

Senate Bill 949

Sponsored by Senator THOMSEN

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**.

Requires last best offer submitted in certain arbitration proceedings by exclusive representative of employees of public employer that requires increases in taxes or fees or reduction of services or workforce to meet costs of implementation of offer to be deemed not to be in best interest and welfare of public.

A BILL FOR AN ACT

1
2 Relating to arbitration of collective bargaining agreements; amending ORS 243.746.

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

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

5 243.746. (1) In carrying out the arbitration procedures authorized in ORS 243.712 (2)(e), 243.726
6 (3)(c) and 243.742, the public employer and the exclusive representative may select their own
7 arbitrator.

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

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

18 (b) The concerns regarding the bias and qualifications of the person designated by lot or by
19 appointment may be challenged by a petition filed directly with the board. A hearing shall be held
20 by the board within 10 days of filing of the petition and the board shall issue a final and binding
21 decision regarding the person's neutrality within 10 days of the hearing.

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

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 witnesses and to present any evidence pertinent to the dispute.

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

8 (a) The interest and welfare of the public.

9 (b) The reasonable financial ability of the unit of government to meet the costs of the proposed
 10 contract giving due consideration and weight to the other services, provided by, and other priorities
 11 of, the unit of government as determined by the governing body. A reasonable operating reserve
 12 against future contingencies, which does not include funds in contemplation of settlement of the la-
 13 bor dispute, shall not be considered as available toward a settlement. **However, if the last best
 14 offer package submitted by the exclusive representative of the employees of the public em-
 15 ployer would result in the inability of the unit of government to meet the costs of the pro-
 16 posed contract without raising taxes or fees or reducing services or workforce, an award
 17 based on the last best offer shall be given first priority under paragraph (a) of this subsection
 18 and shall be deemed not to be in the best interest and welfare of the public.**

19 (c) The ability of the unit of government to attract and retain qualified personnel at the wage
 20 and benefit levels provided.

21 (d) The overall compensation presently received by the employees, including direct wage com-
 22 pensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all
 23 other direct or indirect monetary benefits received.

24 (e) Comparison of the overall compensation of other employees performing similar services with
 25 the same or other employees in comparable communities. As used in this paragraph, "comparable"
 26 is limited to communities of the same or nearest population range within Oregon. Notwithstanding
 27 the provisions of this paragraph, the following additional definitions of "comparable" apply in the
 28 situations described as follows:

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;

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; and

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

34 (f) The CPI-All Cities Index, commonly known as the cost of living.

35 (g) The stipulations of the parties.

36 (h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are tradi-
 37 tionally taken into consideration in the determination of wages, hours, and other terms and condi-
 38 tions of employment. However, the arbitrator shall not use such other factors, if in the judgment
 39 of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence
 40 for an award.

41 (5) Not more than 30 days after the conclusion of the hearings or such further additional periods
 42 to which the parties may agree, the arbitrator shall select only one of the last best offer packages
 43 submitted by the parties and shall promulgate written findings along with an opinion and order. The
 44 opinion and order shall be served on the parties and the board. Service may be personal or by reg-
 45 istered or certified mail. The findings, opinions and order shall be based on the criteria prescribed

1 in subsection (4) of this section.

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

3 **SECTION 2.** ORS 243.746, as amended by section 1, chapter 878, Oregon Laws 2009, is amended
4 to read:

5 243.746. (1) In carrying out the arbitration procedures authorized in ORS 243.712 (2)(e), 243.726
6 (3)(c) and 243.742, the public employer and the exclusive representative may select their own
7 arbitrator.

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

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

18 (b) The concerns regarding the bias and qualifications of the person designated by lot or by
19 appointment may be challenged by a petition filed directly with the board. A hearing shall be held
20 by the board within 10 days of filing of the petition and the board shall issue a final and binding
21 decision regarding the person's neutrality within 10 days of the hearing.

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

32 (4) Where there is no agreement between the parties, or where there is an agreement but the
33 parties have begun negotiations or discussions looking to a new agreement or amendment of the
34 existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties' last
35 best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and
36 opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary
37 priority to paragraphs (b) to (h) of this subsection as follows:

38 (a) The interest and welfare of the public.

39 (b) The reasonable financial ability of the unit of government to meet the costs of the proposed
40 contract giving due consideration and weight to the other services, provided by, and other priorities
41 of, the unit of government as determined by the governing body. A reasonable operating reserve
42 against future contingencies, which does not include funds in contemplation of settlement of the la-
43 bor dispute, shall not be considered as available toward a settlement. **However, if the last best**
44 **offer package submitted by the exclusive representative of the employees of the public em-**
45 **ployer would result in the inability of the unit of government to meet the costs of the pro-**

1 **posed contract without raising taxes or fees or reducing services or workforce, an award**
 2 **based on the last best offer shall be given first priority under paragraph (a) of this subsection**
 3 **and shall be deemed not to be in the best interest and welfare of the public.**

4 (c) The ability of the unit of government to attract and retain qualified personnel at the wage
 5 and benefit levels provided.

6 (d) The overall compensation presently received by the employees, including direct wage com-
 7 pensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all
 8 other direct or indirect monetary benefits received.

9 (e) Comparison of the overall compensation of other employees performing similar services with
 10 the same or other employees in comparable communities. As used in this paragraph, “comparable”
 11 is limited to communities of the same or nearest population range within Oregon. Notwithstanding
 12 the provisions of this paragraph, the following additional definitions of “comparable” apply in the
 13 situations described as follows:

14 (A) For any city with a population of more than 325,000, “comparable” includes comparison to
 15 out-of-state cities of the same or similar size;

16 (B) For counties with a population of more than 400,000, “comparable” includes comparison to
 17 out-of-state counties of the same or similar size;

18 (C) Except as otherwise provided in subparagraph (D) of this paragraph, for the State of Oregon,
 19 “comparable” includes comparison to other states; and

20 (D) For the Department of State Police troopers, “comparable” includes the base pay for city
 21 police officers employed by the five most populous cities in this state.

22 (f) The CPI-All Cities Index, commonly known as the cost of living.

23 (g) The stipulations of the parties.

24 (h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are tradi-
 25 tionally taken into consideration in the determination of wages, hours, and other terms and condi-
 26 tions of employment. However, the arbitrator shall not use such other factors, if in the judgment
 27 of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence
 28 for an award.

29 (5) Not more than 30 days after the conclusion of the hearings or such further additional periods
 30 to which the parties may agree, the arbitrator shall select only one of the last best offer packages
 31 submitted by the parties and shall promulgate written findings along with an opinion and order. The
 32 opinion and order shall be served on the parties and the board. Service may be personal or by reg-
 33 istered or certified mail. The findings, opinions and order shall be based on the criteria prescribed
 34 in subsection (4) of this section.

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

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