Feb. 25, 2013

To: House Committee on Business and Labor
From: Nancy Hungerford, The Hungerford Law Firm

I am writing to oppose H.B. 2448. At a time when public employees elsewhere in the nation are decrying the loss of bargaining rights, I find it ironic and objectionable that this bill would virtually eliminate collective bargaining over issues that arise during the term of a contract and hand the decision-making to an interest arbitrator.

I have represented Oregon and Washington school districts for 32 years and have bargained 400+ labor contracts, almost all for school districts and community colleges throughout Oregon. My law firm currently represents more than 100 Oregon districts, and so I am very conscious of the difficulties schools face in reacting to long-term inadequate funding.

SB 2448 would effectively eliminate any opportunity for public employers, including school districts, from making any changes during the term of a bargaining agreement, even if it is a permissive matter like a change in student schedule, if that decision had any kind of an impact on any mandatory subject, such as workload. Instead, such changes would be subject to a decision by an interest arbitrator. None of the arbitrators active in Oregon have any recent experience with K-12 education.

The current "expedited bargaining" law was written in 1995 because the then-existing law prolonged public employer decision-making for most of a year over single issues that unions were demanding to bargain. At a time when school districts have to make dramatic changes, and often unpredictable changes because of school funding problems, the current law (which is still very cumbersome, even though it provides for a 90-day bargaining period) gives districts at least a chance to be more responsive to parents and the public, more "nimble," and more innovative. Cities, counties, and other public employers also have the need to change policies or services to the public during the term of a collective bargaining agreement.

Attached is a list of examples where interim bargaining has been demanded by unions, where the expedited process is used.

Thank you for your consideration of this information.

Here are some recent school district examples of where interim bargaining has been demanded by the unions:

• In Tigard-Tualatin, the TTEA demanded to bargain over an alleged change in practice when a registered nurse (a member of the bargaining unit) was required to step in for one day to be present in a classroom where a medically fragile student was enrolled, because the contract service nurse was sick and the backup contract service nurse was in a car accident 15 minutes before the student arrived at school. The Association's position was that the school should have just sent the student home and not let him attend that day. The District's nurse (a bargaining unit member) had all the required credentials to serve this student, but because the District had obtained contracted service to spare the regular nurses this job, it was claimed that this was a change in practice to require the bargaining unit nurse to substitute even for one day. In order to avoid a ULP the district agreed to bargain and agreed to numerous requirements for advance training, etc., but the TTEA would agree to nothing so the District unilaterally implemented. Under H.B. 2448, an arbitrator would have decided whether the school district could have its registered nurse employees serve a medically fragile student.

* In Eagle Point, the association demanded to bargain when the District announced it was standardizing the work year for elementary secretaries, some of whom reported for work in early August and others who didn't report until late August. Even though the plan would have increased days (and pay) for a number of secretaries, the association demanded to bargain this as a change in practice. Again, the District agreed to bargain under the expedited procedure, but the association would never agree to anything that involved cutting any number of days for the secretaries who had been reporting early in August. The District unilaterally implemented, as a result, after 90 days. Under HB 2448, an arbitrator would have decided whether the school district could save money by not having secretaries report on days they weren't needed.

• In Joseph, there is a pending ULP hearing over the classified union's position that because the District used resolution dollars to obtain an instructional assistant from the ESD, that this was contracting out and had to be bargained under the expedited procedure before the District could unilaterally accept the services of the ESD employee (aide). The District has had ESD-paid aides in this and other schools for a number of years, but the union is claiming that replacing a single District-paid aide with an ESD-paid aide requires expedited bargaining. The District doesn’t think this has to be bargained and refused to do so because it is not a change in the status quo (past practice). But if this had to be bargained, under SB 2448 if no agreement was reached in expedited bargaining, an interest arbitrator would decide if the District could save money by using ESD dollars to pay an instructional assistant to serve students.

• A number of small school districts are seeing no way to survive with school buses driven by their own employees, since PERS now adds 33 cents to every dollar of payroll; they feel the only way to stay solvent is to contract out bus service. But H.B. 2448 would mean that if these districts tried to use the expedited procedure, an interest arbitrator would decide if they could contract out or not. Otherwise, they would have to use the extremely length regular bargaining process, which requires a minimum of 230 days to conclude.

• School districts seeking to change to a different high school schedule almost invariably receive a demand to bargain from the union about the impact on workload, whether it is a few minutes more of student contact time per day for some teachers, or teaching 15 classes a year instead of 12 when a school goes to a trimester (even though prep time is increased and student contact time is unchanged). The student schedule is a permissive item, but school district must bargain over the impacts of this permissive change before it can implement the change. HB 2448 would thus make an interest arbitrator the determiner of whether a district can make a change in a permissive subject.

Examples of other public employer ERB cases over interim bargaining demanded by the union:

- Demand by the union to bargain over the employer's change in minimum qualifications before an employee could apply for the position of buyer. *Amalgamated Transit Union, Division 757 v. Tri-Met*, 23 PECBR 34 (2009).
- Demand by the union to bargain over the impact of a new return-to-work program for medically restricted firefighters. *Portland Fire Fighters Assn., Local 43 v. City of Portland*, 23 PECBR 43, 165 (2009).
- Demand by union to bargain over changes in bidding of hours and days off. *AOCE v. State of Oregon*, 20 PECBR 890 (2005).
- Demand by union to bargain county policy that did not allow probation officers to carry weapons at work. *FOPPO v. Washington County*, 19 PECBR 411 (2001).
- Demand by union to bargain over the employer's temporary reassignment of a carpenter and painter to an evening shift for one day. *AOCE v. State of Oregon, Dept. of Corrections*, 20 PECBR 890, 22 PECBR 850, 23 PECBR 361 (2009).
- Demand by police union to bargain over department rules for lost or stolen departmental property and rules regarding leaving a training session. *Lincoln County Police Employees Assn. v. City of Lincoln City,* 18 PECBR 323 (1999).
- Demand by union for county to bargain over the impact of denying building inspectors the right to take county vehicles home at night. *AFSCME Council 75 v. Lane County Human Resources Division*, 20 PECBR 987 (2005).
- Demand to bargain over rate changes at state-operated parking garages.

OSPOA v. Oregon State Police, 11 PECBR 332 (1989).

- Demand to bargain over whether employer was required to pay for employees to take certification tests for inspectors (which it had done two times in the previous seven years). *AFSCME v. Housing Authority of Yamhill County*, 12 PECBR 249 (1990).
- Demand by union to bargain over changing work conditions, such as processing time, case intake requirements, and caseload ceilings. *OPEU v. State of Oregon, Administrative Services Dept*., 15 PECBR 567 (1995).
- Demand by the union to bargain a change in a police chief's promotion review process. *Coos Bay Police Officers Assn. v. City of Coos Bay*, 14 PECBR 229 (1992).
- Demand by union to bargain over discontinuation of Christmas gift certificates that had been given twice by the City. *AFSCME v. City of Lincoln County*, 14 PECBR 83 (1992).