

Enrolled
House Bill 3342

Sponsored by Representative DEMBROW; Representatives BARKER, MATTHEWS, Senators EDWARDS, ROBLAN

CHAPTER

AN ACT

Relating to union organizing; creating new provisions; amending ORS 243.672, 243.676 and 243.682; and declaring an emergency.

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

SECTION 1. Sections 3 and 4 of this 2013 Act may be cited as the Public Employer Accountability Act.

SECTION 2. Section 4 of this 2013 Act is added to and made a part of ORS 243.650 to 243.782.

SECTION 3. (1) The Legislative Assembly finds that:

(a) It is the policy of this state that public funds may not be used to subsidize interference with an employee’s choice to join or to be represented by a labor union.

(b) Some public employers use public funds to aid or subsidize efforts to deter union organizing.

(c) Use of public funds to deter union organizing is contrary to the purposes for which the funds were appropriated and is wasteful of scarce public resources.

(2) The purpose of section 4 of this 2013 Act is to maintain the neutrality of public bodies in labor organizing by forbidding the use of public funds for unintended purposes and to conserve public resources by ensuring that public funds are used as intended.

SECTION 4. (1) As used in this section:

(a) “Assist, promote or deter union organizing” means any attempt by a public employer to influence the decision of any or all of its employees or the employees of its subcontractors regarding:

(A) Whether to support or oppose a labor organization that represents or seeks to represent those employees; or

(B) Whether to become a member of any labor organization.

(b) “Public funds” means moneys drawn from the State Treasury or any special or trust fund of the state government, including any moneys appropriated by the state government and transferred to any public body, as defined in ORS 174.109, and any other moneys under the control of a public official by virtue of office.

(c) “Public property” means any real property or facility owned or leased by a public employer.

(2) A public employer may not:

(a) Use public funds to support actions to assist, promote or deter union organizing; or

(b) Discharge, demote, harass or otherwise take adverse action against any individual because the individual seeks to enforce this section or testifies, assists or participates in any manner in an investigation, hearing or other proceeding to enforce this section.

(3) If an employee requests the opinion of the employee's employer or supervisor about union organizing, nothing in this section prohibits the employer or supervisor from responding to the request of the employee.

(4) This section does not apply to an activity performed, or to an expense incurred, in connection with:

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement.

(b) Allowing a labor organization or its representatives access to the public employer's facilities or property.

(c) Performing an activity required by federal or state law or by a collective bargaining agreement.

(d) Negotiating, entering into or carrying out an agreement with a labor organization.

(e) Paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement.

(5)(a) This section shall be enforced by the Employment Relations Board, which shall adopt rules necessary to implement and administer compliance. A resident of this state may intervene as a plaintiff in any action brought under this section.

(b) Nothing in this section prohibits a public employer from spending public funds for the purpose of representing the public employer in a proceeding before the board or in a judicial review of that proceeding.

SECTION 5. A petition for representation filed under ORS 243.682 (2) alleging that a majority of employees in the unit appropriate for the purpose of collective bargaining wish to be represented by a labor organization for that purpose must include a statement of a desire by the employees to be represented for the purpose of collective bargaining and must be signed and dated by 30 percent of the employees in the unit during the 180 days prior to the filing of the petition with the Employment Relations Board.

SECTION 6. ORS 243.672 is amended to read:

243.672. (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization. Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the payment-in-lieu-of-dues from the salaries or wages of the employees.

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

(e) Refuse to bargain collectively in good faith with the exclusive representative.

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(i) Violate section 4 (2) of this 2013 Act.

(2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782.

(b) Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.

(c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(d) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(f) For any labor organization to engage in unconventional strike activity not protected for private sector employees under the National Labor Relations Act on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

(g) For a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other state-wide elected officials are not considered members of a governing body for purposes of this paragraph. Nothing in this paragraph may be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

(3) An injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing party in any case in which the complaint or answer is found to have been frivolous or filed in bad faith. The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.

SECTION 7. ORS 243.676 is amended to read:

243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is engaging in any unfair labor practice listed in ORS 243.672 (1) and (2) and 243.752, the Employment Relations Board or its agent shall:

(a) Cause to be served upon such person a copy of the complaint;

(b) Investigate the complaint to determine if a hearing on the unfair labor practice charge is warranted. If the investigation reveals that no issue of fact or law exists, the board may dismiss the complaint; and

(c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or an agent of the board not more than 20 days after a copy of the complaint has been served on the person.

(2) Where, as a result of the hearing required pursuant to subsection (1)(c) of this section, the board finds that any person named in the complaint has engaged in or is engaging in any unfair labor practice charged in the complaint, the board shall:

(a) State its findings of fact;

(b) Issue and cause to be served on such person an order that the person cease and desist from the unfair labor practice;

(c) Take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290;

(d) Designate the amount and award representation costs, if any, to the prevailing party; and

(e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal, including proceedings for Supreme Court review, of a board order.

(3) Where the board finds that the person named in the complaint has not engaged in or is not engaging in an unfair labor practice, the board shall:

(a) Issue an order dismissing the complaint; and

(b) Designate the amount and award representation costs, if any, to the prevailing party.

(4)(a) The board may award a civil penalty to any person as a result of an unfair labor practice complaint hearing, in the aggregate amount of up to \$1,000 per case, without regard to attorney fees, if:

[(a)] (A) The complaint has been affirmed pursuant to subsection (2) of this section and the board finds that the person who has committed, or who is engaging, in an unfair labor practice has done so repetitively, knowing that the action taken was an unfair labor practice and took the action disregarding this knowledge, or that the action constituting the unfair labor practice was egregious; or

[(b)] (B) The complaint has been dismissed pursuant to subsection (3) of this section, and that the complaint was frivolously filed, or filed with the intent to harass the other person, or both.

(b) Notwithstanding paragraph (a) of this subsection, if the board finds that a public employer named in the complaint violated section 4 (2) of this 2013 Act, the board shall impose a civil penalty equal to triple the amount of funds the public employer expended to assist, promote or deter union organizing.

(5) As used in subsections (1) to (4) of this section, "person" includes but is not limited to individuals, labor organizations, associations and public employers.

SECTION 8. ORS 243.682 is amended to read:

243.682. (1) If a question of representation exists, the Employment Relations Board shall:

(a) Upon application of a public employer, public employee or a labor organization, designate the appropriate bargaining unit, and in making its determination shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.

(b) Investigate and conduct a hearing on a petition that has been filed by:

(A) A labor organization alleging that 30 percent of the employees in an appropriate bargaining unit desire to be represented for collective bargaining by an exclusive representative;

(B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit;

(C) A public employer alleging that one or more labor organizations has presented a claim to the public employer requesting recognition as the exclusive representative in an appropriate bargaining unit; or

(D) An employee or group of employees alleging that 30 percent of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit.

(2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or labor organization acting on behalf of the employees files a petition alleging that a majority of employees in a unit appropriate for the purpose of collective bargaining wish to be represented by a labor organization for that purpose, **or when a group of unrepresented employees files a petition stating that the unrepresented employees seek to be included in an existing bargaining unit**, the board shall investigate the petition. If the board finds that a majority of the employees in a unit appropriate for bargaining **or in a group of unrepresented employees seeking to be included in an existing bargaining unit** have signed authorizations designating the labor organization specified in the petition as the employees' bargaining representative and that no other labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit **or in the group of unrepresented employees seeking to be included in an existing bargaining unit**, the board may not conduct an election but shall certify the labor organization as the exclusive representative unless a petition for a representation election is filed as provided in subsection (3) of this section.

(b) The board by rule shall develop guidelines and procedures for the designation by employees of a bargaining representative in the manner described in paragraph (a) of this subsection. The guidelines and procedures must include:

(A) Model collective bargaining authorization language that may be used for purposes of making the designations described in paragraph (a) of this subsection;

(B) Procedures to be used by the board to establish the authenticity of signed authorizations designating bargaining representatives;

(C) Procedures to be used by the board to notify affected employees of the filing of a petition requesting certification under subsection (3) of this section;

(D) Procedures for filing a petition to request a representation election, including a timeline of not more than 14 days after notice has been delivered to the affected employees of a petition filed under paragraph (a) of this subsection; and

(E) Procedures for expedited resolution of any dispute about the scope of the appropriate bargaining unit. The resolution of the dispute may occur after an election is conducted.

(c) Solicitation and rescission of a signed authorization designating bargaining representatives are subject to the provisions of ORS 243.672.

(3)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification has been filed under subsection (2) of this section, an employee or a group of employees in the unit designated by the petition, **or one or more of the unrepresented employees seeking to be included in an existing bargaining unit**, may file a petition with the board to request that a representation election be conducted.

(b) The petition requesting a representation election must be supported by at least 30 percent of the employees in the bargaining unit designated by the petition, **or 30 percent of the unrepresented employees seeking to be included in an existing bargaining unit**.

(c) The representation election shall be conducted on-site or by mail not later than 45 days after the date on which the petition was filed.

(4) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to subsection (1)(b) of this section that a question of representation exists, the board shall conduct an election by secret ballot, at a time and place convenient for the employees of the jurisdiction and also within a reasonable period of time after the filing has taken place, and certify the results of the election.

SECTION 9. The amendments to ORS 243.682 by section 8 of this 2013 Act apply to petitions filed with the Employment Relations Board on or after the effective date of this 2013 Act.

SECTION 10. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect July 1, 2013.

Passed by House April 25, 2013

Repassed by House July 7, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 7, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State