

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-1-04

(UNIT CLARIFICATION—REDESIGNATION)

COOS COUNTY,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	ORDER REDESIGNATING
OREGON AFSCME COUNCIL 75,	)	BARGAINING UNIT
LOCAL 2936,	)	
	)	
Respondent.	)	
_____	)	

On March 12, 1974, in Case No. C-147, the Board certified Local 502-A, Coos County Courthouse Employees, American Federation of State, County and Municipal Employees, AFL-CIO, Oregon Public Employees Council #75 as the exclusive representative for a bargaining unit of Coos County courthouse employees. On May 7, 1985, in Case No. UC-28-85, the Board amended the certification to reflect a change in local number. The name on the certification became AFSCME Local 2936, Council 75, AFL-CIO (Respondent). All of the members of the bargaining unit were strike-permitted at that time, including several classifications of parole and probation officers.

In 2003, the legislature enacted House Bill 2576, amending ORS 243.736, to make parole and probation officers strike-prohibited employees. The bill became effective January 1, 2004. On that date, the bargaining unit became a mixed unit containing both strike-permitted and strike-prohibited employees.

On January 12, 2004, Coos County (Petitioner) filed a Unit Clarification—Redesignation petition (UC petition) seeking to clarify the bargaining unit by redesignating the nonstrikeable parole and probation officers into a separate bargaining unit. The existing bargaining unit as described in the UC petition is: "All regular full-time and regular part-time employees set forth in Appendix A [of the parties'

collective bargaining agreement].” A copy of the collective bargaining agreement was attached to the UC petition. The UC petition seeks to amend Appendix A by deleting reference to the classifications of Probation Officer I, Probation Officer II, Probation Officer III, and Lead Probation Officer.

The elections coordinator served the UC petition on Respondent on January 15, 2004. On January 21, 2004, Petitioner posted notices of the proposed UC petition in the work areas of the affected employees. There were no objections filed to the UC petition.

The term of the parties’ collective bargaining agreement was July 1, 2002, to June 30, 2003. The parties are currently negotiating a successor agreement. On January 28, 2004, before the end of the period for objections to the UC petition, Coos County Community Corrections Officers Association filed a representation petition (Case No. RC-5-04) seeking to represent the redesignated nonstrikeable bargaining unit described as “All Coos County Community Adult Parole and Probation Officers, *excluding* supervisory and confidential employees.” The representation petition is currently being processed by the Board elections coordinator.

#### DISCUSSION

Board Rule 115-25-045 provides that we will conduct a hearing “[w]hen a valid petition has been filed and objections \* \* \* have been timely filed \* \* \*.” In the analogous circumstances of representation petitions filed under Board Rule 115-25-000(1)(a) and (b) and unit clarification petitions filed under Board Rule 115-25-005, we generally grant the petition when a party has proposed a facially appropriate unit and the other party has not filed an objection.<sup>1</sup> This Board has not previously considered whether to apply a similar practice where a party has filed a petition for a redesignation under Board Rule 115-25-000(1)(d), and no objections have been filed. We conclude that it is appropriate to apply the same practice to such petitions.

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<sup>1</sup>Compare *Teamsters Local 223 v. City of Gold Hill*, Case No. RC-75-92, 14 PECBR 290 (1993) (election ordered where no valid objections filed by employer); *Teamsters Local 57 v. City of Bandon*, Case No. UC-47-91, 13 PECBR 225 (1991) (subject to results of self-determination election, unit clarification ordered where employer’s objections were untimely); *Rainier Rural Fire Protection District v. IAFF Local 3651*, Case No. UC-41-96, 16 PECBR 773 (1996) (unit clarification ordered where the employer filed a petition and the labor organization did not object)

The UC petition proposes a facially appropriate unit. The recent amendment to ORS 243.736 resulted in this unit of strike-permitted employees becoming a mixed unit that includes both strike-permitted and strike-prohibited employees. The strike-prohibited parole and probation officers constitute 8 employees out of a bargaining unit of 168.

“\* \* \* This Board has often designated units which mix a small number of strike-permitted workers with a large number of strike-prohibited workers, particularly if the employees have a strong community of interest. \* \* \*” *Multnomah County v. Multnomah County Employees Union Local 88*, Case No. UC-4-92, 13 PECBR 689, 699 (1992). However, “[t]his Board has never permitted, *and will not maintain*, a bargaining unit which combines a small minority of strike-prohibited employees with a large majority of strike-permitted employees. We separate the two groups because of the difference in the dispute resolution process between the two groups. We will not permit a few strike-prohibited employees to deny the right to strike to a much larger group.” *Multnomah County v. Multnomah County Employees Union Local 88*, 13 PECBR at 699-700 (1992) (footnote omitted, emphasis added).<sup>2</sup>

“\* \* \* [B]eginning with *Teamsters Local Union No. 223 v. City of Central Point*, Case No. C-195-79, 5 PECBR 2756 (1980), we have exercised a policy favoring the separation of work forces into units of exclusively strikeable and exclusively nonstrikeable employees. The difference in the final methods of dispute resolution for these two groups -- strike or interest arbitration -- is a community of interest factor which strongly favors their separation. \* \* \*” *AFSCME v. City of Seaside*, Case No. C-20-81, 6 PECBR 4783, 4786-4787 (1981).<sup>3</sup>

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<sup>2</sup>See also *AOCE v. State of Oregon, Department of Corrections and AFSCME, Council 75*, Case No. UC-24-99, 18 PECBR 441, 450 (2000) (the policy of the PECBA favors separate modes of dispute resolution for strike-permitted and strike-prohibited employees, and thus does not favor mixed units); *AOCE v. State of Oregon, Department of Corrections and AFSCME, Council 75*, Case No. UC-25-99, 18 PECBR 576, 587 (2000) (compelling reasons must exist to convert strike-permitted employees to strike-prohibited status through inclusion in a mixed unit)

<sup>3</sup>A lengthy history of bargaining is among the factors that, in general, weigh against redesignating a portion of an existing bargaining unit into a separate unit. *FOPPO v. Multnomah County*, Case No. RC-6-91, 13 PECBR 234, *recons denied*, 13 PECBR 286 (1991), *aff'd without opinion*, 122 Or App 636, 858 P2d 183 (1993) (parole and probation officers' status as members of a craft is outweighed by their history of inclusion in a county-wide unit, particularly because

(continued .)

Because there are no objections to this petition, a hearing is not necessary. In view of our conclusion that this petition proposes a facially appropriate unit, we shall grant the requested redesignation. The Respondent continues to represent the redesignated units.<sup>4</sup>

Based on the foregoing, this Board issues the following order:

### ORDER

1. The petition for redesignation is granted. The classifications of Probation Officer I, Probation Officer II, Probation Officer III, and Lead Probation Officer are removed from the existing bargaining unit represented by AFSCME Local 2936, Council 75, AFL-CIO. That bargaining unit description is amended to read as follows:

“All regular full-time and regular part-time employees set forth in Appendix A of the parties’ collective bargaining agreement; excluding adult parole and probation officers, as defined in ORS 243.736, supervisory and confidential employees.”

2. The parole and probation officers are placed in an appropriate unit described as follows:

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<sup>3</sup>(...continued)

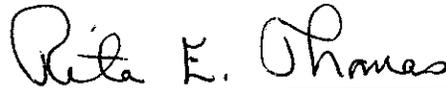
all employees in that unit were strike-permitted [note that this case arose before parole and probation officers were made strike-prohibited]). However, the recent legislative action making the employees involved in this petition strike-prohibited is a statutory change of circumstances which outweighs the history of bargaining as a single unit. *See City of Salem v. AFSCME Council 75, Local 2067*, Case No. UC-119-87, 10 PECBR 603, 610 (1988) (severance of emergency telephone workers made strike-prohibited by legislative action was presumptively appropriate).

<sup>4</sup>*Phoenix-Talent School District #4 v. OSEA*, Case No. UC-16-94, 15 PECBR 544, 551, n. 4 (1995). As noted above, the collective bargaining agreement has expired and a petition seeking to represent the strike-prohibited employees is pending. Pending the outcome of that representation petition for the strike-prohibited employees, Respondent continues to represent the employees in both units. The changed circumstances due to the statutory change making the adult parole and probation officers strike-prohibited warrants a waiver to the certification bar under Board Rule 115-25-015(3)(d).

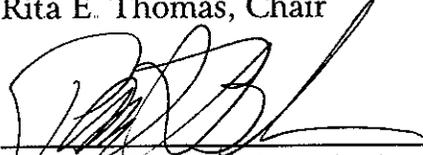
"All adult parole and probation officers, as defined in ORS 243.736, employed by Coos County, excluding supervisory and confidential employees."

AFSCME Local 2936, Council 75, AFL-CIO, represents this bargaining unit. Continuing representation for this redesignated strike-prohibited unit will be determined in Case No. RC-5-04.

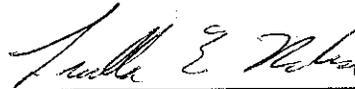
DATED this 12<sup>th</sup> day of February 2004.



Rita E. Thomas, Chair



Paul B. Gamson, Board Member



Luella E. Nelson, Board Member

This Order may be appealed pursuant to ORS 183.482.