

House Bill 4057

Sponsored by Representatives BREESE-IVERSON, CATE, GOODWIN; Representatives RESCHKE, WALLAN, WRIGHT, Senators KNOPP, LINTHICUM, SMITH DB (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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would make it unlawful for teachers to participate in a strike. (Flesch Readability Score: 69.9).

Expands the statutory list of strike-prohibited employees to include teachers employed by a common school district or a union high school district. Imposes a civil penalty of \$500 per day against an individual or labor organization that participates in an unlawful teacher strike.

A BILL FOR AN ACT

1
2 Relating to unlawful strikes; amending ORS 243.650, 243.726 and 243.736.

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

4 **SECTION 1.** ORS 243.736 is amended to read:

5 243.736. (1) It is unlawful for any of the following public employees to strike or recognize a
6 picket line of a labor organization while in the performance of official duties:

7 (a) Assistant attorneys general;

8 (b) Deputy district attorneys;

9 (c) Emergency communications [*worker*] **workers**;

10 (d) [*Employee*] **Employees** of the Oregon Youth Authority who [*has*] **have** custody, control or
11 supervision of adjudicated youths;

12 [*e*] *Firefighter*;

13 (e) **Firefighters**;

14 (f) [*Guard*] **Guards** at a correctional institution or mental hospital;

15 (g) Parole and probation [*officer who supervises*] **officers who supervise** adult offenders; [*and*]

16 (h) Police [*officer*.] **officers**; **and**

17 (i) **Teachers employed by a common school district or a union high school district.**

18 (2) As used in this section, "emergency communications worker" means an individual whose of-
19 ficial focal duties are receiving information through the emergency communications system under
20 ORS 403.105 to 403.250, relaying the information to public or private safety agencies or dispatching
21 emergency equipment or personnel in response to the information.

22 **SECTION 2.** ORS 243.726 is amended to read:

23 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-
24 cluded in an appropriate bargaining unit for which an exclusive representative has been certified
25 by the Employment Relations Board or recognized by the employer; or is included in an appropriate
26 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-
27 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650
28 to 243.809 and 341.290.

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 (2) It shall be lawful for a public employee who is not prohibited from striking under subsection
 2 (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to partic-
 3 cipate in a strike over mandatory subjects of bargaining provided:

4 (a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes
 5 have been complied with in good faith;

6 (b) Thirty days have elapsed since the board has made public the fact finder's findings of fact
 7 and recommendations or the mediator has made public the parties' final offers;

8 (c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike
 9 and stating the reasons for its intent to strike to the board and the public employer;

10 (d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a
 11 reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or
 12 renegotiation under ORS 243.698; and

13 (e) The union's strike does not include unconventional strike activity not protected under the
 14 National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice un-
 15 der ORS 243.672 (3).

16 (3)(a) Where the strike occurring or is about to occur creates a clear and present danger or
 17 threat to the health, safety or welfare of the public, the public employer concerned may petition the
 18 circuit court of the county in which the strike has taken place or is to take place for equitable relief
 19 including but not limited to appropriate injunctive relief.

20 (b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of
 21 Marion County.

22 (c) If, after hearing, the court finds that the strike creates a clear and present danger or threat
 23 to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall in-
 24 clude an order that the labor dispute be submitted to final and binding arbitration within 10 days
 25 of the court's order pursuant to procedures in ORS 243.746.

26 (4)(a) A labor organization may not declare or authorize a strike of public employees that is or
 27 would be in violation of this section. When it is alleged in good faith by the public employer that
 28 a labor organization has declared or authorized a strike of public employees that is or would be in
 29 violation of this section, the employer may petition the board for a declaration that the strike is or
 30 would be unlawful. The board, after conducting an investigation and hearing, may make such dec-
 31 laration if it finds that such declaration or authorization of a strike is or would be unlawful.

32 (b) When a labor organization or individual disobeys an order of the appropriate circuit court
 33 issued pursuant to enforcing an order of the board involving this section and ORS 243.736 or 243.738,
 34 they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the amount
 35 of the fine shall be at the discretion of the court.

36 **(c) In addition to any other penalty provided by law, if a strike is a strike of teachers,**
 37 **as described in ORS 243.736, and the board has declared the strike to be unlawful under**
 38 **paragraph (a) of this subsection, the board shall impose a civil penalty against any individual**
 39 **or labor organization that participated in the unlawful strike. The amount of the penalty**
 40 **shall be \$500 per day for each day of violation.**

41 (5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike.
 42 The board upon the filing of an unfair labor charge alleging that a public employer has committed
 43 an unfair labor practice during or arising out of the collective bargaining procedures set forth in
 44 ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the
 45 court of competent jurisdiction for appropriate relief or a restraining order.

1 (6) As used in this section, “danger or threat to the health, safety or welfare of the public” does
2 not include an economic or financial inconvenience to the public or to the public employer that is
3 normally incident to a strike by public employees.

4 **SECTION 3.** ORS 243.650 is amended to read:

5 243.650. As used in ORS 243.650 to 243.809, 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:

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

1 (B) "Employment relations" excludes the school or educational calendar, standards of perform-
 2 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and
 3 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of
 4 personal conduct, the standards and procedures for student discipline, the time between student
 5 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS
 6 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that
 7 is permissive under paragraphs (b), (c) and (d) of this subsection.

8 (f) For employee bargaining involving employees covered by ORS 243.736, **except teachers, and**
 9 **for employee bargaining involving** [and] employees of the Department of Corrections who have
 10 direct contact with adults in custody, "employment relations" includes safety issues that have an
 11 impact on the on-the-job safety of the employees or staffing levels that have a significant impact on
 12 the on-the-job safety of the employees.

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

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

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

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

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

43 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
 44 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
 45 arrange terms or conditions of employment relations, regardless of whether the disputants stand in

1 the proximate relation of employer and employee.

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

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

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

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

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

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

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

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

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

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

41 (23)(a) "Supervisory employee" means any individual having authority in the interest of the
42 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
43 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
44 commend such action, if in connection therewith, the exercise of the authority is not of a merely
45 routine or clerical nature but requires the use of independent judgment. Failure to assert supervi-

1 sory status in any Employment Relations Board proceeding or in negotiations for any collective
2 bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent
3 board proceeding or contract negotiation.

4 (b) "Supervisory employee" includes a faculty member of a public university listed in ORS
5 352.002 or the Oregon Health and Science University who:

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

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

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

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

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

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

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

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

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

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

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