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Testimony before the Senate Committee on Workforce
In Support of HB 2544
April 27, 2015

Chair Dembrow and Members of the Senate Committee on Workforce:

My name is Sarah Drescher and I am legal counsel for the Oregon School Employees Association. I am here to offer OSEA's support for the passage of HB 2544 and to provide my perspective and experience with the expedited bargaining process.

Prior to SB 750 (1995), there was no time limit on bargaining. SB 750 established two processes that put time limits on bargaining: (1) the regular, 150-day bargaining process that includes mediation as the dispute resolution process; and (2) the expedited 90-day bargaining process, which does not include any dispute resolution process. The expedited bargaining process is what is used when the parties are in the middle of a labor agreement and is often referred to as "mid-term bargaining." The expedited bargaining process has largely been a failure from the perspective of labor. That's because it subverted the bargaining process in the following critical ways:

1. It did away with mediation of labor disputes. <u>There is no dispute resolution process if the parties fail to reach agreement</u>;

2. It created an environment where employers can make unilateral changes affecting workers' livelihoods, such as outsourcing jobs or eliminating retirement benefits, without any meaningful bargaining; and

3. It allowed labor strikes in the middle of a contract, disrupting public services and creating labor strife, contrary to the legislative goals of the collective bargaining law (the "PECBA").

Most cases settle on the courthouse steps because the sheer pressure of the dispute resolution process encourages compromise. But you have to have a courthouse or at least some steps to get there. The 90-day expedited bargaining process does not have a dispute resolution process, and it's this lack of a resolution process that allows employers to avoid meaningful bargaining and unilaterally implement changes in working conditions. There's simply no pressure on employers to reach agreement because there's no process to resolve the dispute in the absence of compromise. If the parties don't reach an agreement after 90 days, the employer can simply do whatever it is that the employer wants to do. Nothing further takes place.

As a result, employers have used the expedited bargaining process to take away employee benefits, reduce compensation, and contract out jobs without even making proposals in bargaining. Employers have even acted strategically to withhold proposed changes from the normal, 150-day bargaining process and instead make such changes in the middle of a labor contract, just so they can use the 90-day expedited bargaining process to push through controversial changes.

For example, if a school district wanted to contract out its bus services to a private company, thereby eliminating all of the public school employee bus drivers' jobs, it could do so over a summer break. It could give notice to the union on June 1, use the summer break to "bargain" for 90 days and implement by the first of September. During this time period most school employees are not in school and may be working other jobs. So there is no one to mobilize against contracting out. The result is catastrophic to workers, including the loss of family wage jobs, health insurance, and retirement.

This is the problem with the expedited bargaining process. On the other hand, the 150-day, regular bargaining process has been a success. This is so because it mandates mediation within a concise time period for dispute resolution. There is real bargaining taking place. The dispute resolution process means something.

HB 2544 will solve the problems in expedited bargaining by inserting a dispute resolution process at the end of the bargaining period. If there is no agreement at the end of 90 days, the bill requires up to 15 days of mediation. If a resolution is still not found, a neutral arbitrator will decide the matter.

Arbitration is the process used to resolve most labor disputes – you'll find it in just about every labor agreement. And, it's *already* the process used by public safety unions, such as fire and police, in their expedited 90-day bargaining process. So, there's already a track record, evidence that this process works without costly delays or sky-falling scenarios. HB 2544 simply provides all unionized public employees with the same dispute resolution process that is already afforded to police and fire employees.

As our law firm also represents most of the firefighter unions in the State of Oregon, as well as several law enforcement unions, I can assure you that adding arbitration as the dispute resolution process to mid-term bargaining leads to greater compromise—not increased litigation. Again, that's because most employers and unions want to reach an agreement, and they are more likely to do so when there is the pressure of the dispute resolution process; the possibility of an adverse decision encourages both parties to come to an agreement.

Employers have complained that they need the expedited bargaining process to deal with unexpected emergencies and that inserting arbitration into this process will lead to shorter contracts and longer bargaining processes. Time and experience with the public safety unions have shown us this is not the case. Finding compromise to resolve labor disputes is exactly what the PECBA is intended facilitate. HB 2544 will accomplish that goal.

/s/ Sarah K. Drescher

Sarah K. Drescher