

Requested by Representative BARKER

**PROPOSED AMENDMENTS TO
HOUSE BILL 3009**

1 On page 1 of the printed bill, line 2, delete “243.650,” and insert “243.672,
2 243.676 and 243.726.”.

3 Delete line 3.

4 Delete lines 5 through 21 and delete pages 2 through 10 and insert:

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
7 designated representative to do any of the following:

8 “(a) Interfere with, restrain or coerce employees in or because of the ex-
9 ercise of rights guaranteed in ORS 243.662.

10 “(b) Dominate, interfere with or assist in the formation, existence or ad-
11 ministration of any employee organization.

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

20 “(d) Discharge or otherwise discriminate against an employee because the
21 employee has signed or filed an affidavit, petition or complaint or has given

1 information or testimony under ORS 243.650 to 243.782.

2 “(e) Refuse to bargain collectively in good faith with the exclusive rep-
3 resentative.

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

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

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

11 “(i) Violate ORS 243.670 (2).

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

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

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

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

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

24 “(e) Refuse to reduce an agreement, reached as a result of collective bar-
25 gaining, to writing and sign the resulting contract.

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

1 “[(g)] **(4) It is an unfair labor practice** for a labor organization or its
2 agents to picket or cause, induce, or encourage to be picketed, or threaten
3 to engage in such activity, at the residence or business premises of any in-
4 dividual who is a member of the governing body of a public employer, with
5 respect to a dispute over a collective bargaining agreement or negotiations
6 over employment relations, if an objective or effect of such picketing is to
7 induce another person to cease doing business with the governing body
8 member’s business or to cease handling, transporting or dealing in goods or
9 services produced at the governing body’s business. For purposes of this
10 *[paragraph]* **subsection**, a member of the Legislative Assembly is a member
11 of the governing body of a public employer when the collective bargaining
12 negotiation or dispute is between the State of Oregon and a labor organiza-
13 tion. The Governor and other statewide elected officials are not considered
14 members of a governing body for purposes of this *[paragraph]* **subsection**.
15 Nothing in this *[paragraph]* **subsection** may be interpreted or applied in a
16 manner that violates the right of free speech and assembly as protected by
17 the Constitution of the United States or the Constitution of the State of
18 Oregon.

19 “**(5) It is not an unfair labor practice or a violation of subsection**
20 **(2)(a) of this section for a labor organization to charge the following**
21 **employees reasonable fees and costs for representation that are unre-**
22 **lated to the negotiation of a collective bargaining agreement, provided**
23 **that the employees are not members of the labor organization and**
24 **have not voluntarily entered into a fair-share agreement:**

25 “**(a) A police officer of a city or municipal police department;**

26 “**(b) A sheriff or deputy sheriff; or**

27 “**(c) A police officer commissioned by a university under ORS**
28 **352.121 or 353.125.**

29 “[(3)] **(6) An injured party may file a written complaint with the Em-**
30 **ployment Relations Board not later than 180 days following the occurrence**

1 of an unfair labor practice. For each unfair labor practice complaint filed,
2 a fee of \$300 is imposed. For each answer to an unfair labor practice com-
3 plaint filed with the board, a fee of \$300 is imposed. The board may allow
4 any other person to intervene in the proceeding and to present testimony.
5 A person allowed to intervene shall pay a fee of \$300 to the board. The
6 board may, in its discretion, order fee reimbursement to the prevailing party
7 in any case in which the complaint or answer is found to have been frivolous
8 or filed in bad faith. The board shall deposit fees received under this section
9 to the credit of the Employment Relations Board Administrative Account.

10 **“SECTION 2.** ORS 243.676 is amended to read:

11 “243.676. (1) Whenever a written complaint is filed alleging that any per-
12 son has engaged in or is engaging in any unfair labor practice listed in ORS
13 243.672 (1) [*and* (2)] **to (4)** and 243.752, the Employment Relations Board or
14 its agent shall:

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

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

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

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

27 “(a) State its findings of fact;

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

30 “(c) Take such affirmative action, including but not limited to the rein-

1 statement of employees with or without back pay, as necessary to effectuate
2 the purposes of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782,
3 292.055 and 341.290;

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

6 “(e) Designate the amount and award attorney fees, if any, to the pre-
7 vailing party on appeal, including proceedings for Supreme Court review, of
8 a board order.

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

12 “(a) Issue an order dismissing the complaint; and

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

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

18 “(A) The complaint has been affirmed pursuant to subsection (2) of this
19 section and the board finds that the person who has committed, or who is
20 engaging, in an unfair labor practice has done so repetitively, knowing that
21 the action taken was an unfair labor practice and took the action disre-
22 garding this knowledge, or that the action constituting the unfair labor
23 practice was egregious; or

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

27 “(b) Notwithstanding paragraph (a) of this subsection, if the board finds
28 that a public employer named in the complaint violated ORS 243.670 (2), the
29 board shall impose a civil penalty equal to triple the amount of funds the
30 public employer expended to assist, promote or deter union organizing.

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

4 **“SECTION 3.** ORS 243.726 is amended to read:

5 “243.726. (1) Participation in a strike shall be unlawful for any public
6 employee who is not included in an appropriate bargaining unit for which
7 an exclusive representative has been certified by the Employment Relations
8 Board or recognized by the employer; or is included in an appropriate bar-
9 gaining unit that provides for resolution of a labor dispute by petition to
10 final and binding arbitration; or when the strike is not made lawful under
11 ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290.

12 “(2) It shall be lawful for a public employee who is not prohibited from
13 striking under subsection (1) of this section and who is in the appropriate
14 bargaining unit involved in a labor dispute to participate in a strike over
15 mandatory subjects of bargaining provided:

16 “(a) The requirements of ORS 243.712 and 243.722 relating to the resol-
17 ution of labor disputes have been complied with in good faith;

18 “(b) Thirty days have elapsed since the board has made public the fact
19 finder’s findings of fact and recommendations or the mediator has made
20 public the parties’ final offers;

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

24 “(d) The collective bargaining agreement has expired, or the labor dispute
25 arises pursuant to a reopener provision in a collective bargaining agreement
26 or renegotiation under ORS 243.702 (1) or renegotiation under ORS 243.698;
27 and

28 “(e) The union’s strike does not include unconventional strike activity
29 not protected under the National Labor Relations Act on June 6, 1995, and
30 does not constitute an unfair labor practice under ORS 243.672 [(2)(f)] **(3)**.

1 “(3)(a) Where the strike occurring or is about to occur creates a clear and
2 present danger or threat to the health, safety or welfare of the public, the
3 public employer concerned may petition the circuit court of the county in
4 which the strike has taken place or is to take place for equitable relief in-
5 cluding but not limited to appropriate injunctive relief.

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

8 “(c) If, after hearing, the court finds that the strike creates a clear and
9 present danger or threat to the health, safety or welfare of the public, it
10 shall grant appropriate relief. Such relief shall include an order that the la-
11 bor dispute be submitted to final and binding arbitration within 10 days of
12 the court’s order pursuant to procedures in ORS 243.746.

13 “(4)(a) A labor organization may not declare or authorize a strike of
14 public employees that is or would be in violation of this section. When it is
15 alleged in good faith by the public employer that a labor organization has
16 declared or authorized a strike of public employees that is or would be in
17 violation of this section, the employer may petition the board for a declara-
18 tion that the strike is or would be unlawful. The board, after conducting an
19 investigation and hearing, may make such declaration if it finds that such
20 declaration or authorization of a strike is or would be unlawful.

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

26 “(5) An unfair labor practice by a public employer shall not be a defense
27 to a prohibited strike. The board upon the filing of an unfair labor charge
28 alleging that a public employer has committed an unfair labor practice dur-
29 ing or arising out of the collective bargaining procedures set forth in ORS
30 243.712 and 243.722, shall take immediate action on such charge and if re-

1 quired, petition the court of competent jurisdiction for appropriate relief or
2 a restraining order.

3 “(6) As used in this section, ‘danger or threat to the health, safety or
4 welfare of the public’ does not include an economic or financial inconven-
5 ience to the public or to the public employer that is normally incident to a
6 strike by public employees.

7 **“SECTION 4. The amendments to ORS 243.672, 243.676 and 243.726
8 by sections 1 to 3 of this 2019 Act apply to all contracts and agreements
9 in effect, entered into, renewed or extended on or after the effective
10 date of this 2019 Act.”.**

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