

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. RC-005-09

(PETITION FOR REPRESENTATION)

BTS MAINTENANCE DEPARTMENT,)	
)	
Petitioner,)	
)	
v.)	
)	
BASIN TRANSIT SERVICE)	RULINGS,
TRANSPORTATION DISTRICT,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND ORDER
Respondent,)	
)	
and)	
)	
SEIU LOCAL 503, OPEU,)	
)	
Incumbent.)	
_____)	

Neither party objected to a Recommended Order issued on May 28, 2009, by Administrative Law Judge (ALJ) Larry L. Witherell following a hearing conducted on April 17, 2009, in Salem, Oregon. The record closed on May 8, 2009, upon receipt of the parties' post-hearing briefs.

Kevin L. Narramore, Keno, Oregon, represented Petitioner.

James R. Uerlings, Attorney at Law, Boivin, Uerlings, and DiIaconi, Klamath Falls, Oregon, represented Respondent.

Joel Rosenblit, Staff Attorney, SEIU Local 503, OPEU, Salem, Oregon, represented Incumbent.

On February 20, 2009, Basin Transit Service (BTS) Maintenance Department employees (Petitioner) filed a petition, accompanied by a sufficient showing of interest, seeking to represent a separate bargaining unit of maintenance department employees.

SEIU Local 503, OPEU (SEIU) currently represents the employees covered by the petition. On March 16, 2009, SEIU filed objections to Petitioner's attempt to remove maintenance employees from SEIU's existing wall-to-wall unit and create a separate new bargaining unit. It also asserted that the petition was not filed by a labor organization as defined in the Public Employees Collective Bargaining Act (PECBA) and that Kevin Narramore, the petitioner's representative, is a supervisor.¹

The issues in this case are:

1. Was the petition filed by a supervisor? If so, does that invalidate the petition?
2. Does the petition propose an appropriate bargaining unit under ORS 243.682(1)?

RULINGS

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

FINDINGS OF FACT

Introduction

1. Basin Transit Services Transportation District (District) is a public employer within the meaning of ORS 243.650(20).
2. Petitioner is a labor organization within the meaning of ORS 243.650(13).
3. On August 26, 1991, SEIU was certified as the exclusive representative for a bargaining unit of District employees. The certification excluded the general manager, assistant to the general manager, director of operations and maintenance, driver trainer, shop supervisor, and STF coordinator.

¹SEIU withdrew its argument that Petitioner is not a labor organization within the meaning of ORS 243.650(13). SEIU contends that Petitioner's representative is a supervisor who is not entitled by statute to file this petition. SEIU asserts the petition is therefore invalid.

4. The District and SEIU were signatories to collective bargaining agreements from March 1992 through 2008. The most recent collective bargaining agreement was in effect from January 1, 2006, through December 31, 2008, and covered full-time transit operators (bus drivers), para-transit operators (dial-a-ride drivers), mechanics, maintenance helpers or bus washers, and part-time relief operators (drivers).²

5. The District was established in 1981 as a transportation district to serve the community of Klamath Falls. The District operates five bus routes, serviced by 18 vehicles. The District operates bus service from 6:30 a.m. to 7:00 p.m., Monday through Friday, and from 9:00 a.m. to 5:00 p.m. on Saturday. There is no Sunday bus service.

6. The District has 31 employees. District administration consists of a general manager (Ernest Palmer), an assistant manager (Starla Davis), a secretary-receptionist, a finance clerk, and two field supervisors.

7. The operations department, consisting of 10 full-time bus drivers, 3 para-transit or dial-a-ride drivers, and 6 part-time drivers, is responsible for providing timely, efficient, and dependable operation of buses and routes.

8. The maintenance department has one lead mechanic, three mechanics, and two bus washers, and is responsible for maintaining the routes, vehicles, and equipment in a safe, clean, and dependable condition.

9. The two field supervisors supervise the full-time bus drivers, para-transit drivers, and part-time relief drivers. The bus drivers work one of two shifts. The "A" shift runs from 6:30 a.m. to 1:00 p.m., Monday through Friday. The "B" shift runs from 1:30 p.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday.

10. The para-transit drivers work one of three different shifts: an early morning shift, 6:30 a.m. to 1:00 p.m.; a day shift, 9:00 a.m. to 5:00 p.m.; or a split shift, which has some morning hours and some afternoon and evening hours, Monday through Thursday. Para-transit drivers generally transport elderly and disabled passengers. Passengers call the District's secretary-receptionist to schedule a ride.

District Facilities

11. The District maintains a central operating facility, which contains the administrative offices and the maintenance operations. Part of the 10,000 square foot

²Until 1991, these employees were represented by Amalgamated Transit Union (ATU).

building houses a reception area staffed by the secretary-receptionist. The general manager, assistant manager, finance clerk, and field supervisors have offices on the administrative side of the facility.

12. The administrative side of the central facility also has a driver assembly area/break room with a table, vending machines, and lockers. The break room is for all employees but is used primarily by the bus drivers before and after their routes. Each day, each para-transit driver is given a computer-generated schedule listing the pickups and deliveries for that driver. When not actually engaged in transporting passengers, the drivers regularly use the driver break room while they wait to go out for their next scheduled passenger pick up and delivery.

13. The maintenance area, referred to as the shop, is separated from the administrative offices by a wall and door. The shop has an assembly room and an office area with two desks for the mechanics. The shop has a bathroom with shower facilities. There are four maintenance bays where the mechanics work on the buses and where some buses are stored overnight. There is also a bay with an automatic bus washing machine. A chain-link fence with gated entrances surrounds the outside yard where the vehicles and equipment are parked and where buses are lined up for the drivers who go out on the morning route.

14. The District also has two transfer stations: the north station in downtown Klamath Falls and the south station near the fairgrounds.

District Operations

15. The morning mechanic works from 5:00 a.m. until 1:30 p.m. He starts his shift by unlocking the facility, turning on the lights, and turning on his computer. He reads the reports left by the night mechanic identifying which vehicles are available for use that day. The morning mechanic starts the vehicles, moves them out of the bay and garage, and lines them up in the yard for the drivers. He posts a list in the break room telling each driver which vehicle the driver will use for the driver's route. The morning mechanic begins work on vehicles needing maintenance or mechanical attention.

The evening mechanic works from 2:00 p.m. until about 9:30 p.m. He receives the vehicles back from the drivers at the conclusion of the "B" shift routes. He works on mechanical problems reported by the drivers at the end of "B" shift and prepares buses for service the next morning.

The swing mechanic works 8:00 a.m. to 5:00 p.m., Tuesday through Friday, and shifts on Saturday morning and Saturday afternoon.

The lead mechanic works 8:00 a.m. to 5:00 p.m., Monday through Friday. Except for a two-hour break on Saturday, a mechanic is on duty when the drivers are on duty. One bus washer works from 2:00 p.m. to 10:00 p.m. and the other works from 6:00 p.m. to 10:00 p.m.

16. At the beginning of the “A” shift, the morning drivers report to the central facility and then go to the break room to fill out their time cards. They check which vehicle has been assigned and go to the yard to perform a required pre-trip vehicle inspection.

At the end of the “A” shift, the drivers are relieved out in the field. A relief vehicle picks up the drivers and returns them to the central facility. The “B” shift drivers end their shift by bringing the vehicle back to the central facility where the bus is washed and any needed repairs are made by the evening mechanic. The drivers may leave at this point but often go to the break room where they complete their time cards or talk with the field supervisor or night mechanic.

17. The driver’s pre-trip bus inspection is to ensure that the mechanic has not missed something and that the bus is in proper condition and safe to operate. The “A” shift driver passes the inspection report along to the “B” shift driver. Drivers report any problems concerning the condition or operation of the vehicle on the inspection report. At the conclusion of the evening shift, the drivers deposit the completed inspection reports in a basket for the mechanics. The drivers also orally inform the mechanics about particular problems with a bus. The drivers tell the maintenance helper if the bus interior needs special cleaning.

The evening mechanic reviews the inspection reports and then attends to the buses that need mechanical repair. At the end of his shift, the evening mechanic leaves a report for the morning mechanic that provides a status report for all the vehicles.

18. When the lead mechanic reports to work at 8:00 a.m. he reads the mechanic reports and reviews the status of the vehicles with the morning mechanic.

The lead mechanic then attends the morning meeting with the general manager, assistant manager, and field supervisors. The lead mechanic reviews the status of the vehicles. He identifies vehicles that are waiting for parts, vehicles that are awaiting mechanical repairs, vehicles that are scheduled for regular preventive maintenance check ups, and vehicles that are not safe to operate on a route.

The general manager sets priorities. He instructs the lead mechanic which vehicles need immediate attention, which repairs can wait, and which repairs can only be made after consultation with the manufacturer or dealer.

19. The mechanics rarely need direction in their work. Their work is generally routine and determined by the mechanics' experience, skills, and knowledge. The routine is controlled by the flow of reports and schedules. Mechanics perform standard preventive maintenance on a vehicle according to a predetermined schedule based on the mileage or age of a vehicle. Mechanics continue the mechanical work commenced by the mechanics on prior shifts as communicated by reports. In addition, drivers leave inspection reports alerting the mechanics to a problem on the bus needing attention. Morning and evening mechanics have check lists that describe standard duties and tasks, such as what is to be performed when opening up, closing, and cleaning the shop. A new or inexperienced mechanic may ask the lead mechanic for instructions or directions but this practice decreases as the mechanic gains experience.

20. Occasionally, the lead mechanic may instruct a mechanic to undertake a different task or work on a different vehicle. For instance, a vehicle may be waiting for parts or may need only minor repair in order to be used as a primary or backup vehicle. As a result, the lead mechanic may instruct the mechanic to repair a certain vehicle first. However, mechanics also may unilaterally set priorities without consulting or waiting to be instructed by the lead mechanic based on their own knowledge and experience.

21. It is not unusual for a driver to have a mechanical problem while on a route. When this happens, the driver uses a two-way radio to call the shop. The driver will report the problem to whichever mechanic answers the shop radio. When the lead mechanic receives the call, he generally determines which mechanic is available to respond to the call. The lead mechanic often responds himself. Mechanics may on their own respond to a call. It is the primary responsibility of all four mechanics to respond to the mechanical needs of the buses and drivers.

The mechanic may be able to repair the bus on the site without significant delay. The mechanic might request that another bus be brought out for the driver while the mechanic repairs the bus in the field. The mechanic might also request another bus be brought out and the disabled bus is returned to the shop for repair. The mechanic needs no special permission to make these decisions.

The general manager is also aware of the conditions of the vehicles through reports, conversations with the staff, and the morning staff meeting, which includes the field supervisors and lead mechanic. As a result, the general manager regularly instructs

the lead mechanic to carry out a particular assignment based on the priorities set by the general manager.

The senior mechanic on duty is responsible for the maintenance department. If an issue arises for which the senior mechanic does not have authority, he first checks with a field supervisor or contacts the general manager. The mechanic does not contact the lead mechanic for instructions during the lead mechanic's off hours.

22. The drivers and field supervisors are instructed to report concerns about the District's property and operations. As a result, mechanics regularly respond to issues at the transfer stations or other District property. If a bus needs a clean up while on a route, the driver calls the shop and a maintenance helper will respond to that request.

The south transfer station has bathroom facilities and a mechanic will go out and repair the facilities. If a bus stop sign or bench has been damaged or vandalized, a mechanic will repair the property or equipment in the field. The mechanic does not need permission from the lead mechanic before responding to calls from the field. If the lead mechanic is present, the mechanic will generally inform the lead mechanic that he is going into the field because of a request from a driver.

Mechanics regularly meet and talk with drivers to learn how the buses are operating after the mechanic has repaired the bus. Mechanics encourage drivers to let mechanics know how particular vehicles are performing.

Job Descriptions - Lead Mechanic and Mechanic

24. The description for the mechanic position states that "[t]his is a skilled position working for the general manager in the vehicle maintenance section. Work assignments are made by the Lead Mechanic to repair and maintain all District equipment and real property as needed. This is a union position."

The duties of the mechanic include:

"Repair and maintain all components of District buses, vans, trucks, and automobiles to insure the safe and efficient operation through preventive maintenance and work orders;

"Repair and maintains buildings and other fixed assets;

"Maintains a safe working environment by strictly following all safety rules and practices;

"Prepares reports and makes computer entries as needed;

“Responds to equipment problems and performs road service repairs as needed;
“Advises the Lead Mechanic of parts and supply needs and equipment status;
“Prepares the District property and equipment for business in the morning and secures the same at the end of each day as assigned.”
(Indentations omitted.)

24. The description for the lead mechanic states that “[t]his is a skilled position working directly for the General Manager in the maintenance section. This employee provides the coordination [of] maintenance section’s daily activities for the General Manager. This is a union position.”

The job description for the lead mechanic provides that the duties may include:

“Repair and maintain all components of District buses, vans, trucks, and automobiles to insure the safe and efficient operation through preventive maintenance and work orders;
“Organize and schedule the daily work assignments of all vehicle maintenance section employees;
“Repairs and maintains buildings and other fixed assets;
“Maintains a safe working environment by strictly following all safety rules and practices;
“Acts as the safety compliance officer for the vehicle maintenance section and monitors the safety performance of all vehicle maintenance section employees;
“Maintains parts supplies through inventory control to insure the minimum needs only are available;
“Purchases routine maintenance parts and supplies through purchase orders up to \$200.00 per purchase;
“Controls the use of District maintenance tools, parts, supplies, and equipment to insure same is used only to meet District needs;
“Meets with maintenance suppliers and vendors as needed;
“Advises the General Manager of the status of the vehicle maintenance section’s personnel, equipment, supplies, and inventory on a daily basis;
“Provides technical assistance and support to the General Manager on special projects and reports as needed;
“Maintains the vehicle maintenance records on the computer files;
“Maintains the hazardous materials program.” (Indentations omitted.)³

³The job descriptions were most recently revised in March 2003.

25. Three different individuals have held the lead mechanic position since 1992. Kevin Narramore is the current lead mechanic.

Lead Mechanic - Working Conditions and Salary

26. The District hired Narramore in August 1999 as a mechanic. He became lead mechanic in July 2002, when the previous lead mechanic retired. Narramore has continued to pay union dues and receive benefits from the collective bargaining agreement identical to other employees with the exception of his wage rates, which are subject to a separate agreement between the District and SEIU.

27. In August 1992, Cynthia Thompson, then-general manager, and Alice Dale, then-executive director for SEIU, signed a "letter of agreement" concerning the "Lead Mechanic Position" that provides:

"This Letter of Agreement is entered into between the Oregon Public Employees Union, SEIU Local 503, AFL-CIO, CLC, (OPEU) and the Basin Transit Service Transportation District (BTS).

"Whereas the parties' 1992-93 Collective Bargaining Agreement addresses the position of 'Lead Mechanic' but does not address wage rates for that position, the parties hereby agree upon the wage rate for Lead Mechanic.

"An employee designated [*sic*] by BTS as Lead Mechanic shall be paid at the next step above that of the employee's regular wage on the Mechanic's pay scale. Should an employee designated as Lead Mechanic be at the top step of the Mechanic's pay scale when so designated, s/he shall be paid 5% more than the highest step.

"The parties also agree that an employee designated as Lead Mechanic shall not perform supervisory duties which would exclude that employee from the OPEU bargaining unit, including, but no [*sic*] limited to, hiring and firing of employees, disciplining employees, conducting performance evaluations of employees, promoting employees."

28. The lead mechanic generally spends approximately 20 percent of his work time on mechanical duties and 80 percent on administrative, paperwork, or non-mechanical duties. If all other mechanics are on duty and the maintenance department is handling only the scheduled, preventive maintenance work, then the lead mechanic spends little or no time performing actual mechanical duties.

The lead mechanic is responsible for inventorying, ordering, purchasing, and picking up parts. However, he is only authorized to purchase parts if the order is for less

than \$200. An order in excess of that amount must be approved by the general manager. The lead mechanic is also responsible for maintaining a large volume of paperwork concerning work being performed by the mechanics and on the vehicles. He maintains the computer record for the vehicle maintenance program and other vehicle maintenance and repair information.

The lead mechanic regularly repairs the bus shelters, replaces broken glass, repairs the lawnmower, and installs banners and signs on District property.

Time Cards and Time Off

29. All 25 bargaining unit employees, including lead mechanic Narramore, fill out and submit time cards. Those employees outside of the bargaining unit do not.

30. Drivers record their time on a time card provided by the finance clerk. At the end of the payroll period, the drivers submit their completed time cards to one of the field supervisors, who then checks the time and records the data on a time sheet. The field supervisors sign the time sheets and submit them and the cards to the finance clerk, who prepares the payroll.

31. The maintenance department employees also record their time on a time card provided by the finance clerk. At the end of the payroll period, the lead mechanic gathers the time cards and submits them to the finance clerk. He does not calculate, verify, or approve the time or the time cards.

32. A mechanic who wishes time off fills out a slip and gives the slip to the lead mechanic. The lead mechanic then gives the slip to the general manager who approves or rejects the request.

However, when a driver requests time off, the field supervisor signs off or approves the request.

Hiring Process

33. When hiring drivers, the District issues a public announcement and accepts applications that are reviewed by the general manager, assistant manager, and field supervisors. The top applicants are interviewed by a committee that includes the general manager, assistant manager, and field supervisors. The interview questions and format are prepared in advance by the general manager and the participants follow the script. Each committee member scores each candidate based on a prepared scoring format. After

all the candidates are interviewed, the committee members review their scoring and discuss their impressions of the candidates.

34. The District uses a similar procedure to hire maintenance department employees. The interview committee includes the general manager, assistant manager, lead mechanic, and occasionally, one of the other mechanics. Since 2002, the District has hired seven or eight mechanics. In addition to the lead mechanic, the senior mechanic has also participated on three of those hiring panels. The most recent interview process was conducted in early 2009. The general manager asked the lead mechanic and senior mechanic to serve on the interview committees. Questions for the interview are prepared in advance by the general manager.

Interview committee members complete an interview score sheet and submit it to the general manager. The score sheet records the committee member's impression of how the applicant answered questions. Examples of the questions include how would the applicant respond to criticism from a supervisor or how would the applicant respond to a driver's complaint about the condition of a bus.

After the interview process, the general manager collects and reviews the scoring sheets. If the scoring sheets appear consistent, then the general manager makes his decision without further consultation. If there is a lack of consensus or some inconsistency in the scoring, the general manager may call the committee together for a discussion of the applicants. The general manager is responsible for making all the hiring decisions.

Evaluations

35. The field supervisors are generally responsible for overseeing and monitoring the bus drivers. Drivers are initially hired as part-time drivers and trained by a field supervisor. After a probationary period, the field supervisor recommends that the employee be discharged or promoted to a full-time driver position. The general manager generally follows the field supervisor's recommendation. The field supervisor recommends discipline to the general manager. Field supervisors annually evaluate drivers. The field supervisor completes a performance appraisal form, referred to as a blue sheet, which constitutes the evaluation. The general manager takes no additional action on driver evaluations.

36. The performance appraisal form provides for the rating of an employee in the following categories: a) quality – the accuracy, thoroughness, and acceptability of work performed; b) productivity – the quality and efficiency of work produced in a specified period of time; c) job knowledge – the practical/technical skills and information

used on the job; d) reliability – the extent to which an employee can be relied upon regarding task completion and follow up; e) availability – the extent to which an employee is punctual, observes prescribed work break/meal periods, and the overall attendance record; f) independence – the extent of work performed with little or no supervision; g) creativity – the extent to which an employee proposes ideas and finds new and better ways of doing things; h) initiative – the extent to which an employee seeks out new assignments and expands capabilities, personally and professionally; i) adherence to policy – the extent to which an employee follows safety/conduct rules and other regulations, and observes good housekeeping practices; j) interpersonal relationships – the willingness and demonstrated ability to cooperate, work, and communicate with coworkers, supervisors, subordinates, and/or outside contacts; k) behavior pattern – the stability, courtesy, personal appearance, and judgement demonstrated on the job.

There is a rating for each of the categories: outstanding (100-90 points), very good (90-80), good (80-70), improvement needed (70-60), unsatisfactory (below 60), or not rated, which means it was not applicable or that it was too soon to rate that employee on that item. The field supervisor then calculates an overall performance average based on the points received in the 11 categories. In the evaluation process, the field supervisors ask for input and comments from the other drivers.

The blue sheet also provides an opportunity to list “[s]pecific areas of improvement needed” and “[r]ecommendations for professional development (seminars, training, schooling, etc.).”

37. The lead mechanic annually evaluates mechanics and bus washers. The lead mechanic solicits comments from the mechanics and bus washers on how the employee (being evaluated) is performing. There are two reasons for soliciting other employees’ input. The first is to develop a consensus. The second is to gather information because there are considerable periods of time when the lead mechanic is not on duty alongside every mechanic or maintenance helper.⁴ The lead mechanic then completes the performance appraisal form or blue sheet based on his observations and the comments of the co-workers.

38. After the lead mechanic completes an employee’s blue sheet, he meets with the general manager to review it. The general manager then completes the formal evaluation, another document referred to as a white sheet. The general manager and the

⁴The lead mechanic works 8:00 a.m. to 5:00 p.m., Monday through Friday. Mechanics are on duty from 5:00 a.m. to about 9:00 or 10:00 p.m., Monday through Friday, and all day Saturday. Bus washers are on duty from 2:00 p.m. to 10:00 p.m.

lead mechanic meet with the employee and review the evaluation. The white sheet is put in the employee's personnel file. The general manager keeps the blue sheet in his own file for any follow up action. Promotions, pay increases, or other job related benefits are not based on the performance evaluation.

Discipline

39. There was only one disciplinary incident involving Narramore. Sometime in 2007, Narramore reported a mechanic to the general manager for poor workmanship that resulted in damage to District property, cost the District money, and possibly put the District at liability risk. Narramore told the general manager that he believed something should be done. The general manager subsequently issued a letter of reprimand to the employee.

Contractual Benefits

40. The drivers, mechanics, and bus washers have wage rates based on their classifications and longevity as set out in the collective bargaining agreement. All positions enjoy the same benefits with respect to retirement plan, health, dental and vision insurance, holidays, vacations, sick leave, bereavement leave, and family medical and parental leave.

Training New Employees

41. The lead mechanic trains new mechanics and bus washers. Training consists of an orientation explaining the District's processes and work routines. The lead mechanic provides no training concerning mechanical tasks or bus cleaning.

42. In 2005, the District hired Jeffrey Staples as a mechanic. Since Staples had no experience working on electrical systems, the lead mechanic provided some guidance and instruction to assist Staples in working on the bus electrical systems. However, Staples regularly consulted the other mechanics for assistance. As Staples became more experienced, he consulted the vehicle manuals and computer to determine how to perform necessary work.

Grievances and Last Chance Panels

43. Article 10 of the collective bargaining agreement provides for a grievance and arbitration process. Prior to taking a grievance to arbitration, Article 10 provides for an optional last chance panel.

“Step 3. Failing to settle the grievance in accordance with Step 2, if pursued, the grievance may be submitted by the Union to a joint Union/Employer ‘last chance’ panel to decide whether the grievance can be settled or must be submitted to final and binding arbitration. The parties shall each appoint two (2) members to a four (4) person ‘last chance’ grievance/arbitration review panel composed of two (2) representatives of the Union and two (2) representatives of the Employer. The panel shall meet within ten (10) calendar days of the Union’s request to review and discuss the grievance and decide whether it will be necessary to select an arbitrator from ERB. A majority of the panel may vote to settle the grievance.”

44. In October 2008, Narramore served on a last chance panel to consider a vacation grievance. The general manager asked Narramore to serve on the last chance panel because the general manager wanted someone with an open mind who could render an objective decision. Narramore and assistant manager Starla Davis served as management representatives. Bus driver and SEIU council member Bill Clay and bus driver Jennifer Fischer served as union representatives. SEIU’s president asked Clay to sit on the panel. Clay also sat on a last chance panel involving another grievance prior to October 2008. Narramore was not asked to sit on that particular panel.

45. The first step of the contractual grievance procedure provides that the employee or SEIU “shall submit the grievance to the employee’s immediate supervisor.” No grievance was ever submitted to the lead mechanic pursuant to Article 10.1 Step 1 of the collective bargaining agreement.

Step Increase

46. In spring of 2006, Jeffrey Staples, who had been hired as a mechanic in September 2005, told Narramore that he was going to distribute his resume because he was not satisfied with his compensation. Narramore reported the conversation to the general manager. Not long after that, the general manager called Staples into his office and offered Staples a step increase if Staples would remain at the District. The general manager increased Staples’ wages from step 1 to step 7. The general manager asked Narramore if Staples’ work warranted such an increase and Narramore agreed that it did. The District has had difficulty hiring and retaining qualified and experienced mechanics because of the compensation rates.

47. Narramore does not have authority to hire, fire, lay off or recall, discipline or discharge, or reward or promote employees, or to adjust employee grievances. Nor does he have authority to effectively recommend such action.

48 Other maintenance employees approached Narramore to express an interest in being represented in a separate unit of maintenance department employees and not by SEIU. As a result of this interest, Narramore filed the instant petition on behalf of the maintenance department employees.

49. Mechanics have served on SEIU's bargaining team during contract negotiations.

CONCLUSION OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.

2. The lead mechanic is not a supervisor within the meaning of ORS 243.650(23).

3. The petition does not propose an appropriate unit.

Petitioner seeks to carve out a six-member departmental unit of maintenance employees from a larger bargaining unit of all District employees. The incumbent union, SEIU, argues that the petition is invalid because it was filed by Narramore, a supervisory employee. SEIU also argues that the petition does not propose an appropriate bargaining unit. The District and Petitioner contend that Narramore is not a supervisor under ORS 243.650(23).

Because we conclude that Narramore is not a supervisory employee, we need not consider whether a representation petition filed by a supervisor is valid. We also conclude that the proposed unit is not appropriate for bargaining. We therefore dismiss the petition.

Under ORS 243.682(1)(a), this Board must, "[u]pon application of a public employer, public employee or a labor organization, designate the appropriate bargaining unit * * *." A supervisor is not a public employee. ORS 243.650(19). SEIU argues that Narramore is a supervisor and thus is not a member of any of the categories authorized to file a petition under ORS 243.682(1)(a). We must first determine if Narramore is a supervisor.

ORS 243.650(23), defines a supervisory employee as:

"[A]ny individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward

or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.”

Accordingly, we must decide if Narramore has the authority to take or effectively recommend any of the statutorily defined actions.

Transfer, Lay Off, and Recall

Narramore has no authority to transfer, lay off, or recall employees, and has never recommended any of these actions.

Discipline or Discharge

Once, in 2007, Narramore reported another employee’s conduct to the general manager and suggested that the general manager take action. Any mechanic could have reported the same conduct. There is nothing to suggest that Narramore exercised any supervisory authority when he reported the employee’s actions. The general manager decided to issue the employee a letter of reprimand. Only the general manager has authority to discipline or discharge employees.

Promote or Reward

Narramore has no authority to promote or reward employees. Wage increases are regulated by the collective bargaining agreement and are based on longevity.

Although Narramore prepares employee evaluations, his responsibilities and contribution to the process are administrative in nature. The general manager prepares the evaluation questions and criteria. Narramore receives input from all maintenance employees on the employee’s performance and compiles this information for the general manager. Narramore cannot recommend pay increases, promotions, or rewards.

Hiring

Since he became lead mechanic, Narramore has participated in the hiring process as a member of an interview committee on several occasions. The committee consisted of the general manager, assistant manager, the lead mechanic, and one of the other mechanics. The general manager has very little mechanical experience and included the mechanics to provide him with technical assistance. The panel asked questions prepared in advance by the general manager. After the interview, the committee completed a

scoring sheet prepared by the general manager. The general manager reviewed the scoring sheets and alone decided whom to hire.

Narramore's participation as one member of the interview committee was too diluted to be considered an effective exercise of independent judgment. *Washington County Police Officers Association v. Washington County Sheriff's Department*, Case No. C-49-84, 8 PECBR 7973, 7986 (1985). The voice of a single alleged supervisor is particularly suspect when the employee's supervisor also serves on the panel. *Laborers' International Union of North America, Local Union No. 320 v. City of Amity*, Case No. RC-13-99, 18 PECBR 350, 357 (1999). *See also Sisters Police Association v. City of Sisters*, Case No. RC-46-96, 17 PECBR 212, 220 (1997); *Tualatin Police Officers Association v. City of Tualatin*, Case No. UC-61-89, 12 PECBR 413, 421-22 (1990); *Oregon State Employees Association v. Department of Human Resources, Health Division*, Case No. C-286-79, 5 PECBR 2707, 2715 (1980). Narramore is not authorized to hire or to effectively recommend such action. *See Deschutes County Sheriff's Association v. Deschutes County*, Case No. UC-62-94, 16 PECBR 328, 340 (1996).

Adjustment of Grievances

Maintenance employees do not present grievances to Narramore and he has no authority to resolve grievances.

In 2008, the general manager asked Narramore to sit on a last chance panel, a step in the contractual grievance procedure. The panel consisted of two management representatives and two union representatives. There is no requirement that the District must appoint supervisors to the panel. The general manager asked Narramore to serve because he felt Narramore was objective and open minded and could render an objective decision. The District did not require that Narramore sit on the panel. The District has not asked Narramore to sit on any other last chance panels.

The composition and use of last chance panels are analogous to the composition and use of interview panels in the hiring process. For the same reason we found an individual's authority on an interview panel too diluted to be an independent exercise of individual authority, we find that Narramore's service on the last chance panel involved no effective exercise of independent judgment. Accordingly, the lead mechanic has no authority to adjust or effectively recommend the adjustment of grievances by merely serving on a single last chance panel.

Assignment

The lead mechanic's job description states that the lead mechanic may "[o]rganize and schedule the daily work assignments of all vehicle maintenance section employees." In actuality, the lead mechanic schedules the process of vehicle repair, not the employees. To be a supervisor, the individual must supervise "'other employes,' not equipment and machinery." *Laborers International Union of North America, Local 85 v. City of Depoe Bay*, Case No. C-209-79, 4 PECBR 2554, 2556-57(1979).

Mechanics generally know what to do and when to do it, and rarely need direction on their work. Their work is routine and controlled by the drivers and the mechanics. Preventive maintenance is predetermined by the age or mileage of a vehicle. Mechanics also independently respond to calls from the drivers in the field about needed vehicle repairs.

The lead mechanic occasionally receives calls from drivers in the field. The lead mechanic may direct a mechanic to respond to the driver. He may also reassign a mechanic to work on another vehicle based on the need for the vehicle and the availability of parts and employees. However, this does not constitute the exercise of independent judgment.

The general manager sets priorities to be carried out by the lead mechanic. The lead mechanic acts as an information conduit from the shop and the mechanics to the general manager. After the general manager determines the priorities, the lead mechanic arranges for coverage based on those priorities.

The lead mechanic and mechanics report to the general manager. The lead mechanic coordinates the maintenance section's daily activities for the general manager. When a mechanic has a work-related emergency and the lead mechanic is not on duty (*e.g.*, early morning, evening, or Saturday), the mechanic does not contact the lead mechanic, but rather consults an on-duty field supervisor or calls the general manager.

Other Factors

In 1992, SEIU and the District agreed to include the lead mechanic in the bargaining unit. While not binding on this Board, we consider the effect of an agreement on the factors that determine an individual's supervisory status. *Ashland Fire Fighters Association, Local 2279, IAFF v. City of Ashland and Brian Almquist, City Manager*, Case No. C-60-80, 5 PECBR 4363, 4369 (1981). (Board not bound by contracting parties' agreements on supervisory status).

SEIU has never protested that the lead mechanic performed supervisory duties subsequent to the 1992 agreement. The parties' 1992 agreement specifically prohibits the lead mechanic from performing specific supervisory duties, including hiring, firing, disciplining, evaluating, or promoting employees. SEIU offers no explanation to reconcile its 1992 agreement with its current position. In these circumstances, we would expect SEIU to present evidence that indicates when the employee's duties changed and he began exercising supervisory authority.

For the reasons set out above, we conclude that the lead mechanic is not a supervisor.⁵ Narramore is a public employee who is entitled to file this petition.

The petition does not propose an appropriate bargaining unit.

The petition proposes to carve out a unit of 4 mechanics and 2 bus washers from an existing wall-to-wall unit of 25 employees traditionally represented by SEIU. SEIU argues that the proposed bargaining unit is not appropriate because it will fragment the District's workforce.

When presented with a question of representation, this Board must designate the appropriate bargaining unit. To do so, we consider such statutory 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. We may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate. ORS 243.682(1)(a).

In addition to the statutory factors, this Board has long had a policy against unit fragmentation. "Basically, the policy is one against the fragmentation of the public work force into a 'plethora' of splinter bargaining units. * * *in a manner inimical to stable labor relations under the PECBA." *Association of Public Employees v. Oregon State System of Higher Education and Oregon Public Employees Union, Local 503, SEIU*, Case No. RC-113-87, 10 PECBR 883, 888-89 (1988). More recently, this Board has reinforced this policy, noting that "[l]arger bargaining units further several important policies identified by the legislature." One such policy is to establish "greater equality of bargaining power between public employers and public employees." ORS 243.656(3). Larger units tend to better equalize bargaining power. *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). We also noted that "[a]nother legislative policy is to protect the public from impairment or interruption of necessary

⁵Because we have determined that Narramore is not a supervisor, we do not decide whether a supervisor can file the type of petition at issue here.

public services. * * * [A]n increase in the number of bargaining units increases the number of potential labor disputes and work stoppages.” *Id.* Lastly, this Board recognized that “[o]ur nonfragmentation policy also helps public employers. It promotes workplace stability, and prevents the undue burden which would fall on public employers if they had ‘to engage in bargaining sessions for the many splinter groups on a round-robin basis.’” *Id.* (quoting *Association of Public Employees v. Oregon State System of Higher Education*, 10 PECBR at 889.) To overcome our nonfragmentation preference, Petitioner must demonstrate that the proposed unit has a clearly distinct community of interest from the existing unit, or that some other compelling reason warrants creation of a splinter bargaining unit. *Oregon Workers Union v. State of Oregon, Department of Transportation and Service Employees International Union Local 503, Oregon Public Employees Union*, 21 PECBR at 886.

In *Oregon Workers Union*, the petitioner sought to carve out a group from an existing wall-to-wall unit. To overcome our “clearly established policy of refusing to allow labor organizations to ‘carve out’ only a portion of an existing bargaining unit to form a new bargaining unit,” this Board held that the petitioner must demonstrate that “(1) the proposed unit has a community of interest which is ‘clearly distinct’ from that of the existing unit, or (2) ‘compelling reasons’ warrant creation of a splinter bargaining unit.” *Id.* at 885. See also *Teamsters Local Union No. 223 v. Yamhill County and Yamhill County Employees’ Association*, Case No. RC-14-07, 22 PECBR 459 (2008); *Oregon AFSCME Council 75 v. City of Ontario*, Case No. RC-1-07, 22 PECBR 260 (2008).

We review the record to determine whether the proposed bargaining unit has a *clearly distinct community of interest* or whether there is some other *compelling reason* to divide the existing bargaining unit.

Community of Interest and Working Conditions

In determining the community of interest, we consider the similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, and common supervision. OAR 115-025-0050(2).

Operations and maintenance employees provide essential complementary contributions to the District’s purpose to provide a safe and dependable public transportation service. Both groups of employees work in and out of the central facility. Drivers and mechanics regularly communicate with one another in order to ensure that mechanical problems are effectively repaired and satisfactory to the drivers. When a vehicle breaks down in the field, a mechanic responds to the driver’s request for assistance. The morning mechanic prepares vehicles and assigns vehicles to the drivers.

Drivers provide daily written reports to the mechanics on the operation and condition of each of the vehicles. These reports determine the mechanics' work assignments.

The collective bargaining agreement establishes the wages and benefits of both operations and maintenance employees. The two groups share a common break area. The driver assembly area is close to the mechanics' shop. Both operations and maintenance employees are ultimately responsible to the same supervisor, the general manager.

Because the employment conditions of operations and maintenance employees are not significantly different, we do not conclude that these two groups have a clearly distinct community of interest that would warrant the designation of a separate bargaining unit. See *Teamsters Local Union No. 223 v. Yamhill County*, 22 PECBR 459, 471-72; *Oregon Workers Union v. State of Oregon, Department of Transportation and Service Employees International Union Local 503, Oregon Public Employees Union*, 21 PECBR at 887; *Laborers' International Union of North America, Local 320 v. City of Keizer*, Case No. RC-37-99, 18 PECBR 476 (2000); *International Union of Operating Engineers, Local 701 v. Deschutes County Public Works*, Case No. RC-4-88, 10 PECBR 906 (1988); *International Union of Operating Engineers, Local No. 701 v. Grant County Road Department*, Case No. C-254-83, 8 PECBR 6735 (1984); *City of Portland Engineering Employees Association v. City of Portland and International Union of Operating Engineers Local 87*, Case No. C-69-78, 4 PECBR 2334, 2341 (1979), *aff'd*, 45 Or App 205, 608 P2d 183, *rev den*, 289 Or 337 (1980).

Other Compelling Reasons

Since 1992, there has been a stable and uninterrupted bargaining history between SEIU and the District. Before SEIU's representation, this same wall-to-wall unit was represented by ATU. Accordingly, the parties' bargaining history does not warrant fragmenting the larger bargaining unit.

The Petitioner asserts that the employees' desire for a separate bargaining unit is a compelling reason to designate a separate unit of the maintenance department employees. We disagree. Discontent or dissatisfaction existing among members of an organization is not unusual. Discontent often emerges in social relationships, particularly employment relationships. *Teamsters Local Union No. 223 v. Yamhill County and Yamhill County Employees' Association*, 22 PECBR at 473. The fact that maintenance department employees have served on the SEIU bargaining team indicates that the level of discontent is not particularly high.

Employee desires is but one of the factors we consider in determining an appropriate unit. We have discretion to decide how much weight to give each factor. When there is no clearly distinct community of interest factor, we will not give controlling weight to employees' preferences. *Id.* See also *Oregon Workers Union v. State of Oregon*, 21 PECBR at 883; *Oregon AFSCME Council 75 v. City of Ontario*, 22 PECBR at 260; and *Association of Public Employees v. Oregon State System of Higher Education*, 10 PECBR at 888-89 (Board may give preference to its policy against fragmentation over the desires of the employees).

When a question of representation is presented, this Board "must balance employee free choice against the need to establish and maintain stable labor relations and to equalize bargaining power." As a result, this Board has "consistently declined to allow one small group of employees to separate into its own bargaining unit unless the small group has a community of interest which is clearly distinct from that of the existing unit, or other compelling reasons warrant creation of a separate unit." *Oregon Workers Union v. State of Oregon*, 21 PECBR at 889.

We conclude that there is no clearly distinct community of interest among the maintenance department employees or other compelling reason that warrants a separate bargaining unit of maintenance department employees. *Teamsters Local Union No. 223 v. Yamhill County*, 22 PECBR at 471-72; *Oregon Workers Union v. State of Oregon*, 21 PECBR at 889. The petition does not propose an appropriate bargaining unit. Accordingly, we will dismiss it.

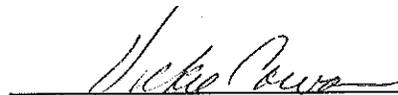
ORDER

The petition is dismissed.

SIGNED AND ISSUED this 30th day of October 2009.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.