

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. RC-26-05

(PETITION FOR REPRESENTATION)

OREGON WORKERS UNION,)	
)	
Petitioner,)	
)	
v.)	
)	
STATE OF OREGON,)	
DEPARTMENT OF TRANSPORTATION,)	RULINGS,
)	FINDINGS OF FACT,
Respondent,)	CONCLUSIONS OF LAW
)	AND ORDER
and)	
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION LOCAL 503,)	
OREGON PUBLIC EMPLOYEES UNION,)	
)	
Incumbent.)	
_____)	

The Board heard oral argument on August 16, 2006 on Petitioner's objections to the Recommended Order issued by Administrative Law Judge (ALJ) Vickie Cowan on May 26, 2006 following a hearing on November 15, 16, and 18, 2005 in Salem, Oregon. The hearing closed on January 11, 2006 upon receipt of the parties' post-hearing briefs.

Mike Wendell, 672 N.E. 6th Street, Prineville, Oregon 97754, represented Petitioner.

Heather Pauley, Assistant Attorney General, Labor and Employment Section, Department of Justice, 1162 Court Street N.E., Salem, Oregon 97301-4096, represented Respondent.

Giles Gibson, Attorney at Law, Goldberg, Mechanic, Stuart & Gibson, American Bank Building, Suite 1450, 621 S.W. Morrison Street, Portland, Oregon 97205-3817 represented Incumbent at hearing; Joel Rosenblit, Attorney at Law, SEIU Local 503, OPEU, 1730 Commercial Street S.E., P.O. Box 12159, Salem, Oregon 97309-0159 represented Incumbent at oral argument.

On July 1, 2005, Oregon Workers Union (OWU) filed this petition seeking to represent a group of Oregon Department of Transportation (ODOT)¹ employees currently represented by Service Employees International Union Local 503, Oregon Public Employees Union (SEIU Local 503).

OWU amended its petition on July 8 and again on July 11 to include all ODOT employees currently represented by SEIU, excluding supervisors, confidential employees, Department of Motor Vehicles (DMV) employees, those employees represented by the Association of Engineering Employees (AEE), and unrepresented employees. According to OWU, the proposed bargaining unit would consist of “only those employees currently represented under ODOT Local 730.”

SEIU and the State filed timely objections on July 27 and July 29, respectively. SEIU Local 503 objected to OWU’s amended petition on grounds that it did not propose an appropriate unit for bargaining. Specifically, it asserted that (1) the petition would result in undue fragmentation, (2) employees in the proposed unit have an overriding community of interest with other SEIU-represented employees, (3) they lack a distinct community of interest, (4) the petition runs counter to 20 years of bargaining history, and (5) the State does not bargain on an agency-by-agency basis.

The ALJ served the formal notice of hearing on August 23, 2005, setting the hearing for November 15, 16, and 18, 2005. On August 26, 2005, the state withdrew its objections to the petition and did not appear at the hearing. The state did not participate further in this case.

The issue is: Does the petition propose an appropriate bargaining unit?

¹In proceedings before the ALJ, both parties at times used the acronym “ODOT” to describe ODOT (the agency), ODOT (the Highway and related divisions), and even Local 730 (the SEIU sublocal). As the record permits, we will distinguish the three usages. We will refer to the Oregon Department of Transportation as “ODOT” or “the agency,” the Highway and related divisions as the “Highway Division,” and Local 730 as itself.

We conclude that OWU's petition does not describe an appropriate bargaining unit, and we therefore dismiss the petition.

RULINGS

The ALJ's rulings were reviewed and are correct.

FINDINGS OF FACT²

1. OWU and SEIU Local 503 are labor organizations.³ ODOT is an agency of the State of Oregon and a public employer.

2. ODOT consists of eight divisions, seven of which are operating divisions that administer various ODOT programs. The seven operating divisions are (1) the Highway division which is responsible for engineering and overseeing the construction and maintenance of the state's highways; (2) Driver and Motor Vehicle (DMV) which handles driver licensing and vehicle titling and registration; (3) the Motor Carrier division which regulates and interacts with the trucking industry; (4) Transportation Development which conducts transportation policy analysis and research, compiles statistics, and otherwise supports development of the State's long-range transportation planning; (5) Transportation Services which administers a statewide safety program through advertising and other public outreach efforts; (6) the Public Transit division which helps local governments pay for public transit by administering state and federal grant programs; and (7) the Rail division which represents and advocates for the users of railroads in order to ensure a safe, efficient, and reliable rail transportation system.

²The State's failure to appear affected the evidence presented in this case. For instance, instead of direct evidence of transfers between divisions and agencies such as the State could provide, SEIU could offer instead only its dues records. OWU challenged the accuracy of some of SEIU's evidence, but could only offer anecdotal evidence on these matters. We give credit to SEIU's evidence: it may not be the best possible, but it is the best available.

³In this opinion, we review approximately 30 years of agency and statewide bargaining history. During that time, the association now known as SEIU Local 503 changed its name several times. It began as the Oregon State Employees Association (OStEA), then became the Oregon Public Employees Association, SEIU Local 503 (OPEU), and is now SEIU Local 503 (SEIU, Local 503). For ease of reference we will refer to it as SEIU Local 503.

The eighth division is Central Services. This division does not directly administer transportation programs. It provides centralized administrative, support, and managerial services to the seven operating divisions. This includes financial, human resources, information systems, internal audit, civil rights compliance assistance, facilities and fleet maintenance, and procurement services.

3. In the late 1960s and early 1970s, the legislature created ODOT by combining the Highway Department and the DMV. Before this merger, the Highway Department and DMV were separate agencies, and their employees were represented by separate locals of the Oregon State Employees Association (OStEA), a predecessor to Local 503. At that time, Local 730 represented Highway Department employees and Local 735 represented DMV employees. Local 730 and Local 735 continue to exist as sublocals of SEIU Local 503. No evidence was presented at hearing as to the internal workings of Local 735. Local 730 has its own local officers, constitution and bylaws, and budget. At hearing, OWU presented evidence that some employees in the Highway Division are dissatisfied with SEIU Local 503 as their bargaining representative because the Local 503 main unit is too big and diverse, and because they think they can get a better deal in negotiations with Highway Division management. The petition seeks to re-establish the Highway Division as a separate unit.

Before 1976, OStEA and AEE jointly represented a unit of engineering employees employed by the Highway Department. In 1976, the AEE unit attained its current configuration (described below in Finding of Fact 7). Thus, there were three separate bargaining units within ODOT after the merger which created the agency. This three-unit bargaining structure lasted until the early 1980s.

4. In 1981, SEIU and the State agreed to merge all SEIU-represented state agencies into a single, multi-agency bargaining unit. Thus, the Highway Department and DMV were merged, along with numerous other agencies, into the SEIU Local 503 main unit. However, Local 730, which historically represented the Highway Department employees, and Local 735, which historically represented DMV employees, remained in existence as sublocals within SEIU Local 503. With the exception of some minor disruptions due to fair share agreements, these units within ODOT have essentially been combined since 1981, and continuously since 1985, as part of the statewide Local 503 unit of strike-permitted employees.

5. Since the merger in the 1980s, SEIU and the State have used a two-track process for bargaining successive labor contracts. Economic and other issues that apply to all employees in the strike-permitted unit are negotiated at the "central table," whereas agency-specific language is separately negotiated in "coalition" bargaining. There

are four separate agency coalitions. We need concern ourselves only with the “ODOT coalition.”

This coalition consists of ODOT, Parks and Recreation, Forestry Department, Department of Aviation, and Department of Fish and Wildlife. Workers from these agencies select and send representatives to the ODOT coalition table. Local 730 and Local 735 send representatives to the ODOT coalition, as do the other SEIU sublocals which are composed of employees in the other agencies in the coalition. Coalition chairs are elected at a bargaining conference by coalition bargaining delegates, and these chairs represent their respective coalitions at the central table bargaining. Language negotiated in coalition bargaining is incorporated into the Master Agreement.

6. Approximately 4,500 ODOT employees are eligible for representation in collective bargaining. Of these, SEIU Local 503 currently represents approximately 2,700 in seven of ODOT’s eight divisions (it does not represent employees in the rail division). This includes approximately 842 employees in DMV and approximately 1,860 employees in the Highway Division, including certain employees of the Motor Carrier Transportation division. However, approximately 50 Motor Carrier employees—a majority of those eligible for representation—are not represented for collective bargaining.

7. AEE represents a separate, specialized unit of approximately 1,000 employees in engineering and technical classifications in four of the agency divisions: Rail, Highway, Transportation Development, and Central Services. SEIU and AEE both represent employees in Highway, Transportation Development, and Central Services. AEE alone represents employees in the Rail division. SEIU alone represents DMV employees.

8. SEIU Local 503 and the State are currently parties to a collective bargaining agreement (the “Master Agreement”) which is effective July 1, 2005 through June 30, 2007. This contract covers two bargaining units: one for all employees represented by Local 503 who are prohibited from striking, and the second for all employees represented by Local 503 who are permitted to strike. The strike-permitted bargaining unit consists of employees at more than 30 state agencies, including ODOT. There are about 16,700 employees in the SEIU main unit, including approximately 2,700 who work for ODOT.

9. The wages, hours, and benefits of all SEIU-represented employees are established through the Master Agreement. Wages are determined by pay ranges and steps. ODOT employees receive the same wages as DMV employees who are in the same

range and step. All receive the same negotiated benefits. The labor contract governs hours of work.

10. The Master Agreement governs layoff and recall rights. Layoffs occur on an agency-by-agency basis. Laid off employees may use their seniority to bump another employee in the same agency within the same classification and same geographical area. If there are no available positions, the employee may bump another employee in the same agency in any classification with the same salary range in which the employee previously held regular status. If there are no available positions, the employee may move into a vacant position in classifications with the same salary range that the agency intends to fill in the same geographic area. If there are no available positions, the employee may choose to demote to a lower classification. Bargaining unit employees have the right to be recalled from layoff to other agencies in the main unit.

11. ODOT employees work in 87 different job classifications. DMV employees alone fill seven of these job classifications, while Highway Division employees work in the remaining 80 classifications. The Highway Division and DMV share 28 job classifications.

12. These 87 classifications are diverse. They can be grouped into four categories: (1) general government (Office Specialist, Accounting Technician, Program Technician, and Information System Specialist classification series), (2) information and education (Public Information representative and Electronic Publication Design Specialist classification series), (3) labor, maintenance, and trades-related (Carpenters, Electricians, Trades Maintenance Workers), and (4) regulation, enforcement and investigation (Governmental Auditor and Motor Carrier Enforcement Officer classification series). These same four categories of jobs are represented by SEIU in the Highway Division, DMV, and elsewhere in the SEIU main unit. There are 5,802 employees in the SEIU main unit, excluding ODOT, who work in the same classifications as ODOT employees. Including ODOT, there are 8,503 employees, out of the total of 16,700 in the SEIU main unit, who perform work in those 87 classifications.

13. Approximately 611 of the 1,859 employees in the proposed unit hold jobs in the general government category of classifications. This category includes the information systems specialist and office specialist series. To be more specific, there are 125 Office Specialists 1 and 2 in the proposed Highway Division bargaining unit. Another 188 Office Specialists 1 and 2 work in the DMV. There are another 1,787 Office Specialists 1 and 2 elsewhere in the SEIU main unit.

Similarly, there are 189 Information Specialists 1 and 2 in the proposed bargaining unit, but there are also 51 Information Specialists 1 and 2 in DMV, and another 851 Information Specialists 1 and 2 in 22 other agencies within the SEIU main unit. These positions require similar skills and perform similar duties throughout the SEIU main unit. The same is true of other groups, such as electricians. There are 35 electricians in the proposed bargaining unit, and another 15 in five other agencies within the SEIU main unit.

14. The Highway Division shares 28 job classifications with DMV. Some classifications are shared quite unevenly. For instance, 360 DMV employees work in the Transportation Services series of job classifications, compared to only 14 in the Highway Division. Similarly, while only one Transportation Maintenance Specialist 2 works in DMV, 743 work in the Highway Division. Nevertheless, apart from the Transportation Maintenance Specialists, 486 Highway Division employees work in job classifications which are also found in DMV, while 733 out of the 842 DMV employees work in job classifications also found in the Highway Division.

Only 17 of the 80 job classifications in the Highway Division are unique to the proposed bargaining unit. SEIU represents the other 63 classifications elsewhere in the existing SEIU main unit. Employees in these 63 shared classifications make up the vast majority of Highway Division employees. This includes 1,587 of the 1,859 employees in the bargaining unit proposed by OWU.

The remainder of the proposed unit consists of 252 employees in 17 job classifications which are unique to the Highway Division. The vast majority of the employees in these unique job categories are included in the transportation maintenance and heavy mechanic classification series.

15. Employees frequently promote or transfer between the Highway Division and other agencies within the SEIU main unit. In the past five years, there have been approximately 384 transfers in and out of the Highway Division. Of that total, 192 transfers or promotions were within ODOT, between the Highway Division and DMV. There have also been approximately 70 temporary transfers between the Highway Division and Forestry, per the interagency agreement discussed below.

16. In 1986, ODOT and the Department of Forestry entered into an interagency agreement which provided for ODOT to use fire suppression forestry employees for highway maintenance during periods of low fire danger. That agreement was amended in 1992 to clarify some workers' compensation issues. As a result of this

agreement, ODOT and Forestry annually exchange or transfer several employees to meet the demands of fire suppression and road maintenance.

17. Several Highway Division employees have regular job-related contacts with DMV and other SEIU-represented agency employees. For example, employees in ODOT's central services division have ongoing contact with DMV employees regarding information systems.

18. Many Highway Division employees work in locations separate and distinct from other SEIU-represented employees within ODOT. Some Highway Division employees, however, have a common work location with DMV employees.

19. A significant number of Highway Division employees work outside, maintaining and repairing roadways. Other employees in the SEIU main unit also work outside, including employees in Parks and Recreation, Fish and Wildlife, Forestry, Agriculture, Occupational Safety, and grounds maintenance and laborers in various agencies and departments.

20. There are a significant number of Highway Division employees who work indoors, primarily in an office environment. Their working conditions do not differ significantly from DMV employees within ODOT, and other employees in the SEIU main unit who also work in office environments.

21. OWU submitted an adequate showing of interest.

CONCLUSIONS OF LAW

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

2. The petition does not propose an appropriate bargaining unit.

DISCUSSION

Introduction

OWU petitions to be certified as the exclusive bargaining representative for a group of ODOT employees, and it asks this Board to conduct an election so that those employees may express their desires regarding representation by OWU. OWU does not seek to represent all of the employees in the SEIU main unit. It does not seek to

represent a unit composed of all ODOT employees. It does not even seek to represent a bargaining unit composed of the 2,700 ODOT employees currently represented by SEIU in the Highway Division and DMV.⁴ Instead, OWU seeks to represent a bargaining unit composed of approximately 1,860 employees of the Highway Division who are “currently represented under ODOT Local 730.”

The issue is whether the proposed unit of Highway Division employees is appropriate. OWU contends that its proposed unit is appropriate because those employees desire it; because of Local 730’s past history with those employees and that Division; and because of the singular mission and dedicated funding sources of the Highway Division itself. It objects to the ALJ’s finding that a substantial community of interest exists between employees in the proposed unit and those in the SEIU main unit by arguing that those same community of interest factors apply statewide, to bargaining units not represented by SEIU. Finally, OWU asserts that Highway Division employees are dissatisfied with SEIU representation, that SEIU is ineffective and undemocratic, and that Highway Division employees must therefore be given a right to select their own representative. OWU urges this Board to allow an election in the petitioned-for unit in order to send a message to SEIU.

OWU’s position is sincerely and strongly held. For the most part, however, it is not supported by those factors on which this Board must rely in determining an appropriate bargaining unit. OWU acknowledges this when it says that “We believe we have shown a significant community of interest, which although unusual, is still quite viable and compelling.” (Objections, p. 9).

We disagree. For the reasons discussed below, we conclude that OWU’s petition does not describe a unit that is appropriate for bargaining, and as a consequence, the statute requires us to dismiss the petition.

Analysis

The heart of the PECBA is the right of public employees to “form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations.” ORS 243.662. The PECBA, however, does not

⁴The petition does not raise, and we consequently do not decide, whether a unit composed of all ODOT employees, or a unit composed of those ODOT employees currently represented by SEIU Local 503, would be appropriate units for bargaining

require a public employer to bargain with just any labor organization, on behalf of just any group of public employees.

Instead, the law provides that only a labor organization “certified by the Employment Relations Board or recognized by the public employer is the exclusive bargaining representative” of the employees. ORS 243.666(1). Thus, public employees have the right to form, join, and participate in labor organizations of their own choosing, without any action by the Board—but that labor organization can become the exclusive bargaining representative only through Board certification, or through recognition by a public employer. The State has not voluntarily recognized OWU, so OWU asks us to conduct an election and certify it as the exclusive bargaining representative.

Before this Board can direct an election, the statute requires us to first decide whether OWU seeks to represent an *appropriate* unit for bargaining. ORS 243.682. In so doing, we give effect to the most basic policies of the PECBA:

“The determination of the appropriate unit is one that is integral to the representation and collective bargaining rights which are created under the Public Employee Collective Bargaining Act (PECBA). Thus, in determining which groupings of employees constitute an appropriate unit, the Board must apply the statutory criteria in a manner which best effectuates the purposes and policies of the PECBA. To this end the Board has established and consistently applies a policy which favors the largest possible groupings of public employees in designating appropriate bargaining units.” *Association of Public Employees v. OSSHE and OPEU Local 503 SEIU*, Case No. RC-113-87, 10 PECBR 883, 888 (1988) (citations omitted).

Under ORS 243.682(1), this Board must “consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees.” This Board “may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.” *Id.* Board rules explain the statutory community of interest factor as “similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, common supervision, etc.” OAR 115-025-050(2). In addition, OAR 115-025-050(1) provides that a bargaining unit “may consist of all the employees of the employer, or any department, division, section or area, or any part or combination thereof, if found to be appropriate by the Board.”

In considering the factors listed in ORS 243.682(1), this Board has discretion to decide how much weight to give to each factor. *Oregon Public Employees Union v. Department of Administrative Services*, 173 Or App 432, 436, 22 P3d 251 (2001). Further, the list of statutory considerations is not exclusive. *Id.* Thus, in determining the scope of an appropriate bargaining unit, we weigh the specific statutory criteria, together with policies and preferences which the Board has developed in more than thirty years of unit determinations under the PECBA.

The Board has established several preferences which are relevant here. Prominent among these is our well-established policy of disfavoring the fragmentation of public workplaces. As we said in *Association of Public Employees v. Oregon State System of Higher Education and OPEU*, Case No. RC-113-87, 10 PECBR 883, 888 (1988): “Basically, the policy is one against the fragmentation of a public work force into a ‘plethora’ of splinter bargaining units * * * in a manner inimical to stable labor relations under the PECBA.”

Larger bargaining units further several important policies identified by the legislature. One such policy is to establish “greater equality of bargaining power between public employers and public employees ” ORS 243.656(3). Larger units tend to better equalize bargaining power. “[F]ragmentation into multiple units serves to destroy rather than preserve parity of bargaining power which this Legislation seeks to establish.” *Association of Public Employees*, 10 PECBR at 889. Another legislative policy is to protect the public from impairment or interruption of necessary public services ORS 243.656(3). The preference against fragmentation is based in part on a recognition that an increase in the number of bargaining units increases the number of potential labor disputes and work stoppages. Our nonfragmentation policy also helps public employers. It promotes workplace stability, and prevents the undue burden which would fall on public employers if they had “to engage in bargaining sessions for the many splinter groups on a round-robin basis.” 10 PECBR at 889.

We recognize that the Board’s nonfragmentation policy may conflict with the desires of certain groups of employees. Nevertheless, the Board must apply this policy in cases where it is clear that the desires of some employees have to give way to other purposes of the Public Employee Collective Bargaining Act.

In particular, this Board has frequently applied the well-established preference for larger bargaining units in cases involving the State.⁵ *OPEU v. Department*

⁵This Board has formulated a preference for “wall-to-wall” bargaining units, *see, Laborers’ International Union of North America v. City of Keizer*, Case No. RC-37-99, 18 PECBR 476 (2000).

of Corrections and AFSCME, UP-91-90, 12 PECBR 876, 888-889 (1991); *Association of State Professional Employees v. Department of Revenue and OPEU*, Case No. RC-55-95, 16 PECBR 615, 622 (1996); and *AOCE v. Department of Corrections and AFSCME*, Case No. UP-23-98, 18 PECBR 564, 569-570 (2000). This emphasis flows from the Board's oft-stated goal with regard to State employee bargaining units, which is to

“* * * [o]n a case-by-case basis (which is the only avenue open to us), * * * move toward the goal of distributing those State employees who desire representation among the most appropriate units for collective bargaining. While pursuing this goal, we will try to avoid establishing new units, or reorganizing existing units, when to do so would make the goal harder to achieve in the future.” *OPEU v. Department of Corrections*, 12 PECBR at 888-889 (quoting *Oregon Nurses Association v. OSSHE*, Case No. C-94-83, 8 PECBR 6716 (1984) (Order on Reconsideration)).

In *OPEU v. Department of Corrections*, this Board declined to find that each new facility opened by a public employer would presumptively constitute a separate appropriate bargaining unit:

“[W]e cannot envision the circumstances under which, for example, we would certify as appropriate a separate bargaining unit in a new school opened by a school district. In many unit determinations, we are required to balance competing policies of the PECBA: *e.g.*, the promotion of labor relations stability and the equalization of bargaining power versus the right of employees to choose an exclusive representative. Under most circumstances, we are more likely than is the NLRB to find that labor stability and equalization of bargaining power outweigh employee self determination rights. (Our large unit policy is one result of this balance.) We share this tendency with most other public sector labor boards. See *U of O Chapter, AFT v. U of O*, 10 PECBR 265, 275 (1987), *affirmed* 92 Or App 614, 759 P2d 1159 (1988).” 12 PECBR at 889-890 n. 17.

We do not apply that preference here. The SEIU main unit is not a wall-to-wall unit of State employees. The SEIU unit at ODOT is not a wall-to-wall unit of ODOT employees. The unit OWU seeks is *certainly* not a wall-to-wall unit.

Here, OWU seeks to carve out a portion of the existing unit and establish it as a separate bargaining unit. The nonfragmentation policy and the preference for larger units weigh against OWU's petition.

Finally, in order to maintain workplace stability, this Board has a clearly established policy of refusing to allow labor organizations to "carve out" only a portion of an existing bargaining unit to form a new bargaining unit unless (1) the proposed unit has a community of interest which is "clearly distinct" from that of the existing unit, or (2) "compelling reasons" warrant creation of a splinter bargaining unit. As we stated many years ago in *Oregon Public Employees Union v. Executive Department, State of Oregon*, Case No. UC-59-87, 10 PECBR 456, 468-69 (1988):

"Under this Board's nonfragmentation policy, '[w]e have expressly declined to allow separation of one small group of employees into their own bargaining unit, except when the small group is clearly distinguishable from a larger group by reason of its peculiar responsibilities or where some other compelling circumstances dictate such a unit.'" (quoting *Teamsters Local 670 v. Linn County*, Case No. C-40-80, 5 PECBR 3081 at 3084-5 (1980)).

More recently, in *Association of State Professional Employees*, the Board determined that a separate unit of professional employees in the Department of Revenue was not appropriate for bargaining under the nonfragmentation policy. We found that community of interest factors "require the formation of separate small units only when the members of the proposed bargaining unit have a common craft or perform highly specialized functions," such as certified teachers working in juvenile detention schools (citing *OEA v. Children's Services Division and OPEU*, Case No. C-62-83, 7 PECBR 6404 (1984)). 16 PECBR at 623. We summarized our previous decisions as follows:

"Cases in which we have refused to allow small groups of State employees to break away from the OPEU [now Local 503] unit of strike-permitted employees and form separate bargaining units: *Oregon State System of Higher Education*, supra (inappropriate to form a separate bargaining unit consisting of 37 employees in the controller's office and audit division of the State Division of Higher Education); *Revenue Hearing Officers Association v. Oregon Department of Revenue and OPEU*, Case No. C-155-83, 7 PECBR 6086 (1983) (although revenue hearings officers were attorneys who performed a

unique function within the Department, they have collective bargaining interests closely allied with other OPEU and Department employees; as a result, they are more appropriately placed in the OPEU unit); *Association of Public Utility Professional Employees v. Public Utility Commissioner and OPEU*, Case No. C-138-81, 6 PECBR 5153 (1982) (no compelling circumstances existed to create a bargaining unit of certain professional employees of the Public Utility Commission).” 16 PECBR at 622-23 n. 3.⁶

OWU’s petition seeks to carve out a portion of the existing SEIU main unit. We apply the general principle that we will not sever a portion of an existing unit to form a new unit unless it has a community of interest distinct from the existing unit, or other compelling reasons exist. As discussed below, the unit sought by OWU does not have a community of interest distinct from the existing main unit, and no other compelling reason exists to fragment the group. This factor weighs against granting OWU’s petition.

We turn now to the factors set out in ORS 243.682(1): community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees.

Community of interest

The vast majority of Highway Division employees work in the same classifications as other SEIU-represented employees. This commonality exists with both the SEIU main unit bargaining unit and, within ODOT, with DMV ODOT shares 87

⁶Except for the common craft/highly specialized functions exception in *Children’s Services*, this Board has severed a smaller bargaining unit from the SEIU main unit in only one case, *Division of State Lands Employes Association v. Division of State Lands and OPEU*, Case No. C-72-83, 7 PECBR 6118, 6128 (1983). There, the Board held that “[u]nder the unusual circumstances of this case, the petition filed by the DSL Employees Association describes an appropriate bargaining unit, despite the lack of any community of interest among the DSL employees that is ‘clearly distinct’ from other groups represented by OPEU, and the petition therefore raises a question of representation.” 7 PECBR at 6130. The continued validity of *State Lands* is open to question. In a later case, we held that we are unlikely to find an agency-wide unit such as the one in *State Lands* to be appropriate. *OPEU v Executive Department*, 10 PECBR at 471 n. 8. In *Association of State Professional Employees*, 16 PECBR at 623 n. 4, we said “we no longer find such a unit appropriate.”

job classifications with the SEIU main unit. The Highway Division itself shares 80. Most DMV employees work in classifications that also exist in the Highway Division. The Highway Division includes 17 classifications which are unique to it. Two hundred and fifty-two employees work in these unique classifications. While these and other Highway Division employees work outdoors, outdoor work is not unique to members of the proposed bargaining unit. Other SEIU-represented employees in Parks, Forestry, Fish and Wildlife, and Agriculture also regularly work outdoors in varied locations throughout the state.

There is a significant amount of interchange of employees between those in the proposed bargaining unit and other SEIU-represented agencies. For example, the Department of Forestry and the Highway Division have for years used the same employees on a seasonal basis to address the increased need for fire suppression in the summer and road maintenance during the winter. In the past five years, there were 384 transfers/promotions between the Highway Division and other agencies in the SEIU main unit. Of those transfers and promotions, 192 were between the Highway Division and DMV. These transfers and other interchanges give all employees within the SEIU main unit an opportunity for secondary recall rights under the Master Agreement.

There are significant job-related contacts between employees in the proposed unit and those in DMV. Employees in ODOT's Central Services division interact with all of the other ODOT divisions, including Highway and DMV, to provide personnel management, information system assistance, and other necessary services.

As in *Association of State Professional Employees*, and cases cited therein, employees in the proposed bargaining unit are not members of a single craft, nor are the great majority of classifications in the proposed unit unique to the Highway Division. When we add substantial employee interchange and job-related contacts with employees outside the Highway Division, we conclude that the proposed unit does not have a clearly distinct community of interest apart from the SEIU main unit.

Wages, hours, and other working conditions

The wages, hours, and benefits of all SEIU-represented employees in the main unit are established by the Master Agreement and are essentially uniform. All employees in the SEIU main unit, and particularly in the "ODOT coalition," have allied collective bargaining interests.

The working conditions of employees in the proposed unit are varied. Both the Highway Division and DMV have offices throughout Oregon. A significant number

of Highway Division employees work outdoors in varied locations. However, an equally significant number of Highway Division employees work indoors in office environments. DMV employees also work indoors in office environments. As we have noted earlier, employees in the SEIU main unit work both in offices and outdoors.

Members of the proposed unit do not have a common craft. A substantial majority do not perform highly specialized job functions. The wages, hours, and working conditions of employees in the proposed unit do not favor the creation of a separate bargaining unit, as sought by OWU.

History of bargaining

ODOT, as it is currently configured, has been in existence since the 1970s. Before the merger which created ODOT, Local 730 represented employees of the Highway Department. Before 1981, the State and SEIU bargained for separate agency contracts. During that time, ODOT representatives negotiated separately with Local 730, Local 735, and AEE. Since 1981, the State has recognized SEIU as the exclusive representative for the SEIU main unit. ODOT has been and remains a part of that unit. The State and SEIU have entered into successive contracts covering that unit. In these proceedings, OWU seeks to regain the status that Local 730 lost more than 25 years ago, with one very important exception: unlike Local 730, OWU would not be a part of SEIU.

The history of bargaining provides no support for OWU's petition. To the contrary, splitting off the proposed bargaining unit from the SEIU main unit would undercut PECBA's policy to promote labor relations stability. ODOT has been part of the SEIU main unit for more than 25 years. During that time, the State and SEIU have negotiated successive labor contracts for that unit, and thereby created a stable labor relations environment for both the State and SEIU main unit employees. As a matter of practice, this Board honors recognition agreements reached by management and labor unless those agreements conflict with the terms of the PECBA or its policies. OWU's proposed unit is fundamentally inconsistent with the recognition agreement which has governed the SEIU main unit since 1981, and it would not promote stability in the workplace.

Desires of the employees

OWU submitted an adequate showing of interest. In addition, some proposed unit employees testified that they desired to have a separate unit. However, no evidence was presented regarding the desires of DMV employees, or unrepresented

employees, whose bargaining rights would also be affected if the Board were to grant OWU's petition.

OWU also offered evidence that employees of the Highway Division were dissatisfied with SEIU Local 503, their current bargaining representative. Such evidence has been offered in a number of cases. *See, e.g., Association of State Professional Employees* (OPEU did not serve employee interests and failed to address important issues); and *Association of Public Employees* (after merger of units, employees had insufficient votes to deauthorize fair share). We do not give employee preference alone controlling weight, instead holding that “[i]n the absence of a clearly distinct community of interest, employee desires must give way to our policy against fragmentation.” *Association of State Professional Employees*, 16 PECBR at 624. Put another way, “dissatisfaction with current representation (for whatever reason) does not by itself provide a compelling reason for creating a splinter unit.” *Association of Public Employees*, 10 PECBR at 892.

Summary

This Board applies the PECBA unit determination criteria to best effectuate the purposes and policies of the Act. We have been given broad discretion to do so. ORS 243.682(1). Of the factors we consider, OWU has demonstrated that at least some employees prefer to be a separate unit represented by OWU. All of the other factors weigh against the petition.⁷

In the exercise of our discretion, we sometimes must strike a balance between competing policies of the PECBA. Here, we must balance employee free choice against the need to establish and maintain stable labor relations and to equalize bargaining power. In order to promote stability and equality, this Board has a long-standing policy against dividing a public work force into a plethora of splinter bargaining units. We have consistently declined to allow one small group of employees to separate into its own bargaining unit unless the small group has a community of interest which is clearly distinct from that of the existing unit, or other compelling reasons warrant creation of a separate unit.

⁷OWU also argues that it should be a separate bargaining unit because the Highway Division has a funding source separate from DMV and other agencies in the main unit. This is not a statutory factor, and OWU has not identified how the consideration of a separate funding source as a factor would further the purposes and policies of the PECBA. State agencies receive money from a variety of funding sources. OWU's argument would permit separate bargaining units for each funding source. This would lead to precisely the type of fragmentation of the State workforce that case law tells us to avoid. We therefore reject the argument.

OWU's proposed bargaining unit would undermine the Board's anti-fragmentation policies. The Highway Division employees do not have a community of interest that is clearly distinct from other ODOT employees or from the other employees in the main bargaining unit. Nor are there other compelling reasons to establish a separate unit of Highway Department employees.

In addition, all of the statutory factors except the desires of the employees weigh against OWU's petition. On balance, we conclude that the petition does not propose an appropriate bargaining unit. Accordingly, we dismiss it.

ORDER

The petition is dismissed.

DATED this 28th day of June 2007.



Paul B. Gamson, Chair



James W. Kasameyer, Board Member

*Vickie Cowan, Board Member

*Member Cowan has recused herself from this matter.

This Order may be appealed pursuant to ORS 183.482.