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Re: Employment Relations Board Case Nos. RC-010-20 and RC-001-21

Attorney General Rosenblum, et al.:

On December 29, 2020, the Oregon Department of Justice (DOJ) submitted written objections on behalf of the Oregon Legislative Assembly to the Employment Relations Board (ERB) regarding Case No. RC-010-20, a petition before the ERB seeking recognition of the International Brotherhood of Electrical Workers (IBEW) Local 89 as the exclusive bargaining representative of various employees of the Legislative branch.

In brief, those objections asserted that:

- (1) recognizing the proposed bargaining unit would violate the separation of powers doctrine found in Article III, section 1 of the Oregon Constitution;
- (2) the Public Employees Collective Bargaining Act (PECBA) does not provide for collective bargaining representation within the Legislative branch;
- (3) the proposed bargaining unit was improperly defined; and
- (4) the number of employees included in the proposed bargaining unit – and the number that signed valid union authorization cards – was questionable.

As you know, Case No. RC-010-20 was subsequently withdrawn by the petitioner IBEW Local 89 and re-filed shortly thereafter as RC-001-21, an amended petition with a different description of the proposed bargaining unit.

As a result, none of the issues raised in the Legislative Assembly's objections have yet been resolved.

First, the Legislative Assembly raised crucial objections as to the legality of this petition under both the separation of powers doctrine of the Oregon Constitution and the state PECBA. Because the Legislative Assembly's initial objections were dropped when RC-010-20 was withdrawn by IBEW, neither question has been answered – and it is crucial that they are. Notwithstanding any relevant objections presented to the ERB, the question of constitutionality should be pursued vigorously through the legal system and ultimately answered by the state courts.

Second, IBEW's revisions to the proposed bargaining unit do not resolve the myriad of problems identified by your office with the appropriateness of that unit. For example, RC-001-21 now limits the bargaining unit description to various legislative assistants (LAs) and broadly excludes "supervisory, managerial, confidential and caucus employees." However, such generalities were something the Legislative Assembly specifically objected to in Case No. RC-010-20 (namely, that a similar description was insufficiently broad due to legislators' unique ability to designate their employees – including LAs – as any one of 90 potential classifications based on their individually assigned job duties, which can include "chief of staff" or other informal roles with supervisory, managerial, or confidential duties). Consequently, the Legislative Assembly's associated concerns about the number of employees in the proposed unit – and the accuracy of those who may have signed union authorization cards pursuant to ORS 243.682(2) – have also not been addressed.

Freedom Foundation shares the Legislative Assembly's concerns about the constitutionality of this petition and now strongly encourages the DOJ, on behalf of the Legislative Assembly, to do both of the following:

- (1) File timely objections to Case No. RC-001-21 with the ERB; and
- (2) Take additional legal action to enforce Article III, Section 1, of the Oregon Constitution.

In light of the fact that these issues were raised in objection to RC-010-20, and remain unresolved, the Freedom Foundation sees no valid reason why the DOJ would not raise the same objections to RC-001-21.

Should the DOJ decline to act, the Freedom Foundation is prepared to take legal action on behalf of aggrieved legislative employees to enforce the Oregon Constitution.

Respectfully,

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