

B-Engrossed
House Bill 2831

Ordered by the Senate June 10
Including House Amendments dated May 4 and Senate Amendments dated
June 10

Sponsored by Representative SCHAUFLEER, Senator ROSENBAUM; Representatives CLEM, DEMBROW, HOLVEY,
WITT

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.

[Includes] **Authorizes inclusion of** temporary employees in definition of "appropriate bargaining unit" for purposes of collective bargaining between public employers and public employees. Eliminates requirement that both issue of representation by labor organization and issue of designation of organization as exclusive representative be placed on ballot for representation elections for faculty of certain universities. Prohibits public employer from hiring permanent replacements for public employees engaged in lawful strike.

A BILL FOR AN ACT

1
2 Relating to public employment; creating new provisions; and amending ORS 243.650, 243.686, 410.614,
3 443.733 and 657A.430.

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)(a) "Appropriate bargaining unit" means the unit designated by the Employment Relations
8 Board or voluntarily recognized by the public employer to be appropriate for collective bargaining.

9 **(b) "Appropriate bargaining unit" may include, but is not limited to, temporary employ-**
10 **ees and seasonal employees who, for more than three months in a 12-month period unless**
11 **otherwise agreed to in a collective bargaining agreement, perform work that is substantially**
12 **the same work that other employees in the bargaining unit perform. The three-month time**
13 **limitation described in this paragraph does not apply to employees of public schools, educa-**
14 **tion service districts, community colleges, colleges or universities.**

15 (c) *[However, an appropriate bargaining unit]* **"Appropriate bargaining unit"** may not include
16 both academically licensed and unlicensed or nonacademically licensed school employees. Academ-
17 ically licensed units may include but are not limited to teachers, nurses, counselors, therapists,
18 psychologists, child development specialists and similar positions. This limitation does not apply to
19 any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer
20 than 50 employees.

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

22 (3) **"Casual employee" means an employee who works less than an average of four hours**
23 **per week during the period the employee is employed or during the quarter preceding the**
24 **filing of a unit clarification or representation petition, whichever is the shorter period.**
25 **"Casual employee" does not include employees of community colleges, colleges or universi-**

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 **ties.**

2 [(3)] (4) “Certification” means official recognition by the board that a labor organization is the
3 exclusive representative for all of the employees in the appropriate bargaining unit.

4 [(4)] (5) “Collective bargaining” means the performance of the mutual obligation of a public
5 employer and the representative of its employees to meet at reasonable times and confer in good
6 faith with respect to employment relations for the purpose of negotiations concerning mandatory
7 subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any
8 dispute concerning the interpretation or application of a collective bargaining agreement, and to
9 execute written contracts incorporating agreements that have been reached on behalf of the public
10 employer and the employees in the bargaining unit covered by such negotiations. The obligation to
11 meet and negotiate does not compel either party to agree to a proposal or require the making of a
12 concession. This subsection may not be construed to prohibit a public employer and a certified or
13 recognized representative of its employees from discussing or executing written agreements regard-
14 ing matters other than mandatory subjects of bargaining that are not prohibited by law as long as
15 there is mutual agreement of the parties to discuss these matters, which are permissive subjects of
16 bargaining.

17 [(5)] (6) “Compulsory arbitration” means the procedure whereby parties involved in a labor dis-
18 pute are required by law to submit their differences to a third party for a final and binding decision.

19 [(6)] (7) “Confidential employee” means one who assists and acts in a confidential capacity to
20 a person who formulates, determines and effectuates management policies in the area of collective
21 bargaining.

22 [(7)(a)] (8)(a) “Employment relations” includes, but is not limited to, matters concerning direct
23 or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other condi-
24 tions of employment.

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

27 (c) After June 6, 1995, “employment relations” does not include subjects that the Employment
28 Relations Board determines to have a greater impact on management’s prerogative than on employee
29 wages, hours, or other terms and conditions of employment.

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

32 (e) For school district bargaining, “employment relations” excludes class size, the school or ed-
33 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
34 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
35 gum chewing and similar matters of personal conduct, the standards and procedures for student
36 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
37 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
38 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
39 subsection.

40 (f) For employee bargaining involving employees covered by ORS 243.736, “employment
41 relations” includes safety issues that have an impact on the on-the-job safety of the employees or
42 staffing levels that have a significant impact on the on-the-job safety of the employees.

43 (g) For all other employee bargaining except school district bargaining and except as provided
44 in paragraph (f) of this subsection, “employment relations” excludes staffing levels and safety issues
45 (except those staffing levels and safety issues that have a direct and substantial effect on the on-

1 the-job safety of public employees), scheduling of services provided to the public, determination of
 2 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
 3 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
 4 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
 5 matters of personal conduct at work, and any other subject proposed that is permissive under par-
 6 agraphs (b), (c) and (d) of this subsection.

7 [(8)] (9) “Exclusive representative” means the labor organization that, as a result of certification
 8 by the board or recognition by the employer, has the right to be the collective bargaining agent of
 9 all employees in an appropriate bargaining unit.

10 [(9)] (10) “Fact-finding” means identification of the major issues in a particular labor dispute by
 11 one or more impartial individuals who review the positions of the parties, resolve factual differences
 12 and make recommendations for settlement of the dispute.

13 [(10)] (11) “Fair-share agreement” means an agreement between the public employer and the
 14 recognized or certified bargaining representative of public employees whereby employees who are
 15 not members of the employee organization are required to make an in-lieu-of-dues payment to an
 16 employee organization except as provided in ORS 243.666. Upon the filing with the board of a peti-
 17 tion by 30 percent or more of the employees in an appropriate bargaining unit covered by such un-
 18 ion security agreement declaring they desire that the agreement be rescinded, the board shall take
 19 a secret ballot of the employees in the unit and certify the results thereof to the recognized or
 20 certified bargaining representative and to the public employer. Unless a majority of the votes cast
 21 in an election favor the union security agreement, the board shall certify deauthorization of the
 22 agreement. A petition for deauthorization of a union security agreement must be filed not more than
 23 90 calendar days after the collective bargaining agreement is executed. Only one such election may
 24 be conducted in any appropriate bargaining unit during the term of a collective bargaining agree-
 25 ment between a public employer and the recognized or certified bargaining representative.

26 [(11)] (12) “Final offer” means the proposed contract language and cost summary submitted to
 27 the mediator within seven days of the declaration of impasse.

28 [(12)] (13) “Labor dispute” means any controversy concerning employment relations or con-
 29 cerning the association or representation of persons in negotiating, fixing, maintaining, changing,
 30 or seeking to arrange terms or conditions of employment relations, regardless of whether the
 31 disputants stand in the proximate relation of employer and employee.

32 [(13)] (14) “Labor organization” means any organization that has as one of its purposes repre-
 33 senting employees in their employment relations with public employers.

34 [(14)] (15) “Last best offer package” means the offer exchanged by parties not less than 14 days
 35 prior to the date scheduled for an interest arbitration hearing.

36 [(15)] (16) “Legislative body” means the Legislative Assembly, the city council, the county
 37 commission and any other board or commission empowered to levy taxes.

38 [(16)] (17) “Managerial employee” means an employee of the State of Oregon who possesses au-
 39 thority to formulate and carry out management decisions or who represents management’s interest
 40 by taking or effectively recommending discretionary actions that control or implement employer
 41 policy, and who has discretion in the performance of these management responsibilities beyond the
 42 routine discharge of duties. A “managerial employee” need not act in a supervisory capacity in re-
 43 lation to other employees. Notwithstanding this subsection, “managerial employee” does not include
 44 faculty members at a community college, college or university.

45 [(17)] (18) “Mediation” means assistance by an impartial third party in reconciling a labor dis-

1 pute between the public employer and the exclusive representative regarding employment relations.

2 [(18)] (19) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the
3 exclusive representative in negotiations and contract administration of all persons in an appropriate
4 bargaining unit who are not members of the organization serving as exclusive representative of the
5 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
6 be an amount agreed upon by the public employer and the exclusive representative of the employees.

7 [(19)] (20) "Public employee" means an employee of a public employer but does not include
8 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
9 under section 41, Article I of the Oregon Constitution, or persons who are confidential employees,
10 supervisory employees or managerial employees.

11 [(20)] (21) "Public employer" means the State of Oregon, and the following political subdivisions:
12 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
13 politan service districts, public service corporations or municipal corporations and public and
14 quasi-public corporations.

15 [(21)] (22) "Public employer representative" includes any individual or individuals specifically
16 designated by the public employer to act in its interests in all matters dealing with employee rep-
17 resentation, collective bargaining and related issues.

18 [(22)] (23) "Strike" means a public employee's refusal in concerted action with others to report
19 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
20 his or her absence in whole or in part from the full, faithful or proper performance of his or her
21 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
22 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
23 limit or impair the right of any public employee to lawfully express or communicate a complaint or
24 opinion on any matter related to the conditions of employment.

25 [(23)] (24) "Supervisory employee" means any individual having authority in the interest of the
26 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
27 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
28 commend such action, if in connection therewith, the exercise of the authority is not of a merely
29 routine or clerical nature but requires the use of independent judgment. *[Failure to assert supervi-*
30 *sory status in any Employment Relations Board proceeding or in negotiations for any collective bar-*
31 *gaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board*
32 *proceeding or contract negotiation.]* **The exercise of any function of authority enumerated in this**
33 **subsection does not require the conclusion that the individual exercising the function is a**
34 **supervisory employee.** Notwithstanding the provisions of this subsection, a nurse, charge nurse or
35 similar nursing position may not be deemed to be supervisory unless that position has traditionally
36 been classified as supervisory.

37 **(25) "Temporary employee" means an employee, other than a casual employee, who is**
38 **employed for the purpose of meeting emergency, nonrecurring or short-term workforce**
39 **needs.**

40 [(24)] (26) "Unfair labor practice" means the commission of an act designated an unfair labor
41 practice in ORS 243.672.

42 [(25)] (27) "Voluntary arbitration" means the procedure whereby parties involved in a labor
43 dispute mutually agree to submit their differences to a third party for a final and binding decision.

44 **SECTION 2.** ORS 410.614 is amended to read:

45 410.614. Notwithstanding ORS 243.650 [(19) and (20)] (20) and (21), the Home Care Commission

1 shall be considered a public employer and home care workers shall be considered public employees
2 governed by ORS 243.650 to 243.782. Home care workers have the right to form, join and participate
3 in the activities of labor organizations of their own choosing for the purpose of representation and
4 collective bargaining with the commission on matters concerning employment relations. These rights
5 shall be exercised in accordance with the rights granted to public employees with mediation and
6 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
7 cess. Home care workers do not have the right to strike.

8 **SECTION 3.** ORS 443.733 is amended to read:

9 443.733. (1) As used in this section, “adult foster care home provider” means a person who op-
10 erates an adult foster home in the provider’s home and who receives fees or payments from the state
11 for providing adult foster care home services. “Adult foster care home provider” does not include
12 a person:

13 (a) Who is a resident manager of an adult foster home who does not provide adult foster care
14 home services in the resident manager’s own home or who does not have a controlling interest in,
15 or is not an officer or partner in, the entity that is the provider of adult foster care home services;

16 (b) Who is not a natural person; or

17 (c) Whose participation in collective bargaining is determined by the Department of Human
18 Services to be inconsistent with this section or in violation of state or federal law.

19 (2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is
20 the public employer of record of adult foster care home providers.

21 (3) Notwithstanding ORS 243.650 [(19)] (20), adult foster care home providers are considered to
22 be public employees governed by ORS 243.650 to 243.782. Adult foster care home providers have the
23 right to form, join and participate in the activities of labor organizations of their own choosing for
24 the purposes of representation and collective bargaining on matters concerning labor relations.
25 These rights shall be exercised in accordance with the rights granted to public employees, with
26 mediation and interest arbitration under ORS 243.742 as the method of concluding the collective
27 bargaining process. Adult foster care home providers may not strike.

28 (4) Notwithstanding subsections (2) and (3) of this section, adult foster care home providers are
29 not for any other purpose employees of the State of Oregon or any other public body.

30 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
31 collective bargaining negotiations with the certified or recognized exclusive representative of an
32 appropriate bargaining unit of adult foster care home providers. The Oregon Department of Admin-
33 istrative Services is authorized to agree to terms and conditions of collective bargaining agreements
34 on behalf of the State of Oregon.

35 (6) Notwithstanding ORS 243.650 (1), an appropriate bargaining unit for adult foster care home
36 providers is any bargaining unit recognized by the Governor in an executive order issued prior to
37 January 1, 2008.

38 (7) This section does not modify any right of an adult receiving foster care.

39 **SECTION 4.** ORS 657A.430 is amended to read:

40 657A.430. (1) As used in this section:

41 (a) “Certified family child care provider” means an individual who operates a family child care
42 home that is certified under ORS 657A.280.

43 (b) “Child care subsidy” means a payment made by the state on behalf of eligible children for
44 child care services provided for periods of less than 24 hours in a day.

45 (c) “Exempt family child care provider” means an individual who provides child care services

1 in the home of the individual or in the home of the child, whose services are not required to be
2 certified or registered under ORS 657A.250 to 657A.450 and who receives a child care subsidy.

3 (d) "Family child care provider" means an individual who is a certified, registered or exempt
4 family child care provider.

5 (e) "Registered family child care provider" means an individual who operates a family child care
6 home that is registered under ORS 657A.330.

7 (2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is
8 the public employer of record of family child care providers.

9 (3) Notwithstanding ORS 243.650 [(19)] (20), family child care providers are considered to be
10 public employees governed by ORS 243.650 to 243.782. Family child care providers have the right to
11 form, join and participate in the activities of labor organizations of their own choosing for the pur-
12 pose of representation and collective bargaining on matters concerning labor relations. These rights
13 shall be exercised in accordance with the rights granted to public employees, with mediation and
14 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
15 cess. Family child care providers may not strike.

16 (4) Notwithstanding subsections (2) and (3) of this section, family child care providers are not
17 for any other purpose employees of the State of Oregon or any other public body.

18 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
19 collective bargaining negotiations with the certified or recognized exclusive representatives of all
20 appropriate bargaining units of family child care providers. The Oregon Department of Administra-
21 tive Services is authorized to agree to terms and conditions of collective bargaining agreements on
22 behalf of the State of Oregon.

23 (6) Notwithstanding ORS 243.650 (1):

24 (a) The appropriate bargaining unit for certified and registered family child care providers is a
25 bargaining unit of all certified and registered family child care providers in the state.

26 (b) The appropriate bargaining unit for exempt family child care providers is a bargaining unit
27 of all exempt family child care providers in the state.

28 (7) This section does not modify any right of a parent or legal guardian to choose and terminate
29 the services of a family child care provider.

30 **SECTION 5.** ORS 243.686 is amended to read:

31 243.686. (1) The Employment Relations Board shall place on the ballot only those labor organ-
32 izations designated to be placed on the ballot by more than 10 percent of the employees in an ap-
33 propriate bargaining unit.

34 (2) The ballot shall contain a provision for marking no representation.

35 (3) The board shall determine who is eligible to vote in the election and require the employer
36 to provide a complete list of all such eligible persons, their names, addresses and job classifications
37 to each candidate organization on the ballot at least 20 days before the election is to occur.

38 (4) The labor organization which receives the majority of the votes cast in an election shall be
39 certified by the board as the exclusive representative.

40 (5) In any election where there are more than two choices on the ballot and none of the choices
41 receives a majority of the votes cast, a runoff election shall be conducted. The ballot in the runoff
42 election shall contain the two choices on the original ballot that received the largest number of
43 votes.

44 [(6)(a) *In conducting an election involving the faculty of a university administered by the State*
45 *Board of Higher Education, the Employment Relations Board shall place on the same ballot provisions*

1 *for voting on two issues:]*

2 *[(A) For or against representation; and]*

3 *[(B) For those labor organizations designated to be placed on the ballot by more than 10 percent*
4 *of the employees in an appropriate bargaining unit.]*

5 *[(b) If a majority of votes in paragraph (a)(A) of this subsection are cast in favor of no represen-*
6 *tation, the board shall not count the votes cast for labor organizations and shall certify no represen-*
7 *tative for the unit.]*

8 *[(c) If a majority of votes in paragraph (a)(A) of this subsection are cast in favor of representation,*
9 *the board shall count the votes in paragraph (a)(B) of this subsection for the designated labor organ-*
10 *izations and, if an organization receives a majority of those votes cast, shall certify that organization*
11 *as the exclusive representative. If no labor organization receives a majority of the votes cast in para-*
12 *graph (a)(B) of this subsection, a runoff election shall be conducted. The ballot in the runoff election*
13 *shall contain only the two labor organizations that received the largest number of votes.]*

14 *[(7)] (6) Nothing in this section is intended to prohibit the waiving of hearings by stipulation for*
15 *the purpose of a consent election, in conformity with the rules of the board.*

16 **SECTION 6. Section 7 of this 2009 Act is added to and made a part of ORS 243.650 to**
17 **243.782.**

18 **SECTION 7. A public employer may not hire permanent replacements for public employ-**
19 **ees who are engaging in a lawful strike. A public employer may hire temporary replacements**
20 **for striking public employees. When the bargaining unit representative of the public em-**
21 **ployees who are on strike makes an unconditional offer to return to work on behalf of the**
22 **striking employees, all temporary replacements hired to replace public employees who are**
23 **on strike shall be terminated and the striking employees returned to the positions the em-**
24 **ployees held prior to going on strike.**

25