

DRAFT

SUMMARY

Modifies definition of “employment relations” for purposes of bargaining with employees of mass transit district, transportation district or municipal bus system to exclude certain hiring decisions about apprentice and journeyworker positions.

A BILL FOR AN ACT

1
2 Relating to definition of “employment relations” for collective bargaining
3 with transportation employees of certain public employers; amending ORS
4 243.650.

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

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

7 243.650. As used in ORS 243.650 to 243.782, unless the context requires
8 otherwise:

9 (1) “Appropriate bargaining unit” means the unit designated by the Em-
10 ployment Relations Board or voluntarily recognized by the public employer
11 to be appropriate for collective bargaining. However, an appropriate bar-
12 gaining unit may not include both academically licensed and unlicensed or
13 nonacademically licensed school employees. Academically licensed units may
14 include but are not limited to teachers, nurses, counselors, therapists, psy-
15 chologists, child development specialists and similar positions. This limita-
16 tion does not apply to any bargaining unit certified or recognized prior to
17 June 6, 1995, or to any school district with fewer than 50 employees.

18 (2) “Board” means the Employment Relations Board.

19 (3) “Certification” means official recognition by the board that a labor
20 organization is the exclusive representative for all of the employees in the

1 appropriate bargaining unit.

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

18 (5) "Compulsory arbitration" means the procedure whereby parties in-
19 volved in a labor dispute are required by law to submit their differences to
20 a third party for a final and binding decision.

21 (6) "Confidential employee" means one who assists and acts in a confi-
22 dential capacity to a person who formulates, determines and effectuates
23 management policies in the area of collective bargaining.

24 (7)(a) "Employment relations" includes, but is not limited to, matters
25 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
26 grievance procedures and other conditions of employment.

27 (b) "Employment relations" does not include subjects determined to be
28 permissive, nonmandatory subjects of bargaining by the Employment Re-
29 lations Board prior to June 6, 1995.

30 (c) After June 6, 1995, "employment relations" does not include subjects
31 that the Employment Relations Board determines to have a greater impact

1 on management's prerogative than on employee wages, hours, or other terms
2 and conditions of employment.

3 (d) "Employment relations" does not include subjects that have an in-
4 substantial or de minimis effect on public employee wages, hours, and other
5 terms and conditions of employment.

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

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

20 **(g) For employee bargaining involving employees covered by ORS**
21 **243.738, "employment relations" does not include hiring decisions made**
22 **by the public employer about apprentice level positions filled through**
23 **a training program offered by a community college in this state or**
24 **hiring decisions about apprentice level or journeyworker level posi-**
25 **tions filled when there are no qualified internal applicants for the po-**
26 **sition.**

27 [(g)] (h) For all other employee bargaining except school district bar-
28 gaining and except as provided in paragraph (f) of this subsection, "employ-
29 ment relations" excludes staffing levels and safety issues (except those
30 staffing levels and safety issues that have a direct and substantial effect on
31 the on-the-job safety of public employees), scheduling of services provided to

1 the public, determination of the minimum qualifications necessary for any
2 position, criteria for evaluation or performance appraisal, assignment of du-
3 ties, workload when the effect on duties is insubstantial, reasonable dress,
4 grooming, and at-work personal conduct requirements respecting smoking,
5 gum chewing, and similar matters of personal conduct at work, and any
6 other subject proposed that is permissive under paragraphs (b), (c) and (d)
7 of this subsection.

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

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

16 (10) "Fair-share agreement" means an agreement between the public em-
17 ployer and the recognized or certified bargaining representative of public
18 employees whereby employees who are not members of the employee organ-
19 ization are required to make an in-lieu-of-dues payment to an employee or-
20 ganization except as provided in ORS 243.666. Upon the filing with the board
21 of a petition by 30 percent or more of the employees in an appropriate bar-
22 gaining unit covered by such union security agreement declaring they desire
23 that the agreement be rescinded, the board shall take a secret ballot of the
24 employees in the unit and certify the results thereof to the recognized or
25 certified bargaining representative and to the public employer. Unless a
26 majority of the votes cast in an election favor the union security agreement,
27 the board shall certify deauthorization of the agreement. A petition for de-
28 authorization of a union security agreement must be filed not more than 90
29 calendar days after the collective bargaining agreement is executed. Only
30 one such election may be conducted in any appropriate bargaining unit dur-
31 ing the term of a collective bargaining agreement between a public employer

1 and the recognized or certified bargaining representative.

2 (11) "Final offer" means the proposed contract language and cost sum-
3 mary submitted to the mediator within seven days of the declaration of im-
4 passe.

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

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

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

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

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

28 (17) "Mediation" means assistance by an impartial third party in recon-
29 ciling a labor dispute between the public employer and the exclusive repre-
30 sentative regarding employment relations.

31 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for

1 services by the exclusive representative in negotiations and contract admin-
2 istration of all persons in an appropriate bargaining unit who are not mem-
3 bers of the organization serving as exclusive representative of the employees.
4 The payment must be equivalent to regular union dues and assessments, if
5 any, or must be an amount agreed upon by the public employer and the ex-
6 clusive representative of the employees.

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

12 (20) "Public employer" means the State of Oregon, and the following pol-
13 itical subdivisions: Cities, counties, community colleges, school districts,
14 special districts, mass transit districts, metropolitan service districts, public
15 service corporations or municipal corporations and public and quasi-public
16 corporations.

17 (21) "Public employer representative" includes any individual or individ-
18 uals specifically designated by the public employer to act in its interests in
19 all matters dealing with employee representation, collective bargaining and
20 related issues.

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

30 (23) "Supervisory employee" means any individual having authority in the
31 interest of the employer to hire, transfer, suspend, lay off, recall, promote,

1 discharge, assign, reward or discipline other employees, or responsibly to
2 direct them, or to adjust their grievances, or effectively to recommend such
3 action, if in connection therewith, the exercise of the authority is not of a
4 merely routine or clerical nature but requires the use of independent judg-
5 ment. Failure to assert supervisory status in any Employment Relations
6 Board proceeding or in negotiations for any collective bargaining agreement
7 does not thereafter prevent assertion of supervisory status in any subsequent
8 board proceeding or contract negotiation. Notwithstanding the provisions of
9 this subsection, a nurse, charge nurse or similar nursing position may not
10 be deemed to be supervisory unless that position has traditionally been
11 classified as supervisory.

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

14 (25) "Voluntary arbitration" means the procedure whereby parties in-
15 volved in a labor dispute mutually agree to submit their differences to a
16 third party for a final and binding decision.

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