

House Bill 2262

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Employment Relations Board)

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**.

Allows Employment Relations Board to employ and set salaries for personnel who are management service employees or unclassified service employees. Changes term "executive secretary" of Employment Relations Board to "executive manager" of board. Changes status of executive manager from classified service to unclassified service. Removes requirement that board, at discretion of executive manager, estimate in advance expenses and costs. Makes available contempt proceedings for violation of order involving strikes by certain employees. Subjects certain employees who are prohibited from striking to binding arbitration when mediation does not culminate in signed agreement. Changes status of head of State Conciliation Service from classified service to unclassified service.

A BILL FOR AN ACT

1
2 Relating to the Employment Relations Board; amending ORS 240.123, 240.167, 243.682, 243.684,
3 243.726, 243.742, 243.752 and 662.455.

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

5 **SECTION 1.** ORS 240.123 is amended to read:

6 240.123. (1) The Employment Relations Board shall employ such personnel as it considers nec-
7 essary for efficient administration of its vested duties, and fix the compensation of its employees in
8 accordance with the compensation plan for classified **service, management service or unclassi-**
9 **fied service** employees.

10 (2) The board shall designate one of its employees as its executive [*secretary*] **manager** and
11 delegate to the executive [*secretary*] **manager** such administrative duties and responsibilities as it
12 finds advisable. The executive [*secretary*] **manager** shall be in the [*classified*] **unclassified** service.

13 (3) The board shall designate a member of the Oregon State Bar as its general counsel to assist
14 it in the performance of its functions and duties. Notwithstanding ORS chapter 180 and independ-
15 ently of the Attorney General, the general counsel may represent the board in any litigation or
16 other matter pending in a court of law to which the board is a party or in which it is otherwise
17 interested. The general counsel [*shall*] **may** not appear before the board in any capacity other than
18 general counsel to the board. The board may also delegate to its general counsel such other ad-
19 ministrative duties and responsibilities as it finds advisable.

20 **SECTION 2.** ORS 240.167 is amended to read:

21 240.167. [(1)] The administrative expenses and costs of operation of the Employment Relations
22 Board in behalf of the state service shall be paid by the various divisions of the service in the state
23 government. The board shall determine the amount of the expenses and costs to be paid by each
24 division of the service on the basis of the proportion that the number of employees of that division
25 in the classified service bears to the total number of employees of all divisions of the service in the
26 classified service, or on any other basis that the board determines to be equitable.

27 [(2)] *The Employment Relations Board, at such times as its executive secretary considers proper,*

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 shall estimate in advance the expenses and costs that will be incurred during a period of not to exceed
 2 six months and shall render to each division of the service in the state government affected thereby an
 3 invoice for its pro rata share of such expenses and costs. Each division shall pay such invoice promptly
 4 as an administrative expense of that division from funds appropriated to or otherwise available for
 5 expenditure by that division, in the same manner as other claims against the state are paid. If the es-
 6 timated expenses in the case of any division are more or less than the actual expenses, the difference
 7 shall be reflected in the next following estimate of expenses and invoice for that division of the
 8 service.]

9 **SECTION 3.** ORS 243.682 is amended to read:

10 243.682. (1) If a question of representation exists, the Employment Relations Board shall:

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

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

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

19 (B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
 20 unit assert that the designated exclusive representative is no longer the representative of the ma-
 21 jority of the employees in the unit;

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

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

28 (2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or
 29 labor organization acting on behalf of the employees files a petition alleging that a majority of em-
 30 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a
 31 labor organization for that purpose, or when a [*group of unrepresented employees*] **labor organiza-**
 32 **tion** files a petition [*stating that the*] **alleging that the majority in a group of** unrepresented em-
 33 ployees seek to be [*included in*] **added to** an existing bargaining unit, the board shall investigate the
 34 petition. If the board finds that a majority of the employees in a unit appropriate for bargaining or
 35 **a majority of employees** in a group of unrepresented employees **that is appropriate to add to**
 36 [*seeking to be included in*] an existing bargaining unit have signed authorizations designating the
 37 labor organization specified in the petition as the employees' bargaining representative and that no
 38 other labor organization is currently certified or recognized as the exclusive representative of any
 39 of the employees in the unit or in the group of unrepresented employees seeking to be [*included*
 40 *in*] **added to** an existing bargaining unit, the board may not conduct an election but shall certify the
 41 labor organization as the exclusive representative unless a petition for a representation election is
 42 filed as provided in subsection (3) of this section.

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

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

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

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

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

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

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

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

19 (b) The petition requesting a representation election must be supported by at least 30 percent
 20 of the employees in the bargaining unit designated by the petition, or 30 percent of the unrepre-
 21 sented employees seeking to be *[included in]* **added to** an existing bargaining unit.

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

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

29 **SECTION 4.** ORS 243.684 is amended to read:

30 243.684. A petition for representation filed under ORS 243.682 (2) *[alleging that a majority of*
 31 *employees in the unit appropriate for the purpose of collective bargaining wish to be represented by a*
 32 *labor organization for that purpose]* must include a statement of a desire by the employees to be
 33 represented *[for the purpose of collective bargaining]* and must be signed and dated by *[30 percent*
 34 *of]* the employees *[in the unit]* during the 180 days *[prior to the filing of]* **before** the petition is filed
 35 with the Employment Relations Board.

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

37 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-
 38 cluded in an appropriate bargaining unit for which an exclusive representative has been certified
 39 by the Employment Relations Board or recognized by the employer; or is included in an appropriate
 40 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-
 41 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650
 42 to 243.782, 292.055 and 341.290.

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

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

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

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

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

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

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

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

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

23 (4)(a) [No] A labor organization [shall] **may not** declare or authorize a strike of public employ-
24 ees that is or would be in violation of this section. When it is alleged in good faith by the public
25 employer that a labor organization has declared or authorized a strike of public employees that is
26 or would be in violation of this section, the employer may petition the board for a declaration that
27 the strike is or would be unlawful. The board, after conducting an investigation and hearing, may
28 make such declaration if it finds that such declaration or authorization of a strike is or would be
29 unlawful.

30 (b) When a labor organization or individual disobeys an order of the appropriate circuit court
31 issued pursuant to enforcing an order of the board involving this section and ORS 243.736 **or**
32 **243.738**, they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the
33 amount of the fine shall be at the discretion of the court.

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

39 (6) As used in this section, "danger or threat to the health, safety or welfare of the public" does
40 not include an economic or financial inconvenience to the public or to the public employer that is
41 normally incident to a strike by public employees.

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

43 243.742. (1) It is the public policy of the State of Oregon that where the right of employees to
44 strike is by law prohibited, it is requisite to the high morale of such employees and the efficient
45 operation of such departments to afford an alternate, expeditious, effective and binding procedure

1 for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080,
 2 240.123, 243.650 to 243.782, 292.055 and 341.290, providing for compulsory arbitration, shall be liber-
 3 ally construed.

4 (2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation of a labor
 5 dispute, have not culminated in a signed agreement between the parties who are prohibited from
 6 striking, the public employer and exclusive representative of its employees shall include with the
 7 final offer filed with the mediator a petition to the Employment Relations Board in writing [*which*]
 8 **that** initiates binding arbitration for bargaining units with employees referred to in ORS 243.736
 9 [~~(1)~~] **or 243.738**. Arbitration shall be scheduled by mutual agreement not earlier than 30 days fol-
 10 lowing the submission of the final offer packages to the mediator. Arbitration shall be scheduled in
 11 accordance with the procedures prescribed in ORS 243.746.

12 **SECTION 7.** ORS 243.752 is amended to read:

13 243.752. (1) A majority decision of the arbitration panel, under ORS 243.706, 243.726, 243.736,
 14 **243.738**, 243.742 and 243.746, if supported by competent, material and substantial evidence on the
 15 whole record, based upon the factors set forth in ORS 243.746 (4), shall be final and binding upon
 16 the parties. Refusal or failure to comply with any provision of a final and binding arbitration award
 17 is an unfair labor practice. Any order issued by the Employment Relations Board pursuant to this
 18 section may be enforced at the instance of either party or the board in the circuit court for the
 19 county in which the dispute arose.

20 (2) The arbitration panel may award increases retroactively to the first day after the expiration
 21 of the immediately preceding collective bargaining agreement. At any time the parties, by stipu-
 22 lation, may amend or modify an award of arbitration.

23 **SECTION 8.** ORS 662.455 is amended to read:

24 662.455. The head of the State Conciliation Service shall be the conciliator who shall be ap-
 25 pointed by the executive [*Secretary*] **manager** of the Employment Relations Board, with the approval
 26 of the **chairperson of the Employment Relations Board**. The conciliator [*and all*] **shall be in the**
 27 **unclassified service**. All other employees of the State Conciliation Service shall be **in the classi-**
 28 **fied service and shall be** subject to the State Personnel Relations Law.