

Enrolled
House Bill 2265

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

CHAPTER

AN ACT

Relating to the 150-day period after which parties involved in negotiations over the terms of a collective bargaining agreement may notify the Employment Relations Board of the need for a mediator; amending ORS 243.712 and 243.746.

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

SECTION 1. ORS 243.712 is amended to read:

243.712. (1) If after a 150-calendar-day period of good faith negotiations over the terms of an agreement or 150 days after certification or recognition of an exclusive representative[,] no agreement has been signed, either or both of the parties may notify the Employment Relations Board of the status of negotiations and the need for assignment of a mediator. Any period of time in which the public employer or labor organization has been found by the Employment Relations Board to have failed to bargain in good faith shall not be counted as part of the 150-day period. This provision cannot be invoked by the party found to have failed to bargain in good faith. The parties may agree to request a mediator before the end of the 150-day period. Upon receipt of such notification **or request**, the board shall appoint a mediator and shall notify the parties of the appointment. The 150-day period [*days of negotiation*] shall begin when the parties meet for the first bargaining session and each party has received the other party's initial proposal **or on an alternative date to which the parties agree in writing**.

(2) The board [*on the request of one of the parties*], **upon receipt of a notification or request under subsection (1) of this section**, shall render assistance to resolve the labor dispute according to the following schedule:

(a) Mediation shall be provided by the State Conciliation Service as provided by ORS 662.405 to 662.455. Any time after 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Notification of an impasse shall be filed in writing with the board, and copies of the notification shall be submitted to the parties on the same day the notification is filed with the board.

(b) Within seven days of the declaration of impasse, each party shall submit to the mediator in writing the final offer of the party, including a cost summary of the offer. Upon receipt of the final offers, the mediator shall make public the final offers, including any proposed contract language and each party's cost summary dealing with those issues, on which the parties have failed to reach agreement. Each party's proposed contract language shall be titled "Final Offer."

(c) Within 30 days after the mediator makes public the parties' final offers, the parties may [*agree and must*] jointly petition the Employment Relations Board to appoint a fact finder. If the

parties jointly petition for fact-finding, a fact finder shall be appointed and the hearing conducted as provided in ORS 243.722.

(d) If [no] an agreement has **not** been reached 30 days after the mediator makes public the final offers, or if the parties participated in fact-finding, 30 days after the receipt of the fact finder's report, the public employer may implement all or part of its final offer, and the public employees have the right to strike. After a collective bargaining agreement has expired, and prior to agreement on a successor contract, the status quo with respect to employment relations shall be preserved until completion of impasse procedures except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise.

[(e)] (3) Nothing in **subsection (1) or (2)** of this section shall be construed to prohibit the parties at any time from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration. The arbitration shall be scheduled and conducted in accordance with ORS 243.746. The arbitration shall supersede the dispute resolution procedures set forth in ORS 243.726 and 243.746.

SECTION 2. ORS 243.746 is amended to read:

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

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

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

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

(3) The arbitrator shall establish dates and places of hearings. Upon the request of either party or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date of the hearing, each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects, and neither party may change the last best offer package unless pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for the hearing may thereafter be changed only for compelling reasons or by mutual consent of the parties. If either party provides notice of a change in its position within 24 hours of the 14-day deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute.

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

(a) The interest and welfare of the public.

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

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

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

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

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

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

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

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

(E) For Department of State Police telecommunicators, as defined in ORS 181A.355, "comparable" includes the base pay for telecommunicators employed by the five public safety answering points in this state, as defined in ORS 403.105, with the most employees.

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

(g) The stipulations of the parties.

(h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

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

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

Passed by House April 20, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 11, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State