

Senate Bill 194

Sponsored by Senator GORSEK (Presession 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**.

Makes permanent provision excluding certain employees of Oregon State Police from meaning of supervisory employee for purposes of public employment.

A BILL FOR AN ACT

1
2 Relating to employment classification of certain employees of Oregon State Police; amending ORS
3 243.650; and repealing section 3, chapter 146, Oregon Laws 2019.

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

5 **SECTION 1.** ORS 243.650, as amended by section 2, chapter 146, Oregon Laws 2019, section 3,
6 chapter 18, Oregon Laws 2020 (first special session), section 2, chapter 490, Oregon Laws 2021, and
7 section 6, chapter 541, Oregon Laws 2021, is amended to read:

8 243.650. As used in ORS 243.650 to 243.809, unless the context requires otherwise:

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

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

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

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

15 (e) For school district bargaining:

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

18 (B) "Employment relations" excludes the school or educational calendar, standards of perform-
19 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and
20 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of
21 personal conduct, the standards and procedures for student discipline, the time between student
22 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS
23 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that
24 is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

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

44 (10) "Fair-share agreement" means an agreement between the public employer and the recog-
45 nized or certified bargaining representative of public employees whereby employees who are not

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

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

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

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

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

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

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

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

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

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

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

1 quasi-public corporations.

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

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

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

20 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
21 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

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

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

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

37 **(iii) Assigns, transfers or directs the work of other employees but does not hire, dis-**
38 **charge or impose economic discipline on those employees.**

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

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

43 **SECTION 2. Section 3, chapter 146, Oregon Laws 2019, is repealed.**

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