

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

MARINE ENGINEERS' BENEFICIAL  
ASSOCIATION

Involving certain employees of:

WASHINGTON STATE FERRIES

CASE 128459-E-16

DECISION 12754-A - MRNE

ORDER CLARIFYING  
BARGAINING UNIT

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for the Marine Engineers' Beneficial Association.

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Ferguson, for the Washington State Department of Transportation.

On September 26, 2016, the Marine Engineers' Beneficial Association (union) filed a petition to represent a bargaining unit of port engineers, the senior port engineer, and the project engineer/CMMS administrator (CMMS administrator) working in the Marine Transportation Division of the Washington State Department of Transportation (employer). The employer opposed the petition, arguing (1) that the Marine Employees Act, Chapter 47.64 RCW, does not apply to the petitioned-for employees due to their inclusion in the Washington Management Service; (2) that the CMMS administrator lacks a community of interest with the port engineers; and (3) that the senior port engineer should be excluded from the petitioned-for bargaining unit because the position is both confidential and supervisory.

This decision addresses the status of the CMMS administrator and the senior port engineer. *Washington State Ferries*, Decision 12680 (MRNE, 2017), addressed the eligibility of the entire group of petitioned-for employees, concluding that their inclusion in the Washington Management Service does not exclude them from coverage under Chapter 47.64 RCW. The matter proceeded to a cross-check, and on July 28, 2017, an interim certification was issued certifying the union as

the exclusive bargaining representative of the port engineers. *Washington State Ferries*, Decision 12754 (MRNE, 2017).<sup>1</sup> The status of the CMMS administrator and senior port engineer then proceeded to hearing. Hearing Officer Dario de la Rosa conducted a hearing on October 25, 2017, and the parties filed post-hearing briefs.

The CMMS administrator position shares a community of interest with the port engineers and would appropriately be included in the port engineers bargaining unit. While Chapter 47.64 RCW does not explicitly preclude supervisory employees from being included in the same bargaining units as nonsupervisory employees, community of interest standards require supervisory and nonsupervisory employees to be in different bargaining units. The senior port engineer does not qualify as a supervisor and cannot be excluded from the port engineers bargaining unit on that basis. Although the senior port engineer performs collective bargaining duties that have a “labor nexus,” Chapter 47.64 RCW does not contain a specific exclusion for “confidential” employees. Neither party addressed what impact, if any, the lack of a specific exclusion should have on how Chapter 47.64 RCW would deal with employees whose duties have a labor nexus. The parties are invited to provide additional briefing on this issue.

## BACKGROUND

The employer operates Washington State Ferries, the second largest automobile and passenger ferry system in the world. The fleet consists of 22 auto-passenger ferries that run on 10 routes and serve 20 terminals. Approximately 1,800 employees work for the ferry system.

Port engineers primarily work in the Port Engineers’ Office, which is located at the employer’s headquarters in Seattle, Washington. The Port Engineers’ Office is in charge of vessel maintenance; engine room equipment and personnel; planning and scheduling vessel out-of-service maintenance and preservation; and emergency and after-hours vessel response. The engine room crews work on the various employer-operated vessels and vessel maintenance occurs at other facilities, such as the Eagle Harbor maintenance facility in Bainbridge Island.

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<sup>1</sup> The bargaining unit description is subject to modification depending on the outcome of these proceedings. See paragraph 1.e. of the June 1, 2017, investigation statement.

The port engineers' oversight of the engine room personnel involves employee performance, disciplinary actions, and union matters. The port engineers support the engine room crews by assisting with repairs, acquiring resources as needed, and interfacing with the United States Coast Guard and other regulatory bodies.

*The CMMS Administrator*

The employer utilizes the Computerized Maintenance Management System (CMMS) to manage the maintenance and preservation of vessels, terminals, and inventoried assets. The CMMS is also the primary requisition system. The CMMS administrator is the first point of contact for all CMMS users in the employer's workforce. The position tracks and reports performance metrics and key performance indicators, such as mean time between repairs, mean time between failures, and lifecycle reliability or performance. The position also serves as the interdepartmental liaison for indicators in the form of data requests, statistical information, various reports, and other requested information. Bill Szigat currently holds the position.

*The Senior Port Engineer*

The senior port engineer oversees the vessel maintenance program and the direction of the engine and maintenance budget. The senior port engineer directs the efficient and effective use of vessel engineering plants; develops service, operating, and maintenance standards; and develops a means of measuring compliance and performance. The position is also responsible for the Port Engineers' Office's labor and non-labor budgets and manages the vessel maintenance schedules and out-of-service time. Wesley Sweet is the senior port engineer. He has occupied that position since May 2015.

Four port engineers and the CMMS administrator report to the senior port engineer. The senior port engineer has not conducted any formal performance evaluations, although he has authority to do so. The senior port engineer has authority to issue corrective action but not formal disciplinary action.

The senior port engineer spends about 5 percent of his time working with his team or independently on the collective bargaining process, which equates to approximately 5 meetings a year. Based on

his knowledge of the department functions, the senior port engineer provides the bargaining team with essential input and information for negotiations. He gives information on past practices of the agency as well as past and current contract language. Sweet has reviewed proposals prior to their disclosure to the union and understands that these proposals are confidential among his negotiating team. During one negotiation Sweet submitted a proposal of his own to the bargaining team, though his proposal did not make the final version of the agreement.

## ANALYSIS

### Applicable Legal Standards

The creation and maintenance of appropriate bargaining units is a function of this agency. *Washington State Ferries*, Decision 12559 (MRNE, 2016). The purpose of that function is to ensure there is a community of interest among the employees sufficient to enable them to bargain effectively with their employer. *Id.*; *Quincy School District*, Decision 3962-A (PECB, 1993).

The Marine Employees' Act, Chapter 47.64 RCW, grants employees of the Marine Transportation Division the right to organize and collectively bargain with their employer similar to other public employees within the state of Washington. While Chapter 47.64 RCW does not explicitly contain unit determination criteria that should be applied when crafting new bargaining units or modifying existing bargaining units, previous decisions have applied the unit determination criteria contained in Chapter 41.80 RCW to bargaining units at Washington State Ferries. *Washington State Ferries*, Decision 12559.

RCW 41.80.070 provides that this agency, in examining whether there is a community of interest, shall consider “[t]he duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation.” *See, e.g., Washington State Ferries*, Decision 12559. The criteria are not applied on a strictly mathematical basis. *State – Fish and Wildlife*, Decision 12636 (PSRA, 2016). 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. Public Employment Relations Commission*, 101 Wn.2d 435 (1984). When crafting the bargaining unit configuration, this agency is only required to create and certify *an* appropriate bargaining unit configuration, not the *most* appropriate. *See State – Veterans Affairs*, Decision 12549-A (PSRA, 2016).

### *Supervisory Employees*

Generally, supervisors are not included in the same bargaining units as the employees they supervise. WAC 391-35-340. 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. *Id.*

A supervisory employee is any 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) (citing 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 his or her time performing supervisory activities but performs a preponderance of the types of supervisory activities. *City of East Wenatchee*, Decision 11371; *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). This agency places emphasis on whether a disputed position has independent authority to act in the interest of the employer and make meaningful changes in the employment relationship. *City of Lakewood*, Decision 12453 (PECB, 2015); *State – Office of Administrative Hearings*, Decision

11503 (PSRA, 2012). If an employee merely executes the instructions of a higher ranking employee when making meaningful changes to the workplace, that employee has not exercised independent judgment. *State – Office of Administrative Hearings, Decision 11503, citing City of Lynnwood, Decision 8080-A (PECB, 2005), aff'd, Decision 8080-B (PECB, 2006).*

The distinguishing characteristic is that the employee's level of authority does not rise to the level of conflict that would require separating the employee out of the bargaining unit. *Rosalia School District, Decision 11523.* In determining supervisory status, the agency considers the extent of authority of supervisors to hire, terminate, suspend without pay, or effectively recommend such actions as being the paramount criteria. *Okanogan County, Decision 6142-A (PECB, 1998).* An employee's exercise of authority to assign and direct work, grant time off, authorize overtime, issue oral or written reprimands, and evaluate and train subordinate employees may be insufficient if that individual does not have authority to hire, terminate, suspend without pay, or effectively recommend such actions. *Id.*

#### Application of Standards

##### *The CMMS Administrator*

The CMMS administrator shares a community of interest with the port engineers, and the position would appropriately be included in the port engineers bargaining unit. The CMMS administrator and four port engineers report to the senior port engineer, and the positions occupy the same horizontal level on the employer's organizational chart. Additionally, the CMMS administrator routinely collaborates with the port engineers to manage the maintenance of the employer's vessels. No evidence suggests that work jurisdiction issues would be created or that the port engineers bargaining unit would be rendered inappropriate if the CMMS administrator position were included.

##### *Senior Port Engineer*

The senior port engineer position is not supervisory in nature because the position does not spend a preponderance of its time performing supervisory duties. The position's incumbent testified that he spends 30 percent of his time on vessel maintenance, staffing, safety, and environmental issues; approximately 20 percent of his time in meetings with staff, regulatory agencies, and vendors and

contractors concerning services; and an additional 20 percent of his time on budget-related work, often in concert with the port engineers. These duties demonstrate that the senior port engineer spends a preponderance of his time performing duties that are not supervisory in nature.

The senior port engineer also does not perform a preponderance of supervisory duties. The senior port engineer's ability to discipline employees is limited. The current incumbent has only issued a written correction that was delivered by e-mail. While the previous incumbent of the position testified that she had issued a formal written warning to an employee, that letter was issued at a time when the director of vessel maintenance, preservation & engineering position was vacant. The senior port engineer does not have independent authority to promote, transfer, layoff, suspend, or discharge employees. No evidence suggests that the senior port engineer has impacted the working conditions for port engineers in a meaningful way so as to create a conflict of interest.

### CONCLUSION

The CMMS administrator position shares a community of interest with the port engineers and would appropriately be included in the port engineers bargaining unit. The senior port engineer does not qualify as a supervisory employee and cannot be excluded from the port engineers bargaining unit on that basis. While most statutes this agency administers contain specific exemptions and definitions for confidential employees precluded from collective bargaining, Chapter 47.64 RCW contains no explicit exclusion. *Compare* RCW 47.64.011(6) *with* RCW 41.56.030(11)(c), RCW 41.59.020(4)(c), RCW 41.76.005(5), *and* RCW 41.80.005(4). Because this issue was identified after the hearing and submission of briefs, the parties have not had a chance to provide input as to whether a confidential employee exemption should be implied with the statute. Processing of this matter shall be remanded to the Hearing Officer for the sole purpose of allowing the parties to brief this issue.

### FINDINGS OF FACT

1. The Washington State Department of Transportation is an employer within the meaning of RCW 47.64.011(4).

2. The Marine Engineers' Beneficial Association (union) is a ferry employee organization within the meaning of RCW 47.64.011(7).
3. The union represents a bargaining unit of port engineers working in the employer's Port Engineers' Office.
4. The Port Engineers' Office is in charge of vessel maintenance; engine room equipment and personnel; planning and scheduling vessel out-of-service maintenance and preservation; and emergency and after-hours vessel response. The port engineers' oversight of the engine room personnel involves employee performance, disciplinary actions, and union matters. The port engineers support the engine room crews by assisting with repairs, acquiring resources as needed, and interfacing with the United States Coast Guard and other regulatory bodies.
5. The employer utilizes the Computerized Maintenance Management System (CMMS) to manage the maintenance and preservation of vessels, terminals, and inventoried assets. The CMMS is also the primary requisition system.
6. The CMMS administrator is the first point of contact for all CMMS users in the employer's workforce. The position tracks and reports performance metrics and key performance indicators, such as mean time between repairs, mean time between failures, and lifecycle reliability or performance. The position also serves as the interdepartmental liaison for indicators in the form of data requests, statistical information, various reports, and other requested information.
7. The senior port engineer oversees the vessel maintenance program and the direction of the engine and maintenance budget. The senior port engineer directs the efficient and effective use of vessel engineering plants; develops service, operating, and maintenance standards; and develops a means of measuring compliance and performance. The position is also



responsible for the Port Engineers' Office's labor and non-labor budgets and manages the vessel maintenance schedules and out-of-service time.

8. Four port engineers and the CMMS administrator report to the senior port engineer. The senior port engineer has not conducted any formal performance evaluations, although he has authority to do so. The senior port engineer has authority to issue corrective action but not formal disciplinary action.
9. The senior port engineer spends 30 percent of his time on vessel maintenance, staffing, safety, and environmental issues; approximately 20 percent of his time in meetings with staff, regulatory agencies, and vendors and contractors concerning services; and an additional 20 percent of his time on budget-related work, often in concert with the port engineers.
10. The senior port engineer's ability to discipline employees is limited. The current incumbent has only issued a written correction that was delivered by e-mail. While the previous incumbent of the position testified that she had issued a formal written warning to an employee, that letter was issued at a time when the director of vessel maintenance, preservation & engineering position was vacant. The senior port engineer does not have independent authority to promote, transfer, layoff, suspend, or discharge employees. The senior port engineer has not impacted the working conditions for port engineers in a meaningful way so as to create a conflict of interest.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 47.64 RCW and Chapter 391-25 WAC.
2. Based upon Findings of Fact 4 through 6, the CMMS administrator shares a community of interest with the port engineers in the bargaining unit described in Finding of Fact 3.

3. Based upon Findings of Fact 7 through 10, the senior port engineer is not a “supervisory” employee that must be excluded from the bargaining unit described in Finding of Fact 3.

ORDER

1. The CMMS administrator is appropriately included in the bargaining unit described in Finding of Fact 3.
2. Processing of this matter is remanded to the Hearing Officer for further briefing consistent with this decision.

ISSUED at Olympia, Washington, this 28th day of March, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL P. SELLARS, Executive Director



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### RECORD OF SERVICE - ISSUED 03/28/2018

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