

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-9-08

(UNIT CLARIFICATION)

CITY OF UNION,)	
)	
Petitioner,)	
)	
v.)	RULINGS,
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
LABORERS' INTERNATIONAL UNION)	AND ORDER
OF NORTH AMERICA, LOCAL 121,)	
)	
Respondent.)	
_____)	

Neither party objected to a Recommended Order issued on July 11, 2008, by Administrative Law Judge (ALJ) Larry L. Witherell, following a hearing on June 19, 2008, in Union, Oregon. The record closed on June 19, 2008, after the parties' closing arguments.

Frank Forbes, Labor Relations Consultant, Local Government Personnel Institute, 1201 Court Street, Suite 301, P.O. Box 908, Salem, Oregon 97308, represented Petitioner.

Alan M. Scott, Attorney at Law, 1 Lincoln Center, 10300 S.W. Greenburg Road, Suite 310, Portland, Oregon 97223, represented Respondent.

On April 29, 2008, the City of Union (City) filed this petition for unit clarification. The petition seeks to clarify the existing bargaining unit by excluding the public works superintendent on grounds that the position is supervisory. On

May 7, 2008, Laborers' International Union of North America, Local 121 (LIUNA) filed timely objections to the petition.

The issue in this case is: Is the public works superintendent a public employee within the meaning of ORS 243.650(19)?

RULINGS

The rulings of the ALJ have been reviewed and are correct.

FINDINGS OF FACT

Introduction

1. LIUNA is a labor organization within the meaning of ORS 243.650(13).

2. The City is a public employer within the meaning of ORS 243.650(20). The City provides residents with water and sewage services, fire and emergency services, a park, a library, planning services, and a local judge. The City also maintains the City roads and streets and contracts with the county sheriff for police services.

3. On March 15, 2005, in Case No. RC-55-04, this Board certified LIUNA as the exclusive bargaining representative for "[a]ll hourly employees of the City of Union, *excluding* supervisory and confidential employees." (Emphasis in original.) At the time of the certification, there were six employees in the bargaining unit.

4. The City and LIUNA are signatories to a collective bargaining agreement that covers the period from July 1, 2005 to June 30, 2008. The recognition clause, Article 1, states:

"The City recognizes the Union as the sole and exclusive bargaining agent for the purpose of establishing salaries, wages, hours, and other conditions of employment for all of its Bargaining Unit employees, but excluding supervisory employees, and employees of the City of Union Police Department, or any employee who is seasonal, temporary, or is employed on a part time basis (defined as employees working over 21 hours and less than 29 hours per week)."

5. The City presently has 7 full time employees, a volunteer fire chief, approximately 20 volunteer firefighters, and 6 emergency service volunteers. The full-time employees include a City administrator and an assistant City administrator. The bargaining unit currently consists of five employees: the public works superintendent, a utility worker, a utility billing clerk, a wastewater treatment operator, and a librarian.

6. The incumbent public works superintendent is Paul Phillips. In December 1999, Phillips was hired as a utility worker. Approximately 18 months later, in 2001, the public works superintendent retired. Phillips applied for and was hired as the public works superintendent. He has held that position since 2001. Since then, he has obtained various licenses, qualifications, and certificates, including water certification, Level II certification in water treatment, Level I certification in wastewater, Level I certification in waste collection, and a cross-connection specialist certification.

7. Since Phillips became public works superintendent in 2001, there have been four different City administrators.

Job Description and Duties

8. In 2002, the City, with the assistance of outside consultants, prepared job descriptions for City employees, including one for the public works superintendent. The employees had no input in preparing the job descriptions. The employees have never signed, agreed to, or recognized the job descriptions as their formal responsibilities. The public works superintendent job description states:

PURPOSE OF POSITION: Administer, plan, schedule, supervise and participate in the activities of the public works department performing a wide variety of public works tasks in the construction, maintenance and repair of the City's infrastructure and buildings. Operate all types of public works equipment and ensure safe work practices of crew. Ensure the overall functioning and performance of the streets, parks, equipment and building maintenance, water and wastewater operations of the department.

“ESSENTIAL JOB FUNCTIONS:

“Supervise subordinate employees including assigning and reviewing work, evaluating performance, scheduling work, recommending disciplinary actions and hiring/termination decisions. Ensure delivery of necessary materials and equipment to the work site.

“Perform journey level maintenance tasks to maintain the infrastructure within the City, including streets, parks, storm and sanitary sewer, and water distribution lines. Operate, maintain, and repair various public works equipment. Perform facilities maintenance activities to maintain City buildings and property.

“Respond to various questions, resolve problems and provide technical assistance to crew that arise at the work site involving work tasks and the public. Confer with citizens regarding complaints, problems, concerns, and suggestions and providing information regarding City services, streets and other general departmental issues.

“Prepare, manage and monitor annual departmental budget. Authorize, review and approve public works expenditures. Develop specifications for equipment and acquire bids from qualified suppliers. Recommend bid award to Council.

“Work with a variety of County, State and Federal agencies regarding necessary reporting, situations and future impact of projects, e.g. DEQ, Oregon Health Department, EPA, State Highway Department, etc.

“Oversee and may participate in treatment plant operations and maintenance. Take readings and ensure equipment and processes are performing within acceptable standards. Correct deficiencies and report malfunctions as necessary.

“Prepare and submit various departmental reports as scheduled or requested. Maintain related records.

“Maintain cooperative working relationships with City staff, other organizations, and the public.

“Ensure compliance by work crew and follow all safety rules and procedures for work areas.

“AUXILIARY JOB FUNCTIONS: Provide assistance to other personnel as workload and staffing levels dictate. Maintain knowledge and proficiency by attending training and meetings, reading materials, and meeting with others in areas of responsibility. Maintain work areas in a clean and orderly manner.

“JOB QUALIFICATION REQUIREMENTS:

“MANDATORY REQUIREMENTS: Thorough knowledge of the proper operation and maintenance of vehicles, tools and equipment, methods, hazards and safety precautions used in the construction and maintenance of the City’s infrastructure, including water and sewer systems. Knowledge of general computer operations, supervisory practices, electrical, hydraulic, pressure, flows, plumbing and chemistry used in a utility environment. Equivalent to a two year college education in a technical discipline and over four years related experience, or any satisfactory combination of experience and training which demonstrates the knowledge, skills and abilities to perform the above duties

“SPECIAL REQUIREMENTS/LICENSES: Possession of Work Zone Traffic Control, Backflow Inspector, first aid/CPR, competent person, and Level I Wastewater Treatment and Wastewater Collection, and Level II Water Distribution certificates. Possession of valid CDL.

“DESIRABLE REQUIREMENTS: Possession of Level II Wastewater Treatment and Level II Wastewater Collection certificates, and Pesticide Applicator licenses. Previous experience in a full supervisory capacity.

“PHYSICAL DEMANDS OF POSITION: While performing the duties of this position, the employee is frequently required to stand, sit, bend, stoop, communicate, reach and manipulate objects, tools or controls. The position requires mobility. Many duties are physically demanding requiring the occasional moving of materials weighing up to 100 pounds. Movement of materials weighing 25 pounds may consume up to 15% of the work period. Activity and types of duties performed require manual dexterity and coordination.

“WORKING CONDITIONS: The majority of duties take place outside of buildings with exposure to all types of weather conditions and on a year-round basis, sewage, bio-hazards, traffic, dirt, oil, grease, fumes, noise and chemicals. Entry to confined spaces is required on an infrequent basis. Position is subject to emergency on-call response after normal duty hours on a rotational basis, typically by telephone. May require working weekends and holidays.

“SUPERVISORY RESPONSIBILITIES: Responsible for over two and seldom over six FTE.

“SUPERVISION RECEIVED: Works under the direction of the City Administrator.” (Emphasis in original)¹

9. The librarian works in the library which is in a building separate from city hall. The utility billing clerk works in city hall

10. Phillips and two other public works employees work outside or in the field. Phillips and Robin George, a utility worker, generally work together in the field as a team. They work out of the shop on the edge of town. George has been a utility worker for about five years. Phillips and George are responsible for the streets, the park, the city water system, installation of new water hookups, maintaining city properties, and anything else related to city properties or responsibilities that need attention. They

¹Phillips testified that he probably meets 75 percent of the requirements contained in the job description. However, he also believed that he is qualified to perform the job

also spend about three days per month reading residential water meters. Phillips spends 80 percent of his time in the field. He spends the remaining time doing office work such as coding bills and checking time sheets for accuracy.

Ralph Riomondo is the wastewater treatment operator. He generally spends all of his work time at the wastewater treatment plant, which is located on the edge of town, and separate from any other city facility. Riomondo has worked for the City for about six and one-half years. Phillips spends about three hours a week checking in at the wastewater treatment plant to determine if Riomondo needs assistance. Phillips and Riomondo work collaboratively at the wastewater treatment plant. Riomondo considers Phillips his equal rather than his supervisor. Riomondo holds licenses and certificates superior to those held by Phillips. If Riomondo has operational difficulties at the wastewater treatment plant, he consults engineers at the engineering firm that installed the plant, or he consults with officials at the Oregon Department of Environmental Quality. He also discusses matters with Phillips, but Riomondo is responsible for overseeing the operation at the plant.

Reporting and Scheduling

11. Phillips has a limited role in scheduling employee work assignments. The work schedules for Phillips, George, and Riomondo (the three public works employees) are defined by routine, response to needs, and consensus.

Nearly all of Riomondo's work schedule is determined by repetition or routine. On Mondays, Riomondo performs wash down at the wastewater treatment plant; on Tuesdays, he pulls samples and does plant maintenance; and on Wednesdays and Thursdays, he does his labs. Riomondo reports to the treatment plant each morning. He may work elsewhere when requested by Phillips to assist in certain projects.

Most of George and Phillips' work is also determined by repetition or routine, meaning they carry out the same general duties and assignments each week.

The remaining work is in response to or determined by specific needs. When someone applies to the City for water service, the three public works employees determine when to schedule and how to carry out the assignment. Riomondo is available to work away from the wastewater treatment plant for only a few hours a week. As a result, a project that needs three crew members will be scheduled when Riomondo's schedule permits, which is generally limited to Tuesdays and Fridays. If the project needs three crew members for two days or more, Phillips gives Riomondo advance notice so he can adjust his schedule. Other assignments also reflect the nature of the project. For

example, water pipe leaks require more immediate scheduling; filling a pothole can be integrated into the crew's current workload. Public works employees also cover or substitute for each other when needed.

12. The wastewater treatment plant is highly computerized with numerous sensors. If a problem or difficulty occurs at the treatment plant, a computer-generated notice is sent by phone, initially to Riomondo. There are three levels of alarms at the plant: critical, moderate, and low. For a low alarm and some moderate alarms, Riomondo generally waits and addresses the problem the next morning. All the other moderate and critical alarms require prompt attention. In these situations, if Riomondo is not on call, he forwards the alarm notification to the on-call employee.

Phillips, Riomondo, and George spend every third week on call. The designated on-call employee is responsible for responding to situations or emergency calls at night or over the weekend. As noted above, if a problem is detected at the wastewater treatment plant, the computer generates a telephone notification initially to Riomondo and then to the on-call employee. Neither Riomondo nor the on-call employee need prior approval to respond to the alarms on an overtime basis.

The city water system and wells use the same computerized alarm system, although water alarms go directly to the on-call employee.

The on-call employee may also have to respond to other special situations. For instance, an emergency 9-1-1 operator called Phillips and notified him that a car struck a deer. Unless Phillips is on call, he refers the matter to the on-call employee to resolve. If the situation requires the employee to respond immediately, then the employee will put in for overtime. While the field crew tries to limit the amount of overtime charged to the City, employees do not have to obtain advance approval from Phillips or the City administrator.

13. Until late 2007 or early 2008, public works employees requested time off by noting the requested date on a wall calendar kept at the shop. If there was no apparent conflict, such as two or more employees requesting the same day off or leaving the wastewater treatment plant without coverage, then Phillips would send a note to the City administrator that a particular employee was taking a particular day off. The City administrator would then approve the request. The City administrator occasionally discussed the request with the employees.

In late 2007 or early 2008, the City administrator adopted a new procedure and form for requesting leave, which provides a space for the "Department Head" to sign as approved or not approved. The form also requires the City administrator to sign the leave request as approved or not approved. Phillips cannot unilaterally approve days off. Phillips believes that he does not have authority to grant time off.

Hiring

14. Phillips had limited involvement in hiring at least three individuals: Robin George, a utility worker; Mr. Lockwood, a wastewater treatment operator; and Ralph Riomondo, Lockwood's replacement as the wastewater treatment operator. The City administrator asked Phillips to serve on a hiring panel. The hiring panels had four or five members, including the City administrator, the mayor, and a City council member. Lockwood, the incumbent wastewater treatment operator, served on the hiring panel when Riomondo was interviewed and hired. The panel constructed a set of questions to ask each applicant. Phillips contributed his questions based on his knowledge of the public works responsibilities and tasks, and based on his familiarity with the position for which the candidates had applied. The City administrator approved the questions for legal propriety. The panel interviewed the applicants and made a recommendation to the entire City council. Only the council has authority to hire an employee.

Evaluations

15. Phillips works daily with the utility worker and has regular weekly contact with the water treatment operator. He is more familiar with their work than is the City administrator. As a result, Phillips has participated in preparing a job evaluation for the utility worker and the water treatment operator.

16. By policy, employees are supposed to be evaluated annually on their anniversary date, although the policy is not uniformly followed.

The present City administrator began working for the City in December 2006. Since then, the City administrator and Phillips have participated in one evaluation for each of the other two public works employees (the utility worker and the water treatment operator). The employee begins the evaluation process by completing a self-evaluation on a prescribed form. The employee rates himself or herself on a scale from one to five in several categories and subcategories: (a) attendance (punctuality, work schedule, appropriate use of leave); (b) quality of work (thoroughness, professional judgment, compliance with city policies/legal requirements,

ability/willingness to follow directions, communication with staff/supervisors/public, level of supervision/instruction needed); (c) quantity of work (amount of work completed compared to workload, timeliness/ability to meet deadlines, individual initiative, goals attained compared to goals set); (d) work environment (safety, organization, and appearance); (e) job knowledge (education/training, experience, acquired skills/abilities); and (f) public/staff relations (attitude/appearance, customer/public interaction, cooperation/problem solving, and ability to maintain confidentiality).

Phillips also fills out a form with his assessment of the employee. The employee then meets with Phillips and they prepare a narrative summary based on the numerical responses. However, this has not been done in every case. There was no evidence that Phillips has ever changed an employee's self-evaluation. The narrative concludes with the statement by Phillips that "I feel that [name of employee] has proven to be a hard working loyal employee for the City of Union and should be granted a pay increase for [his/her] performance over the past year." Principally because of their work locations, the City administrator does not have an opportunity to observe the performance of the public works employees.

The employee and Phillips then meet with the City administrator and discuss the self-evaluation and the summary narrative, if that has been prepared

The City administrator is responsible for submitting a recommendation for a pay increase to the City council, and the City council then acts upon the recommendation. Article 10 of the parties' collective bargaining agreement provides that "[e]mployees shall be compensated in accordance with the salary schedule attached to this agreement * * *." The attached salary schedule provides for 12 steps distributed among 16 salary ranges. The bottom of the salary schedule states: "Merit Step increases are based on consideration of individual employee performance, also based on annual evaluations which are evident [*sic*] of a better than satisfactory evaluation." There was no evidence that Phillips' participation in or contribution to this process plays a role in the City council's decision.

Discipline

17. On one occasion, Phillips returned to work after a day off and found a memorandum (marked confidential) from the assistant City administrator claiming that the utility worker had refused a direct order. Phillips talked with the utility worker and learned that the utility billing clerk asked her to place a "door knocker" (notice of delinquent water bill) on the door of a particular house. Phillips learned that the utility worker was willing to do it, but the house was vacant. Phillips also talked with the utility

billing clerk and learned her side of the story. Phillips concluded that the incident had been blown out of proportion. Phillips informed the two employees that any time there is a request to post a notice, it should be posted even if the house is vacant. Phillips then reported to the City administrator and explained that he had talked with both employees and obtained their story. He further explained that the notices would be posted in the future even if the house was vacant. Phillips also informed the City administrator that he believed the incident had been blown out of proportion.

18. Phillips was involved in the termination of a temporary contract employee. Occasionally during summer months, the City contracts with an employment or personnel agency to provide temporary contract employees to assist the public works crew. The City used such a temporary employee during the summer of 2006. During that time, a City council member contacted Phillips on a weekend and informed him that the temporary employee used a City vehicle to purchase alcohol. Phillips and the City council member found and confronted the individual with alcohol in the City vehicle. Phillips sent the employee home. On the next Monday, Phillips took the information to the City administrator.² The City administrator asked Phillips for his recommendation. Phillips suggested they call the agency and get another employee. The City administrator then called and informed the personnel agency that the City would no longer be using that employee's services.

Time Sheets

19. At the end of each month, all City employees fill out and submit a time sheet. The utility worker and the wastewater treatment operator submit their time sheets to Phillips.

The time sheet lists the number of hours an employee works each day, and breaks those hours down into activity categories such as work at the City park, the library, the shop, the ranger station, water treatment facility, sewers, snow plowing, or street work. An employee who works overtime must list the overtime hours and explain why overtime was necessary.

²In his testimony, Phillips stated that he sent the individual home, even though the incident occurred on a weekend when the employees were not actually working. It is uncertain what the individual was sent home from if he was not actually working. Phillips further stated that he did not bring the matter to the attention of the City administrator until the following Monday morning.

Phillips inspects both employees' time sheets to see that the hours listed are generally accurate. The public works employees use a calendar at the shop to record projects they performed. Phillips often consults the calendar to verify the projects and the number of regular hours and overtime worked. He signs the time sheets and forwards them to the City administrator. Phillips' signature does not necessarily represent approval, but rather confirms the general accuracy of the content to the City administrator.

The City administrator inspects the time sheets to break down the hours according to certain budget items. He allocates the hours to the appropriate budget, such as the water budget or street budget. The administrator then forwards the time sheets to the firm that prepares the payroll checks.

Budget and Expenditures

20. The City administrator has asked Phillips to prepare portions of a proposed public works budget. Phillips' portion of the budget does not include personnel or employment-related items. The City administrator is responsible for employment decisions and recommendations to the City council. Phillips' portion of the proposed budget is limited to materials and supplies that he anticipates public works will need for the upcoming year. He occasionally consults with Riomondo to determine what supplies Riomondo believes the water treatment operations will need. The proposed budget is influenced by the experience of the previous years. Phillips submits it to and discusses it with the City administrator. The City administrator then considers the public works proposed budget as he prepares a proposed budget involving all of the City's needs. The City administrator submits this proposed budget to the City council.

21. The librarian, the chief of emergency services, and Riomondo also submit separate budget requests for the library, emergency services, and the wastewater treatment plant needs.

22. The City council has granted both Phillips and Riomondo the authority to purchase items (e.g., tools, equipment, and parts) valued up to \$500 without a purchase order and additional approval. Purchase orders between \$500 and \$2,500 must be approved by the City administrator. Purchases in excess of \$2,500 must be approved by the City council.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.

2. The public works superintendent is not a supervisor within the meaning of ORS 243.650(23), and therefore is appropriately included in the LIUNA bargaining unit.

Under the Public Employee Collective Bargaining Act (PECBA), only “public employees” are entitled to bargain collectively with their public employer. ORS 243.662. The PECBA defines “public employee” to exclude supervisors. ORS 234.650(19). Supervisors are thus not appropriately included in a bargaining unit. *See OPEIU, Local #11 v. City of Hillsboro*, Case No. RC-4-99, 18 PECBR 269, 274-75 (1999) (under the PECBA, supervisors do not have the right to organize and bargain collectively).

The City asserts that Phillips, the public works superintendent, is a supervisor and should be excluded from the LIUNA bargaining unit. LIUNA disagrees. It asserts that Phillips is at most a lead employee but not a supervisor.

We begin our analysis with ORS 243.650(23), which defines a supervisory employee as:

“[A]ny individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.”

Accordingly, we must determine the extent of the authority of the public works superintendent regarding these statutory duties.

Assign or Responsibly Direct

The City has seven full-time employees. The city manager and assistant city manager are excluded from the bargaining unit. Three of the five current bargaining unit

members are public works employees: Phillips is the public works superintendent, George is a utility worker, and Riomondo is the wastewater treatment operator.

Phillips generally performs the same tasks and work as the other public works employees. All three employees rotate on-call responsibilities every third week. They cover or substitute for each other when needed. Scheduling and assignments are generally routine in nature or are arranged by consensus of the employees. Phillips does not need to authorize overtime because employees have authority to undertake an overtime assignment based on their experience and knowledge of the circumstances.

Riomondo's work assignments at the wastewater treatment plant are determined by repetition and routine. One week's schedule is generally the same as the next. When Riomondo is faced with on-the-job difficulties, he consults outside sources, including engineers at the firm which installed the equipment, or specialists at the Department of Environmental Quality. Although Riomondo also consults with Phillips, Phillips does not direct Riomondo in the operation of the plant.

Phillips and George's schedule and work assignments are also determined by routine. The two employees work together to schedule non-routine assignments. Although Phillips examines and signs time sheets for the other two public works employees, his signature does not indicate approval. Instead, it confirms the accuracy of the hours recorded. Employees do not need or receive significant direction or assignment from Phillips. He does not have authority to approve requests for time off. Phillips does not exercise independent judgment in assigning or directing employees but rather uses his experience and knowledge of the work.

Many of Phillips' responsibilities—dealing with scheduling, time sheets, overtime, and days off—do not indicate supervisory status because they are “routine or clerical in nature, or are subject to review by other management officials.” *Oregon State Employees Association v. Department of Human Resources, Health Division*, Case No. C-286-79, 5 PECBR 2707, 2715 (1980). This Board has declined to find supervisory status where the employee's role in assignment and direction is “primarily routine and recurring in nature.” *IAFF Local 851 v. Lane Rural Fire/Rescue*, Case No. RC-7-03, 20 PECBR 512, 520 (2003). Phillips rarely assigns or directs the other two public works employees. Most of the tasks, work, or assignments are routine in nature or dictated by problems or emergencies to which the employees respond based on their experience or expertise. The public works employees understand what they are expected to do and require little direction. In such circumstances, this Board will not conclude that one of the employees is a supervisor. *International Brotherhood of Electrical Workers, Local Union 932 v. City of Siletz*, Case No. RC-12-00, 19 PECBR 178, 188

(2001). Accordingly, our analysis of Phillips' involvement in assigning and directing the two other public works employees leads us to conclude that his authority is "mostly routine and does not call for the use of independent judgment." *Laborers' International Union of North America, Local Union No. 320 v. City of Amity*, Case No. RC-13-99, 18 PECBR 350, 357 (1999).

Transfer, Lay Off, Recall, or Resolve Grievances

Phillips does not possess and has not exercised any authority to transfer, lay off, or recall employees. The record does not indicate that Phillips plays any role in the grievance process.

Promote or Reward

Phillips has no authority to promote or reward employees. He does, however, have a limited role in the evaluation process. Evaluation is not one of the statutory indicia of supervisory status, but we consider it to the extent it constitutes evidence that Phillips effectively recommends personnel action. *Deschutes County Sheriff's Association v. Deschutes County*, Case No. UC-62-94, 16 PECBR 328, 341 (1996).

Phillips has a limited role in evaluating the two other public works employees. Phillips does not initiate the evaluation process. Rather, the employee initiates the process with a self-evaluation conducted on the employee's anniversary date. The employee and Phillips then meet and prepare a narrative summary that is based on the self-evaluation. Phillips has never changed an employee's self-evaluation. Phillips' role is similar to a peer review. He does not exercise independent judgment. The self-evaluation and the narrative are provided to the City administrator. The City administrator decides on, or effectively recommends to the council, a wage step increase in accordance with the provisions of the collective bargaining agreement. Phillips does not effectively recommend promotions or rewards.

Hiring

Phillips participated in the hiring process on three occasions as one member of a four- or five-member interview panel, which included the City administrator, the mayor, and a City council member. The panels made recommendations to the City council. Only the City council has authority to hire employees. Phillips' contribution to the interview panels was based on his experience and knowledge of the public works functions.

This Board has consistently held that in the hiring context, the “voice of a single panel member is far too diluted and removed from the actual decision to be considered an *effective* exercise of *independent* judgment.” *Washington County Police Officers Association v. Washington County Sheriff’s Department*, Case No. C-49-84, 8 PECBR 7973, 7986 (1985) (emphasis in original). *See also* *LIUNA, Local Union No. 320 v. City of Amity*, 18 PECBR at 357; *Sisters Police Association v. City of Sisters*, Case No. RC-46-96, 17 PECBR 212, 220 (1997); *Tualatin Police Officers Association v. City of Tualatin*, Case No. UC-61-89, 12 PECBR 413, 421-22 (1990); and *OSEA v. Department of Human Resources*, 5 PECBR at 2715. Phillips’ service on interview panels is insufficient to establish hiring authority. Phillips lacks the authority to hire or effectively to recommend hiring decisions. *See Deschutes County Sheriff’s Association v. Deschutes County*, Case No. UC-62-94, 16 PECBR 328, 340 (1996).

Suspend, Discharge, or Discipline

Phillips was tangentially involved in the discharge of a temporary employee hired on contract through a personnel agency. Phillips discovered the temporary contract employee with alcohol in a City vehicle. He reported the incident to the City administrator. The City administrator informed the personnel agency that the City no longer needed the individual’s services. Phillips was merely a conduit of the information from the scene to a supervisor, the City administrator. Phillips’ participation does not demonstrate authority to discharge. *See Tri-County Metropolitan Transportation District of Oregon v. Amalgamated Transit Union, Division 757*, Case No. UC-40-88, 12 PECBR 75, 86 n 6 (1990) (imposing a one-day suspension on an employee who reported late to work was insufficient to indicate supervisory authority).

In another incident, a bargaining unit employee, the utility billing clerk, complained that another bargaining unit employee refused to perform certain tasks. After interviewing the two employees, Phillips advised the City administrator that the dispute was the result of a misunderstanding and no action was necessary. Again, Phillips appears to be the source of information for the City administrator. Phillips was basically resolving a dispute between two bargaining unit employees, and not participating in a disciplinary investigation. We conclude that Phillips has no authority to suspend, discipline or discharge employees or effectively to recommend such action.

Summary

“To establish supervisory status within the meaning of the Public Employee Collective Bargaining Act (PECBA), it is not expertise or responsibility that are controlling, but rather the exercise of independent judgment in crucial *personnel* matters

Where such authority is not shown, this Board will not find supervisory status.” *IAFF Local 851 v. Lane Rural Fire/Rescue*, 20 PECBR at 520. (Emphasis in original.)

Phillips does not exercise independent judgment in the areas defined by ORS 243.650(23). Any supervisory functions he exercises are incidental to his expertise and are therefore insufficient to make him a supervisor under the statute. *Oregon School Employees Association v. Baker School District 5J*, Case No. C-184-79, 5 PECBR 2927, 2934 (1980); and *American Federation of State, County and Municipal Employees v. City of Seaside*, Case No. C-20-81, 6 PECBR 4783, 4786 (1981). Phillips’ role in assigning and directing employees is limited to routine situations. This Board has found such an employee to be a lead worker rather than a supervisor. “Typically, a lead worker performs work alongside of bargaining unit members and carries out management’s instructions.” *Sisters Police Association v. City of Sisters*, 17 PECBR at 221. Under these criteria, Phillips is a lead worker.

Based on the totality of the circumstances, we conclude that the public works superintendent is not a supervisor as defined in the statute, and we will not exclude the position from the existing bargaining unit.

ORDER

1. The public works supervisor is not a supervisory employee within the meaning of ORS 243 650(23).
2. The petition is dismissed

DATED this 4th day of December 2008.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.