

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION  
LOCAL 587,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 133011-U-20

DECISION 13392 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

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Amalgamated Transit Union Local 587 (ATU Local 587) represents a job classification at King County (employer) called Maintenance Service Center (MSC) Worker. Deno Maedgen was classified as an MSC Worker when he filed a reclassification request in June 2016, asserting he was actually doing the work of a Transit Chief. The Transit Chief position is represented by a different union, PROTEC17.

In 2019, the Pierce County Superior Court agreed with Maedgen and ordered the employer to reclassify Maedgen to Transit Chief effective June 2016. Subsequently, the employer and Maedgen executed a settlement agreement, by which Maedgen was reclassified as a Maintenance Planner-Scheduler. Upon reclassification, Maedgen left the ATU Local 587 unit because the Maintenance Planner-Scheduler classification is represented by PROTEC17.

In this unfair labor practice case, ATU Local 587 claims that because Maedgen was classified as an MSC Worker prior to his reclassification and his work has not changed, he is therefore still doing the work of an MSC Worker. ATU Local 587 claims that the employer unlawfully skimmed

its bargaining unit work when the employer moved Maedgen out of the ATU Local 587 unit while he continued to do the same work he did while in the unit.

ATU Local 587 does not meet its burden of proof to establish that the employer transferred “bargaining unit work” when Maedgen was reclassified. Accordingly, the complaint is dismissed.

### ISSUE

As framed by the preliminary ruling of September 9, 2020, the issue in this case is:

Did the employer refuse to bargain in violation of RCW 41.56.140(4) [and if so, commit derivative interference in violation of RCW 41.56.140(1)] when the union learned of the violation within six months of the date the complaint was filed, by skimming Street Car Section MSC Worker work previously performed by bargaining unit members, without providing the union an opportunity for bargaining?

### BACKGROUND

In addition to operating one of the largest bus transit systems in the country, King County also operates a light rail system and a streetcar system. When King County began operating a streetcar line in 2007, there was only one line: the South Lake Union Line. To begin staffing the streetcar system, the employer and ATU Local 587 executed an agreement providing that the employer would create new classifications in the streetcar system, including MSC Worker, which would be represented by ATU.

#### *Deno Maedgen Is Hired at Link Light Rail and Transferred to Seattle Streetcar*

In September 2008, Deno Maedgen was hired by the employer at its Link Light Rail system as an MSC Worker. Maedgen and another MSC Worker, Dave Burdick, were responsible for helping

establish the Materials Service Center<sup>1</sup> for the light rail service. Maedgen and Burdick set up physical locations and put away inventory. Establishing protocols for operation of the service center was unnecessary because they already existed. At Link Light Rail, Maedgen reported to Chief Ben Leeden. At some point, Maedgen began doing MSC Worker work for Seattle Streetcar, about one day per week, out of the Link Light Rail shop. Around 2012, Seattle Streetcar began work to add a second streetcar line, the First Hill Line.

In December 2014, Maedgen was transferred from Link Light Rail to Seattle Streetcar full time. He was still classified as an MSC Worker, and he reported directly to the superintendent of Seattle Streetcar, Tedd Hankins. While Maedgen continued to perform some of the tasks he had performed at Link Light Rail, he also performed additional duties. There was no chief at Seattle Streetcar, so Maedgen himself performed some of the tasks that had been performed by Leeden at Link Light Rail.

Maedgen was responsible for setting up a dedicated Maintenance Service Center for Seattle Streetcar. He had to “establish the streetcar MSC center from the ground up essentially.” His tasks included getting the inventory management system set up; establishing a process for checking out parts overnight; setting up a hazardous materials program; working with overseas vendors who were building the streetcars; and being the liaison between the employer and the City of Seattle (who actually owns the streetcar system). Unlike at Link Light Rail, where the protocols to make the MSC run were already established, at Seattle Streetcar, Maedgen had to set up the protocols himself.

#### *Maedgen’s Body of Work—2015 to Present*

Sometime in 2015, the Seattle Streetcar MSC setup was complete. Since then, Maedgen has continued to work with vendors to negotiate and administer contracts to obtain streetcar parts, deal with warranties, and work with out-of-compliance or expiring parts. Maedgen is the liaison between the County facilities’ employees and the vendors, ensuring that the employer’s workers

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<sup>1</sup> “Materials Service Center” and “Maintenance Service Center” are used interchangeably.

have the items they need. At Seattle Streetcar, Maedgen must develop contacts with international vendors, which he did not do in his MSC Worker position at Link Light Rail (at Light Rail, Maedgen would fill out a requisition for parts and Sound Transit would purchase components from overseas).

Unlike the MSC Workers at Link Light Rail,<sup>2</sup> Maedgen does not regularly issue and pull parts because at Seattle Streetcar, the electromechanics issue and pull parts. Maedgen only issues parts for the Overhead Catenary System support, which are taken from the established overnight or unstaffed weekend checkout log. Similar to MSC Workers at Link Light Rail, Maedgen creates purchase orders; but unlike them, Maedgen also has responsibility for initiating contracts with vendors.

Maedgen is responsible for the Material Safety Data Sheet (MSDS) process relating to hazardous chemicals in parts, including checking the MSDS website. As an MSC Worker at Link Light Rail, Maedgen would only identify whether an MSDS was in the system; it was up to the chief to fill out the sheet. At Seattle Streetcar, Maedgen also owns and manages the entire warranty process, such as managing warranty data in the system.

Jeff Wong was hired as a Chief for Seattle Streetcar in 2018. As Maedgen's supervisor, Wong described Maedgen's predominant responsibility at Seattle Streetcar:

Basically making sure we have a vendor supply for most of our components that are no longer... available to acquire due to the manufacture. . . . [H]e needs to do a lot of finding alternate vendors, research, and also building the maintenance scheduling or planning for any issues we have. And he also had projects that are – basically we're trying to update our South Lake Union base, the gate system, and he's basically working with contractors in developing a plan for that and the cost.

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<sup>2</sup> In this case, Maedgen's work was compared and contrasted to the MSC Workers in Link Light Rail because, apparently, there have not been any MSC Workers at Seattle Streetcar other than Maedgen (when he was in that classification).

Link Light Rail Maintenance Service Center Chief Leeden was asked to describe the MSC Workers with two words, and he explained:

Service Center. They service all crafts. They service in whatever they need.

So let's say, it's today. "Hey, where did we get that from last time?" So they have to answer that question to them.

"Hey, you know, I'm out of these little widgets. What do I have?" You know, and then they answer that question to them.

So I would say their job is every day people coming in and asking them questions, or "How do I do this?" or "I need this," or, you know, it's so multifaceted. It's so many things that they do in one day.

I just come in and do this every day. It's, like, "I'm working on P cars. Oh yeah, Tom, I can help you with this right now." So they have to move from one thing to the next to the next to the next all day long.

### *Maedgen Pursues Reclassification*

At some point, Seattle Streetcar Superintendent Hankins started a reclassification request form for Maedgen, and asked Maedgen for help with portions of the form that needed his input. Hankins began working on the reclassification request after Maedgen "had come to [him] and claimed that he [Maedgen] was working above his class or out of class and was there anything [Hankins] could do about it . . . as far as getting him a different position or a bump in pay or some other solution."<sup>3</sup> Hankins testified that Maedgen was "gradually stretching the scope of his work," and that in most cases he was assigning the duties to Maedgen, "but sometimes he would go beyond." Hankins'

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<sup>3</sup> Hankins testified that these discussions occurred a couple of months before the request form was submitted.

testimony indicates that he was not closely monitoring the finer details of Maedgen's work but was aware of and supported Maedgen's higher level duties.<sup>4</sup>

Maedgen was "surprised [] and gratified" when he learned that Hankins would file a reclassification request for him. Maedgen felt that he had been working out of class since December 2014, which was when he was transferred to Seattle Streetcar and began setting up the Maintenance Service Center without a chief.

Hankins submitted the reclassification request on June 9, 2016. In the reclassification request form, Hankins stated that Maedgen had "taken on many roles and responsibilities that are far beyond the original scope of the MSC Worker job description initially hired for." Hankins requested that Maedgen be reclassified to a Transit Chief position. Hankins came up with the idea of requesting that Maedgen be a chief. Hankins testified that he did not necessarily think that Maedgen was doing the work of a chief, "but in the discussions prior to that with the people at Metro Transit personnel, there was nothing between what he was doing and chief that was going to fit. So that was what we put down there . . . ." The Transit Chief job classification is outside of the ATU Local 587 unit and is represented by a different union, PROTEC17.

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<sup>4</sup> Hankins testified:

Q: And had you observed him working out of class?

A: I had observed what he was doing, and I was aware of what he was doing. I'm not sure I connected the dots that it was out of his classification. If I knew that, I would have asked somebody else to do it or had done something else about it. He was sort of gradually stretching the scope of his work.

Q: You say he was "gradually stretching." Were you assigning him these duties?

A: That's a good question. It's more like – yes. In most cases I'm sure that was exactly correct, but sometimes he would go beyond. Like, he would get involved in a contract creation, and I was not that – following that closely exactly what he did. So when he would say, "I'm going to go to this prebid meeting for a track contractor," or something, then I would – my response would be, "Good. Thank you. I appreciate it."

As things went on – or, for instance, a good example would be if we needed a part from Czechoslovakia and it needed to have a letter for a waiver for a sole source or for some other reason, he would take it upon himself to create such a letter and offer it to me to submit to the general manager for signature. And then these were very welcome things when he did them for us, and they needed to be done. And he, at the time, was knowledgeable and so forth, and he would do them.

On October 3, 2016, Compensation Analyst Molly Jensen denied the reclassification request. Jensen explained: “[T]he employee does participate in duties beyond other comparable MSC employees, but does not maintain a higher consequence of error or accountability. Based on the business needs of the agency, the most appropriate classification for the employee’s preponderance of duties is Rail Maintenance Service Center Worker.”

On October 5, 2016, Maedgen filed a request for reconsideration of Jensen’s decision. His request for reconsideration was denied by James Fournier on February 2, 2017. Fournier stated that Maedgen could not be reclassified as a chief, because chiefs were supervisors and Maedgen did not supervise other employees. However, Fournier recognized that the “scope of Deno’s position has grown,” and accordingly agreed to increase Maedgen’s pay by five percent, effective December 17, 2016.

Maedgen appealed the denial of his reclassification request to the King County Personnel Board. Maedgen requested that he be reclassified to a chief and be granted back pay “from the date I accreted the higher duties commensurate with the Transit Chief classification (November 4, 2014).”<sup>5</sup> The Personnel Board denied Maedgen’s appeal, finding that “because Maedgen does not supervise any employees he cannot properly be classified as a Transit Chief.”

#### *Superior Court Order and Settlement*

Maedgen appealed the Personnel Board’s decision to Pierce County Superior Court. On August 15, 2019, the Superior Court issued a writ, reversing the Personnel Board’s decision and directing the Personnel Board to immediately reclassify Maedgen as a Transit Chief, dating back to June 9, 2016. The Superior Court found:

The standard for job reclassification, as stated by the County, is whether the employee is performing the “preponderance” of the job duties of the classification.

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<sup>5</sup> In the alternative, Maedgen requested that he be granted back pay “back to the reclassification request (June 9, 2016).”

The Court finds that Mr. Maedgen was performing the preponderance of the Transit Chief-Rail Vehicle Maintenance position at the time of the reclassification request.

On about March 28, 2020, Maedgen and the employer executed an agreement providing that the employer would reclassify Maedgen from an MSC Worker to a Maintenance Planner-Scheduler, with the working title of Streetcar Maintenance Service Center Program Coordinator, effective June 16, 2016. The agreement also provided that Maedgen would dismiss his Pierce County Superior Court lawsuit. As part of the agreement, Maedgen was assigned a new pay rate and was paid \$47,482.09 as a "Retro Sum."

Seattle Streetcar Manager Christine Anderson testified that although the employer did not actually make Maedgen a Transit Chief as directed by the superior court, the superior court's order did prompt the employer to work more quickly to determine what classification would be the best fit for Maedgen. Although this is not entirely clear from the record, it seems that Maedgen and the employer agreed on the Maintenance Planner-Scheduler position to compromise between Maedgen's conviction (and the superior court's order) that he is doing higher level duties than the MSC Worker classification, and the employer's position that chiefs require direct reports, which Maedgen does not have.

Around May 19, 2020, Maedgen contacted ATU Local 587 to request that he stop paying dues to the union because he had been reclassified out of the bargaining unit. ATU Local 587 learned of the settlement and Maedgen's reclassification, and filed the above-captioned unfair labor practice complaint on September 4, 2020.

An Unfair Labor Practice Manager for the Commission issued a preliminary ruling on September 9, 2020. The employer filed its answer on September 29, 2020. A hearing was held on March 9 and 10, 2021. Due to the Coronavirus pandemic, the hearing was held via Zoom, a videoconferencing computer program, with the consent of both parties. The last brief was filed, closing the record, on May 17, 2021.



ANALYSISApplicable Legal Standard

The threshold question in a skimming case is whether the work that the employer assigned to non-bargaining unit employees was bargaining unit work. If the work was not bargaining unit work, then the analysis stops, and the employer would not have had an obligation to bargain its decision to assign the work. If the work was bargaining unit work, then we apply a balancing test to determine whether the decision to assign bargaining unit work to non-bargaining unit employees was a mandatory subject of bargaining. *Wapato School District*, Decision 12894-A (PECB, 2019) (citing *Central Washington University*, Decision 12305-A (PSRA, 2016)).

The *City of Richland* balancing test weighs the competing interests of the employees in wages, hours, and working conditions against “the extent to which the subject lies ‘at the core of [the employer’s] entrepreneurial control’ or is a management prerogative.” *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989). Recognizing that public-sector employers are not “entrepreneurs” in the same sense as private-sector employers, when weighing entrepreneurial control the Commission considers the right of a public-sector employer, as an elected representative of the people, to control the management and direction of government. *See Unified School District No. 1 of Racine County v. Wisconsin Employment Relations Commission*, 81 Wis. 2d 89, 95 (1977).

If the decision was a mandatory subject of bargaining, then the next question is whether the employer provided the union with notice and an opportunity to bargain the decision. If the employer did not, then the union will have met its burden of proving that the employer refused to bargain by skimming bargaining unit work. *King County*, Decision 12632-A (PECB, 2017).

A bargaining unit need not have lost work for an employer to be found to have skimmed bargaining unit work. The “actual loss of work is not, and should not be, the yardstick by which ‘skimming’ of bargaining unit work is to be measured.” *Battle Ground School District*, Decision 2449-A (PECB, 1986). It is detrimental to a bargaining unit when an employer assigns bargaining unit

work to non-bargaining unit employees, because any such assignment erodes the union's work jurisdiction, and "[u]nions have a strong interest in maintaining bargaining unit work." *Central Washington University*, Decision 12305-A. The extent of the impact on the union or its members is therefore an important factor. On the other side of the scale, the burden is not heavy: if the topic is found to be a mandatory subject of bargaining, the employer must notify the union and, upon request, bargain with the union in good faith to agreement or impasse.

#### Application of Standard

In this case, the analysis does not need to go any further than the "threshold question . . . whether the work that the employer assigned to non-bargaining unit employees was bargaining unit work." *Wapato School District*, Decision 12894-A. As discussed below, ATU Local 587 does not establish that Maedgen is performing "bargaining unit work." Having failed to carry its burden of proof on the threshold question in this case, "the analysis stops and the employer would not have had an obligation to bargain its decision to assign the work." *Id.*<sup>6</sup>

#### *Maedgen's Classification as an MSC Worker Prior to Reclassification Does Not Establish His Work Is "Bargaining Unit Work"*

In this case, Maedgen is doing the same job that he was doing prior to his reclassification, when he was in the ATU Local 587 bargaining unit. The union's principal argument in this case is that Maedgen's work is *ipso facto* ATU Local 587 bargaining unit work, because his work was historically performed by an employee in the bargaining unit (Maedgen himself). ATU Local 587 argues that "Maedgen has been doing and continues to do work belonging to the ATU Local 587 bargaining unit" because he "is 'working the same job' now as he has been since June 2016 when he filed his initial reclassification request."

The problem with ATU Local 587's argument is that the superior court found that Maedgen was improperly classified as an MSC Worker from 2016 to 2019. As ATU Local 587 notes, the general

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<sup>6</sup> As ATU Local 587 does not satisfy the "threshold question," I need not address the issue of whether the employer's reclassification of an employee to comply with a superior court order would be a mandatory subject of bargaining.

standard for defining “bargaining unit work” is as “work that bargaining unit employees have historically performed.” *Washington State University*, Decision 11498-A (PSRA, 2013). This standard cannot be stretched to include work performed by an employee when the employee should not have been included in the bargaining unit in the first place.

Without explicitly saying so, ATU Local 587 seeks to nullify the judgment of the superior court. ATU Local 587 argues that Maedgen’s assertions in his reclassification request were erroneous.<sup>7</sup> The superior court found that Maedgen’s reclassification request had merit, so if I were to agree with ATU Local 587 on this point, the agreement would contradict the holding of the superior court.

The superior court found that Maedgen’s placement in the ATU Local 587 unit was in error since at least 2016.<sup>8</sup> Accordingly, the fact that Maedgen was doing the same work while in the unit prior to his reclassification cannot establish that he is currently doing bargaining unit work. ATU Local 587 needs some other baseline to define the “bargaining unit work.”

*ATU Local 587 Does Not Otherwise Establish that Maedgen Is an MSC Worker*

The preponderance of evidence shows that Maedgen’s work is distinct from that of the typical MSC Worker.<sup>9</sup>

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<sup>7</sup> ATU Local 587 argues, “In his reclassification request forms he listed numerous tasks that he contends distinguishes his work from that of the typical MSC Worker. Substantial testimony belies his contention.”

<sup>8</sup> It seems that June 2016 was the retroactive date because that was when Maedgen formally initiated the reclassification process. Maedgen and Hankins had discussed the possibility that Maedgen was working out of class for some time prior to the filing of the reclassification paperwork, and Maedgen contended that he was misclassified since November 2014.

<sup>9</sup> ATU Local 587 cited the provision in the job description stating the MSC Worker could “perform other duties as assigned” as evidence that all of Maedgen’s work was MSC Worker work. This is not persuasive in establishing that whatever was assigned to Maedgen was the work of an MSC Worker. This is standard job description language. The employer presented job descriptions for positions outside of ATU Local 587 that similarly stated that they could “perform other duties as assigned.”

As part of its case in chief, ATU Local 587 called Ben Leeden, chief of the Link Light Rail Maintenance Service Center. On direct examination, Leeden testified about how Maedgen's work at Seattle Streetcar is different from the Link Light Rail MSC Workers. Leeden said that the Link Light Rail MSC Workers do not manage, research, or purchase parts to the extent Maedgen does. Leeden also testified that MSC Workers do not interpret and administer contracts. As quoted above, Leeden summarized the core duties of the MSC Worker as involving customer service—answering questions and providing parts for tradesmen.

Similarly, ATU Local 587's own witness, Jeff Wong, Maedgen's supervisor, testified on direct that he believed Maedgen's work was only 50 percent MSC Worker work.<sup>10</sup> As quoted above, Wong summarized Maedgen's core duties as dealing with vendors and contractors to obtain and manage the inventory for Seattle Streetcar.

Maedgen was also called as part of ATU Local 587's case in chief, and he also testified that his work involving contracts, overseas vendors, warranties, and the MSDS was different from and beyond the scope of an MSC Worker. Maedgen also described how he does not pull and issue parts, which is the job of an MSC worker at Link Light Rail.

ATU Local 587 argues that Maedgen is an MSC Worker because Hankins testified that Maedgen's assignments leading up to the reclassification request were "within his job classification." I do not find this is sufficient to establish that Maedgen is doing MSC Worker work. First, even if Hankins had thought it was appropriate at the time to assign these tasks to Maedgen, he later initiated and filed the reclassification request form stating that Maedgen was working beyond the duties of an MSC Worker and would be more appropriately classified as a chief. Second, at another point during his direct examination, he indicated that he did not think the MSC Worker classification was appropriate for Maedgen: "[t]here was nothing between what he was doing and chief that was going to fit." Moreover, the specific inquiry in this case is whether Maedgen was doing

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<sup>10</sup> However, Wong admitted that he "never actually had an MSC" other than the "Deno-hybrid MSC worker," so "it would be kind of hard for [him] to make a decision with the difference between an actual MSC worker and what the maintenance scheduler/planner [position held by Maedgen] is about."

ATU Local 587 bargaining unit work when he was transferred out of the ATU Local 587 bargaining unit. Even if Hankins believed Maedgen was doing MSC Worker work belonging to the ATU Local 587 bargaining unit in 2016 when the reclassification was filed, it appears Hankins was no longer working at Seattle Streetcar at the time the work was allegedly skimmed in 2020.

ATU Local 587 also argues that Maedgen is an MSC Worker because “classification experts Molly Jensen and James Fournier, after thorough analyses, each concluded that . . . the vast bulk of Mr. Maedgen’s work was in [the MSC Worker] classification.” Jensen and Fournier’s assessments are not persuasive because they were appealed to, and overturned by, the superior court.

ATU Local 587 further argues that “the parties . . . recognized and agreed that the [MSC Worker] was ATU Local 587 bargaining unit work by virtue of placing the position in the bargaining unit.” This is true, but this case is not about whether the MSC Worker position belongs in the ATU Local 587 bargaining unit. This fact does not establish that Maedgen is an MSC Worker or is performing ATU Local 587 bargaining unit work.

In sum, the preponderance of the evidence shows that Maedgen’s work is distinct from the work of the MSC Worker job classification.

This case is similar to *City of Tukwila*, Decision 9839 (PECB, 2007), where a union filed skimming charges after an employee, Trinh, was reclassified from IT Specialist (in the bargaining unit) to Systems Administrator (out of the bargaining unit). The Examiner found that “in the new position as Systems Administrator, Trinh [performed] job duties which are unique and fundamentally different from the duties he performed as an IT Specialist, and were not historically performed by employees of the Administrative/Technical bargaining unit.” Similar to Maedgen’s case, in *City of Tukwila*, upon reclassification, Trinh was given a retroactive pay increase “in recognition that he had been working out of class for some time.” The Examiner concluded that “[t]he union did not meet its burden of proof to show that the work of the Systems Administrator [was] work historically performed by the Administrative/Technical bargaining unit.”

This case also has parallels with *City of Tacoma*, Decision 6601 (PECB, 1999). In that case, the union represented a Customer Service Consultant job classification. Due to financial pressures, the employer eliminated the positions and laid off the employees. Over a year later, the employer created a new position outside of the bargaining unit called Energy Services Account Executive. The union filed a skimming charge, contending that “the employer resurrected work previously performed by the consumer service consultants, and that the account executive position [was] very similar in scope and content to the consumer service consultant position.”

The Examiner in *City of Tacoma* dismissed the union’s claim, finding that the new position was “fundamentally different from regular bargaining unit work in terms of the nature of duties, skills, or working conditions of the position.” Among other things, the Examiner found that the “basic function” of the positions were different. The historical bargaining unit position had a customer-service focus and did not “rise to the same level as the role and authority vested in the new position.” The Examiner also noted that the account executive position was paid 25 percent more than the customer service consultant position, reflecting “[f]urther evidence of the higher function and responsibility” in the account executive position.

Similar to *City of Tacoma*, in this case, the record indicates different basic functions between the MSC Worker and the Maintenance Planner-Scheduler positions. Where the MSC Workers deal mostly in customer service, as a Maintenance Planner-Scheduler, Maedgen performs work at a higher level, dealing with vendors and contractors. Maedgen also is paid more as a Maintenance Planner-Scheduler than he was as an MSC Worker, as reflected in the \$47,482.09 he was paid as a “Retro Sum” upon his reclassification.

Another significant parallel with this case is that in *City of Tacoma*, the skimming charge was rejected even though the employer did not refill the previously eliminated bargaining unit positions. The Examiner’s focus was on whether the new position was “bargaining unit work” or whether it was fundamentally different. Accordingly, in this case, the fact that the employer did not hire a new MSC Worker in the Seattle Streetcar system following Maedgen’s reclassification is not conclusive that the employer skimmed the MSC Worker work. The union must still establish that Maedgen is performing bargaining unit work.

*ATU Local 587 Did Not Argue that a Particular Subset of Maedgen's Job Is ATU Local 587 Bargaining Unit Work*

ATU Local 587's principal argument is that Maedgen is an MSC Worker and therefore he continues to do ATU Local 587 bargaining unit work.<sup>11</sup> ATU Local 587 does not—in its pleadings, brief, or anywhere else—argue that even if Maedgen is not an MSC Worker, there are still specific components of Maedgen's work that belong to ATU Local 587's bargaining unit. Although the record shows that there is some overlap between the MSC Worker and Maedgen's work, it is unnecessary to break down Maedgen's work to determine what is and is not ATU's bargaining unit work because ATU did not present such a case. "It is the burden of the parties to present their cases, and the job of the Examiner to determine whether the parties have met their respective burdens." *Kitsap County*, Decision 12022-A (PECB, 2014). ATU Local 587's theory in this case was that Maedgen is an MSC Worker, and ATU Local 587 did not prove its theory.

*Positions outside of the Bargaining Unit Perform Tasks Similar to Maedgen*

Even accepting that some of Maedgen's duties overlap with those of MSC Workers, the record shows that there is also overlap with positions outside of the bargaining unit. ATU Local 587 has not demonstrated that Maedgen's tasks are exclusive to ATU Local 587's bargaining unit work. Leeden, as chief, administers and interprets contracts for Link Light Rail. PROTEC17 has positions in its jurisdiction that deal with warranties and warranty administration, inventory work and inventory administration, purchasing, and contract administration. If the employer has also historically assigned the at-issue work to employees outside of the bargaining unit so that there is "overlap" of employees performing the work, the work "has not attached exclusively" to the

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<sup>11</sup> ATU Local 587 argues: "Almost fourteen years ago King County and ATU Local 587 agreed that [MSC Workers] would be part of the Union bargaining unit. Then suddenly, in March 2020 without any notification to the Union King County transferred the work to a different bargaining unit." ATU Local 587 further stated that "[t]he [Maintenance Service Center Worker] position is still included within the ATU Local 587 bargaining unit. However, the work is no longer being performed by a member of the bargaining unit; instead, it is being performed by an employee in a different bargaining unit represented by a different labor union." (citations to record omitted).

bargaining unit and it is not “bargaining unit work” within the meaning of the skimming analysis. *Wapato School District*, Decision 12894-A.

ATU Local 587 has also permitted overlap of work to occur across bargaining units as a matter of practice and policy. The employer’s standard for job reclassification is whether the employee is performing the “preponderance” of the job duties of the classification. If a worker is performing a preponderance of a certain job classification’s duties, the worker will be placed in that classification, even if the minority of those duties belong in another classification. Unlike the other unions at the employer, ATU Local 587 did not bargain its own reclassification structure into its collective bargaining agreement; instead, it is subject to the County-wide “preponderance” standard. By acquiescing to this standard, ATU Local 587 permits some of its job classifications’ work to be done outside of the unit as long as the “preponderance” of the non-ATU employees’ work belongs to the non-ATU job classification. Under this standard, Maedgen is properly classified outside of the ATU Local 587 bargaining unit because the preponderance of his work is outside of the unit, even if he also performs some work within ATU Local 587’s job classification.

ATU Local 587 has also agreed to allow overlap of job duties in its collective bargaining agreement:

because of the small size of the Streetcar operation, there shall be variations from the usual, customary and historic work jurisdiction rules and practices that have been established in the Bus AGREEMENT. RAIL shall generally respect the classification boundaries that are established in the classification specifications for Streetcar jobs; however *it is agreed that incidental assignment of cross-classification work is allowed.*<sup>12</sup>

David Levin, a senior labor negotiator for the employer, testified that in the bus system “you have a lot of employees in very clear silos of work. . . . and we have generally respected those boundaries

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<sup>12</sup> Employer Ex. 18 at Art. R3 Sec.17 A. (emphasis added).



between these positions.” However, with the Seattle Streetcar system, this contract language was intended to allow overlap of work across bargaining units. Levin stated that

because of its very, very small size and the small number of people who would be on staff at any particular moment, we negotiated this language to make sure that people could pitch in and keep the thing moving. And this was an acknowledgement by the Union with the County that some of the kind of cross-jurisdictional problems that we – or issues that might arise over on the bus side could not arise over on the streetcar, that the Union would give us a pass on saying kind of “Hey, you go do that.” We need somebody to help, and that’s not really a concept that we have on the bus side as well, where people are much more siloed.

Levin’s testimony was not rebutted, and this would present another difficulty in ATU Local 587’s effort to establish that particular components of Maedgen’s work are exclusively ATU Local 587’s bargaining unit work that cannot be incidentally assigned to Maedgen.

### CONCLUSION

ATU Local 587 claims that Maedgen was doing the work of an ATU Local 587 bargaining unit MSC Worker and that the employer transferred him out of that bargaining unit, but he continues to do the same work. ATU Local 587 claims that the employer thereby unlawfully skimmed ATU Local 587’s bargaining unit work. The superior court found that Maedgen is not an MSC Worker, Maedgen’s body of work is distinct from MSC Workers’ work, and much of Maedgen’s type of work is not exclusively performed by the ATU Local 587 bargaining unit. ATU Local 587 has not carried its burden of proof in establishing that Maedgen’s work is ATU Local 587’s “bargaining unit work.” ATU Local 587 does not establish the threshold element of its skimming charge, and the case is dismissed.

### FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(13).
2. Amalgamated Transit Union Local 587 is a bargaining representative within the meaning of RCW 41.56.030(2).

3. From 2008 to 2020, Deno Maedgen was classified as a Maintenance Service Center (MSC) Worker in the ATU Local 587 bargaining unit.
4. In 2014, Maedgen was transferred to King County's streetcar system, where he was initially responsible for setting up a dedicated Maintenance Service Center for the Seattle Streetcar service.
5. In 2015, the setup of the Seattle Streetcar Maintenance Service Center was complete. Since 2015, Maedgen's body of work includes initiating vendor contracts, working with vendors, dealing with warranties, and managing the Material Safety Data Sheet process. Maedgen's basic function is to ensure the streetcar service has a vendor supply for components.
6. The basic function of MSC Workers in King County's Link Light Rail system is to provide service to the crafts, such as answering questions and providing parts.
7. On June 9, 2016, Maedgen's supervisor, Tedd Hankins, submitted a reclassification request form for Maedgen, stating that Maedgen had taken on roles and responsibilities that were beyond the original scope of the MSC Worker job description.
8. Maedgen's reclassification request was initially denied. It was also denied on an internal request for reconsideration and on appeal to the King County Personnel Board.
9. Maedgen filed an appeal to the Pierce County Superior Court, and on August 15, 2019, the Pierce County Superior Court issued a writ reversing the Personnel Board's decision and directing the Personnel Board to reclassify Maedgen as a Transit Chief retroactive to June 9, 2016.
10. The Transit Chief job classification is in a bargaining unit represented by PROTEC17.
11. On about March 28, 2020, Maedgen and King County executed a settlement agreement resolving Maedgen's superior court action and reclassifying him to a Maintenance Planner-Scheduler, with the working title of Streetcar Maintenance Service Center

Program Coordinator, effective June 16, 2016. Maedgen was assigned a new pay rate and was paid \$47,482.09 as a “Retro Sum.”

12. The Maintenance Planner-Scheduler job classification is in a bargaining unit represented by PROTEC17.
13. Maedgen’s body of work is distinct from the work of an MSC Worker.
14. Positions outside of ATU Local 587 perform types of work performed by Maedgen. Link Light Rail Chief Ben Leeden administers and interprets contracts for Link Light Rail. PROTEC17 has positions in its jurisdiction that deal with warranties and warranty administration, inventory work and inventory administration, purchasing, and contract administration.
15. By not bargaining a reclassification standard into its collective bargaining agreement as other unions at King County have done, ATU Local 587 has acquiesced to the reclassification standard in the King County Code. This standard provides that an employee’s proper classification is based on the preponderance of their job duties.
16. In its collective bargaining agreement with King County, ATU Local 587 agreed:

[B]ecause of the small size of the Streetcar operation, there shall be variations from the usual, customary and historic work jurisdiction rules and practices that have been established in the Bus AGREEMENT. RAIL shall generally respect the classification boundaries that are established in the classification specifications for Streetcar jobs; however it is agreed that incidental assignment of cross-classification work is allowed.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.
2. By the actions described in findings of fact 3–16, King County did not skim bargaining unit work and did not commit an unfair labor practice under RCW 41.56.140.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 16th day of August, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink that reads "Sean Leonard".

SEAN M. LEONARD, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



# RECORD OF SERVICE

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ISSUED ON 08/16/2021

DECISION 13392 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 133011-U-20

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