

Senate Bill 401

Sponsored by Senator BROWN (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**.

Modifies definition of "supervisory employee" for purposes of public employee collective bargaining law.

A BILL FOR AN ACT

1
2 Relating to supervisory employees under public employee collective bargaining law; creating new
3 provisions; and amending ORS 243.650.

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

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

6 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

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

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

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

17 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
18 and the representative of its employees to meet at reasonable times and confer in good faith with
19 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
20 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
21 concerning the interpretation or application of a collective bargaining agreement, and to execute
22 written contracts incorporating agreements that have been reached on behalf of the public employer
23 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
24 negotiate does not compel either party to agree to a proposal or require the making of a concession.
25 [*Nothing in*] This subsection [*shall*] **may not** be construed to prohibit a public employer and a cer-
26 tified or recognized representative of its employees from discussing or executing written agreements
27 regarding matters other than mandatory subjects of bargaining that are not prohibited by law, so
28 long as there is mutual agreement of the parties to discuss these matters, which are permissive
29 subjects of bargaining.

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

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

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

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

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

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

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

21 (f) For all other employee bargaining except school *[districts]* **district bargaining**, “employment
22 relations” *[expressly excludes]* **does not include** staffing levels and safety issues (except those
23 staffing levels and safety issues *[which]* **that** have a direct and substantial effect on the on-the-job
24 safety of public employees), scheduling of services provided to the public, determination of the min-
25 imum qualifications necessary for any position, criteria for evaluation or performance appraisal,
26 assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, groom-
27 ing, and at-work personal conduct requirements respecting smoking, gum chewing, and similar mat-
28 ters of personal conduct at work, and any other subject proposed that is permissive under
29 paragraphs (b), (c) and (d) of this subsection.

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

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

36 (10) “Fair-share agreement” means an agreement between the public employer and the recog-
37 nized or certified bargaining representative of public employees whereby employees who are not
38 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
39 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
40 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
41 security agreement declaring they desire that *[such]* **the** agreement be rescinded, the board shall
42 take a secret ballot of the employees in *[such]* **the** unit and certify the results thereof to the re-
43 cognized or certified bargaining representative and to the public employer. Unless a majority of the
44 votes cast in an election favor *[such]* **the** union security agreement, the board shall certify deau-
45 thorization *[thereof]* **of the agreement**. A petition for deauthorization of a union security agreement

1 must be filed not more than 90 calendar days after the collective bargaining agreement is executed.
2 Only one such election shall be conducted in any appropriate bargaining unit during the term of a
3 collective bargaining agreement between a public employer and the recognized or certified bar-
4 gaining representative.

5 (11) "Final offer" means the proposed contract language and cost summary submitted to the
6 mediator within seven days of the declaration of impasse.

7 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
8 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
9 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
10 the proximate relation of employer and employee.

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

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

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

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

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

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

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

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

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

42 (22) "Strike" means a public employee's refusal in concerted action with others to report for
43 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
44 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
45 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,

1 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
 2 or impair the right of any public employee to lawfully express or communicate a complaint or
 3 opinion on any matter related to the conditions of employment.

4 (23)(a) “Supervisory employee” means any individual having authority in the interest of the
 5 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
 6 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
 7 commend such action, if in connection therewith, the exercise of [*such*] **the** authority is not of a
 8 merely routine or clerical nature but requires the use of independent judgment. Failure to assert
 9 supervisory status in any Employment Relations Board proceeding or in negotiations for any col-
 10 lective bargaining agreement [*shall*] **does** not thereafter prevent assertion of supervisory status in
 11 any subsequent board proceeding or contract negotiation.

12 (b) Notwithstanding the provisions of **paragraph (a)** of this subsection[, *no*]:

13 (A) A nurse, charge nurse or similar nursing position [*shall be deemed*] **may not be considered**
 14 to be supervisory unless [*such*] **the** position has traditionally been classified as supervisory.

15 (B) **A public safety officer, as defined in ORS 181.610, who merely assigns, transfers or**
 16 **directs the work of other employees, but who has no authority to impose economic discipline**
 17 **on those employees, may not be considered to be supervisory.**

18 (24) “Unfair labor practice” means the commission of an act designated an unfair labor practice
 19 in ORS 243.672.

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

22 **SECTION 2. The amendments to ORS 243.650 by section 1 of this 2007 Act apply only to**
 23 **collective bargaining agreements executed on or after the effective date of this 2007 Act.**

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