

D R A F T

SUMMARY

Extends deadline for submission of last best offer in arbitration hearing for public employee collective bargaining from 14 calendar days prior to hearing to 35 calendar days prior to hearing.

A BILL FOR AN ACT

1
2 Relating to the deadline for submission of a last best offer prior to an arbi-
3 tration hearing in public employee collective bargaining; amending ORS
4 243.650 and 243.746.

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

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

8 243.746. (1) In carrying out the arbitration procedures authorized in ORS
9 243.712 (2)(e), 243.726 (3)(c) and 243.742, the public employer and the exclusive
10 representative may select their own arbitrator.

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

19 (a) When the parties have not designated the arbitrator and notified the
20 board of their choice within five days after receipt of the list, the board shall

1 appoint the arbitrator from the list. However, if one of the parties strikes
2 the names as prescribed in this subsection and the other party fails to do so,
3 the board shall appoint the arbitrator only from the names remaining on the
4 list.

5 (b) The concerns regarding the bias and qualifications of the person des-
6 ignated by lot or by appointment may be challenged by a petition filed di-
7 rectly with the board. A hearing shall be held by the board within 10 days
8 of filing of the petition and the board shall issue a final and binding decision
9 regarding the person's neutrality within 10 days of the hearing.

10 (3) The arbitrator shall establish dates and places of hearings. Upon the
11 request of either party or the arbitrator, the board shall issue subpoenas.
12 Not less than [~~14~~] **35** calendar days prior to the date of the hearing, each
13 party shall submit to the other party a written last best offer package on
14 all unresolved mandatory subjects, and neither party may change the last
15 best offer package unless pursuant to stipulation of the parties or as other-
16 wise provided in this subsection. The date set for the hearing may thereafter
17 be changed only for compelling reasons or by mutual consent of the parties.
18 If either party provides notice of a change in its position within 24 hours
19 of the [~~14-day~~] **35-day** deadline, the other party will be allowed an additional
20 24 hours to modify its position. The arbitrator may administer oaths and
21 shall afford all parties full opportunity to examine and cross-examine all
22 witnesses and to present any evidence pertinent to the dispute.

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

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

1 (b) The reasonable financial ability of the unit of government to meet the
2 costs of the proposed contract giving due consideration and weight to the
3 other services, provided by, and other priorities of, the unit of government
4 as determined by the governing body. A reasonable operating reserve against
5 future contingencies, which does not include funds in contemplation of
6 settlement of the labor dispute, shall not be considered as available toward
7 a settlement.

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

10 (d) The overall compensation presently received by the employees, in-
11 cluding direct wage compensation, vacations, holidays and other paid ex-
12 cused time, pensions, insurance, benefits, and all other direct or indirect
13 monetary benefits received.

14 (e) Comparison of the overall compensation of other employees performing
15 similar services with the same or other employees in comparable communi-
16 ties. As used in this paragraph, “comparable” is limited to communities of
17 the same or nearest population range within Oregon. Notwithstanding the
18 provisions of this paragraph, the following additional definitions of “compa-
19 rable” apply in the situations described as follows:

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

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

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

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

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

31 (g) The stipulations of the parties.

1 (h) Such other factors, consistent with paragraphs (a) to (g) of this sub-
2 section as are traditionally taken into consideration in the determination of
3 wages, hours, and other terms and conditions of employment. However, the
4 arbitrator shall not use such other factors, if in the judgment of the
5 arbitrator, the factors in paragraphs (a) to (g) of this subsection provide
6 sufficient evidence for an award.

7 (5) Not more than 30 days after the conclusion of the hearings or such
8 further additional periods to which the parties may agree, the arbitrator
9 shall select only one of the last best offer packages submitted by the parties
10 and shall promulgate written findings along with an opinion and order. The
11 opinion and order shall be served on the parties and the board. Service may
12 be personal or by registered or certified mail. The findings, opinions and
13 order shall be based on the criteria prescribed in subsection (4) of this sec-
14 tion.

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

17 **SECTION 2.** ORS 243.650 is amended to read:

18 243.650. As used in ORS 243.650 to 243.782, unless the context requires
19 otherwise:

20 (1) "Appropriate bargaining unit" means the unit designated by the Em-
21 ployment Relations Board or voluntarily recognized by the public employer
22 to be appropriate for collective bargaining. However, an appropriate bar-
23 gaining unit may not include both academically licensed and unlicensed or
24 nonacademically licensed school employees. Academically licensed units may
25 include but are not limited to teachers, nurses, counselors, therapists, psy-
26 chologists, child development specialists and similar positions. This limita-
27 tion does not apply to any bargaining unit certified or recognized prior to
28 June 6, 1995, or to any school district with fewer than 50 employees.

29 (2) "Board" means the Employment Relations Board.

30 (3) "Certification" means official recognition by the board that a labor
31 organization is the exclusive representative for all of the employees in the

1 appropriate bargaining unit.

2 (4) "Collective bargaining" means the performance of the mutual obli-
3 gation of a public employer and the representative of its employees to meet
4 at reasonable times and confer in good faith with respect to employment re-
5 lations for the purpose of negotiations concerning mandatory subjects of
6 bargaining, to meet and confer in good faith in accordance with law with
7 respect to any dispute concerning the interpretation or application of a col-
8 lective bargaining agreement, and to execute written contracts incorporating
9 agreements that have been reached on behalf of the public employer and the
10 employees in the bargaining unit covered by such negotiations. The obli-
11 gation to meet and negotiate does not compel either party to agree to a
12 proposal or require the making of a concession. This subsection may not be
13 construed to prohibit a public employer and a certified or recognized repre-
14 sentative of its employees from discussing or executing written agreements
15 regarding matters other than mandatory subjects of bargaining that are not
16 prohibited by law as long as there is mutual agreement of the parties to
17 discuss these matters, which are permissive subjects of bargaining.

18 (5) "Compulsory arbitration" means the procedure whereby parties in-
19 volved in a labor dispute are required by law to submit their differences to
20 a third party for a final and binding decision.

21 (6) "Confidential employee" means one who assists and acts in a confi-
22 dential capacity to a person who formulates, determines and effectuates
23 management policies in the area of collective bargaining.

24 (7)(a) "Employment relations" includes, but is not limited to, matters
25 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
26 grievance procedures and other conditions of employment.

27 (b) "Employment relations" does not include subjects determined to be
28 permissive, nonmandatory subjects of bargaining by the Employment Re-
29 lations Board prior to June 6, 1995.

30 (c) After June 6, 1995, "employment relations" does not include subjects
31 that the Employment Relations Board determines to have a greater impact

1 on management's prerogative than on employee wages, hours, or other terms
2 and conditions of employment.

3 (d) "Employment relations" does not include subjects that have an in-
4 substantial or de minimis effect on public employee wages, hours, and other
5 terms and conditions of employment.

6 (e) For school district bargaining, "employment relations" excludes class
7 size, the school or educational calendar, standards of performance or criteria
8 for evaluation of teachers, the school curriculum, reasonable dress, grooming
9 and at-work personal conduct requirements respecting smoking, gum chewing
10 and similar matters of personal conduct, the standards and procedures for
11 student discipline, the time between student classes, the selection, agendas
12 and decisions of 21st Century Schools Councils established under ORS
13 329.704, requirements for expressing milk under ORS 653.077, and any other
14 subject proposed that is permissive under paragraphs (b), (c) and (d) of this
15 subsection.

16 (f) For employee bargaining involving employees covered by ORS 243.736,
17 "employment relations" includes safety issues that have an impact on the
18 on-the-job safety of the employees or staffing levels that have a significant
19 impact on the on-the-job safety of the employees.

20 (g) For all other employee bargaining except school district bargaining
21 and except as provided in paragraph (f) of this subsection, "employment re-
22 lations" excludes staffing levels and safety issues (except those staffing levels
23 and safety issues that have a direct and substantial effect on the on-the-job
24 safety of public employees), scheduling of services provided to the public,
25 determination of the minimum qualifications necessary for any position, cri-
26 teria for evaluation or performance appraisal, assignment of duties, workload
27 when the effect on duties is insubstantial, reasonable dress, grooming, and
28 at-work personal conduct requirements respecting smoking, gum chewing,
29 and similar matters of personal conduct at work, and any other subject pro-
30 posed that is permissive under paragraphs (b), (c) and (d) of this subsection.

31 (8) "Exclusive representative" means the labor organization that, as a

1 result of certification by the board or recognition by the employer, has the
2 right to be the collective bargaining agent of all employees in an appropriate
3 bargaining unit.

4 (9) "Fact-finding" means identification of the major issues in a particular
5 labor dispute by one or more impartial individuals who review the positions
6 of the parties, resolve factual differences and make recommendations for
7 settlement of the dispute.

8 (10) "Fair-share agreement" means an agreement between the public em-
9 ployer and the recognized or certified bargaining representative of public
10 employees whereby employees who are not members of the employee organ-
11 ization are required to make an in-lieu-of-dues payment to an employee or-
12 ganization except as provided in ORS 243.666. Upon the filing with the board
13 of a petition by 30 percent or more of the employees in an appropriate bar-
14 gaining unit covered by such union security agreement declaring they desire
15 that the agreement be rescinded, the board shall take a secret ballot of the
16 employees in the unit and certify the results thereof to the recognized or
17 certified bargaining representative and to the public employer. Unless a
18 majority of the votes cast in an election favor the union security agreement,
19 the board shall certify deauthorization of the agreement. A petition for de-
20 authorization of a union security agreement must be filed not more than 90
21 calendar days after the collective bargaining agreement is executed. Only
22 one such election may be conducted in any appropriate bargaining unit dur-
23 ing the term of a collective bargaining agreement between a public employer
24 and the recognized or certified bargaining representative.

25 (11) "Final offer" means the proposed contract language and cost sum-
26 mary submitted to the mediator within seven days of the declaration of im-
27 passe.

28 (12) "Labor dispute" means any controversy concerning employment re-
29 lations or concerning the association or representation of persons in negoti-
30 ating, fixing, maintaining, changing, or seeking to arrange terms or
31 conditions of employment relations, regardless of whether the disputants

1 stand in the proximate relation of employer and employee.

2 (13) "Labor organization" means any organization that has as one of its
3 purposes representing employees in their employment relations with public
4 employers.

5 (14) "Last best offer package" means the offer exchanged by parties not
6 less than [14] **35** days prior to the date scheduled for an interest arbitration
7 hearing.

8 (15) "Legislative body" means the Legislative Assembly, the city council,
9 the county commission and any other board or commission empowered to
10 levy taxes.

11 (16) "Managerial employee" means an employee of the State of Oregon
12 who possesses authority to formulate and carry out management decisions
13 or who represents management's interest by taking or effectively recom-
14 mending discretionary actions that control or implement employer policy,
15 and who has discretion in the performance of these management responsi-
16 bilities beyond the routine discharge of duties. A "managerial employee"
17 need not act in a supervisory capacity in relation to other employees. Not-
18 withstanding this subsection, "managerial employee" does not include faculty
19 members at a community college, college or university.

20 (17) "Mediation" means assistance by an impartial third party in recon-
21 ciling a labor dispute between the public employer and the exclusive repre-
22 sentative regarding employment relations.

23 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for
24 services by the exclusive representative in negotiations and contract admin-
25 istration of all persons in an appropriate bargaining unit who are not mem-
26 bers of the organization serving as exclusive representative of the employees.
27 The payment must be equivalent to regular union dues and assessments, if
28 any, or must be an amount agreed upon by the public employer and the ex-
29 clusive representative of the employees.

30 (19) "Public employee" means an employee of a public employer but does
31 not include elected officials, persons appointed to serve on boards or com-

1 missions, incarcerated persons working under section 41, Article I of the
2 Oregon Constitution, or persons who are confidential employees, supervisory
3 employees or managerial employees.

4 (20) "Public employer" means the State of Oregon, and the following pol-
5 itical subdivisions: Cities, counties, community colleges, school districts,
6 special districts, mass transit districts, metropolitan service districts, public
7 service corporations or municipal corporations and public and quasi-public
8 corporations.

9 (21) "Public employer representative" includes any individual or individ-
10 uals specifically designated by the public employer to act in its interests in
11 all matters dealing with employee representation, collective bargaining and
12 related issues.

13 (22) "Strike" means a public employee's refusal in concerted action with
14 others to report for duty, or his or her willful absence from his or her posi-
15 tion, or his or her stoppage of work, or his or her absence in whole or in
16 part from the full, faithful or proper performance of his or her duties of
17 employment, for the purpose of inducing, influencing or coercing a change
18 in the conditions, compensation, rights, privileges or obligations of public
19 employment; however, nothing shall limit or impair the right of any public
20 employee to lawfully express or communicate a complaint or opinion on any
21 matter related to the conditions of employment.

22 (23) "Supervisory employee" means any individual having authority in the
23 interest of the employer to hire, transfer, suspend, lay off, recall, promote,
24 discharge, assign, reward or discipline other employees, or responsibly to
25 direct them, or to adjust their grievances, or effectively to recommend such
26 action, if in connection therewith, the exercise of the authority is not of a
27 merely routine or clerical nature but requires the use of independent judg-
28 ment. Failure to assert supervisory status in any Employment Relations
29 Board proceeding or in negotiations for any collective bargaining agreement
30 does not thereafter prevent assertion of supervisory status in any subsequent
31 board proceeding or contract negotiation. Notwithstanding the provisions of

1 this subsection, a nurse, charge nurse or similar nursing position may not
2 be deemed to be supervisory unless that position has traditionally been
3 classified as supervisory.

4 (24) “Unfair labor practice” means the commission of an act designated
5 an unfair labor practice in ORS 243.672.

6 (25) “Voluntary arbitration” means the procedure whereby parties in-
7 volved in a labor dispute mutually agree to submit their differences to a
8 third party for a final and binding decision.

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