

Senate Bill 386

Sponsored by Senator FERRIOLI (Pre-session 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**.

Prohibits public employer from participating in collection of labor organization dues.

A BILL FOR AN ACT

1
2 Relating to restricting public employer from using resources to participate in collection of labor
3 organization dues; amending ORS 243.670, 243.672, 243.676 and 243.726.

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

5 **SECTION 1.** ORS 243.670 is amended to read:

6 243.670. (1) As used in this section:

7 (a) "Assist, promote or deter union organizing" means any attempt by a public employer to in-
8 fluence the decision of any or all of its employees or the employees of its subcontractors regarding:

9 (A) Whether to support or oppose a labor organization that represents or seeks to represent
10 those employees; or

11 (B) Whether to become a member of any labor organization.

12 (b) "Public funds" means moneys drawn from the State Treasury or any special or trust fund
13 of the state government, including any moneys appropriated by the state government and transferred
14 to any public body, as defined in ORS 174.109, and any other moneys under the control of a public
15 official by virtue of office.

16 (c) "Public property" means any real property or facility owned or leased by a public employer.

17 (2) A public employer may not:

18 (a) Use public funds to support actions to assist, promote or deter union organizing; [*or*]

19 (b) Discharge, demote, harass or otherwise take adverse action against any individual because
20 the individual seeks to enforce this section or testifies, assists or participates in any manner in an
21 investigation, hearing or other proceeding to enforce this section[.]; **or**

22 (c) **Participate in any manner in the collection of dues or payment-in-lieu-of-dues on be-**
23 **half of a labor organization.**

24 (3) If an employee requests the opinion of the employee's employer or supervisor about union
25 organizing, nothing in this section prohibits the employer or supervisor from responding to the re-
26 quest of the employee.

27 (4) This section does not apply to an activity performed, or to an expense incurred, in con-
28 nection with:

29 (a) Addressing a grievance or negotiating or administering a collective bargaining agreement.

30 (b) Allowing a labor organization or its representatives access to the public employer's facilities
31 or property.

32 (c) Performing an activity required by federal or state law or by a collective bargaining agree-

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 ment.

2 (d) Negotiating, entering into or carrying out an agreement with a labor organization.

3 (e) Paying wages to a represented employee while the employee is performing duties if the pay-
4 ment is permitted under a collective bargaining agreement.

5 (5)(a) This section shall be enforced by the Employment Relations Board, which shall adopt rules
6 necessary to implement and administer compliance. A resident of this state may intervene as a
7 plaintiff in any action brought under this section.

8 (b) Nothing in this section prohibits a public employer from spending public funds for the pur-
9 pose of representing the public employer in a proceeding before the board or in a judicial review
10 of that proceeding.

11 **SECTION 2.** ORS 243.672 is amended to read:

12 243.672. (1) It is an unfair labor practice for a public employer or its designated representative
13 to do any of the following:

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

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

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

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

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

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

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

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

34 (i) Violate ORS 243.670 (2).

35 (2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a
36 public employee or for a labor organization or its designated representative to do any of the fol-
37 lowing:

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

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

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

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

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

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

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

21 [(3)] **(5)** An injured party may file a written complaint with the Employment Relations Board
22 not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor
23 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice
24 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to
25 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee
26 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing
27 party in any case in which the complaint or answer is found to have been frivolous or filed in bad
28 faith. The board shall deposit fees received under this section to the credit of the Employment Re-
29 lations Board Administrative Account.

30 **SECTION 3.** ORS 243.676 is amended to read:

31 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is
32 engaging in any unfair labor practice listed in ORS 243.672 (1) [and (2)] **to (4)** and 243.752, the
33 Employment Relations Board or its agent shall:

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

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

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

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

45 (a) State its findings of fact;

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

3 (c) Take such affirmative action, including but not limited to the reinstatement of employees
 4 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,
 5 240.123, 243.650 to 243.782, 292.055 and 341.290;

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

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

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

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

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

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

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

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

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

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

29 **SECTION 4.** ORS 243.726 is amended to read:

30 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-
 31 cluded in an appropriate bargaining unit for which an exclusive representative has been certified
 32 by the Employment Relations Board or recognized by the employer; or is included in an appropriate
 33 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-
 34 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650
 35 to 243.782, 292.055 and 341.290.

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

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

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

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

45 (d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a

1 reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or
2 renegotiation under ORS 243.698; and

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

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

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

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

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

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

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

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

34