

AFSCME COUNCIL 75,)
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Petitioner,)
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v.)
)
STATE OF OREGON,)
DEPARTMENT OF CORRECTIONS,)
MILL CREEK CORRECTIONAL FACILITY)
)
Respondent,)
)
and)
)
ASSOCIATION OF OREGON)
CORRECTIONS EMPLOYEES,)
)
Incumbent,)
)
Case No. UC-15-05;)
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Case No. RC-16-05;)
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from the AOCE bargaining unit to AFSCMEs statewide nonsecurity bargaining unit. RC-16-05 seeks a stand-alone unit of strike-permitted and strike-prohibited employees at MCCF.

On April 29, 2005, AFSCME filed RC-21-05 seeking a stand-alone unit of strike-prohibited employees at Oregon State Correctional Institution (OSCI).

AOCE and the State of Oregon (State) filed timely objections. The cases were combined for hearing. At hearing the parties submitted a partial fact stipulation.¹

The issues presented for hearing are:

1. UC-14-05—Is it more appropriate to include the MCCF security staff in the AFSCME bargaining unit than in the AOCE bargaining unit?

2. UC-15-05—Is it more appropriate to include the MCCF nonsecurity staff in the AFSCME bargaining unit than in the AOCE bargaining unit?

3. RC-16-05—Is a wall-to-wall unit of strike-prohibited and strike-permitted MCCF employees an appropriate bargaining unit? If so, the parties stipulate that AFSCME seeks a stand-alone unit of MCCF employees while the incumbent, AOCE, seeks to maintain the current bargaining unit.

4. RC-21-05—Is a stand-alone unit of strike-prohibited OSCI employees an appropriate unit? If so, the parties stipulate that AFSCME seeks a stand-alone unit of strike-prohibited OSCI employees while AOCE seeks to maintain the current bargaining unit.

RULINGS

AOCE objected to the validity of AFSCME's showing of interest, alleging that AFSCME misled employees into signing the showing of interest cards. At hearing, AOCE sought to introduce evidence of AFSCME's misleading behavior and AFSCME objected. The ALJ correctly sustained AFSCME's objection, but allowed AOCE to present an offer of proof.

This Board determines the adequacy of the showing of interest, and that determination is not subject to collateral attack. OAR 115-25-020.

¹The fact stipulation covers Findings of Fact 1-22.

Subsequent to the hearing and filing of post-hearing briefs, the State withdrew its objections in cases RC-16-05 and RC-21-05. The State's post-hearing arguments regarding RC-16-05 and RC-21-05 were not considered in this decision.

The ALJ's remaining rulings were reviewed and are correct.

FINDINGS OF FACT

1. The State is a public employer. Acting through its Department of Corrections (DOC), the State operates 14 adult correctional facilities which are listed in paragraphs 4 and 5 below.

2. AFSCME is a labor organization. AFSCME represents two multi-institution bargaining units of DOC employees, one for strike-prohibited employees (security) and one for strike-permitted employees (nonsecurity or security plus).

3. AOCE represents one multi-institution bargaining unit of DOC employees, which includes both strike-prohibited and strike-permitted employees.

4. AFSCME's security bargaining unit includes the strike-prohibited employees working in the institutions listed below:

Coffee Creek Correctional Facility/Intake in Wilsonville (CCCF)
Columbia River Correction Institution in Portland (CRCI)
Eastern Oregon Correctional Institution in Pendleton (EOCI)
Oregon State Penitentiary—Minimum in Salem (OSPM) [formerly Oregon Women's Correctional Center (OWCC)]
Powder River Correctional Facility in Baker City (PRCF)
Santiam Correctional Institution in Salem (SCI)
Shutter Creek Correctional Institution in North Bend (SCCI)
Snake River Correctional Institution in Ontario (SRCI)
Two Rivers Correctional Institution in Umatilla (TRCI)
Warner Creek Correctional Facility in Lakeview (WCCF)

AFSCME's security unit also includes strike-prohibited employees who work in programs that are administered on a centralized statewide basis.²

²See *AOCE v. State of Oregon, Department of Corrections and AFSCME*, Case No UC-35-97, 17 PECBR 721 (1998), *AWOP* 161 Or App 667, 984 P2d 959 (1999).

5. AOCE's bargaining unit includes employees working in the institutions listed below:

- Mill Creek Correctional Facility in Salem (MCCF)
- Oregon State Correctional Institution in Salem (OSCI)
- Oregon State Penitentiary in Salem (OSP)
- South Fork Forest Camp in Tillamook (SFFC)

At OSCI, only strike-prohibited employees are included in the AOCE unit; at the other three listed institutions, both strike-prohibited and strike-permitted employees are included.

6. AFSCME's security-plus bargaining unit includes all of the strike-permitted DOC employees who are not in the AOCE unit. The unit includes employees working at the institutions listed in paragraph 4 above; employees working at OSCI; and employees working in centralized, statewide programs located either on or off the grounds of the institution.

7. The approximate number of employees in each of the units employed in the various facilities is as follows:

<u>AFSCME Security Unit</u>	<u>Strike-Prohibited</u>	<u>Strike-Permitted</u>	<u>Total</u>
CCCF	214	0	214
CRCI	71	0	71
EOCI	261	0	261
OSPM	31	0	31
PRCF	37	0	37
SCI	62	0	62
SCCI	50	0	50
SRCI	587	0	587
TRCI	270	0	270
WCCF	70	0	70

<u>AOCE Security Unit</u>	<u>Strike-Prohibited</u>	<u>Strike-Permitted</u>	<u>Total</u>
MCCF	33	7	40
OSCI	140	0	140
OSP	328	122	450
SFFC	22	7	29

AFSCME Nonsecurity Unit

CCCF	0	185	185
CRCI	0	43	43
EOCI	0	99	99
OSCI	0	77	77
OSP	0	12	12
OSPM	0	9	9
PRCF	0	24	24
SCI	0	37	37
SCCI	0	20	20
SRCI	0	243	243
TRCI	0	123	123
WCCF	0	4	4

8. AFSCME also represents a bargaining unit of doctors who work in DOC institutions.

9. AOCE also represents a bargaining unit of employees who work for Oregon Corrections Enterprises (OCE). OCE is a semi-independent agency of DOC, whose administrator is appointed by the Director of DOC. *See* ORS 421.344 *et seq.* OCE employees work in the prison industries programs in seven DOC correctional institutions (CCCF, OSCI, EOCL, SRCI, OSP, TRCI, MCCF).

Bargaining/Representation History

10. In 1966, the Oregon State Employees Association (later renamed Oregon Public Employees Union (OPEU)) was certified as the exclusive representative of all classified employees at OSCI. In approximately 1987, by agreement between OPEU and the State, OSCI employees were separated into two State "collector units" (strike-prohibited and strike-permitted) represented by OPEU, and were included under OPEU's master agreements. OPEU continued to represent all OSCI employees until 1997.

11. Prior to July 1, 1989, AFSCME represented the following bargaining units.

- (1) A "mixed" unit formed in 1972 of all strike-permitted and strike-prohibited employees at OSP. (*See* Case No. C-87 (1972).) The "OSP unit" included employees at the following other programs under the supervision and control of OSP: (a)

the farm annex (later renamed MCCF); (b) the forest camp (later renamed South Fork Forest Camp); and (c) prison industries (which became part of OCE).

(2) A "mixed" unit formed in 1975 of all strike-permitted and strike-prohibited employees at OWCC (later renamed OSPM). (See Case No. C-51-75.)

(3) A unit of all strike-prohibited security employees at EOCl. (See Case No. C-136-83.)

(4) A unit of all strike-prohibited security employees at DCRC.

(5) A multi-institution strike-permitted unit including EOCl nonsecurity employees and clerical personnel in the central offices and field services sections. (See Case No. UC-73-86.)

12. In August 1990, AFSCME and the State agreed to combine the EOCl security unit and the DCRC security unit, to add to the combined security unit any new strike-prohibited personnel hired at four new facilities (SCCI, CRCl, SRCl, and Clackamas (the former intake center)), and to add to the multi-institution nonsecurity unit any new strike-permitted personnel hired at the four additional facilities. The agreement did not alter the mixed units at OSP and OWCC.

13. In 1992, AOCE was certified as the representative for employees in the mixed unit at OSP. (See Case No. RC-31-92.)

14. In 1997, AOCE was certified as the representative of the strike-prohibited employees at OSCl. By agreement between AOCE and the State, those employees were folded into the OSP unit. Nonsecurity employees at OSCl remained in the OPEU bargaining unit.

15. In 1998, this Board held that it was appropriate to add the security positions at SFFC to the AFSCME bargaining unit, subject to the results of a self-determination election among the affected employees. *AFSCME, Council 75 v. State of Oregon, Department of Corrections and AOCE*, Case No. UC-37-97, 17 PECBR 767 (1998). The employees voted to remain in the AOCE unit.

16. In 2000, AOCE was certified as the representative of a bargaining unit of employees of OCE who are strike-permitted. (See Case No. RC-48-99.)

17. In 2003, AFSCME became the representative for the nonsecurity employees at OSCI. By agreement between AFSCME and the State, those employees were folded into the statewide nonsecurity unit.

Inmate Supervision and Working Conditions

18. DOC determines the appropriate supervision level for each inmate when first assigned to the department and at regular intervals thereafter. Close custody is the most secure supervision level and minimum is the least secure.

19. The focus of security and nonsecurity staff at correctional institutions has not changed substantially since this Board issued its Order in *State of Oregon, Oregon State Penitentiary v. AFSCME* and *State of Oregon, Oregon Women's Correctional Center v. AFSCME*, Case Nos. UC-19/20-87, 10 PECBR 144 (1987). The primary responsibility of all DOC personnel is the maintenance of order and security within the institution. The focal duty of nonsecurity employees, however, is not inmate control, but the function for which they are hired. The focal duty of security personnel is inmate control.

20. Security and nonsecurity employees have some similarity of duties insofar as both receive the same orientation upon being hired, supervise daily inmate activities, escort prisoners within the institution or to certain outside activities, frisk inmates, deal with inmate disturbances, and serve on Tactical Emergency Response Teams (TERT). Most of the employees work in proximity to persons convicted of serious crimes. Only security employees wear distinctive uniforms. Nonsecurity employees may intermittently relieve corrections officers during the officers' short personal comfort breaks. While the security and nonsecurity employees do not generally have direct common supervision, nonsecurity employees are subject to be drafted to stand by or to assist directly in quelling inmate disturbances.

21. DOC training is centralized. Since 1989, the same in-service training is provided throughout DOC to newly hired employees and as part of continuing training programs for veteran employees. Some minor variations may exist among the institution for initial orientation programs and where certain types of force or disciplinary methods are not used because of architectural constraints.

22. Since 1991, newly hired guards at all DOC institutions have been required to receive training and certification from the Department of Public Safety Standards and Training (DPSST).

23. The job classifications and job functions of both AOCE- and AFSCME-represented employees are essentially the same. Employees in both units supervise inmates or provide support services to the institutions that house those inmates.

24. MCCF was originally under the control and supervision of OSP. In 1997, SCI assumed administrative responsibility for MCCF. Richard Ladeby, the current security and operations manager, presides over both institutions. Both institutions share a single organizational chart and DOC budgets as if the two institutions were one.

25. MCCF, SCI, OSP, and OSCI are located in close proximity to one another within the Salem community.

26. SCI and MCCF share supervisors. Lieutenants, who are the first-line supervisors of strike-prohibited employees, rotate assignments between SCI and MCCF on a regular six-month basis. They also go back and forth daily due to shift trades and vacation relief. Strike-permitted MCCF employees have no first-line supervisors on site; they all report to supervisors located at SCI. Ladeby is primarily located at SCI, but visits MCCF on a regular basis. OSP managers are not in the supervisory chain of command for MCCF employees.

27. MCCF and SCI share responsibility and staff for a lot of their inmate programs. Medical services at MCCF are supplied by an SCI nurse who comes to MCCF four hours per day. MCCF inmates with more serious medical problems are taken to SCI for treatment. The two institutions share inmate religious services and a law library. They also share a single inmate work program (IWP) which is coordinated by an IWP coordinator and an assignment officer, both of whom work at SCI and are in the AFSCME bargaining unit. MCCF and SCI also have joint employee committees such as safety committees and joint staff meetings for work groups such as food-service employees.

28. By letter of agreement, overtime vacancies at MCCF are filled by AOCE employees employed at OSP and OSCI. No SCI security staff work at MCCF. While managers transfer between SCI and MCCF, the only corrections officers on MCCF grounds are from MCCF, OSCI, and OSP.

29. The wages and hours for both AFSCME- and AOCE-represented employees are determined by their respective collective bargaining agreements. These

agreements are very similar in terms of the subjects covered and the working conditions and benefits established for employees. The contracts differ, however, in terms of seniority as it applies to shift and days-off bidding. For shift and days-off bidding, all of AOCE's contracts and AFSCME's strike-permitted contracts use time in classification within the agency, whereas AFSCME's strike-prohibited contract uses time in classification within the bargaining unit.

30. SCI and MCCF are both minimum security facilities. OSP is a maximum security facility and OSCI is a medium security facility.

31. AFSCME filed an adequate showing of interest in each of the cases.

CONCLUSIONS OF LAW

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

2. It is appropriate to transfer the strike-prohibited MCCF employees into the statewide, strike-prohibited, AFSCME unit, subject to a self-determination election among the affected employees (UC-14-05).

3. It is appropriate to transfer the strike-permitted MCCF employees into the statewide, strike-permitted, AFSCME unit, subject to a self-determination election among the affected employees (UC-15-05).

4. A stand-alone mixed unit of all MCCF employees is not appropriate (RC-21-05).

5. A stand-alone unit of all OSCI employees is not appropriate (RC-21-05).

Our analysis of an OAR 115-25-005(6) unit clarification (UC) case and a unit determination (RC) case is essentially the same. In both proceedings, we consider such factors as community of interest, wages, hours, and other working conditions of the affected employees, the history of collective bargaining, and the desires of the employees. ORS 243.682(1). Historically, we have also expressed a preference for wall-to-wall units when it makes sense. When comparing two bargaining units to determine which is the more appropriate unit, our overriding goal is to group together those employees who share the greatest community of interest, although all statutory criteria are considered. *State of Oregon, Department of Corrections*.

Community of interest factors are paramount to a determination of whether a transfer between units is appropriate. Therefore, we begin our discussion with those factors.

UC-14/15-05

These petitions seek to transfer the MCCF security and nonsecurity staff out of the AOCE bargaining unit and into AFSCME bargaining units.

Job classifications and functions. The job classifications held by the affected employees are utilized in both the AOCE and the AFSCME units. Employees in both units are engaged in supervising inmates or providing support services to the institutions that house those inmates. Both SCI and MCCF are minimum security institutions.

Organizational structure. MCCF was originally under the control and supervision of OSP. In 1997, SCI assumed administrative responsibility for MCCF with the same superintendent supervising both institutions. MCCF staff appear on the SCI organizational chart, rather than the OSP organizational chart. OSP no longer has operational control over MCCF.

Work location. OSP, SCI, MCCF, and OSCI are all located in close proximity to one another within the Salem community.

Supervisory structure. SCI and MCCF share the same superintendent. DOC personnel at MCCF are directly supervised by SCI lieutenants who rotate between SCI and MCCF every six months. The nonsecurity personnel at MCCF are supervised directly by SCI managers. OSP managers are not in the supervisory chain of command for MCCF employees.

Interchange of employees. There is considerable contact between SCI and MCCF employees. They share medical services, religious services, a law library, and an inmate work program. There is consistent interchange between supervisory staff at SCI and MCCF, but no interchange between MCCF and OSP supervisory personnel. There is interchange between MCCF and OSP security staff, however, because OSP security staff may work overtime assignments at MCCF.

Wages, hours, and other working conditions. The wages, hours, and working conditions of the affected employees are established by the respective collective bargaining agreement. These agreements are very similar, especially regarding wages and benefits. The major differences between the AOCE contract and the AFSCME contract are the seniority provisions concerning shift and days-off bidding. Other benefits utilizing seniority, such as vacation, are the same in both units.

Desires of the employees. AFSCME produced a sufficient showing of interest; however, showing of interest cards or petitions are not necessarily the best indicators of the desires of the employees.

Wall-to-wall preference. This Board's historical preference for wall-to-wall units is not relevant to the unit clarification cases. AFSCME and AOCE both represent broad bargaining units of employees in correctional institutions.

Although it is a very close case, we conclude that MCCF employees have a greater community of interest with AFSCME than with AOCE. Most of the statutory factors do not provide support for one unit over the other. However, the organizational structure and chain of command strongly favor inclusion of the MCCF positions under AFSCME's jurisdiction because of the closer ties with SCI than with OSP. *State of Oregon, Department of Corrections.*

The historical reasons for including the MCCF employees in the OSP unit were extinguished when SCI assumed administrative control of MCCF. MCCF employees have a significant functional relationship with AFSCME-represented SCI employees. That relationship is more substantial than their connection with OSP. Assuming that MCCF employees vote to do so, we should transfer them to the unit with which they have a greater affinity. An election will be ordered to determine whether the employees desire to transfer to the AFSCME bargaining unit.

RC-16-05

AFSCME filed this representation petition for a stand-alone unit of MCCF employees as an alternative should this Board not find in AFSCME's favor in the unit clarification cases. AFSCME has stated that it will not pursue an election in RC-16-05 if it prevails in UC-14/15-05. Because of our determination in UC-14/15-05, we need not address this representation petition and the petition will be dismissed.

RC-21-05

AFSCME currently represents OSCI's strike-permitted employees as part of its statewide bargaining unit. AOCE represents OSCI's strike-prohibited employees in its statewide bargaining unit. AFSCME seeks to establish a stand-alone bargaining unit of strike-prohibited employees at OSCI.

In analyzing whether a portion of a larger bargaining unit should be separated from the larger unit, we consider whether: (1) the employees in the proposed bargaining unit

have working conditions that are significantly different from those of other personnel employed by the employer; (2) the facility in which the employees' work is self-contained and clearly separate from other employer operations; (3) the employees desire a separate bargaining unit; and (4) designation of the unit would not lead to undue fragmentation. *LIUNA v. City of Keizer*, Case No. RC-37-99, 18 PECBR 476, 484 (2000).

When we apply these criteria to the OSCI strike-prohibited workforce, we conclude that a stand-alone unit is not appropriate. First, OSCI strike-prohibited employees do not have significantly different working conditions from other strike-prohibited AOCE represented employees. Their wages and hours are established by the AOCE collective bargaining agreement. All correctional officers receive the same training, supervise daily inmate activities, frisk inmates, deal with inmate disturbances, and serve on TERT. Inmate control is the focal duty of any correctional officer regardless of the institution. The evidence does not establish that OSCI is significantly different enough from OSP to warrant a separate, stand-alone bargaining unit.

Currently there are three interest arbitration units in DOC. If OSCI strike-prohibited employees were to become its own stand-alone unit, this would make four interest arbitration units, resulting in undue fragmentation. This Board historically applied a preference for larger units in our appropriate unit designations. Our rationale has been that larger units promote a balance of bargaining power between a bargaining unit and the employer, and prevent undue fragmentation of the employer's workforce. *AOCE v. State of Oregon, Department of Corrections, and AFSCME*, Case No. UC-35-97, 17 PECBR 721, 727 (1998), *AWOP 161 Or App 667, 984 P2d 959* (1999); and *Association of Engineering Employees of Oregon v. State of Oregon, Department of Transportation and OPEU*, Case No. UC-61-91, 13 PECBR 414, 420 (1992). Separating 140 employees from a unit of approximately 700 does nothing to further the stability of labor relations, especially when there is little evidence to indicate a need for the change. We shall dismiss this petition.

ORDER

1. This Board's elections coordinator shall, as soon as is practicable, conduct a secret mail ballot election for employees at MCCF currently represented by AOCE. The ballot will provide a choice between AFSCME and AOCE.
2. Persons eligible to vote are those individuals employed by MCCF on the date of this Order and still employed at the time the election closes.
3. No later than ten days from the date of this Order, DOC will provide this Board, AOCE, and AFSCME with an alphabetized list of the names, home addresses, and

job classifications of the eligible voters. At that time, DOC shall also provide this Board with an alphabetized set of mailing labels for the eligible voters.

4. Representation petitions RC-16-05 and RC-21-05 are dismissed.

SIGNED and ISSUED this 28 day of October, 2005.



Paul B. Gamson, Chair



Rita E. Thomas, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.

