

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-01-12

(REDESIGNATION)

JOSEPHINE COUNTY,)	
)	
Petitioner,)	
)	
v.)	RULINGS,
)	FINDINGS OF FACT,
JOSEPHINE COUNTY)	CONCLUSIONS OF LAW,
SHERIFF’S ASSOCIATION,)	AND ORDER
)	
Respondent.)	
_____)	

Neither party objected to a Recommended Order issued on August 1, 2012, by Administrative Law Judge (ALJ) Wendy L. Greenwald, after a hearing held on April 26 and 27, 2012, in Salem, Oregon. The record closed on May 30, 2012, with the receipt of the parties’ post-hearing briefs.

Steven Schuback, Attorney at Law, Local Government Personnel Institute, Salem, Oregon, represented Petitioner.

Lane Toensmeier, Attorney at Law, Snyder & Hoag, LLC, Portland, Oregon, represented Respondent.

On January 30, 2012, Josephine County (County) filed this redesignation petition under OAR 115-025-0000(1)(e), seeking to remove strike-permitted positions from the existing bargaining unit of Sheriff’s Office employees represented by the Josephine County Sheriff’s Association (Association). The Association filed timely objections to the petition on the basis that the petition is procedurally deficient under OAR 115-025-0010(4)(c) and the current bargaining unit is an appropriate unit under ORS 243.682(1)(a).

The issue in this case is:

Should the positions of control room technician, criminal analyst, emergency services/search and rescue specialist, emergency services/search and rescue coordinator, police support technician, police support technician lead-civil, police support technician lead-corrections, police support technician lead-records, and property control specialist be redesignated into a separate bargaining unit represented by the Association under OAR 115-025-0000(1)(e)?¹

RULINGS

1. The Association objected to the petition on the grounds that the County failed to provide a sufficient statement of the reason why it was requesting redesignation under OAR 115-025-0010(4)(c). The County's petition provided a sufficient statement of the reasons why it sought redesignation, however. The County marked the Redesignation of Unit box on the petition form that specifies the County was seeking to remove the positions "because it believes the employees are inappropriately included under the criteria contained in ORS 243.682(1)." In addition, the County stated under the description of the existing unit and the proposed change that "[t]he Sheriff's Association is currently a mixed unit. The unit consists of both strike permitted (clerical and support personnel []) and strike prohibited employees (police officers and emergency telephone workers, ORS 243.736)." *Id.* at 2. The County also listed the positions that it sought to remove from the bargaining unit, which were the strike-permitted positions. The Association's objection on these grounds was therefore properly denied by the ALJ.

2. The other 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 bargaining unit consisting of the employees in the Sheriff's Office at the County, a public employer.

2. The County consists of 23 different departments; these departments include the Assessor's Office, Community Corrections (Parole and Probation), Finance, Human Resources, Public Works, and the Sheriff's Office.

3. County employees are represented in four separate bargaining units by four different labor organizations, including: (1) approximately 77 Sheriff's Office employees represented by the Association, including 58 strike-prohibited and 19 strike-permitted positions; (2) approximately 12 parole and probation officers represented by the Federation of Oregon Parole and Probation Officers (FOPPO); (3) approximately 43 employees in the Public Works Department represented by the Service Employees International Union Local 503, Josephine County Division of Public Works Employees, Local 496 (SEIU); and (4) a general unit of approximately 182 employees represented by the American Federation of State, County and Municipal Employees, Council 75, Local 3694 (AFSCME).

¹The parties stipulated at the hearing that, if the Board granted the redesignation petition, the positions removed from the bargaining unit would constitute an appropriate bargaining unit under ORS 243.682(1)(a).

4. The County is facing significant layoffs in the Sheriff's Office and other County departments due to the loss of federal funding. In the event of a layoff, the Sheriff's Office would eliminate most of its strike-permitted positions.

Bargaining Unit History

5. Teamsters Local 223 was first certified as the exclusive representative of a bargaining unit consisting of all regular non-supervisory, non-confidential Sheriff's Office employees in 1977.² In 1987, the Association was certified as the exclusive bargaining representative of the Sheriff's Office employees.³ The unit subject to the certification included all Sheriff's Office employees

“regularly scheduled to work 30 hours or more per week in the following classifications: Police Clerk/Dispatcher, Senior Dispatcher, Dispatcher/Matron, Deputy Sheriff, Resident Deputy, Crime Prevention/Juvenile Deputy, Detective, Corporal, Investigative Analyst, Deputy Records Coordinator, Corrections Officer, Corrections Work Foreman I, Corrections Work Foreman II, Civil Clerk, Civil Deputy, Jail Cook, Corrections Corporal; excluding supervisory, confidential & temporary employees.” (Emphasis in original.)

6. Since its certification, the Association bargaining unit has consisted of a mixed unit of strike-permitted and strike-prohibited employees. Under the parties' current collective bargaining agreement (Agreement), effective from July 1, 2010 through June 30, 2012, the bargaining unit includes all budgeted non-supervisory, non-confidential Sheriff's Office employees working at least 16 hours per week for more than four consecutive months in a 12-month period.

7. The bargaining unit strike-prohibited positions include deputy, detective, dispatcher, and dispatcher-lead. The bargaining unit strike-permitted positions include control room technician, criminal analyst, emergency services/search and rescue specialist, emergency services/search and rescue coordinator, police support technician, police support technician lead-civil, police support technician lead-corrections, police support technician lead-records, and property control specialist.

Sheriff's Office Structure

8. The Sheriff's Office maintains a supervisory command structure that consists of the following four levels: (1) an elected Sheriff; (2) Undersheriff Donald Fasching; (3) the operations commander, adult jail commander, and business manager; and (4) the shift sergeants. The functions of the Sheriff's Office are essentially divided into four units: operations, administration, corrections, and emergency management/search and rescue. The Sheriff's Office is open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday.

²*Teamsters Local 223 v. Josephine County Commissioners*, Case No. C-58-77 (1977).

³*Josephine County Sheriffs Association v. Josephine County Sheriff Department*, Case No. RC-78-86 (1987).

Operations Unit

9. The operations unit is overseen by the operations commander. Bargaining unit employees in this unit include deputies, detectives, and the property control specialist. This unit primarily operates out of the Administration Building, which is a locked and secured facility attached to the County Courthouse. The medical examiner, who works for the district attorney's (DA's) office, is the only non-Sheriff's Office position located in the Administration Building. Two marine deputies operate out of the Emergency Coordinator Center, which is located in a building on the outskirts of the City of Grants Pass. The property control specialist works out of a warehouse located within the Grants Pass city limits.

10. Deputy Sheriffs. The primary function of the operation's unit deputies is the deterrence of crime and apprehension of criminal suspects. These deputies work primarily in the field and are assigned to different positions as follows: (1) patrol - motorized street patrol services; (2) canine - works with trained police dogs to support patrol deputies in searches and hazardous situations; (3) civil - responsible for processing and serving civil process and other court papers; (4) marine - contract positions with Oregon State Marine Board responsible for complaints and concerns on County waterways; and (5) forest - responsible for patrol work in areas designated by the U.S. Forest Service.

11. Operations deputies work rotating 10-hour shifts covering a 24-hour per day/7-day per week schedule (24/7 schedule), and are supervised by the shift sergeant. Deputies are required to have a high school diploma or general education degree (GED), one to three months related experience and/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 16-week academy at the Department of Public Safety Standards and Training (DPSST) and obtain a basic deputy DPSST certification within one year of hire.

12. Detectives. Detectives are responsible for the investigation of assigned cases in areas such as narcotics, vice, gambling, and major crimes. This position requires more than five years' experience as a patrol deputy and is considered to be a promotion from that position. Detectives are supervised by the detective sergeant and work rotating 10-hour shifts, covering a 24/7 schedule.

13. Property Control Specialist. The property control specialist receives, maintains, categorizes, and controls all property and evidence either found or obtained as a result of law enforcement duties; transports property and evidence between the warehouse, lab, and courts; and is occasionally called out to assist deputies with the execution of search warrants by processing evidence after a location is secured. The specialist provides training to recruits and deputies on the requirements for handling, packaging, and tagging evidence and the release of property to owners. This position may also write citations and testify in court regarding the chain of custody of evidence.

14. The property control specialist works from 8:00 a.m to 5:00 p.m., Monday through Friday, and is on-call other times to respond to alarms at the warehouse or assist with search warrants. This position is supervised by the operations commander. The requirements for the property control specialist position include a high school diploma or GED; a minimum of three

years' clerical experience, with one year in a government or law enforcement environment preferred; good decision-making, reasoning, organization, communication, and basic math skills; knowledge of applicable reports and office equipment, especially computer skills; and the ability to maintain a tracking system. The employee hired into the position must have knowledge of the Law Enforcement Data System (LEDS).⁴

15. The Sheriff granted the request of the current property control specialist, Kari Lee, to carry a firearm while on duty. Lee made this request due to safety concerns related to the warehouse's remote location and her responsibility for transporting evidence and property, including drugs and stolen goods. Lee is only authorized to use the firearm to defend herself and is required to qualify on the firearm every six months in the same manner as deputies.

Administration Unit

16. Business Manager Sue Watkins, who is a civilian employee, oversees the administration unit and supervises the unit's employees. The administration unit operates out of the Administration Building and includes the bargaining unit positions of dispatcher and lead, police specialist technician and leads, and criminal analyst.

17. Dispatchers and Lead. The primary duties of the dispatchers and dispatcher-lead are to receive and process emergency 911 and non-emergency requests for assistance and to initiate police and other emergency personnel response as required. Dispatchers maintain radio contact with deputies in the field and monitor a field unit's response and support requirements. Dispatchers work in an office. The dispatcher-lead, which is a promotion from a dispatcher position, provides general oversight of assigned dispatchers.

18. Dispatchers work rotating 8-hour or 10-hour shifts, covering a 24/7 schedule. Dispatchers are required to have a high school diploma or GED and a minimum of two years' clerical experience, with prior dispatch experience preferred; good communication, reasoning, decision-making, and basic math skills; and knowledge of office equipment, including computers. Dispatchers must attend a two-week DPSST academy and become certified in basic telecommunications. The position requires "a considerable degree of initiative and independent judgment within procedural boundaries in responding to emotional, disturbed and sometimes abusive people in a variety of situations."

19. Criminal Analysts: The two criminal analysts assigned to the administration unit conduct investigative research of criminal and office activities; establish, maintain, analyze, and report on gathered information to deputies, detectives, and administration; conduct trend analysis of service calls from the public and officers; act as the primary contact for grant management and asset forfeiture tracking and reporting; and may assist deputies in the field. Information collected by

⁴LEDS is a law enforcement database system, 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 a 20 to 25 hour training to obtain a LEDS certification. The training may be taken at the place of employment.

the criminal analysts is used for state and federal reporting requirements, to identify current criminal trends and major accident locations, and to manage and direct resources.

20. The analysts also provide technical assistance, support, and training on computer software and databases specific to the Sheriff's Office, such as those used in dispatch, records management, the Adult Jail, and patrol cars. Analysts sometimes work with employees in the County's Information Technology (IT) Department and software vendors. Criminal Analyst Jonathan Brock works out of both the Administration Building and the Adult Jail. During the last six months, he has spent 80 percent of his time assisting with the implementation of a new software system.

21. The criminal analyst position requirements include a high school diploma or GED; associates' degree or two years' experience in criminal justice, public administration, or related field; five years' experience in public safety operations and administration; a thorough knowledge of the maintenance of business data files; LEADS certification; and good communication, reasoning, decision-making, and basic math skills. The analysts are generally scheduled to work from 8:00 a.m. to 4:00 p.m., Monday through Friday, and are required to respond to call-outs on nights and weekends. Brock's current schedule is from 10:00 a.m. to 6:00 p.m., Monday through Friday, which may be modified depending on the needs of the office.

22. Police Support Technicians and Leads. Police support technician is an entry-level clerical position, which provides a full range of administrative duties. The technicians in the administration unit are assigned to work in the records, detective, or civil section. A police support technician lead-civil and police support technician lead-records are primarily responsible for the smooth operation of those sections. A lead position is a promotion from the police support technician position.

Police support technicians and leads work in an office environment at a desk. Requirements for these positions include an associates' degree in office administration or related field and four years of progressively responsible secretarial or administrative experience; a high school diploma or GED and five years' experience, or a satisfactory combination of training and experience; good communication, reasoning, decision-making, and basic math skills; and LEADS certification. The lead positions require additional secretarial or administrative experience, a minimum of one year supervisory experience, and considerable knowledge of the functions of their unit.

23. Records Section. Police support technicians in records are the Sheriff's Office first point of non-emergency in-person or telephone contact with the public. Their primary function is to answer non-emergency telephone calls; refer calls to dispatchers as needed; process reports for the DA's office, juvenile department, and children's services; access database information for deputies in the field, such as running criminal background checks or checking for warrants; coordinate delivery of paperwork to the DA's office and medical examiner; process concealed weapon permit applications; and enter restraining and protection orders into the system. These technicians process deputy incident reports, after the report has been approved by the sergeant, to ensure all required information is provided before the report is sent to the DA's office. They also process non-emergency incidents, such as noise complaints or theft from a vehicle, by obtaining the necessary

information over the telephone, assigning a case number, preparing an incident report using the same format as deputies, and either closing the case or referring the incident to a deputy for follow up.

24. Records technicians work either an eight-hour day or evening shift to cover the records section operations from 7:00 a.m. to 11 p.m., seven days a week. When these technicians are not present, their telephone calls are forwarded to dispatch. The technicians interact with deputies, dispatchers, civil police support technicians, County court employees, DA's office employees, and employees in other law enforcement agencies and court systems.

25. Police Support Technician Lead Jennifer Geiger has worked in the records section since she was hired at the Sheriff's Office in 1997. She spends approximately 75 percent of her day on the telephone with the public, who are either reporting incidents or wanting to speak with Sheriff's Office employees. Geiger sometimes relieves dispatchers for brief breaks, during which she answers emergency calls and notifies deputies to respond. Geiger attended the two-week DPSST basic telecommunications training at the academy, but is not DPSST-certified. She has also had training in dealing with difficult and mentally ill people.

26. Civil Section. The police support technicians and lead in the civil section work directly with the public providing assistance with fingerprinting, concealed handgun permits, service of papers, writs of assistance, and other matters. These technicians are also responsible for generating appropriate court documents and ensuring that the documents meet administrative, legal, and time line requirements before they are signed by a judge and provided to the civil or patrol deputies for service. Technicians also may determine if there are outstanding warrants or risk indications and then place a caution note on the document to be served to alert the deputy. These technicians work with patrol and civil deputies, records section police support technicians, and employees in the DA's office and state courts on a daily basis. They work from 9:00 a.m. to 5:00 p.m., Monday through Friday.

27. Detective Section. The police support technician in the detective section works as the detectives' clerk. The technician answers telephone calls from informants and citizens reporting suspicious activity, documents the information obtained, assesses the accuracy of the information and credibility of the caller, and forwards credible information to a detective. If the caller requests to speak directly with a detective, the detectives document the information provided in the same manner as the technician. The technician maintains and stores the collected information in an intelligence file. The technician also conducts research and provides information in response to requests by detectives regarding current investigations.

Corrections Unit

28. The corrections unit operates out of the Adult Jail, which is located several miles from the Administration Building. This unit is overseen by the jail commander. The bargaining unit positions in this unit include corrections deputy, police support technician and lead, criminal analyst, and control room technician. These employees are supervised by the shift sergeant, except for the criminal analyst who is supervised directly by the jail commander.

29. Deputies. The primary function of a corrections deputy is to maintain the safety and security of the Adult Jail, including the care, custody, and control of inmates. Corrections deputies oversee the movement, control, and transportation of inmates and participate in inmate searches and booking. They may also be assigned to provide court security. The corrections deputies work three shifts, covering a 24/7 schedule. These positions have the same skills and ability requirements as operations deputies. Upon hiring, corrections deputies are required to attend a six-week DPSST corrections academy and become DPSST-certified. Their training includes criminal law regarding incarceration, defensive tactics, interpersonal skills, report writing, and counseling.

30. Control Room Technician. Control room technicians visually monitor staff and inmates throughout the Adult Jail housing unit by video cameras and from a secure elevated glassed-in control room. The technician operates doors and maintains intercom and phone contact with inmates for the purpose of stopping observed behaviors and orally moving inmates from one section of the facility to another. The technician also logs records of inmate movements, prepares incident reports, and can administer sanctions to inmates for observed behaviors. Technicians interact with corrections deputies, patrol deputies, other corrections staff, Public Health and Mental Health nurses assigned to the Adult Jail, and other outsiders visiting inmates. They have limited direct contact with inmates.

The control room technician job requirements include a high school diploma or GED; thorough knowledge of office equipment and computers; court clerk certification; LEDS certification; and effective communication, comprehension, and report-writing skills. These technicians work the same 24/7 schedule as corrections deputies. Deputies trained in control room duties replace technicians on breaks and cover shifts when a technician is not available.

31. Criminal Analyst. The criminal analyst assigned to corrections performs special projects for the jail commander. The analyst is currently working on a grant. This position requires the same skills and abilities and works the same hours as the criminal analysts in the administration unit.

32. Police Support Technicians and Lead. The police support technicians and lead in corrections perform administrative processes related to booking and releasing inmates. Their work includes data entry, processing paperwork, controlling holding room cell doors, releasing funds, filing, providing inmates with court and bail information, and notifying inmates of release requirements. These positions deal with inmates across a counter while the inmates are supervised by a deputy. The lead position oversees the work of the technicians. The technicians and lead interact frequently with patrol and corrections deputies. The requirements for these positions are similar to those of administration unit police support technicians and leads. These positions work from 8:00 a.m. through 5:00 p.m., Monday through Friday. Deputies book inmates on swing and graveyard shifts.

Emergency Management/Search and Rescue Unit

33. The emergency management/search and rescue unit consists of the emergency services/search and rescue coordinator and specialist, who are directly supervised by Undersheriff Fasching. These positions operate out of the Emergency Coordinator Center, where their equipment is also located.

34. Emergency Services/Search and Rescue Coordinator and Specialist. The primary responsibilities of the emergency services/search and rescue coordinator and specialist are to plan for, respond to, and recover from man-made and natural disasters and coordinate or assist in search and rescue operations for lost, missing, or injured persons. In the Sheriff's absence, either the coordinator or the undersheriff acts as the incident commander. The coordinator and specialist interact with field deputies during operations and assist in the coordination of a large number of volunteers. They also interact with employees from the City of Grants Pass, Federal Emergency Management Administration, and Oregon State Emergency Operations, with whom the County shares emergency response/duties. The coordinator and specialist work from 8:00 a.m. to 4:00 p.m., Monday through Friday. The coordinator is typically assigned to on-call responsibilities during all other times.

35. The job requirements for the emergency services/search and rescue specialist position include a high school diploma or GED and four years of progressively responsible secretarial or administrative experience or some similar combination, with a preference for law enforcement or emergency services experience and good communication, reasoning, decision-making, and basic math skills. The specialist must also possess or have the ability to obtain certifications in Emergency Management and Basic Applied Practices (Disaster Recovery and Mitigation), National Management Systems, Incident Command Series, and Hazmat or Weapons of Mass Destruction Awareness. In addition to the requirements for the specialist position, the coordinator position requires a bachelor's degree or four years' experience in emergency services or a related field, and experience and training in incident command system; or an equivalent of experience and training. If these positions were eliminated, the duties would be covered by the sheriff, undersheriff, and deputies.

Transfer and Hiring of Employees Within the Sheriff's Office

36. Deputies and police support technicians sometimes transfer between the administration/operations units and corrections.

37. Sheriff's Office employees have been hired into other bargaining unit positions as follows:

a. Sara Rubrecht began her employment as a control room technician and was then hired as the assistant to the emergency services/search and rescue coordinator before being promoted to the emergency services/search and rescue coordinator position.

b. Jo Monard was originally hired as a control room technician and was then hired as a corrections police support technician before being promoted to police support technician

lead-corrections. At times, Monard still covers the control room technician's duties while the technician is on break or unavailable.

c. Kari Lee was originally hired as a records dispatcher before being hired into her current position as a property control specialist.⁵

d. Prior to being promoted to her current corrections sergeant position, Jill Burrows held the following positions in the Sheriff's Office: police support technician, control room technician, emergency services/search and rescue specialist, patrol deputy, and corrections deputy. Undersheriff Fasching believes that Burrows' prior experience at the Sheriff's Office was helpful to her being hired into the deputy position.

38. William McCartney volunteered as a Sheriff's Office reserve officer before being hired as a control room technician. As a reserve officer, McCartney assisted with events, went on patrol with deputies, and worked at the Adult Jail. McCartney maintains a DPSST number, which is used to record law enforcement training, because his goal is to become a Sheriff's Office corrections deputy.

39. One non-Sheriff's Office County employee, an emergency preparedness specialist in the Public Health Department, was hired into the Sheriff's Office emergency management/search and rescue operations.

Wages, Benefits, and Other Working Conditions

40. The wage schedule and wage increases for bargaining unit members are provided for in the parties' Agreement. Salaries for deputies, detectives, and the emergency services/search and rescue coordinator are at the highest grades. The positions of control room technician, dispatcher-basic certificate, emergency services/search and rescue specialist, police support technician, and property control specialist are at the lowest salary grade. The police support technician leads are at the same salary grade as the dispatcher-advanced certificate, lead dispatcher-basic certificate, and criminal analyst positions.

41. Under the Agreement, all bargaining unit employees are entitled to a 30-minute on-duty paid meal period and receive the same holiday leave, on-call pay, vacation leave, sick leave, and insurance benefits. All bargaining unit employees are reimbursed for call-backs and overtime in the same manner and have access to a grievance procedure for violations of the Agreement.

42. Under the parties' Agreement, bargaining unit employees have some different working conditions and benefits. DPSST-certified employees receive incentive pay for intermediate and advanced certifications. Newly hired deputies, who do not possess a DPSST certification, serve an 18-month probationary period, while all other employees serve a 12-month probationary period. By statute, deputies, detectives, and dispatchers are covered under the Oregon Public Employee Police and Fire Retirement System, while strike-permitted employees are covered by the general

⁵Lee testified that she was originally hired as a records dispatcher. It was unclear if she was referring to a dispatcher or records police support technician position.

Public Employee Retirement System and/or the Oregon Public Service Retirement Plan (OPSRP). Under the Agreement, the County contributes matching funds of up to three percent of a strike-permitted employee's contribution into a deferred compensation program.

43. The Sheriff administers an oath to all new employees under which they swear to support the Sheriff and constitutions of the United States and Oregon.

44. Sheriff's Office employees interact with other County employees, including Public Works mechanics, who maintain Sheriff's Office vehicles; Building and Maintenance employees, who provide janitorial services and maintain the buildings; Human Resources employees, who handle human resources issues; Communication Services employees, who maintain the towers and radios; IT employees, who provide overall systems management and oversee the purchase of new computer equipment; County Public Health and Mental Health nurses, who visit inmates in the Adult Jail; the DA's office employees; the medical examiner; and court employees.

45. Human Resources (HR) Director Sarah Moye and Business Manager Watkins recognize that a redesignation would result in another bargaining unit at the County. Watkins understands that being required to bargain with another unit will create more work for her. Moye does not believe five bargaining units are unmanageable. The County is seeking to redesignate the strike-permitted employees into a separate bargaining unit so the employees will no longer be part of a unit subject to interest arbitration. The County hopes to be able to bargain lower benefits for the redesignated employees in order to obtain cost savings to address its financial situation. For example, the County would bargain for lower insurance benefits for the redesignated employees consistent with the benefits now provided to other County employees not represented by the Association, resulting in a savings of approximately \$100,000 per year. In addition, the County would bargain to eliminate the strike-permitted employees' deferred compensation match, which is not a benefit provided to other County employees, resulting in a savings of up to \$30,000 per year.

46. Desires of Employees. The Association's Executive Board voted against the County's redesignation petition. Fifteen of the 19 strike-permitted employees signed a petition asking the County to withdraw the petition for redesignation and stating that it was their desire to "retain our current representation within the JCSA bargaining unit." Two strike-permitted employees, one of whom also signed the petition, wrote letters to the County in opposition to the redesignation petition.

Other County Positions

47. Positions in other County departments, including Community Corrections, Juvenile Justice, and the DA's office, are required to have a LEADS certification. In addition, positions in other County departments may be assigned on-call duties, including IT employees, building maintenance employees, Public Works employees, probation and parole officers, juvenile probation officers, and Public Health nurses. The contracts between the County and SEIU, AFSCME, and FOPPO all include an on-call provision.

48. The County has a generic support staff position series, which is applicable to other County departments. The series includes the positions of administrative secretary, department specialist, senior department specialist, department assistant, and office manager. The nature of the

work in these positions is specific to the department to which a position is assigned, and each department requires special training. For example, an administrative secretary in the DA's office would be trained on LEDS and other department-specific processes. These positions are in the AFSCME bargaining unit.

49. The administrative secretary position provides secretarial, administrative, and/or technical support related to the operation of an office or a function. This position's duties could include answering phones and serving customers, preparing and processing forms, entering data, researching and summarizing information, and establishing and maintaining filing or tracking systems. The job requirements for this position include a high school diploma or GED and three years' secretarial experience, or an acceptable combination of experience and training, and effective language, reasoning, and math skills. Newly-hired administrative secretaries are trained on department specific equipment and processes.

50. The department assistant position is the entry-level support staff position assigned to basic clerical duties including typing, word processing, filing, answering phones, and some data processing.

51. The department specialist position performs specialized clerical duties requiring specific knowledge of department operations and guidelines, including maintaining and processing records and forms and answering questions regarding department policies, procedures, and services. Employees in these positions work in the Juvenile Department, Public Health Department, Public Works Department, DA's office, and Building Safety. The requirements for this position include a high school diploma or GED and two years' clerical work, preferably in the assigned department, or an acceptable combination of experience and training; and effective language, reasoning, and math skills.

52. The senior department specialist position performs advanced and complex clerical and administrative duties and related work in support of a complete and specialized department function. Duties could include compiling special studies and analysis of complicated data, responding to non-routine correspondence and complaints, and overseeing the work of subordinate employees. Employees in this position work in Community Corrections, Public Health, and Public Works.

53. The legal secretary position's duties include secretarial work, research work, report preparation, maintenance of tracking systems, and work with sensitive and confidential information. Employees in this position hold a LEDS certification. The legal secretary position requires a high school diploma or GED and two years' secretarial experience, preferably in a legal or judicial situation, or a satisfactory combination of training and experience; knowledge of legal terminology; ability to operate office equipment; and effective language, reasoning, and math skills. Employees in this position work in the DA's office and Juvenile Justice.

54. The position of office manager is a quasi-supervisory position, similar to a lead position, which is located in the Public Health Department.

55. The County also has a data processing technician position, which installs software and performs updates and repairs on computer systems. Employees in this position do not perform research or data analysis and are primarily located in the IT Department. The job requirements for this position include a high school diploma or GED and two years' experience with computer operations, or an acceptable combination of experience and training; and effective language, reasoning, and math skills. This is an AFSCME-represented position.

56. The County Public Works Department has a purchasing/warehouse coordinator position whose duties are to purchase, receive, store, track, and monitor parts, supplies, and materials used for the maintenance, construction, and repair of vehicles and equipment. This position's job requirements include a high school diploma or GED and three years' experience in purchasing, ordering, working with stock or in a warehouse, or a satisfactory combination of experience and training; and effective language, reasoning, and math skills. This is an AFSCME-represented position.

57. The Public Works Department also has a storeroom maintenance/data entry clerk whose duties are to order, receive, store, and inventory parts, supplies, and materials for maintenance, construction, and repair of vehicles and equipment. This position operates a special computerized ordering and inventory system. The position's job requirements include a high school diploma or GED and one to three years' experience in purchasing, ordering, and working with stock or in a warehouse, or an acceptable combination of experience and training; knowledge of automotive and equipment parts and supplies and computerized ordering and record keeping systems; ability to operate a forklift and radios; and effective language and reasoning skills. This is an AFSCME-represented position.

58. The County DA's office has support enforcement specialist I and II positions, which perform activities and work related to the collection of court-ordered child or spousal support payments. These positions prepare and work with legal paperwork and court orders related to child or spousal support payments and paternity. Their work includes preparing files, interviewing payers, negotiating payment plans, preparing paperwork for court-mandated payments, and maintaining payment records. The position's job requirements include an associates' degree in office administration and one year support enforcement experience or high school diploma or GED, and three years support enforcement related secretarial experience, or a satisfactory combination of experience and training. These are AFSCME-represented positions.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of this dispute.
2. It is not appropriate to redesignate the positions at issue out of the Association bargaining unit.

DISCUSSION

Legal Standards

The County seeks to remove the strike-permitted positions from a mixed bargaining unit of strike-permitted and strike-prohibited Sheriff's Office employees. Pursuant to OAR 115-025-0000(1)(e), an employer may file a petition for redesignation "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).

In *Executive Department, State of Oregon v. Oregon Public Employees Union*, Case No. UC-7-89, 12 PECBR 59, 69 (1990), we explained 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." 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*, 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 (1987), we identified six factors which affect our decision regarding redesignation petitions proposing to split bargaining units that contain both strike-prohibited and strike-permitted employees. We stated that

"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." 10 PECBR at 153.

The County argues that we should apply the same standards in this redesignation case that we apply to petitions seeking to transfer certain positions from a strike-permitted bargaining unit into a strike-prohibited bargaining unit under OAR 115-025-0005(6). In such cases, we consider (1) the

percentage of strike-prohibited employees; (2) the relationship of their duties to the agency's law enforcement mission; (3) the uniqueness of their positions; (4) whether there are other bargaining units that include employees with similar duties; (5) the pattern of bargaining units and unrepresented employees in the workforces; and (6) the history and stability of labor relations. *Ashland Police Association v. City of Ashland and International Brotherhood of Electrical Workers, Local 659*, Case No. UC-22-06, 22 PECBR 1, 9 (2007), citing to *Washington County Police Officers Association v. Washington County*, Case No. UC-36-00, 19 PECBR 641, 648-49 (2002). The County asserts that applying these standards is more consistent with this Board's strong preference against mixed bargaining units and would result in the redesignation of the strike-permitted employees out of the current Association bargaining unit.

The legislature specifically identified that one purpose of the Public Employee Collective Bargaining Act (PECBA) is to promote the improvement of employer-employee relations "by providing a uniform basis for recognizing the right of public employees to join organizations *of their own choice*, and to be represented by such organizations in their employment relations with public employers." ORS 243.656(5). (Emphasis added.) In addition, ORS 243.662 specifically grants public employees "the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining * * *."

A redesignation petition is filed by an employer seeking to remove employees from the employees' current bargaining unit. The unit at issue had previously been determined to be an appropriate unit either through the employer's consent or Board certification. Redesignation petitions are neither supported by a showing of interest nor subject to an election to allow the employees to exercise their choice. If the petition is granted, the employees will be removed from the bargaining unit of their choice and become either a separate bargaining unit or, should we find that the removed employees are not an appropriate bargaining unit in themselves, become unrepresented. Therefore, applying standards under which the employees subject to the petition remain in their current bargaining unit unless they have a community of interest that is *clearly distinct* from the other bargaining unit employees is consistent with the policies and purposes of the PECBA.

We also note that our charge in addressing a petition seeking to transfer strike-permitted employees into a strike-prohibited unit under OAR 115-025-0005(6) is very different than our charge in a redesignation petition. Before we grant a transfer petition, we must determine "that it would be appropriate to add the positions in question to the petitioning organization's bargaining unit." OAR 115-025-0005(6). In making our decision under OAR 115-025-0005(6), we apply standards which allow us to "evaluate two different bargaining units and decide which is *more appropriate*" for the petitioned-for employees under ORS 243.682(1). *Ashland Police Association*, 22 PECBR at 9 (emphasis added). Therefore, whether we grant or deny such a petition, the employees at issue will be represented.

The County also argues that it should be entitled to align the Sheriff's Office bargaining unit to meet the legislatively-defined categories of strike-permitted and strike-prohibited employees. If it does not, it will be "strapped to a mixed bargaining unit without remedy." (County's Post-hearing Brief at 23.) The County asserts that "[m]aintaining policies of favoring employees to remain in a unit that is statutorily out of their definition is not in the public interest when it leads to exaggeration

of benefits and manipulation of rights not afforded to other strike permitted employees.” (County’s Post-hearing Brief at 24.)

In making our decision on a redesignation petition, we are charged with considering all of the criteria in ORS 243.682(1)(a). Based on this charge, one of the six factors this Board considers regarding a petition for redesignation of a mixed unit is the percentage of strike-permitted employees in the unit. Another factor is whether the bargaining unit employees’ community of interest is stronger than the loss of an employee’s right to strike. However, an employee’s strike-permitted status in a strike-prohibited bargaining unit is not controlling on our determination, just as the desires of the employees are not controlling. These factors are only part of the identified criteria that we consider in determining whether to remove the employees from their current unit.

Analysis of the Positions Subject to the Petition

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. The business manager supervises the dispatchers and lead, as well as police support technicians and leads and criminal analysts. The corrections sergeant supervises the corrections deputies, police support technicians and lead, and control room technicians. The other strike-permitted employees are all supervised by higher levels in the chain of command structure.

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, some dispatchers are at the same salary grade as some of the strike-permitted employees. In addition, all bargaining unit employees are entitled to the same wage increases. We recognize that deputies and dispatchers are eligible for certification pay and for a different retirement benefit. However, most other wage and benefit provisions are the same for all bargaining unit positions.

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

Overall, we conclude that the strike-permitted employees share a community of interest with other Association bargaining unit positions. All bargaining unit employees work in a single County department. The strike-prohibited and strike-permitted employees work closely with each other, performing duties related to that department’s law enforcement/corrections mission. Strike-permitted and strike-prohibited employees also share the same work locations, primarily working out of either the Administration Building or the Adult Jail. While other County employees perform work in these buildings, the buildings are essentially isolated from the rest of the County’s facilities either by location or security requirements, and the amount of contact with other County departments and employees is limited.

Although the bargaining unit employees in the strike-permitted positions do not perform actual law enforcement, corrections, or emergency dispatch duties, their duties are directly related to and supportive of the work performed by the deputies, detectives, and dispatchers. The records police support technicians and lead answer telephone calls from the public, forward calls to dispatch and other staff, process non-emergency reports, and provide information to aid deputies with the performance of their duties in the field. The civil police support technicians and lead are responsible for ensuring that warrants and other court papers are appropriately prepared and ready to be served by the civil and patrol deputies. The detective police support technician is the detectives' information conduit, answering calls from informants and the public, acting as a resource for detectives in the field, and maintaining the detectives' intelligence file. The corrections police support technicians and lead work directly with patrol and corrections deputies during the inmate booking and release process.

The criminal analysts produce statistical information which is used, in part, to determine the functioning and allocation of resources in the department. These employees also provide all department staff, including deputies and dispatchers, with assistance on department specific software and databases. The control room technicians ensure a safe environment for the corrections deputies by visually monitoring staff and inmate activities in the Adult Jail. And although the control room technician has no direct contact with inmates, the position is responsible for inmate supervision and may be involved in issuing sanctions to inmates. The property control specialist maintains and tracks evidence and property obtained by deputies and detectives during law enforcement activities, and occasionally assists deputies with the collection of this evidence in the field. Finally, the emergency services/search and rescue specialist and coordinator share an office with two marine deputies and work in the field with deputies during operations.

The hours of the strike-permitted and strike-prohibited employees are generally different. The strike-prohibited employees work shifts covering a 24/7 schedule. Only the control room technicians work a similar schedule. The other strike-permitted employees generally work regular day shifts, Monday through Friday, except for the records unit police support technicians and Criminal Analyst Brock. Some of the strike-permitted employees, such as the property control technician and the emergency services/search and rescue coordinator, are also on-call.

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 likely to be considered in an application for a strike-prohibited position. In at least one case, an employee started in a strike-permitted position prior to being hired as a deputy. Another employee is currently working in a strike-prohibited position with the hope of becoming a deputy. There is evidence of transfers and promotions in positions between the administration unit, operations, and Corrections.

The County presented evidence of positions in the AFSCME bargaining unit that it argued performed work similar to the strike-permitted positions at issue here. However, the issue of whether the positions at issue in this petition have a community of interest with positions in another bargaining unit is not relevant. Such evidence would only be relevant if these employees were subject to a petition seeking to transfer them into the AFSCME bargaining unit.

We conclude that the community of interest among the bargaining unit employees is stronger than the strike-permitted employees' loss of the right to strike. The 19 strike-permitted employees 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 25-year 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

Although the County recognizes that this Board has a policy of discouraging fragmentation and proliferation of bargaining units, it argues that it is not appropriate to apply the policy in this case. The County asserts that our policy against fragmentation is based on a concern against placing an undue hardship on employers by obligating them to bargain multiple contracts. However, the County contends that the real undue burden it faces is the leverage exercised by the strike-permitted employees as a result of their inclusion in a bargaining unit entitled to interest arbitration, which has allowed these strike-permitted employees to bargain for better wages and benefits than those provided to other strike-permitted County employees. The County explains that granting the redesignation petition will allow it to have greater power to bargain for a reduction of benefits for the strike-permitted employees.

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, 889 (1988). A major purpose of our non-fragmentation policy is to assist employers. *Division of State Lands Employes Association v. Division of State Lands, State of Oregon, and Oregon Public Employes 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.*

Our preference for larger bargaining units is also "grounded on considerations sensitive to both employer and labor organization realities." *Oregon State Penitentiary*, 10 PECBR at 153. These considerations include promoting stability in labor relations, establishing greater equality of bargaining power between public employers and public employees, and protecting the public from interruptions of necessary services by limiting the potential number of labor disputes and work stoppages. ORS 243.656(3). *Oregon Workers Union v. State of Oregon, Department of Transportation and Service Employees International Union Local 503, Oregon Public Employees Union*, Case No. RC-26-05, 21 PECBR 873, 883 (2007).

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 19 employees. The unit would be one of two units within the Sheriff's Office, which is one of 23 departments in

the County. This would result in five bargaining units for a total of 314 County employees. Such a result unduly fragments the County workforce.

In addition, the redesignation of these employees into a separate bargaining unit would be contrary to the policy and purposes of the PECBA under which we seek to avoid fragmentation. While the County is willing to accept the additional work involved in having another bargaining unit, this is not our only consideration.⁶ Designating a bargaining unit of 19 employees, in a jurisdiction where the employees are already divided among four bargaining units, is inconsistent with our policy of equalizing bargaining power between the employer and the employees. It would also create the potential for an additional labor dispute at the County and could result in the interruption of necessary services to the public at the Sheriff's Office facilities and a lack of stability in labor relations.

(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 19 strike-permitted employees out of a bargaining unit of 77, the strike-permitted employees constitute approximately 25 percent of the unit.

(5) History of Collective Bargaining

The current Association bargaining unit has existed in essentially the same form since 1987. For ten years prior to that, a different labor organization was the exclusive representative of a similar mixed bargaining unit. While the County apparently has not liked some of the results of collective bargaining with the Association, there is no evidence of instability in labor-management relations.

(6) Significant Change in Circumstances

The County asserts that this Board should find that a sufficient change in circumstances has occurred since it consented to the current bargaining unit structure in 1987. The County contends that the current economy and government structure are very different than that which previously existed. We assume that changes have occurred in the County's and Sheriff's Office organizational structure and the duties/responsibilities and conditions of employment for the positions in the Association bargaining unit over the last 25 years. Yet, the County introduced little or no evidence of a change in circumstances in these areas. Instead, it introduced evidence regarding the County's current financial situation, which is not one of the criteria relevant to determining whether a bargaining unit is appropriate under ORS 243.682(1)(a). And even if an employer's financial situation was relevant to our decision, the County failed to introduce any evidence regarding the state of the economy or government in 1987 to support its assertion of a change in circumstances.

The County introduced evidence that should its financial situation not change, it planned to layoff most of the strike-permitted employees and have the deputies or other sworn-personnel perform the work currently performed by the strike-permitted employees. Such a change in position

⁶While the current County leadership accepts the cost of fragmentation, this Board must consider the long-term effect. Notably, this bargaining unit has existed in its current form for more than 25 years.

responsibilities and department structure is the type of circumstances we would consider under this factor. However, in this case, we can only address the actual status of the positions and department structure at issue at the time the hearing was held.

Conclusion

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.

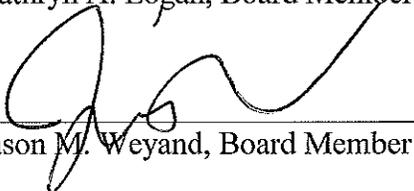
DATED this 31 day of October, 2012.



Susan Rossiter, Chair



Kathryn A. Logan, Board Member



Jason M. Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.