

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-011-13

(UNIT CLARIFICATION PETITION)

LABORERS' INTERNATIONAL UNION	)	
OF NORTH AMERICA, LOCAL 483,	)	
	)	
Petitioner,	)	RULINGS,
	)	FINDINGS OF FACT,
v.	)	CONCLUSIONS OF LAW,
	)	AND ORDER
CITY OF PORTLAND,	)	
	)	
Respondent.	)	
_____	)	

On January 9, 2014, the Board heard oral argument on Petitioner's and Respondent's objections to a Recommended Order issued on November 20, 2013, by Administrative Law Judge (ALJ) Wendy L. Greenwald after hearings held on May 28 and 29, 2013, in Salem, Oregon. The parties' post-hearing briefs were submitted on June 24, 2013. The record closed on July 8, 2013, with the admission of two additional exhibits.

Erica B. Askin, Staff Representative, Laborers' International Union of North America, Local 483, Portland, Oregon, represented Petitioner.

Matthew V. Farley, Deputy City Attorney, City of Portland, Portland, Oregon, represented Respondent.

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On April 17, 2013, the Laborers' International Union of North America, Local 483 (LIUNA), an affiliate of the District Council of Trade Unions (DCTU), filed a unit clarification petition under OAR 115-025-0005(4). LIUNA seeks to add all unrepresented park rangers employed at the City of Portland (City), including those working without an annual hours limitation ("full-time park rangers") and those who work up to 1,400 hours per calendar year ("1400-hour park rangers" or "hours-limited park rangers"), to the existing LIUNA/DCTU bargaining unit.

The City filed timely objections to the petition asserting that: (1) the park rangers, who perform security duties, do not have a community of interest with other LIUNA-represented employees, who primarily perform manual labor; (2) a grievance filed by AFSCME, Local 189, is evidence that the park rangers lack a community of interest with the LIUNA/DCTU-represented employees; (3) it is not appropriate to add hours-limited park rangers because they are allegedly “temporary employees”; and (4) the park rangers do not represent a logical group of employees to be added to the bargaining unit.<sup>1</sup>

The issue is: Is it appropriate to include the petitioned-for employees in the LIUNA bargaining unit under ORS 243.650(1), ORS 243.683(1)(a), and OAR 115-025-0050(2)?

For the reasons discussed below, we conclude that it is appropriate to add the petitioned-for park rangers to the LIUNA/DCTU bargaining unit.

### RULINGS

1. At the hearing, the parties agreed to withdraw Exhibits P-48 and R-24 and submit a stipulation after the hearing in lieu of those exhibits. After the parties were unable to enter into the stipulation, the ALJ appropriately allowed the parties to resubmit Exhibits P-48 and R-24, which were received into the record on July 8, 2013.

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

### FINDINGS OF FACT

1. The City is a public employer that provides services through various bureaus and offices, including the Bureau of Parks and Recreation (Parks Bureau), the Water Bureau, the Bureau of Transportation (BOT), and the Bureau of Environmental Services (BES).

2. LIUNA is a labor organization and a member of the DCTU. DCTU is a coalition of seven unions, including LIUNA; AFSCME, Local 189 (AFSCME); IBEW, Local 48 (IBEW); Machinists and Mechanics, District Lodge 24; Operating Engineers, Local 701; Plumbers, Local 290; and Painters and Allied Trades, District Council 5 (Painters).<sup>2</sup> DCTU, on behalf of these unions, and the City were parties to a collective bargaining agreement, effective July 1, 2010 to June 30, 2013 (DCTU Agreement).

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<sup>1</sup>Before the hearing, the City withdrew two other objections: (1) that another union was attempting to organize the park rangers; and (2) that the eleven 1400-hour park rangers were “casual employees.” Given the City’s concession that none of the petitioned-for rangers are “casual employees,” we have modified the description of the petitioned-for unit, which had included a voter-eligibility limitation designed to exclude “casual employees.”

<sup>2</sup>The parties disagree about whether there are seven or eight unions under the DCTU Agreement. Although resolution of this conflict is not critical to our decision, we refer to seven unions because that is the number of unions on the Agreement’s signature page.

3. The DCTU-affiliated unions are the collective bargaining agents for a City-wide bargaining unit of “all employees of the City in all classifications contained in Schedule A of this agreement, as defined in sections 1.1.1, 1.1.2, 1.1.3, 1.1.6, and 1.2 below.” The employees represented by the DCTU-affiliated unions include approximately 1600 employees in approximately 189 classifications who work throughout the City. Some classifications are exclusively represented by one of the seven unions, while others are represented by multiple unions. For example, utility workers are represented by AFSCME in the Water Bureau and by LIUNA in the Parks Bureau and BES.

4. Section 1.1.2 of the DCTU Agreement defines permanent/probationary employees as those employees working in positions budgeted on a yearly basis in Schedule A classifications with permanent or probationary status under the City’s Human Resources Administrative Rules (HRARs). Section 1.1.3 defines permanent part-time employees as those working less than full-time in Schedule A classifications. Under Section 1.1.6, temporary employees working in full-time budgeted positions are included in the bargaining unit, but have limited contract rights.

5. Section 1.1.5 of the DCTU Agreement addresses seasonal employees as follows:

**“Seasonal Employee.** Seasonal employees as defined herein shall be excluded from the bargaining unit covered by this Agreement. A seasonal employee shall be defined as an employee who is employed for a limited duration of up to 860 hours in a calendar year.

“The City may employ seasonal employees at any time of the year. However, a seasonal employee may only be employed for up to 860 hours in a calendar year. After working for 860 hours, a seasonal employee must have a break in service of at least ninety (90) days before they may be reemployed. Except for continuation overtime, permanent employees in the work unit will be offered overtime before seasonal employees.

“Seasonal workers will normally be assigned to common labor jobs and will not normally be up-graded to classifications covered by the contract except on an incidental basis as required by day-to-day work flow. Nothing in this Agreement will be construed to limit the City’s right to hire additional personnel in emergencies beyond the City’s control.”

6. HRAR 3.03 defines casual/casual other appointments as follows:

“Casual/Casual Other appointments are used for positions that occur, terminate, and recur periodically or regularly. Casual/Casual Other employees serve at-will and do not accrue status in the class to which they have been appointed and have no appeal rights upon demotion, suspension or termination from employment.

“Casual/Casual Other employees do not accrue vacation or sick leave, service credit, and are not eligible for health benefits. Casual/Casual Other employees generally are not eligible for retirement benefits unless they have worked at least 600 hours in a calendar year in a qualified position. Full-time Casual/Casual Other employees are eligible for holiday pay if they were hired at least two weeks prior to the holiday and are in pay status the day before and the day following the holiday. Part-time Casual/Casual Other employees are not eligible for holiday pay.

“Casual/Casual Other employees are not eligible for reemployment under the Administrative Rules on Reinstatement or Layoff & Recall and do not have bumping rights. Casual/Casual Other appointments are limited to 1400 hours per calendar year.” (Emphasis omitted).

### Parks Bureau

7. The Parks Bureau is overseen by Director Mike Abatt and Assistant Director Warren Jimenez. It consists of four sections: 1) parks and recreation services, which oversees the community centers; 2) city nature, which manages and is responsible for the preservation of the City’s natural areas; 3) the director’s office/professional services, which provides bureau-wide services; and 4) planning, development, and assets, which is responsible for planning, construction, turf, and irrigation. The director’s office/professional services section is overseen by Assistant Director Jimenez and consists of five separate divisions: workforce development/human resources; community relations; property/acquisitions and services; business/finance; and security.

8. LIUNA represents a significant majority of Parks Bureau employees, including all employees who work outside, except for a few electricians represented by IBEW and a few painters represented by Painters. Parks Bureau employees in the classifications of office support specialist and accountant work indoors and are represented by AFSCME.

9. Some Parks Bureau employees are represented by the City of Portland Professional Employees Association, which is not affiliated with DCTU. Independent of the DCTU, LIUNA is also the exclusive bargaining representative of a bargaining unit of Parks Bureau employees in the seasonal maintenance worker classification and a bargaining unit of approximately 85 Parks Bureau employees in the classifications of recreation leader and coordinator. The LIUNA-represented recreations leaders and coordinators work at recreation centers and sun schools. The City does not believe that it would be appropriate to include the park rangers in LIUNA’s recreation bargaining unit.<sup>3</sup>

10. The Parks Bureau also employs thousands of unrepresented, casual employees who work in recreation centers, recreation programs, and sun schools, many of whom are classified as recreation leaders.

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<sup>3</sup>We use “park ranger” to refer to all of the petitioned-for employees because this term is generally used to refer to both full-time and “1400-hour” employees in the City’s park ranger program.

## LIUNA/DCTU Bargaining Unit

11. LIUNA/DCTU represents approximately 548 employees in various City bureaus in approximately 45 DCTU classifications.

12. LIUNA/DCTU-represented classifications in the Parks Bureau include: arborist (high climber trainee, high climber, high climber lead, tree inspector); automotive equipment operator (I, stripper operator, bus driver, II, sewer vacuum operator, street sweeper, and tractor-trailer combination); carpenter (apprentice, carpenter, and lead); construction equipment operator; facilities maintenance technician (apprentice, technician, and lead); greenskeeper (I, II, and III); horticulturist (apprentice, horticulturist, and lead); maintenance mechanic (may require licenses/certifications such as respirator certificate, backflow tester's certificate, playground safety inspector's certificate, and aquatic facility operator's certificate); maintenance worker; parks maintenance crew leader; parks technician (technician and lead); storekeeper/acquisition specialist (I, II, automotive parts specialist, III, and lead); turf maintenance technician; utility worker (apprentice, I, and II); and welder (apprentice, welder, and lead). Except for storekeepers, the employees in these classifications primarily work outdoors and travel to different locations within the park system to perform their duties. Storekeepers work in the business/finance division of the director's office/professional services section.<sup>4</sup> LIUNA/DCTU-represented employees also work in some of these classifications in other City bureaus.

13. LIUNA/DCTU-represented classifications in other City bureaus include: asphalt raker; auto servicer; collection system video inspector (uses a track-mounted CCTV camera to remotely inspect and identify issues in sewer and storm water pipes); collection system investigator; concrete finisher (apprentice, concrete finisher, and lead); environmental systems crew leader; environmental systems maintenance technician; equestrian trainer (develops and provides training to horses and mounted police officers); industrial machinist (requires journey machinist classification or demonstrated skill); industrial maintenance millwright (apprentice, trainee, millwright, and lead—lead must have or complete four-year journey program and licenses/certifications, such as back flow prevention, welding, forklift operation, crane operation, self-contained breathing apparatus, confined space entry); laboratory analyst (I, II, analytical specialist, and coordinator—coordinator requires course work or degree in chemistry, environmental science, biology, microbiology, geology, or a related field and two years of analytical laboratory experience or the equivalent); parking collection technician (criminal background checks required); parking pay station technician and lead; police impound technician (works with law enforcement computer and records systems and must obtain PPDS/LEDS certification); public works crew leader; sidewalk inspector; sign maker; stable attendant; street maintenance crew leader; traffic crew leader; wastewater operator (trainee, I, II, and lead/journey level positions that may require operator III, operator IV, or crane certifications); and wastewater operations specialist.

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<sup>4</sup>The City's contention that no LIUNA/DCTU-represented employees currently work under the director's office/professional services section is not supported by the evidence.

14. The LIUNA/DCTU-represented park technicians are responsible for ensuring the safety, cleanliness, and operability of the City's parks and recreational grounds and facilities. Their typical duties include performing grounds maintenance; applying chemicals and fertilizers; maintaining facilities and equipment; installing and repairing irrigation equipment; and ensuring park users' overall safety by inspecting grounds and equipment and removing or mitigating hazards. These employees work outside for extended periods. The qualifications for the park technician positions include knowledge of parks maintenance techniques; ability to perform minor equipment repairs, routine cleaning, and building maintenance; knowledge of safe pesticide application techniques; effective oral and written communication skills; ability to work effectively with coworkers and respond to questions/concerns from other employees and the public; and teamwork. Park technicians receive training in verbally interacting with park patrons who are drunk, using drugs, abusive, or possibly mentally ill.

15. Until recently, employees in the LIUNA/DCTU-represented turf maintenance technician classification worked nine months per year. Employees in this classification now work year-round.

16. Schedule A of the DCTU Agreement includes a step-wage structure for the 189 DCTU-represented classifications, under which employees are eligible for various hourly rates on a schedule of one to six steps. Classifications at the low end of Schedule A include the maintenance worker with two steps at \$11.77 per hour and \$13.95 per hour. Classifications at the high end of Schedule A include the laboratory coordinator with six steps, ranging from \$26.89 to \$37.94 per hour.

17. Under the DCTU Agreement, permanent bargaining unit employees are eligible for an employer contribution toward health insurance benefits that is prorated for part-time employees, holidays, paid vacations, and other paid and unpaid leaves. The DCTU Agreement also addresses shift schedules and pay, lateral transfers, job bidding, and promotions within a bureau. Temporary bargaining unit employees are eligible for holiday pay, paid vacations, and other leaves, but eligibility for health care benefits is based on the *status quo* as provided for under the City's benefit plans. Other provisions in the Agreement, including promotions, layoff/recall, and seniority, do not apply. Under the DCTU Agreement, the Parks Bureau is recognized as a single work unit for purposes of filling vacancies.

18. Discipline of bargaining unit employees is subject to a just cause standard and a grievance/arbitration process under the DCTU Agreement. The steps of the grievance process include an informal conference with the employee's immediate supervisor followed by a formal grievance filed with the bureau head or designee.

#### Petitioned-For Park Ranger Positions

19. The Parks Bureau has operated a park ranger program since approximately 1995, the purpose of which is to provide a safe, meaningful, and positive experience for park users. Under the program, the City employs park rangers to patrol approximately 200 City parks and park facilities in the downtown, central business district, and outlying areas. At the time that the petition

was filed, there were four full-time and 11 hours-limited park rangers. In May 2013, the City added 12 new hours-limited park ranger positions.

20. The park ranger program falls within the security division of the Parks Bureau director's office/professional services section. The park rangers work under the direction of Park Ranger Supervisor Hasan Artharee. Artharee reports to Security Manager Art Hendricks, who reports to Assistant Director Jimenez.

21. **Park ranger classifications.** The City assigns park rangers to three different classifications. Full-time Forest Park Ranger Robert McCoy is classified as a community outreach and information assistant. McCoy, who began work as an hours-limited park ranger in 2006, was placed into this classification when his full-time position was created in August 2010 because it was the most appropriate classification at the time. His position is currently funded through BES.<sup>5</sup> The general purpose of a community outreach and information assistant is to perform specific public information, awareness, and community involvement projects, including creating and developing materials and media for use in public and internal communications.

22. Full-time Park Rangers Asa Arden, Lionel Eyres, and Sam Sachs work under a park ranger classification that was created in April 2011. That classification's specifications emphasized public safety and security enforcement, which distinguishes it from the LIUNA-represented parks technician classification.

23. 1400-hour park rangers generally work "full-time" weekly hours up to 1400 hours per calendar year. In April 2013, the City reassigned the 1400-hour park rangers from the recreation leader classification, which is limited to 1200 hours per calendar year, to the community service aide 1 (CSA) classification. CSA is a City-wide classification assigned to any employees working up to 1400 hours per calendar year in an unbudgeted casual appointment regardless of the type of work performed. The City administratively designates "1400-hour" park rangers as "casual" employees under HRAR 3.03.

24. Originally, the park ranger season occurred during the summer months. The current park rangers, however, were hired for seasons starting in the summer, fall, or beginning of the calendar year.

25. **Park ranger duties.** The park rangers' duties include patrolling assigned parks by foot, bicycle, or vehicle; monitoring the parks for safety issues and damage to grounds, facilities, or equipment; addressing nuisance issues, including removing drug paraphernalia and cleaning up homeless camps; assisting and educating the public by providing general information and answering questions about the park, park history, and schedules of events; interpreting park codes, ordinances, rules, and regulations, and providing this information to the public; addressing code violations, including issuing warnings and park exclusions; working with law enforcement authorities, other City bureaus, outside organizations, and neighborhood/community citizen

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<sup>5</sup>Due to the position's funding, the City asserts that the Forest Park Ranger is in BES. However, this position is designated and treated as part of the Parks Bureau in all other respects.

groups to address nuisance issues and criminal activity; assisting in problem-solving and resolving park-user conflicts; assisting other Parks Bureau employees with safety and user issues; responding to citizen complaints; and maintaining accurate logs, notes, and reports for use by the Parks Bureau, police, City Attorney, or outside agencies.

26. For safety reasons, park rangers generally work in pairs. All park rangers wear identical park ranger uniforms and work out of the same office, referred to as the ranger bunker. Park rangers generally come to the office at the beginning and end of their shift to file reports, attend staff meetings, and respond to e-mails. Park rangers spend approximately 85 to 90 percent of their time patrolling the park and 10 to 15 percent of their time on administrative duties and meetings. They generally work day or swing shifts. Some shifts include weekends.

27. Due to their experience, full-time park rangers are usually expected to act as lead workers providing support and assistance to 1400-hour rangers. Full-time park rangers also provide training during the park ranger academy for new 1400-hour rangers and are assigned other special projects. Forest Park Ranger McCoy is also an instructor for the Department of Public Safety Standards and Training (DPSST) security certification. 1400-hour park rangers are not generally required to work with community groups.

28. **Park ranger qualifications and abilities.** Employees in the park ranger classification are required to have a high school diploma or equivalent, with a preference for some college-level courses or experience in law enforcement, criminal justice, recreation management, security, or social services. These employees must be able to understand, interpret, and apply codes, policies, and procedures; establish and maintain good interpersonal relationships with diverse individuals and organizations; have effective communication skills; investigate and assess violations and develop solutions; remain calm and professional in response to verbal abuse and threats; maintain accurate records; prepare for and testify at code or judicial proceedings; use practical judgment and critical reasoning during enforcement and information gathering situations; deal tactfully and effectively with the public; resolve conflicts; and mediate disputes.

29. The minimum qualifications for employees in the community outreach and information assistant classification include public information, advertising, marketing, and public relations-related skills.

30. The CSA classification does not list any specifications or requirements. A recent 1400-hour ranger position posting sought employees with excellent communication skills and basic conflict resolution abilities who are able to work in teams, do extensive walking and biking, provide a positive presence in City parks, and educate the public on and enforce park rules and regulations. The posting stated that previous park or security experience was preferred.

31. All park rangers are required to obtain a State of Oregon unarmed security guard license through the DPSST within six months of their hire; pass a background check and physical capacity test; obtain bicycle, defensive tactics, and first aid/CPR certifications; and become familiar with crisis intervention and social services.

32. **Wages and benefits.** The salary scale for the park ranger classification is based on the City's non-represented employee pay grade 1, with a range of \$16.42 to \$23.50 per hour. The salary scale for the community outreach and information assistant classification is based on the non-represented pay grade 4, with a range of \$21.67 to \$33.39 per hour. McCoy currently earns \$21.67 per hour. The salary scale for a CSA 1 is \$8.95 to \$13.17 per hour. The salary range included in a recent 1400-hour park ranger posting was from \$11.00 to \$17.00 per hour.<sup>6</sup> 1400-hour park rangers generally start at \$11.00 per hour and receive a \$.50 increase each year that they return. Park rangers sometimes work overtime or flex their schedules to work certain park events.

33. The four full-time park rangers receive paid vacation leave, sick leave, holiday pay, and retirement and health insurance benefits. 1400-hour park rangers are eligible for retirement benefits after they work at least 600 hours in a calendar year and receive holiday pay if they were hired at least two weeks before the holiday and are in pay status the day before and the day following the holiday. 1400-hour park rangers are not eligible for health insurance benefits or other paid leaves.

34. **Hiring of full-time park rangers.** McCoy's hours-limited park ranger position was converted to a full-time position in 2010. When the other three full-time park ranger positions were created in 2011, applicants were required to go through the City's formal external recruitment and interview panel process. The City hired hours-limited park rangers to fill these three positions. In 2012, the City filled a full-time park ranger vacancy through an internal City recruitment process. 1400-hour park rangers must apply for and are given no preference for full-time positions, but may apply as internal applicants if they are working at the time of the recruitment. During the 2012 recruitment, then hours-limited ranger Arden's supervisor told him not to work all of his 1400 hours so that he could apply as an internal applicant.

35. **Hiring/rehiring of hours-limited park rangers.** Before 2010, the City hired a fluctuating number of hours-limited park rangers for short periods of time. In the summer of 2012, the City significantly increased its number of hours-limited park rangers after it took over patrolling its downtown area parks, work that the City had previously contracted out. The City is not required to use a formal recruitment process for hiring 1400-hour park rangers. In four out of the past five recruitments, new applicants were required to submit an application and resume and were interviewed by the park ranger supervisor and security manager. In the July/August 2012 recruitment, prior hours-limited park rangers were invited to apply and were hired after being informally interviewed by either the park ranger supervisor or security manager.

36. 1400-hour park rangers do not have a right to return in subsequent years and not all of those rangers are asked to come back after their tenure ends. Security Manager Hendricks tells employees that recurring opportunities exist to return in the next year, subject to performance, budget, and availability. Hours-limited park rangers who have not exhausted their 1400 hours by the end of December are usually continued into the next calendar year without reapplying for the

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<sup>6</sup>The salary range for a CSA 2 is \$12.38 to \$22.56 per hour. None of the 1400-hour park rangers are classified as a CSA 2.

position. Supervisors have contacted hours-limited park rangers who exhausted their 1400 hours in one year when employment opportunities arose in a subsequent year. Park rangers who return for a second employment tenure do not go through a formal interview process, but are usually required to fill out the necessary administrative/payroll paperwork.

37. Eight of the 11 hours-limited park rangers who were working at the time the petition was filed (Cardis Berry, Travis Bonneau, Michael Gaither, Alex Gastille, Katie Gribbon, Vicente Harrison, Dustin Meyer, and Jonathan Wilkins) began working in the summer or fall of 2012 and were still working in May 2013, without a break in service. These eight employees could work as long as August or September 2013, which is approximately when their 1400 hours would be exhausted. The majority of these employees were hired in August 2012, although a few were hired in June or July 2012. One of the 11 hours-limited park rangers (Nathan Hepp) worked in the 2012 season through September and then returned to work in January 2013. Another of the 11 hours-limited park rangers (Josh Larsen) began in October 2012 and was working in May 2013, but took a break in service during that time when he had a child. The remaining hours-limited park ranger (Nicholas McAfee) was hired in January 2013. Three of the 11 employees (Berry, Hepp, and Meyer) also worked as hours-limited park rangers before the 2012 season.<sup>7</sup> The employees hired to fill the 12 new hours-limited park ranger positions in May 2013 included one employee (Karras Kalivas) who previously worked as a park ranger for the City.

38. **Interactions with LIUNA-represented employees.** Park rangers in the central business district and some outlying parks interact with park technicians on a daily basis. Park rangers notify the park technicians about maintenance issues that they observe while patrolling the parks and park technicians seek assistance from park rangers regarding issues related to park patrons and drug or drinking activity in the parks. Some park rangers, such as McCoy, only see park technicians every few weeks. Park rangers occasionally work with park technicians and Parks Bureau seasonal maintenance staff to clean up homeless camps. Park rangers sometimes see or interact with arborists, urban forestry employees, seasonal maintenance workers, and the city nature section employees. Park rangers also occasionally interact with Water Bureau employees, parking enforcement officers, and other City employees.

39. **Transfer/promotion into LIUNA positions.** There is no history of an interchange or transfer of employees or promotional ladders between park ranger and LIUNA-represented positions.

40. **History of collective bargaining.** The park rangers have not previously been represented.

41. **Desires of employees.** The park rangers desire to be represented by LIUNA under the DCTU Agreement. Before filing the petition in this matter, the park rangers asked the City to recognize their positions as represented by LIUNA/DCTU. These employees are seeking

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<sup>7</sup>Due to the parties' failure to reach a stipulation, there is limited evidence regarding rehiring of hours-limited park rangers, other than the employees working at the time that the petition was filed.

representation through LIUNA because, unlike the other unions the employees contacted, LIUNA agreed to seek to represent both the full-time and 1400-hour park rangers.

#### Other Relevant Positions

42. In early 2013, the City employed Bryan Tierney in the Parks Bureau dog enforcement program. Tierney is hired on a seasonal basis under the CSA classification, currently makes \$15.00 per hour, and is unrepresented. He is supervised by Security Manager Hendricks. Tierney works both in the field and in an office environment, where he is developing and coordinating the dog enforcement program. He wears a shirt that identifies him as a Parks Bureau employee. Tierney previously worked as a park ranger, but was laid off in October 2012.

43. Adriana Hays is assigned to the Parks Bureau office working on a specific project. She is classified as a CSA, makes \$13.00 per hour, and is unrepresented. She previously worked as a park ranger.

44. There are approximately six other employees working under the classification of community outreach and information assistant in several other City bureaus. Colleen Keyes works under this classification in the Parks Bureau in an office environment, developing public relations and information materials for Parks Bureau programs. Keyes is paid \$33.39 per hour. McCoy once worked with Keyes when he helped write an instruction manual for Forest Park volunteers.

45. Parking code enforcement officers are represented by AFSCME under the DCTU Agreement, work out of BOT, and are responsible for patrolling assigned areas to enforce parking ordinances. In March 2013, AFSCME filed a grievance after the City announced its intent to have park rangers issue parking citations in City parks, which was not a park ranger duty at that time. AFSCME objected to the City assigning this work outside of the bargaining unit.

46. Water security specialists are represented by AFSCME under the DCTU Agreement, work out of the Water Bureau, and are responsible for water system maintenance and emergencies. In May 2013, AFSCME filed a grievance after the City announced its intent to have park rangers patrol Water Bureau properties, which was not a park ranger duty at that time.

#### CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The petitioned-for park rangers are appropriately included in the LIUNA/DCTU bargaining unit.

#### DISCUSSION

LIUNA has petitioned to add all park rangers to the bargaining unit that it currently represents under the DCTU Agreement. The City objects to the petition on the following grounds: (1) the park rangers lack a community of interest with other LIUNA/DCTU-represented

employees; (2) the park rangers do not represent a logical group of employees to be added to the bargaining unit; and (3) it is not appropriate to add the seasonal park rangers because they are “temporary employees.”

Under ORS 243.682(1)(a), we determine whether it is appropriate to add a group of employees to an existing bargaining unit based on “such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees.” Community-of-interest factors include “similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, [and] common supervisor.” OAR 115-025-0050(2). We have the authority to determine how much weight to give these factors. *OPEU v. Dept. of Admin. Services*, 173 Or App 432, 436, 22 P3d 251 (2001). We also only add the petitioned-for employees to an existing bargaining unit if they constitute “a logically defined group or class of employees (as opposed to interested individuals or fragments of a group).” *Oregon Public Employees Union, SEIU, Local 503 v. Executive Department, State of Oregon*, Case No. UC-59-87, 10 PECBR 456, 471 (1988).

We first address the City’s objection that the park rangers do not share a community of interest with the existing LIUNA-bargaining unit employees. In considering this issue, we jointly address the full-time and 1400-hour park rangers because all park rangers perform essentially the same work under the same conditions, work directly with other park rangers in the same locations and on the same shifts, work out of the same office, attend the same staff meetings, go through the same training, obtain the same certifications, and share the same line of authority and supervision. They also have similar interactions with other Parks Bureau and City workers. The primary differences between the full-time and 1400-hour park rangers, such as their pay and benefits, are the result of the City’s budgeting process and assignment of classifications. These differences are within the City’s discretion and do not significantly impact our analysis of the community of interest factors.

To be sure, there are differences between the park rangers and the LIUNA-represented employees. The park rangers have different duties, responsibilities, skills, and qualifications; and are paid under different wage scales. They also work under different classifications and do not share the same supervision except at the level of assistant bureau director and above. And although the full-time park rangers have health insurance, retirement, and other leaves and benefits in common with the bargaining unit employees, the 1400-hour park rangers only receive holiday pay and retirement benefits if they qualify for those benefits based on hours worked.

However, these “differences” are not uncommon among employees in a “collector” bargaining unit, such as that represented by LIUNA.<sup>8</sup> LIUNA represents employees in approximately 45 classifications. The employees in these 45 classifications also perform different work and have various skills, qualifications, knowledge, abilities, and training. For example, some LIUNA-represented classifications have minimal qualifications. Other classifications require

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<sup>8</sup>As set forth above, LIUNA is part of the DCTU coalition, which is essentially a coalition of seven collector City-wide bargaining units. The DCTU unions (of which LIUNA is one) represent employees in over 180 different classifications throughout the City, and those employees work in various bureaus and departments and have very different classifications, duties, responsibilities, skills, and qualifications.

employees to go through apprenticeship programs, be at a journey level, or have a specific college degree.

The salaries and benefits under the parties' agreement also reflect the "collector" nature of the bargaining units it covers. Employees under the agreement receive very different levels of pay and are eligible for different numbers of steps. The agreement also provides for a different level of benefits for permanent full-time, permanent part-time, and temporary employees. And, although the agreement excludes "seasonal" workers, it defines such workers as those employed for a limited duration up to 860 hours in a year. In fact, until recently, the LIUNA-represented turf maintenance technicians only worked nine months per year.

The park rangers also have a number of factors in common with the LIUNA-represented employees. The majority of employees in the Parks Bureau, including almost all of the employees who work outside, are already included in the LIUNA bargaining unit. The park rangers and these LIUNA-represented employees work under the same Parks Bureau director, who is the first step in a formal grievance process under the parties' agreement. One LIUNA-represented classification also works under the assistant director in the same Parks Bureau section as the park rangers. The park rangers and the LIUNA-represented Parks Bureau employees generally work outside under the same conditions and in the same or similar physical locations. The park rangers see or interact with some LIUNA-represented Parks Bureau employees during their work day. They even sometimes provide assistance to the park technicians and have a few similar duties, such as surveying the park for safety concerns, interacting with the public, and cleaning up homeless camps and drug paraphernalia. There is no evidence that the park rangers have similar commonalities with employees in other DCTU or non-DCTU bargaining units.

The City argues that the park rangers should not be included in the LIUNA bargaining unit because the park rangers are DPSST-certified security employees whose work is focused on safety and enforcement, while other LIUNA-represented Parks Bureau employees perform manual labor focused on the maintenance and care of properties and machinery. The City relies on *International Brotherhood of Teamsters v. Bay Area Hospital*, Case No. RC-36-01, 19 PECBR 898 (2002), in which this Board concluded that a separate unit of security employees was an appropriate bargaining unit because their work was sufficiently distinct from other hospital employees. In that case, however, we limited ourselves to addressing the issue before us—the union's petition to represent the security employees in a separate bargaining unit. We specifically qualified our decision by stating that we were not addressing the issue of whether the security employees also could appropriately be included within the hospital collector unit. The City's reliance on that case, therefore, is not persuasive.

Moreover, the work performed by the park rangers is insufficient to distinguish them from other LIUNA-represented employees so as to cause us to deny this petition. As previously stated, the LIUNA-represented employees perform a variety of duties. Although many perform manual labor, this is not the focus of work for all classifications. For example, the collection system video inspector operates a track-mounted camera to remotely inspect and identify issues in sewer and storm water pipes; the equestrian trainer develops and provides training to horses and mounted police officers; and the laboratory analyst prepares and performs laboratory work and analysis. In

addition, there are other commonalities. The “police impound technician” works with law enforcement and is required to have a specific certification to access police records. The parking collection technician is also required to go through a criminal background check.

The City also asserts that including the park rangers in the LIUNA bargaining unit would be detrimental because park rangers may be placed in the position of investigating other bargaining unit employees and, in periods of labor unrest or strike, the park rangers’ security obligations would conflict with those of the LIUNA members. However, there is little evidence of actual investigations conducted by park rangers of LIUNA-represented employees. In addition, the City makes no claim that these employees are prohibited from striking as emergency or public safety personnel under ORS 243.736. Therefore, if added to the existing LIUNA bargaining unit, they would be entitled to participate in a lawful strike under the same conditions as other bargaining unit employees.

The City’s assertion that the grievances filed by AFSCME support a lack of community of interest with the LIUNA-represented employees is not convincing. AFSCME has neither petitioned to represent the park rangers nor sought to intervene in the petition filed by LIUNA. AFSCME is only objecting to the City’s intent to assign work performed by employees it represents to the unrepresented park rangers. It is unclear how the grievances are relevant to our community-of-interest analysis.

In addition to the above-described shared community of interest, the park rangers expressed a desire to be represented in the LIUNA bargaining unit, which is a factor in determining whether the proposed unit clarification is appropriate. The park rangers are public employees within the meaning of ORS 243.650(19). As public employees, they “have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation.” ORS 243.662. The City objects to including the park rangers in the LIUNA bargaining unit. It also takes the position that the LIUNA-represented recreation leader unit is not appropriate for the park rangers. The City does not identify what bargaining unit, if any, it considers to be appropriate.

Our charge is to determine whether the proposed bargaining unit is *an* appropriate unit. This does not mean that the proposed unit is the *most* appropriate unit, or that other bargaining units are not appropriate. However, due to the small number of park rangers, it is unlikely that we would conclude that a separate unit of the park rangers is appropriate. This is especially true because designation of another bargaining unit in light of the number of existing bargaining units at the City would lead to additional fragmentation. *Laborers’ International Union of North America, Local #483 v. City of Portland*, Case No. RC-30-00, 19 PECBR 384 (2001). There is also insufficient evidence to conclude that another bargaining unit is more appropriate. Therefore, including the park rangers within the LIUNA bargaining unit is consistent with our policies of certifying the largest possible unit and providing an opportunity for these public employees to engage in collective bargaining.

## 1400-Hour Park Rangers

We next address whether the 1400-hour park rangers are “temporary employees” that should be excluded from the bargaining unit. In *Service Employees International Union Local 503, Oregon Public Employees Union v. Marion County (SEIU v. Marion County)*, Case No. UC-11-10, 24 PECBR 521, 552-54, *nunc pro tunc order*, 24 PECBR 557 (2011), this Board explained that, going forward, we would look to two tests used by the National Labor Relations Board (NLRB) to determine whether employees are “temporary”: (1) the date certain test; and (2) the reasonable expectation test.<sup>9</sup> See also *Kinney Drugs, Inc. v. N.L.R.B.*, 74 F3d 1419, 1434 (2d Cir. 1996) (explaining those tests); *NLRB v. S.R.D.C., Inc.*, 45 F3d 328, 331-32 (9th Cir 1995) (same); *NLRB v. New England Lithographic Co., Inc.*, 589 F2d 29, 33 (1st Cir 1978) (same). “Under the date certain test, an employee may be fully aware that his or her employment will be short-lived, but, as long as no definite termination date is known and the employee was employed on the eligibility and election dates, he or she will be eligible to vote.” *S.R.D.C.*, 45 F3d at 332 (quoting *New England Lithographic Co.*, 589 F2d at 34). Under the “reasonable expectation test,” “the Board looks at the employee’s reasonable expectation of permanent employment within the bargaining unit.” *S.R.D.C.*, 45 F3d at 331. The First and Ninth Circuits have treated these two tests as competing tests and have endorsed the “date certain” test as the better approach, whereas the Second Circuit has concluded that both are “relevant to the temporary employee issue.” *Kinney Drugs, Inc.*, 74 F3d at 1434. We need not determine, in this case, whether the “date certain” or the “reasonable expectation” test (or both) is preferred because, under either test, we conclude that the “1400-hour” park rangers are not “temporary employees,” and are, therefore, properly included in the proposed unit and eligible to vote.

As set forth above, “[u]nder the date certain test, an employee may be fully aware that his or her employment will be short-lived, but, as long as no definite termination date is known and the employee was employed on the eligibility and election dates, he or she will be eligible to vote.” *S.R.D.C.*, 45 F3d at 332 (quoting *New England Lithographic Co.*, 589 F2d at 34). Here, the 1400-hour park rangers are hired under the condition that they work no more than 1400 hours per calendar year. However, they are not given a specific date for the end of their employment at the time they are hired. The actual termination date varies based on the number of hours worked per week and whether a limited-hours park ranger is laid off before the exhaustion of their 1400 hours in a calendar year, works all of their 1400 hours in a calendar year, or is continued into the next calendar year without a break in service. Consequently, there is “no definite termination date” for these employees and they are not “temporary employees” under the date certain test.

The “1400-hour” park rangers also have a reasonable expectation of permanent employment. As set forth above, although these park rangers are limited to 1400 annual hours, they are not hired for just a specific project or for only a fixed period. They simply may not exceed

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<sup>9</sup>We also used the NLRB’s general rule for determining whether certain employees are “casual workers who are ineligible to vote on inclusion in the Union bargaining unit.” *SEIU v. Marion County*, 24 PECBR at 553. As set forth above, however, the City has withdrawn its objection that the petitioned-for park rangers are “causal employees.”

1400 hours per calendar year. Moreover, all but one of the 11 of the petitioned-for “1400 hour” park rangers were employed in 2012 and had their hours “renewed” in January 2013. Specifically, eight of the 11 hours-limited park rangers began working in the summer or fall of 2012 and were still working in May 2013, without a break in service. One of the 11 hours-limited park rangers worked in the 2012 season through September and then returned to work in January 2013. Another of the 11 hours-limited park rangers began in October 2012 and was working in May 2013, but took a break in service during that time when he had a child. Three of the 11 hours-limited park rangers also worked as hours-limited park rangers before the 2012 season.

The City has also routinely used the 1400-hour park rangers to fill full-time park ranger vacancies. Finally, although the 1400-hour employees are not “guaranteed” to be recalled the following year, they are told in hiring meetings that they can expect to be rehired if they do a good job and the budget allows. Under these circumstances, we conclude that the 1400-hour park rangers have a reasonable expectation of permanent employment (*i.e.*, those employees reasonably expect continued employment).

In disagreeing with the City’s contrary position, we observe that, under the reasonable expectation test, the expectation of permanent employment must only be reasonable, not certain. We also note that the City’s memorandum in aid of oral argument relies on evidence that was not admitted at the hearing. As set forth above, we have agreed with the ALJ’s rulings and we do not consider any such evidence proffered by the City in its memorandum, which was not admitted by the ALJ.

Finally, the City objects that the park rangers are not a “logically defined group of employees” to be added to the bargaining unit. Specifically, the City asserts that LIUNA’s failure to include Parks Bureau CSAs Tierney and Hays, who previously worked as hours-limited park rangers, shows that LIUNA has engaged in a selective choice of individuals. The City questions what will happen if either of these employees were reassigned as park rangers in the future.

The City’s objection misses the mark. The identified CSAs are not logically tied to the petitioned-for park rangers. The park rangers all perform essentially the same duties patrolling the City parks and have generally the same qualifications, skills, and certification requirements. From the evidence in the record, the current duties performed by CSAs Tierney and Hays are not similar to those of the park rangers. In addition, aside from having a classification and salary range in common, there is little evidence that Forest Park Ranger McCoy shares any community of interest with the other unrepresented employees in the community information and information assistant classification. The same is true for the 1400-hour park rangers and other unrepresented employees in the CSA classifications. The park rangers have little in common with other CSAs, except assignment to that classification, which is purely a result of budgeting. Therefore, the park rangers constitute a logically defined group of employees to be added to the LIUNA/DCTU bargaining unit.

ORDER

1. It is appropriate to include the following employees in the LIUNA/DCTU bargaining unit: all park rangers employed by the City of Portland, including full-time park rangers and park rangers limited by City administrative rule to 1400 hours per calendar year.

2. This Board's elections coordinator shall, as soon as practicable, conduct a secret mail ballot election among the group of unrepresented employees described above to determine whether they wish to be represented by LIUNA for the purposes of collective bargaining. Eligible voters are unrepresented park rangers employed by the City of Portland on the date of this Order who are still employed at the close of the election. The choices on the ballot shall be: Laborers' International Union of North America, Local 483, and No Representation.

3. Within 10 days of the date of this Board's final Order, the City shall provide an alphabetized list of the names, current home addresses, position titles, and job classifications for the eligible voters to the elections coordinator and LIUNA.

DATED this 6 day of March 2014.

  
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Kathryn A. Logan, Chair

  
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Jason M. Weyand, Member

  
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Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.