

House Bill 3194

Sponsored by COMMITTEE ON EDUCATION

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**.

Prohibits school districts from entering into collective bargaining agreements on certain subjects.

A BILL FOR AN ACT

1
2 Relating to collective bargaining by school districts; creating new provisions; and amending ORS
3 243.650.

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

5 **SECTION 1.** ORS 243.650 is amended to read:

6 243.650. As used in ORS 243.650 to 243.782, 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 cannot 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 shall 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 Nothing in this subsection shall be construed to prohibit a public employer and a certified or re-
26 cognized representative of its employees from discussing [*or executing written agreements regarding*]
27 matters other than mandatory subjects of bargaining that are not prohibited by law, so long as there
28 is mutual agreement of the parties to discuss these matters, which are permissive subjects of bar-
29 gaining.

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

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

4 (7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-
 5 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
 6 employment.

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

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

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

14 (e) For school district bargaining, “employment relations” shall expressly exclude **and a school**
 15 **district may not agree to any provision in a collective bargaining agreement related to** class
 16 size, the school or educational calendar, standards of performance or criteria for evaluation of
 17 teachers, **assignment or transfer of employees, contracting out of services to persons not**
 18 **represented by the bargaining unit, just cause provisions, participation in a retirement or**
 19 **supplemental retirement program other than the Public Employees Retirement System,** the
 20 school curriculum, reasonable dress, grooming and at-work personal conduct requirements respect-
 21 ing smoking, gum chewing and similar matters of personal conduct, the standards and procedures
 22 for student discipline, the time between student classes, the selection, agendas and decisions of 21st
 23 Century Schools Councils established under ORS 329.704, and any other subject proposed that is
 24 permissive under paragraphs (b), (c) and (d) of this subsection.

25 (f) For all other employee bargaining except school districts, “employment relations” expressly
 26 excludes staffing levels and safety issues (except those staffing levels and safety issues which have
 27 a direct and substantial effect on the on-the-job safety of public employees), scheduling of services
 28 provided to the public, determination of the minimum qualifications necessary for any position, cri-
 29 teria for evaluation or performance appraisal, assignment of duties, workload when the effect on
 30 duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements re-
 31 specting smoking, gum chewing, and similar matters of personal conduct at work, and any other
 32 subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

39 (10) “Fair-share agreement” means an agreement between the public employer and the recog-
 40 nized or certified bargaining representative of public employees whereby employees who are not
 41 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
 42 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
 43 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
 44 security agreement declaring they desire that such agreement be rescinded, the board shall take a
 45 secret ballot of the employees in such unit and certify the results thereof to the recognized or cer-

1 tified bargaining representative and to the public employer. Unless a majority of the votes cast in
 2 an election favor such union security agreement, the board shall certify deauthorization thereof. A
 3 petition for deauthorization of a union security agreement must be filed not more than 90 calendar
 4 days after the collective bargaining agreement is executed. Only one such election shall be con-
 5 ducted in any appropriate bargaining unit during the term of a collective bargaining agreement be-
 6 tween a public employer and the recognized or certified bargaining representative.

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

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

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

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

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

19 (16) "Managerial employee" means an employee of the State of Oregon who possesses authority
 20 to formulate and carry out management decisions or who represents management's interest by tak-
 21 ing or effectively recommending discretionary actions that control or implement employer policy,
 22 and who has discretion in the performance of these management responsibilities beyond the routine
 23 discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to
 24 other employees. Notwithstanding this subsection, "managerial employee" shall not be construed
 25 to include faculty members at a community college, college or university.

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

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

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

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

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

44 (22) "Strike" means a public employee's refusal in concerted action with others to report for
 45 duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his

1 or her absence in whole or in part from the full, faithful or proper performance of his or her duties
 2 of employment, for the purpose of inducing, influencing or coercing a change in the conditions,
 3 compensation, rights, privileges or obligations of public employment; however, nothing shall limit
 4 or impair the right of any public employee to lawfully express or communicate a complaint or
 5 opinion on any matter related to the conditions of employment.

6 (23) "Supervisory employee" means any individual having authority in the interest of the em-
 7 ployer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
 8 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
 9 commend such action, if in connection therewith, the exercise of such authority is not of a merely
 10 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-
 11 sory status in any Employment Relations Board proceeding or in negotiations for any collective
 12 bargaining agreement shall not thereafter prevent assertion of supervisory status in any subsequent
 13 board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, no
 14 nurse, charge nurse or similar nursing position shall be deemed to be supervisory unless such posi-
 15 tion has traditionally been classified as supervisory.

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

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

20 **SECTION 2. The amendments to ORS 243.650 by section 1 of this 2005 Act apply to col-**
 21 **lective bargaining agreements entered into on or after the effective date of this 2005 Act.**

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