

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE COUNCIL OF  
COUNTY AND CITY EMPLOYEES

Involving certain employees of:

CLARK COUNTY

CASE 25493-E-13-3700

DECISION 11961 - PECB

ORDER OF ELIGIBILITY

*Audrey B. Eide*, General Counsel, for the union.

Clark County Prosecuting Attorney Tony Golik, by *Darryl Walker*, Deputy Prosecuting Attorney, for the employer.

On February 25, 2013, the Washington State Council of County and City Employees (union) filed a petition seeking to represent a bargaining unit of the nonsupervisory full and part-time Facilities Management employees of Clark County (employer). Commission staff conducted an investigation conference on May 15, 2013, and the parties agreed to the following bargaining unit description:

All full-time and regular part-time employees of the Clark County Facilities Management Department, excluding supervisors, confidential employees, employees in the Office Assistant job class, employees in other bargaining units and all other employees.

Although the parties agreed on the definition of the unit, the union contested the inclusion of the two Facilities Maintenance Specialist, Lead (Facilities Lead) positions, on the basis that they are supervisory positions. Christopher Jackson (Jackson) held that position at the time of the proceeding. Later, the parties contested Robert Moug's (Moug) inclusion because he held the same position as Jackson.

On June 7, 2013, agency staff conducted a mail ballot election. Jackson and Moug voted by challenged ballot. The eligibility challenge affected the outcome of the election. Hearing

Officer Dario de la Rosa conducted a hearing on September 4, 2013, to determine the status of the Facilities Leads. Both the union and the employer filed post-hearing briefs for consideration.

### ISSUE PRESENTED

Is the Facilities Lead position a supervisory position that should be excluded from the petitioned-for bargaining unit?

The Facilities Maintenance Specialist, Lead does not exercise independent judgment to act in the interest of the employer and make meaningful changes in the employment relationship. Additionally, the position does not spend a preponderance of time performing supervisory duties and does not perform a majority of the supervisory activities. The supervisory authority that the position exercises is similar to a lead worker as opposed to a supervisor. Therefore, the Facilities Lead position should be included in petitioned-for bargaining unit as described.

### DISCUSSION

#### Applicable Legal Standards

The determination and modification of bargaining units is a function delegated to the Commission by the Legislature. RCW 41.56.060. *Ronald Wastewater District*, Decision 9874-C (PECB, 2009). The exclusion of supervisors from the bargaining units of their subordinates is presumed appropriate when they exercise authority on behalf of the employer over rank-and-file subordinates, and such exclusion avoids a potential for conflicts of interest. WAC 391-35-340. Chapter 41.56 RCW does not define the term “supervisor.” The Commission applies the definition of supervisor found in RCW 41.59.020(4)(d) to differentiate supervisors, who are excluded from bargaining units with their subordinates, from lead workers, who are included in the bargaining units with those they lead:

[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.

*Granite Falls School District*, Decision 7719-A (PECB, 2003).

“Preponderance” as used in the definition of supervisor can be met in two ways. An employee is a supervisor they spend a preponderance of their time performing one or more of the statutory supervisory activities. *City of East Wenatchee*, Decision 11371 (PECB, 2012); *Inchelium School District*, Decision 11178 (PECB, 2011). An employee may also be a supervisor if they spend less than a preponderance of their time performing supervisory activities but perform a preponderance of the type of supervisory activities enumerated in RCW 41.59.020(4)(d). *City of East Wenatchee*, Decision 11371; *King County*, Decision 10075 (PECB, 2008). The determination of whether an employee possesses sufficient authority to be excluded from a rank-and-file bargaining unit as a supervisor is made by examining the actual duties and authority exercised by that individual, not on the basis of his or her title or job description. *Rosalia School District*, Decision 11523 (PECB, 2012); *Morton General Hospital*, Decision 3521-B (PECB, 1991).

With respect to potential future duties, the Commission has found that if particular functions have never been exercised, absent concrete evidence of assignment, only those duties currently performed by the employee can be examined. *State - Office of Administrative Hearings*, Decision 11503 (PSRA, 2012), *citing Ronald Wastewater District*, Decision 9874-C.

When examining supervisory indicia, the Commission places emphasis on whether a disputed position has independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. *State - Office of Administrative Hearings*, Decision 11503, *citing State - Corrections*, Decision 9024-A (PSRA, 2006). If an employee merely executes the instructions of a higher ranking employee when making meaningful changes to the workplace, that employee has not exercised independent judgment. *State - Office of Administrative Hearings*, Decision 11503, *citing City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff'd*, Decision 8080-B (PECB, 2006).

A determination under the Commission’s definition of supervisor does not negate or strip away any titular or other supervisory authority of that employee. Indeed, an employee may possess a lower level of supervisory authority than the statutory definition contemplates and still be deemed a “supervisor” by subordinates. The distinguishing characteristic is that the authority does not rise to the level of conflict expressed in the statute which would require separating the employee out of the bargaining unit. *Rosalia School District*, Decision 11523.

### BACKGROUND

The Facilities Management department provides maintenance to the facilities in Clark County. The 2013 organizational chart reflects a Facilities Manager, Darrel Stump (Stump), under which is the Operations Supervisor, Michael Wright (Wright) who oversees the two leads. Each Facilities Lead oversees fifteen to sixteen employees holding the positions of specialist, helper, or customer aide.

The Facilities Lead position’s daily work includes coordinating projects, assigning work orders, supporting their subordinates, working with contractors, providing technical assistance, placing purchase order requests, and working out in the field. Each of the specialists has subject matter expertise and the work is assigned based on the specialist’s area of expertise. For example an HVAC specialist would be assigned to repair an issue with an air conditioner. Specialists work on crews based on their area of expertise. The Facilities Lead positions are not responsible for hiring employees and do not have the authority to promote, transfer, layoff, or recall employees. Additionally, the Facilities Lead positions have not formally evaluated employees for some time. The Facilities Lead position does attend management meetings but does not have the independent authority to implement changes that are discussed at those meetings.

### Application of Standard – Preponderance of Duties

Concerning whether the Facilities Leads perform a preponderance of the type of supervisory activities enumerated in RCW 41.59.020(4)(d), the record reveals the following:

*Hiring/Transfer/Promotion/Layoff and Recall*

Wright, Moug, and Jackson each testified that the Facilities Leads may look at potential applicants' resumes, sit in on the interviews, and make recommendations. However, Wright testified that he and Stump make the final hiring decision.

Moug testified that there was only one situation where he assisted with a transfer. In that situation, an additional HVAC crew member was needed, and the county did not have the ability to hire an additional employee. Wright requested that Moug identify an electrician that would be able to transfer to the HVAC position. Moug identified an employee with the proper skill set. Wright agreed with Moug's recommendation, and that electrician was transferred into the HVAC position.

Finally, Wright, Moug, and Jackson each testified that the Facilities Leads do not have the ability to promote, transfer, layoff, or recall employees.

*Suspend/Discipline/Discharge*

The Facilities Lead position is not involved in decisions regarding the suspension, discipline, or discharge of employees. Wright testified that he makes the final decision on any suspension, discipline, or discharge case. Moug testified that he has no authority to discipline employees, but does have the ability to verbally counsel an employee for minor issues. Verbal counseling is not considered discipline. If an issue becomes repetitive or is more serious, the Facilities Leads inform Wright that a problem exists, but do not recommend discipline for the problem. Wright determines any discipline if necessary.

For example, Ray Smith (Smith), a journeyman plumber, testified that he once had an issue that escalated to a point that Wright became involved. Jackson, who was Smith's Facilities Lead at the time, was aware that a situation involving Smith existed but was not involved in the meetings between Wright and Smith, or the subsequent discipline.

*Evaluations*

The department has never completed formal evaluations. Wright testified that if the department were to complete evaluations, the Facilities Leads would provide him with information regarding

the employee's daily performance and routine because they see the employee's work on a daily basis. The Facilities Leads would not sign the evaluation. Moug testified that he does informally evaluate his crew on a daily basis and uses that evaluation to assign work orders to employees. Jackson testified that he informally evaluates by making sure that the assigned work is being completed within the standards of the department. He stated that he will give positive feedback when an employee is following those standards and may address an issue that needs to be improved with an employee.

#### *Scheduling of Work/Overtime*

The Facilities Lead position has the ability to approve leaves of absence and vacation leave. Wright testified that when an employee needs to take time off for sick leave, vacation, or compensation time, they fill out the leave form and turn it into their Facilities Lead. The Facilities Lead then reviews the request and makes sure there is coverage in that department. Wright testified that as long as there is coverage, the leave is approved. Additionally, the Facilities Lead signs off on the employees' time sheets. There was no evidence presented on overtime or how the employees' daily hours of work were scheduled.

#### *Assignment of Work*

The Facilities Leads are the only employees who assign work, but the work is assigned based on how Wright and Stump have determined the Facilities Maintenance department will operate on a daily basis. The Facilities Leads assign work to the employees on their teams. Each morning the Facilities Leads review the work orders that have come in overnight through the TMA system (maintenance management software). Work orders are incoming work requests from the county facilities and offices. The Facilities Leads prioritize the work orders and assign the jobs to the various employees on their teams based on urgency and the employees' area of expertise (*i.e.*, assigning an electrician to perform electrical maintenance).

#### *Adjustment of Grievances*

Because this group has not had a collective bargaining agreement in the past, there is no formal grievance procedure. Thus, Wright, Moug, and Jackson testified that the Facilities Leads do not adjust grievances, nor do they prepare grievance responses.

While there is no formal grievance process, Moug testified that if employees are having issues with other employees, they may bring these issues to Moug. Moug will then attempt to assist the employees in resolving the issues. If the issue escalates, Moug will refer the employees to Wright. Jackson's testimony corroborated Moug's testimony when he testified that he will assist employees with minor work issues, but if it is more substantial or a policy driven situation, he would escalate it to management.

#### *Management Meeting Attendance/Training Recommendations*

Wright and Stump hold weekly meetings with the Facilities Leads. During these meetings, Wright and Stump provide the Facilities Leads with directives for the Facilities Leads to carry out within their teams. The Facilities Leads also provide updates to Wright and Stump on the progress of projects or other needs of their teams. Additionally, the Facilities Leads recommend training for the maintenance employees. Wright determines whether to allow the employees to complete the training based on the cost of the training and needs of the employees.

#### *Summary*

Jackson and Moug's current duties and authority demonstrate that the Facilities Lead position does not have the authority to make meaningful changes in the employees' employment relationship with the employer. Wright testified that the Facilities Leads have the independent judgment to plan and carry out the work in accordance with Stump and Wright's instructions, policies, and accepted practice. This independent authority is based on department practices and county policies. However, the record demonstrates that Jackson and Moug lack independent authority to hire, transfer, promote, layoff or recall, or discipline employees. They are only allowed to assign work to employees based on the work order requests that come into the department. They may approve leave only if there is enough coverage within that department. Wright has final signatory authority for issuing performance evaluations and issues formal discipline.

While a record may reflect that "lead workers" exercise some supervisory authority, there still must be a sufficient preponderance of supervisory duties to warrant their separation from the rank-and-file employees they lead. *Ronald Wastewater District*, Decision 9874-C, citing *City of Lynnwood*, Decision 8080-B. Monitoring the work of a fellow employee, even if done

constantly, is not enough to satisfy the “preponderance of time” standard. *City of East Wenatchee*, Decision 11371, *citing Inchelium School District*, Decision 11178. A lead worker’s authority might extend to evaluating a subordinate’s job performance because the lead worker is in the best position to observe that performance, but this activity does not automatically create a conflict of interest that would warrant a supervisory exclusion. *State – Fish and Wildlife*, Decision 10962 (PSRA, 2011), *citing City of Lynnwood*, Decision 8080-A, *aff’d*, Decision 8080-B.

Jackson and Moug are correctly identified as lead employees within the employer’s classification systems. They evaluate the daily work of the Facilities Specialists on their teams, and at times advise them of minor complaints or issues with the specialists’ completion of work. The continuous and informal evaluation of the work performed by the specialists on each Facilities Lead’s team helps Jackson and Moug assign work orders to individual specialists. These evaluations may be completed while Jackson and Moug are working side-by-side with the specialists on their team or after a complaint has been received. These activities do not rise to the level of a statutory supervisory exclusion of the Facilities Lead position from the bargaining unit.

Even where lead workers have the authority to direct subordinate employees in their daily job assignments, they generally do not have the authority necessary to make meaningful changes in the employment relationship. *Inchelium School District*, Decision 11178, *citing Grant County*, Decision 4501 (PECB, 1993). While Jackson and Moug may have the limited authority to assign work orders and approve leave, they lack authority to make meaningful changes to the employees’ relationship with the employer in discipline, hiring, promoting, layoff and recall, transferring, or issuing performance evaluations.

The record demonstrates that the Facilities Lead position does not perform a preponderance of supervisory duties. Unless the positions spend a preponderance of time performing supervisory duties, the Facilities Lead position should be included in the bargaining unit.

#### Application of Standards – Preponderance of Time

Wright, Moug, and Jackson testified that somewhere between 15 and 20 percent of the Facilities Lead workers day is attributable to coordinating work orders and assigning work. The other 80 to



85 percent of the Facilities Leads day includes supporting the specialists working in the field, working with contractors, providing technical assistance, making and responding to phone calls, placing purchase order requests, handling minor employee work issues, training, or interviews. The record demonstrates that approximately 15 percent of the Facilities Lead positions time is spent working shoulder-to-shoulder with specialists in the field.<sup>1</sup>

The union relies on *City of Lynnwood*, Decision 8080-A, *Chelan County*, Decision 667 (PECB, 1979), and *City of Buckley*, Decision 287-A (PECB, 1977), to define a lead worker. In *City of Lynnwood*, the lead workers had limited involvement in the hiring process, assigned work to employees in their division, participated in evaluations, and participated in informal counseling of employees. In *Chelan County*, the Executive Director held that lead workers “generally have duties involving hands-on work with the tools of the trade.” In *City of Buckley*, “employees who spent the majority of their workdays performing bargaining unit work were not excluded from the bargaining unit.”

The union argues that these cases stand for the proposition that the amount of time a position spends in the field with their subordinates should be determinative in establishing whether a position is a lead employee or a supervisor. The union asserts that because the Facilities Leads in the present case do not spend a majority of their time working out in the field shoulder-to-shoulder with the specialists, and most of their work is completed within their offices, their work constitutes supervisory work.

The union’s argument is incorrect. In *Chelan County* the position in question did work daily with the tools of the trade and that specific factor was used in determining that the position was classified as a “leadman.” However, working daily with the tools of the trade was not the sole factor used in determining the employee’s status as a “leadman.” The Executive Director found that the position worked alongside employees that were temporarily assigned to him, the position directed the work and set the pace of work, but his independent authority was limited.

---

<sup>1</sup> Moug testified that he spends 15% of the time working in the field, but later agreed to the attorney’s statement of 50% of the time working in the field. The record reflects that the amount of time the Facilities Leads work in the field is more closely set at 15%.

The *City of Buckley* is not applicable to the facts of this case. In that case, a Hearing Officer included two “Work Superintendents” in a nonsupervisory bargaining unit. Neither employee spent a preponderance of their time working in the field with the nonsupervisory employees. The employer challenged whether the two disputed employees qualified as public employees under the statute. The Commission affirmed the Hearing Officers conclusion that the disputed positions qualified as public employees under the Act. The Commission declined to address any arguments that the Work Superintendents were supervisors because that issue was not raised in the hearing below.

Whether a position spends a preponderance of the time working side-by-side with subordinate employees is one factor that may be considered in making a supervisory determination, but it is not a sole determinative factor. The determination of whether an employee possesses sufficient authority to be excluded from a rank-and-file bargaining unit as a supervisor is made by examining the actual duties and authority exercised by that individual. *Rosalia School District*, Decision 11523; *Morton General Hospital*, Decision 3521-B.

The present case is more similar to *City of Lynnwood* where the positions met the lead worker definition, not the supervisory definition, and were included within the bargaining unit. In that case, a disputed employee did not necessarily complete work shoulder-to-shoulder with all four employees that reported to him, and yet he was found to be a lead worker because he did not spend a preponderance of his time engaged in supervision of other employees nor did he have the authority to independently perform or make effective recommendations on a preponderance of the duties.

As stated earlier, Jackson and Moug do assign work to the specialists that report to them, participate in the interview process, assist employees with resolving minor work issues that do not result in discipline, approve leaves of absence, and sign off on time sheets. They do not complete work should-to-shoulder with the specialists that report to them for a majority of their work day, do not spend a preponderance of their time performing statutory supervisory duties, nor do they have the authority to independently perform or make effective recommendations on a preponderance of the duties. Jackson and Moug lack the authority to hire, promote, transfer,

layoff, recall, suspend, discipline, or discharge other employees, to adjust their grievances, or to recommend effectively such action.

The record lacks sufficient evidence to support that Jackson and Moug spend a preponderance of their time performing one or more of the statutory supervisor duties.

### Conclusion

The record demonstrates that the Facilities Maintenance Specialist, Lead position does not perform supervisory activities for a preponderance of work time. Since the positions also do not perform a preponderance of supervisory duties, the Facilities Maintenance Specialist, Lead position is appropriate to include in the bargaining unit.

### FINDINGS OF FACT

1. Clark County is a public employer within the meaning of RCW 41.56.030(12).
2. The Washington State Council of County and City Employees, Council 2 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. On May 15, 2013, and the parties agreed that the following bargaining unit description is an appropriate bargaining unit under RCW 41.56.060:

All full-time and regular part-time employees of the Clark County Facilities Management Department, excluding supervisors, confidential employees, employees in the Office Assistant job class, employees in other bargaining units and all other employees.

4. Although the parties agreed on the definition of the unit, the union contested the inclusion of the Facilities Maintenance Specialist, Lead position.
5. Curtis Jackson and Robert Moug are employed by Clark County as Facilities Maintenance Specialist, Leads.
6. The Facilities Maintenance Specialist, Lead does not have the authority to independently perform or make effective recommendations on a preponderance of the following types of

activities: hire, assign, promote, transfer, layoff, recall, suspend, discipline, discharge, or adjust grievances.

7. The Facilities Maintenance Specialist, Lead does not spend a preponderance of work time engaged in the supervision of subordinate employees.

#### 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. As described in Findings of Fact 6 and 7, the Facilities Maintenance Specialist, Lead position is a public employee under RCW 41.56.030(11) and is not a supervisor under RCW 41.59.020(4)(d) or WAC 391-35-340.

#### ORDER

1. The positions of Facilities Maintenance Specialist, Lead are not supervisory positions and are included in the petitioned-for bargaining unit described in Finding of Fact 3.
2. Processing of the above-captioned case is remanded to the Representation Case Administrator to process the challenged ballots in a manner consistent with this decision.

ISSUED at Olympia, Washington, this 23rd day of December, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, 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.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
THOMAS W. McLANE, COMMISSIONER  
MARK E. BRENNAN, COMMISSIONER  
MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 12/23/2013

The attached document identified as: **DECISION 11961 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ DEBBIE HOBBS

CASE NUMBER: 25493-E-13-03770 FILED: 02/25/2013 FILED BY: PARTY 2  
DISPUTE: QCR UNORGANIZED  
BAR UNIT: ALL EMPLOYEES  
DETAILS: -  
COMMENTS:

EMPLOYER: CLARK COUNTY  
ATTN: CLARK CO COMMISSIONERS  
1300 FRANKLIN ST  
PO BOX 5000  
VANCOUVER, WA 98666-5000  
Ph1: 360-397-2232

REP BY: DARRYL WALKER  
CLARK COUNTY PROSECUTING ATTORNEYS OFFICE  
PO BOX 5000  
VANCOUVER, WA 98666-5000  
Ph1: 360-397-2478

PARTY 2: WSCCCE  
ATTN: CHRIS DUGOVICH  
PO BOX 750  
EVERETT, WA 98206-0750  
Ph1: 425-303-8818

REP BY: BILL KEENAN  
WSCCCE  
PO BOX 750  
EVERETT, WA 98206-0750  
Ph1: 425-303-8818 Ph2: 360-438-7449

REP BY: AUDREY EIDE  
WSCCCE  
PO BOX 750  
EVERETT, WA 98206-0750  
Ph1: 425-303-8818 Ph2: 800-775-6418