Chair Neron, Vice Chairs Dobson and McIntire and members of the committee,

My name is Liz Joffe. I am a partner in the labor law firm McKanna Bishop Joffe, LLP. We represent labor organizations, including the Oregon Education Association and its local affiliates throughout the state. I have been working with OEA since the mid-1990s.

In 2007, in collaboration with a management-side labor lawyer and an editor from the University of Oregon Labor Education and Research Center (LERC), I co-authored a LERC monograph titled "Public Employees and Oregon's Scope of Bargaining." That monograph is available online, and I encourage those interested in the evolution of the scope of bargaining under Oregon's Public Employee Collective Bargaining Act to review it. *See* https://lerc.uoregon.edu/monograph-series/ (No. 18).

I am testifying in support of HB 3652 because it makes legal and practical sense to include class size and caseload limits among subjects that are mandatory for bargaining.

Bargaining subjects are either **mandatory**, meaning they must be discussed at the bargaining table if either party raises them, **permissive**, meaning the parties can agree to discuss them, but one party cannot force the other to do so, or **prohibited**, meaning it is unlawful. Defining a subject as mandatory – a matter of "employment relations" in the parlance of the PECBA – does not require either party to agree to any proposal; it merely prevents one party from shutting down discussion about it.

Generally speaking, mandatory subjects involve wages, benefits, working hours, vacation, leaves, workload, and other terms and conditions of employment. Permissive subjects, on the other hand, involve inherent management rights.

The case law, both in the Oregon public sector and the private sector, has long been clear that workload – the amount and type of work one does – is a mandatory subject of bargaining. As the Oregon Employment Relations Board (ERB) held in 1987, "It is only possible to rationally bargain for 'an honest day's pay' if one can also negotiate the boundaries and contents of 'an honest day's work.'"

For this reason, the case law before 1995 held that class size was mandatory for bargaining because it is a workload issue: for each student assigned to a teacher, there is an additional amount of work beyond group instruction, such as grading, preparation, parent-teacher conferences, and individual assistance.

The 1995 legislature, however, nullified that case law by expressly excluding class size from the definition of "employment relations." Having a law that allows school districts to shut down conversation about that at the bargaining table artificially removes an issue from the bargain that is at the heart of educators' working conditions though. It makes no sense legally or practically.

It is counterproductive to limit discussion about working conditions. If educators prefer to have some district dollars go toward more educator FTE and lower class sizes and caseloads

rather than compensation, that should be part of the discussion. Forcing unions to make only compensation proposals prevents the parties from getting to the nub of their dispute and bridging their distance by addressing legitimate concerns about untenable workload. Again, districts would remain free to reject proposals for class size and case load limits. This bill only prevents them from removing from the conversation a truly fundamental working condition for educators.

The 2021 legislature went back to making class size and case load mandatory, but only for Title I schools. The 2025 legislature should return to making class size and case loads mandatory in all schools so that parties bargain about the working conditions that are important to educators.