Oppose SB 845: Modifying Binding Arbitration for Mass Transit District Employees

History of Mass Transit Bargaining in Oregon

In Oregon, mass transit district employees are currently subject to "Final Offer" arbitration. When the employee union and employer cannot agree on a new contract, the parties are required to participate in binding arbitration wherein an arbitrator selects one of the parties' Final Offers in its entirety. This system has been in place since 2007 with the passage of HB 2537-A. ATU lobbied and championed that bill. According to public testimony, ATU supported the legislation because it requires mass transit districts and their employees to use a Final Offer system that generates concessions from both sides and avoids other systems that lead to "no-win" situations. The bill was approved with overwhelming support and created a new statute – *ORS 243.738 Strikes by employees of mass transit districts, transportation districts and municipal bus systems.*

What the Proposed Legislation Would Do

The Bill makes a wide variety of changes to the current legislation. First, it replaces "Final Offer" arbitration, where the arbitrator must select either the employee union's or the employer's Final Offer in its entirety – with "Issue-By-Issue" arbitration – where arbitrators makes determinations on each unresolved subject matter item by selecting either the employee union's or the employer's proposal on that individual item. Second, it replaces an individual arbitrator – mutually agreed to by the parties through a striking process – with a three person arbitration panel that includes one arbitrator chosen by each party along with one independent arbitrator chosen through a striking process. Third, it requires that at least three of the seven arbitrator candidates for the independent arbitrator provided to the parties be diverse arbitrators "who are representative of minorities, women, persons with disabilities and persons of differing sexual orientations and gender identities." Lastly, the Bill adds a variety of additional criteria under which the arbitration panel must base its findings and opinions.

Why This Legislation Should Not Proceed

1. This legislation is not necessary

The presumed goals of this legislation that aren't related to giving employee unions an advantage in the arbitration process can be accomplished using current law. An arbitration panel is not necessary to ensure an impartial arbitrator. Arbitrator candidates understand that each side can strike candidates – therefore making fair and impartial decisions is their best way to ensure their continued selection for future arbitrations. Adding additional criteria under which the arbitration panel must base its findings and opinions is also unnecessary. Current law allows the arbitrator to add their own criteria if the enumerated factors do not provide sufficient grounds to make a decision. The specific language on "comparable" transit systems is not needed because arbitrators can and have created lists of comparable systems in the past under current law that appropriately balanced employer and employee union interests.[i]

The state can and should investigate the current level of diversity in arbitrators and, if it is lacking, work to recruit and train more diverse arbitrators.

2. This legislation would introduce risk and division during a critical juncture for mass transit in Oregon.

With ridership for many of Oregon's transit agencies at less than 60% of pre-pandemic levels, it is crucial that transit providers and the ATU continue to work together to improve service and enhance employee morale. The next several years will be critical to the future of mass transit in Oregon as it continues to evolve in the post-pandemic world. "Final Offer" arbitration encourages collaboration and ensures stability through an established process that incentivizes mutual concessions through an arbitrator when an agreement between parties cannot be reached. When one party is unreasonable under current law, that party loses.

"Issue-By-Issue" arbitration, on the other hand, incentivizes each party to not be reasonable and to instead concede nothing on any individual proposals, increasing the likelihood that radical and destabilizing proposals could be adopted. As opposed to the well-settled current arbitration criteria, the proposed new criteria is vaguely worded, potentially in conflict with PECBA definitions of what issues require mandatory bargaining, may lead to unintended consequences, and will almost certainly result in litigation.

The panel approach to arbitration creates further division. The two "arbitrators" selected by each party will simply be advocates who shift arbitrator deliberations from an unbiased fact finding process to an additional adversarial process.

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[i] The "West Coast 11" was created by an arbitrator under HB 2537-A.

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