

Senate Bill 402

Sponsored by Senator BROWN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies criteria used by arbitrators in public collective bargaining.

A BILL FOR AN ACT

1
2 Relating to arbitration criteria in public collective bargaining; creating new provisions; and amend-
3 ing ORS 243.722, 243.746 and 243.752.

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

5 **SECTION 1.** ORS 243.746 is amended to read:

6 243.746. (1) In carrying out the arbitration procedures authorized in ORS 243.712 (2)(e), 243.726
7 (3)(c) and 243.742, the public employer and the exclusive representative may select their own
8 arbitrator.

9 (2)(a) [*Where*] **When** the parties have not selected their own arbitrator within five days after
10 notification by the Employment Relations Board that arbitration is to be initiated, the board shall
11 submit to the parties a list of seven qualified, disinterested, unbiased persons. **The board shall in-**
12 **clude** a list of Oregon interest arbitrations and fact-findings for which each person has issued an
13 award [*shall be included*]. Each party shall alternately strike three names from the list. The order
14 of striking shall be determined by lot. The remaining individual shall be designated the
15 "arbitrator."[:]

16 [(a)] (b) When the parties have not designated the arbitrator and notified the board of their
17 choice within five days after receipt of the list, the board shall appoint the arbitrator from the list.
18 However, if one of the parties strikes the names as prescribed in this subsection and the other party
19 fails to do so, the board shall appoint the arbitrator only from the names remaining on the list.

20 [(b)] (c) [*The*] Concerns regarding the bias and qualifications of the person designated by lot or
21 by appointment may be [*challenged*] **raised** by a petition filed directly with the board. **The board**
22 **shall hold** a hearing [*shall be held by the board*] within 10 days of filing [*of*] the petition and [*the*
23 *board*] shall issue a final and binding decision regarding the person's neutrality within 10 days of
24 the hearing.

25 (3) The arbitrator shall establish dates and places of hearings. Upon the request of either party
26 or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date
27 of the hearing, each party shall submit to the other party a written last best offer package on all
28 unresolved mandatory subjects, and neither party may change the last best offer package unless
29 pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for
30 the hearing may thereafter be changed only for compelling reasons or by mutual consent of the
31 parties. If either party provides notice of a change in its position within 24 hours of the 14-day
32 deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 may administer oaths and shall afford all parties full opportunity to examine and cross-examine all
2 witnesses and to present any evidence pertinent to the dispute.

3 (4) [Where] **When** there is no agreement between the parties, or [where] **when** there is an
4 agreement but the parties have begun negotiations or discussions looking to a new agreement or
5 amendment of the existing agreement, unresolved mandatory subjects submitted to the arbitrator in
6 the parties' last best offer packages shall be decided by the arbitrator. Arbitrators shall base their
7 findings and opinions on [these criteria giving first priority to paragraph (a) of this subsection and
8 secondary priority to paragraphs (b) to (h) of this subsection as follows:] **the following criteria:**

9 [(a) *The interest and welfare of the public.*]

10 **(a) The lawful authority of the public employer.**

11 **(b) The stipulations of the parties.**

12 [(b)] **(c) The interest and welfare of the public and** the reasonable financial ability of the unit
13 of government to meet the costs of the proposed contract [giving due consideration and weight to the
14 other services, provided by, and other priorities of, the unit of government as determined by the gov-
15 erning body]. A reasonable operating reserve against future contingencies, which does not include
16 funds in contemplation of settlement of the labor dispute, [shall] **may** not be considered as available
17 toward a settlement.

18 [(c)] **(d)** The ability of the unit of government to attract and retain qualified personnel at the
19 wage and benefit levels provided.

20 [(d)] **(e)** The overall compensation presently received by the employees, including direct wage
21 compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and
22 all other direct or indirect monetary benefits received.

23 [(e)] **(f)** Comparison of the [overall compensation] **wages, hours and other terms and condi-**
24 **tions of employment** of other employees performing similar services with the same or other em-
25 ployees in comparable communities. As used in this paragraph, "comparable" [is limited to] **includes**
26 communities of the same or nearest population range within Oregon. [Notwithstanding the provisions
27 of this paragraph, the following additional definitions of "comparable" apply in the situations described
28 as follows] **and:**

29 (A) For any city with a population of more than 325,000, "comparable" includes comparison to
30 out-of-state cities of the same or similar size **on the west coast of the United States;**

31 (B) For counties with a population of more than 400,000, "comparable" includes comparison to
32 out-of-state counties of the same or similar size **on the west coast of the United States;** and

33 (C) For the State of Oregon, "comparable" includes comparison to other states.

34 [(f)] **(g)** The [CPI-All Cities Index,] **average consumer prices for goods and services** com-
35 monly known as the cost of living.

36 [(g) *The stipulations of the parties.*]

37 **(h) Changes in any of the criteria in paragraphs (a) to (g) of this subsection during the**
38 **pendency of the arbitration proceedings.**

39 [(h)] **(i)** Such other [factors] **criteria**, consistent with paragraphs (a) to [(g)] **(h)** of this
40 subsection, as are traditionally taken into consideration in the determination of wages, hours[,] and
41 other terms and conditions of employment. [However, the arbitrator shall not use such other factors,
42 if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide suf-
43 ficient evidence for an award.]

44 (5) Not more than 30 days after the conclusion of the hearings or such further additional periods
45 to which the parties may agree, the arbitrator shall select only one of the last best offer packages

1 submitted by the parties and shall promulgate written findings along with an opinion and order. The
 2 opinion and order shall be served on the parties and the board. Service may be personal or by reg-
 3 istered or certified mail. The findings, opinions and order shall be based on the criteria prescribed
 4 in subsection (4) of this section.

5 (6) The cost of arbitration shall be borne equally by the parties involved in the dispute.

6 **SECTION 2. The amendments to ORS 243.746 by section 1 of this 2007 Act apply only to**
 7 **arbitrations initiated on or after the effective date of this 2007 Act.**

8 **SECTION 3.** ORS 243.722 is amended to read:

9 243.722. (1) In carrying out the fact-finding procedures authorized in ORS 243.712 (2)(c), the
 10 public employer and the exclusive representative may select their own fact finder.

11 (2)(a) [*Where*] **When** the parties have not selected their own fact finder within five days after
 12 written acknowledgment by the Employment Relations Board that fact-finding has been jointly ini-
 13 tiated, the board shall submit to the parties a list of seven qualified, disinterested, unbiased persons.
 14 A list of Oregon fact-finding interest arbitrations for which each person has issued an award shall
 15 be included. Each party shall alternately strike three names from the list. The order of striking shall
 16 be determined by lot. The remaining individual shall be designated the “fact finder.”

17 (b) When both parties desire a panel of three fact finders instead of one as provided in this
 18 subsection, the board shall submit to the parties a list of seven qualified, unbiased, disinterested
 19 persons. Each party shall alternately strike two names from the list. The order of striking shall be
 20 determined by lot. The remaining three persons shall be designated “fact finders.”

21 (c) When the parties have not designated the fact finder and notified the board of their choice
 22 within five days after receipt of the list, the board shall appoint the fact finder from the list. How-
 23 ever, if one of the parties strikes the names as prescribed in this subsection and the other party fails
 24 to do so, the board shall appoint the fact finder only from the names remaining on the list.

25 (d) [*The*] Concerns regarding the bias and qualifications of the person designated by lot or by
 26 appointment may be challenged by a petition filed directly with the board. A hearing shall be held
 27 by the board within 10 days of filing the petition and the board shall issue a final and binding de-
 28 cision regarding the person’s neutrality within 10 days of the hearing.

29 (3) The fact finder shall establish dates and places of hearings. Upon the request of either party
 30 or the fact finder, the board shall issue subpoenas. The fact finder may administer oaths and shall
 31 afford all parties full opportunity to examine and cross-examine all witnesses and to present any
 32 evidence pertinent to the dispute. Not more than 30 days from the date of conclusion of the
 33 hearings, the fact finder shall make written findings of fact and recommendations for resolution of
 34 the dispute and shall serve such findings and recommendations upon the parties and upon the board.
 35 Service may be personal or by registered or certified mail. Not more than five working days after
 36 the findings and recommendations have been sent, the parties shall notify the board and each other
 37 whether or not they accept the recommendations of the fact finder. If the parties do not accept
 38 them, the board, five days after receiving notice that one or both of the parties do not accept the
 39 findings, shall publicize the fact finder’s findings of facts and recommendations.

40 (4) The parties may voluntarily agree at any time during or after fact-finding to submit any or
 41 all of the issues in dispute to final and binding arbitration, and if such agreement is reached prior
 42 to the publication of the fact finder’s findings of facts and recommendations, the board shall not
 43 publicize such findings and recommendations.

44 (5) The cost of fact-finding shall be borne equally by the parties involved in the dispute.

45 (6) Fact finders shall base their findings and opinions on the matters prescribed in this sub-

1 section in accordance with the criteria set out in ORS 243.746 (4)[(a) to (h)].

2 **SECTION 4.** ORS 243.752 is amended to read:

3 243.752. (1) A majority decision of the arbitration panel, under ORS 243.706, 243.726, 243.736,
4 243.742 and 243.746, if supported by competent, material and substantial evidence on the whole re-
5 cord, based upon the [*factors*] **criteria** set forth in ORS 243.746 (4), shall be final and binding upon
6 the parties. Refusal or failure to comply with any provision of a final and binding arbitration award
7 is an unfair labor practice. Any order issued by the Employment Relations Board pursuant to this
8 section may be enforced at the instance of either party or the board in the circuit court for the
9 county in which the dispute arose.

10 (2) The arbitration panel may award increases retroactively to the first day after the expiration
11 of the immediately preceding collective bargaining agreement. At any time the parties, by stipu-
12 lation, may amend or modify an award of arbitration.

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