

D R A F T

SUMMARY

Restricts arbitration award from ordering disciplinary action that differs from disciplinary action imposed by law enforcement agency if arbitrator makes finding that misconduct occurred consistent with agency's finding of misconduct, and disciplinary action imposed by agency is consistent with provisions of discipline guide or discipline matrix adopted by agency as result of collective bargaining and incorporated into agency's disciplinary policies.

Specifies that for purposes of collective bargaining involving sworn law enforcement officers of law enforcement agency, "employment relations" includes development of discipline guide or discipline matrix.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to arbitration awards; creating new provisions; amending ORS
3 243.650 and 243.706; and declaring an emergency.

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

5 **SECTION 1.** ORS 243.706 is amended to read:

6 243.706. (1) A public employer may enter into a written agreement with
7 the exclusive representative of an appropriate bargaining unit setting forth
8 a grievance procedure culminating in binding arbitration or any other dis-
9 pute resolution process agreed to by the parties. As a condition of
10 enforceability, any arbitration award that orders the reinstatement of a
11 public employee or otherwise relieves the public employee of responsibility
12 for misconduct shall comply with public policy requirements as clearly de-
13 fined in statutes or judicial decisions including but not limited to policies
14 respecting sexual harassment or sexual misconduct, unjustified and egregious
15 use of physical or deadly force and serious criminal misconduct, related to

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 work. In addition, with respect to claims that a grievant should be reinstated
2 or otherwise relieved of responsibility for misconduct based upon the public
3 employer's alleged previous differential treatment of employees for the same
4 or similar conduct, the arbitration award must conform to the following
5 principles:

6 (a) Some misconduct is so egregious that no employee can reasonably rely
7 on past treatment for similar offenses as a justification or defense to dis-
8 charge or other discipline.

9 (b) Public managers have a right to change disciplinary policies at any
10 time, notwithstanding prior practices, if such managers give reasonable ad-
11 vance notice to affected employees and the change does not otherwise violate
12 a collective bargaining agreement.

13 (2) In addition to subsection (1) of this section, a public employer may
14 enter into a written agreement with the exclusive representative of its em-
15 ployees providing that a labor dispute over conditions and terms of a con-
16 tract may be resolved through binding arbitration.

17 **(3) Notwithstanding subsection (1) of this section, when an arbi-**
18 **tration proceeding involves alleged misconduct by a sworn law**
19 **enforcement officer of any law enforcement agency, as those terms**
20 **are defined in ORS 131.930, and the arbitrator makes a finding that**
21 **misconduct has occurred consistent with the law enforcement**
22 **agency's finding of misconduct, the arbitration award may not order**
23 **any disciplinary action that differs from the disciplinary action im-**
24 **posed by the agency, if the disciplinary action imposed by the agency**
25 **is consistent with the provisions of a discipline guide or discipline**
26 **matrix adopted by the agency as a result of collective bargaining and**
27 **incorporated into the agency's disciplinary policies.**

28 [(3)] (4) In an arbitration proceeding under this section, the arbitrators,
29 or a majority of the arbitrators, may:

30 (a) Issue subpoenas on their own motion or at the request of a party to
31 the proceeding to:

1 (A) Compel the attendance of a witness properly served by either party;
2 and

3 (B) Require from either party the production of books, papers and docu-
4 ments the arbitrators find are relevant to the proceeding;

5 (b) Administer oaths or affirmations to witnesses; and

6 (c) Adjourn a hearing from day to day, or for a longer time, and from
7 place to place.

8 [(4)] (5) The arbitrators shall promptly provide a copy of a subpoena is-
9 sued under this section to each party to the arbitration proceeding.

10 [(5)] (6) The arbitrators issuing a subpoena under this section may rule
11 on objections to the issuance of the subpoena.

12 [(6)] (7) If a person fails to comply with a subpoena issued under this
13 section or if a witness refuses to testify on a matter on which the witness
14 may be lawfully questioned, the party who requested the subpoena or seeks
15 the testimony may apply to the arbitrators for an order authorizing the party
16 to apply to the circuit court of any county to enforce the subpoena or compel
17 the testimony. On the application of the attorney of record for the party or
18 on the application of the arbitrators, or a majority of the arbitrators, the
19 court may require the person or witness to show cause why the person or
20 witness should not be punished for contempt of court to the same extent and
21 purpose as if the proceedings were pending before the court.

22 [(7)] (8) Witnesses appearing pursuant to subpoena, other than parties or
23 officers or employees of the public employer, shall receive fees and mileage
24 as prescribed by law for witnesses in ORS 44.415 (2).

25 (9) **As used in this section:**

26 (a) **“Discipline guide” means a grid that is designed to provide pa-**
27 **rameters for the level of discipline to be imposed for an act of mis-**
28 **conduct that is categorized by the severity of the misconduct and that**
29 **take into account the presumptive level of discipline for the miscon-**
30 **duct and any aggravating or mitigating factors.**

31 (b) **“Discipline matrix” means a grid used to determine the level of**

1 **discipline to be imposed for an act of misconduct that is categorized**
2 **by the severity of the misconduct, according to the intersection where**
3 **the category of misconduct and the level of disciplinary action meet.**

4 **SECTION 2.** ORS 243.650 is amended to read:

5 243.650. As used in ORS 243.650 to 243.806, unless the context requires
6 otherwise:

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

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

17 (3) "Certification" means official recognition by the board that a labor
18 organization is the exclusive representative for all of the employees in the
19 appropriate bargaining unit.

20 (4) "Collective bargaining" means the performance of the mutual obli-
21 gation of a public employer and the representative of its employees to meet
22 at reasonable times and confer in good faith with respect to employment re-
23 lations for the purpose of negotiations concerning mandatory subjects of
24 bargaining, to meet and confer in good faith in accordance with law with
25 respect to any dispute concerning the interpretation or application of a col-
26 lective bargaining agreement, and to execute written contracts incorporating
27 agreements that have been reached on behalf of the public employer and the
28 employees in the bargaining unit covered by such negotiations. The obli-
29 gation to meet and negotiate does not compel either party to agree to a
30 proposal or require the making of a concession. This subsection may not be
31 construed to prohibit a public employer and a certified or recognized repre-

1 tentative of its employees from discussing or executing written agreements
2 regarding matters other than mandatory subjects of bargaining that are not
3 prohibited by law as long as there is mutual agreement of the parties to
4 discuss these matters, which are permissive subjects of bargaining.

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

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

11 (7)(a) "Employment relations" includes, but is not limited to, matters
12 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
13 labor organization access to and communication with represented employees,
14 grievance procedures and other conditions of employment.

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

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

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

25 (e) For school district bargaining, "employment relations" excludes class
26 size, the school or educational calendar, standards of performance or criteria
27 for evaluation of teachers, the school curriculum, reasonable dress, grooming
28 and at-work personal conduct requirements respecting smoking, gum chewing
29 and similar matters of personal conduct, the standards and procedures for
30 student discipline, the time between student classes, the selection, agendas
31 and decisions of 21st Century Schools Councils established under ORS

1 329.704, requirements for expressing milk under ORS 653.077, and any other
2 subject proposed that is permissive under paragraphs (b), (c) and (d) of this
3 subsection.

4 (f) For employee bargaining involving employees covered by ORS 243.736
5 and employees of the Department of Corrections who have direct contact
6 with adults in custody, “employment relations” includes safety issues that
7 have an impact on the on-the-job safety of the employees or staffing levels
8 that have a significant impact on the on-the-job safety of the employees.

9 **(g) For employee bargaining involving sworn law enforcement offi-**
10 **cers of a law enforcement agency, as those terms are defined in ORS**
11 **131.930, “employment relations” includes the development of a disci-**
12 **pline guide or discipline matrix as those terms are defined in ORS**
13 **243.706.**

14 [(g)] (h) For all other employee bargaining except school district bar-
15 gaining and except as provided in paragraph (f) of this subsection, “employ-
16 ment relations” excludes staffing levels and safety issues (except those
17 staffing levels and safety issues that have a direct and substantial effect on
18 the on-the-job safety of public employees), scheduling of services provided to
19 the public, determination of the minimum qualifications necessary for any
20 position, criteria for evaluation or performance appraisal, assignment of du-
21 ties, workload when the effect on duties is insubstantial, reasonable dress,
22 grooming, and at-work personal conduct requirements respecting smoking,
23 gum chewing, and similar matters of personal conduct at work, and any
24 other subject proposed that is permissive under paragraphs (b), (c) and (d)
25 of this subsection.

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

30 (9) “Fact-finding” means identification of the major issues in a particular
31 labor dispute by one or more impartial individuals who review the positions

1 of the parties, resolve factual differences and make recommendations for
2 settlement of the dispute.

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

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

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

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

31 (14) "Last best offer package" means the offer exchanged by parties not

1 less than 14 days prior to the date scheduled for an interest arbitration
2 hearing.

3 (15) “Legislative body” means the Legislative Assembly, the city council,
4 the county commission and any other board or commission empowered to
5 levy taxes.

6 (16) “Managerial employee” means an employee of the State of Oregon
7 or a public university listed in ORS 352.002 who possesses authority to for-
8 mulate and carry out management decisions or who represents management’s
9 interest by taking or effectively recommending discretionary actions that
10 control or implement employer policy, and who has discretion in the per-
11 formance of these management responsibilities beyond the routine discharge
12 of duties. A “managerial employee” need not act in a supervisory capacity
13 in relation to other employees. Notwithstanding this subsection, “manage-
14 rial employee” does not include faculty members at a community college,
15 college or university.

16 (17) “Mediation” means assistance by an impartial third party in recon-
17 ciling a labor dispute between the public employer and the exclusive repre-
18 sentative regarding employment relations.

19 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for
20 services by the exclusive representative in negotiations and contract admin-
21 istration of all persons in an appropriate bargaining unit who are not mem-
22 bers of the organization serving as exclusive representative of the employees.
23 The payment must be equivalent to regular union dues and assessments, if
24 any, or must be an amount agreed upon by the public employer and the ex-
25 clusive representative of the employees.

26 (19) “Public employee” means an employee of a public employer but does
27 not include elected officials, persons appointed to serve on boards or com-
28 missions, incarcerated persons working under [section 41,] Article I, **section**
29 **41**, of the Oregon Constitution, or persons who are confidential employees,
30 supervisory employees or managerial employees.

31 (20) “Public employer” means the State of Oregon, and the following pol-

1 itical subdivisions: Cities, counties, community colleges, school districts,
2 special districts, mass transit districts, metropolitan service districts, public
3 service corporations or municipal corporations and public and quasi-public
4 corporations.

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

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

18 (23)(a) "Supervisory employee" means any individual having authority in
19 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
20 mote, discharge, assign, reward or discipline other employees, or responsibly
21 to direct them, or to adjust their grievances, or effectively to recommend
22 such action, if in connection therewith, the exercise of the authority is not
23 of a merely routine or clerical nature but requires the use of independent
24 judgment. Failure to assert supervisory status in any Employment Relations
25 Board proceeding or in negotiations for any collective bargaining agreement
26 does not thereafter prevent assertion of supervisory status in any subsequent
27 board proceeding or contract negotiation.

28 (b) "Supervisory employee" includes a faculty member of a public univer-
29 sity listed in ORS 352.002 or the Oregon Health and Science University who:

30 (A) Is employed as a president, vice president, provost, vice provost, dean,
31 associate dean, assistant dean, head or equivalent position; or

1 (B) Is employed in an administrative position without a reasonable ex-
2 pectation of teaching, research or other scholarly accomplishments.

3 (c) “Supervisory employee” does not include:

4 (A) A nurse, charge nurse or nurse holding a similar position if that po-
5 sition has not traditionally been classified as supervisory;

6 (B) A firefighter prohibited from striking by ORS 243.736 who assigns,
7 transfers or directs the work of other employees but does not have the au-
8 thority to hire, discharge or impose economic discipline on those employees;

9 (C) A faculty member of a public university listed in ORS 352.002 or the
10 Oregon Health and Science University who is not a faculty member described
11 in paragraph (b) of this subsection; or

12 (D) An employee of the Oregon State Police who:

13 (i) Serves in a rank equivalent to or below the rank of sergeant;

14 (ii) Is prohibited from striking by ORS 243.736; and

15 (iii) Assigns, transfers or directs the work of other employees but does
16 not hire, discharge or impose economic discipline on those employees.

17 (24) “Unfair labor practice” means the commission of an act designated
18 an unfair labor practice in ORS 243.672.

19 (25) “Voluntary arbitration” means the procedure whereby parties in-
20 volved in a labor dispute mutually agree to submit their differences to a
21 third party for a final and binding decision.

22 **SECTION 3.** ORS 243.650, as amended by section 2, chapter 146, Oregon
23 Laws 2019, is amended to read:

24 243.650. As used in ORS 243.650 to 243.806, unless the context requires
25 otherwise:

26 (1) “Appropriate bargaining unit” means the unit designated by the Em-
27 ployment Relations Board or voluntarily recognized by the public employer
28 to be appropriate for collective bargaining. However, an appropriate bar-
29 gaining unit may not include both academically licensed and unlicensed or
30 nonacademically licensed school employees. Academically licensed units may
31 include but are not limited to teachers, nurses, counselors, therapists, psy-

1 chologists, child development specialists and similar positions. This limita-
2 tion does not apply to any bargaining unit certified or recognized prior to
3 June 6, 1995, or to any school district with fewer than 50 employees.

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

5 (3) "Certification" means official recognition by the board that a labor
6 organization is the exclusive representative for all of the employees in the
7 appropriate bargaining unit.

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

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

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

30 (7)(a) "Employment relations" includes, but is not limited to, matters
31 concerning direct or indirect monetary benefits, hours, vacations, sick leave,

1 labor organization access to and communication with represented employees,
2 grievance procedures and other conditions of employment.

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

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

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

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

23 (f) For employee bargaining involving employees covered by ORS 243.736
24 and employees of the Department of Corrections who have direct contact
25 with adults in custody, "employment relations" includes safety issues that
26 have an impact on the on-the-job safety of the employees or staffing levels
27 that have a significant impact on the on-the-job safety of the employees.

28 **(g) For employee bargaining involving sworn law enforcement offi-**
29 **cers of a law enforcement agency, as those terms are defined in ORS**
30 **131.930, "employment relations" includes the development of a disci-**
31 **pline guide or discipline matrix as those terms are defined in ORS**

1 **243.706.**

2 [(g)] (h) For all other employee bargaining except school district bar-
3 gaining and except as provided in paragraph (f) of this subsection, “employ-
4 ment relations” excludes staffing levels and safety issues (except those
5 staffing levels and safety issues that have a direct and substantial effect on
6 the on-the-job safety of public employees), scheduling of services provided to
7 the public, determination of the minimum qualifications necessary for any
8 position, criteria for evaluation or performance appraisal, assignment of du-
9 ties, workload when the effect on duties is insubstantial, reasonable dress,
10 grooming, and at-work personal conduct requirements respecting smoking,
11 gum chewing, and similar matters of personal conduct at work, and any
12 other subject proposed that is permissive under paragraphs (b), (c) and (d)
13 of this subsection.

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

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

22 (10) “Fair-share agreement” means an agreement between the public em-
23 ployer and the recognized or certified bargaining representative of public
24 employees whereby employees who are not members of the employee organ-
25 ization are required to make an in-lieu-of-dues payment to an employee or-
26 ganization except as provided in ORS 243.666. Upon the filing with the board
27 of a petition by 30 percent or more of the employees in an appropriate bar-
28 gaining unit covered by such union security agreement declaring they desire
29 that the agreement be rescinded, the board shall take a secret ballot of the
30 employees in the unit and certify the results thereof to the recognized or
31 certified bargaining representative and to the public employer. Unless a

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

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

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

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

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

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

25 (16) "Managerial employee" means an employee of the State of Oregon
26 or a public university listed in ORS 352.002 who possesses authority to for-
27 mulate and carry out management decisions or who represents management's
28 interest by taking or effectively recommending discretionary actions that
29 control or implement employer policy, and who has discretion in the per-
30 formance of these management responsibilities beyond the routine discharge
31 of duties. A "managerial employee" need not act in a supervisory capacity

1 in relation to other employees. Notwithstanding this subsection, “manage-
2 rial employee” does not include faculty members at a community college,
3 college or university.

4 (17) “Mediation” means assistance by an impartial third party in recon-
5 ciling a labor dispute between the public employer and the exclusive repre-
6 sentative regarding employment relations.

7 (18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for
8 services by the exclusive representative in negotiations and contract admin-
9 istration of all persons in an appropriate bargaining unit who are not mem-
10 bers of the organization serving as exclusive representative of the employees.
11 The payment must be equivalent to regular union dues and assessments, if
12 any, or must be an amount agreed upon by the public employer and the ex-
13 clusive representative of the employees.

14 (19) “Public employee” means an employee of a public employer but does
15 not include elected officials, persons appointed to serve on boards or com-
16 missions, incarcerated persons working under [*section 41,*] Article I, **section**
17 **41**, of the Oregon Constitution, or persons who are confidential employees,
18 supervisory employees or managerial employees.

19 (20) “Public employer” means the State of Oregon, and the following pol-
20 itical subdivisions: Cities, counties, community colleges, school districts,
21 special districts, mass transit districts, metropolitan service districts, public
22 service corporations or municipal corporations and public and quasi-public
23 corporations.

24 (21) “Public employer representative” includes any individual or individ-
25 uals specifically designated by the public employer to act in its interests in
26 all matters dealing with employee representation, collective bargaining and
27 related issues.

28 (22) “Strike” means a public employee’s refusal in concerted action with
29 others to report for duty, or his or her willful absence from his or her posi-
30 tion, or his or her stoppage of work, or his or her absence in whole or in
31 part from the full, faithful or proper performance of his or her duties of

1 employment, for the purpose of inducing, influencing or coercing a change
2 in the conditions, compensation, rights, privileges or obligations of public
3 employment; however, nothing shall limit or impair the right of any public
4 employee to lawfully express or communicate a complaint or opinion on any
5 matter related to the conditions of employment.

6 (23)(a) "Supervisory employee" means any individual having authority in
7 the interest of the employer to hire, transfer, suspend, lay off, recall, pro-
8 mote, discharge, assign, reward or discipline other employees, or responsibly
9 to direct them, or to adjust their grievances, or effectively to recommend
10 such action, if in connection therewith, the exercise of the authority is not
11 of a merely routine or clerical nature but requires the use of independent
12 judgment. Failure to assert supervisory status in any Employment Relations
13 Board proceeding or in negotiations for any collective bargaining agreement
14 does not thereafter prevent assertion of supervisory status in any subsequent
15 board proceeding or contract negotiation.

16 (b) "Supervisory employee" includes a faculty member of a public univer-
17 sity listed in ORS 352.002 or the Oregon Health and Science University who:

18 (A) Is employed as a president, vice president, provost, vice provost, dean,
19 associate dean, assistant dean, head or equivalent position; or

20 (B) Is employed in an administrative position without a reasonable ex-
21 pectation of teaching, research or other scholarly accomplishments.

22 (c) "Supervisory employee" does not include:

23 (A) A nurse, charge nurse or nurse holding a similar position if that po-
24 sition has not traditionally been classified as supervisory;

25 (B) A firefighter prohibited from striking by ORS 243.736 who assigns,
26 transfers or directs the work of other employees but does not have the au-
27 thority to hire, discharge or impose economic discipline on those employees;
28 or

29 (C) A faculty member of a public university listed in ORS 352.002 or the
30 Oregon Health and Science University who is not a faculty member described
31 in paragraph (b) of this subsection.

1 (24) “Unfair labor practice” means the commission of an act designated
2 an unfair labor practice in ORS 243.672.

3 (25) “Voluntary arbitration” means the procedure whereby parties in-
4 volved in a labor dispute mutually agree to submit their differences to a
5 third party for a final and binding decision.

6 **SECTION 4. The amendments to ORS 243.650 and 243.706 by sections**
7 **1 to 3 of this 2020 special session Act apply to collective bargaining**
8 **agreements entered into on or after the effective date of this 2020**
9 **special session Act.**

10 **SECTION 5. This 2020 special session Act being necessary for the**
11 **immediate preservation of the public peace, health and safety, an**
12 **emergency is declared to exist, and this 2020 special session Act takes**
13 **effect on its passage.**

14
