

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, DISTRICT LODGE 751

Involving certain employees of:

SPOKANE VALLEY FIRE
DEPARTMENT (SPOKANE VALLEY
FIRE DISTRICT 1)

CASE 127522-E-15

DECISION 12581 - PECB

DIRECTION OF ELECTION

Michael J. McMahon, Attorney at Law, Etter, McMahon, Lamberson, Van Wert & Oreskovich, P.C., for the Spokane Valley Fire Department.

Michael Robinson, Attorney at Law, Schwerin Campbell Barnard Iglitzin & Lavitt, LLP, for the International Association of Machinists and Aerospace Workers, District Lodge 751.

On August 3, 2015, the International Association of Machinists and Aerospace Workers, District Lodge 751 (union) filed a petition to represent the part-time and full-time utility persons, mechanics, and lead employees, including the Fleet Operations Supervisor, at the Spokane Valley Fire Department (employer or department). Although the parties agree that the mechanics and utility employees could constitute an appropriate bargaining unit, the parties disagree about the eligibility and inclusion of the Fleet Operations Supervisor. The employer argues the Fleet Operations Supervisor position is supervisory and should be excluded from the proposed bargaining unit. The union contends that the position does not meet this agency's supervisory standards and should be included in the proposed bargaining unit. Hearing Officer Elizabeth Snyder conducted a hearing on November 13, 2015, and January 8, 2016, and the parties filed post-hearing briefs to complete the record.¹

¹ The union's brief was 25 pages in length as required by WAC 391-25-350(4), but it had numerous lengthy footnotes containing both legal and factual arguments. If the content of the footnotes had been included in

The issue in this case is whether the Fleet Operations Supervisor is a supervisor under WAC 391-35-340 that should be excluded from the proposed non-supervisory bargaining unit. The Fleet Operations Supervisor does not perform a preponderance of the statutory supervisory duties or spend a preponderance of work time performing one or more of the supervisory activities. The Fleet Operations Supervisor does not exercise independent judgment by acting in the interest of the employer and does not have the authority to make meaningful changes in the employment relationship. The authority that the position exercises is similar to that of a lead worker as opposed to a supervisor. The Fleet Operations Supervisor shares a community of interest with the rest of the employees in the petitioned-for bargaining unit and should be included in the petitioned-for unit.

BACKGROUND

The employer's Maintenance Division maintains the department's vehicles and equipment. The maintenance operation consists of five total employees: the Fleet Operations Supervisor, two mechanics, and two utility persons. The Fleet Operations Supervisor oversees the division. He performs administrative functions and, on a limited basis, also performs many of the maintenance functions. The mechanics perform repair work on all of the department's vehicles and equipment. The utility persons are responsible for delivering supplies, equipment, and mail to the department's stations.

Prior to 2005 the maintenance operation was headed by the Maintenance Officer position. The incumbent was also an active firefighter and a captain in the department. The Maintenance Officer position was included in a non-supervisory firefighters bargaining unit represented by the International Association of Firefighters (IAFF).

In 2005 the employer eliminated the Maintenance Officer position and created the Fleet Operations Supervisor position to oversee the maintenance operation. Gordon Schoonmaker was hired for the

the body of the brief, the brief clearly would have exceeded the 25-page limit. While it is not clear that this was an overt attempt to evade the 25-page limit, the union is reminded of the Commission's admonition against using footnotes to evade page limits. *Northshore Utility District*, Decision 11267-A (PECB, 2012).

position in 2005 and has been the only employee to hold the position. Although the Fleet Operations Supervisor position assumed many duties previously performed by the Maintenance Officer, Schoonmaker has not performed firefighting duties and the position was not included in the IAFF's bargaining unit. The employer updated the Fleet Operations Supervisor's job description in 2007 and there have been no subsequent changes to the description.

The Fleet Operations Supervisor

The Fleet Operations Supervisor performs a myriad of duties. He serves as a parts handler, a service writer, an administrative secretary, and a general mechanic. The position's parts handler duties include receiving parts when they arrive, stocking those parts on shelves, and issuing work orders. The position's service writer duties include greeting customers when they bring their vehicles to the shop, recording the work to be accomplished, and providing estimates of the repair work. The Fleet Operations Supervisor also performs office-clerical work, such as data entry. The position enters orders for maintenance of the vehicles, reviews repair orders, and occasionally "turns wrenches" or does the actual manual repair of vehicles. When the Fleet Operations Supervisor performs maintenance work, that work is entered into the employer's FASTER program, which records the amount of time employees spend performing maintenance duties. None of the position's other work is similarly recorded.

The Fleet Operations Supervisor assigns work and provides instructions to the mechanics at the beginning of the workweek. The mechanics work on a 9/8 bi-weekly schedule, where they work four nine-hour days and one eight-hour day one week and only four nine-hour days the next week. Assignments are allocated based on the employees' schedules. If a mechanic is working a five-day workweek, that employee will receive the more time-consuming jobs. If a mechanic is working a four-day workweek, that employee will be assigned the smaller and shorter tasks. The utility persons' duties are regular, regimented, and require little supervision from the Fleet Operations Supervisor.

The Fleet Operations Supervisor also approves sick and vacation leave but does not have the authority to change an employee's scheduled working hours. For example, the mechanics requested that the Fleet Operations Supervisor ask the Fire Chief about changing to a 4/10 work

schedule, where the mechanics would work four days a week at 10 hours a day. The Fleet Operations Supervisor did not have the authority to approve the request, which was denied by the employer's administration.

The Fleet Operations Supervisor has minimal authority to evaluate employees. The incumbent has only completed four evaluations during his tenure. The Fleet Operations Supervisor has not promoted, transferred, laid off, or disciplined any employee since the position was created.

The position does not have independent authority to hire employees. In two instances when the employer hired mechanics, the Fleet Operations Supervisor worked with the Human Resources Director to create interview questions and a matrix to score the applicants. The Fleet Operations Supervisor participated in the interview along with the Deputy Chief of Support Services, the Human Resources Director, and a civil service examiner to rank the top three candidates. The Fire Chief interviewed the top three candidates and made the final hiring determination.

On average, the employer buys one or two fire trucks per year. The Fleet Operations Supervisor develops the specifications for fire trucks that are made-to-order for the department. This requires the Fleet Operations Supervisor to discuss details with firefighters to determine what they need on the fire trucks. The Fleet Operations Supervisor must also talk with vendors of items like engines and pumps to make sure that the department receives the correct parts.

The Northern Lakes Fire Department contracts with the employer for equipment maintenance services, and the Fleet Operations Supervisor coordinates those services with that department. The Fleet Operations Supervisor also handles the logistics and administration of fleet operations and maintenance for the Northern Lakes Fire Department's fire apparatuses.

DISCUSSION

Applicable Legal Standards

The creation and maintenance of appropriate bargaining units is a function of this agency. RCW 41.56.060. The purpose of this function is to ensure there is a community of interest among the

employees sufficient to enable them to bargain effectively with their employer. *Central Washington University*, Decision 9963-B (PSRA, 2010); *Quincy School District*, Decision 3962-A (PECB, 1993).

RCW 41.56.060(1) provides that this agency, in examining whether there is a community of interest, 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.” While each factor is considered in each case, no one factor dominates the others. See *King County*, Decision 5910-A (PECB, 1997). 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.

Again, this agency’s role is to determine whether there is a community of interest, not the best community of interest. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render the proposed configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015), citing *Snohomish County*, Decision 12071 (PECB, 2014), and *City of Winslow*, Decision 3520-A (PECB, 1990).

Generally, supervisors are not included in the same bargaining units as the people they supervise. WAC 391-35-340. The exclusion of supervisors from the bargaining units of their rank-and-file subordinates is presumed appropriate when they exercise authority on behalf of the employer over subordinate employees, and any such exclusion avoids a potential for conflicts of interest. *Id.* 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 (PSRA, 2012), 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 the affected 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 (PECB, 2012).

The Commission distinguishes supervisors from employees who are "lead workers." Lead workers are not excluded from a subordinate bargaining unit. *City of Lynnwood*, Decision 8080-A. The lead worker may have limited discretionary authority in administrative matters or to direct subordinates in daily job assignments. However, the lead worker does not have independent authority to make meaningful changes in the employment relationship which is the hallmark of supervisory status. *Id.*; *Grant County*, Decision 4501 (PECB, 1993).

A supervisory employee is any employee whose *preponderance* of actual duties includes the independent authority "to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action" RCW 41.59.020(4)(d); *see also Granite Falls School District*, Decision 7719-A (PECB, 2003).

"Preponderance" can be met in two different ways. An employee may be a supervisor if he or she spends a preponderance of his or her 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 he or she spends less than a preponderance of his or her time performing supervisory activities but performs 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 the employee's title or job description. *Rosalia School District*, Decision 11523; *Morton General Hospital*, Decision 3521-B (PECB, 1991).

Application of Standards

The disputed Fleet Operations Supervisor position does not have independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. The position performs neither a preponderance of the statutory supervisory duties nor supervisory duties for a preponderance of time worked. Rather, the position is a lead worker for the purpose of the collective bargaining law.

The employer argues that, based on the Fleet Operations Supervisor job description, the incumbent performs supervisory duties for a preponderance of his working time. The employer claims that several regularly performed duties—such as supervising the department's equipment and maintenance program, reviewing and evaluating reports of subordinates, providing technical assistance or direction, and supervising the Maintenance Division staff as well as ensuring their competence to perform their required duties—are all indicia that the position is supervisory. However, supervisory status is determined by examining the actual duties and authority of a position as opposed to what is stated in the job description. The employee's duties must be examined in the context of how they are actually performed in order to determine whether the position possesses sufficient authority to be excluded from the rank-and-file bargaining unit as a supervisor. *Newport Hospital*, Decision 11197-A (PECB, 2012), citing *Morton General Hospital*, Decision 3521-B.

The Fleet Operations Supervisor possesses the authority to approve employee sick leave and vacations. However, the position lacks the authority to change the scheduled working hours of the employees. The position has minimal influence over the assignment of duties for the mechanics in the shop. Work assignments are based on the mechanics' weekly work schedules. The Fleet

Operations Supervisor meets with the mechanics each morning for about 20 minutes to check in and answers questions throughout the day.

The Fleet Operations Supervisor has minimal authority to evaluate employees. The position rarely evaluates employees and the incumbent testified that he has only completed four evaluations during his tenure in the position. While the evidence demonstrates that the Fleet Operations Supervisor evaluates new employees after their first year of employment, there is no evidence demonstrating that the Fleet Operations Supervisor's evaluations have any meaningful impact on the employees' employment relationship. This stands in contrast to the evaluation authority found in *City of Lakewood*, Decision 12453 (PECB, 2015). In that case the employees, who were found to be supervisors, not only evaluated employees but also had the authority to accelerate or slow down the attainment of step increases based upon the evaluations. *Id.*

The current Fleet Operations Supervisor has not promoted, transferred, laid off, or disciplined any employee since the position was created. The position lacks the independent authority to hire new employees. There is no evidence demonstrating that the Fleet Operations Supervisor has been granted the authority to make independent decisions in these areas or that the position has the authority to recommend effectively a course of action.

Furthermore, the Fleet Operations Supervisor's lack of independent hiring authority is similar to the lack of authority found in *City of Pasco*, Decision 12212 (PECB, 2014), and *King County*, Decision 12079 (PECB, 2014). In *City of Pasco* the petitioned-for police sergeants participated in interviews and made recommendations about hiring new employees but ultimately the chief of police made the final hiring decisions, and the police sergeants were deemed not to be supervisors. Similarly, in *King County* the Senior Appraiser positions in the Residential Division helped conduct interviews and score applicants based on a predetermined scoring guide that they helped create, but they did not have the authority to make the final hiring decisions.

The Fleet Operations Supervisor also does not spend a preponderance of his time performing supervisory duties. The position spends only about 30 minutes a week scheduling employee leave

and approximately 20 minutes a week distributing work orders to the mechanics. During the rest of his working time, the Fleet Operations Supervisor performs other, non-supervisory duties.

The employer argues that based on the hours recorded in the FASTER program, the Fleet Operations Supervisor spends a limited amount of time performing mechanical, non-supervisory work. According to reports generated by the program, Schoonmaker spent just 4.9 percent of his time working as a mechanic in 2013 and only 4.6 percent of the time working as a mechanic in 2014. These reports are generated based on input entered by the employees. Schoonmaker testified that many of his duties are not entered into the FASTER program, such as the administrative secretarial work or maintenance record-keeping work. Although Schoonmaker was not able to accurately recall the amount of time he actually spends on particular duties per week, the record does not support a finding that he spends a preponderance of his time performing supervisory duties.

Finally, the record does not support the employer's argument that the Fleet Operations Supervisor's expertise in other duties, such as budgeting and purchasing, demonstrates that the position lacks a community of interest with the other maintenance employees. All of the employees in the Maintenance Division perform the spectrum of maintenance duties. Although the Fleet Operations Supervisor is the only employee that performs the division's budget and purchasing work, these duties are nevertheless associated with vehicle and equipment maintenance. The Fleet Operations Supervisor also performs the same maintenance duties as the mechanics on a limited basis. Excluding the position from the non-supervisory bargaining unit would create work jurisdiction issues.

Conclusion

The Fleet Operations Supervisor is not a supervisor within the meaning of Chapter 41.56 RCW and WAC 391-35-340. The position shares a community of interest with the other employees in the Maintenance Division. This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

FINDINGS OF FACT

1. The Spokane Valley Fire Department (employer or department) is a public employer within the meaning of RCW 41.56.030(12).
2. The International Association of Machinists and Aerospace Workers, District Lodge 751 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. On August 3, 2015, the union filed a petition to represent the part-time and full-time utility persons, mechanics, and lead employees, including the Fleet Operations Supervisor.
4. The mechanics perform repair work on all of the department's vehicles and equipment. The utility persons are responsible for delivering supplies, equipment, and mail to the department's stations.
5. The Fleet Operations Supervisor oversees the division. He performs administrative functions and, on a limited basis, also performs many of the maintenance functions.
6. The Fleet Operations Supervisor performs a myriad of duties. He serves as a parts handler, a service writer, an administrative secretary, and a general mechanic.
7. The Fleet Operations Supervisor develops the specifications for fire trucks that are made-to-order for the department. This requires the Fleet Operations Supervisor to discuss details with firefighters to determine what they need on the fire trucks. The Fleet Operations Supervisor must also talk with vendors of items like engines and pumps to make sure that the department receives the correct parts.
8. The Fleet Operations Supervisor possesses the authority to approve employee sick leave and vacations. However, the position lacks the authority to change the scheduled working hours of the employees.

9. The position has minimal influence over the assignment of duties for the mechanics in the shop. Work assignments are based on the mechanics' weekly work schedules. The Fleet Operations Supervisor meets with the mechanics each morning for about 20 minutes to check in and answers questions throughout the day.
10. The Fleet Operations Supervisor has minimal authority to evaluate employees.
11. The current Fleet Operations Supervisor has not promoted, transferred, laid off, or disciplined any employee since the position was created.
12. The position does not have independent authority to hire employees. In two instances when the employer hired mechanics, the Fleet Operations Supervisor worked with the Human Resources Director to create interview questions and a matrix to score the applicants. The Fleet Operations Supervisor participated in the interview along with the Deputy Chief of Support Services, the Human Resources Director, and a civil service examiner to rank the top three candidates. The Fire Chief interviewed the top three candidates and made the final hiring determination.
13. The Fleet Operations Supervisor does not spend a preponderance of his time performing supervisory duties. The position spends only about 30 minutes a week scheduling employee leave and approximately 20 minutes a week distributing work orders to the mechanics. During the rest of his working time, the Fleet Operations Supervisor performs other, non-supervisory duties.

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 5 through 13, the Fleet Operations Supervisor is a public employee under RCW 41.56.030(11) and is not a supervisor under WAC 391-35-340 or as described in RCW 41.59.020(4)(d).

ORDER

This matter is remanded to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 2nd day of June, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Michael P. Sellars", is written over the printed name.

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 391-25-590.



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RECORD OF SERVICE - ISSUED 06/02/2016

DECISION 12581 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:


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