

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-22-06

(PETITION FOR REPRESENTATION)

ASHLAND POLICE ASSOCIATION,)	
)	
Petitioner,)	
)	
v.)	
)	
CITY OF ASHLAND,)	RULINGS,
)	FINDINGS OF FACT,
Respondent.)	CONCLUSIONS OF LAW
)	AND ORDER
and)	
)	
INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 659,)	
)	
Incumbent.)	
_____)	

Neither party objected to a Recommended Order issued on July 12, 2007 by Administrative Law Judge (ALJ) Susan Rossiter following a hearing before ALJ Vickie Cowan on April 30, 2007 in Salem, Oregon. The record closed on April 30, 2007 at the conclusion of the hearing.

Becky Gallagher, Attorney, Garrettson, Goldberg, Fenrich & Makler, 423 Lincoln Street, Eugene, Oregon, 97401, represented Complainant.

Kathy A. Peck, Attorney, Williams, Zografos & Peck, 334 Third Street, P.O. Box 547, Lake Oswego, Oregon, 97034, represented Respondent.

Ron Johnson, IBEW Local 659, 4480 Rogue Valley Highway #3, Central Point, Oregon 97502, represented Incumbent.

On September 14, 2006, the Ashland Police Association (Association) filed a unit clarification petition under OAR 115-025-0005(6) seeking to transfer three account clerk positions from the strike-permitted bargaining unit represented by the International Brotherhood of Electrical Workers, Local 659 (Union or IBEW) to the Association's strike-prohibited bargaining unit of City of Ashland (City) Police Department employees. The City filed timely objections on October 3, 2006. The Union did not file objections or otherwise appear in these proceedings.

The issue is whether the account clerk positions, currently represented by the Union, are more appropriately included in the Association's bargaining unit.

RULINGS

All rulings of the ALJ have been reviewed and are correct.

FINDINGS OF FACT

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

2. The Association represents a strike-prohibited unit of City employees which consists of 23 strike-prohibited sworn officers and 2 strike-permitted employees—an evidence and property technician and a community service officer (CSO). All Association members work in or are based in the City Police Department.

3. The Union has represented a bargaining unit of clerical and technical employees since at least 1974; Union members work in various City departments, including Administration, Finance, Police, and the Municipal Court. The Union bargaining unit includes 16 account clerks, 3 of whom work in the Police Department. The Association seeks to transfer these clerk positions into its bargaining unit.

4. In addition to the Union and the Association, three other labor organizations also represent City employees: Laborer's Union Local 121, the Ashland Firefighters Association Local 1269, and IBEW Local 659 (Electrical).

Union Bargaining Unit: Working Conditions

5. The Union and the City are parties to a collective bargaining agreement that is in effect from July 1, 2005 through June 30, 2008. The agreement

recognizes the Union as the exclusive representative of permanent employees in the following job classifications:

Building Inspector
Engineering Technician III - Assistant Surveyor
Staff Accountant/EDP
Associate Planner
Account Representative
Programmer
Engineering Technician II
GIS Specialist
Facilities Maintenance Worker
Energy Analyst and Inspector
Assistant Planner
Computer Technician
Finance Project Coordinator
Engineering Technician I
Building Maintenance - Warehouse Worker II
Account Clerk
Administrative Secretary (Planning)
Court Clerk II
Court Clerk I
Secretary
Clerk II
Clerk I
Code Compliance Specialist

Account Clerks/Police Department

6. Account clerks hired to work in the City Police Department must have a high school diploma, one year of general office experience, and the ability to work courteously with members of the public. They must either have certification to make queries and enter data into the state LEADS¹ computer system at the time of hire, or have the ability to obtain appropriate LEADS certification within 30 days of their date of hire.

7. The account clerks for the Police Department work in the lobby of a building which is separate from other City departments. The clerks spend

¹LEADS is an acronym for Law Enforcement Data System. OAR 257-015-0010. See ORS 181.730 for a description of LEADS' function.

approximately 50 to 80 percent of their time entering police reports, warrants, and other data into the department computer system and preparing cases for delivery to other agencies, such as the Municipal Court, the District Attorney, and the City Attorney. They have no authority to make substantive changes in any of the data they enter, although they may question officers about a typographical error or other mistake, and make any necessary corrections. Police Department account clerks also fingerprint members of the public, register sex offenders, release vehicles for people who have been arrested and whose vehicles have been impounded, process parade and noise applications, perform records checks for the Armed Forces, answer phones, and assist members of the public who walk into the Police Department lobby. Police Department account clerks answer questions from members of the public and provide basic information about non-emergency matters. If someone wants to report a crime or has an emergency, the account clerks will direct them to use a phone in the lobby to call dispatch.

8. Police Department account clerks work the day shift and have weekends and holidays off. They have some flexibility in the length of the shifts they work. The clerks carry identification but do not wear badges. Four days a week, they must wear shirts that have "Ashland Police Department" embroidered on the front. Clerks may choose the style and color of shirts they wear, however.

9. Police Department account clerks interact daily with Association bargaining unit members but have limited interaction with other City employees. The sworn officers and CSO spend most of their time outside of the Police Department office, but often discuss work-related matters with the account clerks when they are in the office. The evidence and property technician works in the Police Department office and has daily contact with the account clerks.

10. Account clerks in the Police Department report to the records supervisor.

11. Account clerks employed in City departments other than the Police Department work the day shift and have weekends and holidays off. They are not required to wear uniforms. These clerks must have the following qualifications for their positions and have the following job responsibilities:

Account Clerk/Courts

12. Account clerks hired to work in the Municipal Court must have a high school education and a minimum of two years of clerical experience in a legal or court environment. Much of the work of the Court clerks involves data entry: they file

tickets and collect and refund fines, bails and assessments, and also prepare and process legal papers such as show cause documents, dispositions, license suspensions, and reinstatement orders. Court clerks are required to provide information to members of the public about Municipal Court procedures. All three Court clerks are certified to make LEDS queries.

Account Clerk/Customer Services

13. Account clerks hired to work in customer services in the Finance Department must have a high school education and at least three years of specialized office training and accounting experience, in addition to two years of experience in a busy office environment. The customer services clerk answers questions and solves problems concerning cable service and utility billings, fees, and rates for customers. The customer services clerk also accepts service orders and enters the orders in the computer, processes utility payments and other monies received by the City, balances a cash drawer each day, and posts payments.

Account Clerks/Utility Billing, Accounts Receivable, Accounts Payable, and Payroll

14. Account clerks hired to work in the Finance Department in utility billing, accounts receivable, accounts payable, and payroll must have a high school education and at least three years office or banking experience, with at least one year of experience in accounting practices and procedures.

15. A utility billing clerk accepts service orders and enters the orders in the computer; prepares cable television, water, sewer, and electric bills; and maintains cable television, water, sewer, and electric account information.

16. An accounts payable clerk maintains open files, matches vendor invoices and authorizing documents, verifies quantities and prices billed, investigates discrepancies in bills, enters invoice data in the computer, and prints checks

17. An accounts receivable clerk invoices, processes, collects, and balances payments received by the City; answers questions about accounts receivable; and performs other accounting and general office duties, as needed.

18. A payroll clerk prepares and maintains payroll-related documents, files, and lists; enters data into the computer; maintains accurate payroll and paid leave accrual records; distributes paychecks; prepares payroll journal entries; and answers questions regarding payroll matters.

19. Account clerks in the Municipal Court report to the finance director. The utility billing, customer services, accounts payable, accounts receivable, and payroll clerks report to the accounting division manager.

20. Account clerks I in the Union bargaining unit may apply for the higher-paid position of account clerk II. All account clerks may apply for the higher-paid Union bargaining unit position of account representative, and may also apply for positions in other City departments and positions outside of the bargaining unit. On December 4, 2006, Police Department Account Clerk Kelly Haptonstall was promoted to a position as records clerk, a supervisory position outside of the Union bargaining unit.

21. An account clerk who accepts another Union bargaining unit position retains all seniority and accrued leave in the new position, but must complete a six-month probationary period. If the employee is unsuccessful in completing the probationary period for the new position, the employee will be returned to his or her old job.

22. Prior to 1999, account clerks in the Police Department were paid less than account clerks in the Municipal Court. On December 22, 1999, the Police Department clerks made a presentation to City management and the Union business representative in which they compared the duties they performed with those performed by the Court clerks, and asked that their salaries be increased to levels equal to those of the Court clerks. The City granted this request.

23. Prior to November 2004, account clerks II were paid different salaries depending on their work assignment. In November 2004, an employee transferred from a job with Ashland Parks and Recreation to a position as account clerk II with the City. When this transfer occurred, the City and Union agreed to place all account clerks II at the same salary level.

24. On December 4, 2006, Sheryl Fish, who had worked as an account clerk I in the Municipal Court since July 27, 2004, accepted a position as an account clerk I in the Police Department. Fish readily and easily learned the duties of her new job. Fish's job change was considered a promotion because she was advanced one step on the Union salary schedule when she began working in the Police Department.

25. Account clerks I and II are paid on a five-step salary schedule. The first advancement occurs after 6 months of employment, and each subsequent advancement occurs every 12 months thereafter until the top of the salary schedule is reached. Beginning July 1, 2006, the following monthly salaries were in effect: the

beginning salary for an account clerk I was \$2,422 and the top salary was \$3,052; the beginning salary for an account clerk II was \$3,017 and the top salary was \$3,704.

Association Bargaining Unit: Working Conditions

26. Prior to April 2003, Teamsters Local Union 223 represented a bargaining unit of Police Department employees that did not include clerks. On April 24, 2003, the Association petitioned this Board to certify a bargaining unit of all non-supervisory and non-confidential employees in the City Police Department. The City objected to the proposed bargaining unit on the basis that it included employees already represented by the Union. The Association and the City reached a consent election agreement that excluded employees represented by another bargaining unit from the group the Association sought to represent.

27. On July 22, 2003, after an election, this Board certified the Association as the exclusive representative of all City Police Department employees who regularly work 20 hours or more per week, excluding supervisory and confidential employees, seasonal and temporary employees, and employees represented by another bargaining unit.

28. The Association and the City were parties to a collective bargaining agreement that was in effect from July 1, 2003 through June 30, 2006. The agreement recognized the Association as the exclusive bargaining representative for the following job classifications: police officer, CSO, youth diversion officer, and property and evidence technician.² Excluded from the bargaining unit are members of the Ashland Police Reserves, irregular part-time employees, and seasonal and temporary employees.

29. Individuals hired as sworn police officers by the City must be high school graduates and have completed 60 college semester hours or 90 college quarter hours, or have military experience. Police officer duties include patrolling the City; directing traffic; responding to calls, including major crimes and civil complaints; and taking actions appropriate to enforce the law. Officers prepare written records and reports and conduct investigations. They testify in court when necessary.

30. Police officers wear a uniform that consists of a jacket, shirt, pants, belt with a firearm, cap, and badge. Officers work all shifts, and rotate shifts every three months. They are required to work holidays and weekends.

²The position of youth diversion officer is currently not filled

31. Occasionally, a police officer will perform the work of an account clerk by answering the telephone, fingerprinting a member of the public, or making a query in the LEDS system.

32. Qualifications to be hired as a CSO are a high school diploma and one year of experience working with the public. The duties of the CSO include responding to non-emergency calls regarding crimes not in progress, investigating noise violations, investigating and responding to abandoned auto violations, and patrolling city parks.

33. The CSO wears a badge and a uniform similar to the uniform worn by a police officer, but does not carry a firearm. In summer, the CSO is permitted to wear a polo shirt instead of his regular uniform shirt.

34. Qualifications for the position of evidence and property technician are a high school diploma and one year of experience working with the public. The evidence and property technician manages criminal evidence storage, transport and inventory; collects evidence; photographs crime scenes; and establishes and maintains evidence and storage records.

35. The evidence and property technician wears a badge and a uniform that is different from the uniform worn by the CSO and police officers.

36. Association members are paid on a six-step salary schedule; the first advancement occurs after 6 months of employment and each subsequent advancement occurs every 12 months thereafter, until the top of the salary schedule is reached. Effective July 1, 2005, the following monthly salaries were in effect: the beginning salary for a police officer was \$3,264 and the top salary was \$4,146; the beginning salary for the CSO was \$2,430 and the top salary was \$2,982; the beginning salary for the evidence and property technician was \$2,476 and the top salary was \$3,060.

Desires of Employees

37. The account clerks in the Police Department want to be represented by the Association.

CONCLUSIONS OF LAW

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

2. The police clerk positions are not more appropriately included in the Association bargaining unit.

The Association seeks to transfer three strike-permitted account clerk positions in the Police Department from the Union bargaining unit to the Association bargaining unit of mainly strike-prohibited employees. Because this petition was filed under OAR 115-025-0005(6), we must evaluate two different bargaining units and decide which is more appropriate in accordance with the requirements of the applicable statute and rules. *AOCE v. State of Oregon, Department of Corrections, and AFSCME, Council 75*, Case No. UC-25-99, 18 PECBR 576, 584 (2000).

In determining the more appropriate unit, we consider such factors as 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). 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)

In this case, the account clerk positions are strike-permitted, and the positions will lose the right to strike if transferred to the Association's strike-prohibited unit. This Board has expressed a strong preference for separate bargaining units for strike-permitted and strike-prohibited employees. *AOCE v. Department of Corrections*, 18 PECBR at 587-88. Consequently, when a petition proposes to add strike-permitted employees to a strike-prohibited bargaining unit, we must consider the following additional factors: (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. *Washington County Police Officers Association v. Washington County*, Case No. UC-36-00, 19 PECBR 641, 648-49 (2002).

Applying the above-listed criteria to the facts of this case, we conclude that the account clerk positions more appropriately belong in the Union bargaining unit.

Community of Interest Factors

The duties performed by the account clerks in the Police Department are not distinctive; they are very similar to those performed by the account clerks in other City departments. The skills required for the job of account clerk are similar—all positions require a high school diploma and varying amounts of clerical experience. City

account clerks perform the same functions—entering data; processing applications, bills, and other documents; and answering questions about City services and functions.

There is interchange among the various account clerk positions: in December 2006, Fish, an account clerk from the Municipal Court, applied for and was accepted for a position as an account clerk in the Police Department. Fish learned the duties of her new job in the Police Department without difficulty.

Account clerks also share the same promotional ladder to other positions; they qualify for promotion to the bargaining unit position of account representative.

Wages, Hours, and other Working Conditions

As members of the Union bargaining unit, all account clerks are currently placed on the same salary schedule in the collective bargaining agreement. In the past, Municipal Court clerks were paid higher salaries than the Police Department clerks; this disparity ended in December 1999 when the salaries of Police Department clerks were raised to the same levels as those paid the Municipal Court clerks. In November 2004, the City placed all account clerks II on a single salary schedule. All other working conditions for account clerks—such as leaves and benefits—are controlled by the Union contract.

All account clerks work day shift, and have holidays and weekends off. All City account clerks work in an office environment in various City Departments.

Desires of Employees

Account clerks in the Police Department wish to be represented by the Association.

Considerations for Adding Strike-Permitted Employees to a Strike-Prohibited Unit

The Association bargaining unit currently includes 23 strike-prohibited employees and 2 strike-permitted employees. If the Union account clerks are added to the Association unit, the strike-prohibited employees will continue to constitute an overwhelming majority of the bargaining unit.

By performing data entry and responding to inquiries from members of the public, account clerks in the Police Department assist and support Association bargaining unit members in their work as law enforcement officers. In this sense, the work of the account clerks is integral to the Police Department's mission as a law

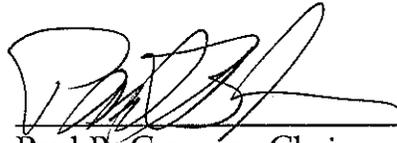
enforcement agency. However, the clerk positions are not unique to the Police Department since account clerks are assigned to a number of other City departments. Keeping the account clerks in the Union bargaining unit will maintain the current pattern of organization for City workers, since City employees are currently grouped into bargaining units on the basis of the type of work they perform. The history and stability of labor relations favors retaining the Police Department clerks in the Union bargaining unit, because the clerks have been part of this unit since at least 1974.

In conclusion, account clerks in the Police Department share a strong community of interest with other Union bargaining unit members. Our review of the *Washington County* criteria for transferring strike-permitted positions to a strike-prohibited bargaining unit also leads us to conclude that account clerks in the Police Department are more appropriately included in the Union bargaining unit. We will dismiss the petition.

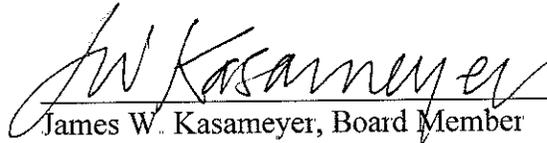
ORDER

The petition is dismissed.

DATED this 8th day of August 2007.



Paul B. Gamson, Chair



James W. Kasameyer, Board Member

*Vickie Cowan, Board Member

This Order may be appealed pursuant to ORS 183.482.

*Board Member Cowan has recused herself.