

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. RC-30-03

(REPRESENTATION PETITION)

OREGON AFSCME COUNCIL 75,)	
)	
Petitioner,)	
)	
v.)	RULINGS,
)	FINDINGS OF FACT,
WASHINGTON COUNTY,)	CONCLUSIONS OF LAW,
)	AND ORDER
)	
Respondent.)	
_____)	

The Board heard oral argument on February 26, 2004, on Complainant's objections to a recommended decision issued by Administrative Law Judge (ALJ) William Greer on December 31, 2003, following a hearing on October 31, 2003, in Hillsboro, Oregon. The hearing closed on December 5, 2003, upon receipt of the parties' post-hearing briefs.

Allison Hassler, Legal Counsel, AFSCME Council 75, 688 Charnelton Street, Eugene, Oregon 97401, represented Petitioner.

Kenneth E. Bemis, Attorney at Law, Bullard, Smith, Jernstedt & Wilson, 1000 S.W. Broadway, Suite 1900, Portland, Oregon 97205, represented Respondent.

On June 5, 2003, Oregon AFSCME Council 75 (AFSCME) filed this petition to represent a proposed bargaining unit of "all regular employees working for Washington County's Community Corrections Residential Services excluding confidential, supervisory and managerial employees." On June 25, Washington County (County) filed objections to the petition.

The issue is: Does the petition propose an appropriate bargaining unit? The ALJ concluded that the petition does not propose an appropriate bargaining unit. We agree the unit sought is not appropriate. However, we conclude that an appropriate unit is "All residential counselors and residential services monitors employed in the Washington County's Community Corrections Center Division of the Community Corrections Department; excluding clerical, confidential, supervisory and managerial employees."

RULINGS

The ALJ made no rulings.

FINDINGS OF FACT¹

1. AFSCME is a labor organization. The County is a public employer.

2. **Organization of County.** The Community Corrections Center Division (Division) of the County's Community Corrections Department (Department) provides counseling and residential services to adult offenders who are transitioning from the County's Correction Center back into the community. The Department presently employs approximately 85 employees, including approximately 34 employees in the Division. The remainder of the Department's employees include approximately 35 parole and probation officers, 5 supervisory and administrative staff in the Probation and Parole Division, and approximately 11 supervisory and administrative staff in the Program Services Division.

The Division is responsible for operating the Community Corrections Center (CCC), a minimum security residential facility for sentenced offenders. As of the hearing date, the CCC had a capacity of 191 residents, housed in dormitories used only for adults. The Department's other two divisions are in a different building one block away. CCC personnel have occasional contact with parole and probation officers.

3. **Personnel included in proposed bargaining unit.** On the date of the hearing, the proposed bargaining unit of employees included approximately 27 employees in the following classifications: senior administrative specialist—1; administrative specialist II—2; residential counselor—6; residential services monitor I—0; and residential services monitor II—18.

¹The Findings of Fact are adapted, in part, from the parties' fact stipulation.

Administrative specialists. The administrative specialist II classification description states that such employees “perform a variety of administrative support duties of moderate complexity requiring knowledge of the work unit, its procedures and operating details * * *”

Throughout all its departments, the County employs approximately 55 employees in the classification of senior administrative specialist and approximately 228 in the classification of administrative specialist II. None of the employees in those classifications are represented by a labor organization.

Residential counselors and similar classification. The County employs six residential counselors (RC) in the Division. The classification description states that the “definition” of an RC is: “To provide lifeskills counseling and program supervision to adult offenders in a residential correctional program; to screen offenders for admission to the program and orient newly admitted residents; to conduct needs assessments and develop case plans; to maintain caseload records of residents and monitor their probation compliance while in the program.”

The County employs approximately 40 juvenile counselors in the juvenile shelter, a residential facility operated by a division of the County Juvenile Department. The classification description states that the definition of a juvenile counselor I is: “To provide case management, counseling, and supervision to juvenile offenders in Shelter Care, home detention, community service, and admissions; to conduct needs assessments; to interview and make referrals to community resources; monitor clients’ activities, progress and caseload records; and to accompany juveniles to court.”

The RC and juvenile counselor I classifications require similar knowledge, skills, and abilities. Those two classifications are on the same salary range in the County pay plan.

Residential services monitors and similar classification. The County employs 18 residential services monitor II (RSM-2) employees in the Division.² The classification description states that the definition of an RSM-2 is: “To monitor the daily activities of residents and act as lead worker for the Residential Services Monitors in the [CCC]; to maintain security and oversee the operations of a residential correctional facility; to interact with residents providing information and assistance; and to provide security checks of facilities and residents.”

²The residential services monitors are strike-permitted employees. *Washington County Police Officers Association v. Washington County*, Case No. UC-36-00, 19 PECBR 641 (2002).

As of the hearing date, the County did not employ any personnel in the residential services monitor I (RSM-1) classification. The classification description states that the definition of an RSM-1 is: "To monitor the daily activities of residents, maintain security and oversee the operations of a residential correctional facility; to interact with residents providing information and assistance; and to provide security checks of facilities and residents."

The County employs shelter aides at the juvenile shelter. The classification description states that the definition of a shelter aide is: "To oversee routine activities of shelter residents and monitor their safety; and maintain security in a juvenile shelter."

The RSM-1 and shelter aide classifications are at the same salary range in the County pay plan.

The above-described personnel in the juvenile shelter do not interact on the job with the CCC personnel who are the subject of this petition. The juvenile shelter is in a different building from the adult residential facilities operated by the Division.

4. Labor organization representation of County personnel. Approximately 475 County employees are represented by labor organizations in four separate bargaining units:

(a) Washington County Police Officers' Association represents approximately 290 employees in the Department of Public Safety;

(b) Teamsters Local 223 represents approximately 123 maintenance and technical employees in the Department of Land Use and Transportation and the Department of Support Services;

(c) Federation of Oregon Parole and Probation Officers represents approximately 35 parole and probation officers employed in the Department; and

(d) Oregon Nurses Association represents approximately 27 nurses employed in the Department of Health and Human Resources and the Department of Public Safety.

5. Unrepresented County employees. Approximately 1,119 County employees (including the 27 subject to this petition) are unrepresented. The County also employs approximately 206 temporary employees, who are unrepresented.

Unrepresented employees' terms and conditions of employment are established by the County pay plan and personnel rules and regulations. Unrepresented employees all receive the same benefits.

6. **History.** Neither AFSCME nor any other labor organization has ever petitioned for a residual wall-to-wall bargaining unit at the County. As discussed in our Conclusions of Law, labor organizations, including AFSCME, have filed representation and unit clarification petitions to represent particular groups of County employees.

7. **Desires of the employees.** The petition was supported by an adequate showing of interest. AFSCME Executive Director Ken Allen testified at hearing that his organization has been unsuccessful in attempting to organize unrepresented County employees in a residual wall-to-wall bargaining unit, despite several attempts.

8. **Transfer of employees.** From 1981 (when the County began to provide a community corrections program) until the hearing date, 27 employees have voluntarily transferred into or out of proposed bargaining unit positions. Most such transfers have been between CCC and positions in police, corrections, or parole or probation; two were RSMs who resigned and were rehired in the juvenile facility in mid-2001; and two administrative specialists transferred in or out of other departments.

CONCLUSIONS OF LAW

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

2. The petition does not propose an appropriate bargaining unit.

3. The appropriate unit is:

All residential counselors and residential services monitors employed in the Washington County's Community Corrections Center Division of the Community Corrections Department, excluding clerical, confidential, supervisory and managerial employees.

AFSCME proposes a bargaining unit of "all regular employees working for Washington County's Community Corrections Residential Services excluding confidential, supervisory and managerial employees."

The County objects to the petition, arguing primarily that the classifications in the proposed bargaining unit do not have a community of interest that is clearly distinct from the interests of the County's many other unrepresented personnel.

Statute and evolution of precedents. The legislature enacted the Public Employee Collective Bargaining Act (PECBA) in 1973. ORS 243 682(1) provides that this Board shall:

“(1) Upon application of a public employer, public employee or a labor organization, designate the appropriate bargaining unit, and in making its determination shall consider such factors as [1] community of interest, [2] wages, hours and [3] other working conditions of the employees involved, [4] the history of collective bargaining, and [5] the desires of the employees. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.”

This Board's designation of bargaining units has evolved over the thirty years in which it has decided representation petitions. *See, generally*, K. Bemis and M. Smith, “Appropriate Bargaining Unit: Scope and Composition,” *Labor and Employment Law: Public Sector* (Oregon State Bar CLE 2002), at 3-4 to 3-9.

Bargaining unit designation considerations. In the early years of public employee bargaining in Oregon, this Board focused on employees' desires to organize, and thus approved relatively small units while reserving the option of evaluating any future petitions to minimize bargaining unit fragmentation. *Communication Workers of America v. Lincoln County Assessors Department*, Case No. C-224, 1 PECBR 75 (1974). In 1980, this Board explicitly abandoned that policy and announced a strong preference for wall-to-wall units except where there was either a clearly distinct community of interest in the smaller unit or the presence of other compelling reasons to approve a smaller unit. *Teamsters Local Union 670 v. Linn County Parks & Recreation Department*, Case No. C-40-80, 5 PECBR 3081 (1980). The policy considerations we have articulated in favor of larger units in subsequent years include stable labor relations; promoting greater equality in bargaining power; “undue hardship” on employers through fragmentation of the workforce by magnifying the time and resources expended in bargaining with multiple and units; and avoiding the possibility of “whipsawing” an employer as numerous bargaining units compete for better settlements.

This Board's most recent comprehensive examination of bargaining unit designation issues occurred in *Laborers' International Union of North America, Local 320 v. City of Keizer*, Case No. RC-37-99, 18 PECBR 476 (2000). In that decision, we stated:

"In addition to the * * * statutory factors, this Board has adopted and applied other factors in determining appropriate bargaining units. The most prominent of those factors is our preference, in most situations, for establishing the largest possible appropriate unit. In *University of Oregon Chapter, AFT v. University of Oregon*, 10 PECBR 265 (1987), *affirmed* 92 Or App 614, 759 P2d 1112 (1988), we stated:

"The large unit policy is designed to serve two basic purposes of the PECBA: the promotion of stability in labor relations and the establishment of greater equality of bargaining power between employers and employees. In *Teamsters Local 670 v. Linn County*, Case No. C-40-80, 5 PECBR 3081 (1980), this Board stated that generally it would not approve fragmentary units unless a group of employees had a *clearly distinct community of interest* or there existed other *compelling reasons* to do so.' 10 PECBR at 275 (Emphasis added; Footnotes omitted)." 18 PECBR at 480-481.

In *Keizer*, we stated that this Board "has concluded that a proposed bargaining unit had a 'clearly distinct' community of interest, or that a 'compelling circumstance' required designation of a separate unit, in only a few general employment categories." 18 PECBR at 481.

Of the categories of personnel discussed in *Keizer*, only one is relevant to the unit sought in this petition: "employees who: (a) desire separate representation, (b) have unique working conditions, *and* (c) have a history of labor relations different from other employees of the employer." 18 PECBR at 481 (emphasis in original). In support of that statement, this Board cited *Division of State Lands Employees Association v. Division of State Lands and OPEU*, Case No. C-72-83, 7 PECBR 6118 (1983), and several other decisions.

We also acknowledged in *Keizer* that “our preference for wall-to-wall bargaining units may conflict with the statutory bargaining unit determination factors, especially the ‘desires of the employees’ * * *.” 18 PECBR at 482, quoting *Division of State Lands*, 7 PECBR at 6128.

In *Keizer*, citing two decisions,³ we stated that the wall-to-wall bargaining unit designation preference is not unlimited. We summarized that those two Board decisions included statements that “were intended as a gentle reminder that our preference for large units is an administratively-created factor. While it is derived from the [PECBA] policies, the preference itself is not statutory. To function properly, the preference must be applied in a way that supports, rather than supplants, the statutory unit determination factors.” 18 PECBR at 483.

Departmental bargaining units. In addition to discussing our preference for wall-to-wall bargaining units, in *Keizer*, we noted that this Board “has designated separate departmental units based in large part upon the desires of the employees, when evidence about that criterion is coupled with other factors.” 18 PECBR at 483.⁴ Based upon principles discussed in two precedents,⁵ this Board summarized that it may designate a separate departmental bargaining unit where:

“* * * (1) employees 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

³*Association of Oregon Correction Employees v. Department of Corrections and AFSCME*, 17 PECBR 730 (1998), *AWOP 161 Or App 667, 984 P2d 959* (1999); and *AFSCME, Council 75 v. Department of Corrections and AOCE*, 17 PECBR 767 (1998).

⁴Subject to the factors specified in ORS 243.682(1) and the additional factors traditionally considered by this Board in designating appropriate bargaining units, this Board may designate a bargaining unit consisting of “all of the employees of the employer, or any department, division, section or area, or any part or combination thereof, if found to be appropriate by the Board.” OAR 115-25-050(1). The important factor is not the organizational label of the group of employees but rather the community of interest that they share, when compared to the interests of other employees.

⁵*International Union of Operating Engineers, Local 701 v. Deschutes County Public Works*, Case No. RC-4-88, 10 PECBR 906 (1988); and *International Union of Operating Engineers, Local 701 v. Grant County Road Department*, Case No. C-254-83, 8 PECBR 6735 (1984).

employees desire a separate bargaining unit; and (4) designation of the unit would not lead to *undue fragmentation*." 18 PECBR at 484 (emphasis added).

History of Board Decisions Involving This County. AFSCME and other unions have sought a variety of bargaining units consisting of portions of the County's unrepresented workforce. The employees sought in several of those petitions included some of those in the unit proposed here.

(a) In 1986, this Board certified AFSCME as the representative of a unit in the Department consisting primarily of clerical employees, pursuant to a consent election agreement in Case No. RC-66-86. A decertification petition for that unit was filed as Case No. DC-4-89 in 1989, and AFSCME disclaimed further interest in representing that unit. We revoked the certification on March 27, 1989.

(b) In 1987, AFSCME filed a petition to represent clerical employees in the Department of Public Safety. *Oregon AFSCME Council 75 v. Washington County Department of Public Safety (Sheriff's Office)*, Case No. RC-27-87, 10 PECBR 172 (1987). This Board's decision in that case noted evidence that employees in the unit sought had been unable to secure a showing of interest in a County-wide clerical unit. 10 PECBR at 175. We dismissed the petition based on a finding that the clericals in question did not have a community of interest "clearly distinct" from that of other County clerical employees, and that the bargaining unit sought would "further fragment the already fragmented bargaining situation" in the County. We found that neither the petitioning employees' employment with the Sheriff's Department nor the fact that they had been "twice rebuffed by the bargaining unit representing Deputy Sheriffs" constituted a compelling reason to establish further fragmentation. 10 PECBR at 177. We also noted there was no evidence regarding the possibility of adding the employees in question to the existing Department clerical unit.

(c) Later in 1987, AFSCME filed a unit clarification petition seeking to add the 36 clerical employees in the Department of Public Safety to the existing 15-employee Department clerical unit.⁶ *Oregon AFSCME Council 75 v. Washington County Department of Public Safety (Sheriff's Office) and Washington County*, Case No. UC-127-87, 11 PECBR 230 (1989). This Board dismissed the petition, noting the existing unit, the group of employees sought to be added to that unit, and the combination of the two

⁶AFSCME had sought this clarification earlier in 1987, in Case No. UC-107-87, but withdrew that petition upon being informed that the petition appeared to be barred by the certification in Case No. RC-66-86.

groups would all be inappropriate units. Thus, while we noted the County could have recognized such a unit voluntarily, we concluded we could not clarify the unit in the manner sought. We further concluded that, even if we had the statutory authority to clarify the unit in that manner, we would not do so in that case. We concluded all the County's clerical employees were "essentially interchangeable." 11 PECBR at 239.

(d) In 1990, the Washington County Police Officers Association sought to clarify its existing unit of 180 strike-prohibited employees by adding 40 unrepresented clerical employees of the Department of Public Safety and transferring three jail nurses from an existing unit of 20 nurses represented by the Oregon Nurses Association. *Washington County Police Officers Association v. Washington County and Oregon Nurses Association*, Case No. UC-27-90, 13 PECBR 1 (1991). We dismissed both elements of the petition after analyzing a number of factors. Those factors relevant to the clerical employees which we concluded argued against the requested clarification were (1) the indirect relationship of the employees' duties to the law enforcement mission was not as significant or crucial as the direct assistance provided by personnel such as dispatchers; (2) the clericals were "essentially interchangeable" with other County clericals and did not constitute a "logically defined" group or class of employees; (3) placement of 40 out of 192 unrepresented clerical employees would fragment the potential residual bargaining unit, thereby reducing its bargaining power; (4) the County's workforce was organized horizontally (i.e., along the lines of the employees' craft, special function, or type of employment) rather than vertically (i.e., by department); and (5) the bargaining relationship within the existing Washington County Police Officers' Association unit had been stable and placing clericals in the unit could disrupt the current balance.

(e) In 1992, AFSCME filed a petition for a department-wide unit in the County Department of Housing Services. *Oregon AFSCME Council 75 v. Washington County*, Case No. RC-57-92, 14 PECBR 271 (1993). In that case, the department was newly-created as a result of an intergovernmental agreement whereby the County assumed support services responsibility for a previously autonomous Washington County Housing Authority (Authority), and the Authority transferred its employees to the County. This Board found these employees were a fragment of 670 unrepresented County employees, noting that 14 of the employees in the proposed unit held job titles that existed in other unrepresented portions of the workforce, and shared wages, hours, and working conditions. We concluded those factors outweighed the considerations raised by AFSCME (e.g., the contract between the County and Authority, the possibility that employees would be transferred back to the Authority if that contract ended, the significant control over operations by the Authority, the impact of federal funding

conditions and limitations, and the lack of contact or interchange with other County employees).

(f) In *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local Union No. 290 v. Washington County*, Case No. RC-20-93, 14 PECBR 679 (1993), this Board considered a petition for all employees in the County's Land Development Services Division, Building Services Section. This Board noted that 33 of the 36 employees in the proposed unit held job titles that also existed elsewhere in the County. We concluded that designating the proposed department-wide unit would fragment at least the administrative specialist workforce. Alternatively, the union sought a "craft" unit consisting of only the construction inspection and plan review personnel. We noted that, unlike the private sector, there was no tradition in the Oregon public sector of organizing on a craft basis; instead, craft employees had been included in wall-to-wall units. We concluded the employees at issue would not meet the private sector definition of a "craft" and did not constitute an appropriate separate unit.

(g) In *Washington County Police Officers Association v. Washington County*, Case No. UC-36-00, 19 PECBR 641 (2002), the association sought to clarify its existing strike-prohibited unit by adding 16 strike-permitted RSMs. This Board noted our historical preference for separate bargaining units for strike-permitted and strike-prohibited employees. We further noted the many differences between the employees sought to be added and the existing unit, including such things as the primary purpose of the facilities where they work; their location; their skills and daily duties; their supervision; and the lack of significant interaction or interchange. We concluded the community of interest factors did not outweigh the loss of the right to strike and our "disfavor of adding strike-permitted employees to a unit prohibited from striking."

Analysis. Based upon the principles and analysis stated in *Keizer*, and in our prior decisions involving this County, the proposed bargaining unit is not appropriate.

All of the County's unrepresented employees, including those sought here, work under the same personnel rules and policies, and the same compensation and benefit structure. An additional significant factor in this particular case is the history in this County of organizing horizontally by function, rather than vertically along departmental lines. The fact that the employees sought in this petition all work in the same building or division does not, by itself, demonstrate a distinct community of interest sufficient to override that organizing history. While these employees unquestionably share a community of interest to varying degrees, more significant community of interest factors point to the conclusion we draw below.

The proposed bargaining unit includes three employees in the administrative specialist classifications. In its other operations, the County employs approximately 55 employees in the classification of senior administrative specialist and approximately 228 employees in the classification of administrative specialist II. Their working conditions are essentially identical, aside from the specific clerical tasks that they perform in the various County departments. None of the employees in the administrative specialist classifications is represented by a labor organization. The personnel in those classifications share a community of interest. In considering prior petitions in this County, this Board has repeatedly held that placing some of these clerical employees in bargaining units organized along departmental lines would inappropriately fragment a County-wide group of "essentially interchangeable" clerical employees. Like the prior petitions involving County employees disapproved by this Board, this petition abandons the County's horizontal organizing structure and includes a fragment of the clericals who share a significant community of interest with one another. We therefore conclude that the petition seeks an inappropriate unit.

Our conclusion regarding the appropriateness of the unit sought does not end our inquiry. If we conclude that a proposed unit is not appropriate, this Board has the authority to determine whether another unit contained within the petition would be appropriate. *IBEW v. Eugene Water and Electric Board*, Case No. RC-36-93, 14 PECBR 808, 817 (1993). See ORS 243.682(1) (Board shall designate the appropriate bargaining unit).

If we eliminate the three clericals, the remainder of the proposed unit consists of six RCs and 18 RSM-2s, all of whom work with adult offenders in a residential setting at the CCC. The County asserts that both of these classifications are similar to classifications in the juvenile shelter. The RC classification (employees who work in the CCC) and juvenile counselor I classification (employees who work in a different County operation) require similar knowledge, skills, and abilities, and they are on the same salary range in the County pay plan. In a like vein, employees in the RSM-1 classification at the CCC (a vacant classification as of the date of hearing) and juvenile shelter aides would be expected to perform similar duties at the same salary range in the County pay plan. These similarities indicate somewhat of a shared community of interests between the CCC and juvenile staff.

However, significant factors also indicate a distinct, separate community of interest within the nonclerical positions at CCC. There are currently no RSM-1s; all of the existing RSMs perform duties and receive compensation at the higher RSM-2 level. RCs and RSMs work exclusively with adjudicated adult offenders, while the juvenile positions work exclusively with juveniles; CCC is housed in a different building

from the juvenile facility; and the adult and juvenile classifications do not interact on the job. These two functions are administratively divided under separate departments. Although two employees hired into juvenile positions after resigning from CCC, there has been no direct interchange between these two employee groups.⁷

Given these significant differences, we would conclude that a distinctive community of interest exists in a CCC unit that excludes clerical employees. Such a unit is also consistent with the County's history of functional organizing, since it includes all the strike-permitted personnel working with adult offenders, but excludes the Department's clerical, administrative, supervisory, and parole and probation personnel (the latter of whom are separately represented).

Accordingly, we designate the appropriate unit to be:

All residential counselors and residential services monitors employed in the Washington County's Community Corrections Center Division of the Community Corrections Department, excluding clerical, confidential, supervisory and managerial employees.

In order to determine whether AFSCME has submitted a sufficient showing of interest in the appropriate unit, we will order the County to produce a list of employees in the unit designated as appropriate. We will then check the showing of interest against the new list to determine the adequacy of the showing. If the showing of interest is sufficient in that unit, we will conduct an election in that unit. If the showing of interest is insufficient, the petition will be dismissed.

ORDER

1. The County shall submit to this Board a list of employees included in the appropriate bargaining unit within 10 days of the date of this Order.

⁷Indeed, the bulk of job-related contacts and interchange between these CCC personnel and other County positions are with police and corrections—i.e., employees who are already separately represented. This Board previously determined that RSMs do not share a sufficient community of interest to be included in the strike-prohibited Department of Public Safety unit. 19 PECBR 641.

2. If the showing of interest submitted by AFSCME is adequate for the bargaining unit designated, the Elections Coordinator shall conduct a secret mail ballot election for employees in the following bargaining unit:

All residential counselors and residential services monitors employed in the Washington County's Community Corrections Center Division of the Community Corrections Department, excluding clerical, confidential, supervisory and managerial employees

The ballot shall provide a choice between the Oregon AFSCME Council 75 and no representation.

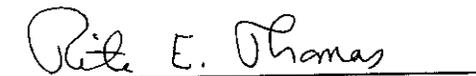
3. Eligible voters shall be those persons employed by the County on the date of this Order and still employed at the time of the closing of the election and who are included in the description of the bargaining unit.

4. No later than 10 days from the date on which AFSCME's showing of interest is deemed adequate, the County shall provide this Board and AFSCME with alphabetized lists of the names, home addresses, and position titles of eligible voters. The County shall also provide to this Board at that time an alphabetized list of mailing labels addressed to eligible voters.

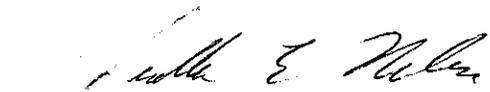
DATED this 16th day of July 2004.



Paul B. Gamson, Chair



Rita E. Thomas, Board Member



Luella E. Nelson, Board Member

This Order may be appealed pursuant to ORS 183.482.