

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
INTERNATIONAL UNION OF OPERATING )  
ENGINEERS, LOCAL 286 ) CASE 8880-E-90-1483  
Involving certain employees of: )  
FEDERAL WAY WATER AND SEWER )  
DISTRICT ) DECISION 3794 - PECB  
DIRECTION OF ELECTION

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Hafer, Price, Rinehart and Schwerin, by M. Lee Price,  
Attorney at Law, appeared on behalf of the petitioner.

Bocek and Pritchett, by Steven H. Pritchett, Attorney at  
Law, appeared on behalf of the employer.

On November 2, 1990, the International Union of Operating Engineers, Local 286, filed a petition for the investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of Federal Way Water and Sewer District. A pre-hearing conference was held on December 11, 1990, at which time issues were framed as to whether the petitioned-for bargaining unit is appropriate, and as to whether certain individuals should be excluded from the bargaining unit as supervisors. A hearing was held at Federal Way, Washington, on January 11, 1991, before Hearing Officer William A. Lang. The parties stipulated to make the record in a previous representation case involving the same employer a part of the record in this case.<sup>1</sup> Post-hearing briefs were filed on February 28, 1991.

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On June 19, 1989, another organization filed a petition seeking to represent only the employees in the employer's sewer division. That petition was dismissed in Federal Way Water and Sewer District, Decision 3228 (PECB, 1989).

BACKGROUND

The Federal Way Water and Sewer District is a municipal corporation organized as a special purpose district under the authority of Titles 56 and 57 of the Revised Code of Washington (RCW). It provides street lighting,<sup>2</sup> water services and sewer services to approximately 80,000 residents. The area served covers approximately 40 square miles in southern King County. An elected three-member Board of Commissioners sets policy and hires a general manager. The current employer entity was created in 1985, by the merger of the Lakehaven Sewer District with King County Water District 124. Prior to that merger, those two entities participated in a high degree of joint operations, and they had used the same policy manual. The new entity continued to use the same policy manual, and the merger did not cause employees to be laid off, or even to change their work locations.

In addition to office and shop facilities housed in two buildings located near one another, the employer operates 20 wells, 24 sewer pumping stations, and 2 sewage treatment plants in the area served.<sup>3</sup>

The current general manager, James Miller, has held that position since January 1, 1986. Miller is responsible for day-to-day operations, and he heads an administrative staff of three persons, including a director of human resources, an executive secretary and a clerical employee. Since approximately January 1, 1989, General

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<sup>2</sup> Street lighting is provided in cooperation with Puget Power, a private utility. While the employer is responsible for the formation of lighting districts and service billing, it does not operate any power plants or maintain any street lighting equipment.

<sup>3</sup> Located at Lakota and Redondo, both sewage treatment plants are each about three miles away from the main office, in different directions. Travel time between the sewage plants is about ten minutes.

Manager Miller has been implementing a reorganization plan calling for four primary divisions reporting directly to him: Finance and Customer Service; Engineering and Technical Services; Water Operations; and Sewer Operations.

The employer has about 110 full-time and regular part-time employees. The employer has some employer-wide personnel policies, and all employees are paid from a single salary schedule with 23 pay ranges.<sup>4</sup> All employees receive the same health insurance benefits, vacation and sick leave accruals, holidays, and retirement.

Some distinctions cut across divisional lines: Overtime is paid at the time-and-one-half rate to employees in all divisions who are on pay range 13 or below.<sup>5</sup> Other distinctions are made along divisional lines: The 40 employees in the sewer operation and the 29 employees in the water operation have similar work hours, using a schedule of four 10-hour days in the summer and a schedule of five 8-hour days in the winter,<sup>6</sup> while the employees in other divisions have different work schedules.

#### Finance and Customer Services

The Finance and Customer Services Division is headed by Roger Brown, and is primarily responsible for billing and collection of customer accounts for water, sewer and lighting services. The 20 employees assigned to the division in addition to Brown include accountants, accounting technicians, comptrollers, purchasing specialists, customer service representatives, an administrative

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<sup>4</sup> The pay rates range from a low of \$950 per month to a high of \$6025 per month.

<sup>5</sup> An exception is made for the Waste Water Treatment Plant Foreman, who also receives the time-and-one-half pay premium for overtime work.

<sup>6</sup> The daily shift starting and ending times are also the same in those two divisions.

secretary, and several clerical employees. The division relies on data processing with its records on computers. These employees are housed in the same building as the administrative office.<sup>7</sup>

There is evidence that this division interacts with the Engineering Division with regard to the handling of federal and state grant monies, and the funding of projects.

This division receives and processes customer complaints and requests for service changes, and so interacts with the water and sewer divisions with regard to the handling of delinquent accounts and service orders. Meter turn on/off requests are forwarded by the customer service personnel to the meter readers and maintenance person employed in the Water Division.

#### Engineering and Technical Services

The Engineering and Technical Services Division is headed by Steve Wieneke, and is primarily responsible for dealing with developers in the design and construction of water and sewer lines. The division monitors private projects under construction. There are 19 employees assigned to this division, working under job classification titles of engineer, field technician, engineer technician, and secretary. The engineering personnel are housed in the same building as the administrative office and the finance personnel.

This division provides technical support services to the employer's water and sewer operations, in the form of mapping and technical advice on the construction of facilities. One engineer assigned to water quality spends an estimated 25% of his time with water operations. Field technicians inspect new water and sewer lines with maintenance persons assigned to the Sewer Division. According

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Also housed there is a secretarial pool of temporary employees who are available to the administration and other divisions on an as-needed basis.

to the testimony, a technician spends part of one day per week as an above-ground safety lookout while a maintenance worker goes down manholes to check sewer line construction.<sup>8</sup> In emergencies, the Engineering Division provides technical assistance, as needed, to the water and/or sewer operations.<sup>9</sup>

#### Water Operations

The Water Division is headed by Superintendent Don Young, and is primarily concerned with the delivery of potable water to customers. The 29 employees under Young's direction include his secretary, a part-time customer engineer, meter readers, mechanics, maintenance workers, and groundskeepers. The Water Division is housed in the separate building located across the parking lot from the main office.

The grounds maintenance employees do work for all of the employer's divisions, but most of their time is spent with the sewer and water operations.

The mechanic services all of the approximately 50 vehicles owned or used by the employer. Most of those vehicles are used in the sewer and water operations, with only five or six used by finance and engineering personnel. Extensive or complicated repairs are contracted out.<sup>10</sup>

At least one of the maintenance employees is assigned to "cross connect" for both water and sewer services.

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<sup>8</sup> Both employees then sign off on the "punch sheet", which lists discrepancies discovered in previous inspections.

<sup>9</sup> The work to repair damaged lines or pumps is performed by the sewer or water crews.

<sup>10</sup> The record indicates that the employer intends to contract out the mechanic's services to the City of Federal Way.

The meter readers receive instructions from the finance personnel to start or stop service to customers. There was evidence that some water meters also meter sewer usage.

#### Sewer Operations

The Sewer Division is headed by Superintendent Bill Martin. The division is primarily concerned with the collection of wastewater from customers and the treatment/disposal of the material. The division has 40 employees, including sewer plant operators, utility workers, maintenance persons, a janitor, and an electrician. The Sewer Division is headquartered at the sewage treatment plants.

The janitor and the electrician regularly perform duties for the other divisions, although their primary responsibilities are with sewer and water operations.

#### POSITION OF THE PARTIES

The union seeks a bargaining unit limited to employees in the sewer and water divisions. It contends that the employees in those two divisions perform similar work, and that they share a community of interest as predominately "blue collar" workers. The union argues that it need not propose the most appropriate bargaining unit, but only an appropriate unit. The union proposes the exclusion of two secretaries who work for the division superintendents, as not sharing a community of interest with the blue collar employees. The union also believes that the duties of those individuals as personal secretaries to the division superintendents makes them "confidential" employees who should be excluded from the bargaining unit on that basis. On the other hand, the union objects to the supervisory exclusions sought by the employer.

Relying on the earlier Commission decision involving its employees, the employer contends that its workforce is integrated to such an extent as to require rejection of the petitioned-for bargaining unit. The employer contends that the only appropriate unit for bargaining would include all of the employees of the employer except for professionals, supervisors and confidential employees. The employer would exclude its accountant, its financial analyst and its engineers as professionals. The employer contends that the three senior operators and the wastewater treatment foreman should be excluded as supervisors. The employer would include the two clericals as non-supervisory employees.

#### DISCUSSION

##### The Propriety of the Petitioned-For Bargaining Unit

As a municipal corporation and/or political subdivision of the state of Washington, the Federal Way Water and Sewer District is a "public employer" within the meaning and coverage of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The determination of bargaining units under that statute is a matter delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060. The decision in Federal Way Water and Sewer District, Decision 3228 (PECB, 1989), has some obvious relevance to this proceeding, but the duty of the Commission under RCW 41.56.060 to decide unit issues in "each" case must also be given effect. Further, any distinctions of fact and law must also be recognized.

##### Duties, Skills, and Working Conditions -

In this case, the proposed bargaining unit encompasses two operational divisions which include essentially all of the employees of this employer who perform "blue collar" work such as maintenance or manual labor. The petitioner distinguishes them

from "white collar" employees even in the same branches of the employer's organizational structure.

The petitioned-for employees are paid on the same salary schedule, and they enjoy the same benefits, as other employees of the employer, but other aspects of their hours and working conditions are entirely different from those of the finance, engineering and clerical employees:

The "blue collar" employees in the sewer and water operations generally work at sites that are removed from the work sites of the employees in the other divisions.

The sewer and water divisions conduct joint safety meetings, to the exclusion of the other groups.

The sewer and water employees share the use of equipment, such as backhoes and trucks. Those are the only divisions having equipment suitable for such interchange.

The employer makes a substantial contention that its operations are integrated to such an extent as to make separation unrealistic and, therefore, to make a separate bargaining unit inappropriate. A similar argument was successfully made in the earlier proceedings, but it must fail here. The earlier case involved an attempt by another union to organize only the employees of the sewer division. A "high degree of interaction" was found to exist among the employees of various divisions, but close analysis of the decision reminds that many of the examples given involved interchange between the water and sewer employees. The union's evident extent of organization was not found sufficient to warrant a separate "vertical" unit in the Sewer Division. In distinct contrast to the earlier case, the petition now before the Commission involves a "horizontal" unit defined by the "blue collar" occupations of the employees sought.



The decision in the earlier Federal Way case was not reviewed by the Commission "on the merits",<sup>11</sup> but the Commission has subsequently issued several decisions which provide guidance on its unit determination policies. See, City of Centralia, Decision 3495-A (PECB, 1990), where the Commission stated:

The statute does not confine us to certifying only "the most appropriate unit" in each case. It is only necessary that the petitioned-for bargaining unit be an appropriate one. Thus, the fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require rejecting a proposed unit that is appropriate.

All of the employees of an employer inherently share some community of interest in dealing with their common employer. Thus, when sought by a petitioning union, employer-wide bargaining units have been viewed as presumptively appropriate.

Units smaller than employer-wide may also be appropriate, especially in larger workforces. The employees in a separate department or division may share a community of interest separate and apart from other employees of the employer, based on their commonality of function, duties, skills and supervision. Consequently, departmental (vertical) units have sometimes been found appropriate when sought by a petitioning union. Alternatively, employees of a separate occupational type may share a community of interest based on their commonality of duties and skills, without regard to the employer's organizational structure. Thus, occupational (horizontal) units have also been found appropriate, on occasion, when sought by a petitioning union.

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A petition for Commission review of Federal Way Water and Sewer District, Decision 3228 (PECB, 1989) was filed by the union involved there, but was dismissed by the Commission as untimely. See, Federal Way Water and Sewer District, Decision 3228-A (PECB, 1990).

Concerns about "fragmentation" of bargaining units arise from time to time. One very real concern is that employees not directly involved in an organizational effort will be deprived of their statutory bargaining rights by being left "stranded" alone or in a unit that is too small to bargain effectively. Another concern is that the establishment of a bargaining relationship gives rise to a scope of "bargaining unit work", and a duty on the part of the employer to give notice to the exclusive bargaining representative and provide opportunity for bargaining prior to transfer of bargaining unit work to employees outside of the bargaining unit. **Thus, decisions have** required that fringe groups be incorporated into the bargaining units to which they logically relate, and have **rejected unit configurations that Balkanize** departments or **occupational groups** into units that can be explained only on the basis of "extent of organization".

[emphasis by bold supplied; footnotes omitted]

See, also, City of Winslow, Decision 3520-A (PECB, 1990).

The record here does not show that the interaction among all of the employer's divisions is so pervasive as to require a conclusion that the employer's workforce be considered only as a single, integrated operation. The Engineering Division does provide support services, such as maps and technical advice, and there are some circumstances where individuals from that division work with some of the petitioned-for employees, but there is no evidence that employees of the Engineering Division routinely work alongside water or sewer employees in the operation of heavy equipment or performing construction or labor tasks. The engineer who performs water quality functions for the Water Division is a professional who would be excluded as such from an "employer-wide" unit under the employer's own argument. The field inspectors who work with the sewer maintenance persons do so on a safety basis only, as the testimony indicates that the actual inspection is performed by the sewer worker while the field technician watches the manhole.

Finance preparation of delinquent lists for the meter readers and maintenance person for purposes of meter turn on or offs are ministerial in nature and do rise to the level of working side by side. The other examples of "integration" presented by the employer are very limited and unconvincing.

Instances of cross-training are limited to employees of the water and sewer operations, and those operations share the same work classifications of maintenance persons. The mechanic, ground maintenance and janitor primarily do work in the sewer and water divisions, with very little activity for other divisions. Sharing of personnel primarily occurs among the secretaries, but only after the pool of temporary clerical employees is exhausted.<sup>12</sup> Since the petitioned-for workers share "blue collar" duties and share similar classifications (wages) and work hours, they are appropriately included in the proposed "occupational" bargaining unit.

The administrative secretaries provide clerical support for the superintendents of the respective divisions. Consistent with its quest here for an occupationally-oriented bargaining unit, the union would exclude these secretaries from the unit claimed appropriate. While there was testimony that these secretaries would not be involved in confidential labor relations matters, there are numerous Commission precedents, as well as precedent developed by the National Labor Relations Board, holding that "office clerical" employees have a community of interest separate and apart from "blue collar" employees.

The clear conclusion from the foregoing is that the unit sought here is "an appropriate unit" under the "duties, skills and working conditions" portion of the statutory unit determination criteria.

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The sharing is limited in any case to covering short term absences such as illness or vacation.

History of Bargaining -

There is no history of bargaining for any of the petitioned-for employees.<sup>13</sup>

If anything, the previous certification and history of bargaining for an employer-wide (*i.e.*, "occupational" or "horizontal") clerical unit reinforces the conclusion that the secretaries to the superintendents in the divisions touched by the petitioned-for unit would share a stronger community of interest with other clericals than with an operational unit of blue collar workers.

Extent of Organization -

The union's extent of organization and proposed bargaining unit in this case conform to all of the "blue collar" employees of the employer, without creating any problems of "stranding". The other employees of the employer are properly categorized as clerical, technical and professional employees.

Desires of the Employees -

Evidence of the "desires of employees" is irrelevant here. Neither the showing of interest filed in support of a petition under RCW 41.56.070 and WAC 391-25-110, nor the testimony of individual employees is relied upon to assess the "desires of employees" for purposes of RCW 41.56.060. City of Seattle, Decision 781 (PECB, 1979). Rather, the confidentiality of employee views on such sensitive matters will be protected by conducting a unit determination election when it is necessary to make an assessment of employee preference. Oak Harbor School District, Decision 1319

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In Federal Way Water and Sewer District, Decision 1261 (PECB, 1981), Teamsters Local 117 was certified as the exclusive bargaining representative of the employer's clerical staff. That history has no direct bearing on the petitioned-for bargaining unit, and the Commission's docket records show that the unit was later disclaimed by the Teamsters, but it is aptly observed that the unit did not conform to the employer's insistence here on a wall-to-wall unit including all of its employees.

(PECB, 1981). There is no need to direct a unit determination election in this case, however, as there is no employee organization seeking certification in an appropriate unit different from the appropriate unit sought by the petitioner.

#### The Proposed Supervisor Exclusions

Supervisors are employees within the meaning and coverage of Chapter 41.56 RCW, and are entitled to organize for the purposes of collective bargaining. METRO v. Department of Labor and Industries, 88 Wn.2d 925 (1977). The Commission has exercised its unit determination authority in the past to exclude "supervisors" from bargaining units containing their rank-and-file subordinates, in order to limit or prevent conflicts of interest arising within the bargaining unit due to the exercise by the supervisors of their authority over subordinates. City of Richland, Decision 279-A (PECB, 1978), aff. 29 Wn.2d 599 (Division III, 1981), rev. denied, 96 Wn.2d 1004 (1981).

#### Senior Operators -

There are three senior operators, who are in charge of shifts at the sewer plant. They report to Waste Water Treatment Plant Supervisor Melva Yoder who, in turn, reports to Assistant Superintendent Charles Babel, and to Superintendent Martin.

The operators are generally assigned regular, routine tasks to be accomplished during their work shifts, and those activities are monitored by the senior operators. The senior operators provide "input" to Yoder for inclusion in the performance evaluations of their subordinates. The senior operators have authority to approve overtime for subordinates in the absence of their supervisor.

The senior operators do not have authority to hire subordinates. New personnel are hired by use of an interview panel process. The panels usually consist of three employees: The personnel director,

a supervisor from another division, and an employee from the hiring division who is familiar with the duties of the vacant position. The panel makes a recommendation to the division head. The general manager must approve all hiring. While senior operators may serve on such panels, there is no evidence that they have done so.

The senior operators do not have authority to discharge subordinates, but they do have authority to issue disciplinary warnings in the absence of their supervisor.

The senior operators regularly perform duties involving monitoring dials, taking readings, checking samples under microscopes, monitoring the operation of machinery, and overseeing the work of other employees. They are, themselves, paid time-and-one-half for overtime work.

The record is clear that these employees have only limited supervisory authority, and then only in the absence of their supervisors. There are as many as five levels of supervision above them, and the record indicates that severe disciplinary actions are subject to approval all the way up through the supervisory chain of command to General Manager Miller, with appeals to the Board of Commissioners. Miller also approves all hiring decisions.

These employees assign work, but their subordinates regularly perform tasks of a daily routine associated with an ongoing operation. The evidence describes working foremen who should be in the same bargaining unit as their subordinates. There is only very limited potential for conflicts of interest arising out of their inclusion in the bargaining unit.

#### Maintenance Foreman

Maintenance Foreman Bernard Stump is in charge of performing plant maintenance. Stump also reports to Yoder. Three maintenance persons are assigned to work under Stump's direction. Stump gives

input on their performance evaluations, makes up work schedules, and approves overtime if his supervisor is not around.

Stump does not hire, but has given recommendations to hire temporary employees who worked with him. Such recommendations are different from those made under the interview panel process.

Stump does not have authority to discharge subordinates, but can give disciplinary warnings.

Most of Stump's duties involve maintenance responsibilities similar to those performed by his subordinates. Unlike other employees at his pay range, Stump is paid time-and-one-half for overtime work.

Again, the evidence describes a working foreman who has been treated in the past more like a rank-and-file workman than like a member of the management. With the real authority vested in the persons of Yoder, Babel, Martin and, ultimately, Miller, there is only very limited potential for conflicts of interest arising out of Stump's inclusion in the bargaining unit.

#### FINDINGS OF FACT

1. Federal Way Water and Sewer District is a municipal corporation and/or political subdivision of the state of Washington, and is a public employer within the meaning of 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 filed a timely and properly supported petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of certain employees of the Federal Way Water and Sewer District.

3. The petitioned-for bargaining unit includes all of the nonsupervisory operations and maintenance employees of the employer, and excludes clerical employees, technical employees, professional employees, confidential employees, and supervisors.
4. The employees in the petitioned-for bargaining unit work in the water and sewer operations of the employer, and have a community of interest based on similar duties and skills as "blue collar" workers.
5. All of the employees in the petitioned-for bargaining unit work the same scheduled hours. Those schedules are different from those of all other employees of the employer.
6. All of the employees in the petitioned-for bargaining unit are paid at premium rates for work in excess of 40 hours per week.
7. The administrative secretaries assigned to the sewer and water operations provide clerical support to the superintendents of those divisions. They have duties, skills, working conditions and a history of bargaining that are separate and apart from those of the "blue collar" workers in their respective divisions.
8. The petitioned-for bargaining unit will not strand employees of the same occupational type.
9. The "Waste Water Treatment Plant Supervisor" and the employees in the "Senior Operator" classification perform duties similar to those of their subordinates and have only limited authority to act in the name of the employer on personnel matters. They are lead workers who perform functions which are primarily ministerial in nature, carrying out the directives of the



board and general manager and three intervening levels of supervision.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapters 41.56 RCW and 391-25 WAC.
2. A bargaining unit consisting of:

all full-time and regular part-time operations and maintenance employees of Federal Way Water and Sewer District, excluding elected officials, officials appointed for a fixed term, the general manager, clerical employees, technical employees, professional employees, confidential employees, and supervisors

is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, and a question concerning representation presently exists in such unit.

3. The "Waste Water Treatment Plant Supervisor" and the employees in the "Senior Operator" classification are nonsupervisory employees who are properly included under RCW 41.56.060 in the appropriate bargaining unit described in paragraph 2 of these conclusions of law.

DIRECTION OF ELECTION

A representation election shall be conducted by secret ballot, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit described in paragraph 2 of the

foregoing conclusions of law, for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by International Union of Operating Engineers, Local 286.

Issued at Olympia, Washington, on the 30th day of May, 1991.

PUBLIC EMPLOYMENT  
RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marvin L. Schurke", written in a cursive style.

MARVIN L. SCHURKE  
Executive Director

This order may be appealed  
by filing timely objections  
with the Commission pursuant  
to WAC 391-25-590.