

Enrolled
House Bill 2070

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Employment Relations Board)

CHAPTER

AN ACT

Relating to fees charged by Employment Relations Board; creating new provisions; amending ORS 240.170, 240.610, 243.672, 663.180 and 663.185; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 243.672 is amended to read:

243.672. (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization. Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If [*such*] a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing [*shall prohibit*] **prohibits** the deduction of the payment-in-lieu-of-dues from the salaries or wages of [*such*] **the** employees.

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

(e) Refuse to bargain collectively in good faith with the exclusive representative.

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept [*such*] **arbitration** awards as final and binding upon them.

(h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign [*such*] **the resulting** contract.

(2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782.

(b) Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.

(c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(d) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept *[such]* **arbitration** awards as final and binding upon them.

(e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(f) For any labor organization to engage in unconventional strike activity not protected for private sector employees under the National Labor Relations Act on June 6, 1995. This provision *[shall apply]* **applies** to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

(g) For a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other state-wide elected officials are not considered members of a governing body for purposes of this paragraph. Nothing in this unfair labor practice provision shall be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

(3) An injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor practice complaint filed, a fee of \$250 is imposed. For each answer to an unfair labor practice complaint filed **with the board**, a fee of *[\$100]* **\$250** is imposed. **The board may allow any other person to intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee of \$250 to the board.** The *[Employment Relations]* board may, in its discretion, order *[filing]* fee reimbursement to the prevailing party in any case in which the complaint or answer is found to have been frivolous or filed in bad faith. **The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.**

SECTION 2. ORS 663.180 is amended to read:

663.180. (1) **A person may file with the Employment Relations Board a charge that another person has engaged in or is engaging in an unfair labor practice. The person filing the charge shall pay a fee of \$250 to the board. The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.**

[(1)] (2) If it is charged that a person has engaged in or is engaging in an unfair labor practice, the *[Employment Relations]* board shall cause an investigation to be made. If, on the basis of this investigation, it appears to the board that an issue of fact or law exists as to a violation of ORS 663.120 to 663.165, the board shall *[cause]* **issue** a complaint *[to issue]*. The complaint shall contain a notice of hearing before the board, at a place *[therein]* fixed **in the notice**, not less than five days after the serving of the complaint.

[(2)] (3) Notwithstanding subsection *[(1)]* (2) of this section, *[no complaint shall issue]* **the board may not issue a complaint** based upon an unfair labor practice occurring more than six months before the filing of the charge with the board, and the service of a copy *[thereof]* **of the charge** upon the person against whom the charge is made, unless the person aggrieved *[thereby]* **by the unfair labor practice** was prevented from filing the charge by reason of service in the Armed Forces of the United States, in which event the six-month period shall be computed from the day of discharge.

SECTION 3. ORS 663.185 is amended to read:

663.185. (1) *[A complaint may be amended by]* The Employment Relations Board *[in its discretion]* **may amend a complaint** at any time before the issuance of an order based *[thereon]* **on the complaint.**

(2) The person so complained of may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the complaint. **The person filing the answer shall pay a fee of \$250 to the board.** *[In the discretion of the board,]* **The board may allow** any other person *[may be allowed]* to intervene in the proceeding and to present testimony. **A person allowed to intervene shall pay a fee of \$250 to the board.**

(3) *[The proceeding, So]* **As far as practicable, [shall be conducted] the board shall conduct the proceeding** in accordance with the rules of evidence applicable to civil actions.

(4) **The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.**

SECTION 4. The Employment Relations Board Administrative Account is established separate and distinct from the General Fund. The account consists of all moneys received by the Employment Relations Board, other than moneys appropriated to the board by the Legislative Assembly. All moneys in the account are continuously appropriated to the board for the payment of all expenses incurred by the board. Interest earned by the account shall be credited to the General Fund.

SECTION 5. (1) Any amounts in the Oregon Department of Administrative Services Operating Fund that are unexpended on the effective date of this 2007 Act and that were authorized to be expended by the Employment Relations Board under ORS 240.170 (2) are transferred to the Employment Relations Board Administrative Account and may be used as provided in section 4 of this 2007 Act.

(2) Any amounts in the P.E. Relations Administrative Account in the General Fund that are unexpended on the effective date of this 2007 Act and that were authorized to be expended by the Employment Relations Board are transferred to the Employment Relations Board Administrative Account and may be used as provided in section 4 of this 2007 Act.

SECTION 6. ORS 240.170 is amended to read:

240.170. *[(1)]* All moneys received by the Personnel Division pursuant to the state personnel management program shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund and are appropriated continuously out of that fund for the payment of all expenses incurred by the division for administration of the state personnel management program.

[(2) All moneys received by the Employment Relations Board pursuant to ORS 240.167 shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund and are appropriated continuously out of the fund for the payment of all expenses incurred by the board.]

SECTION 7. ORS 240.610 is amended to read:

240.610. (1) Notwithstanding ORS 662.435, when the Employment Relations Board assigns a mediator under ORS 243.712 or 662.425 to resolve a labor dispute or labor controversy between a local public employer and the exclusive representative of the **public** employees of that employer, the board may charge a fee for the mediation services provided by the board.

(2) Notwithstanding any other law, the fee charged by the board under this section shall not exceed \$1,000, and the local public employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. Notwithstanding any other law, in addition to the initial fee charged for mediation services, the board may charge a second fee, in an amount not to exceed \$1,000, for mediation services performed subsequent to those services performed at one mediation session after a notice of intent to strike or notice of intent to implement the employer's last offer has been given.

(3) Notwithstanding any other law, in addition to fees for mediation services, the board may establish fees for training in interest-based problem solving. Such fees are not subject to the provisions of subsection (2) of this section.

(4) Fees received by the board under this section shall be deposited to the credit of the [Oregon Department of Administrative Services Operating Fund established by ORS 240.170] **Employment Relations Board Administrative Account.**

(5) As used in this section:

(a) "Exclusive representative" and "labor dispute" have the meanings given those terms in ORS 243.650.

(b) "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district and a public and quasi-public corporation.

SECTION 8. The amendments to ORS 243.672, 663.180 and 663.185 by sections 1, 2 and 3 of this 2007 Act apply only to charges and answers filed with the Employment Relations Board and to persons who are allowed to intervene in board proceedings on or after the effective date of this 2007 Act.

SECTION 9. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect July 1, 2007.

Passed by House May 9, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 18, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State