

House Bill 2847

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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**.

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 arbitration hearing in public
3 employee collective bargaining; amending ORS 243.650 and 243.746.

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

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

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

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

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

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

24 (3) The arbitrator shall establish dates and places of hearings. Upon the request of either party
25 or the arbitrator, the board shall issue subpoenas. Not less than [14] **35** calendar days prior to the
26 date of the hearing, each party shall submit to the other party a written last best offer package on
27 all unresolved mandatory subjects, and neither party may change the last best offer package unless
28 pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for
29 the hearing may thereafter be changed only for compelling reasons or by mutual consent of the
30 parties. If either party provides notice of a change in its position within 24 hours of the [14-day]
31 **35-day** deadline, the other party will be allowed an additional 24 hours to modify its position. The

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

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

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

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

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

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

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

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

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

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

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

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

34 (g) The stipulations of the parties.

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

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

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

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

3 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

4 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board
5 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
6 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
7 nonacademically licensed school employees. Academically licensed units may include but are not
8 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
9 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
10 to June 6, 1995, or to any school district with fewer than 50 employees.

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

12 (3) "Certification" means official recognition by the board that a labor organization is the ex-
13 clusive representative for all of the employees in the appropriate bargaining unit.

14 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
15 and the representative of its employees to meet at reasonable times and confer in good faith with
16 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
17 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
18 concerning the interpretation or application of a collective bargaining agreement, and to execute
19 written contracts incorporating agreements that have been reached on behalf of the public employer
20 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
21 negotiate does not compel either party to agree to a proposal or require the making of a concession.
22 This subsection may not be construed to prohibit a public employer and a certified or recognized
23 representative of its employees from discussing or executing written agreements regarding matters
24 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
25 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

26 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute
27 are required by law to submit their differences to a third party for a final and binding decision.

28 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-
29 son who formulates, determines and effectuates management policies in the area of collective bar-
30 gaining.

31 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
32 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
33 employment.

34 (b) "Employment relations" does not include subjects determined to be permissive, nonmanda-
35 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

36 (c) After June 6, 1995, "employment relations" does not include subjects that the Employment
37 Relations Board determines to have a greater impact on management's prerogative than on employee
38 wages, hours, or other terms and conditions of employment.

39 (d) "Employment relations" does not include subjects that have an insubstantial or de minimis
40 effect on public employee wages, hours, and other terms and conditions of employment.

41 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
42 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
43 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
44 gum chewing and similar matters of personal conduct, the standards and procedures for student
45 discipline, the time between student classes, the selection, agendas and decisions of 21st Century

1 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
2 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
3 subsection.

4 (f) For employee bargaining involving employees covered by ORS 243.736, “employment
5 relations” includes safety issues that have an impact on the on-the-job safety of the employees or
6 staffing levels that have a significant impact on the on-the-job safety of the employees.

7 (g) For all other employee bargaining except school district bargaining and except as provided
8 in paragraph (f) of this subsection, “employment relations” excludes staffing levels and safety issues
9 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
10 the-job safety of public employees), scheduling of services provided to the public, determination of
11 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
12 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
13 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
14 matters of personal conduct at work, and any other subject proposed that is permissive under par-
15 agraphs (b), (c) and (d) of this subsection.

16 (8) “Exclusive representative” means the labor organization that, as a result of certification by
17 the board or recognition by the employer, has the right to be the collective bargaining agent of all
18 employees in an appropriate bargaining unit.

19 (9) “Fact-finding” means identification of the major issues in a particular labor dispute by one
20 or more impartial individuals who review the positions of the parties, resolve factual differences and
21 make recommendations for settlement of the dispute.

22 (10) “Fair-share agreement” means an agreement between the public employer and the recog-
23 nized or certified bargaining representative of public employees whereby employees who are not
24 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
25 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
26 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
27 security agreement declaring they desire that the agreement be rescinded, the board shall take a
28 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
29 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
30 election favor the union security agreement, the board shall certify deauthorization of the agree-
31 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
32 calendar days after the collective bargaining agreement is executed. Only one such election may be
33 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
34 between a public employer and the recognized or certified bargaining representative.

35 (11) “Final offer” means the proposed contract language and cost summary submitted to the
36 mediator within seven days of the declaration of impasse.

37 (12) “Labor dispute” means any controversy concerning employment relations or concerning the
38 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
39 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
40 the proximate relation of employer and employee.

41 (13) “Labor organization” means any organization that has as one of its purposes representing
42 employees in their employment relations with public employers.

43 (14) “Last best offer package” means the offer exchanged by parties not less than [14] 35 days
44 prior to the date scheduled for an interest arbitration hearing.

45 (15) “Legislative body” means the Legislative Assembly, the city council, the county commission

1 and any other board or commission empowered to levy taxes.

2 (16) "Managerial employee" means an employee of the State of Oregon who possesses authority
3 to formulate and carry out management decisions or who represents management's interest by tak-
4 ing or effectively recommending discretionary actions that control or implement employer policy,
5 and who has discretion in the performance of these management responsibilities beyond the routine
6 discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to
7 other employees. Notwithstanding this subsection, "managerial employee" does not include faculty
8 members at a community college, college or university.

9 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
10 between the public employer and the exclusive representative regarding employment relations.

11 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-
12 sive representative in negotiations and contract administration of all persons in an appropriate
13 bargaining unit who are not members of the organization serving as exclusive representative of the
14 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
15 be an amount agreed upon by the public employer and the exclusive representative of the employees.

16 (19) "Public employee" means an employee of a public employer but does not include elected
17 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
18 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-
19 visory employees or managerial employees.

20 (20) "Public employer" means the State of Oregon, and the following political subdivisions:
21 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
22 politan service districts, public service corporations or municipal corporations and public and
23 quasi-public corporations.

24 (21) "Public employer representative" includes any individual or individuals specifically desig-
25 nated by the public employer to act in its interests in all matters dealing with employee represen-
26 tation, collective bargaining and related issues.

27 (22) "Strike" means a public employee's refusal in concerted action with others to report for
28 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
29 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
30 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
31 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
32 or impair the right of any public employee to lawfully express or communicate a complaint or
33 opinion on any matter related to the conditions of employment.

34 (23) "Supervisory employee" means any individual having authority in the interest of the em-
35 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
36 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
37 commend such action, if in connection therewith, the exercise of the authority is not of a merely
38 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
39 sory status in any Employment Relations Board proceeding or in negotiations for any collective
40 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
41 board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, a nurse,
42 charge nurse or similar nursing position may not be deemed to be supervisory unless that position
43 has traditionally been classified as supervisory.

44 (24) "Unfair labor practice" means the commission of an act designated an unfair labor practice
45 in ORS 243.672.

1 (25) “Voluntary arbitration” means the procedure whereby parties involved in a labor dispute
2 mutually agree to submit their differences to a third party for a final and binding decision.
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