

A-Engrossed Senate Bill 1567

Ordered by the Senate February 18
Including Senate Amendments dated February 18

Sponsored by Senators FREDERICK, MANNING JR, ROBLAN, FINDLEY, THATCHER, Representatives BYNUM, LEWIS, PILUSO, POWER; Senators BEYER, BOQUIST, BURDICK, DEMBROW, FAGAN, GELSER, GOLDEN, HANSELL, HASS, MONNES ANDERSON, PROZANSKI, RILEY, STEINER HAYWARD, TAYLOR, Representatives ALONSO LEON, HELM, KENY-GUYER, MEEK, SANCHEZ, WILLIAMS (Pre-session filed.)

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.

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

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

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

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

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

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

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

22 (2) In addition to subsection (1) of this section, a public employer may enter into a written

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 agreement with the exclusive representative of its employees providing that a labor dispute over
2 conditions and terms of a contract may be resolved through binding arbitration.

3 **(3) Notwithstanding subsection (1) of this section, when an arbitration proceeding in-**
4 **volves alleged misconduct by a sworn law enforcement officer of any law enforcement**
5 **agency, as those terms are defined in ORS 131.930, and the arbitrator makes a finding that**
6 **misconduct has occurred consistent with the law enforcement agency's finding of miscon-**
7 **duct, the arbitration award may not order any disciplinary action that differs from the dis-**
8 **ciplinary action imposed by the agency, if the disciplinary action imposed by the agency is**
9 **consistent with the provisions of a discipline guide or discipline matrix adopted by the agency**
10 **as a result of collective bargaining and incorporated into the agency's disciplinary policies.**

11 [(3)] (4) In an arbitration proceeding under this section, the arbitrators, or a majority of the
12 arbitrators, may:

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

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

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

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

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

19 [(4)] (5) The arbitrators shall promptly provide a copy of a subpoena issued under this section
20 to each party to the arbitration proceeding.

21 [(5)] (6) The arbitrators issuing a subpoena under this section may rule on objections to the is-
22 suance of the subpoena.

23 [(6)] (7) If a person fails to comply with a subpoena issued under this section or if a witness
24 refuses to testify on a matter on which the witness may be lawfully questioned, the party who re-
25 quested the subpoena or seeks the testimony may apply to the arbitrators for an order authorizing
26 the party to apply to the circuit court of any county to enforce the subpoena or compel the testi-
27 mony. On the application of the attorney of record for the party or on the application of the
28 arbitrators, or a majority of the arbitrators, the court may require the person or witness to show
29 cause why the person or witness should not be punished for contempt of court to the same extent
30 and purpose as if the proceedings were pending before the court.

31 [(7)] (8) Witnesses appearing pursuant to subpoena, other than parties or officers or employees
32 of the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS
33 44.415 (2).

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

35 (a) **"Discipline guide" means a grid that is designed to provide parameters for the level**
36 **of discipline to be imposed for an act of misconduct that is categorized by the severity of the**
37 **misconduct and take into account the presumptive level of discipline for the misconduct and**
38 **any aggravating or mitigating factors.**

39 (b) **"Discipline matrix" means a grid used to determine the level of discipline to be im-**
40 **posed for an act of misconduct that is categorized by the severity of the misconduct, ac-**
41 **ording to the intersection where the category of misconduct and the level of disciplinary**
42 **action meet.**

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

44 243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

45 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board

1 or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
2 ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
3 nonacademically licensed school employees. Academically licensed units may include but are not
4 limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
5 similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
6 to June 6, 1995, or to any school district with fewer than 50 employees.

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

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

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

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

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

27 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
28 rect monetary benefits, hours, vacations, sick leave, labor organization access to and communication
29 with represented employees, grievance procedures and other conditions of employment.

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

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

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

37 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
38 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
39 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
40 gum chewing and similar matters of personal conduct, the standards and procedures for student
41 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
42 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
43 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
44 subsection.

45 (f) For employee bargaining involving employees covered by ORS 243.736 and employees of the

1 Department of Corrections who have direct contact with adults in custody, “employment relations”
2 includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels
3 that have a significant impact on the on-the-job safety of the employees.

4 **(g) For employee bargaining involving sworn law enforcement officers of a law enforce-**
5 **ment agency, as those terms are defined in ORS 131.930, “employment relations” includes the**
6 **development of a discipline guide or discipline matrix as those terms are defined in ORS**
7 **243.706.**

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

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

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

23 (10) “Fair-share agreement” means an agreement between the public employer and the recog-
24 nized or certified bargaining representative of public employees whereby employees who are not
25 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
26 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
27 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
28 security agreement declaring they desire that the agreement be rescinded, the board shall take a
29 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
30 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
31 election favor the union security agreement, the board shall certify deauthorization of the agree-
32 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
33 calendar days after the collective bargaining agreement is executed. Only one such election may be
34 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
35 between a public employer and the recognized or certified bargaining representative.

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

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

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

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

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

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

11 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
12 between the public employer and the exclusive representative regarding employment relations.

13 (18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclu-
14 sive representative in negotiations and contract administration of all persons in an appropriate
15 bargaining unit who are not members of the organization serving as exclusive representative of the
16 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
17 be an amount agreed upon by the public employer and the exclusive representative of the employees.

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

22 (20) "Public employer" means the State of Oregon, and the following political subdivisions:
23 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
24 politan service districts, public service corporations or municipal corporations and public and
25 quasi-public corporations.

26 (21) "Public employer representative" includes any individual or individuals specifically desig-
27 nated by the public employer to act in its interests in all matters dealing with employee represen-
28 tation, collective bargaining and related issues.

29 (22) "Strike" means a public employee's refusal in concerted action with others to report for
30 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his
31 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
32 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
33 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
34 or impair the right of any public employee to lawfully express or communicate a complaint or
35 opinion on any matter related to the conditions of employment.

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

44 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
45 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

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

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

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

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

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

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

29 **(g) For employee bargaining involving sworn law enforcement officers of a law enforce-**
30 **ment agency, as those terms are defined in ORS 131.930, "employment relations" includes the**
31 **development of a discipline guide or discipline matrix as those terms are defined in ORS**
32 **243.706.**

33 [(g)] (h) For all other employee bargaining except school district bargaining and except as pro-
34 vided in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety
35 issues (except those staffing levels and safety issues that have a direct and substantial effect on the
36 on-the-job safety of public employees), scheduling of services provided to the public, determination
37 of the minimum qualifications necessary for any position, criteria for evaluation or performance
38 appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable
39 dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and
40 similar matters of personal conduct at work, and any other subject proposed that is permissive un-
41 der paragraphs (b), (c) and (d) of this subsection.

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

45 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one

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

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

16 (11) "Final offer" means the proposed contract language and cost summary submitted to the
17 mediator within seven days of the declaration of impasse.

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

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

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

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

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

36 (17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute
37 between the public employer and the exclusive representative regarding employment relations.

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

43 (19) "Public employee" means an employee of a public employer but does not include elected
44 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
45 [section 41,] Article I, **section 41**, of the Oregon Constitution, or persons who are confidential em-

1 ployees, supervisory employees or managerial employees.

2 (20) "Public employer" means the State of Oregon, and the following political subdivisions:
3 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
4 politan service districts, public service corporations or municipal corporations and public and
5 quasi-public corporations.

6 (21) "Public employer representative" includes any individual or individuals specifically desig-
7 nated by the public employer to act in its interests in all matters dealing with employee represen-
8 tation, collective bargaining and related issues.

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

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

24 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
25 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

38 (24) "Unfair labor practice" means the commission of an act designated an unfair labor practice
39 in ORS 243.672.

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

42 **SECTION 4. The amendments to ORS 243.650 and 243.706 by sections 1 to 3 of this 2020**
43 **Act apply to collective bargaining agreements entered into on or after the effective date of**
44 **this 2020 Act.**

45 **SECTION 5. This 2020 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
2 **on its passage.**

3
