

SB 383-6
(LC 2394)
3/29/19 (JAS/ps)

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 383**

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
4 proceeding involves alleged misconduct by a sworn public employee of any
5 law enforcement agency and the arbitrator makes a finding that misconduct
6 has occurred consistent with the law enforcement agency’s finding of mis-
7 conduct, the arbitration award may not order any disciplinary action that
8 differs from the disciplinary action imposed by the agency, if the disciplinary
9 action imposed by the agency is consistent with the provisions of a discipline
10 guide or discipline matrix adopted by the agency as a result of collective
11 bargaining and incorporated into the agency’s disciplinary policies.”.

12 On page 2, delete line 1.

13 Delete lines 26 through 32 and insert:

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

19 “(b) ‘Discipline matrix’ means a grid used to determine the level of dis-
20 cipline to be imposed for an act of misconduct that is categorized by the
21 severity of the misconduct, according to the intersection where the category

1 of misconduct and the level of disciplinary action meet.

2 “(c) ‘Law enforcement agency’ has the meaning given that term in ORS
3 131.930.

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

5 “243.650. As used in ORS 243.650 to 243.782, 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

1 construed to prohibit a public employer and a certified or recognized repre-
2 sentative of its employees from discussing or executing written agreements
3 regarding matters other than mandatory subjects of bargaining that are not
4 prohibited by law as long as there is mutual agreement of the parties to
5 discuss these matters, which are permissive subjects of bargaining.

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

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

12 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters
13 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
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

1 and decisions of 21st Century Schools Councils established under ORS
2 329.704, requirements for expressing milk under ORS 653.077, and any other
3 subject proposed that is permissive under paragraphs (b), (c) and (d) of this
4 subsection.

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

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

1 labor dispute by one or more impartial individuals who review the positions
2 of the parties, resolve factual differences and make recommendations for
3 settlement of the dispute.

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

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

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

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

1 employers.

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

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

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

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

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

28 “(19) ‘Public employee’ means an employee of a public employer but does
29 not include elected officials, persons appointed to serve on boards or com-
30 missions, incarcerated persons working under section 41, Article I of the

1 Oregon Constitution, or persons who are confidential employees, supervisory
2 employees or managerial employees.

3 “(20) ‘Public employer’ means the State of Oregon, and the following
4 political subdivisions: Cities, counties, community colleges, school districts,
5 special districts, mass transit districts, metropolitan service districts, public
6 service corporations or municipal corporations and public and quasi-public
7 corporations.

8 “(21) ‘Public employer representative’ includes any individual or individ-
9 uals specifically designated by the public employer to act in its interests in
10 all matters dealing with employee representation, collective bargaining and
11 related issues.

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

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

1 “(b) ‘Supervisory employee’ includes a faculty member of a public uni-
2 versity listed in ORS 352.002 or the Oregon Health and Science University
3 who:

4 “(A) Is employed as a president, vice president, provost, vice provost,
5 dean, associate dean, assistant dean, head or equivalent position; or

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

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

9 “(A) A nurse, charge nurse or nurse holding a similar position if that
10 position has not traditionally been classified as supervisory;

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

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

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

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

23 **“SECTION 3. The amendments to ORS 243.650 and 243.706 by**
24 **sections 1 and 2 of this 2019 Act apply to collective bargaining agree-**
25 **ments entered into on or after the effective date of this 2019 Act.”.**

26