

House Bill 2775

Sponsored by Representative NEARMAN

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**.

Prohibits union security agreements between public employer and union.
Permits public employees to choose not to join union or pay union dues.
Exempts unions from duty to represent public employees who choose not to join union or pay union dues.
Makes conforming changes.

A BILL FOR AN ACT

Relating to union representation for public employees; creating new provisions; and amending ORS 243.650, 243.656, 243.666, 243.672, 243.676, 243.682, 243.684, 243.706, 243.726, 243.742, 243.746, 243.762, 261.345, 292.055, 329A.430, 410.614, 443.733 and 652.610.

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

SECTION 1. ORS 243.650 is amended to read:

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

(1) "Appropriate bargaining unit" means the unit **of union employees** designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. [*However, an appropriate bargaining unit may not include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.*]

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

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

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its **union** employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. This subsection may not be construed to prohibit a public employer and a certified or recognized representative of its **union** employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law as long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

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

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

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

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

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

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

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

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

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

43 [(10) "Fair-share agreement" means an agreement between the public employer and the recognized
44 or certified bargaining representative of public employees whereby employees who are not members of
45 the employee organization are required to make an in-lieu-of-dues payment to an employee organization

1 *except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more*
 2 *of the employees in an appropriate bargaining unit covered by such union security agreement declaring*
 3 *they desire that the agreement be rescinded, the board shall take a secret ballot of the employees in the*
 4 *unit and certify the results thereof to the recognized or certified bargaining representative and to the*
 5 *public employer. Unless a majority of the votes cast in an election favor the union security agreement,*
 6 *the board shall certify deauthorization of the agreement. A petition for deauthorization of a union se-*
 7 *curity agreement must be filed not more than 90 calendar days after the collective bargaining agreement*
 8 *is executed. Only one such election may be conducted in any appropriate bargaining unit during the*
 9 *term of a collective bargaining agreement between a public employer and the recognized or certified*
 10 *bargaining representative.]*

11 [(11)] (10) “Final offer” means the proposed contract language and cost summary submitted to
 12 the mediator within seven days of the declaration of impasse.

13 (11) **“Independent employee” means a public employee who does not consent to join, re-**
 14 **new membership in or pay for the services of a labor organization.**

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

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

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

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

25 (16) “Managerial employee” means an employee of the State of Oregon or a public university
 26 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or
 27 who represents management’s interest by taking or effectively recommending discretionary actions
 28 that control or implement employer policy, and who has discretion in the performance of these
 29 management responsibilities beyond the routine discharge of duties. A “managerial employee” need
 30 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,
 31 “managerial employee” does not include faculty members at a community college, college or uni-
 32 versity.

33 (17) “Mediation” means assistance by an impartial third party in reconciling a labor dispute
 34 between the public employer and the exclusive representative regarding employment relations.

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

40 [(19)] (18) “Public employee” means an employee of a public employer but does not include
 41 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
 42 under [section 41,] Article I, **section 41**, of the Oregon Constitution, or persons who are confidential
 43 employees, supervisory employees or managerial employees.

44 [(20)] (19) “Public employer” means the State of Oregon, and the following political subdivisions:
 45 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-

1 politan service districts, public service corporations or municipal corporations and public and
2 quasi-public corporations.

3 [(21)] (20) "Public employer representative" includes any individual or individuals specifically
4 designated by the public employer to act in its interests in all matters dealing with employee rep-
5 resentation, collective bargaining and related issues.

6 [(22)] (21) "Strike" means a public employee's refusal in concerted action with others to report
7 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
8 his or her absence in whole or in part from the full, faithful or proper performance of his or her
9 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
10 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
11 limit or impair the right of any public employee to lawfully express or communicate a complaint or
12 opinion on any matter related to the conditions of employment.

13 [(23)(a)] (22)(a) "Supervisory employee" means any individual having authority in the interest
14 of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or dis-
15 cipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively
16 to recommend such action, if in connection therewith, the exercise of the authority is not of a
17 merely routine or clerical nature but requires the use of independent judgment. Failure to assert
18 supervisory status in any Employment Relations Board proceeding or in negotiations for any col-
19 lective bargaining agreement does not thereafter prevent assertion of supervisory status in any
20 subsequent board proceeding or contract negotiation.

21 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
22 352.002 or the Oregon Health and Science University who:

23 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
24 sistant dean, head or equivalent position; or

25 (B) Is employed in an administrative position without a reasonable expectation of teaching, re-
26 search or other scholarly accomplishments.

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

28 (A) A nurse, charge nurse or nurse holding a similar position if that position has not tradi-
29 tionally been classified as supervisory;

30 (B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the
31 work of other employees but does not have the authority to hire, discharge or impose economic
32 discipline on those employees; or

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

35 [(24)] (23) "Unfair labor practice" means the commission of an act designated an unfair labor
36 practice in ORS 243.672.

37 (24) "Union employee" means a public employee who consents to join, renew membership
38 in or pay for the services of a labor organization.

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

41 **SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 243.650 to**
42 **243.782.**

43 **SECTION 3. (1)(a) An independent employee is not required to pay union dues or any**
44 **other assessment to defray the cost of a labor organization's services.**

45 **(b) If an independent employee does not pay union dues or any other assessment to de-**

1 **fray the cost of a labor organization's services:**

2 **(A) The independent employee may not benefit from the labor organization's services;**
 3 **and**

4 **(B) The labor organization is not required to engage in collective bargaining on behalf**
 5 **of the independent employee or otherwise represent the independent employee in the inde-**
 6 **pendent employee's employment relations with the public employer.**

7 **(2)(a) A public employer shall determine the wages, benefits and other terms and condi-**
 8 **tions of employment of an independent employee based on the independent employee's edu-**
 9 **cation, experience, training, skills and performance.**

10 **(b) A public employer may not determine an independent employee's wages, benefits or**
 11 **other terms and conditions of employment based on the terms of a collective bargaining**
 12 **agreement or any other agreement into which the independent employee did not enter.**

13 **(c) Any term or condition of employment determined in accordance with this subsection**
 14 **is valid, nondiscriminatory and does not constitute an unfair labor practice.**

15 **(3) A comparison of the terms and conditions of employment of a union employee with**
 16 **the terms and conditions of employment of an independent employee may not form the basis**
 17 **of an unfair labor practice or discrimination claim.**

18 **SECTION 4.** ORS 243.656 is amended to read:

19 243.656. The Legislative Assembly finds and declares that:

20 (1) The people of this state have a fundamental interest in the development of harmonious and
 21 cooperative relationships between government and its employees;

22 (2) Recognition by public employers of the right of public employees to organize and full ac-
 23 ceptance of the principle and procedure of collective negotiation between public employers and
 24 public employee organizations can alleviate various forms of strife and unrest. Experience in the
 25 private and public sectors of our economy has proved that unresolved disputes in the public service
 26 are injurious to the public, the governmental agencies, and public employees;

27 (3) Experience in private and public employment has also proved that protection by law of the
 28 right of employees to organize and negotiate collectively safeguards employees and the public from
 29 injury, impairment and interruptions of necessary services, and removes certain recognized sources
 30 of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes
 31 arising out of differences as to wages, hours, terms and other working conditions, and by establish-
 32 ing greater equality of bargaining power between public employers and public employees;

33 (4) The state has a basic obligation to protect the public by attempting to assure the orderly
 34 and uninterrupted operations and functions of government; and

35 (5) It is the purpose of ORS 243.650 to 243.782 **to prohibit compulsory payments to labor**
 36 **organizations by independent employees. It is also the purpose of ORS 243.650 to 243.782** to
 37 obligate public employers, [*public*] **union** employees and their representatives to enter into collective
 38 negotiations with willingness to resolve grievances and disputes relating to employment relations
 39 and to enter into written and signed contracts evidencing agreements resulting from such negoti-
 40 ations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-
 41 employee relations within the various public employers by providing a uniform basis for recognizing
 42 the right of public employees to join organizations of their own choice, and to be represented by
 43 such organizations in their employment relations with public employers.

44 **SECTION 5.** ORS 243.666 is amended to read:

45 243.666. (1) A labor organization certified by the Employment Relations Board or recognized by

1 the public employer is the exclusive representative of the **union** employees of a public employer for
 2 the purposes of collective bargaining with respect to employment relations. [*Nevertheless any agree-*
 3 *ments entered into involving union security including an all-union agreement or agency shop agreement*
 4 *must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or*
 5 *teachings of a church or religious body of which such employee is a member. Such employee shall pay*
 6 *an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a*
 7 *nonreligious charity or to another charitable organization mutually agreed upon by the employee af-*
 8 *ected and the representative of the labor organization to which such employee would otherwise be re-*
 9 *quired to pay dues. The employee shall furnish written proof to the employer of the employee that this*
 10 *has been done.*]

11 (2) Notwithstanding the provisions of subsection (1) of this section, an individual **union** em-
 12 ployee or group of **union** employees at any time may present grievances to their employer and have
 13 such grievances adjusted, without the intervention of the labor organization, if:

14 (a) The adjustment is not inconsistent with the terms of a collective bargaining contract or
 15 agreement then in effect; and

16 (b) The labor organization has been given opportunity to be present at the adjustment.

17 (3) Nothing in this section prevents a public employer from recognizing a labor organization
 18 [*which*] **that** represents at least a majority of **union** employees as the exclusive representative of
 19 the **union** employees of a public employer when the board has not designated the appropriate bar-
 20 gaining unit or when the board has not certified an exclusive representative in accordance with ORS
 21 243.686.

22 **SECTION 6.** ORS 243.672 is amended to read:

23 243.672. (1) It is an unfair labor practice for a public employer or its designated representative
 24 to do any of the following:

25 (a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaran-
 26 teed in ORS 243.662.

27 (b) Dominate, interfere with or assist in the formation, existence or administration of any em-
 28 ployee organization.

29 (c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the
 30 purpose of encouraging or discouraging membership in an employee organization. [*Nothing in this*
 31 *section is intended to prohibit the entering into of a fair-share agreement between a public employer*
 32 *and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been*
 33 *agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the*
 34 *payment-in-lieu-of-dues from the salaries or wages of the employees.*]

35 (d) Discharge or otherwise discriminate against an employee because the employee has signed
 36 or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650
 37 to 243.782.

38 (e) Refuse to bargain collectively in good faith with the exclusive representative.

39 (f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

40 (g) Violate the provisions of any written contract with respect to employment relations including
 41 an agreement to arbitrate or to accept the terms of an arbitration award, where previously the
 42 parties have agreed to accept arbitration awards as final and binding upon them.

43 (h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and
 44 sign the resulting contract.

45 (i) Violate ORS 243.670 (2).

1 (j) **Enter into an agreement that requires independent employees to make payments to**
 2 **a labor organization.**

3 (k) **Determine an independent employee's wages, benefits or other terms and conditions**
 4 **of employment based on the terms of a collective bargaining agreement or any other agree-**
 5 **ment into which the independent employee did not enter.**

6 (L) **Determine a union employee's wages, benefits or other terms and conditions of em-**
 7 **ployment based on the terms and conditions of employment of an independent employee.**

8 (2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a
 9 public employee or for a labor organization or its designated representative to do any of the fol-
 10 lowing:

11 (a) Interfere with, restrain or coerce any employee in or because of the exercise of any right
 12 guaranteed under ORS 243.650 to 243.782.

13 (b) Refuse to bargain collectively in good faith with the public employer if the labor organization
 14 is an exclusive representative.

15 (c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

16 (d) Violate the provisions of any written contract with respect to employment relations, includ-
 17 ing an agreement to arbitrate or to accept the terms of an arbitration award, where previously the
 18 parties have agreed to accept arbitration awards as final and binding upon them.

19 (e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and
 20 sign the resulting contract.

21 [(f)] **(3) It is an unfair labor practice** for any labor organization to engage in unconventional
 22 strike activity not protected for private sector employees under the National Labor Relations Act
 23 on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again
 24 strikes.

25 [(g)] **(4) It is an unfair labor practice** for a labor organization or its agents to picket or cause,
 26 induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or
 27 business premises of any individual who is a member of the governing body of a public employer,
 28 with respect to a dispute over a collective bargaining agreement or negotiations over employment
 29 relations, if an objective or effect of such picketing is to induce another person to cease doing
 30 business with the governing body member's business or to cease handling, transporting or dealing
 31 in goods or services produced at the governing body's business. For purposes of this paragraph, a
 32 member of the Legislative Assembly is a member of the governing body of a public employer when
 33 the collective bargaining negotiation or dispute is between the State of Oregon and a labor organ-
 34 ization. The Governor and other statewide elected officials are not considered members of a gov-
 35 erning body for purposes of this paragraph. Nothing in this paragraph may be interpreted or applied
 36 in a manner that violates the right of free speech and assembly as protected by the Constitution of
 37 the United States or the Constitution of the State of Oregon.

38 **(5) It is an unfair labor practice for a labor organization to enter into an agreement that**
 39 **requires independent employees to make payments to the labor organization.**

40 [(3)] **(6)** An injured party may file a written complaint with the Employment Relations Board
 41 not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor
 42 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice
 43 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to
 44 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee
 45 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing

1 party in any case in which the complaint or answer is found to have been frivolous or filed in bad
 2 faith. The board shall deposit fees received under this section to the credit of the Employment Re-
 3 lations Board Administrative Account.

4 **SECTION 7.** ORS 243.676 is amended to read:

5 243.676. (1) Whenever a written complaint is filed alleging that any person has engaged in or is
 6 engaging in any unfair labor practice listed in ORS 243.672 (1) [*and (2)*] **to (5)** and 243.752, the
 7 Employment Relations Board or its agent shall:

8 (a) Cause to be served upon such person a copy of the complaint;

9 (b) Investigate the complaint to determine if a hearing on the unfair labor practice charge is
 10 warranted. If the investigation reveals that no issue of fact or law exists, the board may dismiss the
 11 complaint; and

12 (c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph
 13 (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or
 14 an agent of the board not more than 20 days after a copy of the complaint has been served on the
 15 person.

16 (2) Where, as a result of the hearing required pursuant to subsection (1)(c) of this section, the
 17 board finds that any person named in the complaint has engaged in or is engaging in any unfair
 18 labor practice charged in the complaint, the board shall:

19 (a) State its findings of fact;

20 (b) Issue and cause to be served on such person an order that the person cease and desist from
 21 the unfair labor practice;

22 (c) Take such affirmative action, including but not limited to the reinstatement of employees
 23 with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080,
 24 240.123, 243.650 to 243.782, 292.055 and 341.290;

25 (d) Designate the amount and award representation costs, if any, to the prevailing party; and

26 (e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal, in-
 27 cluding proceedings for Supreme Court review, of a board order.

28 (3) Where the board finds that the person named in the complaint has not engaged in or is not
 29 engaging in an unfair labor practice, the board shall:

30 (a) Issue an order dismissing the complaint; and

31 (b) Designate the amount and award representation costs, if any, to the prevailing party.

32 (4)(a) The board may award a civil penalty to any person as a result of an unfair labor practice
 33 complaint hearing, in the aggregate amount of up to \$1,000 per case, without regard to attorney fees,
 34 if:

35 (A) The complaint has been affirmed pursuant to subsection (2) of this section and the board
 36 finds that the person who has committed, or who is engaging, in an unfair labor practice has done
 37 so repetitively, knowing that the action taken was an unfair labor practice and took the action
 38 disregarding this knowledge, or that the action constituting the unfair labor practice was egregious;
 39 or

40 (B) The complaint has been dismissed pursuant to subsection (3) of this section, and that the
 41 complaint was frivolously filed, or filed with the intent to harass the other person, or both.

42 (b) Notwithstanding paragraph (a) of this subsection, if the board finds that a public employer
 43 named in the complaint violated ORS 243.670 (2), the board shall impose a civil penalty equal to
 44 triple the amount of funds the public employer expended to assist, promote or deter union organiz-
 45 ing.

(5) As used in subsections (1) to (4) of this section, “person” includes but is not limited to individuals, labor organizations, associations and public employers.

SECTION 8. ORS 243.682 is amended to read:

243.682. (1) If a question of representation exists, the Employment Relations Board *[shall]*:

(a)(A)(i) **Shall**, upon application of a public employer, a public employee or a labor organization, designate the appropriate bargaining unit, and in making its determination shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.

(ii) May not designate as appropriate a bargaining unit that includes both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

(B) Unless a labor organization and a public employer agree otherwise, *[the board]* may not designate as appropriate a bargaining unit that includes:

[(A)] (i) A faculty member described in ORS 243.650 *[(23)(c)(C)]* **(22)(c)(C)** who supervises one or more other faculty members; and

[(B)] (ii) Any faculty member who is supervised by a faculty member described in subparagraph (A) of this paragraph.

(b) **Shall** investigate and conduct a hearing on a petition that has been filed by:

(A) A labor organization alleging that 30 percent of the employees in an appropriate bargaining unit desire to be represented for collective bargaining by an exclusive representative;

(B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit;

(C) A public employer alleging that one or more labor organizations has presented a claim to the public employer requesting recognition as the exclusive representative in an appropriate bargaining unit; or

(D) *[An]* **A union** employee or group of **union** employees alleging that 30 percent of the employees **in an appropriate bargaining unit** assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit.

(2)(a) Notwithstanding subsection (1) of this section, when *[an]* **a union** employee, group of **union** employees or labor organization acting on behalf of the employees files a petition alleging that a majority of **union** employees in a unit appropriate for the purpose of collective bargaining wish to be represented by a labor organization for that purpose, or when a labor organization files a petition alleging that the majority in a group of unrepresented **union** employees seek to be added to an existing bargaining unit, the board shall investigate the petition. If the board finds that a majority of the **union** employees in a unit appropriate for bargaining or a majority of **union** employees in a group of unrepresented employees that is appropriate to add to an existing bargaining unit have signed authorizations designating the labor organization specified in the petition as the employees’ bargaining representative and that no other labor organization is currently certified or recognized as the exclusive representative of any of the **union** employees in the unit or in the group of unrep-

1 resented **union** employees seeking to be added to an existing bargaining unit, the board may not
2 conduct an election but shall certify the labor organization as the exclusive representative unless
3 a petition for a representation election is filed as provided in subsection (3) of this section.

4 (b) The board by rule shall develop guidelines and procedures for the designation by **union**
5 employees of a bargaining representative in the manner described in paragraph (a) of this sub-
6 section. The guidelines and procedures must include:

7 (A) Model collective bargaining authorization language that may be used for purposes of making
8 the designations described in paragraph (a) of this subsection;

9 (B) Procedures to be used by the board to establish the authenticity of signed authorizations
10 designating bargaining representatives;

11 (C) Procedures to be used by the board to notify affected employees of the filing of a petition
12 requesting certification under subsection (3) of this section;

13 (D) Procedures for filing a petition to request a representation election, including a timeline of
14 not more than 14 days after notice has been delivered to the affected employees of a petition filed
15 under paragraph (a) of this subsection; and

16 (E) Procedures for expedited resolution of any dispute about the scope of the appropriate bar-
17 gaining unit. The resolution of the dispute may occur after an election is conducted.

18 (c) Solicitation and rescission of a signed authorization designating bargaining representatives
19 are subject to the provisions of ORS 243.672.

20 (3)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification has
21 been filed under subsection (2) of this section, [an] a **union** employee or a group of **union** employees
22 in the unit designated by the petition, or one or more of the unrepresented **union** employees seeking
23 to be added to an existing bargaining unit, may file a petition with the board to request that a
24 representation election be conducted.

25 (b) The petition requesting a representation election must be supported by at least 30 percent
26 of the **union** employees in the bargaining unit designated by the petition, or 30 percent of the un-
27 represented **union** employees seeking to be added to an existing bargaining unit.

28 (c) The representation election shall be conducted on-site or by mail not later than 45 days after
29 the date on which the petition was filed.

30 (4) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to
31 subsection (1)(b) of this section that a question of representation exists, the board shall conduct an
32 election by secret ballot, at a time and place convenient for the **union** employees of the jurisdiction
33 and also within a reasonable period of time after the filing has taken place, and certify the results
34 of the election.

35 **SECTION 9.** ORS 243.684 is amended to read:

36 243.684. A petition for representation filed under ORS 243.682 (2) must include a statement of
37 a desire by the **union** employees to be represented and must be signed and dated by the **union** em-
38 ployees during the 180 days before the petition is filed with the Employment Relations Board.

39 **SECTION 10.** ORS 243.706 is amended to read:

40 243.706. (1) A public employer may enter into a written agreement with the exclusive represen-
41 tative of an appropriate bargaining unit setting forth a grievance procedure culminating in binding
42 arbitration or any other dispute resolution process agreed to by the parties. As a condition of
43 enforceability, any arbitration award that orders the reinstatement of a public employee or other-
44 wise relieves the public employee of responsibility for misconduct shall comply with public policy
45 requirements as clearly defined in statutes or judicial decisions including but not limited to policies

1 respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or
 2 deadly force and serious criminal misconduct, related to work. In addition, with respect to claims
 3 that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based
 4 upon the public employer's alleged previous differential treatment of employees for the same or
 5 similar conduct, the arbitration award must conform to the following principles:

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

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

11 (2) In addition to subsection (1) of this section, a public employer may enter into a written
 12 agreement with the exclusive representative of its **union** employees providing that a labor dispute
 13 over conditions and terms of a contract may be resolved through binding arbitration.

14 (3) In an arbitration proceeding under this section, the arbitrators, or a majority of the
 15 arbitrators, may:

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

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

18 (B) Require from either party the production of books, papers and documents the arbitrators find
 19 are relevant to the proceeding;

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

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

22 (4) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each
 23 party to the arbitration proceeding.

24 (5) The arbitrators issuing a subpoena under this section may rule on objections to the issuance
 25 of the subpoena.

26 (6) If a person fails to comply with a subpoena issued under this section or if a witness refuses
 27 to testify on a matter on which the witness may be lawfully questioned, the party who requested the
 28 subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to
 29 apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the
 30 application of the attorney of record for the party or on the application of the arbitrators, or a
 31 majority of the arbitrators, the court may require the person or witness to show cause why the
 32 person or witness should not be punished for contempt of court to the same extent and purpose as
 33 if the proceedings were pending before the court.

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

36 **SECTION 11.** ORS 243.726 is amended to read:

37 243.726. (1) Participation in a strike shall be unlawful [*for*]:

38 (a) **For** any [*public*] **independent employee**;

39 (b) **For any union** employee who is not included in an appropriate bargaining unit for which
 40 an exclusive representative has been certified by the Employment Relations Board or recognized by
 41 the employer; [*or*]

42 (c) **For any union employee who** is included in an appropriate bargaining unit that provides
 43 for resolution of a labor dispute by petition to final and binding arbitration; or

44 (d) When the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to
 45 243.782, 292.055 and 341.290.

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

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

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

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

10 (d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a
 11 reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or
 12 renegotiation under ORS 243.698; and

13 (e) The union's strike does not include unconventional strike activity not protected under the
 14 National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice un-
 15 der ORS 243.672 [(2)(f)] (3).

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

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

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

26 (4)(a) A labor organization may not declare or authorize a strike of public employees that is or
 27 would be in violation of this section. When it is alleged in good faith by the public employer that
 28 a labor organization has declared or authorized a strike of public employees that is or would be in
 29 violation of this section, the employer may petition the board for a declaration that the strike is or
 30 would be unlawful. The board, after conducting an investigation and hearing, may make such dec-
 31 laration if it finds that such declaration or authorization of a strike is or would be unlawful.

32 (b) When a labor organization or individual disobeys an order of the appropriate circuit court
 33 issued pursuant to enforcing an order of the board involving this section and ORS 243.736 or 243.738,
 34 they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the amount
 35 of the fine shall be at the discretion of the court.

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

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

44 **SECTION 12.** ORS 243.742 is amended to read:

45 243.742. (1) It is the public policy of the State of Oregon that where the right of employees to

1 strike is by law prohibited, it is requisite to the high morale of such employees and the efficient
 2 operation of such departments to afford an alternate, expeditious, effective and binding procedure
 3 for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080,
 4 240.123, 243.650 to 243.782, 292.055 and 341.290, providing for compulsory arbitration, shall be liber-
 5 ally construed.

6 (2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation of a labor
 7 dispute, have not culminated in a signed agreement between the parties who are prohibited from
 8 striking, the public employer and exclusive representative of its **union** employees shall include with
 9 the final offer filed with the mediator a petition to the Employment Relations Board in writing that
 10 initiates binding arbitration for bargaining units with employees referred to in ORS 243.736 or
 11 243.738. Arbitration shall be scheduled by mutual agreement not earlier than 30 days following the
 12 submission of the final offer packages to the mediator. Arbitration shall be scheduled in accordance
 13 with the procedures prescribed in ORS 243.746.

14 **SECTION 13.** ORS 243.746 is amended to read:

15 243.746. (1) In carrying out the arbitration procedures authorized in ORS 243.712, 243.726 (3)(c)
 16 and 243.742, the public employer and the exclusive representative may select their own arbitrator.

17 (2) Where the parties have not selected their own arbitrator within five days after notification
 18 by the Employment Relations Board that arbitration is to be initiated, the board shall submit to the
 19 parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon interest arbi-
 20 trations and fact-findings for which each person has issued an award shall be included. Each party
 21 shall alternately strike three names from the list. The order of striking shall be determined by lot.
 22 The remaining individual shall be designated the "arbitrator":

23 (a) When the parties have not designated the arbitrator and notified the board of their choice
 24 within five days after receipt of the list, the board shall appoint the arbitrator from the list. How-
 25 ever, if one of the parties strikes the names as prescribed in this subsection and the other party fails
 26 to do so, the board shall appoint the arbitrator only from the names remaining on the list.

27 (b) The concerns regarding the bias and qualifications of the person designated by lot or by
 28 appointment may be challenged by a petition filed directly with the board. A hearing shall be held
 29 by the board within 10 days of filing of the petition and the board shall issue a final and binding
 30 decision regarding the person's neutrality within 10 days of the hearing.

31 (3) The arbitrator shall establish dates and places of hearings. Upon the request of either party
 32 or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date
 33 of the hearing, each party shall submit to the other party a written last best offer package on all
 34 unresolved mandatory subjects, and neither party may change the last best offer package unless
 35 pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for
 36 the hearing may thereafter be changed only for compelling reasons or by mutual consent of the
 37 parties. If either party provides notice of a change in its position within 24 hours of the 14-day
 38 deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator
 39 may administer oaths and shall afford all parties full opportunity to examine and cross-examine all
 40 witnesses and to present any evidence pertinent to the dispute.

41 (4) Where there is no agreement between the parties, or where there is an agreement but the
 42 parties have begun negotiations or discussions looking to a new agreement or amendment of the
 43 existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties' last
 44 best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and
 45 opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary

1 priority to paragraphs (b) to (h) of this subsection as follows:

2 (a) The interest and welfare of the public.

3 (b) The reasonable financial ability of the unit of government to meet the costs of the proposed
4 contract giving due consideration and weight to the other services, provided by, and other priorities
5 of, the unit of government as determined by the governing body. A reasonable operating reserve
6 against future contingencies, which does not include funds in contemplation of settlement of the la-
7 bor dispute, shall not be considered as available toward a settlement.

8 (c) The ability of the unit of government to attract and retain qualified personnel at the wage
9 and benefit levels provided.

10 (d) The overall compensation presently received by the **union** employees, including direct wage
11 compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and
12 all other direct or indirect monetary benefits received.

13 (e) Comparison of the overall compensation of other employees performing similar services with
14 the same or other employees in comparable communities. As used in this paragraph, “comparable”
15 is limited to communities of the same or nearest population range within Oregon. Notwithstanding
16 the provisions of this paragraph, the following additional definitions of “comparable” apply in the
17 situations described as follows:

18 (A) For any city with a population of more than 325,000, “comparable” includes comparison to
19 out-of-state cities of the same or similar size;

20 (B) For counties with a population of more than 400,000, “comparable” includes comparison to
21 out-of-state counties of the same or similar size;

22 (C) Except as otherwise provided in subparagraphs (D) and (E) of this paragraph, for the State
23 of Oregon, “comparable” includes comparison to other states;

24 (D) For the Department of State Police troopers, “comparable” includes the base pay for city
25 police officers employed by the five most populous cities in this state; and

26 (E) For Department of State Police telecommunicators, as defined in ORS 181A.355,
27 “comparable” includes the base pay for telecommunicators employed by the five public safety an-
28 swering points in this state, as defined in ORS 403.105, with the most employees.

29 (f) The CPI-All Cities Index, commonly known as the cost of living.

30 (g) The stipulations of the parties.

31 (h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are tradi-
32 tionally taken into consideration in the determination of wages, hours, and other terms and condi-
33 tions of employment. However, the arbitrator shall not use such other factors, if in the judgment
34 of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence
35 for an award.

36 (5) Not more than 30 days after the conclusion of the hearings or such further additional periods
37 to which the parties may agree, the arbitrator shall select only one of the last best offer packages
38 submitted by the parties and shall promulgate written findings along with an opinion and order. The
39 opinion and order shall be served on the parties and the board. Service may be personal or by reg-
40 istered or certified mail. The findings, opinions and order shall be based on the criteria prescribed
41 in subsection (4) of this section.

42 (6) The cost of arbitration shall be borne equally by the parties involved in the dispute.

43 **SECTION 14.** ORS 243.762 is amended to read:

44 243.762. Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290
45 is intended to prohibit a public employer and the exclusive representative of its **union** employees

1 from entering into a collective bargaining agreement [*which*] **that** provides for a compulsory arbi-
 2 tration procedure [*which*] **that** is substantially equivalent to ORS 243.742 to 243.756.

3 **SECTION 15.** ORS 261.345 is amended to read:

4 261.345. (1) All labor employed by a district, directly or indirectly, shall be employed under and
 5 in pursuance of the provisions of ORS 279B.235, 279C.540, 279C.545, 653.268 and 653.269.

6 (2) The minimum scale of wages to be paid by a people’s utility district or by any contractor
 7 or subcontractor for such district shall be not less than the prevailing wage for the character of
 8 work in the same trade in the largest city having a population of 5,000 or more in the district, or
 9 if there is none, the nearest to the district.

10 (3) The board of directors of any utility district may negotiate, sign and maintain collective
 11 bargaining agreements concerning employment, rates of pay and working conditions with the rep-
 12 resentatives of its employees **who consent to join, renew membership in or pay for the services**
 13 **of a labor organization.** Notice in writing of any intended change in rates of pay, or working
 14 conditions, or both, shall be given in accordance with the provisions of the agreements. The pro-
 15 visions of ORS 243.650 to 243.782 shall govern the negotiation of a collective bargaining agreement
 16 and any changes to an existing agreement. The mutual rights and obligations of the board and the
 17 employees or their representatives shall be those provided under ORS 243.650 to 243.782.

18 (4) Whenever any district acquires any utility [*which*] **that** at the time of acquisition is in pri-
 19 vate ownership:

20 (a) The district shall, within financial and organizational limitations, offer employment to all
 21 employees of the private utility whose work primarily served the affected territory.

22 (b) Where the employees of the private utility are, at the time of acquisition, covered by any
 23 collective bargaining contract, plan for individual annuity contracts, retirement income policies,
 24 group annuity contract or group insurance for the benefit of employees, the district shall maintain
 25 any benefits or privileges that employees of the acquired utility would receive or be entitled to had
 26 the acquisition not occurred by:

27 (A) Assuming for one year all of the rights, obligations and liabilities of the acquired private
 28 utility in regard to that collective bargaining contract or plan for the employees covered thereby
 29 at the time of acquisition; or

30 (B) Substituting a similar plan or contract under an agreement with a majority of the affected
 31 employees.

32 (c) The district may pay all or part of the premiums or other payments required under paragraph
 33 (b) of this subsection out of the revenue derived from the operation of its properties.

34 (d) The district shall recognize the collective bargaining agent of the employees if the district
 35 retains a majority of the employees of the private utility working in the affected territory.

36 **SECTION 16.** ORS 292.055 is amended to read:

37 292.055. (1) **Except as provided in subsection (6) of this section,** upon receipt of the request
 38 in writing of a state officer or employee so to do, the state official authorized to disburse funds in
 39 payment of the salary or wages of such state officer or employee each month shall deduct from the
 40 salary or wages of such officer or employee the amount of money indicated in such request, for
 41 payment thereof to a labor organization as the same is defined in ORS 243.650.

42 (2) Such state official each month shall pay such amount so deducted to any such labor organ-
 43 ization so designated to receive it.

44 (3) Unless there is a contract to the contrary, upon receipt of the request in writing of such
 45 officer or employee so to do, such state official shall cease making such deductions and payments.

1 (4) In addition to making such deductions and payments to any labor organization certified un-
 2 der the rules of the Employment Relations Board as representatives of employees in a bargaining
 3 unit, any department, board, commission, bureau, institution or other agency of the state shall make
 4 deductions for and payments to noncertified, yet bona fide, labor organizations, if requested to do
 5 so by officers and employees in that department, board, commission, bureau, institution, or other
 6 state agency, and for so long as the requests are not revoked. No deductions for and payments to
 7 any labor organization under this section shall be deemed an unfair labor practice under ORS
 8 243.672.

9 (5) Upon receipt from the Oregon Department of Administrative Services of a copy of a valid
 10 fair-share agreement in a collective bargaining unit, the state official authorized to disburse funds
 11 in payment of the salary or wages of the employees in such unit each month shall deduct from the
 12 salary or wages of the employees covered by the agreement the in-lieu-of-dues payment stated in the
 13 agreement and pay such amount to the labor organization party the agreement in the same manner
 14 as deducted dues are paid to a labor organization. Such deduction and payment shall continue for
 15 the life of the agreement.

16 **(6) No amount of money may be deducted for payment to a labor organization from the**
 17 **salary or wages of a state officer or employee who is an independent employee as defined in**
 18 **ORS 243.650.**

19 **SECTION 17.** ORS 329A.430 is amended to read:

20 329A.430. (1) As used in this section:

21 (a) "Certified family child care provider" means an individual who operates a family child care
 22 home that is certified under ORS 329A.280.

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

25 (c) "Exempt family child care provider" means an individual who provides child care services
 26 in the home of the individual or in the home of the child, whose services are not required to be
 27 certified or registered under ORS 329A.250 to 329A.450 and who receives a child care subsidy.

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

30 (e) "Registered family child care provider" means an individual who operates a family child care
 31 home that is registered under ORS 329A.330.

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

34 (3) Notwithstanding ORS 243.650 [(19)] (18), family child care providers are considered to be
 35 public employees governed by ORS 243.650 to 243.782. Family child care providers have the right to
 36 form, join and participate in the activities of labor organizations of their own choosing for the pur-
 37 pose of representation and collective bargaining on matters concerning labor 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. Family child care providers may not strike.

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

43 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
 44 collective bargaining negotiations with the certified or recognized exclusive representatives of all
 45 appropriate bargaining units of family child care providers. The Oregon Department of Administra-

1 tive Services is authorized to agree to terms and conditions of collective bargaining agreements on
 2 behalf of the State of Oregon.

3 (6) Notwithstanding ORS 243.650 (1):

4 (a) The appropriate bargaining unit for certified and registered family child care providers is a
 5 bargaining unit of all certified and registered family child care providers in the state **who consent**
 6 **to join, renew membership in or pay for the services of a labor organization.**

7 (b) The appropriate bargaining unit for exempt family child care providers is a bargaining unit
 8 of all exempt family child care providers in the state **who consent to join, renew membership in**
 9 **or pay for the services of a labor organization.**

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

12 **SECTION 18.** ORS 410.614 is amended to read:

13 410.614. (1) Notwithstanding ORS 243.650 [(19) and (20)] **(18) and (19)**, the Home Care Commis-
 14 sion shall be considered a public employer and home care workers shall be considered public em-
 15 ployees governed by ORS 243.650 to 243.782.

16 (2) Home care workers have the right to form, join and participate in the activities of labor
 17 organizations of their own choosing for the purpose of representation and collective bargaining with
 18 the commission on matters concerning employment relations. These rights shall be exercised in ac-
 19 cordance with the rights granted to public employees with mediation and interest arbitration under
 20 ORS 243.742 as the method of concluding the collective bargaining process.

21 (3) Home care workers are not public employees with respect to the Public Employees Retire-
 22 ment System, the Oregon Public Service Retirement Plan or the Public Employees' Benefit Board.

23 (4) Home care workers do not have the right to strike.

24 **SECTION 19.** ORS 410.614, as amended by section 16, chapter 75, Oregon Laws 2018, is
 25 amended to read:

26 410.614. (1) Notwithstanding ORS 243.650 [(19) and (20)] **(18) and (19)**, the Home Care Commis-
 27 sion shall be considered a public employer and home care workers and personal support workers
 28 shall be considered public employees governed by ORS 243.650 to 243.782.

29 (2) Home care workers and personal support workers have the right to form, join and participate
 30 in the activities of labor organizations of their own choosing for the purpose of representation and
 31 collective bargaining with the commission on matters concerning employment relations. These rights
 32 shall be exercised in accordance with the rights granted to public employees with mediation and
 33 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
 34 cess.

35 (3) Home care workers and personal support workers are not public employees with respect to
 36 the Public Employees Retirement System, the Oregon Public Service Retirement Plan or the Public
 37 Employees' Benefit Board.

38 (4) Home care workers and personal support workers do not have the right to strike.

39 **SECTION 20.** ORS 443.733 is amended to read:

40 443.733. (1) As used in this section, "adult foster care home provider" means a person who op-
 41 erates an adult foster home in the provider's home and who receives fees or payments from state
 42 funds for providing adult foster care home services. "Adult foster care home provider" does not in-
 43 clude a person:

44 (a) Who is a resident manager of an adult foster home who does not provide adult foster care
 45 home services in the resident manager's own home or who does not have a controlling interest in,

1 or is not an officer or partner in, the entity that is the provider of adult foster care home services;

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

3 (c) Whose participation in collective bargaining is determined by the licensing agency to be in-
4 consistent with this section or in violation of state or federal law.

5 (2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is
6 the public employer of record of adult foster care home providers.

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

15 (4) Notwithstanding subsections (2) and (3) of this section, adult foster care home providers are
16 not for any other purpose employees of the State of Oregon or any other public body.

17 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
18 collective bargaining negotiations with the certified or recognized exclusive representative of an
19 appropriate bargaining unit of adult foster care home providers. The Oregon Department of Admin-
20 istrative Services is authorized to agree to terms and conditions of collective bargaining agreements
21 on behalf of the State of Oregon.

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

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

26 **SECTION 21.** ORS 652.610 is amended to read:

27 652.610. (1)(a) All persons, firms, partnerships, associations, cooperative associations, corpo-
28 rations, municipal corporations, the state and its political subdivisions, except the federal govern-
29 ment and its agencies, employing, in this state, during any calendar month one or more persons,
30 shall provide the employee on regular paydays and at other times payment of wages, salary or
31 commission is made, with an itemized statement as described in paragraph (b) of this subsection.

32 (b) The statement required under this subsection must be a written statement, sufficiently
33 itemized to show:

34 (A) The date of the payment;

35 (B) The dates of work covered by the payment;

36 (C) The name of the employee;

37 (D) The name and business registry number or business identification number;

38 (E) The address and telephone number of the employer;

39 (F) The rate or rates of pay;

40 (G) Whether the employee is paid by the hour, shift, day or week or on a salary, piece or com-
41 mission basis;

42 (H) Gross wages;

43 (I) Net wages;

44 (J) The amount and purpose of each deduction made during the respective period of service that
45 the payment covers;

- 1 (K) Allowances, if any, claimed as part of minimum wage;
- 2 (L) Unless the employee is paid on a salary basis and is exempt from overtime compensation as
 3 established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate
 4 or rates of pay, the number of regular hours worked and pay for those hours, and the number of
 5 overtime hours worked and pay for those hours; and
- 6 (M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number
 7 of pieces completed at each piece rate and the total pay for each rate.
- 8 (c) Notwithstanding paragraph (b) of this subsection, the employer may provide the statement
 9 required under this subsection to the employee in electronic form pursuant to ORS 84.001 to 84.061
 10 if:
- 11 (A) The statement contains the information described in paragraph (b) of this section;
- 12 (B) The employee expressly agrees to receive the statement in electronic form; and
- 13 (C) The employee has the ability to print or store the statement at the time of receipt.
- 14 (2)(a) The statement may be attached to or be a part of the check, draft, voucher or other in-
 15 strument by which payment is made, or may be delivered separately from the instrument.
- 16 (b) The statement shall be provided electronically at the time payment is made to all state offi-
 17 cers and employees paid electronically under the state payroll system as provided by ORS 292.026.
- 18 (c) State agencies shall provide access to electronic statements to employees who do not have
 19 regular access to computers in their workplace.
- 20 (d) Notwithstanding paragraph (b) of this subsection, if an officer or employee paid under the
 21 state payroll system as provided by ORS 292.026 wants to receive payment of net salary and wages
 22 by check or to receive a paper statement of itemized payroll deductions, the officer or employee
 23 shall request paper statements or payment by check in accordance with the procedures adopted by
 24 rule by the Oregon Department of Administrative Services.
- 25 (3) An employer may not withhold, deduct or divert any portion of an employee's wages unless:
- 26 (a) The employer is required to do so by law;
- 27 (b) The deductions are voluntarily authorized in writing by the employee, are for the employee's
 28 benefit and are recorded in the employer's books;
- 29 (c) The employee has voluntarily signed an authorization for a deduction for any other item,
 30 provided that the ultimate recipient of the money withheld is not the employer and that the de-
 31 duction is recorded in the employer's books;
- 32 (d) The deduction is authorized by a collective bargaining agreement to which the employer is
 33 a party;
- 34 (e) The deduction is authorized under ORS 18.736; or
- 35 (f) The deduction is made from the payment of wages upon termination of employment and is
 36 authorized pursuant to a written agreement between the employee and employer for the repayment
 37 of a loan made to the employee by the employer, if all of the following conditions are met:
- 38 (A) The employee has voluntarily signed the agreement;
- 39 (B) The loan was paid to the employee in cash or other medium permitted by ORS 652.110;
- 40 (C) The loan was made solely for the employee's benefit and was not used, either directly or
 41 indirectly, for any purpose required by the employer or connected with the employee's employment
 42 with the employer;
- 43 (D) The amount of the deduction at termination of employment does not exceed the amount
 44 permitted to be garnished under ORS 18.385; and
- 45 (E) The deduction is recorded in the employer's books.

1 (4) When an employer deducts an amount from an employee's wages as required or authorized
2 by law or agreement, the employer shall pay the amount deducted to the appropriate recipient as
3 required by the law or agreement. The employer shall pay the amount deducted within the time re-
4 quired by the law or the agreement or, if the time for payment is not specified by the law or
5 agreement, within seven days after the date the wages from which the deductions are made are due.
6 Failure to pay the amount as required constitutes an unlawful deduction.

7 (5) This section does not:

8 (a) Prohibit the withholding of amounts authorized in writing by the employee to be contributed
9 by the employee to charitable organizations, including contributions made pursuant to ORS [243.666
10 and] 663.110;

11 (b) Prohibit deductions by checkoff dues to labor organizations or service fees when the de-
12 ductions are not otherwise prohibited by law; or

13 (c) Diminish or enlarge the right of any person to assert and enforce a lawful setoff or
14 counterclaim or to attach, take, reach or apply an employee's compensation on due legal process.

15 **SECTION 22. Section 3 of this 2019 Act and the amendments to ORS 243.650, 243.656,**
16 **243.666, 243.672, 243.682, 243.684, 243.706, 243.726, 243.742, 243.746, 243.762, 261.345, 292.055 and**
17 **329A.430 by sections 1 and 4 to 17 of this 2019 Act apply to all contracts and collective bar-**
18 **gaining agreements entered into, renewed or extended on or after the effective date of this**
19 **2019 Act.**

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