



Jim Steiner, Council Representative, AFSCME Local 2831, 688 Charnelton Street, Eugene, Oregon 97401, represented Incumbent.

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On April 5, 2005, the Federation of Oregon Parole and Probation Officers (FOPPO) filed this petition seeking to represent approximately 35 Lane County (County) parole and probation officers (PPOs) who were then in a bargaining unit represented by AFSCME Local 2831 (AFSCME). The petition was accompanied by a timely and adequate showing of interest. The County filed timely objections on April 22, 2005. Effective July 12, 2005, AFSCME disclaimed its interest in the existing PPO bargaining unit.

The issue presented for determination is: Is the bargaining unit of all adult PPOs employed by Lane County an appropriate unit?

### RULINGS

The ALJ made no rulings.

### FINDINGS OF FACT<sup>1</sup>

1. FOPPO is a public sector labor organization. Until July 12, 2005, AFSCME was the exclusive representative of approximately 35 PPOs employed by the County, a public employer.

2. The County employs approximately 1,470 employees in 13 departments. Of the 1,470 employees, approximately 1,238 are represented by 1 of 7 labor organizations:

A. AFSCME Local 2831 represents a strike-permitted, general-collector unit of approximately 608 employees across the County's 13 departments.

B. AFSCME Local 2831 represents a strike-permitted unit of approximately 35 nurses employed in public safety, youth services, and health and human services.

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<sup>1</sup>Except as otherwise modified by this Board, these findings of fact are based upon findings proposed by the County and agreed to by FOPPO, as well as findings of fact proposed by FOPPO to which the County did not object.

C. Until its disclaimer of July 12, 2005, AFSCME Local 2831 also represented a strike-prohibited unit of adult PPOs employed by the County.

D. Public Works Association Local 626 represents approximately 149 strike-permitted public works employees primarily engaged in road maintenance work.

E. Public Works Administrative, Professional, and Technical Staff represents approximately 109 strike-permitted public works employees including first-level supervisors, engineering staff, and property acquisition officers.

F. Prosecuting Attorneys Association represents approximately 24 strike-permitted attorneys in the district attorney's office.

G. Lane County Peace Officer Association (LCPOA) represents approximately 275 strike-prohibited, public safety and youth services employees. Most of the employees are corrections officers in the sheriff's office, road deputies, or group workers in youth services. There are a few sheriffs' office non-deputy positions included within the unit as well. None of the LCPOA-represented employees work in the health and human resources department. The majority of LCPOA-represented employees report to an independently elected sheriff.

3. Prior to 1997, PPOs were employed by the state and were represented by FOPPO in a bargaining unit consisting solely of PPOs.

4. As a result of new legislation, PPO functions were transferred to the County effective December 31, 1996. In January 1997, the PPOs previously employed by the state became County employees.

5. Under the terms of the AFSCME collector unit agreement, the PPOs were automatically included in the AFSCME general bargaining unit.

6. Since 1997, the County and AFSCME have negotiated four new or rollover agreements for the collector unit.

7. In 2003, the legislature amended ORS 243.736, making PPOs strike-prohibited employees subject to binding interest arbitration under ORS 243.742.

8. As a result of the 2003 amendments, the AFSCME general unit became a mixed unit due to the inclusion of the strike-prohibited parole and probation employees. Thus, the entire unit was subject to binding interest arbitration.

9. In January 2005, the County petitioned this Board to remove the strike-prohibited PPOs from the AFSCME general unit in order to avoid a mixed unit.<sup>2</sup>

10. By order dated February 25, 2005, we granted the County's petition, because the unit sought was facially appropriate and no objections were filed. We placed the adult parole and probation officers in the following bargaining unit:

“All adult parole and probation officers, as defined in ORS 243.676, employed by Lane County, excluding supervisory and confidential employees.” *Lane County v. AFSCME, Local 2831*, Case No. UC-4-05, 20 PECBR 856 (2005).

11. The County employs approximately 35 PPOs. These officers supervise adult offenders who have been put on probation by the courts or paroled from prison after serving all or part of a sentence for a criminal conviction.<sup>3</sup>

12. The adult PPOs are employed within the County's health and human services division. The division also provides family mediation services, developmental disability services, public health, and mental health services.

13. PPO functions are presently within a division of the department providing supervision and treatment services to a broad range of clientele. The services include not only the parole and probation function of supervising approximately 3,300 adult offenders, but also sex offender and chemical dependency treatment for opiate addiction and evaluation of court-mandated offenders for treatment referrals. The PPO function also includes investigative services for the courts and various partnerships with local law enforcement agencies such as meth lab investigation. Employees within the division have job classifications of administrative assistant, casework supervisor, clinical services supervisor, correctional services technician, mental health specialist, office assistant, public health officer, and PPO.

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<sup>2</sup>Originally, the County sought to assign the PPOs to the strike-prohibited Lane County Peace Officers Association (LCPOA). However, LCPOA disavowed any interest in representing the PPOs, thus rendering the petition inappropriate. The County then amended its petition to reflect only the redesignation of the PPOs from the AFSCME general unit into a separate strike-prohibited unit

<sup>3</sup>Supervision of juvenile offenders is provided by employees of the County's department of youth services. These employees are unrepresented.

14. The duties of PPOs include preparing reports for the courts, state parole board, and other correctional agencies; monitoring client progress in treatment programs provided by counselors; enforcement of supervision conditions through home visits, office visits, and other activities; and working in conjunction with law enforcement agencies and other public and private entities to solve client problems.

15. From 1997 to 2003, the parole and probation manager reported directly to the health and human services department head. In a 2003 economically-driven consolidation, the parole and probation function was made part of an expanded supervision and treatment services division within the department of health and human services. Linda Eaton heads the supervision and treatment division and supervises four managers within her division, three of whom supervise PPOs.

16. The three managers who directly supervise PPOs also supervise clerical and support personnel providing direct support to parole and probation functions. The support personnel positions are presently six office assistants and two correctional service technicians. All of these support positions perform work limited to the County's parole and probation functions; all are within the AFSCME general bargaining unit. The parole and probation support personnel within the AFSCME general unit are not subject to the petition that is the subject of these proceedings. All of the managers supervising PPOs were once PPOs. They are nonrepresented supervisory positions and not subject to this petition.

17. PPO functions include arranging for treatment services for supervised offenders, necessitating regular contact with other employees of the supervision and services division. The PPO function requires frequent contact with state court personnel, the state parole board, local and state police agencies, and Lane County sheriff corrections personnel.

18. PPOs have different training standards than enforcement deputies. There is no common chain of command between PPOs and sheriff's deputies and LCPOA does not wish to represent the PPOs.

#### CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The proposed unit of all County adult PPOs is an appropriate bargaining unit.

As a result of a change in the law, the County petitioned ERB in January 2005 to have the PPOs redesignated out of the general, strike-permitted AFSCME unit into a separate AFSCME-represented, strike-prohibited unit.<sup>4</sup> Because there were no objections to the County's petition, and the petition proposed a facially appropriate unit, this Board certified the unit sought by the County without a hearing. *Lane County v. AFSCME Local 2831*. FOPPO now petitions to represent employees in this unit.

The County objects, alleging that a unit of FOPPO-represented PPOs is not an appropriate unit because it would result in undue fragmentation, and it would be more appropriate either to include the PPOs in the LCPOA bargaining unit, or leave them in the current AFSCME strike-prohibited unit. LCPOA, however, has no interest in representing the PPOs and AFSCME has disclaimed its interest. That leaves the PPOs in the position of either voting for FOPPO or being unrepresented.

FOPPO argues that the County is precluded from objecting to the appropriateness of the unit based on collateral estoppel and res judicata. FOPPO is correct.

In *Coos County v. Oregon AFSCME Council 75, Local 2936*, Case No. UC-1-04, 20 PECBR 534 (2004) and *Jackson County v. SEIU Local 503, OPEU*, Case No. UC-2-04, 20 PECBR 544 (2004) we decided, in accordance with OAR 115-25-045, that in cases involving parole and probation officers this Board would, without hearing, grant a redesignation petition when the petition proposed a facially appropriate unit and there were no objections to the petition.<sup>5</sup>

As previously noted, the County filed just such a redesignation petition in *Lane County v. AFSCME, Local 2831*. On February 25, 2005, we granted the County's petition because the unit sought was facially appropriate and there were no objections to the petition.

In April 2005, FOPPO filed a petition to represent the County adult parole and probation officers in the unit that ERB found appropriate in February of that year. Based upon the principles of issue and claim preclusion, the County cannot now object to the appropriateness of the same unit it petitioned for – and we approved – in *Lane County v. AFSCME, Local 2831*. The County has made no attempt to show a substantial change in circumstances since the issuance of our certification in that case. Without such a change in

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<sup>4</sup>To leave the PPOs in the general unit would have resulted in the entire unit being strike-prohibited and subject to interest arbitration. *Lane County v. AFSCME, Local 2831*.

<sup>5</sup>OAR 115-25-045 provides in relevant part that ERB will conduct a hearing “[w]hen a valid petition has been filed and objections \* \* \* have been timely filed \* \* \*.”

circumstances, our previous unit determination is conclusive. See, e.g., *Federation of Oregon Parole and Probation Officers v. Polk County Community Corrections*, Case No. RC-71-88, 11 PECBR 667 (1989). Compare, *OSEA v. Rogue Community College*, Case Nos. C-175-83, C-253-83, 8 PECBR 6718 (1984); *AWOP 77* Or App 195, 712 P2d 186 (prior stipulation of parties to consent election agreement does not amount to *res judicata* or collateral estoppel in a subsequent representation proceeding).

Nevertheless, the parties have fully litigated the question of whether the proposed bargaining unit is appropriate. For reasons set forth below, we find that it is. ORS 243.682(1) provides that in designating an appropriate bargaining unit, we must consider 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.

*Community of interest.* There is no dispute that the PPOs share a community of interest amongst themselves. They all have the same job duties, skills, wage scales, benefits, hours, and working conditions.

Although they are all strike-prohibited employees, PPOs do not have a strong community of interest with the LCPOA-represented employees. There are no transfers or promotions between the two. They have separate chains of command and there is no common supervision. The training requirements for sheriff's deputies and PPOs are significantly different as well.

*History of collective bargaining.* Prior to being transferred to the County, the PPOs were included in a statewide PPO unit represented by FOPPO. They have only recently been redesignated into a separate AFSCME-represented, strike-prohibited unit.

This Board has treated certain groups of professional employees as "crafts" for purposes of unit determination, particularly where such employees desired to be represented by special-purpose labor organizations that represent only members of their craft. FOPPO is such an organization which represents only the professional craft of adult parole and probation officers. Such units constitute an exception to our preference for "wall-to-wall," or largest possible units. *Polk County Community Corrections*, 11 PECBR at 690.

*Desires of the employees.* The petition was supported by an adequate showing of interest.

*Fragmentation.* Currently, there are seven different bargaining units within the County. If the PPOs vote to be represented by FOPPO, there will still be seven bargaining units. Approval of this unit will not unduly fragment the County's workforce. It is already fragmented.<sup>6</sup>

ORS 243.662 grants public employees the right to “\* \* \* form, join and participate in the activities of the labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations.” “Except for elected officials and appointed board members, every person employed by a public employer has PECBA status as a ‘public employee,’ and therefore has the right to be included in a bargaining unit, unless the person is a confidential or supervisory employe.” *Treasure Valley Community College v. Treasure Valley Education Association*, Case Nos. UC-61/69-86, 10 PECBR 1, 17 (1987).

The PPOs have a sufficient community of interest which is distinct from other County bargaining units. The proposed unit is an appropriate one. The PPOs have indicated that they wish to have FOPPO as their representative. Based on their rights under ORS 243.662, they will be provided the opportunity to determine whether FOPPO will represent them.

### ORDER

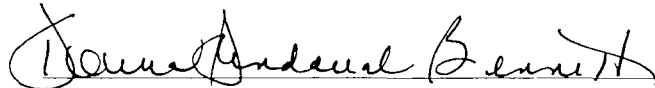
1. An appropriate unit is: All adult parole and probation officers, as defined in ORS 243.736, employed by Lane County, excluding supervisory and confidential employees.
2. The elections coordinator shall conduct a secret mail ballot election in the above bargaining unit for eligible employees to express their desires for or against collective bargaining representation. Eligible voters are those employees of the County employed in the bargaining unit on the date of this Order and who are still employed at the time of the close of the election. The choices on the ballot shall be: FOPPO and No Representation.

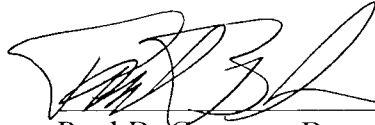
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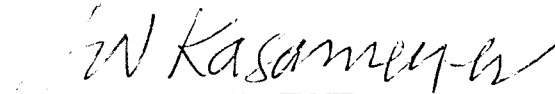
<sup>6</sup>As a general rule, we need not withhold approval of a proposed unit merely because it is not the most appropriate. *OSEA v. South Coast ESD, Region #7*, Case No. RC-10-00, 19 PECBR 58 (2001). In this case, however, we have previously ruled that a bargaining unit of Lane County PPOs is appropriate, and so the question of whether another unit might also be appropriate does not arise.

3. The County shall provide this Board and FOPPO with an alphabetical listing of names, home addresses, and classification titles of all eligible employees, within 20 days of the date of this Board's final Order. The County shall provide a set of mailing labels, with the addresses of eligible voters in alphabetical order, to the elections coordinator within 20 days of the date of this Board's final Order.

DATED this 17<sup>th</sup> day of February 2006.

  
Donna Sandoval Bennett, Chair

  
Paul B. Gamson, Board Member

  
James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.