

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-C - MRNE

DECISION OF COMMISSION

*Michael R. McCarthy*, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P.,  
for the Marine Engineers' Beneficial Association.

*Thomas R. Knoll, Jr.*, Assistant Attorney General, Attorney General Robert W.  
Ferguson, for the Washington State Ferries.

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 (Washington State Ferries or employer). The employer asserted that Chapter 47.64 RCW did not apply to the petitioned-for employees because they were included in the Washington Management Service, that the CMMS administrator lacked a community of interest with the port engineers; and that the senior port engineer should be excluded as confidential and supervisory.

In *Washington State Ferries*, Decision 12680 (MRNE, 2017), the executive director concluded that the employees' inclusion in the Washington Management Service (WMS) did not exclude them from coverage under Chapter 47.64 RCW. The executive director remanded the case to the representation case administrator. Neither party appealed the executive director's application of Chapter 47.64 RCW to the employees at issue. While the executive director's holding that WMS employees are eligible to exercise collective bargaining rights under Chapter 47.64 RCW is not before us, the only ferry employees precluded from exercising collective bargaining rights are

those exempt employees identified in RCW 41.06.079. The representation case administrator conducted a cross-check, and the executive director certified the union as the exclusive bargaining representative. *Washington State Ferries*, Decision 12754 (MRNE, 2017). The executive director remanded the case to resolve the disputed issues.

In *Washington State Ferries*, Decision 12754-A (MRNE, 2018), the executive director concluded that the CMMS administrator shared a community of interest with the port engineers and that the senior port engineer was not a supervisor. The executive director remanded the case for briefing and argument on the issue of whether the senior port engineer was confidential when Chapter 47.64 RCW did not explicitly exclude confidential employees from exercising their collective bargaining rights. The executive director concluded that the lack of a specific statutory exclusion did not prevent the application of the labor nexus test under community of interest principles, and that the senior port engineer was not confidential. *Washington State Ferries*, Decision 12754-B (MRNE, 2018).

The employer filed a timely appeal of *Washington State Ferries*, Decision 12754-A and Decision 12754-B. The employer did not file an appeal brief. The union filed a response brief to complete the record.

The Commission reviews conclusions and applications of law, as well as interpretations of statutes de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings of fact, in turn, support the executive director's conclusions of law. *City of Bellingham*, Decision 7322-B (PECB, 2002). Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Id.*

We have reviewed the record, including the transcripts, the exhibits, the parties' briefs to the executive director, the notice of appeal, and the union's brief. Substantial evidence supports the executive director's findings of fact, which in turn, support the executive director's conclusions of law. We affirm the executive director. The CMMS administrator shares a community of interest

with the port engineers. We affirm the executive director's holding that ferry employees that exercise confidential duties may exercise collective bargaining rights but must still share a community of interest with other employees in the bargaining unit. In some circumstances, not present here, the confidential duties of a ferry employee with respect to a bargaining unit may undermine that employee's community of interest with a bargaining unit. The executive director appropriately applied the labor nexus test to determine whether the senior port engineer was a confidential employee. Here, the senior port engineer is neither supervisory nor confidential.

ORDER

The findings of fact, conclusions of law, and order issued by Executive Director Michael P. Sellars are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 18th day of December, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



SPENCER NATHAN THAL, Commissioner



# RECORD OF SERVICE

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ISSUED ON 12/18/2018

DECISION 12754-C - MRNE has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 128459-E-16

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