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Comment on House Bill 2544 (2015)
Before the Senate Workforce Committee

Chair Dembrow and Members of the Committee:

My name is Richard Schwarz. I was unable to attend the April 27, 2015 public hearing and I want to thank you for the opportunity to comment on House Bill (HB) 2544.

I am a retired private citizen with a continuing interest in the development of collective bargaining as a necessary process for fostering peaceful resolution of disputes and labor peace. I strongly support HB 2544 and urge the Committee's approval and recommendation for passage by the Senate.

It should be supported because, I believe, it brings back into harmony the provisions for expedited bargaining with the public policy objectives of the Public Employee Collective Bargaining Act (PECBA): recognizing the importance of harmonious relationship between government and its; alleviation of various forms of strife and unrest; safeguarding employees and the public from injury, impairment and interruptions of necessary services; and assuring orderly and uninterrupted operations of government.[1]

I speak from some knowledge and experience in collective bargaining and labor relations. My background includes some 40 years work in collective bargaining and labor relations and the state and national level. That spans collective bargaining negotiations in the private, public and federal environments under their respective labor relations and collective bargaining laws. These endeavors encompassed many states and locales, in a wide variety of settings. It included many, many contract negotiations in a variety of settings. In Oregon, that included 24 years as Executive Director of AFT-

[1] "243.656 Policy statement. The Legislative Assembly finds and declares that:
"(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;
"(2) Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employee organizations can alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees;
"(3) Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards employees and the public from injury, impairment and interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers and public employees;
"(4) The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government; and
"(5) It is the purpose of ORS 243.650 to 243.782 to obligate public employers, public employees and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers. [1973 c.536 §2]"

Oregon, the position from which I recently retired, encompassing K-12, community college and higher education, child care and health care collective bargaining agreements.

Under the current collective bargaining framework, the parties to a collective bargaining agreement are free to negotiate for however long, as often and through whatever style of interaction they wish. They are required only to bargain in good faith and reduce their agreements to writing. The statutory framework does provide an insulated period of 150 days before either party may unilaterally request a mediation assistance to help resolve their differences and reach agreement. They are free to set their own timetable, including when commencement of negotiations begins and other lawful conditions they may mutually set for themselves.

The 150-day period begins "when the parties meet for the first bargaining session and each party has received the other party's initial proposal."[2] Even so there are other conditions and timetables that must be met for the duration of mediation (15 days), and in the absence of final agreement, submission of final offers (7 days), a "cooling off" period before making final offers public (30 days), and notice of strike (10 days), and strike and employer implementation. All of these conditions are intended to continually encourage the parties to narrow their differences and reach mutual agreement.

The current expedited bargaining provision,[3] withdraws and deprives collective bargaining representatives most of these certain fundamental elements of fairness explicit in PECBA. Where the regular framework speaks to the public policy objectives, the current expedited bargaining process works against them by expediting the end game, which the rest of the statute is purposefully designed to slow.

Compared to the regular negotiations framework, 90-day period begins exactly "when the employer notifies the exclusive representative of anticipated changes" that require bargaining.[4] Mediation assistance can only occur by jointly agreeing, "but that mediation shall not continue past the 90-day period" from the date of the employer's notice.[5] The exclusive representative is given a 14-day window to respond to the employer notice, but event that time period is encompassed within the 90 days. The "90 days of bargaining" as the process is often described is largely a myth. The actual time is far less.

Use of mediation is limited to a joint request, no matter how desperate the relationship may need neutral facilitation. There are no final offer exchanges with the opportunity to draw the parties closer to agreement.

The process jumps immediately to the endgame of implementation and strike, exactly the provisions of PECBA otherwise are designed to forestall. And the current procedure leaves open the possibility of gaming the process. Anyone with experience in strikes, the only option left to the exclusive representative, will tell you they require considerable time to develop and prepare. As the only alternative in the current expedited framework, would require the union to commence its preparation on receipt of the employer notice.

Opponents argue that culminating expedited bargaining with interest arbitration will add costs and delay imposition, including the retention of attorneys to develop final proposals and prepare for arbitration. These are precisely the kinds of things that should be taken into consideration in any bargaining strategy. And, I cannot imagine an employer invoking expedited bargaining without have a solid grasp of the basis and support for its position before even beginning negotiations. Preparation for arbitration should be minimal.

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[2] ORS 243.712
[3] ORS 243.698
[4] ORS 243.698 (2)
[5] ORS 243.698(4)

Oregon's statutory expedited bargaining procedure is unique. While it embraces the "continuing duty to bargain" obligation, the private sector has lived under the National Labor Relations Act with the same duty for some 80 years without the need for a special section of the law codifying a separate procedure.

Likewise, there is nothing that prevents the parties from negotiating into their regular agreement, as many have, processes for handling issues that arise during its term including Labor-Management Committees, reopening provisions for modification under new circumstances, and bargaining over issues not contemplated in the contract.

I find it difficult to imagine in the public sector with as much advance work, budgeting and public notice requirements that there could be many wages, hours and terms and conditions of employment issues that were unknown, short of a catastrophic event, which could not have been addressed in the regular course of negotiations.

I urge the committees support of HB 2544 to restore some balance to the use of the expedited process so it serves both parties by encouraging resolution rather than only the extreme events the current process offers.

Thank you.