

# House Bill 3260

Sponsored by Representative WILSON

## 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**.

Prohibits deductions from wages or salary of public employee by public employer for payment of dues to labor organization or for payment-in-lieu-of-dues to labor organization.

## A BILL FOR AN ACT

Relating to public employee payroll deductions; creating new provisions; amending ORS 243.672, 243.676, 243.726, 243.742, 243.762, 243.772 and 243.782; and repealing ORS 243.776 and 292.055.

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

**SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 243.650 to 243.782.**

**SECTION 2. A public employer may not make deductions from the wages or salary of a public employee for the payment of dues to a labor organization or for payment-in-lieu-of-dues to a labor organization made by the employee.**

**SECTION 3.** 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

**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 sign the resulting contract.

2 (i) Violate ORS 243.670 (2).

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

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

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

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

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

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

16 *[(f)]* **(3) It is an unfair labor practice** for any labor organization to engage in unconventional  
17 strike activity not protected for private sector employees under the National Labor Relations Act  
18 on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again  
19 strikes.

20 *[(g)]* **(4) It is an unfair labor practice** for a labor organization or its agents to picket or cause,  
21 induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or  
22 business premises of any individual who is a member of the governing body of a public employer,  
23 with respect to a dispute over a collective bargaining agreement or negotiations over employment  
24 relations, if an objective or effect of such picketing is to induce another person to cease doing  
25 business with the governing body member's business or to cease handling, transporting or dealing  
26 in goods or services produced at the governing body's business. For purposes of this *[paragraph]*  
27 **subsection**, a member of the Legislative Assembly is a member of the governing body of a public  
28 employer when the collective bargaining negotiation or dispute is between the State of Oregon and  
29 a labor organization. The Governor and other statewide elected officials are not considered members  
30 of a governing body for purposes of this *[paragraph]* **subsection**. Nothing in this *[paragraph]* **sub-**  
31 **section** may be interpreted or applied in a manner that violates the right of free speech and as-  
32 sembly as protected by the Constitution of the United States or the Constitution of the State of  
33 Oregon.

34 *[(3)]* **(5)** An injured party may file a written complaint with the Employment Relations Board  
35 not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor  
36 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice  
37 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to  
38 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee  
39 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing  
40 party in any case in which the complaint or answer is found to have been frivolous or filed in bad  
41 faith. The board shall deposit fees received under this section to the credit of the Employment Re-  
42 lations Board Administrative Account.

43 **SECTION 4.** ORS 243.676 is amended to read:

44 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is  
45 engaging in any unfair labor practice listed in ORS 243.672 (1) and (2) and 243.752, the Employment

1 Relations Board or its agent shall:

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

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

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

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

13 (a) State its findings of fact;

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

16 (c) Take such affirmative action, including but not limited to the reinstatement of employees  
17 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,  
18 240.123, 243.650 to 243.782[, 292.055] and 341.290;

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

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

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

24 (a) Issue an order dismissing the complaint; and

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

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

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

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

36 (b) Notwithstanding paragraph (a) of this subsection, if the board finds that a public employer  
37 named in the complaint violated ORS 243.670 (2), the board shall impose a civil penalty equal to  
38 triple the amount of funds the public employer expended to assist, promote or deter union organiz-  
39 ing.

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

42 **SECTION 5.** ORS 243.726 is amended to read:

43 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-  
44 cluded in an appropriate bargaining unit for which an exclusive representative has been certified  
45 by the Employment Relations Board or recognized by the employer; or is included in an appropriate

1 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-  
 2 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650  
 3 to 243.782[, 292.055] and 341.290.

4 (2) It shall be lawful for a public employee who is not prohibited from striking under subsection  
 5 (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to par-  
 6 ticipate in a strike over mandatory subjects of bargaining provided:

7 (a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes  
 8 have been complied with in good faith;

9 (b) Thirty days have elapsed since the board has made public the fact finder's findings of fact  
 10 and recommendations or the mediator has made public the parties' final offers;

11 (c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike  
 12 and stating the reasons for its intent to strike to the board and the public employer;

13 (d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a  
 14 reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or  
 15 renegotiation under ORS 243.698; and

16 (e) The union's strike does not include unconventional strike activity not protected under the  
 17 National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice un-  
 18 der ORS 243.672 [(2)(f)] (3).

19 (3)(a) Where the strike occurring or is about to occur creates a clear and present danger or  
 20 threat to the health, safety or welfare of the public, the public employer concerned may petition the  
 21 circuit court of the county in which the strike has taken place or is to take place for equitable relief  
 22 including but not limited to appropriate injunctive relief.

23 (b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of  
 24 Marion County.

25 (c) If, after hearing, the court finds that the strike creates a clear and present danger or threat  
 26 to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall in-  
 27 clude an order that the labor dispute be submitted to final and binding arbitration within 10 days  
 28 of the court's order pursuant to procedures in ORS 243.746.

29 (4)(a) No labor organization shall declare or authorize a strike of public employees that is or  
 30 would be in violation of this section. When it is alleged in good faith by the public employer that  
 31 a labor organization has declared or authorized a strike of public employees that is or would be in  
 32 violation of this section, the employer may petition the board for a declaration that the strike is or  
 33 would be unlawful. The board, after conducting an investigation and hearing, may make such dec-  
 34 laration if it finds that such declaration or authorization of a strike is or would be unlawful.

35 (b) When a labor organization or individual disobeys an order of the appropriate circuit court  
 36 issued pursuant to enforcing an order of the board involving this section and ORS 243.736, they shall  
 37 be punished according to the provisions of ORS 33.015 to 33.155, except that the amount of the fine  
 38 shall be at the discretion of the court.

39 (5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike.  
 40 The board upon the filing of an unfair labor charge alleging that a public employer has committed  
 41 an unfair labor practice during or arising out of the collective bargaining procedures set forth in  
 42 ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the  
 43 court of competent jurisdiction for appropriate relief or a restraining order.

44 (6) As used in this section, "danger or threat to the health, safety or welfare of the public" does  
 45 not include an economic or financial inconvenience to the public or to the public employer that is

1 normally incident to a strike by public employees.

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

3 243.742. (1) It is the public policy of the State of Oregon that where the right of employees to  
 4 strike is by law prohibited, it is requisite to the high morale of such employees and the efficient  
 5 operation of such departments to afford an alternate, expeditious, effective and binding procedure  
 6 for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080,  
 7 240.123, 243.650 to 243.782[, 292.055] and 341.290, providing for compulsory arbitration, shall be lib-  
 8 erally construed.

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

17 **SECTION 7.** ORS 243.762 is amended to read:

18 243.762. Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782[, 292.055] and  
 19 341.290 is intended to prohibit a public employer and the exclusive representative of its employees  
 20 from entering into a collective bargaining agreement which provides for a compulsory arbitration  
 21 procedure which is substantially equivalent to ORS 243.742 to 243.756.

22 **SECTION 8.** ORS 243.772 is amended to read:

23 243.772. Any provisions of local charters and ordinances adopted pursuant thereto in existence  
 24 on October 5, 1973, and not in conflict with the rights and duties established in ORS 240.060,  
 25 240.065, 240.080, 240.123, 243.650 to 243.782[, 292.055] and 341.290 may remain in full force and effect  
 26 after the Employment Relations Board has determined that no conflict exists.

27 **SECTION 9.** ORS 243.782 is amended to read:

28 243.782. (1) For purposes of proceedings commenced pursuant to ORS 240.060, 240.065, 240.080,  
 29 240.123, 243.650 to 243.782[, 292.055] and 341.290, a person may be represented by counsel or any  
 30 other agent authorized by such person.

31 (2) As used in [*subsection (1) of*] this section, “person” means any individual, a labor organization  
 32 or a public employer.

33 **SECTION 10.** ORS 243.776 and 292.055 are repealed.

34 **SECTION 11.** Section 2 of this 2015 Act, the amendments to ORS 243.672, 243.676, 243.726,  
 35 243.742, 243.762, 243.772 and 243.782 by sections 3 to 9 of this 2015 Act and the repeal of ORS  
 36 243.776 and 292.055 by section 10 of this 2015 Act apply to collective bargaining agreements  
 37 entered into or renewed after the effective date of this 2015 Act.

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