

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. RC-41-03

(PETITION FOR REPRESENTATION)

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

The parties filed no objections to a proposed order issued by Administrative Law Judge (ALJ) B. Carlton Grew on May 6, 2004, after the case was submitted on stipulated facts on February 19, 2004. The record closed on upon filing of the parties' post-hearing briefs on March 5, 2004.

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

David E. Coulombe, Attorney at Law, Fewel & Brewer, 456 S.W. Monroe Avenue, #101, Corvallis, Oregon 97333-4710, represented Respondent.

On October 14, 2003, Oregon AFSCME, Council 75 (AFSCME or Union) filed a petition seeking to represent a bargaining unit of 11 seasonal parks and recreation workers employed by the City of Corvallis (City). The petition was supported by a timely and adequate showing of interest. The City timely objected to the petition on the grounds that (1) a separate unit for seasonal parks and recreation workers is not appropriate, and (2) the petition should be dismissed because of the statutory contract and election bars. In its brief, the City also argues that the petition is not justiciable

because all employees covered by the petition were laid off for the winter after the Union's showing of interest was filed.

The issues are :

(1) Is the petition justiciable?

(2) Is the proposed bargaining unit of all seasonal Parks and Recreation Department employees of the City who work at least 1,040 hours but less than 2,080 hours on a year-to-year basis, an appropriate unit?

We conclude that the petition is justiciable and that the proposed bargaining unit is appropriate. Accordingly, we will order that an election be held

RULINGS

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

FINDINGS OF FACT¹

1. AFSCME is a labor organization and the exclusive representative of an existing bargaining unit of employees employed by the City, a public employer.

2. The Union and the City are parties to a collective bargaining agreement effective August 27, 2002 through June 30, 2005. Bargaining sessions for this contract took place from January 11 through August 27, 2002.

3. The City's seasonal Parks and Recreation Department employees who work at least 1,040 hours per year, but less than 2,080 hours per year, and no more than eight months each year (seasonal parks workers or subject employees), are currently unrepresented public employees.

4. Article I, Section 1.1, of the parties' 2002-2005 collective bargaining agreement expressly recognizes AFSCME as the sole and exclusive bargaining agent for employees scheduled to work at least 1,040 hours per year, with specific exceptions, to exclude seasonal Parks and Recreation Department employees working no more than

¹These findings of fact are based on the parties' February 18, 2004 joint stipulation of facts.

eight months. Employees working less than 1,040 hours per year are considered temporary or casual and are not represented.

5. All current AFSCME-represented positions are specified on the City's AFSCME classification schedule. The employees in these positions work a variety of workweek schedules, both in terms of number of hours (20 to 40 hours per week) and in terms of shift times.

6. The petitioned-for employees are classified as Seasonal Parks Maintenance Workers (II, III, and IV). The positions are not part of the City's AFSCME unit classification schedule.

7. Seasonal parks workers are hired for positions each March and seasonal appointments end on or before October 31 of each year. Seasonal parks workers are told that if they leave the City in good standing at the end of the season, while they are not guaranteed reemployment the following season, they are afforded a preference in the hiring process. If a seasonal parks worker agrees to continue with the City for the next season, the City contacts him or her prior to the start of the next season. These employees are not required to complete a new application or to re-interview. In the 2003 season, 8 of the 11 subject employees had previously performed work for the City. The City's other casual or temporary employees do not have similar annual vacancies.

8. Regular parks employees, other than the parks maintenance supervisor, are classified as parks operation specialists and park maintenance technicians.

9. Regular parks employees are responsible for the care and maintenance of over 1,600 acres of City-owned property as well as riverfront recreation areas and sports fields. They are responsible for maintenance of all trees, shrubs, and lawns, as well as improved landscape areas in the urban area of the City. Regular parks employees train and give day-to-day direction to seasonal parks workers. Regular parks employees are expected to perform a wider range of duties than seasonal parks workers, as well as some significantly higher technical functions. Regular parks employees are involved in preparing and monitoring the budget, supervising volunteers and special projects, acting as lead workers for seasonal parks workers, and routinely responding to public requests.

10. Seasonal parks workers mow lawns and fields, maintain structures and trails, clean bathrooms, and maintain downtown improved landscape areas. Seasonal parks workers are not interchangeable with regular parks employees, and do not temporarily fill the positions of regular parks employees. Seasonal parks workers are

responsible for essential parks functions, but perform more of the routine and day-to-day maintenance work. The character of the work for regular parks employees is generally of a more technical and complex level. The two groups of employees have differences in required qualifications and certifications. They are all an integral part of the City's parks operations.

11. Seasonal parks workers and regular parks employees work in the same locations, throughout the City's parks, trails, and open space network.

12. Both seasonal parks workers and regular parks employees are supervised by Parks Maintenance Supervisor Joe Whinnery.

13. Both seasonal and regular parks employees generally work the same basic schedule (eight hours per day, five days a week) during the season. One of the eight regular parks employees works weekends when volunteers are working. Four of the 12 seasonal parks workers were assigned a weekend day as part of their regular workweek. By comparison, few casual or temporary employees generally work 40 hours per week.

14. Seasonal positions and regular represented positions are funded and budgeted differently. Seasonal and casual employees are hourly workers; no specific number of positions or wage level is budgeted, just a total wage dollar amount. Moving dollars from regular wages to seasonal wages or vice versa is an administrative act that can be authorized by the department director. Moving seasonal wage dollars to contract services would require the approval of the City manager. Seasonal parks workers do not receive regular cost-of-living or specific scheduled increases, although there are five wage steps in each wage range, and the schedule is reviewed by the City annually for appropriate changes, including a review for minimum wage and living wage compliance. Additionally, the City's practice has been that seasonal parks workers who are rehired in the subsequent season are placed at a higher step of their job class or into a higher seasonal job class. Only once in recent years did this not occur. Similar annual vacancies and routine rehiring do not occur for casual and temporary employees, so there is little history on whether those employees would generally receive the same increase in wage rate upon rehire. Step increases are given periodically for casual and temporary employees, but not on a regular schedule.

15. The City maintains a separate wage rate schedule for its seasonal and casual workers entitled "Seasonal and Casual Rate Schedule."

16. Regular parks employees are assigned a job group on one of two AFSCME salary schedules. Regular employees represented by AFSCME change from a non-PERS salary schedule to the PERS salary schedule (which is six percent higher) when they become members of PERS. Casual and seasonal employees do not have separate non-PERS and PERS schedules and their wages do not automatically change based on PERS membership.

17. The City does not automatically promote seasonal parks workers to regular parks employee positions when openings occur. Both seasonal and regular parks employees must follow the regular hiring process, including application and interview, for a regular parks position. The City is required to offer regular represented employees an interview if they meet minimum qualifications for the position, and they are allowed to interview on paid time. No such provisions exist for seasonal employees. Of the three regular parks employees hired in 2003, two had been prior City employees; of the three regular parks employees hired in 2001, all had been prior City employees; and of the two regular parks employees hired in 1999, one was a prior casual or seasonal employee. The remaining two regular parks employees had not been prior City employees and were hired in 1976 and 1994 respectively. Because regular parks positions require related experience, seasonal parks workers generally understand that their seasonal employment provides such experience and would assist them in gaining regular employment, should an opening arise. Opportunities to gain this experience elsewhere are becoming more limited.

18. Former seasonal parks workers are rehired in subsequent years at higher steps on the classification wage range, and typically progress from seasonal parks worker II to worker III or even worker IV levels with even higher hourly wage rates. No other City temporary or casual employees are given this preference in the hiring process, or have regularly scheduled pay adjustments or promotions. While some casual employees in other City employment do become regular employees, it does not occur regularly.

19. Regular employees receive the following benefits: medical and dental insurance, PERS retirement (when eligible under PERS rules), paid holidays, paid vacation, paid sick leave, life insurance, disability insurance, employee assistance program, access to a section 125 flexible benefit plan, deferred compensation, unemployment insurance, workers compensation insurance, eligibility for in-house only recruitments, and training opportunities. Regular employees represented by AFSCME receive differing levels of accrual benefits based on their hours of work and in the case of vacation time, their years of service. For example, a half-time employee would receive half the accrual of a full-time member. They receive differing levels of health benefits

based upon their full-time equivalent (FTE). Part-time employees with 0.5 to 0.75 FTE receive City-paid benefits for single coverage; part-time employees with 0.75 FTE or more receive City-paid benefits for up to two-party coverage; and full-time employees receive City-paid benefits for up to full-family coverage or the dollar threshold established in the contract.

20. Seasonal employees receive the following benefits: PERS retirement (when eligible under PERS rules), unemployment and workers compensation insurance, eligibility for in-house only recruitments, and training opportunities. Casual employees receive the same benefits based on their eligibility.

21. Language excluding seasonal employees from the AFSCME unit first appeared in the 1980 contract's recognition clause. The specific language excluding seasonal Parks and Recreation Department employees working no more than eight months per year appeared in the parties' collective bargaining agreement for the first time in 1993.

22. In 2000, AFSCME purportedly collected showing-of-interest cards for the subject employees. AFSCME Staff Representative Lou Sinniger requested that the City voluntarily recognize the subject employees as part of the existing bargaining unit. The City declined.

23. In 2002, during the negotiations for a successor agreement, AFSCME did not present any proposals to modify the recognition clause to add the subject employees to the existing bargaining unit.

24. On October 6, 2003, Sinniger presented the City council with a request that the City voluntarily recognize the subject employees as part of the existing bargaining unit. Sinniger stated that if the City refused, he intended to file a petition with the Employment Relations Board seeking an election to form a new unit. AFSCME's October 6 and October 19, 2003 letters to the City council, together with attached letters from the subject employees, asked the City to voluntarily agree to add the subject employees to the existing bargaining unit as the preferred manner in which to gain representation for the subject employees. The City declined to do so.

25. On October 14, 2003, AFSCME filed a petition for representation on behalf of all seasonal City Parks and Recreation Department employees who work at least 1,040 but less than 2,080 hours a year on a year-to-year basis. The City sent a letter containing the names and addresses of the then-current employees meeting the

description of the proposed bargaining unit. This consisted of eleven employees. None of these employees were employed by the City as of February 18, 2004.

26 On November 4, 2003, the City filed objections to the petition.

CONCLUSIONS OF LAW

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

2. The petition is justiciable.

3. An appropriate bargaining unit is:

All seasonal Parks and Recreation Department employees of the City who work at least 1,040 hours but less 2,080 hours on a year-to-year basis.

The City offers three objections to the petition and proposed unit. First, the City contends that the petition is not justiciable because the employees in the proposed unit were laid off at the end of the season, after the Union filed the showing of interest. Second, the City argues that the petition should be dismissed because it is subject to both election and contract bars. Third, the City contends that the subject employees do not share a sufficiently distinct community of interest to warrant the creation of a separate bargaining unit. We consider each objection in turn.

JUSTICIABILITY

AFSCME filed this petition on October 14, 2003. The City argues that the petition is not justiciable because none of the subject employees were employed by the City as of March 5, 2004, the date its post-hearing brief was filed. This argument lacks merit.

The City's seasonal parks workers are hired each March and are laid off on or before October 31 each year. Seasonal parks workers who leave the City in good standing at the end of the season are given a preference in the hiring process. Seasonal parks workers seeking reemployment are called in advance of starting the next season. They are not required to complete a new application or to re-interview, and are paid at a higher level. For the 2003 season, 8 of the 11 subject employees had worked for the City prior to the 2003 season.

The City relies on *Utsey v. Coos County*, 176 Or App 524 at 549-550, 32 P3d 933 (2001) *rev allowed* 334 Or 75, 45 P3d 449 (2002), *rev dismissed* 335 Or 217, 65 P3d 1108, 1109 (2003). In *Utsey*, an intervenor organization, the League of Women Voters, sought to appeal a decision of the Land Use Board of Appeals (LUBA) granting a permit for use of farmland as an off road vehicle area and for a motocross race track. The League never asserted any interest of its own in the decision. The Court of Appeals held that the League suffered “no practical effect” from LUBA’s decision, and therefore its appeal of that decision did not present a justiciable controversy.

The Oregon Supreme Court has said that:

“* * * Under Oregon law, a justiciable controversy exists when ‘the interests of the parties to the action are adverse’ and ‘the court’s decision in the matter will have some practical effect on the rights of the parties to the controversy.’ *Brumnett v. PSRB*, 315 Or 402, 405-06, 848 P2d 1194 (1993). ‘Cases that are otherwise justiciable, but in which a court’s decision no longer will have a practical effect on or concerning the rights of the parties,’ are moot. *Id.* at 406.” *Barcik v. Kubiacyk*, 321 Or 174, 182, 895 P2d 765 (1995).

Oregon courts have applied a similar analysis in a case arising under the Public Employee Collective Bargaining Act (PECBA). In *Eugene Education Association v. Eugene School District*, 91 Or App 78, 754 P2d 580, *vacated as moot* 306 Or 659, 761 P2d 524 (1988), the Court of Appeals had upheld this Board’s bargaining order regarding disputed contract language, reasoning that even though the parties had negotiated an agreement without the disputed language, the bargaining order would apply to future union proposals which included that language. The Oregon Supreme Court, without providing its reasoning, vacated the Court of Appeals’ decision and remanded the case with instructions to dismiss it as moot. Shortly thereafter, the Court of Appeals was confronted with a similar issue. The Court of Appeals interpreted the Supreme Court’s action as follows:

“* * * It seems clear from the Supreme Court’s action [in *Eugene*] that an ERB case is moot, despite a continuing dispute between a union and an employer over the meaning or legality of a contractual provision or proposal, if there are no longer any specific rights of specific parties at issue. * * *”

Portland Association of Teachers v. Portland School District, 94 Or App 215, 218, 764 P2d 965 (1988).

Accordingly, the Court of Appeals dismissed a petition for judicial review as moot where this Board had ordered the parties to arbitrate a grievance and the grievance had been settled.

This Board confronted the issue of justiciability in *Jefferson County v. Oregon Public Employees Union*, Case No. UP-18-99, 18 PECBR 388 (1999), *reversed and remanded* 174 Or App 12, 23 P3d 401 (2001), *Order on Remand*, 20 PECBR 217 (2003). That case concerned an alleged violation of ORS 243.672(2)(g) based on the union's picketing of a county commissioner's private businesses. This Board originally disposed of the case on standing grounds but the Court of Appeals reversed. When this Board addressed the case on remand, the union no longer represented any employees of the county. Accordingly, this Board held that the issue was moot and dismissed the complaint because there were no longer specific rights of specific parties at issue; there was no reasonable potential that the dispute between these parties would be repeated in the future; and there was no relief which this Board could provide even if it found that OPEU had violated the statute.

Similarly, in *State of Oregon, Department of Administrative Services v. OPEU*, Case No. UP-78-95, 17 PECBR 399 (1997), the employer filed an unfair labor practice complaint alleging that the union had inappropriately pursued a permissive subject of bargaining to interest arbitration. Shortly after the interest arbitrator selected the employer's last best offer, the union lost its status as exclusive representative in a representation election. This Board dismissed the employer's complaint as moot, reasoning that "[s]ince [the union] no longer represents the employees, there is no reasonable expectation that this dispute between these specific parties will be repeated in the future." 17 PECBR at 402.

In this case, however, the Union has filed a petition, with a timely and adequate showing of interest, to represent seasonal parks workers who are generally employed from March through October. There is no evidence that the City's long-standing practice of employing seasonal parks workers has ended, or that the City has altered its practice of generally reemploying seasonal parks workers from the previous season. The City retains salary schedules and other policies governing that seasonal employment. We conclude that, although no seasonal parks workers were employed as of the date of the post-hearing brief, the City's seasonal-worker program and job classifications continue. The positions covered by the petition continue to exist, and, on this record, continue to be filled from March until no later than October 31 each year.

Therefore, specific rights of specific parties are at issue, and there is a reasonable expectation that this dispute between these specific parties will continue. The action is justiciable.²

CONTRACT AND ELECTION BARS

The City next argues that a representation election for this unit is barred by ORS 243.692(1), which provides:

“* * * (1) No election shall be conducted under ORS 243.682(3) in any appropriate bargaining unit within which during the preceding 12-month period an election was held, nor during the term of any lawful collective bargaining agreement between a public employer and an employee representative. However, a contract with a term of more than three years shall be a bar for only the first three years of its term.”

That statutory section does not apply to this case. No election was held in the proposed unit, and no collective bargaining agreement exists between the City and a representative of the proposed unit or any of its members. The fact that the City and Union have discussed inclusion of the subject employees in another unit of employees represented by the Union does not trigger the election or contract bars as to this proposed unit.

APPROPRIATE BARGAINING UNIT

ORS 243.682(1) provides that this Board shall:

“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 community of interest, wages, hours and other working conditions of the employees involved, the

²The City also argues that the showing of interest is insufficient because, subsequent to its filing, the employees in the proposed unit were laid off. OAR 115-25-000(1)(a) and 115-25-010(1)(h) provide that a petition accompanied by a showing of interest initiates the process of potential certification of a bargaining unit. The Union has satisfied the rules governing the filing of the petition. Our rules do not require that a properly filed showing of interest be revised every time a personnel change occurs in a proposed unit.

history of collective bargaining, and 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.”

“Community of interest” includes such factors as similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, and common supervision. OAR 115-25-050(2). An appropriate bargaining unit may consist of all of the employer’s employees, “or any department, division, section or area, or any part or combination thereof.” OAR 115-25-050(1).

The City concedes that the employees in the proposed unit share a sufficient community of interest among themselves to constitute an appropriate unit. Relying on *AFSCME Council 75 v. City of Salem*, Case No. UC-55-91, 13 PECBR 433 (1992), the City first argues that the employees in the proposed unit share a significant community of interest with the existing AFSCME unit, and *more appropriately* belong there.³ Although that may be the case, in a petition for representation of an unrepresented proposed unit, our responsibility is to determine whether the proposed unit is *an* appropriate unit, “even though some other unit might also be appropriate.” ORS 243.682(1).

The City next argues that the employees in the proposed unit do not share a community of interest sufficiently *distinct* from the existing AFSCME unit to warrant creation of a separate bargaining unit. In *Laborers’ International Union of North America, Local 320, v. City of Keizer*, Case No. RC-37-99, 18 PECBR 476 (2000), this Board noted:

“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

³The seasonal parks workers share some characteristics with regular parks employees. They share similar work, although at a different skill level. There may be movement of seasonal parks workers to regular parks positions (of the eight regular parks employees hired in 1999, 2001 and 2003, six were previously City employees; the stipulation does not indicate whether their prior employment was in the Parks and Recreation Department.) The seasonal parks workers share common supervision with regular parks employees. There are, however, important differences, such as the skill level of their work, the fact that seasonal parks workers do not temporarily fill in for regular parks employees, the seasonal or non-seasonal nature of their work, the wage and benefits structure, and a 24-year history of separation for collective bargaining purposes.

unit, in only a few general employment categories. We have designated separate, specialized (other than wall-to-wall) bargaining units for employees who are prohibited by ORS 243.736 from striking, employees such as teachers with special certifications, professional employees, craft employees, production and maintenance employees (where the public employer is a utility that sells its commodities to the public), and for 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 (footnotes omitted, emphasis omitted).

We turn to the factors set out in ORS 243.682(1) and OAR 115-25-050(2).

Community of interest: Unlike other City employees, the seasonal parks workers do not have a classification description. They do not temporarily replace regular parks employees. The qualifications for hire of a seasonal parks worker are lower than those required for a regular parks employee. Seasonal parks workers are not promoted to regular parks positions, and do not receive any preference in applying for those positions. Regular employees must be offered an interview on paid time. Although the City employs other seasonal workers, those seasonal workers do not work with the parks workers.

The seasonal parks workers work with regular parks employees in the same locations and during the same shift. They share the same line of authority and supervision. They perform work which is similar to that of regular parks employees, although regular parks employees perform tasks which require greater skill, experience, or responsibility.

Although there is no actual hiring preference, seasonal parks workers understand their experience in those positions provides experience that will assist them in gaining regular Parks and Recreation Department positions. There are many other job categories identified in the City-AFSCME, 2002-2005 collective bargaining agreement, none of which appear to have duties similar to those performed by the seasonal parks workers.

Wages, hours, and working conditions: Seasonal parks workers are paid on a different pay scale from regular parks employees. The City's other seasonal workers do not have a multilevel pay scale like the seasonal parks workers. While seasonal

workers can qualify for PERS, the employee portion of those payments is deducted from their wages. In contrast, the wages of regular employees are increased once they qualify for PERS so that their take-home pay is not reduced. Regular City workers receive medical and dental insurance, paid holidays, sick leave, life and disability insurance, a deferred compensation plan, and related benefits, while seasonal parks workers do not.

History of collective bargaining: The seasonal parks workers have been excluded from the existing AFSCME unit since 1980. In 2000, AFSCME collected showing of interest cards and attempted to have the seasonal parks workers included in the AFSCME unit through bargaining with the City. The City did not agree, and AFSCME did not raise the issue in later bargaining during 2001 and 2002. In October 2003, AFSCME again asked the City to add the seasonal parks workers to the AFSCME unit. As part of that effort, AFSCME presented the City with letters from seasonal parks workers asking to be made part of the existing unit. The City declined AFSCME's request.⁴ The record does not contain a list of other City bargaining units, but it appears from the unit description that the AFSCME unit includes virtually all eligible City employees, except sworn police officers, firefighters, and seasonal parks workers.

The desires of the employees: The evidence in the record suggests that the seasonal parks workers have recently expressed both a desire to join the existing AFSCME unit and a desire to create their own unit. We conclude that the employees' desires are in favor of representation in general.

DISCUSSION

In *City of Keizer*, 18 PECBR at 476, this Board certified a small bargaining unit of a separate department of city utility workers after finding that the job duties, skills, and desires of the petitioned-for employees differed from those of other employees. In *Laborers' International Union of North America, Local #483 v. City of Portland*, Case No. RC-30-00, 19 PECBR 384 (2001), this Board certified a bargaining unit consisting of a portion of an employer's seasonal employees, based on similar findings.

In *Oregon School Employees Association v. South Coast ESD, Region #7*, Case No. RC-10-00, 19 PECBR 58 (2001), OSEA sought to represent a proposed unit of

⁴The City suggests that the history of bargaining should lead us to deny a separate unit because AFSCME failed to make a proposal to represent these employees during bargaining for the 2002-2005 collective bargaining agreement. Our focus here, however, is on the appropriateness of the proposed unit, not whether the Union sought to bargain with the employer over the issue.

part-time instructional assistants. This Board noted that the employees in the proposed unit shared a community of interest with the existing unit employees, in part because they worked in the same schools, often in the same classrooms, under the same job descriptions using the same knowledge and skills. This Board also concluded that the petition proposed an appropriate unit, in part because the part-time employees had the same job descriptions, skills, (lack of) benefits, and supervision. They also had no history of being represented, and had expressed, by signing authorization cards, a desire to be represented in a separate bargaining unit. 19 PECBR at 63-65.

OSEA had sought to represent the subject employees for over two years. It first sought to include them in the existing unit. While the parties were in the process of negotiating a collective bargaining agreement, and after they had reached tentative agreement on the recognition clause, the association filed a unit clarification petition seeking to add the part-time employees to the existing unit. OSEA withdrew the petition after failing to submit the required showing of interest. Later, OSEA filed a representation petition for a wall-to-wall unit, which was dismissed by this Board after concluding that a question of representation did not exist. 19 PECBR at 65. This Board concluded that there were compelling circumstances that supported designation of the petitioned-for unit:

“What this history means is that OSEA, although willing, is unable to include the part-time employees in its existing bargaining unit. The result is that this residual group of employees is being denied the statutory right to choose an exclusive representative for ‘the purpose of representation and collective bargaining with their public employer on matters concerning employment relations.’ ORS 243.662.

“Approval of this unit will not unduly fragment ESD’s workforce. It is already fragmented. The full-time classified employees are represented; the part-time classified employees are unrepresented. If these employees choose OSEA as their exclusive representative, ESD will have to bargain with one additional bargaining unit. While a wall-to-wall unit combining the part-time employees with the existing unit might be more appropriate, we need not withhold approval of a proposed unit merely because it is not the most appropriate.

“Where, as here, the statutory directives for determining appropriate bargaining units dictate one result—approval of the unit—but conflict with Board-created policy preferences (for large units and against fragmentation), adherence to the statute is the better course of action. In other circumstances, where our preferences work to further the policies of the PECBA, such preferences will still be applied. Each unit determination case is governed by its own peculiar facts. Here, the procedural history of this matter, coupled with our conclusion that the proposed unit is appropriate under the requirements of ORS 243.682(1), leads us to approve the unit and order an election.” 19 PECBR at 65 (footnote omitted, emphasis omitted).

In *City of Portland, supra*, this Board concluded that employees in a proposed unit of seasonal maintenance workers, including parks workers, had a sufficiently distinct community of interest to warrant the creation of a separate bargaining unit. This Board stated:

“Although this Board in the past typically has declined to include seasonal and casual employees in a bargaining unit of regular employees, it has allowed separate units of employees with a limited employment relationship with a public employer. *AFSCME Council 75 v. Multnomah County Juvenile Justice Division*, Case Nos. RC-36/UC-47-92, 14 PECBR 202 (1992), and *Beaverton Education Association v. Beaverton School District 48J*, Case No. RC-72-93, 15 PECBR 210 (1994).” 19 PECBR at 390.

In *Multnomah County Juvenile Justice Division, supra*, we designated a bargaining unit of on-call juvenile group workers. In *Beaverton School District 48J, supra*, we designated a bargaining unit of substitute teachers. In *ILWU v. Port of Portland*, Case Nos. RC-3/5-95, 16 PECBR 205, 211-16 (1995), *aff'd* 142 Or App 592, 921 P2d 429 (1996), this Board declined to create separate bargaining units for ten port terminal supervisors and six port terminal berth agents, when the same union already represented a unit of three berth agents who shared a community of interest with the supervisors and berth agents.

We conclude that City seasonal parks workers are sufficiently distinct from other City workers and that it is appropriate to allow them to organize separately.⁵

The subject employees have signed cards demonstrating that they desire separate representation. They have unique working conditions. They are employees with a different level of attachment to their employment than regular City employees. Their work differs from both other City seasonal workers and regular Parks and Recreation Department employees. These employees also have a 24-year history of separation from the other Parks and Recreation Department employees and the existing AFSCME unit, and thus have a history of labor relations different from other City employees.

Were we to dismiss this petition, it would effectively prevent these public employees from exercising their statutory right to seek representation. Based on the appropriate unit factors, we designate a bargaining unit of City seasonal parks workers and order an election.

ORDER

1. An appropriate bargaining unit is all seasonal Parks and Recreation Department employees of the City of Corvallis, who work at least 1,040 hours but less 2,080 hours on a year-to-year basis.

2. The elections coordinator shall conduct a secret mail ballot election in the above bargaining unit for eligible employees to express their desires for or against collective bargaining representation. Eligible voters are those employees of the City employed in the bargaining unit on the date of this Order and who are still employed at the time of the close of the election. The choices on the ballot shall be Oregon AFSCME, Council 75 and No Representation.

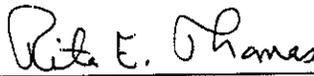
⁵We observe that this will create a small unit which has certain community of interest factors similar to the larger AFSCME unit. During the discussions leading to this petition, AFSCME asked the City to voluntarily recognize the seasonal parks workers as part of the larger unit. The City here suggests this is where they belong. While this separate unit is appropriate under the law, the parties may both benefit, in the event the employees vote for representation, by a voluntary amendment to the larger unit's recognition clause. This would avoid undue fragmentation and the time required to bargain a new agreement, and would provide the employees the bargaining benefits of being members of the larger established unit.

3. The City shall provide this Board and AFSCME with an alphabetical listing of names, home addresses, and classification titles of all eligible employees within 10 days of the date of this Order. The City shall provide a set of mailing labels, with the addresses of eligible voters in alphabetical order to the elections coordinator within 20 days of the date of this Order.

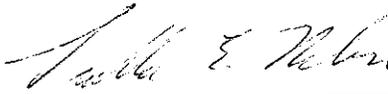
DATED this 30 day of June 2004.



Paul B. Gamson, Chair



Rita E Thomas, Board Member



Luella E. Nelson, Board Member

This Order may be appealed pursuant to ORS 183 482.

