

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-25-11

(REDESIGNATION PETITION)

JACKSON COUNTY,)	
)	
Petitioner,)	RULINGS,
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND ORDER
JACKSON COUNTY SHERIFF'S)	
EMPLOYEES' ASSOCIATION,)	
)	
Respondent.)	
_____)	

This Board heard oral argument on December 17, 2012, on Petitioner's objections to a Recommended Order issued on October 9, 2012, by Administrative Law Judge (ALJ) Peter A. Rader, following a hearing held on January 5 and 6 and May 2, 2012, in Salem, Oregon. The record closed on June 4, 2012, upon receipt of the parties' post-hearing briefs.

Joel C. Benton, Senior Assistant County Counsel, Jackson County, Medford, Oregon, represented Petitioner.

Rhonda J. Fenrich, Fenrich & Gallagher, P.C., Eugene, Oregon, represented Respondent at the hearing. Seth Davis and Ms. Fenrich represented the Respondent at oral argument.¹

On September 22, 2011, Jackson County (County) filed this redesignation petition under OAR 115-025-0000(1)(e) seeking to remove strike-permitted positions from an existing mixed bargaining unit of Sheriff's Department employees represented by the Jackson County Sheriff's Employees' Association (Association). The Association filed timely objections on the grounds that the petition did not assert a substantial change in circumstances sufficient to support a petition to redesignate, and that it did not meet the statutory requirements set forth in ORS 243.682(1) and OAR 115-025-0000(1)(e).

¹Mr. Davis, a law clerk, represented the Respondent under the supervision of Ms. Fenrich.

The issue is:

Should the current mixed unit of strike-prohibited and strike-permitted employees described as “all employees within the Jackson County Sheriff’s Department, excluding supervisory, confidential, extra help or irregular part-time (on-call) employees” be redesignated to exclude the strike-permitted employees, including records clerks and other administrative staff, pursuant to OAR 115-025-0000(1)(e)?

RULINGS

The rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT

1. The Association is a labor organization and the exclusive representative of a wall-to-wall bargaining unit of employees in the Sheriff’s Department of the County. The County is a public employer.

2. The County’s employees are represented by three unions: Service Employees International Union (SEIU) represents approximately 493 strike-permitted employees; the Federation of Oregon Parole and Probation Officers (FOPPO) represents approximately 21 strike-prohibited officers; and the Association represents a mixed unit of approximately 90 strike-prohibited and 45 strike-permitted employees.² Each of the unions has unique contracts with the County.

Bargaining Unit History

3. In 1982, the County voluntarily recognized Teamsters Local 223 as the exclusive representative of bargaining unit employees in the Sheriff’s Department. Following a 1986 consent agreement, the Board certified the Association as the successor and exclusive representative of a bargaining unit including “Records Clerk, Corrections Cook, Property/Evidence Clerk, Corrections Officers, Criminal Deputy, and Investigator; excluding supervisory, confidential, temporary, and part-time employees who work less than 1,040 hours per year.”³

²The County alleged for the first time in its closing brief that the ratio of strike-prohibited to strike-permitted employees in the bargaining unit was 106/43.5. Association president Ben Fazio testified that it was 100/45. We credit the testimony of Human Resources employee Sasha Grafenstein who testified that it was 90/45, which the Association cited in its closing brief.

³*AFSCME, Council 75 v. Jackson County Sheriff’s Department and Jackson County Sheriff*, Case No. RC-30-86 (1986).

4. The bargaining unit's strike-prohibited job classifications include criminal, civil, corrections, and transportation deputies. The strike-permitted job classifications include community service officer, corrections specialist, criminal data technician, property evidence clerk, records clerk, search and rescue assistant, and court security officer.

5. Since its certification, the bargaining unit has been comprised of both strike-permitted and strike-prohibited employees. Under the parties' collective bargaining agreement (Agreement), effective July 1, 2008 through June 30, 2011, the bargaining unit is defined as all "employees within the department, excluding supervisory, confidential, extra help or irregular part-time (on-call) employees."

6. There is no history of labor unrest associated with this mixed unit and no evidence that any statutorily strike-permitted bargaining unit members desire to be in a separate unit.

Sheriff's Department Command Structure

7. The Sheriff's Department maintains a multi-level command structure, beginning with the elected Sheriff, Michael Winters. Reporting directly to Winters is Undersheriff Rodney Countryman. Winters and Countryman oversee the Department's two primary divisions, operations and support services.

8. The operations division is supervised by Captain Terry Larson and includes the criminal and field services divisions. The criminal services division is divided into traffic and patrol, which provides services to White City and Shady Cove under contract. The patrol division in White City is located in a secured facility. The field services division includes search and rescue and marine services.

9. The support services division is supervised by Captain Monty Holloway and includes corrections, special operations, and special projects. The corrections division is divided into sections for the County jail, corrections records, and transport. The special operations division is divided into sections for the Southern Oregon Multi-agency Marijuana Eradication team, two investigation units, and the medical examiner. Special projects is divided into civil, court services, and criminal records. Captain Holloway also supervises training, finance, and administration/personnel support.

10. Bargaining unit members are supervised exclusively by managers/officers within the Sheriff's Department. The chain of command for both strike-prohibited and strike-permitted members initially includes a sergeant or a civilian records supervisor, but all positions ultimately report up the chain of command to a lieutenant, a captain, the undersheriff, and sheriff. All members undergo between twelve and eighteen months of trial service.

11. If they are not working in the field, bargaining unit members report to, and work in, secured facilities that are not accessible by other County employees without permission. They are required to wear Sheriff's Department identification badges and uniforms particular to their job classification. The deputies, security officers, and community service officers all wear similar uniforms which are distinguished by badges identifying their job title and authorization to carry a firearm.

Job Classifications in the Bargaining Unit

12. Criminal Deputies. The primary function of the sworn criminal deputies is the deterrence of crime, which includes patrolling highways and County waterways, apprehending criminal suspects, investigations, issuing and enforcing citations, serving warrants, and general law enforcement. Deputies work primarily in the field or secured facilities and require specialized training and certification from the Department of Public Safety Standards and Training (DPSST). Criminal deputies carry Glock .45 caliber pistols, bean bag shotguns, pepper ball guns, and tasers, and wear distinctive uniforms that include a metal badge, khaki pants with a green stripe, and shirt patches with their rank. They drive marked vehicles. The Sheriff's Department operates 365 days a year, and criminal deputies work one of three shifts per day, seven days a week under the supervision of a shift sergeant.

Criminal deputies are required to have a high school diploma or general education degree (GED); one to three months of related experience or training, or an equivalent combination of experience and training; an Oregon driver's license; and good decision-making, reasoning, communication, and basic math skills. They also must pass a psychological evaluation, physical agility test, and medical exam. Upon being hired, patrol deputies must attend a 10-week DPSST academy and obtain a basic deputy certification within a year of hire.

13. Corrections Deputies. Corrections deputies hold sworn positions and are responsible for supervising inmates at the County jail. Their duties include running a control room to control jail access, forcibly restraining inmates using trained techniques and tools, performing searches of persons and property for concealed contraband, gathering information related to criminal activity, and processing legal warrants and civil documents. They also inventory inmate property, obtain medical information, process mail, and escort inmates when they leave the facility.

Like criminal deputies, they must undergo extensive training and DPSST certification, including training at an academy which focuses on law enforcement, firearms, and the physical aspects of the job. They must possess excellent vision, hearing, and speech, and be physically fit. Their uniforms are similar to those worn by patrol deputies, and include green pants, tan shirts, badges, and logo patches signifying their position, except that the logos are embroidered instead of metal. For safety reasons, they are not permitted to carry firearms in the jail, but may carry tasers or pepper spray. The jail operates 365 days a year, and corrections deputies work one of three shifts per day, seven days a week under the supervision of a corrections sergeant.

14. Transportation Deputies. The transportation deputies hold sworn positions and provide backup to criminal and corrections deputies. Their duties include transporting inmates, supervising and maintaining inmate order and discipline, serving arrest warrants and other civil documents, processing the lodging and release of inmates, conducting searches of people and property for concealed contraband, gathering evidence, and writing reports. The transportation deputies are required to have DPSST certification and they must possess good vision, hearing, and speech and be physically fit. They wear identifying uniforms that are similar to the other deputies and report to a sergeant. They carry firearms as well as nonlethal means of force. They work one of three shifts per day, seven days a week.

15. Community Services Officer. There are currently three non-sworn community service officers in the Sheriff's Department who perform most of the same duties as criminal deputies, except that they cannot make arrests or carry lethal weapons, although they may carry batons, pepper spray, or tasers. They report to a patrol sergeant, work in the same secured environment or in the field, are dispatched in the same way as deputies, wear a uniform and utility belt that is similar to criminal and corrections deputies, drive marked vehicles, file similar reports, undergo the same background checks, and are LEDS-certified.⁴ Unlike criminal deputies, they are not required to be certified by DPSST, but may have other training in defensive tactics, CPR, and data entry in criminal databases. These officers take the same oath as deputies, sign the criminal code of ethics, and sign a confidentiality agreement. They occasionally testify in court. They typically work Monday through Friday from 8:00 a.m. to 5:00 p.m.

Captain Larson oversees these positions and described the duties as more expansive than indicated in the position description.⁵ The position's duties also include investigating cold cases and burglaries, acting as evidence technicians, writing reports, and performing the essential duties of a deputy except they do not make probable cause arrests or contact suspects. The community service officer position has always been part of this unit. The position receives less pay than a deputy but all other contractual benefits are the same.

The County compared this position to a Developmentally Disabled Investigator, which investigates allegations of abuse involving disabled persons, acts as a liaison to investigative agencies, and provides education and advocacy on behalf of clients. That position does not provide backup to deputies and, unlike community service officers, it relinquishes control over a case once a determination of criminal wrongdoing has been made. That position is also paid less than a community services officer.

⁴LEDS stands for Law Enforcement Data System and is a criminal justice database which includes information about criminal histories, warrants, stolen property, court orders, and weapons. Certification is required to access the system and an employee must complete 20 to 25 hours of training to obtain a LEDS certification, but proficiency can take up to 60 hours. Recertification must occur every two years.

⁵A number of position descriptions in the bargaining unit have not been updated for many years and do not accurately reflect the current scope of duties or the training required to perform them. Testimony from employees holding these positions and their supervisors more accurately reflects their job duties.

Criminal Data Technician. There are currently three criminal data technicians (CDT) in the Sheriff's Department assigned to investigations, traffic, and the interagency drug task force. They are responsible for performing technical and statistical research and analysis from a wide variety of sources, including law enforcement databases, social networking sites, and electronic data mapping software. They use that information to locate people, develop leads to support criminal investigations, clarify jurisdictional boundaries on maps, and link crime information to match perpetrators or identify missing property. The research requires familiarity with law enforcement practices and criminal conduct. They receive a five percent pay differential due to the specialized skills needed for the job. They are an integral part of the investigation team.

The criminal data technicians wear a logo polo shirt, slacks, an identification lanyard, and an identification tag that states "crime analyst" as a job title. The position requires the same level of background investigation as the sworn deputies.

CDT Jennifer Albrecht is stationed in the patrol division and manages the hand-held ticketing program, traffic accidents, and criminal reporting for the traffic team, which includes maintenance, programming, updates, and downloading information. She also manages the patrol car video systems in the Sheriff's Department's fleet, including preserving evidence, managing the chain of custody, and providing proper storage. Albrecht and other criminal data technicians prepare photo line-ups for use by the deputies or investigators, and may assist the district attorney's office in gathering information. The technicians support the work of criminal investigators and sworn deputies on a daily basis by providing independent information from a variety of electronic databases to be used in criminal cases. Technicians work Monday through Friday from 8:00 a.m. to 5:00 p.m.

The County compared this position to the non-represented IT programmers outside the Sheriff's Department, including an office assistant III position with the County's community justice program, which deals with adult and juvenile parole and probation workers. The office assistant III position performs substantial data entry and retrieval into the juvenile justice information system (JJIS), which is a statewide database involving victim data, police reports, crime locations, and conditions of parole. There are similarities between the two job classifications, but the criminal data technicians require specialized training and experience to sift through, identify, and manipulate data relative to criminal investigations, which is one reason why LEADS certification is required for the job. Due to the confidential nature of the work, the criminal data technicians are located in the secured offices of the Sheriff's Department with easy access to the investigators and deputies. The rate of pay is less than other IT positions, but the benefits are superior.

17. Property/Evidence Clerk. The primary function of this job is to receive, maintain, categorize, store, and control all property and evidence either found or obtained as a result of law enforcement duties. Upon receipt, the evidence is bar-coded and preserved by the clerk until needed at trial or released to the owner. Anne Greene has been the property evidence clerk for twenty-nine of her forty years of employment with the County. She has been called upon to transport evidence between the storage facility and court. The clerk is occasionally called out to crime scenes to assist deputies with the retrieval of evidence and to train recruits and deputies in

the requirements for handling, packaging, tagging, and storing evidence. The clerk also testifies in court regarding the preservation of evidence, as well as the chain of custody. When the property/evidence clerk is unavailable, the commanding sergeant may perform the position's duties.

Greene has received specialized training in evidence handling methods at one of the International Association of Property and Evidence Clerk Schools, which takes two years to complete. This training develops specialized skills in the handling of materials such as blood, illegal street drugs, hazardous waste materials, and body parts, as well as applicable state statutes and Departmental rules. Greene is also trained in the proper disposal methods for narcotics and paraphernalia at industrial sites or sanitary disposal service facilities. Ensuring the proper chain of custody for evidence used in criminal prosecutions is an essential aspect of her duties.

The chain of command for this position is exclusively within the Sheriff's Department and Greene reports directly to a sergeant. The property/evidence clerk is required to undergo a background investigation similar to other Sheriff's Department employees, has access to and certification in LEADS, must wear a uniform, and works in a secured location adjacent to the Sheriff's Office and the courthouse that is not accessible to the public or other non-departmental employees. The property/evidence clerk works from 8:00 a.m to 5:00 p.m., Monday through Friday.

The County's comparison of the property/evidence clerk to the storekeeper position in Public Works indicates several differences. The evidence stored by the criminal property/evidence clerk involves retrieval, handling, and storage for criminal investigations rather than operating parts/supply warehouses. The property/evidence clerk works closely within law enforcement protocols, has a chain of command solely within the Sheriff's Department, and the legal requirements of the position link it intrinsically to the law enforcement function. In comparison, the storekeeper position uses an inventory control system but has no chain of custody requirement; is not called out to crime scenes or to testify in court; is not subject to the same specialized training or statutory standards for storage, preservation, or handling of evidence; and the storekeeper position does not require LEADS certification. The equipment shop is open twenty hours per day and mechanics are free to check out parts on their own. If equipment or materials go missing, a report is filed but, other than the monetary loss, the operations of that department are not materially affected.

18. Corrections Specialist. The corrections specialist is assigned to the corrections division and performs duties that are similar to the corrections deputies, but does not carry firearms, restrain inmates, or perform searches. The position is primarily responsible for the assessment and classification of inmates to ensure their proper lodging and to protect other inmates, jail personnel, and the public. The specialist interviews inmates to identify their medical conditions, family connections, disabilities, educational needs, and explains rules and regulations. They generate a criminal history report which is analyzed using a matrix to prepare release recommendations to the court, district attorney, or defense counsel, which may include an assessment of eligibility for a court-appointed attorney, and any special conditions of release and bail amount. The specialist may also attend in-custody court proceedings. The specialist reports to

a sergeant, works in the same secured facility as corrections deputies, and acts as back-up to transportation and corrections deputies.

The position requires a high school diploma, two years of college level courses with an emphasis in criminology or social sciences, plus one year of clerical experience. The specialist undergoes an in-depth background investigation and drug screen, and must be DPSST-certified within one year of employment. The typical hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

19. Records Clerks. The County employs civil, criminal, and corrections records clerks, who have similar skill sets but specialized functions. They are often the public's first point of non-emergency contact with the Sheriff's Office. Civil records clerks are supervised by civilian employee Denise Bottoms, or the on-duty sergeant if Bottoms is not present. Criminal records clerks are supervised by Walter Haussner, but ultimate authority for all records clerks comes from the sheriff. Haussner cannot suspend employees and a sergeant signs the employee evaluations. No employees outside the Department give direction to the records clerks. All are required to have a high school diploma and three years of secretarial experience. They all receive a \$100 uniform allowance that includes polo shirts with embroidered logo badges, khaki or dark blue slacks, and Sheriff's Department identification badges. All work in secured areas of the Sheriff's Department.

Civil Records Clerks. The civil records clerks process criminal subpoenas for all law enforcement agencies in the County, prepare restraining orders and civil documents, conduct web-based searches and background checks on people about to be served in order to alert deputies of any potential safety risks, fingerprint members of the public, process handgun permits, prepare Sheriff's Department property sales, serve as a liaison to the court staff, and enter and retrieve data from the LEDS database. They are also responsible for analyzing and entering data into the Amber Alert system.

The civil records clerks have daily contact with community justice officers, probation officers, and court personnel. They also interact with inmates who are being transported, and obtain a judge's signature when fugitive charges are filed. They answer incoming telephone calls from the public and inquiries at the front desk. They process the 500-600 documents that are pending at any given time.

Criminal Records Clerks. The criminal records clerks work with the patrol and investigations divisions. They are responsible for entering data into the LEDS database, entering reports and maintaining reports in the ARS system, entering citations, running criminal histories for the deputies, entering reports of stolen property and missing people into the LEDS database, entering warrants for fourteen agencies, coordinating extradition of inmates, preparing stalking orders, registering sex offenders, releasing impounded vehicles, and answering inquiries from the public. They work very closely with the Sheriff's Department traffic team and use the Crystal Reporting System, which requires a thorough understanding of crimes, the methods used by perpetrators, and how crime analysis is performed in order to fashion appropriate search queries.

Notwithstanding the 25-hour LEDS certification training course, it takes up to a year to become proficient with LEDS. A level of trust is required to have access to the LEDS program because unauthorized LEDS searches could lead to warnings from the FBI, which monitors its usage. Other than supervisors, no County personnel outside the bargaining unit are trained to perform these duties. The criminal records clerks work on a 24/7 schedule. The position reports to a civilian supervisor or a sergeant in the command ladder. They all sign a confidentiality agreement and undergo background checks.

One of the criminal records clerks is also assigned duties as a classification clerk. This clerk shares duties with the corrections specialist and interacts daily with corrections deputies. The classification clerk classifies inmates, maintains the jail matrix for determining release dates, provides release assistance, tracks the movement of inmates from the correctional facility to the work release center, and performs the duties of the corrections specialist when that person is not on duty. These duties relate to the safety of inmates and deputies in the corrections facility. The classification clerk works the same hours as the corrections specialist and in the same secure location. The classification clerk is supervised by a sergeant or a civilian supervisor, who report up the same chain of command.

Corrections Records Clerks. The corrections records clerks work with and provide support to the corrections deputies at the County jail. They assist with the lodging of inmates, review lodging sheets to ensure accuracy, confirm identities, enter appropriate information into the Corrections Management System (CMS), validate warrants, and review probable cause affidavits. They also confirm release dates, ensure no additional warrants are outstanding, inform inmates of their reporting requirements to the parole and probation officer as required, and process bail. In some cases, the clerks handle “process onlys,” which occur when they process the District Attorney’s order that a person be booked without being arrested and requires them to confirm the correct charges and enter the information into the CMS. The clerks also review, track, and enter criminal charges into the Oregon Judicial Information Network (OJIN), and enter inmates release calculations into the Tiburon database. Most corrections deputies do not access the LEDS or Tiburon systems and rely on the corrections clerks to ensure the proper lodging, tracking, and release of inmates. The clerks also process “no contact orders” and interview inmates to obtain basic data.

The County’s comparison of the records clerks to the general office assistant classification shows significant differences. Apart from data entry, the office assistants do not have LEDS or Tiburon certification, they do not share the same law enforcement expertise or training, they have a different chain of command, and they do not have the same degree of responsibility or confidentiality obligations related to public safety.

The corrections clerks earn less than deputies, but the contractual benefits are the same. They work in the secured transport office at the correctional facility. There is no automatic right to transfer into other departments. The positions work regular, eight-hour shifts, Monday through Friday.

23. Search and Rescue Assistant. The primary function of this position is to provide support to search and rescue deputies and to the more than 100 volunteers who assist in the recovery of lost, missing, or injured persons. There are three different programs under search and rescue, including canine, rope training, and diving. The position manages the daily operations of this section, which may include initiating a call for volunteers for a mission and providing backup at the incident command center.

Sandi Copeland has been the search and rescue assistant for eleven of her eighteen years at the Sheriff's Department. She previously worked as a criminal and civil records clerk. Copeland tracks hours spent on search and rescue operations, maintains training files and equipment inventory, and prepares budgeting and statutorily-required reports. She conducts background checks for the search and rescue volunteers and the part-time marine deputies. She is certified in LEDS. She also tracks federal grant money used to purchase equipment, tracks worker's compensation claims, and is versed in the Oregon Emergency Management System.

The position reports to a sergeant and works in the same location as the strike-prohibited members of the unit. The search and rescue assistant does not wear a uniform but wears a Sheriff's identification badge similar to those worn by other Sheriff's Department employees. Copeland works five days a week, but is subject to call-out at any time for a search and rescue mission. She reports directly to Lieutenant Patrick Rowland. The position requires a high school diploma.

The County compared this position to the general office assistant position in the County. The two classifications share the same office skills, but the skills needed for search and rescue are fairly specialized and require familiarity with state statutes and Marine Board rules and procedures, budgeting skills, and LEDS-certification.

24. Court Security Officers. There are currently seven security officers in the County whose primary function is maintaining security at the courthouse. Their duties include searching the building, screening all entrants to the courthouse and conducting appropriate searches, seizing contraband or other property, conducting video and audio surveillance, conducting evacuations, providing courtroom security upon request, controlling disorderly individuals, responding to medical alerts in the building, and writing reports. They operate the metal detectors and x-ray machines at the building's entrance. These officers do not carry firearms, but they wear duty belts, bullet-proof vests, a pouch for gloves, a key fob, handcuffs, a radio, and some carry pepper spray. Their uniforms are similar to the corrections deputies. They work daily shifts that coincide with the court's hours of operation.

The County compared this position to the strike-permitted airport enforcement officer position. While both have security functions, the airport enforcement officers do not screen passengers, which is performed by TSA officers. Airport law enforcement, such as handling disorderly persons and apprehending or arresting suspects, is the responsibility of the Medford Police Department. The airport security officers manage traffic and issue citations, check the fence perimeter for holes, troubleshoot the baggage system, and regulate access to restricted areas. They do not carry weapons or have responsibilities outside the airport. The court

security officers support deputies and make arrests in the courthouse as well as earn more than airport security officers.

Transfer and Hiring of Employees Within the Sheriff's Office

25. A County employee from another agency cannot transfer automatically into a Sheriff's Department position. They must first apply, and then undergo a background check, a motor vehicle check, and possibly a credit check. They would have to be eligible for LEDS certification.

26. Sworn deputies may transfer fairly easily to other deputy positions within the Sheriff's Department, and a number of deputies have been promoted to sergeant, lieutenant, or captain. Detective Sergeant Colin Fagin was a corrections deputy before promoting to detective and then detective sergeant.

27. The property/evidence clerk position requires significant training to meet statutory standards for handling hazardous materials, chemicals, narcotics, body parts, and other crime-related evidence. It is one of the highest-paid, non-sworn positions in the bargaining unit, and a person would most likely promote from within, rather than from outside, the Sheriff's Department.

28. Strike-permitted employees in the Sheriff's Department have transferred into other strike-permitted positions within the office.

Wages, Benefits, and Other Working Conditions

29. The wage schedule and wage increases for bargaining unit members are provided for in the parties' Agreement. Salaries for deputies, the corrections specialist, and the property/evidence clerk are at the highest grades. The court security officer, criminal data technician, records clerks, search and rescue assistant, criminal data technician, and community service officer are at the lowest salary grades.

30. Under the Agreement, all bargaining unit employees are entitled to a 30-minute on-duty paid meal period during an eight-hour work day, and have similar accrual rates for holiday leave, on-call pay, vacation leave, and sick leave. Other types of leave available to all unit members include jury duty, voting time, military, bereavement leave, family medical leave, and workers' compensation. Most positions work a forty-hour week, and some positions earn a differential for working nighttime shifts. Overtime is paid to all employees at time and a half.

31. The Association purchases medical insurance for its members based on financial contributions from the County. The premiums for the Association's members are higher than the premiums for SEIU or FOPPO members and therefore the amount of the County's contributions to the Association are correspondingly higher. The medical, dental, and vision benefits received by the Association's members are better than the benefits available to other union members and they have lower deductibles.

32. Association members undergo pre-employment checks commensurate with their duties, which can exceed the typical background checks for other County employees. This may include a criminal history check, a credit history check, and a driving record report from the Department of Motor Vehicles.

33. Association members are administered an oath to uphold the U.S. and Oregon constitutions. They are required to abide by the criminal justice code of ethics, and they sign confidentiality agreements.

34. Under the parties' Agreement, four sets of uniforms are furnished for each deputy and security officer, and an allowance is provided to maintain them. Criminal and corrections deputies, security officers, and community service officers receive an annual \$250 allowance for footwear. Clerical employees receive four polo-style shirts which are purchased by the County and embroidered with a logo. The County also provides a \$100 annual allowance for clerical employees to purchase trousers and shoes. Trousers must be docker-style, in black, navy, or khaki. Shoes must have closed toes.

35. Sheriff Department employees interact with other County employees but the interaction is connected to their law enforcement duties. They interact with Public Works employees who maintain the vehicle fleet, courthouse employees, human resources employees, IT employees who provide technical assistance, and other County agencies requiring background checks or criminal history information as part of their mission.

36. Human Resources employee Grafenstein acknowledged that a redesignation petition could result in a new bargaining unit to be administered, but did not believe an additional bargaining unit was unmanageable.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of this dispute.
2. The petition for redesignation is dismissed.

DISCUSSION

Legal Standards

The County seeks to remove the strike-permitted positions from a mixed bargaining unit of Sheriff's Department employees. An employer may file a petition for redesignation pursuant to OAR 115-025-0000(1)(e) "contending that the existing bargaining unit includes an employee or employees who *should not be included* in such bargaining unit under the criteria set forth in ORS 243.682(1)(a)." (Emphasis added.) ORS 243.682(1)(a) requires that we consider such factors as the "community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees." We have specifically defined community of interest factors to include similarity of duties, skills, benefits,

interchange or transfer of employees, promotional ladders, and common supervision. OAR 115-025-0050(2).

We previously determined that the “should not be included” language in OAR 115-025-0000(1)(e) “requires us to find that employees have a clearly distinct community of interest to justify their redesignation out of the unit.” *Executive Department, State of Oregon v. Oregon Public Employees Union*, Case No. UC-7-89, 12 PECBR 59, 69 (1990). We later stated that “to prevail in such a case the petitioning employer must show that the unit is not an appropriate unit. Put another way, the employer must prove that certain included employees have a community of interest that is *clearly distinct* from the other unit employees.” *State of Oregon, Executive Department v. AFSCME Local 2623* and *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections and AFSCME Local 2623*, Case Nos. UC-84/85-91/RC-31-92, 14 PECBR 35, 45-46 (1992) (emphasis in original).

In *State of Oregon, Oregon State Penitentiary v. American Federation of State, County, and Municipal Employees* and *State of Oregon, Oregon Women’s Correctional Center v. American Federation of State, County, and Municipal Employees*, Case Nos. UC-19/20-87, 10 PECBR 144, 153 (1987), we identified six factors which affect our decision regarding redesignation petitions:

“our decision in a mixed unit case is affected by whether: (1) all of the employees are organized with some common supervision and compensation patterns; (2) the community of interest among the employees is a stronger factor than the loss of the strike-permitted employees’ right to strike; (3) fragmentation is avoided; (4) strike-prohibited employees constitute the larger percentage of persons in the unit; (5) the unit has historically been mixed; (6) regarding a consent unit, the employer shows a significant change in circumstances.”

We now apply the six factors to determine if the strike-permitted employees subject to the petition have a clearly distinct community of interest from the strike-prohibited bargaining unit employees.

(1) Supervision and Compensation Patterns

The strike-permitted and strike-prohibited employees in the Association bargaining unit work under common supervision. There are both civilian managers and sergeants who supervise the records clerks, but ultimately they all report up the same command ladder to lieutenants, captains, the undersheriff, and sheriff.

Bargaining unit employees also have some common compensation patterns. Wages under the parties’ Agreement are established by classification based on a salary schedule. While deputy and detective salaries are generally higher, the property/evidence clerk is at one of the highest salary levels, which is a reflection of the demands and expertise required of the job. There are also certain wage differentials based on shift work, training, and overtime, which are uniformly applied to all qualifying members of the bargaining unit. The medical benefits are the same for all

bargaining unit members, which are distinct from the benefits available to other County employees. The requirement that employees wear identifying uniforms, and are supplied an allowance for that purpose, is an additional distinguishing characteristic.

(2) Community of Interest Factor v. Loss of Right to Strike

The community of interest of the employees in this bargaining unit is distinctive and shared across the board. They are all employed in the same County department with the same chain of command, they work and interact collaboratively on a daily basis, they share the same law enforcement mission, they share secured work locations, many undergo similar types of training and background checks, and they wear uniforms that distinguish them from other County employees.

Some other County employees perform work in the same buildings, but the areas where bargaining unit members work are always secured and not accessible by the public or other County employees without permission. These bargaining unit employees may interact with other County departments in a support capacity, but it is not consistent daily contact.

The County is correct that the strike-permitted employees subject to this petition do not perform core law enforcement duties in the same way as sworn deputies, but without the support, expertise, and training of these employees, the deputies could not do their jobs with the same degree of safety or competency. The community service officers provide critical support to, and undergo similar training as, the sworn deputies in the field and perform many of the same duties. The corrections specialist backs up the corrections deputies, interacts with inmates at the jail, and applies accepted law enforcement standards for assessing inmate safety, medical needs, family contacts, and conditions of release.

The criminal data technicians perform complex statistical analysis, including the use of several law enforcement databases and other electronic sources, and are trained to apply that information to help locate persons of interest or missing property, or to use mapping technology. Training in LEADS or other DPSST certification is a requirement of the job. The property evidence clerk plays a vital role in the proper preservation of criminal evidence, and is one of the highest paid employees in the unit because of the training and responsibility required of the position.

The records clerks are often the Sheriff's Department first line of contact with the public and perform a variety of law enforcement-related duties. These include more than just routine data entry and retrieval, as argued by the County, but involve entering warrants for fourteen agencies, fingerprinting, registering sexual offenders, entering citations, running criminal history checks, coordinating extradition of inmates, processing no-contact orders, releasing impounded vehicles, and performing a myriad of other tasks that require constant interaction with deputies and specialized training.

The search and rescue assistant coordinates the emergency functions of that section, including background checks for the volunteers; monitoring equipment, training, and hours;

working at the incident command center when necessary; budgeting; and complying with statutory reporting requirements.

The security officers perform public safety functions for the courthouse that include screening the public who enter the building, conducting searches and evacuations, making court-ordered arrests, maintaining control in the courtroom, and operating video and screening equipment. They wear uniforms and utility belts with a variety of non-lethal law enforcement tools.

The hours of the strike-permitted and strike-prohibited employees are generally different. The strike-prohibited employees, including the criminal records clerks, work shifts covering a 24/7 schedule. The other strike-permitted employees generally work regular day shifts, Monday through Friday. Some of the strike-permitted employees, such as the property/evidence clerk and the search and rescue assistant, are subject to call-out in the event of an emergency.

The County correctly points out that there is no common promotional ladder between the strike-permitted and strike-prohibited positions. However, an individual's employment in a strike-permitted position is considered favorably in an application for a strike-prohibited position due to their training and familiarity with law enforcement operations.

In considering all of these factors, we conclude that the community of interest among the bargaining unit employees is stronger than the County's concerns about the strike-permitted employees' loss of the right to strike. The approximately 45 strike-permitted members of the bargaining unit subject to the petition are prohibited from striking because of their inclusion in the current bargaining unit. However, this is not a situation in which employees stand to lose the right to strike, since they have not had the right to strike throughout the bargaining unit's 26 years of existence. In addition, the desires of the strike-permitted employees to remain in the current bargaining unit override our concern that these employees will be deprived of their right to strike. *Oregon State Penitentiary*, 10 PECBR at 155.

(3) Avoiding Fragmentation

This Board has a policy against the fragmentation of a public employer's workforce into a plethora of splinter bargaining units. *Association of Public Employees v. Oregon State System of Higher Education and Oregon Public Employees Union, Local 503, SEIU*, Case No. RC-113-87, 10 PECBR 883, 888 (1988). A major purpose of our non-fragmentation policy is to assist employers. *Division of State Lands Employees Association v. Division of State Lands, State of Oregon, and Oregon Public Employees Union*, Case No C-72-83, 7 PECBR 6118, 6129 (1983). We have found that designating larger units addresses concerns about the undue burden on public employers caused by the time and resources needed to bargain with multiple bargaining units and the potential 'whipsaw' effect of having different unions competing for bigger and better contracts. *Id.* Notwithstanding this policy, the County argues that the addition of one more bargaining unit would not be a burden, or at least one that it is prepared to accept.

But this Board’s policy against fragmentation and preference for larger bargaining units reflects policies set forth under the PECBA that address concerns of both employers and labor organizations. Among those policies is establishing “greater equality of bargaining power between public employers and employees.” ORS 243.656(3). Larger units tend to better equalize bargaining power. Fragmentation into multiple units serves to destroy rather than preserve parity of bargaining power. *Oregon Public Employees Union*, 10 PECBR at 889. Another purpose of the policy is to protect the public from impairment or interruption of necessary public services. ORS 243.656(3). An increase in the number of bargaining units increases the number of potential labor disputes and work stoppages. Public employers benefit by having workplace stability and avoiding the undue burden of having to engage in bargaining sessions for the many splinter groups on a round-robin basis. *Id.*

One of the six factors we consider in redesignation petitions involving a mixed bargaining unit is whether fragmentation will be avoided. *Oregon State Penitentiary*, 10 PECBR at 153. Granting the petition for redesignation in this case would create a bargaining unit of 45 employees. The unit would be one of two units within the Sheriff’s Department, which does not meet the criterion of avoiding fragmentation. While the County’s current leadership is willing to accept the additional work involved in having another bargaining unit, this is not our only consideration. If the strike-permitted employees were in a separate bargaining unit, in the event of labor unrest, there would be potential disruption to the public safety functions of the County

(4) Percentage of Strike-Prohibited Employees

The percentage of strike-prohibited employees in the bargaining unit is larger than that of strike-permitted employees. Based on the 45 strike-permitted employees out of a bargaining unit of 135, the strike-permitted employees constitute 33.3 percent. Typically, in cases where we have granted redesignation petitions of mixed units, the number of strike permitted employees has greatly exceeded the number of strike prohibited positions. This is not the case here.

(5) History of Collective Bargaining

The current Association bargaining unit has existed in essentially the same form since 1986 and, prior to that, was represented by a different labor organization. For all of that time, it has been a wall-to-wall mixed unit. There is no history of labor instability, and several longtime employees testified that there has never been talk of splitting the unit or wanting to strike.

(6) Significant Change in Circumstances

The County has not asserted that there has been a significant change in circumstances since it consented to the current bargaining unit structure in 1986.

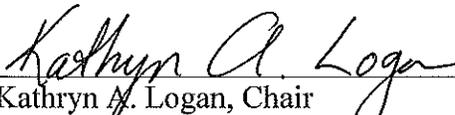
Conclusion

After considering and weighing each of the factors, we find that the strike-permitted employees subject to the redesignation petition do not have a clearly distinct community of interest from the strike-prohibited bargaining unit employees. The six factors favor retention of the mixed unit. Therefore, we will dismiss the petition.

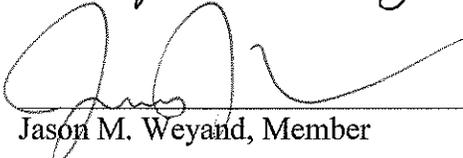
ORDER

The petition for redesignation is dismissed.

DATED this 27 day of February, 2013.



Kathryn A. Logan, Chair



Jason M. Weyand, Member

This Order may be appealed pursuant to ORS 183.482.