

Requested by Senator PROZANSKI

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 1005**

1 On page 1 of the printed A-engrossed bill, line 2, after “amending” insert
2 “ORS 243.650 and 243.706 and”.

3 On page 4, after line 31, insert:

4 **“SECTION 9.** ORS 243.706 is amended to read:

5 “243.706. (1) A public employer may enter into a written agreement with
6 the exclusive representative of an appropriate bargaining unit setting forth
7 a grievance procedure culminating in binding arbitration or any other dis-
8 pute resolution process agreed to by the parties. As a condition of
9 enforceability, any arbitration award that orders the reinstatement of a
10 public employee or otherwise relieves the public employee of responsibility
11 for misconduct shall comply with public policy requirements as clearly de-
12 fined in statutes or judicial decisions including but not limited to policies
13 respecting sexual harassment or sexual misconduct, unjustified and egregious
14 use of physical or deadly force and serious criminal misconduct, related to
15 work. In addition, with respect to claims that a grievant should be reinstated
16 or otherwise relieved of responsibility for misconduct based upon the public
17 employer’s alleged previous differential treatment of employees for the same
18 or similar conduct, the arbitration award must conform to the following
19 principles:

20 “(a) Some misconduct is so egregious that no employee can reasonably
21 rely on past treatment for similar offenses as a justification or defense to

1 discharge or other discipline.

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

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

10 **“(3) Notwithstanding subsection (1) of this section, when an arbi-**
11 **tration proceeding involves alleged misconduct by a sworn public em-**
12 **ployee of any law enforcement agency and the arbitrator makes a**
13 **finding that misconduct has occurred consistent with the law**
14 **enforcement agency’s finding of misconduct, the arbitration award**
15 **may not order any disciplinary action that differs from the disciplinary**
16 **action imposed by the agency, if the disciplinary action imposed by the**
17 **agency is consistent with the provisions of a discipline guide or disci-**
18 **pline matrix adopted by the agency as a result of collective bargaining**
19 **and incorporated into the agency’s disciplinary policies.**

20 “[3] (4) In an arbitration proceeding under this section, the arbitrators,
21 or a majority of the arbitrators, may:

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

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

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

28 “(b) Administer oaths or affirmations to witnesses; and

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

1 “[(4)] (5) The arbitrators shall promptly provide a copy of a subpoena is-
2 sued under this section to each party to the arbitration proceeding.

3 “[(5)] (6) The arbitrators issuing a subpoena under this section may rule
4 on objections to the issuance of the subpoena.

5 “[(6)] (7) If a person fails to comply with a subpoena issued under this
6 section or if a witness refuses to testify on a matter on which the witness
7 may be lawfully questioned, the party who requested the subpoena or seeks
8 the testimony may apply to the arbitrators for an order authorizing the party
9 to apply to the circuit court of any county to enforce the subpoena or compel
10 the testimony. On the application of the attorney of record for the party or
11 on the application of the arbitrators, or a majority of the arbitrators, the
12 court may require the person or witness to show cause why the person or
13 witness should not be punished for contempt of court to the same extent and
14 purpose as if the proceedings were pending before the court.

15 “[(7)] (8) Witnesses appearing pursuant to subpoena, other than parties
16 or officers or employees of the public employer, shall receive fees and mile-
17 age as prescribed by law for witnesses in ORS 44.415 (2).

18 **“(9) As used in this section:**

19 **“(a) ‘Discipline guide’ means a grid that is designed to provide pa-**
20 **rameters for the level of discipline to be imposed for an act of mis-**
21 **conduct and that is categorized by the severity of the misconduct and**
22 **takes into account the presumptive level of discipline for the miscon-**
23 **duct and any aggravating or mitigating factors.**

24 **“(b) ‘Discipline matrix’ means a grid used to determine the level**
25 **of discipline to be imposed for an act of misconduct that is categorized**
26 **by the severity of the misconduct, according to the intersection where**
27 **the category of misconduct and the level of disciplinary action meet.**

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

30 **“SECTION 10. ORS 243.650 is amended to read:**

1 “243.650. As used in ORS 243.650 to 243.782, unless the context requires
2 otherwise:

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

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

13 “(3) ‘Certification’ means official recognition by the board that a labor
14 organization is the exclusive representative for all of the employees in the
15 appropriate bargaining unit.

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

1 discuss these matters, which are permissive subjects of bargaining.

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

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

8 “(7)(a) ‘Employment relations’ includes, but is not limited to, matters
9 concerning direct or indirect monetary benefits, hours, vacations, sick leave,
10 grievance procedures and other conditions of employment.

11 “(b) ‘Employment relations’ does not include subjects determined to be
12 permissive, nonmandatory subjects of bargaining by the Employment Re-
13 lations Board prior to June 6, 1995.

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

18 “(d) ‘Employment relations’ does not include subjects that have an in-
19 substantial or de minimis effect on public employee wages, hours, and other
20 terms and conditions of employment.

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

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

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

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

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

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

30 “(10) ‘Fair-share agreement’ means an agreement between the public em-

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

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

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

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

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

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

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

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

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

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

29 “(20) ‘Public employer’ means the State of Oregon, and the following
30 political subdivisions: Cities, counties, community colleges, school districts,

1 special districts, mass transit districts, metropolitan service districts, public
2 service corporations or municipal corporations and public and quasi-public
3 corporations.

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

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

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

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

30 “(A) Is employed as a president, vice president, provost, vice provost,

1 dean, associate dean, assistant dean, head or equivalent position; or

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

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

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

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

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

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

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

19 **“SECTION 11. The amendments to ORS 243.650 and 243.706 by
20 sections 9 and 10 of this 2019 Act apply to collective bargaining agree-
21 ments entered into on or after January 1, 2020.”.**

22 In line 32, delete “9” and insert “12”.

23
