

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. RC-14-07

(PETITION FOR REPRESENTATION)

TEAMSTERS LOCAL UNION NO. 223,)	
)	
Petitioner,)	
)	
v.)	
)	
YAMHILL COUNTY,)	RULINGS,
)	FINDINGS OF FACT,
Respondent,)	CONCLUSIONS OF LAW AND
)	ORDER
and)	
)	
YAMHILL COUNTY EMPLOYEES')	
ASSOCIATION,)	
)	
Incumbent.)	
_____)	

None of the parties objected to a Recommended Order issued by Administrative Law Judge (ALJ) Larry L. Witherell on January 23, 2008, following a hearing conducted by ALJ B. Carlton Grew on October 25, 2007, in Salem, Oregon. The hearing closed on December 17, 2007, upon receipt of the parties' post-hearing briefs.

Sarah K. Drescher and Michael J. Tedesco, Attorneys at Law, 14183 Taylor's Crest Lane, Lake Oswego, Oregon 97035, represented Petitioner.

John M. Gray, Jr., County Counsel, Yamhill County Courthouse, 535 N.E. Fifth Street, McMinnville, Oregon 97128, represented Respondent.

Daryl S. Garrettson, Attorney at Law, Garrettson, Gallagher, Fenrich & Makler, 5530 S.W. Kelly Avenue, Portland, Oregon 97239, represented the Incumbent Yamhill County Employees Association, but did not appear at the hearing.

On April 27, 2007, Teamsters Local Union No. 223 (Teamsters) filed a petition, accompanied by a sufficient showing of interest, seeking to represent a separate bargaining unit of Yamhill County Public Works Department (County) employees currently part of a wall-to-wall unit represented by the Yamhill County Employees Association (YCEA).

On October 4, 2007, Teamsters amended its petition to describe the proposed bargaining unit as the employees of the Yamhill County Public Works Department,

“* * * including the following job classifications: heavy equipment operator, medium equipment operator, utility worker, mechanic, mechanic assistant, parts clerk, engineer technicians, permit specialist, utility coordinator, tech specialist, laborer I, laborer II, flagger, administrative office specialist, and accounting clerk.”

The County filed timely objections on May 17, 2007, arguing that separating the public works employees from YCEA’s wall-to-wall unit would unduly fragment the work force. YCEA did not take a position.

The issue in this case is: Does the petition propose an appropriate bargaining unit under ORS 243.682(1)?

RULINGS

The rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT

1. YCEA is the exclusive representative of a bargaining unit of personnel employed by the County, a public employer. Teamsters is a labor organization.

2. Yamhill County government is divided into the following four branches:

(a) General Government—consists of the following departments: Administrative Services (which includes Accounting, Commission on Children and Families, Facilities, Personnel, and Veterans); Assessor and Tax Collection; Clerk’s Office; County Counsel; Information Systems; and the Treasurer’s Office.

(b) Criminal Justice—consists of the following departments: Community Corrections (which includes Parole and Probation); District Attorney’s Office (which includes Family Support, Prosecution, and Victims and Witness Assistance); Juvenile Department (which includes Juvenile Court Services); and the Sheriff’s Office (which includes Animal Control, Community Resources, Emergency Management, Jail, Marine, Narcotics, and Patrol).

(c) Social Services—consists of the following department: Health and Human Services (which includes Chemical Dependency, Developmental Disabilities, Family and Youth, Mental Health, and Public Health).

(d) Land Use and Transportation—consists of the following departments: Community Corrections (which includes Parks), Fairgrounds, Planning (which includes Building, Land Use, and Solid Waste); Surveyor’s Office; and Public Works.

3. County employees are represented by three separate bargaining units. Teamsters represents a strike-prohibited bargaining unit of Sheriff’s Office employees. The Federation of Parole and Probation Officers (FOPPO) represents a strike-prohibited bargaining unit of County parole and probation officers. The YCEA represents the remaining 230 employees in what has been referred to as a wall-to-wall unit. Approximately 30 of those positions are in the Public Works Department.

4. At the time of the petition, the County and YCEA were signatories to a collective bargaining agreement effective July 1, 2006 to June 30, 2007. The collective bargaining agreement covers the following bargaining unit:

“* * * [A]ll non-supervisory employees of the County, excluding elected officials, supervisory employees, confidential employees, irregular part-time employees and part-time employees normally working less than 20 hours per week, persons hired for a period of six months or less, persons hired for a temporary position intended to be less than one year, and all employees represented by other bargaining units. Employees renewed for a temporary position for more than one year of continuous employment shall be reviewed by both parties.”

5. The juvenile detention employees are a sub-unit within the wall-to-wall unit represented by YCEA, and are covered by the collective bargaining agreement. The juvenile detention technicians and juvenile detention specialists are

guards within the meaning of ORS 243.736. Therefore, they are prohibited from striking. A memorandum accompanying the 2006-2007 collective bargaining agreement states:

“1. [The] Juvenile Detention Technicians and Juvenile Detention Specialists shall constitute a separate YCEA sub-bargaining unit known as the ‘Juvenile Detention Unit.’ Juvenile Detention Technicians and Juvenile Detention Specialists within the Juvenile Detention Unit shall be considered ‘guards’ within the meaning of ORS 243.736 and thus prohibited from striking.

“2. The Collective Bargaining Agreement shall apply to members of the YCEA bargaining unit and Juvenile Detention Unit; provided, however, that members of the Juvenile Detention Unit may not strike and may not refuse to cross picket lines to perform their jobs for the County.

“3. The County recognizes YCEA as the sole and exclusive bargaining representative for the Juvenile Detention Unit until otherwise ordered or agreed. The County and YCEA agree to joint bargaining for the YCEA bargaining unit and the Juvenile Detention Unit, subject to their respective rights to different final dispute resolution processes in the event the parties are unable to reach agreement on a successor collective bargaining agreement.

“4. In the event the County and YCEA on behalf of the Juvenile Detention Unit are unable to agree to terms of a successor collective bargaining agreement following mediation, then the Juvenile Detention Unit shall be entitled to binding arbitration in accordance with the Public Employers [*sic*] Collective Bargaining Act.

“5. Except as specifically provided in this memorandum of understanding, all other terms and conditions of the YCEA Collective Bargaining Agreement shall remain in full force and effect.”

6. YCEA was formed in 1973 to represent a wall-to-wall unit of County employees. Throughout much of the 1990s, and perhaps earlier, YCEA was affiliated

with the Service Employees International Union Local 503, Oregon Public Employees Union (SEIU/OPEU). In 2004, YCEA filed a petition (ERB Case No. RC-25-04) seeking to represent the wall-to-wall unit of County employees. An election was scheduled for June 2004, based on a consent agreement between the three parties, SEIU/OPEU, YCEA, and the County. Prior to an election, SEIU/OPEU disclaimed any interest in representing the employees. YCEA therefore withdrew the petition and the County subsequently recognized YCEA as the exclusive bargaining representative for the bargaining unit.

7. In addition to the Public Works employees, classifications in the wall-to-wall unit include:

(a) Accounting clerk I and II, senior accounting clerk, accounting technician, administrative office specialist, switchboard operator/telecom assistant, management analyst, office specialist I and II, office specialist technician, senior office specialist, department lead worker, and inventory control clerk;

(b) Appraiser trainee, appraiser, appraiser II and III, building inspector I, building inspector II, building inspector III, building inspection assistant, and code enforcement officer;

(c) Cartographer, cartographic technician assistant, cartographic technician, senior cartographer, GIS analyst I and II, survey specialist I and II, senior survey specialist, senior planner, planner, assistant planner, and associate planner;

(d) Communications technician I and II, computer specialist-engineering, data analyst, data processing technician I and II, systems analyst, senior operator/programmer, programmer, senior programmer/analyst, programmer analyst, program coordinator, and program supervisor;

(e) Deputy district attorney I and II, legal assistant, and paralegal;

(f) Engineering/survey aide and engineering/survey technician I;

(g) Environmental health specialist I and II, environmental health specialist III/waste management specialist, public health nurse, nursing assistant, human services associate, human services specialist I, human services specialist II, human services specialist III, human services technician, and vocational trainer;

(h) Facilities maintenance specialist, facilities maintenance worker I, facilities maintenance worker II, and facilities maintenance worker III; and

(i) Juvenile probation officer I and II, juvenile corrections division technician, juvenile corrections division specialist, probation officer aide, and probation officer intern.

8. Most County employees work in the courthouse or one of its adjacent annexes (referred to collectively as the courthouse complex).

9. The Public Works Department has three administrative components: Road and Bridge Maintenance Operations, Engineering and Administration Operations, and Fleet and Motor Pool Operations.

10. The Public Works Department is housed in two buildings located approximately one to one and one-half miles from the courthouse complex. The director of the Public Works Department, permit specialist, administrative office specialist, accounting clerk, engineer technicians, engineer specialist, technical specialist, and utility coordinator are located in the administrative building. The Public Works shop building is located across the parking lot from the Public Works administration building and houses the Road and Bridge Maintenance Operations and Fleet and Motor Pool Operations. The equipment operator, utility worker, mechanic and mechanic assistant, parts clerk, laborers, and flaggers work at, or out of, the shop building, and most work in the field throughout the County.

11. The following County employees also regularly work or have worked outside the courthouse complex:

(a) Until recently, Health and Human Services employees worked at, or were based out of, a building that was three miles from the County courthouse complex;

(b) Appraisers generally report to their offices in the courthouse complex and then travel to locations throughout the County conducting property appraisals;

(c) Public health nurses report to the public health building in the morning and then go into the community for their appointments and to carry out their assignments. Some Health and Human Services employees are out-stationed in communities other than McMinnville and do not report to the courthouse complex. The County operates a school-based clinic in Willamina that is staffed by Health and Human Services employees;

(d) Juvenile probation officers are assigned to specific geographic regions and travel throughout the County carrying out their assignments. The Community

Correction and Adult Correction Department operates a sub-station in Newburg where probation officers, represented by FOPPO, work with probation officer interns, represented by YCEA;

(e) Building inspectors, chemical dependency counselors, social workers, and adult mental health specialists travel throughout the County carrying out their work assignments. The County is scheduled to establish an out-station for a veterans' service officer.

12. Public Works employees are generally responsible for road maintenance and repair; to grade roads and brush roadsides and rights-of-way; plow and sand during inclement weather; clean culverts adjacent to the roads; clear ditches; and repair roads after rock and mud slides. Equipment used by some of the employees may include excavators, cranes, caterpillar tractors, trucks, scoops, machine brooms, paving machines, trailers, backhoes, rollers, and graders.

(a) Medium equipment operators operate pickup, water, and dump trucks; pull the trailer and haul heavy equipment; and operate the brush cutters, backhoe, heavy roller, and scoops for loading rock and moving materials. They are required to have a Class A commercial driver's license (CDL); pass an air brake examination; and are encouraged to have a tank endorsement, which requires an additional written examination and permits the operation of water and oil tanker trucks. They can also have a hazardous materials endorsement or a combination vehicle endorsement.

(b) Heavy equipment operators operate the heaviest equipment, generally complex road construction and maintenance equipment, including motor grader equipment, distributor, excavator, heavy bulldozer, paver, and chip spreader. These employees must hold a Class A CDL.

(c) Utility workers perform routine maintenance on light equipment used in road and bridge maintenance operations. They operate dump and light trucks, power mower, power broom for cleaning roads and intersections, patch trucks for applying asphalt and oils to pavement, and small rollers. They can also serve as flaggers for traffic control. They are required to hold a Class B CDL.

(d) Mechanics diagnose complex mechanical problems and perform skilled mechanical equipment repair work in the shop or occasionally in the field, including repair and overhaul of transmissions, differentials, axle assemblies, ignition systems, brakes, steering gears, fuel pumps, carburetors, generators, and alternators. The employee may operate welding and repair equipment, lathes, drill presses, valve

machines, saws, and cutting torches. The employees must have considerable knowledge of automotive systems, engines, parts, tools, equipment and repair technology, metals and welding, and safety procedures.

(e) Mechanic assistants perform scheduled and non-scheduled service and maintenance of motor pool vehicles and road equipment; assist mechanics; fuel, lube, and oil vehicles and equipment; and change and repair tires. The employees must be familiar with tools, equipment, and technology used in the service and maintenance of equipment.

(f) Laborers perform a wide variety of manual and semi-skilled assignments.

(g) The utilities coordinator assists in processing, coordinating, and scheduling permits for right-of-way usage by utility companies and permits for road approach projects. The employee must be able to read blueprints and maps; apply codes, legal requirements, regulations, ordinances, and statutes relating to right-of-way issues; and review construction projects and evaluate compliance with legal requirements.

(h) The permits specialist belongs to a County-wide classification that includes election and recording specialists, and performs advanced administrative work, providing engineers and inspectors with assistance. The employee must have knowledge of road and engineering inspection activities, and clerical and general office procedures.

(i) The administrative office specialist provides office direction, coordination, and assistance to the department. The employee must have college-level course work in public administration or a related field.

(j) The accounting clerk performs routine clerical activities associated with the financial and business record-keeping of the department, and must have basic knowledge of bookkeeping, accounting, and financial record-keeping. The employee must be familiar with computers and electronic financial programs and systems. To qualify, the employee must have a high school diploma and one year of related experience.

(k) The parts clerk receives and distributes parts and supplies; maintains inventories and records; assists the mechanic in supply activities; and assists in motor pool checkout. The employee may have to operate a forklift. The employee must have knowledge of purchasing, record-keeping, computer spreadsheet programs, and word processing.

(l) The engineering specialist performs technical field engineering and survey work, inspects departmental construction projects, and conducts construction materials tests. The employee must have knowledge of engineering and surveying principles, equipment and operations, and hold an associate degree in civil engineering or a related field.

(m) The senior engineering specialist performs lead work level evaluation, and plans and directs civil engineering and land surveying projects. The employee must have a four-year college degree in civil engineering or land surveying.

(n) The technical specialist performs technical field and office work engineering, and assists the director and road master in writing technical reports and other engineering-related assignments. The employee is responsible for operation of the Integrated Road Information System, Pavement Management Program, Maintenance Management System, and the Document Management System. The employee must be knowledgeable in mathematics and computer programs, and be able to read road plans and specifications.

(o) The community services work crew supervisor directs and participates in manual labor and semi-skilled work maintaining parks, fairgrounds, and boat ramps. The employee supervises juvenile or adult offenders from the County jail who are performing community service. The employee must have a reasonable knowledge of psychology and sociology related to crime and adult or juvenile offenders.

13. The administrative office specialist, accounting clerk, permit specialist, engineer technicians, and engineering specialist work in the Public Works administrative office building and report to the Public Works director. The technical specialist and utility coordinator also work in the administrative office building and report to the road master. The mechanic, mechanic assistant, and parts clerk work primarily in the Public Works shop building and report to the shop supervisor. The heavy and medium operators, utility workers, laborers, and flaggers primarily work in the field and report to one of the two road supervisors.

14. All YCEA bargaining unit employees are subject to the same basic terms and conditions of employment as provided by the collective bargaining agreement. All work a 40-hour work week. The collective bargaining agreement provides flexibility for the arrangement of different hours or shifts. All employees have the same rest and lunch break requirements; receive the same holidays, holiday pay, flexible earned time, personal extended leaves, parental leave, educational leave, military duty leave, and funeral leave; have enjoyed the same percentage of annual wage increases; are subject to the same merit increases, longevity pay, and bilingual pay; and receive the same mileage

and travel expenses. All employees receive the same medical, health, dental, and hospital benefits. All employees are subject to the same disciplinary processes, standards, and grievance provisions.

15. During the summer months, those Public Works employees who work in the field, work a ten-hour shift from 6:30 a.m. to 5:00 p.m., Monday through Thursday, in order to take advantage of daylight. In winter, these employees work from 7:00 a.m. to 3:30 p.m. No other County employees have seasonal work schedules. During anticipated inclement weather conditions, the Public Works employees who work on the roads may work an alternate schedule. In inclement weather, one shift would be scheduled for 4:00 a.m. to 4:00 p.m. and a second shift scheduled for 4:00 p.m. to 4:00 a.m. When unexpected weather conditions occur, employees may be, and have been, called in to work until the rotating shifts could be established.

16. During elections, County Clerk's Office employees are required to work outside of the regular work hours, often around the clock. This occurs once or twice a year. At least one Facilities and Maintenance Department employee works every Saturday. There are occasions, such as office relocation, when Facilities and Maintenance employees work on weekends and occasionally around the clock. There were three or four occasions during 2007, while the County was renovating and relocating offices, when Facilities and Maintenance employees worked weekend shifts around the clock.

17. The County provides certain Public Works employees with vests, hard hats, coveralls, hip-waders, and gloves. The County also provides an annual allowance so that some Public Works employees can purchase appropriate work boots. No other YCEA bargaining unit employees are provided uniforms, equipment, or tools. Provisions of the collective bargaining agreement cover tool inventory and replacement. Every six months certain Public Works employees conduct and submit an inventory of personal tools they use on the job. The County then replaces stolen, lost, or damaged tools.

18. There is generally limited interaction between the other members of the YCEA unit and most of the Public Works employees, particularly the equipment operators and those who work out in the field on roads and bridges. However, any County employee who uses the motor pool vehicles, which are located in the Public Works compound, will have a certain level of contact with some Public Works employees.

19. Due to their specialized qualification, most County employees have promotional opportunities only in their own departments. Opportunities to transfer to

other departments have been limited. The main exceptions are clerical and accounting employees. Their transfer opportunities extend throughout all departments.

20. An accounting clerk has transferred from Health and Human Services to Public Works. Clerical employees have transferred from Public Works to the District Attorney's Office, from Administrative Services to Public Works, and from Public Works to Information Services.

21. Laborers or utility workers have transferred from Public Works to the Community Corrections Department.

22. Election, recording, and permit specialists work in the Public Works Department, the County Clerk's Office, and the Planning Department.

23. Accounting clerks work in Public Works, Administrative Services, and Health and Human Services. Administrative office specialists work in the Public Works Department, the Health and Human Services Department, and in the Juvenile Department.

24. Both laborer I and laborer II classifications work in the Public Works Department, the Community Corrections Department, and the Facilities and Maintenance Department. There is one community services work crew supervisor in the Public Works Department and three in the Community Corrections Department.

25. On one occasion, the Payroll Department temporarily used the Public Works administrative services employee to assist in preparing the payroll.

26. Compensation for all YCEA bargaining unit employees is set by the collective bargaining agreement. Public Works employees are permitted to convert overtime into compensation time at a time and one-half rate, and to accumulate 60 hours of compensation time per year. Other YCEA-represented employees exchange overtime for compensation time at an hour-for-hour rate.

27. Some Public Works employees work with hazardous materials. Occasionally, Facilities and Maintenance employees work with hazardous materials or in hazardous conditions, including working with power tools, chemicals, paints, and dust.

28. Some Public Works employees, particularly the mechanics, expend a considerable amount of money providing their own personal tools for their jobs.

29. Some Public Works Department employees feel their interests are not being represented by YCEA. Some Public Works employees, particularly those who work with equipment or in the field, wish to see the issue of shift differential pay pursued more aggressively in negotiations. The mechanics also wish to see the issue of tool allowances pursued more.

30. YCEA has pursued grievances on behalf of Public Works employees who have been disciplined. Public Works employees have regularly served on the YCEA negotiations committee during the last three contracts, and have signed the contract on behalf of YCEA. Two Public Works employees currently serve on YCEA's Board of Directors.

CONCLUSIONS OF LAW

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

2. The petition does not propose an appropriate bargaining unit

The Teamsters propose to create a bargaining unit consisting of the 30 Public Works employees who have traditionally belonged to the 230-member, YCEA-represented unit. The County objects to the proposed bargaining unit on the basis that it is inappropriate because it will unduly fragment the County's workforce. We begin by considering the relevant law.

Relevant Law

The starting point for our analysis is the statute. When presented with a question of representation, this Board is called upon to "designate the appropriate bargaining unit." In making that determination, we are required to "consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees." However, this Board "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).

This Board has long had a policy and preference for creating the largest possible appropriate bargaining units. By doing so, we seek to prevent the "proliferation of collective bargaining unit[s] in a manner inimical to stable labor relations under the PECBA [Public Employee Collective Bargaining Act]." *Association of Public Employees v. Oregon State System of Higher Education and Oregon Public Employees Union, Local 503, SEIU*, Case No. RC-113-87, 10 PECBR 883, 889 (1988). Larger bargaining units further the

purposes and policies of the PECBA by creating a more equal bargaining relationship and by reducing the number of potential labor disputes and work stoppages. *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).

In particular, we permit one small group of employees to separate from a larger bargaining unit and form a smaller unit only under certain circumstances. We have determined that a separate bargaining unit may be appropriate where:

“* * * (1) [E]mployees in the proposed bargaining unit have working conditions that are significantly different from those of other personnel employed by the employer; (2) the department in which the employees work is self-contained and clearly separate from other employer operations; (3) the employees desire a separate bargaining unit; and (4) designation of the unit would not lead to undue fragmentation. * * *” *International Brotherhood of Teamsters v. Bay Area Hospital*, Case No. RC-36-01, 19 PECBR 898, 905 (2002).

In *Oregon Workers Union v. State of Oregon, Department of Transportation*, 21 PECBR at 885, we refused to allow a union to “carve out” a portion of a larger state-wide unit to form a new bargaining unit. We explained that the proposed unit had no community of interest clearly distinct from the larger unit and no compelling reasons warranted creation of a smaller unit. See also *Oregon AFSCME Council 75 v. City of Ontario*, Case No. RC-1-07, 22 PECBR 260 (2008).

Accordingly, we will analyze the evidence presented and determine whether the employees in the County Public Works Department satisfy the criteria for formation of a smaller unit that is separate from the larger YCEA bargaining unit. *Oregon Workers Union v. State of Oregon, Department of Transportation*, 21 PECBR at 885.

Community of Interest and Working Conditions

We begin with community of interest. This Board’s administrative rules set out factors to be considered in determining community of interest: “similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, common supervisor.” OAR 115-025-0050(2).

The Teamsters claim that the Public Works employees have a community of interest separate from the wall-to-wall unit because they have significantly different working conditions. The collective bargaining agreement defines the YCEA unit's terms and conditions of employment. However, overtime and compensatory time have been treated differently for certain Public Works employees, particularly those who work in the field. Also, some Public Works employees receive clothing, equipment, safety items, and allowances that are not available to other unit employees. Generally, only the outside road crews—that is, the equipment operators—have irregular shifts or schedules based on the season, the weather, or emergencies.

While all Public Works Department employees work away from the courthouse complex, many other unit employees, including public health nurses, appraisers, surveyors, certain correctional employees, probation and parole officers, chemical dependency counselors, building inspectors, social workers, and mental health specialists, also regularly work in the field. Further, a group of Public Works employees works at the Public Works administrative office.

Occupational mobility for YCEA unit employees is generally limited by their specialties and their departments, but several employees, particularly clerks and laborers, have routinely transferred in and out of the Public Works Department.

Some Public Works employees, particularly the equipment operators and mechanics, have working conditions, responsibilities, specializations, and qualifications that are demonstrably different than other employees in the YCEA unit. However, other employees within the wall-to-wall unit, such as deputy district attorneys, public health nurses, planners, cartographers, social workers, and other health and human service workers, also have significant differences in their responsibilities, specializations, and qualifications. These employees are in the same relationship to the wall-to-wall unit of employees as the Public Works employees.

Employee Desires

The Teamsters assert that the employees' desire is a compelling reason for this Board to designate a separate bargaining unit of Public Works employees. Specifically, the Teamsters claim that the Public Works employees believe their interests have not been represented by the larger unit. The testimony of two employees reveals the existence of some level of discontent or dissatisfaction among at least some of the Public Works employees, particularly the mechanics and equipment operators.

It is difficult to determine whether the discontent is with the existence of the wall-to-wall unit, with the incumbent representative, or with the ultimate success or

failure of negotiations with the employer. In large and diverse social organizations, particularly regarding employment relationships, it is inevitable that some members of the social group feel dissatisfied or believe their interests have been neglected by others. In this case, some of the Public Works employees—those working with and on the equipment and out in the field—have had ongoing concerns that are limited to their situations. The equipment operators have been concerned about shift differential, particularly when it involves on-call duty and emergency call-out times. The mechanics, and perhaps the equipment operators, also have had concerns about tool allowances. Thus, both groups of employees believe YCEA has not pursued their issues aggressively enough during contract negotiations.

Not all Public Works employees share these concerns. Public Works employees have regularly served in the YCEA leadership; they have served on the YCEA’s negotiation team, and have been signatories to the collective bargaining agreements between the County and YCEA.

In addition, 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. *Oregon Workers Union v. State of Oregon, Department of Transportation*, 21 PECBR at 883. When there are no clearly distinct community of interest factors, we will not give controlling weight to employees’ preferences. *Ontario*, 22 PECBR 260 (2008).

Other Factors

The Teamsters contend that establishing a separate bargaining unit limited to Public Works employees would not unduly fragment the County’s workforce. It points out that the County currently bargains with three unions composed of three strike-prohibited units and one strike-permitted unit. ORS 243.736(1) makes it “unlawful for any * * * [f]irefighter; [g]uard at a correctional institution * * *; [p]arole and probation officer who supervises adult offenders; [or] [p]olice officer” “to strike or recognize a picket line * * *.” Generally, this Board prefers separate units for strike-prohibited employees. See *American Federation of State, County and Municipal Employees v. City of Seaside*, Case No. C-20-81, 6 PECBR 4783, 4786-87 (1981). Accordingly, the County’s other bargaining relationships with its employees is not a compelling reason for carving out the Public Works employees into a separate bargaining unit.

The Teamsters argue that there has been an unstable bargaining history. However, the evidence establishes that this has been a stable bargaining unit for at least 15 years. In similar circumstances, this Board has held that a separate unit of operating

engineers was not an appropriate unit where there was a ten-year bargaining history within a larger unit, even though the employees “attempted to maintain some separate identity” during that period. We held that severance would violate our anti-fragmentation policy. *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).

In support of its position that a separate bargaining unit of Public Works employees is appropriate, the Teamsters rely upon *International Union of Operating Engineers, Local 701 v. Deschutes County Public Works*, Case No. RC-4-88, 10 PECBR 906 (1988). Although we found a bargaining unit of public works department employees to be appropriate in *Deschutes County*, the circumstances differed greatly from the case before us. Unlike here, the Deschutes County employees were unrepresented and previous attempts to organize a county-wide bargaining unit had failed. Taking this history into consideration, plus the public works employees’ community of interest with each other and their desire for representation, we determined that a departmental unit of public works employees was an appropriate bargaining unit.

We concluded that “while the [public works] employees * * * have a different community of interest than other County employes, it is not such a clearly distinct community of interest that it alone would merit the designation of a separate unit.” *Deschutes County*, 10 PECBR at 917 (emphasis in original).

The Teamsters also rely upon two other cases in which we found compelling reasons to create separate bargaining units. *Laborers’ International Union of North America, Local 320 v. City of Keizer*, Case No. RC-37-99, 18 PECBR 476 (2000); and *International Union of Operating Engineers, Local No. 701 v. Grant County Road Department*, Case No. C-254-83, 8 PECBR 6735 (1984). In *City of Keizer*, we created a separate unit of eight previously unrepresented parks and public works employees. We did so because the subject employees had a community of interest distinct from the other 13 city employees who were also unrepresented. In addition, we concluded that dismissal of the petition would have prevented parks and public works employees from “exercising their statutory right to seek representation,” and found this a compelling reason to approve the petition. *City of Keizer*, 18 PECBR at 485. In *Grant County*, this Board again found a public works or road unit to be appropriate where there was no other unit, no recent history of a bargaining relationship covering any of the County’s employees, and where dismissal of the petition would have denied the employees any right to be represented. In the instant case, however, there is a primary bargaining unit and a longstanding bargaining relationship.

We conclude that there is no clearly distinct community of interest among the Public Works employees or other compelling reason that warrants a separate bargaining unit of Public Works employees. The petition does not propose an appropriate bargaining unit; therefore, we will dismiss it.

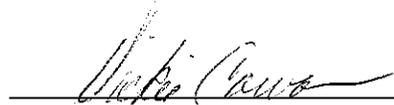
ORDER

The petition is dismissed.

DATED this 21ST day of April 2008.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.