

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the joint petition of:

CITY OF TACOMA

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 483

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, LODGE 160

For clarification of an existing
bargaining unit.

CASE 25677-C-13-1552

DECISION 11999 - PECB

ORDER CLARIFYING
BARGAINING UNIT

Alice A. Phillips, Business Manager, for International Brotherhood of Electrical Workers, Local 483.

Robert Westbrook, Business Representative, for International Association of Machinists and Aerospace Workers, Lodge 160.

Cheryl A. Comer, Assistant City Attorney, for the employer.

The City of Tacoma (employer) created an in-house training program to educate and develop Wastewater Treatment Plant Operators (WWTP Operators). WWTP Operators service and maintain the employer's wastewater treatment plants. Training for these employees was previously performed through a technical training program at the Green River Community College. The college discontinued that program several years ago. The employer recognized that it needed to establish a training program and created a new Wastewater Treatment Plant

Operator-in-Training (WWTP Operator-in-Training) position to train and educate employees to become WWTP Operators.

The new WWPT Operator-in-Training position replaces the existing Wastewater Treatment Plant Assistant (WWTP Assistant) positions in the employer's wastewater treatment operation. The WWTP Assistant positions assist the skilled maintenance positions by repairing and cleaning equipment, tools, buildings, grounds and related facilities. The WWTP Assistant job class works at departments and sections of the employer's operation. Those positions would not be replaced by the newly created WWTP Operator-in-Training positions.

The International Brotherhood of Electrical Workers, Local 483 (IBEW) and the International Association of Machinists and Aerospace Workers, Lodge 160 (Machinists) each represent employees working at the employer's wastewater treatment plants.¹ The IBEW represents the employees in the WWTP Operator and WWTP Senior Operator job classes. Those positions are part of the IBEW's Water Pollution Control bargaining unit. The Machinists represent the employees in the WWTP Assistant job class at the WWTP. Those employees are part of the Machinist's General bargaining unit. The Machinists also represent employees in the WWTP Assistant job class that are not part of the employer's wastewater treatment operation.

The parties jointly filed this petition seeking to clarify the appropriate bargaining unit for the new WWTP Operator-in-Training positions. 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 issue in this case is whether the newly created WWPT Operator-in-Training positions share a community of interest with the WWTP Operator and WWTP Operator Senior positions in the IBEW's bargaining unit or with the WWTP Assistants in the Machinist General bargaining unit. The WWTP Operator-in-Training positions share a community of interest with the WWTP

¹ Neither bargaining unit was certified by this Commission. However, the at-issue employees were subject to a previous unit clarification petition filed in 1998.

Operator and WWTP Operator Senior positions. Accordingly, it is appropriate to include the Operator-in-Training positions in the IBEW's bargaining unit.

BACKGROUND

The employer's Environmental Services Department is responsible for protecting the environmental quality of the employer's territories. Included within the Environmental Services Department is the Operations & Maintenance Division. The Operations & Maintenance Division is divided into three sections, the Sewer Transmission Management Group, the Sewer Plant/Pump Station Maintenance Management Group and Wastewater Treatment Operations. This case focuses on the employees in the Wastewater Treatment Operations Section.

The Wastewater Treatment Operations Section is responsible for maintaining two wastewater treatment plants. Three primary job positions are responsible for maintaining the plants: WWTP Operator, WWTP Senior Operator, and WWTP Assistant. The WWTP Operator and WWTP Operator Senior job classes perform the skilled maintenance on the wastewater treatment plants and are also responsible for maintaining operating conditions by measuring and interpreting biological and chemical processes. The WWTP Operator job class requires a Washington State Department of Ecology Group I certification to perform their duties. The Group I certification means that the employee has met the state mandated education and experience requirements and has passed an exam certifying the employee as competent to operate the wastewater equipment.²

The WWTP Assistant positions assist the skilled maintenance positions by repairing and cleaning equipment, tools, buildings, grounds and related facilities. The WWTP Assistant job class is currently included in two sections of the Operations & Maintenance Division: the Sewer Plant/Pump Station Maintenance Management Group and the Wastewater Treatment Operations Section. The WWTP Assistants in the Wastewater Treatment Operations Section are not required to have the same certifications as the WWTP Operators and are therefore not qualified to perform

² The WWTP Operator Senior job class requires a Group III certification.

many of the tasks that the WWTP Operators perform. The WWTP Assistants could not promote to the WWTP Operator job class without the proper certification.

The WWTP Operator and WWTP Senior Operator job classes are represented by the IBEW. The WWTP Assistants in the Wastewater Treatment Operations are represented by the Machinists. The Machinists also represent employees in the WWTP Assistant job class in the Sewer Plant/Pump Station Maintenance Management Group.

The employer's current WWTP Operators received their training through various local programs, including a program at the Green River Community College. The programs provided employees with enough education and training to test for the Group I certification that allowed the employees to be a WWTP Operator. Many of the local programs, included in the Green River program, were discontinued and the employer had no reliable method of training their WWTP Operators.

When the Green River training program closed, the employer was not able to recruit qualified applicants to fill vacancies in the WWTP Operator job class. The employer began discussions with IBEW as to how to most appropriately address the change in circumstances resulting from the Green River closure. The employer created the WWTP Operator-in-Training position, which is essentially an in-house apprenticeship program for the WWTP Operator job class. The WWTP Operator-in-Training position replaces the WWTP Assistant positions in Wastewater Treatment Operations. The WWTP Operator-in-Training position is unique to Wastewater Treatment Operations; a similar position does not exist in the Sewer Plant/Pump Station Maintenance Management Group.

When the employer created the WWTP Operator-in-Training position, it refocused the position to provide the appropriate development experiences for the WWTP Operator-in-Training positions to promote to WWTP Operators. The employer also incorporated some of the duties of the WWTP Assistant position that those positions performed in Wastewater Treatment Operations.

ISSUE

Do the newly created WWPT Operator-in-Training positions share a community of interest with the WWTP Operator and WWTP Operator Senior positions in the IBEW bargaining unit or do they share a community of interest with the WWTP Assistants in the Machinist General bargaining unit?

Conclusion

The duties, skills and working conditions and the extent of organization in the employer's workforce demonstrate that the WWPT Operator-in-Training positions share a community of interest with the WWTP Operator and WWTP Operator Senior positions in the Wastewater Treatment Operations Section. The duties performed by the WWPT Operator-in-Training positions are part of a continuum of duties associated with the operation and maintenance of the employer's wastewater treatment plants. The WWTP Operator Senior positions share common working conditions with the WWTP Operator and WWTP Operator Senior positions and employees in the WWPT Operator-in-Training may expect to promote to the WWTP Operator-in-Training position. Accordingly, the WWTP Operator-in-Training position should be included in the IBEW's Water Pollution Control bargaining unit.

ANALYSIS

Applicable Legal Standards

The implementation of the right of public employees to join and be represented by labor organizations is the intent and purpose of Chapter 41.56 RCW. *Nucleonics Alliance, Local Union No. 1-369, Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984); RCW 41.56.010. Chapter 41.56 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).

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 under Chapter 41.56 RCW 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.”³ The criteria are not applied on a strictly mathematical basis. *King County*, Decision 5910-A (PECB, 1997). 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).

Application of Standards⁴

The employer and IBEW contend that the WWTP Operator-in-Training positions are appropriately grouped with the WWTP Operator and WWTP Operator Senior positions that are

³ 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).

⁴ None of the parties have challenged the timeliness of the petition. WAC 391-35-020 governs the time at which a unit clarification petition can be filed. A unit clarification petition may be filed at any time with regard to a dispute concerning newly created positions. A party may also file a petition asking this agency to review the continued appropriateness of the bargaining unit following a recent change of circumstances.

In this case, the City of Tacoma has recently created a new classification, the WWTP Operator-in-Training position. All parties agree that this job class is new to the employer’s workforce even though the new classification performs some duties of the WWTP Assistant position in the Wastewater Treatment Operation. Additionally, the creation of the WWTP Operator-in-Training positions was prompted by the closure of the Green River Community College training program, the corresponding lack of qualified applicants for vacant WWTP Operator positions, and the creation of in-house training program. Finally, all three parties have jointly filed this petition and there have been no objections to this agency’s determination of the appropriate bargaining unit for the WWTP Operator-in-Training positions.

represented by IBEW. In their opinions, the WWTP Operator-in-Training positions are the starting point for the WWTP Operator positions. Both point out that the WWTP Operator-in-Training and the WWTP Operator work side-by-side performing many of the same tasks on the same equipment.

The Machinists believe that the WWTP Operator-in-Training positions continue to perform the same duties that the WWTP Assistant positions performed in the Wastewater Treatment Operations Section and therefore that work remains part of the Machinists' historical work jurisdiction. The Machinists also argue that even with new duties, the WWTP Operator-in-Training positions will continue to share a community of interest with the IAM bargaining unit.

Duties, Skills and Working Conditions –

The primary duties of the WWTP Operator-in-Training position are to assist the WWTP Operator job class with the operation and maintenance of the wastewater treatment plants. The positions work exclusively with WWTP Operators in the Wastewater Treatment Operations Section. The position is responsible for cleaning equipment and performing preventative maintenance. The WWTP Operator-in-Training is also responsible for performing laboratory sampling and testing and providing emergency support at the employee's assigned facility.

To qualify for the WWTP Operator-in-Training positions, an applicant must have a high school diploma and at least two years of college level course work in the environmental sciences, know basic mechanical and electrical knowledge, algebra and how to apply algebraic and arithmetic calculations, and demonstrate a willingness to attend job-related classes and seminars. Employees in the WWTP Operator-in-Training position are also expected to complete education and training that is necessary so that the individual in the position can achieve his or her certification and promote to the WWTP Operator job class.

The knowledge and skills required to be a WWTP Operator-in-Training differ from the knowledge and skills required to be a WWTP Assistant and demonstrate that the WWTP Operator-in-Training

position shares a community of interest with the WWTP Operator and WWTP Operator Senior. To qualify for the WWTP Assistant positions, an applicant only needs a high school diploma and six months of routine maintenance and general labor experience and has no certification requirements. The WWTP Operator-in-Training is expected to have taken college level courses and to obtain an operator-in-training certificate within six months of employment.

Newly hired WWTP Operators-in-Training are required to receive an operator-in-training certification within six months of hire and failure to do so will result in dismissal from the position. After receipt of their training certificate, the employee then begins training for the Group I certification. Both certifications require the successful completion of an exam and hands-on work experience.

The Machinists argue that the WWTP Assistants have successfully been promoted to Operator roles in the past. The Machinists also argue that the WWTP Operator-in-Training positions complete some of the functions currently performed by WWTP Assistants, including performing laboratory tests, plant operation and general cleanup.

Some overlap exists between the two positions. The Machinists correctly point out that both the WWTP Operator-in-Training positions and the WWTP Assistants that worked on the wastewater treatment plants perform laboratory tests, general cleanup and are expected to perform general maintenance on the equipment that they use. However, the differences between the duties of the WWTP Operator Assistants and the WWTP Operator-in-Training demonstrate that the positions are different. The duties of the WWTP Operator-in-Training position are specifically focused on operating and maintaining wastewater treatment plants and gaining the knowledge and education to test for the Group I certificate. The duties of the WWTP Assistants in the Sewer Plant/Pump Station Maintenance Management Group are more general in nature. The WWTP Assistants are assigned to a machinist or senior machinist and assist those employees with work at the numerous pump stations within the sewer system.

The fact that the employer created an in-house training program for WWTP Operators-in-Training

to achieve the Group I certification also demonstrates that the employees share a community of interest with the WWTP Operators. In creating this training program, the employer has crafted a method for employees to promote within the Wastewater Treatment Operations Section. A WWTP Operator-in-Training who has received her or his Group I certificate can expect to promote to a WWTP Operator when a position is available. The training program itself shows intent to treat the employees in the Wastewater Treatment Operation as a distinct and separate entity where an employer-trained employee would promote within the organization.

The working conditions of the WWTP Operator Assistant and the WWTP Operator-in-Training positions demonstrates that the WWTP Operators-in-Training share a community of interest with the WWTP Operator and WWTP Operator Senior job classes. The employees share common lines of supervision and work on the same equipment.

History of Collective Bargaining –

In 1998, the IBEW filed a unit clarification seeking to include the WWTP Assistants in its existing Water Pollution Control bargaining unit. *City of Tacoma*, Decision 6780 (PECB, 1999). That petition was dismissed because the IBEW failed to demonstrate that a change of circumstances existed that warranted review of the existing bargaining units. *City of Tacoma*, Decision 6780 (PECB, 1999).

Although the outcome of the previous litigation is not dispositive for this case, the litigation history does establish that the Machinists have represented the employees in the WWTP Operator Assistant positions since at least 1995. *City of Tacoma*, Decision 6780. Additionally, the litigation history does not establish that either the Machinists' or the IBEW's bargaining units have ever been certified as being appropriate by this agency through either a representation petition or unit clarification proceeding. Where a bargaining unit is established by voluntary recognition, those agreements are not binding upon the Commission. *King County*, Decision 11441-A, citing *City of Richland*, Decision 279-A (PECB, 1978).

The WWTP Operator-in-Training positions are new. No specific history of bargaining relates to these positions. The history of bargaining does not assist in determining whether the WWTP Operators-in-Training share a community of interest with the WWTP Operator and WWTP Operator Senior positions in the IBEW's bargaining unit or with the WWTP Assistants in the Machinist General bargaining unit.

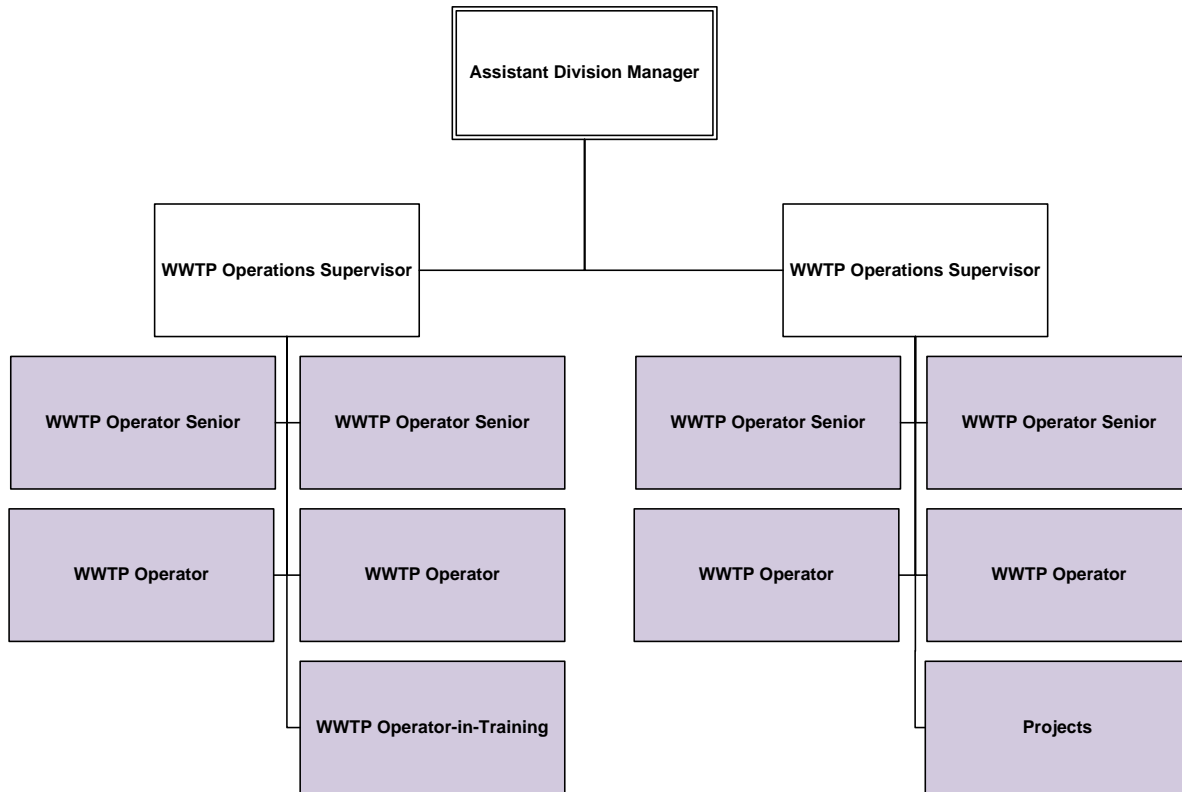
Extent of Organization –

The extent of organization component examines the existing bargaining units of the employer's workforce and how the at-issue positions fit into that workforce. When faced with the question of whether a newly created or modified position should be included in an existing bargaining unit, the starting point of the analysis is the bargaining unit description. If the newly created or modified position logically fits within an existing bargaining unit certification, then this factor would tend to demonstrate that a community of interest exists.

Here, neither bargaining unit operates under an existing certification. The recognition agreements for both bargaining units describe the units by job classes. While a presumption exists that the work performed by each job class is historical bargaining unit work, *see University of Washington*, Decision 18833 (PSRA, 2013), a change in circumstance may warrant review of the continued appropriateness of maintaining a job position in the existing bargaining unit.

When faced with a situation such as this, the organizational location of the at-issue employees' workforce structure takes on a greater significance. The duties, skills and working conditions of those employees working around the at-issue employees also becomes of significant importance.

The organizational structure of the Wastewater Treatment Operations Section is shown below:



The WWTP Operator-in-Training positions occupy the box that previously contained the WWTP Assistants.

All of the employees within the vertical structure of the Wastewater Treatment Operation Section work on the employer’s wastewater treatment plants and no other employees in the employer’s workforce work on these plants. The extent of organization demonstrates that placing the WWTP Operator-in-Training positions in a different bargaining unit from the other employees in the Wastewater Treatment Operations Section would unduly fragment the employer’s workforce and create work jurisdiction issues. The WWTP Operator-in-Training positions are organizationally located with positions that possess similar duties, skills and working conditions. The WWTP Operator and WWTP Operator-in-Training positions work side-by-side on projects and if these positions were in separate bargaining units, each bargaining unit could claim work that overlaps between the positions. The WWTP Operator-in-Training also has the opportunity to promote to positions that are within the same organizational structure.

The WWTP Operator-in-Training positions share a community of interest with the WWTP Operators and WWTP Operator Senior who work in Wastewater Treatment Operations. Accordingly, the WWTP Operator-in-Training positions are included in the IBEW's Water Pollution Control bargaining unit.

FINDINGS OF FACT

1. The City of Tacoma (employer) is a public employer within the meaning of RCW 41.56.030(12).
2. The International Brotherhood of Electrical Workers, Local 483 (IBEW) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The International Association of Machinists and Aerospace Workers, Lodge 160 (Machinists) is a bargaining representative within the meaning of RCW 41.56.030(2).
4. The employer's Environmental Services Department is responsible for protecting the environmental quality of the employer's territories. Included within the Environmental Services Department is the Operations & Maintenance Division. The Operations & Maintenance Division is divided into three sections, the Sewer Transmission Management Group, the Sewer Plant/Pump Station Maintenance Management Group, and Wastewater Treatment Operations.
5. The Wastewater Treatment Operations Section is responsible for maintaining two wastewater treatment plants. Three primary job positions are responsible for maintaining the plants: WWTP Operator, WWTP Senior Operator, and WWTP Assistant.
6. The IBEW represents the employees in the WWTP Operator and WWTP Senior Operator job classes. Those positions are part of the IBEW's Water Pollution Control bargaining unit. The Machinists represent the employees in the WWTP Assistant job class at the

WWTP. Those employees are part of the Machinist's General bargaining unit. The Machinists also represent employees in the WWTP Assistant job class that are not part of the employer's wastewater treatment operation.

7. The WWTP Operators require a Washington State Department of Ecology Group I certification to perform their duties. The Group I certification means that the employee has met the state mandated education and experience requirements and has passed an exam certifying the employee as competent to operate the wastewater equipment.
8. The WWTP Operators received their training through various local programs, including a program at the Green River Community College. The programs provided employees with enough education and training to test for the Group I certification that allowed the employees to be a WWTP Operator. Many of the local programs, included in the Green River program, were discontinued and the employer had no reliable method of training the WWTP Operators.
9. The employer created the WWTP Operator-in-Training position, which is essentially an in-house apprenticeship program for the WWTP Operator job class. The WWTP Operator-in-Training position replaces the WWTP Assistant positions in Wastewater Treatment Operations. The WWTP Operator-in-Training position is unique to Wastewater Treatment Operations; a similar position does not exist in the Sewer Plant/Pump Station Maintenance Management Group.
10. The primary duties of the WWTP Operator-in-Training position are to assist the WWTP Operator job class with the operation and maintenance of the wastewater treatment plants. The position is responsible for cleaning equipment, performing preventative maintenance, and performing laboratory tests. The duties of the WWTP Operator-in-Training position are specifically focused on operating and maintaining wastewater treatment plants and gaining the knowledge and education to test for the Group I certificate.

11. The duties of the WWTP Assistants in the Sewer Plant/Pump Station Maintenance Management Group are more general in nature. The WWTP Assistants are assigned to a machinist or senior machinist and assist those employees with work at the numerous pump stations within the sewer system.
12. To qualify for the WWTP Assistant positions, an applicant must have a high school diploma and six months of routine maintenance and general labor experience.
13. To qualify for the WWTP Operator-in-Training positions, an applicant must have a high school diploma and at least two years of college level course work in the environmental sciences, know basic mechanical and electrical knowledge, algebra and how to apply algebraic and arithmetic calculations, and demonstrate a willingness to attend job-related classes and seminars.
14. The working conditions of the WWTP Operator and the WWTP Operator-in-Training positions demonstrates that they share common lines of supervision and work on the same equipment.
15. A WWTP Operator-in-Training who has received her or his Group I certificate can expect to promote to a WWTP Operator when a position available.
16. The WWTP Operator-in-Training positions are organizationally located with positions that possess similar duties, skills and working conditions. The WWTP Operator-in-Training has the opportunity to promote to positions that are within the same organizational structure.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.

2. Based on Findings of Fact 4 through 16, the Wastewater Treatment Plant Operator-in-Training position shares a community of interest with the employees in the Wastewater Treatment Plant Operator and Wastewater Treatment Plant Operator Senior positions in the employer's Wastewater Treatment Operations Section.

ORDER

The bargaining unit represented by the International Brotherhood of Electrical Workers, Local 483 is clarified to include the employees in the Wastewater Treatment Plant Operator-in-Training positions.

ISSUED at Olympia, Washington, this 28th day of February, 2014.

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.