

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-11-10

(UNIT CLARIFICATION)

SERVICE EMPLOYEES)	
INTERNATIONAL UNION)	
LOCAL 503, OREGON PUBLIC)	RULINGS, FINDINGS OF
EMPLOYEES UNION,)	FACT, CONCLUSIONS OF
)	LAW, AND ORDER
Petitioner,)	
)	
v.)	
)	
MARION COUNTY,)	
)	
Respondent.)	

On May 25, 2011, this Board heard oral argument on both parties' objections to a Recommended Order issued by Administrative Law Judge (ALJ) B. Carlton Grew on February 28, 2011, following a hearing on July 27 and 28, 2010, in Salem, Oregon. The record closed on September 13, 2010, with receipt of the parties' post-hearing briefs.

Joel Rosenblit, Attorney, SEIU Local 503, OPEU, Salem, Oregon, represented Petitioner.

Jeffrey P. Chicoine, Attorney, Miller Nash LLP, Portland, Oregon, represented Respondent.

On May 3, 2010, Service Employees International Union Local 503, Oregon Public Employees Union, Marion County Employees Association (MCEA/SEIU or Union) filed this Petition under OAR 115-025-0005(4) seeking to add approximately 120 temporary employees to its strike-permitted bargaining unit of Marion County (County) employees. The County filed timely objections on May 24, 2010, asserting that (1) the Petition was untimely; (2) clarification of the temporary employees into the existing bargaining units was not appropriate because temporary employees did not share

a community of interest with bargaining unit members; and (3) granting the Petition would cause fragmentation of the County's temporary employee workforce.

MCEA/SEIU's Petition included the employees of the Marion County Housing Authority. The parties stipulated at hearing that the Housing Authority is not a County department and should be removed from the Petition. Also at hearing, the Union withdrew its effort to represent the Deputy County Clerk, asked leave to amend its Petition to include all temporary employees in classifications it represented, and asked that the record be held open to permit the Union to find and introduce additional evidence about those employees. The County objected to the proposed amendment and holding the record open. The Union withdrew its request to amend the Petition after hearing.

The issues in this case are:

1. Is the Petition timely?
2. Is it appropriate to add the following employees to the SEIU bargaining unit:

All temporary, non-casual employees in the Assessor's Office, Board of Commissioners Office, Business Services, Children and Families, Courts, District Attorney's Office, Health and Services, Information Technology, Juvenile Department, Legal Counsel, Public Works, Treasurer's Office, and Sheriff's Office¹ in the following job classifications:

Behavioral Health Aide, Building Plans Examiner 1; Case Aide; Civil Engineering Associate 1; Department Specialist 1, 2, and 3; Drug Treatment Associate; Electrician 1; Health Educator 1 and 2; Legal Secretary 1; Library Assistant; Maintenance Worker; Management Analyst 2; Medical Technologist; Mental Health Associate; Mental Health Specialist 1 and 2; Nutrition Aide; On-Site Wastewater Specialist; Permit Specialist; Plumbing Inspector; Programmer Analyst 1, 2 and 3²; Public

¹The Petition did not include temporary employees in the County Clerk's Office and Finance Department, although each of those departments employ temporary employees in classifications represented by the Union.

²The Union identified this position as "Program Analyst" in its Petition.

Health Aide; Public Works Aide; Support Specialist; Victim Assistance Advocate; and Youth and Family Counselor.³

Excluding: Casual employees⁴; interns, practicum and work study students provided they are paid by their schools; independent contractors; temporary employees in job classifications represented by other labor organizations if the job classification is not a classification represented by SEIU Local 503, OPEU; temporary employees hired by agencies that contract with the County and employees not directly employed by the County; and temporary supervisory and temporary confidential employees.

³The Petition does not include temporary employees filling positions in several Union-represented classifications in the County departments named in the Petition. These positions are: Custodial Worker, Disease Investigation & Control, Election Clerk, Election Technician, Investigator, Licensed Practical Nurse, Mail Courier, Scale Attendant, Shelter Technician, and Volunteer Services Coordinator.

In addition, the Union offered no evidence or argument regarding the following positions listed in its Petition: Electrician 1, Health Educator 1, Programmer Analyst 1 and 2, Support Specialist, and Victim Assistance Advocate, and in some cases it is unclear what department these positions are part of.

⁴The parties stipulated to a list of 19 casual employees. These employees work in the same classifications and perform the same duties as some temporary employees in the proposed unit, but worked fewer hours during the relevant time frame. The employees are: Kerry Blum, Mental Health Specialist 2 (Health); Jordan Burgess, Behavioral Health Aide (Health); Nataliya Butsemia, Mental Health Specialist 2 (Health); Jamila Gordon, Mental Health Specialist 2 (Health); Eusebia Herrera-Perez, Mental Health Associate (Health); Laura Jirges, Department Specialist 1 (Public Works) and on-call Debt Specialist; Brenda Lee, Mental Health Associate (Health); Kristin Link, Mental Health Associate (Health); John Mack, Mental Health Specialist 2 (Health); Kristin Minahan, Department Specialist 2 (Health); Judith Morehead, Mental Health Specialist 2 (Health); Don Oswalt, Library Assistant (Legal); Rosemary Players, Department Specialist 2 (Health); Martin Roberts, Maintenance Worker (Public Works); Ruth Sanchez, Department Specialist 2 (Health); Lora Sauermann, on-call Building Plans Examiner 1 (Public Works); Rene Senecault, Jr., on-call Plumbing Inspector (Public Works); Tamalyne Varner, Department Specialist 2 (Business Services); and Rebecca Weinstein, Youth and Family Counselor (Juvenile).

In its post-hearing brief, the Union conceded that the following are also casual employees: Terri Chapman, Mental Health Specialist 2 (Health), and Darlene Martin, Building Permit Technician (Public Works).

RULINGS

At hearing, the Union asked to amend its Petition to include all temporary employees in classifications it represented, and asked that the record be held open to permit the Union to find and introduce additional evidence about those employees. The ALJ reserved ruling on the amendment to the Petition, but denied the motion to hold the record open. The ALJ reasoned that the Union failed to show that it was unable to obtain this information prior to hearing. That ruling was rendered moot by the Union's decision to withdraw its motion to amend the Petition.

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

FINDINGS OF FACT

1. The Union, a labor organization as defined by ORS 243.650(13), represents a collective bargaining unit of approximately 763 strike-permitted workers employed by the County, a public employer as defined by ORS 243.650(20).

2. The County has 14 departments, eight headed by appointed directors (Health, Children and Families, Finance, Business Services, Information Technology, Juvenile, Legal Counsel, and Public Works) and seven by elected officials (Assessor/Tax, Clerk, District Attorney, Board of Commissioners, Justice Courts, Sheriff, and Treasurer). As of July 19, 2010, the County employed approximately 1,500 individuals.

3. In addition to the Union bargaining unit, there are four other bargaining units in the County: (1) the Marion County Law Enforcement Association (MCLEA) with 225 strike-prohibited employees; (2) the Federation of Parole and Probation Officers (FOPPO) with 41 strike-prohibited employees; (3) the Marion County Juvenile Employees Association (MCJEA) with 35 strike-prohibited employees; and (4) the Oregon Nurses Association (ONA) with 20 strike-permitted employees.

4. The Union and the County have bargained collectively since at least 1977, and were parties to a collective bargaining agreement in effect from July 2008 until June 30, 2010.⁵ The recognition clause of that agreement provides, in part:

“The Employer recognizes the SEIU Local 503, OPEU/MCEA, Local 294 as the sole and exclusive bargaining representative for ALL regular

⁵At the time of hearing, the parties had completed successor bargaining and were awaiting ratification of a tentative agreement. The successor agreement did not alter the unit description.

employees except supervisory and confidential employees or employees represented by other labor organizations or employees considered prohibited from striking within the definition of ORS 243.736.”

The bargaining unit description has remained the same since the 2001 agreement. The term “regular employee” has never been defined in the parties’ collective bargaining agreements.

5. In April 2006, this Board considered a unit clarification case involving the same parties, *Service Employees International Union Local 503 v. Marion County*, Case Nos. UC-32/33-04, 21 PECBR 327 (2006), *recons*, 21 PECBR 482 (2006), *AWOP*, 215 Or App 501, 170 P3d 8, 9 (2007). The relevant issues in UC-32/33-04 were: “(1) whether it is appropriate to add temporary employees to the County’s strike-permitted bargaining unit; and (2) whether it is appropriate to add temporary employees to the County’s strike-prohibited bargaining unit.” 21 PECBR at 328. This Board denied the petition⁶.

6. The Union bargaining unit includes regular employees in 184 different classifications. As of June 14, 2010, temporary employees filled positions in 35 of those classifications.⁷ Temporary employees may fill positions in any County job classification.

7. County personnel rules define a “regular” employee as “[an] employee who fills a budgeted position and who has satisfactorily completed the employee’s first trial service period.” This definition dates back to the 1980s. County personnel rules define “Regular Position” as a “position included in the annual budget.” The County has used the term “regular employees” to define the Union unit since 1995.

⁶The Petition in UC-32-04 sought to add: “Non-Strikeable temporary employees directly hired by Marion County as defined in Article 39, Section I.A. of the collective bargaining agreement * * *. Excluded are: Interns, practicum and work study students provided they are paid by their schools; independent contractors; temporary employees in job classifications represented by other labor organizations if the job classification is not a classification represented by SEIU Local 503, OPEU; temporary employees hired by agencies that contract with the County and are not directly employed by the County; and temporary supervisory and temporary confidential employees.”

⁷There are 184 Union bargaining unit job classifications; temporary employees may fill positions in any of these classifications. As of June 10, 2010, temporary employees filled positions in 35 of the 184 Union bargaining unit job classifications; the Union seeks to represent temporary employees filling positions in 25 of these job classifications. The Union has not stated its rationale for excluding some temporary positions from its Petition.

8. County personnel rules define “temporary employees” as “[e]mployees hired on a short-term basis who do not fill regular positions.” The County allocates a specific amount of funds to its departments for temporary employees. The departments decide how many to hire and in what classifications.

9. County personnel rules state that temporary employees may serve as seasonal workers, on-call relief, fill vacancies in budgeted positions due to regular employee leave, perform work on special projects, or perform extra work of limited duration.

10. The parties’ collective bargaining agreement addresses temporary employees and their roles:

“ARTICLE 34 — TEMPORARY EMPLOYEES

“Section 1. Definitions.

“A. Temporary Employee [*sic*] is a person who is employed by Marion County in a non-budgeted position to perform the following services:

“1. Seasonal or on-call relief;

“2. Filling a vacancy in a budgeted position due to:

“a. Sick leave, parental leave, vacation leave, military leave, or

“b. Shift work, injury or during recruitment.

“3. Special projects and extra work of limited duration.

“B. Temporary employment is distinguished from regular, part-time employment in that regular, part-time employment relates to a budgeted position for which there are some benefits. Interns, practicum and work study students are not temporary employees provided the interns, practicum and work study students are paid by the schools or are otherwise not covered by the terms of this Agreement.

“C. Temporary work is defined as that which is limited to nine hundred seventy five (975) hours based upon a thirty seven and one-half (37.5)-hour workweek or one thousand forty (1,040) hours based upon a forty (40)-hour workweek within a twelve (12)-month period.

“Section 2. Policy. No temporary employee can perform temporary work for more than nine hundred seventy-five (975) hours or one thousand forty (1,040) hours in a twelve (12)-month period commencing with the date of hire. A temporary employee may work more than twelve (12) months provided they do not exceed their yearly allocation of hours and they comply with the definitions set forth above. Once the temporary employee has performed temporary work for nine hundred seventy five (975) hours or one thousand forty (1,040) hours in any twelve (12)-month period, the temporary employee shall be terminated and the County will not hire another temporary employee in the same twelve (12)-month period unless the department is granted an extension by the Labor-Management Committee or the department has requested and the County has approved a budgeted position.

“Employees may fill both regular, part-time positions and temporary positions in two (2) or more departments provided they do not work more than nine hundred seventy five (975) or one thousand forty (1,040) hours in a twelve(12)-month period.

“Section 3. Extension Procedure. The Labor-Management Committee’s approval is required for extensions. Requests must be made thirty (30) days prior to reaching the nine hundred seventy five (975) or one thousand forty (1,040)-hour deadlines. Any extension granted by the Labor-Management Committee will result in the employee continuing their employment as a temporary employee doing temporary work.”⁸

11. County officials periodically determine that a “temporary employee” is in fact working the same hours as a “regular employee.” In such cases, County practice is to convert the position to a regular position and the employee to a regular employee.

⁸The parties used this provision to extend temporary employees beyond half-time status 18 times between May 1, 2007 and June 7, 2010, including three times since May 30, 2009.

Hiring and Working Conditions: Union Regular Employees

12. A County department that wishes to hire a regular employee submits a hiring request to the County's Human Resources Department (HR). HR may notify laid off employees of the open position, and may conduct an internal recruitment process, where current County employees are notified first about the job opening and given an opportunity to apply before the general public is able to do so.

13. HR accepts and scores the applications for all regular job openings, screens applicants, selects a group of eligible candidates for the position, and gives the list of eligible applicants to the appropriate department. The County department then interviews candidates from this list and selects an applicant for the position.

14. Under the Union/County collective bargaining agreement, regular employees in the Union bargaining unit receive health insurance benefits, holidays, paid vacations, and other types of paid and unpaid leave. They also participate in the Public Employees Retirement System (PERS) after six months of service to the County, and the County pays the employees' contribution to PERS as a pre-tax contribution.

15. Regular employees are paid on a step system set by the Union/County collective bargaining agreement. These employees receive regular step increases or, if at the top step, longevity pay.

16. Regular employees are subject to routine performance appraisals, and their discipline is subject to a contractually guaranteed just-cause standard. Regular employees are not subject to layoff until the relevant temporary staff have been laid off.

Hiring and Working Conditions: Temporary Employees

17. Individual County departments are responsible for recruitment, selection, and hiring of all temporary employees. HR's involvement is typically only the posting of available positions for temporary work.

18. Temporary workers are generally hired, and remain, on step one of the salary scale for their classification.

19. Temporary employees, as defined by County policies, can hold that status indefinitely.

20. Several County departments regularly use temporary employees, including Juvenile, Health, Public Works, and Elections. Under County policy, however, County departments do not have specific, budgeted temporary positions. Instead, each department budgets a certain amount of money for temporary employees.

21. Temporary employees become members of PERS after six months of service with the County. The County does not pay the employee contribution to PERS. Temporary employees receive no other benefits except those mandated by state and federal law. Temporary employees were eligible for holiday pay prior to 2004 but are no longer eligible for this benefit.

22. Temporary employees need not receive regular performance appraisals, are employed at will, and are not entitled to progressive discipline or a procedure to grieve disciplinary actions.

23. The duties performed by temporary employees and regular employees in a particular job classification are substantially the same.

24. Temporary employees and regular employees have common supervision.

25. Temporary employees may have an assigned shift and hours, but generally only for a fixed or defined term. For example, temporary summer Public Works Maintenance Workers work regular shifts, but only for the summer, and an employee filling a vacancy will work the vacant position's regular shift until the vacancy is filled by a regular employee.

26. On-call temporary employees are permitted to reject assignments.

27. Turnover among temporary employees is high. The Health Department, in particular, frequently recruits temporary Nutrition Aides and Department Specialists.

28. From January 1, 2007 to July 27, 2010, County departments engaged in 350 recruitment efforts for temporary employees and hired 346 temporary employees. Of that number, 130 employees worked in classifications containing regular employees in the Union bargaining unit, and 93 of these employees worked in classifications covered by this Petition. Of the 346 employees, 115 were in the Health Department and 110 were in Public Works.

29. From May 1, 2009 to April 30, 2010, 94 temporary employees worked in classifications covered by this Petition. Of that 94, 27 had previously worked once as

temporary employees: one had previously worked five times as a temporary employee, four had previously worked four times as temporary employees, five had previously worked three times as temporary employees, and 17 had previously worked twice as temporary employees.

30. Temporary employees who wish to apply for regular positions with the County must participate in the County HR application and selection process. Under the terms of the 2004-2006 County/Union collective bargaining agreement, temporary employees are eligible to apply for positions through the internal recruitment process offered to regular employees.⁹ The County gives no preference to temporary employees in hiring for temporary or regular positions, although as applicants they may benefit from familiarity with the work, County procedures, and County personnel.

31. Of the approximately 760 regular employees in the Union unit, 227 were previously temporary workers. Of that 227, 149 are in the same job classification in which they worked as temporary employees.

32. The Union did not include the following classifications in its Petition, even though temporary employees filled positions in these classifications at the time of the hearing: Custodial Worker 1, Disease Investigation and Control Specialist 1, Elections Clerk, Elections Technician, Investigator, LPN, Mail Courier, Medical Technologist Senior, Scale Attendant, Shelter Technician, and Volunteer Services Coordinator.

Public Works Department

33. In the Public Works Department, the Union seeks to add to its bargaining unit temporary employees filling positions in approximately 11 Union-represented classifications. Most of these temporary employees are summer Maintenance Workers; others are employed as winter Maintenance Workers; Building Plans Examiner 1; Civil Engineering Associate 1; Department Specialist 1, 2, and 3; Electrician 1; Management Analyst 2; On-Site Wastewater Specialist 2; Permit Specialist; Plumbing Inspector; and Public Works Aide.

34. The Public Works Department has 191 regular budgeted positions. During the 2009-2010 fiscal year, the Department employed 35 temporary summer or winter Maintenance Workers.

⁹Prior to the implementation of the 2004-2006 Union/County collective bargaining agreement, temporary employees were not eligible to apply for positions through the internal recruitment process.

35. Many regular Public Works employees are required to have commercial drivers licenses, and special licenses, such as an herbicide applicator's license. Temporary employees are not subject to these requirements.

36. Approximately one-third of the Public Works temporary employees are students, and approximately one-third have other employment.

37. The Department hired one temporary employee as a regular employee in 2008, two in 2009, and two in 2010.

Maintenance Workers

38. Most of the Public Works temporary Maintenance Workers work regular shifts during the summer. They are employed to free up regular employees to operate heavy equipment. Temporary employees perform manual work to assist in road construction, such as flagging, setting up temporary signs, and operating pilot cars. They also work on the vegetation crew. The eight temporary winter Maintenance Workers clear drains and ditches, perform traffic control, or act as helpers for snowplow operators, and do not work regular shifts.

39. Public Works temporary Maintenance Workers work regular assigned shifts, but are sent home without pay when the work is interrupted, such as by changes in the weather.

40. The County employs the following temporary Maintenance Workers:

- Daniel Bobo was hired in 2010. He worked 153 hours from February through April 2010. He works Monday through Thursday, four ten-hour days per week.

- Lyle Cochran was rehired in 2010. He worked 1,004 hours in 2008 and 863.5 hours in 2009. He worked 160 hours from February through April 2010. He works Tuesday through Friday, four ten-hour days per week.

- Taylor Conder was rehired in April 2010. He worked 519.5 hours in 2008 and 513.3 hours in 2009. He worked 79.5 hours from February through April, 2010. He works Monday through Thursday, four ten-hour days per week.

- Randy Favre was first hired in 2007. Favre worked 623.5 hours in 2007, 775.5 hours in 2008, and 635 hours in 2009. He worked 217 hours from November 2009 through January 2010, and 216 hours from February through April 2010,

averaging approximately 16.7 hours per week. He worked a four ten-hour days per week schedule. In the year before the Petition was filed, half the time his schedule was Monday, Tuesday, Wednesday and Friday, and half of the time it was Monday, Tuesday, Thursday and Friday.

- Charles Hackett was hired in 2010. He worked 154.5 hours from February through April 2010. He works four ten-hour days, Monday through Thursday.
- Joseph Howard was rehired in 2010. He worked 80 hours in April 2010. Howard worked 848.5 hours in 2009. He works four ten-hour days, Monday through Thursday.
- Amber Kirby works four ten-hour days per week. During the summer of 2008, she worked 917 hours. She did not work in 2009. Kirby worked 80 hours from February through April 2010.
- Chad Minnich worked 759.5 hours in 2009 and 81.5 hours from February through April 2010. He works a four ten-hour days per week schedule, Monday through Thursday.

Other Public Works Employees

41. During the 2009-2010 fiscal year, the Public Works Department employed one temporary employee on a specific project and six temporary employees in on-call positions. The Department uses three temporary Public Works assistants to clean and perform light maintenance, to collect tolls, or to provide other help on the County's two ferries. The Public Works Department also employs five temporary Department specialist employees in its Administrative Division to assist with filing and general office work. Another temporary employee filled in for an animal shelter employee on maternity leave.

42. The Public Works Department employs the following temporary employees:

- Craig Clark has worked each of the last six years as an On Site Wastewater Specialist 2. He worked 314 hours in 2005, 804.8 hours in 2006, 388 hours in 2007, 12.5 hours in 2008, and 268 hours in 2009. He worked 49 hours from May through July 2009, 148 hours from August through October 2009, 13.5 hours from November 2009 through January 2010, and 69.5 hours from February through April 2010.

- Kasi Clark works as a Public Works Aide. She worked 1,029.5 hours in 2006, 943.8 hours in 2007, no hours in 2008 or 2009, and 393.8 hours from February through April 2010, an average of 30.3 hours per week. She works Monday through Friday, and some Saturdays.

- Gordon Tracy has worked as a Management Analyst 2 since at least 2005. In 2005 he worked 888 hours, in 2006 he worked 814 hours, in 2007 he worked 737 hours, in 2008 he worked 772 hours, and in 2009 he worked 796.5 hours. He worked 192 hours from May through July 2009, an average of 14.8 hours per week; 199.5 hours from August through October 2009, an average of 15.4 hours per week; 206 hours from November 2009 through January 2010, an average of 15.9 hours per week; and 200 hours from February through April 2010, an average of 15.4 hours per week. He works Tuesdays and Wednesdays for eight hours a day.

Health Department Temporary Employees

43. The Health Department provides mental health services through several programs, including the Psychiatric Crisis Center (PCC), a Respite program, client Cottages, and the Adaptive Community Integrated Support Team (ACIST), an intensive case management team. The Department provides these services through Mental Health Specialists (MHSs), Mental Health Associates (MHAs), and Behavioral Health Aides (BHAs). An MHS must be a certified Qualified Mental Health Professional (QMHP) and generally has a Masters degree. The Health Department employs regular and temporary MHS and MHA employees.

In the PCC and Respite programs, the Department employs six and one-half regular MHS employees and four regular MHAs. ACIST has three full time MHAs. The Cottages have ten regular MHA employees and three non-credentialed BHA temporary employees filling in for absences and vacancies.

44. The Health Department also includes a significant administrative and support staff. Much of the clerical support is provided by Department Specialists.

45. The PCC provides emergency mental health services to eligible clients. The PCC MHSs screen people undergoing mental health crises and decide whether they need in-patient care or community-based services. The screenings take place at any time of the day or night at Salem Hospital and during nights and weekends at Silverton, Newburg, and McMinnville hospitals.

46. The County's Respite program provides community-based mental health care. County MHAs provide "supportive activity" for Respite clients, such as monitoring their condition and use of medication and transporting them to appointments. The Respite program employs regular and temporary MHAs.

47. The Union seeks to add to its bargaining unit temporary employees filling positions in approximately 13 Union-represented classifications in the Health Department. The positions these temporary workers fill are: Behavioral Health Aide; Department Specialist 1, 2, and 3; Drug Treatment Associate; Health Educator 1 and 2; Medical Technologist; Mental Health Associate; Mental Health Specialist 1 and 2; Nutrition Aide; and Public Health Aide.

48. The Health Department has at least 150 regular budgeted positions in the Union bargaining unit, not counting positions in classifications shared with other departments such as Department Specialists. As of July 8, 2010, the Department employed approximately 70 temporary employees.

49. As of July 15, 2010, the Health Department had a temporary pool of 14 MHSs and 14 MHAs. Fifteen of them had other, full-time jobs, one was a full-time student, and three were retired. Only five were looking for regular, full-time work.

50. Regular MHS and MHA employees perform case management, counsel clients, and create long-term treatment plans. Temporary MHS and MHAs do not perform these activities.

51. Regular MHS and MHA employees have fixed five eight-hour or four ten-hour day-per-week schedules, staffing 24 hour coverage at the PCC in three shifts and day shifts in the Respite program. Regular employees may not change their schedule without approval of a supervisor, and are entitled to two-weeks notice of a County imposed schedule change. The schedules are created on a monthly basis, with gaps, absences, or vacancies staffed by temporary employees.

52. Temporary MHS employees are on call from 5:00 p.m. to 8:00 p.m, with a guarantee of a minimum of four hours per shift. Temporary MHA employees are on call in 12-hour shifts, with a guarantee of a minimum of two hours per shift. Temporary staff also fill in when a regular employee is absent or on leave, or when a position is vacant. Temporary staff are permitted to exchange their scheduled work times with each other.

Temporary Mental Health Associates and Specialists; Behavioral Health Aides

53. The Health Department employs the following temporary employees:

- Marsha Atchley is an MHA. She was a regular full-time employee from 1990 to 2006, when she retired. Atchley has worked as a temporary employee since August 2006. She worked 806.5 hours in 2007, 714.4 hours in 2008, and 776.8 hours in 2009. She worked 187 hours from May through July 2009, averaging 14.38 hours per week; 191.3 hours from August through October 2009, averaging 14.7 hours per week; 306.3 hours from November 2009 through January 2010, averaging 23.6 hours per week; and 143.8 hours from February through April 2010, averaging 11.1 hours per week. Limited to half-time as a retiree, she works 15 to 20 hours per week. She works every Tuesday and every other Monday and occasionally other days.

- Jerrod Boles is an MHA hired in 2009. He worked 715.5 hours in 2009. He worked 249.2 hours in May through July 2009, averaging 19.2 hours per week; 267.6 hours from August through October 2009, averaging 20.6 hours per week; 146.2 hours from November 2009 through January 2010, averaging 11.2 hours per week; and 190 hours from February through April 2010, averaging 14.6 hours per week. He is scheduled to work on Tuesdays, Thursdays, and Saturdays.

- Mia Clark is an MHS 2 hired in 2009. She worked 406 hours from May through July 2009, averaging 31.2 hours per week; 163.8 hours from August through October 2009, averaging 12.6 hours per week; 38.5 hours from November 2009 through January 2010, averaging 3 hours per week; and 66.3 hours from February through April 2010, averaging 5.1 hours per week. She works on Sunday, Tuesday, and Thursday.

- Sara Cornell is an MHS 2 hired in 2009. She worked 683.9 hours in 2009. She worked 174 hours from August through October 2009, averaging 13.4 hours per week; 92.3 hours from November 2009 through January 2010, averaging 7.1 hours per week; and 347.5 hours from February through April 2010, averaging 26.7 hours per week. Cornell usually works Tuesdays, but takes shifts on other days as well.

- Robert Danielian has worked for ten years as an MHS 2. He worked 427.3 hours in 2005, 400 hours in 2006, 466.3 hours in 2007, 366.8 hours in 2008, and 245.3 hours in 2009. He worked 37.3 hours from May through July 2009, averaging 2.9 hours per week; 78.8 hours from August through October 2009, averaging 6.1 hours per week; 106.8 hours from November 2009 through January 2010, averaging 8.2 hours per week; and 84.2 hours from February through April 2010, averaging 6.5 hours per week.

Danielian works three or four Saturday shifts a month and takes shifts on other days as well.

- Dovey Desirey was hired in 2003, 2004, and 2007 as an MHS. She generally performs screening for PCC on weekends and holidays. She has a full-time position as an MHS for another employer. She worked 799.2 hours in 2008 and 507.8 hours in 2009. She worked 113 hours from May through July 2009, averaging 8.7 hours per week; 94 hours from August through October 2009, averaging 7.2 hours per week; 210.3 hours from November 2009 through January 2010, averaging 16.2 hours per week; and 140 hours from February through April 2010, averaging 10.8 hours per week. She is scheduled for 10-20 hours per week and also picks up other shifts. She generally works a ten-hour shift every Saturday and every other Sunday. In addition, she replaces regular employees on leave.

- Frederick (Chip) Dilley, III is an MHA hired in 2009, working 25.5 hours that year. He worked 236.3 hours from February through April, 2010, averaging 18.2 hours per week. He is usually scheduled Saturdays, Sundays, and Tuesdays.

- Mark Fisler is a BHA. In 2009 he worked full-time Monday through Friday until he reached 1,070.4 hours in 2009. He worked 302.9 hours from May through July 2009, averaging 23.3 hours per week; 496.5 hours from August through October 2009, averaging 38.2 hours per week; 300.5 hours from November 2009 through January 2010, averaging 23.1 hours per week; and 90 hours from February through April 2010, averaging 6.9 hours per week.

- Roland Gille is an MHA hired in 2008. He worked 285 hours from May through July 2009, averaging 21.9 hours per week; 385.3 hours from August through October 2009, averaging 29.6 hours per week; 277.3 hours from November 2009 through January 2010, averaging 21.3 hours per week; and 199 hours from February through April 2010, averaging 15.3 hours per week. Gille worked 833.5 hours in 2009. He usually works every Saturday and also picks up on-call hours, averaging at least 15 hours per week in every quarter.

- Marshall Goldsmith is an MHS 2 hired in 2009. He worked 68.3 hours from August through October 2009, averaging 5.3 hours per week; 149.5 hours from November 2009 through January 2010, averaging 11.5 hours per week; and 191.5 hours from February through April 2010, averaging 14.7 hours per week. He usually works Wednesdays.

- Heidi Graves has worked as an MHA since at least 2005. She worked 623.5 hours in 2005, 666.3 hours in 2006, 899.5 hours in 2007, 936.3 hours in 2008, and 886 hours in 2009. She worked 288 hours from May through July 2009, averaging 22.2 hours per week; 202.3 hours from August through October 2009, averaging 15.6 hours per week; 227.8 hours from November 2009 through January 2010, averaging 17.5 hours per week; and 143.5 hours from February through April 2010, averaging 11 hours per week. She usually works on Thursday and some Mondays.

- Lydia Gutierrez has worked as an MHS 2 since at least 2005. Gutierrez worked 334 hours in 2005, 576.2 hours in 2006, 377 hours in 2007, 600.4 hours in 2008, and 839.6 hours in 2009. She worked 224.3 hours from May through July 2009, averaging 17.3 hours per week; 150 hours from August through October 2009, averaging 11.5 hours per week; 247 hours from November 2009 through January 2010, averaging 19 hours per week; and 223.5 hours from February through April 2010, averaging 17.2 hours per week. She usually works on Saturdays, but also works many Fridays and Sundays.

- Laura Keen is a BHA hired in 2009. She worked 186.7 hours from November 2009 through January 2010, averaging 14.4 hours per week; and 472 hours from February through April 2010, averaging 36.3 hours per week. She usually works on Mondays, Thursdays, and Saturdays.

- Thomas Kirkland, Jr. is an MHS 2 hired in 2008. He worked 659.4 hours in 2008 and 679.8 hours in 2009. He worked 154 hours from May through July 2009, averaging 11.9 hours per week; 154.5 hours from August through October 2009, averaging 11.9 hours per week; 123.8 hours from November 2009 through January 2010, averaging 9.5 hours per week; and 186.5 hours from February through April 2010, averaging 14.4 hours per week. He usually works Tuesdays and Thursdays and picks up hours other days of the week.

- Chasee Lofft is an MHS 2 hired in 2009. She worked 100.6 hours in May through July 2009, averaging 7.7 hours per week; 278.5 hours from August through October 2009, averaging 21.4 hours per week; 390 hours from November 2009 through January 2010, averaging 30 hours per week; and 226.8 hours from February through April 2010, averaging 9 hours per week. Lofft usually works Saturdays and Wednesdays and picks up hours other days of the week.

- Corina Martinez-Tolbert is an MHA hired in 2007. She worked 181.6 hours in 2007, 326.1 in 2008, and 581.2 in 2009. Martinez-Tolbert worked 171.2 hours from May through July 2009, averaging 13.2 hours per week; 150 hours from August through October 2009, averaging 11.5 hours per week; 323.8 hours from November

2009 through January 2010, averaging 24.9 hours per week; and 169 hours from February through April 2010, averaging 13 hours per week. She is scheduled to work on Saturdays and has picked up hours on Thursdays, Fridays, and Sundays as well.

- Elizabeth McClure has worked as an MHA every year since 2003. She worked 403.8 hours in 2005, 349.9 hours in 2006, 320.6 hours in 2007, 254.3 hours in 2008, and 299.5 hours in 2009. McClure worked 109.1 hours from May through July 2009, averaging 8.4 hours per week; 78.8 hours from August through October 2009, averaging 6.1 hours per week; 10 hours from November 2009 through January 2010, averaging .8 hours per week; and 32.5 hours from February through April 2010, averaging 2.5 hours per week. She works every other Friday.

- Allison Musillami is an MHA hired in 2009. She worked 271.7 hours in 2009. She worked 96.4 hours from May through July 2009, averaging 7.4 hours per week; 119.3 hours from August through October 2009, averaging 9.2 hours per week; 75 hours from November 2009 through January 2010, averaging 5.8 hours per week; and 44.5 hours from February through April 2010, averaging 3.4 hours per week. She usually works on Sundays.

- Robert Naylor is an MHA hired in 2010. He worked 19 hours from February through April 2010. He works on Fridays.

- Edith Rayhel is an MHA hired in 2009. She worked 310 hours in 2009. Rayhel worked 100.6 hours from August through October 2009, averaging 7.7 hours per week; 384.2 hours from November 2009 through January 2010, averaging 29.6 hours per week; and 218.5 hours from February through April 2010, averaging 16.8 hours per week. She works on Fridays, Saturdays, and Sundays.

- Marlene Richardson is an MHA hired in 2005. She worked 553.8 hours in 2005, 580.5 hours in 2006, 391.5 hours in 2007, and 224 hours in 2008. She took time off for surgery in late 2006 and early 2007. She worked 10 hours from May through July 2009; 183 hours from August through October 2009, averaging 14.1 hours per week; 290.4 hours from November 2009 through January 2010, averaging 22.3 hours per week; and 113 hours from February through April 2010, averaging 8.7 hours per week. She works every Wednesday and every other Friday.

- Peter Teller is an MHS 2 who has worked for the County for over 17 years, first as a temporary employee, then as a regular employee, and now as a temporary employee. He worked 391.3 hours in 2005, 698.5 hours in 2006, 373.3 hours in 2007, 499.3 hours in 2008, and 471 hours in 2009. Teller worked 169 hours from May

through July 2009, averaging 13 hours per week; 100 hours from August through October 2009, averaging 7.7 hours per week; 102.8 hours from November 2009 through January 2010, averaging 7.9 hours per week; and 82.5 hours from February through April 2010, averaging 6.4 hours per week. He works 20-30 hours per month during the school year, primarily 10-hour shifts on Sundays. Teller works 15-20 hours per week in the summers. He only works regular shifts for absent staff.

- Vickie Thompson is an MHS 2 hired in 2009. She worked 25.9 hours from August through October 2009, averaging 2 hours per week; 175.5 hours from November 2009 through January 2010, averaging 13.5 hours per week; and 239.2 hours from February through April 2010, averaging 18.4 hours per week. She often works Wednesdays and Fridays.

- Paula Wang is an MHS 2 hired in 2008. She worked close to 800 hours in 2009. She worked 262.7 hours from May through July 2009, averaging 20.2 hours per week; 109 hours from August through October 2009, averaging 8.4 hours per week; 208.1 hours from November 2009 through January 2010, averaging 16 hours per week; and 286.2 hours from February through April 2010, averaging 22 hours per week. She works a part-time schedule, primarily Sunday through Thursday.

- Debralee Young is a BHA hired in 2008. She worked 769.3 hours in 2008 and 788 hours in 2009. She worked 231.8 hours from May through July 2009, averaging 17.8 hours per week; 201.8 hours from August through October 2009, averaging 15.5 hours per week; 246 hours from November 2009 through January 2010, averaging 18.9 hours per week; and 197 hours from February through April 2010, averaging 15.2 hours per week. She generally works Monday through Thursday, four to six hours per day.

Temporary Health Department 'Department Specialists'

54. The Health Department has a clerical pool of regular Department Specialist 2s and two regular Department Specialist 1s. Temporary Department Specialists primarily fill in when an employee is absent or on leave, or when a position is vacant. Temporary Department Specialists do the same work as regular employees, except for work involving payroll, evaluations, recruitment, hiring, handling cash, and most uses of the personal health information database. The Department recruits new temporary employees for these positions two to three times each year.

55. The Health Department employs the following temporary Department Specialists:

- Kathryn Cardwell is a recently hired Department Specialist 2 hired in 2009. She worked 169 hours from November 2009 through January 2010, averaging 13 hours per week; and 169.3 hours from February through April 2010, averaging 13 hours per week.

- Annemarie Chapman is a Department Specialist 3 hired in 2008. In 2009 she worked 1,912 hours. She worked 482 hours from May through July 2009, averaging 37.1 hours per week; 485.5 hours from August through October 2009, averaging 37.4 hours per week; 464 hours from November 2009 through January 2010, averaging 35.7 hours per week; and 496.5 hours from February through April 2010, averaging 38.2 hours per week. She usually worked 8:00 a.m. to 5:00 p.m., Monday through Friday.

- Jade Collatt is a Department Specialist 2 hired in 2008; she worked 880.8 hours that year. She worked 225 hours from May through July 2009, averaging 17.3 hours per week; 209.5 hours from August through October 2009, averaging 16.1 hours per week; 208.5 hours from November 2009 through January 2010, averaging 16 hours per week; and 322.2 hours from February through April 2010, averaging 24.8 hours per week. She works 8:00 a.m. to 5:00 p.m. During April 2010 she worked full-time.

- Mary Crocker is a Department Specialist 2 hired in 2007. She worked 814.3 hours in 2008 and 676 hours in 2009. She worked 165 hours from May through July 2009, averaging 12.7 hours per week; 130 hours from August through October 2009, averaging 10 hours per week; 173 hours from November 2009 through January 2010, averaging 13.3 hours per week; and 180.5 hours from February through April 2010, averaging 13.9 hours per week. She works Tuesdays, Wednesdays, and Thursdays; sometimes she picks up additional hours.

- Mecalea Herrera worked as a Department Specialist 2 in 2005, 2009, and 2010. In 2005 she worked 385.8 hours; in 2009, she worked 801.8 hours. She worked 345.3 hours from May through July 2009, averaging 26.6 hours per week; 240.7 hours from August through October 2009, averaging 18.5 hours per week; 298.8 hours from November 2009 through January 2010, averaging 23 hours per week; and 247.5 hours from February through April 2010, averaging 19 hours per week. She works on Mondays, Tuesdays, Thursdays, and Fridays.

- Vanessa Palacios is a Department Specialist 2 hired in 2009. She worked 387 hours from November 2009 through January 2010, averaging 29.8 hours per week on a regular Monday through Friday schedule; and 54.5 hours from February through April 2010, averaging 4.2 hours per week. At the time of hearing, she was not working for the County.

- Katie Reynolds is a Department Specialist 2 hired in 2009. She worked 128.3 hours from May through July 2009, averaging 9.9 hours per week; 210.3 hours from August through October 2009, averaging 16.2 hours per week; 283.8 hours from November 2009 through January 2010, averaging 21.8 hours per week; and 206.8 hours from February through April 2010, averaging 15.9 hours per week. She works two weeks per month on all days of the week.

- Ruth Sanchez is a Department Specialist 2 hired in 2009. She worked 136.5 hours from August through October 2009, averaging 10.5 hours per week; 329.8 hours from November 2009 through January 2010, averaging 25.4 hours per week; and 157.8 hours from February through April 2010, averaging 12.1 hours per week.

- Lisa Schneider is a Department Specialist 2 hired in 2009. She worked 873.26 hours that year. She worked 450.9 hours from May through July 2009, averaging 34.7 hours per week; 350 hours from August through October 2009, averaging 26.9 hours per week; 72.3 hours from November 2009 through January 2010, averaging 5.6 hours per week; and did not work at all from February through April 2010. She worked a Monday through Friday schedule.

- Leslie Shorb is a Department Specialist 2 hired in 2010. She worked 94 hours in February through April 2010, averaging 7.2 hours per week. She works on Tuesdays, Thursdays, and Fridays.

WIC (Women, Infant and Children) Program Temporary Nutrition Aides

56. WIC is a federally-funded program administered through the County providing nutrition classes and advice, food vouchers, breast pump services, a high school clinic, and other services to pregnant women and new mothers. Its regular staff employees are Registered Dietitians, Nutrition Educators, and Nutrition Aides. WIC also employs six temporary Nutrition Aides. The temporary Nutrition Aides fill in when an employee is absent or on leave, or when a position is vacant; these temporary employees also assist the regular Nutrition Aides when their workload becomes too heavy. The temporary Nutrition Aides have the same minimum qualifications as regular Nutrition Aides. Temporary Nutrition Aides spend most of their time determining client eligibility and teaching classes. Regular Nutrition Aides also teach classes and determine client eligibility; in addition, the regular Nutrition Aides have access to the database of personal medical information; supervise the volunteers in the peer breast-feeding support program; staff the high school clinic and breast pump station; handle cash; provide bilingual services; and develop lesson plans.

57. The WIC staff schedule is created monthly. Supervisors first set the regular staff schedule and then contact temporary employees to fill in gaps or provide extra help.

At the time of hearing, the Health Department was adding a regular, part-time position to fill in on days when the need has historically been greatest.

58. The WIC program employs the following temporary Nutrition Aides:

- Karen Culbertson was hired in the third quarter of 2009. She worked 94.4 hours from November 2009 through January 2010, averaging 7.3 hours per week; and 389.4 hours from February through April 2010, averaging 30 hours per week. In March and April 2010 she worked four to five days a week, Monday through Friday.

- Patricia Dowell was hired in 2005. She worked 935.5 hours in 2006; 967.8 hours in 2007; 805.3 hours in 2008; and 854.8 hours in 2009. She worked 168.5 hours from May through July 2009, averaging 13 hours per week; 306.5 hours from August through October 2009, averaging 23.6 hours per week; 223 hours from November 2009 through January 2010, averaging 17.2 hours per week; and 223.5 hours from February through April 2010, averaging 17.2 hours per week. She generally works seven and one-half hour days and usually works three days per week each month. Dowell works less in the summers when her children are not in school.

- Ellen Lanigan was hired in 2007. She worked 703.4 hours in 2007 and 690.1 hours in 2008. She worked 42 hours from January through May 2009, averaging less than 2 hours per week; 34 hours from May through July 2009, averaging 2.6 hours per week; 26 hours from November 2009 through January 2010, averaging 2 hours per week; and 118.9 hours from February through April 2010, averaging 9 hours per week. At the time of hearing, she worked two days per week.

- Therese Montgomery was hired in 2006. She worked 701.7 hours in 2007; 725.6 hours in 2008; and 646.4 hours in 2009. She worked 132.9 hours from May through July 2009, averaging 10.2 hours per week; 248.7 hours from August through October 2009, averaging 19 hours per week; 40.5 hours from November 2009 through January 2010, averaging 3.1 hours per week; and 59.8 hours from February through April 2010, averaging 4.6 hours per week. She usually worked one shift of 7.5 hours per week and picked up additional shifts. She works Fridays and does some trainings on Thursdays.

- Bernadine Newland was hired in 2006. She worked 694.6 hours in 2006, 821.4 hours in 2007, 892.3 hours in 2008 and 930.8 hours in 2009. She worked 181.3 hours from May through July 2009, averaging 13.9 hours per week; 217.5 hours from August through October 2009, averaging 16.7 hours per week; 389.3 hours from November 2009 through January 2010, averaging 29.9 hours per week; and 226 hours

from February through April 2010, averaging 17.4 hours per week. She works eight hours per day, 8:30 a.m. to 5:00 p.m., on Monday through Thursday or Tuesday through Friday until she approaches her limit of 1040 hours. On Tuesdays she works 10:30 a.m. to 7:00 p.m. Two months in advance, she turns in a schedule of the days she is available to work; she is then given a work schedule by the 20th of the month preceding the work month. She has worked regularly since she began working for the County, except on two occasions when she reached the annual limit of 1,040 hours. Newland chose not to apply for the new regular part-time position because she wanted more hours.

- Grace Williamson was hired in 2005. She worked 879.5 hours in 2006, 598.3 hours in 2007, 379.8 hours in 2008, and 472.8 hours in 2009. She worked 113 hours from May through July 2009, averaging 8.7 hours per week; 129.5 hours from August through October 2009, averaging 10 hours per week; 187.3 hours from November 2009 through January 2010, averaging 14.4 hours per week; and 123.5 hours from February through April 2010, averaging 9.5 hours per week. She does not have a regular schedule, but works on average 10 hours per week, working two or three days a week during the school year.

Other Health Department Temporary Classifications

59. The Health Department employs the following other temporary workers:

- Emilia Jaeger is a Health Educator 2 hired in 2009. She worked 316.8 hours from November 2009 through January 2010, averaging 24.4 hours per week; and 456.3 hours from February through April 2010, averaging 35.1 hours per week. She works Monday through Friday.

- Eugenia McElroy is a Senior Medical Technologist hired in 2008. She worked 96.8 hours in 2008 and 71.5 hours in 2009. She worked 17.9 hours from August through October 2009, averaging 1.4 hours per week; 68.2 hours from November 2009 through January 2010, averaging 5.2 hours per week; and 100.6 hours from February through April 2010, averaging 7.7 hours per week. She is filling a vacant position which the Health Department hopes to eliminate if its plans meet state approval. She works every Friday and covers for employees on sick leave or vacation on other days.

- Ismael Perez-Guzman is a Public Health Aide in Communicable Disease Services hired in 2009. He worked 48.8 hours from November 2009 through January 2010, averaging 3.8 hours per week; and 142 hours from February through April 2010, averaging 10.9 hours per week. He usually works Thursdays and Fridays.

- Jamie Petts is a Health Educator 1 hired in 2009. He worked 1,229.26 hours from November 2009 through January 2010, averaging 17.6 hours per week; and 515.8 hours from February through April 2010, averaging 39.7 hours per week. He works Monday through Friday, 37 to 40 hours per week.

- Janie Romero is a Public Health Aide hired in 2009; she worked 274.4 hours that year. She worked 71.9 hours from May through July 2009, averaging 5.5 hours per week; 187.5 hours from August through October 2009, averaging 14.4 hours per week; 63 hours from November 2009 through January 2010, averaging 4.9 hours per week; and 300.8 hours from February through April 2010, averaging 23.1 hours per week. She generally works Monday, noon to 4 p.m., and all day Tuesday, Wednesday, and Friday. The Department plans to convert this position to a regular part-time position.

Sheriff's Office

60. The County Sheriff's Office employs the following temporary workers:

- Jennifer Bangs is a Department Specialist 2 hired in 2007. Bangs worked 856 hours in 2007, 1,658 hours in 2008, and 1,655.5 hours in 2009. She worked 435.5 hours from May through July 2009, averaging 33.1 hours per week; 416 hours from August through October 2009, averaging 32 hours per week; 363 hours in November 2009 through January 2010, averaging 27.9 hours per week; and 436 hours from February through April 2010, averaging 33.5 hours per week. She worked most Tuesdays, Wednesdays, and Thursdays during that year and many Mondays and Fridays.

- Raymond Mandyck is a Case Aide hired in 2008. He worked 945 hours in 2008 and 1,696.5 hours in 2009. He worked 387 hours from May through July 2009, averaging 29.8 hours per week; 403.5 hours from August through October 2009, averaging 31 hours per week; 475 hours from November 2009 through January 2010, averaging 36.5 hours per week; and 482 hours from February through April 2010, averaging 37.1 hours per week. At the time of hearing, he worked eight hours a day Monday through Thursday, and a half day on Friday.

- Dallas Northcott is a Case Aide hired in 2009; he worked 240 hours in that year. He worked 98 hours from August through October 2009, averaging 7.5 hours per week; 196 hours from November 2009 through January 2010, averaging 15.1 hours per week; and 186 hours from February through April 2010, averaging 14.3 hours per week. He usually works Monday through Thursday.

- Rhonda Stitz is a Department Specialist 2 hired in 2005. She worked 439.5 hours in 2006, 690 hours in 2007, 759.5 hours in 2008, and 376 hours in 2009. She worked 95.5 hours from May through July 2009, averaging 7.4 hours per week; 68.5 hours from August through October 2009, averaging 5.3 hours per week; 95 hours from November 2009 through January 2010, averaging 7.3 hours per week; and 89.5 hours from February through April 2010, averaging 6.9 hours per week. She currently works fewer hours than in the past; she is primarily employed to take notes at a weekly managers' meeting.

- Tawnya Vincent is a former regular employee hired as a temporary Department Specialist 2 in 2007. She worked 866.3 hours in 2008 and 826.3 hours in 2009. She worked 226.3 hours from May through July 2009, averaging 17.4 hours per week; 178 hours from August through October 2009, averaging 13.7 hours per week; 211.5 hours from November 2009 through January 2010, averaging 16.3 hours per week; and 199.5 hours from February through April 2010, averaging 15.4 hours per week. She works five to seven hours per day on Tuesdays, Wednesdays, and Thursdays.

Other Departments

61. Other County departments recently employed the following temporary workers:

- Wanda Case was hired in 2009 as a Legal Secretary I; the record does not state the Department in which she is employed. She worked 224.8 hours from November 2009 through January 2010, averaging 17.3 hours per week; and 468.5 hours from February through April 2010, averaging 36 hours per week. Towards the end of 2009, Case worked a regular full-time schedule every Monday through Friday.

- Wendy Cohara is a Department Specialist 2 in the Health Department. She worked 135.5 hours from February through April 2010, averaging 31.5 hours per week. She worked Monday through Friday in April 2010.

- Veronica Digman-McNassar is a Department Specialist 3 in the Children and Families Department. She worked 16.3 hours from August through October 2009; 125.3 hours from November 2009 through January 2010, averaging 9.6 hours per week; and 148.8 hours from February through April 2010, averaging 11.4 hours per week. She generally works three Tuesdays a month.

- Kathleen Larson is a Programmer Analyst 3 in the Information Technology Department. She worked 1,238.5 hours in 2009, working every Monday and Tuesday,

7:00 a.m. to 4:00 p.m. She has also worked more limited hours on other days of the week. She worked 128 hours from August through October 2009, averaging 9.9 hours per week; 229 hours from November 2009 through January 2010, averaging 17.6 hours per week; and 192 hours from February through April 2010, averaging 14.8 hours per week.

- Elizabeth Little is a Department Specialist in the Juvenile Department. She worked 108 hours from February through April 2010, averaging 8.3 hours per week. At the time of hearing, she worked an eight-hour day, five days a week.

- Katie Reynolds is a Department Specialist 2 in the Juvenile Department. She worked 668.3 hours in 2009. She worked 128.3 hours from May through July 2009, averaging 9.9 hours per week; 210.3 hours from August through October 2009, averaging 16.2 hours per week; 283.8 hours from November 2009 through January 2010, averaging 21.8 hours per week; and 206.8 hours from February through April 2010, averaging 15.9 hours per week. She works two weeks per month on various days of the week.

- Amanda Thompson has been employed as a Department Specialist 2 in the Business Services Department since 1999, with a break in employment in 2009. She worked 181 hours in 2005, 528.3 hours in 2006, 601.5 hours in 2007, 423.9 hours in 2008, and did not work at all in 2009. She worked 83.5 hours in January 2010, averaging 19.4 hours per week; and 269.3 hours from February through April 2010, averaging 20.7 hours per week. Since her return to work in 2010, she has worked eight hours on Tuesdays and Thursdays and four hours on Wednesdays.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The Petition is timely.

The Union filed its unit clarification petition on Monday, May 3, 2010. OAR 115-025-0015(4) provides that a petition such as this one is subject to the contract bar as specified in OAR 115-025-0005(4). That rule states:

“(4) Open Period for Filing. A petition for an election where a contract exists must be filed not more than 90 days and not less than 60 days before the end of the contract period. If a contract is for more than three

years, a petition for an election may be filed not more than 90 and not less than 60 days before the end of the expiration of the first three years of the contract or anytime after three years from the effective date of the contract. However, if a new contract is negotiated during the fourth year of the contract and prior to the filing of a petition for election the new contract shall serve as a contract bar.”

The parties’ 2008-2010 agreement expired on June 30, 2010. The County argues that the open period for the parties’ agreement therefore extended from Friday, April 2, 2010 (90 days before contract expiration), to *Sunday*, May 2, 2010 (60 days before expiration). The Union filed its unit clarification petition on *Monday*, May 3, 2010.

OAR 115-010-0012 provides,

“Unless otherwise specifically provided in these rules, time will be computed by excluding the first day and including the last day unless the last day falls upon a legal holiday or Saturday, in which case the last day also is excluded.”

The County argues:

“[T]he computation-of-time rule is written as a rule of exclusion. It excludes one from **counting** the last day of a period when a party must act within a specific length of time from a given event or date, and the last day falls on a Saturday or holiday. When the last day (or due date) falls on weekend, this rule ‘excludes’ that last day from the count. In such circumstances the effect of the computation-of-time rule is to give the filing party until the next work day to file.

“The open period does not work that way. The open period does not provide for filing within 30 days from a set date. Rather, the open period offers a window.” (County’s Memorandum in Aid of Oral Argument, p. 22) (emphasis in original).

The County contends that under OAR 115-025-0005(4), we must count back 60 days from the contract expiration date to Sunday, May 2, and then exclude both this “last day” and Saturday, May 1 from the open period. Therefore, the County claims, the end of the open period and the last day on which the Union could file its petition was Friday, April 30. We disagree.

We see no reason to treat the chronological end (whether one counts forward or backward) of the open period under OAR 115-025-0005(4) any differently than any other time period that ends on a day upon which the offices of this Board are closed. Using the language of OAR 115-010-0012, the “last day” of the open period was Saturday, May 1, and therefore May 1 and Sunday, May 2, are excluded from calculation of the open period, extending it to May 3, 2010. We conclude that the Petition was timely filed.¹⁰

3. It is not appropriate to add the petitioned-for employees to the Union bargaining unit.

This is the second time this Board has been asked to determine whether County temporary employees are appropriately clarified into the Union unit. In *Service Employees International Union Local 503 v. Marion County*, Case Nos. UC-32/33-04, 21 PECBR 327 (2006), *petition for recons*, 21 PECBR 482 (2006) *AWOP*, 215 Or App 501, 170 P3d 8 (2007) (*Marion County I*), this Board held that it was not appropriate to add temporary employees to the Union bargaining unit. The principles of issue and claim preclusion bar us from reconsidering decisions where “we have made findings in prior cases between the same parties concerning the same factual questions and conclusions of law.” *Federation of Oregon Parole and Probation Officers v. Polk County Community Corrections*, Case No. RC-71-88, 11 PECBR 667, 680 (1989). *See also Federation of Oregon Parole and Probation Officers v. Lane County*, Case No. RC-10-05, 21 PECBR 235, 240-241 (2006). Although this case involves the same parties as the previous petition, it does not present the same factual question and legal issue. In *Marion County I*, the Union sought to include *all* County temporary employees in its strike-permitted bargaining unit; it did not exclude casual employees from the petitioned-for group. Here, the Union excludes casual employees from the group of temporary employees it seeks to add to its bargaining unit.

We acknowledged the difference between a group of all County temporary employees and a group of non-casual County temporary employees when the Union sought reconsideration of its petitions in *Marion County I*. The Union’s original petitions sought to add all temporary employees to its strike-prohibited and strike-permitted bargaining units. After we dismissed those petitions, the Union petitioned for reconsideration and also moved to amend its original petitions to exclude casual employees “with irregular work schedules” from the group of temporary employees it sought to represent. The Union requested a rehearing to determine which employees

¹⁰ The Union also argues that Board administrative staff advised it that the Petition would be timely if filed on May 3. This is not a defense; parties are responsible for performing their own legal research in Board proceedings.

were casual. *Marion County I*, 21 PECBR at 482. We refused to allow the Union to amend its petitions. We reasoned that the showing of interest submitted in support of the original petitions could not be used to support the amended petitions because the employee groups were too different. *Id.* at 485. Accordingly, this petition—which seeks to add non-casual County temporary employees to the Union’s collective bargaining unit of strike-permitted employees—involves an employee group different from the group the Union originally sought to represent in *Marion County I*. As a result, the petition presents different factual and legal issues and we are not precluded from considering it.

The group which the Union now wants to add to its collector bargaining unit consists of approximately 120 employees whom the County has classified as temporary. The petitioned-for employees work in a number of different positions in several County departments. The County opposes the petition, asserting that all the individuals the Union seeks to represent are casual employees who cannot be appropriately included in the Union bargaining unit.

Under OAR 115-25-0050(2), we consider the following factors to determine whether to add unrepresented employees to an existing bargaining unit: “community of interest * * *, wages, hours and other working conditions of the employees involved, the history of collective bargaining and the desires of the employees.” *See also* ORS 243.682(1). In addition, we will only add unrepresented employees to an existing bargaining unit if the petitioned-for group constitutes “a *logically defined group or class of employees* (as opposed to interested individuals or fragments of a group * * *).” *Oregon Public Employees Union v. Executive Department, State of Oregon*, Case No. UC-59-87, 10 PECBR 456, 471 (1988) (emphasis added). We begin our consideration of the Union’s petition by determining whether the employees the Union seeks to add to its bargaining unit share a community of interest and other common working conditions with Union bargaining unit employees.

Community of interest factors include “similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, [and] common supervisor * * *.” OAR 115-025-0050(2). Where a union seeks to add casual, temporary, or substitute employees to a bargaining unit of regular employees, we expand our analysis of these factors to look at the nature of the ongoing employment relationship the petitioned-for workers have with the employer. We refuse to add workers who have only a “tenuous employment relationship” with the employer to a bargaining unit of regular employees. *AFSCME Local 189 v. City of Portland, BOEC*, Case No. UC-12-91, 13 PECBR 302, 308 (1991). Our refusal is based on the differing interests of casual and regular employees; workers whose relationship with the employer is tenuous have bargaining priorities that differ significantly from those of regular employees. *Id.* To

decide if an employment relationship is tenuous, we look not to the number of hours worked but at the nature of the relationship; an individual is a casual employee if the worker's employment is neither regular nor recurrent. *Marion County I*, 21 PECBR at 348.

Difficulties have arisen, however, when we have attempted to apply these standards to determine what type of employment is regular and recurring. Our efforts to develop definitions of casual, substitute, and temporary employees based on the facts presented by specific cases have not produced consistent principles to reliably guide employers or unions. For example, we excluded *all* substitute teachers—a group defined as teachers employed on a day-to-day basis who worked less than 60 days per assignment—from a bargaining unit of regular teachers in *Mid-Valley Bargaining Council v. Greater Albany Public School District 8-J*, Case No. C-17-81, 6 PECBR 4766 (1981). We accepted the parties' definition of a substitute, and did not consider the hours worked by or the employment history of the individuals at issue in making our decision.

Our holding in *Greater Albany School District* is difficult to reconcile with the one we made in *Oregon School Employees Association v. Warrenton-Hammond School District 30*, Case No. RC-47-86, 9 PECBR 9034, 9037 (1986), where we decided that four substitute employees—a substitute bus driver, two substitute kitchen helpers, and a substitute teacher's aide—belonged in the regular classified employee bargaining unit. We examined the work hours and employment history of the individuals at issue, noting that their work hours fluctuated: over a six-month period, the employees worked anywhere from seven to 71 hours per month. Despite the employees' status as substitutes and the short (six months) work history we considered, we concluded that they had "consistent recurring employment with the District over a substantial period of time." *Id.*

Later cases have not produced a logical definition of the type of employment considered "consistently recurring." In *Teamsters Local Union #223 v. North Lincoln Hospital*, Case No. RC-11-96, 16 PECBR 672, 674, (1996), we refused to include "per diem" employees in a bargaining unit of hospital workers. The 31 "per diem" employees worked varied hours, ranging from an average of 10 hours or less per week to an average of over 30 hours per week; all but six of the "per diem" employees had been employed by the hospital for at least two years.

Contrast these conclusions in *North Lincoln Hospital* with those we made in *Lane Community College Employees Federation, Local 2417, AFT, AFL-CIO v. Lane Community College*, Case No. UC-19-97, 17 PECBR 423 (1997). In *Lane Community College*, we added classified employees working less than half-time to an existing bargaining unit of

employees working more than half-time. The employment of many of these workers was less recurring than that of the “per diem” workers in *North Lincoln Hospital*: over a three-year period, approximately one-half of the *Lane Community College* employees at issue who worked one year for the college did not return to work the following year. *Id.* at 426.

The inconsistencies in our cases led to results we now view as anomalous in *Marion County I*. There, a substantial number of the employees we decided were casual worked 1,040 hours or more during a 12-month period—significantly more hours over a longer period of time than the employees we decided were regular in *Warrenton-Hammond*. Many of the casual employees in *Marion County I* had worked for the County for a number of years: during the six years preceding the year in which the petition was filed, 39 percent had worked in temporary County positions for two or three years, and 17 percent had worked in temporary County positions for four or more years. It is difficult to find a logical basis for distinguishing between the employment history of these casual County workers and that of the employees we held were regular in *Lane Community College*.

Under ORS 243.682(1)(a), we have responsibility for designating an appropriate bargaining unit. We believe this case presents an opportunity to re-examine the conclusions we reached in *Marion County I* and develop more consistent and reliable standards for determining who must be excluded from a bargaining unit as a casual employee. We have come to agree with our dissenting colleague in *Marion County I* that the approach we have used in prior cases—that of comparing the facts of one case to another to determine the nature of the individuals’ employment relationship—is “especially ill-suited to fact-intensive and workplace-specific cases” like the one presented here. *Marion County I* at 351. As explained below, we now adopt the reasoning in the dissent and apply it to the facts of this case.

When we use a fact-matching analysis, we must choose between two options to determine the status of a group of employees: we can generalize about the work performed by the employees, or we can analyze the working conditions and employment patterns of every single employee in the petitioned-for group. The first option leads us to make conclusions about “most” or a “majority” of the employees at issue. Any such generalizations may not accurately describe the actual employment relationships of specific individuals in the petitioned-for group. As a result, some employees may be incorrectly labeled casual and barred from representation under the Public Employee Collective Bargaining Act (PECBA). The second option requires us to individually (and exhaustively) consider the particular employment situation of each worker in the petitioned-for group. Such an approach is time-consuming and impractical where, as

here, the Union seeks to add 120 employees to its bargaining unit. We decline to choose either option. Instead, we find it appropriate to reject the fact-matching analysis we applied in *Marion County I* and prior cases and adopt the standards used by the National Labor Relations Board (NLRB) to determine whether an individual is a casual employee.

Such an approach is consistent with one we advocated in *Salem Federation of Classified Employees v. Salem School District 24J*, Case No. C-169-83, 7 PECBR 6187, 6194-6195 n 3 (1983). In that case, which was decided three years after we adopted our 1980 unit clarification rules, we noted that although NLRB precedent was not controlling, we anticipated “referring to the experience of the NLRB” in determining casual employee status. Deference to the National Labor Relations Act (NLRA) as interpreted by the NLRB is appropriate; when the PECBA was adopted in 1973, it was modeled, to a great extent, on the NLRA. As a result, we often apply pre-1973 NLRA precedent to interpret the PECBA. *Elvin v. OPEU*, 313 Or 165, 175 n 7, 832 P2d 36 (1992).

We begin by reviewing the NLRB definitions of casual and temporary employees. Although we have never distinguished between these two types of employees, the NLRB has. The NLRB defines casual employees as those who, because their employment is not sufficiently regular, lack a community of interest with other bargaining unit employees. The NLRB has a long-standing and widely-used formula to determine who is eligible to vote as a regular employee on inclusion in a bargaining unit and who is ineligible as a casual employee: an individual is considered a regular, part-time (and not a casual) employee if the employee averaged four or more weekly hours of work in the last quarter prior to the election eligibility date. *May Dep’t Stores Co.*, 175 NLRB 514 (1969), *supplemental order* 181 NLRB 710, 711-712 (1970); *Davison-Paxon Co. Div.*, 185 NLRB 21, 23-24 (1970).¹¹ The NLRB has continued to use this formula. *Trump Taj Mahal Associates*, 306 NLRB 294, 295 (1992); *New York Display and Die Cutting Corp.*, 341 NLRB 930 (2004); *A.L. Investors Orlando, LLC* 344 NLRB 582, 582-583 (2005).

In regard to temporary employees, the NLRB has applied two standards to decide if an individual is a temporary employee and ineligible to vote as a member of a regular employee bargaining unit: a reasonable expectation of employment test and a date certain test. John E. Higgins, Jr., *The Developing Labor Law* 601 (Fifth Ed. 2006). Under the reasonable expectation test, an individual is considered a temporary employee if, on the election and eligibility dates, the individual is working but has no reasonable

¹¹In *May Dep’t Stores Co.*, 181 NLRB at 712-713, the NLRB used the following formula to assess the voting eligibility of an employee who began work for the employer during the quarter immediately preceding the election eligibility date: an employee was eligible to vote if the employee began work no later than the seventh week of the quarter and worked a weekly average of four hours or more in two-thirds of the weeks between the date the employee began work and the date on which the quarter ended.

expectation of permanent employment. *Georgia-Pacific Corp.*, 201 NLRB 831 (1973); *NLRB v. S.R.D.C.*, 45 F3d 328, 331 (9th Cir 1995). Under the date certain test, an employee is eligible to vote as a regular employee if, on the eligibility and election dates, the employee is working but has no definite date on which this employment will end. *H. Sargent and Company*, 99 NLRB 1318, 1320 (1952); *Personal Products Corp.*, 114 NLRB 959, 960 (1955); *Lloyd A. Fry Roofing*, 121 NLRB 1433, 1437 (1958); *M.J. Pirolli & Sons, Inc.*, 194 NLRB 241, 250 (1972).¹²

Here, the County classifies all the employees at issue as “temporary.” We are not bound by this term, however. The record contains no evidence that any of the individuals at issue have definite dates on which their County employment will end; to the contrary, all individuals whose work histories are cited in the Findings of Fact have worked intermittent periods of varying length for the County, sometimes for several years. Nor do the County “temporary” employees lack an expectation of permanent employment: the County has reclassified a number of temporary employees as regular employees, based on the number of hours they have worked. Accordingly, the issue we must decide is whether the employment status of the individuals in the petitioned-for group is casual. We adopt the NLRB standard to make this determination: casual workers who are ineligible to vote on inclusion in the Union bargaining unit are those individuals who, on the date of eligibility for the election, have averaged less than four weekly hours of work in the quarter (13 weeks) preceding the election eligibility date.

Use of this formula is consistent with the approach taken by a number of other states that use some type of numerical formula to determine an employee’s status. These states include: Washington (under Washington Administrative Code 391-35-350, adopted by the Washington Public Employment Relations Commission, employees are presumed to be regular part-time employees and eligible for inclusion in a bargaining unit if, during the previous 12 months, they have worked at least one-sixth of the time normally worked by full-time employees and are available for work); New Jersey (*Orange*

¹²The First and Ninth Circuits have adopted the date certain test as the better and more objective standard for determining an employee’s status as a bargaining unit member. *NLRB v. New England Lithographic Co.*, 589 F2d 29, 33 (1st Cir 1978); *NLRB v. S.R.D.C. Inc.*, 45 F3d 328, 332 (9th Cir 1995). Under the date certain test as used by these courts,

“[A]n employee may be fully aware that his or her employment will be short-lived, but, as long as no definite termination date is known and the employee was employed on the eligibility and election dates, he or she will be eligible to vote.” *S.R.D.C. Inc.*, 45 F3d at 332.

County Board of Education and Orange Custodial and Maintenance Association, 15 NPER – NJ 23165 (1992), substitute custodians who worked at least one-sixth of the work-year worked by regular custodians and who continue to be available to accept work are properly accreted to a bargaining unit of regular employees); Pennsylvania (*Westmoreland County*, 18 NPER – PA 27038 (1996), county correctional officers, who worked 13 or more of 21 regular pay periods are properly included in regular employee bargaining units); Rhode Island (*City of Providence School Department v. Rhode Island State Labor Relations Board*, 177 LRRM 2953 (2005), substitute clerks who work more than 16 weeks a year are not casual employees and not excluded from collective bargaining); Michigan (*Taylor Federation of Teachers v. Taylor Bd. Of Education*, 129 LRRM 2884 (1988), substitute teachers who worked at least one day in 25 percent or more of the pay periods in the two full years preceding the election were appropriately permitted to vote on inclusion in the regular teacher bargaining unit), and Minnesota (Section 179A.03, subdivision 14(e) of the Minnesota Public Employment Labor Relations Act defines a casual employee as one who works the lesser of 14 hours per week or 35 percent of the normal work week in the relevant unit).¹³

Our inquiry does not end with the adoption and application of the NLRB test to determine who is a casual County employee, however. As discussed above, the nature of an individual’s employment relationship is only one of the community of interest factors we consider; in addition, we look at similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, and common supervision. OAR 115-25-0050(2). We also examine “wages, hours and other working conditions of

¹³We also anticipate following NLRB precedent by applying the bright-line test for casual employment in a flexible manner that allows for necessary exceptions. As the NLRB has made clear, the formula “should be followed absent a showing of special circumstances.” *Columbus Symphony Orchestra*, 350 NLRB 523, 524 (2007). One such special circumstance that has required modification of the formula is the entertainment industry, where employment patterns are often highly irregular. *Id.*

In Oregon, one situation that may require an exception to use of the NLRB bright-line standard is that of substitute teachers. Because ORS 342.815(8) defines a substitute teacher, it may be impractical to apply the NLRB definition of a casual employee to this type of employee. In addition, it has been our long-standing practice to exclude substitute teachers from bargaining units of regular licensed teachers. *Mid-Valley Bargaining Council v. Greater Albany Public School District 8-J*, Case No. C-17-81, 6 PECBR 4766 (1981). Instead, we have required that substitutes form their own bargaining units. *Beaverton Education Association /OEA-OACE/NEA v. Beaverton School District 48J*, RC-72-93, 15 PECBR 210 (1994). Whether it is necessary to reconsider this practice, or whether it would be unnecessarily disruptive to do so, is an issue that must be resolved in a future case.

the employees involved, the history of collective bargaining, and the desires of employees.” ORS 243.682(1)(a).

Here, the duties of the petitioned-for employees are substantially the same as those performed by bargaining unit members. (Finding of Fact 23). In a few instances, the work performed by the temporary employees differs from the work of regular employees. Regular MHS and MHA employees perform case management, counsel clients, and create long-term treatment plans; temporary MHS and MHA workers do not. Temporary Maintenance Workers do not operate heavy equipment; regular Maintenance Workers do. We do not consider these few differences to be significant, however. Because the temporary employees work in the same job classifications as regular employees, their skills are similar to those of the regular employees. The petitioned-for employees share common supervision with bargaining unit employees. There is some interchange between the temporary and regular work force: out of 760 regular employees, approximately 30 percent (227) are former temporary workers. (Finding of Fact 31). Although temporary employees are placed on the same salary schedule as regular employees, their salaries are lower and benefits fewer. These differences can probably be attributed to the collective bargaining rights enjoyed by regular employees, however. The showing of interest submitted with the petition, as well as the fact that this is the second time County temporary employees have sought representation by the Union, indicate that the petitioned-for employees want to be represented by the Union.

In sum, we conclude it is appropriate to apply the NLRB definitions to determine which employees in the petitioned for group are eligible to vote for inclusion in the Union bargaining unit because they are regular employees. It is appropriate to include these regular employees in the bargaining unit, based on the community of interest and other working conditions these employees share with Union bargaining unit members.

We turn now to the final factor to consider in deciding whether to add the petitioned-for employees to the Union bargaining unit: do the individuals the Union seek to add to its bargaining unit constitute a “logically defined group of employees”?

The Union has sought to represent only some of the employees the County classifies as “temporary.” As of June 10, 2010, approximately one month before the date of the hearing, “temporary” employees filled positions in 35 Union bargaining unit job classifications. The Union’s petition seeks to represent “temporary” employees filling positions in 25 of these job classifications. (Finding of Fact 6 n 7). The Union has offered no reason for excluding many of the County “temporary” employees from its petition.

The facts here are very similar to those in *Portland Community College Faculty Association v. Portland Community College*, Case No. UC-13-00, 19 PECBR 129, 143 (2001). In that case, the union sought to add to its bargaining unit casual professional employees who were authorized to work a certain number of hours during the fiscal year. We dismissed the petition, holding that the group the union sought to add under subsection (4) was not logically defined because the defining factor—the number of hours an employee was authorized to work—was an “arbitrary figure. Here, as in *PCC*, the Union’s selection of the “temporary” employees it wants to represent is arbitrary. The Union has provided no evidence or argument to explain why County “temporary” employees in some departments and job classifications should be included in the bargaining unit and why “temporary” employees in other departments and job classifications should be excluded. Accordingly, the petition does not propose the addition of a logically defined group of employees and we will dismiss it.

ORDER

The Petition is dismissed.

SIGNED AND ISSUED this 9th day of December, 2011.

*Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.

*Chair Gamson not available.