

House Bill 2831

Sponsored by Representative SCHAUFLER, Senator ROSENBAUM; Representatives 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 **as introduced**.

Includes 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.

Repeals expedited bargaining process in collective bargaining between public employers and employees.

A BILL FOR AN ACT

1
2 Relating to public employment; creating new provisions; amending ORS 240.212, 243.650, 243.686,
3 243.702, 243.726, 410.614, 443.733 and 657A.430; and repealing ORS 243.698.

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. "**Ap-**
9 **propriate bargaining unit**" **includes, but is not limited to, temporary employees, seasonal**
10 **employees and limited duration employees hired under grants and for special projects, if such**
11 **employees perform substantially the same work as other employees in the bargaining unit.**
12 **A temporary, seasonal or limited duration employee may not be considered a casual employee**
13 **unless the employee has worked less than an average of four hours per week during the**
14 **employee's employment or the quarter preceding the filing of a unit clarification or repre-**
15 **sentation petition, whichever period is shorter.** However, an appropriate bargaining unit may
16 not include both academically licensed and unlicensed or nonacademically licensed school employ-
17 ees. Academically licensed units may include but are not limited to teachers, nurses, counselors,
18 therapists, psychologists, child development specialists and similar positions. This limitation does
19 not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school dis-
20 trict with fewer than 50 employees.

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

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

24 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
25 and the representative of its employees to meet at reasonable times and confer in good faith with
26 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
27 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
28 concerning the interpretation or application of a collective bargaining agreement, and to execute

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 written contracts incorporating agreements that have been reached on behalf of the public employer
2 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
3 negotiate does not compel either party to agree to a proposal or require the making of a concession.
4 This subsection may not be construed to prohibit a public employer and a certified or recognized
5 representative of its employees from discussing or executing written agreements regarding matters
6 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
7 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

13 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
14 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
15 employment.

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

18 (c) After June 6, 1995, "employment relations" does not include subjects that the Employment
19 Relations Board determines to have a greater impact on management's prerogative than on employee
20 wages, hours, or other terms and conditions of employment.

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

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

31 (f) For employee bargaining involving employees covered by ORS 243.736, "employment
32 relations" includes safety issues that have an impact on the on-the-job safety of the employees or
33 staffing levels that have a significant impact on the on-the-job safety of the employees.

34 (g) For all other employee bargaining except school district bargaining and except as provided
35 in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues
36 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
37 the-job safety of public employees), scheduling of services provided to the public, determination of
38 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
39 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
40 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
41 matters of personal conduct at work, and any other subject proposed that is permissive under par-
42 agraphs (b), (c) and (d) of this subsection.

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

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

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

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

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

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

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

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

29 [(16) "Managerial employee" means an employee of the State of Oregon who possesses authority to
30 formulate and carry out management decisions or who represents management's interest by taking or
31 effectively recommending discretionary actions that control or implement employer policy, and who has
32 discretion in the performance of these management responsibilities beyond the routine discharge of du-
33 ties. A "managerial employee" need not act in a supervisory capacity in relation to other employees.
34 Notwithstanding this subsection, "managerial employee" does not include faculty members at a com-
35 munity college, college or university.]

36 [(17)] (16) "Mediation" means assistance by an impartial third party in reconciling a labor dis-
37 pute between the public employer and the exclusive representative regarding employment relations.

38 [(18)] (17) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the
39 exclusive representative in negotiations and contract administration of all persons in an appropriate
40 bargaining unit who are not members of the organization serving as exclusive representative of the
41 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
42 be an amount agreed upon by the public employer and the exclusive representative of the employees.

43 [(19)] (18) "Public employee" means an employee of a public employer but does not include
44 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
45 under section 41, Article I of the Oregon Constitution, or persons who are confidential

1 employees[,] or supervisory employees [*or managerial employees*].

2 [(20)] (19) “Public employer” means the State of Oregon, and the following political subdivisions:
 3 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
 4 politan service districts, public service corporations or municipal corporations and public and
 5 quasi-public corporations.

6 [(21)] (20) “Public employer representative” includes any individual or individuals specifically
 7 designated by the public employer to act in its interests in all matters dealing with employee rep-
 8 resentation, collective bargaining and related issues.

9 [(22)] (21) “Strike” means a public employee’s refusal in concerted action with others to report
 10 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
 11 his or her absence in whole or in part from the full, faithful or proper performance of his or her
 12 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
 13 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
 14 limit or impair the right of any public employee to lawfully express or communicate a complaint or
 15 opinion on any matter related to the conditions of employment.

16 [(23)] (22) “Supervisory employee” means any individual having authority in the interest of the
 17 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
 18 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
 19 commend such action, if in connection therewith, the exercise of the authority is not of a merely
 20 routine or clerical nature but requires the use of independent judgment. [*Failure to assert supervi-*
 21 *sory status in any Employment Relations Board proceeding or in negotiations for any collective bar-*
 22 *gaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board*
 23 *proceeding or contract negotiation.*] **The exercise of any function of authority enumerated in this**
 24 **subsection does not require the conclusion that the individual exercising the function is a**
 25 **supervisory employee.** Notwithstanding the provisions of this subsection, a nurse, charge nurse or
 26 similar nursing position may not be deemed to be supervisory unless that position has traditionally
 27 been classified as supervisory.

28 [(24)] (23) “Unfair labor practice” means the commission of an act designated an unfair labor
 29 practice in ORS 243.672.

30 [(25)] (24) “Voluntary arbitration” means the procedure whereby parties involved in a labor
 31 dispute mutually agree to submit their differences to a third party for a final and binding decision.

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

33 410.614. Notwithstanding ORS 243.650 [(19) and (20)] (18) and (19), the Home Care Commission
 34 shall be considered a public employer and home care workers shall be considered public employees
 35 governed by ORS 243.650 to 243.782. Home care workers have the right to form, join and participate
 36 in the activities of labor organizations of their own choosing for the purpose of representation and
 37 collective bargaining with the commission on matters concerning employment relations. These rights
 38 shall be exercised in accordance with the rights granted to public employees with mediation and
 39 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
 40 cess. Home care workers do not have the right to strike.

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

42 443.733. (1) As used in this section, “adult foster care home provider” means a person who op-
 43 erates an adult foster home in the provider’s home and who receives fees or payments from the state
 44 for providing adult foster care home services. “Adult foster care home provider” does not include
 45 a person:

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

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

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

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 adult foster care home providers.

9 (3) Notwithstanding ORS 243.650 [(19)] (18), adult foster care home providers are considered to
 10 be public employees governed by ORS 243.650 to 243.782. Adult foster care home providers have the
 11 right to form, join and participate in the activities of labor organizations of their own choosing for
 12 the purposes of representation and collective bargaining on matters concerning labor relations.
 13 These rights shall be exercised in accordance with the rights granted to public employees, with
 14 mediation and interest arbitration under ORS 243.742 as the method of concluding the collective
 15 bargaining process. Adult foster care home providers may not strike.

16 (4) Notwithstanding subsections (2) and (3) of this section, adult foster care home providers are
 17 not 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 representative of an
 20 appropriate bargaining unit of adult foster care home providers. The Oregon Department of Admin-
 21 istrative Services is authorized to agree to terms and conditions of collective bargaining agreements
 22 on behalf of the State of Oregon.

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

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

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

28 657A.430. (1) As used in this section:

29 (a) "Certified family child care provider" means an individual who operates a family child care
 30 home that is certified under ORS 657A.280.

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

33 (c) "Exempt family child care provider" means an individual who provides child care services
 34 in the home of the individual or in the home of the child, whose services are not required to be
 35 certified or registered under ORS 657A.250 to 657A.450 and who receives a child care subsidy.

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

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

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

42 (3) Notwithstanding ORS 243.650 [(19)] (18), family child care providers are considered to be
 43 public employees governed by ORS 243.650 to 243.782. Family child care providers have the right to
 44 form, join and participate in the activities of labor organizations of their own choosing for the pur-
 45 pose of representation and collective bargaining on matters concerning labor relations. These rights

1 shall be exercised in accordance with the rights granted to public employees, with mediation and
 2 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
 3 cess. Family child care providers may not strike.

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

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

11 (6) Notwithstanding ORS 243.650 (1):

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

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

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

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

19 243.686. (1) The Employment Relations Board shall place on the ballot only those labor organ-
 20 izations designated to be placed on the ballot by more than 10 percent of the employees in an ap-
 21 propriate bargaining unit.

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

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

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

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

32 *[(6)(a) In conducting an election involving the faculty of a university administered by the State
 33 Board of Higher Education, the Employment Relations Board shall place on the same ballot provisions
 34 for voting on two issues:]*

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

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

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

41 *[(c) If a majority of votes in paragraph (a)(A) of this subsection are cast in favor of representation,
 42 the board shall count the votes in paragraph (a)(B) of this subsection for the designated labor organ-
 43 izations and, if an organization receives a majority of those votes cast, shall certify that organization
 44 as the exclusive representative. If no labor organization receives a majority of the votes cast in pa-
 45 ragraph (a)(B) of this subsection, a runoff election shall be conducted. The ballot in the runoff election*

1 *shall contain only the two labor organizations that received the largest number of votes.]*

2 [(7)] (6) Nothing in this section is intended to prohibit the waiving of hearings by stipulation for
 3 the purpose of a consent election, in conformity with the rules of the board.

4 **SECTION 6.** ORS 243.702 is amended to read:

5 243.702. [(1)] In the event any words or sections of a collective bargaining agreement are de-
 6 clared to be invalid by any court of competent jurisdiction, by ruling by the Employment Relations
 7 Board, by statute or constitutional amendment or by inability of the employer or the employees to
 8 perform to the terms of the agreement, then upon request by either party the invalid words or
 9 sections of the collective bargaining agreement shall be reopened for negotiation.

10 [(2) *Renegotiation of a collective bargaining agreement pursuant to this section is subject to ORS*
 11 *243.698.*]

12 **SECTION 7.** ORS 243.726 is amended to read:

13 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-
 14 cluded in an appropriate bargaining unit for which an exclusive representative has been certified
 15 by the Employment Relations Board or recognized by the employer; or is included in an appropriate
 16 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-
 17 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650
 18 to 243.782, 292.055 and 341.290.

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

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

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

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

28 (d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a
 29 reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 [(1) or
 30 *renegotiation under ORS 243.698*]; and

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

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

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

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

44 (4)(a) No labor organization shall declare or authorize a strike of public employees that is or
 45 would be in violation of this section. When it is alleged in good faith by the public employer that

1 a labor organization has declared or authorized a strike of public employees that is or would be in
 2 violation of this section, the employer may petition the board for a declaration that the strike is or
 3 would be unlawful. The board, after conducting an investigation and hearing, may make such dec-
 4 laration if it finds that such declaration or authorization of a strike is or would be unlawful.

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

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

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

17 **SECTION 8.** ORS 240.212 is amended to read:

18 240.212. The management service shall comprise all positions not in the unclassified or exempt
 19 service that have been determined to be confidential employees[,] **or** supervisory employees [*or*
 20 *managerial employees*], as defined in ORS 243.650.

21 **SECTION 9.** ORS 243.698 is repealed.

22 **SECTION 10.** Section 11 of this 2009 Act is added to and made a part of ORS 243.650 to
 23 **243.782.**

24 **SECTION 11.** A public employer may not hire permanent replacements for public em-
 25 ployees who are engaging in a lawful strike. A public employer may hire temporary replace-
 26 ments for striking public employees. When the bargaining unit representative of the public
 27 employees who are on strike makes an unconditional offer to return to work on behalf of the
 28 striking employees, all temporary replacements hired to replace public employees who are
 29 on strike shall be terminated and the striking employees returned to the positions the em-
 30 ployees held prior to going on strike.