

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. CC-03-09

(REPRESENTATION PETITION)

KLAMATH COMMUNITY COLLEGE)	
FACULTY ASSOCIATION, OEA/NEA,)	
)	
Petitioner,)	RULINGS,
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND ORDER
KLAMATH COMMUNITY COLLEGE,)	
)	
Respondent.)	
_____)	

On November 20, 2009, the parties filed written arguments in lieu of oral arguments on Respondent's objections to a Recommended Order issued by Administrative Law Judge (ALJ) Wendy L. Greenwald after a hearing held on August 7, 2009, in Salem, Oregon. The record closed on September 3, 2009, with the receipt of the parties' post-hearing briefs.

Christine N. Moore, Attorney at Law, Bennett, Hartman, Morris & Kaplan, Portland, Oregon, represented Petitioner.

Bruce Bischof, Attorney at Law, Law Offices of Bruce Bischof, Bend, Oregon, represented Respondent.

On May 20, 2009, Klamath Community College Faculty Association, OEA/NEA (Association) filed this petition seeking to certify a bargaining unit without an election under OAR 115-025-0000(1)(c). The bargaining unit proposed in the petition includes "[a]ll faculty employed by the Klamath Community College who work at least 0.2 FTE

or teach at least nine credit hours over the academic year, including librarians, faculty chairs, instructional coordinators, and other staff who perform instructional duties,” but excluding “[s]upervisory employees, confidential employees, classified employees, casual employees, and instructors who teach community education classes exclusively.” The petition was accompanied by an adequate showing of interest.

Klamath Community College (College) filed timely objections to the petition, asserting that (1) casual or limited adjunct faculty should not be included in the unit based on a lack of community of interest with regular instructors; (2) the inclusion of instructional coordinators is inappropriate because the College has no such position; and (3) the learning resource center coordinator position should not be included because it is a supervisory position.

At the beginning of the hearing, the Association withdrew its request to represent the learning resources center coordinator position and the College withdrew its objection to the inclusion of the instructional coordinators in the proposed bargaining unit. Therefore, the issue in this case is:

Is it appropriate to include adjunct instructors who work 0.2 FTE or more within the proposed bargaining unit?

RULINGS

1. At the conclusion of the hearing, the parties agreed that the Association would be allowed to supplement the record with the recognition clauses from the collective bargaining agreements for Clatsop, Clackamas, and Mt. Hood Community Colleges. That exhibit, which was marked as Exhibit P-25, is received into the record.
2. The other rulings of the ALJ have been reviewed and are correct.

FINDINGS OF FACT

1. The Association, a labor organization, has petitioned to represent a bargaining unit of employees at the College, a public employer. The petitioned-for unit includes “[a]ll faculty employed by the Klamath Community College who work at least 0.2 FTE [full-time equivalent] or teach at least nine credit hours over the academic year, including librarians, faculty chairs, instructional coordinators, and other staff who perform instructional duties,” but excluding “[s]upervisory employees, confidential

employees, classified employees, casual employees, and instructors who teach community education classes exclusively.”

Background

2. The College opened in 1996 and is the newest of the 17 community colleges in the state. The primary function of the College is education.

3. The College is the fastest growing community college in the state. Its enrollment increased by 141 percent from the 2007-08 to the 2008-09 academic year. The College enrolled 1,319 students during the 2007-08 academic year. However, the actual number of students attending the College at that time was approximately 900, because the College operates as a funding pass-through for 400 enrolled students who took courses at the Klamath Adult Learning Center.¹

4. For the 2007-08 academic year, the approximate student enrollment at other community colleges was: Portland Community College – 23,972; Chemeketa Community College – 11,405; Lane Community College – 11,393; Mount Hood Community College – 8,591; Clackamas Community College – 7,722; Linn Benton Community College – 6,693; Rogue Community College – 4,388; Central Oregon Community College – 4,160; Umpqua Community College – 3,517; Southwestern Oregon Community College – 3,167; Treasure Valley Community College – 2,641; Blue Mountain Community College – 2,462; Clatsop Community College – 1,381; Columbia Gorge Community College – 981; Oregon Coast Community College – 432; and Tillamook Bay Community College – 360.

5. Gerald Hamilton has been president of the College since September 2007. Hamilton was on the original committee involved with the formation of the College in 1994 and served on its Board from approximately 1995 to 2001.

6. Karren Andrews has worked as the executive director of the College’s human resources department since January 1997. The human resources department does not currently convert credit hours to an FTE formula for any purpose.

7. The dean for learning services oversees the College academic divisions, which include health sciences, industry and engineering, arts and communication, business and management, human services, social sciences, and natural resource systems.

¹Instructors at the Klamath Adult Learning Center are not subject to the petition at issue here.

8. President Hamilton believes that the College has been successful because of its current flexibility to respond quickly to identified community needs by creating new courses that meet those needs and by eliminating courses that no longer meet those needs. For example, the College created computer web design classes based on identified student interest and eliminated other computer courses in which enrollment had dropped. Another example of how the College is able to meet community needs occurred in the spring term of 2009, when the College offered a free program to unemployed individuals. The College created the program in three days and hired adjuncts to teach it.

9. Jamie Jennings is the department chair for the human services division and Keith Duren is the department chair for the natural resource systems division. Jennings and Duren participated in faculty senate meetings during which faculty discussed concerns about the stability of their working conditions. Among the concerns raised by faculty at these meetings were the lack of contracts for full-time faculty; turnover in deans; and changes in job descriptions, class size, and tutoring services, which were made without discussion with the faculty. Because the College has the lowest ratio of full-time faculty to students of all the Oregon community colleges, faculty were also concerned that the continuing increase in adjunct faculty would adversely affect the quality of education. These concerns subsequently led the Association to file the petition in this matter.

10. Eleven community colleges have the following single bargaining units of full-time and part-time faculty:² (1) the Blue Mountain Community College unit includes faculty who teach at least three instructional units (IUs) and are employed for two terms per year, or teach 13 IUs in one term; (2) the Central Oregon Community College unit includes all full-time and adjunct faculty; (3) the Chemeketa Community College unit includes all faculty who work more than 20 percent per academic term; (4) the Columbia Gorge Community College unit includes all full-time and part-time faculty who teach more than one three-credit class or 30 hours per term; (5) the Lane Community College unit includes faculty who work more than 20 percent of a FTE workload in a term, or 20 percent or more of an annual FTE workload; (6) the Rogue Community College unit includes faculty who work more than 20 percent FTE in a term, work 20 percent or more in three terms, or work in 15 or more qualifying terms; (7) the Southwestern Oregon Community College unit includes faculty who work more than 50 percent FTE on a 10-, 11-, or 12-month contract; (8) the Treasure Valley

²Faculty in these units may also include librarians, counselors, and other non-instructional employees. Some units also include faculty who teach non-credit classes.

Community College unit includes faculty who work 55 percent or more of a regular full-time academic year workload; (9) the Portland Community College unit includes faculty who work 30 hours or more in an academic term or who teach a three-credit hour class or more in an academic term; (10) the Umpqua Community College unit includes faculty who work .68 FTE or more per academic year; (11) the Oregon Coast Community College unit includes all full-time and part-time faculty; and (12) the Linn Benton Community College unit includes faculty who work 50 percent or more on an academic year contract.

11. Three community colleges have the following separate bargaining units for full- and part-time faculty: (1) Clatsop Community College has one bargaining unit which includes all faculty employed one-half time or more on annual contracts and another bargaining unit which includes all part-time faculty who work more than 20 percent but less than 50 percent of an annual FTE; (2) Mount Hood Community College has one bargaining unit which includes faculty who have a workload of 50 percent or more FTE within three terms in a fiscal year and another bargaining unit which includes faculty who have a workload of less than 50 percent; and (3) Clackamas Community College has a unit of full-time contracted faculty and a unit of all part-time faculty.

12. The faculty at Tillamook Bay Community College are not currently represented.

Job Classifications, Duties, and Responsibilities

13. Current faculty classifications are: department chairs (six employees), 12-month teaching faculty (three employees), nine-month teaching faculty (10 employees), and adjunct faculty (76 employees).³ The 12-month faculty classification is a grandfathered position resulting from a change in the faculty classification structure. The College has job descriptions for department chairs and nine- and 12-month faculty. There is no job description for adjunct faculty.

14. Department chairs' duties include administration, teaching, professional development, and college/community service. Their administrative duties are carried out

³We will use the term faculty to refer to all teaching classifications – department chairs, nine- and 12-month faculty, and adjunct faculty. We will use the term full-time faculty to refer to department chairs and nine- and 12-month faculty. The parties used the terms adjunct faculty and part-time faculty interchangeably to refer to faculty working on term-to-term contracts. For the sake of consistency, we will use the term adjunct faculty.

in consultation with department faculty and the dean for learning services. The department chairs' administrative duties include: coordinating the recruitment, hiring, and retention of adjunct faculty; participating in adjunct and full-time faculty evaluations; coordinating the preparation of annual and term class schedules, including faculty class assignments; initiating necessary class schedule adjustments; reviewing and maintaining the department's curriculum; making department budget recommendations; assisting students with complaints; representing and advocating for department needs; insuring that faculty meet scheduled deadlines and commitments; being on campus during non-teaching workdays; and assisting in the department's quarterly productivity analysis.

15. Department chairs teach 36 credits per year in addition to their administrative duties. In addition to teaching assigned classes, they also propose and develop new classes; modify their curriculum and/or teaching style based on assessment results and professional development experiences; maintain student office hours; and establish and provide student syllabi. Other related duties may include "advising organizations and groups at in-services, and participation in such activities, committees, and councils as deemed necessary."

16. The 12-month faculty teach 54 credits per year during four terms per academic year. The nine-month faculty teach 44 and 45 credits per year during three terms per academic year. The nine- and 12-month faculty's teaching duties are the same as those of the department chairs. These employees' other duties include professional development and college/community service, such as serving on committees and attending meetings.

17. All full-time faculty are required to hold one office hour per week for every class they teach. Each full-time faculty office is shared by two employees.

18. Adjunct faculty are required to "perform the duties assigned, accept responsibilities associated with that assignment, to follow Klamath Community College course curriculum and adhere to the Klamath Community College Policies adopted by the Klamath Community College Board of Education." In addition, adjuncts are required to submit a course syllabus by the end of the second week of classes and to input grades by a specified date. Adjuncts also "shall participate in required in-service activities and shall maintain outside of class availability, as prescribed by the administration."

19. Adjuncts are generally responsible for teaching their assigned courses in the same manner as full-time faculty and are required to use the same teaching-related procedures and forms, including the course syllabus, academic integrity concern, and

student withdrawal/drop forms. Adjuncts are not required to hold office hours, and are not expected to remain on campus when they are not teaching classes, unless their agreement with the College requires that they do so. Some adjuncts make themselves available to students before or after their classes. The College contracted with one adjunct to hold office hours to advise the students in the criminal justice program. There is only one office assigned to all of the adjunct faculty. Adjuncts are invited to participate in graduation in the same manner as full-time faculty and are provided with gowns, although few actually attend.

20. Currently, approximately 60 percent of the courses at the College are taught by adjunct faculty. To limit costs, the College does not usually hire adjuncts to teach more than 22 credit hours per academic year. By limiting the hours adjuncts teach, the College is not required to contribute to the Public Employee Retirement System (PERS) for the adjuncts or pay other benefits. During the 2008-09 academic year, 53 of the 76 adjuncts taught nine credits or more per year. Of these 53 adjuncts, 23 adjuncts taught between nine and 12 credits per year, nine adjuncts taught between 13 and 18 credits per year, 14 adjuncts taught between 19 and 24 credits per year, and seven adjuncts taught more than 24 credits per year. During 2008-09, 23 of the 76 adjuncts taught classes for only one term, 10 adjuncts taught for two terms, 26 adjuncts taught for three terms, and 17 adjuncts taught all four terms.

21. The College expects all faculty to engage in professional development. The College offers some professional development activities on campus, and also has professional development funds available for use by all faculty.

22. Full-time faculty are required to attend an all-day in-service training session each fall and are also required to attend other in-service training throughout the year. Adjunct faculty have a separate two-hour in-service training each fall; some adjuncts may be invited to attend some full-time faculty in-service sessions. Last year, the College held an off-campus retreat, to which all faculty were invited. The College also offers training sessions, called "Lunch and Learns," to which all faculty and sometimes other College staff are invited.

23. Full-time and adjunct faculty are both covered by most of the College Board human resources policies, including standards of conduct, a code of conduct, and a disciplinary procedure. Some policies apply only to full-time faculty, such as those which cover full-time faculty benefits and layoff.

Hiring and Qualifications

24. Full-time faculty positions are advertised on the College's website. In addition, the College also conducts a broader search. The College uses a formal hiring process to fill full-time faculty positions. A team, made up of representatives from the College human resources department, faculty from the appropriate department, the department chair, and the dean of learning services, interviews applicants. At these interviews, the team discusses the applicant's relocation and incorporation into the local community; these discussions may give the applicant an expectation of long-term employment.

25. Adjuncts are primarily recruited from the community or local area. Adjunct faculty positions are posted on the College website and may be advertised by the human resources department. Department chairs may also contact community members in businesses or industries to attempt to recruit adjunct faculty. Department chairs will generally interview applicants for adjunct positions, and the department chairs may consult with other department faculty about the applicants before making a recommendation to the dean of learning services. Sometimes the dean will also meet with the applicants.

26. The dean of learning services hires all faculty and adjuncts. The College reviews the qualifications of each applicant before hiring the applicant.

27. Under College Board policy, the minimum requirements for all faculty teaching positions are based on the level of courses the faculty member will teach. Generally, all positions require an advanced degree and expertise in the area in which the applicant will be teaching.

28. Currently, College faculty have the following degrees:

- All department chairs have a master's degree
- Two 12-month faculty have a master's degree
- One 12-month faculty has less than a bachelor's degree
- All nine-month faculty have master's degrees
- Seven adjunct faculty have doctorate degrees
- 28 adjunct faculty have a master's degree
- 17 adjunct faculty have a bachelor's degree
- Six adjunct faculty have less than a bachelor's degree.

29. The majority of adjuncts work other full-time or part-time jobs. This includes the Klamath City Police Chief, who teaches one three-credit course per year; the District Attorney, who teaches 15 credit hours over three terms; a number of secondary teachers who teach various courses and terms; and other professionals. The College often hires these employees because their other work is relevant to the courses they teach. In such cases, the College schedules the adjunct's classes around his/her professional work schedule. Some full-time faculty also have other jobs or professions.

Terms of Appointment

30. The College does not grant tenure to full-time faculty. The College gives each full-time faculty an annual letter of appointment in the spring extending the faculty member's employment for the next academic year. The letter of appointment for 2009-10 also provided "[p]lease note that due to the ongoing economic challenges facing Klamath Community College, financial exigency may require a reduction-in-force and you may be subject to potential layoff." (Emphasis in original.)

31. Current full-time faculty have worked for the College as follows: department chairs – between one and seven years, for a median of 3.33 years; 12-month faculty – between three and 11 years, for a median of seven years; and nine-month faculty – between zero and five years, for a median of 2.4 years.⁴ Full-time faculty have never been laid off, although the appointments of two full-time faculty were not renewed for the next academic year.

32. Adjunct faculty are hired on a term-by-term agreement, which is usually signed just prior to the start of a term. Adjunct faculty hired to teach more than one assignment in a term sign a separate agreement for each assignment. The adjunct faculty agreement provides that an assignment "is predicated upon sufficient enrollment to warrant holding the course indicated above for which services are required." Human resources director Andrews reviews these agreements with the adjunct faculty and makes sure they understand there is no guarantee that they will continue in their employment in a subsequent term.

33. Current adjunct faculty have worked for the College between zero and 11 years for a median of 4.33 years. Of the current adjuncts who teach at least nine credits per year, five began teaching in 1999; three began teaching in 2000; four began teaching in 2001; three began teaching in 2002; three began teaching in 2003; four began

⁴The number of years worked at the College for nine-month faculty does not include years worked as an adjunct.

teaching in 2004; two began teaching in 2005; four began teaching in 2006; 10 began teaching in 2007; eight began teaching in 2008; and four began teaching in 2009.

34. Nine-month faculty who teach during the summer are required to sign an adjunct faculty agreement and are paid at the adjunct faculty rate.

35. Department chairs Jennings and Duren coordinate the preparation of class schedules in their divisions. In developing the human services academic year schedule, Jennings consults with full-time and adjunct faculty to determine which faculty will teach which courses. Jennings also prepares term schedules, which specify the name of the faculty employee teaching each course. Students select courses from the schedule during registration. At the beginning of August, Jennings prepares the final schedule for the winter term. When Duren prepares the academic year schedule, he prefers to assign adjuncts an entire course sequence, such as Biology 1, 2, and 3, for the year. Duren and Jennings believe that some adjuncts have an expectation of continued employment with the College because of the class scheduling process and the adjuncts' long-term employment with the College.

36. The College cancels classes with insufficient enrollment. This can occur even a few days before the beginning of a term. If a cancelled class was assigned to an adjunct, the agreement with that employee is void. Full-time faculty have priority in assignment to classes. If the cancelled class was assigned to a full-time faculty employee, a class previously assigned to an adjunct may be transferred to the full-time employee or the full-time employee may choose to pick up another class during a subsequent term.

Interchange of Duties and Advancement Opportunities

37. Full-time and adjunct faculty teach many of the same classes and students. Full-time and adjunct faculty may also substitute for each other during absences.

38. At least 12 current full-time faculty employees began their employment as adjunct faculty. Jennings, who began her employment at the College as an adjunct in June 2000, taught one class her first term, two classes her second term, and three classes her third term. She was hired the next year as a full-time faculty employee.

39. All faculty may participate in their department or program's advisory committee. The purpose of these committees is to review and assess all courses and programs. Ninety percent of the faculty on the criminal justice advisory committee are adjuncts. Community members are also invited to participate in these meetings.

40. Jennings, whose office is located next to the adjunct faculty office, interacts daily with adjunct faculty.

41. The College recently approved creation of a faculty senate, which is composed of both full-time and adjunct faculty. Faculty requested the formation of the faculty senate so they could have a voice that is recognized by the administration. The senate's elected officers, who are all currently full-time employees, participate in some College committees, such as the monthly directors' meeting. The senate is a forum where faculty can talk about academic issues, including the quality of learning, professional development, and academic excellence.

Hours

42. Classes run from 8:30 a.m. to 9:00 p.m. The majority of full-time faculty teach during the day, but some teach in the evening. Adjunct faculty teach both during the day and in the evening.

Salary

43. The College conducts an annual study of full-time faculty wages and benefits at the following comparable colleges: Blue Mountain Community College, Clatsop Community College, Columbia Gorge Community College, Rogue Community College, Southwestern Community College, Treasure Valley Community College, and Oregon Institute of Technology. The purpose of the study is "to ensure Klamath Community College employee salaries and benefits are appropriate and provide for the recruitment and retention of quality and talented staff and faculty." Salary for College department chairs is between \$54,000 and \$66,000 per year. Starting salary for a nine-month College faculty member is \$37,500. Full-time College faculty are paid on the last day of the month.

44. The College does not conduct a compensation study for adjunct faculty salaries. Adjuncts are paid \$415 for each credit taught plus an hourly fee for labs. Their salary is paid on the last day of each month in the term in which they teach.

Supervision

45. The College recently incorporated its evaluation procedures into a document entitled Faculty Excellence Program Procedural Manual (Manual). The Manual establishes teaching standards, evaluation criteria, and quarterly deadlines, which apply to all faculty.

46. The dean for learning services evaluates full-time employees. Full-time faculty are evaluated in the areas of teaching, management of discipline, and college leadership. Their evaluation process includes quarterly student evaluations, an annual self-evaluation, an annual peer observation and evaluation, and an annual observation and evaluation by the dean.

47. Department chairs evaluate adjunct faculty. Adjunct faculty evaluations generally include observations by the chair and quarterly student evaluations. Chairs have some flexibility in determining the best evaluation approach for adjuncts, and self-evaluations of long-term adjuncts are one of the evaluation methods listed as an option in the Manual. Adjuncts may also be evaluated on their involvement in the College advisory committees or other college activities.

48. Department chair Jennings observes and evaluates the adjuncts in her department. The dean then reviews Jennings' evaluations and the student evaluations for the department adjuncts. Jennings does not have independent authority to dismiss an adjunct. However, Jennings, the dean, and the human resources director have decided as a group not to continue an adjunct. Jennings has also initiated the process leading to the dismissal of an adjunct and has not renewed adjunct contracts as directed by the dean.

Healthcare and Other Benefits

49. Full-time faculty benefits include: PERS, health insurance, life insurance, accident insurance, disability insurance, sick leave, bereavement leave, personal leave, holiday leave, unlimited College tuition waivers, and coverage under the employee assistance program. Department chairs are also eligible for vacation leave.

50. Adjunct faculty are eligible for PERS if they already work for a PERS employer or if they work a minimum of 600 hours annually for the College. They also receive a College tuition waiver equal to the number of credits/hours of instruction they provide. The College also does not deduct time off due to sick leave from their wages.

Physical Location

51. Classes are generally conducted on the College campus, although a few classes, such as golf, are taught off campus.

Bargaining History

52. These employees have not been previously represented.

Desires of Employees

53. The petition was supported by an adequate showing of interest.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The appropriate bargaining unit is:

All faculty employed by the Klamath Community College who work at least 0.2 FTE or teach at least nine credit hours over the academic year, including librarians, faculty chairs, instructional coordinators, and other staff who perform instructional duties, but excluding supervisory employees, confidential employees, classified employees, casual employees, and instructors who teach community education classes exclusively.

DISCUSSION

The Association proposes a bargaining unit composed of all faculty at the College, except those working less than .02 FTE or nine credit hours per year. The College objects to the inclusion of the adjunct faculty in this unit, based on the nature of their employment. According to the College, adjunct faculty lack an expectation of continued employment with the College and cannot be appropriately included in the same bargaining unit as full-time employees. We conclude that the petitioned-for unit is appropriate within the meaning of ORS 243.683(1)(a).

Standards for Decision

In designating an appropriate bargaining unit, we consider factors such as community of interest, wages, hours, and other working conditions of employees; the history of collective bargaining; and employees' desires. We may determine a unit to be appropriate, even though some other unit might also be appropriate. ORS 243.682(1)(a). The term "community of interest" includes such factors as "similarity of

duties, skills, benefits, interchange or transfer of employees, promotional ladders, common supervisor * * *." OAR 115-025-0050(2).

We have repeatedly emphasized the importance of these factors in determining an appropriate bargaining unit. We have explained that "commonality of interest" is significant in designating a bargaining unit because the resulting unit must function for the benefit of all included employees. Bargaining units in which members share a sufficient community of interest will effectuate the purposes and policies of the Public Employee Collective Bargaining Act (PECBA) by decreasing labor unrest and increasing equality of bargaining power. *United Employees of Columbia Gorge Community College, Local 4754, AFT, AFL-CIO v. Columbia Gorge Community College*, Case No. UC-19-01, 19 PECBR 452, 458 (2001), citing *AFSCME Council 75 v. State of Oregon and AOCE*, Case No. UC-37-97, 17 PECBR 767, 774-775 (1998).

We generally prefer to certify the largest possible appropriate unit. *See, Columbia Gorge Community College*, 19 PECBR at 460; *Lane Community College Employees Federation, Local 2417, AFT, AFL-CIO v. Lane Community College*, Case No. UC-19-97, 17 PECBR 423, 428 (1997); and *Teamsters Local Union #223 v. North Lincoln Hospital*, Case No. RC-11-96, 16 PECBR 672, 681 (1996). We do so because of the many important public policies that are promoted by larger bargaining units. Larger bargaining units establish greater equality of bargaining power between employees and employers. They also protect the public from interruption of necessary public services because of labor disputes and work stoppages. In addition, larger units encourage workplace stability and reduce the burden that public employers would bear if they had to negotiate with many splinter groups. *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). Accordingly, we generally favor wall-to-wall bargaining units. We will certify a smaller unit as a fragment of the employer's work force only if the employees' community of interest in the proposed unit is clearly distinct from that of other employees, or there are other compelling reasons to create a smaller unit. *Id.* at 885, citing *Teamsters Local 670 v. Linn County*, Case No. C-40-80, 5 PECBR 3081, 3088 (1980).

We begin our analysis of the Association's proposed bargaining unit by considering the community of interest factors its member share.

Similarity of qualifications, skills, and duties. Full-time and adjunct faculty have similar qualifications and skills. The College requires the same minimum qualifications for all faculty, which are determined by the level of the course the faculty member teaches. Faculty are generally required to have advanced degrees and expertise

in their discipline. As a result, most of the current full-time and adjunct faculty employees have a master's degree or higher in their subject area or a related area.

The primary duty of the full-time faculty and adjuncts is also similar. All teach students and perform the duties that are a necessary part of this job, such as preparing course syllabi, preparing for and teaching classes, assigning and grading homework, and issuing course grades. Full-time and adjunct faculty also participate in professional development opportunities, work together on advisory or department committees, and participate in the faculty senate. Full-time faculty and adjuncts have different in-service training requirements, however.

Interchange/transfer of duties and promotional opportunities. There is some interchange of duties between full-time and adjunct faculty. Although the College gives priority to full-time faculty in making class assignments, full-time faculty and adjuncts teach similar classes and students. Adjuncts also may substitute for absent full-time faculty.

While no true promotional ladder exists for any faculty, many adjuncts move into full-time positions. The evidence shows that more than half of the current full-time faculty began working at the College in an adjunct position.

Supervisory structure. The dean of learning services decides whom to hire for full-time faculty and adjunct positions. The dean's decision to hire a full-time faculty member is based on a committee's recommendation; the decision to hire an adjunct, however, is based on the department chair's recommendation. Other than the hiring process, full-time faculty and adjuncts do not share a common supervisory structure. Although all faculty are subject to the same evaluation standards, department chairs generally evaluate adjuncts and the dean of learning services generally evaluates full-time faculty.

Wages, benefits, and other working conditions. Full-time faculty and adjuncts have different wages, benefits, and working conditions. The College pays full-time faculty a salary for teaching during the academic year. By contrast, the College pays adjunct faculty only for the credit-hours they teach. Full-time employees have formal job descriptions; adjuncts do not. The College gives full-time employees letters of appointment for the year; the College hires adjuncts on a term-by-term, assignment-by-assignment basis. Although the College does not grant faculty tenure, it gives full-time employees reason to expect that they are on a career path. Adjuncts receive few of the benefits provided to full-time faculty: they do not receive the leaves, insurance benefits, and unlimited tuition waiver that full-time faculty do.

However, full-time and adjunct faculty have some similar working conditions. All faculty share a common payday and work site. All are subject to most of the same College policies, standards of conduct, code of ethics, and discipline procedures. In addition, many adjuncts develop an expectation of continuing employment at the College because of the long-term nature of their employment and the class scheduling process. Of the 76 adjunct faculty, 54 (approximately 70 percent) have been employed by the College for two or more years. Finally, when nine-month faculty work during the summer, they are paid the adjunct rate and are required to sign an adjunct contract.

Hours and workload. The hours of work for full-time faculty and adjunct faculty are determined by their course schedules. Full-time faculty are also required to be available on campus and hold office hours, while adjunct faculty generally are not.

History of collective bargaining. These employees have never been represented.

Desires of the employees. The petition was supported by a sufficient showing of interest.

After reviewing these statutory community of interest factors, we conclude that a sufficient community of interest exists to create a bargaining unit of full-time and adjunct faculty who work at least 0.2 FTE or teach nine or more credits during the academic year. These employees have the same primary job responsibility, similar job qualifications, most of the same duties, usually work in the same location, work with the same students, have some interchange of duties and promotion-type opportunities, and work on the same committees that decide which College courses will be offered.

The history of collective bargaining is not relevant here, since the employees at issue have not previously been represented.

The College's Objections

The College argues that the adjuncts and full-time faculty share an insufficient community of interest because of differences in wages, benefits, hiring process, evaluation, in-service training requirements, office space, and required office hours. The College asserts that the only thing the full-time faculty and adjuncts have in common are their teaching duties, and that factor alone is not enough to justify including adjuncts and full-time faculty in a single bargaining unit. However, we have found similarities other than teaching duties on which we base our finding of a community of interest

among College faculty, including the employees' similar skills and qualifications, interchange of duties, involvement in committees, and promotion-like opportunities.

In addition, the primary duty of *all* faculty, which is teaching, is essential to the College's primary function of educating students. As a result, we give the greatest weight to this community of interest factor.⁵

The Oregon Court of Appeals addressed the significance of community of interest factors and differences in wages and benefits in *OPEU v. Dept. of Admin. Services*, 173 Or App 432, 438-439, 22 P3d 251 (2001). The court concluded that differences between the status and rights of temporary employees and those of regular employees provide "no compelling basis" not to join the groups in a single bargaining unit. The court noted that the union could address these disparities by bargaining appropriate provisions in the collective bargaining agreement. The court held that differences in working conditions "do not override, as a matter of law, the community of interest that those [regular] employees, as well as temporary employees, have in broader issues relating to pay, hours and working conditions." *Id.* at 439.

Just as the court did in *OPEU v. Dept. of Admin. Services*, we conclude that the strong community of interest shared by College full-time and adjunct faculty supports creation of a single bargaining unit that includes both groups.

Our determination is consistent with our prior decisions. We have consistently held that academic/professional employees at institutions of higher education have a community of interest. *See, Associated Academic Professionals (AAP), AFT, AFL-CIO v. Eastern Oregon University*, Case No. RC-23-02, 20 PECBR 108, 120 (2002); *University of Oregon Chapter, American Federation of Teachers v. University of Oregon and Oregon State System of Higher Education*, Case No. RC-46-87, 10 PECBR 265, 276 (1987), *aff'd.*, 92 Or App 614, 759 P2d 1112 (1988); *Portland Community College Faculty Federation v. Portland Community College*, Case No. UC-34-87, 10 PECBR 700, 732-733 (1988); and *AAUP, et al., v. Oregon State University*, Case No. C-66-82, 6 PECBR 5604 (1983). Here, we find no reason to deviate from the conclusion we reached in those cases under the facts of this case.

⁵We determine what weight to give to the various community of interest factors listed in ORS 243.682(1)(a). *Welches School Dist. v. Welches Education Assn.*, 116 Or App 564, 569, 842 P2d 437 (1992); *OPEU v. Dept. of Admin. Services*, 173 Or App 432, 436, 22 P3d 251 (2001).

The College also argues that the adjuncts lack a sufficient community of interest with full-time faculty because most adjuncts work fewer hours than the full-time faculty, are hired on a term-to-term basis, and have other professional employment. We disagree.

We have never held that the amount of time an employee works is, by itself, a significant community of interest factor. In *Lane Community College Employees Federation v. Lane Community College*, UC-19-97, 17 PECBR 432 (1997), we added regular less than .5 FTE employees to a bargaining unit of regular .5 FTE and more employees because of shared community of interest factors such as work location, common supervision, and similarity in assigned duties. We concluded that “[w]hile the *amount* of FTE employment is not particularly significant, the *regularity* of less than .5 FTE employment is a defining characteristic for inclusion of personnel in the .5 FTE and more bargaining unit.” *Id.* at 429. In *Eastern Oregon University*, 20 PECBR at 122, we created a single bargaining unit that included part-time and full-time college librarians and teaching faculty. We noted that the part-time instructors shared numerous community of interest factors with the full-time faculty, and that the primary difference between the two groups “is that less than .5 FTE resource faculty do not work as many hours nor do they receive the same benefits as those employed more than .5 FTE.” *Id.* We did not find these differences “compelling,” however, and concluded there was no reason to deviate from our practice of designating a single bargaining unit of all employees in an appropriate classification, regardless of their status as full-time or part-time employees. *Id.*⁶

Here, as in *Eastern Oregon* and *Lane Community College*, many part-time adjunct faculty have long-term and on-going employment relationships with the College. More than half of the adjuncts in the proposed bargaining unit have worked for the College for more than three years, teach more than 12 credit hours per year, and teach three or more terms per year. Although many adjuncts have jobs in addition to their employment with the College, they nonetheless share strong community of interest factors with full-time faculty while at the College. For these reasons, it is appropriate to include adjuncts in the same bargaining unit with full-time faculty.

⁶See *Mid-Valley Bargaining Council(OEA/NEA) v. Greater Albany Public School District 8-J*, Case No. C-17-81, 6 PECBR 4766, 4775 (1981) (half-time and full-time teachers are appropriately included in the same bargaining unit because “[w]hether an employe works full time or part time has little significance in designating an appropriate unit.”), and *Laborers’ International Union of North America Local 483 v. City of Portland*, Case No. RC-22-02, 20 PECBR 208, 215 (2003) (when the number of hours worked is the only difference between bargaining unit members and employees the union wants to add to the unit, “[t]hat distinction is not a sufficient basis to warrant the creation of a separate bargaining unit of employees.”).

In support of its argument, the College refers to this Board's "longstanding practice of certifying separate bargaining units in community colleges for full-time (or, some cases, half-time or more) employees and those whose work schedules do not qualify them for membership in the first unit." *Portland Community College Faculty Federation, Local 2277, OFTEHP v. Portland Community College*, Case No. UC-41-95, 16 PECBR 510, 515 (1996). However, we no longer follow this practice. In fact, we eventually approved the merger of the separate full-time and part-time faculty bargaining units at Portland Community College. *Portland Community College Faculty Federation, Local 2277 of the American Federation of Teachers, AFT-Oregon, NOLC, AFL-CIO v. Portland Community College*, Case No. UC-34-99, 18 PECBR 276 (1999). As discussed above, we also approved a bargaining unit of all full-time and part-time university faculty in *Eastern Oregon University*, 20 PECBR 108. Indeed, the evidence shows that most Oregon community colleges have single bargaining units that include part-time and full-time faculty.

The College also asserts that we should not include adjuncts and full-time faculty in the same bargaining unit because it needs flexibility to quickly create or cancel adjunct faculty classes, based on community needs. The College argues that this flexibility is especially important because of its small size and the changes caused by its rapidly increasing enrollment. However, the parties are free to negotiate specific contract terms to address different types of employees. Nothing prohibits the College from addressing its need for flexibility in negotiating an agreement that covers full-time and adjunct faculty.

Under ORS 243.662, all "[p]ublic employees have the right to form, join and participate in the activities of labor organizations * * *." Even if we found that a unit of full-time employees and adjuncts was not appropriate, the adjunct faculty would still be entitled to form a separate labor organization and the College would still be required to address its need for flexibility in employment arrangements for adjuncts in negotiations. The inclusion of adjuncts in a bargaining unit with full-time faculty does not change the situation the College faces.

The College argues that an inherent conflict exists between the rights and interests of full-time and adjunct faculty. According to the College, the two groups have "clear and identifiable competing interests." The College contends that increases in salaries, benefits, and employment rights for one group of faculty may result in a decrease in salaries, benefits, and employment rights for the other group.

Our strong preference for designating the largest possible bargaining unit often results in a bargaining unit whose members have varied interests. The Association may

find it difficult to address the various needs and interests of the faculty it represents. However, public employees have the right to join a labor organization “of their own choosing.” ORS 243.662. Here, where the adjuncts and full-time faculty wish to form a single bargaining unit, we will not consider their motives or the possible concessions each group of employees may have to make. Instead, our role is to determine if these employees have a sufficient community of interest to be included in the same bargaining unit. We conclude that they do.⁷

Finally, the College contends that the Association has inappropriately sought inclusion of the 53 adjuncts who have full-time jobs in addition to their work for the College and have:

“virtually no interest in being subject to the restrictions of collective bargaining and paying dues to the Union.”

The College asserts that the bargaining unit should include only those adjuncts who teach more than half-time. Having raised this argument, the College is responsible for presenting evidence to support it. However, the College objected to the inclusion of *any* adjuncts in the bargaining unit; it presented no evidence or argument regarding those adjuncts it believed could appropriately be included in a unit with full-time faculty. Our role is to determine if the proposed bargaining unit is appropriate, and not to determine if it is the most appropriate unit. ORS 243.682(1); *Eastern Oregon University*, 20 PECBR at 122. For the reasons stated above, we conclude that the bargaining unit proposed by the Association is appropriate. Consequently, we will not consider the College’s argument, unsupported by evidence, that a bargaining unit consisting of faculty who teach more than half-time is more appropriate.

⁷ We also note that the proposed bargaining unit description excludes casual employees, who are defined as those employees with a “relatively insignificant employment relationship with a public employer” because they work on an intermittent, irregular basis and do not have a reasonable expectation of continued employment. *Lane Community College, supra*, at 429 n 9, citing *AFSCME v. City of Salem*, Case No. UC-55-91, 13 PECBR 433 (1992) and quoting *OSEA College, v. Warrenton-Hammond School District*, Case No. RC-47-86, 9 PECBR 9034, 9037 (1986). By excluding casual employees, we create a bargaining unit whose members are less likely to have conflicts because they share a strong community of interest. *Lane Community* 17 PECBR at 429.

ORDER

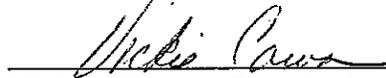
1. An appropriate bargaining unit is: All faculty employed by the Klamath Community College who work at least 0.2 FTE or teach at least nine credit hours over the academic year, including librarians, faculty chairs, instructional coordinators, and other staff who perform instructional duties, but excluding supervisory employees, confidential employees, classified employees, casual employees, and instructors who teach community education classes exclusively.

2. The Elections Coordinator shall check the showing of interest against the original list of employees provided by the College. If it is determined that a majority of the employees in the designated bargaining unit wish to be represented by the Association for purposes of collective bargaining, this Board shall certify the Association as the exclusive representative of the bargaining unit.

DATED this 14th day of January 2010.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.