Statement of PPA Lawyer Anil Karia Regarding SB 747

Before the General Government, Consumer, and
Small Business Protection Committee

April 10, 2013

Thank you Mr. Chair and members of the committee. My name is Anil Karia. I'm the lawyer for the Portland Police Association. Briefly by way of background, I have represented the PPA since January 2011, and have represented police unions since 2009. My predecessor, Will Aitchison, represented the PPA for over 30 years. I lecture to both labor and management on labor issues, including police-specific labor issues.

I have three points that I'd like to make in opposing Senate Bill 747. First, for 40 years, there has been a strong public policy preference under the Public Employee Collective Bargaining Act (PECBA) for binding arbitration to resolve labor disputes, including police use of force discipline cases. Notwithstanding this strong public policy, Senate Bill 747 would deny Portland Police officers the right to arbitration in use of force discipline cases. The Bill targets only one jurisdiction—the City of Portland and its unionized police officers. The singular targeting of one labor organization and its members is inherently unfair. In fact, I cannot think of any other place in the PECBA where one local government is hand-picked as exempt from the protections and obligations of the State-wide statutory scheme.

Second, discipline cases are very rare in Portland. A 2011 report issued by the City of Portland's Independent Police Review division notes 56 instances of discipline against Portland police officers for the period 2009 through 2011. Only 2 of those cases have been arbitrated by the PPA. Similarly, of the 16 in-custody deaths and officer-involved shootings over the 4-year period from 2007 through 2011, there was only 1 sustained excessive force claim that went to arbitration—that of Officer Ron Frashour. In fact, in the 35 combined years that Mr. Aitchison and I have represented the PPA, there have

been only 4 arbitrations in excessive force cases. An average of 1 labor arbitration every 9 years is not a problematic pattern, and most certainly should not be the basis of targeted legislation against Portland Police officers.

Third, the loss of binding arbitration would deprive Portland Police officers of a neutral, independent review of discipline. Sometimes, the Portland Police Bureau's discipline is unsupported by the facts or lacks due process. These cases may include basic day-to-day performance issues or whistle-blowing matters. Sometimes, these cases involve high profile police incidents, such as Officer Frashour's use of deadly force. Senate Bill 747 would strip away from Portland police officers their one and only opportunity for a fair trial before a neutral body. In its place, the Oregon Legislature would be trusting the City of Portland's political leaders, who would have the final say in discipline, to get it right without any checks and balances from an independent body, such as a labor arbitrator. The Oregon State Police Superintendent and the Governor don't even have this level of unfettered discretion in discipline matters over state troopers.

Checks and balances are important, because the City of Portland has gotten it wrong in discipline cases, most recently in Officer Frashour's case. It was only through the independent review of a labor arbitrator that the City's mistake in terminating Officer Frashour was identified and fixed.

After the City terminated Officer Frashour in November 2010 for using deadly force in the line of duty against Aaron Campbell, the City and the PPA submitted the case to arbitration. The City hand-selected a highly qualified labor arbitrator with over 20 years of experience to consider the case. In an exhaustive review, the Arbitrator conducted 16 days of hearing, considered over 115 exhibits, and heard from 31 witnesses, including Officer Frashour and the City's police chief. She also heard from 11 on-scene officers and 10 officers who had trained Officer Frashour—all of whom

believed in their professional judgment that Officer Frashour had followed his training and policy. The arbitration was the first time these key witnesses were heard.

In the end, Arbitrator Wilkinson determined that Officer Frashour should keep his job. This is how final and binding arbitration works. A skilled third party selected by the employer and labor organization makes a neutral decision after weighing all the evidence and arguments raised by the parties.

It's important to know that Arbitrator Wilkinson was not alone. Four others had preceded her. A Multnomah County Grand Jury, the United States Department of Justice, the Oregon Department of Public Safety Standards and Training, the Oregon Employment Department, all acting within their own regulatory schemes, had all previously found nothing inappropriate about Officer Frashour's conduct. The Oregon Employment Relations Board spoke last, and upheld the Arbitrator Wilkinson's award.

In sum, Senate Bill 747 is a solution in search of a problem. That independent, neutral arbitrators have overturned the City's discipline in past cases, including Officer Frashour's, does not mean that the system is broken. It simply means that the City's discipline was unwarranted in those particular cases. Senate Bill 747 would target the PPA and rob its members of the fundamental right to a fair trial before a neutral arbitrator.