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April 24, 2015

Senate Committee on Workforce
Oregon State Capitol
900 Court Street NE
Salem, OR 97301

Re: *HB 2544*

Dear Honorable Committee Members:

The Oregon Public Employer Labor Relations Association ("ORPELRA") is a professional, non-profit Oregon association affiliated with the National Public Employer Labor Relations Association ("NPELRA"). ORPELRA consists of public sector management representatives who are responsible for carrying out the labor relations programs within their respective jurisdictions. Its members are employed by municipal, county, and state governments; school districts and university systems; special purpose districts; and include lawyers and consultants serving management exclusively. ORPELRA's members come from unionized jurisdictions of all sizes. ORPELRA's mission is to improve labor relations in the public sector through advice, counsel and advocacy. In pursuit of this mission, ORPELRA works with state legislature, members of governing bodies and public administrators. I represent ORPELRA in its advocacy matters.

HB 2544 causes a radical departure from both public sector labor law in Oregon, as well as tried and true labor law in the private sector. Specifically, it requires interest arbitration over mid-term bargaining issues in both strike-prohibited and strike-permitted bargaining units. This will change the face of labor relations in a significantly deleterious manner, which will negatively impact peaceful labor negotiations in this state.

The change seeks to impose interest arbitration for strike-permitted bargaining units. In Oregon, PECBA delineates two different groups of employees; those who are allowed to strike and those who are not. At present, if the parties have issues that arise during the life of a collective bargaining agreement that are not covered by that agreement, pursuant to ORS 243.698, the parties can engage in good faith negotiations. Typically, such issues are matters that cannot wait until the regular course to bargain a successor contract. If the parties do not reach an agreement, respective impasse procedures are available to both; namely, the employer may implement the proposal and the union may strike. As you know, PECBA was built on the National Labor Relations Act ("NLRA"). Cases under the NLRA (*Hydrologics Inc.,* 293 NLRB 1060; *Speedrack, Inc.,* 293 NLRB 1054) allow a union to strike over the subjects of the re-opener during re-opened negotiations. HB 2544 seeks to create a new system whereby strike-permitted units no longer have that right. The consequences of imposing interest arbitration for strike-permitted units would

be catastrophic. Because the issues typically at stake during mid-term bargaining are ones that require some immediacy, interest arbitration will delay the ability to effectuate those matters and substantially increase the employer's costs.

For strike-prohibited units, HB 2544 imposes an absurd consequence; namely, forcing employers to pursue interest arbitration over even a permissive bargaining subject. As you know, bargaining is broken down into two types of issues; mandatory and permissive. Mandatory subjects are subjects that the parties must engage in good faith bargaining over. Permissive subjects, on the other hand, are subjects the parties may bargain over. However, one party cannot force the other to engage in bargaining over the permissive subject. More importantly, a party cannot insist upon a permissive subject to impasse. HB 2544 would require employers to bargain over permissive subjects where the impact of the subject affects mandatory subjects. As an example, an employer who seeks to impose a no-smoking policy on its campus will be required to arbitrate the new rule because the union would argue that a 10-minute rest period is not enough time to leave employer's campus to smoke. Consequently, the union would ask for longer breaks or an exemption for an employee to come back late from the paid break. In this example, the employer would be forced to go to arbitration, delaying the imposition of a no-smoking policy on its campus, and significantly increasing its costs.

For the above reasons, ORPELRA advocates against adoption of HB 2544. However, as a compromise, ORPELRA would support modification of the bill requiring, at most, mediation following mid-term bargaining. In addition, ORPELRA would agree to the memorialization of a strike-permitted unit's right to strike during mid-term bargaining.

Very truly yours,

Todd. A. Lyon
For FISHER & PHILLIPS LLP

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