

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

CITY OF TACOMA

and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 483

For clarification of an existing bargaining unit.

CASE 135040-C-22

DECISION 13569 - PECB

ORDER CLARIFYING BARGAINING  
UNIT

*Alice Phillips*, Business Manager/Financial Secretary, for the International Brotherhood of Electrical Workers Local 483.

*Dylan Carlson*, Senior Labor Relations Manager, for the City of Tacoma.

The International Brotherhood of Electrical Workers Local 483 (union) represents a voluntarily recognized bargaining unit of customer & field services employees and a bargaining unit of supervisory employees at the City of Tacoma (employer). The parties jointly filed a petition to move the Warehouse Supervisors into the union's supervisory bargaining unit. During negotiations for the most recent collective bargaining agreement, prior to filing the petition, the parties discussed and agreed that the Warehouse Supervisors should be moved to the union's supervisory bargaining unit.

The parties' request to move the Warehouse Supervisors into the union's supervisory bargaining unit is granted. The parties jointly stipulated that the Warehouse Supervisors assign work, evaluate, and adjust grievances of the journey and lead level warehousing employees represented by the

union<sup>1</sup>. The Warehouse Supervisors also effectively recommend that the employees they supervise be promoted, hired, terminated, and can adjust grievances. Based upon these stipulations, the Warehouse Supervisors perform a preponderance of the supervisory duties and should be included in the union's supervisory bargaining unit to avoid creating a conflict of interest in the customer & field services bargaining unit.

## ANALYSIS

### Applicable Legal Standard

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. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *review 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).

Included in this agency's authority to determine an appropriate bargaining unit is the power to modify that unit, upon request, through a unit clarification proceeding. *University of Washington*, Decision 11590 (PSRA, 2012), *aff'd*, Decision 11590-A (PSRA, 2013); *see also Pierce County*, Decision 7018-A (PECB, 2001). Unit clarification cases are governed by the provisions of chapter 391-35 WAC. The general purpose of the unit clarification process is to provide this agency, as well as the parties to a collective bargaining relationship, 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). Unit clarification proceedings can be used to determine the bargaining unit placement of newly-created positions. WAC 391-35-020(1)(a).

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<sup>1</sup> The Warehouse Supervisors also supervise journey and lead level warehousing employees represented by the Washington state Council of County and City Employees Local 120.

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 include 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 a preponderance of the employee’s time is spent 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 less than a preponderance of that employee’s time is spent performing supervisory activities, but the employee performs a preponderance of supervisory activities. *City of East Wenatchee*, Decision 11371; *King County*, Decision 12079 (PECB, 2014).

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 that would require separating the employee out of the bargaining unit. *Rosalia School District*, Decision 11523 (PECB, 2012). In determining supervisory status, the agency considers 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. *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 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).

#### Application of Standard

The union represents a customer & field services bargaining unit and a supervisory bargaining unit. The customer & field services bargaining unit was voluntarily recognized by the parties and is currently described as:

All full-time and regular part-time employees working at the City of Tacoma in the following job classes: Customer Service Representative, Lead Customer Service Representative, Technical Customer Services Representative, Mail & Stock Processor, Senior Mail & Stock Processor, Meter Reader, Advanced Meter Field Investigator, Warehouse Supervisor, and Workforce Coordinator; excluding: confidential employees and all other employees.

The supervisory bargaining unit is currently described as:

All full-time and regular part-time employees working at the City of Tacoma in the following job classes: Customer Accounts Supervisor, Fire Electrical Maintenance Supervisor, Traffic Field Operations Supervisor, Biosolids Supervisor, and Solid Waste Collection Supervisor; excluding: confidential employees and all other employees.

The bargaining unit was last clarified in *City of Tacoma*, Decision 13205 (PECB, 2020).

The parties’ joint request to move the Warehouse Supervisors into the union’s supervisory bargaining unit is granted. The stipulated facts demonstrate that the Warehouse Supervisors are responsible for overseeing and directing the activities of the subordinate journey and lead level

warehouse employees, including assigning work, performing employee evaluations, and disciplining the journey and lead level warehouse employees job class. The Warehouse Supervisors also conduct interviews and effectively recommend that subordinate journey and lead level warehouse employees be hired. The Department Director has delegated the hiring authority to the Warehouse Supervisors. The Warehouse Supervisors conduct the interview process and then communicates the recommendation to the Department Director. The Department Director has historically followed the Warehouse Supervisors' recommendations. There have been times where the Warehouse Supervisors have completed interviews and recommended that the Department Director repost the position to find a new pool of applicants because they could not select any of the current applicants. Once the Warehouse Supervisor has selected an applicant, the Warehouse Supervisor calls the applicant, offers the position to the applicant, and determines start dates. While the formal offer letter is issued and signed by the Department Director, the Warehouse Supervisor exercises independent control in making effective hiring recommendations.

The Warehouse Supervisor also has the ability to effectively recommend that a subordinate journey and lead level warehouse employee be promoted, terminated, and also adjust grievances raised by the journey and lead level warehouse employees including alleged improper award of overtime, shift bid, vacation bid, or out-of-class assignment opportunities. These facts demonstrate that a conflict of interest exists and there is no longer a community of interest between the customer & field services bargaining unit employees and the Warehouse Supervisors.

The parties agree that the Warehouse Supervisors share a community of interest with the union's supervisory bargaining unit, which includes employees in the Customer Accounts Supervisor, Fire Electrical Maintenance Supervisor, Traffic Field Operations Supervisor, Solid Waste Collection Supervisor, and Biosolids Supervisor job classes. The community of interest for these positions is based upon their supervisory status and adding the Warehouse Supervisors to this bargaining unit will not disrupt the existing community of interest.

#### 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 483 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit of customer & field services employees that is currently described as follows:

All full-time and regular part-time employees working at the City of Tacoma in the following job classes: Customer Service Representative, Lead Customer Service Representative, Technical Customer Services Representative, Mail & Stock Processor, Senior Mail & Stock Processor, Meter Reader, Advanced Meter Field Investigator, Warehouse Supervisor, and Workforce Coordinator; excluding: confidential employees and all other employees.

4. The union also represents a supervisory bargaining unit currently described as:

All full-time and regular part-time employees working at the City of Tacoma in the following job classes: Customer Accounts Supervisor, Fire Electrical Maintenance Supervisor, Traffic Field Operations Supervisor, Biosolids Supervisor, and Solid Waste Collection Supervisor; excluding: confidential employees and all other employees.

5. The Warehouse Supervisors are responsible for overseeing and directing the activities of the subordinate journey and lead level warehouse employees, including assigning work, performing employee evaluations, and disciplining the journey and lead level warehouse employees job class.
6. The Warehouse Supervisors also conduct interviews and effectively recommend that subordinate journey and lead level warehouse employees be hired. The Department Director has delegated the hiring authority to the Warehouse Supervisors. The Warehouse Supervisors conduct the interview process and then communicates the recommendation to the Department Director. The Department Director has historically followed the Warehouse Supervisors' recommendations. There have been times where the Warehouse Supervisors have completed interviews and recommended that the Department Director repost the position to find a new pool of applicants because they could not select any of the current applicants. Once the Warehouse Supervisor has selected an applicant, the

Warehouse Supervisor calls the applicant, offers the position to the applicant, and determines start dates. While the formal offer letter is issued and signed by the Department Director, the Warehouse Supervisor exercises independent control in making effective hiring recommendations.

7. The Warehouse Supervisor also has the ability to effectively recommend that a subordinate journey and lead level warehouse employee be promoted, terminated, and also adjust grievances raised by the journey and lead level warehouse employees including alleged improper award of overtime, shift bid, vacation bid, or out-of-class assignment opportunities.
8. A conflict of interest exists and there is no longer a community of interest between the customer & field services bargaining unit employees and the Warehouse Supervisors.

#### 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 findings of fact 5 through 8, the Warehouse Supervisor exercises supervisory authority over the subordinate journey and lead level warehouse employees. This exercise of authority creates a conflict of interest that disrupts the community of interest between these positions.
3. Based upon findings of fact 5 through 8, the Warehouse Supervisor shares a community of interest with the bargaining unit described in finding of fact 4.

ORDER

1. The Warehouse Supervisor shall be removed from the customer & field services employees bargaining unit described in finding of fact 3. That bargaining unit shall be redefined as follows:

All full-time and regular part-time employees working at the City of Tacoma in the following job classes: Customer Service Representative, Lead Customer Service Representative, Technical Customer Services Representative, Mail & Stock Processor, Senior Mail & Stock Processor, Meter Reader, Advanced Meter Field Investigator, and Workforce Coordinator; excluding: confidential employees and all other employees.

International Brotherhood of Electrical Workers Local 483 shall continue to represent this bargaining unit.

2. The Warehouse Supervisor shall be added to the supervisory bargaining unit described in finding of fact 4. That bargaining unit shall be redefined as follows:

All full-time and regular part-time employees working at the City of Tacoma in the following job classes: Customer Accounts Supervisor, Fire Electrical Maintenance Supervisor, Traffic Field Operations Supervisor, Biosolids Supervisor, Solid Waste Collection Supervisor, and Warehouse Supervisor; excluding: confidential employees and all other employees.

The International Brotherhood of Electrical Workers Local 483 shall continue to represent this bargaining unit.

ISSUED at Olympia, Washington, this 29th day of September, 2022.

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.





# RECORD OF SERVICE

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ISSUED ON 09/29/2022

DECISION 13569 - PECB 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 135040-C-22

EMPLOYER: CITY OF TACOMA

REP BY: DYLAN CARLSON  
CITY OF TACOMA  
747 MARKET ST RM 1520  
TACOMA, WA 98402  
dcarlson2@cityoftacoma.org

PARTY 2: IBEW LOCAL 483

REP BY: ALICE PHILLIPS  
IBEW LOCAL 483  
3525 SO ALDER ST  
TACOMA, WA 98409  
alice@ibew483.org