81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

House Bill 2061

Introduced and printed pursuant to House Rule 12.00. Presession 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

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

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

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

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

(2) “Board” means the Employment Relations Board.

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

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

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

(6) “Confidential employee” means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

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

(b) “Employment relations” does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) “Supervisory employee” does not include:

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

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

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

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

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

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

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

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

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

SECTION 2. ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, and section
3, chapter 18, Oregon Laws 2020 (first special session), is amended to read:
243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

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

(2) “Board” means the Employment Relations Board.

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

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

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

(6) “Confidential employee” means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

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

(b) “Employment relations” does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

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

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

(e) For school district bargaining, “employment relations” excludes class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, the time between student classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this...
(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the Department of Corrections who have direct contact with adults in custody, “employment relations” includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that have a significant impact on the on-the-job safety of the employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) “Supervisory employee” does not include:

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

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

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

SECTION 3.
ORS 243.672 is amended to read:

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

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

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

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

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

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

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

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

(i) Violate ORS 243.670 (2).

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

(k) Encourage an employee to revoke an authorization for the deductions described under ORS 243.806.
(2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

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

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

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

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

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

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

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

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

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

(b) A sheriff or deputy sheriff; or

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

(6) An injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor practice complaint filed, a fee of $300 is imposed. For each answer to an unfair labor practice complaint filed with the board, a fee of $300 is imposed. The board may allow any other person to intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee of $300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing party in any case in which the complaint or answer is found to have been frivolous or filed in bad faith. The board shall deposit fees received under this section to the credit of the Employment Re-
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SECTION 4. ORS 243.682 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(A) Model collective bargaining authorization language that may be used for purposes of making
the designations described in paragraph (a) of this subsection;
(B) Procedures to be used by the board to establish the authenticity of signed authorizations designating bargaining representatives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Notwithstanding ORS 243.650 [(1)(b)] (17), family child care providers are considered to be public employees governed by ORS 243.650 to 243.806. Family child care providers have the right to form, join and participate in the activities of labor organizations of their own choosing for the pur-
pose of representation and collective bargaining on matters concerning labor relations. These rights shall be exercised in accordance with the rights granted to public employees, with mediation and interest arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Family child care providers may not strike.

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

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

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

(6) Notwithstanding ORS 243.650 (1):

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

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

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

SECTION 6. ORS 410.614 is amended to read:

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

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

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

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

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

443.733. (1) As used in this section, “adult foster care home provider” means a person who operates an adult foster home in the provider’s home and who receives fees or payments from state funds for providing adult foster care home services. “Adult foster care home provider” does not include a person:

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

(b) Who is not a natural person; or
(c) Whose participation in collective bargaining is determined by the licensing agency to be inconsistent with this section or in violation of state or federal law.

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

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

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

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

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

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

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