

House Bill 3165

Sponsored by Representative EVANS

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**.

Modifies definition of "supervisory employee" to exclude certain strike prohibited public employees.

A BILL FOR AN ACT

1
2 Relating to employment classification of certain strike prohibited employees; amending ORS 243.650.

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

4 **SECTION 1.** ORS 243.650, as amended by section 5, chapter 541, Oregon Laws 2021, is amended
5 to read:

6 243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

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

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

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

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

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

31 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-

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 son who formulates, determines and effectuates management policies in the area of collective bar-
2 gaining.

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

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

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

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

13 (e) For school district bargaining:

14 (A) "Employment relations" includes class size and caseload limits in schools that qualify for
15 assistance under Title I of the federal Elementary and Secondary Education Act of 1965.

16 (B) "Employment relations" excludes the school or educational calendar, standards of perform-
17 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and
18 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of
19 personal conduct, the standards and procedures for student discipline, the time between student
20 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS
21 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that
22 is permissive under paragraphs (b), (c) and (d) of this 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 all other employee bargaining except school district bargaining and except as provided
28 in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues
29 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
30 the-job safety of public employees), scheduling of services provided to the public, determination of
31 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
32 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
33 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
34 matters of personal conduct at work, and any other subject proposed that is permissive under par-
35 agraphs (b), (c) and (d) of this subsection.

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

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

42 (10) "Fair-share agreement" means an agreement between the public employer and the recog-
43 nized or certified bargaining representative of public employees whereby employees who are not
44 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
45 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition

1 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
 2 security agreement declaring they desire that the agreement be rescinded, the board shall take a
 3 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
 4 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
 5 election favor the union security agreement, the board shall certify deauthorization of the agree-
 6 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
 7 calendar days after the collective bargaining agreement is executed. Only one such election may be
 8 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
 9 between a public employer and the recognized or certified bargaining representative.

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

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

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

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

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

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

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

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

37 (19) "Public employee" means an employee of a public employer but does not include elected
 38 officials, persons appointed to serve on boards or commissions, incarcerated persons working under
 39 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-
 40 visory employees or managerial employees.

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

45 (21) "Public employer representative" includes any individual or individuals specifically desig-

1 nated by the public employer to act in its interests in all matters dealing with employee represen-
 2 tation, collective bargaining and related issues.

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

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

18 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
 19 352.002 or the Oregon Health and Science University who:

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

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

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

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

27 (B) A firefighter, **an emergency communications worker, a guard at a correctional insti-**
 28 **tution or mental hospital or a police officer** prohibited from striking by ORS 243.736 who assigns,
 29 transfers or directs the work of other employees but does not have the authority to hire, discharge
 30 or impose economic discipline on those employees;

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

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

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

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

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

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

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

42 **SECTION 2.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, section 3,
 43 chapter 18, Oregon Laws 2020 (first special session), section 2, chapter 490, Oregon Laws 2021, and
 44 section 6, chapter 541, Oregon Laws 2021, is amended to read:

45 243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

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

38 (e) For school district bargaining:

39 (A) "Employment relations" includes class size and caseload limits in schools that qualify for
 40 assistance under Title I of the federal Elementary and Secondary Education Act of 1965.

41 (B) "Employment relations" excludes the school or educational calendar, standards of perform-
 42 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and
 43 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of
 44 personal conduct, the standards and procedures for student discipline, the time between student
 45 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS

1 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that
2 is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

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

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

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

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

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

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

45 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission

1 and any other board or commission empowered to levy taxes.

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

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

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

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

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

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

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

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

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

45 (A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-

1 sistant dean, head or equivalent position; or

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

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

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

7 (B) A firefighter, **an emergency communications worker, a guard at a correctional insti-**
8 **tution or mental hospital or a police officer** prohibited from striking by ORS 243.736 who assigns,
9 transfers or directs the work of other employees but does not have the authority to hire, discharge
10 or impose economic discipline on those employees; or

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

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

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

17
