

## SENATE AMENDMENTS TO SENATE BILL 383

By COMMITTEE ON JUDICIARY

April 22

1 On page 1 of the printed bill, line 2, after “ORS” insert “243.650 and”.

2 Delete lines 24 through 29 and insert:

3 “(3) Notwithstanding subsection (1) of this section, when an arbitration proceeding involves al-  
4 leged misconduct by a sworn public employee of any law enforcement agency and the arbitrator  
5 makes a finding that misconduct has occurred consistent with the law enforcement agency’s finding  
6 of misconduct, the arbitration award may not order any disciplinary action that differs from the  
7 disciplinary action imposed by the agency, if the disciplinary action imposed by the agency is con-  
8 sistent with the provisions of a discipline guide or discipline matrix adopted by the agency as a re-  
9 sult of collective bargaining and incorporated into the agency’s disciplinary policies.”.

10 On page 2, delete line 1.

11 Delete lines 26 through 32 and insert:

12 “(a) ‘Discipline guide’ means a grid that is designed to provide parameters for the level of dis-  
13 cipline to be imposed for an act of misconduct that is categorized by the severity of the misconduct  
14 and take into account the presumptive level of discipline for the misconduct and any aggravating  
15 or mitigating factors.

16 “(b) ‘Discipline matrix’ means a grid used to determine the level of discipline to be imposed for  
17 an act of misconduct that is categorized by the severity of the misconduct, according to the inter-  
18 section where the category of misconduct and the level of disciplinary action meet.

19 “(c) ‘Law enforcement agency’ has the meaning given that term in ORS 131.930.

20 “**SECTION 2.** ORS 243.650 is amended to read:

21 “243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

22 “(1) ‘Appropriate bargaining unit’ means the unit designated by the Employment Relations Board  
23 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-  
24 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or  
25 nonacademically licensed school employees. Academically licensed units may include but are not  
26 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and  
27 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior  
28 to June 6, 1995, or to any school district with fewer than 50 employees.

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

30 “(3) ‘Certification’ means official recognition by the board that a labor organization is the ex-  
31 clusive representative for all of the employees in the appropriate bargaining unit.

32 “(4) ‘Collective bargaining’ means the performance of the mutual obligation of a public employer  
33 and the representative of its employees to meet at reasonable times and confer in good faith with  
34 respect to employment relations for the purpose of negotiations concerning mandatory subjects of  
35 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute

1 concerning the interpretation or application of a collective bargaining agreement, and to execute  
2 written contracts incorporating agreements that have been reached on behalf of the public employer  
3 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and  
4 negotiate does not compel either party to agree to a proposal or require the making of a concession.  
5 This subsection may not be construed to prohibit a public employer and a certified or recognized  
6 representative of its employees from discussing or executing written agreements regarding matters  
7 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-  
8 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

11 “(6) ‘Confidential employee’ means one who assists and acts in a confidential capacity to a per-  
12 son who formulates, determines and effectuates management policies in the area of collective bar-  
13 gaining.

14 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters concerning direct or indi-  
15 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of  
16 employment.

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

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

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

24 “(e) For school district bargaining, ‘employment relations’ excludes class size, the school or ed-  
25 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-  
26 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,  
27 gum chewing and similar matters of personal conduct, the standards and procedures for student  
28 discipline, the time between student classes, the selection, agendas and decisions of 21st Century  
29 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS  
30 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this  
31 subsection.

32 “(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the  
33 Department of Corrections who have direct contact with inmates, ‘employment relations’ includes  
34 safety issues that have an impact on the on-the-job safety of the employees or staffing levels that  
35 have a significant impact on the on-the-job safety of the employees.

36 “(g) **For employee bargaining involving sworn employees of a law enforcement agency as**  
37 **defined in ORS 131.930, ‘employment relations’ includes the development of a discipline guide**  
38 **or discipline matrix as those terms are defined in ORS 243.706.**

39 “[g] (h) For all other employee bargaining except school district bargaining and except as  
40 provided in paragraph (f) of this subsection, ‘employment relations’ excludes staffing levels and  
41 safety issues (except those staffing levels and safety issues that have a direct and substantial effect  
42 on the on-the-job safety of public employees), scheduling of services provided to the public, deter-  
43 mination of the minimum qualifications necessary for any position, criteria for evaluation or per-  
44 formance appraisal, assignment of duties, workload when the effect on duties is insubstantial,  
45 reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum

1 chewing, and similar matters of personal conduct at work, and any other subject proposed that is  
2 permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

9 “(10) ‘Fair-share agreement’ means an agreement between the public employer and the recog-  
10 nized or certified bargaining representative of public employees whereby employees who are not  
11 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
12 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition  
13 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
14 security agreement declaring they desire that the agreement be rescinded, the board shall take a  
15 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-  
16 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an  
17 election favor the union security agreement, the board shall certify deauthorization of the agree-  
18 ment. A petition for deauthorization of a union security agreement must be filed not more than 90  
19 calendar days after the collective bargaining agreement is executed. Only one such election may be  
20 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement  
21 between a public employer and the recognized or certified bargaining representative.

22 “(11) ‘Final offer’ means the proposed contract language and cost summary submitted to the  
23 mediator within seven days of the declaration of impasse.

24 “(12) ‘Labor dispute’ means any controversy concerning employment relations or concerning the  
25 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to  
26 arrange terms or conditions of employment relations, regardless of whether the disputants stand in  
27 the proximate relation of employer and employee.

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

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

32 “(15) ‘Legislative body’ means the Legislative Assembly, the city council, the county commission  
33 and any other board or commission empowered to levy taxes.

34 “(16) ‘Managerial employee’ means an employee of the State of Oregon or a public university  
35 listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or  
36 who represents management’s interest by taking or effectively recommending discretionary actions  
37 that control or implement employer policy, and who has discretion in the performance of these  
38 management responsibilities beyond the routine discharge of duties. A ‘managerial employee’ need  
39 not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection,  
40 ‘managerial employee’ does not include faculty members at a community college, college or univer-  
41 sity.

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

44 “(18) ‘Payment-in-lieu-of-dues’ means an assessment to defray the cost for services by the exclu-  
45 sive representative in negotiations and contract administration of all persons in an appropriate

1 bargaining unit who are not members of the organization serving as exclusive representative of the  
2 employees. The payment must be equivalent to regular union dues and assessments, if any, or must  
3 be an amount agreed upon by the public employer and the exclusive representative of the employees.

4 “(19) ‘Public employee’ means an employee of a public employer but does not include elected  
5 officials, persons appointed to serve on boards or commissions, incarcerated persons working under  
6 section 41, Article I of the Oregon Constitution, or persons who are confidential employees, super-  
7 visory employees or managerial employees.

8 “(20) ‘Public employer’ means the State of Oregon, and the following political subdivisions:  
9 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-  
10 politan service districts, public service corporations or municipal corporations and public and  
11 quasi-public corporations.

12 “(21) ‘Public employer representative’ includes any individual or individuals specifically desig-  
13 nated by the public employer to act in its interests in all matters dealing with employee represen-  
14 tation, collective bargaining and related issues.

15 “(22) ‘Strike’ means a public employee’s refusal in concerted action with others to report for  
16 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his  
17 or her absence in whole or in part from the full, faithful or proper performance of his or her duties  
18 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,  
19 compensation, rights, privileges or obligations of public employment; however, nothing shall limit  
20 or impair the right of any public employee to lawfully express or communicate a complaint or  
21 opinion on any matter related to the conditions of employment.

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

30 “(b) ‘Supervisory employee’ includes a faculty member of a public university listed in ORS  
31 352.002 or the Oregon Health and Science University who:

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

34 “(B) Is employed in an administrative position without a reasonable expectation of teaching,  
35 research or other scholarly accomplishments.

36 “(c) ‘Supervisory employee’ does not include:

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

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

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

44 “(24) ‘Unfair labor practice’ means the commission of an act designated an unfair labor practice  
45 in ORS 243.672.

1           “(25) ‘Voluntary arbitration’ means the procedure whereby parties involved in a labor dispute  
2 mutually agree to submit their differences to a third party for a final and binding decision.

3           “**SECTION 3. The amendments to ORS 243.650 and 243.706 by sections 1 and 2 of this 2019**  
4 **Act apply to collective bargaining agreements entered into on or after the effective date of**  
5 **this 2019 Act.**”.

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