

House Bill 2866

Sponsored by Representative EVANS (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 makes changes to laws about collective bargaining with respect to public employees who are not members of a union. The Act would change how those employees will make payments to the union. (Flesch Readability Score: 60.1).

Permits employees who are not union members to voluntarily consent to make in-lieu-of-dues payment to a labor organization for the organization's representation of the nonmember employees in employment relations with a public employer. Prohibits compulsory payments to labor organizations by nonmember employees. Makes entering into an agreement that requires the nonmember employees of a labor organization to make payments to the labor organization an unfair labor practice.

A BILL FOR AN ACT

1
2 Relating to labor organization representation; amending ORS 243.650, 243.656 and 243.672.

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

4 **SECTION 1.** ORS 243.650, as amended by section 1, chapter 84, Oregon Laws 2024, 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-

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 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

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

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

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

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

17 (e) For school district bargaining:

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

20 (B) "Employment relations" excludes the school or educational calendar, standards of perform-
21 ance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and
22 at-work personal conduct requirements respecting smoking, gum chewing and similar matters of
23 personal conduct, the standards and procedures for student discipline, the time between student
24 classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS
25 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that
26 is permissive under paragraphs (b), (c) and (d) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (20) "Public employer" means the State of Oregon, and the following political subdivisions:

1 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
 2 politan service districts, public service corporations or municipal corporations and public and
 3 quasi-public corporations.

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

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

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

22 (b) “Supervisory employee” includes:

23 (A) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and
 24 Science University who:

25 (i) Is employed as a president, vice president, provost, vice provost, dean, associate dean, as-
 26 sistant dean, head or equivalent position; or

27 (ii) Is employed in an administrative position without a reasonable expectation of teaching, re-
 28 search or other scholarly accomplishments.

29 (B) A guard at a correctional institution or mental hospital or a police officer who serves in the
 30 rank of lieutenant or higher except for those lieutenant guards or police officers who were included
 31 in an appropriate bargaining unit for purposes of collective bargaining on or before April 4, 2024.

32 (C) An employee of the Criminal Justice Division of the Department of Justice who manages
 33 police officers of the division.

34 (c) “Supervisory employee” does not include:

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

37 (B) A firefighter or an emergency communications worker prohibited from striking by ORS
 38 243.736 who assigns, transfers or directs the work of other employees but does not have the au-
 39 thority to hire, discharge or impose economic discipline on those employees;

40 (C) A guard at a correctional institution or mental hospital or a police officer who:

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

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

43 (iii) Assigns, transfers or directs the work of other employees but does not have the authority
 44 to hire, discharge or impose economic discipline on those employees;

45 (D) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and

1 Science University who is not a faculty member described in paragraph (b) of this subsection; or

2 (E) An employee of the Oregon State Police who:

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

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

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

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

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

11 **SECTION 2.** ORS 243.656 is amended to read:

12 243.656. The Legislative Assembly finds and declares that:

13 (1) The people of this state have a fundamental interest in the development of harmonious and
14 cooperative relationships between government and its employees;

15 (2) Recognition by public employers of the right of public employees to organize and full ac-
16 ceptance of the principle and procedure of collective negotiation between public employers and
17 public employee organizations can alleviate various forms of strife and unrest. Experience in the
18 private and public sectors of our economy has proved that unresolved disputes in the public service
19 are injurious to the public, the governmental agencies, and public employees;

20 (3) Experience in private and public employment has also proved that protection by law of the
21 right of employees to organize and negotiate collectively safeguards employees and the public from
22 injury, impairment and interruptions of necessary services, and removes certain recognized sources
23 of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes
24 arising out of differences as to wages, hours, terms and other working conditions, and by establish-
25 ing greater equality of bargaining power between public employers and public employees;

26 (4) The state has a basic obligation to protect the public by attempting to assure the orderly
27 and uninterrupted operations and functions of government;

28 (5) It is in the public interest to ensure that exclusive representatives of public employees are
29 able to effectively carry out their statutory duties by having direct access to represented employees,
30 including communicating with the employees at the workplace or otherwise;

31 (6) It is the purpose of ORS 243.650 to 243.809 to **prohibit compulsory payments to labor**
32 **organizations by employees who are not members of the labor organization. It is also the**
33 **purpose of ORS 243.650 to 243.809 to** obligate public employers, public employees and their rep-
34 resentatives to enter into collective negotiations with willingness to resolve grievances and disputes
35 relating to employment relations and to enter into written and signed contracts evidencing agree-
36 ments resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.809 to promote
37 the improvement of employer-employee relations within the various public employers by providing
38 a uniform basis for recognizing the right of public employees to join organizations of their own
39 choice, and to be represented by such organizations in their employment relations with public em-
40 ployers; and

41 (7) Ensuring meaningful communication between labor organizations and employees increases
42 the effectiveness of public employees' work performance.

43 **SECTION 3.** ORS 243.672 is amended to read:

44 243.672. (1) It is an unfair labor practice for a public employer or its designated representative
45 to do any of the following:

1 (a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaran-
 2 teed in ORS 243.662.

3 (b) Dominate, interfere with or assist in the formation, existence or administration of any em-
 4 ployee organization.

5 (c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the
 6 purpose of encouraging or discouraging membership in an employee organization. [*Nothing in this*
 7 *section is intended to prohibit the entering into of a fair-share agreement between a public employer*
 8 *and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been*
 9 *agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the*
 10 *payment-in-lieu-of-dues from the salaries or wages of the employees.*]

11 (d) Discharge or otherwise discriminate against an employee because the employee has signed
 12 or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650
 13 to 243.809.

14 (e) Refuse to bargain collectively in good faith with the exclusive representative.

15 (f) Refuse or fail to comply with any provision of ORS 243.650 to 243.809.

16 (g) Violate the provisions of any written contract with respect to employment relations including
 17 an agreement to arbitrate or to accept the terms of an arbitration award, where previously the
 18 parties have agreed to accept arbitration awards as final and binding upon them.

19 (h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and
 20 sign the resulting contract.

21 (i) Violate ORS 243.670 (2).

22 (j) Attempt to influence an employee to resign from or decline to obtain membership in a labor
 23 organization.

24 (k) Encourage an employee to revoke an authorization for the deductions described under ORS
 25 243.806.

26 **(L) Enter into an agreement that requires employees who are not members of the labor**
 27 **organization to make payments to the labor organization.**

28 (2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a
 29 public employee or for a labor organization or its designated representative to do any of the fol-
 30 lowing:

31 (a) Interfere with, restrain or coerce any employee in or because of the exercise of any right
 32 guaranteed under ORS 243.650 to 243.809.

33 (b) Refuse to bargain collectively in good faith with the public employer if the labor organization
 34 is an exclusive representative.

35 (c) Refuse or fail to comply with any provision of ORS 243.650 to 243.809.

36 (d) Violate the provisions of any written contract with respect to employment relations, includ-
 37 ing an agreement to arbitrate or to accept the terms of an arbitration award, where previously the
 38 parties have agreed to accept arbitration awards as final and binding upon them.

39 (e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and
 40 sign the resulting contract.

41 (3) It is an unfair labor practice for any labor organization to engage in unconventional strike
 42 activity not protected for private sector employees under the National Labor Relations Act on June
 43 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

44 (4) It is an unfair labor practice for a labor organization or its agents to picket or cause, induce,
 45 or encourage to be picketed, or threaten to engage in such activity, at the residence or business

1 premises of any individual who is a member of the governing body of a public employer, with respect
 2 to a dispute over a collective bargaining agreement or negotiations over employment relations, if
 3 an objective or effect of such picketing is to induce another person to cease doing business with the
 4 governing body member's business or to cease handling, transporting or dealing in goods or services
 5 produced at the governing body's business. For purposes of this subsection, a member of the Legis-
 6 lative Assembly is a member of the governing body of a public employer when the collective bar-
 7 gaining negotiation or dispute is between the State of Oregon and a labor organization. The
 8 Governor and other statewide elected officials are not considered members of a governing body for
 9 purposes of this subsection. Nothing in this subsection may be interpreted or applied in a manner
 10 that violates the right of free speech and assembly as protected by the Constitution of the United
 11 States or the Constitution of the State of Oregon.

12 (5) It is not an unfair labor practice or a violation of subsection (2)(a) of this section for the
 13 exclusive representative of an appropriate bargaining unit to charge the following employees in the
 14 unit reasonable fees and costs for representation that are unrelated to the negotiation of a collective
 15 bargaining agreement, provided that the employees are not members of the labor organization that
 16 is the exclusive representative and have not voluntarily entered into a fair-share agreement:

- 17 (a) A police officer of a city or municipal police department;
- 18 (b) A sheriff or deputy sheriff;
- 19 (c) A police officer commissioned by a university under ORS 352.121 or 353.125;
- 20 (d) An employee of the Department of Corrections or of Oregon Corrections Enterprises; or
- 21 (e) A parole or probation officer who supervises adult offenders.

22 **(6) It is not an unfair labor practice or a violation of subsection (2)(a) of this section for**
 23 **a labor organization to enter into an agreement whereby employees who are not members**
 24 **of the labor organization may voluntarily consent to pay payment-in-lieu-of-dues to the labor**
 25 **organization to resolve grievances and disputes in employment relations.**

26 [(6)] (7) An injured party may file a written complaint with the Employment Relations Board
 27 not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor
 28 practice complaint filed, a fee of \$300 is imposed. For each answer to an unfair labor practice
 29 complaint filed with the board, a fee of \$300 is imposed. The board may allow any other person to
 30 intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee
 31 of \$300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing
 32 party in any case in which the complaint or answer is found to have been frivolous or filed in bad
 33 faith. The board shall deposit fees received under this section to the credit of the Employment Re-
 34 lations Board Administrative Account.

35