

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-13-09

(UNIT CLARIFICATION)

BEAVERTON POLICE ASSOCIATION,)	
)	
Petitioner,)	RULINGS,
)	FINDINGS OF FACT
v.)	CONCLUSIONS OF LAW,
)	AND ORDER
CITY OF BEAVERTON,)	
)	
Respondent,)	
)	
and)	
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION LOCAL 503, OREGON PUBLIC)	
EMPLOYEES UNION,)	
)	
Incumbent.)	
_____)	

On April 28, 2010, this Board heard oral argument on Respondent's objections to a Recommended Order issued on December 10, 2009, after a hearing held before Administrative Law Judge (ALJ) B. Carlton Grew on June 26, 2009, at the City's offices in Beaverton, Oregon. The record closed on July 27, 2009, with the submission of the parties' post-hearing briefs.

Mark J. Makler, Attorney at Law, Garrettson, Gallagher, Fenrich & Makler, Portland, Oregon, represented Petitioner.

Joel L. Rosenblit, Attorney at Law, SEIU Local 503, OPEU, Salem, Oregon, represented Incumbent SEIU.

William J. Scheiderich, Attorney at Law, City Attorney's Office, Beaverton, Oregon, represented Respondent City.

On April 28, 2009, the Beaverton Police Association (Association) filed this Petition for unit clarification. The Association seeks to transfer six positions from the Service Employees International Union (SEIU) bargaining unit into its bargaining unit. SEIU filed timely objections on May 14, 2009.

The issue is: Are the positions of Support Specialist 1, Support Specialist 2, and Program Coordinator-Photo Radar, working exclusively in and for the Beaverton Police Department (Police Department), more appropriately included in the existing Beaverton Police Association bargaining unit under OAR 115-025-0005(6)?

RULINGS

At hearing, the Association sought to introduce a putative job description for the position of Police Support Specialist 2, Exhibit P-24. SEIU objected on the grounds that there was no evidence that the document was an official City of Beaverton (City) job description. Several official City job descriptions were part of the record. The ALJ properly denied the admission of the exhibit.

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

FINDINGS OF FACT

Parties

1. The Association and SEIU are labor organizations and the exclusive representatives of separate bargaining units of public employees employed by the City, a public employer.

2. The Association represents a strike-prohibited unit of Police Department employees which consists of 135 strike-prohibited sworn officers and 23 strike-permitted non-sworn employees in the classifications of Police Officer, Police Support Specialist, Sergeant, Inventory Specialist, Community Services Officer, Property Control Specialist, and Senior Police Support Specialist. The Association does not represent any Program Coordinators or Support Specialists 1 or 2. All Association members work in or are based in the Police Department. The Association has represented this unit since the Association's creation in 1999.

3. SEIU represents a bargaining unit of employees in approximately 70 job classifications across the City, including the positions at issue. Other positions include Accounting Assistant, Arborist Technician, Computer Service Technician, Court Clerk, Engineering Technician, Electrical Inspector, Librarian, Mechanic, Assistant Planner, Sign and Marking Technician, and Water Quality Technician. SEIU bargaining unit members work in various City departments and sections including the Mayor's Office, Neighborhoods, Public Works, Police Department, and the Municipal Court. SEIU or its predecessors have represented this bargaining unit since 1980.¹

The Police Department has two facilities relevant to this case. The main Police Department headquarters, where most Police Department employees report for work, is located in a locked office suite on portions of two floors of the Beaverton City Hall. Other City employees work in other sections of the City Hall building. The Police Department also has a separate training facility, which is almost exclusively used for police-oriented training.

4. The SEIU bargaining unit includes three Support Specialist 1s, one of whom works in the Police Department; 27 Support Specialist 2s, four of whom work in the Police Department; and four Program Coordinators², one of whom works in the Police Department. These six positions are the only SEIU-represented positions in the Police Department. The Association petition seeks to transfer these six positions into its bargaining unit.

5. The Police Department positions at issue are held by the following employees:

Support Specialist 1:	Rebecca Grant
Support Specialist 2:	Lisa Espinosa, Traci Monihan, Katie Newton, and Karen Nathman.
Program Coordinator:	Rochelle Ballweber

Working Conditions

6. At the time of hearing, Association and the City were parties to a collective bargaining agreement in effect from July 1, 2007 through June 30, 2009. The agreement

¹There is no evidence in the record of any other relevant history of collective bargaining.

²Two additional Program Coordinator positions will be added elsewhere in the SEIU unit in the 2009-2010 fiscal year.

recognized SEIU as the exclusive representative of all regular employees on a list of approximately 70 job classifications, including Support Specialists 1 and 2, and Program Coordinators.

The Association and the City were parties to a collective bargaining agreement in effect from July 1, 2007 until June 30, 2009. The agreement recognized the Association as the exclusive representative of the seven Police Department job classifications listed in Finding of Fact 2.

City Support Specialist 1

7. The Support Specialist 1 position provides reception, customer service, and clerical support services such as word processing, data entry, and filing. SEIU-represented Support Specialist 1s work in the Mayor's Office, Administration, and the Police Department.

8. The essential functions of the Support Specialist 1 include: provide reception and general information services to the public by telephone and in person; calm and defuse confused or irate customers; coordinate special projects and activities; create word processing documents; maintain files, process records, and file and retrieve material; prepare and distribute materials; maintain department internal/external website; perform data entry and retrieval; participate in operational processes such as procedure development and implementation; and provide backup to others.

9. Support Specialist 1s must have knowledge of practices and principles of reception, customer service, and basic public/business administration and decision-making.

10. The minimum qualifications for the Support Specialist 1 are a high school diploma or GED and one year of general office experience, including reception experience, or an equivalent combination of education and experience.

11. In general, Support Specialist 1s work between 6:30 a.m. and 5:30 p.m., Monday through Friday. The Police Department Support Specialist 1 works slightly more than half time, working four days a week during regular office hours.

12. Support Specialist 1s are paid on a seven-step salary schedule. Beginning July 1, 2007, the beginning salary for the position was \$2,280 per month, and the top step was \$3,055 per month. Step increases are available after six months for the first two steps, and annually through step 7.

13. Support Specialist 1s can promote to Support Specialist 2 and then Program Coordinator positions. The SEIU bargaining unit also includes a Support Specialist 3 position.³

Police Support Specialist 1 Rebecca Grant

14. Grant is the SEIU-represented Support Specialist 1 working for the Police Department. She previously worked as a Police Support Specialist in the Criminal Investigation Division, a position represented by the Association. Grant retired from that position in June 2006 and took this part-time Support Specialist 1 position in July 2006. Her current work station is 50 feet from her former work station.

15. Grant fills the receptionist role in the Police Department. She sits behind a locked door and glass window and grants entry to the Police Department's offices to other City employees and members of the public. She answers and routes telephone calls to appropriate individuals, photocopies lengthy documents, sends lengthy faxes, and performs some support work for the City's traffic safety grants. Her desk is close to the Police Chief's office and conference room. Her direct supervisor is Management Analyst Michelle Harrold.

16. Grant interacts frequently with Police Department management and Association-represented employees in person, and with the public over the telephone. Grant's primary contact with other SEIU-represented staff is admitting them to the Police Department; she occasionally communicates with staff in the City Finance office as well. SEIU-represented Police Support Specialist 2 Espinosa, who also reports to Harrold, usually covers Grant's desk when Grant is gone, along with Association-represented Police Administrative Assistant Christy Ray and SEIU-represented Police Support Specialist 2s Monihan and Ballweber. Grant is certified by the Department of Public Safety Standards and Training (DPSST). She also has Law Enforcement Data System (LEDS) certification, and uses LEDS from time to time.⁴

³The record does not reveal whether this position is, in fact, a viable promotion opportunity for Support Specialists 1 and 2.

⁴Ten SEIU bargaining unit employees working in the City's Municipal Court are also LEDS certified, as are at least three SEIU bargaining unit employees in the City Attorneys office, including Sheila Lee, a Support Specialist 2.

Although Grant attended no police-oriented training sessions from January through May, 2009, she attended 28 in 2008.⁵

City Support Specialist 2

17. The Support Specialist 2 provides administrative and fiscal support services. Duties of the position include: coordinate program components including meeting with and/or coordinating various groups to explain processes and procedures; apply discretion in interpreting and applying program rules and regulations; train the public and volunteers in program functions and processes; provide fiscal services, such as accounts payable, accounts receivable, budget monitoring, payroll timekeeping, purchase ordering, reconciling assigned contract files, and maintaining inventory; review and track contract payment requests and process payments and change orders; take minutes at meetings; provide clerical assistance to individuals or work groups; make meeting and travel arrangements and maintain schedules and calendars; assist in tracking grant expenditures and generating and submitting grant reports; maintain department internal/external website; coordinate special projects and activities; format and maintain databases and spreadsheets; verify, track, and update information including budget monitoring; maintain departmental or program filing system according to City retention guidelines and ensure that confidential files are appropriately secured; conduct file and record searches and input or retrieve information using the computer system; handle confidential and sensitive information; research, compile, coordinate, prepare, and distribute materials; aid in division/section operational processes including procedure development and implementation; participate in the City Emergency Management program including classes, training sessions, and emergency events; and provide orientation and assistance to Support Specialist 1s as assigned.

18. Support Specialist 2s are required to have a working knowledge of practices and principles of public/business administration and decision-making, and of public purchasing and contracting laws and regulations.

⁵The Police Department provides a significant amount of police-oriented training. Although SEIU-represented Police Department employees attend many of these trainings, most do not appear to relate to their positions. For example, SEIU bargaining unit Police Department employees attended training in "Foot Pursuits," "Juveniles Involved in Prostitution," "K9 Unit," and "ATM Theft Information." Other trainings are on topics such as "Microsoft Excel 2007," "Ethics Bulletin," "Legal Update," and "New Supervisor Considerations." Most trainings are 15 minutes long, although some are much longer. There is no evidence in the record that non-Police employees attend police-oriented training.

19. The minimum qualifications for the Support Specialist 2 include a high school diploma or GED and three years of general office experience, or an equivalent combination of education and experience.

20. Support Specialist 2 positions are scattered throughout the City, in the Mayor's Office, Public Works, City Attorney, Administration, Planning, Finance, and the Police Department.

21. Support Specialist 2s are paid on a seven-step salary schedule. Beginning July 1, 2007, the beginning salary for the position was \$2,715 per month, and the top step was \$3,639 per month. Step increases are available after six months for the first two steps, and annually through step seven.

22. Generally, Support Specialist 2s work between 8 a.m. and 7 p.m., Monday through Friday; in the Police Department, they work between 7 a.m. and 7 p.m.

23. Support Specialist 2s may be promoted to Program Coordinator. The SEIU unit also contains a Support Specialist 3 classification.⁶

Police Department Support Specialist 2 Lisa Espinosa

24. Espinosa is an SEIU-represented Support Specialist 2 who works as the Alarm Coordinator for the Police Department. She works on the second floor of the Police Department offices in City Hall, near SEIU-represented Program Coordinator Ballweber and SEIU-represented Support Specialist 2 Monihan. Espinosa's supervisor is Management Analyst Harrold. Espinosa previously held an account assistant position with the City Finance Department, where she worked in the City passport program, utility section, and business licensing program. She took this position in September 2005.

25. The City's alarm ordinance requires a license for business and residential burglar and alarm systems and assesses an annual fee. Espinosa processes alarm permit applications and maintains a database of alarm locations that have permits. Espinosa receives electronically transmitted information from Washington County 911 about alarm calls, uses e-mail or telephone to check with City Police officers who responded to the calls, and records this information in the database. She also informs alarm owners in writing when officers respond to a false alarm and notifies them of any resulting fines or fees.

⁶See footnote 3.

26. Espinosa receives checks from businesses and citizens for the alarm program, which she forwards to the City Finance Department. She is in regular contact with City Finance Department employees regarding many issues involved in the alarm program, and with City Water Department employees to obtain addresses of alarm sites not in the alarm database.

27. On occasion, Espinosa covers phone duties for SEIU-represented Police Support Specialist 1 Grant and the Police Chief's Administrative Assistant Christy Ray, an apparently unrepresented Police employee.

28. Espinosa does not attend police-oriented training, and does not have DPSST or LEDS certification.

Police Department Support Specialist 2 Traci Monihan

29. Monihan is an SEIU-represented Support Specialist 2 who performs accounts payable, ordering, and payroll functions for the Police Department. Monihan works in the Police Department offices on the second floor of City Hall, near SEIU-represented Program Coordinator Ballweber and unrepresented Crime Analyst Brad Bliss. Both Monihan and Bliss report to Deputy Chief Tony Merritt. Monihan previously held a position as an administrative assistant to the Police Chief; the position was changed to this Support Specialist 2 position.

30. Monihan reviews time cards and payroll sheets to ensure compliance with the terms of the Association-City collective bargaining agreement; she is especially careful to check entries relating to overtime pay, callback pay, and premium pay. She enters overtime cards into the City's computer systems, and sees and approves all Police Department employee time sheets. Monihan also keeps track of volunteer hours provided to the Police Department. She answers phones and generally provides support to the Police Department administration as needed. Monihan occasionally covers for Support Specialist 1 Grant at the front reception desk.

31. Monihan also orders and arranges for delivery of police training and safety equipment, weapons, training meal reimbursement and per diem payments, uniforms, and other items for Police Department employees, and ensures that the distribution of this material complies with Police Department and City policies. As part of this work, Monihan routinely responds to Police Department employee questions about payroll, overtime, and orders for equipment and supplies.

32. Monihan takes notes at Police Department policy planning committees, and attends other meetings held by the City or other entities related to Police Department issues.

33. Monihan processes, and is the custodian for, all Police Department employee evaluations. She regularly communicates with Police Department sergeants and lieutenants to ensure that evaluations are completed as scheduled and that copies are provided to the City's Human Resources Office. Monihan also tracks and completes all Police Department personnel action forms.

34. Monihan has contact with City Human Resources employees once a day, and with Finance Department employees four to five times per day.

35. Monihan has a DPSST certification dating back to an earlier stint as a reserve police officer for the City of Madras. The record does not reveal whether she was LEADS certified at the time of hearing. Monihan attended one police-oriented training from January through May, 2009; she attended 15 such trainings in 2008.

Police Department Support Specialist 2 Katie Newton

36. Newton is an SEIU-represented Support Specialist 2 working as the administrative support person for the Department Training Division. She works in the Department training facility, a building separate from City Hall which is a five minute drive from City Hall. Newton is the only non-sworn employee at the facility. Training Sergeant Troy Barnbrook and Lieutenant Dan Gill supervise Newton. Like the City Hall Department offices, the training facility is secure and requires an access code for entry. Unlike the City Hall offices, virtually no non-Police Department employees have the access code for this building—even information technology and custodial staff are admitted by Newton. Prior to this Support Specialist 2 position, Newton held a position now called Police Support Specialist in the Police Department records section, a position represented by the Association.⁷

37. Newton answers phones, files documents, and coordinates and tracks training for all Police Department employees. Newton also reminds Police Department employees of upcoming trainings and documents their training attendance. She is the coordinator and contact for new Police Department officer recruits; her duties include coordinating the recruits' field training evaluation program and their activities with the

⁷The personnel action form for this change identified it as a "promotion."

DPSST Police Academy. In addition, Newton works with the Police Department field training officers responsible for the new recruits. Newton periodically contacts DPSST to ensure that police officers and other sworn Police Department employees have current certifications. Newton is DPSST and LEADS certified, and she runs criminal background checks on new Department recruits via LEADS.

38. Newton makes sure out-of-area training meets Police Department criteria and makes travel arrangements for that training. She supports local trainings by providing reimbursements, refreshments, course materials, and registration or check-in documentation.

39. Newton issues training and safety bulletins to all Beaverton Police. Some of these bulletins are simply copies of material that Newton receives in another format; others are Newton's summaries of longer source material.

40. Newton interacts primarily with police officers and police recruits. She communicates with Police Department or City support staff by telephone or e-mail regarding training activities for Police Department employees. She communicates with the City Finance Department regarding financial matters related to training, and assists City custodial and information technology employees in entering the training facility to perform their work as needed.

41. Newton attended one police-oriented training from January through May, 2009, and attended 31 such trainings in 2008.

Police Department Support Specialist 2 Karen Nathman

42. Nathman is an SEIU-represented Support Specialist 2 working as the administrative assistant/secretary for the Patrol Division. She was hired for this position in November 2008. She works in the Police Records section of the Police Department offices on the first floor of City Hall. She shares a desk with Police Records support employee and Association unit member Roni Bickford (although Records employees have a separate chain of command). The office of the sergeant in charge of the Patrol Division is around the corner from her.

43. Nathman provides support for the officers and sergeants in the Patrol Division. She answers the phone and directs calls to officers and other employees in the Police Department. She routinely performs vehicle license and criminal history checks for Police officers, and provides them with other information they need by communicating with them via cell phone, Blackberry, mobile data computer, and the

police radio/911 call system. Nathman assists with: towing abandoned vehicles, documenting the location of evidence or information needed for court proceedings, maintaining the patrol NEXTEL radio/phone, and coordinating the use of patrol Blackberry communication devices.

44. Nathman also coordinates subpoenas and leave requests for officers attending Municipal Court, DMV, and Washington County Circuit Court proceedings, making sure that subpoenas are delivered to the correct officer and that officers are aware of required court dates. As part of this work, she talks personally and by telephone with SEIU-represented Municipal Court employees who work across the hall from her, as well as Washington County Circuit Court employees.

45. Nathman also provides officers with information about their work shifts and locations; she maintains and assists officers with time sheets and updates and distributes payroll sheets; and she helps locate officers for overtime shift coverage when other officers are absent. She assists sergeants in preparing annual evaluation packets for Police Department patrol officers. Nathman arranges sergeants' meetings and trainings, and takes notes and records the minutes for those meetings. When Department Support Specialist 2 Moynihan is absent, Nathman prepares the Police Department payroll.

46. Police Sergeant Mark Clark supervises Nathman; she also receives guidance from other Police Department sergeants and lieutenants, and interacts daily with Association-represented officers and Police Records personnel.

47. Because her work area is visible to the public through the Records Division window, Nathman wears a uniform or clothing that identifies her as a Police Department employee. Nathman is DPSST and LEDS certified. She attended one police-oriented training from January through May, 2009, and attended three such trainings in 2008.

48. Prior to Nathman, this position was held for four years by Ballweber who left in late 2008 or early 2009 to become the Photo Radar Program Coordinator.

City Program Coordinator

49. The duties of City Program Coordinators include: manage program activities such as marketing, outreach, and communications with internal and external leaders and members; research, analyze, and recommend outreach strategies and opportunities; recommend and implement program and policy improvements; prepare and monitor employee work schedules and timesheets; monitor progress to ensure objectives are met; lead and facilitate meetings; prepare reports and recommendations,

and assist in developing the program policies and budget; represent the City to the public in meetings and otherwise; develop and disseminate educational and publicity materials; and manage volunteers. The position requirements include knowledge of strategic planning methods; laws, regulations, and procedures governing the program; public/business administration practices; knowledge of principles and practices of outreach, public relations, and marketing; and knowledge of administrative support functions.

50. The minimum qualifications for the position include a Bachelor's degree in public and/or business administration or a related field, and two years progressively responsible experience in a customer-driven professional environment, including one year's experience in program coordination with emphasis on outreach to and working with public and citizen groups/committees, or an equivalent combination of education and experience enabling the incumbent to perform the essential functions of the position.

51. City Program Coordinators work on City Neighborhoods, Mediation, Waste Reduction, Sister Cities, Library, Public Works, and Police Department programs.

52. Program Coordinators are paid on a seven-step salary schedule. Beginning July 1, 2007, the beginning salary for most program coordinator positions was \$3,342 per month, and the top step was \$4,479 per month. Step increases are available after six months for the first two steps, and annually through step seven. Program Coordinators elsewhere in the City work between 8:00 a.m. and 7:00 p.m, Monday through Friday. In the Department, the Program Coordinator works 7:00 a.m. to 4:00 p.m., Monday through Friday.

Police Photo Radar Program Coordinator Rochelle Ballweber

53. Ballweber holds the SEIU-represented Photo Radar Program Coordinator position. The position was transferred from the Mayor's office to the Police Department in late 2008 or early 2009, which is when Ballweber moved into this position. Prior to becoming the Photo Radar Program Coordinator, Ballweber worked for four years as the Patrol Support Specialist 2, a position now held by Nathman.

54. Ballweber coordinates the use and maintenance of the four photo red light camera operations in the City; her duties include reviewing the citations with the assigned Police officer and coordinating the officer's appearances in municipal court. Ballweber performs similar duties for the City's photo radar van program, along with coordinating the van's maintenance and equipment. She selects locations for the van

(using Police Department guidelines and statistics) and schedules officers to work shifts in the van. Ballweber submits dismissal documents and affidavits to the court when there is a belief that the City cannot prosecute a photo radar or photo red light citation. She also coordinates and monitors training and certifications necessary for the photo radar officers.

55. Ballweber works on the second floor of City Hall, inside the secure Police Department office suite. Police Department Lieutenant Monger, who is in charge of the City's Traffic Program, supervises her work. Ballweber primarily interacts with Association bargaining unit members. She does have ongoing contact with Police Support Specialist 1 Monihan because of Monihan's bill paying duties. Ballweber communicates with municipal court employees several times a week and with City Finance Department employees once a month.

56. Ballweber has retained her DPSST certification from her prior position of Patrol Support Specialist 2. She is LEDS certified and uses LEDS frequently.

57. Ballweber attended two police-oriented trainings from January through May, 2009 and attended 32 such trainings in 2008. One of her 2009 trainings was a 24-hour program called "New Supervision Considerations."

58. Ballweber routinely answers questions from the public about the photo radar program. She is able to review photo radar information and tell inquiring members of the public whether, in the Police Department's view, a violation has occurred. She also prepares affidavits and motions to dismiss in cases where she determines no violation has occurred.

Association Bargaining Unit Police Support Specialist

59. The essential functions of the Association-represented Police Support Specialist position include: perform data entry, data inquiry, and word processing to generate police logs, reports, criminal history, and background inquiries and related information; perform a variety of office support and extensive receptionist duties; process and prioritize daily mail and insurance reports as outlined by state and court ordered time frames; provide support for Police staff and detective unit; advise officers of subpoenas and cancellations; query, enter, confirm, clear, and locate critical items in LEDS/NCIC⁸, including warrants, criminal history, stolen vehicles, etc.; maintain databases and spreadsheets; transcribe tape recordings; prepare and distribute materials and monitor and order office supplies; provide technical information pertaining to the

⁸NCIC is the National Crime Information Center.

services of the records unit; provide information regarding department policies, procedures, and regulations; participate in police records operational processes including procedure development and implementation; participate in the City Emergency Management program including classes, training sessions, and emergency events. Other functions of the position include: use computer system to code crimes and check and verify police reports; use computer database to perform background checks; process and distribute mug photographs, pawn records, and field contact reports and letters; write affidavits for arrest warrants and produce other special reports; provide investigative support through various means including utility accounts; and archive records per Oregon Administrative Rules.

60. Police Support Specialists must have a basic understanding of civil and criminal laws, laws and regulations governing police records, and police terminology. They must have a working knowledge of practices and procedures regarding police records.

61. Minimum qualifications include a high school diploma or GED and two years clerical experience, including experience in a criminal justice environment, or an equivalent combination of education and experience. They must pass a criminal background check, obtain LEDS certification, and become a Notary Public.

62. This position was called Records Clerk in 1997; in 1998, it was changed to Police Records Specialist, and in 2004 to Police Support Specialist. Effective January 1, 2009, the beginning hourly salary for Police Support Specialists was \$15.65 and the top hourly salary was \$20.97.

Other Police Positions

63. Police officers⁹, their supervisors, and records section staff work on shifts covering 24 hours a day, seven days a week. Officers are often away from Police Department offices performing patrol duties, along with answering alarm calls, receiving training on and off site, testifying in court, and attending meetings with other law enforcement-related entities. Association-represented employees, including the Police Support Specialists, may have to attend work meetings outside of their regular working hours.

⁹The record does not contain position descriptions and specific testimony about the duties of Police officers and sergeants, who make up the vast majority of the Association bargaining unit. These facts are derived from descriptions of the work of other Police employees.

64. Association bargaining unit members are paid on a seven-step salary schedule. Employees on the first two steps are eligible for advancement after six months of employment; each subsequent advancement occurs every 12 months thereafter, until the top of the salary schedule is reached. Effective January 1, 2009, the following hourly salaries were in effect: the beginning salary for a Police officer was \$23.07 and the top salary was \$30.92; the beginning salary for the Police sergeants was \$27.55 and the top salary was \$36.92.

All Police Department Employees

65. Because all Police Department facilities are secured by locked doors, each Police employee has a card key that provides access to all Police facilities.¹⁰ While most City employees have a general City employee identification card, all Police employees, including the SEIU-represented employees, have an identification card which identifies them in a large typeface as an employee of the Police Department.

66. Few, if any, non-Police Department employees have card access to the training facility. Several non-Police Department employees have access to the City Hall Police Department office. Some non-Police Department employees of the City have card keys which allow them to enter the secured areas of the Police Department. For example, people in the following non-police positions have access to the Police Records door: ISD¹¹ and reprographics staff, engineering staff, court staff, department heads, maintenance and emergency management staff, janitorial staff, code services staff, human relations staff, the mayor, assistant mayor, chief of staff, and the risk manager. This list includes approximately 22 individuals.

67. Police Department support employees generally wear clothing which identifies them as Police employees, especially if they work in areas where they can be seen by the public.

68. All Police Department employees are subject to the Police Department General Orders and policy and procedures manual. A Police Sergeant or manager evaluates each employee annually. All Police Department employees report to other Police Department employees in the chain of supervision.

¹⁰Other departments or sections of the City have secured areas, such as the municipal court.

¹¹ISD is an acronym for Information Services Division.

Desires of Employees

69. The Association filed an adequate showing of interest in support of the Petition.

CONCLUSIONS OF LAW

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

2. The Police Support Specialist 1 and 2 positions are not more appropriately included in the Association bargaining unit. The Police Photo Radar Coordinator position is more appropriately included in the Association bargaining unit.

Standards for Decision

The Association seeks to transfer six strike-permitted support staff positions in the Police Department from the SEIU bargaining unit to the Association bargaining unit of mainly strike-prohibited employees under OAR 115-025-0005(6).¹² Accordingly, our task is to evaluate the two bargaining units to determine if the SEIU unit is more appropriate for the positions at issue. *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections, and AFSCME, Council 75*, Case No. UC-25-99, 18 PECBR 576, 584 (2000). In determining if the SEIU bargaining unit is more appropriate, we consider the community of interest, wages, hours, and other working conditions of the employees involved, as well as the history of collective bargaining and the desires of employees. ORS 243.682(1)(a). Community of interest factors include similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, and common supervision among departments. OAR 115-025-0050(2).

Because strike-permitted employees lose their right to strike if they are added to a strike-prohibited unit, we have a “strong preference for separate bargaining units for strike-permitted and strike-prohibited employees.” *Ashland Police Association v. City of Ashland*, Case No. UC-22-06, 22 PECBR 1, 9 (2007) (citing *AOCE v. Department of*

¹²OAR 115-025-0005(6) permits this Board to “clarify a group of employees who are represented within (as a fragment of) another bargaining unit” into a bargaining unit represented by a petitioning labor organization, if we determine “that it would be more appropriate to add the positions in question to the petitioning organization’s bargaining unit.” If we make such a determination and the showing of interest is adequate, we must order a self-determination election to allow the petitioned-for employees to vote on representation by either the current labor organization or the petitioning labor organization.

Corrections, 18 PECBR at 587-88). Accordingly, “we do not lightly make unit determinations that convert statutorily strike-permitted employees to strike-prohibited status. There must be compelling reasons for that result based on community of interest factors.” *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections and AFSCME Council 75*, Case No. UC-24-99, 18 PECBR 441, 450 (2000). Our goal is to group those employees who share the greatest community of interest in the same bargaining unit. *Oregon State Police Officers’ Association v. State of Oregon, Department of State Police and Oregon AFSCME Council 75*, Case No. UC-6-00, 18 PECBR 930, 935 (2000).

When considering a petition to add strike-permitted employees to a strike-prohibited bargaining unit, we also consider a number of additional factors. They are:

“(1) the percentage of strike-prohibited employees in the bargaining unit; (2) the relationship of the employees’ duties to the mission of a law enforcement agency; (3) the uniqueness of the employees’ positions; (4) the extent to which other employees with similar duties are organized; (5) the pattern of organization in the work force; and (6) the history and stability of labor relations.” *Ashland*, 22 PECBR at 9 (citing *Washington County Police Officers Association v. Washington County*, Case No. UC-36-00, 19 PECBR 641, 648-49 (2002)).

When a petition involves a law enforcement agency, we focus on the degree to which the work of the petitioned-for employees is distinctive to the agency and the positions at issue are significantly involved and integrated with a law enforcement mission. *Multnomah County Deputy Sheriff’s Association v. Multnomah County and AFSCME Local 88*, Case No. UC-14-01, 19 PECBR 733, 748 (2002).

We begin our analysis by applying the relevant statutory criteria.

Community of Interest

The duties performed and skills used by the Police Department support specialists are not distinctive; they are very similar to the duties and skills performed by support specialists in other City departments. The general job description and qualifications for Police Department and other City support specialist positions are the same. There is no evidence in the record that the duties and skills of sworn, non-support Police Department staff overlap significantly with those of support employees.

Although the duties of each Program Coordinator vary, depending on the nature of their assignment, the skills needed and utilized to perform those duties are similar. There is no evidence that the work of the Police Photo Radar Program Coordinator is more or less specialized than that of other Program Coordinators.

The benefits provided to the Support Specialists 1 and 2 and Program Coordinators are the same as those provided to other SEIU-represented employees. The parties have not identified any differences between benefits provided to Association and SEIU bargaining unit employees that affect this petition.

There is significant interchange or transfer of support employees between the Police Department and other City departments. Ballweber and Espinosa came to SEIU-represented positions in the Police Department from other SEIU bargaining unit positions. Grant and Newton left Association bargaining unit positions for SEIU bargaining unit positions. Monihan was reclassified from an Association bargaining unit position into an SEIU bargaining unit position.

The promotional ladders between the SEIU unit and Association unit appear limited; the only evidence in the record of a promotion from one bargaining unit to the other is Newton's move from a Police Support Specialist position in the Association bargaining unit to a Support Specialist 2 position in the SEIU bargaining unit. (Finding of Fact 37.) Given the relative size of the respective units, it is likely that there will always be more promotional opportunities for support employees in the SEIU unit than in the Association bargaining unit. The promotion path of sworn, non-support Police Department staff does not overlap with the promotion path of support employees—there is no evidence that either an SEIU-represented or Association-represented support employee ever promoted into a non-support position in the Police Department.

The SEIU and Association bargaining unit members in the Police Department share common supervision. Except for Grant and Espinosa, who are supervised by Management Analyst Harrold, Police Department sergeants or managers supervise all SEIU- and Association-represented Police Department support employees. The limited evidence in the record suggests that SEIU bargaining unit employees working in other sections of City government are similarly supervised by managers in those sections.

Wages, Hours, and Other Working Conditions

Wages and benefits are similar for SEIU and Association bargaining unit Support Specialists 1 and 2, and Program Coordinators. Beginning July 1, 2007, salaries for a Support Specialist 1 in the SEIU bargaining unit ranged from \$2,280 to \$3,055, and for a Support Specialist 2, from \$2,715 to \$3,639. For most Program Coordinator positions, the beginning salary was \$3,342 per month and the top step was \$4,479 per month.

Effective January 1, 2009, for employees in the Association bargaining unit, the following hourly salaries were in effect: the beginning salary for Police Support Specialists was \$15.65 and the top salary was \$20.97 (\$2,713 – \$3,635 per month)¹³; the beginning salary for a police officer was \$23.07 and the top salary was \$30.92 (\$4,109 – \$5,360 per month); the beginning salary for the Police Sergeants was \$27.55 and the top salary was \$36.92 (\$4,628 – \$6,202 per month).

The provisions for salary schedule advancement for Support Specialists in the SEIU and Association bargaining units are also similar. Support specialists in both bargaining units are paid on seven-step salary schedules; employees on the first two steps of the schedules are eligible for advancement after six months of employment, and subsequent advancements occur every 12 months.

All City and Police Department Support Specialists and Program Coordinators work a day shift and have holidays and weekends off. Police Department Program Coordinator Ballweber works 7:00 a.m. to 4:00 p.m., Monday through Friday; the other program coordinators generally work between 8:00 a.m. and 7:00 p.m., five days a week. All Association bargaining unit members work shifts organized around a 24 hour day, and may have to attend meetings outside of their regular working hours.

All City and Police Department Support Specialists and Program Coordinators work in office environments. Police Department Support Specialists work in secured environments, as do SEIU-represented municipal court employees. Police Department Support Specialists and the Program Coordinator wear uniforms or clothing labeled to identify them as Police Department employees; there is no evidence that any non-Police Department City employees wear similarly labeled clothing.

History of Collective Bargaining

The Support Specialist and Program Coordinator positions, or their predecessors, have been in the SEIU bargaining unit since 1980. The Association Police Department employees, or their predecessors, have been in the Association unit bargaining since its creation in 1999.

¹³Because the SEIU wages are calculated by month, for comparison purposes we have multiplied the Association hourly wages by eight hours per average workday and 21.67 workdays per average month to obtain an approximate monthly salary for these Association positions.

Desires of Employees

The Association presented a sufficient showing of interest to demonstrate that the SEIU-represented Police Department employees identified in the Petition wish to be represented by the Association.

Strike-Permitted/Strike-Prohibited Status

The Association bargaining unit currently includes 135 strike-prohibited employees (85 percent) and 23 strike-permitted employees (15 percent). If the six SEIU-represented Program Coordinator and Support Specialists are added to the Association bargaining unit, the current percentage of strike-permitted employees in the bargaining unit will increase from 15 percent to 18 percent, a relatively minor increase.

The Support Specialists' work is supportive of, but not integral to, the mission of the Police Department. Specialized law enforcement certification—DPSST and LEDS—and training is not required of all the Support Specialists. Espinosa is not DPSST or LEDS certified. Although Grant and Monihan are DPSST certified, they obtained it through prior police employment and not in their current work as Support Specialists. Ballweber, Grant, Nathman, and Newton have LEDS certification and use it in their jobs. Grant and Nathman do not attend police-oriented training. Although many of the trainings Support Specialists attend are police-oriented, the trainings appear to have no significant relationship to their jobs. There is virtually no interchange of duties between Support Specialists and non-support Department employees.

The Photo Radar Coordinator, by contrast, appears to directly fulfill a law enforcement function. In addition to coordinating the logistics of the various photo radar devices and personnel, she also participates in selecting which photos warrant prosecution and which do not. The distinctly law enforcement nature of this function appears to be supported by the City's decision to transfer it from the Mayor's Office to the Police Department.

The Support Specialist 1 and 2 positions are not unique, Support Specialists 1 and 2 work in various departments throughout the City. They all have the same position description, and have readily transferred from other City departments to the Police Department. Even the alarm coordinator's position has an analog in the City's business license program.

All employees with duties similar to Support Specialists 1 and 2 and Program Coordinators are organized, with Police Support Specialists placed in the Association unit and other similar positions in the SEIU unit.

SEIU argues that the pattern of organization in the work force is by job classification and not by the division or section of the City in which the employees work. This is generally true, but the Police Department is the exception to this rule, and this factor favors transferring these positions to the Association unit.

Both the Association and SEIU bargaining units have a long history of representing City employees. There is no evidence that the outcome of this case will significantly affect the stability of labor relations aside from the transfer of these positions themselves. It is unlikely that granting the petition will lead to a rash of confusion regarding the placement of similar positions in other City departments. Denying the petition could, at most, raise the issue of whether a few Police Department support positions are appropriately placed in the Association bargaining unit.

Based on our analysis of the relevant statutory factors and the additional considerations appropriate to a mixed unit, we conclude that although placement in either unit may be appropriate, we cannot say that the Support Specialist 1 and 2 positions are more appropriately placed in the Association unit. We conclude, however, that the Police Photo Radar Coordinator is more appropriately placed in the Association unit because of the distinctive nature of the work and involvement in the Police Department's mission as a law enforcement agency.

Our conclusion is consistent with those reached in prior cases involving mixed bargaining units in law enforcement agencies. We include strike-permitted positions in a strike-prohibited law enforcement bargaining unit only if the positions have duties, like those of the Police Photo Radar Coordinator, that are unique or distinctive and are closely tied and integral to the law enforcement agency's mission. *See Klamath County Peace Officers Association v. Klamath County and Laborers' International Union of North America, Local 915*, Case No. RC-12-86, 9 PECBR 8944, 8956 (1986); *Marion County Sheriff's Department v. Oregon Public Employees Union*, Case No. UC-58-86, 9 PECBR 9441, 9451 (1987); *Tigard Police Officers Association v. City of Tigard*, Case No. UC-32-88, 10 PECBR 1014, 1022 (1988); *Oregon State Police Officers Association v. Oregon State Police Department and Executive Department, Labor Relations and Personnel Division*, Case No. UC-99-87, 10 PECBR 678, 683 (1988); *Multnomah County Deputy Sheriff's Association v. Multnomah County*, 19 PECBR at 749. *Compare Washington County Police Officers Association v. Washington County*, Case No. UC-36-00, 19 PECBR 641, 651-652 (2002) ("community of interest factors do not show that RSMs [residential service managers who help offenders transition to the community] are significantly involved in the law enforcement mission of the sheriff's office" and the RSMs are not appropriately placed in a strike-prohibited sheriff's department bargaining unit.)

We will dismiss that portion of the petition that seeks to transfer the Support Specialist 1 and 2 positions to the Association bargaining unit. We will grant that portion of the petition that seeks to transfer the Police Photo Radar Coordinator

position to the Association bargaining unit. We will check the showing of interest to determine if it is adequate under OAR 115-025-005(6).¹⁴ If it indicates that the Police Photo Radar Program Coordinator expressed an interest in representation by the Association for the purpose of collective bargaining, we will conduct a self-determination election so that this employee can vote on whether to be represented by SEIU or the Association.

ORDER

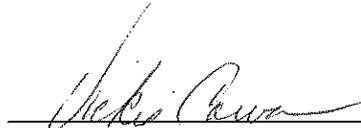
1. The Elections Coordinator shall, as soon as practicable, check the showing of interest against the original list of employees provided by the City of Beaverton. If the Elections Coordinator determines that the Police Photo Radar Program Coordinator has expressed a wish to be represented by the Beaverton Police Association for the purposes of collective bargaining, the Elections Coordinator will conduct a secret mail ballot election for the Police Photo Radar Coordinator. The ballot will provide a choice between the Beaverton Police Association and SEIU Local 503.

2. No later than 10 days from the date on which the showing of interest is deemed to be adequate, the City shall provide this Board, SEIU Local 503, and the Beaverton Police Association with the name, home address, and classification title of the employee at issue.

DATED this 17th day of June 2010.



Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

This Order may be appealed pursuant to ORS 183.482.

¹⁴See *Oregon AFSCME Council 75 v. Washington County*, Case No. RC-30-03, 20 PECBR 745, 757 (2004) (when we designated an appropriate unit for representation that differed from the petitioned-for unit, we ordered a check of the showing of interest to determine whether it was adequate for the unit we designated).