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MEASURE: HB 2618
EXHIBIT: 5
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SUBMITTED BY: Don Loving

Testimony of Don Loving, Oregon AFSCME Communications Director

Oregon House Business and Labor Committee

Re: HB 2618 • Feb. 18, 2015

Thank you for the opportunity to spend a few minutes with you this morning.

First I want to go back and note the reason the Police & Fire tier was created in the first place. The P & F tier was added to PERS to acknowledge the risks and the inability of public employees performing certain jobs to complete a normal retirement period of 30 years, and/or to recognize that certain employees will statistically die sooner as a result of performing those jobs. Obviously police officers and fire fighters headed that list, hence the name, and over the years the Legislature has added a list of almost 20 other professions that qualify as P & F eligible.

One of those additions that came about with little argument are correctional officers who serve in our state prisons. That correctional-officers are indisputably part of the P& F tier is highly germane to the discussion we're having today. In 1994, the Oregon Court of Appeals upheld an earlier finding that employees working at group homes caring for what we today term intellectually developmentally disabled (IDD) clients are properly legally defined as "guards at a mental hospital." The decision went on to define a "guard" in the same way that "state prison guards" are defined. And while the "guard" term is today anachronistic and outdated, the underlying point is that nothing in the law has changed since 1994 — these employees have essentially the same legal definition as state correctional officers, who have long been part of the Police and Fire tier.

(Included in my testimony is a synopsis of that legal case; I spared you the full, multi-page version.)

With that in mind, I'd like to talk for a moment about assaults and staff injuries caused by assaults. I requested, through my AFSCME colleagues, reports from both DHS and from the Department of Corrections on staff assault numbers for the past five years. We did not hear back from the DOC in time for today's hearing, but I have anecdotal information from several of my Corrections members. DHS ultimately send us two sets of numbers, which my colleague Randy Ridderbusch is going to discuss in detail in a moment. The second set of numbers from DHS was somewhat lower than the first set because the agency told us they had inadvertently included what they term "near misses" in their first report, and that a "near miss" does not constitute an assault. While that's technically true, I think we could reasonably argue that "near misses" — while misses — nonetheless contribute to a dangerous work environment.

But my broader point is this: even using the damped down DHS numbers, the assault rate on SACU staff is considerably higher than the assault rate on correctional officers in the prisons. To be clear, we're talking here about physical assaults where employees are hit, kick, bit, etc. to the extent that they require medical attention. According to my Corrections colleagues, those kinds of assaults occur in the state prison system at a rate of maybe 2 or 3 a month — and even then, it's usually collateral damage, so to speak, from breaking up a fight between inmates. The assault rate in the group homes is five to seven times higher, and those assaults are most often purposeful, direct assaults on the staff.

Finally, I'll close with this thought. We closed Dammasch State Hospital in 1995. We closed Fairview Training Center in 2000. The Oregon State Hospital, even when the Junction City campus opens, will still house less patients than it used to. There are some former clients of those three institutions that are now housed in state prisons, plus dozens of more recent inmates who would have gone to one of those institutions. We have prison wings that are essentially behavioral wings for inmates with developmental disabilities. In other words, we have correctional officers overseeing people with virtually the same diagnoses as SACU employees have in the state group homes. In the prisons, officers can be forceful in dealing with inappropriate behaviors. They can use any number of physical restraints. They can house an inmate in solitary confinement. And they're in P & F PERS, because they are DOC employees.

SACU workers are instructed to be as docile as possible with their clients. They are not allowed to use any physical restraints. There's nothing akin to solitary confinement. SACU employees work in group home settings whose model dates back to the 1970s, when the clients were by-and-large non-violent, frequently non-verbal and often immobile. They are at risk, understaffed, overworked and frequently assaulted. Given their legal status that's the equivalent of corrections officers, it is time to at the very least properly move them into the Police and Fire PERS tier where they belong.

Thank you.

125 Or.App. 625
Court of Appeals of Oregon.

STATE of Oregon, DEPARTMENT OF HUMAN RESOURCES, MENTAL HEALTH AND
DEVELOPMENTAL DISABILITY SERVICES DIVISION, Petitioner,

v.

AFSCME COUNCIL 75, Respondent.

DR-1-92; CA A78077. | Argued and Submitted Sept. 22, 1993. | Decided Jan. 5, 1994.

State appealed decision of Employment Relations Board finding that employees at behavioral group homes for developmentally disabled residents were prohibited from striking. The Court of Appeals, Edmonds, J., held that: (1) homes were “mental hospitals” within meaning of statute prohibiting “guards” at “mental hospitals” from striking, and (2) employees were “guards” within meaning of statute.

Affirmed.

West Headnotes (8)

III Statutes

◆ Intent

In construing statute, court’s task is to ascertain intention of legislature when it enacted statute.

Cases that cite this headnote

121 Statutes

◆ Language and intent, will, purpose, or policy

Statutes

◆ Context

In determining intent of legislature, court begins with statutory provision’s text and context, including other provisions of same statutory scheme.

131 **Statutes**

◆ **Other Statutes**

Whenever possible, provisions of statute are construed so as to give effect to each.

Cases that cite this headnote

141 **Labor and Employment**

◆ **Scope and extent of review in general**

Words “guard” and “mental hospital” used in statute prohibiting guards at mental hospital from striking were inexact terms, so that Court of Appeals’ task on review of order of Employment Relations Board finding that behavioral group home employees were guards at mental hospital was to discern and apply legislative policy that inhered to those terms. ORS 243.736(1).

Cases that cite this headnote

151 **Administrative Law and Procedure**

◆ **Law questions in general**

Court of Appeals’ task on review of agency orders construing inexact terms is to discern and apply legislative policy that inheres in term by its use in statute.

Cases that cite this headnote

161 **Labor and Employment**

◆ **Particular employees**

For purposes of statute prohibiting guards at mental hospital from striking, “mental hospital” includes any facility providing residential services to mentally ill and developmentally disabled individuals who present public danger or threat. ORS 243.736(1).

Cases that cite this headnote

◆ Particular employees

Behavioral group homes for individuals with developmental disabilities were “mental hospitals” within meaning of statute prohibiting strikes by guards at “mental hospital”; group homes were located in residential communities, some residents had histories of physical aggression and sexual assaults on children, five of 15 residents in homes posed risk to community, homes were secure facilities with alarm systems and fenced yards, and homes were treatment facilities with long range goal of adjusting residents’ maladaptive behaviors and short term goal of providing residents with safe environment while keeping community safe from residents. ORS 243.736(1).

Cases that cite this headnote

181 **Labor and Employment**

◆ Particular employees

Employees of behavioral group homes for developmentally disabled residents were “guards” within meaning of statute prohibiting “guards” at mental hospital from striking; all employees were required to monitor residents’ behavior and location and to be prepared to intervene to quell inappropriate behavior, and management of resident behavior was intended not only to modify behavior and protect residents, but also to protect public, even though job duties were predominantly therapeutic. ORS 243.736(1).

Cases that cite this headnote

Attorneys and Law Firms

****499 *626** Richard D. Wasserman, Asst. Atty. Gen., argued the cause for petitioner. With him on the brief were Theodore R. Kulongoski, Atty. Gen., and Virginia L. Linder, Sol. Gen.

Barbara J. Diamond argued the cause for respondent. With her on the brief was Bennett & Hartman.

Before DEITS, P.J., and EDMONDS and LEESON, JJ.

Opinion

***627** EDMONDS, Judge.

Petitioner, State of Oregon, appeals from a declaratory ruling, ORS 183.410, by the Employment Relations Board

Assaults on SACU Staff

(as provided by DHS)

2011-12

2012-13

2013-14

2014-15 to date (seven months)

166

153

215

148

* 252 (including “near misses”)