HB 2479 - Defines "danger or threat to welfare of public" Tape 11, Side 1

HOUSE COMMITTEE ON LABOR

March 21, 1979 1:30 p.m. Hearing Room E

Members present: Representative Jim Chrest, Chairman
Representative Bill Rogers, Vice Chairman
Representative Eldon Johnson
Representative Gretchen Kafoury
Representative Max Rijken
Representative George Starr

Members excused: Representative Al Riebel

Staff present: Mike Kopetski, Administrator
Ellen Scheidel, Assistant

Witnesses: Larry M. Clerk, ILWU, Local 40
Larry Amburgey, Port of Portland
Don Grigg, Port of Portland
Andrew Lippay, Port of Portland
Mike Dewey, Oregon Wheat Growers League
Caroline Miller, Portland Federation of Teachers

0020 HB 2479 - Defines "danger or threat to the welfare of the public"

Mr. Larry M. Clark presented written testimony in support of the bill. His testimony is marked "Exhibit A". He stated the intent of the bill is to give public employees in Oregon equality with their counterparts in the private sector in the event it is necessary to withhold their labors.

0328 Rep. Starr suggested an amendment on page 3, line 9, after the second "to" insert "an employer or". He asked if that would further underscore the purpose of the bill. Mr. Clark replied that he felt it would.

0400 The Port of Portland was represented by Larry K. Amburgey, attorney; Donald J. Grigg, manager of marketing planning for the Port of Portland; and Andrew P. Lippay, personnel manager for the Port of Portland.

Mr. Amburgey testified in opposition to the bill and stated he felt it was up to the courts to decide whether or not a strike would endanger the welfare of the public. His testimony is marked "Exhibit B". He thinks the public should have some say when the strike would affect them.

Rep. Rogers stated the judge still makes the determination under the existing law and he has doubts about leaving the decision in the hands of the judge. Mr. Amburgey stated he has a lot of confidence in the courts and feels this is an issue they are well suited to judge.

0755 Mr. Donald J. Grigg, manager of marketing planning for the Port of Portland also testified in opposition to the bill. His testimony is marked "Exhibit C" and expressed the Port's concern regarding the impact that the passage of this bill will have on international trade and on the maritime industry's economic benefits to the community and state.

1015 Mr. Andrew P. Lippay, personnel manager for the Port of Portland, presented written testimony in opposition to the bill. His testimony is marked "Exhibit D". He believes the law as currently written provides protection to all parties concerned: the union, employer and especially the citizens of the community who are greatly affected by the results of the negotiations.

1186 Mr. Mike Dewey, representing the Oregon Wheat Growers League, testified in opposition to the bill. He stated the League does not normally get involved in public employes type legislation but this bill does have an effect on Oregon Wheat Growers because of the wheat exportation. 85% of the wheat grown in Oregon is exported. The League has taken many years to develop foreign markets and strikes have the potential of causing the market to deteriorate. The League feels it is in the best interests to go before a judge for a decision.

1211 Carolyn Miller, representing Portland Federation of Teachers, spoke in support of the bill. Feels the current interpretation of the law by the courts is limiting. Can see as teachers in public education all strikes being determined illegal.

1276 Mr. John Olson, member of the ILWU, spoke in support of the bill. He made a brief rebuttal of the testimony by the Port of Portland.

The meeting adjourned.

Respectfully submitted,

Ellen Scheidel, Clerk

Testimony of Earl Pryor, President of the Oregon Wheat Growers League, is marked "Exhibit E" and made a part of the record. He was unable to remain at the meeting long enough to give his testimony in person.

HB 2318, HB 2479, HB 2246
Work Session

Tape 11 - Side 2

HOUSE COMMITTEE ON LABOR

March 23, 1979 1:30 p.m. Hearing Room E

Members present: Representative Jim Chrest, Chairman
Representative Bill Rogers, Vice Chairman
Representative Eldon Johnson
Representative Gretchen Kafoury

Members detained: Representative Max Rijken (arrived 2:30 p.m.)

Members excused: Representative Al Riebel
Representative George Starr

Staff present: Mike Kopetski, Administrator
Ellen Scheidel, Assistant

0020 Chairman Chrest called the Committee on Labor to order. He announced that because of the lack of a quorum no action would be taken today.

0035 HB 2318 - Relating to the work-day and amount of overtime

Mike Kopetski explained the amendments prepared by Legislative Counsel for Rep. Day and Rep. Chrest. The amendments states if a person has worked in each of the two previous weeks some overtime then the third week they would have the right to refuse to work overtime. They further exempt out agriculture labor and provide a private right of action. They except out those employer employee relationships that have collective bargaining agreements that speak directly to the overtime issue. Mr. Kopetski advised the committee they might want to include a line stating that instead of having any amount of overtime, a specific amount of overtime might be specified.

0111 Chairman Chrest asked Mr. Gribling his opinion on the amendments. Mr. Gribling indicated he was opposed to the amendments. The work session on this bill will be carried over until Wednesday, March 28.

0120 HB 2479 - Statutory definition of "danger or threat to the welfare of the public"

Mr. Kopetski explained amendments which intend that if a strike is a minor threat to the welfare of the public an injunction cannot be made, but if it is major impact the courts can issue an injunction. The decision will be up to the court.

0230 Mr. Joe Barkofsky of Legislative Counsel stated that the bill talks about two different levels of harm. One is the danger or threat to the welfare of the public. For this the court can enjoin a public employes strike. By deleting "a danger or threat to the economic welfare of the public or" the reasons for which the court could enjoin a public employes strike would be narrowed and would be limited to a major economic harm.

0470 Rep. Rogers moved that on line 8, page 3, delete "a danger" at the end of the line and in line 9 delete "or threat to the economic welfare of the public or".

0480 Mr. Larry Amburgey of the Port of Portland and Mr. John Olson both felt the amendment softened the bill considerably and made it more acceptable.

0745 The motion carried with Reps. Johnson, Kafoury, Rogers and Chrest voting "aye" and Rep. Rijken voting "no".

0750 Rep. Rogers moved on page 3, line 8, after the first "the" insert "health, safety or". Motion carried with Reps. Johnson, Kafoury, Rijken, Rogers and Chrest voting "aye". Rep. Riebel and Starr were excused.

0772 Rep. Rogers moved HB 2479, as amended, to the floor of the House with a do pass recommendation. Motion carried with Reps. Kafoury, Rijken, Rogers and Chrest voting "aye" and Rep. Johnson voting "No". Rep. Rogers to carry the bill on the floor.

0779 HB 2246 - Reinstatement of striking employees

Mr. Joe Barkofsky and Kent Hansen from Legislative Counsel advised the committee of the opinion determined by the Counsel as requested in a previous hearing. The opinion concerned the doctrine of preemption as it applies to HB 2246. The opinion, dated 3/22/79 is marked "Exhibit H". In short, the bill, which requires employers to reinstate striking employes after settlement of a labor dispute is subject to preemption by federal law.

0799 Rep. Johnson then suggested that this bill would not be helping any of the people who wanted the bill in the first place. Mr. Barkofsky stated that is right.

0819 Rep. Rijken presented amendments requested by the public employes and prepared by Legislative Counsel. The amendments applied only to public employes and those not covered by the National Labor Relations Act.

Another set of amendments were presented by Mr. Kopetski and prepared by Legislative Counsel which would add another section to the bill and says the act would not apply to those employers subject to the NLRB and thereby would have the effect of having HB 2246 apply to all other employes.

Rep. Kafoury asked that action on the amendments be withheld until she had further time to study them.

0867 Mr. Karl Frederick, Associated Oregon Industries, felt this bill would put a restrictive burden on the small employer with the amendment.

0883 Mr. Steve Telfer, Association of Oregon Counties, League of Oregon Cities and Oregon School Board Association, stated the amendments are duplicate of HB 2718 from last session which passed the House but died in the Senate Labor Committee. He presented the committee with copies of Editorials from Eugene and Corvallis during the debate in the 1977 session. These Editorials are marked "Exhibit I". Feels the bill if passed as proposed by the amendments, would clearly change the present balance between labor and management and destroy the balance. Requested the bill be tabled.

Rep. Chrest advised the committee further action on the bill would be continued at the Wednesday meeting.

The meeting adjourned.

Respectfully submitted,

Ellen Scheidel, Clerk

House Labor Committee
3/21/79 - Exhibit A
HB 2479
Presented by Larry M. Clark

March 21, 1979 6 pages

TESTIMONY OF: Larry M. Clark, Secretary-Treasurer, International Longshoremen's and Warehousemen's Union, Local 40

BEFORE: Oregon State House Labor Committee
In support of House Bill 2479

Chairman Chrest and members of the House Labor Committee, I am Larry Clark, Secretary-Treasurer of Local 40 of the International Longshoremen's and Warehousemen's Union. Our offices are in Portland and our Local represents employees in both the private and public sector. I am speaking in favor of House Bill 2479. The intent of the Bill is to give Public Employees in Oregon equality with their counterparts in the private sector in the event it is necessary to withhold their labors.

The Public Employees that our Local represents are in an autonomous unit.

They are Transportation Office Employees in the job title of "Berth Agents" employed by the Port of Portland.

Until May of 1978, our Union also represented Grain Inspectors, Weighers and Samplers employed by the Department of Agriculture of the State of Oregon. These persons have since become Federal employees represented by the A.F.G.E. (American Federation of Government Employees)

During the year 1976, both of these Units, which our Union then represented, were involved in litigation as a result of what we believe a misinterpretation of O.R.S. 243.726 (3)(c).

In the case of the Berth Agents employed by the Port of Portland, the negotiation, mediation and factfinding requirements of the Public Employees Collective Bargaining Act were exhausted. The Union then served the required notice of its intent to strike after ten (10) days. The employer, the Port of Portland, then sought an injunction in the Multnomah County Circuit Court which would have prohibited the Union from striking. Judge Robert E. Jones heard the case and

ordered an additional bargaining session between the parties, during which an agreement was reached. Therefore, there was no strike and no injunction was issued. He did, however, make some interesting comments, at one point criticizing the language of the law and saying it would have to be cleared up by either a higher court or, better yet, by the legislature itself.

Judge Jones' statements, prior to ordering the additional bargaining, indicated an awareness of the reluctance of courts to intervene in labor disputes. These statements signified an understanding that if, in fact, an employer is allowed to run into court the moment negotiations break down, and expect the courts to intervene, then the right to the employees' ultimate collective bargaining weapon - the right to strike - is, in fact, an illusionary right.

The Grain Inspectors, Weighers and Samplers began negotiating with the State of Oregon in May of 1975, went to mediation in October, went to factfinding in January of 1976, served ten (10) days notice of their intent to strike on or after April 8, 1976, and participated in several more bargaining sessions during April and May of 1976. They also used every method to publicize their plight and gained considerable support from the general public and the news media. The Union, as a last resort, went on strike on July 20, 1976. The Executive Department of the State of Oregon sought an injunction prohibiting the strike. Arguments of both parties were heard by Marion County Circuit Court Judge Val Sloper on July 26, 1976. On July 27, 1976, Judge Sloper enjoined the strike. He did say, in his decision, that he was personally opposed to court intervention in labor disputes and did so reluctantly because of the scheme of the Oregon statutes.

He also said "that all strikes create economic pressures, the more serious the pressure, the more effective the strike," and agreed "that a strike that results in no loss to anyone will not succeed in its objective."

Much has been said about the supposedly "devastating effect" a strike by certain groups of public employees would have on the economy of the entire State.

I ask you to recall the longshore strike of 1971-72, the only one in over thirty (30) years, which closed every West Coast United States port for 143 days. At first glance that might be considered devastating. The fact is, many shippers have told us they actually realized a profit as a result, among these were wheat producers. Furthermore, cargo tonnage on the West Coast has increased over three times since that strike. While longshoremen are not public employees, even a strike of that magnitude was not devastating.

The two aforementioned labor disputes have tested O.R.S. 243.726 (3)(c) and its meaning. Employers in both cases interpreted the word "welfare" to mean economic welfare. They were reluctantly sustained in their argument by two of the State's eminent jurists who expressed great concern in being asked to solve labor disputes in the courts.

We can not possibly believe that the word "welfare" could have been intended to mean "economic welfare" when talking about a strike. A strike by its very nature is economic, both to the employer and the employee. We must remember the economic impact of a strike on the employees and their families. When on strike these employees receive no income and have no fringe benefits; consequently, before authorizing a strike, they consider very seriously all of the alternatives and ramifications of their actions. They certainly must have the courage of their convictions.

The Public Employees Collective Bargaining Act contains many adequate safeguards against hasty or ill-conceived strikes designed to protect the public. In the case of the Berth Agents exhausting all the provisions of the law required eight (8) months. The Grain Inspectors negotiation, mediation and factfinding took fifteen (15) months before the Union took strike action.

Before a strike can be called by our Union, a secret ballot vote is taken by all the members of the bargaining unit. Historically that vote has required a minimum 75% affirmative ballot before a strike can be called. In the cases of the Grain Inspectors and the Berth Agents, the affirmative secret ballot votes authorizing a strike were over 95%.

We know other Unions also have safeguards prohibiting officers or executive committees from acting hastily.

The two cited examples present documented evidence that the 1973 Law does not accomplish what the Legislature intended. The statute has been misused and distorted far out of proportion. The specific provision relative to health and safety must have been intended to protect the public when strikes by policemen, firemen or prison guards were imminent and the health and safety of the entire public could be adversely affected. In those isolated cases the courts might impose "final and binding arbitration." The basic and flagrant flaw in the "final and binding arbitration" requirement and the reason many unions object to it so strenuously is the method of selecting arbitrators. If you will examine the Employment Relations Board's list of arbitrators, you will find nearly every one is either a lawyer or a college professor. There are no Union people at all on the roster. It is made up by the Employment Relations Board, whose director is appointed by the Governor, who is the head of the Executive Department, which conducts the contract negotiations with Public Employees. This surely is a conflict and should be corrected so that in the future, policemen, firemen and prison guards will have at least a 50-50 chance of going before an arbitrator who understands what it is like to raise a family on a low income, to work nights and only get a few cents per hour shift differential, and who understands and bears the brunt

of high prices on family necessities . This is why many unions oppose "final and binding arbitration."

The passage of House Bill 2479 into law would not preclude parties involved in contract bargaining from agreeing to submit the unresolved issues to final and binding arbitration when an impasse has been reached. However, this decision must be left to the parties and not the courts.

The Bill presented here deals with a basic inherent right which employees in the private sector have, but which has been denied Public Employees in the State of Oregon through manipulation and misinterpretation of the language of O.R.S. 243.726 (3)(c).

The time is long overdue for the State of Oregon to give Public Employees the right to withhold their services collectively when they have reached an impasse in contract negotiations for wages, fringe benefits, hours, or working conditions.

They are entitled to no less than any other employee or, for that matter, professional people such as doctors, lawyers, dentists or accountants who withhold their services unless their price is met. We can also recall certain merchants and brokers who stockpiled and withheld their products rather than accept a current market price which they considered too low. Is a producer who shoots his cattle and buries them, or smothers his baby chicks, or dumps his milk on the ground, or burns his potatoes, or plows up his wheat field, not, in effect, striking?

And what about the gasoline and oil producers, are we sure they weren't just holding for higher prices in 1973, and may, in fact, be doing it again this year? The employees' only product is their labor; and their last recourse in an impasse is to collectively withhold that labor. Whether they are private employees or Public Employees should make no difference.

The Law as it now stands gives the Public Employee the right to strike, but through an abuse of semantics, that right has been taken away. Oregon should stop treating Public Employees as second-class citizens.

I ask that this session of the Oregon Legislature make the necessary amendments so that Public Employees in this State may be treated equally with their counterparts in private industry. In that regard, I request the support of this Committee of House Bill 2479.

Thank you.

B

House Labor Committee
3/21/79 - Exhibit B
HB 2479 8 pages
Presented by Larry Amburgey

March 21, 1979

House Labor Committee
Oregon Legislative Assembly
1979 Regular Session
Hearings on House Bill 2479
Salem, Oregon

Mr. Chairman, Members of the Committee:

My name is Larry K. Amburgey, and I am appearing here today as a witness on behalf of the Port of Portland. I am a member of the Portland law firm of Bullard, Korshoj & Smith, P.C., and I am here today to speak against House Bill 2479, which is designed the limit the circumstances under which an Oregon court may prohibit strikes which create "a clear and present danger or threat to the health, safety or welfare of the public." With all respect, Mr. Chairman, I submit that there is simply no reason to tamper with the statute at this time. I also submit that although the Oregon public -- the average man or woman on the street, resident and taxpayer alike -- will end up being the big loser if House Bill 2479 is passed, organized labor also stands to lose.

Background of the Oregon Public Employes Collective Bargaining law.

In order to place House Bill 2479 in the proper perspective, it is helpful to take a minute to go back a few years to the mid-1960's and early 1970's. It was during those years that the movement toward granting public

employees a voice in their own wages, hours and working conditions gained substantial strength -- and more and more states began considering (and enacting) public sector bargaining laws. A majority of the states, something like 35 at last count, have now accorded at least some public employees the right to organize and engage in at least some form of collective bargaining.

Although there are substantial differences in the approaches that the various states have followed -- some have no law at all, some, like Washington, have nine different laws -- strikes and work stoppages are still almost uniformly prohibited, either by statute or court decision. Limited strike rights do exist in Alaska, Hawaii, Minnesota, Montana, Pennsylvania, Vermont and, of course, in Oregon. Those strike rights also vary greatly from state to state. In Minnesota, for example, strikes are actually prohibited -- but "nonessential" public employees are given a limited defense against the penalties associated with unlawful strikes if the public employer involved has refused to arbitrate or has failed to comply with an arbitration award. In Pennsylvania guards and court employees are absolutely prohibited from striking. In Alaska, police and fire prevention employees, jail, prison and other correctional institution employees, and hospital employees are absolutely prohibited from striking.

The Right to Strike Under the Oregon PERA

What it comes down to, in a nutshell, is that the Oregon statute, along with statutes in only a handful of other states, is something of a maverick since most public employees have the right to strike. By way of contrast, the states of Washington and California, by statute and court decision, completely prohibit public employee strikes. In the course of my testimony against an identical bill (House Bill 2010) in 1977, a former member of this Committee requested a summary of the law in those states, and I am providing this Committee with a copy today (Attachment 1). Although there have been some additional court cases and legislative changes over the last two years, public employee strikes are still prohibited in both states.

In enacting the PERA, the Oregon legislature adopted "the principle and procedure of collective negotiation between public employers and public employee organizations" to "alleviate various forms of strife and unrest":

> "Experience in private and public employment has 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 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 employes ***." ORS 243.656(3). (Emphasis added).

Although the legislature concluded that public sector collective bargaining would best serve the public interest, it nonetheless emphasized that the state "*** has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government ***." ORS 243.656(4).

In granting public employees the right to organize and bargain collectively the 1973 Oregon legislature provided all the tools of classic collective bargaining, including negotiations, mediation and factfinding. In addition, the legislature recognized the importance of arbitration as a means of "peacefully" resolving disputes -- "voluntary" arbitration, where the parties could mutually agree to submit outstanding issues to final and binding arbitration, ORS 243.722(4), and "compulsory" arbitration for policemen, firemen, and guards at correctional institutions and mental hospitals. ORS 243.736; ORS 243.742.

In keeping with the philosophy that the PERA was designed to protect "*** the public from injury, impairment and interruptions of necessary services ***," ORS 243.565(3), the Oregon legislature also included a "safety valve" in the PERA's intricate system of checks and balances. That "safety valve" is set forth in ORS 243.726(3), the statute which House Bill 2479 seeks to amend, which provides, in relevant part:

> "(3)(a) Where the strike occurring or is about to occur creates a clear and present danger or threat to the health, safety or welfare of the public, the public employer

concerned may petition the circuit court of the county in which the strike has taken place or is to take place for equitable relief including but not limited to appropriate injunctive relief.

*****

"(c) If, after hearing, the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall include an order that the labor dispute be submitted to final and binding arbitration within 10 days of the court's order. ***" (Emphasis added)

Mr. Chairman, I cannot overemphasize the fact that ORS 243.726(3) was designed to protect the public interest -- not to protect the interests of public employers, or to harm the interests of public employees or public sector labor organizations. The statute simply guarantees the people of Oregon the right to be heard, the right to be considered, when a strike creates a clear and present danger or threat to their health, safety or welfare.

What it comes down to, Mr. Chairman, is that our statute establishes a proper balance between the rights of public employes and the rights of the public. In those unusual cases where a court decides -- after a full, complete and public hearing -- that the public health, safety or welfare would be seriously harmed by a strike, the court must order the parties to submit to final and binding arbitration within ten days. Let me reemphasize that point because in the private sector the courts can really only prohibit or postpone strikes, whereas the

PERA provides a mandatory means of peacefully resolving the underlying dispute. The very fact that the "price" of an injunction is compulsory arbitration has a positive effect on the system. Both sides are forced to sit down to attempt to work out their differences together -- or both face the prospect of losing all control over the ultimate terms of the settlement. This, in turn, also keeps the courts from becoming routinely involved in public sector labor problems.

Arbitrators Can Equitably Resolve Labor Disputes That Would Otherwise Seriously Endanger the Public Health, Safety or Welfare.

Although some have suggested that the arbitration process is stacked against unions because most arbitrators are lawyers or college professors who do not understand what it is like to work for a living, or so the argument goes, the fact is that labor organizations in both the public and private sectors are getting a fair shake from arbitration. Indeed, Mr. Chairman, I submit that the vast majority of employers and unions -- in the private and public sector alike -- would agree that the Pacific Northwest is gifted with a large number of highly qualified, professional arbitrators. Many industries, including the maritime industry (under the Pacific Maritime Association - ILWU master agreement), have had mutually-agreed arbitrators in place for years, individuals who were chosen because they were

acceptable to both management and labor, who are chosen randomly or in rotation as grievances arise, and who often know as much or more about industry practices and customs than do the parties' own representatives.

Some have also suggested that the arbitration process is stacked against unions because the Employment Relations Board "controls" the "list" of arbitrators. In the first place, of course, the Board's distinguished record speaks for itself as far as its impartiality is concerned. In the second place, the Board's list includes a wide spectrum of professional mediators, factfinders and arbitrators -- individuals who come from all walks of life: management, labor, education, and government service. Third, the PERA expressly provides that "the public employer and the exclusive representative may select their own arbitrator," ORS 243.746; see ORS 243.726(3)(c) (adopting those procedures by reference). Finally, and assuming that some problem does exist in selection procedures, that hardly justifies watering down the circumstances in which the public may be protected from harmful strikes. Rather, it might justify restructuring selection procedures -- perhaps giving the parties the option of selecting a permanent arbitrator or panel of arbitrators before disputes arose, or of selecting from lists provided by the Federal Mediation and Conciliation Service, the American Arbitration Association, or the Employment Relations Board.

Arbitration has been around for a long time -- and it works. The theory is that if both sides have the opportunity to present their case to a neutral third party, the merits of each side's position will be recognized in the final settlement. Experience in the private sector under the National Labor Relations Act over the last thirty or so years proves that the theory works -- and it can (and does) work for us in Oregon. Experience in the public sector with policemen, firemen and guards also indicates that the interests of those public employees -- and the interests of the public at large -- have been protected and advanced by our statutory scheme of compulsory arbitration. There is no reason to believe that the process would work any differently in cases arising under ORS 243.726(3).

There is no Evidence that ORS 243.726(3) will be Abused by Public Employers or the Courts.

House Bill 2479 is essentially an outgrowth of two labor disputes involving units of the International Longshoremen and Warehousemens Union. The first dispute arose in early 1976 between the Port of Portland and an ILWU bargaining unit consisting of approximately eight "berth agents." The second dispute arose later that year between the State of Oregon and an ILWU bargaining unit consisting of approximately 62 grain inspectors.

In the berth agents case the parties were able to resolve a number of issues through negotiations, but four

or five issues, including a union demand for a 46.55 percent wage increase over three years (compared to a Port offer of 22.41 percent), were eventually taken to factfinding. The Port offered to make the factfinding process final and binding on both parties, but the union refused. The factfinding hearing was held in early January 1976, and both sides had the opportunity to introduce witnesses and exhibits in support of their arguments. The factfinder issued his report (Attachment 2) on February 20, 1976, holding in the Port's favor on all issues:

> "In conclusion, the Factfinder is aware that on each of the issues presented to him, the Factfinder has found in favor of the Port. Although that is an unusual circumstance, particularly for this Factfinder, the reasons are relatively simple. The Port presented voluminous evidence in each particular and the Factfinder was persuaded by that evidence. The union, on the other hand, presented almost no evidence to substantiate its position except for an attempt to establish a comparability between berth agents and dock supervisors. Unfortunately, for the union, that evidence was not persuasive to the Factfinder."

As Judge Jones later observed when the deadlock reached his court:

> "*** [T]he Port has already submitted this to an independent person, Ron Lowe, who has made findings all in favor of the Port which indicates that the Port's position may well be the reasonable position and not a silly position. The report reflects that the defendants did not put on a good case on their behalf before Mr. Lowe."

The Port offered to accept the factfinder's report in its entirety, but the union refused. The Port offered to resume negotiations (Attachment 3) to break the deadlock. The union again refused. The Port then offered to submit all unresolved issues to final and binding arbitration, even to "assume the total cost of the arbitrator" (Attachment 4). The union responded that it "might be willing to accept" the offer, if the union's attorney "would be the arbitrator" (Attachment 5) -- but on the very same day the union gave notice of its intent to strike (Attachment 6).

Faced with the strike notice, the union's rejection of final and binding arbitration, and the fact that a strike would have shut down the entire waterfront, the dispute ended up in Multnomah County Circuit Court. A hearing was held before Judge Robert E. Jones on the question of whether the threatened strike created "a clear and present danger or threat to the health, safety or welfare of the public." Judge Jones concluded that "*** There is no question that a strike at this time would be devastating to the local economy and the welfare of the people in this State ***," and he granted an injunction and appointed an experienced PMA-ILWU arbitrator to resolve the dispute. Judge Jones' decision was based upon expert testimony and exhibits indicating that approximately 51,000 Port-related jobs would have been directly affected by the strike, and that another 25,000 jobs would have been indirectly affected --

something like one-third of the total 1970 employment in Multnomah County. The evidence also indicated that the 1971 West Coast dock strike, which closed the Port for 100 days, cost Oregon over $185,000,000, including $90,000,000 to agriculture and $20,000,000 to forest products. Direct maritime employment was reduced by 70 percent, representing a loss of approximately $35,000,000 a month to the Oregon economy. Loading and unloading activities, steamship agents, grain and industrial docks and pilots were almost entirely shut down. Ship repair activities, freight forwarders, supplies, insurance, truck and rail, and tug and barge operations were seriously impaired -- about 60 percent idle. The strike also affected approximately 30 percent of those involved in banking and government.

Although the 1971 statistics reflected what a coast-wide dock strike did to the Oregon economy, the threatened berth agent's strike undoubtedly would have had an even more severe impact because it would only have been focused on one West Coast port, thereby encouraging manufacturers and shippers to take their business elsewhere. For example, the Oregon economy lost substantial business after a short waterfront shutdown in 1972 when several large accounts moved to Vancouver and Tacoma during the shutdown -- and never moved back.

In the grain inspectors' case the parties had bargained on the union's 40-odd proposals for over a year, had been to factfinding, and had apparently reached agreement on everything but wages. The state offered a cumulative pay increase of 25.6 percent over two years. The Union demanded 64.3 percent. The factfinder recommended that the state increase its offer by five percent (Attachment 7), and the state agreed to do so (thereby offering a cumulative pay increase of 30.6 percent over two years). The union rejected the factfinder's recommendation, insisting upon the 64.3 percent -- which would not only have given the inspectors the highest pay in the 18 states that did grain inspections, but also would have made their pay 43 percent higher than the 18-state average and 23 percent higher than the second highest state (Attachment 8). The dispute was referred to the Marion County Circuit Court. A hearing was held before Judge Val D. Sloper on July 26, 1976 and, based upon the evidence presented, the Judge concluded that the on-going strike presented "a clear and present danger or threat to the health, safety or welfare of the public and must be enjoined."

Mr. Chairman, what is particularly striking about all of this is not just the fact that the same union was involved in both of the previous cases involving ORS 243.726(3), or that the disputes centered on substantial wage demands, or even that independent, neutral factfinders generally

upheld the public employer's position as reasonable. Rather, what is really significant is that of the dozens of public employee labor unions, of the hundreds of public employee bargaining units, and of the thousands of public employees in this state, there have only been two cases in the six years since the PERA was enacted -- and none in the last three years. Since the same union was involved in both of those cases, it is perhaps understandable that it is now seeking legislative relief. The fact remains, however, that the statute has not been abused by public employers or by the courts. Most importantly, the public has been well served by the entire system of PERA checks and balances. The statutory standards -- and the fact that the "price" of an injunction is compulsory arbitration -- have obviously not tempted public employers to look to the courts for relief. Moreover, the standards have also not resulted in any "rubber stamping" of requests for injunctive relief. Judge Jones indicated as much in the berth agents' case:

> "I have no intention of setting up any precedent that every time that a public employee and the Port cannot get together that they are going to be able to come up here willy-nilly to this court and get intervention, but I do not think there is any question that a strike at this time would be devastating to the local economy and the welfare of the people of this state. ***".

It is particularly ironic that House Bill 2479 ultimately involves an attempt by one union to avoid final and binding arbitration in favor of strikes and picketing.

This is in marked contrast to the on-going struggle now being waged by the vast majority of the other unions which represent employees in the public sector to get (or retain) final and binding arbitration in their contracts.

The "Health, Safety or Welfare" Standard has Been Proposed, Debated and Adopted in Other States.

As I have indicated earlier, there are really only five other states that permit public employee strikes. Of the five, three, like Oregon, have expressly granted their courts the right to enjoin strikes that threaten the public health, safety or welfare. The Alaska Public Employment Relations Act provides simply that strikes by certain public employees "*** may not be enjoined unless it can be shown that it has begun to threaten the health, safety or welfare of the public." Alaska Stat Ann § 23.40.200(c) (1972). Interestingly enough, the statute also provides that the courts "*** shall consider the total equities" in deciding whether to enjoin a strike, which "*** includes not only the impact of the strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations." Alaska Stat Ann § 23.40.200(c) (1972).

The Pennsylvania Public Employe Relations Act also provides that strikes by certain public employees "*** shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or

welfare of the public." 43 Penns Stat § 1101.1003 (1978 Supp). Similarly, the Vermont Municipal Employees Relations Act provides that strikes cannot be prohibited unless it would "*** endanger the health, safety or welfare of the public." 21 Vermont Stat Ann, § 1730(a)(3) (1979 Supp).

Mr. Chairman, I believe that the fact that three of the five other states that permit public employee strikes have used the "health, safety and welfare" standard is something which this Committee should and must consider very carefully. It is not simply that three of the five have chosen the same standard. Rather, it is the fact that after thoroughly examining the alternatives and issues all three elected to give their citizens the right to be considered, as well as the right to be protected against strikes which threaten those basic and fundamental interests. As things now stand, our courts can look to decisions of courts in those states for guidance in interpreting our statute. This does not mean that we will necessarily end up following the paths blazed in other states anymore than it means that their courts will feel bound to follow ours. It does mean, however, that our courts will have the benefit of examining the approaches and reasoning followed by other courts under the same standard. House Bill 2479 would change all that -- and might drastically limit the circumstances under which the public welfare could be protected.

Conclusions.

1. The Oregon Public Employes Relations Act is something of a maverick since we are one of only six states that gives any public employees the right to strike. In giving public employees a voice in their wages, hours and working conditions, the 1973 Oregon legislature emphasized that the ultimate objective was to "safeguard" the public "*** from injury, impairment and interruptions of necessary services" by encouraging the peaceful adjustment of disputes through collective bargaining and by establishing a greater equality of bargaining power between public employers and public employees. In keeping with that philosophy, policemen, firemen and guards at correctional institutions and mental hospitals were absolutely prohibited from striking. In return, those employees were granted the right to compulsory final and binding arbitration. The 1973 legislature also recognized that there might be circumstances under which the public should be protected against strikes by other classes of public employees -- where the strike presented "a clear and present danger or threat to the health, safety or welfare of the public."

2. The "health, safety or welfare" standard set forth in ORS 243.726 was designed to protect the public -- not to protect the interests of public employers or to harm the interests of public employees or public sector unions. The statute simply guarantees the people of Oregon

the right to be heard, the right to be considered, when a strike threatens their health, safety or welfare. This is a fair and equitable test from the standpoint of balancing the rights of public employees against the rights of the public, and it has been adopted by three of the five other states which permit public employee strikes.

3. House Bill 2479 was designed to "cure" a problem that does not even exist. Of the dozens of public employee labor unions, of the hundreds of bargaining units, and of the thousands of public employees in this state, the courts have been asked to prohibit public employee strikes under ORS 243.726 on only two occasions in the last six years. There have been no cases in the last three years. That record speaks for itself. The statute has not encouraged anyone to use the courts to evade their bargaining obligations, nor is there any evidence that the courts have or would "rubber stamp" requests for such relief.

4. What is particularly interesting about the two cases that have arisen under the "health, safety or welfare" standard is that the same union was involved, that the disputes involved substantial wage demands, and that independent factfinders generally upheld the position of the public employer as being reasonable and equitable. Although it is perhaps understandable that the union that was involved is now seeking legislative relief, the record clearly demonstrates that the public has been well served by the entire system of

PERA checks and balances. The very fact that only one union has been involved in the past -- and that there have only been two cases in six years -- indicates that the system must also be serving the interests of public employees.

5. The question that must be asked is, "what is wrong with protecting the Oregon public, the average man or woman in the street, taxpayer and resident alike, from strikes which would seriously injure their health, safety or welfare? Why should any group of public employees be permitted to jeopardize the public "welfare," economic or otherwise, when the interests of everyone can be protected and advanced through compulsory, final and binding arbitration? What is unfair or inequitable about giving both sides the opportunity to present their "case" to an impartial professional for settlement? Our policemen, firemen and guards have been using that system for almost six years and it does not appear that there have been any complaints, let alone demands for legislative relief. Many, if not most, public sector labor organizations would probably prefer compulsory arbitration to the present system.

6. Although it is impossible to predict how the courts might ultimately apply the language in House Bill 2479, it undoubtedly would restrict the circumstances in which a court could protect the public interest. It is almost impossible to provide the courts with fixed and immutable guidelines in any situation, nor is it appropriate

to do so. Every case should be considered on its own facts and merits. The courts must be given the flexibility to protect the interests of everyone involved. ORS 243.726(3) now gives the courts that flexibility and, at least until there is some evidence of abuse, it hardly makes sense to tamper with an intricate system of checks and balances that has functioned very successfully for almost six years. In the event that problems do arise in the future, the "health, safety or welfare" standard is essential. To deprive the courts of the power to at least consider the "economic welfare" or "economic or financial inconvenience" of the public would expose Oregonians to totally unwarranted risks, particularly when (1) strikes can be prohibited only if there is "a clear and present danger or threat" and (2) compulsory final and binding arbitration is available as an effective and equitable means of resolving the underlying dispute. To expose Oregonians and the Oregon economy to even the potential loss of hundreds or thousands of jobs or massive layoffs -- something which might be viewed as simply involving the "economic welfare" or "economic or financial inconvenience" under House Bill 2479 -- is totally unthinkable. With all respect, Mr. Chairman, House Bill 2479 could have that result -- and I, for one, do not believe that it would serve the interests of any group of public employees, let alone the public itself.

March 17, 1977

Representative Glenn Otto
House Committee on Labor
Room 453-E, State Capitol
Salem, Oregon 97310

Dear Representative Otto:

Re: House Bill 2010

As you may recall, I recently testified before your Committee in opposition to House Bill 2010. In the course of my testimony, you requested that I provide the Committee with a brief summary of the current status of Washington and California law with respect to the circumstances, if any, under which public employees may lawfully strike. Assuming that public employees in those states have that right, you also requested a brief summary of the circumstances, if any, under which a public employer may lawfully enjoin such a strike.

The Washington Public Employees' Collective Bargaining Act, Revised Code of Washington Annotated ("RCWA") §41.56.010, et seq., is the basic statute governing the rights of public employees to bargain collectively with their employers in Washington state. The Act applies to counties, municipal corporations and political subdivisions other than ferry systems, toll bridge authorities, public utility districts, school districts and port districts. The Act expressly provides that "[n]othing contained in this act shall permit or grant any public employee the right to strike or refuse to perform his official duties." RCWA §41.56.120.

The Washington statute which governs collective bargaining between port districts and employee organizations also expressly provides that "*** nothing in this act shall be construed to authorize any employee, or employee organization, to cause or engage in a strike or stoppage of work or slowdown or similar activity against any port district."

ATTACHMENT 1

RCWA §53.18.020. Accord: RCWA §49.66.060 (governing collective bargaining between health care facilities and employee organizations).

Although the two Washington statutes which govern collective bargaining involving school districts and community colleges are silent on the right of the affected employees to strike, see RCWA §28A.72.010, et seq., and RCWA §28A.52.010, et seq., the Washington Supreme Court has held that absent an express grant of authority to do so public employees have no right to strike. In Port of Seattle v. International Longshoremen's and Warehousemen's Union, 52 Wash 2d 317, 324 P2d 1099 (1958), for example, the court reaffirmed that principle and also affirmed the trial court's action in issuing an injunction to halt the strike by the ILWU. In reaching this conclusion, the court specifically held that the primary reason for prohibiting strikes by public employees is simply to safeguard and protect the public. 324 P2d at 1102.

The State of California has a very similar statutory scheme. The Meyers-Milias-Brown Act of 1968 is the basic statute which governs the right of public employees to bargain collectively. West's Ann Gov Code §3500, et seq. Although the Act does not expressly prohibit strikes by public employees, Section 3509 does provide that the provisions of Section 923 of the California Labor Code shall not apply to public employees. The latter, in turn, grants employees of private employers substantial collective bargaining rights, including a broad right to engage in "concerted activities" and the section has been construed to permit strikes and picketing.

The implication, of course, is that strikes by public employees are unlawful. The California Supreme Court has also declined to review the two cases in which appellate courts concluded that public employees had no right to strike. See Almond v. County of Sacramento, 276 Cal App 2d 32, 80 Cal Rptr 518 (1969); City of San Diego v. American Federation of State, County and Municipal Employees, 8 Cal App 3d 308, 87 Cal Rptr 258 (1970). See also Trustees of Cal St. College v. Local 1352, San Francisco SCFT, 14 Cal App 3d 866, 92 Cal Rptr 134 (1970) (similar holding); American Federation of State, County and Municipal Employees v. County of Los Angeles, Cal App 3d 356, 122 Cal Rptr 591 (1975) (similar holding).

The Act itself declares a policy of encouraging negotiations and communications between public employers and their employees. West's Ann Gov Code §3500. In the event that good faith negotiations fail to produce an agreement after a reasonable time, however, the Act permits a public employer and a public employees organization to agree to mediation. West's Ann Gov Code §3505.2. The California Supreme Court recently indicated that although the parties may voluntarily agree to mediation, the statute clearly does not permit an agreement to refer a dispute to factfinding or binding arbitration. Bagley v. City of Manhatten Beach, 18 Cal 3d 22, 132 Cal Rptr 668 (1976).

In summary, the Oregon Public Employe Relations Act is something of a maverick on the west coast inasmuch as public employees have generally been given an absolute right to strike. As the Washington Supreme Court indicated in Port of Seattle v. ILWU, supra, a public employer's immunity from strikes is based on what amounts to a conclusive presumption that any interference with its functions is a threat to the public. The Oregon statute reverses that presumption and provides that public employees generally have the right to strike unless the strike "*** creates a clear and present danger or threat to the health, safety or welfare of the public ***." ORS 243.726(3)(c). As I attempted to point out in my testimony, it is the Port of Portland's position that the overall statutory scheme protects both the rights of public employees to strike and the rights of the public to be protected from those strikes which would have a clear and disastrous effect on the public as a whole. In light of the complete prohibition on public employee strikes in Washington and California, the Oregon statute as it currently exists establishes a proper balance between the rights of public employees and the rights of the public.

I hope that this satisfactorily answers the questions which you posed during my testimony. Naturally, if I can be of any further assistance to you or to the Committee in your deliberations on House Bill 2010 I would be pleased to do so.

Very truly yours,

Larry K. Amburgey

LKA:sae

REPORT AND RECOMMENDATIONS OF THE FACTFINDER

PORT OF PORTLAND

and

ILWU LOCAL 40

The Oregon Revised Statutes provide procedures by which contract disagreements between governmental units and its employees may be resolved through factfinding. In the present matter, the below named Factfinder was named by ILWU Local 40 and the Port of Portland on December 5, 1975, and an informal hearing in this matter was held on January 6,1976, in Portland, Oregon. The Port's spokesman was Mr. Andrew P. Lippay and he was accompanied by M.C. Cunningham, Carol A. Smith and Garry Whyte. ILWU Local 40 was represented by Larry M. Park and he was accompanied by Deena Notdurft, Denise Ragland, Kenneth M. Parks and Phillip Lee Davis.

Prior to commencement of the proceedings, the parties waived the making of a recorded record. Each side presented witnesses and introduced exhibits which have been marked and placed in the Factfinder's official record of the proceeding.

The outstanding issues in the matter were reduced to four:

1. Wages.
2. Cost of Living Clause.
3. Successor Clause.
4. Term of Agreement.

ATTACHMENT 2

WAGES

ILWU Local 40 represents eight Berth Agents who are employed by the Port of Portland at the marine terminals and work under a chain of command headed by the Terminal's Operation Manager. The Berth Agent's duties are outlined in the collective bargaining agreement between the Port of Portland and the Transportation Office Employees ILWU Local 40 for 1974-75. (See Union's Exhibit "A"). These are found on page three of the agreement. It is the Union's contention that the duties as outlined in the collective bargaining agreement closely approximate those duties and responsibilities exercised by Dock Supervisors designated as "Clerk Supervisors" by the ILWU. Dock Supervisors are not Port of Portland employees. Evidence presented by the Union indicates that Berth Agents are making approximately $1.98 to $2.50 less per hour than the Dock Supervisors. The Union has based substantially all of its case for an increase in wages on the fact that there is a wide diversity of compensation between the two job categories and the Union's contention that the Port's Berth Agents should have comparability of pay. The Union has presented the following proposal:

> Effective July 1, 1975, 8:00 a.m., the straight time hourly rate for employees covered in this Agreement will be $6.70 per hour and the overtime rate will be $10.05 per hour.
> July 1, 1976, $7.65 straight time, $11.475 overtime per hour.
> July 1, 1977, $8.50 straight time, $12.75 overtime per hour.

> New Berth Agents will be brought up to the maximum hourly pay rates at the end of two years. They will receive increases equally distributed every six (6) months, after date of employment reaching parity at the end of two (2) years. For the first year of this Agreement the starting rate for new Berth Agents will be $4.91 per hour straight time and the overtime rate will be $7.365 per hour.
>
> Second year $5.86 straight time, $8.79 overtime per hour.
>
> Third year $6.71 straight time, $10.065 overtime per hour.

The Port has taken the position that there is no comparability between the responsibilities and employment of Dock Supervisors and the Port's Berth Agents. It is noted in the Union's Exhibit "A" that Berth Agents are provided by the Port with a considerable amount of fringe benefits including vacation credits and sick leave. In addition, life, unemployment and dental insurance are provided by the Port for its employees and the Port pays into the Oregon State Public Employee's Retirement System for the benefit of the employees. There is also sick leave, military leave of absence, educational training and tuition benefits, and other fringe benefits. No evidence was presented by the Union or by the Port as to the fringe benefits which may or may not be obtained by Dock Supervisors.

The Factfinder is not persuaded by the Union's argument that (1) the positions of Berth Agent and Dock Supervisor are comparable and therefore wages should be comparable, and; (2) that public employees with the benefits accruing from such employment,

including job security should be paid at the same rate as employees in private employment unless it can be shown that private employee's fringe benefit packages and security aspects are equal to or the same as the public employees fringe benefits and security aspects.

The Port has presented formidable evidence supporting its wage proposition. The Port's Exhibit "1" clearly places the Berth Agents in an administrative heirarchy in which the Berth Agents perform essentially clerical functions. The last proposal by the Port would provide a basic salary of $12,536 plus ten days of holiday at $464, or a total of $13,000.

When placed on the organization chart of the Port, it is clear that Berth Agents are paid but slightly less than the assistant superintendents and more than secretaries and administrative coordinators.

In addition, the Berth Agents' position is an entry level position in the terminal heirarchy and there is an opportunity for promotion and advancement through the Port's administrative chain.

The Port's Exhibits "3" and "4" demonstrate that the Port is experiencing a period of decreasing revenue and business and is operating under severe budgetary restraints. The Port's Exhibits "5" through "9" provide comparability studies between the wages of Port of Portland's Berth Agents and other West Coast employees with the same or similar responsibilities. These exhibits clearly support the proposal set forth by the Port as to the comparability of the wages paid to other such employees and, in fact, the Port's proposal

appears to be at the top of the range of such salaries.

Based upon the evidence submitted by the parties, the Factfinder finds that the wage proposal made by the Port of Portland is adequate and proper and recommends that the offer made by the Port be accepted by the Union.

COST OF LIVING CLAUSE

The Union has taken the position that if its wage demands are met, the Union is willing to delete the cost of living increase demands. On the other hand, if its wage increase demands are not met, then the Union's position is as follows:

> C.O.L.I. will be based on current U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, on the review dates.
>
> C.O.L.I. including wages, subsistence and transportation allowance will be reviewed and adjusted every six months after July 1, 1975. Increases to be paid as of the first day of each of these review months.
>
> Statistics for the U.S. West Coast - C.P.I. are to be used to calculate the percentage increase.

The Port rejected this demand and indicated that the cost of living increase will be reflected in the wages which it negotiates during this bargaining session and sessions to come. The Port feels that it would be willing to enter into a three year contract with the Union with all terms remaining the same except wages, which it would negotiate on a year-by-year basis. This negotiation would reflect any cost of living increases which the country has experienced during the preceding twelve months.

The Factfinder finds that the Port's willingness to enter into a two or three year contract agreement leaving wages open to yearly negotiation is a reasonable position and recommends to the parties that this position be accepted.

SUCCESSOR CLAUSE

The Union is concerned that the Port, as a means to avoid negotiating with the Berth Agents, will contract the work out to independent contractors. The Union has therefore put forth the following language to be included in the contract:

> This Agreement shall be binding upon the successors and assigns, if any, of the parties hereto. The Port will not contract out Berth Agent's work as a subterfuge to avoid employing Berth Agents.

The Port has taken the position that it is agreeable to including in the language the first sentence quoted above. It rejects the second sentence on the basis that the decision of whether or not to contract out Berth Agent's work must remain a management option.

The Factfinder recommends the deletion of the second sentence of the language proposed by the Union. The reasons are simple. In the first place, the Agreement not to contract Berth Agent's work as a means to avoid employing Berth Agents would be valid and enforceable only so long as the master contract is in force. If the master contract is in force, the Port could not contract Berth Agent's work in any event. Therefore, in the Factfinders opinion, the language has no additional force. It would not, in any event, be a commitment beyond the length of the contract

itself. This is apparently what the Union wishes to accomplish but it will not be done by means of the language proposed by the Union. It is therefore recommended that the Union delete the second sentence of the proposed language.

TERM OF AGREEMENT

The Union is willing to accept either a two or three year Agreement depending upon the wage settlement. The Port has offered as an alternative to the wage proposal, a three year settlement with the last year or two open for wage negotiations.

In view of the recommendations made above, the Factfinder recommends to the parties that the term of the contract be for either two or three years, depending upon the desires of the respective parties, with the wage and benefit sections left open for negotiations on a yearly basis. In view of the fact that the parties have amicably settled all of their differences except for the wage and benefit packages, there would appear to be no advantage in reducing the terms of the contract to a yearly basis except for the wage and benefit packages.

In conclusion, the Factfinder is aware that on each of the issues presented to him, the Factfinder has found in favor of the Port. Although that is an unusual circumstance, particularly for this Factfinder, the reasons are relatively simple. The Port presented voluminous evidence in each particular and the Factfinder was persuaded by that evidence. The Union, on the other hand, presented almost no evidence to substantiate its position except

for an attempt to establish a comparability between Berth Agents and Dock Supervisors. Unfortunately, for the Union, that evidence was not persuasive to the Factfinder.

The Factfinder believes that the offer made by the Port should be accepted by the Union in all particulars.

Respectfully submitted,

Ronald J. Loewi

Dated February 20, 1976

Port of Portla
Box 3529 Portland, Oregon
503/233-8331
TWX: 910-464-5151

March 9, 1976

Larry Clark
I.L.W.U. Local 40
2401 N.W. 23rd Avenue
Portland, Oregon 97210

Dear Larry,

As indicated to you in my letter of March 1, 1976, and in my telephone conversation with Mr. Ken Parks on March 9, 1976, the Port is willing to meet with you at any time to finalize our agreement.

Mr. Parks stated that he didn't feel anything would be accomplished by meeting again. He stated that your Union is going to hold firm on your contract demands and would notify us thirty days from the publication of the factfinder's report of your Union's intent to strike.

Because that action could result in a most unfavorable situation for both parties, the Port is willing to immediately submit the unresolved issues to final and binding arbitration as provided by O.R.S. 243.742 - 243.756. It is hoped that you and your membership will give this proposal serious consideration.

M.C. Cunningham
Labor Relations

ATTACHMENT 3

Port of Portland
Box 3529 Portland, Oregon 97
503/231-5
TWX: 910-464-6151

March 23, 1976

Mr. Larry Clark
I.L.W.U. Local 40
2401 N.W. 23rd Avenue
Portland, Oregon 97210

Dear Mr. Clark:

Two weeks have passed since the Port of Portland offered to submit to final and binding arbitration the unresolved issues remaining to finalize our agreement. To date, we have not heard from your Union and in a further effort to resolve these issues, the Port would be willing to assume the total cost of the arbitrator if your Union would voluntarily join with the Port in submitting these issues to final and binding arbitration.

I hope you and your membership will give this proposal your immediate and serious consideration and notify me of your acceptance by March 29, 1976.

Yours truly,

Lloyd E. Anderson
Executive Director

cc: Ken Parks, President, T.O.E.
G. John Parks, I.L.W.U. Regional Director

bcc: Joseph M. Edgar

ATTACHMENT 4

MGMPTLA PTL
2-026730ED90002 03/30. .6
ICS IPMRNCZ CSP
1 5032338331 MGM TDRN PORTLAND OR 03-30 1140A EST

western union Mailgram®

THE PORT OF PORTLAND MYRNA MESSINGER
PO BOX 3529
PORTLAND OR 97208

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

5032338331 TDRN PORTLAND OR 30 03-30 1140A EST
PMS LARRY CLARK , DLR
2401 NORTHWEST 23
PORTLAND OR 97210

THE PORT OF PORTLAND WOULD LIKE TO REAFFIRM OUR OFFER TO SUBMIT ALL OUTSTANDING ISSUES TO FINAL AND BINDING ARBIRTRATION AS PER OUR LETTERS OF MARCH 9 AND 23 1976.
LLOYD ANDERSON EXECUTIVE DIRECTOR

1142 EST

MGMPTLA PTL

SUPERCARGOES AND CHECKERS UNION LOCAL 40

SECRETARY-TREASURER—BUSINESS AGENT

DISPATCHER

2401 N. W. TWENTY-THIRD AVE.
PORTLAND, OREGON 97210

MARCH 26, 1976

MR. LLOYD ANDERSON
EXECUTIVE DIRECTOR
PORT OF PORTLAND
P. O. BOX 3529
PORTLAND, OREGON 97208

DEAR MR. ANDERSON:

THIS LETTER IS IN RESPONSE TO YOUR CORRESPONDENCE OF MARCH 23, 1976, WHICH I RECEIVED ON MARCH 26, 1976. I.L.W.U. LOCAL 40 TRANSPORTATION OFFICE EMPLOYEES (BERTH AGENTS) MIGHT BE WILLING TO ACCEPT THE PORT'S OFFER OF ASSUMING THE TOTAL COST OF FINAL AND BINDING ARBITRATION ON THE CONDITION THAT MR. FRANK POZZI, ATTORNEY OF THE LAW FIRM POZZI, WILSON AND ATCHISON, WOULD BE THE ARBITRATOR.

IF THIS IS AGREEABLE WITH THE PORT, PLEASE RESPOND AT YOUR EARLIEST CONVENIENCE SO THAT WE MAY BE able TO DISCUSS IT FURTHER PRIOR TO APRIL 8, 1976.

VERY TRULY YOURS,

Larry M. Clark

LARRY M. CLARK,
SECRETARY-TREASURER
I.L.W.U. LOCAL 40

cc: FRANK POZZI, ATTORNEY
cc: G. JOHN PARKS, REGIONAL DIRECTOR I.L.W.U.
cc: KEN PARKS, CHAIRMAN BERTH AGENTS
cc: MIKE CUNNINGHAM, PORT OF PORTLAND

ATTACHMENT 5

SUPERCARGOES AND CLERKS UNION LOCAL 40

SECRETARY-TREASURER—BUSINESS AGENT
221-0342

2401 N.W. TWENTY-THIRD AVE.
PORTLAND. OREGON 97210

DISPATCHER
221-0340

March 26, 1976

Mike Cunningham, Labor Relations
Port of Portland
P.O. Box 3529
Portland, Oregon 97208

Public Employe Relations Board
300 Capitol Tower
Salem, Oregon 97301

Re: Port of Portland - I.L.W.U. Local 40

Gentlemen:

You are hereby given ten (10) days notice, in accordance with Enrolled House Bill 2263, Chapter 536, Section 16, Item 2(d), that I.L.W.U. Local 40 Transportation Office Employes (Berth Agents) are "intending to strike" the Port of Portland on or after April 8, 1976. On that date thirty (30) days will have transpired since the Factfinding Reports were made public on March 8, 1976, which was confirmed by Mr. K. E. Brown, State Conciliator.

In accordance with I.L.W.U. requirements and traditions, a secret ballot vote taken on March 25, 1976, revealed that an overwhelming number of the employes in the bargaining unit authorized a strike.

The reason for striking is that the Union does not feel that the Port of Portland is being realistic or responsive in matters dealing with wages, cost of living allowance, term of agreement (length of contract) or successors clause.

Sincerely yours,

Larry M. Clark

Larry M. Clark
Secretary-Treasurer
I.L.W.U. Local 40

LMC:DP
cc-Frank Pozzi, I.L.W.U. Attorney
cc-G. John Parks, I.L.W.U. Reg. Director
cc-Kenneth Parks, Chairman T.O.E.

CERTIFIED MAIL (634737) - Cunningham
RETURN RECEIPT REQUESTED

CERTIFIED MAIL (634738) - PERB
RETURN RECEIPT REQUESTED

ATTACHMENT 6

In the Matter of the Fact-Finding between)
)
THE EXECUTIVE DEPARTMENT OF THE STATE OF OREGON)
)
and)
)
THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S)
UNION SUPERCARGO AND CLERKS LOCAL 40)

REPORT AND RECOMMENDATIONS OF THE FACTFINDER

February 20, 1976

The present matter came before the Factfinder through a submission agreement signed by both parties. Hearings were held at 1123 SW Yamhill, Portland, Oregon on January 9, 1976. Subsequently post-hearing briefs were submitted by both sides.

The Executive Department was represented by Labor Contract Negotiator John Demusiak, Personnel Division, Executive Department, State of Oregon. Also appearing for the Department were: Ralph Bolt, Dave Jacobsen, Ramney Reiner, Lloyd Griffiths, and Allen G. Plummer. The State was also represented by William F. Hoelscher, Assistant Attorney General and Counsel, Department of Justice.

The International Longshoremen's and Warehousemen's Union, Supercargo and Clerks Local 40, was represented by Frank Pozzi, its attorney. Also appearing for the Union were:

Larry M. Clark,	Secretary-Treasurer, Business Agent;
Carl Sloan,	Local 40 Negotiator
Johnny Parks,	ILWU International
Gerald H. Rieder,	Grain Division
William L. Anderson,	Grain Division
Merle Dement,	Grain Division
Jim DeWilde,	Grain Division
Dan Moszer,	Grain Division
Paul Erlich,	Grain Division

The various issues are discussed in this report in the following order:

PRELIMINARY

(a) GENERAL CONSIDERATIONS.

Our statute sanctions collective bargaining by public employees

ORS 243.650(4) defines the process as:

> "'Collective bargaining' means the performance of the mutual obligation of a public employer and the representative of its employes to meet at reasonable times and confer in good faith with respect to employment relations, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party. However, this obligation does not compel either party to agree to a proposal or require the making of a concession." [1]

Our Supreme Court has said (Stearns v. Commission of Public Docks, 246 Or 36, 423 P.2d 748, 753 [1967]):

> "The right of the public employe which is protected from such actions by the public employer (interference, coercion, discrimination), is 'the right to form, join and participate in the activities of labor organizations of their choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations'. . . The purpose of the statute is to leave public employes unfettered in their union activities so they are free to bargain with their employer."

At the same time there are limits. As explained by the Oregon Public Employe Relations Board (Springfield Education Association v. Springfield School District No. 19, No. C-278 [1974]):

> "3. A public employer may not bargain over items which fall within the scope of prohibited bargaining. A public employer need not bargain with the exclusive representative of his employes over items which fall within the scope of permissive bargaining. A public

---

1. See also following opinions of the Oregon Attorney General:
1964-6, p 185;
1964-6, p 254;
1966-8, p 384;
1966-8, p 521;
(1968) Vol 34, p 329;
(1968) Vol 34, p 675;
(1970) Vol 34, p 935;
(1970) Vol 34, p 1099.

employer must bargain collectively with the exclusive representative of his employes over items which fall within the scope of mandatory bargaining.

"A prohibited item for bargaining is one which would require either party to do an illegal act or perform an act which is contrary to any other statutory or constitutional provision. A prohibited item is one for which an employer may not enter into an agreement.

"A permissive item for bargaining is one which, either because inherently a prerogative of management or within the proprietary function of management, or delegated as an exclusive management prerogative by constitutional or statutory law or state administrative rule, falls within the scope of the managerial or proprietary prerogatives of the school district. A public employer may agree or not agree to talk about a permissive topic, but cannot be required to bargain. A public employer may not be required to take to mediation a permissive topic of bargaining.

"Any bargaining proposal within the definition of employment relations which is neither prohibited nor permissive is within the scope of mandatory bargaining. A public employer must bargain with the exclusive representative, through mediation, fact finding and compulsory arbitration, or to the point of a strike, over any proposal falling within the scope of mandatory bargaining. However, this obligation to bargain does not require that an employer agree to any proposal, but only that he is willing to enter into good faith discussions concerning the proposal."

Factfinding arises, under the Oregon law, when a labor dispute has not been settled after fifteen days of mediation, and can be requested by either party (jointly or individually) or by action of the Public Employe Relations Board on its own initiative.[2] The factfinder is admonished, under the statute, to (ORS 243.722[3]):

"afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute."

Factfinding itself is defined by the legislature as (ORS 243.650[9]):

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2. ORS 243.712 (2) (b).

"identification of the major issues in a particular labor dispute by one or more impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute."

While the specific factors which factfinders should consider are not delineated with specificity, it seems probable that the legislature had in mind the correlative provisions dealing with arbitrators, which appear in ORS 243.746[4]. They are:

"(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

(A) In public employment in comparable communities.
(B) In private employment in comparable communities.

(e) The average consumer prices for goods and services commonly known as the cost of living.

(f) The overall compensation presently received by the employes, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private service."

(b) BARGAINING UNIT.

The bargaining unit in this instance is the Grain Division of the State Department of Agriculture. There are 62 men in the

Division.[3] They are charged with enforcing the United States Grain Standards Act[4] and the applicable state statutes. They are principally concerned with the weighing, inspection and grading of grain at such inspection points as are designated by the State Department of Agriculture.[5] Some of the tasks include:

(a) keeping of suitable books and records of every carload, motor vehicle load or cargo inspected, graded or weighed;[6]

(b) issuance of certificates in inspection;[7]

(c) examination of cars containing grain to ascertain the condition of such cars and to determine if leakage occurred in transit and if the doors were properly secured and sealed at point of shipment;[8]

(d) closing and resealing such cars;[9]

(e) drawing grain for inspection, grading and weighing;[10]

The certificates which are issued are frequently used at banks and other lending institutions as collateral.[11]

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3. 7 USC §71 et seq.
4. E.g., ORS 586.570 et seq.
5. ORS 586.570, 586.600.
6. ORS 586.570.
7. ORS 586.570.
8. ORS 586.630
9. ORS 586.630.
10. ORS 586.660.
11. Tr 64.

Of the sixty two men in this unit:

18 are classified as grain inspectors;
2 are classified as warehouse inspectors;
5 are classified as weigher/sampler foremen; 12
37 are classified as weigher/samplers or samplers.

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12. Tr 136-7 (Assuming I have interpreted Mr. Pozzi's remarks at Tr. 136-7 correctly).
Weigher/Samplers are in a different classification than are samplers. The employer has proposed that a new category of grain sampler be (grain sampler; grain weigher/sampler; grain weigher/sampler foreman; grain inspector; grain warehouse inspector 1; grain warehouse inspector 2), instead of the five categories at present (samplers, weigher/samplers; weigher/sampler foreman; warehouse inspector; grain inspector).

The tasks performed by the various classifications vary, to a degree, depending upon the location of the inspection (rail, ship, barge, truck, warehouse, etc.). However, a brief description of some of the work was given as follows:

(1) weigher/sampler.
Like the other categories, they are licensed by the federal government under the Federal Grain Standards Act (Tr 78). In the case of grain arriving in railroad cars, he would be expected to record the identification of the cars, check the cars for leaks, open the storm doors, and probe the cars in five different locations using a 6' probe on boxcars and a 12' probe in hopper cars (Tr 79-80). He also checks the condition of the grain to determine if it is sour, heating or musty, contain foreign objects or anything which might contaminate the grain (Tr 80). The sampler/weigher observes the unloading of the car to determine if the car is completely unloaded and delivered into the scale at the grain elevator, and that there are no spills (Tr 80). The weigher/sampler also works on the scale floor, where he must be certain the scales are empty and balanced before the weighing takes place. He must also record each draft of grain (Tr 82). The process is much the same when a ship is loaded for export. Much of the work takes place on the scale floor, at the bottom of the shipping bins. Conveyor belts are used to carry the grain to the ship. A mechanical sampler is used. The sampler/weigher must check the grain to be certain it has the proper grade. This requires the taking of a pan sample at intervals (such as every five minutes), and checking for insects and other foreign object and determination that the integrity of the various classes of grain are maintained and do not exceed certain tolerance (Tr 86). He is also expected to check for spills and to ascertain that the spouts are set on the right hatches (Tr 86). He is also expected to record car seals and to mark tariffs and capacities (Tr 91).

The inspection of grain is a sophisticated undertaking. There are seven classes of wheat[13], for example, and each of these (with the exception of Red Durun and Soft Red Winter Wheat) is broken down into 3-5 subclasses.[14] In addition, wheat is assigned a grade from 1-5, or sample grade, which is (simplistically stated) predicated upon certain minimum test weights and certain maximum limits of defects.[15] Somewhat similar classifications, sub-classifications and gradations are established for corn, barley, oats, rye, grain sorghum, flaxseed, soybeans, mixed grain and others.

All of those who work in this bargaining unit are licensed by the federal government as a sampler or as a grain inspector.[16]

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12. cont. (2) weigher/sampler foreman.
The foreman is expected to perform the same tasks as weigher/samplers or samplers, and to supervise their activities as well. (Tr 92-96).

(3) grain warehouse inspector.
He is principally concerned with checking the storag facilities and inventorying grain, maintaining written records, issuance of negotiable receipts, and occasion testing and the removal of samples for testing (Tr 97-

(4) grain inspector.
The grain inspector receives the grain from the weig sampler. He then subjects the grain to a number of tests to determine the amount of dockage, its moistu content, weight, classification and quantun of shrun ken and broken kernels (Tr 49-52).
The inspector is also expected, in the case of a vessel, to make a preliminary ship inspection by checking the holds to ascertain if they are clean, d and ready to receive grain (Tr 51).

13. The seven classes are: Hard Red Spring Wheat, Durum Wheat, Red Durum Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat and Mixed Wheat. (Official Grain Standards of the United States, U.S. Dept. of Agriculture, §26.318).

14. Ibid, §26.319-26.325.
15. Ibid, §26.327.
16. Tr 53.

Separate licenses are needed for each major type of grain.[17] They are issued for a period of three years and require both a written and a picking examination.[18] In the case of wheat, this requires approximately three days to complete.[19] The tests are administered by the federal government and the state inspectors are supervised by federal grain inspectors.[20] There are approximately eleven licenses in all (including peas, beans and lentils) and approximately ten of the 18 inspectors in this unit have them all.[21] The licenses are issued for a period of three years, and must be renewed at that time.[22]

The average number of years for state service as a grain inspector is 11-1/2 years, as compared with the state average of about 5-1/2 years.[23]

Grain inspection is generally self financing, in the sense that the fees which are charged pay for the services of those who work in this unit.[24] In most years it returns a profit.[25]

There was considerable testimony that those who work as inspectors weighers and samplers are subjected to a number of physical hazards, such as fumes, dust, moving belts, and those incidental to inspection of holds, climbing on box cars and ladders, riding man lifts in the grain elevators, and quite generally to many of the hazards faced by longshoremen.

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17. Tr 54; US Grain Standards Act as Amended, August 15, 1968 (7 USC §71 et seq) and Regulations under the US Grain Standards Act (Title 7, Chapter I, Subchapter A, Part 26, Code of Federal Regulations §26.75.).
18. Tr 54-55.
19. Tr 54-55.
20. Tr 55.
21. Tr 54, 56.
22. Tr 62. The renewal examination consists of another written examination (for grain inspectors) where twenty questions are given, with one hour allotted [Tr 61]. Samplers are given 10 questions to answer in the space of one hour [Tr 62].
23. Tr 138.
24. Ex U-13.

There was also much evidence that automation and other machinery has increased the rapidity with which vessels and other conveyances can be loaded and unloaded, and this has necessitated an accelerated inspection process. It is apparently not infrequent that a ship may unload 1400 tons of grain per hour, and that an inspector (during harvest season) may be called upon to grade 150 separate samples during a single day.[26]

JURISDICTION AND ROLE OF THE FACT FINDER.

A threshold question has been presented by the state, which suggests that my role is narrowly circumscribed, and largely that of a amanuensis.

In this hearing the employer has adopted the stance that the subjects of union security (1), insurances (3), sick leave (5), retirement (6), seniority (7), vacation (8), and holidays (9) are "permissive subjects of bargaining, and that their provisions are not a proper subject to be pursued through the dispute resolution process."

The Attorney General, when presented with this question, has conceded "normally" the subject of "insurances, medical leave, sick leave, retirement, vacation, holidays, paid negotiating time, and overtime compensation" are "mandatory bargaining subjects." However, it was the opinion of the Attorney General that since these issues were bargained in the 1975 "central collective bargaining negotiations with a coalition of employe labor organizations consisting of the OSEA AFSCME, ONA, LPN, AEE and Printers" therefore they cannot be bargained with this unit.

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26. Tr 63-64.

I agree that normally all of these subjects are mandatory bargaining subjects. I also feel that the remaining issues--in the main--are within the mandatory umbrella too, though I concede that management must be afforded a hospitable scope for management. But certainly, in the main, virtually every subject at issue here cannot fairly be regarded as "inherently a prerogative of management", and if management chooses to make too many stands on that front, then the laudable objectives ennunciated by our legislature in ORS 243.656(2)[28] may be in jeopardy. Nevertheless, I do not wish to appear overcritical since I am persuaded that both sides are acting with utmost good faith.

I also appreciate that it would be unfair and unjust for any segmented group of state employes to be overpaid--or underpaid--in comparison with other groups who perform similar work. The principle of equal pay for equal work should guide the deliberations here.

There can be little doubt, therefore, that for issues squarely decided in the central unit, the same should be applied here. However, to the extent there are solid differences, it would be fatuous to pretend otherwise.

I also recognize and appreciate that:

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28. ORS 243.656(2): "Recognition by public employers of the right of public employes to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employe 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 employes;. . ."

(a) the statutes cannot be transgressed. If a subject is specifically covered by law--federal, state or whatever, then management cannot carry out an agreement which would not conform to its mandate. Therefore, if a union shop is not permitted under the Oregon law (and more on this subject later) it cannot be done--period.

However, even with respect to statutes, I do not preclude the possibility that some factfinder may someday encounter a problem so critical that he might be remiss if he did not mention the subject and make whatever recommendation would be appropriate.[28a] Such instances will likely be rare. But to some extent a factfinder must be an anableps. For our job, the legislature has told us, is to identify the major issues in the dispute, review the positions of the parties, resolve factual differences and make recommendations for settlement. Hence, if some factfinder may someday feel that the rub between management and labor can only be lubricated by recommendin the legislature change its mind, then so be it.

(b) Legislative prerogatives must be respected.

It is well recognized and appreciated by both union and management that the final denouement of any monetary dispute between the state and its employes may necessarily await legislative endorsement, unless the program is funded in some other way. For if the agreement is not funded, it is not funded.

However, as before, a factfinder cannot shirk his responsibility to call the shots the way he sees them merely because the legislature may not adopt his recommendation.

(c) prerogatives of the Governor.

28a. As Thomas Hobbes put it (Dialogue of The Common Laws, 6 works 5) "It is not wisdom but authority that makes a law."

To the extent that state law commits the final decision to the Governor or any other state officer, then such boundaries must also be respected. But a factfinder can still recommend whatever course seems best suited to resolve factual differences and promote settlement of the dispute. He can do no less.

(d) personnel rules.

This presents a more troublesome point.

The state argues that its personnel rules should be treated with the same dignity and deference as legislative enactments.

I respectfully disagree.

It is true that as applied to a state of facts which has already occurred, they should control. The rules should not be changed after the game has been concluded. However, a different situation arises where one side has proposed that a personnel rule be changed to alleviate a situation which may arise in the future.

The subject of rulemaking is covered in part in ORS 183. Courts are obliged to take judicial notice of them, and to enforce them where not inconsistent with the statutes.[29] Nevertheless, they are not immutable. Indeed, ORS 183.390 specifically provides:

> "An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition."

As a factfinder, I am also interested.

Clearly if a rule is an impediment to the resolution of factual differences between the parties to this controversy, a factfinder is not obliged to remain mute. Besides, as you have already perceived, such is contrary to my nature.

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29. ORS 183.360(5).

(1) Union Security.

Union position:

The union asks that all employees within 30 days join and maintain membership in the union--in other words, what is normally called a union shop.

Management position:

Management is willing to require its employees to maintain membership in the union or to make fair share payments in lieu of dues. Further, if the employee objects to making a fair share payment based on religious tenets or teachings of a church or religious body, the union and employee shall agree on a non-religious charity or other charitable organization to which to make the payment in lieu of dues. Management also asks that the union indemnify it, if sued because of the implementation of such agreement.

Factfinder's Comment:

Clearly a complete closed or union shop would be contrary to the Oregon statute. ORS 243.666(1) provides:

> "any agreements entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employes, based on bona fide religious tenets or teachings of a church or religious body of which such employe is a member. Such employe shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employe affected and the representative of the labor organization to which such employe would otherwise be required to pay dues. The employe shall furnish written proof to his employer that this has been done."

A fair-share agreement is also mentioned in ORS 243.650(10) and (16), with apparent approval.

It is true that ORS 243.666 is ambiguous and appear to be poorly drafted. It could conceivably be interpreted as authorizing

a union shop, with the qualification that those who have religious scruples--and only those--be permitted the alternative of fair share contributions to a nonreligious or other charity.

However, the statute seems to stress a degree of individual self-determination. For example, even a fair share agreement must (ORS 243.650[10]):

> "reflect the opinion of a majority of the employes in the bargaining unit."

Thus it seems implausible that the same legislature which thrice mentioned the "fair-share" arrangement, would also have intended to sanction a closed or union shop, where the freedom of choice would be removed.

I do disagree, however, with the employer's proposal that the union indemnify it "from the negotiation or implementation of the Agreement".

This would be an unwise precedent, and might do much to discourag a union from asserting all the legitimate claims of its members. On its face it has a ring of plausibility; however, legal boundary lines are not always enscribed on tablets of stone. A union should not be required to bargain at its peril. Conversely, if management feels a request is outside a statutory fence, it should say so at the time the request is made.

CONCLUSION:

I recommend the proposal of employer with the exception of the final paragraph.

(2) Duties.

Union position:

Proposes that changes in classification specifications shall be a subject of negotiations between the parties.

Employer position:

Proposes that the employer will merely agree to meet and discuss proposals for changes in classification in an attempt to reach an agreement.

Factfinder's Comment:

Management is understandably concerned that there be no erosion of management's prerogatives. The union is just as concerned that hard fought wage gains not be swept aside under the guise of reclassification.

It is acknowledged that individual employees presently have a right to appeal their classifications.[30]

I appreciate that the difference between the two positions can be more than a semantic one. Nevertheless, I do not feel that, pragmatically speaking, the relative difference is profound either. I doubt seriously that management would decline to discuss a protest from the business agent regarding job classifications in most situations. Moreover, if the protest affected a considerable number of employees, rather than one or two, it seems probable that management would be more amenable to listen, as contrasted with the situation where only one or two were unhappy. True, this might not technically be categorized as 'bargaining'. However, the differences tend to coalesce. Hence, I doubt that management is losing much if the union language is adopted.

CONCLUSION:

I recommend the adoption of the union proposal.

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30 Rule 16-220

(3) Insurances.

Union position:

The union requests that the employer pay full benefits at Blue Cross or Kaiser for hospital and medical benefits for themselves, their spouse and dependents. Also requested is a group life policy in the amount of $15,000, disability insurance, and a comprehensive dental program, all paid for by the state.

Employer position:

Proposes to contribute $30 per month toward a health insurance plan effective June 1, 1975, and $5 towards dental insurance coverage, effective July 1, 1976.

Factfinder's comments:

The proposal of management is that which was adopted with the coalition of unions for the bulk of state employees, following a careful consideration of this problem by a panel of fact finders consisting of Paul Kleinsorge, Carlton Snow and NOrman Stoll, whose opinions I greatly respect.

I am also impressed with the employer's arguments that there are economies of scale when a group of employees obtain a common insurance policy. Further, it would seem far better to establish a flat amount, which can be agreed upon, rather than leaving the final determination of costs within the control of Blue Cross or Kaiser. The alternative would be a veritable nightmare for the legislature to budget. There are also, I suspect, serious constitutional problems when power of this kind is delegated to a private company.

CONCLUSION:

I recommend the adoption of the employer's proposal.

(4) Medical Leave.

Union position:

Proposes that medical leave be granted for extended illness or injury which exceeds Paid-Sick-Leave time. All benefits to continue during Medical Leave for a period of twenty (20) weeks.

Employer position:

Suggests no change in its present policy, which allows the accrual of sick leave with pay credits at the rate of 8 hours per month. It also provides sick leave without pay, after sick leave credits have been exhausted, in two ways: For a job-incurred injury or illness, the appointing authority is required to grant sick leave without pay for a period of time which may be terminated only upon the employe's request. In the case of a non job-incurred injury or illness, the appointing authority may grant leave without pay status for a period not to exceed one year.

Factfinder's Comments:

The plan evolved over several years, which allows the accumulatic of credits for months spent on the job, appeals to one's sense of fairness. Besides, studies have shown it does have a tendency to reduce absenteeism.

There seems to be no strong reason to treat this unit differently from all other units in the state. I am favorably disposed towards the employer's argument that excessive fragmentation might result if an exception were created for this unit.

However, the last portion of the present rule which provides that for a non job-incurred injury or illness the appointing authority may grant a leave without pay status for a period of not to exceed one year could, in my judgment, lend itself to favoritism and nepotism I would much prefer that the specifics be spelled out, so that each employee would know absolutely what his rights might be.

CONCLUSION:

I recommend the employer position, with the exception of that part of Personnel Division Rule 73-300 which applies to cases of non job-incurred injury or illness. As to the latter, I recommend the adoption of a fixed period of leave without pay status, which is not subject to the approval of the administrator, except that the employee shall be required to provide medical evidence that he is, in fact, ill.[31]

(5) Sick Leave.

Union Position:

That employees shall accrue 10 hours of sick leave with pay credits for each full month worked. Employees who work less than a full month, but at least 32 hours, shall accrue sick leave pay on a pro-rata basis. Actual time worked and all leave with pay, except for educational leave, shall be included in determining the pro-rata accrual of sick leave credits each month. Upon termination of employment for any reason, employees will be paid 50% of such accumulated sick leave.

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31. This may have been the intent of the rule anyway, though it is not specifically stated.

Employer position:

See discussion under Medical Leave (4), supra.

Factfinder's comments:

The evidence indicates the state's present schedule is comparable to that offered by other public sector employees. There seems to be no strong reason that this unit of 62 men should be treated differentl than all other state employees.

The pro-rata proposal of the union does, however, seem logical, particularly for those who do not work a full work schedule through no fault of their own, but simply to accommodate the employer.

With respect to the accumulation of credits for actual time work and all leave with pay in determining the pro-rata accrual of sick leave credits, this seems to be covered by the Personnel Rule 73-110, at least in principle. It mentions that "(a)ctual time worked and all leave with pay, except for education leave, shall be included in determining the pro-rata accrual of sick leave credits each month." The same principle should be extended to cover the situation where pro-rata accrual of sick leave credits is calculated.

Finally, with respect to the proposal to pay 50% of accumulated sick leave upon termination of employment, I endorse the following statement made by the panel of three factfinders in connection with the Corrections Coalition on April 18, 1975:

> "D. Cash out upon retirement.
>
> "The Union has asked that upon retirement, the employee may--at his option--elect to have all accumulated unused sick leave time paid to him in cash or have all or any portion thereof credited to his or her retirement account under the prevailing conditions at the time of retirement.

"There is considerable logic in a proposal which would--in effect--reward those employees who have stayed in harness through the years and have accumulated unused sick leave pay. Especially since it would probably encourage them to do so, if they knew they would receive credit by doing so.

"The use of similar spurs seems to be growing, although apparently still in the minority in both private and public sectors.

"On the other hand, this would cost $1.2 million if implemented state-wide, during a year when the state is hard pressed to meet its financial obligations.

"There is also a danger a small minority might be tempted to use a cash lump sum pay-off profligately, leaving only their retirement pay for the leaner years ahead.

"We therefore feel it would be wise to approve the Union request in principle, but to limit its application to provide an additional credit to the retirement account. In other words, it would not be paid to the employee in a lump sum on the date of retirement, but in computing the number of days and years worked for the state, the number of days of unused sick leave would be added."

CONCLUSION:

I recommend the employer's position with respect to the accrual of sick leave with pay credits and sick leave without pay (as appears in Personnel Division Rule 73-110 and 73-300), although I believe that that portion dealing with the approval of the administrator be deleted, as discussed in (4) supra.

At the same time, I recommend that the last three sentences in the union proposal on this issue (5) be adopted, except as modified by the fifth paragraph above.

(6) Retirement.

Union Proposal:

The union has proposed that the state make the total contribution to the Oregon State Public Employes Retirement System, and an additional supplementary insured pension benefit.

Employer Position:

That the present system be continued which requires that the state contribute 6-1/2% of the employe's monthly base salary, while the employe contributes a sliding amount (4-7%) from his or her own salary.

Factfinder's Comments:

No strong reason has been advanced why this unit of 62 men should be treated differently than all other state employees. The state has also presented evidence that in both private and public sectors, the vast majority require the employe to make some contribution to his retirement plan.

CONCLUSION:

I recommend the position of the employer..

(7) Seniority.

Union Proposal:

The union asks that the present seniority system be replaced by one which would place primary emphasis on seniority rather than the present system which considers service credit based on merit and seniority.

Employer position:

That the present system be retained.

Factfinder's Comments:

This issue was discussed by the corrections coalition panel on April 18, 1975 as follows:

> "The Union proposes that seniority be controlling in layoffs. The Employer contends that this would violate the Merit System and ORS 240.525 in that both require that, in addition to length of service, relative efficiency and merit rating must be considered in layoffs.
>
> "The Employer currently uses a point system in layoffs. There are four divisions on merit:
>
> "A - Makes superior contribution in all areas - 15 points
> "B - Meets requirements for all areas - 10 points
> "C - Meets most requirements - 5 points
> "D - Meets few requirements - 0 points
>
> "To these point values is added 1/12 point for each month of service. Employees are then laid off on the basis of total points.
>
> "The Union contends that these ratings have been subjectively used and employees have been unfairly rated. To this contention the Employer responds that such ratings can be appealed through the grievance procedure if the employee contests the rating.
>
> "It is our recommendation that the present system be continued in view of the legal requirement that merit and relative efficiency must be considered. If any employee feels he or she has been rated unfairly an appeal can be made through the grievance procedure so the employee's rights are protected."

CONCLUSION:

I recommend the position of the employer.

(8) Vacations.

Union Position:

The union requests pay for vacation pay on a sliding schedule as follows:

"Vacation pay will be paid at the regular straight time rate as per the following schedule:

"Years of Service	Days Per Year
"After 1st day through 6 months	6 days
"After 6 months through 4th year	15 days
"After 4th year through 9th year	19 days
"After 9th year through 14th year	23 days
"After 14th year through 20th year	27 days
"After 20 years	31 days

Employer Proposal:

The employer suggests the following schedule:

"After having served in the state service for six full calendar months, full-time classified and unclassified employes shall be credited with six days of vacation leave and thereafter vacation leave shall be accumulated as follows:

"After six months through 5th year	12 work days for each 12 full calendar months of service
"After 5th year through 10th year	15 work days for each 12 full calendar months of service
"After 10th year through 15th year	18 work days for wach 12 full calendar months of service"

Factfinder's Comments:

The employer's proposal is the one negotiated with all other labor organizations representing state employes and is applicable to the entire classified and unclassified service. It is also in

conformity with the findings and recommendations of the general coalition factfinders, dated March 22, 1975.

There seems to be no strong reason why this particular unit differs from all other state employees in this regard.

CONCLUSION:

I recommend the position of the employer.

(9) Holidays.

Union Proposal:

The union asks that New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, the Day after Thanksgiving, Christmas Day, and the Employe's Birthday be recognized as paid holidays. Any work performed on these days will be compensated at the regular rate plus double time. Further, on election days the work will be arranged to allow the employes the opportunity to vote. All work on federal and state election days will be paid at the overtime rate.

Employer Position:

The employer proposes that only those days currently listed in the statutes as legal holidays be recognized, plus one additional day. This additional day would be the day before or the day after Christmas, the day before or after Thanksgiving, or any other day of the employe's choice. Further with respect to this day of paid leave, it is to be granted on a basis which will preclude the closing of state offices. All holidays which fall on Saturday are to be observed on the preceding Friday. All employes who are required to work on days recognized as holidays which fall within their regular

work schedule shall be entitled, in addition to their regular monthly salary, to compensatory time off for the time worked, or, at the discretion of the appointing authority, to be paid in cash for such time worked. Compensatory time off or cash paid for all such time worked shall be at the rate of time and one-half. The employer agrees that on recognized election days the work will be arranged so as to insure that no employe will be prevented the opportunity to vote

Factfinder's Comment:

The employer's proposal is in conformity with the holiday schedul of other state employes--both classified and unclassified. There appears to be no solid reason why this unit should be treated differentl than all other state employes. I therefore feel the unit holiday schedule should conform to the schedules of all other state employes. It is better handled, it seems, on a coalition basis.

However, when the coalition bargaining is conducted, it appears that consideration should be given to those holidays which do not conform to the holiday schedules for federal employes. It is confusing to the public when the two observe different holidays. Some governmental units, for example, this year still recognized both Lincoln's and Washington's birthdays. Many switched to the new so-called 'President's Day'. Whatever system is evolved should be relatively uniform. Further it is my feeling that the day before or the day after Christmas should be regarded as a holiday, and also the day after New Year's as well. It is unrealistic to expect that if they are not treated as holidays, they will be days of full performanc However, as mentioned, the subject of holidays, in general, should be considered for all employees together and not merely in terms of a unit of 62 men.

CONCLUSION:

I recommend the position of the employer.

(10) Wages and Hours for the Negotiating Committee.

Union Proposal:

All collective bargaining to be conducted by authorized representatives of the certified collective bargaining unit and the Executive Department. The union representatives shall be reimbursed for wages, travel time, transportation allowance and per diem for attending negotiation sessions. However, the employer to assume no overtime obligation as a result of the employes' attendance at the negotiating sessions and the employe representatives shall be reimbursed up to a maximum of 480 hours exclusive of travel time in the aggregate per round of negotiations. Negotiations shall be conducted during normal working hours, unless mutually agreed otherwise.

Employer Proposal:

Also agrees that bargaining is to be conducted by authorized representatives of the certified collective bargaining representative and the Executive Department. The union representatives to be reimbursed for wages, travel time and per diem for attending negotiation sessions. However, the employer shall assume no overtime obligations as a result of the employe's attendance at negotiating sessions and the employe representatives shall be reimbursed up to a maximum of 200 hours in the aggregate per round of negotiations. Negotiations shall be conducted during normal working hours, unless mutually agreed otherwise.

Factfinder's Comments:

The disagreement seems to relate to the maximum number of negotiating hours for which union representatives will be reimbursed.

Two separate coalition factfinder panels have recently considered this question.

Both panels, agreed that:

(a) such negotiations should be considered as official state business;

(b) there be a limit of two employe members;

(c) they be conducted during their regularly scheduled working hours, and

(d) no overtime obligations be incurred.

Neither panel placed a ceiling on the number of hours which might be spent in such negotiations.

Following such factfinding, agreements were concluded between the Corrections Coalition and the Oregon State Employees ASsociation limiting the number of union negotiators who would be paid for their time to two, and also providing that each employe representative would be reimbursed a maximum of 100 hours per round of negotiations.

Neither the union nor the employer proposals on this occasion has a limit as to the number of union representatives who comprise the bargaining team. Both proposals would view the paid negotiating team in the aggregate.

It was the feeling of both panels of factfinders that bargaining served the interests of all parties, and did not constitute unlawful interference or assistance in the administration of an employe organization. I agree. If there is disagreement, it should be discussed.

Further, I am inclined to accede to the position of both sides and not place an artificial limit as to the size of the bargaining team on either side. However, to place some sort of curb on the hours seems logical, if the numbers of those participating is unlimited. Hence, the hours should be counted in the aggregate, as both sides have agreed in this instance.

With respect to the maximum number of hours, this should conform to the same guidelines which apply to all other state employes, in general, rather than create a special exception for this unit. This situation is somewhat unique in that the proposals of neither side conform completely to the agreements concluded with the coalitions.

With respect to the number of hours, the one which most nearly conforms with the present agreements with the other state employes is that of management. I feel there is no particular reason to treat this unit differently than all other state units. However, as a gratuitous observation, if this unit were the general coalition I would tend to agree with the union position. If the principle is sound (and I believe it is) that bargaining is in the mutual interest of both sides, then there is no particular reason to limit the number of hours to 200, especially since the representatives of management are paid for their time. It strikes me as a bit unfair for only one group of negotiators to be paid--beyond a certain point. Of course, if the process were to be abused, then a ceiling could be imposed. However, such is certainly not the case here.[32]

CONCLUSION:

I recommend the position of the employer for the present.

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32. Cf. Great Lakes Pipeline Co. 36 LA 291 (1960); John H. Davis Painting Co. 44 L.A. 866 (1965); Basic Patterns in Labor Arbitration Agreements, 34 L.A. 391 (1960).

(11) Working Out of Class.

Union Position:

Employees will not be required to perform duties outside their permanently assigned classification specification, except for mutually agreed upon bona-fide training and development opportunities of emergency conditions. When required to perform duties of a higher skill, the employe will be paid at the highest rate for the entire shift.

Employer Position:

Would accept the first sentence of the union proposal, but not the second.

Factfinder's Comments:

This entire subject was thoughtfully considered by the general coalition of factfinders, as follows:

> "The Coalition proposed a 5% pay differential for persons working out of their classification four or more hours per day. The Coalition contended that the proposal was necessary because, unless an employe worked approximately 50% out of classification, it was difficult to obtain a reclassification. The Coalition also argued that the present reclassification system is not altogether precise and requires up to 45 days to reclassify a position.
>
> "The State objected to the Coalition proposal and argued that it could generate intolerable difficulties. The State pointed out that all duties in a job are not of equal significance and that delineations of job classifications often contain overlaps that blur differences. There was an additional problem involving training circumstances.
>
> "The State's point is well taken that it must retain sufficient flexibility to assign occasional tasks outside a classification. Strict observance of jurisdictional lines would not only produce an overload for the arbitration machinery but, more seriously, would jeopardize on-the-job training programs and otherwise hamper an efficient operation of State agencies.
>
> "The Coalition, however, has also raised a legitimate concern. The thrust of their proposal was not toward

temporary assignments outside of classification but toward regular and continual assignments of tasks properly belonging in another classification.

"Therefore, the Panel recommends the following proposal on working out of classification:

"Whenever an employe is assigned for at least one month to work for four (4) or more hours in any work day in a classification above that applicable to the position to which the employe is regularly assigned, the employe shall be paid a 5% pay differential for that period of time worked in the higher classification. The provision shall not apply to time spent in work over classification pursuant to the express provisions of a recognized training program."

I agree.

CONCLUSION:

I recommend the conclusion of the factfinder panel in the general coalition bargaining (quoted above) be applied here. The effective date to be July 1, 1975.

(12) Hours.

Union position (to be effective July 1, 1975):

"Definition of Regular Work Week and Overtime.

"The straight-time rate will be paid for work in the basic, normal or regular work day and work week consisting of (8) hours worked between 8:00 A.M. and 5:00 P.M., Monday through Friday, except contract holidays or after eight (9) hours work.

"All work between 5:00 P.M. and 8:00 A.M. on weekdays and all work on Saturday, Sunday and contract holidays and after eight (8) hours will be paid at time and one-half (1-1/2) of the straight-time rate of pay.

"All regular employes covered by this agreement shall be guaranteed five (5) work days of eight (8) hours in each work week.

"Work through the meal hour shall be paid at 1-1/2 times the prevailing rate.

"All after-hour duties (continuation of the regular shift) will be guaranteed a four (4) hour minimum at the prevailing rate of overtime.

"An employe who is ordered to work an overtime shift will be guaranteed eight (8) hours at the overtime rate.

"Each employe will be entitled to a fifteen (15) minute relief in each four (4) hours of work. The relief break will be as near as possible to the mid-point of the four (4) hour period."

Employer position (to be effective July 1, 1975):

"Daily and Weekly Overtime Provisions

"All work in excess of eight (8) hours per day and/or forty (40) hours per week shall be compensated at the rate of time and one-half (1-1/2) the employe's regular hourly rate and may be cash or compensatory time-off at the discretion of the Appointing Authority. (Ref. Personnel Division Rule 34-200, Overtime for Employes Working a Regular Work Week, Employer Exhibit 12.1 and Personnel Division Rule 34-260, Compensation for Overtime, Employer Exhibit 12.2).

"Shift Differential

"All full-time classified employes who perform work during the hours of 6:00 P.M. to 6:00 A.M. shall receive a shift differential of 18 cents per hour for all work performed between the hours of 6:00 P.M. and 6:00 A.M.

"Holiday Pay

"Employes who are required to work on days recognized as holidays which fall within their regular work schedule shall be entitled, in addition to their regular monthly salary, to compensatory time off for the time worked or, at the discretion of the Appointing Authority, to be paid in cash for such time worked. Compensatory time off or cash paid for all such time worked shall be at the rate of time and one-half. (Ref. Personnel Division Rule 34-120, Employes Required to Work on Holidays, Employer Exhibit 12.3).

"Meal Period Provision.

"All employes shall be guaranteed a meal period of at least thirty (30) minutes within each five and one-half (5-1/2) hours of continuous work.

"Overtime Guarantee-Continuation of Regular Shift

"Employes who continue their regular shift beyond eight (8) hours per day shall be guaranteed overtime in blocks of two (2) hours, at the overtime rate.

"Rest Periods

"Each employe will be entitled to a fifteen (15) minute rest period for each four (4) hours of work performed. Rest periods will be scheduled as near to the middle of the four (4) hour period as possible."

Definition:

The parties apparently agree that within the context of their agreement, the term "overtime" shall mean 1-1/2 times the employee's regular hourly rate of pay. Further that no provision or application of the agreement regarding "overtime" shall be construed or interpreted to effect a pyramiding of overtime, i.e., time and one-half (1-1/2) of time and one half (1-1/2).

Chart:

A chart was offered by the employer showing the practical effect of the various proposals, as follows:

Premium Pay Conditions	Rate of Premium Pay	
	Union Proposal	Employer Proposal
Work over 8 hours per day	time and one-half (overtime)	time and one-half (overtime)
Work over 40 hours per week	time and one-half (overtime)	time and one-half (overtime)
Work on recognized holidays	time and one-half (overtime)	time plus time and one half (base monthly rat plus time and one-half holiday pay
Work on Saturday or Sunday	time and one-half (overtime)	time and one-half if weekend work results i over 40 hours per wee (overtime)

Premium Pay Conditions	Rate of Premium Pay	
	Union Proposal	Employer Proposal
Work on a night shift	time and one-half (overtime)	18 cents per hour differential in additio to base rate (shift differential)
Work through meal hour	time and one-half (overtime)	time and one-half if work through meal hour results in more than 8 hours per day (overti

Factfinder's Comments:

With respect to general pay differential, this seems to be relatively uncommon among state employees. (One exception recently recommended by the general coalition panel was $5 per hour to aquatic biologists for diving time).

Shift differential seems to be more common. The general coalitic panel commented:

> "The present shift differential paid by the State of Oregon to employes in the bargaining unit involved in this proceeding is 15 cents per hour for both the swing shift and the graveyard shift. Apparently there was very little discussion or bargaining by the parties over the Coalition's proposal to raise the differential to 50 cents. The Coalition's main argument is that the State of Oregon nurses are paid a 30 cents per hour differential in Portland, and that various corporations doing business in Portland pay differentials ranging from 12 cents to 35 cents per hour. Shift differentials comprise only .3 of 1% of State payroll, while for the average surveyed, it was .9 of 1%. The Coalition assumes from this that the State's differential is low."

The coalition panel recommended an increase in shift differential from 15 cents to 18 cents.

In this unit the differential was increased by the employer from 15 cents to 18 cents in July, 1975, though not required by contract.

Evidence was presented that overtime is relatively common for employees in this unit. One employee averaged 75 hours a month two years ago, when shipments were heavy.[33] It also happens, when a "fast put-through" is necessary, that the men are required to work in two shifts to bring in the grain within the time allotted.[34]

I assume that part of the explanation for this is the demurrage charges which would otherwise result, and the cost of seamen's wages if the ship were immobilized at the dock for extended periods. At any rate, for whatever reason, the pressures for speedy unloading (and its concomitant inspection) seem to have intensified (particularly now that more automation equipment is available). It is likely that such trends will build in the future, and the demands--both physical and mental--on the inspectors will rise commensurately. Speeds of 1400 tons per hour were mentioned during the hearing.[35]

With respect to the hours when time and a half pay will be calculated, it appears that the union is proposing a strict clock-time premium. The state contends that such contracts are rare outside of longshore or stevedoring contracts. No examples have been cited where such compensation is paid to state employees at present.

I am inclined to feel the present system (which grants an 18 cent shift differential and also provides for time and a half for all hours over eight each day and for all hours over 40 each week) is not unfair. It is more liberal than required under the Federal Fair Labor Standards Act.

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33. Tr 73.
34. Tr 74.
35. Tr 63.

The union proposal that work through the meal hour be compensated at the rate of 1-1/2 times would require considerable bookkeeping. Moreover, it seems unlikely it would increase the rate of compensation materially, since if an employe works an 8 to 5 shift at present, and takes only a half hour lunch break, he would still receive time and a half for one half hour, since he would thus have worked 8-1/2 hours.

With respect to after-hour duties, which represent a continuation of the regular shift, the union has requested a minimum block of four hours, while management has proposed guaranteed overtime in blocks of two hours, at the overtime rate.

It is the feeling of the factfinder that requiring minimum blocks of 4 hours may inhibit unloading of ships even though it could be completed within the space of relatively few minutes. If the ship is obliged to lay over an extra day, it could incur a charge to the Port of Portland, which averages $713 a day for dock space. Moreover, under some circumstances the amount of compensation under a four hour block would be less to the inspectors than would the two-hour block proposed by management,[36] although it is possible the employer may tailor the work schedule so that this would be an unusual event.

Both union and employer agree there should be a fifteen minute rest or relief period during each four-hour segment, which should be scheduled as near as possible to the mid-point of the four-hour period.

The union proposal that all regular unit employes be guaranteed five work days of eight hours in each work week, may someday be adviseable. However, there was little discussion of this at the

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36. If the employe works 5 hours past his regular shift, he would earn a total of 7-1/2 hours credit (5 hours x 1.5) under the union's four hour minimum block proposal. Under management's proposal he would earn 9 hours credit (2 hours plus 2 hours plus 2 hours x 1-1/2).

hearing, and I feel this should be deferred until more evidence is presented to show its practical effect and cost. It deserves a plenary hearing. Inter alia, the precise impact of this plan on all state employes should be considered. If the cost is not major and if it would give the employes the assurance that an established floor has been created which would permit them to meet their living expenses with greater assurance, then it is worthy of every consideration.

CONCLUSION:

I recommend the position of the employer. The effective date to be July 1, 1975.

(13) Salary.

Union proposal:

"The following wage rates will be in effect May 1, 1975.

	First 6 months Monthly	After 6 months Monthly
Grain Inspector	$1,304	$1,438
Warehouse Inspectors	1,304	1,438
Weigher/Sampler Foreman	1,183	1,304
Weigher/Samplers	1,127	1,240
Samplers	973	1,072

"The following wage rates will be in effect July 1, 1976.

	First 6 months Monthly	After 6 months Monthly
Grain Inspector	$1,447	$1,596
Warehouse Inspectors	1,447	1,596
Weigher/Sampler Foreman	1,313	1,447
Weigher/Samplers	1,251	1,376
Samplers	1,080	1,190

Employer Proposal:

"The following rates will be effective May 1, 1975:

Grain Sampler				662	694	727
Grain Weigher/Sampler				762	801	841
Grain Weigher/Sampler Foreman	727	762	801	841	881	926
Grain Inspector	801	841	881	926	963	1021
Grain Warehouse Inspector 1	727	762	801	841	881	926
Grain Warehouse Inspector 2	841	881	936	973	1021	1072

"The following rates will be effective July 1, 1976:

Grain Sampler				746	770	807
Grain Weigher/Sampler				856	889	934
Grain Weigher/Sampler Foreman	807	846	889	945	978	1028
Grain Inspector	889	934	978	1028	1080	1133
Grain Warehouse Inspector 1	807	846	889	934	978	1028
Grain Warehouse Inspector 2	934	978	1028	1080	1133	1190

Factfinder's discussion:

As will be noted, the union proposal would eliminate the present six-step salary plan and replace it with two levels, i.e., first six months and post six months.

The employer has indicated that, at present, the employes in this unit are distributed as follows:

Step in Range	% of Those In Unit at These Steps.[37]
first	0.0%
second	10.5%
third	27.0%
fourth	1.6%
fifth	3.2%
sixth	58.7%

Normally it requires 4-1/2 years to move from the bottom to the top step.[38]

The step program is no step-child. It has been an established part of the state compensation program for many years, and seems to apply to the vast majority of state employes.

If the step procedure is to be abandoned it should be considered in greater depth than that permitted here. It should probably be a legislative decision. It has much to recommend it, and it seems

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37. It was explained that the total above is 101% because the numbers have been rounded.

38. Tr 172.

likely it does promote job stability and cohesiveness. In any event, I do not feel that enough evidence has been presented at this point to justify a recommendation on my part that it be discarded.

With respect to the fundamental issue of salaries, patently it should not be considered in isolation. Fringes must also be considered (Exhibit S-2 contains a history of the salary and benefit compensation paid to grain inspectors. It is attached as Appendix A. A salary history for sampler, foreman and inspector appears as Appendix B.)

Considerable evidence was presented tending to show a relationship and comparability between samplers, weighers and grain inspectors and the longshoremen categories of longshoreman, clerk (sometimes called checker) and supervisor respectively.[39] That there are some similarities is clear, although there are many dissimilarities too. Nevertheless there is a great deal of co-mingling between the two occupations, and they are exposed to many of the same hazards, as earlier discussed.[40] There are slightly less than 800 longshoremen in Portland at present.[41] Approximately 62 of these (roughly the same number as those state employes in this unit) work in grain elevators, more or less on a regular basis.[42] They are called key men.[43] For key men the comparability with weigher/samplers is stronger.

Testimony was offered that the average earnings of longshoremen in Portland in 1975 were $17-19,000, $19,000 for clerk and $20,000 for supervisors.[44] The union has prepared four charts showing a comparison between the wages of longshoremen-clerks-and supervisors and their counterparts, samplers-weighers-and inspectors. They are attached as Appendices C, D, E & F. They show, inter alia, that the

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39. See Tr 34-41.
40. Tr 80, 83, 88, 121, 150, 153.
41. Tr 160
42. Tr 44, 160.
43. Tr 154. The key men also rece an extra 25 cents per hour a 8% (Tr 153)
44. Tr 153.

present monthly wages are $750 (weigher samplers), $827 (weigher sampler foreman), $827 (warehouse inspectors) and $912 (for inspectors) This would be $9,000, $9,924 and $10,944 on an annual basis.[45] Of course, as the state has pointed out, this does not show all the fringe benefits (presumably) but this may also be true of the longshoremen-clerk-supervisor salaries (though this point is not clarified in the record). A better relative comparison appears in Appendices D, E and F, which reflect the hourly rates for the two categories. These show that longshoremen receive 62% more than weigher/samplers, that basic clerks receive 56% more than weigher/samplers and that supervisors receive 61% more than grain inspectors, all on an hourly basis.[46]

Of course, it is true there are some advantages in working for the state, such as job security and fixed pay. However, as mentioned, the testimony has indicated that on an annualized basis the longshoremen are considerably ahead.

ORS 240.235 directs that for those in the classified service,[47] (and these employes are classified) the following factors must be considered in the setting of compensation:

> "the prevailing rates of pay for the services performed and for comparable services in public and private

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45. The average state salary for all jobs on May 1, 1975, was $876 per month (Tr 175).

46. At times the relative difference has been greater. In 1970, for example, longshoremen received 84% more, basic clerks 74% more, and inspectors 83% more than their counterparts (if they are true counterparts) here (See App D).

47. For a definition of classified service, see ORS 240.210. The other two categories--exempt and unclassified--are defined in ORS 240.200 and 240.205 respectively.

employment, living costs, maintenance of other benefits received by employes, and the state's financial condition and policies."

It is conceded that the state does have the financial ability to pay the requested increases for members of this unit, plus, as mentioned, this service (grain inspection) is self-sustaining and normally generates a profit.[48] It has also been indicated that there are no objections from the users of the service provided by members of this unit to any increase in inspection fees (if such should prove necessary) to pay for the increased salaries and related benefits requested.[49]

The factor of increased living costs does not require extensive elaboration on my part. It also appears in one of the employer's exhibits (See Appendix A). The rate of inflation seems to have abated somewhat, though one can be very certain that the dragon is not dead, but only dormant for awhile.[50]

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48. Tr 106, 133. Section 26.70(a) of the Regulations under the United States Grain Standards Act provides:
"(s) Assessment and use of fees.. Fees and charges. . .shall not be used to pay costs of conducting any operation of the inspection agency which is not related to official inspection functions."

49. Although the users of such service were not represented or present during these hearings.

50. Provident National Bank has stated recently (The Stock Market - 1976 Outlook, January 29, 1976):
"(T)he Consumer Price Index dropped from 11.0% in 1974 to 9.2% in 1975, with a further easing to 6.8% projected for 1976. While the rate of increase in the CPI may bottom in mid-1976, increases in the second half are unlikely to be of sufficient magnitude to adversely effect securities prices."

A recent Standard Metropolitan Statistical survey indicated that the annual increase in the CPI on a national basis is 7.3%. In Portland, the annual index increase for the period October 1974 to October 1975 was 7.4% (Tr 164).

Maintenance and other benefits have been discussed earlier (passim), and are reflected, to a degree, in Appendix A.

Another factor, which logically is apropos, is the relative danger of this occupation. While the precise number of accidents was not given, it seems clear the potential is there (see discussion supra p 9). While, perhaps, (and this is admittedly conjectural), not as serious or as frequent as those which befall longshoremen, nevertheles the latent danger from climbing into holds, dust, fumes, riding man lifts, opening hatches, and checking the moving stream in the grain elevators cannot be ignored. Almost all the work is performed in what is generally described as the "hard hat" area.

Yet another factor relates to the skill, knowledge and experience required to perform the work. This has also been discussed earlier (supra p 6-9). This is considerable here. Licenses must be obtained each three years to cover the various types of grain checked by the inspectors. Some indication of the experience of those grain inspectors in this unit is seen in the fact they have remained on the job (on the average) more than twice as long as the average state employe.[51]

Another factor is the ease of recruitment. That would not appear to be a major obstacle here, although little evidence was offered on this precise point. Still, I would feel that these would be desirable jobs, and with unemployment levels still hovering near 8%, there should be no dearth of applicants.

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51. 11-1/2 years as against 5-1/2 years (Tr 138).

For the same reason, it is not entirely accurate to draw precise parallels between the salary levels of longshoremen, etc. and grain inspectors, etc. Since their numbers are kept at a relatively low level, it seems logical that this must contribut to their relatively high income.

Collaterally, one should also consider the salaries for comparable jobs in the private sector. The jobs which most closely approximate these are, as mentioned, as longshoremen-clerks-supervisor However, it can not be gainsaid that there is virtually no cross movement from grain inspectors, etc. to longshoremen, etc, for the reason that both of these unions evidently do not welcome or solicit new recruits. They are, apparently, among the most difficult to join.

Yet another factor which I have carefully considered is, of course, the increases which were granted to all other state employes recently. All other factors being equal, I would try to closely approximate the percentage adjustments which were given to those employes. However, for the reasons previously indicated I do not feel that my hands are forever tied by those percentages if there are factors present in this instance which were not present there. And there are such factors here, as mentioned.

The Employer has offered first year adjustments of 12% (6% plus $40 below $68 a month) retroactive to May 1, 1975. The Employer has also proposed a second year across-the-board adjustment of 11% to be effective July 1, 1976. The overall adjustment would thus be 24.4%, which is the same as that recently granted to the bulk of the state's 40,000 employes.

It has been estimated that the Union's wage demands represent an increase in salary rates of 67-135% over the life of the agreement. In addition, the employer has estimated that if the steps were abolish and replaced by the Union's two-stage formula, this would add another 7-37%. However, I have already concluded the 6-step salary formula should be retained.

The Union has also requested an 11% across-the-board adjustment in salaries effective July 1, 1976, contingent upon a first year salary schedule which it finds acceptable. If not acceptable, then the Union proposes a cost-of-living escalator clause with reviews and adjustments on January 1, and July 1, 1976, and January 1, 1977.

A survey published by the state in October, 1976, of 16 states[52] and 7 unidentified private organizations indicated that Oregon's present rates were 3.4% behind the employers surveyed at the minimum, and 7.6% behind at the maximum.[53] Nine of the states which were used (Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina and Virginia) are normally regarded as souther states, where the salary levels are generally lower than those in the Pacific Northwest. Two others (Kansas and Missouri) are in the midwest

The three jurisdictions which I personally regard as most representative of Oregon are Washington, California and the federal governme And to a lesser extent, Minnesota. A comparison of their salary levels with the one proposed by the employer here, beginning (under the propos on May 1, 1975, is as follows:*

	OREGON new proposal	WASHINGTON	Difference between Oregon and Washington
Sampler	662-726	----------	----------
Weigher/Sampler	762-841	709-905	(53) to 64
Inspector	801-1021	821-1047	20 to 26

	OREGON new proposal	CALIFORNIA	Difference between Oregon and California
Sampler	662-726	619-683	(43) to (44)
Weigher/Sampler	762-841	791-959	29 to 118
Inspector	801-1021	911-1106	110 to 85

* Figures shown in parentheses are minus figures.

	OREGON new proposal	FEDERAL	Difference between Oregon and Federal
Sampler	662-727	592-864	(70) to 137
Weigher/Sampler	762-841	-------	----------
Inspector	801-1021	921-1460	120 to 439

	OREGON new proposal	MINNESOTA	Difference between Oregon and Minnesota
Sampler	662-727	790-980	128 to 253
Weigher/Sampler	762-841	790-908	28 to 139
Inspector	801-1021	850-1050	49 to 29

Of course, direct comparisons are often difficult and enigmatic, particularly when varying tasks are sometimes assigned to different categories of jobs. Also the precise dates when the various answers were given by the various states do not appear--although I appreciate it is not possible to include very iota of data in every chart.

Another factor, which must be considered, is that grain sampler and grain weigher/sampler proposed pay scales start with the fourth step, since there are no entries for the first three. Thus the beginning salaries are somewhat higher than would be the case with the usual six-step arrangement.

However, disregarding these factors, it appears that in Washingtor weigher/samplers start 6.9% lower than the pay scale proposed by the employer here, but ultimately receive 7.6% more, assuming they reached the top step. For inspectors, Washington's pay scale would be 2.5% higher throughout. For California the pay scales are 6.5 to 6.05% lowe

for samplers, but 3.8-14.03% higher for weigher-samplers and 13.7 and 8.3% higher for inspectors. For the federal government a sampler would receive 10.6% less to start but 18.84% more at the top step. Inspectors would receive 15% to 43% more. In Minnesota the pay scales are 19.3% to 34.8% higher for samplers, 3.67-16.53% higher for weigher samplers, and 6.12-2.84% higher for inspectors. The averages are thus 1.425% higher in Washington, 4.546% higher in California, 16.56% highe in the federal service, and 5.76% higher in Minnesota.

It is, of course, unfair and unrealistic to pay less than full measure for honest work. At the same time the state has a correlative obligation to the taxpayers to keep expenditures within reasonable limits. However, I notice that the survey indicates the state with the lowest pay scale is Louisiana, where, as we are all painfully awar a major scandal has developed. Underpaid men do occasionally succumb to temptation. So, too, do well paid ones. Nevertheless, I suggest the hazards may be greater with underpaid ones.

The U.S. Labor Department has recently reported that $14,300 is required to maintain a typical urban American family of four.

The men in this unit are several cuts above the average. They are well equipped to do their jobs, both by training and experience, and from all indications do it well.

I feel their salaries should be adjusted upwards to reflect that fact.

CONCLUSION:

It is the recommendation of the factfinder the salary levels be increased to the following levels effective May 1, 1975 and July 1, 1976 (with appropriate intermediate step adjustments to be computed by the parties, using the same ratios):

	Salary Range May 1, 1975	Salary Range July 1, 1976
Grain sampler	$695 - 763	$772 - 847
Grain weigher/sampler	800 - 883	888 - 980
Grain weigher/sampler foreman	763 - 972	847 - 1079
Grain inspector	841 - 1072/1438	933 - 1190
Grain warehouse inspector 1	763 - 972	847 - 1079
Grain warehouse inspector 2	883 - 1126	980 - 1250

I cannot conclude these remarks without a statement that another factor which I have considered is the importance in the scheme of things of grain inspection to this community, state and nation. Such facts are well known to all of us, but sometimes we need to be reminde

The amount of grain which leaves our ports and harbors is astounding to those not otherwise familiar with the facts. The importar of those whose job it is to make certain the grain we do ship reflects credit on this area cannot be exaggerated.

Also, I appreciate the help received from the State of Oregon's foremost labor negotiator, John Demusiak, and two of Oregon's most illustrious attorneys, Frank Pozzi and William Hoelscher. I do not believe they left a stone unturned.

If I have labored too long in the production of this opinion, it is because it required considerable time to assimilate the material so excellently presented.

DATED: February 20, 1976.

Roger Tilbury - Factfinder

Employer Exhibit 13.6 5-2

APPENDIX A

SALARY AND BENEFIT HISTORY
GRAIN INSPECTOR

Date	C.P.I. Portland S.M.S.A.	Monthly Salary Max. Rate	Index	Paid Leave (Hours Per Month) Holiday	Vacation	Sick Leave	Voluntary Insurances (Employer Monthly Contribution) Health	Dental	Retirement (Employers Mo. % Contr.)	Monthly Salary + Benefits Rate	Index
July 66		$ 575		6 hrs	13.3 hrs	8 hrs			4.6%		
July 67		655		"	"	"			"		
Average 67	100	615	100	6	13.3	8	-0-	-0-	4.6	$740.21	100
August 68	103.6	655	106.5	"	"	"			"	788.44	106.5
April 69	108.2	680	110.6	"	"	"			"	814.41	110.6
July 69	108.6	728	118.4	"	"	"			5.22	880.79	119
July 70	113.5	759	123.4	"	"	"			"	918.33	124.1
July 71	116.2	796	129.4	"	"	"			"	963.00	130.1
July 72	119.6	824	134	"	"	"	$10		"	1006.83	136
January 73	121.8	824	134	"	13.3	"	"		7.5	1031.74	139.4
July 73	127.1	870	141.5	"	14	"	"		"	1085.81	146.7
July 74	143.7	912	148.3	"	"	"	$15		"	1142.68	154.4
Proposed May 75		$ 1021	166	"	"	"	"		"	1277.50	172.6
June 75		1021	166	6.7	16	"	$30		"	1292.50	174.6
July 75	157.1	1021	166	6.7	16	"	"		"	1308.17	176.7
July 76		1133	184.2	6.7	16	"	"	$5	"	1453.50	196.4

Employer Exhibit 13.5

5-3

APPENDIX B

GRAIN UNIT SALARY HISTORY

	GRAIN WEIGHER SAMPLER	GRAIN WEIGHER SAMPLER FOREMAN	GRAIN INSPECTOR	GRAIN WAREHOUSE INSPECTOR 1	GRAIN WAREHOUSE INSPECTOR 2
July 1976	846 - 934	807 - 1028	889 - 1133	807 - 1028	934 - 1190
proposed May 1975	762 - 841	727 - 926	801 - 1021	727 - 926	841 - 1072
proposed July 1974	587 - 751	648 - 827	715 - 912	648 - 827	751 - 957
July [illegible]73	560 - 716	618 - 789	682 - 870	618 - 789	716 - 913
July 1972	531 - 679	586 - 748	646 - 824	586 - 748	679 - 866
July 1971	513 - 656	566 - 722	624 - 796	566 - 722	656 - 836
July 1970	489 - 624	539 - 688	594 - 759	539 - 688	624 - 796
July 1969	469 - 599	517 - 660	570 - 728	517 - 660	599 - 764
April 1969	457 - 571	498 - 623	545 - 680	498 - 623	571 - 711
Aug 1968	440 - 550	480 - 600	525 - 655	480 - 600	550 - 685
July 1967	440 - 550	480 - 600	525 - 655	480 - 600	550 - 685
July 1966	400 - 480	420 - 525	460 - 575	420 - 525	480 - 600
July 1965	360 - 460	400 - 500	420 - 525	400 - 500	460 - 575
July 1964	342 - 440	360 - 460	380 - 480	360 - 460	420 - 525
July 1963	342 - 440	360 - 460	380 - 480	360 - 460	420 - 525

(7)

Black = Monthly Wage
Blue = Hourly Wage

"State Grain Wage Schedule"

	Present Grade	Present Wages	Union Proposal 5-1-75	Union Proposal 7-1-76	State Proposal 5-1-75	State Proposal 7-1-76
Inspectors	#16	$912 5.26	$1438 8.30	$1596 9.21	$1021 5.89	$[illegible] 6.[illegible]
Warehouse Inspectors	#14	$827 4.77	$1438 8.30	$1596 9.21	$926 5.34	$[illegible] 5.[illegible]
Weigher Sampler Foreman	#14	$827 4.77	$1303 7.52	$1447 8.35	$926 5.34	$[illegible] 5.[illegible]
Weigher Samplers	#12	$750 4.33	$1240 7.16	$1376 7.94	$844 4.85	$[illegible] 5.[illegible]
[illegible]mplers (None Now)		$750 4.33	$1073 6.19	$1191 6.87	$721 4.20	$[illegible] 4.[illegible]

APPENDIX C

Comparison Weigher/Sampler to Longshoreman

Year	Longshore	Weigher Sampler	Difference	% Diff. L.S. Ahead
1965	3.38	2.65	.13	78%
1966	3.88	2.65	1.23	
1967	3.88	3.17	.71	
1968	3.88	3.17	.11	
1969	4.08	3.46	.62	
1970	4.28	3.60	.68	84%
1971	4.10	3.19	.91	
1972	5.10	3.92	1.18	
1973	5.50	4.13	1.37	
1974	6.10	4.33	1.77	
1975	6.92	4.33	2.59	62%

Comparison Weigher/Sampler To Basic Clerk

Year	Basic Clerk	Weigher Sampler	Difference	% Diff. Clerk Head
1965	3.68	2.65	1.03	72%
1966	4.365	2.65	1.715	
1967	4.365	3.17	1.195	
1968	4.365	3.17	1.195	
1969	4.59	3.46	1.13	
1970	4.815	3.60	1.215	74%
1971	5.29	3.79	1.50	
1972	5.19	3.92	1.27	
1973	6.19	4.13	2.06	
1974	6.86	4.33	2.53	
1975	7.785	4.33	3.455	56%

Comparison Supervisor / Grain Inspector

Year	Supervisor Rate	Grain Insp. Rate	Difference	% Diff. (Slv Ahead)
1965	4.05	3.03	1.02	14%
1966	4.80	3.03	1.11	
1967	4.80	3.18	1.02	
1968	4.80	3.18	1.02	
1969	5.05	4.20	.85	
1970	5.295	4.38	.92	83%
1971	5.815	4.59	1.23	
1972	6.31	4.75	1.56	
1973	6.805	5.02	1.79	
1974	7.55	5.26	2.29	
1975	8.565	5.26	3.31	61%

Official defends state's position on grain inspectors' pay

To the Editor: Your "Grain deadlocked" editorial was poorly researched and replete with errors and half-truths.

1. You say the grain inspectors are "grossly underpaid." A survey finished July 15 shows that our offer to the grain inspectors would give them the highest pay in the 18 states that do grain inspections. The union demand would make their pay 43 per cent higher than the average of other states' grain inspectors and 23 per cent higher than salaries paid by the second-highest state.

2. You say the state has not denied that the fees are adequate to meet the union demands. The fact is that changing federal regulations have increased costs. It is questionable that the July 1, 67 per cent increase on grain inspection charges would cover the pay increase offered by the state. These fees are passed on to the farmers.

3. You imply that the grain inspection fees' "surplus" is "laundered" into the general fund. That is a serious charge and a false one. Every dollar of grain inspection fees has been used to support the grain inspection program.

4. You imply, that arbitration is no solution since "college professors and lawyers. . .have no understanding of what it is like to try to feed a family on $500 a month." First, under the salary proposal we have made, no grain inspection employe working a normal shift would receive less than $770 per month. Second, arbitrators must be mutually acceptable to both management and union. Third, arbitration is a recognized tool used by management and union alike and is recognized as such by the Oregon Legislature.

5. You state that "federal inspectors, who do similar work, are being paid $17,523, while the top pay for state inspectors is $11,484 and ranges down to $7,044." Federal inspectors' pay ranges from $7,102 to $17,523. Under our offer, state inspectors' pay would range from $9,240 to $15,012. The union is demanding a range from 12,684 to $17,364. The federal jobs are supervisory in nature. The state jobs are not.

6. You say the state hopes to win in the courts what it could not achieve at the bargaining table. Nothing could be further from the truth. We have successfully negotiated wage agreements with more than 36,000 state employes. Only 68 grain inspectors have not settled. For more than a year the state has bargained in good faith each of the union's 43 proposals. Only the pay issue remains unresolved. As required by the state's collective bargaining act, we submitted to mediation and fact-finding. When the fact finder, a mutually agreed upon referee, recommended the state increase its pay proposal by 5 per cent, the state complied. In an attempt to avert a strike which could have long-term damaging effects on Oregon's economy, we have taken the next legal step. The state sought an injunction.

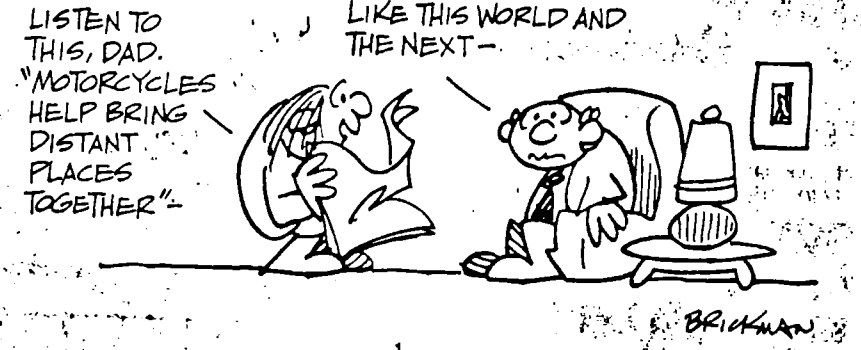
7. You say the state has declassified state employes engaged in either hazardous or special occupations. This is not true. The concept of "declassification" is a concept introduced by the union out of sheer ignorance of the laws which regulate state employment.

You failed to note the inflationary impact of such large settlements on taxpayers. The state is looked to as the leader in sound fiscal management. What we do strongly influences school districts, cities and counties which are engaged in public collective bargaining. We have offered a cumulative pay increase of 30.6 per cent over two years. The union is asking for a cumulative increase of 64.3 per cent. State salaries were below the private sector at the start of the biennium, July 1, 1975, and the 30.6 per cent includes a reclassification due to the working conditions.

What you apparently support is an inflationary solution that would have serious, unjustified and long-range effects on the taxpayers of Oregon.

STAFFORD HANSELL,
Director,
Executive Department,
240 Cottage St., SE,
Salem.

The small society



House Labor Committee
3/21/79 - Exhibit C
HB 2479 (Attachment)
Presented by Donald Grigg
11 pages

March 21, 1979

House Labor Committee
Oregon Legislative Assembly
1979 Regular Session
Salem, OR

Mr. Chairman and Members of the Committee:

My name is Donald J. Grigg, manager of marketing planning for the Port of Portland. One of my major responsibilities at the Port has been marine economic research and marine market research. I was project manager for the Port's 1975 marine economic impact analysis performed by an independent consultant and have been involved in working with importers, exporters and steamship lines to develop new business for Portland's maritime industry.

My testimony today is to express the Port's concern regarding the impact that passage of House Bill 2479 will have on international trade and on the maritime industry's economic benefits to the communty and state.

Portland is a major Port. We are the third largest port on the West Coast and the largest export port. Three ships per day call at Portland to serve the needs of the shipping public. The real impact of a shutdown of Portland harbor does not fall on the Port itself but on Oregon's international trade community and its workers.

In essence, the Port is like the neck of an import/export funnel. Although we are only one organization among many in the import/export chain, the goods supplied, received, transported, financed, insured or otherwise serviced by all such firms must at sometime move through the Port. For example, in the case of automobile imports, as many as 20

organizations other than the Port and the ILWU are involved in just the physical movement of a typical shipment. This does not count insurance, banking, fuel, supplies and a number of other goods and services. The attached exhibit, Auto Imports Impact, illustrates this process (Exhibit 1).

Each import/export commodity moving through the Port involves a similar chain of activities which collectively include literally hundreds of companies in Oregon and thousands of jobs.

The impact of a strike at the Port is like pinching the neck of the funnel, shutting off its flow. The Port's operating statistics illustrate that strike activity has had a substantial impact on the flow of commerce in the past, bringing ship and cargo movement to a standstill (Exhibit 2). The ripple effect of this is far-reaching, involving a substantial loss of income to Oregon businesses and a loss of jobs to Oregonians.

Based on the Port's 1975 economic impact study by Economics Research Associates, which I supervised, the current (1978) impact of the Port's marine cargo activites is estimated to be (Exhibit 3):

- $720 million in income to Oregon businesses
- $380 million in payrolls to Oregon workers
- 28,700 full-time jobs for Oregonians

This boils down to almost $2 million in income and over $1 million in payrolls each day. Bear in mind that while these income and payroll estimates reflect the current level of cargo, they are expressed in 1975 dollars. Correcting for inflation, these impacts are actually at least one-third higher.

The point is, a strike at the Port potentially involves not just the Port and the ILWU but hundreds of other organizations and thousands of other workers. In fact, the 1975 economic impact study indicates that over 90 percent of the payroll endangered by a strike is for workers not involved in the issue at all. We believe that the 90 percent should have a chance to be heard through the injunctive process that current law allows and that eliminating the "economic" interpretation of "welfare" is inappropriate.

It is often argued that should the Port of Portland be shut down, cargo could be easily diverted to other ports, and the public would not be harmed. This is a gross simplification and is just not true in most cases. Portland is, as I said, the third largest port on the entire West Coast. Next to Los Angeles and Long Beach, we handle more cargo--and have the facilities to handle more cargo--than any other West Coast port. The physical capacity to absorb Portland's volume of marine cargo does not just lie idle at other Northwest ports, especially other Oregon ports. While Coos Bay is a highly ranked West Coast port, 70 percent of its cargo and, presumably, its facility capacity is in woodchips, a product not even handled by the Port's public terminals. Astoria handled only 1.2 million tons of cargo in 1977, mostly logs and grain, and Newport handled less than 200,000 tons. Where is the capacity to handle Portland's 12.6 million tons of diversified cargoes? It doesn't exist.

The fact is that the Port of Portland has over 580 acres of the most diverse marine cargo facilities on the West Coast. The ports of Astoria, Newport and Coos Bay, on the other hand, do not have the facilities to handle container cargo, refrigerated cargo, automobiles, heavy machinery lifts, liquid bulks, bulk minerals or a variety of other Portland cargoes.

It is unreasonable to expect that millions of bushels of grain handled at the Port's Cargill and Columbia elevators can be simply diverted when grain elevators are leased and operated by competing firms. Most likely, these other ports could only handle a small portion of Portland's break-bulk general cargo, which in total accounts for less than 10 percent of Portland's tonnage. This component of the Port's total trade, incidentally, is projected to decline in the years ahead.

A labor dispute focused on only one West Coast port, as opposed to all West Coast ports, has disastrous consequences for that port and its community. Local shippers, such as Willamette Valley seed and onion growers, would have to pay about $300 per container more to get their cargo to Seattle. Because of the brokered nature of agricultural products, this 10 or 15 cents per hundred weight would not just make them more expensive, it could put them out of the the competitive world market entirely. And, because of the delicate competitive balance that exists between ports, it is inevitable that those customers who could divert their cargo to other ports may not return, resulting in a permanent loss of business and jobs.

In 1970, we had an unfortunate jurisdictional dispute centering around the servicing of imported automobiles. Without belaboring the point, a 19-day strike evolved. This strike not only closed down the auto facility, but all facilities. This tarnished our reputation with foreign auto manufacturers. Subsequently, Datsun moved to Seattle and Volkswagen to Vancouver. This diversion was not recovered, and our ability to attract other automobile accounts was stifled for several years.

We have been working to increase the import container business through Portland with considerable success in order to make this port economically attractive for steamship lines and shippers, financially self-sufficient for the taxpayers and to develop Portland's maritime commerce--commerce

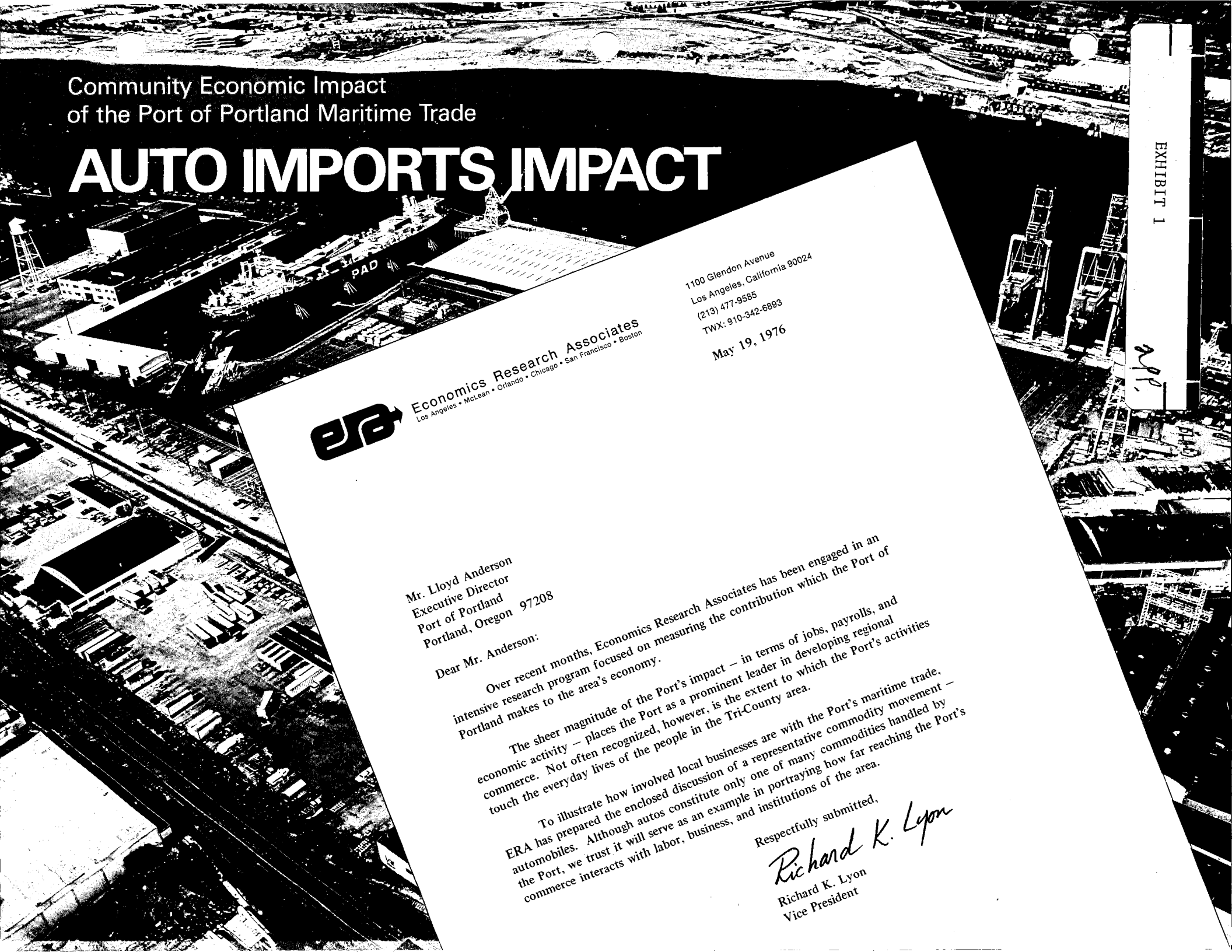
which means jobs. Without going into detail, this is a pivotal market for Portland's ultimate success or failure as a container port. We are still in a fairly tenuous position because we have not yet built the high revenue cargo base needed to make these expensive containerships profitable in Portland.

Import containers, then, is an extremely important market. And it is extremely competitive, also. A localized strike would have a devastating impact on this trade, from which we may never recover. These container importers are footloose customers who would switch ports and may never return. And while we would be working to recover this lost business, the containerized steamship lines would become even more entrenched in other "load center" ports such as Seattle and Oakland. A local disruption such as a strike in Portland, therefore, could well be a permanent setback in our efforts to develop Portland's container commerce and to make the Port financially self-sufficient. Furthermore, it could very likely result in a permanent loss of steamship service for Oregon exporters and importers and jobs for Oregonians.

To summarize, then, Port activities have a tremendous impact on the economy of the community and state. They encompass hundreds of companies and thousands of workers in the international trade/maritime community who would be the injured bystanders in a longshore strike. Generally speaking, cargo could not be easily diverted to other ports because the capacity and specialized facilities simply do not exist. Shippers who could divert their cargo would do so at a great expense and may never return, resulting in a permanent loss of business and jobs to Portland's maritime community.

I would, therefore, urge you to not pass House Bill 2479.

MD79C



Community Economic Impact
of the Port of Portland Maritime Trade

AUTO IMPORTS IMPACT

EXHIBIT 1

app.

Economics Research Associates
Los Angeles • McLean • Orlando • Chicago • San Francisco • Boston

1100 Glendon Avenue
Los Angeles, California 90024
(213) 477-9585
TWX: 910-342-6893

May 19, 1976

Mr. Lloyd Anderson
Executive Director
Port of Portland
Portland, Oregon 97208

Dear Mr. Anderson:

Over recent months, Economics Research Associates has been engaged in an intensive research program focused on measuring the contribution which the Port of Portland makes to the area's economy.

The sheer magnitude of the Port's impact — in terms of jobs, payrolls, and economic activity — places the Port as a prominent leader in developing regional commerce. Not often recognized, however, is the extent to which the Port's activities touch the everyday lives of the people in the Tri-County area.

To illustrate how involved local businesses are with the Port's maritime trade, ERA has prepared the enclosed discussion of a representative commodity movement — automobiles. Although autos constitute only one of many commodities handled by the Port, we trust it will serve as an example in portraying how far reaching the Port's commerce interacts with labor, business, and institutions of the area.

Respectfully submitted,

Richard K. Lyon

Richard K. Lyon
Vice President

With clearance procedures accomplished the marine surveyor would board the vessel for automobile damage inspection. The condition of each vehicle is documented prior to discharge. The active marine survey firms are General Adjustment Bureau (Intermodal Transportation Services), Petrucela & Co. (for Opels), Volvo and Port Services (BMW's).

The vehicles are then discharged by a stevedoring company, either Jones Oregon Stevedoring Co. or Brady-Hamilton Stevedore Co. (the longshoremen engaged in this activity are retained by the stevedoring company through the Pacific Maritime Association).

Meanwhile the agent services the vessel and crew for their needs—water, fuel, laundry services, repairs, ship stores, shopping, etc. —which may include a ship chandler such as American Pacific or electronics repair services by a firm such as Progress Electronics.

As the vehicles are discharged from the vessel they are positioned at the Auto Facility by spot checkers, a service provided by the Port of Portland or Pacific Northwest Auto Terminals.

When the ship is fully discharged, the vessel is undocked and tug-escorted and pilot-assisted for its departure to the ocean.

The vehicles at the Auto Facility are then resurveyed for damage; the survey at pre-, during and post-discharge allows for liability of any damage to be determined.

The vehicles are then transported to one of three auto processing firms for cleaning, customizing and preparation. These firms are Port Services, Columbia Warehouse and Predelivery Services Company. The first two are located contiguous to the Auto Facility and the PSC (a Ford Motor Co. company for servicing Couriers and Capris) is located at the Tigard area.

After the vehicles have been prepared for delivery to dealers, they are loaded on trucks or rail cars for delivery to local dealers or dealers throughout the Pacific Northwest and some to distant points within the U.S. The active trucking companies are Convoy, Selland and Transport Storage and Delivery. The rail companies are the Milwaukee Road, Union Pacific and Burlington Northern. The dealers perform final preparations and lease or sell their vehicles to the public.

In addition to the above companies, many other companies are engaged in supplying services to the importation process—these include local banking and insurance companies, clothing stores, markets, other retail stores, and many more.

A Typical Shipment

To complete the picture with the specific detail of a given shipment of vehicles, a typical Toyota shipment is presented. The accompanying exhibit (Figure 4) displays who is involved in a typical Toyota shipment.

Port of Portland
700 N.E. Multnomah
Portland, Oregon 97232
503/233-8331
TWX: 910-464-6151

What does this mean to the Portland area?

Well, prior to the Auto Facility, automobile imports through the Port's marine terminals were rather small in number. And when vehicles did arrive they were usually handled by the laborious lift-on/lift-off means of handling general cargoes. Today, the number of vehicles entering the Port of Portland is on the order of 60,000-70,000 units per year. At a direct impact to the Portland area of some $120 per unit, this translates into about $8 million annually to local businesses (without counting the ripple effects of spending that income in the community).

Figure 4

Voyage Arrangements	Pilotage	Dockage	Clearance	Marine Surveying, Discharging, Servicing	Placement	Auto Processing and Undocking	Ground Transportation	Retailing
Matson Agencies	Columbia Bar Pilots	Willamette Western	U.S. Government • Agriculture • Customs • Immigration	General Adjustment Bureau	Pacific Northwest Auto Terminals	Port Services	Convoy	Toyota Dealers
NYK-Line	Columbia River Pilots	Portland Lines Bureau		Jones-Oregon		Willamette Western	Union Pacific Burlington Northern	
U.S. Coast Guard		Port of Portland	Harper-Robinson	American Pacific		Portland Lines Bureau		
Merchants Exchange			Matson Agencies			Port of Portland		
						River Pilots		
						Bar Pilots		

PROGRAM: STEAMSHIP SERVICE
MONTHLY HIGHLIGHT: [redacted]

ACTIVITY: No. of Ship Calls - Port Facilities

EXHIBIT 2
2 pp.

1.2% INCREASE-[redacted] YEAR TO DATE

Avg. Month 1973 [78]

Month	1970	1971	1972	1973	1974
JAN	95	73	29 (Strike)	77	65
FEB	95	79	38 (Strike)	70	69
MAR	87	82	79	81	85
APR	98	88	65	75	88
MAY	49 (Strike)	83	76	80	81
JUN	97	81	71	83	70
JUL	86	Strike	87	77	76
AUG	89	Strike	76	81	87
SEP	81	Strike	79	71	83
OCT	81	50	70	85	82
NOV	69	39	64	82	84
DEC	81	119	80	75	78
Total	1008	694	814	937	948

PROGRAM: MARINE TERMINALS
MONTHLY HIGHLIGHT:

ACTIVITY: Total Tonnage - Excluding Grain

.8% INCREASE-[redacted] YEAR TO DATE

Avg. Month 1973 [176,849]

Month	1970	1971	1972	1973	1974
JAN	162,518	145,980	66,439 (Strike)	184,296	143,199
FEB	204,948	166,548	94,291 (Strike)	151,442	148,193
MAR	125,217	156,642	142,814	167,351	186,704
APR	182,068	164,506	169,563	244,188	206,253
MAY	59,629 (Strike)	165,076	149,816	150,353	237,854
JUN	162,789	149,976	121,050	143,477	198,551
JUL	222,095	Strike	167,997	171,592	150,251
AUG	171,005	Strike	185,232	173,002	197,032
SEP	133,746	Strike	139,495	149,233	146,634
OCT	128,303	126,321	143,422	206,610	206,618
NOV	148,191	197,504	116,148	181,997	161,322
DEC	169,487	184,364	148,365	198,644	156,527
Total	1,869,996	1,456,917	1,641,632	2,122,185	2,139,138

PROGRAM: MARINE TERMINALS
ACTIVITY: Grain Tonnage
MONTHLY HIGHLIGHT:

4.7% [redacted] DECREASE YEAR TO DATE

Avg. Month 1973 143,784

Month	1970	1971	1972	1973	1974
JAN	114,180	120,335	37,296 (Strike)	122,105	167,020
FEB	90,539	91,672	28,343 (Strike)	143,318	123,638
MAR	103,568	105,117	148,999	168,960	156,889
APR	105,084	103,134	121,947	125,194	140,380
MAY	Strike	101,462	91,397	152,626	108,830
JUN	85,576	84,806	122,114	138,450	70,294
JUL	101,616	Strike	66,121	154,215	114,874
AUG	112,395	Strike	130,506	125,150	156,764
SEP	90,257	Strike	113,644	130,512	161,976
OCT	114,301	92,215	82,535	159,871	135,503
NOV	95,307	129,213	137,173	149,240	179,061
DEC	79,302	137,985	143,185	155,763	129,053
Total	1,092,125	965,939	1,223,269	1,725,404	1,644,282

PROGRAM: MARINE TERMINALS
ACTIVITY: Loaded Containers Handled
MONTHLY HIGHLIGHT:

20 & 40-foot containers mixed.

9.9% INCREASE-[redacted] YEAR TO DATE

Avg. Month 1973 3,575

Month	1970	1971	1972	1973	1974
JAN			Strike	2,928	3,847
FEB			20 (Strike)	2,291	3,464
MAR			1,460	3,604	4,092
APR		Records	1,507	3,511	4,472
MAY		Not	1,210	3,780	3,851
JUN		Available	1,286	2,997	3,727
JUL		Prior	1,467	3,487	3,713
AUG		To	2,015	3,373	4,525
SEP		1972	1,641	3,354	3,567
OCT			1,969	5,157	4,020
NOV			1,962	4,419	4,192
DEC			2,827	3,994	3,668
Total			17,364	42,895	47,138

Economics Research Associates

Los Angeles, California
McLean, Virginia
Orlando, Florida
Oak Brook, Illinois
San Francisco, California
Boston, Massachusetts

EXHIBIT 3 2pp.

COMMUNITY ECONOMIC IMPACT OF THE MARINE TERMINALS OF THE PORT OF PORTLAND

VOLUME I: IMPACT ANALYSIS

PREPARED FOR
THE PORT OF PORTLAND

MAY 1976

	PRIMARY IMPACT + INDUCED IMPACT → TOTAL IMPACT				
VALUE ADDED	$180.7 MILLION	+	$229.7 MILLION	→	$410.4 MILLION *
EMPLOYMENT	7,210	+	9,118	→	16,328 *
PAYROLL	$95.2 MILLION	+	$120.1 MILLION	→	$215.3 MILLION *

Figure I-4

TOTAL ECONOMIC IMPACT OF THE PORT OF PORTLAND MARINE TERMINALS

* Divided by 2.89 million tons in 1975 and then multiplied by 5.08 million tons in 1978 in order to adjust for cargo growth results in: $721.4 million in income (value added), 28,701 jobs and $378.5 million in payrolls for 1978.

House Labor Committee
HB 2479 - Exhibit D
3/21/79
Presented by Andrew Lippay

Box 3529 Portland, OR 97208
503/231-5000
TWX:910-464-6151

Offices also in Hong Kong, Manila, Seoul,
Singapore, Taipei, Tokyo, Sydney,
Chicago, Pasco, Washington D.C.

March 21, 1979

House Labor Committee
Oregon Legislative Assembly
1979 Regular Session
Salem, Oregon

Mr. Chairman, Members of the Committee:

My name is Andrew P. Lippay, personnel manager for the Port of Portland, a position I have held since January 1974. As department manager, my responsibilities include the labor relation and contract negotiation functions of the Port.

I wish to express my opposition to House Bill 2479 which would delete consideration of economic welfare and thereby restrict the guidelines by which an injunction may be granted by a court under the Oregon Public Employee Collective Bargaining Law.

I believe the law as currently written provides protection to all parties concerned: the union, employer and especially the citizens of the community who are greatly affected by the results of the negotiations. The provision for a judge to consider economic welfare insures the public interest is protected--not to the benefit of either the labor union or the public agency.

The Port of Portland currently is signatory to nine contracts involving 22 different unions. On only one occasion, in all negotiations since the advent of this law, did the Port request injunctive relief based on economic welfare to prevent a strike. The one instance involved a unit of eight clerical employees, titled berth agents, who perform office clerical work at the marine terminals. The berth agents are not longshoremen but are a separate unit affiliated with the longshore union.

A short history of the unit's organization and negotiations will show the effectiveness of the current collective bargaining law. I have witnessed each of these negotiations:

1. After the berth agents unionized, the first contract was signed September 1, 1974. It was only 10 months duration and provided for a wage of $5.80 per hour which was an average 24.73 percent increase. Mediation and factfinding were used, with the factfinder's report rejected by the union as was voluntary binding arbitration. The Port did not request an injunction upon receiving the union notice of intent to strike.

2. The second contract was effective July 1, 1975, for three years. The union demanded a 46.55 percent pay raise over three years, and the Port offered 22.41 percent. Again the factfinder's report and the offer of fully Port paid binding arbitration were rejected by the union.

   Only after the Port received the injunction based on economic welfare did the union begin to negotiate on wages.

   A contract was agreed upon prior to the injunction going into effect providing for wages as follows:

Effective Date	Hourly Wage	% Increase
July 1, 1975	$6.40	10.3%
July 1, 1976	$7.00	9.4%
July 1, 1977	$7.60	8.6%
Total Effective Increase	$1.80	31.0%

   The union made clear during both the negotiations and in testimony that the entire Port marine activity would be closed if the eight berth agents went on strike. The longshore union would honor the berth agent picket line.

3. The third contract with the berth agent union was negotiated in only four meetings during May and June 1978. No state mediation or factfinding services were used.

   The contract provided for wage increases as follows:

Effective Date	Hourly Wage	% Increase
July 1, 1978	$8.25	8.6%
July 1, 1979	$9.00	9.0%
July 1, 1980	$9.75	8.3%
Total Effective Increase	$2.15	28.2%

I believe the above bargaining history shows that the law providing for consideration of economic welfare has not hurt the berth agents. In fact, a larger percentage increase came in the three-year contract in which the injunction was granted than in the last negotiations. Also,

the wage increases have surpassed any measure of inflation during that time. Finally, there is no evidence that once an injunction is granted it will be repeated in future negotiations. The last contract was by far the fastest and easiest to negotiate.

However, what did occur was that a strike and all its devastating consequences to the citizens of the state whose jobs are in the many private businesses that are dependent upon the operation of the Port was averted.

Public employers have not, therefore, sought haphazardly to request injunctions to prevent strikes by public employees. The existence of the authority to seek injunctive relief has not prevented public employees from negotiating and obtaining fair labor contracts. I would submit that this provision of the law has worked to the advantage and benefit of all concerned: public employees, public employers, and the public at large.

I respectfully ask the committee to keep the law and its intent unchanged.

Andrew P. Lippay

Andrew P. Lippay
Personnel Manager

PE57C-R

House Labor Committee
3/21/79 - Exhibit E
HB 2479 2 pages
Presented by Earl Pryor

Oregon Wheat Growers League

MARCH 21, 1979

TESTIMONY: HOUSE LABOR COMMITTEE
SUBJECT: HB 2479

My name is Earl Pryor, President of the Oregon Wheat Growers League. The Oregon Wheat Growers League (OWGL) is opposed to HB 2479. This bill adds a new subsection to O.R.S. 243.726 which defines "danger or threat to the welfare of the public" to not include economic or financial inconvenience to the public.

Oregon and the United States have been successful in the international grain trade arena because of the ability to offer an important commodity to our partners in trade on a consistent basis and at a high quality. Many wheat exporting countries can not make this claim because of irregular production patterns due to adverse weather and technology.

The OWGL and the Oregon Wheat Commission pioneered the development of foreign wheat markets. The first program was developed in 1956 by the Oregon Wheat Commission through a contract with the OWGL. In 1959 the program developed into a regional plan with the formation of Western Wheat Associates. Today approximately 85% of the wheat grown in Oregon is exported. The 85% figure amounts to between 41-44 million bushels .

The current language in O.R.S. 243.726 (3) (c) provides some protection to the Oregon wheat growers. This protection is not automatic. The public employer

Affiliated with **Western Wheat Associates, U.S.A., Inc.**
503 276-7330 **PENDLETON, OREGON 97801** **P. O. Box 400**

may petition the court for equitable relief, including injuctive relief. An injuction is available only after the court has determined that a strike or a strike about to occur would create a " clear and present danger or threat to the health, safety or welfare of the public." (O.R.S. 243.726 (3a) Furthermore, an injuction does not end the dispute.

It is our understanding that injunctive relief was granted in two cases involving the International Longshoremen's and Warehousemen's Union. We do not believe that two cases justifies amending Oregon statute to remove some protection to Oregon wheat growers who have cultivated international markets over many years through hard work and dedication. Once a market is interrupted it may take years to reestablish a good working basis.

O.R.S. 243.656 (4) provides, " the state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government". The passage of HB 2479 would circumvent this intent.

Since the pricing of wheat is based on a world market price, we are in essence competing with other states that produce similar varieties. It is our understanding that the state of Washington does not allow this type of activity. A strike affecting the Port of Portland would then place Oregon wheat growers at a competitive disadvantage.

We appreciate the opportunity to discuss HB 2479 with you and hope that you will not pass this bill out of committee with a "do pass" recommendation.

Thank You.

190 MOTION: SENATOR HANLON moved A-Engrossed HOUSE BILL 2135 to the floor with a Do Pass as Amended by the House, recommendation.

192 VOTE: The motion failed with Senators Hanlon, Kulongoski and Groener voting aye. Senator Trow voting no. Senators Hannon, Smith and Wingard excused.

192 SENATOR TROW wanted a good reason why the limit should be $30,000 rather than $50,000 and whether the Labor Commissioner wanted the limit at $30,000 or $50,000. MR. STEEN said that, based on the positions they feel it affects only five percent of the positions being advertised and salaries they see within the state of Oregon coming through the Bureau of Labor, Wage and Hour Division, as they monitor these agencies, shows that the $30,000 is a justifiable limit. SENATOR TROW asked if the $0,000 was not justifiable. MR. STEEN feels it is too high, at this time. Maybe next session they will have to come back and increase it as salaries do go up, but for the times of jobs they are seeing, $30,000 is adequate. SENATOR TR OW asked if they would come back in two years and ask for $50,000 and MR. STEEN said they would, if jobs have increased that much. SENATOR TROW asked what the affect would be of increase it to $50,000 now and MR. STEEN didn't feel it would be a burden with regard to enforcement or regulation, it would just cover more jobs. But they feel the $30,000 level is more in line with what they are dealing with right now. MS. BELL advised that it would also increase the responsibility, in terms of regulating these agencies which would require staff and more initial monitoring and investigation. SENATOR TROW stated their position as being the $50,000 limit would cost more and cover more and $30,000 would be the inflationary $20,000, so they would be regulating the same group and the increase would take more resources than they have. MS. BELL agreed. SENATOR TROW wondered why they didn't make this point earlier, because that is a good reason for not going to the higher level.

205 MOTION: SENATOR HANLON moved A-ENGROSSED HOUSE BILL 2135 as amended to the floor with a Do Pass recommendation.

206 VOTE: The motion carried with Senators Hanlon, Trow, Kulongoski and Groener voting aye. Senators Hannon, Smith and Wingard excused.

HOUSE BILL 2479 - Relating to public employee strikes

211 LESTER SMITH, with the law firm of Bullard, Koshoj and Smith, Portland, representing the Port of Portland, said they were not opposed to the form the bill is in at the present time. They don't believe the House reversed the intent of the law by attaching the language "exclude economic or financial inconvenience to the public or public employer that is normally incident to a strike by public employes". He mentioned two court cases that were referred to in connection with the amendments and he didn't feel this language changes the results of those cases or the facts that were involved. They don't think, where an employer is forced to get an injunction where the public health and safety is concerned, that economic or financial inconvenience to that public employer

or the public in general is going to be involved. Oregon's legislation is unique because there is the right to strike. Other states have also granted the right to strike, but they end it there and don't have the arbitration concept. He could envision a situation where a number of school district collective associations could decide to give notice to strike at the same time, thereby brining on a tremendous strike in terms of the public sector, but in that situation there is a provision in the law whereby an injunction could be sought and it wouldn't be on the basis of the economic or financial inconvenience to the public, but other things, such as the loss of education. The real intent of the law is still there.

228 LARRY CLARK, Secretary-Treasurer, International Longshoremen's and Warehousemen's Union, Local 40, testified in support of House Bill 2479, presenting his prepared testimony marked Exhibit "C", hitting the high points for the committee.

234 JOHN OLSON, representing the ILWU, explained that the amendments to the bill cam from the representative that carried the bill, Representative Bill Rogers. This wasn't exactly what they asked for, but it is a good thing and it will help them and the reason they are supporting the bill.

HOUSE BILL 2097 - Relating to insurance

239 FRANK HOWATT, Deputy Insurance Commissioner, addressed his comments to section 5, that was deleted by the House, and asked that it be restored to the bill. He discussed the deletions from the bill, which relate to the rating standards. He submitted requested amendments marked Exhibit "D".

260 SENATOR KULONGOSKI asked about the vote in the House committee. MR. HOWATT explained that this was one of the first bills before the committee and he felt it was something of a joke among the members to see how much they could take out of the bill. He discussed some of the comments that were made by the committee members in their consideration of the bill. He mentioned there was concern expressed by lobbyists for the industry that, under this legislation, the commissioner might impose some drastic new statistical gathering requirements on the companies and, in spite of the wording of this bill, require them individually to maintain these statistics rather than through their licensed rating organizations. He continued by explaining the rest of the amendments that were made to the bill.

277 SENATOR TROW mentioned the other parts of the bill that were deleted by the House and wondered if any were pertinent, in his view. MR. HOWATT replied that the one they are asking back is the only one they are anxious about. Sections 1 and 3 were a nice try to solve a problem, but probably creates another problem and the life and health insurance industry is very strenuously opposed to these two sections. If they were enacted they created other problems for group insurance contracts. The problem is how to regulate provision for Oregon citizens in group insurance issued out of state. They tried to do it in the bill, but it was too good a job and the industry didn't like it. It was taken out and he is not too comfortable with it anyway.

Tape 27 - Side 1

336 SENATOR TROW didn't know why they should object because he felt it was a reasonable thing for the commissioner to do, even though it might cost a little more money. MR. BESSONETTE didn't feel it was reasonable because if they lie to the commissioner on the statistics they have and they fall out of sync with the rest of the industry, he will know that the statistics are not valid and ash why, but to be required to set up quality control just to verify that the statistics are accurate is an added cost. SENATOR TROW felt statistics are very important and there should be a control for them. SENATOR GROENER felt there should be no problem because the statistics are available for the use of the companies already. MR. BESSONETTE indicated that was the reason they were in favor of the bill, except for subsection 6, which he feels goes beyond the gathering of statistical data.

342 SENATOR HANLON asked if he had talked to the Insurance Commissioner to see if there was some language they could agree on and MR. HOWATT felt statistics were no good if they were inaccurate and the whole point of subsection 6 is to allow the commissioner to enforce some measure of disciplin on the statistical gathering process so it is correct data and not bum data, which is worse than no data.

347 MR. BESSONETTE hoped the committee would not accept Mr. Fender's amendments. The licensing of staff adjusters has been discussed many times. They are already subject to the control of the insurance commissioner because of the Unfair Trade Practices Act which regulates insurers and their employes and there is enough regulations.

349 MR. HOWATT pointed out to Senator Hanlon that the law now requires the licensing of adjusters whether adjusting for the insurer or the insured and that was what the bold language on page 5 of the bill is dealing with. Calling for separate licenses for that segment that licenses for the public rather than for the commissioner. As a completely separate group, those that are salaried employers of insurers are now exempted from licensing and that is what Mr. Fender's proposal was. SENATOR GROENER asked if they should be exempted and MR. HOWATT replied that MR. RAWLS was of the opinion that the salaried adjusters should be licensed, but they are neutral on the subject. They can see advantages to licensing them, but it could cause a considerable burden and problem for the insurers and not something they are proposing. SENATOR GROENER asked if it would cause problems in this bill. MR. HOWATT said he was sure it would.

HOUSE BILL 2479

355 MOTION: SENATOR KULONGOSKI moved HOUSE BILL 2479 to the floor with a Do Pass recommendation.

356 VOTE: The motion carried with Senators Hanlon, Trow, Kulongoski and Groener voting aye. Senators Hannon, Smith and Wingard excused.

357 SENATOR TROW advised that he voted for the bill as a courtesy to Senator Kulongoski, but he had not heard much of the discussion since he was out of the hearing room at the time of the hearing, and he might

vote against the bill on the floor.

HOUSE BILL 2097

359 MOTION: SENATOR TROW moved HOUSE BILL 2097 to the floor with a Do Pass as Amended recommendation.

360 VOTE: The motion carried with Senators Hanlon, Trow, Kulongoski and Groener voting aye. Senators Hannon, Smith and Wingard excused.

SENATE BILL 496 - Relating to Employes' Benefits Board

361 SENATOR KULONGOSKI stated that there was discussion about whether or not Senate Bill 496 should go to Ways and Means and it was his understanding that Bill Wyatt, who is interested in the bill, has requested that it be sent to Ways and Means. SENATOR GROENER understood that Mr. Lansing was also agreeable to having the bill go to Ways and Means.

362 MOTION: SENATOR KULONGOSKI moved that Senate Bill 496 be sent to the floor with Do Pass as Amended and be referred to Ways and Means recommendation.

363 VOTE: The motion carried with Senators Hanlon, Trow, Kulongoski and Groener voting aye. Senators Hannon, Smith and Wingard excused.

HOUSE BILL 2056 - Relating to bid advertisements

367 JACK KALINOSKI, representing the Associated General Contractors, explained that the bill came from the Public Contracting Task Force, which found that in a requirement for advertisement for bids for a public works contract, there is no statutory requirements for the date, time and place that the bids will be opened to be included in the advertisement, and HB 2056 will make it mandatory.

369 SENATOR KULONGOSKI pointed out that a bill was passed in the last session which had to do with what were and were not public works and a $2,000 figure was used, but the definition section was not amended to say when the contract price became $2,000. The amendment he is requesting, LC 0273, dated 01/11/79, amends the definition of public works so that "when the contract price exceeds $2,000" is included. The reason for the length of the amendment is because the whole section has to be recited in order to make this small correction.

374 SENATOR TROW asked if he felt there would be any opposition to this from anybody and SENATOR KULONGOSKI felt it was housekeeping and he didn't think it changed the law at all, other than to put this in the definition section, where it was supposed to be. JACK KALINOSKI advised that it would change in that the bill, in 1977, intended to say that the prevailing wage law will apply only to public works contracts exceeding $2,000 in cost. The same as in the federal act. Unfortunately, no one noticed that in drafting the bill it came out that any contractor,

EXHIBIT "C" - HB 2479
Senate Committee on
Labor, Consumer and
Business Affairs
18 May 1979
Larry Clark
6 pages

May 18, 1979

TESTIMONY OF: Larry M. Clark, Secretary-Treasurer, International Longshoremen's and Warehousemen's Union, Local 40

BEFORE: Oregon State Senate Committee on Labor, Consumer and Business Affairs

In support of House Bill 2479

Chairman Groener, Vice-Chairman Kulongoski and members of the Senate Committee on Labor, Consumer and Business Affairs, I am Larry Clark, Secretary-Treasurer of Local 40 of the International Longshoremen's and Warehousemen's Union. Our offices are in Portland and our Local represents employees in both the private and public sector. I am speaking in favor of House Bill 2479. This basically is the same proposition that was heard by this committee in 1977, and Senators Groener, Hannon and Trow are familiar with it. Senator Kulongoski also heard our testimony before the House Labor Committee in 1977, being Chairman of that body then. The intent of the Bill is to give Public Employees in Oregon equality with their counterparts in the private sector in the event it is necessary to withhold their labors.

The Public Employees that our Local represents are in an autonomous unit.

They are Transportation Office Employees in the job title of "Berth Agents" employed by the Port of Portland.

Until May of 1978, our Union also represented Grain Inspectors, Weighers and Samplers employed by the Department of Agriculture of the State of Oregon. These persons have since become Federal employees represented by the A.F.G.E. (American Federation of Government Employees)

During the year 1976, both of these Units, which our Union then represented, were involved in litigations as a result of what we believe a misinterpretation of O.R.S. 243.726 (3)(c).

In the case of the Berth Agents employed by the Port of Portland, the negotiations, mediation and factfinding requirements of the Public Employees Collective Bargaining Act were exhausted. The Union then served the required notice of its intent to strike after ten (10) days. The employer, the Port of Portland, then sought an injunction in the Multnomah County Circuit Court which would have prohibited the Union from striking. Judge Robert E. Jones heard the case and ordered an additional bargaining session between the parties, during which an agreement was reached. Therefore, there was no strike and no injunction was issued. He did, however, make some interesting comments, at one point criticizing the language of the law and saying it would have to be cleared up by either a higher court or, better yet, by the legislature itself.

Judge Jones' comments prior to ordering the additional bargaining, indicated a reluctance by courts in intervening in labor disputes. These statements signified an understanding that if, in fact, an employer is allowed to run into court the moment negotiations break down, and expect the court to intervene, then the right to the employees' ultimate collective bargaining weapon - the right to strike - is, in fact, an illusionary right.

The Grain Inspectors, Weighers and Samplers began negotiating with the State of Oregon in May of 1975, went to mediation in October, went to factfinding in January of 1976, served ten (10) days notice of their intent to strike on or after April 8, 1976, and participated in several more bargaining sessions during April and May of 1976. They also used every method to publicize their plight, gaining considerable support from the general public and the news media. The Union, as a last resort, went on strike on July 20, 1976. The Executive Department of the State of Oregon sought an injunction prohibiting the strike. Arguments of both parties were heard

by Marion County Circuit Court Judge Val Sloper on July 26, 1976. On July 27, 1976, Judge Sloper enjoined the strike. He did say, in his decision, that he was personally opposed to court intervention in labor disputes and did so reluctantly because of the scheme of the Oregon statutes.

He also said "that all strikes create economic pressures, the more serious the pressure, the more effective the strike," and agreed "that a strike that results in no loss to anyone will not succeed in its objective."

These two labor disputes have tested O.R.S. 243.726 (3)(c) and its meaning. Employers in both cases interpreted the word "welfare" to mean economic welfare. They were reluctantly sustained in their argument by two of the State's eminent jurists who expressed great concern in being asked to solve labor disputes in the courts.

We can not possibly believe that the word "welfare" could have been intended to mean "economic welfare" when talking about a strike. A strike by its very nature is economic, both to the employer and the employee. We must remember the economic impact of a strike on the employees and their families. When on strike these employees receive no income and usually have no medical benefits; consequently, before authorizing a strike, they consider very seriously all of the alternatives and ramifications of their actions. They certainly must have the courage of their convictions.

The Public Employees Collective Bargaining Act contains many adequate safeguards against hasty or ill-conceived strikes designed to protect the public. In the case of the Berth Agents, exhausting all the provisions of the law required eight (8) months. The Grain Inspectors negotiation, mediation and factfinding took a lengthy fifteen (15) months before the Union took strike action.

Before a strike can be called by our Union, a secret ballot vote is taken by all

the members of the bargaining unit. Historically that vote has required a minimum 75% affirmative ballot before a strike can be called. In the cases of the Grain Inspectors and the Berth Agents, the affirmative secret ballot votes authorizing a strike were over 95%.

We know other Unions also have safeguards prohibiting officers or executive committees from acting hastily.

The two cited examples present documented evidence that the 1973 Law does not accomplish what the Legislature intended. The statute has been misused and distorted far out of proportion. The specific provision relative to health and safety must have been intended to protect the public when strikes by policemen, firemen or prison guards were imminent and the health and safety of the entire public could be adversely affected. In those isolated cases the courts might impose "final and binding arbitration." The basic problem in the "final and binding arbitration" requirement and the reason many Unions object to it so strenuously is the method of selecting arbitrators. If you will examine the Employment Relations Board's list of arbitrators, you will find nearly every one is either a lawyer or a college professor. There are virtually no Union people at all on the roster. It is made up by the Employment Relations Board, whose director is appointed by the Governor, who is the head of the Executive Department, which, in many cases, conducts the contract negotiations with Public Employees. This surely is a conflict which should be corrected so that in the future, policemen, firemen and prison guards will have at least a 50-50 chance of going before an arbitrator who understands what it is like to raise a family on a low income, to work nights and only get a few cents per hour shift differential, and who understands and bears the brunt of high prices on family necessities. This is why many Unions oppose "final and binding arbitration."

The passage of House Bill 2479 into law would not preclude parties involved in contract bargaining from agreeing to submit the unresolved issues to final and binding arbitration when an impasse has been reached. However, this decision should be left to the parties and not the courts.

The Bill presented here deals with a basic inherent right which employees in the private sector have, but which has been denied Public Employees in the State of Oregon through manipulation and misinterpretation of the language of O.R.S. 243.726 (3)(c).

The time is long overdue for the State of Oregon to give Public Employees the right to withhold their services collectively when they have reached an impasse in contract negotiations for wages, fringe benefits, hours, or working conditions.

They are entitled to no less than any other employee or, for that matter, professional people such as doctors, lawyers, dentists or accountants who withhold their services unless their price is met. We can also recall certain merchants and brokers who stockpiled and withheld their products rather than accept a current market price which they considered too low. Is a producer who shoots his cattle and buries them, or smothers his baby chicks, or dumps his milk on the ground, or burns his potatoes, or plows up his wheat field, not, in effect, striking?

And what about the gasoline and oil producers, are we sure they weren't just holding out for higher prices in 1973 and are, in fact, doing it again this year? The employees' only product is their labor; and their last recourse in an impasse is to collectively withhold that labor. Whether they are private employees or Public Employees should make no difference.

The Law as it now stands gives the Public Employee the right to strike, but through an abuse of semantics, that right has been taken away. Oregon should stop

treating Public Employees as second-class citizens.

I ask that this session of the Oregon Legislature make the necessary corrections so that Public Employees in this State may be treated equally with their counterparts in private industry. In that regard, I request the support of this Committee on House Bill 2479.

Thank you.