

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

CITY OF TACOMA

For clarification of an existing bargaining
unit represented by:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 483

CASE 127790-C-15

DECISION 12744 - PECB

ORDER OF DISMISSAL

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International Brotherhood of Electrical Workers, Local 483.

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Tacoma.

On December 17, 2015, the City of Tacoma (employer) filed a unit clarification petition seeking to exclude seven positions from a non-supervisory bargaining unit on the grounds that the positions are supervisors. The seven positions work in the employer's water department. The International Brotherhood of Electrical Workers, Local 483 (union) disputes that the positions are supervisors. Hearing Officer Karyl Elinski conducted a hearing on May 25, May 26, July 13, September 12, September 15, and October 17, 2016, and the parties filed post-hearing briefs on January 6, 2017, to complete the record. Additionally, oral argument was held on April 12, 2017, to allow for further presentation on the issues.

The issue in this case is whether the Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors should be excluded from the non-supervisory bargaining unit because they are supervisors or because they do not share a community of interest with the rest of the bargaining unit. The employer has not established that the positions are supervisors under this agency's standards. The positions do not have independent authority to act in the interests of the employer and make meaningful changes in the employment relationship.

The employer has also not shown that the positions lack a community of interest with the other positions in the bargaining unit. The petition is dismissed.

BACKGROUND

The employer operates a water utility, known as Tacoma Water, which treats and delivers fresh water to parts of Pierce and King Counties. For over 35 years, the union has represented a non-supervisory maintenance and operation bargaining unit at Tacoma Water. The unit mainly includes trades employees but also includes the Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors.¹

Tacoma Water has experienced growth and changes during the time the union has represented the bargaining unit. Among the changes are the building of a new water supply system and new water treatment plant, the raising of the Howard Hansen Dam, updates to the water treatment process, and moving the water treatment plant to a 24-hour operation.

The employer recently studied the duties of the Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors and determined that they were supervisors who should be excluded from the union's bargaining unit. The employer updated the job descriptions of the Water Service Supervisors in June 2015 to add references to discipline, grievances, and hiring. During negotiations for the parties' 2015-2018 collective bargaining agreement, the employer put the union on notice that it sought to remove the Water Service Supervisor, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisor positions from the bargaining unit. The parties were unable to agree on the status of the positions. The employer filed its unit clarification petition on December 17, 2015.

The seven at-issue positions are in three job classes with distinct functions and purposes described below.

¹ A Water Supply Supervisor position, currently held by Jeff Thomas, is not included in the unit. This position is not at issue in this proceeding.

Water Service Supervisors

The Water Service Supervisors oversee crews responsible for construction and maintenance work on Tacoma Water's distribution network. There are four Water Service Supervisors at Tacoma Water: Curt Roland, Bill Reynolds, Ken Lowder, and Kendall Funk.

Three of the Water Service Supervisors—Rowland, Reynolds, and Lowder—are primarily responsible for construction work, which includes fixing leaks, responding to customer calls about problems with service, and installing new distribution pipes and meters. The fourth Water Service Supervisor, Funk, is primarily responsible for maintenance, such as performing routine preventative maintenance on fire hydrants and meters and “flushing” fresh water through the distribution system to maintain water quality.

Roland and Reynolds have each been a Water Service Supervisor for over four years. Both are based out of the Tacoma Water headquarters. Roland oversees 16 to 20 employees at a given time: two construction crews responsible for bigger jobs that require trucks and large scale excavation,² two one-person and two two-person hand crews responsible for smaller jobs that can be accomplished by one or two people without heavy equipment, and a pool of utility workers and service workers who fill in as needed.³ Reynolds oversees 14 to 18 employees: two construction crews, two two-person hand crews, two one-person hand crews, and a pool of utility workers to fill in as needed.⁴ Roland and Reynolds report to Assistant Division Manager Bob Hinzman. Hinzman reports to the Water Distribution Division Manager Ray West, who reports to Superintendent Linda McCrea. McCrea reports to the Tacoma Public Utilities Director Bill Gaines, who is appointed by the five-member Tacoma Public Utility Board, which is appointed by the Tacoma City Council.

² The construction crews include Heavy Equipment Operators and Equipment Operators who are represented by Teamsters Local 117.

³ Roland also technically oversees the Vector Truck Operator, although the vector truck is generally used by whoever needs it. The Vector Truck Operator is represented by Teamsters Local 117.

⁴ Reynolds is also assigned an Asphalt Truck Operator, although the asphalt truck is used by other supervisors as well. The Asphalt Truck Operator is represented by Teamsters Local 117.

Roland begins his work day at 7:00 a.m. and Reynolds begins at 7:30 a.m. They both start their work days by checking the mobile dispatch system to see what work is coming in for their crews and to determine if the service vans need to be set up. They also schedule around work absences. At 8:00 a.m., they meet with the workers on their crews to discuss the work that is coming up for the day. During the morning, both work in the office completing paperwork. In the afternoon, both work in the field marking job sites with paint to identify existing pipes and determining if their crews will need anything for the following day. Roland estimated that he spends about 60–70 percent of his time in the office and 30–40 percent of his time in the field. Reynolds estimated he spends two to three hours a day working in the office, making calls for locates, and reviewing and inputting information into the electronic maintenance management system. Roland’s and Reynolds’ crews alternate weeks where they are responsible for repairing leaks in the western part of Tacoma Water’s service area.

Lowder has been a Water Service Supervisor for about 13 years. Lowder’s crews are based at the McMillan Reservoir in South Hill. Lowder’s crews are responsible for water service issues similar to Reynolds’, Roland’s, and Funk’s crews but in the eastern part of Tacoma Water’s service area. Lowder oversees nine employees: a construction crew,⁵ a locator who marks the locations of Tacoma Water pipes,⁶ a one-person hand crew, and a two-person hand crew. Lowder also has a “runner” who picks up mail and equipment from the Tacoma Water headquarters building and brings the mail to the McMillan Reservoir. Lowder currently reports to Hinzman.

Lowder reports to work at 7:00 a.m. He spends his first hour answering phone calls, making adjustments to crew sheets, and reviewing and printing time cards. At 8:00 a.m., he meets with his crews to discuss questions about the work and to share information from managers. After the meeting, which lasts about 15 minutes, Lowder finishes reviewing and processing signed time cards. He then takes phone calls about new jobs as well as work assignment calls from contractors and others at Tacoma Water. He processes parts lists, closes out jobs, and goes to meetings with supervisors, managers, and office staff. Lowder said that working in the field, driving, talking to

⁵ The construction crew includes a Heavy Equipment Operator and an Equipment Operator who are represented by Teamsters Local 117.

⁶ Marking of underground water pipes is part of the “8-1-1” or “call before you dig” program.

contractors, and putting down paint comprises 60–70 percent of his day. Lowder's crews are continuously responsible for leaks that occur in Tacoma Water's eastern service area.

Funk has been a Water Service Supervisor for about six years. Funk's crews are mainly responsible for maintenance and are based out of the Tacoma Water headquarters. Funk oversees about 24 employees, all of whom are represented by the union. Four of Funk's crews conduct flushing. One crew is responsible for maintaining and repairing fire hydrants. A second crew is responsible for maintaining water meters. One employee staffs the tool room. Funk also oversees a crew of locators. Finally, one crew is assigned to a "temp meter project" which is currently involved in replacing high-consumption, smaller meters with electronic meters. Funk reports to Operations Manager Gary Gates, who in turn reports to Hinzman.

Funk reports to work at 7:30 a.m. Like Roland, Reynolds, and Lowder, he first checks his e-mail for leave slips to see if anyone has called in sick. He then organizes crews based on absences and prepares time cards for the day. Funk has an 8:00 a.m. meeting with his crews where they discuss the day's work and where Funk shares information from management. After the meeting, Funk reviews time cards from the previous day. He checks if they include all of the required information, like meter numbers, hydrant numbers, flusher numbers, set-up codes, and time-off codes. Next he checks the crew sheet to see where people are working and then checks to see if there are new leave request slips. He has frequent phone calls from customers asking about flushing operations in their neighborhoods. Funk does some work in the field such as opening gate boxes. When Funk is out in the field with crews, he spends time looking at and evaluating problems.

Roland, Reynolds, Funk, and Lowder, as well as Geff Yotter (a Water Service Worker who is usually the first in line to set up for a Water Service Supervisor during absences) rotate through on-call duty. During their turns, they are responsible for taking after-hours calls from the Water Control Center. On-call duty lasts for a week, so each Water Service Supervisor (plus Yotter) is on call every fifth week.

Water Pumps and Storage Supervisor

Bill Cummins is the current Water Pumps and Storage Supervisor. Cummins has been in the Water Pumps and Storage Supervisor position since February 2015. He works out of the Tacoma Water headquarters building and supervises crews responsible for operating and maintaining the water system's pumps, valves, and storage facilities such as the reservoirs. The Water Pumps and Storage Supervisor also oversees the Water Control Center. The call center takes calls 24 hours a day and operates the hydraulics of the water system. That work includes filling and draining reservoirs, operating pumps, and coordinating work in the field.

Cummins has two crews reporting to him, consisting of 14 employees, all of whom are represented by the union. Ten employees are in the wells division, and four are in the Water Control Center. Cummins reports to Operations Manager Jeremy Kaiser, who reports to Assistant Division Manager Chris Johnson, who reports to Water Supply Manager Glen George, who reports to Superintendent McCrea.

Cummins reports to work at 7:30 a.m. When he first arrives, he may work on procurements, review time cards from the day before, and prepare the work schedule for the day. At 8:00 a.m., he meets with the wells crew to review what occurred the previous day, what work was completed or not completed, and what issues people have run into. Cummins also provides the wells crew with its paperwork for the day's jobs, and they discuss the upcoming day's work. After the meeting, he completes time cards, goes through work orders, and touches base with the Control Center Operators. Cummins also spends time in the field making sure that work is conducted according to plan, and monitoring the safety of the crews. He estimated that around 5 percent of his time is spent in the field. Cummins spends most of his time planning, coordinating, preparing, and overseeing the work that his crews will be doing.

Water Treatment Plant Supervisors

The Water Treatment Plant Supervisors work primarily at Tacoma Water's water treatment plant near Ravensdale, where they supervise the crews that operate and maintain the treatment plant. At the water treatment plant, fresh water obtained primarily from the Green River is filtered and treated with chemicals to meet governmental clean drinking water standards. There are currently

two Water Treatment Plant Supervisors, Jeff Bolam and Wade Green. Bolam and Green both report to Operations Manager Gary Fox. Fox reports to Deputy Water Superintendent Chris McMeen, who reports to Superintendent McCrea.

Bolam has been in the Water Treatment Plant Supervisor position for over 13 years, and Green has been in the position for over two years. Bolam oversees eight employees in the Water Treatment Plant Operator position who are responsible for running the water treatment plant. All of the Water Treatment Plant Operators are represented by the union. Green has six employees reporting to him: three Water Service Mechanics, two Water Plant Maintenance Workers, and one Engineering Instrumentation Tech.⁷ Green's crew is primarily responsible for the maintenance and repair of the water treatment plant.

Bolam reports to work at 7:00 a.m. He usually first checks in with the Duty Operator to find out what issues have been occurring at the plant overnight and what issues need to be addressed. They will discuss upcoming issues that could affect operations. After checking in with the duty operator, Bolam discusses maintenance issues with Green, spends time talking to the Support Operators, and examines the plant for issues that could impact operations. He sometimes drives to the dam or other parts of the system. Once a week, Bolam has a meeting with the plant manager where the plant manager tells Bolam about his expectations.

Green begins his day at 6:30 a.m. Green reviews the schedule for his crew and makes any changes that are needed and then meets with his crew for about 20 minutes to give them work orders that have been scheduled. They also discuss the work to be performed that day. After the meeting, Green provides his crew more explanation about what needs to be done, and will work with them if needed. If he does not work with the crew, he generates work orders and reads e-mails. Green spends at least an hour every day on phone calls with vendors and performs research relating to his purchasing responsibility for the maintenance of the plant. If Green notices smaller tasks, he may address those matters himself. These tasks can take from an hour to the entire day. Green

⁷ All of the employees on Green's crew, with the exception of the Engineering Instrumentation Tech, are represented by the union.

meets with the plant manager once a week to discuss the priorities of maintenance work, such as breakdowns.

Supervisory Functions

All the at-issue employees participate in hiring panels where the panel interviews the applicants, ranks them, reaches a consensus as to their recommendation, and submits the same to the hiring authority.⁸ All the at-issue positions have authority to temporarily promote an employee to fill a vacancy (set-up) who is pre-selected from a civil service list. All of the at-issue positions conduct performance evaluations of their subordinate employees, and review any performance evaluations prepared by their subordinate employees. On April 19, 2016, the parties executed a new collective bargaining agreement that states that the at-issue employees are the Step 1 responder for grievances.

All of the positions direct the work of their subordinate employees and distribute assignments to their crews. However, much of the work is planned and prioritized by employees who supervise the at-issue employees, and those work assignments are dispatched through the work order system. The at-issue employees approve leave and decide whether to approve overtime to complete a project. Overtime is then assigned pursuant to the collective bargaining agreement. The at-issue employees are accountable for the costs of the projects.

None of the at-issue employees have authority to fire non-probationary employees. While all of the positions have authority to issue lower forms of discipline, such as a written letter of expectations or reprimand, none of the at-issue employees have the independent authority to suspend employees. If the discipline involves suspension or higher, the at-issue employees' involvement is limited to providing information and possibly a recommendation to his direct supervisor and the employer's Human Resources office.

⁸ Lowder has not participated in a hiring panel for several years. He testified that he has not been asked to sit on a hiring panel after he expressed his disagreement with the hiring process.

ANALYSIS

Applicable Legal Standards

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*, *International Association of Fire Fighters, Local 1052 v. PERC*, 29 Wn. App. 599 (1981), *rev. denied*, 96 Wn.2d 1004 (1981). 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. *Quincy School District*, Decision 3962-A (PECB, 1993).

In making bargaining unit determinations, this agency considers “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.” RCW 41.56.060(1). These 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).

Included in the authority to determine an appropriate bargaining unit is the power to modify an existing bargaining unit, upon request, through a unit clarification proceeding. Chapter 391-35 WAC; *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). The general purpose of the unit clarification process is to provide a mechanism to make changes to an appropriate bargaining unit based upon a change of circumstances. *See, e.g., Toppenish School District*, Decision 1143-A (PECB, 1981) (outlining the procedures to remove supervisors from existing bargaining units).

Generally, supervisors are not included in the same bargaining unit as the individuals they supervise. WAC 391-35-340. The exclusion of supervisors from the rank-and-file bargaining unit predates the 2001 codification of WAC 391-35-340. *City of Tacoma*, Decision 95-A (PECB, 1977); *City of Richland*, Decision 279-A. Separating supervisors from the rank-and-file

bargaining unit avoids the potential for conflicts of interest that would otherwise exist in a combined bargaining unit. WAC 391-35-340.

Chapter 41.56 RCW does not define the term “supervisor.” Originally the Commission based circumstances warranting a separate supervisory bargaining unit upon a distinct set of duties, skills, and working conditions from the rank-and-file bargaining unit, which often presented a conflict of interest. *IAFF, Local 252 v. PERC*, 29 Wn. App. 599 (1981), *rev. denied*, 96 Wn.2d 1009 (1981); *White Pass School District*, Decision 573-A (PECB, 1979); *Washington Public Power Supply System*, Decision 2065 (PECB 1984); *City of Bothell*, Decision 2724 (PECB, 1987).

The Commission also looked to the definition of supervisor in both Section 2(11) of the National Labor Relations Act (NLRA) and in the Educational Employees Relations Act (EERA), Chapter 41.59 RCW, to specify supervisory criteria. *City of Mercer Island*, Decision 1026-A (PECB, 1981); *Snohomish Health District*, Decision 4735-A (PECB, 1995). In *City of Mercer Island*, the Commission, *citing* to Section 2(11) of the NLRA, stated, “Supervisors have management roles entailing duties such as hiring, firing, assignment, transfer, layoff, recall of subordinate employees and the processing of their grievances.”⁹ *City of Mercer Island*, Decision 1026-A. In *Snohomish Health District*, the Commission stated that it has looked to the definition of supervisor in RCW 41.59.020(4)(d) for the types of authority which create potential conflicts of interests when placing supervisors in a rank-and-file bargaining unit.¹⁰ *Snohomish Health District*, Decision 4735-A.

⁹ Section 2(11) of the NLRA defines “supervisor” as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

¹⁰ RCW 41.59.020 defines “supervisor” as “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.”

The Commission moved to use the test under the EERA because the test under the NLRA is disjunctive. *Id.*, citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571 (1994). While the definition in the EERA is generally patterned after the NLRA, it provides that only those employees performing a preponderance of the specified acts are considered supervisors. RCW 41.59.020(4)(d); *Snohomish Health District*, Decision 4735-A. The Commission determined the preponderance test found in RCW 41.59.020(4)(d) to be closer to Commission precedent following *IAFF, Local 1052 v. PERC* than the disjunctive test under the NLRA. *Id.*

Therefore, a supervisor is an employee whose preponderance of 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” *Granite Falls School District*, Decision 7719-A (PECB, 2003); *see also* RCW 41.59.020(4)(d). “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 their time performing the type of supervisory activities enumerated in RCW 41.59.020(4)(d). *City of East Wenatchee*, Decision 1131; *King County*, Decision 12079 (PECB, 2014). The determination of an employee’s supervisory status is made by examining the employee’s actual duties, not solely on the basis of the job title or job description. *Rosalia School District*, Decision 11523 (PECB, 2012); *Morton General Hospital*, Decision 3521-B (PECB, 1991).

The Commission places emphasis on whether a disputed position has independent authority to act in the interest of the employer and make meaningful employment changes in the employment relationship. *City of Lakewood*, Decision 12453 (PECB, 2015); *State – Office of Administrative Hearings*, Decision 11503 (PSRA, 2012). If a position merely executes the instructions of a higher ranking employee when making meaningful change to the workplace, that employee has not exercised independent judgment. *Id.*; citing *City of Lynnwood*, Decision 8080-A (PECB, 2005), *aff’d*, Decision 8080-B (PECB, 2006).

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. In *Okanogan County*, Decision 6142-A (PECB, 1998), the Commission stated that it considered the extent of authority of first-line supervisors to hire, terminate, suspend without pay, or to effectively recommend such actions as being the paramount criteria. *Id.* The exercise of authority to assign and direct work, grant time off, authorize overtime, issue oral or written reprimands, evaluate and train employees may be insufficient when that individual does not have authority to hire, terminate, suspend without pay or effectively recommend such actions. *Id.*

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).

While the supervisory criteria has been well settled for some time, the issue frequently comes before this agency. Most of the contested cases before this agency, particularly in the last five years, have resulted in a determination that the contested positions are not supervisory. *See, e.g., State – Ecology*, Decision 12565 (PSRA, 2016); *King County*, Decision 11490-A (PECB, 2013), and *City of East Wenatchee*, Decision 11440 (PECB, 2012).

The evolution of the agency’s standard shows that not all employees who perform lower level supervisory type duties would present a conflict of interest if they are in the same bargaining unit as the individuals whom they oversee. It is not simply the individuals who would be excluded under the test in Section 2(11) of the NLRA that must be separated from the rank-and-file bargaining unit. Rather, as the standard has evolved with the Commission referencing the EERA, it is an even higher level of employee who meets the preponderance of supervisory indicia that is *required* to be separated from the rank-and-file bargaining unit.

Application of Standards*Supervisory Analysis*

The employer asserts that the at-issue positions should be excluded from the union's bargaining unit as supervisors under WAC 391-35-340. The employer argues that the employees perform a preponderance of supervisory duties and perform those duties a preponderance of the time. To support this argument, the employer claims that the employees have evolved from working foremen to supervisors taking on greater supervisory responsibilities in the last five years.

The employer asserts that the at-issue employees have discretion to make important decisions affecting employees. Chief among them, according to the employer, is the authority to assign work, temporarily fill a temporary vacancy of a position with a lower level employee (set-up), and authorize overtime as well as the authority to evaluate, counsel, and issue written expectations or reprimands and respond to Step 1 grievances. The employer also asserts that the at-issue employees effectively recommend hiring and promotional decisions when they participate in hiring panels that make a consensus recommendation to the employer. This total level of authority, argues the employer, is consistent with agency decision where similar authority was found to meet the supervisor test.

The union alleges that the employer engineered the facts to justify the petition. The union characterizes the at-issue employees as leads who do not perform a preponderance of the required supervisory duties or spend a preponderance of time performing the same. The union argues the role of the at-issue employees regarding the supervisory functions is managed or dictated by management and it is the managers who control or dictate the daily decisions affecting the terms and conditions of employment. According to the union, the at-issue employees only coordinate functions dictated to them by management rather than exercising independent supervisory functions and authority. Finally, the union argues that there is no evidence that the employees' presence in the bargaining unit has created a conflict of interest that now merits their exclusion.

Both sides make valid arguments and cherry pick from agency decisions to support their arguments. The employer, in particular, would stretch the analysis a bit further and look to the impact of all of the discretionary authority granted to the employees at issue. There is some merit

to those points. On balance, however, the level of authority granted to the employees does not create a conflict of interest that renders them supervisors under the majority of agency precedent.

The at-issue employees do not perform a preponderance of supervisory duties. While their duties demonstrate that the employees have some higher level of independent authority, they do not exercise the type of independent authority that requires removal from the bargaining unit. None of the at-issue employees exercise independent authority or effectively recommend for the paramount criteria identified in *Okanogan County*, Decision 6142-A. The at-issue employees do not hire, promote, fire, demote, suspend without pay, or effectively recommend such actions. While the employees exercise varying levels of authority to assign the work, grant time off, authorize overtime, issue oral reprimands, evaluate and train employees whom they oversee, that level of authority does not create the type of conflict that requires their exclusion from the bargaining unit.

The employer acknowledges that the at-issue employees do not have authority to hire, but characterize their role on hiring panels as an effective recommendation that indicates a higher level of authority. The employer relies upon *Island County*, Decision 5147 (PECB, 1995) where the Executive Director stated, "A 'consensus' implies the making of an effective recommendation." In that case, the two chief deputy treasurers made up the hiring panel with the elected treasurer, who was the hiring authority, and participated in a "consensus" decision regarding the candidate to be hired. Here, the employees' participation on hiring panels includes drafting questions and asking questions of candidates and then reaching a consensus on the candidate to recommend to the hiring authority.

By definition, consensus decision making requires unanimity. See WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 297 (1994). As such, a hiring panel utilizing consensus to determine which candidate to recommend to the hiring authority will require unanimity among the panel. The hiring panels that the disputed employees have participated on have been comprised of various groups of individuals. In *Island County*, the employees participated on the panel with the hiring authority in deciding which candidate to hire. Whether that was essential to the Executive Director's determination that the petitioned-for employees

effectively recommended on hiring is unclear from that decision. In this case, it is clear that the at-issue employees may write interview questions, participate in the interview, and work with the panel in unanimously determining which candidate to recommend to the hiring authority. What is also clear is that the disputed employees do not possess independent discretion to effectively recommend the candidate to hire. *Thurston County*, Decision 12727 (PECB, 2017) (participation on a hiring panel that makes selections based upon consensus does not equate to an effective recommendation). The panel makes that recommendation.

The employees have authority to issue written expectations and written reprimands, which are the lowest forms of formal discipline. With respect to higher levels of discipline, which make up part of the paramount criteria identified in *Okanagan County*, the at-issue employees largely provide information and give input to their manager and human resources. This level of interaction does not constitute effective recommendation.

Examining the at-issue employees' duties as a whole, they do not perform a preponderance of the supervisory duties that would require them to be excluded from the union's bargaining unit. Furthermore, the at-issue employees do not spend a preponderance of their time performing supervisory duties. The employer contends that the employees work predominantly in an office setting performing administrative functions. Specifically, they schedule and assign the work, fill out crew sheets, manage leave requests, manage time cards, close out job orders, manage employee performance issues, and interact with customers and vendors. When the employees are in the field, they plan the work, check on their crews, and trouble shoot problems. The employer contends that these are all supervisory functions. These activities, while different from the duties of the employees that the at-issue employees oversee, are not sufficiently supervisory in nature for bargaining unit exclusion, regardless of the time they are performed.

Several of the at-issue employees oversee a large number of employees. The Water Service Supervisors oversee up to 24 employees and may oversee lead employees. However, even with that number of employees or with leads, the role of the employees still does not rise to that of a supervisor under this agency's standards. Nor does the number of employees or the presence of a lead under the at-issue employees necessarily pose the conflict that necessitates exclusion from the

bargaining unit. *See also Clark County*, Decision 11961 (PECB, 2013) (15–18 employee span of control was not an issue in supervisory analysis); *City of Pasco*, Decision 12212 (PECB, 2014) (lead over lead also was not an issue in supervisory analysis).

The record clearly demonstrates that the employer has begun to change how it utilizes these positions. The level of accountability has increased. However, their roles have not substantially changed at this time. There is no evidence of any conflict of interest occurring that necessitates separation from the bargaining unit. Whether the increased accountability and expectations could result in that type of conflict of interest is speculative and insufficient at this point. *See City of Yakima*, Decision 9983-A (PECB, 2008).

Community of Interest

The employer also claims that the disputed positions should be removed from the union's bargaining unit because they lack a community of interest with the other employees in the unit. Because unit clarifications alter the composition of bargaining units, the Commission adopted WAC 391-35-020 to govern the time frames in which unit clarification petitions may be filed to maintain stability in bargaining units. Specifically, that rule requires unit clarification petitions to be "filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions."

The change in circumstances that leads to the filing of a unit clarification petition must be a meaningful change in an employee's duties, responsibilities, or working conditions. *University of Washington*, Decision 10496-A (PSRA, 2011), *citing City of Richland*, Decision 279-A (PECB, 1978). A mere change in job titles is not necessarily a material change in working conditions that would qualify under Chapter 391-35 WAC to alter the composition of a bargaining unit through the unit clarification process. *University of Washington*, Decision 10496-A. Other types of changes to the workplace environment, such as a reorganization of an employer's workforce, are occurrences that could warrant the filing of a unit clarification petition. *See Lewis County*, Decision 6750 (PECB, 1999). Absent a recent change in circumstances, a unit clarification petition will be dismissed as untimely. *See University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013).

The recent increase in accountability, emphasis on duties in job descriptions and increased role in future grievances are what the employer relies upon as a recent change in circumstances. Those changes are too nebulous to constitute a change in circumstances. Nevertheless, the record appears to still support a community of interest between the at-issue employees and other members of the bargaining unit. For example, rank-and-file employees fill in for the at-issue employees and the at-issue employees at times perform rank-and-file work causing functional integration, similarity in hours and work locations, and common skills, which is also demonstrated by supervisors promoting out of the rank-and-file. Lead employees who assign work share a community of interest with the employees to whom they assign work. *City of Pasco*, Decision 12212.

Conclusion

The Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors are not supervisors as defined by Chapter 41.56 RCW and WAC 391-35-340 because they do not perform a preponderance of the required higher level supervisory duties and do not spend a preponderance of their time performing those supervisory duties. Furthermore, the record fails to establish that a conflict of interest exists between the Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors and their subordinate employees. Finally, the Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors continue to share a community of interest with the rest of the union's bargaining unit are not timely because no recent change in circumstances has been alleged.

FINDINGS OF FACT

1. The City of Tacoma is a public employer within the meaning of RCW 41.56.030(12).
2. The International Brotherhood of Electrical Workers, Local 489 is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a non-supervisory maintenance and operation bargaining unit at Tacoma Water. The unit mainly includes trades employees but also includes the Water

Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors.

4. The employer recently studied the duties of the Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors and determined that they were supervisors who should be excluded from the union's bargaining unit. The employer updated the job descriptions of the Water Service Supervisors in June 2015 to add references to discipline, grievances, and hiring. During negotiations for the parties' 2015-2018 collective bargaining agreement, the employer put the union on notice that it sought to remove the Water Service Supervisor, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisor positions from the bargaining unit.
5. The Water Service Supervisors oversee crews responsible for construction and maintenance work on Tacoma Water's distribution network. There are four Water Service Supervisors at Tacoma Water: Curt Roland, Bill Reynolds, Ken Lowder, and Kendall Funk.
6. Three of the Water Service Supervisors—Rowland, Reynolds, and Lowder—are primarily responsible for construction work, which includes fixing leaks, responding to customer calls about problems with service, and installing new distribution pipes and meters. The fourth Water Service Supervisor, Funk, is primarily responsible for maintenance, such as performing routine preventative maintenance on fire hydrants and meters and "flushing" fresh water through the distribution system to maintain water quality.
7. Roland and Reynolds have each been a Water Service Supervisor for over four years. Both are based out of the Tacoma Water headquarters.
8. Roland oversees 16 to 20 employees at a given time: two construction crews responsible for bigger jobs that require trucks and large scale excavation, two one-person and two two-person hand crews responsible for smaller jobs that can be accomplished by one or two people without heavy equipment, and a pool of utility workers and service workers who

fill in as needed. Reynolds oversees 14 to 18 employees: two construction crews, two two-person hand crews, two one-person hand crews, and a pool of utility workers to fill in as needed.

9. Roland begins his work day at 7:00 a.m. and Reynolds begins at 7:30 a.m. They both start their work days by checking the mobile dispatch system to see what work is coming in for their crews and to determine if the service vans need to be set up. They also schedule around work absences. At 8:00 a.m., they meet with the workers on their crews to discuss the work that is coming up for the day. During the morning, both work in the office completing paperwork. In the afternoon, both work in the field marking job sites with paint to identify existing pipes and determining if their crews will need anything for the following day.
10. Roland estimated that he spends about 60–70 percent of his time in the office and 30–40 percent of his time in the field.
11. Reynolds estimated he spends two to three hours a day working in the office, making calls for locates, and reviewing and inputting information into the electronic maintenance management system.
12. Lowder has been a Water Service Supervisor for about 13 years. Lowder's crews are based at the McMillan Reservoir in South Hill. Lowder's crews are responsible for water service issues. Lowder oversees nine employees: a construction crew, a locator who marks the locations of Tacoma Water pipes, a one-person hand crew, and a two-person hand crew. Lowder currently reports to Hinzman.
13. Lowder reports to work at 7:00 a.m. He spends his first hour answering phone calls, making adjustments to crew sheets, and reviewing and printing time cards. At 8:00 a.m., he meets with his crews to discuss questions about the work and to share information from managers. After the meeting Lowder finishes reviewing and processing signed time cards. He then takes phone calls about new jobs as well as work assignment calls from contractors

and others at Tacoma Water. He processes parts lists, closes out jobs, and goes to meetings with supervisors, managers, and office staff. Lowder said that working in the field, driving, talking to contractors, and putting down paint comprises 60–70 percent of his day. Lowder's crews are continuously responsible for leaks that occur in Tacoma Water's eastern service area.

14. Funk has been a Water Service Supervisor for about six years. Funk's crews are mainly responsible for maintenance and are based out of the Tacoma Water headquarters. Funk oversees about 24 employees, all of whom are represented by the union. Four of Funk's crews conduct flushing. Funk reports to Operations Manager Gary Gates, who in turn reports to Hinzman.
15. Funk reports to work at 7:30 a.m. He first checks his e-mail for leave slips to see if anyone has called in sick. He then organizes crews based on absences and prepares time cards for the day. Funk has an 8:00 a.m. meeting with his crews where they discuss the day's work and where Funk shares information from management. After the meeting, Funk reviews time cards from the previous day. Next he checks the crew sheet to see where people are working and then checks to see if there are new leave request slips. He has frequent phone calls from customers asking about flushing operations in their neighborhoods. Funk does some work in the field such as opening gate boxes. When Funk is out in the field with crews, he spends time looking at and evaluating problems.
16. Bill Cummins is the current Water Pumps and Storage Supervisor. Cummins has been in the Water Pumps and Storage Supervisor position since February 2015. He works out of the Tacoma Water headquarters building and supervises crews responsible for operating and maintaining the water system's pumps, valves, and storage facilities such as the reservoirs. The Water Pumps and Storage Supervisor also oversees the Water Control Center. The call center takes calls 24 hours a day and operates the hydraulics of the water system. That work includes filling and draining reservoirs, operating pumps, and coordinating work in the field.

17. Cummins has two crews reporting to him, consisting of 14 employees, all of whom are represented by the union. Ten employees are in the wells division, and four are in the Water Control Center. Cummins reports to Operations Manager Jeremy Kaiser, who reports to Assistant Division Manager Chris Johnson, who reports to Water Supply Manager Glen George, who reports to Superintendent McCrea.
18. Cummins reports to work at 7:30 a.m. When he first arrives, he may work on procurements, review time cards from the day before, and preparing the work schedule ready for the day. At 8:00 a.m., he meets with the wells crew to review what occurred the previous day, what work was completed or not completed, and what issues people have run into. Cummins also provides the wells crew with its paperwork for the day's jobs, and they discuss the upcoming day's work. After the meeting, he completes time cards, goes through work orders, and touches base with the Control Center Operators. Cummins also spends time in the field making sure that work is conducted according to plan, and monitoring the safety of the crews. He estimated that around 5 percent of his time is spent in the field. Cummins spends most of his time planning, coordinating, preparing, and overseeing the work that his crews will be doing.
19. The Water Treatment Plant Supervisors work primarily at Tacoma Water's water treatment plant near Ravensdale, where they supervise the crews that operate and maintain the treatment plant. There are currently two Water Treatment Plant Supervisors, Jeff Bolam and Wade Green. Bolam and Green both report to Operations Manager Gary Fox. Fox reports to Deputy Water Superintendent Chris McMeen, who reports to Superintendent McCrea.
20. Bolam has been in the Water Treatment Plant Supervisor position for over 13 years, and Green has been in the position for over two years. Bolam oversees eight employees in the Water Treatment Plant Operator position who are responsible for running the water treatment plant. All of the Water Treatment Plant Operators are represented by the union. Green has six employees reporting to him. Green's crew is primarily responsible for the maintenance and repair of the water treatment plant.

21. Bolam reports to work at 7:00 a.m. He usually first checks in with the Duty Operator to find out what issues have been occurring at the plant overnight and what issues need to be addressed. They will discuss upcoming issues that could affect operations. After checking in with the duty operator, Bolam discusses maintenance issues with Green, spends time talking to the Support Operators, and examines the plant for issues that could impact operations. He sometimes drives to the dam or other parts of the system. Once a week, Bolam has a meeting with the plant manager where the plant manager tells Bolam about his expectations.
22. Green begins his day at 6:30 a.m. Green reviews the schedule for his crew and makes any changes that are needed and then meets with his crew for about 20 minutes to give them work orders that have been scheduled. They also discuss the work to be performed that day. After the meeting, Green provides his crew more explanation about what needs to be done, and will work with them if needed. If he does not work with the crew, he generates work orders and reads e-mails. Green spends at least an hour every day on phone calls with vendors and performs research relating to his purchasing responsibility for the maintenance of the plant. If Green notices smaller tasks, he may address those matters himself. These tasks can take from an hour to the entire day. Green meets with the plant manager once a week to discuss the priorities of maintenance work, such as breakdowns.
23. All the at-issue employees participate in hiring panels where the panel interviews the applicants, ranks them, reaches a consensus as to their recommendation, and submits the same to the hiring authority.
24. All the at-issue positions have authority to temporarily promote an employee to fill a vacancy (set-up) who is pre-selected from a civil service list.
25. All of the at-issue positions conduct performance evaluations of their subordinate employees, and review any performance evaluations prepared by their subordinate employees.

26. On April 19, 2016, the parties executed a new collective bargaining agreement that states that the at-issue employees are the Step 1 responder for grievances.
27. All of the positions direct the work of their subordinate employees and distribute assignments to their crews. However, much of the work is planned and prioritized by employees who supervise the at-issue employees, and those work assignments are dispatched through the work order system.
28. The at-issue employees approve leave and decide whether to approve overtime to complete a project. Overtime is then assigned pursuant to the collective bargaining agreement. The at-issue employees are accountable for the costs of the projects.
29. None of the at-issue employees have authority to fire non-probationary employees. While all of the positions have authority to issue lower forms of discipline, such as a written letter of expectations or reprimand, none of the at-issue employees have the independent authority to suspend employees. If the discipline involves suspension or higher, the at-issue employees' involvement is limited to providing information and possibly a recommendation to his direct supervisor and the employer's Human Resources office.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-35 WAC.
2. Based upon Finding of Facts 4 through 29, the Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors working at Tacoma Water are not supervisors within the meaning of WAC 391-35-340.

ORDER

The petition filed by the City of Tacoma is DISMISSED and the Water Service Supervisors, Water Pumps and Storage Supervisor, and Water Treatment Plant Supervisors are appropriately included in the bargaining unit described in Finding of Fact 3 that is represented by the International Brotherhood of Electrical Workers, Local 489.

ISSUED at Olympia, Washington, this 12th day of July, 2017.

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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RECORD OF SERVICE - ISSUED 07/12/2017

DECISION 12744 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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