

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

TEAMSTERS LOCAL 252

Involving certain employees of:

CITY OF OLYMPIA

CASE 141379-E-24

DECISION 14175 - PECB

ORDER ON ELIGIBILITY

Heather Slusher, Business Agent, for Teamsters Local 252.

Douglas J. Morrill, Attorney at Law, Summit Law Group PLLC, for the City of Olympia.

On October 11, 2024, Teamsters Local 252 (union) filed a representation petition seeking to add the Outreach Services Coordinator employee to an existing bargaining unit at the City of Olympia (employer or City). The employer objected to the eligibility of the employee on the basis that the employee is a confidential employee and is a supervisor. On February 25, 2025, a hearing was held before Hearing Officer Loyd Willaford. On April 18, the union filed a brief to complete the record. The Outreach Services Coordinator is a confidential employee within the meaning of RCW 41.56.030(12) because it has a labor relations nexus to this particular bargaining unit. The petition is dismissed.

BACKGROUND

The employer's Police Department houses civilian support units and specialized commissioned units, including the Outreach Services Section of the department's Outreach and Administrative Division, which fall under the community policing umbrella. The union represents 31 support

personnel within the City of Olympia's Police Department.¹ Of the 31 bargaining unit employees, 14 employees work in the Outreach Services Section and report to the Outreach Services Coordinator. The Outreach Services Coordinator is not currently in the bargaining unit. The union's representation petition seeks to add that position to the existing bargaining unit of support personnel for the Police Department. *City of Olympia*, Decision 6372-A (PECB, 1998).

The Outreach Services Coordinator manages the Outreach Services section of the department's Outreach and Administrative Division. The Outreach Services section performs mental health community outreach. Ren Emerson currently holds the Outreach Services Coordinator position. Deputy Chief Parker supervises that position and reports to the Police Chief. In addition to Outreach Services, the Outreach and Administrative Division includes Administrative Support Services; Business Systems and Planning; and Community Policing. None of the leaders of these sections are in the existing bargaining unit.

Ren Emerson currently holds the Outreach Services Coordinator position. Emerson manages 14 direct reports. Emerson is responsible for reviewing and evaluating work methods and procedures, meeting with management staff to identify and resolve problems, identifying necessary improvements and implementing the changes. The Outreach Services Coordinator facilitates the hiring of personnel, motivates and evaluates personnel, provides or coordinates staff training, works with employees to correct deficiencies, and makes recommendations regarding discipline and termination. Additionally, the position develops, recommends, and implements new operations, procedures and policies associated with program areas, technical areas or city and department operations. There have been no substantial changes to the Outreach Services Coordinator job duties in the past two years.

¹ The bargaining unit is described as "All full-time and regular part-time support personnel employees or the City of Olympia Police Department, excluding supervisors, confidential employees, Division of Probation, Courts, Cadets, and all other employees." *City of Olympia*, Decision 6372-A (PECB, 1998).

Emerson has participated in collective bargaining on behalf of the employer for the unit at issue in this case. Emerson previously voiced frustration with some of the decisions that were made in the contract that did not work well for the units she managed. Initially Emerson was invited to all scheduled negotiation sessions as a subject matter expert of the Outreach Services section. Emerson participated in the employer's bargaining team at a negotiation session on August 13, 2024. Some of the employees were working schedules that were not compliant with the Fair Labor Standards Act (FLSA). Emerson had worked with the unit to develop work schedules that would be compliant under the FLSA. During the August 13 negotiations Emerson reviewed and proposed the various compliant schedules to the union. After the present petition was filed in October 2024, Emerson no longer participated in bargaining for the employer, as the employer saw the participation as a potential conflict of interest.

In addition to the bargaining sessions, Emerson engages in long-term planning meetings with Deputy Chief Parker and has knowledge of long-range goals of the city council and city leadership. Meetings include information on impacts to labor, funding, staffing levels, and operational hours. Deputy Chief Parker has conversations with Emerson that Parker does not have with the commissioned managers because of the significant labor implications. Emerson is privy to strategic plans that the rest of the senior leadership team is not.

Emerson also engages in labor-management discussions between herself, her work group, and the union. After the presentation at the August 13 negotiation session, Emerson continued to collaborate with the union, and the parties were able to reach agreement on a schedule that would comply with FLSA. She is often aware of the challenges facing the unit and briefs the deputy chief on the information. Emerson often resolves issues including discipline at the lowest level with the union and the membership before it even reaches a labor-management meeting.

ANALYSIS

Applicable Legal Standard(s)

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).

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)).

Confidential Status

Only those personnel who qualify as “public employee[s]” may exercise collective bargaining rights under the statute. RCW 41.56.030(12). Excluded from this definition are employees whose duties imply a confidential relationship to the bargaining unit or to the executive management of the employer, such as an appointee to a board, commission, or committee for a particular term of an elected official. RCW 41.56.030(12)(c)(i–iii). Accordingly, anyone who meets the confidential employee definition is precluded from exercising collective bargaining rights under the statute. *Id.* Because confidential employees are precluded from exercising collective bargaining rights, a heavy burden is placed on the party seeking that confidential determination. *City of Seattle*, Decision 689-A (PECB, 1979).

A confidential employee is further defined as any employee who participates directly on behalf of the employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements. WAC 391-35-320(1). The nature of the work that creates the confidential status should be more than routine or clerical in nature. Rather, the work must call for the consistent exercise of independent judgment. *Id.*; see also *City of Lynden*, Decision 7527-B (PECB, 2002).

In determining whether the work performed by an employee is confidential in nature, a labor relations nexus test is used to examine the employee's current duties. *City of Yakima*, Decision 9983-A (PECB, 2008). The labor nexus test examines whether the employee's current duties imply a confidential relationship that flows from an official intimate fiduciary relationship with the executive head of the bargaining unit or public official. *International Association of Fire Fighters, Local 469 v. City of Yakima*, 91 Wn.2d 101 (1978).

The confidential exclusion depends on the particular association of the persons involved, rather than on any arbitrary test including title, position on organization chart, job description, or role. See *Shelton School District*, Decision 1609-B (PECB, 1984). "The nature of this close association must concern the official and policy responsibilities of the public officer or executive head of the bargaining unit, including formulation of labor relations policy." *City of Yakima*, 91 Wn.2d at 107. The exclusion prevents potential conflicts of interest between the employee's duty to their employer and status as a union member. *Walla Walla School District*, Decision 5860-A (PECB, 1997). An employee's official duties may provide them with access to sensitive information regarding the employer's collective bargaining position. In that case, the employee's loyalties should not be placed in a position where they could be questioned by either the employer or the bargaining unit. *State – Natural Resources*, Decision 8458-B (PSRA, 2005). Any relied-upon labor relations responsibilities must be necessary, regular, and ongoing. *Washington State Department of Children, Youth, and Families*, Decision 13399-A (PSRA, 2022) (citing *Yakima School District*, Decision 7124-A (PECB, 2001)).

Employees, and in particular, supervisors who are sources of important information to the employer's bargaining team are not rendered confidential merely because they might have access

to the employer's confidential labor relations materials or provide input to the employer's labor relations team. *Pierce County*, Decision 8892-A (PECB, 2006). General supervisory responsibility is insufficient to render an employee confidential. *City of Yakima*, 91 Wn.2d at 107. Furthermore, an employer must communicate to an employee its expectation that the labor relations information or material be kept confidential. *See, e.g., Pateros School District*, Decision 3911-B (PECB, 1992) (finding that employee was not confidential where the record was void of any indication that the employer expected the information, she prepared to be kept confidential at any time). Finally, an employer may not obtain an excessive number of confidential exclusions by spreading out confidential duties to a large number of employees. *See, e.g., Clover Park School District*, Decision 2243-A (PECB, 1987), *aff'd*, Decision 2243-B (PECB, 1987).

Supervisor Status

Generally, supervisors are not included in the same bargaining units as the employees they supervise. WAC 391-35-340; *Pend Oreille Public Hospital District I*, Decision 11197-A (PECB, 2012). 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. WAC 391-35-340.

Chapter 41.56 RCW does not define the term "supervisor." Originally, the Commission based circumstances warranting a separate supervisory bargaining unit upon a distinct set of duties, skills, and working conditions from the rank-and-file bargaining unit, which often presented a conflict of interest. *International Association of Fire Fighters, Local 252 v. Public Employment Relations Commission*, 29 Wn. App. 599 (1981), *rev. denied*, 96 Wn.2d 1009 (1981); *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 Education Employees 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*, the Commission (citing to Section 2(11) of the NLRA, stated, "Supervisors have management roles entailing duties such as hiring, firing, assignment, transfer, layoff, recall of

subordinate employees and the processing of their grievances.”) *City of Mercer Island*, Decision 1026-A. In *Snohomish Health District*, the Commission stated that it has looked to the definition of supervisor in RCW 41.59.020(4)(d) for the types of authority which create potential conflicts of interests when placing supervisors in a rank-and-file bargaining unit. *Snohomish Health District*, Decision 4735-A.

The Commission moved 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 Corp. of America*, 511 U.S. 571 (1994)). While the definition in the EERA is generally patterned 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 the preponderance test found in RCW 41.59.020(4)(d) to be closer to Commission precedent following *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission* than the disjunctive test under the NLRA. *Id.*

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 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.*

PERC 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).

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 are in the same bargaining unit as the individuals whom 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, as the standard has evolved, with the Commission referencing the EERA, 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.

A determination under PERC's definition of supervisor 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. 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.

Application of Standard(s)

The Outreach Services Coordinator is a confidential employee within the meaning of RCW 41.56.030(12)(c) and WAC 391-25-320. The position participates with the employer in the formulation and administration of labor relations policy for the petitioned-for bargaining unit. Emerson participates in bargaining, helps develop proposals, makes recommendations on contract language, and participates in meetings where labor strategy is discussed and further developed.

Emerson frequently engages in labor-management discussions with her work group and the union. For example, she worked with the union to develop a schedule that complied with the Fair Labor Standards Act. Emerson works with the union shop steward to discuss issues that involve bargaining unit employees. Deputy Chief Parker has conversations with Emerson that Parker does not have with commissioned managers because of the labor implications. In those conversations, Emerson briefs Parker on issues facing her unit. Emerson is privy to strategic plans that the rest of the senior leadership team is not.

In the past, Emerson expressed considerable frustration at her lack of a voice at the bargaining table because some decisions made at the bargaining table did not, in her opinion, work well for her unit. As a result, the employer invited Emerson to participate in the 2024 contract negotiations for the support personnel bargaining unit. Deputy Chief Parker testified that Emerson was invited because of her knowledge of her work unit, which comprises nearly half of the bargaining unit. Parker stated that Emerson brought extensive knowledge about that unit to the bargaining team, its needs, and the areas where language cleanup was necessary. Emerson’s presence would make sure that decisions made at the table worked for her unit.

Emerson was initially invited to all the scheduled bargaining sessions. Emerson participated with the employer at the first bargaining session on August 13, 2024. Her presence ceased, however,

upon the filing of this petition. Given the petition, the employer believed that Emerson's continued presence at the table presented a potential conflict.

This level of involvement in the bargaining process and the bargaining table, including the input and feedback on labor relations issues, is consistent with other decisions finding an employee to be a confidential employee. *City of Kirkland*, Decision 13642 (PECB, 2023); *City of Seattle*, Decision 13097-A (PECB, 2020). Emerson clearly has a labor relations nexus to the support personnel bargaining unit that supports Emerson's exclusion as a confidential employee.

The parties referred to Emerson's presence at the bargaining table as a "subject matter expert" and not a "decision maker." Emerson was not a subject matter expert for one discrete topic where participation at the table or among the bargaining team was limited. Rather, she was the subject matter expert for the work unit that comprised nearly half of the bargaining unit. Emerson used that expertise and knowledge to work with the employer to formulate, develop, and ensure that what was agreed to at the bargaining table would work for the work unit.

Emerson only participated in one bargaining session, but that was due to the employer's concerns about a conflict once this petition was filed. Absent that filing, Emerson would have continued participating at the bargaining table. If Emerson is not added to the bargaining unit, the employer expects her to continue to be involved in the labor relations policy for the bargaining unit.

The evidence demonstrates that the Outreach Services Coordinator is a confidential employee as it pertains to the support personnel bargaining unit. Since Emerson has been found to be confidential, it is not necessary to decide the employer's supervisory challenge. The petition is dismissed.

FINDINGS OF FACT

1. The City of Olympia is a public employer within the meaning of RCW 41.56.030(13).

2. Teamsters Local 252 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union represents a bargaining unit described as:

All full-time and regular part-time support personnel employees of the City of Olympia Police Department, excluding supervisors, confidential employees, Division of Probation, Courts, Cadets, and all other employees.
4. The employer's Police Department houses civilian support units and specialized commissioned units, including the Outreach Services Section of the department's Outreach and Administrative Division, which fall under the community policing umbrella. The union represents 31 support personnel within the City of Olympia's Police Department. Of the 31 bargaining unit employees, 14 employees work in the Outreach Services Section and report to the Outreach Services Coordinator. The Outreach Services Coordinator is not currently in the bargaining unit. The union's representation petition seeks to add that position to the existing bargaining unit of support personnel for the Police Department.
5. The Outreach Services Coordinator manages the Outreach Services section of the department's Outreach and Administrative Division. The Outreach Service section performs mental health community outreach. Ren Emerson currently holds the Outreach Services Coordinator position. Deputy Chief Parker supervises that position and reports to the Police Chief. In addition to Outreach Services, the Outreach and Administrative Division includes Administrative Support Services; Business Systems and Planning; and Community Policing. None of the leaders of these sections are in the existing bargaining unit.
6. Ren Emerson currently holds the Outreach Services Coordinator position. Emerson manages 14 direct reports. Emerson is responsible for reviewing and evaluating work methods and procedures, meeting with management staff to identify and resolve problems, identifying necessary improvements and implementing the changes. The Outreach Services Coordinator facilitates the hiring of personnel, motivates and evaluates personnel, provides

or coordinates staff training, works with employees to correct deficiencies, and makes recommendations regarding discipline and termination. Additionally, the position develops, recommends, and implements new operations, procedures and policies associated with program areas, technical areas or city and department operations. There have been no substantial changes to the Outreach Services Coordinator job duties in the past two years.

7. Emerson has participated in collective bargaining on behalf of the employer for the unit at issue in this case. Emerson previously voiced frustration with some of the decisions that were made in the contract that did not work well for the units she managed. Initially Emerson was invited to all scheduled negotiation sessions as a subject matter expert of the Outreach Services section. Emerson participated on the employer's bargaining team at a negotiation session on August 13, 2024. Some of the employees were working schedules that were not compliant with the Fair Labor Standards Act (FLSA). Emerson had worked with the unit to develop work schedules that would be compliant under the FLSA. During the August 13 negotiations Emerson reviewed and proposed the various compliant schedules to the union. After the present petition was filed in October 2024, Emerson no longer participated in bargaining for the employer, as the employer saw the participation as a potential conflict of interest.
8. In addition to the bargaining sessions, Emerson engages in long-term planning meetings with Deputy Chief Parker and has knowledge of long-range goals of the city council and city leadership. Meetings include information on impacts to labor, funding, staffing levels, and operational hours. Deputy Chief Parker has conversations with Emerson that Parker does not have with the commissioned managers because of the significant labor implications. Emerson is privy to strategic plans that the rest of the senior leadership team is not.
9. Emerson also engages in labor-management discussions between herself, her work group, and the union. After the presentation at the August 13 negotiation session, Emerson continued to collaborate with the union, and the parties were able to reach agreement on a

schedule that would comply with FLSA. She is often aware of the challenges facing the unit and briefs the deputy chief on the information. Emerson often resolves issues including discipline at the lowest level with the union and the membership before it even reaches a labor-management meeting.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-25 WAC.
2. Based upon the findings of fact 4 through 9, the Outreach Services Coordinator is a confidential employee and should be excluded from the bargaining unit described in finding of fact 3.

ORDER

The Outreach Services Coordinator shall be excluded from the Teamsters Local 252 bargaining unit.

ISSUED at Olympia, Washington, this 30th day of July, 2025.

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 391-25-660.



RECORD OF SERVICE

ISSUED ON 7/30/2025

DECISION 14175 - PECB has been served electronically by the Public Employment Relations Commission to the parties and their representatives listed below. If no email address was provided, a paper copy was sent to the mailing address.

BY: DEBBIE BATES

CASE 141379-E-24

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