

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-9-05

(UNIT CLARIFICATION)

CITY OF REDMOND EMPLOYEES)	
ASSOCIATION/AFSCME COUNCIL 75,)	
)	
Petitioner,)	RULINGS,
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW
)	AND ORDER
CITY OF REDMOND,)	
)	
Respondent.)	
_____)	

Upon no objections to the Recommended Order issued on January 26, 2006, following a hearing held before Administrative Law Judge (ALJ) Vickie Cowan on July 26, 2005, in Redmond, Oregon. The hearing closed on September 2, 2005, upon receipt of the parties' post-hearing briefs.

Jason M. Weyand, Legal Counsel, Oregon AFSCME Council 75, 308 S.W. Dorion, Pendleton, Oregon 97801, represented Petitioner.

Bruce Bischof, Attorney at Law, 747 S.W. Mill View Way, Bend, Oregon 97702, represented Respondent.

On April 4, 2005, the City of Redmond Employees Association/AFSCME Council 75 (Association) filed an OAR 115-25-005(4) petition seeking to add approximately five unrepresented City of Redmond (City) Airport employees to the existing bargaining unit. The City filed timely objections.

The issue is: Is it appropriate to add non-supervisory, non-confidential, regular Airport employees to the existing bargaining unit?

RULINGS

The ALJ's rulings were reviewed and are correct.

FINDINGS OF FACT

1. The Association is the exclusive representative of a bargaining unit of Public Works and Engineering Department employees employed by the City, a public employer.¹

2. The Association and the City are parties to a collective bargaining agreement effective July 1, 2003 through June 30, 2005.²

3. On April 4, 2005, the Association filed this petition seeking to represent the following proposed bargaining unit:

“All non-supervisory and non-confidential regular employees who work in excess of 80 hours per month, within the Public Works, Airport and Engineering Departments of the City, excluding temporary, seasonal employees and other non-represented employees.” (Emphasis in original.)

The Association currently represents all Public Works and Engineering Department employees employed in excess of 80 hours per month, excluding temporary, seasonal, and other non-represented employees. The petition seeks to add approximately four Airport facility maintenance workers, one vehicle mechanic, and two custodian positions to the existing bargaining unit.³

¹The City of Redmond Employees Association became affiliated with AFSCME on October 18, 2004. Prior to that date, they were an unaffiliated labor organization, having left the Laborer's International Union of North America (LIUNA) in 1998.

²At the time of hearing, the parties were in negotiations for a successor agreement.

³The petition sought the addition of approximately five Airport employees who work more than 80 hours per month. At hearing, the Association discovered that there are also two custodians who work in excess of 80 hours per month, as well as several security personnel. The Association requests that the custodial positions be included. The custodians will be considered for inclusion because their job duties, wages, hours, and working conditions are similar to other maintenance-type jobs included in the unit; the showing of interest would still be sufficient with their inclusion; and their positions fall within the proposed unit description. The security personnel will not be considered, however, because the original petition did not intend to include security personnel, there was no evidence produced indicating that their job duties are similar to those of the existing bargaining unit, and there would be an insufficient showing of interest if the security personnel were included in the proposed bargaining unit.

4. The City consists of eight departments: Airport, Community Development, Fire, Human Resources, Administration/City Recorder, Finance, Police, and Public Works.

5. Currently, the City has three separate bargaining units. The Association represents five engineering employees in the Community Development Division and approximately 30 employees in the Public Works Division. The Redmond Police Officers Association represents the City's Police Officers and the International Association of Fire Fighters represents the City's Fire Department employees. The remaining City employees are unrepresented.

PUBLIC WORKS

6. Approximately 30 Public Works Department employees are included in the Association's bargaining unit. Public Works employees work in various divisions including Transportation, Parks, Wastewater, and Water.

7. Some examples of Public Works positions include transportation operations utility worker I, II, and III; storm drainage/utility worker; parks/facilities maintenance worker I, II, and II; vehicle mechanic; and transportation operations utility worker lead.

8. Public Works utility workers I, II, III, and storm drain utility workers operate heavy equipment such as front-end loaders, road graders, dump trucks, street sweepers, and snow and ice removal equipment. They clear snow and ice from the streets; repair, maintain, sweep, and paint roadways; and grade, mow, and maintain right-of-ways. They also repair concrete storm drains, curbs, and sidewalks, and seal cracks in asphalt. They are required to have a commercial driver's license (CDL), first aid certification, and in some cases, an herbicide applicator's license and an Oregon Department of Transportation (ODOT) flagger's certificate. They may work night or evening shifts and weekends. These positions generally report to the transportation operations vehicle maintenance supervisor or the transportation operations supervisor.

9. A Public Works utility worker I is paid at salary grade 6, a utility worker II at grade 8, and a utility worker III at grade 10.

10. Parks/facilities maintenance workers are responsible for repairing and maintaining streets, parks, the cemetery, and public buildings and grounds. They perform construction, carpentry, remodeling, roofing, and woodworking tasks on public structures. They maintain and repair the HVAC system, electrical computerized controls, plumbing, and the interior and exterior of all municipal structures. They prepare concrete to construct and repair sidewalks, streets, ramps, pads, and driveways. They utilize heavy equipment such as dump trucks, front-end loaders, chain saws, jackhammers, backhoes, etc. As such, they must

possess or obtain a valid CDL, an herbicide license, a basic first aid and CPR certificate, and other licenses as applicable. These positions generally work under the direct supervision of the parks/facilities supervisor and/or the parks/facilities chief operator. Parks/facilities maintenance workers II are paid at salary grade 8, and park/facilities maintenance workers III are paid at salary grade 10.

11. The Public Works vehicle mechanic tests, services, and repairs vehicles and mechanical equipment including diesel and gasoline engines, brakes, electrical, fuel, hydraulic, transmission, ignition, air, exhaust, axle assemblies, and related systems. The position utilizes assorted equipment and tools including cutting and welding equipment, diagnostic equipment, and a variety of hand, electric, and air driven tools. The mechanic must possess or obtain a CDL. This position works under the daily supervision of the lead mechanic and under the general supervision of the transportation operations vehicle maintenance supervisor. The position is paid at salary grade 12.

12. Public Works supervisors report to the Public Works director who then reports to the City Manager, the Mayor, and the City Council.

AIRPORT

13. The Redmond Municipal Airport serves the central Oregon region. The airport has budget authority for 21 full-time employees, including two managers and 12 security officers who are not included in the proposed bargaining unit. Carrie Novick has been the Airport Manager for approximately 15 years. Novick reports to the City Manager.

14. Prior to 1991, maintenance at the airport was provided by the Public Works Department. In June 1991, an Airport maintenance position was created. Winton Platt, then a Public Works employee and a bargaining unit member, was hired as the first maintenance employee to work exclusively at the airport.⁴ Platt is now the first-line supervisor for Airport employees.

15. The Airport diesel mechanic/equipment operator maintains, repairs, and operates airport vehicles and equipment including diesel and gasoline engines, electrical, fuel, hydraulic, transmission, ignition, air, exhaust, axle assemblies, brakes, and related systems. The position utilizes a variety of equipment and tools including diagnostic instruments, welding and cutting equipment, hand, electrical, and air driven tools. This position also operates heavy equipment such as backhoes, dump trucks, front-end loaders, chain saws, snow plows, and various other types of heavy equipment. The mechanic must possess or obtain a CDL. The position reports to the superintendent of Airport Operations

⁴See *Laborers International Union of North America, Local 121 v. City of Redmond*, Case No. UC-40-92, 14 PECBR 162 (1992).

and Maintenance. This position works shifts that include weekends, evenings, and holidays, and is paid at salary grade 14.

16. The airfield and facilities maintenance workers perform airport building maintenance for HVAC components and electrical computerized controls, plumbing, and interior and exterior of all airport structures. They utilize heavy equipment and tools such as backhoes, dump trucks, sweepers, chain saws, snow plows, hand and power tools, graders, mowers, and various other tools and equipment. They repair runways, taxiways, streets, ramps, pads, sidewalks, and driveways, utilizing concrete and asphalt. These workers must possess or obtain a valid Oregon CDL and possess or obtain an Airport Safety and Operations Specialist License. The position generally reports to the Superintendent of Airport Operations and Maintenance, and is paid at salary grade 8. This position is shift work that includes weekends, evenings, and holidays.

17. Airport building and grounds maintenance workers (custodians) are responsible for maintaining and cleaning the airport buildings and the surrounding property, including the parking lot, sidewalks, and right-of-way on airport roads. In addition to cleaning and maintaining the airport buildings, they maintain the landscaping, irrigation systems, and apply fertilizer and herbicides. They remove snow and ice from pedestrian walkways and monitor roadways in inclement weather. This position is paid at salary grade level 4. They must pass an FBI background check. The position is shift work; weekends and holidays may be required. The position reports directly to the airfield and facilities maintenance lead worker, and generally to the Superintendent of Airport Operations and Maintenance.

18. The airfield and facilities maintenance lead worker is responsible for the airfield, facilities, and ground maintenance, to include corrective and preventative maintenance, construction, carpentry, demolition, and remodeling projects. The position performs the same duties and utilizes the same equipment and tools as the airfield and facilities maintenance workers, but has the added responsibility of supervising Airport custodians and temporary landscaping crews. The position is paid at salary grade 10.

19. All City CDL holders are subject to random drug and alcohol testing. Airport and Public Works employees must possess a high school education or equivalent. These employees also receive training regarding the laws that govern their respective areas, safety training, sexual harassment training, and other City-wide required training.

CONCLUSIONS OF LAW

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

2. The Airport employees are appropriately included in the Association bargaining unit, subject to the results of a self-determination election.

ORS 243.682(1) dictates that in determining appropriate bargaining units, we must 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.” Our analysis of the petitioned-for employees includes consideration of the similarity of duties, required job skills, job classifications, interchange of duties, integration of work sites, promotional and transfer opportunities, level of common supervision, and the strike-permitted/prohibited nature of the positions.

COMMUNITY OF INTEREST

Similarity of duties. In comparing the duties of Airport maintenance employees with the duties of the AFSCME-represented Public Works employees, we note significant similarity in the duties performed. Both operate and maintain light and heavy equipment, and maintain and repair buildings, roads, pathways, and parking lots.

Job skills. The majority of both Public Works and Airport employees are required to possess a CDL, both are trained in state and federal laws governing their respective operations, and both require a high school education.

Other community of interest considerations. Although Public Works and Airport employees perform similar types of duties, there is little to no interchange or transfer between the two departments. They work at different sites and there is no common supervision. Both are strike-permitted.

OTHER UNIT DESIGNATION CONSIDERATIONS

Wages, hours, and working conditions. The wages, hours, and working conditions of the employees in the proposed bargaining unit are more similar than different. All are paid on an hourly basis. The wages for Public Works employees are determined by the collective bargaining agreement. Wages for Airport employees are determined by the City policy manual. All City employees receive essentially the same benefits: all employees are eligible for PERS, and they have the same health, dental, vision, life, and accidental death and dismemberment policies. Any City employee may voluntarily participate in the City’s deferred compensation plan.

Most of the Public Works employees work Monday through Friday, but may be called out to work weekends and holidays, if the need arises.⁵ The airport operates 24/7, and employees are scheduled accordingly. Both Public Works and Airport employees primarily work eight-hour shifts, and are compensated at time and one-half for hours worked in excess of eight per day or 40 per week. All CDL holders in both departments are subject to random drug and alcohol testing.

Both Public Works and Airport employees are frequently required to work out-of-doors, often in inclement weather. Most employees in both departments are exposed to loud noise, fumes, heights, and moving equipment.

Desires of the employees. The Association submitted an adequate showing of interest, and there was testimony from some of the Airport employees that they desire Association representation.

DISCUSSION

The City argues that there is an insufficient community of interest between Public Works and Airport employees. It further alleges that it is not opposed to a separate bargaining unit of Airport employees, but resists including Airport employees with Public Works employees.

In *Treasure Valley Community College v. Treasure Valley Education Association*, Case Nos. UC-61/69-86, 10 PECBR 1, 17 (1987), this Board established that except for elected officials and appointed board members, every person employed by a public employer has Public Employee Collective Bargaining Act (PECBA) status as a “public employee,” and therefore has the right to be included in a bargaining unit of their choice, unless the person is a confidential or supervisory employee.

The question for this Board, therefore, is whether the inclusion of the Airport employees in the existing Association unit constitutes an appropriate bargaining unit. *City of Portland Professional Employees Association v. City of Portland*, Case No. UC-44-96, 17 PECBR 180 (1997).

The City argues that adding the Airport employees into the Public Works bargaining unit would not be appropriate because there is no common supervision between the two departments, there is limited interaction between employees of the two departments, the employees’ work hours and workweeks are different, and the funding sources for the two departments are distinct.

⁵The collective bargaining agreement does not establish shift times or restrict work to a particular shift. It merely provides for a workweek consisting of either five consecutive eight-hour days, or four consecutive ten-hour days.

None of the City's concerns poses a sufficient reason to rule against the proposed clarification. The end result of this unit clarification, assuming the Airport employees vote to be represented by AFSCME, will be that the City still has three bargaining units with which to bargain. While the resulting unit will encompass two City departments, it is not uncommon for bargaining units to include multiple departments. *See, Executive Department, State of Oregon v. Oregon Public Employees Union*, Case No. UC-7-89, 12 PECBR 59, 67 (1990). These employees perform similar duties, use similar equipment, and have similar experience, training, working conditions, wages, and benefits. The fact that the two departments have different funding sources is not a factor we consider in determining appropriate bargaining units. *Oregon AFSCME, Council 75 v. Crook County*, Case No. UC-27-00, 19 PECBR 67, 74 (2001).

We conclude that the Airport employees share a sufficient community of interest with the Public Works employees to be included in the existing bargaining unit. Although there are some differences, our task is to determine if the proposed bargaining unit is *an appropriate* unit, not whether it is the *most appropriate* unit. ORS 243.682(1). Clarifying the proposed unit in this manner furthers the purposes of the PECBA by protecting the right of the Airport employees to organize and advances our policy against unnecessary proliferation of bargaining units.

The petition proposes an appropriate bargaining unit. We will order a self-determination election among the petitioned-for employees.

ORDER

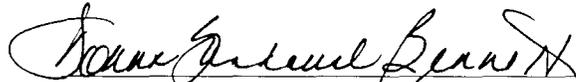
1. Subject to the results of a self-determination election, the AFSCME bargaining unit is clarified to include “[a]ll non-supervisory and non-confidential regular employees who work in excess of 80 hours per month, within the Public Works, Airport and Engineering Departments of the City, excluding temporary, seasonal and other non-represented employees.”

2. The Elections Coordinator shall conduct a secret mail-ballot election as soon as practicable to determine if the Airport employees wish to be represented by AFSCME or wish no representation for the purposes of collective bargaining.

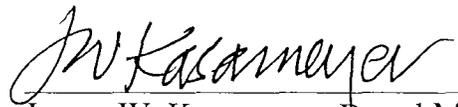
3. The eligible voters shall be the Airport employees employed by the City on the date of this Order and still employed at the time the election is closed.

4. Within ten days of the date of the Order, the City shall provide this Board and AFSCME with the names, home addresses, and position titles of the eligible voters.

DATED this 27th day of February 2006.


Donna Sandoval Bennett, Chair


Paul B. Gamson, Board Member


James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.