

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



CITY OF PALMDALE,

Employer,

and

TEAMSTERS LOCAL 911,

Petitioner.

Case No. LA-PC-5-M

PERB Decision No. 2203-M

September 23, 2011

Appearances: Cohen & Goldfried by David L. Cohen, Attorney, for City of Palmdale; Law Offices of Patricia S. Waldeck by Patricia S. Waldeck, Attorney, for Teamsters Local 911.

Before Martinez, Chair; McKeag and Dowdin Calvillo, Members.

DECISION

MARTINEZ, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the City of Palmdale (City) to a proposed decision (attached) of the Hearing Officer (Board agent) arising out of a petition filed by the Teamsters Local 911 (Teamsters). By its petition, the Teamsters seek recognition as the exclusive representative of certain public works employees in the Maintenance and Traffic Divisions of the City's Department of Public Works.¹ Because the parties were unable to agree on the composition of the bargaining unit, the Board agent conducted a formal hearing.

In the proposed decision, the Board agent excluded the Traffic Division classifications and two of the nine disputed Maintenance Division positions, concluding that none of these employees share a community of interest with the other employees in the petitioned-for unit. Regarding the remaining seven disputed Maintenance Division positions, the Board agent concluded that they do share a community of interest with the other employees in the

¹ The Representation Petition states that the number of employees in the proposed unit is 80.

petitioned-for unit and, therefore, should be included in the unit. Because PERB previously determined that the Teamsters demonstrated proof of majority support and no other employee organization had filed a valid petition to represent any of the positions at issue, the Board agent concluded that no election was necessary and that the City had no lawful reason to deny recognition to the Teamsters for the unit described in the proposed order.

We have reviewed the entire record, including the proposed decision, the hearing transcripts and exhibits, the City's exceptions and the Teamsters' response, in light of the relevant law. Based on this review, the Board finds the proposed decision to be well-reasoned, adequately supported by the evidentiary record and in accordance with the applicable law. Accordingly, the Board adopts the proposed decision as the decision of the Board itself, as supplemented by the following discussion of the City's exceptions.

BACKGROUND

The City's Department of Public Works is organized into five divisions – Engineering, Traffic, Program Management, Environmental and Maintenance. The Teamsters' petitioned-for unit includes certain classifications and positions within the Traffic Division and the Maintenance Division. It excludes classifications with the title of Supervisor, Assistant Superintendent or Superintendent. It also excludes Maintenance Division employees with administrative classifications.

The City argued at the formal hearing that certain classifications and positions within the petitioned-for unit involve the performance of supervisory duties or are professional or technical in nature. Based on these distinctions, the City argued for exclusion of these classifications and positions from the bargaining unit.

The Board agent rendered a proposed decision following six days of formal hearing. The Board agent found that it is not appropriate to include employees in either of the

petitioned-for Traffic Division classifications (Traffic Signal Technician I and II) in the bargaining unit because they do not share common job duties, skills, wages or supervision with Maintenance Division employees. Nor do the Traffic Division employees and the Maintenance Division employees interact with one another on more than a limited basis. The Board agent further found that it is not appropriate to include Danny Knott, acting supervisor of the Maintenance Division's Facility Maintenance Section, in the bargaining unit because his job duties, supervision and hours differed greatly from those of other employees in the petitioned-for unit. Last, the Board agent found that it is not appropriate to include Sean O'Brien, senior maintenance specialist who oversees the City's Water Conservation program under the Maintenance Division's Landscape Maintenance Section, in the bargaining unit; although he shares some commonalities with other employees in the petitioned-for unit, his unique job duties, skills, goals and responsibilities are sufficiently distinct.

No exceptions were taken to the above-described portions of the Board agent's proposed decision. Therefore, the Board agent's findings and order pertaining to the exclusion of the Traffic Division classifications and the two Maintenance Division positions are not before the Board and need not be further discussed.

Exceptions were, however, filed by the City. The City continues to argue against inclusion of the remaining disputed positions within the Maintenance Division except one. The City does not except to the inclusion of Roger Naugle, senior maintenance specialist in the Facility Maintenance Section, in the petitioned-for unit. Accordingly, the Board agent's findings and order pertaining to the inclusion of this position are not before the Board and need not be further discussed.

The following six Maintenance Division positions are still disputed by the City:

(1) Richard Meyers, lead custodian; (2) Joe Gamez, maintenance lead worker; (3) Tom Eply,

maintenance lead worker; (4) Steve Montenegro, landscape inspector; (5) Joel Kefuss, maintenance specialist; and (6) Chad Thomas, senior maintenance specialist.

DISCUSSION

The Issue on Appeal

The main thrust of the City's thirty-nine exceptions is that the employees in the disputed positions (collectively, Leads) are mainly involved in supervising employees, not in performing maintenance work. As argued by the City, the supervisory nature of their job duties creates a distinction between them and the other Maintenance Division employees. The City contends that this distinction is sufficient to exclude these positions from the proposed bargaining unit under a community of interest analysis.

For the reasons discussed below, we agree with the Board agent that the Leads share a sufficient community of interest with other Maintenance Division employees such that their inclusion in the proposed bargaining unit is appropriate.

The Applicable Law

The Meyers-Milias-Brown Act (MMBA)² empowers PERB to make unit determinations in those cases where there is a dispute concerning the appropriateness of a proposed bargaining unit and there are no applicable local rules. (MMBA, §§ 3507.1(a), 3509(a) and 3541.3(a).) In unit determinations under the MMBA, the question is whether the petitioned-for unit is "an appropriate unit," not whether it is "the *ultimate* unit or the *most* appropriate unit." (See, *Alameda County Assistant Public Defenders Assn. v. County of*

² The MMBA is codified at Government Code section 3500 et seq. Unless otherwise noted, all statutory references are to the Government Code.

Alameda (1973) 33 Cal.App.3d 825, 830 (*County of Alameda*) [italics in the original]; MMBA, §§ 3507(a)(4) and 3507.1.)

Unlike other collective bargaining statutes enforced by PERB, such as the Ralph C. Dills Act (Dills Act),³ the MMBA does not specify criteria to be used when resolving unit determination disputes. (Compare, e.g., Dills Act, § 3521.) In determining whether a proposed bargaining unit is an appropriate unit under the MMBA, courts have considered criteria similar to those contained in other collective bargaining statutes,⁴ including but not limited to the following: community of interest among the employees at issue, history of representation,⁵ and the general field of work. (*Reinbold v. City of Santa Monica* (1976) 63 Cal.App.3d 433, 440.)

In determining whether a community of interest exists among employees within a proposed unit, the Board has analyzed a variety of factors. These factors include job function and duties, wages, method of compensation, hours, employment benefits, supervision, qualifications, training and skills, contact/interchange with other employees, integration of work functions, and goals. (*International Federation of Professional and Technical Engineers, Local 21 v. City and County of San Francisco* (2000) 79 Cal.App.4th 1300, 1306, citing *County of Alameda, supra*, 33 Cal.App.3d 825, 830-831; *Redondo Beach City School District* (1980) PERB Decision No. 114; *San Diego Community College District* (2001) PERB

³ The Dills Act is codified at section 3512 et seq.

⁴ When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California collective bargaining statutes with parallel provisions. (*Firefighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

⁵ The City objects to the Board agent's statement that the history of representation factor "will not weigh heavily into this analysis." The City argues that this factor deserves no weight. As is clear from the proposed decision, the parties have no negotiating history. The Board agent, in fact, gave this factor no weight.

Decision No. 1445 (*San Diego CCD*); *Monterey Peninsula Community College District* (1978)

PERB Decision No. 76 (*Monterey Peninsula CCD*.)

In analyzing these factors, the Board has rejected a checklist approach in favor of examining the “totality of circumstances.” (*San Diego CCD, supra*, PERB Decision No. 1445.) “The point in comparing factors is to reveal the interests of employees and ascertain whether they share substantial mutual interests in matters subject to meeting and negotiating.” (*Monterey CCD, supra*, PERB Decision No. 76.)

Unlike other statutes enforced by PERB, such as the Educational Employment Relations Act (EERA),⁶ the MMBA neither defines “supervisor” nor expressly precludes the formation of a bargaining unit that includes both supervisory and non-supervisory employees. As stated in *Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331, 338, the MMBA confers organizational and representational rights on supervisory, management and confidential employees “without regard to their position in the administrative hierarchy.”⁷ In *Santa Clara County Counsel Attorneys Assn. v. Woodside* (1994) 7 Cal.4th 525, the California Supreme Court addressed the issue of potential divided loyalties between such employees and rank-and-file employees. The Court observed:

By choosing to explicitly include supervisorial, managerial, and confidential employees within the realm of the MMBA’s protections, the Legislature implicitly decided that the benefits for public sector labor relations achieved by including

⁶ EERA is codified at section 3540 et seq.

⁷ While the MMBA allows public agencies to adopt rules restricting lawfully designated management and confidential employees from being included in a rank-and-file bargaining unit, the same statutory provision further states that “this section does not otherwise limit the right of employees to be members of and to hold office in an employee organization.” (MMBA, § 3507.5.) A public agency’s discretion under this statute to designate management and confidential employees does not extend to the designation of supervisors. (*United Clerical Employees v. County of Contra Costa* (1977) 76 Cal.App.3d 119; *Public Employees of Riverside v. County of Riverside* (1977) 75 Cal.App.3d 882.)

managerial employees outweighed the potential divided loyalty dilemmas raised. We therefore note at the outset that any argument which contends that MMBA protections should not apply to certain managerial employees because of problems with divided loyalty must be viewed with skepticism, for that argument follows precisely the legislative road the MMBA declined to take.

(*Id.* at p. 538; fn. omitted.)

Overview of the Maintenance Division

The Maintenance Division currently employs approximately 96 employees and is organized into seven sections or groups. The head of the Maintenance Division is Mike Gass (Gass), whose title is superintendent of maintenance. Reporting directly to Gass in the chain of command is Rod Holtz (Holtz), whose title is assistant superintendent of maintenance. Reporting directly to Holtz is the supervisor or acting supervisor for the five Maintenance Division Sections,⁸ who typically perform no maintenance work.⁹

⁸ The chain of command for the other two Maintenance Division groups differs slightly. Air Park & Nature Trails, which is not referred to as a “Section” on the Department of Public Works’ organizational chart, is comprised of one employee, a maintenance lead worker who reports directly to Holtz.

The chain of command for Custodial Services, which like Air Park & Nature Trails also is not referred to as a “Section” on the organizational chart, differs as well. Prior to October 2008, Custodial Services came under the Facility Maintenance Section. In October 2008, the supervisor of the Facility Maintenance Section retired. Subsequently, Danny Knott, senior maintenance specialist, was promoted to acting supervisor of the Facility Maintenance Section. At that point, Custodial Services was temporarily removed from the Facility Maintenance Section and brought under the direct supervision of Holtz. According to Holtz, if the position of supervisor for the Facility Maintenance Section is filled, the City expects to return Custodial Services back to the Facility Maintenance Section.

⁹ The City contends that the Board agent erred in finding that “[g]enerally, each Section in the Maintenance Division has one Supervisor, except Facility Maintenance and Custodial Services.” The City argues that this statement fails to distinguish between employees whose title is supervisor and employees who perform supervisory duties. It appears the Board agent was merely referring to positions whose title is “Supervisor.” The Board agent’s finding in this regard is supported by the evidentiary record. City’s Exhibit C1, the Department of Public Works’ organizational chart, shows there to be one position entitled supervisor (or acting supervisor) for each of the five Sections in the Maintenance Division.

The Disputed Positions

I. Richard Meyers (Meyers), Lead Custodian

Meyers works in a lead capacity in Custodial Services. Custodial Services maintains the interior areas of approximately 30 buildings or other facilities throughout the City.

Including Meyers, there are currently ten employees in Custodial Services. For reasons explained in footnote 7, *infra*, there is no position entitled supervisor assigned to Custodial Services. Meyers as lead custodian therefore reports directly to Holtz.

Working in a lead capacity, Meyers oversees the work of Custodial Services employees, as well as the work of two outside contractors. Meyers inspects the work of the Custodial Services employees to ensure that it has been performed correctly. Where necessary, Meyers instructs employees to correct deficiencies in their work. Meyers has approved overtime and time-off requests. When personnel issues arise, Meyers has counseled/coached employees, and has recommended discipline. Meyers has drafted and signed performance evaluations of Custodial Services employees as the “rater.”¹⁰ Meyers also has responsibilities in the areas of work assignments and scheduling; payroll, budgets and reporting; training; and supplies.

Meyers spends a portion of his time performing the same kind of work cleaning facilities as performed by the other employees in Custodial Services whom he oversees.¹¹ In

¹⁰ Holtz testified that he initials all of the performance evaluations drafted by Meyers “so that there is some person in a supervisory capacity over and above what I have empowered him to do that has seen that document.”

¹¹ The City is correct that the Board agent erred in finding that the job description for custodian I states that the position “may exercise some supervisory authority [over] less experienced personnel.” This minor factual error, however, alters neither the analysis nor the conclusions reached herein.

the job description for Lead Custodian, the position is defined: "To supervise and participate in the cleaning of City buildings and facilities; and to do related work as required."

The City asserts that the Board agent erred in finding that "Meyers spends approximately one-third of his time performing traditional custodial duties and the remainder performing his oversight functions."¹² The City's argument that the Board agent's finding is not supported by the evidentiary record is misplaced. When asked by counsel for the City on direct examination how often he cleans a facility, Meyers responded that he might spend approximately 15 hours per week so engaged. When asked on cross-examination how many hours per week he generally works, Meyers responded that he normally works 40 hours but that he does put in additional time. Accordingly, we conclude that the Board agent's finding, which is an approximation only, is adequately supported by the evidentiary record as a whole, and reasonable inferences drawn therefrom, and need not be disturbed.

II. Joe Gamez (Gamez), Maintenance Lead Worker
Tom Eply (Eply), Maintenance Lead Worker
Steve Montenegro (Montenegro), Landscape Inspector

Eply, Gamez and Montenegro (collectively, Landscape Maintenance Leads) work in a lead capacity in the Landscape Maintenance Section. The Landscape Maintenance Section is responsible for maintaining the City's public parks and other areas that have landscaping.

There are approximately 32 employees in the Landscape Maintenance Section below the rank of supervisor, a position held by Antonio Colombo (Colombo).

¹² Except as otherwise noted, we do not specifically address each of the City's exceptions to the factual findings of the Board agent concerning the job duties and functions of the disputed positions. A review of the record indicates these exceptions are either immaterial to the disposition of the issues presented, without evidentiary support, or otherwise lacking in merit. We specifically address the exceptions to the factual findings concerning whether the Leads spend any time doing actual maintenance work because the fact that they do supports our conclusion that they share a community of interest with other employees in the petitioned-for unit.

Within the Landscape Maintenance Section is the Park Maintenance crew, which is divided into two teams. Maintenance Lead Worker Eply oversees the team responsible for the City's seven east side parks. Maintenance Lead Worker Gamez oversees the team responsible for the City's two west side parks and the work of an outside contractor. Also within the Landscape Maintenance Section are the Landscape Maintenance District (LMD) crews. Landscape Inspector Steve Montenegro oversees the LMD Zone II crew and the work of an outside contractor.

The Landscape Maintenance Leads report directly to Colombo. Working in a lead capacity, they oversee the work of Landscape Maintenance Section employees operating in work crews. Gamez and Montenegro also oversee the work of two outside contractors. The Landscape Maintenance Leads inspect the work performed by their crews to ensure that it has been performed correctly. Where necessary, they instruct employees to correct deficiencies in their work. According to Colombo, the Landscape Maintenance Leads can approve overtime and time-off requests.¹³ When personnel issues arise, they may counsel/coach employees, but have no disciplinary authority. They draft performance evaluations for Colombo's review and signature as the rater.¹⁴ They also have responsibilities in the areas of work assignments and scheduling, training, reporting and supplies.

The Landscape Maintenance Leads spend approximately ten percent of their time performing the same kind of landscape maintenance work as performed by the crews whom

¹³ Eply, however, testified that he views his authority to approve overtime as limited. With regard to time-off requests, he sees himself in relationship to his crew as a "conduit" to Colombo.

¹⁴ There was one performance evaluation moved into evidence with Montenegro's signature as the rater. Montenegro signed the evaluation of Manuel Moya on July 27, 2009, the first day of PERB's formal hearing. Prior to this, it appears that performance evaluations for employees in the Landscape Maintenance Section had been signed by Colombo.

they oversee. In the job description for maintenance leadworker, the position is defined as: “To plan, supervise, coordinate and participate in the work of a crew involved in inspection, maintenance and repair work of park grounds and structures, parkways, or golf course.” While the job description for landscape inspector does not include similar language, Colombo testified that Montenegro spends the same amount of time doing actual maintenance work as Eply and Gamez.

III. Joel Kefuss (Kefuss), Maintenance Specialist
Chad Thomas (Thomas), Senior Maintenance Specialist

Joel Kefuss and Chad Thomas (collectively, Street Maintenance Leads) work in a lead capacity in the Street Maintenance Section. The Street Maintenance section is responsible for maintaining and repairing the City’s roadways. Within the Street Maintenance Section is the Concrete Construction and Repair crew led by Maintenance Specialist Kefuss. Also, within the Street Maintenance Section is the Roadway Maintenance crew led by Senior Maintenance Specialist Thomas. There are approximately 28 employees in the Street Maintenance Section below the rank of supervisor, a position held by Bruce Roadhouse (Roadhouse).

The Street Maintenance Leads report directly to Roadhouse. Working in a lead capacity, they oversee the work of Street Maintenance Section employees operating in work crews. They inspect the work performed by their crews to ensure that it has been performed correctly. Where necessary, they instruct employees to correct deficiencies in their work. They can approve overtime in storm-related emergencies. Roadhouse signs off on time-off requests. When personnel issues arise, Kefuss and Thomas bring them to Roadhouse’s attention. They draft performance evaluations for Roadhouse’s review and signature as the rater. They also have responsibilities in the areas of work assignments and scheduling, training, reporting and supplies.

The Street Maintenance Leads spend a portion of their time performing the same kind of street maintenance work as performed by the crews whom they oversee. In the job description for maintenance specialist, the position is defined as: "To perform skilled maintenance and repair work in a variety of specialties as assigned, . . ." In the job description for senior maintenance specialist, the position is defined as: "To provide technical and functional supervision over assigned personnel; and to perform a variety of skilled parks and building maintenance work, preventative maintenance, upkeep and repair of parks, buildings, equipment and facilities."

The City takes issue with the following factual finding of the Board agent: "Thomas estimates that he spends between 10 and 20 percent of this time performing actual maintenance work." The City bases its exception on three grounds. First, the City contends that the Board agent's finding is contradicted by Thomas' testimony. Second, the City contends that the Board agent's finding is contradicted by the testimony of Roadhouse. Third, the City contends that the Board agent's finding is contradicted by CitiTech, the City's management system.

Thomas testified that he spends twenty percent of his time working "side by side" with the crew. While Roadhouse testified that Thomas spends only five percent of this time doing the same work as the employees he supervises, Roadhouse's breakdown of Thomas' duties by percentages does not add up to one hundred percent. CitiTech records indicate Thomas devotes ten percent of his time to non-supervisory tasks.

Accordingly, we conclude that the Board agent's finding, which is in the form of a range and not an exact number, is adequately supported by the evidentiary record as a whole, and reasonable inferences drawn therefrom, and need not be disturbed.

Similarly, the City takes issue with the following factual finding of the Board agent: "Kefuss estimates that he spends between 10 and 30 percent of his time performing actual

maintenance work.” The City bases its exception on CitiTech records. The City argues that these records demonstrate that Kefuss spends ninety-seven percent of his time not engaged in the same work as his crew.

Kefuss testified that he spends about a third of his time doing the same kind of work as his crew. Roadhouse testified that Kefuss spends between 15 and 20 percent of his time doing the same work as his crew, “[h]elping them place the concrete, finish the concrete, break out sidewalks.” The CitiTech records upon which the City relies shows a breakdown of work activities by code. There was no testimony by Kefuss, however, explaining how he codes his work activities for CitiTech purposes in order to know whether these records can be used to accurately determine whether Kefuss spends any time doing the same kind of work as his crew and, if so, how much.

Accordingly, we conclude that the Board agent’s finding, which is in the form of a range and not an exact number, is adequately supported by the evidentiary record as a whole, and reasonable inferences drawn therefrom, and need not be disturbed. The corroborating testimony of Roadhouse supports our conclusion.

Community of Interest

As stated above, the issue presented is whether the Leads share a sufficient community of interest with other positions in the proposed unit, despite differences in their job duties and functions, such that their inclusion in the unit is appropriate. The City is correct that the Leads’ primary duty is lead supervision, not actual maintenance work. They are given supervisor training and are evaluated in part based on their supervisory skills. These facts are undisputed.

In their leadership roles with their respective crews, the Leads generally do the following: prioritize work; make assignments; adjust schedules; do on-the-job training; inspect

the quality of work performed and require that deficiencies be corrected; prepare reports and draft performance evaluations; and maintain adequate supply levels. Some Leads approve overtime and time-off requests; others view their authority in this area as more limited and ultimately a matter for the position of section supervisor to pass on. As Leads, they work to resolve personnel problems and conflicts, and may be involved in coaching and counseling, though generally under the oversight of the section supervisor. There is variation among the Leads as to whether they can recommend that discipline be imposed on the employees they oversee, but none are authorized to issue or implement discipline themselves.

Meyers does have some lead supervision responsibilities in addition to the above. He signs performance evaluations as the rater, after which the evaluations are initialed by Holtz. Meyers and Holtz view Meyers' authority to recommend discipline and approve overtime and time-off requests as unqualified. Meyers reports directly to Holtz, unlike the other Leads who report to their section supervisor. As assistant superintendent of maintenance with oversight responsibility over all seven sections and groups within the Maintenance Division, Holtz's reliance on Meyers to function autonomously is understandable.

The MMBA, however, includes all public employees except elected officials and gubernatorial appointees within its scope (MMBA section 3501(d)) and does not expressly preclude the formation of bargaining units comprised of both supervisory and non-supervisory personnel. Therefore, there is no basis under the MMBA to exclude the Leads from the proposed bargaining unit based solely on the supervisory nature of their leadership roles. Instead, the question is whether the distinctive nature of their job duties in providing lead supervision forms a sufficient basis upon which to conclude that they do not share a community of interest with the petitioned-for unit.

In comparing the factors in the community of interest analysis, the Board examines the “totality of circumstances” contained in the record. (*San Diego CCD, supra*, PERB Decision No. 1445.) The goal is to ascertain whether there are shared mutual interests in matters subject to meeting and conferring. (See, *Monterey CCD, supra*, PERB Decision No. 76.) Under the MMBA, these matters include wages, hours and other terms and conditions of employment. (MMBA, § 3504.) Community of interest factors are analyzed with this goal in mind.

The Leads spend at least ten percent of their time regularly performing the same kind of maintenance work and using the same tools as their crews, whether it be cleaning facilities in the case of Meyers, landscaping in the case of Gamez, Eply and Montenegro, or roadway work in the case of Thomas and Kefuss. Although their lead supervision responsibilities are distinctive in nature, the Leads work in an integrated fashion with their crews. They inspect the work of their crews, show how the work is supposed to be done if not done correctly and provide on-the-job training. They wear the same uniforms as their crews. The uniforms vary from section to section, and even within sections, but primarily consist of blue or black jeans and a distinctive colored shirt with a City logo and name patch. This is in contrast to positions ranked supervisor and above whose dress code is dress slacks and a shirt.

The Leads and the other employees in the proposed unit share a common goal, which is to ensure that the City’s facilities, parks and roadways are well maintained. They have daily contact with one another, meeting at City buildings, parks or in the maintenance yard for both informal conversation and discussion of work assignments. They share similar training, qualifications and skills, mainly that learned and acquired working in the field. With the exception of Meyers, the Leads work in sections headed by one supervisor. At least until the start of PERB’s formal hearing, supervisors signed performance evaluations for both the Leads and for those employees overseen by the Leads, and made decisions regarding

recommendations for step increases. In this regard, there is common supervision between the Leads and the other employees in the petitioned-for unit.

Unlike those ranked supervisor and above who earn a salary and accrue administrative time off, Leads have the same wage and benefit structure as the other employees in the petitioned-for unit. Leads' wages fall within the same range as other positions in the petitioned-for unit. Like these other positions, Leads are paid on an hourly basis and are eligible to earn overtime.

Considering the totality of the circumstances contained in the record, we are not persuaded by the exceptions filed by the City to the Board agent's inclusion of the Leads in the petitioned-for unit. Despite the distinctive nature of their lead supervision responsibilities, the Leads nonetheless share substantial mutual interests with other employees in the petitioned-for unit in collectively negotiating matters within the scope of representation – wages, hours and other terms and conditions of employment.

ORDER

For the above reasons and based upon the entire record in this case, it is hereby ORDERED that the Teamsters Local 911's (Teamster) petition to be certified as the exclusive representative of a bargaining unit of certain maintenance positions at the City of Palmdale's (City) Department of Public works is GRANTED, with the following provisos:

1. The two petitioned-for Traffic Division classifications, traffic technician I and traffic technician II, shall be excluded from the bargaining unit.
2. Two petitioned-for Maintenance Division positions, Senior Maintenance Specialist Sean O'Brien and Acting Supervisor Danny Knott, shall be excluded from the bargaining unit.

3. All other positions identified for inclusion in the proposed unit by the Teamsters, including but not limited to Lead Custodian Richard Meyers, Maintenance Lead Worker Joe Gamez, Maintenance Lead Worker Tom Eply, Landscape Inspector Steve Montenegro, Senior Maintenance Specialist Chad Thomas, Maintenance Specialist Joel Kefuss and Senior Maintenance Specialist Roger Naugle, shall be included in the bargaining unit.

On March 9, 2009, the Public Employment Relations Board (PERB) determined that the Teamsters had demonstrated proof of majority support in the proposed unit pursuant to PERB Regulations 61210(b) and 61240(c).¹⁵ No other employee organization filed a valid petition to represent any of the positions at issue. Therefore, an election is not necessary in this case and the City must grant recognition to the Teamsters for the bargaining unit described in this Order. (Government Code, § 3507.1(c); PERB Reg. 61090.)

Members McKeag and Dowdin Calvillo join in this Decision.

¹⁵ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD**



CITY OF PALMDALE,

Employer,

and

TEAMSTERS LOCAL 911,

Petitioner.

REPRESENTATION
CASE NO. LA-PC-5-M

PROPOSED DECISION
(4/22/2010)

Appearances: Law Offices of Patricia Waldeck by Patricia Waldeck, Attorney, for Teamsters, Local 911; Cohen and Goldfried by David Cohen, Attorney, for City of Palmdale.

Before Eric J. Cu, Hearing Officer.

PROCEDURAL HISTORY

On December 24, 2008, Teamsters Local 911 (Union) filed a petition to be certified as the exclusive representative of all public works employees at the City of Palmdale (City) with the Public Employment Relations Board (PERB or Board). On December 29, 2008, PERB sent the parties a letter seeking to determine whether the City has adopted local rules concerning certification in accordance with Meyers-Milias-Brown Act (MMBA or Act) section 3507.¹ On January 6, 2009, the City responded to PERB's December 29, 2008 letter. The City stated that it had not adopted local rules concerning certification. The City posted the Union's petition from January 6, 2009 through January 27, 2009.

On March 9, 2009, PERB made the administrative determination that the proof of support submitted by the Union in conjunction with its petition was sufficient to meet the requirements of PERB Regulation 61210(b).² PERB also made the administrative

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

determination that a majority of the employees in the proposed unit desired to be represented by the Union. (PERB Regulation 61240(c); Gov. Code, § 3507.1(c).)

On March 30, 2009, the City filed a letter brief with PERB disputing the appropriateness of the bargaining unit proposed by the Union. The City stated that certain positions not included in the Union's unit description should be included in the bargaining unit and that other positions should be excluded. The Union modified the description of the proposed unit in subsequent filings, the most recent modification occurring in the Union's closing brief.

An informal settlement conference was held on May 6, 2009, but the parties were unable to reach an agreement over the composition of the bargaining unit. Six days of formal hearing were held on July 27-29, 2009, August 4-5, 2009, and September 8, 2009. The parties submitted simultaneous closing briefs on the issues raised during the hearing on November 25, 2009. On that date, the matter was submitted to PERB for decision.

FINDINGS OF FACT

The City's Department of Public Works is divided into several Divisions, including: Program Management, Environmental, Engineering, Maintenance, and Traffic. The Director of the Department of Public Works is Michael Mischel. The Union's petition concerns positions in the City's Maintenance and Traffic Divisions.

I. The Maintenance Division

The Maintenance Division has approximately 96 employees and is divided into seven Sections: Sanitary Sewer Maintenance; Landscape Maintenance; Facility Maintenance; Street Maintenance; Fleet Maintenance; Custodial Services; and Air Park and Nature Trails. Some of the Sections are divided into crews based on specific functions. For example, within the Street

Maintenance Section, there is a Roadway Maintenance Crew; a Concrete Construction and Repair Crew; and a Street Sweeping, Signs, Legends, and Striping Crew.

The head of the Maintenance Division is Michael Gass, who holds the title of Superintendent of Maintenance. Working directly beneath Gass in the chain of command is Assistant Superintendent Rodney Holtz. Other employees in the Maintenance Division are in the following job classifications: Maintenance Worker I, Maintenance Worker II, Maintenance Leadworker, Maintenance Specialist, Senior Maintenance Specialist, Landscape Inspector, Public Works Inspector, Custodian I, Custodian II, Lead Custodian, Equipment Operator, Heavy Equipment Operator, and Supervisor. In addition, the Maintenance Division employs seasonal employees, community service workers,³ and individuals who are part of the City's Welfare-to-Work program.

Generally, each Section in the Maintenance Division has one Supervisor, except Facility Maintenance and Custodial Services. Prior to October 2008, Custodial Services was part of Facility Maintenance. In October 2008, Jerry Bogna, then Supervisor of Facility Maintenance, retired and Danny Knott was promoted from Senior Maintenance Specialist to Acting Supervisor of Facility Maintenance. The Custodial Services Section was brought under the direct supervision of Holtz and does not currently have a Supervisor assigned to it. When a permanent Supervisor for Facility Maintenance is selected, the City expects to bring Custodial Services back as one of the crews of the Facility Maintenance Section. It is undisputed that the Supervisor position reports directly to the Assistant Superintendent of Maintenance position in the chain of command and is responsible for the activities of each Section. For that reason, it

³ These employees who are typically individuals who are fulfilling some form of mandatory community service.

is undisputed by the parties that the Supervisor position should be excluded from the proposed unit of Maintenance workers.

Almost every employee in the Maintenance Division under the supervision of a Supervisor wears a City uniform, though the uniforms sometimes vary by Section. Qualification for most positions in the Maintenance Division consists largely of prior work experience in the field. All employees in the Maintenance Division under the supervision of a Supervisor are hourly employees.

A. Custodial Services Section

The Custodial Services Section maintains the interior areas of approximately 30 buildings or other facilities throughout the City. There are currently 10 employees working in this Section, including Lead Custodian Richard Meyers. All employees in this Section are required to wear a City uniform consisting of black jeans and a blue work shirt with the City logo and a name patch. All employees in this section are paid on an hourly basis; are entitled to earn overtime; as well as receive the same benefits as all employees in the Maintenance Division. The Custodian I classification is paid at Range 22 of the City's Maintenance Division pay scale or \$2,995-\$3,823 per month. The Custodian II position is paid at Range 24, or \$3,303-\$4,215 per month, and the Lead Custodian classification is paid at Range 29, or \$4,215-\$5,380 per month. The qualifications required for all positions in this Section include the ability to read and write, as well as previous work experience as a custodian.

Employees in the Custodial Services Section work according to a set schedule, typically an eight-hour shift Monday through Friday, starting at 2:00 a.m. There is a separate group of employees that work during the weekends. Common duties for the employees in the Custodial Services Section include: removing trash, sweeping and mopping floors, cleaning windows,

vacuuming carpets, cleaning restrooms, shampooing carpets, waxing floors, and changing light bulbs. All 10 employees perform these duties.

Employees in the Custodian classification generally report to Meyers to handle basic personnel and scheduling issues. Meyers reports to Holtz. Meyers has the ability to recommend that Custodians receive discipline such as counseling memoranda. In one instance, Meyers recommended to then-Supervisor Bogna that an employee be terminated prior to completing his probationary period. Ultimately, Bogna decided not to confirm that employee for permanent employment. Meyers has also recommended that employees be issued counseling memoranda and suspensions in the past. Meyers also performs other duties such as recording the payroll for the employees in the Custodial Section, inspecting other custodians' work, tracking the use of supplies, requesting new supplies, and delivering supplies while he is making inspections. No other Custodians are assigned to perform these other duties. However, in the job description for the Custodian II classification, the City states that the position must be familiar with methods of training and supervision, and must be ready to supervise other employees. Meyers estimates that he performs approximately 15 hours of routine custodial work during his typical 40-hour work week; the remainder of his time is spent performing his other duties.

Meyers is also responsible for communicating with two outside contractors used by the City to perform custodial services. Specifically, Meyers is responsible for inspecting the contractors' work and requiring that corrections be made if necessary.

Meyers completes the initial draft of performance evaluations of the other employees in the Custodial Section. He sends the draft evaluation to Holtz for his consideration. After review, Holtz then sends the draft evaluation to the Human Resources Department for further review.

B. The Landscape Maintenance Section

The Landscape Maintenance Section is responsible for maintaining the City's public parks and other areas of the City that have landscaping. There are approximately 32 employees in this Section, excluding Supervisor Antonio Colombo. The other positions employed in this Section are: Maintenance Worker I, Maintenance Worker II, Maintenance Leadworker, Maintenance Specialist, Senior Maintenance Specialist, Landscape Inspector, and Public Works Inspector. Salary in this Section varies from Range 22 to Range 29 of the City's salary scale or between \$2,995 per month and \$5,380 per month. The primary qualification for all of the positions in this Section below the rank of Supervisor is prior work experience performing the duties of the classifications that are part of the Section. The employees in this Section, except the Supervisor, wear a uniform consisting of blue jeans and an orange work shirt with the City logo and a name patch. The Parks Maintenance Section employees wear a uniform consisting of blue jeans and a green work shirt with the City logo and a name patch.

The primary duties of employees in the Landscape Maintenance Section include: cutting grass; pruning trees and bushes; setting and repairing irrigation; and painting and repairing park equipment. The Landscape Maintenance Section is also responsible for maintaining certain sections of the City that have been divided into Landscape Maintenance Districts (LMDs). LMDs are maintained according to a set schedule, though residents that reside within an LMD may request special maintenance services. The Landscape Maintenance Section is divided into four crews: Park Maintenance, LMD Zone I, LMD Zone II, and Water Conservation.

Each of the Crews in this Section perform routine tasks on any given day. Typically, employees in this Section spend the majority of their time performing the maintenance work according to these pre-assigned tasks. In addition, employees may receive work orders for

repairs or other maintenance work. Typically, employees perform their pre-assigned tasks before satisfying the work orders, unless the work order raises safety concerns for the public or for City personnel.

Colombo oversees the activities of each of the Crews. Colombo reviews internal and public work orders, and distributes them to the Crews for assignment. Colombo has authority to make decisions regarding scheduling, evaluations, overtime, leave, evaluations, and discipline. As discussed below, other employees have some responsibility in this area as well. Colombo estimates that he spends approximately 80 percent of his time in his office performing oversight work and the remainder of his time is spent attending City meetings with various levels of management. As with the other Supervisors in the Maintenance Division, Colombo does not typically perform any maintenance work.

1. Park Maintenance

The Park Maintenance Crew is responsible for performing maintenance and repairs at the City's various public parks. Within this Crew, there are two teams: Maintenance Leadworker Tom Epley oversees the team responsible for the City's seven east side parks, and Maintenance Leadworker Joe Gamez oversees the team that is responsible for the City's two west side parks. In addition, Gamez oversees a private contractor used by the City to clean and maintain other City parks. The Maintenance Leadworker classification is paid according to Range 29 of the City's Salary Scale. The remaining positions in this Crew are the Maintenance Worker I and II classifications, and the Maintenance Specialist classification, paid at Ranges 22, 24, and 29 respectively.

Epley and Gamez perform substantially similar job duties. Both Epley and Gamez oversee groups of other City employees performing maintenance work at the City's parks. This entails ensuring that employees are performing their scheduled maintenance tasks as well

as inspecting their work. Epley and Gamez are also responsible for assigning work projects to employees pursuant to work orders and inspecting the parks for additional maintenance projects. Epley and Gamez also deliver supplies to employees, instruct them on how to perform certain duties, and perform actual maintenance work themselves.

Epley and Gamez also have some responsibility over personnel issues. Epley and Gamez can authorize employee overtime, but this must be reported to Colombo. Epley and Gamez assist with training employees in the performance of their job duties. Epley and Gamez produce draft evaluations of the employees on their respective teams. These drafts are sent to Colombo for his consideration. Colombo will sometimes want to discuss a draft evaluation to make changes. Epley and Gamez each play a role in resolving disputes among coworkers at an informal level. If the issue implicates a possible violation of City policy or creates the potential for discipline, Epley or Gamez is required to report the matter to their Supervisor, Colombo, who would then address the issue. Epley recalls being instructed to draft counseling memoranda for some employees he oversees and submit them to Colombo for review. Epley does not believe he has any authority to recommend anything beyond such counseling statements.

The job description for the Maintenance Specialist position lists supervising, scheduling, and reviewing work duties. The job description for the Maintenance Worker II position includes providing supervision over other Maintenance Division personnel.

In addition to the duties discussed above, Gamez also has some responsibility overseeing the City's contract with Richard Meiers's Services, a private contractor used to perform some park maintenance work. Gamez's duties in this respect include inspecting the work of the contractor's employees and communicating with the contractor's supervisor if the work is not satisfactory.

2. Landscape Maintenance District Crews

The LMD Crews previously had a Supervisor assigned to oversee the work they performed but it is currently part of the Landscape Maintenance Section.⁴ Landscape Inspector Steve Montenegro is responsible for overseeing the activities of the LMD Zone II Crew. This position is paid according to Range 29 of the City's salary scale. The other positions in these Crews include Maintenance Worker I and II, Maintenance Specialist, and Public Works Inspector.

Montenegro oversees seven other City employees as well as community service workers. Montenegro shares office space in the Maintenance Yard with other Maintenance Department employees. Montenegro meets with the employees in his Crew in the Maintenance Yard every morning. At these meetings, he assigns work to employees based on work orders and projects based on his own observations and inspections.

Like Gamez, Montenegro also has a role in overseeing the City's maintenance contract. Montenegro inspects the work performed by the contractor and can request that work be redone if he believes it is necessary.

Like Gamez and Epley, Montenegro has authority to assign overtime or to grant employees time off. Montenegro drafts evaluations for employees in the LMD Crew. Montenegro is responsible for drafting reports concerning the work performed by the LMD Crew. It is estimated that Montenegro spends about 10 percent of his time performing maintenance work. On the days that Montenegro is not in the office, Landscape Inspector Mark Etherton performs Montenegro's duties.

⁴ It is unclear from the record whether LMDs were a part of the Landscape Maintenance Section, a different Section, or whether LMDs comprised its own Section within the Maintenance Department. At all times relevant to this proceeding, the LMD was a Crew within the Landscape Maintenance Section.

3. Water Conservation

The Water Conservation Crew is primarily responsible for maintaining the sprinkler and irrigation systems in the City's public parks as well as other areas in the City that require irrigation. In recent times, the City's use of irrigation has become a more important issue due to the City's desire to use less water for cost-saving and environmental reasons. There are currently three employees assigned to the Water Conservation Program: Senior Maintenance Specialist Sean O'Brien, and Maintenance Worker II's Timothy Allgood, and Paul Wood. The Senior Maintenance Specialist position is paid according to Range 31 of the City's salary scale or between \$4,647-\$5,932 per month. The Maintenance Worker II classification is paid at Range 24 of the City's salary scale.

Some of the City's irrigation systems are centrally controlled by the City's Maxicom software. Maxicom allows a City employee to control the timing of irrigation from a single remote location. Maxicom also allows the City to adjust the timing and amount of irrigation based on weather and moisture conditions. Irrigation systems that are not connected to Maxicom must be controlled on-site.

O'Brien is the City employee primarily responsible for the operations of Maxicom. O'Brien's duties include monitoring the system and changing the City's irrigation schedule based on the data compiled in Maxicom. Allgood and Wood are primarily responsible for the day-to-day usage of the Maxicom system. O'Brien oversees the work of Allgood and Wood and instructs them to make changes or adjustments based on his analysis. In addition, O'Brien works with Colombo to create a formal written program for how the Maxicom system operates so that it can be run by anyone in the Maintenance Division. In 2001, O'Brien served as Acting Supervisor of the Street Maintenance Section.

O'Brien also has some responsibility for scheduling employees in the Landscape Maintenance Section. For example, he has the authority to assign Allgood and Wood to special irrigation projects outside of their normal duties. In addition, O'Brien has assigned work to other members of the Landscape Maintenance Section. O'Brien has the authority to assign overtime and grant time off.

O'Brien assists Colombo by generating reports using Cititech, the system used to collect data on Maintenance Department tasks. These reports were used to develop the regular schedule of maintenance tasks currently used by the various crews in the Landscape Maintenance Section. O'Brien's reports were also useful in identifying trends in employee attendance and usage of time off.

O'Brien has drafted evaluations for Allgood and Wood. O'Brien has also occasionally assisted Gamez, Epley, and Meyers in preparing their draft evaluations for other Maintenance Department employees.

O'Brien estimates that he spends approximately 90 percent of his time in the office space he shares either working on reports or overseeing the Maxicom system. In the remainder of his time, O'Brien is either attending meetings with Colombo or with other City officials or overseeing the work of the Water Conservation Crew. O'Brien rarely performs actual maintenance work on the City's irrigation system.

O'Brien has some responsibility for ordering equipment for the Water Conservation Crew. O'Brien prepares drafts of requisition forms and solicits bids for the equipment from various vendors. O'Brien used to have the authority to make major purchases on his own. More recently, however, major purchases are currently handled by Colombo. O'Brien also creates reports tracking purchases for the purpose of inventory and determining when additional equipment may be needed.

C. The Facilities Maintenance Section

The Facilities Maintenance Section is responsible for maintaining and repairing the various buildings owned or operated by the City. The Facilities Maintenance Section contains 10 employees in the classifications of Acting Supervisor, Senior Maintenance Specialist, Maintenance Worker I, and Maintenance Worker II. The uniform for this Section is black jeans and a blue work shirt with the City's logo and a name patch.

Within the Facilities Maintenance Section, there are three crews: the Facilities Services Crew, the Graffiti Abatement Crew, and the Water Park and Pool Maintenance Crew. Employees in the Facilities Services Crew perform work such as maintaining and repairing plumbing, air conditioning, heating, lighting, windows, and carpet. Employees in the Graffiti Abatement Crew perform work such as removing or painting over graffiti located on City property or on private property in the City. There is no dispute by the parties that the employees in the Facilities Services Crew and the Graffiti Abatement Crew belong in the proposed unit.

Unlike most of the other sections in the Maintenance Department, the Facilities Maintenance Section does not have a Supervisor because Facilities Supervisor Bogna retired in 2008. The City promoted Danny Knott, who had previously been a Senior Maintenance Specialist, to Acting Supervisor. Knott testified that his promotion to Acting Supervisor has resulted in a salary increase but was unsure what the increase was. Knott typically works a Monday through Friday schedule, but is available by telephone on the weekends if issues concerning the Facilities Maintenance Section arise. Knott occasionally wears the Facilities Maintenance uniform, but sometimes wears a regular dress shirt with the uniform pants. Knott had previously worked as the Acting Supervisor of the Facilities Maintenance Section from October 2005 until October 2006.

As Acting Supervisor, Knott reviews work orders sent to the Maintenance Department from all other City departments. He then determines the appropriate employee to assign each work order in terms of training and availability. Knott regularly assigns and reassigns employees in this fashion. After the employee completes the work and returns that work order to Knott, Knott makes random inspections and occasionally will have an employee perform additional work if the job is deemed to be substandard. Knott also has the authority to draft evaluations as the Supervisor, issue disciplinary memoranda, and schedule overtime. If Knott schedules overtime, he must notify his supervisor, Mike Gass. In a typical work week, Knott does not perform any maintenance work.⁵ Instead, his duties in supervising the Facilities Maintenance Section occupy his entire work day.

Knott regularly participates in meetings with Gass, Holtz, and all of the Supervisors in the Maintenance Department. At these meetings, each Supervisor will report on highlights and issues related to that Supervisor's Section. Knott provides the report for the Facility Maintenance Section.

Employees in the Water Park and Pool Maintenance Crew are responsible for maintaining the City's four swimming pools and the City's Dry Town Water Park (Dry Town), a five-acre amusement park containing water slides, an artificial river and other water-based recreational activities. There are three employees currently assigned to the Water Park and Pool Maintenance Crew: Roger Naugle, Senior Maintenance Specialist; Daryl Yancy, Maintenance Worker II; and John Coddington, Maintenance Worker I. All the employees in this Crew are required to wear a City uniform consisting of black jeans and a blue work shirt with the City logo and a name patch. All the employees in this Crew are hourly employees.

⁵ Knott will occasionally perform work as a locksmith if another member of the Section is unavailable or if the project requires someone of Knott's experience to perform the work.

Naugle is paid according to Range 31 of the City's salary scale. Yancy is paid according to Range 24. Coddington is paid according to Range 22.

Naugle works primarily at Dry Town and its adjacent swimming pool where he is responsible for tests, maintenance, and repairs. With respect to Dry Town, this involves daily inspections of all facilities and of the water itself to comply with State and County regulations. Moreover, regulating the balance of chemicals, pH, and temperature in the water is necessary to protect the public and the filtration equipment used at the facility. Naugle works Monday through Friday with his hours varying depending on the season. Coddington works with Naugle on these duties on Wednesday through Friday and performs these functions alone on the weekend. Coddington is in the process of being trained by Naugle to perform these duties. Prior to that, former City employee Ed Letterhouse performed Naugle's duties on the weekends.⁶ There are no other Maintenance Section employees assigned to work at Dry Town or the accompanying swimming pool. Naugle worked in this Crew for approximately four years. Prior to that, Naugle worked in other sections of the Facilities Maintenance Crew for approximately 14 years.

Naugle has earned certifications regarding water treatment.⁷ Naugle also has earned an Aquatic Facility Operator (AFO) Certificate after completing a two-day course with the National Parks and Recreation Association. Yancy also has earned an AFO Certificate.

⁶ No evidence was presented regarding Letterhouse's job classification while he was an employee at the City.

⁷ Naugle obtained certification as an Aquatic Facility Operator. He also has a Grade-Two Water Treatment certification. In addition, Naugle has earned an Advanced Water Course certificate. Possession of these certificates is not necessary for Naugle to perform his duties and no other Maintenance Department employees possess these certificates.

Yancy performs maintenance and repairs at the City's other three swimming pools. These other swimming pools utilize equipment that is older and less sophisticated than the equipment used in Dry Town.

D. The Street Maintenance Section

The Street Maintenance Section is responsible for maintaining and repairing the roadways in the City. This includes approximately 500 miles of asphalt road, sidewalks, curbs, gutters, street markings, signs, and trees. There are approximately 28 employees working in this Section not including the position of Supervisor. The classifications in the Section include Senior Maintenance Specialist, Maintenance Specialist, Maintenance Worker II, Maintenance Worker I, Heavy Equipment Operator, Equipment Operator, and Sweeper Operator. The salaries for employees in this Section vary from Range 22 or \$2,995-\$3,823 per month to Range 31 or \$4,647-\$5,932 per month.

The Street Maintenance Section is divided into three Crews. The Roadway Maintenance Crew is primarily responsible for maintaining the roads themselves, including asphalt, the shoulder, drainage, and any related markings, signs, and abatement. The Concrete Maintenance Crew is primarily responsible for maintaining the curbs and sidewalks adjacent to City roads along with any related signs and markings in those areas. There is also a Sweeping, Signs, Legends, and Trees Crew that is not at issue in this hearing.

All employees who work in the Street Maintenance Section, other than the Supervisor, wear a City uniform consisting of blue jeans and an orange work shirt with the City logo and a name patch. All the employees in this section are hourly employees.

Bruce Roadhouse is the Supervisor of the Street Maintenance Section. Roadhouse is responsible for the overall management of the Street Maintenance Section including meeting with employees, reviewing reports and data input, preparing budgets, and attending meetings

with the management of Maintenance Department. Roadhouse is also responsible for evaluating employees, issuing discipline, recommending salary increases, and approving overtime or time off.

Chad Thomas is currently the only employee assigned to the position of Senior Maintenance Specialist for the Roadway Maintenance Crew. The position is paid according to Range 31 of the City's Salary Scale. Thomas's duties include inspecting the City's roads and reviewing community and internal City work orders for work projects for the Roadway Maintenance Crew. Thomas will then assign members of the Crew to complete each of these projects and will offer guidance and assistance to Crew members, if needed. This includes the general discretion to decide how the project should be completed and which workers to assign. Depending on the size and the complexity of the project, Thomas may discuss the matter with Roadhouse, who has ultimate authority on such decisions. Generally speaking, however, Roadhouse and Thomas usually agree on the appropriate approach to each project. Thomas estimates that he spends between 10 and 20 percent of his time performing actual maintenance work.

Thomas is also responsible for reviewing the work of the Roadway Maintenance Crew as well as performing maintenance work alongside the crew. If Thomas determines that work was not performed correctly, he has the authority to direct the employee to correct the problem, though he rarely needs to do so. Thomas also prepares the first draft of employee evaluations of the other employees in the Roadway Maintenance Crew. These evaluations are subject to review by Roadhouse, who reviews and signs the evaluation as the Supervisor.

Thomas is also responsible for entering data regarding the projects of the Roadway Maintenance Crew, including the number of projects completed, the materials and equipment used, and the number of worker hours. This data is compiled into reports which he submits to

the Roadway Maintenance Supervisor on a regular basis. Thomas performs these duties in an office located in the Maintenance Department Yard. Thomas shares this office with other Maintenance Department employees that have similar reporting requirements or other need for use of a computer. Thomas will perform some of Roadhouse's duties, such as finalizing payroll materials for the Human Resources Department when Roadhouse is on leave or not scheduled to work.

Joel Kefuss is a Maintenance Specialist that works in the Concrete Construction and Repair Crew within the Street Maintenance Section. This position is paid according to Range 29 of the City's salary scale. Kefuss's job duties on the Concrete Construction and Repair Crew are similar to Thomas's oversight duties on the Roadway Maintenance Crew, described above. Kefuss assigns members of the Crew work assignments based on work orders or Kefuss's own inspections. Kefuss inspects the work of other Crew members and maintains reports on the work performed by the Crew. Kefuss estimates that he spends between 10 and 30 percent of his time performing actual maintenance work. Like Thomas, Kefuss also drafts evaluations of members of his Crew for Roadhouse to review and sign. Kefuss also regularly performs maintenance work alongside the Concrete Construction and Repair Crew.

II. The Traffic Division

The Traffic Division is another division in the City's Department of Public Works and is organizationally considered by the City to be separate from the Maintenance Division. The Traffic Division has a total of 11 employees in the following classifications: Traffic Signal Technician I, Traffic Signal Technician II, Senior Traffic Signal Technician, Engineering Technician II, Engineering Intern, Senior Civil Engineer, Assistant Engineer for the Geographic Information System (GIS), Associate Engineer for the GIS, Transportation/GIS Manager, and Traffic/Transportation Engineer. Like the Maintenance Division, the Traffic

Division is divided into Sections: the Signal Operations Section, the GIS Section, and the Traffic Engineering Section. The Traffic Division is currently supervised by Bill Padilla. Padilla is supervised by Mischel, the Director of the Public Works Department. At issue in this case are the Traffic Signal Technician I and Traffic Signal Technician II positions, which are included in the Signal Operations Section.

Employees in the Signal Operations Section are required to wear a uniform consisting of blue jeans and an orange work shirt with the City logo and a name patch. These are the same uniforms worn by employees in the Street Maintenance Section of the Maintenance Division. All employees in this section are paid on an hourly basis and are entitled to benefits. The Traffic Signal Technician I position is paid according to Range 31 of the City's salary scale, amounting to approximately \$4,647-\$5,932 per month. The Traffic Signal Technician II position is paid according to Range 33, amounting to approximately \$5,124-\$6,540 per month.

The primary functions of the Traffic Signal I and II classifications are to monitor, maintain, repair, and install the various traffic signal devices and other fixtures related to traffic signals installed at intersections throughout the City's streets. This includes traffic signal lamps, video cameras, the mast arm and pole that traffic signals attach to, electronic sensors used to detect the presence of vehicles at intersections red or yellow flashing signal lamps, as well as the service box used to control the traffic signals at intersections, and a battery back-up box used to provide power to traffic signals in the case of a power outage.

The Traffic Signal Technicians' job duties require regular use of electrical and computer equipment. For example, these positions maintain the sensors that detect the presence of vehicles at an intersection. The sensors send an electrical signal to the traffic signal control box, which houses a computer. The computer in the control box is used to operate, monitor, and program the timing of traffic lights at any given traffic intersection.

The Traffic Signal Technician I position is considered the entry-level traffic signal technician position. Employees in the Traffic Signal Technician I classification are required to possess or obtain a Class B drivers license (to operate trucks) as well as Level I certification from the International Municipal Signal Association (IMSA) regarding traffic signals. In addition, the Traffic Signal Technician I employees are required to have one year of experience in a traffic-related field or similar experience with electrical equipment. In order to become a Traffic Signal Technician II, the candidate must possess or obtain a Class B Driver's License, an IMSA Level II certification, and must possess at least five years experience in a traffic-related field or similar experience with electrical equipment.

One City employee, Robert Vogel, was formerly employed in the Maintenance Division as a Maintenance Worker II and is currently employed in the Traffic Division as a Traffic Signal Technician I. Vogel obtained the necessary training and certifications during non-work time by attending classes. In addition, Vogel had experience working with electrical equipment associated with wind turbines at a previous job in another city. Vogel applied for the Traffic Signal Technician I position during an open enrollment job bulletin and was hired for the position.

Both the Traffic Signal Technician I's and II's report to work at the same yard where employees in the Maintenance Division report to work. These two classifications generally work from 6:00 a.m. until 4:30 p.m. Monday through Thursday. At the beginning of the workday, these positions attend a meeting with the Senior Traffic Signal Technician before driving to and performing their assigned tasks for the day. All Traffic Signal Technicians are given a total of one hour of break-time per day. The Traffic Signal Technicians have access to the same break-room as employees in the Maintenance Division but, generally speaking, the Traffic Signal Technicians take their breaks together and not with other employees.

Occasionally, Traffic Signal Technicians interact with employees in the Maintenance Division professionally, most commonly the Street Maintenance Section. A few times per year, Street Maintenance Employees must repair or replace damaged street signs that are affixed to City traffic signal poles or mast arms. In these instances, the Maintenance and Traffic Divisions must coordinate their activities to complete the job. In other instances, if a tree or other object obstructs the public view of a traffic signal, then the Traffic Division must contact the Street Maintenance Section for assistance. In addition, occasionally Street Maintenance employees must perform their work at or near traffic intersections. In those cases, certain employees in the Street Maintenance Section were trained on how to change a traffic signal to indicate an all-direction stop. Employees in the Maintenance Section are not trained to return the traffic signal to normal operation. Such actions can only be done by Traffic Division employees. Street Maintenance employees are not trained to otherwise utilize traffic signal devices and are not required to obtain certifications from the IMSA. The work of the Traffic Division and the Maintenance Division do not overlap on a day-to-day basis.

ISSUE

The issue in this case is the appropriateness of the unit of maintenance employees as described by the Union. The Union has changed the description of its proposed unit at different points during the course of this case. According to the Union's most recent description, the appropriate unit should be described as:

All regular full-time, regular part-time and probationary employees in the Maintenance Division of the Department of Public Works ("DPW") in the classifications of Custodian I and II, Lead Custodian, Maintenance Worker I and II, Maintenance Lead Worker, Maintenance Specialist, Senior Maintenance Specialist, Equipment Operator, and Heavy Equipment Operator, Street Sweeper Operator, and Landscape Inspector; and in the Traffic Division of the DPW, Traffic Signal Technician I and II.

According to the Union, the unit should exclude:

All employees in the Department of Public Works with the title of Supervisor, Assistant Superintendent, or Superintendent; Maintenance Division employees with the classification of Office Assistant I, Engineering Aide II and Administrative Technician, all other employees of the Traffic Division, and all other City employees.

The City does not dispute that several of the positions identified by the Union belong in the proposed unit. However, according to the City, the appropriate bargaining unit should be described as:

All regular full-time and regular part-time employees (including probationary employees) in the Maintenance Division of the Public Works Department of the City employed in the following classifications: *Custodian I, Custodian II, Equipment Operator, Heavy Equipment Operator, Maintenance Worker I, Maintenance Worker II, Street Sweeper Operator*, and those employees in the classifications of *Maintenance Specialist, Senior Maintenance Specialist, Landscape Inspector*, and *Maintenance Lead Worker* who are **not** supervisory, professional or technical employees.

According to the City, the bargaining unit appropriately excludes:

All *Superintendents, Assistant Superintendents, Managers*, and *Supervisors* in the City's Department of Public Works, including all employees who exercise supervisory duties in the job classification of *Lead Custodian, Landscape Inspector, Maintenance Lead Worker, Senior Maintenance Specialist* in the Maintenance Division; all clerical employees in the Maintenance Division, including employees in the classification *Office Assistant, Engineering Aide* and *Administrative Technician*, all professional and technical employees, all temporary and casual employees and all other employees of the City, including employees in the Administration, Project Management, Engineering, Traffic (including the classifications of *Traffic Signal Technician I* and *Traffic Signal Technician II*), and Environmental Divisions of the City's Department of Public Works.

More specifically, the City seeks to exclude from the unit Lead Custodian Richard Meyers, Senior Maintenance Specialist Sean O'Brien, Maintenance Leadworker Joe Gamez, Maintenance Leadworker Tom Epley, Landscape Inspector Steve Montenegro, Acting

Supervisor Danny Knott, Senior Maintenance Specialist Chad Thomas, and Maintenance Specialist Joel Kefuss because these employees perform “supervisory” duties for the City. The City also seeks to exclude from the unit Senior Maintenance Specialist Roger Naugle and all employees classified as Traffic Signal Technician I’s and II’s, because these positions do not share a “community of interest” with other Maintenance employees.

CONCLUSIONS OF LAW

The MMBA empowers PERB to make unit determinations in those cases where there is a dispute concerning the appropriateness of a proposed bargaining unit and where the local public agency has not adopted local rules concerning unit determination. (Gov. Code, §§ 3507.1(a), 3509(a); and 3541.3(a).)

I. Unit Determination Criteria

Unlike the other collective bargaining statutes PERB enforces, such as the Educational Employment Relations Act (EERA) and the Ralph C. Dills Act (Dills Act), the MMBA does not specify the criteria to be used when making unit determinations in cases of a dispute. (See Gov. Code, §§ 3521 et seq., 3545.) Nevertheless, when making unit determinations under the MMBA, courts have used similar factors, including but not limited to the community of interest between the employees at issue, the history of representation, and the general field of work. (*Alameda County Assistant Public Defenders Association v. County of Alameda* (1973) 33 Cal.App.3d 825, 830-831 (*County of Alameda*).) In *City of Glendale* (2007) PERB Decision No. Ad-361-M, the Board affirmed that these factors were consistent with the purposes of the MMBA and existing legal precedent. Indeed, the criteria identified in those cases are substantially similar to the criteria used by PERB when making unit determinations

under other collective bargaining statutes. (See e.g., Gov. Code, § 3545(a); *Elk Grove Unified School District* (2004) PERB Decision No. 1688.)⁸

In the present case, the City does not have any existing bargaining units in the Maintenance Division, nor was any evidence presented regarding any employee organization's efforts to represent any of the petitioned-for classifications in the City. Thus, the history of representation factor will not weigh heavily into this analysis and greater weight will be afforded to the factors of community of interest among the petitioned-for employees.

A. Community of Interest Factors

Community of interest determinations under the MMBA should consider similarities or differences in the nature of the duties of the petitioned-for employees, lines of supervision, hiring practices, and the degree of interchange amongst the petitioned-for employees. (*International Federation of Professional and Technical Engineers, Local 21 v. City and County of San Francisco* (2000) 79 Cal.App.4th 1300, 1306 (*San Francisco*), citing *County of Alameda, supra*, 33 Cal.App.3d 825, 830-831.) The Board has considered similar factors when making unit determinations under other collective bargaining statutes it enforces. (*Redondo Beach City School District* (1980) PERB Decision No. 114 (*Redondo Beach*).) In addition, the Board found factors such as the degree of similarity in wages, hours, and qualifications to be relevant. (*Ibid.*) The existence of common goals is another factor considered. (*San Diego Community College District* (2001) PERB Decision No. 1445 (*San Diego CCD*); *State of California (State Teachers Retirement System)* (1997) PERB Decision No. 1202-S.) Among these various factors, the Board has considered similarities in job duties more heavily than

⁸ When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*Firefighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

other community of interest factors. (*San Diego CCD, supra*, PERB Decision No. 1445.)

PERB will apply these standards to deciding the appropriateness of the petitioned-for unit.

B. Exclusion Solely Because of Supervisory Duties

The City contends that eight employees should be excluded from the petitioned-for bargaining unit because those employees have some supervisory duties.⁹ Essentially, the City argues that the proposed bargaining unit creates the possibility for conflicts for employees with supervisory duties between those employees' loyalty to City management and their loyalty to the Union.

Some of the collective bargaining statutes enforced by PERB, such as EERA, expressly preclude supervisory employees from being represented by the same employee organization as employees whom the supervisory employees supervise. (See e.g., Gov. Code, § 3545(b)(2).) The MMBA, on the other hand, does not define what it means to be a supervisory employee. Nor does it expressly preclude the creation of a bargaining unit including both supervisory and non-supervisory employees. The MMBA does, however, allow for the restriction of employees lawfully designated as management or confidential from being included in a rank-and-file bargaining unit. (Gov. Code, § 3507.5.) That same section goes on to state, "this section does not otherwise limit the right of employees to be members of and hold office in an employee organization."

The California Supreme Court addressed this issue in *Santa Clara County Counsel Attorneys Association v. County of Santa Clara* (1994) 7 Cal.4th 525. In that case, the court noted "[b]y choosing to explicitly include supervisorial, managerial, and confidential

⁹ Those employees are Lead Custodian Richard Meyers, Senior Maintenance Specialist Sean O'Brien, Maintenance Leadworker Joe Gamez, Maintenance Leadworker Tom Epley, Landscape Inspector Steve Montenegro, Acting Supervisor Danny Knott, Senior Maintenance Specialist Chad Thomas, and Maintenance Specialist Joel Kefuss.

employees within the realm of the MMBA's protections, the Legislature implicitly decided that the benefits for public[-]sector labor relations achieved by including [those] employees outweighed the potential divided loyalty dilemmas raised." (*Id.* at 538.) Accordingly, "any argument which contends that MMBA protections should not apply to certain managerial employees because of problems with divided loyalty must be viewed with skepticism, for that argument follows precisely the legislative road the MMBA declined to take." (*Ibid.*) Because nothing in the MMBA prevents employees with supervisory duties from being represented in a bargaining unit that includes employees being supervised, this analysis will focus on whether the employees at issue should be excluded from the proposed unit due to community of interest and other relevant factors.¹⁰

C. Individualized Analysis

In cases where employees of the same job classification perform different job duties, the Board has adopted an "individualized analysis" approach to unit determinations. (*San Ramon Valley Education Association, CTA/NEA (Abbot and Cameron)* (1990) PERB Decision No. 802.) In those cases, the Board considers the actual job duties of the various individuals in the classifications and then makes unit determinations based upon each individual employee's duties. (*Ibid.*) In this case, because the City contends that some, but not all of the employees in the positions of Senior Maintenance Specialist, Maintenance Specialist,

¹⁰ The City also contends that supervisors should not be included in the petitioned-for bargaining unit because of their status as agents and the corresponding possibility of liability under the Fair Employment and Housing Act (FEHA). This argument is unpersuasive for several reasons. First, the City does not explain how the inclusion of these positions in the proposed unit increases the City's exposure to liability. Second, the City does not establish how the present decision would have any bearing on a court's decision of supervisory status under FEHA. Third, PERB has not considered the possibility of such liability to be a factor when making unit determinations.

Maintenance Leadworker, and Landscape Inspector should be excluded from the proposed unit, an “individualized analysis” approach is appropriate.¹¹

II. Unit Determinations

A. Richard Meyers, Custodial Services

The Union includes the City’s only Lead Custodian, Richard Meyers, in the petitioned-for unit. Meyers has assumed a leadership role in the City’s Custodial Services Section after Custodial Services was removed as a Crew of the Facilities Maintenance Section and became a separate Section.¹² Like all other employees in the Custodial Services Section, Meyers is an hourly employee and works according to the same basic schedule as do all employees in this Section. At salary Range 29, Meyers is among the highest paid City employees in this Section, but his salary Range is the same as five other classifications in the Maintenance Division.¹³

Meyers’s job duties include the same type of work as the other employees in the Custodial Services Section. Meyers also has some responsibility in overseeing the work of his co-workers. These duties include managing the use of custodial supplies, inspecting employee work, and interacting with contractors used by the City to perform custodial services. Meyers spends approximately one-third of his time performing traditional custodial duties and the remainder performing his oversight functions.

Based on the factors, set forth above, I find that Meyers shares a significant community of interest with other Maintenance employees in the petitioned-for unit. I find the shared job

¹¹ The City also seeks to exclude **all** the employees in the Acting Supervisor, Lead Custodian, Traffic Signal Technician I and Traffic Signal Technician II positions.

¹² This occurred after former Facilities Maintenance Supervisor Bogna retired and that position was replaced by Acting Supervisor Knott. The Custodial Services Section is currently supervised by the Assistant Superintendent of Maintenance.

¹³ Those classifications are: Equipment Operator, Landscape Inspector, Maintenance Leadworker, Maintenance Specialist, and Street Sweeper Operator.

duties between Meyers and the rest of the Custodial Services Section to be significant. (See *San Diego CCD, supra*, PERB Decision No. 1445.) In addition, Meyers shares other working conditions with the Custodial Section such as hours, qualifications, and uniform. Meyers's salary is also commensurate with other employees in the Maintenance Division.

The City contends that Meyers's oversight duties in the Custodial Services Section are such that he lacks a community of interest with non-supervisory personnel in the Maintenance Division and would more appropriately be placed in a unit of City supervisory employees. The City does not, however, dispute the commonalities shared by Meyers and the other employees in the petitioned-for unit. In addition, the job description for the Custodian I and II classification states that these positions may exercise some supervisory authority over less experienced personnel. In addition, the qualifications for the Custodian II classification requires knowledge of basic supervision and training methods.¹⁴ Therefore, the position that Meyers lacks a community of interest with the petitioned-for employees is unpersuasive.

The argument that Meyers shares a greater community of interest with a theoretical unit of supervisory personnel is equally unpersuasive. When making unit determinations under the MMBA, the proposed unit need only be "appropriate." (*Alameda County, supra*, 33 Cal.App.3d at 830, citing *Morand Bros. Beverage Co.* (1950) 91 NLRB 58, enf. (7th Cir 1951) 190 F.2d 576.) "[T]he board need not determine the *ultimate* unit or the *most* appropriate unit." (*Ibid.*) Thus, even if Meyers shares a greater community of interest with other City

¹⁴ PERB has found that employee job descriptions are entitled to "some weight" when making unit determinations. (*Los Angeles Unified School District* (2004) PERB Decision No. 1665.)

employees that have supervisory duties, given the similarities between his position and those in the petitioned-for Maintenance unit, inclusion in the unit is appropriate.¹⁵

B. The Landscape Maintenance Section

The Union has petitioned to include all full-time City employees in the Landscape Maintenance Section below the position of Supervisor. The City contends that Maintenance Leadworkers Joe Gamez, Maintenance Leadworker Tom Epley, and Landscape Inspector Steve Montenegro should be excluded from the petitioned-for unit by nature of the supervisory duties those employees perform within the Landscape Maintenance Section. The City further contends that Senior Maintenance Specialist Sean O'Brien should be excluded from the petitioned-for unit because of the supervisory duties he performs as well as the technical nature of his duties in the Water Conservation Program Crew.

1. Joe Gamez, Tom Epley, and Steve Montenegro

These three employees share the same basic set of duties, though their actual day-to-day duties may vary somewhat due to their respective positions at the City and their relationship with Colombo.

Gamez and Epley both work in the City's Park Maintenance Section and share the same job classification. Accordingly, they are both paid at Range 29 of the City's salary scale, the same as five other classifications in the Maintenance Division. There is no dispute that the City's other Maintenance Leadworker, James Cooksley, appropriately belongs in the petitioned-for unit. As with the other employees in the Park Maintenance Crew, Gamez and Epley are hourly employees and are supervised by Colombo.

¹⁵ This decision does not preclude an employee organization from organizing the City's employees with supervisory duties and filing, under appropriate conditions, to create a separate unit of supervisory personnel. If and when a valid petition is filed, PERB will consider the petition according to the relevant regulations and standards of law.

Gamez and Epley's day-to-day duties include ensuring other Park Maintenance employees are performing their regular-scheduled tasks, assigning new Park Maintenance tasks as needed, inspecting the work of Park Maintenance employees, ordering and delivering supplies, and performing actual Park Maintenance work. The job descriptions for the Maintenance Specialist and Maintenance Worker II classifications include basic supervisory duties. In addition, the job description for the Maintenance Specialist lists as a qualification "plan, schedule, supervise, and review work performed by others."

Epley and Gamez also play a role in training other Park Maintenance employees, approving time off and overtime, creating drafts of evaluation, and creating drafts of disciplinary memoranda. The facts do not specify whether any other Park Maintenance employees are assigned these other job functions.

Montenegro oversees for the LMD Zone II Crew in the Landscape Maintenance Section. Montenegro is employed as a Landscape Inspector and is paid at the same range of the salary scale as Gamez and Epley. Like other employees in the Landscape Maintenance Section, Montenegro is an hourly employee. Similar to Gamez and Epley, Montenegro inspects the work of the employees in his Crew, assigns tasks as needed, provides supplies, and performs maintenance work along with the rest of the Crew. Montenegro also has the ability to grant overtime and leave to employees in the LMD Zone II Crew. Like Gamez, Montenegro oversees work performed by private contractors used by the City to maintain the City's LMDs.

Based on this information, I find that Gamez, Epley, and Montenegro share a significant community of interest with other Maintenance employees in the petitioned-for unit. As with Richard Meyers, the fact that Gamez, Epley, and Montenegro perform the same maintenance work as the rest of the Landscape Maintenance Section favors finding a community of interest among Maintenance personnel. (See *San Diego CCD, supra*, PERB

Decision No. 1445.) In addition, these employees have a similar schedule, the same supervision, the same basic qualifications, and wear the same uniform as other members of the Landscape Maintenance Section. All three employees are paid a salary that is commensurate with other employees of their experience level within the Maintenance Division. While it is true that these three employees spend only a limited amount of time performing actual maintenance work, this fact is not significant given the other similarities, described above.

The City again contends that the supervisory nature of Gamez, Epley, and Montenegro's duties preclude their inclusion in the proposed unit. As already explained above, nothing in the MMBA prevents supervisory employees from being placed in the same bargaining unit as the employees they supervise. Nor do these employees' supervisory functions demonstrate a lack of community of interest with the petitioned-for Maintenance bargaining unit given the similarities in wages, hours, supervision, qualifications, and other terms and conditions of employment.

2. Sean O'Brien

O'Brien is employed as a Senior Maintenance Specialist and oversees the City's Water Conservation program. Unlike most other classifications in the petitioned-for unit, O'Brien spends approximately 90 percent of his time working in the Maintenance office. O'Brien's primary job duties include analyzing data from sources such as Maxicom or Cititech and drafting reports for Supervisor Colombo or other City representatives to review. O'Brien also spends a significant amount of time meeting with City representatives outside of the Maintenance Division. For example, O'Brien regularly meets with City officials concerning water conservation. He does not perform maintenance work on a regular basis. O'Brien is occasionally assigned to act as Supervisor of the Landscape Maintenance Section in Colombo's absence. O'Brien also occasionally assigns work to employees in other crews

within the Landscape Maintenance Section. Similarly, O'Brien also sometimes assists other employees in the Maintenance Division in drafting evaluations.

Based on these facts, I find that O'Brien lacks a community of interest with the employees in the petitioned-for bargaining unit. O'Brien rarely, if ever, performs actual maintenance work for the Water Conservation Crew or for any other part of the Maintenance Division. This difference among job duties is significant. (See *San Diego CCD, supra*, PERB Decision No. 1445.)

Moreover, O'Brien's responsibilities are primarily concerned with making the City's operations more efficient, whether it is by using the Maxicom or Cititech. These goals are different from most other Maintenance employees, whose goal is to maintain various aspects of City property. The degree of commonality among goals is another community of interest factor. (*San Diego CCD, supra*, PERB Decision No. 1445.) As an additional consequence, O'Brien possesses different skills from other Maintenance Division employees. Only one other job classification is in the same salary range as O'Brien's position.

Therefore, although there are some commonalities between O'Brien's position and other employees in the petitioned-for unit, I find that O'Brien's unique job duties, skills, goals, and responsibilities within the Water Conservation Program Crew are distinct from the other employees in the proposed unit and on that basis find that it is proper to exclude O'Brien from the unit.

C. The Facilities Maintenance Section

1. Roger Naugle

The Union contends that all employees in the Senior Maintenance Specialist classification should be included in the petitioned-for unit. The City contends that Senior Maintenance Specialist Naugle should be excluded from the unit because the nature of his

work is different from other Maintenance employees. Naugle works in the Water Park and Pool Maintenance Crew of the City's Facility Maintenance Section along with Coddington and Yancy. Naugle works at the City's Water Park with Coddington's assistance. Yancy is responsible for maintaining the City's other swimming pools. Naugle is paid at Range 31 of the City's salary scale, the same range as the Heavy Equipment Operator classification. Like most other employees in the Maintenance Division, Naugle is an hourly employee.

Naugle possesses certain certificates regarding the treatment and handling of water. However, possession of these certificates is not necessary for Naugle to perform his job duties. In fact, Coddington, who does not possess the same certificates as Naugle, currently performs those duties on the weekends when Naugle is not scheduled to work. The City does not dispute Coddington's placement in the petitioned-for unit.

The City contends that Naugle's specialized and technical duties at the Water Park differentiate him from other Maintenance Division employees.¹⁶ In particular, the City asserts that Naugle must perform many complicated tasks on a daily basis such as testing and repairing the various pumps that control the flow of water and maintaining the pH balance of the water. In addition, the City states that Naugle played a significant role in ensuring the City's compliance with new regulations concerning safety drain covers on swimming pools. Naugle's meticulous attention to the many operations of Dry Town are certainly commendable but, based on the evidence provided, I cannot find that he lacks a community of interest with

¹⁶ It is unclear whether the City contends that Naugle is a "professional employee" within the meaning of MMBA section 3507.3. According to that section, "professional employees" shall not be denied the right to be represented separate from non-professional employees in an employee organization consisting of "professional employees." To the extent that the City contends that MMBA section 3507.3 precludes Naugle's inclusion into the proposed unit, the City establishes neither that an employee organization consisting of "professional employees" exists in this case nor that Naugle seeks representation from such an organization.

other employees in the Maintenance Division. Naugle works alongside another member of the petitioned-for unit, i.e., Coddington, performing essentially the same type of work according to the same basic schedule and hours. The similarity in job duties is a significant factor in determining community of interest. (*San Diego CCD, supra*, PERB Decision No. 1445.) Furthermore, Naugle's salary range is comparable to other Maintenance Division employees with his training and experience. He is supervised by the same personnel. Coddington was transferred to the Water Park & Pool Maintenance Crew from another Facilities Maintenance Crew. The interchangeability of these positions further suggests that Naugle's job is not so technical in nature that he lacks a community of interest with other Maintenance Division employees. (*San Francisco, supra*, 79 Cal.App.4th 1300, 1306.) Due to the similarities in job duties, wages, hours, supervision, and qualifications, I find that Naugle shares a community of interest with the other positions in the petitioned-for unit, and it is therefore appropriate to include his position in the proposed unit.

2. Danny Knott

The Union's petition includes all positions in the Facilities Maintenance Section, but does not specifically identify the position of Acting Supervisor. However, during the course of the hearing and in its closing brief, the Union has asserted that this position belongs in the proposed unit. Knott is the Acting Supervisor for the Facilities Maintenance Section. Knott's duties in this section are consistent with the duties of the Supervisors of each of the other Sections in the Maintenance Division. Knott participates in the Maintenance Division meetings with the Superintendent of Maintenance and the Assistant Superintendent of Maintenance and reports on the activities of the Facilities Maintenance Section. Knott has the ability to sign evaluations, grant overtime and leave, and issue employee discipline. Knott does not perform any actual maintenance work on a regular basis and estimates that his

supervisory functions take up his entire work day. Knott is scheduled to work Monday through Friday but is available by telephone on the weekends if issues arise in the Facilities Maintenance Section. Knott was unsure what his salary is since he became the Acting Supervisor of the Facilities Maintenance Section.

Based on these facts, I find that Knott lacks a community of interest with the employees in the petitioned-for bargaining unit. Knott has different job duties, supervision, and hours from any other employee in the Facilities Maintenance Section. Such differences demonstrate a lack of commonality between the Acting Supervisor position and the positions identified in the Union's petitions. (See *San Francisco, supra*, 79 Cal.App.4th 1300, 1306; *San Diego CCD, supra*, PERB Decision No. 1445.) Therefore, I find that this position should be excluded from the proposed unit.

D. Joel Kefuss and Chad Thomas, Street Maintenance Section

The Union's petition includes all the positions in the Street Maintenance Section except the Supervisor position. The City contends that Senior Maintenance Specialist Chad Thomas and Maintenance Specialist Joel Kefuss should be excluded from the unit due to their supervisory duties in the Section.

Kefuss is responsible for assigning work to the Concrete Construction and Repair Crew based on work orders received or through his own inspections. Kefuss then inspects the work performed based on training and instruction provided by Street Maintenance Supervisor Roadhouse. Kefuss is paid according to Range 29 of the City's salary scale, the same as five other classifications in the Maintenance Division. Thomas performs similar work for the Roadway Maintenance Crew. Thomas is paid according to Range 31 of the City's salary scale, the same as the Heavy Equipment Operator classification.

Both Kefuss and Thomas draft evaluations for employees in the respective Crews for Roadhouse to inspect and approve. Kefuss and Thomas also perform maintenance work for their respective Crews. As already explained above, the job descriptions for the other classifications in this Section, such as Maintenance Worker I and II, include supervisory duties. In addition, the job description for the Heavy Equipment Operator requires that the position “provide leadership to subordinates on assigned projects.”

Based on these facts, I find that both Kefuss and Thomas should be included in the unit. Kefuss and Thomas both perform maintenance work for at least part of their time in their respective crews. Common duties is evidence of a community of interest. (*San Diego CCD, supra*, PERB Decision No. 1445.) Like all employees in the Street Maintenance Section, Kefuss and Thomas are supervised by Roadhouse, and their salaries are commensurate with other employees in the Section. Furthermore, Kefuss and Thomas work according to the same schedule, wear the same uniform, and have similar qualifications as other members in the proposed unit. These similarities are indicative of a community of interest. (*San Francisco, supra*, 79 Cal.App.4th at 1306; *San Diego CCD, supra*, PERB Decision No. 1445.) As with the other classifications discussed above, Kefuss and Thomas’s supervisory duties do not preclude them from inclusion in the unit. Nor do such duties, under these circumstances, demonstrate that Kefuss and Thomas lack a community of interest with the petitioned-for employees. For these reasons, I hold that Kefuss and Thomas should be included in the unit.

E. The Traffic Division: Traffic Signal Technicians I and II

The Union has included the classifications of Traffic Signal Technician I and II in its proposed unit of Maintenance Employees. The City contends that these classifications lack a community of interest with the other classifications in the Union’s petition. In *Alameda County, supra*, 33 Cal.App.3d 825, the court considered the appropriateness of creating a

separate unit of public defenders from the existing unit of county professional employees. In determining that the groups did not share a community of interest, the court relied on the fact that the attorneys performed distinctive job functions, had distinct levels of supervision, work locations, and hiring practices. (*Id.* at 831.) In addition, the court found that the public defenders had minimal interchange with the other county professionals. (*Ibid.*)

The relationship between the Traffic Signal Technician I and II classifications and the petitioned-for classifications in the Maintenance Division are similar to the two groups at issue in *Alameda County, supra*, 33 Cal.App.3d 825. Maintenance Division employees have distinct job functions from Traffic Signal Technicians. Although it can be said generally that both Maintenance Division employees and Traffic Signal Technicians are responsible for maintaining various parts of the City, the actual job duties of the Traffic Signal Technicians are different from employees in the Maintenance Division. The work of Traffic Signal Technicians involve heavy usage of computers and electrical equipment to monitor and program the City's traffic signal devices. Traffic Signal Technicians are required to possess or obtain special training certificates to operate the traffic signal devices and no employees in the Maintenance Division are qualified to program such devices.¹⁷ Dissimilar job duties is a significant factor in determining whether a community of interest exists. (*San Diego CCD, supra*, PERB Decision No. 1445.)

Employees in the Maintenance Division are supervised by their respective Section Supervisor. Likewise evaluations and employee discipline are handled within each

¹⁷ Some employees in the Maintenance Division are authorized to change a traffic signal light from normal operation to all-way direction when necessary to address an issue within the purview of the Maintenance Division. Maintenance Division employees are not authorized to change the traffic signal device back to normal operation. Moreover, changing a traffic signal device to all-way stop plays no direct role in the maintenance or operation of the traffic signal device itself.

Maintenance Section or by the Assistant Superintendent or Superintendent of Maintenance.

Traffic Signal Technicians are supervised by the Traffic/Transportation Engineer in the Traffic Division. Evaluations and discipline are handled within the Traffic Division. These differences also weigh against finding a community of interest between Traffic Signal Technician I's and II's and employees in the Maintenance Division.

As the Union correctly points out, there is some limited interaction between Traffic Signal Technicians and Maintenance Division employees. Traffic Signal Technicians wear the same uniform (orange City shirt and blue jeans) as Street Maintenance employees. Traffic Signal Technicians report for work at the City's Maintenance Yard, as do several Maintenance Division Employees. Traffic Signal Technicians have access to the break room in the Maintenance Yard as well. The Signal Operations Section must occasionally work with the Street Maintenance Section to hang a street sign or repair a road condition at or near a traffic intersection. Interchange among employees is another factor considered when determining community of interest. (*San Francisco, supra*, 79 Cal.App.4th at 1306.) However, in this case, instances of interaction among the Divisions occur only a few times per year, so the interchange is minimal. In addition, there is little evidence of any employee transferring from the Maintenance Division to the Traffic Division. The only employee to do so, Robert Vogel, independently qualified for the Traffic Division position, applied, and was hired into the position.

Both the Traffic Signal Technicians and the Maintenance Division employees are paid according to the City's salary schedule. The Traffic Signal Technician I, the lower of the two Traffic Division classifications at issue, is paid at salary range 31, the highest range paid to any employee in the Maintenance Division below Supervisor. The Traffic Signal Technician II

position is paid at salary range 33, higher than any classification, excluding the Supervisor position, in the Maintenance Division.

Based on the totality of the evidence presented, I hold that it is not appropriate to include the Traffic Signal Technician I and Traffic Signal Technician II classifications in the petitioned-for unit of Maintenance employees. The employees do not have common job duties, skills, or supervision. Traffic Signal Technicians are generally paid at a higher rate than Maintenance employees. Further, the two groups interact on only a limited basis. Thus, I find that these employees should be excluded from the petitioned-for unit.

PROPOSED ORDER

For the reasons discussed above, I hold that the proposed unit should exclude the positions of Traffic Signal Technician I and II, Senior Maintenance Specialist Sean O'Brien, and Acting Supervisor Danny Knott. I further find that all other positions identified by the Union, including but not limited to Lead Custodian Richard Meyers, Maintenance Leadworker Joe Gamez, Maintenance Leadworker Tom Epley, Maintenance Leadworker Steve Montenegro, Senior Maintenance Specialist Roger Naugle, Senior Maintenance Specialist Chad Thomas, and Maintenance Specialist Joel Kefuss, should be included in the proposed unit.

As already stated above, on March 9, 2009, PERB determined that the Union has demonstrated proof of majority support in the proposed unit pursuant to PERB Regulations 61210(b) and 61240(c).¹⁸ No other employee organization has filed a valid petition to represent any of the positions at issue. Therefore, PERB determines that an election is not

¹⁸ The unit determination in this decision does not affect PERB's earlier determination that the Union has demonstrated proof of majority support among the City's Maintenance employees.

necessary in this case and that the City has no lawful reason to deny recognition to the Union for the unit described in this order.

RIGHT TO APPEAL

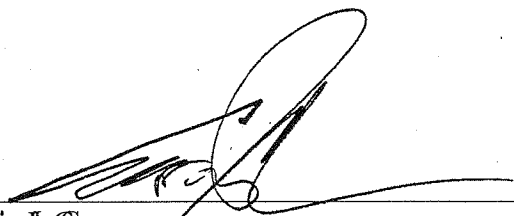
Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)



Eric J. Cui
Hearing Officer