

BEFORE THE EMPLOYMENT RELATIONS BOARD
of the
STATE OF OREGON

OREGON TECH AMERICAN
ASSOCIATION OF UNIVERSITY
PROFESSORS,

Petitioner,

v.

OREGON INSTITUTE OF TECHNOLOGY,

Respondent.

Case No. RC-007-18

**BRIEF OF *AMICI CURIAE* LABOR
ORGANIZATIONS AND MICHAEL
DEMBROW IN SUPPORT OF
PETITIONER OREGON TECH
AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS**

Submitted by:

Elizabeth A. Joffe
MCKANNA BISHOP JOFFE, LLP
1635 NW Johnson Street
Portland, Oregon 97209
503-821-0962
ljoffe@mbjlaw.com

Of Attorneys for *Amici Curiae*
Labor Organizations and Michael Dembrow

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I. Introduction

The labor organizations listed below represent faculty at institutions of higher education in Oregon and hereby file this brief, along with Oregon State Senator Michael Dembrow, as *amici curiae* in support of the petitioner Oregon Tech American Association of University Professors' position that the petitioned-for unit of all faculty department chairs at the Oregon Institute of Technology (OIT) is an appropriate bargaining unit under ORS 243.682(2). Dembrow and each of these labor organizations have a strong interest in the outcome of this case, which is the first case to interpret the 2017 changes to the PECBA regarding the definition of "supervisory employees" as applied to public universities and Oregon Health and Science University.

Amici maintain that the ALJ's recommended order is contrary to the Legislature's policy statement in ORS 243.656(3) confirming the PECBA's aim of protecting the rights of employees to organize and negotiate collectively and that any ambiguity in Oregon House Bill 3170 (2017), which made changes to the definition of "supervisory employee," should be interpreted in accordance with that underlying policy of enfranchising public employees' choice to organize and bargain collectively.

Amici further maintain that the clear intent of HB 3170 was to *expand* collective bargaining rights in Oregon's public universities by clarifying that faculty who lead research teams are *not* supervisory employees. The recommended order interprets the legislative changes, however, to *retract* collective bargaining rights by reading the supervisory employee exclusion more broadly than the Legislature intended.

Rather than carefully examining the evidence presented at hearing to determine whether the department chairs at OIT actually meet the supervisory indicia under ORS 243.650(23)(a), the ALJ reached an automatic conclusion that they constitute excluded supervisory employees under ORS

243.650(23)(b), even though department chairs are not listed among the automatic exclusions named in subsection (A) of that provision.

If the Board adopts that recommended order, currently represented department chairs who have enjoyed the stability of collective bargaining and union representation could become disenfranchised, and the ability of currently unrepresented department chairs who wish to organize and negotiate collectively at OIT and other universities will be denied. That is contrary to the purposes of the Act, and it was not the intent of the Legislature to so limit the bargaining rights of faculty.

A. The Oregon State Conference of the American Association of University Professors (AAUP Oregon)

AAUP-Oregon represents more than 6300 faculty, academic professionals, and graduate employees at the University of Oregon, Portland State University, Oregon State University, and the Oregon Institute of Technology. The Board's decision will impact AAUP-Oregon's ability to organize units at institutions with currently unrepresented department chairs and to fully represent the broad range of faculty in Oregon's institutions of higher education.

B. The American Federation of Teachers-Oregon (AFT Oregon)

AFT Oregon represents 15,000 workers in education in Oregon, many in faculty, academic professional, and staff positions at community colleges and universities. One of its local affiliates represents a bargaining unit that has long included department chairs and/or program administrators: the Eastern Oregon University Federation of Teachers. The Board's decision could upset that longstanding bargaining relationship as well as impact the rights of other AFT-represented faculty to include department chairs in their bargaining units.

C. The Oregon Education Association (OEA)

The OEA has approximately 190 locals representing some 45,000 members who work as K-12 teachers, educational support professionals, and community college instructors and staff throughout the state of Oregon. Upwards of 4000 of those members work in ten of Oregon's seventeen community colleges. Several of those faculty bargaining units currently represent and have long represented department or program chairs. While the Board's decision in this case will not directly impact those bargaining units, it could have future repercussions on the rights of those members to continue to enjoy collective bargaining rights as well as the rights of those faculty at the other colleges to choose to become represented.

D. The Portland State University Chapter of the American Association of University Professors (PSU-AAUP)

PSU-AAUP has represented the 1250 full-time faculty and academic professionals at Portland State University for 41 years. The Association is keenly interested in this case because, although department chairs are not currently represented by PSU-AAUP while they serve in that capacity, they may wish to be included in the bargaining unit in the future. PSU-AAUP provided input into the drafting of HB 3170, and it was widely believed that the final language of HB 3170 preserved the right of the department chairs at Portland State University to organize if they chose to do so.

E. The Western Oregon University Federation of Teachers, AFT Local 2278 (WOUFT)

The WOUFT, a local affiliate of the AFT, represents approximately 270 faculty members at or above 0.5 FTE at Western Oregon University (WOU). While division chairs at WOU are faculty members, they are currently unrepresented. The Board's decision in this case will have a significant impact on the ability of those faculty members to obtain union representation.

F. Eastern Oregon University Associated Academic Professionals (AAP), AFT Local 6200

The AAP, a local affiliate of the AFT, represents more than 100 full- and part-time faculty at Eastern Oregon University (EOU). The AAP has a critical interest in this case because the bargaining unit currently includes department chairs. If the Board adopts the recommended order, the parties' longstanding bargaining relationship and agreement that department chairs remain represented faculty when they rotate into service as chairs will be upset.

G. Michael Debrow

Michael Debrow is a member of the Oregon Senate who represents District 23, which includes portions of SE and NE Portland and the city of Maywood Park. He has served in the Oregon Senate since November 2013. He served in the Oregon House of Representatives from 2008 until his 2013 appointment to the Senate. Debrow was a sponsor of HB 3170 and testified in 2017 about its purpose to *extend* collective bargaining rights to certain previously excluded faculty members of public universities, namely research faculty who lead teams of researchers, but are primarily engaged in academic rather than administrative duties. Rec. O, p. 17-18, 20. *See also id.* at 15-18 (Drescher, Swift, Bakalinsky, Weyan Test.); P-7; P-8; P-9. Debrow has a strong interest in seeing that the bill he sponsored is interpreted consistently with its intent rather than how the ALJ interpreted it, which *retracts* bargaining rights from faculty positions that have historically enjoyed those rights.

In addition to his role as a state senator and sponsor of HB 3170, Debrow is himself a retired English instructor who taught at Portland Community College's Cascade campus in North Portland from 1981 until his recent retirement. He also served as the President of the PCC faculty union for 16 years, which has long represented faculty, including department chairs. As a sponsor of HB 3170, former college faculty member, and leader of a union representing faculty, including

department chairs, he has a strong interest in insuring that department chairs at public institutions of higher education in Oregon, including those employed by public universities and the Oregon Health and Science University, remain free to choose to bargain collectively and that the legislation he sponsored for the purpose of extending bargaining rights to research faculty who lead research teams not be misconstrued to remove bargaining rights from anyone.

II. The Purposes of the PECBA Require That the Law be Interpreted to Protect, not Limit, the Rights of Public Employees to Choose Whether to be Represented

The overarching aim of the PECBA is to foster harmonious relationships between government and its employees by protecting employees's rights to organize and bargain collectively.

In enacting the PECBA in 1973, the Oregon Legislature found and declared:

“(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

“(2) Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employee 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 employees;

“(3) Experience in private and public employment has also 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 the 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 employees;

“(4) The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government; and

“(5) It is the purpose of ORS 243.650 to 243.782 to obligate public employers, public employees and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the

improvement of employer-employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers.”

ORS 243.656.

Toward that end, it has long been held that the definition of “public employee” is broad, and exclusions from that definition should be narrowly construed. *See e.g. City of Portland v. Portland Police commanding Officers Association*, UC-017-013, 25 PECBR 996, 1018 (2014). The recommended order flouts these longstanding principles by reading the “supervisory employee” exclusion broadly to retract collective bargaining rights long enjoyed by department chairs in Oregon’s public institutions of higher education. The Board should reject the recommended order and instead follow the policies behind the PECBA and read the supervisory employee exclusion narrowly.

III. The ALJ Erred by Automatically Determining OIT Department Chairs are Supervisory Employees Rather than Evaluating the Evidence to Determine Whether Indicia of Supervisory Status Exist

“Public employee” is defined as “an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under section 41, Article I of the Oregon Constitution, or persons who are confidential employees, supervisory employees or managerial employees.” ORS 243.650(19). “Supervisory employee,” the only exclusion from the “public employee” definition relevant to this case, is defined in three subsections. The first is the general definition of “supervisory employee”:

“‘Supervisory employee’ means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. [* * *].”

ORS 243.650(23)(a). The ALJ did not engage in any analysis of whether OIT department heads engage in any of the indicia listed in this section.

Subsection (b), the current content of which was newly added through HB 3170, addresses the supervisory status of certain university administrator positions:

“Supervisory employee’ includes a faculty member of a public university listed in ORS 352.002 or the Oregon Health and Science University who:

“(A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, assistant dean, head or equivalent position; or

“(B) Is employed in an administrative position without a reasonable expectation of teaching, research or other scholarly accomplishments.”

ORS 243.650(23)(b).

The third subsection then clarifies that certain specific positions, including faculty members who are not excluded by subsection (b), are *not* supervisory employees:

“Supervisory employee’ does not include:

“(A) A nurse, charge nurse or nurse holding a similar position if that position has not traditionally been classified as supervisory;

“(B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the work of other employees but does not have the authority to hire, discharge or impose economic discipline on those employees; or

“(C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and Science University who is not a faculty member described in paragraph (b) of this subsection.”

ORS 243.650(23)(c).

Rather than analyzing the evidence to determine whether the OIT department chairs are “supervisory employees” within the meaning of ORS 243.650(23)(a), the recommender order hinges on two non-fact-based conclusions: 1) that OIT department chairs are supervisory employees because of the Board’s 1975 decision in *Associated Professors of Oregon Institute of Technology v.*

Oregon State System of Higher Education. Case No. C-230, 1 PECBR 425 (1975); and 2) that OIT “department chairs” are “heads or the equivalent” within the meaning of ORS 243.650(23)(b)(A). The Board should reject both of these conclusions.

It is clear from the 1975 decision that circumstances have changed over the last four decades since the Board held that “Department Chairmen” were supervisory employees within the meaning of the PECBA at that time. For example, unlike currently, the decision notes that “Department Chairmen are not elected by their peers.” 1 PECBR at 429. In addition, the statutory definition of “supervisory employe” in 1975 is not identical to the current definition. *Compare* ORS 243.650(14) (1975) *with* ORS 243.650(23). Particularly given the passage of 44 years, the ALJ should have examined the evidence and reached a conclusion based on the totality of the circumstances, not merely followed the 1975 decision, which gave all of a paragraph’s attention to the status of department “chairmen.” 1 PECBR at 429; *see also AFT Local 6069, Coalition of Graduate Employees v. OUS*, UC-004-12, 25 PECBR 356, 375-376 (2013) (holding graduate assistants are public employees, and declining to follow 1977 decision to the contrary due to changed circumstances and the need make a fact specific inquiry and decision based upon the totality of the circumstances), Member Logan dissenting.

In the Board’s most recent decision on supervisory status, the Board set forth its test for determining whether employees are statutory supervisors under ORS 243.650(23):

“When we apply this provision, we consider three questions, ‘each of which must be answered in the affirmative for an employee to be deemed a supervisory employee: (1) does the employee have the authority to take action (or to effectively recommend action be taken) in any of the 12 listed activities; (2) does the exercise of that authority require ‘the use of independent judgment’; and (3) does the employee hold the authority in the interest of management.”

Keizer Police Association v. City of Keizer, UC-004-18, p.19, 27 PECBR 796, 814 (2019) (citations omitted). Only after a detailed analysis of the evidence did the Board conclude in that case that the

sergeants the union sought to add to the existing bargaining unit were supervisors. In so holding, the Board underscored the need for “detailed, specific evidence” of sufficient supervisory authority, not merely inferences or conclusory statements:

“Before we will conclude that an otherwise ‘public employee’ is a ‘supervisory employee,’ however, there must be sufficient evidence establishing that the statutory exclusion of ORS 243.650(23) applies. *Portland Police Commanding Officers Association*, UC-017-13 at 23, 25 PECBR at 1018. Mere inferences and conclusory statements are insufficient. *Id.* Accordingly, in the absence of detailed, specific evidence establishing that a petitioned-for employee has authority under ORS 243.650(23), we will conclude that the employee is not a supervisory employee. *SEIU Local 503, OPEU v. Portland State University*, Case No. UC-002-17 at 13 (2018).”

Keizer, UC-004-18, p.19.

In the cited *PPCOA* case, the Board noted that actual, sufficient evidence is required because “‘supervisory employee’ is a statutory exclusion from the otherwise broadly defined term ‘public employee.’” *City of Portland v. Portland Police Commanding Officers Association*, UC-017-013, 25 PECBR 996, 1018 (2014). Only after assessing whether the evidence demonstrated the employees at issue had authority under the specific supervisory statutory criteria did it hold that lieutenants and captains are not supervisors under ORS 243.650(23) but commanders and captains are. *Id.* at 1028. *See also International Brotherhood of Teamsters, Local 223 v. City of Medford*, UC-014-17, 27 PECBR 505 (2018) (adopting recommended order concluding Fleet Services Coordinator is not a statutory supervisor); *City of Union v. Laborers’ International Union of North America, Local 121*, UC-9-08, 22 PECRA 872, 888 (2008) (holding that, based on totality of the circumstances, public works superintendent is not a supervisory employee within the meaning of ORS 243.650(23)).

The ALJ here failed to explain why he did not apply the Board’s longstanding test for determining supervisory status. There is no evidence the 2017 Legislature intended to abandon the test or its underlying principles by enacting HB 3170.

It is undisputed that the OIT department chairs are and remain full-time faculty members who have been nominated by and selected through majority vote by the faculty members in their department. Rec. O., p.6 (FF 21); P-47, p. 2. Significantly, they remain teaching faculty, typically at half-time, subject to faculty evaluation and promotion procedures while they serve as department chairs. *Id.* at p.7-8 (FF 22, 23, 29). They are faculty “leaders” who continue to function as teaching department faculty. P-47, p. 1; R-11, p. 1.

This stands in sharp contrast to the “Department Heads” at Oregon State University, who are typically external hires, not rotating faculty serving three- or four-year terms, and have far more authority to administer discipline, hire, promote, and make decisions affecting pay. *Id.* at p. 10 (FF 39). Unlike OIT department chairs, who receive release time from faculty duties and a stipend, OSU heads receive a separate and higher base salary than faculty. P-59, p. 3; P-60, p. 1.

IV. The Fact that Faculty Bargaining Units at Two of Oregon’s Public Universities Currently Include Department Chairs Supports the Conclusion that Department Chairs are not “Supervisory Employees”

The record reveals that faculty bargaining units at two of Oregon’s public universities currently include department chairs: Southern Oregon University and Eastern Oregon University. P-54 at 11; P-61 at 38; Bromley Test. There are only seven public universities in Oregon. ORS 352.002. That department chairs at more than 25% of Oregon’s public universities are currently represented is significant for at least two reasons.

First, “department chair” was clearly a known and commonly used position title in Oregon’s public universities when HB 3170 was passed, yet it was not among the list of administrator positions the bill expressly included in subsection (b)(A) of the definition of “supervisory employee.” Rather, the listed positions include only: “president, vice president, provost, vice provost, dean, associate dean, assistant dean, head or equivalent position.” ORS 243.650(23)(b)(A).

Under the statutory construction rule *expressio unius est exclusio alterius* – when things in a class are expressly listed, those not included in the list are excluded – the Board should presume that the Legislature did not intend for “department chair” to be read into that subsection. That is particularly so in light of the fact that the next subsection of the definition identifies the key factor the positions listed in subsection (A) have in common: they are “employed in an administrative position without a reasonable expectation of teaching, research or other scholarly accomplishments.” ORS 243.650(23)(b)(B). That is plainly *not* the case with OIT department chairs. It is undisputed that they have ongoing teaching, research, or other scholarly duties and responsibilities. It is unreasonable to conclude that the Legislature intended to include department chairs in the definition of “supervisory employees” given the knowledge that department chairs at over a quarter of Oregon’s public universities are currently represented and the list of supervisory employee positions in public universities fails to specifically name them.

Second, affirming the recommended order would upset longstanding bargaining relationships at Eastern Oregon University and Southern Oregon University where department chairs have long been included in the faculty bargaining units. In accordance with the policies behind the PECBA, the Board should strive to avoid such an unreasonable and harsh result that would disenfranchise public employees who currently enjoy collective bargaining rights.

V. There are Many Other Faculty Bargaining Units in Oregon that Include Department Chairs, and if the Legislature Intended to Remove Certain "Department Chairs" from the Definition of Public Employees by Including them in the Definition of "Supervisors," They Would Have Specifically Referenced "Department Chairs"

In addition to the represented department chairs at Eastern Oregon University and Southern Oregon University, department chairs at the majority of Oregon’s community colleges are represented. While they will not be directly impacted by this decision because it pertains only to faculty members of public universities or the Oregon Health and Science University, their

widespread and longstanding acceptance as public employees with the right to organize and bargain collectively is relevant for at least two reasons. First, a Board decision holding that public university department chairs are not public employees could render community college department chairs vulnerable to subsequent exclusion either legislatively or through unit clarification petitions.

Second, and more immediately relevant to the Board’s consideration is that it is even more inconceivable that the Legislature would have intended to exclude university department chairs from the right to representation and collective bargaining without specifically stating so in light of the fact that so many department chairs at public institutions of higher education throughout the state enjoy such representation.

There are seventeen community colleges in Oregon: Blue Mountain Community College, Central Oregon Community College, Chemeketa Community College, Clackamas Community College, Clatsop Community College, Columbia Gorge Community College, Klamath College Community College, Lane Community College, Linn-Benton Community College, Mt. Hood Community College, Oregon Coast Community College, Portland Community College, Rogue Community College, Southwestern Oregon Community College, Tillamook Bay Community College, Treasure Valley Community College, and Umpqua Community College.

Sixteen of these 17 community colleges have represented faculty bargaining units. Of those 16 represented faculty units, at least the following ten include department or program chairs in the bargaining unit.¹

1. Blue Mountain Community College (BMCC)

The BMCC Faculty Association, an affiliate of the Oregon Education Association (OEA) and National Education Association (NEA) represents “all profession faculty” at the College,

¹Some of the remaining schools do not have department chairs or the equivalent at all.

excluding supervisory employees and a number of listed positions. App. at 2². The collective bargaining agreement sets forth specific terms and conditions of employment for department chairs. App. at 6, 12.

2. Central Oregon Community College (COCC).

The COCC Faculty Forum, an independent, unaffiliated labor organization, represents “all full-time faculty and adjunct instructors employed on faculty or adjunct appointments approved by the Board.” App. at 14. “Full-time faculty” includes “librarians and *department chairs* whose services are provided on a full-time basis over the full academic year, unless they are specifically contracted in another category of personnel.” App. at 15-16 (emphasis added)

3. Chemeketa Community College.

The Chemeketa Community College Association, an affiliate of the OEA/NEA, represents a merged bargaining unit of faculty expressly including “program chairs.” App. at 18. The applicable collective bargaining agreement sets forth specific duties and terms and conditions of employment for program chairs. App. at 26-27.

4. Clackamas Community College (CCC).

The CCC Education Association, an affiliate of the OEA/NEA, represents, “all full-time faculty annually contracted employees” expressly including “full-time faculty annually contracted employees who are instructors, librarians, counselors, health sciences faculty, coaches, *department chairpersons*, and those in grant funded positions.” App. at 29. The collective bargaining agreement sets forth the terms and conditions of employment for department chairs. App. at 36.

²The Appendix (App.) to this brief includes the cover page and relevant articles of the collective bargaining agreements covering those bargaining units.

5. Columbia Gorge Community College.

The United Employees of Columbia Gorge Community College, a local affiliate of the AFT, represents full-time instructors, part-time instructors who teach credit courses, and part-time instructors who teach noncredit courses in adult basic education, GED, English as a second language, and vocational (professional/technical) education. App. at 46; 47. The collective bargaining agreement contemplates that faculty retain their represented status during the period they are elected to serve as department chairs. App. at 49.

6. Klamath College Community College (KCC).

The KCC Faculty Association, an affiliate of the OEA/NEA, represents “[a]ll faculty employed by the Klamath Community College who work at least 0.2 FTE or teach at least nine (9) credit hours over the academic year, including librarians, *faculty chairs*, instructional coordinators, and other staff who perform instructional duties.” App. at 52 (emphasis added); *see also Klamath Community College Faculty Association v. Klamath Community College*, CC-3-09, 23 PECBR 484, 496 (2010) (holding petitioned-for unit included department chairs is appropriate).

7. Linn-Benton Community College (LBCC).

The LBCC Faculty Association represents “all .50 or more individually contracted faculty members employed by the Board.” App. at 55. The collective bargaining agreement addresses “faculty salaries,” including “faculty adjustment for department chair duties or program chair duties” and contains a separate article setting forth additional terms and conditions for “Department/Program Chairs” as well as an appendix for tabulating points for purposes of placement on the “Chair Pay Scale.” App. at 56, 58, 59-61.

8. Portland Community College (PCC).

The Portland Community College Federation of Faculty and Academic Professionals, a local affiliate of the AFT, represents full and part-time faculty and academic professionals at PCC, including department chairs. App. at 64, 66. There are several provisions of the collective bargaining agreement addressing the terms and conditions of employment applicable to department chairs. App. at 75-76, 78.

9. Rogue Community College (RCC).

The RCC Education Association, an affiliate of the OEA/NEA, represents “faculty and professionals assigned more than 20% of a fulltime equivalent workload” and expressly defines “department chair” as “a unit member who typically performs, among others, the following duties: acts as liaison between community and educational programs; provides input into recruitment, selection, and evaluation of departmental faculty and staff; coordinates departmental activities; assists in budget preparation; conducts advisory committee meetings; and prepares initial class schedule.” App. at 80, 84. Department chair pay and release time is set forth in the compensation article and an appendix. App. at 89, 90-92.

10. Treasure Valley Community College (TVCC).

The TVCC Education Association, an affiliate of the OEA/NEA, represents “Teaching faculty members contracted to work at least fifty-five percent (55%) of a regular full-time academic year workload assignment.” App. at 94. Department chairs are included in the bargaining unit and those faculty serving in that capacity during the academic year receive a stipend equal to the overload rate of three credits. App. at 103. Those serving as chairs during the summer term receive a stipend equal to one overload credit. *Id.* The collective bargaining agreements contains a specific article setting forth terms and conditions of employment for department chairs. App. at 105.

11. Umpqua Community College (UCC).

The UCC Faculty Association, an affiliate of the OEA/NEA, represents “all faculty of the College who work 0.68 FTE or more per academic year (Fall, Winter, Spring), including all employees who are assigned ILC classes, adult basic skill development (adult basic and secondary education) instructors, ESL instructors, librarians, counselors, and *department chairs*.” App. at 107. (emphasis added). The collective bargaining agreement contains a specific article on department chairs repeating that “[a] faculty department chair shall be a bargaining unit member” and setting forth the terms and conditions of employment for department chairs. App. at 108. Subsequent to signing the 2017-2021 agreement, the parties entered into a Memorandum of Understanding updating the terms and conditions of employment for department chairs. App. at 110-112.

It makes far more sense that, rather than intending the term “head” as used in ORS 243.650(23)(b)(A) to mean the equivalent of “department chairs,” who widely enjoy collective bargaining rights throughout public higher education institutions, the Legislature intended “head” to mean the same thing or the equivalent as that specific position at OSU, one of the institutions expressly considered behind the purposes of HB 3170. As the ALJ found, OSU “Department Heads” are quite different from OIT and other typical department “chairs.” While chairs are generally faculty members who are elected by their faculty peers for rotating terms and who continue to perform faculty duties, albeit with some release time for chair duties, OSU department heads are non-rotating external hires who have independent salaries not based on a faculty salary differential or release time, have little to no instructional duties, and have significantly more supervisory duties. Rec. O., p. 10. There is evidence in the record that the Legislature specifically considered OSU head positions, but there is no evidence the Legislature considered any of the

dictionary definitions of “head” the ALJ cited in support of his conclusion that the “head or equivalent” includes “department chair.” *See* Rec. O., p.13-14; Anderson Test.; Bromley Test.

To the contrary, bill sponsor Dembrow expressly referenced “[f]aculty department chairs” in his testimony in support of the bill, noting that, “they are generally not considered supervisory management because they don’t have final hiring and firing authority over their peers and as a result are considered part of the faculty collective bargaining unit.” Rec. O., p. 20. His testimony underscores that the bill was not intended to change the public employee status of those widely represented faculty chairs; it was intended to address academic research faculty who supervise research teams. *Id.* at 20-21.

While the ALJ correctly concluded that, “the legislature’s purpose in enacting HB 3170 was to remove research faculty, who supervise other individuals under the terms of a grant or funding source, from the definition of ‘supervisor’ under the PECBA,” he went on to incorrectly hold that they did so in a manner that also excluded department chairs, even though they have widely enjoyed representation in Oregon’s public institutions of higher education and there is no legislative history that supports this purported ancillary intent. *Id.* at 21.

VI. Conclusion

For all these reasons, AAUP-Oregon, AFT-Oregon, OEA, PSU-AAUP, WOUFT, EOUFT, and Michael Dembrow respectfully request that the Board find Petitioner’s petitioned-for unit of faculty department chairs to be an appropriate bargaining unit.

Dated: July 1, 2019.

Respectfully submitted,

MCKANNA BISHOP JOFFE, LLP



Elizabeth A. Joffe, OSB# 940243

Of Attorneys for *Amici Curiae*

Labor Organizations and Michael Dembrow

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **BRIEF OF AMICI CURIAE LABOR ORGANIZATIONS AND MICHAEL DEMBROW IN SUPPORT OF PETITIONER OREGON TECH AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS** on:

Jeffrey Chicoine
Attorney at Law
Miller Nash Graham and Dunn, LLP
111 SW Fifth Avenue, Suite 3400
Portland, OR 97204
jeff.chicoine@millernash.com

Jason Weyand
Haley Rosenthal
Tedesco Law Group
12780 SE Stark St
Portland, OR 97233
jason@miketlaw.com
Of Attorneys for Respondent

by the following indicated method or methods:

- by **mailing** a copy thereof in a sealed, first-class postage-paid envelope, addressed to the attorney(s) listed above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- by **faxing** a copy thereof to at the fax number(s) shown above, on the date set forth below.
- by **efiling** a copy thereof on the date set forth below.

DATED this 1st day of July, 2019.



Elizabeth A. Joffe
MCKANNA BISHOP JOFFE, LLP
1635 NW Johnson Street
Portland OR 97209
Phone: 503-821-0962
Fax: 503-226-6121
Email: ljoffe@mbjlaw.com

Of Attorneys for *Amici Curiae*
Labor Organizations and Michael Dembrow