THE
HUNGERFORD LAW FIRM
ATTORNEYS AT LAW

April 27, 2015

To: Chair Dembrow and Members of the Senate
From: Nancy Hungerford
Re: H.B. 2544 (Changes in Expedited Bargaining Law)

The expedited bargaining provisions in current ORS 243.698 were enacted in 1995 to address situations that arose during the lifetime of a collective bargaining agreement that were not fixed by the current contract. It applies primarily to situations where (1) unexpected fiscal problems require a public employer, such as a school district or community college to reduce costs in order to balance the budget or (2) the employer wants to make changes in "permissive" subjects, such as a student schedule or a level of service to students and the union demands to bargain over the "impacts" on employees.

During the House Committee hearing on HB 2544 in February, 2015, the union representatives testified to two major problems with the current law. Each can be fixed with a simple modification of the current law:

1. The contention was that public employers wait until bargaining on a new (successor) agreement is completed and then initiate expedited bargaining by revealing plans to change a matter of "status quo" that is not written into the current CBA. Two examples (one from K-12 and the other from a County) were given. The proposed amendments (attached) would avoid this situation by creating a 60-day period after ratification when no such issues could be raised by the public employer.

2. The union representatives expressed concern that there was no dispute resolution system if bargaining during the 90-day expedited period was not successful. The proposed amendments correct this problem by providing for mediation that would take place during the last month of the expedited process if no agreement had been reached by that time. Since most expedited bargaining is about single issues, a single mediation session will likely resolve the issue if a compromise is possible.

You will likely hear that these amendments are not enough. But that will simply demonstrate that public employee unions' goal is really the elimination of expedited bargaining, which they unsuccessfully sought in 2011 and 2013. Handing the decision to an arbitrator, often from out-of-state and out-of-touch with K-12 or higher education, destroys the ability of local elected boards to make tough decisions that protect the interests of the children of the state and the taxpayers.

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EXAMPLES OF USE OF EXPEDITED BARGAINING

1. The Tigard-Tualatin School District employs 5 school nurses, who are RNs and in the bargaining unit, but also employs a number of contract nurses (also RNs) to spend all day with medically fragile students who may die without immediate medical intervention. One day the contract nurse was sick and the backup contract nurse was in a traffic accident on the way to the school. The district directed one of the 5 bargaining unit nurses to go to the school for the day to provide needed medical services to one student. The association contended that this is a change in the assignment of staff that has an impact on working conditions of its bargaining unit nurses. It demanded to bargain. The district engaged in expedited bargaining for more than 90 days, but when no agreement was reached and a new school year is starting, implemented its final offer, which includes additional training for the five nurses who will provide only back-up services for medically-fragile students.

2. A middle school in Hood River was experiencing an increase of incidence of vandalism and bullying in the halls, gym, and commons areas of the school. The school announced it would install video cameras in those areas to deter improper student behavior and to be able to validate student complaints. The employee association demanded to bargain over the impact of having cameras in the gym, where instruction takes place during some times of the day. The association demanded that the cameras not be used until agreement is reached on use of footage that happens to show employee misconduct. After 90 days of unproductive expedited bargaining, the District imposed its final offer. The Association brought the issue up again in the next round of successor bargaining and a resolution was reached as part of the entire CBA settlement.

3. Centennial High School needed to cut staff because of inadequate state support in 2008-13 recession. The existing block schedule (teachers taught 3 periods of 88 minutes each per day; had one 88-period prep time) meant 25% of staff was unavailable for teaching at all times. Staff cuts would mean class sizes would rise from 30 to 40 in many classes. The school determined that changing to a seven-period schedule with teachers teaching 6 periods of 45 minutes each would make 86% of staff available for each period, thus maintaining class sizes with fewer staff. The Association demanded to bargain the impact on staff working conditions. The change in schedule and teachers' student-contact time was agreed upon during the 90-day expedited bargaining period.

4. The State Board of Education has revised the OARs to increase annual student instruction time from 810 to 900 hours per year for 1st-3rd-graders, who often ride the same buses as grades 4-6 (always required to receive 900 hours per year). After studying options, a district decides it will add the instructional time for grades 1-3 by reducing from 2 to 1 recess per day (same as grades 4-6 have had). If the association demands to bargain over the impact of additional 15 minutes of instruction per day on teachers in grades 1-3, no change can be made in the student schedule until bargaining is complete. Under HB 2544, if no agreement is reached, a binding decision on student contact time of Grades 1-3 teachers is made by an outside arbitrator.

PROPOSED AMENDMENT: EXPEDITED BARGAINING LAW

243.698 Expedited bargaining process; notice: implementation of proposed changes. (1) When the employer is obligated to bargain over employment relations during the term of a collective bargaining agreement and the exclusive representative demands to bargain, the bargaining may not, without the consent of both parties and provided the parties have negotiated in good faith, continue past 90 calendar days after the date the notification specified in subsection (2) of this section is received.

(2) The employer shall notify the exclusive representative in writing of anticipated changes that impose a duty to bargain. Such notice may not be given until 60 calendar days have elapsed since the parties have ratified the most recent collective bargaining agreement.

(3) Within 14 calendar days after the employer's notification of anticipated changes specified in subsection (2) of this section is sent, the exclusive representative may file a demand to bargain with the employer and the Employment Relations Board. If a demand to bargain is not filed within 14 days of the notice, the exclusive representative waives its right to bargain over the change or the impact of the change identified in the notice.

(4) If no agreement is reached within 30 days of the exclusive representative's notice, the Employment Relations Board will assign a mediator to meet with the parties during the following 45-day period.

~~(4)~~ (5) The expedited bargaining process shall cease 90 calendar days after the written notice described in subsection (2) of this section is sent, and the employer may implement the proposed changes without further obligations to bargain. ~~At any time during the 90-day period, the parties jointly may agree to mediation, but that~~ Mediation ~~shall not~~ may continue past the 90-day period from the date the notification specified in subsection (2) of this section is sent with mutual agreement of the parties. Neither party may seek binding arbitration during the 90-day period. [1995 c.286 §13]