

# House Bill 2348

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Business and Labor)

## 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 collective bargaining law; creating new provisions;  
3 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 may not 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 does not apply to any bargaining unit certified or recognized prior  
13 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 This subsection may not be construed to prohibit a public employer and a certified or recognized  
26 representative of its employees from discussing or executing written agreements regarding matters  
27 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-  
28 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

31 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-

**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 son who formulates, determines and effectuates management policies in the area of collective bar-  
2 gaining.

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

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

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

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

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

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

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

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

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

39 (10) "Fair-share agreement" means an agreement between the public employer and the recog-  
40 nized or certified bargaining representative of public employees whereby employees who are not  
41 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
42 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition  
43 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
44 security agreement declaring they desire that the agreement be rescinded, the board shall take a  
45 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-

1   fied bargaining representative and to the public employer. Unless a majority of the votes cast in an  
2   election favor the union security agreement, the board shall certify deauthorization of the agree-  
3   ment. A petition for deauthorization of a union security agreement must be filed not more than 90  
4   calendar days after the collective bargaining agreement is executed. Only one such election may be  
5   conducted in any appropriate bargaining unit during the term of a collective bargaining agreement  
6   between a public employer and the recognized or certified bargaining representative.

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

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

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

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

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

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

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

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

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

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

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

44       (22) "Strike" means a public employee's refusal in concerted action with others to report for  
45  duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his

1 or her absence in whole or in part from the full, faithful or proper performance of his or her duties  
 2 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,  
 3 compensation, rights, privileges or obligations of public employment; however, nothing shall limit  
 4 or impair the right of any public employee to lawfully express or communicate a complaint or  
 5 opinion on any matter related to the conditions of employment.

6 (23) "Supervisory employee" means any individual having authority in the interest of the em-  
 7 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline  
 8 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-  
 9 commend such action, if in connection therewith, the exercise of the authority is not of a merely  
 10 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-  
 11 sory status in any Employment Relations Board proceeding or in negotiations for any collective  
 12 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent  
 13 board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, a nurse,  
 14 charge nurse or **nurse holding a similar nursing position** [*may not be deemed to be supervisory un-*  
 15 *less*] that [*position*] has **not** traditionally been classified as supervisory **or a public employee pro-**  
 16 **hibited from striking by ORS 243.736, who merely assigns, transfers or directs the work of**  
 17 **other employees but does not have the authority to impose economic discipline on those**  
 18 **employees, is not a supervisory employee.**

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

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

23 **SECTION 2. The amendments to ORS 243.650 by section 1 of this 2011 Act apply only to**  
 24 **collective bargaining agreements executed on or after the effective date of this 2011 Act.**