

STATE OF WASHINGTON

BEFORE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
WASHINGTON STATE COUNCIL OF) CASE 12493-E-96-2088
COUNTY AND CITY EMPLOYEES)
)
Involving certain employees of:) DECISION 5639-B - PECB
)
CITY OF PUYALLUP) ORDER DETERMINING
) ELIGIBILITY ISSUES
)
_____)

Clem Edwards, Organizer, represented the union.

Foster, Pepper and Shefelman, by P. Stephan DiJulio,
Attorney at Law, represented the employer.

On May 15, 1996, the Washington State Council of County and City Employees, AFSCME, AFL-CIO (union) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification for certain employees of the City of Puyallup. After an investigation conference, the Commission conducted a representation election by mail ballot. The tally of ballots issued on July 24, 1996 indicated that the union was supported by a majority of the employees who voted. The employer filed objections under WAC 391-25-590(1)(a), alleging that some employees failed to receive ballots and that others who were not on the eligibility list were permitted to cast challenged ballots. On September 17, 1996, the Commission dismissed the objections and ordered a determination of the eligibility issues.¹ On September 18, 1996, an interim certification was issued, designating the union as exclusive bargaining representative of a bargaining unit described as:

¹ City of Puyallup, Decision 5639 (PECB, 1996).

All full-time and regular part-time employees of the City of Puyallup in information services, court, building code enforcement, public works, engineering /city shops /corporate yard, library, cemetery, fire department (office assistant II's), recreation (finance tech, office assistant, facility assistant II), and senior center (office specialist) excluding supervisors, confidential employees and all other employees.

City of Puyallup, Decision 5639-A (PECB, 1996).

A hearing on the eligibility issues was held before Hearing Officer William A. Lang on November 24, 1996, in Puyallup, Washington. The employer filed a post-hearing brief on January 13, 1997. The union chose not to file a post-hearing brief.

BACKGROUND

The classifications remaining at issue in this proceeding are limited to two "engineer tech IV" positions in the Public Works Department and a "library tech II" position and an "adult services librarian" position in the Library.

The Public Works Positions

The employer's public works operations include maintenance of sewer and water utilities, storm drains, an arterial streets program, street maintenance, building and grounds maintenance, parks, cemetery, and capital projects. The department workforce consists of 73 employees.² The department is headed by Director Tom Heinecke. The next level of supervision is the operations and

² A local union of the International Brotherhood of Teamsters, et al. currently represents employees who perform street and sewer maintenance functions, as well as those who operate the treatment plant and those who clean and maintain the employer's facilities.

maintenance manager, who supervises three assistant city engineers who are in charge of traffic, development, and capital improvement divisions, respectively. The disputed engineer tech IV positions are immediately below the assistant city engineers on the organization chart. Robert Akridge and Earl Vanderhoof are the incumbents in these positions.

The position description for the engineer tech IV classification describes the responsibilities of the class as work in a highly advanced technical field or office engineering or drafting work. Employees in this classification are required to have a high school diploma or GED equivalent, plus at least six years of experience which demonstrates their ability to perform the work of the position. Employees in this class handle a wide variety of complex engineering tasks, and are expected to independently solve problems in the field and office. The position description includes the possibility of supervising lower-level employees.

The essential functions of the disputed class are sub-divided into four sections: Surveying, inspection, design and office.

The surveying section is mentioned as a minor function, although the the incumbent may oversee crew chiefs or may act as crew chief on a survey crew, and is held responsible for the accuracy and quality of the survey. Engineer tech IV's also draft complex legal descriptions of property.

The inspection section performs highly complex inspections on every phase of public works construction. The incumbent oversees the work of other inspectors, and is responsible for assuring that all city codes and standards are met on every project inspected by subordinates. The engineer tech IV advises property owners and contractors of code violations.

The design section performs highly complex drafting, design and project management for street, water, sewer and drainage system improvements. Engineer tech IV's check the design and details of plans prepared by lower level engineering technicians, and is

responsible for their accuracy and completeness. The engineer tech IV serves as an assistant to the project engineer on a variety of utility and street projects and prepares technical reports to other departments and to the city council. The engineer tech IV may represent the department on outside committees and boards.

The office function consists of overseeing the work of customer service, clerical and support personnel. The engineer tech IV reviews plans on all public and private projects, resolves intra- and inter-department disputes, and may attend city council or planning commission meetings as the department representative.

The engineer tech IV and engineer tech III classes are both in a "technical" category. The higher class is distinguished by coordinating major engineering program areas, making day-to-day decisions on design or construction, and providing direct supervision to department personnel. At \$3,043 to \$3,955 in 1996, the pay of the disputed class was 6.2% higher than the engineer tech III class. Employees in a "building inspector II" class are paid the same salary as the engineer tech III, while a "senior building inspector" class is paid more than the engineer tech IV class. A "building official" class is paid at a higher range in a management category.

Employees in the disputed class do not have authority to hire or fire subordinates. They have participated in hiring interviews for positions in the engineer tech III class (which are in the Teamsters bargaining unit), and they are said to have authority to recommend discipline of subordinates. The disputed employees provide input to the assistant engineers regarding assignment and direction of subordinate staff. All leaves and other requests for time off are approved by the assistant city engineers.

The Library Positions

The city library is directed by Gail Uhl, who has been the city librarian for 24 years. An adult services librarian and a youth

services librarian, each of whom holds a degree in library science, are at the next level of the organization chart. An employee in a library tech II class works on a regular part-time basis, as do three employees in a "library tech I" class. A varying number of library assistants and pages,³ and volunteers also work at the library.

Adult Services Librarian -

Carol Peterson was hired by Uhl in 1996, to fill a newly-created position. The position description for the adult services librarian says that the work requires a high degree of initiative, independent judgment and professional expertise planning and implementing a program of library services primarily for adults in the community. The responsibilities of the adult services librarian include reference librarian services and audio/visual equipment.

Supervision of the library tech I and library tech II employees is not characteristic of this position on a routine basis, although the adult services librarian is in charge of the entire library in the absence of the city librarian. Peterson oversees 10 to 30 volunteers, and has authority to approve or terminate volunteers. The position is paid in a "professional group II" category.

Library Tech II -

Nancy Lehman is the incumbent of the library tech II position. She reports to the city librarian. The position description for this class refers to technical work primarily relating to the effective operation of the library, and positions in this class perform a wide variety of different tasks related to one of more major program areas of the library (e.g., circulation, reference and technical services). She monitors the library budget, oversees

³ The library assistants and pages are usually high school or college students who are paid by the hour. They are not included in any bargaining unit.

the work of library aides and pages, and has authority to hire those employees. Lehman does not have or exercise any supervisory authority over the employees in the library tech I class. The position is paid under a "support" category.

All employees of the City of Puyallup, whether they are managers, supervisors, represented or unrepresented, receive the same insurance and leave benefits.

POSITIONS OF THE PARTIES

The employer argues that the disputed employees should be excluded from the bargaining unit because of their supervisory duties, their higher rate of pay, and their lack of a community of interest with the other employees. The employer did not call any of the incumbents as witnesses, and now contends that the union's failure to call them (i.e., to rebut the employers witnesses or to support their inclusion in the bargaining unit), forecloses the union from now arguing a position contrary to the employer's evidence.

The union did not make an oral argument at the hearing, and it did not file a post-hearing brief. From its statements at the pre-hearing conference and at the hearing, the union does not concede the additional "supervisor" exclusions claimed by the employer.

DISCUSSION

The Nature of the Proceedings

The employer's contention that the union should be foreclosed from argument in this case misstates the process. The determination of appropriate bargaining units is a function delegated by the Legislature to the Commission. RCW 41.56.060; City of Richland,

Decision 279-A (PECB, 1979), affirmed 29 Wn.App. 599 (Division III, 1981), cert. denied 96 Wn.2d 1004 (1981). The process set forth in Chapter 391-25 WAC is investigatory, not adversary, in nature. While the party seeking an exclusion of persons or positions is expected to present evidence in this fact-finding process, both the employer and other parties to a representation case are actually affecting the statutory rights of individual employees. This is markedly different from the situation in unfair labor practice proceedings under Chapter 391-45 WAC, where there is an obligation to file an answer and the spectre of default upon failure to do so, as well as a clear burden of proof. The union's failure to call particular witnesses in this case does not in any way foreclose or detract from its contention that the disputed positions should be included in the petitioned-for bargaining unit.

The employer's contentions in this case concerning implementation of the "desires of employees" aspect of the RCW 41.56.060 unit determination criteria are also in error. In situations where two or more organizations are proposing two or more appropriate unit configurations, the "desires of employees" will be assessed through a secret ballot unit determination election conducted by the Commission.⁴ 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". City of Seattle, Decision 781 (PECB, 1979). The confidentiality of employee views on such sensitive matters is protected by conducting a secret ballot unit determination election. Oak Harbor School District, Decision 1319 (PECB, 1981).

⁴ See, for example, Mukilteo School District, Decision 1008 (PECB, 1980) and numerous subsequent cases where the employees in a group proposed for "severance" have been given the opportunity to vote on whether to overrule their "history of bargaining" and move to a separate unit or retain their existing unit structure.

The integrity of the ballot is of great concern to the Commission,⁵ so that the solicitation of such testimony would be improper and could be considered an interference with the right of employees to select representatives by secret ballot, free from intimidation or disclosure. Moreover, there was no occasion to conduct a unit determination election in this case, where only one union is involved and only one bargaining unit configuration was at issue. Clark County, Decision 290-A (PECB, 1977). Once placed within a bargaining unit under RCW 41.56.060, individual employees have a right to vote on any question concerning representation in that bargaining unit, but disputed employees do not have a right to vote separately on representation or to veto the Commission's decision including them in a bargaining unit.

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), affirmed 29 Wn.2d 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

The employer correctly notes that Chapter 41.56 RCW does not contain a definition of supervisor, but the Commission has looked to the definition of supervisor set forth in RCW 41.59.020(4)(d) as indicating the types of authority which pose a potential for conflicts of interest:

⁵ See, City of Tukwila, Decision 2434-A (PECB, 1986).

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to effectively recommend such action, if in connection with the foregoing the exercise of such authority is not really 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.

The definition of supervisor found in Section 2(11) of the National Labor Relations Act (NLRA) lacks the "preponderance" clause, and has been applied by the National Labor Relations Board (NLRB) in a somewhat mathematical manner, so that private sector employees have been totally excluded from bargaining rights as supervisors when they only exercise one or a few of the attributes. Thus, NLRB precedent is of limited value in making the "potential for conflict" determinations required by Washington precedent.

The Engineer Tech IV Positions -

Aside from statements in the position description, there is very little direct testimony that the employees in the engineer tech IV positions have or exercise supervisory authority over any other employees in the bargaining unit involved here.

The employer argues that these employees make effective recommendations on the hiring and firing of subordinates. The record indicates, however, that Vanderhoof has merely participated on an interview panel for the engineer tech III class during his 15 years with this employer. There was no evidence that Vanderhoof recommended the hiring of any particular applicant, or that any such recommendation was effected without independent decisionmaking at a higher level. Neither Vanderhoof nor Akridge have been involved in the discipline of other employees. Although it was claimed that they have the authority to recommend discipline of

subordinates, the effectiveness of any such recommendation must be questioned in light of Heinecke's testimony that he has the "sole" authority to hire and fire subordinates, subject to approval of the city manager. It is apparent from the organizational structure that any recommendation made by an engineer tech IV on the personnel matters critical to a supervisory exclusion would have to be reviewed and approved by an assistant city engineer and the operations and maintenance manager before it would reach the public works director and the city manager for their consideration.

The employer claims that Vanderhoof "supervises" one or more employees in the engineer tech III class, but the record does not elaborate upon the kind(s) of supervision exercised. It is also noteworthy that the engineer tech III positions would not be in the same bargaining unit with the disputed class, thereby removing any potential for intra-unit conflicts of interest.

Akridge manages major construction activities, such as an "East Pioneer Pump Station" project which is in the \$2 million range. Even accepting that Akridge monitors expenditures and budgets for the projects, and that he has total responsibility for day-to-day activities on construction projects, those functions involve oversight of contractors and contract employees who are not within the bargaining unit represented by the union. Such program functions do not deprive public employees of their right to organizing to secure or protect their own wages, hours and working conditions.

Akridge occasionally oversees and/or gives advice to employees in the engineer tech III class. Heinecke testified, however, that this activity is "more like a team function than requiring people" to act in a particular manner. Moreover, the argument is irrelevant because the engineer tech IV would be in a different bargaining unit than the subordinate employees, thereby eliminating any potential conflict of interest.

The position description characterizes the engineer tech IV as "an office manager overseeing work of the departmental customer service, clerical and support personnel", but that characterization was not confirmed by the testimony of the public works director. In particular, the record lacks sufficient evidence to form a conclusion as to whether the "overseeing" is a technical/consultive role or one in which the disputed employee actually exercises authority over subordinates in the manner described in RCW 41.59.020. Moreover, it is difficult to envision how an engineer tech IV could function as the supervisor of the office personnel when he spends so much of his time in the field managing projects.

The employer contends that the engineer tech IV gives input to managers, and may represent the department on outside boards and committees. Apart from the fact that such program responsibilities are not a basis for exclusion from collective bargaining rights under Chapter 41.56 RCW, the statement contained in the position description stands alone. There is no evidence that this has ever occurred in the 15 years that Vanderhoof has been in one of the disputed positions.

There is no direct evidence that either Akridge or Vanderhoof has any authority to transfer, lay off or recall any subordinate employees. The evidence that they have no authority to approve leaves of absences or time off clearly undermines the employer's arguments.

The Adult Services Librarian -

The employer claims the adult services librarian is a supervisor because she has the authority to hire and fire volunteers and library assistants. As indicated above, however, supervisor exclusions are handled as a unit determination exercise under RCW 41.56.060, designed to avoid conflicts of interest **within** bargaining units by **excluding supervisors from the same bargaining unit which contains their rank-and-file subordinates**. Where, as here,

the employees supervised are not in the bargaining unit, there is no potential conflict of interest.

The record indicates that the adult services librarian once brought a problem concerning a paid staff person to Uhl's attention, and that Uhl then counseled that staff person. That testimony inherently establishes that the adult services librarian does not have disciplinary authority over the paid staff person.

Library Tech II -

This regular part-time employee also only supervises aides and pages who are not in the bargaining unit. She does not exercise supervisory authority over the employees in the library tech I positions. Chief librarian Uhl testified that she hired the library tech I, and she could not remember whether Lehman even participated in the interview process.

Conclusions on "Supervisor" Claims -

Based on the record in this case, none of the disputed positions have or exercise sufficient supervisory authority to warrant their exclusion from this bargaining unit.

Community of Interest

In resolving unit determination issues, the primary concern is to group together employees who have substantial mutual interests in wages, hours, and working conditions. In this arena, the Commission assesses the existence of a "community of interest" in much the same way that the NLRB makes unit determinations under Section 9 of the NLRA. Neither the NLRA nor RCW 41.56.030 defines community of interest, but Kalamazoo Paper Box Corp., 136 NLRB 134 (1962) enumerated the factors to be considered in determining community of interest:

a difference in method of wages or compensation; different hours of work; different

employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs under State and Federal regulations; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.

All of the employees of an employer inherently have some community of interest in dealing with their common employer, so employer-wide units have been found appropriate under RCW 41.56.060. Smaller units have also been found appropriate under RCW 41.56.060, particularly where they include all of the employees assigned to a single branch or department of the employer's table of organization,⁶ where they include all of the employees of a generic occupational type,⁷ or where required by the availability of interest arbitration.⁸

Regardless of whether they originated as "vertical" or "horizontal", or were merely based upon "extent of organization", once one or more bargaining units already exist within an employer's workforce, petitions for later-created units must honor the history of bargaining in the earlier-created unit(s). While not specifically denominated as such, the unit sought in this case is somewhat of a

⁶ Such a "vertical" unit draws its community of interest from the commonality of "working conditions" implied among employees reporting to the same supervisor.

⁷ Such a "horizontal" unit draws its community of interest from the commonality of "duties and skills" implied among employees performing similar functions.

⁸ WAC 391-35-310 requires the separation of employees who are "uniformed personnel" under RCW 41.56.030(7), and who are therefore eligible for interest arbitration under RCW 41.56.430 et seq., from employees who are not eligible for that dispute resolution procedure.

"residual" configuration which sweeps together the historically unrepresented employees in several departments. Such units can also be found appropriate, lest the employees in them be deprived of their rights under Chapter 41.56 RCW.

The decision in METRO, supra, made it clear that there is no categorical exclusion of "managerial" employees from the coverage of Chapter 41.56 RCW, and the decision in City of Vancouver, Decision 440 (PECB, 1978) made it clear that there is no categorical exclusion of "professional" employees from the coverage of Chapter 41.56 RCW. Nor is there a special test, apart from community of interest, for the unit placement of technical employees. Virginia Manufacturing Co. (VAMCO), 311 NLRB 992 (1993).

The Public Works Positions -

The employer argues that the engineering tech IV classification does not share a community of interest with the bargaining unit. It cites Seattle School District, Decision 2830-A (PECB, 1988), but that case involved a supervisor who was excluded from the bargaining unit of employees in an office machine repair shop because he exercised supervisory authority over the other employees, including organizing their work schedules, assigning their work, evaluating their performance, recommending their hiring, discipline or transfer, and approved their time sheets and training. That supervisor attended separate meetings of foremen, and spent the majority of his time in an office. He estimated that he spent only 10% to 15% of his work time in the actual repairing of equipment, but at least some of that activity was on work that his subordinates were not trained to perform. Those facts are easily distinguishable from the instant case, where the engineer tech IV employees have a full load of program functions and have little authority over subordinates.

The fact that building inspectors have different duties, skills and working conditions is not conclusive. Vanderhoof's alleged

supervision of inspectors would need to be considered in light of the authority exercised by the senior building inspector (who is paid at the same salary range as Vanderhoof) and by the building official (who is paid a higher salary in a "management" level), but those relationships were not fully explained. The titles suggest lines of command which would normally place the building inspectors under the supervision of the building official and senior building inspector. In the absence of a better explanation, we infer from the involvement of the engineer tech IV in construction projects that the alleged supervision is in the nature of collaboration between branches of the employer's table of organization.

The employees in the engineer tech IV class enjoy the same benefits as other employees, and are paid on the same monthly *basis* as other employees. The employer compares the salary *level* of the engineer tech IV to that of a "public works supervisor" classification, but that comparison is suspect. The foreman position at issue in City of Mukilteo, Decision 2202-A (PECB, 1986), was paid 24% above the highest-paid employee in the bargaining unit (in addition to having authority to interview applicants for employment, assign work, approve overtime, leaves and timecards, and adjust grievances). The starting pay for the engineer tech IV is 11% below the cited supervisor, and only 6.2% above the engineer tech III classification, so that the differential is no more than "lead" pay. If the engineer tech IV employees were truly part of the management, one would expect their pay would equal that of the public works supervisor classification, rather than lagging 11% below it.

The employees in the engineer tech IV class perform many of the same duties as other employees in the public works department. Along with other employees in the department, they are supervised by an assistant city engineer who approves leaves and other changes in employment. There is considerable interaction and integration with other employees in surveying (where the engineer tech IV may

act as crew chief), in design (where they check design and detail of plans prepared by lower-level technicians), in inspection (where they are responsible for enforcement of building codes and standards administered by other employees in the department), and in the office (where the focus of effort is on customer service).

The Library Positions -

The employer argues that the adult services librarian does not share a community of interest with the other employees because she is paid at a much higher salary than the library tech classes and is required to have a college degree not required of the library tech classes. While the salary difference (\$915 per month or 44%) and training difference are significant, they are not conclusive in the "residual unit" context of this case. The adult services librarian, the library tech I employees and library tech II have a common work location and supervisor, and there is considerable interchange among those employees. Thus, the adult services librarian is not a supervisor and shares a community of interest with other library employees. An added concern, having determined that she is not a supervisor, is that exclusion of this employee from this bargaining unit would effectively strand her without any opportunity to implement her statutory bargaining rights.

FINDINGS OF FACT

1. The City of Puyallup, a municipal corporation and/or political subdivision of the state of Washington within the meaning of RCW 41.56.020, is a public employer within the meaning of RCW 41.56.030(1).
2. The Washington State Council of County and City Employees, AFSCME, AFL-CIO, a bargaining representative within the meaning of RCW 41.56.030(3).

3. Employees in the engineer tech IV classification are assigned a wide variety of complex engineering tasks and are expected to independently solve problems in the office and the field. They are paid about 6% more than the pay of the engineer tech III class, and they review and are responsible for accuracy and quality of surveys, designs, and plans prepared by lower level personnel. They also oversee the work of customer service employees.
4. The engineer tech IV employees do not assign, evaluate, transfer, recall or layoff other personnel, and do not make effective recommendations on the hiring or discipline of other personnel. They appear to have a collaborative relationship with engineer tech III's and building inspectors. Engineer tech IV's do not have a preponderance of supervisory responsibilities over the employees with whom they work.
5. The adult services librarian is responsible for various services including reference library services and audio/video. The work requires a high degree of initiative, independent judgment implementing a program of library services for adults in the community. The adult services librarian supervises volunteers who are not in the bargaining unit represented by the union. The adult services librarian does not supervise other employees. While the adult services librarian is paid at a significantly higher salary than most of the employees with whom she works, the difference is based on the nature of her professional duties.
6. The library tech II is a regular part-time employee who performs technical work and a large variety of tasks relating to one or more major program areas such as circulation, reference and technical services. The library tech II supervises library assistants and pages who are not in the

bargaining unit represented by the union. The library tech II assists library tech I's but does not supervise them.

7. The engineer tech IV, adult services librarian, and library tech II enjoy the same hours of work, leave and insurance benefits as other employees of the City of Puyallup. They regularly work with and assist other employees on the technical aspects of the work. With the exception of the adult services librarian, their level of pay for the positions is not significantly higher than the employees with whom they work.

CONCLUSIONS OF LAW

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

All full-time and regular part-time employees of the City of Puyallup in information services, court, building code enforcement, public works, engineering / city shops / corporate yard, library, cemetery, fire department (office assistant II's), recreation (finance tech, office assistant, facility assistant II), and senior center (office specialist) excluding supervisors, confidential employees and all other employees

is an appropriate unit for the purposes of collective bargaining under RCW 41.56.060

3. The positions of engineer tech IV, adult services librarian, and library tech II lack supervisory authority sufficient to warrant their exclusion, under RCW 41.56.060, from the

bargaining unit described in paragraph 2 of these conclusions of law.

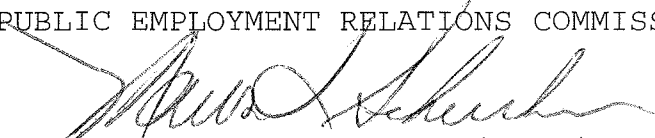
4. The positions of engineer tech IV, adult services librarian, and library tech II have duties, skills and working conditions similar to other employees in the bargaining unit found appropriate in this case, and are properly included under RCW 41.56.060 in that unit.

ORDER

The positions of engineer tech IV, adult services librarian, and library tech II shall be included in the bargaining unit of non-supervisory personnel of the City of Puyallup.

DATED at Olympia, Washington, this 7th day of March, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARWIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-25-390(2).