

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS, LOCAL 763

Involving certain employees of:

PORT OF SEATTLE

CASE 26353-E-14-3855

DECISION 12190 - PORT

DIRECTION OF ELECTION

Reid, Pedersen, McCarthy & Ballew, L.L.P., by *David Ballew*, Attorney at Law,
for Teamsters, Local 763.

Mikel O'Brien, Labor Relations Manager, for the employer.

On March 19, 2014, Teamsters, Local 763 (union) filed a petition seeking to represent the Landside Supervisors in the Air Transit Operations Group (ATO Supervisors). The employer opposed the petition on two grounds. First, the employer claimed that the ATO Supervisors are “administrative personnel” as defined by RCW 53.18.010 and therefore are precluded from exercising collective bargaining rights under Chapter 53.18 RCW and Chapter 41.56 RCW. The employer also claimed that a bargaining unit consisting of ATO Supervisors would cause unnecessary fragmentation and a potential for a proliferation of bargaining units within its workforce. The employer argues that all of the Landside Supervisors within the Landside Department, not just the Landside Supervisors in the Air Transit Operations Group, should be included in a single bargaining unit. Neither party asserted that the ATO Supervisors were not supervisory employees. Hearing Officer Erin J. Slone-Gomez conducted a hearing on October 9, 2013, and the parties submitted post-hearing written arguments in support of their positions.

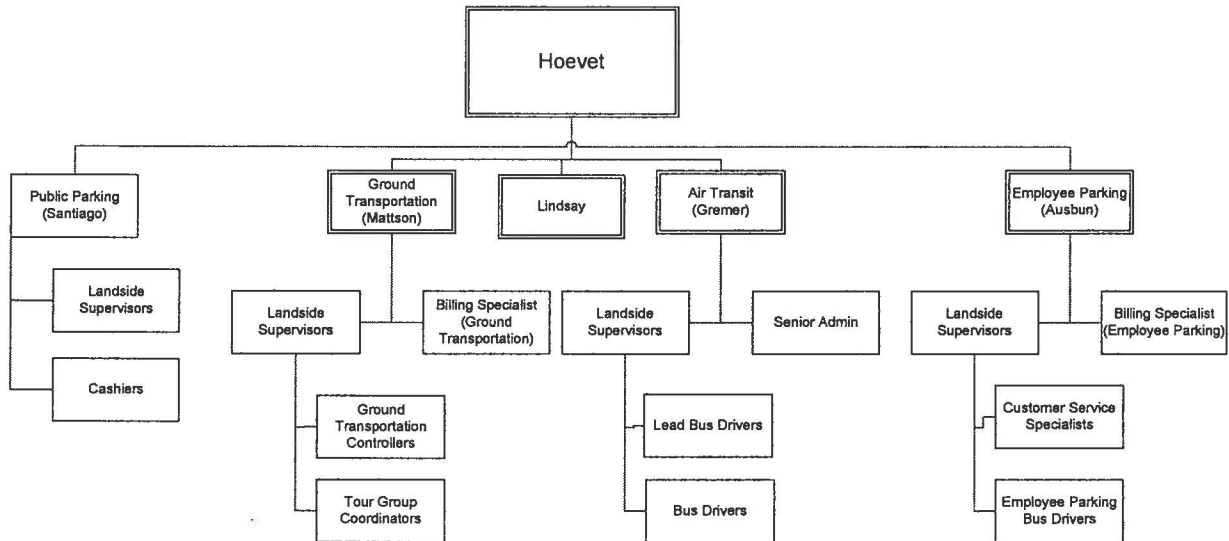
The first issue to be decided is whether the ATO Supervisors are administrative personnel as defined by RCW 53.18.010. If so, then they are not employees who are eligible to exercise collective bargaining rights under the statute and the petition should be dismissed. If the ATO Supervisors do not meet the administrative personnel exemption, then the question to be answered

is whether the bargaining unit configuration proposed by the union is appropriate under the statute. If the proposed configuration is appropriate, then the matter shall be remanded to the Representation Case Administrator for further processing. If the proposed configuration is not appropriate, then the petition must be dismissed.

The ATO Supervisors are not administrative employees within the meaning of RCW 53.18.010 because they are not responsible for the management and direction of the department or program within the employer's operation. The ATO Supervisors are mid-level employees who are not responsible for policy making but rather are responsible for implementing the policies enacted by those managers who are organizationally above them. Additionally, the proposed bargaining unit configuration is an appropriate bargaining unit under the statute because the petitioned-for employees share a community of interest and no work jurisdiction issues would be created under the proposed configuration. The matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

BACKGROUND

The employer's operation is comprised of three operating divisions: Seaport, Real Estate, and Aviation. The Aviation Division operates the Seattle-Tacoma International Airport and employs approximately 850 full-time employees. Within the Aviation Division is the Aviation Operations and Customer Service Section. The Aviation Operations and Customer Service Section has three primary areas of operation: Airfield, Terminal, and Landside. The Landside Department is lead by the Airport Operations/Landside Senior Manager, Jeff Hoebet. There are five different managers who report to the Airport Operations/Landside Senior Manager. These five managers are responsible for four different operating groups: Air Transit Operations, Public Parking, Ground Transportation, and Employee Parking. The Landside Department is organized as follows:



Each of the four groups within the Landside Department contains employees in the Landside Supervisor job class. The employer considers the Landside Supervisors, including the ATO Supervisors, to be supervisory employees. None of the Landside Supervisors are currently represented for purposes of collective bargaining. However, all of these employees were once included in a parking and ground transportation supervisors bargaining unit. *Port of Seattle*, Decision 5605 (PORT, 1996). That bargaining unit configuration, which was decertified in 2007, pre-dated the current structure of the Landside Operations Department. *Port of Seattle*, Decision 9800 (PORT, 2007).

Air Transit Operations

Air Transit Operations is responsible for providing transportation between the airport’s main terminal and the off-site rental car facility. Greg Gremer oversees Air Transit Operations. The petitioned-for ATO Supervisors work in Air Transit Operations.

The transportation services provided by Air Transit Operations are available 24 hours a day, seven days a week. There are three different job classes in this group, the ATO Supervisors, Lead Bus Drivers, and Bus Drivers. The Lead Bus Drivers are not represented. The Bus Drivers are represented by Teamsters, Local 117. Both of these job classes report to the ATO Supervisors.

The eight ATO Supervisors work primarily in the Air Transit Operations facility, at the passenger pick up areas, and on the buses that carry passengers between the airport terminal and rental car facility. The ATO Supervisors are responsible for the smooth operation of the transportation between the airport and the rental car facility. The ATO Supervisors do this by riding along with bus drivers and providing guidance and counseling, coordinating bus maintenance, communicating with other Port departments, and resolving customer service and employee issues. They are also responsible for scheduling the bus drivers and lead bus drivers, including approving leave. The ATO Supervisors are responsible for evaluating the bus drivers and lead bus drivers and are also involved in the grievance process. The ATO Supervisors sit on interview panels and rate potential candidates and have input, but not the final say, in the hiring process.

Public Parking, Ground Transportation, and Employee Parking

The other three groups in the Landside Department are the Public Parking, Ground Transportation and Employee Parking groups. There are six Landside Supervisors in the Public Parking Group, two in the Ground Transportation Group, and two in the Employee Parking Group.

The Public Parking Group is responsible for public parking at the airport. The employees in this group work in the airport's main parking terminal. There are two different job classes in this group, the Landside Supervisors and the Cashiers. The Cashiers report to the Landside Supervisors. The Cashiers are considered non-supervisory employees and are represented by Teamsters, Local 117.

The Ground Transportation Group is responsible for the orderly operation of ground transportation providers such as taxis, limos, and cruise buses. The employees in this group work primarily on the third floor of the airport's main parking terminal and a ground transportation lot. There are four different job classes in this job group, the Landside Supervisors, the Ground Transportation Controllers, the Tour Group Coordinators, and the Billing Specialists. The Ground Transportation Controllers and the Tour Group Coordinators report to the Landside Supervisors. The Billing Specialists report directly to the Ground Transportation Manager. Neither the Ground Transportation Coordinators nor the Billing Specialists are represented. The Tour Group Coordinators are represented by the International Longshore and Warehouse Union, Local 9.

The Employee Parking Group is responsible for providing parking to airport employees as well as transportation between the employee parking lots and other areas of the airport. There are four different job classes in this job group: the Landside Supervisors, the Customer Service Specialists, the Employee Parking Bus Drivers, and the Billing Specialists. The Landside Supervisors work primarily at the employee parking lot and on buses providing transportation for employees. The Customer Service Specialists and the Employee Parking Bus Drivers report to the Landside Supervisors. The Billing Specialists report directly to the Employee Parking Manager. Neither the Customer Service Specialists nor the Billing Specialists are represented. The Employee Parking Bus Drivers are represented by Teamsters, Local 117.

DISCUSSION

The Authorizing Statute Contains a Narrower Definition of Employee

Chapter 53.18 RCW grants employees at port districts the ability to organize and collectively bargain with their employer similar to other public employees within the state of Washington. As a collective bargaining statute, Chapter 53.18 RCW is remedial in nature and should be liberally construed to affect its purpose. *International Ass'n of Firefighters Local 469 v. Yakima*, 91 Wn.2d 101, 109 (1978).

When originally adopted, Chapter 53.18 RCW lacked many of the features of other state collective bargaining laws, such as unfair labor practice provisions and provisions authorizing enforcement of unfair labor practices through the courts. In 1983, the Legislature enacted RCW 53.18.015 to provide that the Public Employees Collective Bargaining Act, Chapter 41.56 RCW, governs the collective bargaining relationship unless there are differences between that chapter and the existing provisions of Chapter 53.18 RCW. Where differences occur, the provisions of Chapter 53.18 RCW shall apply.

One such difference between the two statutes is that the definition of employees eligible to exercise collective bargaining rights is narrower for port districts than under Chapter 41.56 RCW. RCW 53.18.010 excludes managerial, professional and administrative personnel from the

definition of employee and thus managerial, professional and administrative personnel working for the ports are not eligible to exercise collective bargaining rights.

Chapter 53.18 does not define “managerial, professional, and administrative personnel.” This agency has yet to interpret this exclusion. The employer raises this argument for the first time with respect to any of the Landside Supervisors. The employer did not raise the administrative personnel challenge when the Landside Supervisors were organized by the International Longshore and Warehouse Union, Local 9, in 1996 or when the unit was decertified in 2007. *Port of Seattle*, Decision 5605; *Port of Seattle*, Decision 9800.

The employer asserts the Landside Supervisors are administrative personnel who are excluded from exercising collective bargaining rights under RCW 53.18.010. In the absence of any interpretation of the exemptions contained in RCW 53.18.010, the employer argues by inference the language and interpretation of a similar exemption contained in the Washington Minimum Wage Act, RCW 49.46.010(3)(c), and the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201. The employer considers the Landside Supervisors to meet the administrative exemption in the Washington Minimum Wage Act and the federal Fair Labor Standards Act. The employer asserts that because the language in the Washington Minimum Wage Act and Fair Labor Standards Act predates the language in RCW 53.18.010, the legislature implied a similar application as the administrative exemption in the Washington Minimum Wage Act.

The union disagrees and argues that the employer’s interpretation is too broad and contrary to the mandate to construe any exclusions narrowly. *See, e.g., International Ass’n of Firefighters Local 469 v. Yakima*, 91 Wn.2d 101 (narrowly defining the confidential employee exclusion). The union also disagrees with the employer’s assertion that the Landside Supervisors meet the administrative exemption in either the Washington Minimum Wage Act or the Fair Labor Standards Act.

The ATO Supervisors are not Administrative Personnel under RCW 53.18.010

The ATO Supervisors do not meet the definition of administrative personnel under RCW 53.18.010 because the employees are not responsible for administering a department or program of

the employer's operation. Rather, the ATO Supervisors are mid-level employees responsible for executing the directions of other employees who are responsible for formulating the employer's operational policies.

Since this agency has yet to interpret the exclusions contained in RCW 53.18.010, the analysis must begin with the words used in the statute. When interpreting statutes administered by this agency, the meaning of the words used in a statute are given the full effect intended by the legislature. *State – Transportation*, Decision 8317-B (PSRA, 2005). The statute's subject matter and the context in which the word is used must also be considered. *Id*; *Chamberlain v. Department of Transportation*, 79 Wn. App. 212, 217 (1995). Statutes must be interpreted and construed so that all the language used is given effect and no portion is rendered meaningless or superfluous. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537 (1996).

Absent a specific definition, contrary legislative intent, or ambiguity, words in statutes are accorded their plain and ordinary meaning. *State v. Gonzalez*, 168 Wn.2d 256, 263 (2010). Statutes are not ambiguous merely because different interpretations are conceivable. *State – Transportation*, Decision 8317-B.

Administrative as used in RCW 53.18.010 is not ambiguous. "Administrative" is commonly defined as "of, belonging to, proceeding from, or suited to administration or an administration." Webster's Third New International Dictionary (Unabridged), 28 (1986). "Administration" can be defined several ways when used in relation to employment at a public entity such as a port district. "Administration" may be "performance of executive duties: management, direction, superintendence;" "the management of public affairs as distinguished from the executive or political function of policy making;" or "a body of persons who are responsible for managing a business or institution." *Id*.

When these ordinary definitions are examined within the context of RCW 53.18.010, a logical definition for "administrative" personnel are those employees who are responsible for the management and direction of the department or program at the port district. Managerial, professional and administrative employees are all high level employees who are responsible for

the operation of a port district. None of these terms are mutually exclusive. All three terms demonstrate intent to exclude the higher echelon employees of a port district from coverage of the act.

When these standards are compared to the duties performed by the ATO Supervisors, it is clear that the ATO Supervisors do not meet the administrative personnel exemption. The ATO Supervisors are not responsible for the administration of a program or department. They do not set policies and procedure. Instead, the ATO Supervisors implement the policies set forth by managers such as Hoevet and Gremer. The ATO Supervisors supervise and evaluate the front line bus drivers in the Air Transit Operations.

This interpretation of “administrative personnel” is not dissimilar to how a similar provision under the Washington Minimum Wage Act has been interpreted. The exemptions to the Washington Minimum Wage Act have been narrowly construed. *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 301 (2000). The administrative personnel exemption has been narrowly interpreted to apply to only persons who perform work of substantial importance to the management or operation of the business. *Fiore v. PPG Indus., Inc.*, 169 Wn. App. 325, 335-36 (2012), review denied, 175 Wn.2d 1027 (2012).

While the interpretations of “administrative personnel” under the Washington Minimum Wage Act and RCW 53.18.010 are not dissimilar, any interpretation of “administrative personnel” under RCW 53.18.010 must be applied within the context of RCW 53.18.015 and RCW 41.56.905 and the requirement for a liberal construction to effectuate its purpose. *See also Rose v. Erickson*, 106 Wn.2d 420, 424 (1986). In this case, the ATO Supervisors do not meet the definition of “administrative personnel” under RCW 53.18.010. That conclusion does not have any bearing on the employer’s conclusion that the ATO Supervisors are “administrative personnel” under the Washington Minimum Wage Act.

Because the ATO Supervisors are not administrative personnel who are excluded from exercising collective bargaining rights under RCW 53.18.010, the next step in the analysis is to determine whether the petitioned-for bargaining unit is an appropriate unit.

Is the Petitioned for Bargaining Unit Appropriate?

The determination of appropriate bargaining units is a function delegated to this agency by the Legislature. *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, *IAFF Local 1052 v. PERC*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). The goal in making bargaining unit determinations is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993). When making bargaining unit determinations, the Commission seeks to avoid fragmentation and potential work jurisdiction disputes. *King County*, Decision 6696 (PECB, 1999). Bargaining unit determinations are made on a case-by-case basis. *King County*, Decision 5910-A (PECB, 1997).

In making bargaining unit determinations, RCW 41.56.060(1) directs this agency to consider “the duties, skills and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.”¹ The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A. Not all of the factors will arise in every case, and where they do exist, any one factor could be more important than another, depending on the facts. *Renton School District*, Decision 379-A (EDUC, 1978), *aff'd*, *Renton Education Association v. PERC*, 101 Wn.2d 435 (1984).

When crafting bargaining units, this agency is not required to determine the “most” appropriate bargaining unit. Rather, it is only necessary that the petitioned-for unit be an appropriate unit. The fact that there may be other groupings of employees which would also be appropriate, or even more appropriate, does not require setting aside a unit determination. *City of Winslow*, Decision 3520-A (PECB, 1990).

¹ Although “desires of the employees” is one of the unit determination criteria listed in RCW 41.56.060, testimony under oath is an inherently coercive and inappropriate method for ascertaining the desires of employees. *Valley Communications Center*, Decision 4465-A (PECB, 1994). Unless an accretion is appropriate, the desires of employees are ascertained through the election process. *Central Washington University*, Decision 9963-B (PSRA, 2010).

The Petitioned-for Bargaining Unit is an Appropriate Unit

The ATO Supervisors share a community of interest. The ATO Supervisors are responsible for the smooth operation of the transportation between the airport and the rental car facility and supervise Lead Bus Drivers and Bus Drivers. They provide guidance and counseling to the Lead Bus Drivers and Bus Drivers, coordinate bus maintenance, and resolve customer service and employee issues. The ATO Supervisors primarily work at the passenger pick up areas in the Air Transit Operations facility. They also work on buses that carry passengers between the airport terminal and rental car facility.

The ATO Supervisors and Landside Supervisors are similarly compensated. Additionally, both groups are overtime-exempt, work approximately 37.5 hours per week, and receive the same salary. However, there is no overlap of work jurisdiction between the ATO Supervisors and the other Landside Supervisors in the Public Parking, Ground Transportation, and Employee Parking groups. The employees do not generally interact with one another and the other Landside Supervisors do not perform any of the work the ATO Supervisors perform, even on a temporary basis.

The employer argues that a bargaining unit of just the ATO Supervisors is an inappropriate bargaining unit because the ATO Supervisors share a community of interest with the other Landside Supervisors in the Landside Department. The employer also argues that allowing a bargaining unit of just the ATO Supervisors would excessively fragment the employer's workforce. It claims that the proposed bargaining unit is not a pure vertical configuration that encompasses all of the employees in a single department or branch. The employer also asserts that allowing the ATO Supervisors their own bargaining unit could create work jurisdiction issues with the Lead Bus Drivers who report to the ATO Supervisors and would also strand the Lead Bus Drivers. These arguments are not persuasive.

While the employer may have a preference for those employees to be organized horizontally in a single bargaining unit, the unit determination analysis examines whether the petitioned-for bargaining unit of just the ATO Supervisors is an appropriate bargaining unit. Although certain terms of employment for the ATO Supervisors and the other Landside Supervisors are similar and

may share a community of interest, the analysis of the other working conditions demonstrates the ATO Supervisors themselves also share a community of interest.

The employer's Landside Department workforce is already highly organized for purposes of collective bargaining. There are four different non-supervisory bargaining units with one in each work group. Furthermore, not all of the non-supervisory employees are represented. In the Ground Transportation Group, the Tour Group Coordinators are represented, but the Ground Transportation Controllers are not. In the Employee Parking Group, the Employee Parking Bus Drivers are represented, but the Customer Service Specialists are not. The record supports a finding that the Landside Department is already organized along the vertical lines of the four different work groups. While the employer may prefer to have all of the Landside Supervisors organized in a horizontal bargaining unit configuration, nothing in RCW 41.56.060 requires a horizontal configuration in this case.

The fact that the Lead Bus Drivers are not included does not render the petitioned-for unit of ATO Supervisors inappropriate. Supervisors are not included in the same bargaining units as the people they supervise. WAC 391-35-340. When the Teamsters, Local 117, organized the Bus Drivers in 2012, the employer specifically requested that the ATO Supervisors be excluded from the Bus Drivers bargaining unit as supervisory employees. Case 24763-E-12-3712.² The employer also requested that the Lead Bus Drivers be excluded from the Bus Drivers bargaining unit because they do not share a community of interest with the Bus Drivers bargaining unit. The parties agreed on those exclusions and the bargaining unit of Bus Drivers was certified to explicitly exclude the Lead Bus Drivers. *Port of Seattle*, Decision 11405 (PORT, 2012).

Without pre-judging whether the ATO Supervisors actually meet this agency's supervisory definition, it would be inappropriate for a "supervisory" bargaining unit of ATO Supervisors to include the non-supervisory Lead Bus Drivers. The employer cannot now use its previous request to exclude the Lead Bus Drivers as a shield against the organizing efforts of the ATO Supervisors.

² Administrative notice is taken of Case 24763-E-12-3712.

Finally the employer asserts that all of the Landside Supervisors were historically included in a single bargaining unit and that separating the ATO Supervisors is not supported by that bargaining history. *Port of Seattle*, Decision 5605 and *Port of Seattle*, Decision 9800. Although all of the Landside Supervisors may have once been included in a single bargaining unit, any bargaining history that attached to that unit dissolved once the unit was decertified and nothing requires the historical unit configuration to be maintained. *Washington State University*, Decision 9613-A (PSRA, 2007).

Conclusion

The ATO Supervisors are not administrative personnel as defined by RCW 53.18.010 and are eligible to exercise collective bargaining rights. Examination of the RCW 41.56.060 unit determination criteria demonstrates that a bargaining unit of the ATO Supervisors in an appropriate bargaining unit. Although the employer argues that there may be a more appropriate bargaining unit configuration for these employees, RCW 41.56.060 does not require this agency to certify the most appropriate bargaining unit. The statute only requires an appropriate bargaining unit, and the petitioned-for bargaining unit configuration meets this standard. This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

FINDINGS OF FACT

1. The Port of Seattle is a public employer within the meaning of RCW 53.18.010.
2. The Teamsters, Local 763, is a bargaining representative within the meaning of RCW 53.18.010.
3. The employer's operation is comprised of three operating divisions: Seaport, Real Estate, and Aviation. The Aviation Division operates the Seattle-Tacoma International Airport and employs approximately 850 full-time employees. Within the Aviation Division is the Aviation Operations and Customer Service Section.

4. The Aviation Operations and Customer Service Section has three primary areas of operation: Airfield, Terminal, and Landside. The Landside Department is lead by the Airport Operations/Landside Senior Manager, Jeff Hoevet. There are five different managers who report to the Airport Operations/Landside Senior Manager.
5. There are four different operating groups under the Airport Operations/Landside Senior Manager: Air Transit Operations, Public Parking, Ground Transportation, and Employee Parking.
6. Air Transit Operations is responsible for providing transportation between the airport's main terminal and the off-site rental car facility. There are three different job classes in this group, the ATO Supervisors, Lead Bus Drivers, and Bus Drivers. The Lead Bus Drivers are not represented. The Bus Drivers are represented by Teamsters, Local 117. Both of these job classes report o the ATO Supervisors.
7. The Public Parking Group is responsible for public parking at the airport and the employees work in the airport's main parking terminal. There are two different job classes in this group, the Landside Supervisors and the Cashiers.
8. The Ground Transportation Group is responsible for the orderly operation of ground transportation providers such as taxis, limos, and cruise buses and primarily work on the third floor of the airport's main parking terminal and a ground transportation lot. There are four different job classes in this job group, the Landside Supervisors, the Ground Transportation Controllers, the Tour Group Coordinators, and the Billing Specialists.
9. The Employee Parking Group is responsible for providing parking to airport employees as well as transportation between the employee parking lots and other areas of the airport. There are four different job classes in this job group, the Landside Supervisors, the Customer Service Specialists, the Employee Parking Bus Drivers, and the Billing Specialists. The Landside Supervisors primarily work at the employee parking lot and on buses providing transportation for employees.

10. The ATO Supervisors are not responsible for the administration of a program or department. They do not set policies and procedure. Instead, the ATO Supervisors implement the policies set forth by managers. The ATO Supervisors supervise and evaluate the front line bus drivers in the Air Transit Operations.
11. The ATO Supervisors are responsible for the smooth operation of the transportation between the airport and the rental car facility and supervise Lead Bus Drivers and Bus Drivers. They provide guidance and counseling to the Lead Bus Drivers and Bus Drivers and coordinate bus maintenance and resolve customer service and employee issues. The ATO Supervisors primarily work at the passenger pick up areas in the Air Transit Operations facility. They also work on buses that carry passengers between the airport terminal and rental car facility.
12. There is no interaction or overlap of work jurisdiction between the ATO Supervisors and the other Landside Supervisors in the Public Parking, Ground Transportation, and Employee Parking groups. The employees do not interact with one another and the other Landside Supervisors do not perform any of work the ATO Supervisors perform, even on a temporary basis.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 53.18 RCW, Chapter 41.56 RCW, and Chapter 391-25 WAC.
2. Based upon Findings of Fact 10 and 11, the ATO Supervisors described in Finding of Fact 6 are not administrative personnel within the meaning of RCW 53.18.010.
3. Based upon Findings of Fact 10 through 12, a bargaining unit of employees in the Landside Supervisors job class in the Air Transit Operations Group is an appropriate bargaining unit under RCW 41.56.060.

NOW, THEREFORE, it is

ORDERED

The representation petition filed by the Teamsters, Local 763, is REMANDED to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 29th day of October, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director

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



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

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /s/ MAJEL C. BOUDIA

CASE NUMBER: 26353-E-14-03855 FILED: 03/18/2014 FILED BY: PARTY 2
DISPUTE: QCR UNORGANIZED
BAR UNIT: SUPERVISORS
DETAILS: -
COMMENTS:

EMPLOYER: PORT OF SEATTLE
ATTN: ROBIN ROMEO
2711 ALASKAN WAY
PO BOX 1209
SEATTLE, WA 98111
romeo.r@portseattle.org
Ph1: 206-787-7963

REP BY: MIKEL OBRIEN
PORT OF SEATTLE
PO BOX 1209
SEATTLE, WA 98111
Ph1: 206-787-5730

PARTY 2: TEAMSTERS LOCAL 763
ATTN: SCOTT SULLIVAN
14675 INTERURBAN AVE S STE 305
TUKWILA, WA 98168
scott.sullivan@teamsters763.org
Ph1: 877-441-0763 Ph2: 206-441-0763

REP BY: DAVID BALLEW
REID MCCARTHY BALLEW LEAHY
100 W HARRISON ST
NORTH TOWER STE 300
SEATTLE, WA 98119-4143
Ph1: 206-285-3610