

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-004-11

(REDESIGNATION)

HOOD RIVER COUNTY,)	
)	
Petitioner,)	
)	ORDER REDESIGNATING
v.)	BARGAINING UNIT
)	
AFSCME LOCAL 1082,)	
)	
Respondent.)	
_____)	

The parties submitted this case directly to this Board on stipulated facts and written legal argument. The record closed on March 23, 2011, following submission of written legal arguments.

Bruce Bischof, Attorney at Law, and Nancy Hungerford, Attorney at Law, represented Petitioner.

Michael Dehner, Council Representative, Oregon AFSCME Council 75, represented Respondent.

By letter dated February 16, 2011, Hood River County (County) asked, among other things, that this Board redesignate the AFSCME Local 1082 (AFSCME) bargaining unit by removing strike-prohibited Deputy District Attorneys (DDAs) from the existing unit and placing them in a separate unit. By letter dated February 17, 2011, the Elections Coordinator notified the County that she would consider the February 16 letter a petition for redesignation under OAR 115-025-0000(1)(e). AFSCME filed timely objections to the petition.

The case was submitted directly to this Board on the following stipulated facts:

1. AFSCME is the exclusive representative of a collector bargaining unit of non-public works employees who work for the County. The bargaining unit contains approximately 38 employees, including one full-time and one part-time DDA.

2. The parties' most recent collective bargaining agreement was in effect from July 1, 2007 through June 30, 2010. On December 7, 2009, AFSCME and the County met to begin negotiations for a successor contract.

3. In 2009, the legislature enacted House bill 2963. It amended ORS 243.736 to specify that DDAs are prohibited from striking. The bill became law on January 1, 2010. On that date, the AFSCME bargaining unit became a mixed unit containing both strike-permitted and strike-prohibited employees.

4. At a February 25, 2010 bargaining session, AFSCME notified the County that strike-prohibited DDAs were part of the bargaining unit.

5. On February 26, 2010, the County filed a petition to redesignate the AFSCME bargaining unit. After this Board's Elections Coordinator notified the County that the Petition was untimely under OAR 115-025-0000(1)(e), the County withdrew the petition on April 5, 2010.

6. On February 10, 2011, AFSCME requested interest arbitration and submitted its final offer to this Board. The Board initiated interest arbitration in a February 10, 2011 letter to the parties.

7. On February 16, 2011, the County objected to the initiation of interest arbitration and asked that this Board redesignate the bargaining unit because it contained strike-prohibited employees.

8. By letter dated February 17, 2011, this Board's Elections Coordinator told the parties she would consider the County's February 16 letter a petition for redesignation filed under OAR 115-025-0000(1)(e).

9. On February 25, 2011, AFSCME objected to the redesignation petition on the grounds that it was untimely and that redesignation would unduly fragment the bargaining unit.

10. DDAs have been members of the AFSCME bargaining unit since 1986 when the original union, AFSCME Local 2503, was chartered. In 1986, AFSCME split into two groups: Local 2503, which represents County public works employees, and Local 1082, which represents all other County employees, including DDAs.

11. DDAs and other bargaining unit members are covered by the same personnel policies and benefit plans. DDAs and bargaining unit members work in the same physical location and in close proximity to one another. DDAs share common supervision with other bargaining unit members; they work similar hours in an office setting identical to those in which other bargaining unit members work.

12. When AFSCME learned about the change in the law that made DDAs strike-prohibited, it repeatedly explained to the Local 1082 elected leadership and bargaining unit membership that the entire unit would be strike-prohibited if DDAs remained in the unit. The members of the AFSCME bargaining unit, including the DDAs, wish to continue including DDAs in the existing bargaining unit.

DISCUSSION

As a result of a change in the law, the AFSCME bargaining unit is now mixed, containing 2 strike-prohibited employees and approximately 36 strike-permitted employees. A bargaining unit with any strike-prohibited employees cannot strike, even if some of the employees would otherwise be strike-permitted. *AFSCME v. Executive Dept.*, 52 Or App 457, 459, 628 P2d 1228 (1981). For this reason, this Board has a historical preference for placing strike-prohibited and strike-permitted employees in separate bargaining units. *Washington County Police Officers Association v. Washington County*, Case No. UC-36-00, 19 PECBR 641, 648 (2002). The difference in the dispute resolution for the two employee groups is a community of interest factor which strongly favors their separation. *American Federation of State, County and Municipal Employees v. City of Seaside*, Case No. C-20-81, 6 PECBR 4783, 4786-87 (1981). We refuse to allow a few strike-prohibited employees to deny the right to strike to a larger group. *Multnomah County v. Multnomah County Employees Union Local 88*, Case No. UC-4-92, 13 PECBR 689, 699-700 (1992); *Jackson County v. SEIU Local 503, OPEU*, Case No. UC-2-04, 20 PECBR 544 (2004); *City of Albany v. American Federation of State, County and Municipal Employees, Local 2909*, Case No. UC-20-07, 22 PECBR 58 (2007). Compelling reasons must exist to allow strike-permitted employees to lose their right to strike because of their inclusion in a mixed unit. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections and AFSCME, Council 75*, Case No. UC-25-99, 18 PECBR 576, 587 (2000).

We have, at times, designated units in which a small number of strike-permitted workers are mixed with a large number of strike-prohibited workers, particularly if the employees share a strong community of interest. *Multnomah County*, 13 PECBR at 699.

We have never permitted and will not maintain a bargaining unit that combines a small minority of strike-prohibited workers with a large number of strike-permitted workers, however. *Id.* at 699-700. We reach a similar result here and grant the County's petition for redesignation.¹

ORDER

1. The petition for redesignation is granted. The description for the existing bargaining unit represented by AFSCME Local 1082 shall be amended to exclude Deputy District Attorneys.

2. Deputy District Attorneys are placed in a separate appropriate unit described as follows:

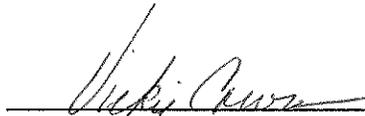
"All Deputy District Attorneys employed by Hood River County, excluding supervisory, managerial, confidential, and other employees excluded by PECBA."

3. AFSCME Local 1082 represents this bargaining unit.

DATED this 1 day of April, 2011.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.

¹We reject AFSCME's contention that this petition was not timely filed. The parties' collective bargaining agreement expired on June 30, 2010. Accordingly, there was no collective bargaining agreement in effect on the date the petition was filed—February 16, 2011—and the limitations for filing a redesignation petition during the term of a contract are inapplicable. OAR 115-025-0000(1)(e).