

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.

Measures Heard HB 2088 HB 2089

HOUSE COMMITTEE ON LABOR

January 28, 1991 Hearing Room D 8:30 a.m. Tapes 11 - 13

MEMBERS PRESENT: Rep. Gene Derfler, Chair Rep. Kevin Mannix, Vice-Chair Rep. Sam Dominy Rep. Jim Edmunson Rep. Rod Johnson Rep. Bob Repine Rep. John Watt

MEMBER EXCUSED:

STAFF PRESENT: Victoria Dozler, Committee Administrator Johanna Klarin, Committee Assistant

WITNESSES: Darlene Livermore, Executive Department
Gary Cordy, Department of Justice Bruce Andrews, Department of
Agriculture Dan Tabizon, Oregon Liquor Control Commission Jeanine Meyer
Rodriguez, OPEU Fred Van Natta, Association of Engineering Employees of
the State of Oregon Don Satchell, Oregon Education Association Mary
Bodtkin, AFSCME Brian De Lashmutt, Oregon Nurses Association Mari Anne
Gest, Oregon School Employees Association Pat West, Oregon State Fire
Fighters Council

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.

TAPE 11, SIDE A

PUBLIC HEARING, HB 2088

005 CHAIR DERFLER: Calls the meeting to order at 8:30 a.m.

CHAIR DERFLER: Opens public hearing on HB 2088.

015 DARLENE LIVERMORE, Executive Department: Summarizes HB 2088.

-The bill defines the definition of a "management official".

-The bill permits exclusion of "management officials" from union bargaining units.

-Approximately 200 positions state-wide would be impacted.

044 GARY CORDY, Assistant Attorney General: Discusses the concept of managerial exemption from bargaining units (Exhibit A).

-He provides an example of a case dealing with a managerial exemption (Exhibit A.1)

-He provides an example from the Police Department.

106 REP. WATT: Why "supervisory" couldn't be under the umbrella "management official?"

113 MR. CORDY: They are quite different in terms of what they are addressing.

-There are supervisors in the state who exercise very little policy direction for an agency. They are excluded because they hire, fire and discipline employees.

-Managers would be excluded because they have discretion in the area of policy making for an agency.

135 REP. WATT: Would a "management official" ever be able to be a supervisory employee and vice versa?

MR. CORDY: Yes.

140 REP. MANNIX: Is this similar to the bill that was introduced last session, passed the House and died in the Senate?

142 MS. LIVERMORE: It is similar.

REP. MANNIX: You are creating a new exemption box with a broad definition.

-This bill could affect 10% of the employees who are in the bargaining units.

-[QUOTE]Why not the concept of taking part of this "management official" definition that deals with your real world problem and put it in under the definition "supervisory employee" as a separate sentence, narrowly written, to deal with your problem, to deal with your 200 state-wide positions such as you described without creating a whole new concept of bargaining unit exclusions?[QUOTE]

175 MR. CORDY: The issue is two-fold.

-"Management official" definition is limited solely to State employees, whereas the definition "supervisory employee" applies to all government entities, cities and counties.

181 REP. MANNIX: That is one point. You are talking about a definition of a box that would apply only to the State.

MR. CORDY: Yes. The second point is that a "management official", as defined here, doesn't look like a "supervisory official" as defined in the current law.

REP. MANNIX: We can redefine it if we want to.

MR. CORDY: Expanding the definition of a "supervisory employee" may create a greater opposition than a more narrow single exemption.

REP. MANNIX: Refers to the example of an interagency task force composed of two state troopers. Under this system they may be excluded as management officials and their counterparts from the local departments wouldn't be excluded.

MR. CORDY: The rationale is based on the size of the State and the discretion afforded some of the people in the State to carry out programs and policies of the State.

REP. MANNIX: What about the phrase "or influence management policies?" Isn't it quite broad?

MR. CORDY: Yes.

211 Rep. Mannix and Mr. Cordy discuss the content and appropriateness of the above phrase.

223 MS. LIVERMORE: "Management official" is the definition that is currently used in the private sector under the National Labor Relations Act. We wanted to avoid creating any new litigation.

REP. MANNIX: Adding "effectively" would reflect our mission to allow every

employee in the state government to have some influence over management.

-He questions the line "professional duties" on line 27. Did you mean to limit the definition "management official" to people who are professional?

MR. CORDY: No we did not.

REP. MANNIX: Could we use another word?

MR. CORDY: We could insert "beyond the routine discharge of their duties."

REP. MANNIX: Of the person's duties?

268 REP. DOMINY: I have concerns about broadening the definition. Why don't you give these people in question the full responsibilities of a supervisor?

272 MS. LIVERMORE: That could be done. We would rather have a definition that takes into account these individuals who do what is required of them, not build a superstructure around them.

288 MR. CORDY: Supervising a single individual meets the definition of a supervisor under the statute.

-He gives an example from the State clerical pool.

-It doesn't make sense efficiency wise.

299 REP. DOMINY: I am not fond of this direction. You are coming up with a new category that sits somewhere in the middle of management and supervisory. People won't know which category they belong to.

318 MS. LIVERMORE: Further testimony will clarify this point from an

organizational point of view.

REP. DOMINY: The organizational problem is your problem. We have enough gray areas in the state government.

348 REP. JOHNSON: These words, when used in private situations under the NLRB, how does that work? Is this grey area a problem in that arena?

352 MR. CORDY: No. I have not seen litigation on this issue under the NLRB.

364 REP. JOHNSON: Raises a question concerning the use of the term "administrative affinity".

-Generally this term has been used as an euphanism for "this person thinks he is management and doesn't want to be in the bargaining unit." Does that give the option of being in management or represented by a union. Is that flexibility something you build into this?

MR. CORDY: No.

381 VICTORIA DOZLER: Would you explain the community of interest concept to the committee?

MR. CORDY: Refers to ORS 243.682 (1).

-[QUOTE]During this window period once every two years when the State can file to remove positions from the bargaining unit that shouldn't be there, the limitation that they worked with and not having managerial exemption is that they in fact have to have interest contrary to the bargaining unit members in order to meet the definition of "administrative affinity"[QUOTE]. Gives an example.

407 REP. REPINE: The private sector language that we keep referring to, is it indeed the same definition?

MS. LIVERMOORE: Yes.

414 REP. MANNIX: You are defining "management official" as someone who has to occupy a position that requires or authorizes, in the job position description, to formulate, determine, effectively influence management policies of the agency and has the discretion in the performance of these responsibilities beyond the routine discharge of that person's duties. Is this a fair statement?

448 MS. LIVERMOORE: Yes.

TAPE 12, SIDE A

016 BRUCE ANDREWS, Director, Department of Agriculture: Gives an example from the Department's domestic and international marketing sector with regard to a group of employees classified as "domestic and international trade marketing specialists."

-These employees don't supervise an individual. They manage a program, both design and implementation phase, as well as delivery and evaluation phase.

-These people are professionals.

049 REP. DOMINY: Why not give them the full status of a supervisor?

053 MR. ANDREWS: They don't supervise anyone directly. They manage a program.

REP. DOMINY: There is nobody else they work with?

ANDREWS: They work with the fellow traders, with logistics people but they don't manage anyone.

REP. DOMINY: What is the advantage of taking them out of the bargaining unit?

MR. ANDREWS: They are managerial in terms of the scope of their work. They work with individuals that expect to be dealing in working with management people. They feel they are being unduly penalized to be forced to participate in something they believe they don't have to.

074 REP. DOMINY: So this is something to make them, and you, feel good?

MR. ANDREWS: Their function is managerial.

REP. DOMINY: Didn't you say that they feel that they are more management than anything else?

MR. ANDREWS: That is our point.

REP. DOMINY: If they are not supervising anyone, I have a problem with it.

084 DAN TABIZON, Oregon Liquor Control Commission: We support this bill. Provides an example of a payroll supervisor regarding this issue (Exhibit B).

109 MR. ANDREWS: One problem is that, under the bargaining rules, we don't have much flexibility in terms of work schedules, hours, time-off, etc.

121 REP. REPINE: Refers to page 2, line 21 "effectively influence" and line 27 "routine discharge of that person's duties". Do you believe that those changes effectively define the individual that you testified about?

MR. TABIZON: Yes.

132 CHAIR DERFLER: Would changing those words require another litigation process?

134 REP. MANNIX: I don't think so.

-I am concerned about the use of the word "professional". I would like to concentrate on the position.

-If you don't add the word "effectively" you open the door to any employee.

150 REP. DOMINY: Refers to "effectively affect the whole bargaining unit". Is the whole bargaining unit going to be exempt? The definition in its fullest extent means that the whole bargaining unit affects the policy.

REP. MANNIX: Only if they are defined as an individual.

162 JEANINE MEYER RODRIGUEZ, Oregon Public Employees Union: Presents testimony in opposition of HB 2088 (Exhibit C).

198 REP. MANNIX: Didn't we have a bill last session that made a distinction between local government employees and state employees in terms of the State's willingness to pay continuation of medical coverage for people who have worker's compensation claims.

MS. RODRIGUEZ: That is true. In terms of applying basic rights to organize, I don't see the rationale for dividing out state employees.

-Ms. Rodriguez continues her testimony (Exhibit C, page 2).

-This bill would result in the de-professionalization of public employee bargaining units.

-People who design their own programs and don't supervise anybody are not hampered by being in a bargaining unit.

253 CHAIR DERFLER: It would be difficult for people who are traveling to work within the confines of rules of unions.

MS. RODRIGUEZ: I don't know of any rules the union imposes on an individual that would hamper their ability to carry out their mission.

268 REP. MANNIX: Would it be more appropriate to say local government, not just state government.

MS. RODRIGUEZ: I am opposed to this all. I don't see any need for it, but yes, there should be uniform procedures, I don't see why we need to divide out any government?

REP. MANNIX: I agree with your concerns about empowerment. The focus should be on the position description and not on the individual (line 26, page 2).

-He suggests the wording "effectively influence management policies".

-Instead of saying "who has discretion" he suggests "which allows discretion."

-He suggests changing "these responsibilities" into "these management responsibilities."

-He suggests "professional duties" be changed into "the duties of the position."

314 MS. RODRIGUEZ: I am not comfortable with this at all. If someone is not supervising someone else at all then there is no need to exclude them from the bargaining unit. I don't think adding another concept "management official" is necessary at all.

REP. MANNIX: That is the real policy issue as far as you are concerned?

MS. RODRIGUEZ: The more exclusions there are the fewer people have access to collective bargaining.

-She questions the wording "routine professional duties."

348 REP. REPINE: What number of employees would this effect? Do you agree with the numbers presented earlier today?

MS. RODRIGUEZ: With the language as it is written now, it is much broader than the 200 positions mentioned.

366 REP. DOMINY: Can this be discussed in bargaining?

MS. RODRIGUEZ: We do negotiate over exclusions.

REP. DOMINY: Is this an issue that has been on the bargaining table?

MS. RODRIGUEZ: We bargain over exclusions. There haven't been many that have gone on to a hearing.

REP. DOMINY: I wonder if this should be solved at union bargaining and not brought over to the legislature.

MS. RODRIGUEZ: The Executive Department is trying to add another definition so they would have a leg to stand on if these issues were brought up.

Representative Edmunson enters at 9:30 a.m.

422 REP. JOHNSON: Do you know if this "management official definition" was in the NLRA statutes at the time PECBA was enacted? Why this definition was excluded from PECBA?

MS. RODRIGUEZ: This definition was in the National Labor Relations Act when we passed the Public Employee Collective Bargaining Act. I am not aware of the legislative history but I know that it was intentionally left out from the PECBA.

TAPE 11, SIDE B

009 REP. JOHNSON: Would you be willing to research this fact?

011 MS. RODRIGUEZ: Yes.

REP. JOHNSON: Are you aware whether or not the definition that is in the NLRA causes problems? Is there a group of people who are excluded from the coverage by the union? Is this a problem area in practice?

022 MS. RODRIGUEZ: Provides an example from a private sector university.

-The whole faculty was excluded from engaging in collective bargaining.

032 REP. REPINE: We have heard from two agencies today concerning the problems regarding this issue. Can you give any other circumstances that would indicate that there are hundreds of these same kinds of flaws in the system?

MS. RODRIGUEZ: We have not heard of complaints from the people we represent in these categories.

058 DON SATCHELL, Oregon Educational Association: Testifies in opposition of HB 2088.

-Current definition hasn't created a problem as to advantage or disadvantage to either side.

-The passage of HB 2088 would affect a large number of people.

-This would create extensive litigation with considerable expense.

094 REP. JOHNSON: Have you experienced people who would be covered by this category complain about being in the union that they didn't want to be in?

MR. SATCHELL: Yes. That complaint is true regardless of how you write the bill. This goes both ways; some people would like to be covered.

REP. JOHNSON: You assume that teachers will be covered as state employees?

MR. SATCHELL: We may be. It shouldn't be divided that each group is separate, that would create a legal nightmare.

116 REP. EDMUNSON: Is it your testimony that if a school principle does not manage, formulate, determine or in any other way influence anything they should be a member of your bargaining unit?

MR. SATCHELL: No, not a principle.

124 PAT WEST, Oregon State Fire Fighters Council: It has become clear that the intention of this bill is to affect all state, county and city bargaining groups. It would impact the Fire bargaining units by one-third. This bill would have a dramatic impact on the people who are represented, mainly the ones that wish to be presented.

143 FRED VAN NATTA, Association of Engineering Employees of Oregon: Testifies in opposition of HB 2088.

-He refutes the size argument as the reason for separating the state and local governments.

-He feels that [QUOTE]if it ain't broke, don't fix it [QUOTE].

191 REP. MANNIX: Wouldn't it help labor to have a careful definition of "management official" in terms of a position?

-Reads an alternative definition. [QUOTE]If we define management official as an individual employed in a position, a) where the position requires or authorizes the individual to formulate, determine or effectively influence management policies of the agency, and b) allows discretion to the individual in the performance of these management responsibilities beyond the routine discharge of the individual's duties [QUOTE].

-He asks if this definition would make the union more comfortable?

217 Representative Mannix and Mr. Van Natta discuss which employees would fit into the above described definition.

MR. VAN NATTA: I don't understand why any of these people should be excluded from the union.

254 REP. DOMINY: Do you see any gray areas left within the domain you represent?

MR. VAN NATTA: In the last ten years we have had very few changes as to who is within or outside the organization. During a massive reclassification in the last three years we heard a lot of discussion as to where employees want to be. There is no way to draw a line that is going to increase the satisfaction in this area.

282 REP. MANNIX: Would you like the individual to choose whether he/she wants to be in management?

MR. VAN NATTA: I don't believe that is a viable test either.

315 BRIAN DE LASHMUTT, Oregon Nurses Association: He echoes the sentiments heard from various labor organizations during today's meeting.

-Expresses concern how this bill, if passed, would influence patient care since the definition, as proposed, would exclude a certain group of nurses from the bargaining unit.

REP. MANNIX: Under the definition I was proposing, they would not be excluded since they would have to have discretion in their position description to go ahead and carry on management decisions. I understand your concern.

MR. DE LASHMUTT: Given this definition, all of the 1200 employees we represent would be out of the union.

364 REP. WATT: Do you represent nurses at a state agency?

MR. DE LASHMUTT: Yes.

374 MARY BODTKIN, American Federation of State, County and Municipal Employees: We represent about 14,000 employees in the state. Some of the employee groups we represent could be seriously damaged by this bill or even by the changes that Rep. Mannix suggested.

-We represent doctors who work in state agencies and they affect management policies. Under this definition it is possible that those doctors could be eliminated from the bargaining unit.

-We are also concerned about our program directors.

409 REP. EDMUNSON: I am confused by your testimony. Do you mean the problem with making the designation of management employee is that they should not be specially identified or that they would not be allowed to organize? Seems that there is a third alternative here that we identify them as management employees but allow them to organize.

MS. BODTKIN: We need to look how that affects other areas PECBA.

TAPE 12, SIDE B

004 REP. EDMUNSON: I was really asking whether your opposition was to the designation of management as a designation. It seems that what you are saying is that it would not be right simply to tell these people that they cannot organize because they happen to have some management duties in their job description. Everyone has some degree of management duties. That is a sort of a slippery slope, how far down do you have to slide before you are out of the unit.

MS. BODTKIN: That is right.

-This bill would result in litigation trying to decide who is in and who is out. My concern is protecting my bargaining units. Under the definitions that have been proposed, doctors clearly could fall down the slippery slope far enough to fall out of the ability to be in the bargaining unit. PECBA was written to provide a vehicle and a resolution for these kinds of issues.

048 CHAIR DERFLER: Recesses the meeting.

PUBLIC HEARING, HB 2089

050 CHAIR DERFLER: Opens public hearing on HB 2089.

064 MS. LIVERMORE: Testifies in favor of HB 2089.

-The purpose of HB 2089 is to allow exclusion from bargaining units of confidential type individuals, wider than we understand the confidential definition now. It would serve to clarify the inclusion of confidential assistants to managers who formulate, direct and effectuate management policies regarding personnel management.

-We are interested in making certain that personnel assistants and personnel officers clearly are continued in their coverage under the bill.

-Agency personnel, office employees who provide confidential assistance to managers are those who, for example, would be determining which positions to cut, to address Ballot Measure 5 kind of issues, provide professional personnel management direction and assistance.

-This bill memorializes what we actually have with the exception of 15-20 individuals.

-We like to ensure clarity in the definition.

110 MR. CORDY: The statute compels that all the collective bargaining on behalf of the state be done by the Executive Department which, in that sense, puts some pressure on the definition of the confidential employee that is unique to state service.

114 REP. MANNIX: The original definition read "in the area of collective bargaining". Your modified bill says "in areas of personnel management or collective bargaining". Grammatically shouldn't it be "the area of personnel management or collective bargaining." We need to be clear that we mean one or the other. Maybe we need to ask legislative counsel to help us.

130 MS. LIVERMORE: You are correct.

133 REP. EDMUNSON: Perhaps you could say "in an area of management or collective bargaining."

138 REP. JOHNSON: We could put the word "either" in the sentence--that would clarify it.

REP. EDMUNSON: Why does the State of Oregon not allow confidential, management, or supervisory employees to organize collectively themselves? What public policy supports the exclusion of those employees from the opportunity to collectively bargain their own terms of employment?

MS. LIVERMORE: The exclusion is derived from a statutory definition of either confidential or supervisory that specifically says that they are excluded.

REP. EDMUNSON: I understand that. Can you offer any public policy that is advanced by excluding these people from the definition of public

employee?

MS. LIVERMORE: This is a philosophical issue. Engaging in the right to collective bargaining, if that is determined to be in the best interest of public policy, is one that I can support.

-In the role as a legislative body, it is your responsibility to look out for the public policy in the best interest of all the citizens and what rights and prerogatives they might have regarding collective bargaining and other employment matters. There is some secondary responsibility in terms of the State as an employer and what your responsibility or burden may be in the public arena and how well the employer functions.

-She describes further the secondary role in terms of what is the employer's responsibility is or the assistance the legislature has in that area of responsibility.

223 REP. DOMINY: You make statements that there are people out there who should be in the classification of confidentiality because of information that they could pass on. Are you making a charge that there are some employees who are passing this information on, and if so, could you give me an example of information and problems that you have had?

MS. LIVERMORE: I don't believe that was my testimony. We do wish to have clarification in this particular area. She provides an example of a possible problem.

-It is not a question of someone passing on information.

254 REP. DOMINY: If that is not the problem, why do you want change the law? What are you after?

MS. LIVERMORE: We want to provide clarity in the dualness of the definition as it exists now.

275 MR. CORDY: He reiterates the state law; regarding who is allowed to conduct collective bargaining.

-Routinely people in personnel offices were included in this definition. However, the Judiciary Department has said that a confidential employee must, through statute, have the authority to engage in collective bargaining.

304 REP. EDMUNSON: The group of state employees who are involved in collective bargaining is fairly small. He questions the wording "confidential employee, one who assists and acts in the capacity of personnel management". This could potentially result in that any employee who provides assistance in this area could be classified confidential. You probably didn't mean that broad interpretation, but that is what it says.

337 MS. LIVERMORE: Your point is well taken. That is not what we are intending here. We don't want to exclude those individuals under a "confidential" definition.

367 MARI ANNE GEST, Oregon School Employees Association: Presents testimony in opposition to HB 2089 (Exhibit D).

-The only purpose I see to this bill is to weaken the bargaining units already defined through negotiations and where there have been disputes,

defined by the Employment Relations Board (ERB).

-She believes the collective bargaining law works well and should not be tampered with in an attempt to weaken the bargaining unit.

TAPE 13, SIDE A

007 JEANINE MEYER RODRIGUEZ, Oregon Public Employees Union: Presents testimony in opposition to HB 2089 (Exhibit E).

-She echoes the sentiments of Rep. Edmunson in that the present wording would open the doors for a very broad interpretation.

-She feels that during crisis times and budget cuts it is important to include more people in the decision making process.

034 REP. MANNIX: How do you deal with the fact that presently a confidential employee of a personnel manager can be involved in both sides of a personnel grievance action.

042 MS. RODRIGUEZ: That is an open process.

REP. MANNIX: Reiterates his question.

058 MS. GEST: In many cases, in grievance handling, many employees are brought in and asked questions, such as a supervisor who may be in the bargaining unit. According to ERB ruling, whether that person should be included or excluded from the unit is whether that person can exercise independent judgment. I believe it has been applied correctly. They also look at where the person's community of interest lies--does that person relate more to the bargaining unit or is she/he actually acting in a supervisory or management position where she/he is affecting independent judgment over the employees.

REP. MANNIX: Provides an example of an exempt personnel manager and his nonexempt assistant and raises a question of a conflict of loyalties regarding the latter. Doesn't that create a real friction?

086 MS. GEST: ERB looks at each case individually and in many cases have ruled people out for a variety of reasons.

REP. MANNIX: Under the current statute it would not work.

099 MS. RODRIGUEZ: Asks that the Executive Department clarify how the above situation would be treated under the current law.

REP. MANNIX: Can this be achieved by just saying that all personnel managers would be involved in collective bargaining process somehow, so that people who work with them would be tied in automatically?

MS. RODRIGUEZ: If indeed people are involved in collective bargaining I think it is appropriate.

113 REP. EDMUNSON: Can an employee be disciplined for divulging confidential information?

133 MS. GEST: There are a variety of ways that people look at confidential information. Yes there is a provision to discipline an employee and a possibility for a discharge.

REP. EDMUNSON: They can be removed from the unit rather directly then.

142 MS. RODRIGUEZ: There are stacks of rules regarding confidentiality in the Employment Division and AFS, and they have nothing to do with collective bargaining. These regulations are very strictly applied.

157 REP. DOMINY: What do you think is the reason the Executive Department is coming forward with this bill?

MS. RODRIGUEZ: I have seen this happening before--employers trying to exclude more people to have a bigger management team in an event of a strike, for example.

178 MARY BODTKIN, AFSME: She clarifies that if an employee has direct involvement in areas discipline, discharge, reductions, they are under the confidential employee rule now.

-She suggests creating an ability for those employees who are below the confidential level but above the bargaining unit level to form their own collective bargaining unit.

-Mid-management level employees have demonstrated interest in bargaining their own agreements.

-The language of this bill appears to be more expansive than the Executive Department meant it to be.

246 DON SATCHELL, Oregon Education Association: This bill clearly affects us. It provides a major conflict to the educational reform which was passed four years ago--to the site based decision making.

278 REP. MANNIX: What is the salary range for all these department chairmen?

MR. SATCHELL: Approximately \$500-\$1500 a year on top of their salary. A significant portion of them would leave.

REP. MANNIX: Their position is to run the department. They are not really involved in personnel, are they?

MR. SATCHELL: They do have the responsibility of personnel. He provides examples.

298 CHAIR DERFLER: Adjourns the meeting at 10:55 a.m.

Submitted by: Reviewed by:

Johanna Klarin Victoria Dozler Assistant Administrator

EXHIBIT LOG:

A	-	Testimony on HB 2088 - Gary M. Cordy - 3 pages
A.1	-	Testimony on HB 2088 - Gary M. Cordy - 16 pages
B	-	Testimony on HB 2088 - Dan Tabizon - 1 page
C	-	Testimony on HB 2088 - Jeanine Meyer Rodriguez - 3 pages
D	-	Testimony on HB 2089 - Mari Anne Gest - 3 pages
E	-	Testimony on HB 2089 - Jeanine Meyer Rodriguez - 1page