

HOUSE COMMITTEE ON COMMERCE SUBCOMMITTEE ON LABOR

June 28, 1993          Hearing Room D 8:30 a.m.      Tapes 145 - 146

MEMBERS PRESENT:                      Rep. John Watt, Chair

Rep. Lee Beyer Rep. Michael Payne

Rep. Charles Starr

Rep. Bob Tiernan

STAFF PRESENT: Marilyn Johnston, Committee Administrator Kristina  
McNitt, Committee Assistant

MEASURES CONSIDERED: SB 329 SB 899 HB 3680

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These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in  
quotation marks report a speaker's exact words. For complete contents  
of the proceedings, please refer to the tapes. [--- Unable To Translate  
Graphic ---]

TAPE 145, SIDE A

CHAIR WATT: Calls the meeting to order. (10:05 a.m.)

PUBLIC HEARING ON SB 899 - A witnesses: Frank Brawner, Oregon Bankers  
Association Rich Brocou, Oregon Bankers Association Steve Rodeman,  
Oregon Credit Unions Irv Fletcher, Oregon AFL-CIO

011 MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: Gives overview of bill  
which would exempt financial institutions from certain wage and hour  
regulations for public contractors. Submits preliminary staff  
measure summary, copies of relevant statutes and fiscal and revenue  
impact statements (EXHIBIT A).

020 FRANK BRAWNER, OREGON BANKERS ASSOCIATION: Testifies in favor  
of SB 899. Testimony summarized in EXHIBIT B.

040 RICH BROCOU, OREGON BANKERS ASSOCIATION: Testifies in favor of bill  
and gives history of industry work hours. Testifies that no employees  
have received a lesser wage or fewer hours while bank industry has been  
expanding business hours.

097 REP. WATT: What was the Senate vote?

100 BRAWNER: I believe it had no opposition. This bill is the product  
of a gut and stuff. The bill was languishing in Senate Labor when  
all parties agreed it would be a good vehicle for this issue in late  
March. It was then moved to Senate Business.

110 REP. TIERNAN: The reason for the bill is the fear that the  
provisions may otherwise be applied against you?

113 BRAWNER: The question was raised whether our depository function made us a public contractor. There are arguments among our counsel that we don't need this bill and should simply litigate if the question arose. Certainly we are not public contractors. Saturday banking is good and competitive business which should not be discouraged.

120 REP. TIERNAN: You just receive the deposits from the bank and make transactions; deposits from the state, transactions for the state?

125 BRAWNER: Most of the deposits we're talking about are either from a local government or from a local employer who will deposit payroll withholdings with us. We transfer that to the state. When that becomes property of the depository it becomes a public fund. There is no question about that. But this does not make us a public contractor.

130 REP. WATT: Notes to Rep. Tiernan some parallel decisions being made in the House Rules and Regulations Committee where state agencies in the form of small boards and commissions are being moved out to semi-private type agencies who will take their funds from the Treasury and deposit in a regular bank covered by the FDIC. This bill is good forethought.

138 STEVE RODEMAN, OREGON CREDIT UNIONS: Testifies in favor of bill. Some of our credit unions may be classified public contractors if the funds issue is considered because the institutions that serve government employees do take in deferred compensation funds. These credit unions would be considered public contractors. Within this group of credit unions some may be open on Saturdays or on legal holidays since credit unions are tied to their sponsor groups and thus are open hours to best serve their members. Adoption of this bill would clarify the issue among our institutions and continue to make it possible for individual credit unions to function at the pleasure of the members.

161 IRV FLETCHER, OREGON AFL-CIO: Testifies in favor of bill. Has had initial concerns addressed by proponents and is comfortable with the bills passage.

#### WORK SESSION

MOTION: BEYER: MOVES SB 899 TO THE FULL COMMERCE COMMITTEE WITH A DO PASS RECOMMENDATION. VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES UNANIMOUSLY.

PUBLIC HEARING ON SB 329 witnesses: John Danielson, OEA Ed Edwards, OSEA Bob Duehmig, OFTEHP

190 MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: Introduces bill to committee and explains provisions which would increase the period when elections are banned during certain collective bargaining agreements. Submits preliminary staff measure summary, and fiscal and revenue impact statements (EXHIBIT C).

201 ED EDWARDS, OREGON SCHOOL EMPLOYEES ASSOC: Testifies in favor of bill. Testimony summarized in EXHIBIT D.

247 REP. WATT: Would you explain how a communication bar restricts representation?

252 EDWARDS: Currently, an election bar is in effect when there is, for example, a two year contract in place. In this situation there can not be an election to change representatives until the window period in the second year of the contract which is between 60 and 90 days before the contract expiration date. In the first year of the contract, there is an election bar in effect. There can be no representation elections during that time. As soon as you enter a two, three or even a four year agreement, in the second year of that contract you could have an election.

259 REP. WATT: But it has to fall within that window of time? Within 60 or 90 days?

271 EDWARDS: That is correct. That is when you file.

271 REP. WATT: Is it different in different areas then? Say Medford. I want to bring in with my JFW and take over OSEA. Within 60 days of the end of the contract I can register to begin?

282 EDWARDS: If an organization is interested in raiding another, they will start long before the window period. This period is for filing purposes only. You can gather support and begin organizing at any time.

286 REP. WATT: At any time? Even the first year?

287 EDWARDS: Yes. 277 REP. TIERNAN: Or after the expiration of the contract?

281 EDWARDS: Yes. Continues testimony. Freedom of choice and the stability of labor relations are two big concerns. Gives historical background of both issues and of some decisions made by the National Labor Relations Board. OSEA currently negotiates about 151 separate collective bargaining agreements. Of those currently in effect, 111 are of a three year duration. 40 are less than three years.

330 REP. TIERNAN: Would this apply to both certification and decertification? And if the employees were unhappy with the union there would be a three year period of time, from election or from when the contract is signed?

339 EDWARDS: Yes, that is correct. There have been some recent decisions about when the period begins, however, that I'm not really up to speed on. I believe the signature date on the contract is a deciding factor in defining the window period.

350 REP. TIERNAN: You testified earlier that this is the exact same provision that is in the private sector.

351 EDWARDS: That is correct.

354 REP. PAYNE: I'm concerned about the decertification elections. Right now could one or two employees try to organize a decertification election two years into the cycle even though they have a three year contract?

373 EDWARDS: There is no law preventing employees at any time from gathering support to decertify an elected representative.

382 REP. WATT: Are you bringing this legislation forward because you are being raided?

393 EDWARDS: Yes, we are raided. We are one of the few labor organizations that does not have the protection of the AFL-CIO shield. Neither does OEA. We do have a great interest in this bill, but I support representation elections. This bill cuts short the labor peace negotiated when the three year contract is signed.

TAPE 146, SIDE A

014 REP. WATT: You're negotiating 151 separate bargaining agreements. What was that number two years ago? Five fewer, ten fewer, a hundred fewer?

024 EDWARDS: I'm not sure, I'd say five fewer.

026 ROBERT DUEHMIG, OREGON FEDERATION OF TEACHERS, EDUCATION AND HEALTH PROFESSIONALS: Testifies in favor of bill, supports Edward's testimony. Reiterates NLRB cable decision. Testimony summarized in EXHIBIT E.

040 REP. WATT: Are you being raided?

041 DUEHMIG: Not at the moment.

042 REP. TIERNAN: Are you familiar with the private sector trend of going beyond three year contracts?

045 DUEHMIG: I am not. I'm not really the one to ask, though.

047 JOHN DANIELSON, OREGON EDUCATION ASSOCIATION: Testifies in opposition to bill. Feels current laws are some of the best in the country and indicates that they are responsible for the relatively tame labor disputes endured by Oregon. Submits written testimony of Don Robertson (EXHIBIT F).

Feels only three groups of people have real interest in orderly bargaining: the general public, those employed by a unit or jurisdiction, and the labor organization itself. This bill makes it more difficult for the workers to select the group they want to have represent them in the collective bargaining process.

All collective bargaining units have significant statutory responsibilities. Contract administration states that the union has the responsibility to oversee that the benefits negotiated are benefits delivered. Employees should have the right to change representation even when a contract is in place. It is during the negotiated contract period that employees may experience dissatisfaction with how the actual contract is being administered.

Traditionally Oregon's been moving toward three year contracts. Under such a contract, in the first year nothing can happen. In the second year during the month of June (60 -90 days before expiration of contract) a petition can be filed and signatures gathered. If you have a third year then you have that year to seek petition success. This proposed bill, however, would allow these attempted changes to take place while the established representative is attempting to bargain

a successor agreement.

This is very disruptive to incumbent representative. The climate is set up for either a fast settlement in order to prevent a takeover or management stalls until they know who, ultimately, will be the bargaining unit. The current law provides for order and a right to choose. We think the law as it stands now is in the best interest of the public and public employees.

164 REP. BEYER: Under a three year contract, under current law, if a change should take place, would the new unit be obligated to administer the existing contract?

166 DANIELSON: Yes. They would be obligated to provide contract administration.

170 REP. TIERNAN: Isn't the overall purpose of having any contract bar a public policy of labor peace? And wouldn't any contract bar be against individual employees interest in the freedom to choose representation?

173 DANIELSON: Labor peace is certainly part of it. You might consider it to be reasonable to say that if they have chosen that choice should last for a reasonable period of time. The bigger issue is when is the most orderly time to change representation?

189 REP. TIERNAN: Do you agree that, in the interests of public policy and labor peace, that the majority of collective bargaining units across the country have determined that that time period is to be a three year contract period?

193 DANIELSON: I believe the public policy in the current Oregon Statute is superior to the legislation proposed here.

203 REP. WATT: Do you consider the OSEA to be a weak union? Do you feel some of their members may believe this?

212 DANIELSON: I am not real familiar with that organization. Probably yes. We believe we are in a stronger position to represent the employees and administer the contracts. We are well spread, geographically, and are abreast of the issues and more fiscally sound.

237 REP. WATT: How many units of classified employees do you have and how are they different from the locals? Like say Medford, for example.

246 DANIELSON: There are wall to wall units that can represent both classified and professional personnel. In this instance there are rules established by the Employment Relations Board. But this is not always the case. In Salem there are two different units, the Oregon Ace Classified and the Salem Education Association.

258 REP. BEYER: Most of the last decade it seems that two year contracts have prevailed over one and three year ones. Is there a movement also where employees look to change their representation?

265 DANIELSON: I believe the trend is actually more toward three year contracts. As far as dissatisfaction, certainly. Classified employees are usually the first hit in cutbacks and fiscally poor times.

292 REP. BEYER: Is it correct that at any point the employees could choose to decertify a union? And once they've gone independent they can choose at a later date to be represented? This bill really doesn't change the rights of employees who may be dissatisfied with the union and want to toss it out.

307 DANIELSON: Yes. Or they could simply choose to form an independent bargaining unit. It is not difficult to get rid of a union. What is complicated is changing union representation in a smooth manner.

311 TIERNAN: Point of clarification, the contract bar applies to both certification AND decertification. You can not decert at any time. It's sort of like a statute of limitations, you have to wait until the contract expires or until the two or three year period is up.

336 DANIELSON: I apologize, I could have been wrong on that issue.

349 REP. PAYNE: My concern is with the decertification elections. After a contract has been bargained, can a bargaining unit decide to go fair share? My concern is about some sort of reactionism that would lead to a decert election.

361 DANIELSON: I'll have to check the decert provisions. I don't know. As far as a fair share agreement, there is a petitioning process which allows a fair share agreement to be voted on separately.

376 REP. TIERNAN: You represent naturally opposing interests: the teachers and the classifieds. How can you represent both sides without an obvious conflict problem?

399 DANIELSON: We have been so successful because it has improved the communication between both groups. It is a painful position at times but not a conflict of interest.

TAPE 145, SIDE B

017 REP. WATT: Did you testify to this issue on the senate side?

020 DANIELSON: Don Satchel did.

PUBLIC HEARING ON HB 3680 Witnesses: Dave Fiskum, Beaverton schools  
Jamon Kent, Beaverton schools Maria Keltner, League of Oregon Cities  
Representative Lonnie Roberts, District 21

025 MARILYN JOHNSTON, COMMITTEE ADMINISTRATOR: Gives overview of bill and explains provisions which would allow certain employees of school districts who are transferred to employment with nonprofit corporations engaged in providing health care to remain members of PERS. Submits preliminary staff measure summary, -1 LC and machine engrossed amendments, and the fiscal and revenue impact statements (EXHIBIT G).

052 DAVE FISKUM, BEAVERTON SCHOOL DISTRICT: Testifies in favor of bill as it would relate to employees from the Beaverton school district who move to St. Vincent's Hospital. Submits written testimony (EXHIBIT H).

Three of the eleven employees have been in PERS for a number of years while the others have not. The Beaverton school district is concerned about these employees being transferred and losing their benefits so close to retirement.

The solution was to have the Beaverton school district make the payments to the retirement system on behalf of these three employees for their remaining years of service.

085 REP. TIERNAN: Your talking about three employees? But the coverage would be extended to all eleven?

100 FISKUM: The intent of this legislation is to limit it to the three employees who have served the most years and are near retirement.

Continues testimony. The alternative to this bill is to keep only six versus eleven nurses employed on the job. This solution comes with the strong support and recommendation of the two bodies involved; the Beaverton school district and St. Vincent's Hospital.

123 REP. WATT: With regards to transferring school employees, as the law is written now, their benefits and salaries go along with them, don't they? And how did you come up with the number of 6 remaining nurses if the bill does not pass?

135 MARIA KELTNER, LEAGUE OF OREGON CITIES: No, that provision doesn't apply to school districts.

142 JAMON KENT, BEAVERTON SCHOOLS: The district has experienced reductions in the health services department. When going through the reduction process, it was determined that six nurses were needed to meet the required standards for the special education students.

154 ELIZABETH HARSHANKO, ATTORNEY GENERAL'S OFFICE: Reviewed bill with specific question in mind: does taking benefits when transferred create a problem with PERS? There is a special provision in the federal tax code that would allow this to occur. There is a class of people called leased employees. For purposes of federal pension tax requirements, leased employees are required to be considered as if they belong to the retirement plan of the entity receiving their services. For these people, PERS qualifications are not threatened. The federal law wouldn't require the employees to make an election, however.

186 REP. BEYER: Do the federal provisions leave us open for the other 6 to challenge? You don't see this as an issue?

189 HARSHANKO: There is a mismatching in terms of who it entitles to participate in PERS and what federal law will require. It is not incompatible, however. The IRS has basically said that public plans are to be non-discriminatory until 1995. At that point it could become an issue. I believe the Speaker plans to put together an interim group to address this.

223 REP. TIERNAN: The intent is good, but have two concerns: qualifications of this plan going out to non-profit or to a non-public entity without violating the terms of the plans. The second concern is that everybody must be treated, with only a few exceptions, equally. Also, regarding leased employees, I'm not sure the leased employee definition we previously worked on applies here. The bottom line of this

bill is fair, I just have some concerns about the legalities.

247 REP. WATT: Are these people represented employees?

252 FISKUM: Yes. By the Beaverton Education Association which is the local affiliate of the Oregon Education Association.

256 BOB ANDREWS, OREGON PUBLIC EMPLOYEES RETIREMENT: Explains proposed amendments. Would enable PERS to collect necessary information from participating employers to begin testing to ensure conformance under IRS code section 414.

271 REP. WATT: For those people who are over the limit, what will happen? 273 ANDREWS: Once they are identified, the benefit that is greater than that allowed by the IRS code will have to be terminated.

287 REP. PAYNE: The two classes identified as out of step with the IRS code are those receiving \$115,000 and those receiving more than their final salary, correct?

297 ANDREWS: Those are the two tests. There is an actual dollar cap and the "100% of compensation" test. We are worried that some retirees may fall under the second test.

304 REP. PAYNE: If we stop paying the benefits to these identified people, is the state liable?

311 HARSHANKO: Yes, if PERS stops paying them out of their reserves in order to preserve the status of the trust, that doesn't remove the employers contractual obligation to pay for all the retirement benefits that were promised. It will just have to come from a different source.

321 REP. PAYNE: You predict the courts will obligate the state to pay but PERS cannot pay without jeopardizing the funds.

358 REPRESENTATIVE LONNIE ROBERTS, HOUSE DISTRICT 21: Testifies in favor of bill, gives case history of a particular constituent, and asks for support of committee.

TAPE 146, SIDE B

001 REPRESENTATIVE ROBERTS: Continues testimony and supports -1 amendments.

WORK SESSION ON HB 3680

MOTION: REP. BEYER: MOVES CONCEPTUAL AMENDMENTS TO HB 3680.

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES UNANIMOUSLY.

MOTION: REP. BEYER: MOVES THE -1 AMENDMENTS TO HB 3680.

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS VOTING NO: TIERNAN.



MOTION: REP. BEYER: MOVES HB 3680 TO THE FULL COMMERCE COMMITTEE WITH A DO PASS RECOMMENDATION.

031 REP. TIERNAN: Objection to individuals opting back into retirement system in general. People are cherry picking. Has serious concerns about the legality of these decisions.

VOTE: IN A ROLL CALL VOTE THE MOTION CARRIES. MEMBERS VOTING NO: TIERNAN.

ADJOURNED AT 11:30

Submitted by:

Reviewed by:

Kristina McNitt,  
Clerk

Marilyn Johnston, Committee  
Committee Administrator

EXHIBIT LOG:

A - SB 899A preliminary staff measure summary, copies of ORS, fiscal and revenue impact statements submitted by staff, pp. 7.

B - SB 899A written testimony presented by Brawner, pp. 3.

C - SB 329 preliminary staff measure summary, fiscal and revenue impact statements presented by staff, pp. 2.

D - SB 329 copy of bill, written testimony, copies of NLRB decisions, presented by Edwards, pp. 9.

E - SB 329 written testimony presented by Duehmig, pp. 2.

F - SB 329 written testimony submitted by Danielson for Robertson, pp. 4.

G - HB 3680 preliminary staff measure summary, -1 LC and machine engrossed amendments, revenue and fiscal impact statements submitted by staff, pp. 6.

H - HB 3680 written testimony presented by Fiskum, pp.4.