

(Including Amendments to Resolve Conflicts)

C-Engrossed Senate Bill 400

Ordered by the House May 2
Including House Amendments dated March 16 and April 12 and May 2

Sponsored by Senators BROWN, PROZANSKI; Representative SCHAUFLEER (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.

Modifies definition of "employment relations" to include [*staffing and safety for*] **safety issues that have impact on on-the-job safety of certain employees who are prohibited from striking, and staffing levels that have significant impact on on-the-job safety of certain employees who are prohibited from striking.**

A BILL FOR AN ACT

1
2 Relating to employment relations in public collective bargaining; creating new provisions; amending
3 ORS 243.650; and repealing sections 3a and 6a, chapter _____, Oregon Laws 2007 (Enrolled
4 House Bill 2372).

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

6 **SECTION 1.** ORS 243.650 is amended to read:

7 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

8 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board
9 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
10 ever, an appropriate bargaining unit cannot include both academically licensed and unlicensed or
11 nonacademically licensed school employees. Academically licensed units may include but are not
12 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
13 similar positions. This limitation [*shall*] **does** not apply to any bargaining unit certified or recognized
14 prior to June 6, 1995, or to any school district with fewer than 50 employees.

15 (2) "Board" means the Employment Relations Board.

16 (3) "Certification" means official recognition by the board that a labor organization is the ex-
17 clusive representative for all of the employees in the appropriate bargaining unit.

18 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
19 and the representative of its employees to meet at reasonable times and confer in good faith with
20 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
21 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
22 concerning the interpretation or application of a collective bargaining agreement, and to execute
23 written contracts incorporating agreements that have been reached on behalf of the public employer
24 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
25 negotiate does not compel either party to agree to a proposal or require the making of a concession.
26 [*Nothing in*] This subsection [*shall*] **may not** be construed to prohibit a public employer and a cer-

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 tified or recognized representative of its employees from discussing or executing written agreements
 2 regarding matters other than mandatory subjects of bargaining that are not prohibited by law[, so]
 3 **as** long as there is mutual agreement of the parties to discuss these matters, which are permissive
 4 subjects of bargaining.

5 (5) “Compulsory arbitration” means the procedure whereby parties involved in a labor dispute
 6 are required by law to submit their differences to a third party for a final and binding decision.

7 (6) “Confidential employee” means one who assists and acts in a confidential capacity to a per-
 8 son who formulates, determines and effectuates management policies in the area of collective bar-
 9 gaining.

10 (7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-
 11 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
 12 employment.

13 (b) “Employment relations” does not include subjects determined to be permissive, nonmanda-
 14 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

15 (c) After June 6, 1995, “employment relations” [*shall*] **does** not include subjects [*which*] **that** the
 16 Employment Relations Board determines to have a greater impact on management’s prerogative than
 17 on employee wages, hours, or other terms and conditions of employment.

18 (d) “Employment relations” [*shall*] **does** not include subjects that have an insubstantial or de-
 19 minimis effect on public employee wages, hours, and other terms and conditions of employment.

20 (e) For school district bargaining, “employment relations” [*shall expressly exclude*] **does not**
 21 **include** class size, the school or educational calendar, standards of performance or criteria for
 22 evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal
 23 conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the
 24 standards and procedures for student discipline, the time between student classes, the selection,
 25 agendas and decisions of 21st Century Schools Councils established under ORS 329.704, and any
 26 other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

27 **(f) For employee bargaining involving employees covered by ORS 243.736, “employment**
 28 **relations” includes safety issues that have an impact on the on-the-job safety of the em-**
 29 **ployees or staffing levels that have a significant impact on the on-the-job safety of the em-**
 30 **ployees.**

31 [*f*] **(g)** For all other employee bargaining except school [*districts*] **district bargaining and ex-**
 32 **cept as provided in paragraph (f) of this subsection,** “employment relations” [*expressly*
 33 *excludes*] **does not include** staffing levels and safety issues (except those staffing levels and safety
 34 issues [*which*] **that** have a direct and substantial effect on the on-the-job safety of public employees),
 35 scheduling of services provided to the public, determination of the minimum qualifications necessary
 36 for any position, criteria for evaluation or performance appraisal, assignment of duties, workload
 37 when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct
 38 requirements respecting smoking, gum chewing, and similar matters of personal conduct at work,
 39 and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this sub-
 40 section.

41 (8) “Exclusive representative” means the labor organization that, as a result of certification by
 42 the board or recognition by the employer, has the right to be the collective bargaining agent of all
 43 employees in an appropriate bargaining unit.

44 (9) “Fact-finding” means identification of the major issues in a particular labor dispute by one
 45 or more impartial individuals who review the positions of the parties, resolve factual differences and

1 make recommendations for settlement of the dispute.

2 (10) “Fair-share agreement” means an agreement between the public employer and the recog-
 3 nized or certified bargaining representative of public employees whereby employees who are not
 4 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
 5 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
 6 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
 7 security agreement declaring they desire that *[such]* **the** agreement be rescinded, the board shall
 8 take a secret ballot of the employees in *[such]* **the** unit and certify the results thereof to the re-
 9 cognized or certified bargaining representative and to the public employer. Unless a majority of the
 10 votes cast in an election favor *[such]* **the** union security agreement, the board shall certify deau-
 11 thorization *[thereof]* **of the agreement**. A petition for deauthorization of a union security agreement
 12 must be filed not more than 90 calendar days after the collective bargaining agreement is executed.
 13 Only one such election shall be conducted in any appropriate bargaining unit during the term of a
 14 collective bargaining agreement between a public employer and the recognized or certified bar-
 15 gaining representative.

16 (11) “Final offer” means the proposed contract language and cost summary submitted to the
 17 mediator within seven days of the declaration of impasse.

18 (12) “Labor dispute” means any controversy concerning employment relations or concerning the
 19 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
 20 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
 21 the proximate relation of employer and employee.

22 (13) “Labor organization” means any organization that has as one of its purposes representing
 23 employees in their employment relations with public employers.

24 (14) “Last best offer package” means the offer exchanged by parties not less than 14 days prior
 25 to the date scheduled for an interest arbitration hearing.

26 (15) “Legislative body” means the Legislative Assembly, the city council, the county commission
 27 and any other board or commission empowered to levy taxes.

28 (16) “Managerial employee” means an employee of the State of Oregon who possesses authority
 29 to formulate and carry out management decisions or who represents management’s interest by tak-
 30 ing or effectively recommending discretionary actions that control or implement employer policy,
 31 and who has discretion in the performance of these management responsibilities beyond the routine
 32 discharge of duties. A “managerial employee” need not act in a supervisory capacity in relation to
 33 other employees. Notwithstanding this subsection, “managerial employee” *[shall]* **may** not be con-
 34 strued to include faculty members at a community college, college or university.

35 (17) “Mediation” means assistance by an impartial third party in reconciling a labor dispute
 36 between the public employer and the exclusive representative regarding employment relations.

37 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for services by the exclu-
 38 sive representative in negotiations and contract administration of all persons in an appropriate
 39 bargaining unit who are not members of the organization serving as exclusive representative of the
 40 employees. The payment shall be equivalent to regular union dues and assessments, if any, or shall
 41 be an amount agreed upon by the public employer and the exclusive representative of the employees.

42 (19) “Public employee” means an employee of a public employer but does not include elected
 43 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
 44 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-
 45 visory employees or managerial employees.

1 (20) "Public employer" means the State of Oregon, and the following political subdivisions:
2 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
3 politan service districts, public service corporations or municipal corporations and public and
4 quasi-public corporations.

5 (21) "Public employer representative" includes any individual or individuals specifically desig-
6 nated by the public employer to act in its interests in all matters dealing with employee represen-
7 tation, collective bargaining and related issues.

8 (22) "Strike" means a public employee's refusal in concerted action with others to report for
9 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
10 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
11 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
12 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
13 or impair the right of any public employee to lawfully express or communicate a complaint or
14 opinion on any matter related to the conditions of employment.

15 (23) "Supervisory employee" means any individual having authority in the interest of the em-
16 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
17 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
18 commend such action, if in connection therewith, the exercise of [*such*] **the** authority is not of a
19 merely routine or clerical nature but requires the use of independent judgment. Failure to assert
20 supervisory status in any Employment Relations Board proceeding or in negotiations for any col-
21 lective bargaining agreement [*shall*] **does** not thereafter prevent assertion of supervisory status in
22 any subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this
23 subsection, no nurse, charge nurse or similar nursing position shall be deemed to be supervisory
24 unless [*such*] **the** position has traditionally been classified as supervisory.

25 (24) "Unfair labor practice" means the commission of an act designated an unfair labor practice
26 in ORS 243.672.

27 (25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute
28 mutually agree to submit their differences to a third party for a final and binding decision.

29 **SECTION 1a. If House Bill 2372 becomes law, sections 3a (amending ORS 243.650) and 6a,**
30 **chapter _____, Oregon Laws 2007 (Enrolled House Bill 2372), and section 1 of this 2007 Act**
31 **(amending ORS 243.650) are repealed and ORS 243.650, as amended by section 3, chapter**
32 **_____, Oregon Laws 2007 (Enrolled House Bill 2372), is amended to read:**

33 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

34 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board
35 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
36 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
37 nonacademically licensed school employees. Academically licensed units may include but are not
38 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
39 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
40 to June 6, 1995, or to any school district with fewer than 50 employees.

41 (2) "Board" means the Employment Relations Board.

42 (3) "Certification" means official recognition by the board that a labor organization is the ex-
43 clusive representative for all of the employees in the appropriate bargaining unit.

44 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
45 and the representative of its employees to meet at reasonable times and confer in good faith with

1 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
 2 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
 3 concerning the interpretation or application of a collective bargaining agreement, and to execute
 4 written contracts incorporating agreements that have been reached on behalf of the public employer
 5 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
 6 negotiate does not compel either party to agree to a proposal or require the making of a concession.
 7 This subsection may not be construed to prohibit a public employer and a certified or recognized
 8 representative of its employees from discussing or executing written agreements regarding matters
 9 other than mandatory subjects of bargaining that are not prohibited by law, so as long as there
 10 is mutual agreement of the parties to discuss these matters, which are permissive subjects of bar-
 11 gaining.

12 (5) “Compulsory arbitration” means the procedure whereby parties involved in a labor dispute
 13 are required by law to submit their differences to a third party for a final and binding decision.

14 (6) “Confidential employee” means one who assists and acts in a confidential capacity to a per-
 15 son who formulates, determines and effectuates management policies in the area of collective bar-
 16 gaining.

17 (7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-
 18 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
 19 employment.

20 (b) “Employment relations” does not include subjects determined to be permissive, nonmanda-
 21 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

22 (c) After June 6, 1995, “employment relations” does not include subjects *[which]* **that** the Em-
 23 ployment Relations Board determines to have a greater impact on management’s prerogative than
 24 on employee wages, hours, or other terms and conditions of employment.

25 (d) “Employment relations” does not include subjects that have an insubstantial or de minimis
 26 effect on public employee wages, hours, and other terms and conditions of employment.

27 (e) For school district bargaining, “employment relations” excludes class size, the school or ed-
 28 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
 29 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
 30 gum chewing and similar matters of personal conduct, the standards and procedures for student
 31 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
 32 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
 33 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
 34 subsection.

35 **(f) For employee bargaining involving employees covered by ORS 243.736, “employment**
 36 **relations” includes safety issues that have an impact on the on-the-job safety of the em-**
 37 **ployees or staffing levels that have a significant impact on the on-the-job safety of the em-**
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39 *[(f)]* **(g) For all other employee bargaining except school [districts] district bargaining and ex-**
 40 **cept as provided in paragraph (f) of this subsection,** “employment relations” excludes staffing
 41 levels and safety issues (except those staffing levels and safety issues *[which]* **that** have a direct and
 42 substantial effect on the on-the-job safety of public employees), scheduling of services provided to
 43 the public, determination of the minimum qualifications necessary for any position, criteria for
 44 evaluation or performance appraisal, assignment of duties, workload when the effect on duties is
 45 insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting

1 smoking, gum chewing, and similar matters of personal conduct at work, and any other subject
2 proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

3 (8) "Exclusive representative" means the labor organization that, as a result of certification by
4 the board or recognition by the employer, has the right to be the collective bargaining agent of all
5 employees in an appropriate bargaining unit.

6 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one
7 or more impartial individuals who review the positions of the parties, resolve factual differences and
8 make recommendations for settlement of the dispute.

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13 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
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17 votes cast in an election favor *[such]* **the** union security agreement, the board shall certify deau-
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24 mediator within seven days of the declaration of impasse.

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26 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
27 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
28 the proximate relation of employer and employee.

29 (13) "Labor organization" means any organization that has as one of its purposes representing
30 employees in their employment relations with public employers.

31 (14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior
32 to the date scheduled for an interest arbitration hearing.

33 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission
34 and any other board or commission empowered to levy taxes.

35 (16) "Managerial employee" means an employee of the State of Oregon who possesses authority
36 to formulate and carry out management decisions or who represents management's interest by tak-
37 ing or effectively recommending discretionary actions that control or implement employer policy,
38 and who has discretion in the performance of these management responsibilities beyond the routine
39 discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to
40 other employees. Notwithstanding this subsection, "managerial employee" does not include faculty
41 members at a community college, college or university.

42 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
43 between the public employer and the exclusive representative regarding employment relations.

44 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-
45 sive representative in negotiations and contract administration of all persons in an appropriate

1 bargaining unit who are not members of the organization serving as exclusive representative of the
2 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
3 be an amount agreed upon by the public employer and the exclusive representative of the employees.

4 (19) "Public employee" means an employee of a public employer but does not include elected
5 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
6 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-
7 visory employees or managerial employees.

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11 quasi-public corporations.

12 (21) "Public employer representative" includes any individual or individuals specifically desig-
13 nated by the public employer to act in its interests in all matters dealing with employee represen-
14 tation, collective bargaining and related issues.

15 (22) "Strike" means a public employee's refusal in concerted action with others to report for
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17 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
18 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
19 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
20 or impair the right of any public employee to lawfully express or communicate a complaint or
21 opinion on any matter related to the conditions of employment.

22 (23) "Supervisory employee" means any individual having authority in the interest of the em-
23 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
24 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
25 commend such action, if in connection therewith, the exercise of *[such]* **the** authority is not of a
26 merely routine or clerical nature but requires the use of independent judgment. Failure to assert
27 supervisory status in any Employment Relations Board proceeding or in negotiations for any col-
28 lective bargaining agreement does not thereafter prevent assertion of supervisory status in any
29 subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this sub-
30 section, a nurse, charge nurse or similar nursing position may not be deemed to be supervisory un-
31 less that position has traditionally been classified as supervisory.

32 (24) "Unfair labor practice" means the commission of an act designated an unfair labor practice
33 in ORS 243.672.

34 (25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute
35 mutually agree to submit their differences to a third party for a final and binding decision.

36 **SECTION 2. The amendments to ORS 243.650 by section 1 of this 2007 Act apply only to**
37 **collective bargaining agreements entered into on or after the effective date of this 2007 Act.**

38 **SECTION 2a.** If House Bill 2372 becomes law, section 2 of this 2007 Act is amended to read:

39 **Sec. 2.** The amendments to ORS 243.650 by section [1] **1a** of this 2007 Act apply only to collec-
40 tive bargaining agreements entered into on or after the effective date of this 2007 Act.

41