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MEASURE: HB 2544
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H.B. 2544

The purpose of the Public Employee Collective Bargaining Act is to ensure the orderly and uninterrupted operations and function of government (ORS 243.656(2)-(4)) and to improve the employer-employee relations by recognizing the right of public employees to join and be represented by unions (ORS 243.656(5). In order to effectively accomplish this, the PECBA has set up a balance. For example, where public employers have the right to unilaterally implement, public employees have the right to strike. This balance of power is essential to collective bargaining, as it encourages both sides to meet in good faith and negotiate an agreement that meets the needs and interests of both parties.

The vast majority of collective bargaining agreements contain a "no strike clause" prohibiting strike activity during the life of the agreement, thus providing the government with assurances that the services it provides will be uninterrupted. Unions agree that during the life of the agreement, they will not engage in any work stoppages in exchange for the employer's agreement to submit disputes arising from the agreement to arbitration. As the U.S. Supreme Court recognized, arbitration "is the substitute for industrial strife."[1] Similarly, the PECBA recognizes that some public employees are so essential to the welfare of the citizens and state that a strike would lead to potentially devastating consequences. In these cases, the right to strike has been substituted for the right to arbitration.

Throughout the entirety of the PECBA, when organized public employees have a dispute with their employers they are granted the tools of self-help through either the right to strike, or the right to arbitration with one exception: interim bargaining for non-strike prohibited employees.

Interim bargaining occurs when the employer initiates a change regarding a mandatory subject of bargaining during the life of the agreement. Under this process, the PECBA allows ninety days for the parties to meet and bargain, after which, the employer is free to unilaterally implement. However, the employees are governed by an active collective bargaining agreement, which likely contains a "no strike clause." Since the matter is a new change and not a dispute arising out of the existing terms of the collective bargaining agreement, the arbitration clause does not apply. Thus, employees are left without any recourse or method of self- help.

[1] Steelworkers v. Warrior Gulf & Navigation Co., 363 U.S. 574, 578, 46 LRRM 2416 (1960)

The results of this imbalance are predictable. Rather than approach the bargaining table with an incentive to compromise, employers have "hard bargained" knowing that the Union is without recourse. Often, the employer will implement without making any compromises. Further, it has provided a means for employers to by-pass traditional negotiations by waiting until just after a collective bargaining agreement is signed to announce the most controversial changes.

HB 2544 addresses this, by giving the employees the right to have an impartial third party, objectively consider the issue, and issue a reasonable decision based on the merits. It accomplishes the goals of the PECBA by allowing the orderly, uninterrupted operations of government while allowing public employees the right to have their concerns adequately represented.

HB 2544 will not negate existing case law that excuses public employers from liability for unilateral changes implemented due to emergency or business necessity.[2] Nor will it expand the definition of mandatory subjects of bargaining. The model proposed under HB 2544 has been tested. Arbitration as a means for resolving interim bargaining issues already exists for employees such as 911 operators and firefighters, and has not proven to be an undue burden on the government agencies that provide such vital and important services to the public.

[2] ONA v. OHSU, 19 PECBR 590, 603 (2002)