Testimony in Support of HB 2544

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Good morning Mr. Chair and Members of the committee. My name is Sarah Drescher and I am Legal Counsel for the Oregon School Employees Association. I am here to offer OSEA's support for passage of HB 2544, and my perspective and experience with the expedited bargaining process, which HB 2544 proposes to amend.

The expedited bargaining process, set out in ORS 243.698, was a misguided attempt to short-circuit the balanced collective bargaining process provided under Oregon's Public Employee Collective Bargaining Act (the PECBA). It has subverted the intention of the bargaining process in these critical respects:

A. It does not contain a process for mediation of labor disputes on such issues as the elimination of retiree benefits or contracting out (outsourcing) of work.

B. It created an environment where employers can make a unilateral change affecting workers' livelihoods without any real bargaining or even making any proposals in bargaining.

Prior to passage of SB 750 (1995), there was no time limit to bargaining. Concerned about deliberate delays by one side or the other, the legislature determined a time limit was necessary. SB 750 set in place two bargaining processes.

The first is a 150-day traditional process that includes mediation and a cooling off period prior to the employer's option to implement its proposal and the employees' option to strike. Here is real bargaining taking place. The dispute resolution process means something. This is so because it mandates mediation within a concise time period for dispute resolution. These pieces are integral to a balanced bargaining process designed to produce the workplace cooperation that is the goal of PECBA. Most bargaining occurs under the 150-day process, and every indication is that this process has been a success. In spite of the nearly constant shortage of education funding, Oregon rarely has seen a strike in any of its 197 school districts.

On the other hand, the 90-day expedited bargaining process does not include a process for dispute resolution through mediation. This makes the process unfair and unbalanced, because the employer is not required truly negotiate, but is allowed to sit mute during bargaining sessions and then implement its plan after the 90-day period is passed. That imbalance is contrary to the basic tenets of PECBA.

For example, in 2004 the Clatskanie School District decided to discontinue providing a health insurance benefit to employees upon retirement and provided OSEA with notice of the change under the expedited bargaining law. During bargaining, the union made a number of proposals to resolve the issue. The district sat there and listened. Ninety days later, without offering a single proposal in return, the district implemented its plan.

Another situation occurred in December 2007, when within five minutes of ratification by the Willamina School Board (WSB) of a successor collective bargaining agreement with OSEA, the WSB voted to issue a Request for Proposals to contract out student transportation services. The board had never mentioned the possibility of contracting out transportation services during contract negotiations and the board's vote to issue an RFP to contract out transportation services immediately after ratifying the contract stunned the employees and the community. It seemed clearly the intent of the WSB to avoid this issue in successor bargaining where mediation was mandatory, and instead use the expedited bargaining process to push through their premeditated unilateral change.

Because the expedited bargaining process does not incorporate traditional dispute resolution processes, employers can wait until a contract is inked to implement changes in employment relations, thereby placing the matter squarely within the expedited process. This strategy allows employers to implement changes mid-contract, without meaningful bargaining.

HB 2544 restores balance to this process by requiring the parties to complete mediation after 90 days of negotiation and submit their dispute to binding arbitration if they cannot reach resolution through mediation. Binding arbitration is fundamental to the resolution of labor disputes. It is the preferred method for dispute resolution provided by most collective bargaining agreements and it is currently the method used to resolve disputes for public safety employees who are prohibited from striking.

Through mediation and arbitration, labor disputes are resolved efficiently, without the possibility of strikes or the creation of ongoing labor strife, thereby avoiding disruption to public services. Experience with public safety unions has shown that when the bargaining process provides for mediation and arbitration, the parties are more likely to work together to resolve disputes on their own as the process encourages compromise.

Employers have complained that they need the expedited bargaining process in order to deal with unexpected emergencies or situations and that arbitration will lead to shorter contracts and longer bargaining processes. Time has shown us this in not the case. School district employers and employees naturally want to work together in solving problems – they do it every day, because that's what works for their students. Indeed that is what the PECBA anticipates and is meant to foster and facilitate.

OSEA and I urge you to return balance to the PECBA by passing HB 2544.

Thank you.