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

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

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

SECTION 1. ORS 243.746 is amended to read:

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

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

(2)(a) When the parties have not selected their own a neutral 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. At least three of the persons included in the list must be diverse arbitrators who are representative of minorities, women, persons with disabilities and persons of differing sexual orientations and gender identities. If the list does not include the requisite diverse arbitrators, each party shall, within seven days after receiving the list from the board, select one diverse arbitrator to be included in the list. The board shall include 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 “neutral arbitrator”[:].

[(a)] (b) When the parties have not designated the neutral arbitrator and notified the board of their choice within five days after receipt of the list, the board shall appoint the neutral 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 neutral arbitrator only from the names remaining on the list.

[(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.

LC 602
by appointment may be [challenged] raised by a petition filed directly with the board. The board shall hold 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] panel of arbitrators shall establish dates and places of hearings. Upon the request of either party or [the arbitrator] a majority of the arbitrators on the arbitration panel, 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 that outlines each party's final position with respect to each unresolved mandatory subject item [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] arbitration panel 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] When there is no agreement between the parties, or [where] when there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, each unresolved mandatory [subjects] subject item submitted to the [arbitrator] arbitration panel in the parties' last best offer packages shall be decided by the [arbitrator] panel as provided in subsection (5) of this section. Arbitrators shall base their findings and opinions on [these] the following 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 overall working conditions of the employees subject to the collective bargaining agreement. For purposes of this paragraph, overall working conditions include, but are not limited to:

(A) Matters regarding employee health and safety;

(B) 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;

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

(D) The level of employee supervision; and

(E) Professional advancement opportunities.

[(b)] (c) 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)] (d) 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 represented in a collective
bargaining agreement or unrepresented 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), (E) and (F) 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;

(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; and

(F) For assistant attorneys general, “comparable” includes comparison to the base pay for attorneys who are employed by a public corporation, a nonprofit organization, a public university listed in ORS 352.002 or a city or county in this state and who perform substantially similar work.

(G) For mass transit districts, transportation districts and municipal bus systems, “comparable” includes comparison to the transit systems of other states, taking into consideration the following factors:

(i) The type of transit services offered;

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

(iii) Size of populations served;

(iv) Total operating budgets; and

(v) Geographic proximity.

(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] arbitration panel shall not use such other factors, if in the judgment of the [arbitrator] panel, 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] arbitration panel shall select only one of the final positions presented by each of the parties for each particular unresolved mandatory subject item detailed in the last best offer packages submitted by the parties and shall promulgate written findings regarding the panel’s chosen position with respect to each item, 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.