

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2831

By COMMITTEE ON COMMERCE AND WORKFORCE DEVELOPMENT

June 10

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 24 and delete pages 2 and 3
2 and insert:

3 “**SECTION 1.** ORS 243.650 is amended to read:

4 “243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

5 “(1)(a) ‘Appropriate bargaining unit’ means the unit designated by the Employment Relations
6 Board or voluntarily recognized by the public employer to be appropriate for collective bargaining.

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

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

19 “(2) ‘Board’ means the Employment Relations Board.

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

24 “[3] (4) ‘Certification’ means official recognition by the board that a labor organization is the
25 exclusive representative for all of the employees in the appropriate bargaining unit.

26 “[4] (5) ‘Collective bargaining’ means the performance of the mutual obligation of a public
27 employer and the representative of its employees to meet at reasonable times and confer in good
28 faith with respect to employment relations for the purpose of negotiations concerning mandatory
29 subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any
30 dispute concerning the interpretation or application of a collective bargaining agreement, and to
31 execute written contracts incorporating agreements that have been reached on behalf of the public
32 employer and the employees in the bargaining unit covered by such negotiations. The obligation to
33 meet and negotiate does not compel either party to agree to a proposal or require the making of a
34 concession. This subsection may not be construed to prohibit a public employer and a certified or
35 recognized representative of its employees from discussing or executing written agreements regard-

1 ing matters other than mandatory subjects of bargaining that are not prohibited by law as long as
2 there is mutual agreement of the parties to discuss these matters, which are permissive subjects of
3 bargaining.

4 “[5] (6) ‘Compulsory arbitration’ means the procedure whereby parties involved in a labor dis-
5 pute are required by law to submit their differences to a third party for a final and binding decision.

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

9 “[7(a)] (8)(a) ‘Employment relations’ includes, but is not limited to, matters concerning direct
10 or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other condi-
11 tions of employment.

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

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

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

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

27 “(f) For employee bargaining involving employees covered by ORS 243.736, ‘employment re-
28 lations’ includes safety issues that have an impact on the on-the-job safety of the employees or
29 staffing levels that have a significant impact on the on-the-job safety of the employees.

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

39 “[8] (9) ‘Exclusive representative’ means the labor organization that, as a result of certification
40 by the board or recognition by the employer, has the right to be the collective bargaining agent of
41 all employees in an appropriate bargaining unit.

42 “[9] (10) ‘Fact-finding’ means identification of the major issues in a particular labor dispute by
43 one or more impartial individuals who review the positions of the parties, resolve factual differences
44 and make recommendations for settlement of the dispute.

45 “[10] (11) ‘Fair-share agreement’ means an agreement between the public employer and the

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

13 “[(11)] (12) ‘Final offer’ means the proposed contract language and cost summary submitted to
14 the mediator within seven days of the declaration of impasse.

15 “[(12)] (13) ‘Labor dispute’ means any controversy concerning employment relations or con-
16 cerning the association or representation of persons in negotiating, fixing, maintaining, changing,
17 or seeking to arrange terms or conditions of employment relations, regardless of whether the
18 disputants stand in the proximate relation of employer and employee.

19 “[(13)] (14) ‘Labor organization’ means any organization that has as one of its purposes repre-
20 senting employees in their employment relations with public employers.

21 “[(14)] (15) ‘Last best offer package’ means the offer exchanged by parties not less than 14 days
22 prior to the date scheduled for an interest arbitration hearing.

23 “[(15)] (16) ‘Legislative body’ means the Legislative Assembly, the city council, the county
24 commission and any other board or commission empowered to levy taxes.

25 “[(16)] (17) ‘Managerial employee’ means an employee of the State of Oregon who possesses au-
26 thority to formulate and carry out management decisions or who represents management’s interest
27 by taking or effectively recommending discretionary actions that control or implement employer
28 policy, and who has discretion in the performance of these management responsibilities beyond the
29 routine discharge of duties. A ‘managerial employee’ need not act in a supervisory capacity in re-
30 lation to other employees. Notwithstanding this subsection, ‘managerial employee’ does not include
31 faculty members at a community college, college or university.

32 “[(17)] (18) ‘Mediation’ means assistance by an impartial third party in reconciling a labor dis-
33 pute between the public employer and the exclusive representative regarding employment relations.

34 “[(18)] (19) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for services by the
35 exclusive representative in negotiations and contract administration of all persons in an appropriate
36 bargaining unit who are not members of the organization serving as exclusive representative of the
37 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
38 be an amount agreed upon by the public employer and the exclusive representative of the employees.

39 “[(19)] (20) ‘Public employee’ means an employee of a public employer but does not include
40 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
41 under section 41, Article I of the Oregon Constitution, or persons who are confidential employees,
42 supervisory employees or managerial employees.

43 “[(20)] (21) ‘Public employer’ means the State of Oregon, and the following political subdivisions:
44 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
45 politan service districts, public service corporations or municipal corporations and public and

1 quasi-public corporations.

2 “[(21)] (22) ‘Public employer representative’ includes any individual or individuals specifically
3 designated by the public employer to act in its interests in all matters dealing with employee rep-
4 resentation, collective bargaining and related issues.

5 “[(22)] (23) ‘Strike’ means a public employee’s refusal in concerted action with others to report
6 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
7 his or her absence in whole or in part from the full, faithful or proper performance of his or her
8 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
9 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
10 limit or impair the right of any public employee to lawfully express or communicate a complaint or
11 opinion on any matter related to the conditions of employment.

12 “[(23)] (24) ‘Supervisory employee’ means any individual having authority in the interest of the
13 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
14 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
15 commend such action, if in connection therewith, the exercise of the authority is not of a merely
16 routine or clerical nature but requires the use of independent judgment. [*Failure to assert supervi-*
17 *sory status in any Employment Relations Board proceeding or in negotiations for any collective bar-*
18 *gaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board*
19 *proceeding or contract negotiation.] **The exercise of any function of authority enumerated in this**
20 **subsection does not require the conclusion that the individual exercising the function is a**
21 **supervisory employee.** Notwithstanding the provisions of this subsection, a nurse, charge nurse or
22 similar nursing position may not be deemed to be supervisory unless that position has traditionally
23 been classified as supervisory.*

24 “(25) **‘Temporary employee’ means an employee, other than a casual employee, who is**
25 **employed for the purpose of meeting emergency, nonrecurring or short-term workforce**
26 **needs.**

27 “[(24)] (26) ‘Unfair labor practice’ means the commission of an act designated an unfair labor
28 practice in ORS 243.672.

29 “[(25)] (27) ‘Voluntary arbitration’ means the procedure whereby parties involved in a labor
30 dispute mutually agree to submit their differences to a third party for a final and binding
31 decision.”.

32 On page 4, delete lines 1 through 41.

33 In line 43, delete “(21) and (22)” and insert “(20) and (21)”.

34 On page 5, line 19, delete “(21)” and insert “(20)”.

35 On page 6, line 7, delete “(21)” and insert “(20)”.