

Senate Bill 845

Sponsored by Senator GORSEK

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**.

Modifies procedures required for binding arbitration for certain public employees. Requires arbitration to be conducted by three-person arbitration panel. Requires certain percentage of diverse arbitrators be included amongst list of potential arbitrators submitted to interested parties for consideration by Employment Relations Board.

Requires parties to arbitration proceeding to submit last best offer package that includes parties' position on each unresolved subject matter item. Requires arbitration panel to select one position for each item and issue findings with respect to each finding.

A BILL FOR AN ACT

1
2 Relating to binding arbitration for purposes of public employee collective bargaining; amending ORS
3 243.746.

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

5 **SECTION 1.** ORS 243.746 is amended to read:

6 243.746. *[(1) In carrying out the arbitration procedures authorized in ORS 243.712, 243.726 (3)(c)*
7 *and 243.742, the public employer and the exclusive representative may select their own arbitrator.]*

8 **(1) A panel of three arbitrators shall carry out the arbitration procedures authorized in**
9 **ORS 243.712, 243.726 (3)(c) and 243.742. The public employer and the exclusive representative**
10 **shall each select one arbitrator to serve on the arbitration panel. The parties may jointly**
11 **select one neutral arbitrator to serve as the third member of the panel.**

12 **(2)(a) [Where] When** the parties have not selected *[their own]* **a neutral** arbitrator within five
13 days after notification by the Employment Relations Board that arbitration is to be initiated, the
14 board shall submit to the parties a list of seven qualified, disinterested, unbiased persons. **At least**
15 **three of the persons included in the list must be diverse arbitrators who are representative**
16 **of minorities, women, persons with disabilities and persons of differing sexual orientations**
17 **and gender identities. If the list does not include the requisite diverse arbitrators, each party**
18 **shall, within seven days after receiving the list from the board, select one diverse arbitrator**
19 **to be included in the list. The board shall include** a list of Oregon interest arbitrations and
20 fact-findings for which each person has issued an award *[shall be included]*. Each party shall alter-
21 nately strike *[three]* names from the list. The order of striking shall be determined by lot. The re-
22 maining individual shall be designated the "**neutral** arbitrator"*[.]*.

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

28 *[(b)]* **(c) [The]** Concerns regarding the bias and qualifications of the person designated by lot or

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 by appointment may be [*challenged*] **raised** by a petition filed directly with the board. **The board**
 2 **shall hold** a hearing [*shall be held by the board*] within 10 days of filing of the petition and [*the*
 3 *board*] shall issue a final and binding decision regarding the person's neutrality within 10 days of
 4 the hearing.

5 (3) The [*arbitrator*] **panel of arbitrators** shall establish dates and places of hearings. Upon the
 6 request of either party or [*the arbitrator*] **a majority of the arbitrators on the arbitration**
 7 **panel**, the board shall issue subpoenas. Not less than 14 calendar days prior to the date of the
 8 hearing, each party shall submit to the other party a written last best offer package **that outlines**
 9 **each party's final position with respect to each unresolved mandatory subject item** [*on all*
 10 *unresolved mandatory subjects*], and neither party may change the last best offer package unless
 11 pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for
 12 the hearing may thereafter be changed only for compelling reasons or by mutual consent of the
 13 parties. If either party provides notice of a change in its position within 24 hours of the 14-day
 14 deadline, the other party will be allowed an additional 24 hours to modify its position. The
 15 [*arbitrator*] **arbitration panel** may administer oaths and shall afford all parties full opportunity to
 16 examine and cross-examine all witnesses and to present any evidence pertinent to the dispute.

17 (4) [*Where*] **When** there is no agreement between the parties, or [*where*] **when** there is an
 18 agreement but the parties have begun negotiations or discussions looking to a new agreement or
 19 amendment of the existing agreement, **each** unresolved mandatory [*subjects*] **subject item** submitted
 20 to the [*arbitrator*] **arbitration panel** in the parties' last best offer packages shall be decided by the
 21 [*arbitrator*] **panel as provided in subsection (5) of this section**. Arbitrators shall base their
 22 findings and opinions on [*these*] **the following** criteria giving first priority to paragraph (a) of this
 23 subsection and secondary priority to paragraphs (b) to (h) of this subsection as follows:

24 (a) The interest and welfare of the public.

25 **(b) The overall working conditions of the employees subject to the collective bargaining**
 26 **agreement. For purposes of this paragraph, overall working conditions include, but are not**
 27 **limited to:**

28 **(A) Matters regarding employee health and safety;**

29 **(B) The overall compensation presently received by the employees, including direct wage**
 30 **compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits**
 31 **and all other direct or indirect monetary benefits received;**

32 **(C) The nature and extent of any disciplinary matters;**

33 **(D) The level of employee supervision; and**

34 **(E) Professional advancement opportunities.**

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

40 [(c)] **(d)** The ability of the unit of government to attract and retain qualified personnel at the
 41 wage and benefit levels provided.

42 [(d)] *The overall compensation presently received by the employees, including direct wage compen-*
 43 *sation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other*
 44 *direct or indirect monetary benefits received.]*

45 **(e)** Comparison of the overall compensation of other **employees represented in a collective**

1 **bargaining agreement or unrepresented** employees, performing similar services with the same or
 2 other employees in comparable communities. As used in this paragraph, “comparable” is limited to
 3 communities of the same or nearest population range within Oregon. Notwithstanding the provisions
 4 of this paragraph, the following additional definitions of “comparable” apply in the situations de-
 5 scribed as follows:

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

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

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

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

14 (E) For Department of State Police telecommunicators, as defined in ORS 181A.355,
 15 “comparable” includes the base pay for telecommunicators employed by the five public safety an-
 16 swering points in this state, as defined in ORS 403.105, with the most employees; *[and]*

17 (F) For assistant attorneys general, “comparable” includes comparison to the base pay for at-
 18 torneys who are employed by a public corporation, a nonprofit organization, a public university
 19 listed in ORS 352.002 or a city or county in this state and who perform substantially similar
 20 work[.]; **and**

21 **(G) For mass transit districts, transportation districts and municipal bus systems,**
 22 **“comparable” includes comparison to the transit systems of other states, taking into con-**
 23 **sideration the following factors:**

24 **(i) The type of transit services offered;**

25 **(ii) Total ridership data, including passenger miles traveled, as reported in the National**
 26 **Transit Database of the Federal Transit Administration;**

27 **(iii) Size of populations served;**

28 **(iv) Total operating budgets; and**

29 **(v) Geographic proximity.**

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

31 (g) The stipulations of the parties.

32 (h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are tradi-
 33 tionally taken into consideration in the determination of wages, hours, and other terms and condi-
 34 tions of employment. However, the *[arbitrator]* **arbitration panel** shall not use such other factors,
 35 if in the judgment of the *[arbitrator]* **panel**, the factors in paragraphs (a) to (g) of this subsection
 36 provide sufficient evidence for an award.

37 (5) Not more than 30 days after the conclusion of the hearings or such further additional periods
 38 to which the parties may agree, the *[arbitrator]* **arbitration panel** shall select only one of the **final**
 39 **positions presented by each of the parties for each particular unresolved mandatory subject**
 40 **item detailed in the** last best offer packages submitted by the parties and shall promulgate written
 41 findings **regarding the panel’s chosen position with respect to each item**, along with an opinion
 42 and order. The opinion and order shall be served on the parties and the board. Service may be
 43 personal or by registered or certified mail. The findings, opinions and order shall be based on the
 44 criteria prescribed in subsection (4) of this section.

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

