

**A-Engrossed**  
**House Bill 2448**

Ordered by the House April 4  
Including House Amendments dated April 4

Sponsored by Representative DOHERTY (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.

Requires issue subject to collective bargaining during term of collective bargaining agreement that is not resolved through negotiation or mediation to be resolved through binding arbitration.

Prohibits public employees from striking when issue subject to collective bargaining during term of collective bargaining agreement is subject to binding arbitration.

**A BILL FOR AN ACT**

1  
2 Relating to matters subject to collective bargaining during term of collective bargaining agreement;  
3 amending ORS 243.698, 243.742 and 243.746.

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

5 **SECTION 1.** ORS 243.698 is amended to read:

6 243.698. (1) When the employer is obligated to bargain over employment relations during the  
7 term of a collective bargaining agreement and the exclusive representative demands to bargain, the  
8 bargaining may not, without the consent of both parties and provided the parties have negotiated  
9 in good faith, continue past 90 calendar days after the date the notification specified in subsection  
10 (2) of this section is received.

11 (2) The employer shall notify the exclusive representative in writing of anticipated changes that  
12 impose a duty to bargain.

13 (3) Within 14 calendar days after the employer's notification of anticipated changes specified in  
14 subsection (2) of this section is sent, the exclusive representative may file a demand to bargain. If  
15 a demand to bargain is not filed within 14 days of the notice, the exclusive representative waives  
16 its right to bargain over the change or the impact of the change identified in the notice.

17 (4) The expedited bargaining process shall cease 90 calendar days after the written notice de-  
18 scribed in subsection (2) of this section is sent, *and the employer may implement the proposed*  
19 *changes without further obligations to bargain*. At any time during the 90-day period, the parties  
20 jointly may agree to mediation, but that mediation *[shall]* **may** not continue past the 90-day period  
21 from the date the notification specified in subsection (2) of this section is sent. Neither party may  
22 seek binding arbitration during the 90-day period.

23 **(5) If the parties fail to reach an agreement through bargaining or mediation, upon ex-**  
24 **piration of the 90-day period:**

25 **(a) The matter shall be submitted to the State Conciliation Service for mediation as**  
26 **provided in ORS 662.405 to 662.455 for a period of up to 15 days from the date of the first**  
27 **mediation session.**

**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           **(b) If the parties fail to reach an agreement through the mediation required by paragraph**  
2 **(a) of this subsection, the matter shall be submitted to the Employment Relations Board for**  
3 **binding arbitration as provided in ORS 243.742 and 243.746.**

4           **(c) The employees in the bargaining unit subject to the binding arbitration may not**  
5 **strike.**

6           **SECTION 2.** ORS 243.742 is amended to read:

7           243.742. (1) It is the public policy of the State of Oregon that where the right of employees to  
8 strike is by law prohibited, it is requisite to the high morale of such employees and the efficient  
9 operation of such departments to afford an alternate, expeditious, effective and binding procedure  
10 for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080,  
11 240.123, 243.650 to 243.782, 292.055 and 341.290, providing for compulsory arbitration, shall be liber-  
12 ally construed.

13           (2) When the procedures set forth in ORS **243.698**, 243.712 and 243.722, relating to mediation of  
14 a labor dispute, have not culminated in a signed agreement between the parties who are prohibited  
15 from striking, the public employer and exclusive representative of its employees shall include with  
16 the final offer filed with the mediator a petition to the Employment Relations Board in writing  
17 [*which*] **that** initiates binding arbitration for bargaining units with employees referred to in ORS  
18 243.736 (1). Arbitration shall be scheduled by mutual agreement not earlier than 30 days following  
19 the submission of the final offer packages to the mediator. Arbitration shall be scheduled in ac-  
20 cordance with the procedures prescribed in ORS 243.746.

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

23           243.746. (1) In carrying out the arbitration procedures authorized in ORS **243.698**, 243.712 (2)(e),  
24 243.726 (3)(c) and 243.742, the public employer and the exclusive representative may select their own  
25 arbitrator.

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

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

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

40           (3) The arbitrator shall establish dates and places of hearings. Upon the request of either party  
41 or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date  
42 of the hearing, each party shall submit to the other party a written last best offer package on all  
43 unresolved mandatory subjects, and neither party may change the last best offer package unless  
44 pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for  
45 the hearing may thereafter be changed only for compelling reasons or by mutual consent of the

1 parties. If either party provides notice of a change in its position within 24 hours of the 14-day  
 2 deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator  
 3 may administer oaths and shall afford all parties full opportunity to examine and cross-examine all  
 4 witnesses and to present any evidence pertinent to the dispute.

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

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

12 (b) The reasonable financial ability of the unit of government to meet the costs of the proposed  
 13 contract giving due consideration and weight to the other services, provided by, and other priorities  
 14 of, the unit of government as determined by the governing body. A reasonable operating reserve  
 15 against future contingencies, which does not include funds in contemplation of settlement of the la-  
 16 bor dispute, shall not be considered as available toward a settlement.

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

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

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

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

29 (B) For counties with a population of more than 400,000, "comparable" includes comparison to  
 30 out-of-state counties of the same or similar size;

31 (C) Except as otherwise provided in subparagraph (D) of this paragraph, for the State of Oregon,  
 32 "comparable" includes comparison to other states; and

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

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

36 (g) The stipulations of the parties.

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

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

1 istered or certified mail. The findings, opinions and order shall be based on the criteria prescribed  
2 in subsection (4) of this section.

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

4

---