

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UC-11-13

(UNIT CLARIFICATION PETITION)

LABORERS' INTERNATIONAL UNION	)	
OF NORTH AMERICA, LOCAL 483,	)	
	)	
Petitioner,	)	RECOMMENDED RULINGS,
	)	FINDINGS OF FACT,
v.	)	CONCLUSIONS OF LAW,
	)	AND PROPOSED ORDER
CITY OF PORTLAND,	)	
	)	
Respondent.	)	
_____	)	

A hearing was held before Administrative Law Judge (ALJ) Wendy L. Greenwald on May 28 and 29, 2013, in Salem, Oregon. The parties' post-hearing briefs were submitted on June 24, 2013. The record closed on July 8, 2013, with the admission of two additional exhibits.

Erica B. Askin, Staff Representative, Laborers' International Union of North America, Local 483, Portland, Oregon, represented Petitioner.

Matthew V. Farley, Deputy City Attorney, City of Portland, Portland, Oregon, represented Respondent.

On April 17, 2013, the Laborers' International Union of North America, Local 483 (LIUNA or Union), an affiliate of the District Council of Trade Unions (DCTU), filed a unit clarification petition under OAR 115-025-0005(4). LIUNA seeks to add all unrepresented park rangers employed at the City of Portland (City), including those working full-time and on a seasonal basis, who averaged four hours or more per week in the last quarter before the election eligibility date, to the classifications represented in the existing LIUNA/DCTU bargaining unit.

The City filed timely objections to the petition asserting that (1) the park rangers, who perform security duties, do not have a community of interest with other LIUNA-represented employees, who primarily perform manual labor; (2) a grievance filed by AFSCME, Local 189, is

evidence that the park rangers lack a community of interest with the LIUNA/DCTU-represented employees; (3) it is not appropriate to add the seasonal park rangers because they are temporary employees; and (4) the park rangers do not represent a logical group of employees to be added to the bargaining unit.<sup>1</sup>

The issue in this case is: Is it appropriate to include the petitioned-for employees in the LIUNA bargaining unit under ORS 243.650(1), ORS 243.683(1)(a), and OAR 115-025-0050(2)?

For the reasons discussed below, we conclude that it is appropriate to add the petitioned-for park rangers to the LIUNA/DCTU bargaining unit.

### RULINGS

1. At the hearing, the parties agreed to withdraw Exhibits P-48 and R-24 and submit a stipulation after the hearing in lieu of those exhibits. After the parties were unable to enter into the stipulation, the ALJ appropriately allowed the parties to resubmit Exhibits P-48 and R-24, and they were received into the record on July 8, 2013.
2. The other rulings of the ALJ have been reviewed and are correct.

### FINDINGS OF FACT

1. The City is a public employer that provides services through various bureaus and offices, including the Bureau of Parks and Recreation (Parks Bureau), the Water Bureau, the Bureau of Transportation (BOT), and the Bureau of Environmental Services (BES).
2. LIUNA is a labor organization and a member of the District Council of Trade Unions (DCTU). DCTU is a coalition of seven unions, including LIUNA; AFSCME, Local 189 (AFSCME); IBEW, Local 48 (IBEW); Machinists and Mechanics, District Lodge 24; Operating Engineers, Local 701; Plumbers, Local 290; and Painters and Allied Trades, District Council 5 (Painters).<sup>2</sup> DCTU, on behalf of these unions, and the City were parties to a collective bargaining agreement, effective July 1, 2010 to June 30, 2013 (DCTU Agreement).
3. The DCTU-affiliated unions are the collective bargaining agents for a City-wide bargaining unit of “all employees of the City in all classifications contained in Schedule A of this agreement, as defined in sections 1.1.1, 1.1.2, 1.1.3, 1.1.6, and 1.2 below.” (Exh. P-12 at 2.) The

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<sup>1</sup>Before the hearing, the City withdrew two other objections in which it asserted that another union was attempting to organize the park rangers and the seasonal park rangers were casual employees.

<sup>2</sup>The parties disagree about whether there are seven or eight unions under the DCTU Agreement. Although resolution of this conflict is not critical to our decision, we refer to seven unions because that is the number of unions on the Agreement’s signature page.

employees represented by the DCTU-affiliated unions include approximately 1600 employees in approximately 189 classifications who work throughout the City. Some classifications are exclusively represented by one of the seven unions, while others are represented by multiple unions. For example, utility workers are represented by AFSCME in the Water Bureau and LIUNA in the Parks Bureau and BES.

4. Section 1.1.2 of the DCTU Agreement defines permanent/probationary employees as those employees working in positions budgeted on a yearly basis in Schedule A classifications with permanent or probationary status under the City's Human Resources Administrative Rules (HRARs). Section 1.1.3 defines permanent part-time employees as those working less than full-time in Schedule A classifications. Under Section 1.1.6, temporary employees working in full-time budgeted positions are included in the bargaining unit, but have limited contract rights.

5. Section 1.1.5 of the DCTU Agreement addresses seasonal employees as follows:

**“Seasonal Employee.** Seasonal employees as defined herein shall be excluded from the bargaining unit covered by this Agreement. A seasonal employee shall be defined as an employee who is employed for a limited duration of up to 860 hours in a calendar year.

“The City may employ seasonal employees at any time of the year. However, a seasonal employee may only be employed for up to 860 hours in a calendar year. After working for 860 hours, a seasonal employee must have a break in service of at least ninety (90) days before they may be reemployed. Except for continuation overtime, permanent employees in the work unit will be offered overtime before seasonal employees.

“Seasonal workers will normally be assigned to common labor jobs and will not normally be up-graded to classifications covered by the contract except on an incidental basis as required by day-to-day work flow. Nothing in this Agreement will be construed to limit the City's right to hire additional personnel in emergencies beyond the City's control.” (Exh. R-4 at 4-5.)

6. HRAR 3.03 defines casual/casual other appointments as follows:

“Casual/Casual Other appointments are used for positions that occur, terminate, and recur periodically or regularly. Casual/Casual Other employees serve at-will and do not accrue status in the class to which they have been appointed and have no appeal rights upon demotion, suspension or termination from employment.

“Casual/Casual Other employees do not accrue vacation or sick leave, service credit, and are not eligible for health benefits. Casual/Casual Other employees generally are not eligible for retirement benefits unless they have worked at least 600 hours in a

calendar year in a qualified position. Full-time Casual/Casual Other employees are eligible for holiday pay if they were hired at least two weeks prior to the holiday and are in pay status the day before and the day following the holiday. Part-time Casual/Casual Other employees are not eligible for holiday pay.

“Casual/Casual Other employees are not eligible for reemployment under the Administrative Rules on Reinstatement or Layoff & Recall and do not have bumping rights. Casual/Casual Other appointments are limited to 1400 hours per calendar year.” (Exh. P-17 at 4) (emphasis omitted).

### Parks Bureau

7. The Parks Bureau is overseen by Director Mike Abatté and Assistant Director Warren Jimenez. It consists of four sections: 1) parks and recreation services, which oversees the community centers; 2) city nature, which manages and is responsible for the preservation of the City’s natural areas; 3) the director’s office/professional services section, which provides bureau-wide services; and 4) planning, development, and assets, which is responsible for planning, construction, turf, and irrigation. The director’s office/professional services section is overseen by Assistant Director Jimenez and consists of five separate divisions: workforce development/human resources; community relations; property/acquisitions and services; business/finance; and security.

8. LIUNA represents a significant majority of Parks Bureau employees, including all employees who perform outside work, except for a few electricians represented by IBEW and a few painters represented by Painters. Parks Bureau employees in the classifications of office support specialist and accountant work indoors and are represented by AFSCME.

9. Some Parks Bureau employees are represented by the City of Portland Professional Employees Association, which is not affiliated with DCTU. Independent of the DCTU, LIUNA is also the exclusive bargaining representative of a bargaining unit of Parks Bureau employees in the seasonal maintenance worker classification and a bargaining unit of approximately 85 Parks Bureau employees in the classifications of recreation leader and coordinator. The LIUNA-represented recreations leaders and coordinators work at recreation centers and sun schools. The City does not believe that park rangers are appropriately included in LIUNA’s recreation bargaining unit.<sup>3</sup>

10. The Parks Bureau also employs thousands of unrepresented, casual employees who work in recreation centers, recreation programs, and sun schools, many of whom are classified as recreation leaders.

### LIUNA/DCTU Bargaining Unit

11. LIUNA/DCTU represents approximately 548 employees in various City bureaus in approximately 45 DCTU classifications.

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<sup>3</sup>We use “park ranger” to refer to all of the petitioned-for employees because this term is generally used to refer to both year-round and seasonal employees in the City’s park ranger program.

12. LIUNA/DCTU-represented classifications in the Parks Bureau include: arborist (high climber trainee, high climber, high climber lead, tree inspector); automotive equipment operator (I, stripper operator, bus driver, II, sewer vacuum operator, street sweeper, and tractor-trailer combination); carpenter (apprentice, carpenter, and lead); construction equipment operator; facilities maintenance technician (apprentice, technician, and lead); greenskeeper (I, II, and III); horticulturist (apprentice, horticulturist, and lead); maintenance mechanic (may require licenses/certifications such as respirator certificate, backflow tester's certificate, playground safety inspector's certificate, and aquatic facility operator's certificate); maintenance worker; parks maintenance crew leader; parks technician (technician and lead); storekeeper/acquisition specialist (I, II, automotive parts specialist, III, and lead); turf maintenance technician; utility worker (apprentice, I, and II); and welder (apprentice, welder, and lead). Except for storekeepers, the employees in these classifications primarily work outdoors and travel to different locations within the park system to perform their duties. Storekeepers work in the business/finance division of the director's office/professional services section.<sup>4</sup> LIUNA/DCTU-represented employees also work in some of these classifications in other City bureaus.

13. LIUNA/DCTU-represented classifications in other City bureaus include: asphalt raker; auto servicer; collection system video inspector (uses a track-mounted CCTV camera to remotely inspect and identify issues in sewer and storm water pipes); collection system investigator; concrete finisher (apprentice, concrete finisher, and lead); environmental systems crew leader; environmental systems maintenance technician; equestrian trainer (develops and provides training to horses and mounted police officers); industrial machinist (requires journey machinist classification or demonstrated skill); industrial maintenance millwright (apprentice, trainee, millwright, and lead - must have or complete four-year journey program and licenses/certifications, such as back flow prevention, welding, forklift operation, crane operation, self-contained breathing apparatus, confined space entry); laboratory analyst (I, II, analytical specialist, and coordinator - requires course work or degree in chemistry, environmental science, biology, microbiology, geology, or a related field and two years of analytical laboratory experience or the equivalent); parking collection technician (criminal background checks required); parking pay station technician and lead; police impound technician (works with law enforcement computer and records systems and must obtain PPDS/LEDS certification); public works crew leader; sidewalk inspector; sign maker; stable attendant; street maintenance crew leader; traffic crew leader; wastewater operator (trainee, I, II, and lead - journey level positions that may require operator III, operator IV, or crane certifications); and wastewater operations specialist.

14. The LIUNA/DCTU-represented park technicians are responsible for ensuring the safety, cleanliness, and operability of the City's park and recreational grounds and facilities. Their typical duties include performing grounds maintenance; applying chemicals and fertilizers; maintaining facilities and equipment; installing and repairing irrigation equipment; and ensuring park users' overall safety by inspecting grounds and equipment and removing or mitigating hazards.

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<sup>4</sup>The City's contention that no LIUNA/DCTU-represented employees currently work under the director's office/professional services section is not supported by its own exhibit. (See Exh. R-19 at page 2.)

These employees work outside for extended periods. The qualifications for the park technician positions include knowledge of parks maintenance techniques; ability to perform minor equipment repairs, routine cleaning, and building maintenance; knowledge of safe pesticide application techniques; effective oral and written communication skills; ability to work effectively with coworkers and respond to questions/concerns from other employees and the public; and teamwork. Park technicians receive training in verbal judo because they come in contact daily with park patrons who are drunk, using drugs, abusive, or possibly mentally ill.

15. Until recently, employees in the LIUNA/DCTU-represented turf maintenance technician classification worked nine months per year. Employees in this classification now work year-round.

16. Schedule A of the DCTU Agreement includes a step wage structure for the 189 DCTU-represented classifications, under which employees are eligible for various hourly rates on a schedule of one to six steps. Classifications at the low end of Schedule A include the maintenance worker with two steps at \$11.77 per hour and \$13.95 per hour. Classifications at the high end of Schedule A include the laboratory coordinator with six steps, ranging from \$26.89 to \$37.94 per hour.

17. Under the DCTU Agreement, permanent bargaining unit employees are eligible for an employer contribution toward health insurance benefits that is prorated for part-time employees, holidays, paid vacations, and other paid and unpaid leaves. The DCTU Agreement also addresses shift schedules and pay, lateral transfers, job bidding, and promotions within a bureau. Temporary bargaining unit employees are eligible for holiday pay, paid vacations, and other leaves, but eligibility for health care benefits is based on the *status quo* as provided for under the City's benefit plans and other provisions in the Agreement, including promotions, layoff/recall, and seniority, do not apply. Under the DCTU Agreement, the Parks Bureau is recognized as a single work unit for purposes of filling vacancies.

18. Discipline of bargaining unit employees is subject to a just cause standard and a grievance/arbitration process under the DCTU Agreement. The steps of the grievance process include an informal conference with the employee's immediate supervisor followed by a formal grievance filed with the bureau head or designee.

#### Petitioned-For Park Ranger Positions

19. The Parks Bureau has operated a park ranger program since approximately 1995, the purpose of which is to provide a safe, meaningful, and positive experience for park users. Under the program, the City employs park rangers to patrol approximately 200 City-wide parks and park facilities in the downtown, central business district, and outlying areas. The park ranger program was operated entirely with seasonal employees until 2001, when the City hired a permanent park ranger

supervisor. In 2010, the Parks Bureau hired its first year-round park ranger.<sup>5</sup> At the time the petition was filed, there were 4 year-round and 11 seasonal park rangers. In May 2013, the City added 12 new seasonal park ranger positions.

20. The park ranger program falls within the security division of the Parks Bureau director's office/professional services section. The park rangers work under the direction of Park Ranger Supervisor Hasan Artharee. Artharee reports to Security Manager Art Hendricks, who reports to Assistant Director Jimenez.

21. **Park ranger classifications.** The City assigns park rangers to three different classifications. Year-round Forest Park Ranger Robert McCoy is classified as a community outreach and information assistant. McCoy, who began work as a seasonal park ranger in 2006, was placed into this classification when his year-round position was created in August 2010 because it was the most appropriate classification at the time. His position is currently funded through BES.<sup>6</sup> The general purpose of a community outreach and information assistant is to perform specific public information, awareness, and community involvement projects, including creating and developing materials and media for use in public and internal communications.

22. Year-round Park Rangers Asa Arden, Lionel Eyres, and Sam Sachs work under a park ranger classification that was created in April 2011. That classification's specifications state it is distinguished from the LIUNA/DCTU-represented parks technician classification by its emphasis on public safety and security enforcement.

23. Seasonal park rangers generally work full-time up to 1400 hours per calendar year in positions not included in the Parks Bureau's formal budget process. In April 2013, the City reassigned seasonal park rangers from the recreation leader classification, which is limited to 1200 hours per calendar year, to the community service aide 1 (CSA) classification. CSA is a City-wide classification assigned to any employees working up to 1400 hours per calendar year in an unbudgeted casual appointment regardless of the type of work performed. The City treats seasonal park rangers as casual employees under HRAR 3.03.

24. Originally, the park ranger season occurred during the summer months. The current park rangers were hired for seasons starting in the summer, fall, or beginning of the calendar year. Seasonal park rangers have not been reclassified as year-round park rangers based on hours worked.

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<sup>5</sup>Because the seasonal park rangers generally work full-time when employed, we refer to the four park rangers who work year-round as year-round park rangers rather than full-time park rangers to avoid confusion.

<sup>6</sup>Due to the position's funding, the City asserts that the Forest Park Ranger is in BES. However, this position is designated and treated as part of the Parks Bureau in all other respects. (See Exh. R-17.)

25. **Park ranger duties.** The park rangers' duties include patrolling assigned parks by foot, bicycle, or vehicle; monitoring the parks for safety issues and damage to grounds, facilities, or equipment; addressing nuisance issues, including removing drug paraphernalia and cleaning up homeless camps; assisting and educating the public by providing general information and answering questions about the park, park history, and schedules of events; interpreting park codes, ordinances, rules, and regulations, and providing this information to the public; addressing code violations, including issuing warnings and park exclusions; working with law enforcement authorities, other City bureaus, outside organizations, and neighborhood/community citizen groups to address nuisance issues and criminal activity; assisting in problem-solving and resolving park-user conflicts; assisting other Parks Bureau employees with safety and user issues; responding to citizen complaints; and maintaining accurate logs, notes, and reports for use by the Parks Bureau, police, City Attorney, or outside agencies.

26. For safety reasons, park rangers generally work in pairs. All park rangers wear identical park ranger uniforms and work out of the same office, referred to as the ranger bunker. Park rangers generally come to the office at the beginning and end of their shift to file reports, attend staff meetings, and respond to e-mails. Park rangers spend approximately 85 to 90 percent of their time patrolling the park and 10 to 15 percent of their time on administrative duties and meetings. They generally work day or swing shifts. Some shifts include weekends.

27. Due to their experience, year-round park rangers are usually expected to act as lead workers providing support and assistance to seasonal employees. Year-round park rangers also provide training during the park ranger academy for new seasonal rangers and are assigned other special projects. Forest Park Ranger McCoy is also an instructor for the Department of Public Safety Standards and Training (DPSST) security certification. Seasonal park rangers are not generally required to work with community groups.

28. **Park ranger qualifications and abilities.** Employees in the park ranger classification are required to have a high school diploma or equivalent, with a preference for some college-level courses or experience in law enforcement, criminal justice, recreation management, security, or social services. These employees must be able to understand, interpret, and apply codes, policies, and procedures; establish and maintain good interpersonal relationships with diverse individuals and organizations; have effective communication skills; investigate and assess violations and develop solutions; remain calm and professional in response to verbal abuse and threats; maintain accurate records; prepare for and testify at code or judicial proceedings; use practical judgment and critical reasoning during enforcement and information gathering situations; deal tactfully and effectively with the public; resolve conflicts; and mediate disputes.

29. The minimum qualifications for employees in the community outreach and information assistant classification include public information, advertising, marketing, and public relations-related skills.

30. The CSA classification does not list any specifications or requirements. A recent seasonal ranger position posting sought employees with excellent communication skills and basic conflict resolution abilities who are able to work in teams, do extensive walking and biking, provide a positive presence in City parks, and educate the public on and enforce park rules and regulations. The posting stated that previous park or security experience was preferred.

31. All park rangers are required to obtain a State of Oregon unarmed security guard license through the DPSST within six months of their hire; pass a background check and physical capacity test; obtain bicycle, defensive tactics, and first aid/CPR certifications; and become familiar with crisis intervention and social services.

32. **Wages and benefits.** The salary scale for the park ranger classification is based on the City's non-represented employee pay grade 1, with a range of \$16.42 to \$23.50 per hour. The salary scale for the community outreach and information assistant classification is based on the non-represented pay grade 4, with a range of \$21.67 to \$33.39 per hour. McCoy currently earns \$21.67 per hour. The salary scale for a CSA 1 is \$8.95 to \$13.17 per hour. The salary range included in a recent seasonal park ranger posting was from \$11.00 to \$17.00 per hour.<sup>7</sup> Seasonal park rangers generally start at \$11.00 per hour and receive a \$.50 increase each year they return. Park rangers sometimes work overtime or flex their schedules to work certain park events.

33. The four year-round park rangers receive paid vacation leave, sick leave, holiday pay, and retirement and health insurance benefits. Seasonal park rangers are eligible for retirement benefits after they work at least 600 hours in a calendar year and holiday pay, if they were hired at least two weeks before the holiday and are in pay status the day before and the day following the holiday. Seasonal park rangers are not eligible for health insurance benefits or other paid leaves.

34. **Hiring of year-round park rangers.** McCoy's seasonal park ranger position was converted to a year-round position in 2010. When the other three year-round park ranger positions were created in 2011, applicants were required to go through the City's formal external recruitment and interview panel process. The City hired seasonal park rangers to fill these three positions. In 2012, the City filled a year-round park ranger vacancy through an internal City recruitment process. Seasonal park rangers must apply for and are given no preference for year-round positions, but may apply as internal applicants if they are working at the time of the recruitment. During the 2012 recruitment, then seasonal ranger Arden's supervisor told him not to work all of his seasonal hours so he could apply as an internal applicant.

35. **Hiring/rehiring of seasonal park rangers.** Before 2010, the City hired a fluctuating number of seasonal park rangers for short periods of time. In the summer of 2012, the City significantly increased its number of seasonal park rangers after it took over patrolling its downtown area parks, work the City had previously contracted out. The City is not required to use a formal

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<sup>7</sup>The salary range for a CSA 2 is \$12.38 to \$22.56 per hour. None of the seasonal park rangers are classified as a CSA 2.

recruitment process for hiring seasonal park rangers. In four out of the past five recruitments, new applicants were required to submit an application and resume and were interviewed by the park ranger supervisor and security manager. In the July/August 2012 recruitment, prior seasonal park rangers were invited to apply and were hired after being informally interviewed by either the park ranger supervisor or security manager.

36. Seasonal park rangers do not have a right to return in subsequent seasons and not all seasonal workers are asked to come back after they complete their season. Security Manager Hendricks tells employees that recurring opportunities exist to return in the next season, subject to performance, budget, and availability. He also provides employees information about the budget and potential seasonal opportunities during their employment. Seasonal park rangers who have not exhausted their 1400 hours by the end of December are usually continued into the next calendar year without reapplying for the position. Supervisors have contacted seasonal park rangers who exhausted their 1400 hours in one season when seasonal employment opportunities arose in a subsequent year. Park rangers who return for a second season do not go through a formal interview process, but are usually required to fill out the necessary administrative/payroll paperwork.

37. Eight of the 11 seasonal park rangers who were working at the time the petition was filed (Cardis Berry, Travis Bonneau, Michael Gaither, Alex Gastille, Katie Gribbon, Vicente Harrison, Dustin Meyer, and Jonathan Wilkins), began working in the summer or fall of 2012 and were still working in May 2013, without a break in service. These eight employees could work as long as August or September 2013, which is approximately when their 1400 hours would be exhausted. The majority of these employees were hired in August 2012, although a few were hired in June or July 2012. One of the 11 seasonal park rangers (Nathan Hepp) worked in the 2012 season through September and then returned to work in January 2013. Another of the 11 seasonal park rangers (Josh Larsen), began in October 2012 and was working in May 2013, but took a break in service during that time when he had a child. The remaining seasonal park ranger (Nicholas McAfee) was hired in January 2013. Three of the 11 employees (Berry, Hepp, and Meyer) also worked as seasonal park rangers before the 2012 season.<sup>8</sup> The employees hired to fill the 12 new seasonal park ranger positions in May 2013, included one employee (Karras Kalivas) who previously worked as a park ranger for the City.

38. **Interactions with LIUNA/DCTU-represented employees.** Park rangers in the central business district and some outlying parks interact with park technicians on a daily basis. Park rangers notify the park technicians about maintenance issues they observe while patrolling the parks and park technicians seek assistance from park rangers regarding issues related to park patrons and drug or drinking activity in the parks. Some park rangers, such as McCoy, only see park technicians every few weeks. Park rangers occasionally work with park technicians and Parks Bureau seasonal maintenance staff to clean up homeless camps. Park rangers sometimes see or interact with arborists, urban forestry employees, seasonal maintenance workers, and the city nature section employees. Park rangers also occasionally interact with Water Bureau employees, parking enforcement officers, and other City employees.

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<sup>8</sup>Due to the parties' failure to reach a stipulation, there is limited evidence regarding rehiring of seasonal workers other than the employees working at the time the petition was filed.

39. **Transfer/promotion into LIUNA/DCTU positions.** There is no history of an interchange or transfer of employees or promotional ladders between park ranger and LIUNA/DCTU-represented positions.

40. **History of collective bargaining.** The park rangers have not previously been represented.

41. **Desires of employees.** The park rangers desire to be represented by LIUNA under the DCTU Agreement. Before filing the petition in this matter, the park rangers asked the City to recognize their positions as represented by LIUNA/DCTU. These employees are seeking representation through LIUNA because, unlike the other unions the employees contacted, LIUNA agreed to seek to represent both the year-round and seasonal park rangers.

#### Other Relevant Positions

42. In early 2013, the City employed Bryan Tierney in the Parks Bureau dog enforcement program. Tierney is hired on a seasonal basis under the CSA classification, currently makes \$15.00 per hour, and is unrepresented. He is supervised by Security Manager Hendricks. Tierney works both in the field and in an office environment, where he is developing and coordinating the dog enforcement program. He wears a shirt that identifies him as a Parks Bureau employee. Tierney previously worked as a park ranger, but was laid off in October 2012.

43. Adriana Hays is assigned to a Parks Bureau office position working on a specific project. She is classified as a CSA, makes \$13.00 per hour, and is unrepresented. She previously worked as a park ranger.

44. There are approximately six other employees working under the classification of community outreach and information assistant in several other City bureaus. Colleen Keyes works under this classification in the Parks Bureau in an office environment, developing public relations and information materials for Parks Bureau programs. Keyes is paid \$33.39 per hour. McCoy once worked with Keyes when he helped write an instruction manual for Forest Park volunteers.

45. Parking code enforcement officers are represented by AFSCME under the DCTU Agreement, work out of BOT, and are responsible for patrolling assigned areas to enforce parking ordinances. In March 2013, AFSCME filed a grievance after the City announced its intent to have park rangers issue parking citations in City parks, which was not a park ranger duty at that time. AFSCME objected to the City assigning this work outside of the bargaining unit.

46. Water security specialists are represented by AFSCME under the DCTU Agreement, work out of the Water Bureau, and are responsible for water system maintenance and emergencies. In May 2013, AFSCME filed a grievance after the City announced its intent to have park rangers patrol Water Bureau properties, which was not a park ranger duty at that time.

## CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The petitioned-for park rangers are appropriately included in the LIUNA/DCTU bargaining unit.

## DISCUSSION

LIUNA has petitioned to add all year-round and seasonal park rangers to the classifications it currently represents under the DCTU Agreement. The City objects to the petition on the basis that the park rangers lack a community of interest with other LIUNA/DCTU-represented employees; it is not appropriate to add the seasonal park rangers because they are temporary employees; and the park rangers do not represent a logical group of employees to be added to the bargaining unit.

Under ORS 243.682(1)(a), we determine whether it is appropriate to add a group of employees to an existing bargaining unit based on “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.” Community of interest factors include “similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, [and] common supervisor.” OAR 115-025-0050(2). We have the authority to determine how much weight to give these factors. *OPEU v. Dept. of Admin. Services*, 173 Or App 432, 436, 22 P3d 251 (2001). Under our community of interest analysis, when a union seeks to add a group of casual or temporary employees to a regular employee bargaining unit, we also “look at the nature of the ongoing employment relationship the petitioned-for workers have with the employer.” *Service Employees International Union Local 503, Oregon Public Employees Union v. Marion County (SEIU v. Marion County)*, Case No. UC-11-10, 24 PECBR 521, 549, *nunc pro tunc order*, 24 PECBR 557 (2011).

In addition, we consider the policies and preferences developed by this Board in determining appropriate bargaining units. Specifically, we have established a preference for certifying the largest possible appropriate unit. *United Employees of Columbia Gorge Community College, Local 4754, AFT, AFL-CIO v. Columbia Gorge Community College*, Case No. UC-19-01, 19 PECBR 452, 460 (2001); *Lane Community College Employees Federation, Local 2417, AFT, AFL-CIO v. Lane Community College*, Case No. UC-19-97, 17 PECBR 423, 428 (1997); and *Teamsters Local Union #223 v. North Lincoln Hospital*, Case No. RC-11-96, 16 PECBR 672, 681 (1996). We also only add the petitioned-for employees to an existing bargaining unit if they constitute “a logically defined group or class of employees (as opposed to interested individuals or fragments of a group).” *Oregon Public Employees Union, SEIU, Local 503 v. Executive Department, State of Oregon*, Case No. UC-59-87, 10 PECBR 456, 471 (1988).

We first address whether the park rangers share a community of interest with the existing LIUNA/DCTU bargaining unit employees. In considering this issue, we initially address the year-round and seasonal park rangers jointly because all park rangers perform essentially the same work under the same conditions, work directly with other park rangers in the same locations and on

the same shifts, work out of the same office, attend the same staff meetings, go through the same training, obtain the same certifications, and share the same line of authority and supervision. They also have similar interactions with other Parks Bureau and City workers. The primary differences between the year-round and seasonal park rangers, such as their pay and benefits, are the result of the City's budgeting process and assignment of classifications. These differences are within the City's discretion and do not significantly impact our analysis of the community of interest factors.

There are many differences between the park rangers and the LIUNA/DCTU-represented employees. The park rangers have different duties, responsibilities, skills, and qualifications; and are paid under different wage scales. They also work under different classifications and do not share the same supervision except at the level of assistant bureau director and above. And while the year-round park rangers have health insurance, retirement, and other leaves and benefits in common with the bargaining unit employees; the seasonal park rangers only receive holiday pay and retirement benefits if they qualify for those benefits based on hours worked.

However, DCTU is essentially a coalition of seven collector City-wide bargaining units. The DCTU unions represent employees in over 180 different classifications throughout the City. These employees work in various bureaus and departments and have very different classifications, duties, responsibilities, skills, and qualifications. Within the DCTU coalition, LIUNA represents employees in approximately 45 classifications. The employees in these 45 classifications also perform different work and have various skills, qualifications, knowledge, abilities, and training. For example, some LIUNA/DCTU-represented classifications have minimal qualifications. Other classifications require employees to go through apprenticeship programs, be at a journey level, or have a specific college degree.

The salaries and benefits under the DCTU Agreement also reflect the collector nature of the bargaining units it covers. Employees under the DCTU Agreement receive very different levels of pay and are eligible for different numbers of steps. The DCTU Agreement also provides for a different level of benefits for permanent full-time, permanent part-time, and temporary employees. And, although the DCTU Agreement excludes seasonal workers, it defines such workers as those employed for a limited duration up to 860 hours in a year. In fact, until recently, the LIUNA/DCTU-represented turf maintenance technicians only worked nine months per year.

The park rangers also have a number of factors in common with the LIUNA/DCTU represented employees. The majority of employees in the Parks Bureau, including almost all of the employees who work outside, are already included in the LIUNA/DCTU bargaining unit. The park rangers and these LIUNA/DCTU-represented employees work under the same Parks Bureau director, who is the first step in a formal grievance process under the DCTU Agreement. One LIUNA/DCTU-represented classification also works under the assistant director in the same Parks Bureau section as the park rangers. The park rangers and the LIUNA/DCTU-represented Parks Bureau employees generally work outside under the same conditions and in the same or similar physical locations. The park rangers see or interact with some LIUNA/DCTU-represented Parks Bureau employees during their work day. They even sometimes provide assistance to the park

technicians and have a few similar duties, such as surveying the park for safety concerns, interacting with the public, and cleaning up homeless camps and drug paraphernalia. There is no evidence that the park rangers have similar commonalities with employees in other DCTU or non-DCTU bargaining units.

The City argues that the park rangers should not be included in the LIUNA/DCTU bargaining unit because the park rangers are DPSST-certified security employees, whose work is focused on safety and enforcement, while other LIUNA/DCTU-represented Parks Bureau employees perform manual labor focused on the maintenance and care of properties and machinery. The City relies on *International Brotherhood of Teamsters v. Bay Area Hospital*, Case No. RC-36-01, 19 PECBR 898 (2002), in which this Board concluded that a separate unit of security employees was an appropriate bargaining unit because their work was sufficiently distinct from other hospital employees.

The security/code-enforcement work performed by the park rangers alone is insufficient to distinguish them from other LIUNA/DCTU-represented employees so as to require us to deny this petition. As previously stated, the LIUNA/DCTU-represented employees perform a variety of duties. While many perform manual labor, this is not the focus of work for all classifications. For example, the collection system video inspector operates a track-mounted camera to remotely inspect and identify issues in sewer and storm water pipes; the equestrian trainer develops and provides training to horses and mounted police officers; and the laboratory analyst prepares and performs laboratory work and analysis. In addition, there are other commonalities. The police impound technician works with law enforcement and is required to have a specific certification to access police records. The parking collection technician is also required to go through a criminal background check.

The City's reliance on *International Brotherhood of Teamsters v. Bay Area Hospital* is not persuasive. In that case, we limited ourselves to addressing the issue before us – the union's petition to represent the security employees in a separate bargaining unit. We specifically qualified our decision by stating that we were not addressing the issue of whether the security employees also could appropriately be included within the hospital collector unit. We are addressing that issue here.

The City also asserts that including the park rangers in the LIUNA/DCTU bargaining unit would be detrimental because park rangers may be placed in the position of investigating other bargaining unit employees and, in periods of labor unrest or strike, the park rangers' security obligations would conflict with those of the LIUNA/DCTU members. However, there is little evidence of actual investigations by park rangers of LIUNA/DCTU-represented employees. In addition, the City makes no claim that these employees are prohibited from striking as emergency or public safety personnel under ORS 243.736. Therefore, they would be entitled to participate in a lawful strike within the LIUNA/DCTU bargaining unit under the same conditions as other bargaining unit employees.

The City's assertion that the grievances filed by AFSCME support a lack of community of interest with the LIUNA-represented employees is not convincing. AFSCME has neither petitioned to represent the park rangers nor sought to intervene in the petition filed by LIUNA. AFSCME is

only objecting to the City's intent to assign work performed by employees it represents to the unrepresented park rangers. It is unclear how the grievances are relevant to our community of interest analysis.

The park rangers expressed a desire to be represented in the LIUNA/DCTU bargaining unit. The park rangers are public employees within the meaning of ORS 243.650(19). As public employees, they "have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation." ORS 243.662. The City objects to including the park rangers in the LIUNA/DCTU bargaining unit. It also takes the position that the LIUNA-represented recreation leader unit is not appropriate for the park rangers. The City does not identify what bargaining unit, if any, it considers to be appropriate.

Our charge is to determine whether the proposed bargaining unit is an appropriate unit. This does not mean that other bargaining units are not appropriate. However, due to the small number of park rangers, it is unlikely that we would conclude a separate unit of the park rangers is appropriate. This is especially true because designation of another bargaining unit in light of the number of existing bargaining units at the City would lead to additional fragmentation. *Laborers' International Union of North America, Local #483 v. City of Portland*, Case No. RC-30-00, 19 PECBR 384 (2001). There is also little or no evidence from which we can conclude that another bargaining unit is more appropriate. Therefore, including the park rangers within the LIUNA/DCTU bargaining unit is consistent with our policies of certifying the largest possible unit and providing an opportunity for these public employees to engage in collective bargaining.

### **Seasonal Park Rangers**

We next address whether the seasonal park rangers have a sufficient ongoing relationship with the City to establish similar interests and bargaining priorities as other bargaining unit employees. *SEIU v. Marion County*, 24 PECBR at 549. In the past, this Board typically excluded seasonal employees from a bargaining unit of regular employees because of the casual/limited nature of their relationship with the public employer. *AFSCME Council 75 v. City of Salem*, Case No. UC-55-91, 13 PECBR 433, 443 (1992). Also see *Oregon Public Employees Union, SEIU 503 v. City of Beaverton*, Case No. UC-42-97, 17 PECBR 646 (1998). On the other hand, we have included seasonal employees in an existing bargaining unit if they had a sufficient community of interest with the regular employees. *AFSCME Council 75 v. City of Salem*, 13 PECBR at 443.

We previously explained:

"[w]e refuse to add workers who have only a 'tenuous employment relationship' with the employer to a bargaining unit of regular employees. *AFSCME Local 189 v. City of Portland, BOEC*, Case No. UC-12-91, 13 PECBR 302, 308 (1991). Our refusal is based on the differing interests of casual and regular employees; workers whose relationship with the employer is tenuous have bargaining priorities that differ

significantly from those of regular employees. *Id.*” *SEIU v. Marion County*, 24 PECBR at 549-50.

In *AFSCME Council 75 v. City of Salem*, this Board established eight factors under which it would determine whether the interests of seasonal employees sufficiently overlapped with the bargaining unit employees’ interests. Those factors included:

“employment of seasonal personnel in classifications that bargaining unit employees occupy; duration of seasonal employment; relationship of seasonal and bargaining unit employees’ compensation levels; commonality of supervision; regularity of seasonal employment; expectation or possibility of reemployment the following year; hiring preference given to prior seasonal employees; and the extent seasonal employee are hired into the regular work force.” 13 PECBR at 443.

However, in *SEIU v. Marion County*, we chose not to apply these factors in addressing a petition seeking to add temporary and seasonal employees to a bargaining unit of regular employees. Instead, we adopted and applied new definitions for casual and temporary employees based on the standards used by the National Labor Relations Board (NLRB). 24 PECBR at 552-54.<sup>9</sup> We held that “casual workers who are ineligible to vote on inclusion in the Union bargaining unit are those individuals who, on the date of eligibility for the election, have averaged less than four weekly hours of work in the quarter (13 weeks) preceding the election eligibility date.” 24 PECBR at 553. In determining whether the employees at issue should be excluded as temporary employees, we applied the NLRB reasonable expectation and date certain tests.<sup>10</sup> We explained that

“[u]nder the reasonable expectation test, an individual is considered a temporary employee if, on the election and eligibility dates, the individual is working but has no reasonable expectation of permanent employment. *Georgia-Pacific Corp.*, 201 NLRB 831 (1973); *NLRB v. S.R.D.C.*, 45 F3d 328, 331 (9<sup>th</sup> Cir 1995). Under the date certain test, an employee is eligible to vote as a regular employee if, on the eligibility and election dates, the employee is working but has no definite date on

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<sup>9</sup>The Public Employee Collective Bargaining Act (PECBA), which was adopted in 1973, was modeled on the National Labor Relations Act (NLRA), 29 USC §§151-168 (1971). As a result, we often apply pre-1973 NLRA precedent to interpret the PECBA. *Elvin v. OPEU*, 313 Or 165, 175 n 7, 832 P2d 36 (1992).

<sup>10</sup>In *NLRB v. New England Lithographic Co., Inc.*, 589 F2d 29, 33 (1st Cir 1978), the court found that the NLRB applied the reasonable expectation of employment test most often when employees were not working on the date of the election but on temporary layoff or leave and the date certain test in cases when the employees were still working. The court approved the use of the date certain test as the more appropriate standard in cases where employees were working on the date of the election because it “avoids the mind reading and subjective fact finding problems engendered by the reasonable expectation standard.” 589 F2d at 34. The Ninth Circuit agreed with this reasoning and adopted the date certain test as the correct standard in *NLRB v. S.R.D.C., Inc.*, 45 F3d 328, 331-32 (9th Cir 1995).

which this employment will end. *H. Sargent and Company*, 99 NLRB 1318, 1320 (1952); *Personal Products Corp.*, 114 NLRB 959, 960 (1955); *Lloyd A. Fry Roofing*, 121 NLRB 1433, 1437 (1958); *M.J. Pirolli & Sons, Inc.*, 194 NLRB 241, 250 (1972).<sup>11</sup> *SEIU v. Marion County*, 24 PECBR at 552-53 (footnote omitted).

Under either the date certain or the reasonable expectation of permanent employment standards adopted in *SEIU v. Marion County*, the seasonal park rangers are not temporary employees.<sup>12</sup> The NLRB has held that “[u]nder the date certain test, an employee may be fully aware that his or her employment will be short-lived, but, as long as no definite termination date is known and the employee was employed on the eligibility and election dates, he or she will be eligible to vote.” *N.L.R.B. v. New England Lithographic Co., Inc.*, 589 F2d 29, 34 (1st Cir 1978). The seasonal park rangers are hired under the condition that they work no more than 1400 hours per calendar year. However, they are not given a specific date for the end of their employment at the time they are hired. The actual termination date varies based on the number of hours worked per week and whether a seasonal park ranger is laid off before the exhaustion of their 1400 hours in a calendar year, works all of their 1400 hours in a calendar year, or is continued into the next calendar year without a break in service.

The seasonal park rangers also have a reasonable expectation of permanent employment. Before 2010, the City hired only seasonal park rangers. In August 2010, it converted a seasonal park ranger position into a year-round position. In April 2011, it created three more year-round park ranger positions. Although the seasonal park rangers received no preference in the application process, the City hired three employees working as seasonal park rangers to fill those positions. In addition, when a vacancy for a year-round park ranger position occurred in December 2012, the City posted the position internally, allowed the seasonal park rangers to compete as internal candidates, and again hired a seasonal park ranger to fill the vacancy.

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<sup>11</sup>The ALJ limits her analysis to applying the *SEIU v. Marion County* temporary employee tests to the seasonal employees in the present case. However, she notes that in adopting the NLRB’s casual and temporary definitions to determine whether the seasonal employees in *SEIU v. Marion County* should be included in a bargaining unit of regular employees, this Board did not address the fact that the NLRB applies a different standard when it addresses seasonal employees. The standard applied by the NLRB is whether seasonal employees have a reasonable expectation of reemployment in the foreseeable future. *Kelly Bros. Nurseries, Inc.*, 140 NLRB 82, 85-86 (1962). The NLRB has held that seasonal employees with a reasonable expectation of reemployment in the foreseeable future have sufficient interest in the working conditions to be included in a regular bargaining unit. *Baumer Foods, Inc.*, 190 NLRB 690 (1971). The factors considered by the NLRB under this standard include “the size of the area labor force, the stability of the Employer’s labor requirements and the extent to which it is dependent upon seasonal labor, the actual reemployment season-to-season of the worker complement, and the Employer’s recall or preference policy regarding seasonal employees.” *Maine Apple Growers*, 254 NLRB 501, 502-03 (1981).

<sup>12</sup>Because the City withdrew its objection that the seasonal park rangers had casual employee status, we do not address that issue here. However, we note that LIUNA incorporated the casual employee definition into its description of petitioned-for employees.

We recognize that unlike the employees in *SEIU v. Marion County*, the City has not reclassified seasonal park rangers to permanent status based on the number of hours worked. However, as explained in *Winkie Mfg. Co., Inc. v. NLRB*, 348 F3d 254 (7th Cir 2003), the transition to permanent employment factor may be based on whether the source of new permanent employees is the seasonal workforce. Here, seasonal park rangers have been the source for filling both newly created and vacant year-round positions. As a result, the seasonal employees have a reasonable expectation of permanent employment.

Finally, the City objects that the park rangers are not a logically defined group of employees to be added to the bargaining unit. The City asserts that LIUNA's failure to include Parks Bureau CSAs Tierney and Hays, who previously worked as seasonal park rangers, shows LIUNA has engaged in a selective choice of individuals. The City questions what will happen if either of these employees were reassigned as park rangers in the future.

LIUNA is seeking to represent all year-round and seasonal employees working as park rangers. The park rangers all perform essentially the same duties patrolling the City parks and have generally the same qualifications, skills, and certification requirements. From the little evidence in the record, the current duties performed by Tierney and Hays are not similar to that of the park rangers. In addition, aside from having a classification and salary range in common, there is little evidence that Forest Park Ranger McCoy shares any community of interest with the other unrepresented employees in the community information and information assistant classification. The same is true for the seasonal park rangers and other unrepresented employees in the CSA classifications. The park rangers have little in common with other CSA's except assignment to that classification, which is purely a result of budgeting. Therefore, the park rangers constitute a logically defined group of employees to be added to the LIUNA/DCTU bargaining unit.

#### PROPOSED ORDER

1. It is appropriate to include the following employees in the LIUNA/DCTU bargaining unit: all park rangers employed by the City of Portland, who have averaged four hours or more of work per week in the last quarter (13 weeks) before the election eligibility date, including full-time park rangers and park rangers limited by City administrative rule to 1400 hours per calendar year.<sup>13</sup>

2. This Board's elections coordinator shall, as soon as practicable, conduct a secret mail ballot election among the group of unrepresented employees described above to determine whether they wish to be represented by LIUNA for the purposes of collective bargaining.<sup>14</sup> Eligible voters

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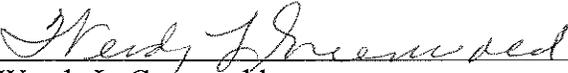
<sup>13</sup>Here, we use the term "full-time" because that is the term LIUNA used in its petition.

<sup>14</sup>This Board may decide to direct that the election be held at the peak of the season in order to allow as many voters as possible with the opportunity to vote. This is consistent with the policy of the NLRB. Office of the General Counsel, NLRB, *An Outline of Law and Procedure in Representation Cases* 262 (2012).

are unrepresented full-time and seasonal park rangers employed by the City of Portland who have averaged four hours or more of work per week in the last quarter (13 weeks) before the date of the final Order and are still employed at the close of the election. The choices on the ballot shall be: Laborers' International Union of North America, Local 483, and No Representation.

3. Within 10 days of the date of this Board's final Order, the City shall provide an alphabetized list of the names, current home addresses, position titles, and job classifications for the eligible voters to the elections coordinator and LIUNA.

SIGNED AND ISSUED this 20<sup>th</sup> day of November 2013.

  
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Wendy L. Greenwald  
Administrative Law Judge

NOTE: The Employment Relations Board's rules provide that the parties shall have 14 days from the date of service of a recommended order to file specific written objections with this Board. (The "date of filing objections" means the date objections are received by this Board; "the date of service" of a recommended order means the date this Board mails or personally serves it on the parties.) A party that files objections to a recommended order with this Board must simultaneously serve a copy of the objections on all parties of record in the case and file with this Board proof of such service. This Board may disregard the objections of a party that fails to comply with those requirements, unless the party shows good cause for its failure to comply. (See Board Rules 115-010-0010(5) and (6); 115-010-0090; 115-035-0050; 115-045-0040; and 115-070-0055.)