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MARGARET KIRSCHNICK

April 12, 2017

Representative Paul Holvey, Chair
House Committee on Business and Labor
900 Court St. NE, Hearing Room E
Salem, OR 97301

Re: Written Testimony of Sarah Drescher in Support of HB 3170

Chair Holvey and members of the House Committee on Business and Labor:

My name is Sarah Drescher and I am a partner at Tedesco Law Group, a law firm that represents labor unions in Oregon. Our firm represents several unions at Oregon's public universities, including the American Federation of Teachers-Oregon; the United Academics of the University of Oregon, AAUP/AFT, AFL-CIO; and the Graduate Teaching Fellows Federation/AFT/AFL-CIO.

Under current law, "supervisors" are excluded from collective bargaining. A supervisory employee has "authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection therewith the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment." ORS 243.650(23). For higher education faculty, determining who is a "supervisor" under Oregon law is a complex analysis that is performed on a case-by-case basis.

In 2012, my firm represented faculty at the University of Oregon who sought union representation. The University objected to the inclusion of numerous faculty members in the

bargaining unit on the basis that those faculty members were “supervisors.” The parties spent months and considerable legal fees arguing over whether dozens of faculty members met the definition of “supervisor” under ORS 243.650(19). The issue became so complicated that the parties ultimately agreed to a separate dispute resolution process for the sole purpose of resolving ongoing questions regarding whether certain faculty members are “supervisors.”

The reason this is so complicated is that the supervisory exclusion in PECBA does not appropriately apply to the work of faculty. Unlike traditional supervisors, faculty at Oregon’s public universities focus primarily on teaching, research, and outreach. Supervisory duties are incidental and often exercised for a limited period of time. For example, research faculty may only exercise supervisory duties when grant funding provides for a research assistant or associate. Unlike the traditional supervisor-subordinate relationship, the relationship between faculty and research assistants is collaborative, working together in both lab and field conditions to produce ground-breaking research. Nevertheless, faculty at Oregon’s public universities find themselves unfairly denied the right to collectively bargain over wages, benefits, and working conditions.

HB 3170 would clarify the definition of “supervisor” as it applies to faculty at Oregon’s public universities, so that faculty with ancillary supervisory duties are not denied the right to collectively bargain. HB 3170 will avoid the time-consuming and expensive litigation required to determine, on a case-by-case basis, whether individual faculty members meet the definition of “supervisor” and eliminate the need to continuously add and remove members from a bargaining unit. HB 3170 will clarify the definition of “supervisor” to ensure that administrators, such as the president, vice president, provost, vice provost, deans, associate deans, assistant deans, heads or equivalent positions will still be excluded as supervisors. This clarification will not only avoid extensive litigation, but will also provide basic job protections to faculty members at Oregon universities working on world-class research and instruction.

The Oregon Legislature has made similar clarifications to the definition of “supervisor” for nurses and firefighters, allowing those professionals to collectively bargain while retaining supervisory duties. Like nurses and firefighters, faculty at Oregon’s public universities are a unique category of employees. Their primary job duties are not supervisory, even though their work may require supervisory duties. Excepting faculty from the definition of supervisor is consistent with previous exceptions made for nurses and firefighters.

HB 3170 is good public policy for Oregon. HB 3170 will extend legal protections to faculty at Oregon’s public universities, reduce litigation, and safeguard valuable research projects.

Please let me know if I can answer any questions.

Sincerely,

/s/ Sarah K. Drescher

Sarah K. Drescher