

Senate Bill 437

Sponsored by Senator MANNING JR (at the request of Catie Thiesen) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Includes matters concerning apprenticeship or training program administered by certain mass transit districts as mandatory subject of collective bargaining for employees of district.

A BILL FOR AN ACT

1
2 Relating to matters concerning apprenticeship programs as mandatory subject of collective bar-
3 gaining; amending ORS 243.650.

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
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, labor organization access to and communication
6 with represented employees, grievance procedures and other conditions of 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” does not include subjects that 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” does 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” excludes class size, the school or ed-
15 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
16 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
17 gum chewing and similar matters of personal conduct, the standards and procedures for student
18 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
19 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
20 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
21 subsection.

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

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

29 **(h) For employee bargaining involving employees of a mass transit district established**
30 **under 267.010 to 267.394 and that has a population of 500,000 or more, “employment**
31 **relations” includes matters concerning the development or termination of an apprenticeship**
32 **or training program administered by the district and any standards relating to the certi-**
33 **fication or registration of such program.**

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

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

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

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

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

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

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

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

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

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

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

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

44 (19) "Public employee" means an employee of a public employer but does not include elected
45 officials, persons appointed to serve on boards or commissions, incarcerated persons working under

1 Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, super-
2 visory employees or managerial employees.

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

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

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

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

25 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
26 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

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

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

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

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

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

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

3 **SECTION 2.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, and section
4 3, chapter 18, Oregon Laws 2020 (first special session), is amended to read:

5 243.650. As used in ORS 243.650 to 243.806, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

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

43 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
44 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
45 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,

1 gum chewing and similar matters of personal conduct, the standards and procedures for student
2 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
3 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
4 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
5 subsection.

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

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

13 **(h) For employee bargaining involving employees of a mass transit district established**
14 **under 267.010 to 267.394 and that has a population of 500,000 or more, “employment**
15 **relations” includes matters concerning the development or termination of an apprenticeship**
16 **or training program administered by the district and any standards relating to the certi-**
17 **fication or registration of such program.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
 10 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

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

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

27