MEMORANDUM

To: Senate Committee on Workforce
From: Lori Sattenspiel, Legislative Services Director, OSBA
Date: Drafted April 15, 2019; revised April 17, 2019
Re: OSBA concerns, HB 2016-A

Please find below, section by section, concerns regarding HB 2016-A. Thank you in advance for your consideration. We have shared these concerns with proponents and appreciate the ongoing discussion.

Section 2

Sec. 2(1), Definitions of "designated representative," "exclusive representative": The bill, starting in sec. 2(1) and continuing, uses the terms "designated representative" and "exclusive representative." It does not adequately define those terms. "Exclusive representative" probably intends to refer to the labor organization under ORS 243.666, but that is not explicit in the bill. The exclusive representative "designates the 'designated representative'". There is no definition for the process of designation, no notice requirements to the employer, and no limit to the number of designees.

The status of "designated representative" conveys rights that will cost school districts in some form. The lack of definition could cause confusion for school districts.

Proposed changes:

- Define "designated representative," including a reasonable time for notice to the public employer, the method for notice of designation to the employer, and a limit on the number of designees per school building. Or,
- Make the definition of "designated representative," a subject of bargaining, either mandatory or permissive.

"Labor organization business": Generally, in school district contracts, "labor organization business" is tied to the contract of the relevant parties, i.e.: the specific ESD, school district, or community college. There is no such tether in the bill for "labor organization business" between the designated representative. This could lead to a much broader interpretation of what constitutes "labor organization business" than is current practice, e.g.: an employee at District A undertaking labor organization business in another district, under another contract, but at a cost to District A.

Proposed changes:

- Define "labor organization business" as being limited in scope to the business of the specific contract between the public employer and exclusive representative.

Section 3

"Reasonable time": Currently, access during work hours is bargained. "Reasonable time" does not have a definition in the bill.

Proposed changes:

- Explicitly state that the terms of a contract may define "reasonable time."

No "reasonable notice" requirement: The bill requires employers to grant a number of rights of access for a "reasonable time" for designated employees to conduct labor association business, but does not require any notice to the employer. This is potentially problematic, especially in small school districts, where there is a limited number of staff and there is often no real way to cover responsibilities of staff impacting student safety.

This is a practical concern. Student safety must be the first priority of all parties. OSBA has no desire to infringe upon employee rights, but the transportation, care, and safety of students sometimes requires time for planning

Proposed changes:

- Include language that the employer shall grant designated representatives reasonable time, etc., "given reasonable advance notice" to the employer. This could either be defined or bargainable.

Real costs to school district: Employers shall release employees during work time with no indemnification for real costs incurred, e.g.: need to hire a substitute teacher.

Proposed changes:

- Include language addressing labor organization reimbursement. E.g.: "Unless otherwise provided in a collective bargaining agreement or any other written agreement entered into between a public employer and an exclusive representative, the exclusive representative shall reimburse the public employer for any compensation that is paid to the designated representative during a period of release time. Compensation paid under this subsection includes any employer contributions made toward any employee benefits, including benefits under ORS chapter 238A."

Section 4

"Public employer shall provide a reasonable release time…" with little meaningful requirement for employer input: The bill requires public employers to release designated representatives for a "reasonable" time. Reasonable is not defined. Also, the bill says the employer and exclusive representative "may" agree to certain items, including the manner of notice and the length of release time. However, it is not clear what occurs if the parties are unable to agree.

Proposed changes:

- Include language making the scenario in which no agreement is reached bargainable.

Sec. 4 (10), ULP under ORS 243.672: The bill does not propose to eliminate the prohibition of employer "assistance" to unions in ORS 243.672(1)(b). ERB's interpretation of "assistance" is sufficient.

Proposed changes:

- Delete sec. 4(10).

Section 5

Sec. 5(1) generally; right to meet, amount of time: The amount of time and other rights in the bill are problematic for school schedules, where the nutrition, health, safety, and supervision of students, including medically fragile students, must be the top priority.

Proposed changes:

- Alter the bill as follows:
  - The right to meet with new employees, with advance notice to the supervisor, during work time for a maximum of 15 minutes per day;
  - The right to meet with new employees for up to 30 minutes during new employee orientation or at individual or group meetings; and
  - For purposes of employees in the bargaining unit who are not new employees, reasonable access includes, but is not limited to, the right to meet with employees during the employees' regular work hours at the employees' regular work location with advance notice and reimbursement for the cost of substitutes to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations

Sec. 5(5), e-mail: Our email systems are public systems. There is no expectation of privacy.

Section 6

Sec. 6(8)(b), indemnification in lieu of *Janus*-approved methods, as pertaining to all of sec. 6: This section would have the exclusive representative indemnify public employers for damages potentially arising from preceding dues collection changes in the bill, such as list-based submission and telephonic communication. It is not clear that this is legal under *Janus v. ASFCME*. This potentially illegal conduct would not be subject to indemnification. It is unreasonable to require public employers to undertake potentially illegal conduct.

Proposed changes:

- Alter Sec. 6 generally to require authorization of membership in ways that are clearly permissible under *Janus*, e.g.: "A public employee may provide authorization for the deductions described in this section in writing, including by electronic transmission of a signed document."
- Also, expand indemnification to other local government units as per the 2016-1 amendments

Section 11

Sec. 11(L), email system prohibitions: As mentioned in relation to sec. 5, our email systems are public. It is likely unconstitutional to screen out some email information, e.g.: anti-labor organization content, but allow other, e.g.: pro-labor organization content, through.

Proposed changes:

- Delete sec. 11(L).

Sec. 11(m), information sharing with private entities: Sometimes school districts contract with private entities for necessary school functions. Prohibiting information sharing with private entities will disrupt current school business, e.g.: the transmission of substitute teacher/employee lists. Furthermore, restricting access by private entities to public information is in conflict with the text and the spirit of the Public Records Act. This would seem to be anathema to the recent legislative drive to preserve the public's access to public records, and we cannot endorse a contradictory stance.

Proposed changes:

- Delete sec. 11(m).