MILLER NASH GRAHAM & DUNN LLP
ATTORNEYS AT LAW

U.S. Bancorp Tower
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204

OFFICE 503.224.5858
FAX 503.224.0155

Jeffrey P. Chicoine, P.C.
jeff.chicoine@millernash.com
503.205.2371 direct line

March 7, 2019

VIA E-MAIL
hbl.exhibits@oregonlegislature.gov

Oregon Legislature
House Committee on Business and Labor

Subject: HB 2016
Committee Hearing on March 11, 2019 / 8:00 a.m.
Opposition of ORPELRA to HB 2016

Dear Committee Members:

This letter is submitted on behalf of the Oregon Public Employer Labor Relations Association ("ORPELRA") in opposition to HB 2016. ORPELRA is an organization of public sector labor relations professionals working for and representing public employers in Oregon.

HB 2016, as introduced, is an overreach by public sector unions in the guise of an antidote to the recent decision of the U.S. Supreme Court in the case of *Janus v. AFSCME*. In the *Janus* decision, the court ruled unconstitutional the mandatory payment of fair share fees to unions by bargaining unit members who elected not to become union members.

With HB 2016 as introduced, public employee unions seek to divert public funds to support union organizing efforts in multiple ways. First, Section 3 requires employers to provide release time "without loss of compensation" to designated representatives to engage in whole range of union activity without any limitation and without any regard to factors such as amount of time, notice or the critical nature of the employees' work, or when or how the employee-representative decides to exercise such rights. While Section 4 obligates the union to reimburse the employer for such release time, unless otherwise agreed, the apparent inability of the employer to regulate such activity makes reimbursement either impractical or prone to conflict. While Section 4

permits negotiation over release time, with the rights granted under Section 3, there is no incentive for a labor organization to agree to any meaningful limits or restrictions.

Second, Section 5 requires public employers to provide union orientation of new employees on paid time without even allowing for employees to opt-out of such sessions. It also requires access of union representatives to employees "for a reasonable time . . . during . . . regularly scheduled work hours" without the employee's loss of compensation. While the bill purports to limit such interactions to what is reasonable, that standard is too open-ended and prone to conflict.

Section 6 addresses the employer collection of union dues and is intended to replace ORS 292.055 (which applies to the state) and 243.776 (which makes ORS 292.055 applicable to other public employers). Our concern with Section 6 is twofold. First, this section generally requires employers to withhold and remit funds without the union showing the employer the authorization (or read literally) even without the union having such an authorization. This puts public funds at the risk of recordkeeping errors of the union. This is a very real concern given potential liability to the public employers for the full panoply of damages available in federal civil rights actions, including attorney fees. For this reason, public employers have been counseled by both lawyers and auditors to have unions provide copies of authorizations of requests for withholdings of wages whether for dues or other purposes.

Second, Section 6 changes the current law which requires union and employer agreement on permitting maintenance of membership or maintenance of dues obligations imposed on public employees. Currently, ORS 292.055(3) requires there be a written agreement between a union and employer to permit a maintenance of membership agreement to delay the effective date of a revocation. *See Stines v. OSEA*, 287 Or 643, 601 P2d 799 (S Ct 1979). Unions in the aftermath of *Janus* want to tie members into dues deduction once they sign up and require them to maintain such dues payments with limited windows to revoke the authorizations. ORPELRA thinks this requirement should continue and an employee be allowed to revoke deduction authorizations, unless the public employer and union agree to such maintenance of dues obligation.

While the bill requires unions to indemnify public employers for any claims of wrongful withholdings, this indemnification runs only to the exclusive representative. In many cases, this is a small local with insufficient financial resources to provide and pay for meaningful defense and indemnification for damages and attorney fees.

We are also concerned about Sections 7 and 8 which create a broad expansion conceptually of what constitutes employment relations and are mandatory subjects for bargaining. Up until now, the definition of employment relations in the statute has been limited to wages, benefits, and terms and conditions of employment for **employees**. This section expands what would be mandatory for bargaining into new and unnecessary realms. Union access has been recognized as part of employment relations only to the extent it invokes employees' conditions of employment. While employers and unions are free to bargain over union access to date, such bargaining is mandatory only when implicating employee rights That is a fair and appropriate balance that has been struck by the Employment Relations Board and remains one that has stood the test of time and should be maintained.

Section 11 adds several new unfair labor practices to which a public employer might run afoul and puts public employers at risk of financial liability without any corresponding risks or obligations on unions. For examples, unions run no risk for misreporting withholding authorizations, for intimidating employees to becoming union members, for what it includes in e-mails to bargaining unit members, or distribution of personally identifiable information of bargaining unit members. In short, with the addition of these unfair labor practices running solely to employers, the unions are engaging in a brazen attempt to tilt the playing field and put public money at risk.

Rather than HB 2016, ORPELRA supports the revisions to the PECBA suggested by the Employment Relations Board in HB 2276 as a modest, fair, and reasonable response to the *Janus* decision.

Very truly yours,

Jeffrey P. Chicoine, P.C.