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Via Email Only

February 11, 2026

Chris Duckworth
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1827 NE 44th Street
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Re: Lane Community College and Lane Community College Education Association Negotiations

Dear Chris:

I am assisting the Lane Community College Education Association (the "Association") in its effort to negotiate a successor collective bargaining agreement with Lane Community College (the "College"). I have received your letters alleging that various Association proposals involve permissive subjects of bargaining and have been informed by my client that the College has directly or indirectly refused to bargain in good faith over these and other proposals. I will respond briefly to your claims on specific issues below, but as a general matter I must note that you have failed to identify any statutory basis or case law for your claims that dozens of proposals involve permissive subjects. That makes a full response difficult and we reserve the right to supplement our response when and if the College provides more detailed explanations of its position.

In some instances, the College averred that—because it believes the proposals to be "arbitrary"—that they are permissive. Putting aside our clear disagreement about the College's self-serving characterization of the Association's proposals, an employer's subjective opinion about the merits of a proposal has no relevance when determining whether a subject is mandatory, permissive, or prohibited. Otherwise, employers could evade their bargaining obligation with impunity by simply declaring the proposals arbitrary or unreasonable. We strongly disagree with this argument, and we also disagree with nearly every claim that our proposals involve permissive subjects. We will address the major issues below in the hopes that the College will stop arguing about the law and start bargaining over terms that work for both parties.

Unfortunately, that has not been the case at the table, and it looks increasingly like the College has little desire to reach a fair contract with the Association. The sheer volume of subjects that the College is claiming are permissive, coupled with the behavior of its representatives in and outside of the bargaining table and the volume of predictably unacceptable proposals the College has made during negotiations, is evidence of bad faith bargaining. The College's conduct almost certainly rises to the level of an outright refusal to bargain on many proposals and certainly constitutes

surface bargaining. This is particularly troubling given the number of unfair labor practices the Association has had to file in recent months in response to other College actions that show a disregard for its obligations under the PECBA.

To be blunt, the College appears to be engaging in legal gamesmanship, repeatedly raising assertions that subjects are permissive but refusing to either clearly refuse to bargain or submit good faith disputes to ERB to get an answer on the status of the proposals. Instead, the College is avoiding meaningful bargaining by stopping just shy of openly refusing to bargain and then only going through some minimal performative motions of bargaining without a sincere desire to come to any agreement on those subjects. If the College does not change course and truly engage in good faith over the many outstanding issues, we will have no choice but to file another unfair labor practice to ensure that all disputes about the College's obligation to bargain are resolved in a timely manner. This would be a waste of time and resources that are better spent negotiating terms for a fair collective bargaining agreement, or at least submitting the dispute in bargaining status to ERB through a declaratory ruling action. That way, neither party has to file or defend an unfair labor practice complaint to find out whose view of the bargaining status is correct.

Please review the responses below and let me know if the College is willing to concede that it must bargain in good faith over some or all of these proposals, so the process can move on. In the alternative, please let me know if the College is open to a declaratory ruling petition to get answers to the biggest areas of dispute.

Article 4 Proposal

Without any meaningful explanation, the College claimed that the following aspects of the Association's proposals are permissive: utilizing the 150-day bargaining process for specific contracting out negotiations that would trigger the bargaining obligation under the proposed contract terms; proposals setting out when and how the College can subcontract bargaining unit work; and protecting bargaining unit work from being performed by artificial intelligence.

Each of these proposals involves mandatory subjects of bargaining. First, the proposal to use the 150-day process is mandatory because it merely designates the appropriate bargaining procedure for what is essentially a reopener provision that is triggered if specific conditions are met. Reopener provisions are typically subject to the 150-day procedure unless the contract requires otherwise. On the other hand, the 90-day process under ORS 243.698 applies to midterm bargaining involving subjects not contained in the contract, or where contract provisions are unlawful and subject to renegotiation under ORS 243.702. Here, some subcontracting and other job security provisions are set out in the contract, but the proposal would create a process for the parties to negotiate additional terms depending on the specific context of the subcontracting because each scenario is different and not ideally suited to a "one size fits all" approach. Thus, there is an argument that the current language actually modifies the bargaining process that would otherwise be required under PECBA. Typically, proposals that would modify the bargaining procedures under the PECBA (e.g., proposals to use interest arbitration to resolve bargaining disputes where not required under the PECBA) are permissive.

Second, the proposal in Article 4.3 on subcontracting involves conditions that must be met by the College before subcontracting out bargaining unit positions and work. Thus, the proposals involve the subjects of job security and preservation of bargaining unit work, both of which are mandatory for bargaining. *See TriMet v. ATU/ATU v. TriMet,* Case Nos. UP-035-20 and UP-036-20 at 58 (2021) (noting that job security and preserving bargaining unit work are mandatory); *Federation*

of Oregon Parole and Probation Officers v. Corrections Division, Field Services Section, Watson, Administrator & Executive Department, State of Oregon, Case No. C-57-82 at 6-7, 7 PECBR 5649, 5654-55 (1983) (subcontracting impacts are mandatory and decisions can be mandatory under all things considered test); *Blue Mountain Faculty Association/Oregon Education Association/NEA and Lamiman v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 673 (2007) (job security is a mandatory subject of bargaining); *TriMet v. ATU/ATU v. TriMet,* Case Nos. UP-001-20 and 003-20 (2021), order on reconsideration at 6-10 (concluding that decision to terminate apprenticeship program was mandatory for bargaining because of impacts on job security and other working conditions).

Similarly, Article 4.3.1 proposes limits on utilizing artificial intelligence to perform bargaining unit work. At its core, this proposal is intended to prevent layoffs or loss of bargaining unit positions through attrition or other means, prevent reductions in hours, and help allocate workload by preserving existing bargaining work. Although the Board has not yet addressed the specific issue of proposals protecting bargaining unit work from being performed by AI, it once again involves the mandatory subjects of bargaining of job security, preservation of bargaining unit work, and workload.

Article 6

You objected to language from the January 13, 2026, proposal from the Association on this article. The Association does not agree with your characterization of the subject as permissive, but the Association made an updated proposal on January 20, 2026, mooting any purported concerns on this article.

Article 7—Nondiscrimination

Labor unions are uniquely suited to protect workers from discrimination and have the right—and an obligation—to seek strong protections for workers that go beyond the minimum rights provided under state, federal, and local employment laws. As unmistakably demonstrated by recent political and legal developments in this country, workers with actual or perceived immigration status issues are at constant risk of adverse actions from many sources, including employers. The Association believes strongly that workers deserve to be treated with fairness and respect regardless of the actual or perceived immigration status, and that contractual rights should not be applied differently to workers because of immigration status.

To effectively create a workplace culture where discrimination is not tolerated and incidents are addressed effectively, it is important for the College to have a complaint and investigation procedure that is fair and responsive to complainants. It is also important that, when incidents are reported, that the College's response is effective and targeted at the root causes of discrimination and bias. If employees do not believe that system will be fair and meaningful, they will not bring issues forward and they will not fully participate in the process even where they are not the complainants. Employees and the Association leadership do not believe that the current system is adequate to address these complex problems. That is why the Association proposed language recommitting to such a procedure with specific steps that would render the process more effective.

Instead of responding with ideas about how to address these problems, the College incorrectly claimed that the proposals are permissive and admonished the Association for including "blanket statements of intent" in the proposal. Protection from discrimination at work is clearly a mandatory subject of bargaining. These provisions include job security elements but also extend to every

subject incorporated into the contract. The College asserts that the Association's language prohibiting discrimination based on immigration status is permissive or possibly prohibited for bargaining. However, prohibitions against arbitrary and unfair discrimination in the workplace are clearly mandatory for bargaining. Indeed, contract articles banning discrimination have been found to be mandatory even where there is a statutory right that also protects employees. Unions and employers can and should agree to ban discrimination beyond the minimal requirements of state and federal law, particularly in higher education where there has been a longstanding commitment to diverse and equitable workplaces.

Nothing in the proposal prohibits the College from complying with any requirements under federal or state law. Claims to the contrary are based on assumptions from the College about the Association's intent that are incorrect. It simply prohibits discrimination against employees because of their immigration status, something that is consistent with Oregon's sanctuary laws which apply to the College. *See generally,* ORS 180.805, 180.810, and 181A.820 to 181A.829. Perhaps most relevant to this situation, ORS 183A.823 prohibits public bodies (including the College) from denying benefits and services to people based on immigration status except where affirmatively required by law, and also bars inquiries into immigration status with narrow exceptions. The Association's proposal is consistent with the intent and spirit of these important state laws, and is consistent with the College's claim that it "is deeply committed to a safe, inclusive campus."

It is beyond perplexing that the College would object to such protections and is instead fighting for the right to discriminate against workers, going so far as to accuse the Association of "usurping" the College's role in protecting workers and students from discrimination. Putting aside the legal problems implicit in this statement, the fact that the College cannot see that the Association should be a key partner in protecting workers and students is troubling. We sincerely hope that the College reverses course and will jointly commit to language prohibiting arbitrary and unfair discrimination in the workplace.

Article 10 – Contracted Faculty Retrenchment and All Faculty Job Security

First, the College objected to the Association's September 11, 2025 proposal on Article 10. That proposal has been replaced by subsequent proposals, including the January 20, 2026, proposal. The Association's proposals all involve the subjects of job security and hours of work, both of which are mandatory for the reasons set out more fully above.

The College objects to the March 15 deadline for retrenchment notices for the fall terms, explaining that its "imposes an arbitrary time limitation for the College." Respectfully, the deadline is not arbitrary, it is a commonsense timeline to allow for meaningful discussion, planning, and negotiations over alternatives to workers losing their jobs. But putting aside the merits of the proposal to continue the current timeline, the College's opinion on the merits of a proposal has nothing to do with that proposals status as mandatory or permissive. The subject is what drives that analysis, and here the subject is the timeline and procedure for responding to potential retrenchments, which is a specific subset of job security proposals.

The College further objects to the proposal to have a minimum threshold for contracted faculty of 60 percent or no less than 210 positions, and additional proposals in Article 10.7 that "stem from and are related to the ratio." The College objects because the proposal "restricts management's rights to determine staffing and allocation of the workforce." Once again, these proposals are directly aimed at protecting job security, establishing hours of work, and protecting bargaining

unit work from erosion. Those subjects are mandatory for bargaining, and the fact that they would limit or modify management's discretion to make certain changes does not render those proposals permissive. Indeed, the entire purpose of a collective bargaining agreement is to place agreed-upon limits on an employer's discretion in many key areas. Agreeing to a salary scale limits an employer's discretion to pay people a lower amount, yet wages and compensation are mandatory for bargaining.

Article 11—Association Matters

Under ORS 243.672(1)(e), the College is required to provide the Association with a wide variety of information related to bargaining and contract administration so it can perform its duties as exclusive representative for the bargaining unit. Likewise, the Association, its members, and its representatives have the same right to information under Oregon's Public Records Law that any other party has. The scope of the information that the Association has a right to under PECBA overlaps with the Public Records Law in significant ways, but there are times when the PECBA requires more information to be produced and times where the Public Records Law may give the Association broader rights to information.

Here, the Association is simply proposing to retain language in Article 11.11 that establishes a contractual right to information that it is already entitled to under the PECBA and/or Public Records Law, and setting out timelines for production of that information. Proposals requiring the College to provide information that is reasonably related to the Association's role as exclusive representative, including timelines for production, are mandatory for bargaining. This is clearly something that is recognized under the Board's case law applying the duty to bargain in good faith when there are disputes about information requests, including attempts to charge for information. Clarifying that the scope of information the College will provide to the Association includes information that is available under the Public Records Law does not render the subject permissive, nor does the inclusion of a timeline for production of information.

You have not provided any case law or statutory support for the claim that this proposal is permissive. Instead, the College claims that the timeline is "arbitrary" and that somehow means the proposal is permissive. Clearly the Association disagrees that the timelines are arbitrary. To the contrary, having an agreed-upon timeline for production of information helps avoid disputes and makes sure all parties share an understanding of how long such production will take. But more importantly, the College's belief that a proposal is arbitrary is irrelevant to evaluating the bargaining status of the proposal. That belief may inform the College's counter proposals, but it does not impact the status of the subject for bargaining. The Association is troubled by the College's attempts to eliminate this existing language and effectively limit its obligation to provide information to the Association. Oregon's laws for public employers are premised upon open disclosure and transparent government. The College's assertion and bargaining proposals are inconsistent with these laudable and important principles.

Article 15—Artificial Intelligence

You raised concerns about the January 13, 2026 proposal on this article, but the Association submitted a subsequent proposal on January 20 that eliminated the portion of Article 15.2.3 that was specifically cited in your letter. Thus, this concern is moot. With respect to the remaining objections on 15.2.1 and 15.2.2, you did not offer any explanation or support for the assertion that the proposed language was permissive. The Board has yet to review the specific status of proposals relating to artificial intelligence, but we are confident that when it does, it will determine that the

use of and limitations on the use of artificial intelligence in the workplace will be mandatory. AI is already having a profound impact on multiple mandatory subjects of bargaining, and that impact will continue to grow and will outweigh any countervailing managerial prerogatives when the Board engages in its balancing test to determine the bargaining status. Perhaps most importantly, AI impacts job security and workload. It can displace workers and dramatically change the nature and amount of work performed by those workers who remain employed. It also requires different skills, training, and education to utilize AI effectively and ethically. It can be utilized to engage in electronic monitoring of employees in the workplace and compromise employee privacy, depending on the systems used, both of which involve mandatory subjects of bargaining. *ATU v. TriMet,* Case No. UP-009-13 at 21 (2014) (electronic surveillance of employees is mandatory for bargaining due to impacts on job security, discipline, employee privacy, and safety).

Article 16—Personal Rights

Once again, with no explanation the College asserts that proposals on employee privacy in Article 16 are permissive. However, these proposals involve limitations on the physical and electronic monitoring/surveillance of employees, and employee privacy protections. As noted above, those subjects are mandatory for bargaining. *ATU v. TriMet,* Case No. UP-009-13 at 21. The proposals also impact job security and disciplinary standards by setting out when and how the College may conduct investigations into employee conduct. Disciplinary standards and investigation procedures are mandatory for bargaining.

Article 23—Professional Development

Article 23 involves professional development funds and corresponding leave to participate in approved activities. This involves the per se mandatory subjects of direct and indirect monetary benefits, paid leaves, and hours of work. See ORS 243.650(7)(a). Professional development opportunities also impact promotional opportunities within the bargaining unit and impacts job security by ensuring that employees meet the qualifications for their position and other positions in the event of retrenchments. The Association having an important role in the allocation of these funds does not result in the subjects at issue becoming permissive. Indeed, this structure is common in higher education and many workplaces have various employer-funded benefits that are directed or partially controlled by labor organizations or employee committees (e.g., union-administered health and pension plans, hardship funds, etc.). To the extent that this is not clear, the Board recently held that a college violated ORS 243.672(1)(e) by unilaterally changing the status quo with respect to various funds, including a faculty education and professional development fund. *Portland State University Faculty Association v. Portland State University,* Case No. UP-047-25 (2025).

Article 34.8.1—Cancellation of Part-Time Faculty Courses

The Association has proposed reasonable parameters on when the College can cancel classes for part-time faculty on short notice. This includes reasonable enrollment thresholds so that courses are not cancelled unreasonably or that low enrollment is not used as a pretext for cancelling classes for alternate reasons. And although we are unaware of a specific case addressing this exact type of proposal, at its core this proposal involves the subjects of job security, hours of work, and compensation. Part-time faculty are particularly vulnerable to low enrollment cancellations because they are not full time, and cancellations can effectively end their employment for a period of time. Further, part-time faculty need to make decisions on seeking or accepting alternate employment in part based on their expected teaching load. If they decline alternate employment

because they have agreed to teach a course at the College, they may not have meaningful opportunities to obtain alternate work and will lose income without reasonable advanced notice of their need to do so.

Article 35—Workload

Workload is a mandatory subject of bargaining and has been for decades. Consistent with this line of case, ERB also held that class size in the education context was mandatory for bargaining in the K-12 in 1989 in its initial order in *Tualatin Valley Bargaining Council v. Tigard School District 23J,* Case No. UP-42-89, 11 PECBR 590 (1989). In 1993, on remand from the Oregon Supreme Court, the Board again concluded that class size was mandatory because it directly correlated to workload and had other impacts on working conditions. That case was the Board's definitive statement on the bargaining status of class size in 1995 when the Legislature enacted SB 750. That law specifically made class size in the K-12 context permissive and provided that Board decisions finding subjects of bargaining permissive prior to 1995 remained in effect. However, the Board had determined that class size was mandatory for bargaining because it directly impacted workload. Thus, the status of this subject as of 1995 was mandatory, not permissive, so the SB 750 language freezing permissive subjects in place is not applicable.

Article 35 has detailed provisions that all are geared towards addressing workload distribution in different ways, including case and class size limits. These proposals reflect the clear and unequivocal connection between case and class sizes and workload, as ERB succinctly explained in the order on remand in *Tualatin Valley:*

> "There can be no reasonable dispute that the number of students in a class directly affects many fundamental teaching activities and responsibilities. The number of tests to be given, papers to grade, grades to be calculated, and parent conferences to prepare for and participate in (both scheduled and unscheduled) are all necessarily affected by the number of students to be taught. These added burdens in turn result in increased hours of work and the expenditure of additional effort within hours worked. Furthermore, as the numbers of students increase, teachers may experience more job stress and concomitantly diminished job satisfaction. We find all of these class size effects to be significant and fundamental components of teachers' working environment. We therefore conclude that the issue of class size raised in the Council proposal substantially affects teachers' interests in conditions of employment (e.g., hours, workload and job satisfaction)." *Id.* at 20.

Article 35 clearly involves mandatory subjects of bargaining and the College's objections to this and related articles are without merit.

Article 42

The College raised objections to Article 42 in its entirety, largely without explanation. However, the Association has modified the proposals from Article 42 and incorporated them into different articles with various changes that should further demonstrate that the Association's proposals involve mandatory subjects. To the extent that you have any remaining objections, please identify those and explain the basis for them.

Article 44—Certifications and Minimum Qualifications

The College asserts that the "core feature of the entire proposal" is permissive, without setting out what the College believes the subject of the proposal is. Presumably, the College is asserting that minimum qualifications is the subject and therefore permissive. However, impacts of minimum qualifications—and changes to them—are often mandatory subjects. Notably, the College previously agreed to bargain over the impacts of these changes in response to demands to bargain by the Association, including the very recent demand we made to negotiate over this during these successor negotiations. The College agreed but now is asserting that the subject is permissive in its entirety and is refusing to bargain. This is compelling evidence of bad faith and we strongly urge the College to reconsider its ill-conceived approach.

Article 45—Safety

The College claims that the safety proposals are permissive because it requires the College to develop or implement policies on safety and because some benefits might be "addressed by or superseded by" Oregon's workers compensation laws. First, the requirement that the College implement or abide by established safety guidelines involves the mandatory subject of employee safety. Secondly, the proposal on benefits, compensation, and additional rights for employees who are injured at work due to an act of violence by another person, are only applicable where "college-provided insurance or other college-provided resources" do not already provide the same or better benefits. Thus, to the extent that some of the benefits are provided through the College's workers compensation insurance program, the provisions of Article 45.1 would not apply. Those workers' compensation benefits do not, however, prohibit the College from going above and beyond what the law minimally requires for faculty who are assaulted on the job. If there is preemption or a direct conflict with the workers compensation statutes, no benefits would be required. Any supplemental benefits involve direct or indirect compensation, benefits, or other clearly mandatory subjects.

Objections to Various Memoranda of Agreement and Settlement Documents

The Association is proposing that we retain existing Memoranda of Agreement ("MOAs") and negotiated settlement agreements between it and the College or incorporate specific portions of those agreements into different sections of the CBA. You raised objections to some of these proposals that we will address briefly, but many of these items have been modified and moved into different articles, making a full response difficult (particularly in light of the lack of explanation for many assertions).

You objected that portions of the MOA on Hyflex Modality was permissive because it included class size limits. As explained above, class size is a mandatory subject of bargaining because it directly controls workload and impacts job security. The proposal requiring hiring of a student assistant was an effort to address workload as well. We may modify that portion of the proposal in our future negotiations.

The College objected to retaining portions of MOAs relating to the impacts of SB 551 and HB 2611 claiming that they are permissive because they require hiring of staff and "restricts management's rights to determine staffing and allocation of the workforce and the proposal requiring allocation of curriculum development funds." First, establishing curriculum development funds is a clearly mandatory subject because it is a direct monetary benefit. Second, giving the Association control over the allocation of those funds does not render the proposal permissive any more than allowing a union to administer a health or retirement trust would make the subject of benefits permissive. It is common for public sector unions to receive lump sum

funding from employers to allocate for things like hardships, health insurance pools for employees who do qualify for the employer's benefits, professional development and training funds, etc.

The College next objected to the Contracted Faculty FTE MOAs as permissive. These MOAs involve the standards and process for applying Article 10.7.4, and these agreements involve the same mandatory subjects at issue in Article 10.7.4 as set out above.

Lastly, the College asserted that the provisions of a recent Grievance and Unfair Labor Practice Settlement Agreement requiring supervisors to continue to receive training on the collective bargaining agreement are permissive. However, training managers on the terms of the collective bargaining agreement and the rights/limitations on supervisors under that agreement should be considered mandatory for bargaining. That training increases the likelihood that supervisors will follow rather than violate the contract, protecting the College and Association members from the negative impacts that arise from such breaches. This training, by extension, impacts all of the mandatory subjects of bargaining contained in the contract. We are again troubled that the College is so reluctant to require its supervisors to receive training on the rights of its workers.

Sincerely,

/s/ Jason M. Weyand
Jason M. Weyand, Attorney for the Union