

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES

For clarification of an existing bargaining
unit of employees of:

CITY OF EAST WENATCHEE

CASE 24179-C-11-1460

DECISION 11371 - PECB

ORDER CLARIFYING
BARGAINING UNIT

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

Devin Poulson, City Attorney, for the employer.

On August 10, 2011, Washington State Council of County and City Employees, Local 846-W (union) filed a unit clarification petition seeking to include the position of Associate Engineer in the existing bargaining unit. The union represents a bargaining unit of employees employed by the City of East Wenatchee (employer) that was certified by the Commission. The bargaining unit is currently certified to include:

All full-time and regular part-time employees of the City of East Wenatchee, excluding supervisors, confidential employees and police department employees.

City of East Wenatchee, Decision 10367 (PECB, 2009).

The Associate Engineer position is currently occupied by Brandon Mauseth. The employer contested the petition on the basis that Mauseth is a supervisory employee. On November 7, 2011, Hearing Officer Kristi Aravena conducted a hearing, and the employer and the union filed post-hearing briefs for consideration.

ISSUES PRESENTED

1. Was the union's petition timely filed?
2. Should the position of Associate Engineer be excluded from the bargaining unit based on supervisory status?

The petition is timely filed under WAC 391-35-020(2) and (4) because the record reflects that the union raised the issue of the Associate Engineer's supervisory status during bargaining with the employer. Although the record demonstrated that the Associate Engineer position has some supervisory authority, this authority is similar to that of a lead worker, as opposed to a supervisor. Therefore, the position is included in the unit.

ISSUE 1: Was the Petition Timely Filed?Applicable Legal Standard

WAC 391-35-020 governs the timing for filing unit clarification petition, and states in part:

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

(a) The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.

...
 LIMITATIONS ON RESULTS OF PROCEEDINGS

...
 (4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

(a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions;
 or

(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions...

Analysis

Brandon Mauseth began working for the employer in 2006 as an associate planner. Mauseth became Public Works Director in 2007. As Public Works Director, Mauseth was excluded from the bargaining unit as a supervisor. In March 2010, Don McGahuey began working for the City as Public Works Director and City Engineer. As that time, Mauseth assumed his current role as Associate Engineer.

In February 2011, during negotiations for the 2011-13 collective bargaining agreement, the union notified the employer that it would file a unit clarification petition to include the Associate Engineer position in the bargaining unit. The union filed its petition in August 2011 and signed the 2011-2013 collective bargaining agreement in September 2011.

The union's petition is timely for two reasons. First, the union put the employer on notice during contract negotiations in February 2011 that it contested the exclusion of the Associate Engineer position, and it filed its unit clarification petition before the current collective bargaining agreement was signed in September 2011. Second, the petition is timely under WAC 391-35-020(4)(b) because excluding the Associate Engineer position from the unit that contains "all . . . employees" of the employer would result in the position being stranded.

ISSUE 2: Is the Associate Engineer Position a Supervisor?

Applicable Legal Standards

WAC 391-35-340 provides for the exclusion of supervisors from bargaining units containing their rank and file subordinates. The purpose of the rule is to avoid the potential for conflicts of interest created by including a supervisor who is acting on behalf of his or her employer in the same bargaining unit as the employees he or she supervises. *City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff'd*, Decision 8080-B (PECB, 2006).

Chapter 41.56 RCW does not define supervisor, so the Commission traditionally looks to the definition of supervisor set forth in RCW 41.59.020(4)(d). *Granite Falls School District*, Decision 7719-A (PECB, 2003). According to that definition, a supervisor is:

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.

RCW 41.59.020(4)(d).

“Preponderance” as used in the definition of supervisor can be met in two ways. First, if an employee spends a preponderance of his or her time performing one or more of the supervisory activities, that employee is a supervisor. *Inchelium School District*, Decision 11178 (PECB, 2011); *Richland School District*, Decision 10151 (PECB, 2008). Second, an employee who spends less time performing supervisory activities but performs a preponderance of the type of supervisory activities enumerated in RCW 41.59.020(4)(d) may also be considered to be a supervisor. *Inchelium School District*, Decision 11178; *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. *Morton General Hospital*, Decision 3521-B (PECB, 1991).

For all supervisory duties, it is important that the supervisor acts with independent judgment and does not simply carry out the decisions of a supervisor. Monitoring the work of a fellow employee, even if done constantly, is not enough to satisfy the “preponderance of time” standard. *Inchelium School District*, Decision 11178.

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. *City of Lynnwood*, Decision 8080-A; *Grant County*, Decision 4501 (PECB, 1993).

APPLICATION OF STANDARD

Preponderance of Time

With respect to the question of whether the Associate Engineer spends a preponderance of his time performing supervisory duties, the record demonstrates the following:

Mauseth started working for the City of East Wenatchee in 2006. From approximately 2007 until March 2010, Mauseth was hired as the Public Works Director. In March of 2010, Don McGahuey was hired to replace Mauseth as the Public Works Director. McGahuey was hired as a “three-quarters” employee, meaning McGahuey only works 1,500 hours a year. Mauseth works 8 a.m. to 5 p.m., Monday through Friday. Due to his three-quarters schedule, McGahuey is absent from work on Fridays, and leaves work early on other days.

In McGahuey’s absence, Mauseth acts as the Public Works Director. Mauseth testified that, while acting as the Director, he has the authority to make decisions affecting the Public Works Department. However, Mauseth also testified that unless a decision was time sensitive, he was likely to leave major decision making to McGahuey.

The limited time Mauseth “acts” on McGahuey’s behalf filling in for the Director is insufficient to satisfy the “preponderance” of time test. Acting for the Director is only a limited part of Mauseth’s actual duties, and this limited time must be considered in aggregate with the time he carries out his normal responsibilities as the Associate Engineer. The facts demonstrate that Mauseth spends the majority of his time managing storm water activities, not supervising employees.

Mauseth testified that he interacts with other employees 6-10 hours in the field and 8-15 hours in the office per month regarding storm water activities and also a few times a year during those times that there may be an emergency situation. The testimony fails to establish that this time was actually spent supervising employees in a manner consistent with the legal standard announced above.

Finally, Mauseth's testimony that he leaves major decisions until McGahuey returns demonstrates that he does not generally exercise independent judgment while acting as the Public Works Director. This fact clearly indicates that Mauseth's duties as Acting Director more closely resemble those of an employee who monitors employees while temporarily acting in a supervisory capacity, and not those of a supervisor as defined by Chapter 41.56 RCW.

Taken as a whole, the record fails to establish that Mauseth spends a majority of his time supervising employees.

Preponderance of Duties

With respect to the question of whether the preponderance of the Associate Engineers duties are supervisory in nature, the record demonstrates the following:

Hiring/Transfer/Promotions/Layoff and Recall - The Associate Engineer has recommended that one employee be hired for a permanent position. Mauseth testified he does not believe he has the authority to hire employees, that only McGahuey and the mayor have that authority. Although Mauseth may be asked to give input on hiring/transfer/promotions/layoff and recall, final authority lies with the Director.

Assignment of Work - The Associate Engineer's primary responsibility is managing all storm water activities. The Associate Engineer spends anywhere from 50 percent to 80 percent of his time managing storm water activities. This responsibility requires Mauseth to be knowledgeable of applicable rules and regulations, recognize the need for special projects (4-5 per year), bill projects to appropriate income sources, and procure grants. Although the Associate Engineer has

the authority to assign and prioritize work for storm water activities, the assignment of work to the various maintenance crews primarily comes from the Operations and Maintenance Supervisor (OMS). Mauseth does not regularly work the same hours as the work crews or the OMS who meets with the work crew in the morning to inform them of the projects they will be working on that day. While Mauseth has the ability to assign work and coordinate subordinates' daily job assignments, this authority is similar to that of a lead worker, as Mauseth does regularly make meaningful changes to subordinates' work assignments.

Suspend/Discipline/Discharge - Mauseth testified that he has never suspended, disciplined or discharged an employee. Although Mauseth stated that he may be asked to make a recommendation regarding these types of personnel decisions, the Associate Engineer does not have the authority to make those types of decisions independently.

Adjustment of Grievances - Mauseth may be asked to make a recommendation or provide clarifying information regarding a grievance, but ultimately the authority to make a decision is with the Director.

Requests for Vacation/Time off - Normally Mauseth does not approve time off or leave requests for the Operations and Maintenance employees. Although Mauseth testified that he has the authority to sign leave slips when acting as the Public Works Director, he stated that he would leave that duty to the Director unless the matter is time sensitive.

Independent Judgment - Mauseth uses independent judgment for a majority of the Associate Engineer duties. However, Mauseth does not exercise independent judgment in making the decision to hire, transfer, promote, layoff or recall employees. Mauseth also does not exercise independent judgment to suspend, discipline, discharge other employees, when making recommendations for adjustment of grievances, or approving time off. Accordingly, Mauseth acts in the capacity of a lead worker, and not a supervisor, because he does not have the independent authority to make meaningful changes to the employment relationship of subordinate employees.

Conclusion

The record demonstrates that Mauseth is a leadworker, not a supervisor. The Associate Engineer does not have the independent authority to promote, transfer, layoff, recall, suspend or discharge employees, or adjust employee grievances. Although the Associate Engineer may have the authority of a supervisor while standing in for the Director and during the 4-6 special storm water projects, the time spent on such activities does not meet the preponderance test for supervisory duties.

FINDINGS OF FACT

1. City of East Wenatchee is a public employer within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The parties were bargaining a contract from January 1, 2011, to December 1, 2013. That agreement was signed in September 2011.
4. In February 2011, the union notified the employer that it would file a unit clarification petition to include the Associate Engineer position.
5. On August 12, 2011, the union filed a petition to include the Associate Engineer position.
6. The Associate Engineer position does not spend a preponderance of work time engaged in the supervision of other City of East Wenatchee employees.
7. The Associate Engineer position does not have the authority to independently perform or make effective recommendations on a preponderance of the following types of duties: hire, assign, promote, transfer, layoff, recall, suspend, discipline, discharge, or adjust grievances.

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 3, the Washington State Council of County and City Employee's petition for unit clarification regarding the position of Associate Engineer was timely filed within the meaning of WAC 391-35-020(4).
3. As described in Finding of Fact 4, the Associate Engineer is a public employee within the meaning of RCW 41.56.030(2) and is not a supervisor under RCW 41.59.020(4)(d) or WAC 391-35-340.

ORDER

The Associate Engineer is included in the bargaining unit involved in this proceeding. The bargaining unit described in *City of East Wenatchee*, Decision 10367 (PECB, 2009), is clarified to include the Associate Engineer position.

ISSUED at Olympia, Washington, this 14th day of May, 2012.

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

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


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