

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

AMALGAMATED TRANSIT UNION
LOCAL 758

Involving certain employees of:

SOUND TRANSIT

CASE 138328-E-24

DECISION 13992 - PECB

DIRECTION OF ELECTION

Christopher Bangs, Associate General Counsel, for Amalgamated Transit Union
Local 758.

Darrah Hinton, Attorney at Law, Davis Wright Tremaine, for Sound Transit.

On February 5, 2024, the Amalgamated Transit Union Local 758 (union) filed a representation petition seeking to add a group of unrepresented maintenance employees of Sound Transit (employer) to its nonsupervisory bargaining unit.¹ The employer objected and argues that the petitioned-for positions lack a community of interest with the existing unit and that the petitioned-for Maintenance Supervisors are supervisors within the meaning of WAC 391-35-340. Hearing Officer Katelyn Sypher conducted a hearing on July 8 and 9, 2024. The parties filed post-hearing briefs to complete the record.

¹ The petition, as filed, sought to add, “All maintenance department employees, including light rail systems maintenance technicians, rail service specialists, and maintenance supervisors.” Before hearing, the union discovered two additional unrepresented positions within the maintenance department: a senior business analyst and a senior materials and services analyst. At hearing, the petitioner clarified its intent that “all maintenance department employees” for the purposes of its petition encompass these two additional positions. The employer did not object.

The union's proposed bargaining unit shares a community of interest and is appropriate. The Maintenance Supervisors are not supervisors within the meaning of WAC 391-35-340.

BACKGROUND

The petition involves employees of Sound Transit's Tacoma Link Light Rail Division. The Division operates a four-mile closed loop light rail system that provides fare-based passenger service to the public in Tacoma. Its Operational Maintenance Facility (OMF) headquarters is located at 802 East 25th Street in Tacoma, with a yard for Light Rail Vehicles (LRV) and two parking lots outside. The Division maintains another nearby property at 401 East 25th Street (401 building), which houses a control center.

The Tacoma Link Light Rail Division is led by Executive Operations Director, Robert Blackburn, who reports to Sound Transit's Deputy Executive Director in Seattle. There has, at times, been a Deputy Director for the Division. The Division is comprised of two "sides," operationally, the Transportation side and the Maintenance side. Each side has its own Manager who reports to the Director. One unrepresented Senior Technical Trainer also reports to the Director. The Division receives Human Resources support from a Sound Transit Business Analyst.

The existing Amalgamated Transit Union Local 758 bargaining unit is comprised of Light Rail Vehicle Operators from the Transportation side. That side also includes Light Rail Transportation Supervisors, who are unrepresented, and one unrepresented Senior Administrative Specialist. The petitioned-for positions come from the Maintenance side and include all unrepresented Maintenance employees who report directly or indirectly up to the Maintenance Manager. The positions include Light Rail Systems Maintenance Technicians, Light Rail Systems Maintenance Supervisors, Rail Service Specialists, a Senior Materials and Services Analyst, and a Senior Business Analyst.

There is also a bargaining unit of employees represented by the International Brotherhood of Electrical Workers Local 46 that perform facilities work for the employer in Tacoma. It was unclear from the evidence whether those employees report up through Division management, as

witnesses including the Division Director demonstrated little knowledge of the unit. No facilities employees were reflected on Division organizational charts. The description of the units in the collective bargaining agreement appears to indicate that the bargaining unit includes all Facilities Specialists, Senior Facilities Specialists, and Facilities Specialist Electricians who perform work for Sound Transit.

Existing Bargaining Unit

The union's current bargaining unit consists only of LRV Operators, whose primary job duty is to operate LRVs in service. There are currently 27 Operators. The Operators report directly to Light Rail Transportation Supervisors, who staff the control center at the 401 building. The Transportation Supervisors report to the Transportation Manager.

Operators are full-time employees who are paid hourly. They are overtime eligible and submit timecards through the MyST software system. They receive the same benefits package as all the petitioned-for positions.

The Operator position requires a high school diploma or GED. The position is categorized as safety sensitive, and employees must maintain Department of Transportation certifications and submit to a drug testing policy.

There are two shifts for Operators, with staggered start times. The earliest morning shift Operator arrives at 4:10 a.m. and the latest evening shift Operator arrives by 2:40 p.m. The evening shift ends shortly after revenue service, around 10:30 or 11:00 p.m.

Operators pick up and return LRVs to the yard outside the OMF. When Operators pick up LRVs, they perform a pre-trip inspection that mirrors a pre-trip inspection Maintenance Technicians perform. Operators park in the same parking lot on the east side of the building as the petitioned-for employees and see other employees in passing. Employees are allowed to use any of the breakrooms in the two buildings. While many Operators spend time in the breakroom at the 401 building, others use a breakroom inside the OMF building. Operators coming and going from shifts commonly cut through the OMF building and converse with Maintenance staff.

There is no evidence of interchange of duties, filling of absences, or promotional pathways between the bargaining unit Operator positions and the petitioned-for positions. Operators interact with the petitioned-for positions in the course of their duties as described below.

Maintenance Technicians

Maintenance is an around-the-clock operation, with eleven Maintenance Technicians split between three shifts. First shift is 6:00 a.m. to 2:00 p.m., second shift is 2:00 p.m. to 10:00 p.m., and third shift can be either 8:00 p.m. to 6:00 a.m. or 10:00 p.m. to 8:00 a.m. Each shift is led by a Maintenance Supervisor. The Maintenance Supervisors report to the Maintenance Manager.

Technicians' job duties include maintaining and repairing LRVs along with the electrical system, switches, and other equipment that keeps them in service. Their primary work location is the Maintenance shop on the first floor of the OMF building. Technicians also stage trains in the rail yard outside, perform maintenance tasks along the Link rail line, work in substations, and work on LRVs in the field.

The position is paid hourly and overtime eligible. Technicians bid for their shifts based on seniority. They submit timecards through the MyST software system. Like the Operator position, the Maintenance Technician position is safety sensitive, and employees must maintain DOT cards and submit to drug testing.

Maintenance Technicians are skilled journey-level workers. The position description calls for a bachelor's degree and four years of job-related experience or an equivalent combination of education and experience. None of the current Technicians have bachelor's degrees. Technicians receive some of the same training as Operators, sufficient to know track signals and move an LRV without passengers to the Maintenance shop for repairs. They also obtain AVO substation training to be able to perform system electrical work. They are also certified as traffic flaggers.

Technicians get called out to the field daily to assist when problems with in-service LRVs arise. There was credible Technician testimony that this occurs, on average, three to five times per day. During such calls, Technicians often board LRVs being operated by bargaining unit Operators and

talk with them to understand and troubleshoot problems. Technicians also have regular passing interaction with Operators in the OMF building and yard, as Operators pick up and return LRVs, take breaks in breakrooms, and access employee parking lots. Technicians can also be asked to perform flagging work directing Operators through crowded areas during special events like concerts at the Tacoma Dome.

Technicians on first and second shift interact with the Senior Business Analyst and Senior Materials and Services Analyst because they work in close proximity and some of their work time overlaps. Third shift may interact with these positions as needed by email but do not tend to see them in person.

A group of Technicians has also formed a work group with Rail Service Specialists, Maintenance Supervisors, and the Senior Materials and Services Analyst to reorganize and keep the Maintenance shop in order. They meet biweekly for approximately an hour.

All the Maintenance Technicians have been trained as relief supervisors. Because there are no supervisors on duty Friday and Saturday, relief supervisors are designated to perform supervisor work, such as reviewing work orders, on those days. They also cover for supervisors' absences. The only supervisory tasks that relief supervisors cannot perform are approving timecards and participating in the annual goal setting and performance evaluation process.

Maintenance Supervisors

There are three Maintenance Supervisors, one for each shift. Each Maintenance Supervisor has five direct reports, which can include Technicians and Rail Service Specialists. Maintenance Supervisors were described as “working supervisors” who perform the same work as Maintenance

Technicians seventy to eighty percent of the time.² They have additional duties related to work planning and work orders, directing work, the employer's annual goal setting and performance evaluation process, approving paid time off (PTO) and timecards, and attending supervisors' meetings.

Maintenance Supervisors maintain offices on the first floor of the OMF by the Maintenance shop. They work Sunday through Thursday schedules. The Supervisor position is paid hourly and overtime eligible.

Maintenance Supervisors receive the same trainings and have the same certification requirements as Maintenance Technicians. The position description calls for an associate's degree in the electrical or electronics systems field and four years of experience, including two years of leadership, planning, or workforce management experience, or an equivalent combination of education and experience. One current Maintenance Supervisor has an associate's degree in accounting and the rest were hired based on equivalent experience.

Supervisors' most frequent supervisory duty involves weekly work planning and work order management. Over the weekend, Supervisors spend time in the employer's computerized work order system reviewing preventative maintenance tasks that need to be performed and sending them out to their teams. At the end of the week, they review completed work orders to verify that Technicians have properly filled out all fields and close the work orders in the computer system. This amounts to "several hours" of weekly work.

² The employer's sole witness, Division Director Robert Blackburn, characterized Maintenance Supervisors as "working supervisors," but also ascribed greater supervisory time and authority to the Supervisors. For example, Blackburn testified that Maintenance Supervisors spend around eighty percent of their time on supervisory duties alone, whereas Maintenance Supervisor Scott Parrish testified to the opposite balance of work. However, Blackburn admits that he is no longer frequently on the Maintenance shop floor, and his broad testimony about these aspects of Maintenance Supervisors' role was not supported with specific examples. Parrish and Maintenance Technician Larry Young's testimony about the duties and authority of Maintenance Supervisors was detailed, consistent, and credible, and in the few instances where their testimony conflicted with Blackburn's, more credible than Blackburn.

Technicians inspect each other's work. When closing out a work order, the Supervisor does not review or verify the quality of the work performed. A testifying Supervisor believed that, as skilled workers, each Technician remained responsible for deficiencies in their work, and that he would only be responsible if he had personally provided faulty advice as a peer about how best to perform a task.

There was mixed evidence about the extent to which the Supervisors otherwise assign or direct work. Witnesses universally agreed that Technicians are self-starting skilled journeymen who do not require much direction. There are occasions when Maintenance Supervisors suggest that a certain time would be a good time to perform a preventative maintenance task or when Maintenance Supervisors happen to receive a phone call directly from Transportation seeking maintenance assistance and relay them to their teams. Ordinarily, such calls come through a radio system, and Technicians and Supervisors are both equipped with radios to answer the calls.

Maintenance Supervisors do not have hiring authority. They may be asked to participate in interview panels for Maintenance positions just as other Maintenance employees like Technicians and Rail Service Specialists are. Interview panel members take turns asking pre-approved interview questions and fill out post-interview forms evaluating candidates.

The Maintenance Manager is the official hiring manager for Maintenance positions. The Maintenance Manager listens to recommendations from interview panel members such as Supervisors but has the power to decide which candidates to refer on to Human Resources. There were no examples of a Supervisor exerting influence over the Maintenance Manager's decision. The rest of the hiring process happens without Supervisor involvement, and the Supervisor finds out later who was hired. Supervisors' involvement in the interview panels takes approximately five to ten hours per job posting.

Maintenance Supervisors have never exercised the power to discipline, suspend, or terminate Maintenance employees. The one instance of discipline issued to a Technician in witnesses' memory was dealt with by the Maintenance Manager and Human Resources with no involvement from the individual's Supervisor. One Maintenance Supervisor believed that they could

hypothetically recommend corrective action for their direct reports, but that it would be the Maintenance Manager's decision whether or not to issue it. And when employees are put on performance improvement plans (PIPs), the role of the Maintenance Supervisor is to "help" management and Human Resources with the plans' development and execution. However, no employees in Maintenance have been put on a PIP since 2012 or 2013.

Maintenance Supervisors give passing safety suggestions to other Technicians when they see hazards, but the comments are just as likely to be made by other Technicians with a particular area of expertise and have no disciplinary consequences.

The employer has an annual performance goal setting and evaluation process for employees. The outcome of employees' evaluations determines the amount of their annual wage increases and bonuses. Each year, the Division Director, Deputy Director, and Managers generate agency goals and pass them down to the Maintenance Department. Individual employees are also encouraged to set their own annual developmental goals. The Maintenance Supervisor reviews the goals for each of their direct reports to ensure that they are attainable and likely to be approved by Human Resources. For example, one Maintenance Supervisor noticed that a direct report had copied and pasted the same developmental goals from the preceding year and instructed him to generate new ones.

Maintenance Supervisors do mid-year check-ins with their direct reports to discuss whether they are on track to attain their goals. At the end of the year, the direct reports self-evaluate their progress. Maintenance Supervisors then rate their performance in categories ranging from "needs development" to "exemplary." A Supervisor estimated that he spends approximately five total hours per year on employee goal setting, mid-year check-ins, and rating his direct reports.

The Supervisor's rating is not final and must be submitted to a "calibration" process. Calibration meetings are held at the local level with other managers and supervisors of the Division, then with upper Sound Transit management and Human Resources. At the meetings, Supervisors present arguments to justify their ratings of their direct reports, and the ratings can be adjusted by other

members of management and Human Resources. High performance ratings are particularly scrutinized.

The lack of Supervisors' power over their employees' final ratings was evident from the testimony. First, a Maintenance Supervisor testified to an instance in which he had initially rated several of his direct reports in the "successful high" category and presented justifications at a calibration meeting, but the ratings were downgraded by others at the meeting, and he was ultimately unable to issue the ratings he wanted. Human Resources has also instructed Supervisors to change their ratings. Finally, the Division Director testified that there were instances in which he has personally intervened after the calibration meetings to continue lobbying Human Resources and upper management, up to and including Sound Transit's Deputy Executive Director, for strong ratings of Division employees. When he and upper management reached a rating they were "on the same page with," the rating was handed down to the Supervisor to give to the employee.

Supervisors review and approve their direct reports' PTO requests however, employees are entitled by policy or practice to use accrued PTO as long as they provide four hours' notice and witnesses were unaware of any instance of a Supervisor denying a request. Supervisors also review timecards to ensure that their direct reports' biweekly hours add up to 80 hours.

When there are overtime opportunities due to concerts or other special events, Supervisors help recruit volunteers through a rotating volunteer system. They do not assign overtime involuntarily, and there was no evidence of Supervisors assigning a shift to one volunteer over another. Generally, there is no evidence that Supervisors have the power to adjust their direct reports' schedules.

Finally, Supervisors participate in biweekly meetings with all of the Tacoma Link Light Rail Division Maintenance and Transportation Supervisors and Managers, the Senior Business Analyst, the Senior Materials and Services Analyst, the Director and Deputy Director, and, at times, Human Resources or higher-level Sound Transit leaders. At the meetings, attendees discuss safety themes, performance metrics, and other ongoing issues but there was no other evidence about any decisions made at those meetings or Supervisors' role in them.

Rail Services Specialists

There are three Rail Service Specialists. The Rail Service Specialists' primary role is to clean LRVs. They also move LRVs within the rail yard and clean the Maintenance shop. Rail Service Specialists are also designated to assist the Senior Materials and Services Analyst with parts and materials handling. They do so regularly each week.

The Rail Service Specialist position is an hourly, overtime-eligible position. Rail Service Specialists' shift times generally align with Maintenance Technicians'. Most of the Rail Service Specialists work third shift, when trains are not in service, but one works first shift. They submit timecards through MyST.

The Rail Service Specialist position requires a high school diploma or GED. They obtain forklift and crane certifications for use in parts and materials moving. Rail Service Specialists are qualified to operate LRVs in the yard but not on the mainline or in passenger service. They are also certified as flaggers. This position is also categorized as safety sensitive, and employees must maintain DOT cards and submit to drug testing.

The Rail Services Specialist who works during revenue service hours interacts with bargaining unit Operators when dispatched to clean spills and biohazards on LRVs. Rail Service Specialists on third shift interact with Operators in passing when Operators return LRVs to the rail yard.

At times, when their own work is completed, Rail Service Specialists assist Technicians in performing preventative maintenance tasks. Though there is no formal promotion pathway between the positions, one current Maintenance Technician started as a Rail Service Specialist and grew the skillset that eventually helped him get hired as a Maintenance Technician by watching and learning from Technicians on his shifts.

Senior Materials and Services Analyst

The Senior Materials and Services Analyst reports directly to the Maintenance Manager. The position's job duties include tracking parts use and inventory for the Maintenance department, ordering parts, equipment, and materials, and moving them around the facility.

The Senior Materials and Services Analyst position description calls for a bachelor's degree in finance, business administration, accounting, purchasing, or a closely related field plus four years of experience, or an equivalent combination of education and experience. The incumbent was promoted internally from a Maintenance Technician position and does not have a degree.

The Senior Materials and Services Analyst works Monday through Friday, 7 a.m. through 3 p.m. and works inside the Maintenance shop. The position is salaried and overtime exempt.

The Senior Materials and Services Analyst routinely collaborates with Maintenance Technicians and Supervisors to procure and deliver the parts and materials they use in their work. The Senior Materials and Services Analyst also works directly with the Rail Services Specialists as described above.

When the Senior Materials and Services Analyst is absent, no one formally fills the shifts, but at least one Maintenance Supervisor maintains a credit card to purchase items needed by the Department in his absence.

Senior Business Analyst

There is one Senior Business Analyst who is responsible for the analytics of the Division. The position manages Division databases and runs performance reports, coordinates and administers Tacoma Link Light Rail initiatives, and reviews and helps update Division policies and procedures. The Senior Business Analyst performs work for both the Transportation and Maintenance departments but reports to the Maintenance Manager for administrative convenience, to balance the number of direct reports between the Transportation and Maintenance Managers.

The Senior Business Analyst position description calls for a bachelor's degree in public administration, business administration, or a closely related field plus four years of experience, or an equivalent combination of education and experience. There was no definitive evidence whether the incumbent meets these criteria.

The Senior Business Analyst works Monday through Friday, 7 a.m. through 3 p.m. and maintains an office proximate to the Maintenance shop, directly beside a Maintenance Supervisor's office. The position is salaried and overtime exempt.

The Senior Business Analyst interacts with supervisors and managers on both sides of the Division to fulfill her duties. She sees Maintenance employees regularly on the job due to her office location and has also participated alongside Maintenance personnel in hiring interview panels for Maintenance positions. The Business Analyst is also the final drafter of the Standard Operating Procedures used by all Division employees and the Standard Maintenance Procedures used by Maintenance employees. She manages a SharePoint calendar and puts out a regular email to Division employees notifying them of upcoming special events for which the Division may want to staff up.

ANALYSIS

Applicable Legal Standard(s)

The determination of appropriate bargaining units is a function delegated to this agency by the legislature. RCW 41.56.060. *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 goal in making unit determinations is to group together employees who have sufficient similarities (community of interest) to indicate that they will be able to bargain effectively with their employer. *Central Washington University*, Decision 9963-B (PSRA, 2010); *Quincy School District*, Decision 3962-A (PECB, 1993).

Appropriate Bargaining Units

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 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).

This agency's role is to determine whether there is a community of interest, not the *best* community of interest. Consequently, the fact that other groupings of employees may also be appropriate, or even more appropriate, does not render the proposed configuration inappropriate. *State – Secretary of State*, Decision 12442 (PSRA, 2015) (citing *Snohomish County*, Decision 12071 (PECB, 2014), and *City of Winslow*, Decision 3520-A (PECB, 1990)).

A wall-to-wall bargaining unit of all employees employed by an employer is inherently appropriate because “all employees share a community of interest in dealing with their common employer.” *State – Social and Health Services*, Decision 12542-B (PSRA, 2016) (citing *Lakehaven Utility District*, Decision 3228 (PECB, 1989)). *See also City of Winslow*, Decision 3520. Residual bargaining units of all unrepresented employees are similarly appropriate. *Quillayute Valley School District*, Decision 2809 (PECB, 1987); *City of Vancouver*, Decision 3160 (PECB, 1989).

Supervisory Status

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.*

Chapter 41.56 RCW does not define the term “supervisor.” Initially, the Commission defined supervisory status based upon a set of duties, skills, and working conditions distinct from those of the employees in the rank-and-file bargaining unit, which often presented a conflict of interest with the employees in the rank-and-file bargaining unit. *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 29 Wn. App. 599, *rev. denied*, 96 Wn.2d 1004; *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 Employment 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*, Decision 1026-A, the Commission cited section 2(11) of the NLRA and stated, “Supervisors have management roles entailing duties such as hiring, firing, assignment, transfer, layoff, recall of subordinate employees and the processing of their grievances.” In *Snohomish Health District*, Decision 4735-A, the Commission stated that it has looked to the definition of supervisor in RCW 41.59.020(4)(d) for the types of authority that would create potential conflicts of interest if supervisors were placed in a rank-and-file bargaining unit.

The Commission elected to use the test under the EERA because the test under the NLRA is disjunctive. *Id.* (citing *National Labor Relations Board v. Health Care & Retirement Corporation of America*, 511 U.S. 571 (1994)). While the definition in the EERA is generally modeled 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 that the preponderance test found in RCW 41.59.020(4)(d) was closer to Commission precedent. *Snohomish Health District*, Decision 4735-A.

Therefore, 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).

This agency places emphasis on whether an employee in 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. *City of Lakewood*, Decision 12453; *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 whether the authority rises to the level of conflict expressed in the statute and that would require separating the employee from the bargaining unit. *Rosalia School District*, Decision 11523 (PECB, 2012). In determining supervisory status, this agency considers the extent of authority of first-line supervisors to hire, terminate, or suspend employees without pay, or to effectively recommend such actions, as being the paramount criteria. *Okanogan County*, Decision 6142-A (PECB, 1998). An employee's 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, or suspend employees without pay, or to effectively recommend such actions. *Id.*

This agency 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 directing 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).

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 were in the same bargaining unit as the individuals 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, 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. *Rosalia School District*, Decision 11523.

A determination that an employee does not meet the definition of supervisor under WAC 391-35-340 does not negate or strip away any titular or other supervisory authority of that employee. Indeed, an employee may possess a lower level of supervisory authority than the statutory definition contemplates and still be deemed a “supervisor” by subordinates.

Application of Standard(s)

The Petitioned-for Unit is An Appropriate Unit

The petitioned-for employees share a community of interest with ATU’s current bargaining unit. Adding them to that unit would result in an appropriate bargaining unit.

The Tacoma Link Light Rail Division is a small subdivision of the employer, with just sixty-two full-time employees. The employees currently in the ATU unit consists only of employees working within the employer’s Tacoma Link Light Rail Division. The employer’s other bargaining unit includes specific classifications working throughout its entire workforce, and it is unclear whether any employees performing facilities work in Tacoma are in the Tacoma Link Light Rail Division. The employer does not assert that the petitioned-for employees have any community of interest to the facilities bargaining unit. This presents significant latitude in terms of bargaining unit configurations without creating work jurisdiction or fragmentation concerns.

Adding the petitioned-for employees to the existing unit would result in nearly a wall-to-wall unit within the Division, with just five employees unrepresented: the Director, the Transportation and Maintenance Supervisors, the Senior Technical Trainer, and the Senior Administrative Specialist on the Transportation side. Like other wall-to-wall units, the petitioned-for and existing unit positions share sufficient basic commonality to create a community of interest. *State – Social and Health Services*, Decision 12542-B.

Maintenance Technicians, Maintenance Supervisors, and Rail Service Specialists have a high degree of functional integration with the bargaining unit Operators. Though they play different roles, both groups work daily to keep LRVs in service, running smoothly. Maintenance Technicians, Maintenance Supervisors, and first-shift Rail Service Specialists interact directly with Operators when dispatched to assist LRVs with operational issues or messes. Maintenance

Technicians, Maintenance Supervisors, and Rail Service Specialists on all shifts interact with Operators in passing either when the Operators are on site in the yard to pick up and return trains, are inside the OMF, or are in the shared east parking lot. Maintenance Technicians, Maintenance Supervisors, and Rail Service Specialists also assist Operators by flagging trains through crowded areas during special events.

The Maintenance Technician, Maintenance Supervisor, Rail Service Specialist, and Operator positions are all full-time, hourly, overtime eligible positions. They utilize the same software to track their time. These positions are all deemed safety sensitive, which means employees are required to maintain DOT certifications and submit to drug testing. Technicians, Supervisors, and Operators share some common training to learn track signals and operate LRVs.

The Senior Business Analyst and Senior Materials and Services Analyst share a community of interest with the other positions, despite being salaried, overtime exempt employees with a less hands-on role with LRVs. These positions share common supervision with the Maintenance Supervisors and, indirectly, the Technicians and Rail Service Specialists. Both perform work that supports the Maintenance Department: the Senior Materials and Services Analyst buys and distributes the parts and materials that enable Maintenance to keep LRVs and the lines in good repair; the Senior Business Analyst tracks data, compiles policies and procedures, and an events calendar for Maintenance and Transportation. Both positions share a work floor in the OMF with Maintenance, and the Senior Materials and Services Analyst is directly involved with other Maintenance employees in reorganizing the Maintenance shop. The Senior Business Analyst has participated with colleagues from the Maintenance Department in interviews for open Maintenance positions. Finally, all of the petitioned-for positions are subject to the same employer benefits package.

The employer essentially concedes the petitioned-for employees share a community of interest with the ATU's bargaining unit when it stated, "[n]one of the petitioned-for employees share an overwhelming community of interest with the existing bargaining unit." The employer provides no argument why these employees would struggle to bargaining collectively together, which is the ultimate purpose of this proceeding. The commonalities identified above, and the extent of

organization all demonstrate a community of interest. Given that this agency's role is to certify *an* appropriate unit, not the *most* appropriate unit, these positions easily meet the standard.

The Maintenance Supervisors Are Properly Included

The Maintenance Supervisors are plainly not supervisors within the meaning of WAC 391-35-340. These employees do not meet either preponderance standard, neither spending a preponderance of their time on supervisory duties nor performing a preponderance of the supervisory duties that require exclusion from the bargaining unit. *City of East Wenatchee*, Decision 11371.

Maintenance Supervisors perform regular Maintenance Technician work seventy to eighty percent of the time, with some additional weekly time spent on work order management, timecards, and PTO requests. Supervisors attend one supervisor meeting every two weeks, occasionally provide verbal direction, and spend approximately five hours per year on employee performance goals and evaluations. This adds up to much less than a preponderance of the Supervisors' time.

The Maintenance Supervisors also lack the paramount authorities of supervisors: hiring, terminating, and suspending employees without pay. There is no evidence that they can enact or effectively recommend such actions. *Okanogan County*, Decision 6142-A. At best, Maintenance Supervisors play the same role in hiring as other lower-level Maintenance employees on interview panels, with the ability to rate and recommend candidates. There is no evidence Supervisors' recommendations carry greater weight than other panelists. Mere participation on hiring committees is generally insufficient to confer supervisory status. *University of Washington*, Decision 13149-A (PECB, 2020); *Thurston County*, Decision 12727 (PECB, 2017).

Maintenance Supervisors have not disciplined or effectively recommended discipline to employees. In the one instance in which discipline has recently been issued to a Maintenance employee, the Supervisor was not involved, and the matter was handled by Human Resources and the Maintenance Manager.

The supervisory tasks performed by Maintenance Supervisors, including planning and directing work through the work order system, occasionally providing verbal assignments, approving

timecards and PTO requests, and overseeing direct reports' annual goals are more consistent with lead workers. *City of Lynnwood*, Decision 8080-A; *Grant County*, Decision 4501. As described by witnesses, the Supervisors' review of timecards, PTO requests, and annual goals are administrative tasks performed to meet Human Resources expectations and policies and do not involve the use of significant independent judgment.

By and large, the authority to meaningfully control employees' terms and conditions resides with management above the Supervisors and with Human Resources. This was evident in the testimony about the employee performance evaluation process, in which Supervisors' ratings of their direct reports, in effect, serve as recommendations that upper-level management and Human Resources may or may not approve during the calibration process. Where Maintenance Supervisors advocated for high ratings, evidence suggested their recommendations were not accepted.

Generally, the Maintenance Supervisors lack power to alter employees' compensation, benefits, hours of work, and other terms and conditions of employment. There is no reason to exclude them from the bargaining unit. *City of Lakewood*, Decision 12453; *State – Office of Administrative Hearings*, Decision 11503.

CONCLUSION

The petitioned-for unit is an appropriate bargaining unit. Maintenance Supervisors are not supervisors for the purposes of WAC 391-35-340 and are appropriately included in the unit.

FINDINGS OF FACT

1. Sound Transit is a public employer within the meaning of RCW 41.56.030(13).
2. Amalgamated Transit Union (ATU) Local 758 is a bargaining representative within the meaning of RCW 41.56.030(2).

3. Sound Transit's Tacoma Link Light Rail Division operates a four-mile closed loop light rail system that provides fare-based passenger service to the public in Tacoma. Its Operational Maintenance Facility (OMF) headquarters is located at 802 East 25th Street in Tacoma, with a yard for LRVs (Light Rail Vehicle) and two parking lots outside. The Division maintains another nearby property at 401 East 25th Street (401 building), which houses a control center.
4. The Tacoma Link Light Rail Division is led by an Executive Operations Director, Robert Blackburn, who reports to Sound Transit's Deputy Executive Director in Seattle. The Division is comprised of two "sides," operationally, the Transportation side and the Maintenance side. Each side has its own Manager who reports to the Director. One unrepresented Senior Technical Trainer also reports to the Director. The Division receives Human Resources support from a Sound Transit Business Analyst.
5. The existing ATU Local 758 bargaining unit is comprised of Light Rail Vehicle Operators from the Transportation side. That side also includes Light Rail Transportation Supervisors, who are unrepresented, and one unrepresented Senior Administrative Specialist. The petitioned-for positions come from the Maintenance side and include all unrepresented Maintenance employees who report directly or indirectly up to the Maintenance manager. The positions include Light Rail Systems Maintenance Technicians, Light Rail Systems Maintenance Supervisors, Rail Service Specialists, a Senior Materials and Services Analyst, and a Senior Business Analyst.
6. The ATU's current bargaining unit consists only of LRV Operators, whose primary job duty is to operate LRVs in service. There are currently 27 Operators. The Operators report directly to Light Rail Transportation Supervisors, who staff the control center at the 401 building. The Transportation Supervisors report to the Transportation Manager.
7. Operators are full-time employees who are paid hourly. They are overtime eligible and submit timecards through the MyST software system. They receive the same benefits package as all the petitioned-for positions. The Operator position requires a high school

diploma or GED. The position is categorized as safety sensitive, and employees must maintain Department of Transportation certifications and submit to a drug testing policy.

8. There are two shifts for Operators, with staggered start times. The earliest morning shift Operator arrives at 4:10 a.m. and the latest evening shift Operator arrives by 2:40 p.m. The evening shift ends shortly after revenue service, around 10:30 or 11:00 p.m. Operators pick up and return LRVs to the yard outside the OMF. When Operators pick up LRVs, they perform a pre-trip inspection that mirrors a pre-trip inspection Maintenance Technicians perform. Operators park in the same parking lot on the east side of the building as the petitioned-for employees and see other employees in passing. Employees are allowed to use any of the breakrooms in the two buildings. While many Operators spend time in the breakroom at the 401 building, others use a breakroom inside the OMF building. Operators coming and going from shifts commonly cut through the OMF building and converse with Maintenance staff.
9. Maintenance is an around-the-clock operation, with eleven Maintenance Technicians split between three shifts. First shift is 6:00 a.m. to 2:00 p.m., second shift is 2:00 p.m. to 10:00 p.m., and third shift can be either 8:00 p.m. to 6:00 a.m. or 10:00 p.m. to 8:00 a.m. Each shift is led by a Maintenance Supervisor. The Maintenance Supervisors report to the Maintenance Manager.
10. Maintenance Technicians' job duties include maintaining and repairing LRVs along with the electrical system, switches, and other equipment that keeps them in service. Their primary work location is the Maintenance shop on the first floor of the OMF building. Technicians also stage trains in the rail yard outside, perform maintenance tasks along the Link rail line, work in substations, and work on LRVs in the field. The position is hourly and overtime eligible. Technicians bid for their shifts based on seniority. They submit timecards through the MyST software system. Like the Operator position, the Maintenance Technician position is safety sensitive, and employees must maintain DOT cards and submit to drug testing.

11. Maintenance Technicians are skilled journey-level workers. The position description calls for a bachelor's degree and four years of job-related experience or an equivalent combination of education and experience. None of the current Technicians have bachelor's degrees. Technicians receive some of the same training as Operators, sufficient to know track signals and move an LRV without passengers to the Maintenance shop for repairs. They also obtain AVO substation training to be able to perform system electrical work. They are also certified as traffic flaggers.
12. Maintenance Technicians get called out to the field daily to assist when problems with in-service LRVs arise. This occurs, on average, three to five times per day. During such calls, Technicians often board LRVs being operated by bargaining unit Operators and talk with them to understand and troubleshoot problems. Technicians also have regular passing interaction with Operators in the OMF building and yard, as Operators pick up and return LRVs, take breaks in breakrooms, and access employee parking lots. Technicians can also be asked to perform flagging work directing Operators through crowded areas during special events like concerts at the Tacoma Dome.
13. Technicians on first and second shift interact with the Senior Business Analyst and Senior Materials and Services Analyst because they work in close proximity and some of their work time overlaps. Third shift may interact with these positions as needed by email but do not tend to see them in person.
14. A group of Technicians has also formed a work group with Rail Service Specialists, Maintenance Supervisors, and the Senior Materials and Services Analyst to reorganize and keep the Maintenance shop in order. They meet biweekly for approximately an hour.
15. All the Maintenance Technicians have been trained as relief supervisors. Because there are no supervisors on duty Friday and Saturday, relief supervisors are designated to perform supervisor work, such as reviewing work orders, on those days. They also cover for supervisors' absences. The only supervisory tasks that relief supervisors cannot perform

are approving timecards and participating in the annual goal setting and performance evaluation process.

16. There are three Maintenance Supervisors, one for each shift. Each Maintenance Supervisor has five direct reports, which can include Technicians and Rail Service Specialists. Maintenance Supervisors were described as “working supervisors” who perform the same work as Maintenance Technicians seventy to eighty percent of the time. They have additional duties related to work planning and work orders, directing work, the employer’s annual goal setting and performance evaluation process, approving paid time off (PTO) and timecards, and attending supervisors’ meetings.
17. Maintenance Supervisors maintain offices on the first floor of the OMF by the Maintenance shop. They work Sunday through Thursday schedules. The Supervisor position is paid hourly and overtime eligible.
18. Maintenance Supervisors receive the same trainings and have the same certification requirements as Maintenance Technicians. The position description calls for an associate’s degree in the electrical or electronics systems field and four years of experience, including two years of leadership, planning, or workforce management experience, or an equivalent combination of education and experience. One current Maintenance Supervisor has an Associate’s degree in accounting and the rest were hired based on equivalent experience.
19. Supervisors’ most frequent supervisory duty involves weekly work planning and work order management. Over the weekend, Supervisors spend time in the employer’s computerized work order system reviewing preventative maintenance tasks that need to be performed and sending them out to their teams. At the end of the week, they review completed work orders to verify that Technicians have properly filled out all fields and close the work orders in the computer system. This amounts to “several hours” of weekly work.

20. Maintenance Technicians inspect each other's work. When closing out a work order, the Supervisor does not review or verify the quality of the work performed. A testifying Supervisor believed that, as skilled workers, each Technician remained responsible for deficiencies in their work, and that he would only be responsible if he had personally provided faulty advice as a peer about how best to perform a task.
21. Technicians are self-starting skilled journeymen who do not require much direction. There are occasions when Maintenance Supervisors suggest that a certain time would be a good time to perform a preventative maintenance task or when Maintenance Supervisors happen to receive a phone call directly from Transportation seeking maintenance assistance and relay them to their teams. Ordinarily, such calls come through a radio system, and Technicians and Supervisors are both equipped with radios to answer the calls.
22. Maintenance Supervisors do not have hiring authority. They may be asked to participate in interview panels for Maintenance positions just as other Maintenance employees like Technicians and Rail Service Specialists are. Interview panel members take turns asking pre-approved interview questions and fill out post-interview forms evaluating candidates.
23. The Maintenance Manager is the official hiring manager for Maintenance positions. The Maintenance Manager listens to recommendations from interview panel members such as Supervisors but has the power to decide which candidates to refer on to Human Resources. There were no examples of a Supervisor exerting influence over the Maintenance Manager's decision. The rest of the hiring process happens without Supervisor involvement, and the Supervisor finds out later who was hired. Supervisors' involvement in the interview panels takes approximately five to ten hours per job posting.
24. Maintenance Supervisors have never exercised the power to discipline, suspend, or terminate Maintenance employees. The one instance of discipline issued to a Technician in witnesses' memory was dealt with by the Maintenance Manager and Human Resources with no involvement from the individual's Supervisor. One Maintenance Supervisor believed that they could hypothetically recommend corrective action for their direct

reports, but that it would be the Maintenance Manager's decision whether or not to issue it. And when employees are put on performance improvement plans (PIPs), the role of the Maintenance Supervisor is to "help" management and Human Resources with the plans' development and execution. However, no employees in Maintenance have been put on a PIP since 2012 or 2013.

25. Maintenance Supervisors give passing safety suggestions to other Technicians when they see hazards, but the comments are just as likely to be made by other Technicians with a particular area of expertise and have no disciplinary consequences.
26. The employer has an annual performance goal setting and evaluation process for employees. The outcome of employees' evaluations determines the amount of their annual wage increases and bonuses. Each year, the Division Director, Deputy Director, and Managers generate agency goals and pass them down to the Maintenance Department. Individual employees are also encouraged to set their own annual developmental goals. The Maintenance Supervisor reviews the goals for each of their direct reports to ensure that they are attainable and likely to be approved by Human Resources.
27. Maintenance Supervisors do mid-year check-ins with their direct reports to discuss whether they are on track to attain their goals. At the end of the year, the direct reports self-evaluate their progress. Maintenance Supervisors then rate their performance in categories ranging from "needs development" to "exemplary." A Supervisor estimated that he spends approximately five total hours per year on employee goal setting, mid-year check-ins, and rating his direct reports.
28. The Supervisor's rating is not final and must be submitted to a "calibration" process. Calibration meetings are held at the local level with other managers and supervisors of the Division, then with upper Sound Transit management and Human Resources. At the meetings, Supervisors present arguments to justify their ratings of their direct reports, and the ratings can be adjusted by other members of management and Human Resources. High performance ratings are particularly scrutinized.

29. Supervisors review and approve their direct reports' PTO requests, however, employees are entitled by policy or practice to use accrued PTO as long as they provide four hours' notice and witnesses were unaware of any instance of a Supervisor denying a request. Supervisors also review timecards to ensure that their direct reports' biweekly hours add up to 80 hours.
30. When there are overtime opportunities due to concerts or other special events, Supervisors help recruit volunteers through a rotating volunteer system. They do not assign overtime involuntarily, and there was no evidence of Supervisors assigning a shift to one volunteer over another. Generally, there is no evidence that Supervisors have the power to adjust their direct reports' schedules.
31. Finally, Supervisors participate in biweekly meetings with all of the Tacoma Link Light Rail Division Maintenance and Transportation Supervisors and Managers, the Senior Business Analyst, the Senior Materials and Services Analyst, the Director and Deputy Director, and, at times, Human Resources or higher-level Sound Transit leaders. At the meetings, attendees discuss safety themes, performance metrics, and other ongoing issues but there was no other evidence about any decisions made at those meetings or Supervisors' role in them.
32. There are three Rail Service Specialists. The Rail Service Specialists' primary role is to clean LRVs. They also move LRVs within the rail yard and clean the Maintenance shop. Rail Service Specialists are also designated to assist the Senior Materials and Services Analyst with parts and materials handling. They do so regularly each week.
33. The Rail Service Specialist position is an hourly, overtime-eligible position. Rail Service Specialists' shift times generally align with Maintenance Technicians'. Most of the Rail Service Specialists work third shift, when trains are not in service, but one works first shift. They submit timecards through MyST.

34. The Rail Service Specialist position requires a high school diploma or GED. They obtain forklift and crane certifications for use in parts and materials moving. Rail Service Specialists are qualified to operate LRVs in the yard but not on the mainline or in passenger service. They are also certified as flaggers. This position is also categorized as safety sensitive, and employees must maintain DOT cards and submit to drug testing.
35. The Rail Services Specialist who works during revenue service hours interacts with bargaining unit Operators when dispatched to clean spills and biohazards on LRVs. Rail Service Specialists on third shift interact with Operators in passing when Operators return LRVs to the rail yard.
36. At times, when their own work is completed, Rail Service Specialists assist Technicians in performing preventative maintenance tasks. Though there is no formal promotion pathway between the positions, one current Maintenance Technician started as a Rail Service Specialist and grew the skillset that eventually helped him get hired as a Maintenance Technician by watching and learning from Technicians on his shifts.
37. The Senior Materials and Services Analyst reports directly to the Maintenance Manager. The position's job duties include tracking parts use and inventory for the Maintenance department, ordering parts, equipment, and materials, and moving them around the facility.
38. The Senior Materials and Services Analyst position description calls for a bachelor's degree in finance, business administration, accounting, purchasing, or a closely related field plus four years of experience, or an equivalent combination of education and experience. The incumbent was promoted internally from a Maintenance Technician position and does not have a degree. The Senior Materials and Services Analyst works Monday through Friday, 7 a.m. through 3 p.m. and works inside the Maintenance shop. The position is salaried and overtime exempt.
39. The Senior Materials and Services Analyst routinely collaborates with Maintenance Technicians and Supervisors to procure and deliver the parts and materials they use in their

work. The Senior Materials and Services Analyst also works directly with the Rail Services Specialists as described above.

40. When the Senior Materials and Services Analyst is absent, no one formally fills the shifts, but at least one Maintenance Supervisor maintains a credit card to purchase items needed by the Department in his absence.
41. There is one Senior Business Analyst who is responsible for the analytics of the Division. The position manages Division databases and runs performance reports, coordinates and administers Tacoma Link Light Rail initiatives, and reviews and helps update Division policies and procedures. The Senior Business Analyst performs work for both the Transportation and Maintenance departments but reports to the Maintenance Manager for administrative convenience, to balance the number of direct reports between the Transportation and Maintenance Managers.
42. The Senior Business Analyst position description calls for a bachelor's degree in public administration, business administration, or a closely related field plus four years of experience, or an equivalent combination of education and experience. The Senior Business Analyst works Monday through Friday, 7 a.m. through 3 p.m. and maintains an office proximate to the Maintenance shop, directly beside a Maintenance Supervisor's office. The position is salaried and overtime exempt.
43. The Senior Business Analyst interacts with supervisors and managers on both sides of the Division to fulfill her duties. She sees Maintenance employees regularly on the job due to her office location and has also participated alongside Maintenance personnel in hiring interview panels for Maintenance positions. The Business Analyst is also the final drafter of the Standard Operating Procedures used by all Division employees and the Standard Maintenance Procedures used by Maintenance employees. She manages a SharePoint calendar and puts out a regular email to Division employees notifying them of upcoming special events for which the Division may want to staff up.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon findings of fact 2 through 43, the Maintenance department employees including Light Rail Systems Maintenance Technicians, Rail Service Specialists, Maintenance Supervisors, Senior Business Analyst, Senior Materials, and Services Analysts share a community of interest with the existing bargaining unit and should be included in the union's existing bargaining unit.
3. Based upon findings of fact 15 through 31, the Supervisor Light Rail Systems Maintenance employees are not supervisors under the statute and should be included in the petitioned-for bargaining unit.

ORDER

This matter is remanded back to the Representation Case Administrator for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 20th day of November, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MICHAEL E. 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 391-25-590.



RECORD OF SERVICE

ISSUED ON 11/20/2024

DECISION 13992 - 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 138328-E-24

EMPLOYER: SOUND TRANSIT

REP BY: CHRIS ELWELL
SOUND TRANSIT
401 S JACKSON ST
SEATTLE, WA 98104
chris.elwell@soundtransit.org

DARRAH HINTON
DAVIS WRIGHT TREMAINE
920 5TH AVE STE 3000
SEATTLE, WA 98104-1610
darrahhinton@dwt.com

PARTY 2: AMALGAMATED TRANSIT UNION LOCAL 758

REP BY: CHRISTOPHER BANGS
AMALGAMATED TRANSIT UNION LOCAL 758
10000 NEW HAMPSHIRE AVE
SILVER SPRING, MD 20903
cbangs@atu.org

JOHN HOHEUSLE
AMALGAMATED TRANSIT UNION LOCAL 758
6923 LAKEWOOD DR W B-1
TACOMA, WA 98467
758president@atu758.org