

# House Bill 2476

Sponsored by Representative BENTZ (at the request of Jill Gibson) (Presession filed.)

## 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**.

Excludes from unfair labor practices employer practice of establishing wages, benefits or other employment terms for member of labor organization that are different from wages, benefits or other employment terms for employee who is not member of labor organization.

## A BILL FOR AN ACT

1  
2 Relating to different employment terms for an employee who is not a member of a labor organiza-  
3 tion; amending ORS 243.672, 243.676 and 243.726.

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

5 **SECTION 1.** ORS 243.672 is amended to read:

6 243.672. (1) It is an unfair labor practice for a public employer or its designated representative  
7 to do any of the following:

8 (a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaran-  
9 teed in ORS 243.662.

10 (b) Dominate, interfere with or assist in the formation, existence or administration of any em-  
11 ployee organization.

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

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

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

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

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

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

28 (i) Violate ORS 243.670 (2).

29 (2) [*Subject to the limitations set forth in this subsection,*] It is an unfair labor practice for a  
30 public employee or for a labor organization or its designated representative to do any of the fol-  
31 lowing:

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

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

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

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

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

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

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

29 **(5) It is not an unfair labor practice for an employer to establish wages, benefits or other**  
 30 **employment terms for an employee who is not a member of a labor organization that are**  
 31 **different from the wages, benefits or other employment terms for an employee who is a**  
 32 **member of a labor organization.**

33 [(3)] **(6)** An injured party may file a written complaint with the Employment Relations Board  
 34 not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor  
 35 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice  
 36 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to  
 37 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee  
 38 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing  
 39 party in any case in which the complaint or answer is found to have been frivolous or filed in bad  
 40 faith. The board shall deposit fees received under this section to the credit of the Employment Re-  
 41 lations Board Administrative Account.

42 **SECTION 2.** ORS 243.676 is amended to read:

43 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is  
 44 engaging in any unfair labor practice listed in ORS 243.672 (1) [and (2)] **to (4)** and 243.752, the  
 45 Employment Relations Board or its agent shall:

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

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

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

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

12 (a) State its findings of fact;

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

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

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

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

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

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

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

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

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

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

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

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

41 **SECTION 3.** ORS 243.726 is amended to read:

42 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-  
43 cluded in an appropriate bargaining unit for which an exclusive representative has been certified  
44 by the Employment Relations Board or recognized by the employer; or is included in an appropriate  
45 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-

1 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650  
2 to 243.782, 292.055 and 341.290.

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

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

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

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

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

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

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

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

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

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

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

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

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

