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Re: House Bill 2016

I have reviewed HB 2016 in light of my 38 years of law practice representing school districts and community colleges in Oregon and Washington, bargaining more than 400 collective bargaining agreements (CBAs). During those years, I have read and reviewed every decision by the Employment Relations Board (ERB) interpreting the Public Employee Collective Bargaining Act (PECBA), as well as every arbitration decision involving Oregon public employers and public employees.

The PECBA has served the state well in accomplishing the purposes stated by the 1973 legislature: "t[T]he development and harmonious and cooperative relationships between government and its employees." Collective bargaining has successfully resolved a multitude of issues, including appropriate ways for union representatives to communicate with members of the bargaining units they represent – keeping in mind the different situations presented in different work places.

HB 2016 Section (3) would duplicate provisions that already exist in the vast majority of public employee CBAs for union leaders' contact with employees. It potentially requires public employers to subsidize a union with public-paid time of teachers, nurses, prison guards, police officers, bus drivers, cafeteria workers, etc. – without any limit and with only vague terms like "reasonable time" that will generate more litigation.

Sections 3, 5, and 6 are not needed because all of these issues are already bargained under the existing language of the PECBA. It imposes a "one size fits all" approach. These issues have already been found mandatory for bargaining by ERB:

--Proposals requiring reasonable paid release time for employees serving on bargaining teams or attending grievance sessions.

--Proposals to allow a member unpaid leave to serve as an officer or employee of the local association and receive experience credit for that time.

--Proposals regarding Association-school communications, including use of interschool-mail, access to district information, right to speak at meetings.

Every CBA I have bargained in the past 20 years has included provisions regarding union rights. And, in the six months following the *Janus* decision, all of the districts m law firm serves reached resolution as to what and how information would be shared between the employer and the union regarding payroll deductions for union dues.

Section 4 takes the appropriate approach of having public employers and unions representing public employees resolve these issues at the bargaining table. However, I do not support these sections:

Subsection (2): This language would undo decisions by ERB setting limits on public employer financial support for the exclusive representative union. Since 1973, ORS 243.672(1)(b) has prohibited employers from engaging in illegal "assistance" to one union that might discriminate against other competing unions. The PECBA has outlawed "assistance" as well as "domination" and "interference" in order to ensure that the selected exclusive representative is the true choice of employees and is not so beholden to management as to be ineffective in representing employees.

Subsection (3): There is no need for reopening existing contracts, most of which are only 2-3 years in duration, for bargaining about release time. This matter has been mandatory for bargaining since at least 1979. *Eugene Ed.Assn. 4J and Richard Miller*, 4 PECBR 3004, 3008; *OSEA v. School District No. 9*, 4 PECBR 2352, 2353 (1979).

Section 7 makes a single change in the list of mandatory subjects of bargaining, to add "labor organization access to and communication with represented employees." For the most part, these subjects have already been found mandatory by ERB.

Section 8 makes additions to the basic statements of the purposes of public employee bargaining, as identified by the 1973 legislature that adopted the PECBA. These additions are unnecessary and debatable. It is quite a leap to argue that "ensuring meaningful communication between labor organizations and employees increases the effectiveness of public employees' work performance."

Section 9 appropriately deletes provisions regarding fair share, as required by the *Janus* decision.

Sections 10 and 11 contains additional language that is unnecessary, in the light of existing ERB decisions interpreting ORS 243.672(1)(b), making it a ULP for a public employer to "dominate, interfere with or assist in the formation, existence or administration of any employee organization." In addition, Section 11, subsection (L) is potentially a violation of First Amendment rights, restricting some emails from outside entities on the basis of content, and subsection (m) would potentially violate the existing Public Records Act.

In summary, HB 2016 is "a solution in search of a problem." Existing provisions of the PECBA and the extensive case law developed by the ERB and the appellate courts of Oregon have addressed most of these issues. Above all, collective bargaining has proven to be an effective way of addressing all of these issues in the multiple and various public workplaces in Oregon. Let collective bargaining work in this post-*Janus* era, as it has worked for the past 45 years.