He insisted on direct testimony that crew leaders might direct one to as many as five specialists when there are emergencies requiring two or more crews or pieces of equipment. Webster remarked during cross-examination that he actually assigned the specialists to the crews, and he determined whether they would work four 10-hour shifts, Monday through Thursday or Tuesday through Friday. While the maintenance specialists typically deposit their daily time cards into a slotted mail box at the end of each shift, approval of time cards (and hence approval of any overtime hours) is actually Webster's duty. Webster usually approves the time cards in the

mornings. In Webster's absence, sewer maintenance crew leaders have signed and approved the time cards. The crew leaders may approve an employee's request for paid time off for sick leave, but the arrangement and planning of vacation leave is accomplished by sign-ups on a posted four-month calendar displayed in the lunch-room. Although this may be an administrative or ministerial duty, it does not rise to the level of significance that would denote supervisory duty.

Role in Hiring - The sewer maintenance crew leaders have also participated on hiring boards and interview panels -- there have been about 12 hires in this department in recent years, and crew leaders helped interview those candidates. Biehl testified that he sat on six of the hiring boards, only two of which were within the wastewater division. Seven or more of these panels were in collections and pretreatment, not wastewater.

The crew leaders' role in hiring is diminished by the fact that city human resources staff practice is to appoint hiring boards that normally also include rank-and-file employees. Webster testified that typically there were four crew leaders and also a maintenance specialist who did the interviewing of the three final candidates for a particular position. The hiring panel recommended the new hire to Webster, and Webster recommended that applicant to the Wastewater Division Manager Doug Mayo. Mayo actually made the decision to hire employees. In light of the fact that any employee may sit on an interview panel, and that panel does not make hiring decisions, the fact that crew leaders sit on interview panels does not make them supervisors.

Role in Performance Evaluations - Evidence established that crew leaders fill out evaluation forms for employees on their teams. Rich Benfiet evaluated an employee on his crew on December 8, 2004;

Webster and Mayo approved the evaluation. Biehl evaluated an employee on March 22, 2005, an evaluation that was also approved by Mayo and Webster. Robert Brown evaluated staff on August 9, 2005, with approvals by Mayo and Webster. The evaluations are doubly important because there are probationary employee evaluations at two months, four months, and six months of employment. However, on the evaluation form under "I recommend this employee be granted permanent status," Webster, *not the crew leader*, signs and then Mayo. It is noted, too, that Webster is routinely involved in the "evaluation meetings" with the employee and the crew leader, after the crew leader has initially completed the evaluation form. In one instance, Webster directed changes in an employee's evaluation, and only signed after the changes were made. In addition, Mayo still approves the evaluations. In a sense, the evaluation duty of the crew leaders is a "shared lead duty" of the type found in *City of Blaine*, Decision 6122 (PECB, 1997). In that case, the Commission decided the employees with "shared" duties were lead but not supervisory employees.

Role in Discipline - The record did not establish that the sewer maintenance crew leaders have authority to discipline employees. Although the crew leaders can call attention to Webster or Mayo regarding work performance problems, the testimony of Webster was clear:

Even in the capacity I'm in now as the supervisor, I don't [think] that I have that authority . . . I would think that the division manager is the only person that would have that [suspension] authority. . . . But even as low as oral reprimands, I would still probably call and get guidance on that because I want [to] make sure I follow the rules and guidelines

In sum, the crew leaders do not have authority to discipline.

Other Direction of Field Crews - One crew leader directs the "flow monitor" work, that is mostly performed from March through October. Robert Brown has one additional "permanent" crew member, but in an emergency can lead four or five crew members. It seems clear, however, that in this department the crew leaders spend a vast majority of their time leading only one additional employee -- the technician sitting in the right-hand seat of the equipment van.

Significance of Pay Differential - In other cases, PERC has found certain pay differentials to be significant in deciding whether a lead person has become a supervisor. *Intercity Transit*, Decision 5709 (PECB, 1996); *City of Mukilteo*, Decision 2202-A (PECB, 1986); *City of Kirkland*, Decision 8504 (PECB, 2004). The last increases from May of 2005 list the sewer maintenance crew leaders at Step E pay of \$3842 per month, 10 percent above the top step of \$3508 for maintenance specialists. The difference in pay for these positions is simply not significant enough to conclude that supervisory status has been created.

Conclusion - A careful reading of this record reveals that the sewer maintenance crew leaders have been assigned lead duties, but not supervisory duties. For the most part, supervision in this operation continues to emanate from Webster responding to Mayo. The crew leaders have responsibility but no independent authority to make personnel decisions.

There may be a fine line between "lead" and "supervisor" but it is identifiable nonetheless. Here, the only duty NOT reviewed by a supervisor is the day-to-day assignment of tasks. The crew leaders typically drive the equipment that travels to the work site but perform work with the maintenance specialists. All other "lead" tasks are reviewed or carried out in common with the maintenance manager or department manager. The Executive Director finds that

the sewer maintenance crew leaders are working lead workers and not supervisors.

Pretreatment Crew Leaders - The pretreatment operation involves contact by this city department with business owners and commercial property owners to review their procedures in preparation for wastewater discharge requirements. The two pretreatment crew leaders are Monte Neumeyer and Glenn Garehime, who lead the work of two pretreatment technicians. The crew leaders report to Environmental Analyst Arlene Carter, who is in charge of the pretreatment program. She in turn reports to Assistant Wastewater Manager Scott Schaffer.

Since the task of the pretreatment program is to sample large sites such as manufacturing plants and commercial installations, the crew leaders select which businesses are to be investigated and tested on any given day. The pretreatment technicians work "in the field" 95 percent of the time taking samples. The pretreatment crew leaders also do sampling and gather data from work sites, this data is analyzed by the environmental specialists of the department.

The assistant manager of the wastewater treatment division maintains management responsibility over the pretreatment program (five employees), as well as the laboratory coordinator and the six employees in that division.² The laboratory coordinator is excluded from the bargaining unit.

² This division deals primarily with coordinating pretreatment, laboratory and related activities which are designed to insure appropriate environmental analysis to wastewater and groundwater ecosystems near the City of Yakima.

The record made regarding the pretreatment crew leaders supports a finding of lead, rather than supervisory, status based on the following facts.

Work is assigned by the crew leaders, but crew leaders spend more than 90 percent of their time in common work with technicians in the field. These crews do not work with specific pieces of equipment, as is the case with the wastewater. Both crew leaders and technicians lift manhole covers, take samples, and inspect and observe businesses which might have environmental impacts or hazardous waste issues. Response to hazardous materials and citizen complaints is a "four-person crew" job, similar to smoke and dye-testing in city sewer lines, but crew leaders and technicians also perform those jobs in common, without direct lines of supervision.

Like the sewer crew leaders, the pretreatment crew leaders can only recommend who is hired as pretreatment technicians. Unlike crew leaders in the sewer operation, pretreatment crew leaders defer approval of annual leave to higher levels of supervision. Pretreatment crew leaders may attend management meetings at the wastewater division, but only in the absence of the environmental analyst. Finally, pretreatment crew leaders are paid about five percent more than the technicians, a marginal promotional step when compared to the 10 percent difference in wastewater crew leader over technicians in that field.

Conclusion - The pretreatment crew leaders are lead employees but not supervisors.

FINDINGS OF FACT

1. The City of Yakima is an employer within the meaning of RCW 41.56.030(1).

2. Washington State Council of City and County Employees, Local 1122, represents a wall-to-wall general employees bargaining unit in the City of Yakima. This unit includes all maintenance employees who are employed in the wastewater functions.
3. The employer and the union are parties to a collective bargaining agreement for 2005 - 2007.
4. Six employees of the bargaining unit are designated sewer maintenance crew leaders who hold lead responsibilities in the department on a daily basis. Two other employees work as pretreatment crew leaders in the wastewater pretreatment and laboratory operation, serving the environmental compliance section of the wastewater division.
5. The 2005 - 2007 collective bargaining agreement includes an informal discussion with the sewer maintenance crew leader as the first step in the grievance procedure. Even with the addition of that step, the sewer maintenance crew leaders do not have authority to sustain or deny a grievance.
6. Sewer maintenance crew leaders work directly with maintenance specialists performing field work. They typically lead one additional person on each of their assigned equipment systems, but occasionally lead the work of assembled teams for a variety of emergency and large-operation tasks. Sewer maintenance crew leaders can make job task directions to technicians in the field, but the sewer maintenance manager exercises supervisory authority in assigning technicians to shifts and crews, and deciding which shifts employees will work. The two pretreatment crew leaders lead the work of two pretreatment technicians. The pretreatment crew leaders work in common with the technicians in the field work for environ-

mental and pretreatment services. The vast majority of the time of both the sewer and pretreatment crew leaders is spent in the same place and on the same job tasks as their work crews. Their administrative tasks are routine and administrative in nature, typical of lead employees.

7. Both sewer maintenance and pretreatment crew leaders participate in interviews of new employees, but the maintenance managers make final hiring decisions.
8. Sewer maintenance crew leaders fill out performance evaluation forms for employees on their teams. The sewer maintenance managers participate in evaluation meetings and have the final approval for performance evaluations.
9. Sewer maintenance crew leaders do not have the authority to discipline employees.
10. Sewer maintenance crew leaders receive a pay differential of 10 percent, while pretreatment crew leaders receive a five percent pay differential. Such pay differentials are typical of lead positions rather than supervisory positions.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. The duties outlined in paragraphs 5 through 9 of the foregoing Findings of Fact indicate that both sewer maintenance crew leaders and pretreatment crew leaders have responsibility for lead worker duties, but do not possess supervisory authority

of the type which would exclude those employees from the bargaining unit under RCW 41.56.060.

ORDER

The existing bargaining unit described in paragraph 2 of the foregoing Findings of Fact shall continue to include the wastewater division sewer maintenance crew leaders and the pretreatment crew leaders.

Issued at Olympia, Washington, this 24th day of April, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

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.