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Senator Arnie Roblan, Chair
Senate Committee on Education
900 Court St. NE, Hearing Room C
Salem, OR 97301

Re: Written Testimony of Jason Weyand in Support of HB 3170

Chair Roblan and Members of the Senate Committee on Education:

My name is Jason Weyand, 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.

This written testimony is submitted in support of HB 3170, which seeks a limited amendment to ORS 243.650(23), the statute that defines which public employees are "supervisors" under the Public Employee Collective Bargaining Act (PECBA), and are therefore excluded from collective bargaining. The amendment sought would clarify that public university faculty are generally not supervisors, but also makes it clear that university administrators continue to maintain their supervisory status. This bill will provide clarity to universities, employees, and labor organizations on who can and cannot engage in collective bargaining.

Currently, a supervisory employee is defined as one that 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). This statutory language was borrowed from the federal labor laws covering the private sector, and dates back to the 1940’s.

Determining who is a supervisor is a complex analysis that requires the parties to evaluate the application of each of the supervisory criteria listed above for each individual employee whose supervisory status is in doubt. Before joining Tedesco Law Group, I served as a member of the Oregon Employment Relations Board (ERB), the State agency that is normally tasked with deciding who is and is not a supervisor in this context. I can personally attest to the complexity of these cases, both from the perspective of an advocate and a former neutral decision maker. Even when these cases involve only a single employee or a small group of employees, they normally require a number of witnesses from all sides to establish the requisite factual record. This requires multi-day hearings, where the parties are almost always represented by lawyers. This process can be long and expensive, requiring the parties to expend resources that could be better spent elsewhere. Further, processing these cases can also require significant time and expense to the ERB.

By way of example, 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 statutory definition. 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.

One of the reasons 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. This may mean that a faculty member’s status as a supervisor could change repeatedly over a short time period, creating a yo-yo effect when it comes to their right to collectively bargain. For example, research faculty may only exercise supervisory duties when grant funding allows for a research assistant or associate to be hired. When those grants end, so would the supervisory duties of the faculty member. This may lead the parties to have ongoing disputes about a single employee’s supervisory status, and that employee could be removed or added to a bargaining unit repeatedly throughout their career. In some circumstances, it would be possible that faculty could be added and removed from a bargaining unit within the same academic

year. This is not an efficient use of resources, and does not promote stable labor relations.

HB 3170 would clarify the definition of “supervisor” as it applies to faculty at Oregon’s public universities, helping the parties avoid time-consuming and expensive litigation, and avoiding the need to continuously add and remove members from a bargaining unit. HB 3170 will also make it clear 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.

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.

Please let me know if I can answer any questions.

Sincerely,

/s/ Jason M. Weyand

Jason M. Weyand