

House Bill 2061

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Employment Relations Board)

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**.

Removes authority of public employer and labor organization to enter into fair-share agreement. Removes authority of public employer to deduct in-lieu-of-dues payment from salary or wages of public employee.

A BILL FOR AN ACT

1
2 Relating to mandatory payments to labor organizations by public employees; amending ORS 243.650,
3 243.672, 243.682, 329A.430, 410.614 and 443.733.

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

5 **SECTION 1.** ORS 243.650, as amended by section 2, chapter 18, Oregon Laws 2020 (first special
6 session), is amended to read:

7 243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

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

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

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

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

30 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute

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 are required by law to submit their differences to a third party for a final and binding decision.

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

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

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

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

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

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

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

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

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

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

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

45 [(10) "Fair-share agreement" means an agreement between the public employer and the recognized

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

13 [(11)] (10) “Final offer” means the proposed contract language and cost summary submitted to
 14 the mediator within seven days of the declaration of impasse.

15 [(12)] (11) “Labor dispute” means any controversy concerning employment relations or con-
 16 cerning the association or representation of persons in negotiating, fixing, maintaining, changing,
 17 or seeking to arrange terms or conditions of employment relations, regardless of whether the
 18 disputants stand in the proximate relation of employer and employee.

19 [(13)] (12) “Labor organization” means any organization that has as one of its purposes repre-
 20 senting employees in their employment relations with public employers.

21 [(14)] (13) “Last best offer package” means the offer exchanged by parties not less than 14 days
 22 prior to the date scheduled for an interest arbitration hearing.

23 [(15)] (14) “Legislative body” means the Legislative Assembly, the city council, the county
 24 commission and any other board or commission empowered to levy taxes.

25 [(16)] (15) “Managerial employee” means an employee of the State of Oregon or a public uni-
 26 versity listed in ORS 352.002 who possesses authority to formulate and carry out management deci-
 27 sions or who represents management’s interest by taking or effectively recommending discretionary
 28 actions that control or implement employer policy, and who has discretion in the performance of
 29 these management responsibilities beyond the routine discharge of duties. A “managerial
 30 employee” need not act in a supervisory capacity in relation to other employees. Notwithstanding
 31 this subsection, “managerial employee” does not include faculty members at a community college,
 32 college or university.

33 [(17)] (16) “Mediation” means assistance by an impartial third party in reconciling a labor dis-
 34 pute 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)] (17) “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 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees,
 43 supervisory employees or managerial employees.

44 [(20)] (18) “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)] (19) “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)] (20) “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)] (21)(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;

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; or

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

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

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

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

40 [(24)] (22) “Unfair labor practice” means the commission of an act designated an unfair labor
41 practice in ORS 243.672.

42 [(25)] (23) “Voluntary arbitration” means the procedure whereby parties involved in a labor
43 dispute mutually agree to submit their differences to a third party for a final and binding decision.

44 **SECTION 2.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, and section
45 3, chapter 18, Oregon Laws 2020 (first special session), is amended to read:

1 243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

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

39 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
40 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
41 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
42 gum chewing and similar matters of personal conduct, the standards and procedures for student
43 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
44 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
45 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this

1 subsection.

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

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

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

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

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

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

37 *[(11)]* (10) “Final offer” means the proposed contract language and cost summary submitted to
 38 the mediator within seven days of the declaration of impasse.

39 *[(12)]* (11) “Labor dispute” means any controversy concerning employment relations or con-
 40 cerning the association or representation of persons in negotiating, fixing, maintaining, changing,
 41 or seeking to arrange terms or conditions of employment relations, regardless of whether the
 42 disputants stand in the proximate relation of employer and employee.

43 *[(13)]* (12) “Labor organization” means any organization that has as one of its purposes repre-
 44 senting employees in their employment relations with public employers.

45 *[(14)]* (13) “Last best offer package” means the offer exchanged by parties not less than 14 days

1 prior to the date scheduled for an interest arbitration hearing.

2 [(15)] (14) “Legislative body” means the Legislative Assembly, the city council, the county
3 commission and any other board or commission empowered to levy taxes.

4 [(16)] (15) “Managerial employee” means an employee of the State of Oregon or a public uni-
5 versity listed in ORS 352.002 who possesses authority to formulate and carry out management deci-
6 sions or who represents management’s interest by taking or effectively recommending discretionary
7 actions that control or implement employer policy, and who has discretion in the performance of
8 these management responsibilities beyond the routine discharge of duties. A “managerial
9 employee” need not act in a supervisory capacity in relation to other employees. Notwithstanding
10 this subsection, “managerial employee” does not include faculty members at a community college,
11 college or university.

12 [(17)] (16) “Mediation” means assistance by an impartial third party in reconciling a labor dis-
13 pute between the public employer and the exclusive representative regarding employment relations.

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

19 [(19)] (17) “Public employee” means an employee of a public employer but does not include
20 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
21 under Article I, section 41, of the Oregon Constitution, or persons who are confidential employees,
22 supervisory employees or managerial employees.

23 [(20)] (18) “Public employer” means the State of Oregon, and the following political subdivisions:
24 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
25 politan service districts, public service corporations or municipal corporations and public and
26 quasi-public corporations.

27 [(21)] (19) “Public employer representative” includes any individual or individuals specifically
28 designated by the public employer to act in its interests in all matters dealing with employee rep-
29 resentation, collective bargaining and related issues.

30 [(22)] (20) “Strike” means a public employee’s refusal in concerted action with others to report
31 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
32 his or her absence in whole or in part from the full, faithful or proper performance of his or her
33 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
34 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
35 limit or impair the right of any public employee to lawfully express or communicate a complaint or
36 opinion on any matter related to the conditions of employment.

37 [(23)(a)] (21)(a) “Supervisory employee” means any individual having authority in the interest
38 of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or dis-
39 cipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively
40 to recommend such action, if in connection therewith, the exercise of the authority is not of a
41 merely routine or clerical nature but requires the use of independent judgment. Failure to assert
42 supervisory status in any Employment Relations Board proceeding or in negotiations for any col-
43 lective bargaining agreement does not thereafter prevent assertion of supervisory status in any
44 subsequent board proceeding or contract negotiation.

45 (b) “Supervisory employee” includes a faculty member of a public university listed in ORS

1 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

14 [(24)] (22) "Unfair labor practice" means the commission of an act designated an unfair labor
15 practice in ORS 243.672.

16 [(25)] (23) "Voluntary arbitration" means the procedure whereby parties involved in a labor
17 dispute mutually agree to submit their differences to a third party for a final and binding decision.

18 **SECTION 3.** ORS 243.672 is amended to read:

19 243.672. (1) It is an unfair labor practice for a public employer or its designated representative
20 to do any of the following:

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

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

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

31 (d) Discharge or otherwise discriminate against an employee because the employee has signed
32 or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650
33 to 243.806.

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

35 (f) Refuse or fail to comply with any provision of ORS 243.650 to 243.806.

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

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

41 (i) Violate ORS 243.670 (2).

42 (j) Attempt to influence an employee to resign from or decline to obtain membership in a labor
43 organization.

44 (k) Encourage an employee to revoke an authorization for the deductions described under ORS
45 243.806.

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

4 (a) Interfere with, restrain or coerce any employee in or because of the exercise of any right
5 guaranteed under ORS 243.650 to 243.806.

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

8 (c) Refuse or fail to comply with any provision of ORS 243.650 to 243.806.

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

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

14 (3) It is an unfair labor practice for any labor organization to engage in unconventional strike
15 activity not protected for private sector employees under the National Labor Relations Act on June
16 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

17 (4) It is an unfair labor practice for a labor organization or its agents to picket or cause, induce,
18 or encourage to be picketed, or threaten to engage in such activity, at the residence or business
19 premises of any individual who is a member of the governing body of a public employer, with respect
20 to a dispute over a collective bargaining agreement or negotiations over employment relations, if
21 an objective or effect of such picketing is to induce another person to cease doing business with the
22 governing body member's business or to cease handling, transporting or dealing in goods or services
23 produced at the governing body's business. For purposes of this subsection, a member of the Legis-
24 lative Assembly is a member of the governing body of a public employer when the collective bar-
25 gaining negotiation or dispute is between the State of Oregon and a labor organization. The
26 Governor and other statewide elected officials are not considered members of a governing body for
27 purposes of this subsection. Nothing in this subsection may be interpreted or applied in a manner
28 that violates the right of free speech and assembly as protected by the Constitution of the United
29 States or the Constitution of the State of Oregon.

30 (5) It is not an unfair labor practice or a violation of subsection (2)(a) of this section for the
31 exclusive representative of an appropriate bargaining unit to charge the following employees in the
32 unit reasonable fees and costs for representation that are unrelated to the negotiation of a collective
33 bargaining agreement, provided that the employees are not members of the labor organization that
34 is the exclusive representative and have not voluntarily entered into a fair-share agreement:

35 (a) A police officer of a city or municipal police department;

36 (b) A sheriff or deputy sheriff; or

37 (c) A police officer commissioned by a university under ORS 352.121 or 353.125.

38 (6) An injured party may file a written complaint with the Employment Relations Board not
39 later than 180 days following the occurrence of an unfair labor practice. For each unfair labor
40 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice
41 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to
42 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee
43 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing
44 party in any case in which the complaint or answer is found to have been frivolous or filed in bad
45 faith. The board shall deposit fees received under this section to the credit of the Employment Re-

1 lations Board Administrative Account.

2 **SECTION 4.** ORS 243.682 is amended to read:

3 243.682. (1) If a question of representation exists, the Employment Relations Board shall:

4 (a) Upon application of a public employer, a public employee or a labor organization, designate
5 the appropriate bargaining unit, and in making its determination shall consider such factors as
6 community of interest, wages, hours and other working conditions of the employees involved, the
7 history of collective bargaining, and the desires of the employees. The board may determine a unit
8 to be the appropriate unit in a particular case even though some other unit might also be appro-
9 priate. Unless a labor organization and a public employer agree otherwise, the board may not des-
10 ignate as appropriate a bargaining unit that includes:

11 (A) A faculty member described in ORS 243.650 [(23)(c)(C)] **(21)(c)(C)** who supervises one or
12 more other faculty members; and

13 (B) Any faculty member who is supervised by a faculty member described in subparagraph (A)
14 of this paragraph.

15 (b) Investigate and conduct a hearing on a petition that has been filed by:

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

18 (B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
19 unit assert that the designated exclusive representative is no longer the representative of the ma-
20 jority of the employees in the unit;

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

24 (D) An employee or group of employees alleging that 30 percent of the employees assert that the
25 designated exclusive representative is no longer the representative of the majority of employees in
26 the unit.

27 (2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or
28 labor organization acting on behalf of the employees files a petition alleging that a majority of em-
29 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a
30 labor organization for that purpose, or when a labor organization files a petition alleging that the
31 majority in a group of unrepresented employees seek to be added to an existing bargaining unit, the
32 board shall investigate the petition. If the board finds that a majority of the employees in a unit
33 appropriate for bargaining or a majority of employees in a group of unrepresented employees that
34 is appropriate to add to an existing bargaining unit have signed authorizations designating the labor
35 organization specified in the petition as the employees' bargaining representative and that no other
36 labor organization is currently certified or recognized as the exclusive representative of any of the
37 employees in the unit or in the group of unrepresented employees seeking to be added to an existing
38 bargaining unit, the board may not conduct an election but shall certify the labor organization as
39 the exclusive representative unless a petition for a representation election is filed as provided in
40 subsection (3) of this section.

41 (b) The board by rule shall develop guidelines and procedures for the designation by employees
42 of a bargaining representative in the manner described in paragraph (a) of this subsection. The
43 guidelines and procedures must include:

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

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

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

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

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

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

12 (3)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification has
 13 been filed under subsection (2) of this section, an employee or a group of employees in the unit
 14 designated by the petition, or one or more of the unrepresented employees seeking to be added to
 15 an existing bargaining unit, may file a petition with the board to request that a representation
 16 election be conducted.

17 (b) The petition requesting a representation election must be supported by at least 30 percent
 18 of the employees in the bargaining unit designated by the petition, or 30 percent of the unrepre-
 19 sented employees seeking to be added to an existing bargaining unit.

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

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

27 **SECTION 5.** ORS 329A.430, as amended by section 7, chapter 10, Oregon Laws 2020 (second
 28 special session), is amended to read:

29 329A.430. (1) As used in this section:

30 (a) “Certified family child care provider” means an individual who operates a family child care
 31 home that is certified under ORS 329A.280.

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

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

37 (d) “Family child care provider” means an individual who is a certified, registered or exempt
 38 family child care provider.

39 (e) “Registered family child care provider” means an individual who operates a family child care
 40 home that is registered under ORS 329A.330.

41 (2) For purposes of collective bargaining under ORS 243.650 to 243.806, the State of Oregon is
 42 the public employer of record of family child care providers.

43 (3) Notwithstanding ORS 243.650 [(19)] (17), family child care providers are considered to be
 44 public employees governed by ORS 243.650 to 243.806. Family child care providers have the right to
 45 form, join and participate in the activities of labor organizations of their own choosing for the pur-

1 pose of representation and collective bargaining on matters concerning labor relations. These rights
 2 shall be exercised in accordance with the rights granted to public employees, with mediation and
 3 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
 4 cess. Family child care providers may not strike.

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

7 (5)(a) The Oregon Department of Administrative Services shall represent the State of Oregon in
 8 collective bargaining negotiations with the certified or recognized exclusive representatives of all
 9 appropriate bargaining units of family child care providers. The Oregon Department of Administra-
 10 tive Services is authorized to agree to terms and conditions of collective bargaining agreements on
 11 behalf of the State of Oregon.

12 (b) The department shall report to the legislative review agency, as defined in ORS 291.371, on
 13 any new or changed provisions relating to compensation in a collective bargaining agreement ne-
 14 gotiated under this section.

15 (6) Notwithstanding ORS 243.650 (1):

16 (a) The appropriate bargaining unit for certified and registered family child care providers is a
 17 bargaining unit of all certified and registered family child care providers in the state.

18 (b) The appropriate bargaining unit for exempt family child care providers is a bargaining unit
 19 of all exempt family child care providers in the state.

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

22 **SECTION 6.** ORS 410.614 is amended to read:

23 410.614. (1) Notwithstanding ORS 243.650 [(19)] (17) and [(20)] (18), the Home Care Commission
 24 shall be considered a public employer and home care workers and personal support workers shall
 25 be considered public employees governed by ORS 243.650 to 243.806.

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

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

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

36 **SECTION 7.** ORS 443.733, as amended by section 8, chapter 10, Oregon Laws 2020 (second
 37 special session), is amended to read:

38 443.733. (1) As used in this section, "adult foster care home provider" means a person who op-
 39 erates an adult foster home in the provider's home and who receives fees or payments from state
 40 funds for providing adult foster care home services. "Adult foster care home provider" does not in-
 41 clude a person:

42 (a) Who is a resident manager of an adult foster home who does not provide adult foster care
 43 home services in the resident manager's own home or who does not have a controlling interest in,
 44 or is not an officer or partner in, the entity that is the provider of adult foster care home services;

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

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

3 (2) For purposes of collective bargaining under ORS 243.650 to 243.806, the State of Oregon is
4 the public employer of record of adult foster care home providers.

5 (3) Notwithstanding ORS 243.650 [(19)] (17), adult foster care home providers are considered to
6 be public employees governed by ORS 243.650 to 243.806. Adult foster care home providers have the
7 right to form, join and participate in the activities of labor organizations of their own choosing for
8 the purposes of representation and collective bargaining on matters concerning labor relations.
9 Mandatory subjects of collective bargaining include but are not limited to provider base rates and
10 add-on payments. These rights shall be exercised in accordance with the rights granted to public
11 employees, with mediation and interest arbitration under ORS 243.742 as the method of concluding
12 the collective bargaining process. Adult foster care home providers may not strike.

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

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

20 (b) The department shall report to the legislative review agency, as defined in ORS 291.371, on
21 any new or changed provisions relating to compensation in a collective bargaining agreement ne-
22 gotiated under this section.

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

26 (7) This section does not modify any right of an adult receiving foster care.
27
