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Testimony on House Bill 2016-A
Senate Workforce Committee
April 18, 2019

Chair Taylor and Members of the Committee:

Thank you for the opportunity to submit my written testimony in support of in support of HB 2016 and to ask the same of the committee. It is through the lens of my experience that I ask the committee to move the HB 2016-A to the Senate for approval.

By way of background I am the retired Executive Director of AFT-Oregon after 24 years in that position. Though I am not a lawyer, I am informed by some 40 years experience in collective bargaining encompassing case handling and presentation in the public (several states), private and federal sectors in multiple industries and institutions, including 27 years under the Oregon Public Employee Collective Bargaining Act (PECBA). Though retired, I maintain, as a private citizen, a strong interest in collective bargaining and its processes and the important place it has in maintaining productive labor –management relations and labor peace. I am serving as a member of the ERB's Rules Advisory Committee; and I served on the ERB's Ad Hoc Opinion Evaluation Committee.[1]

The bill does not limit the right to join – a voluntary act -- or to not join a labor organization. It does recognize that membership is an internal matter of the labor organization and membership status and interactions between members and their organization is the business of the labor organization that is the exclusive representative. It preserves members' right to have their dues deducted from their payroll and forwarded to their labor organization.

It appropriately makes it an unfair labor practice for a public employer to facilitate interference in the internal business of exclusive representatives if it provides access to internal electronic mail systems or, especially, to public employee personal information to unrelated, outside third-parties.[2]

Providing electronic mail system access and employee information to the exclusive representatives facilitates peaceful employment relations consistent with the public policy expressed in ORS 243.656.

It cannot be argued that a labor organization needs access (especially in this day and age) to electronic mail and personal information of those for whom it is the exclusive representative to

[1] "BUDGET NOTE
"The Employment Relations Board is directed to undertake the following items and then report to the appropriate policy committee and the Joint Committee on Ways and Means during the 2013 legislative session:

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• Conduct a review of recent opinions issued by the Board and its administrative law judges to evaluate the quality of opinions issued and how they can be improved upon; . ." SB 5701-A (2012)

[2] HB 2016 Summary: **"**Makes certain activities, related to labor organization, attempts to influence employee to resign from or decline membership, use of employer's electronic mail to discourage membership in labor organization or to discourage authorization of deduction for payment to labor organization, employer's encouragement of employee to revoke authorization of deduction for payment to labor organization and provision of certain personally identifiable information about public employees within bargaining unit to entity other than exclusive representative, unfair labor practices."

responsibly meet its duties, which includes representing both members and non-members in a bargaining unit.[3]

But aiding unrelated parties access and distribution to represented public employees for the objective of discouraging union membership, and more specifically to decline or withdraw from membership is contrary to that policy.

I urge the committee to resist objections to HB 2016-A by those outside third-parties seeking electronic mail access and personal information for the express purpose of interfering in the *contract* relationship between labor organizations and their members – and I am not referring to a collective bargaining agreement.

Often lost is understanding that the nature of a labor organization and its membership *is a contract*. These contracts include such common elements as purposes and objectives; governance structure; officer and board elections, and responsibilities and duties; budget and audit; levying dues; membership and member rights, privileges and responsibilities.

Labor organizations themselves are not government enterprises. They are private, unincorporated associations, governed by their own constitutions and/or bylaws, and any promulgated rules. They come in all sizes, and despite popular perceptions, most are small. Some may be independent. Some may be affiliated with state or national organizations or both, which are often not the actual certified representative of the bargaining unit.

Neither the government nor courts at any level require private, unincorporated associations to constitute themselves in any specific configuration or composition, nor mandate any particular class or classes of membership, nor members' specific rights, privileges or responsibilities. Each is left to its own requisites for addressing and adjudicating internal matters in dispute between members and their organization; or between a local or chapter and its state or national affiliate. Disputes may ultimately be introduced in a court for resolution within the confines of the organization's governing documents authorities and requirements.

That the relationship between a labor organization and its members *is a contract*, is a well established view of long standing. "Both sides accept the concept that the international constitution forms a contract between the local, and its members, and the international. *Way v. Patton et al,* 1952, 195 Or 36, 241 P2d 895, and many similar cases unnecessary to cite." *Crocker v. Weil*, 227 Or. 260 (1961), 361 P.2d 1014.[4] (*underline emphasis added*)

In *Carpenters Union v. Backman*, 160 Or. 520, 528 (Or. 1939), the Oregon Supreme Court describes that: "The charter, constitution and general laws of the Brotherhood, together with the local constitution and laws, constitute a contract which all members of the union who have assented

[3] Despite some bill opponents representations, requiring membership in a labor organization has always been unlawful under PECBA. Senators should not confuse that with a requirement that a public employee who has *voluntarily joined* a labor organization may be required to maintain that *voluntary membership* during the term of a collective bargaining agreement. *Janus* did not undo the requirement to represent public employees regardless membership status in the labor organization.

[4] Even in dissent where the issue was a specific solution to the issue in the dispute, it's agreed "that 'The legal theory defining the role of the court in internal union affairs is that the union constitution is a contract between the union and its members.' Summers, The Law of Union Discipline: What the Courts Do in Fact, 70 Yale L J 175 (1960). Some form of legal compact exists as a result of the constitution of [the union] to which [the local] has subscribed . . . Our previous cases, in line with the universal rule have described this form of agreement as a contact. Quinn v. Marvin, 168 Or 52, 57-58, 120 P2d 227 (1941); Carpenters Union v. Backman, 160 Or 520, 528, 86 P2d 456 (1939)." *Crocker v. Weil* 227. *Id.*

thereto are bound to obey so long as they remain members of the union and, upon ceasing to be members of the union, they forfeit all right to the property and funds of the union and have no more right to control the disposition of such property and funds than if they had never been members thereof." The principle is widely held even beyond the borders of Oregon.[5]

HB 2016-A prohibits the distribution of certain employee information to unrelated third parties whose purpose is to interfere in that contractual relationship, bring disruption to the peaceful collective bargaining relationship, and unnecessarily entangle public employers in such contract disputes.

Prohibiting such access and personal information release to outside third parties directs public employers away from entanglement in disputes over contract interference and aiding in that interference.

Finally, as many have noted, HB 2016-A goes some distance toward codifying basic issues that have evolved over the long history of collective bargaining under the PECBA. Anecdotally, opponents have argued, that it is unnecessary because these matters are often addressed in collective bargaining agreements.

Inclusion of these "common" issues in contracts is definitely not universal. It is not unusual for a public employer to resist touching on these subjects in negotiations, or vigorously working to the narrowest of the inclusion and application in a contract. As subjects of negotiations, there now is no requirement to agree or to include these issues in a contract; and there is no explicit template or guidance on the contours, depth or breadth, or their application. When they are included in agreements, they can and often do differ in their contours, and can leave much to grievance and arbitration over differences in application. I have argued cases to stop a public employer from providing release time incorporated in a contract with an exclusive representative to a rival organization to raid it.[6] I have argued case regarding dues deduction, notably one where a public employer unilaterally stopped providing contractually required names when forwarding payroll deduction.[7] HB 2016-A makes these employer and collective bargaining obligations clear and less likely to generate disputes between the parties.

By expressly incorporating each of the identified and enumerated subjects into the statutes, HB 2016-A aids public employers and exclusive representatives in their negotiations by limiting the range of disputes in negotiations and contract administration. Because HB 2016-A provides that

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[5] See, e.g., *Holt v. Santa Clara County Sheriff's Benefit Association*, 250 CalApp2d 926 (**"**It appears to be the law of this state that dissolution of an unincorporated association may be brought about by the action of the association itself as provided for in its articles of association, charter, or by-laws. (Grand Grove U.A.O.D. v. Garibaldi Grove, 130 Cal. 116 [62 P. 486, 80 Am.St.Rep. 80]; Supreme Lodge of the World v. Los Angeles Lodge No. 386, 177 Cal. 132 [169 P. 1040].) The propriety of such a method of dissolution stems from the well-established principle that the constitution or by-laws of an unincorporated association have the force and effect of a contract between the association and its members as to which the members are bound and are charged with full knowledge. (Bowie v. Grand Lodge L.W., 99 Cal. 392, 395 [34 P. 103].

Under the NLRA, the U.S. Supreme Court held in *National Labor Relations Board v. Boeing Company et al*, 412, U.S. 67, 93 S. Ct. 1952, 36 L.Ed. 2nd 752, that "Issues as to the reasonableness or unreasonableness of such fines must be decided upon the basis of law of contacts, voluntary associations, or such other principles of law as may be applied in a forum competent to adjudicate the issue."

[6] *Portland Federation of Teaches and Classified Employees, Local 111, AFT, AFL-CIO v. School District No. 1, Multnomah County*, ERB Case No. UP-20-92 (1992).

[7] *Graduate Teaching Fellows Federation Local 3544, AFT, AFL-CIO v. Oregon University System (University of Oregon)*, ERB Case No. Up-18-00 (2001).

these parties “may” negotiate over certain details, it does not compel a particular design or “one-size-fits-all” for the result of negotiations.

It also is not unusual that subjects that become commonplace to end up in the law. Collective bargaining “common” achievements like vacations, leaves, health and other insurance, overtime, retirement and payroll deduction of dues, are among them.

Thank you for the opportunity to be heard on this bill and I urge your full support of HB 2016-A.