

House Bill 3886

Sponsored by Representative SMITH G

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 modifies a defined term with respect to PECBA. The Act sets limits on the makeup of certain collective bargaining units. (Flesch Readability Score: 61.0).

Modifies the definition of "supervisory employee" to exclude certain strike-prohibited public employees. Limits the permissible composition of certain bargaining units.

A BILL FOR AN ACT

Relating to employment classification of certain strike-prohibited employees; amending ORS 243.650 and 243.682.

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

SECTION 1. ORS 243.650, as amended by section 1, chapter 84, Oregon Laws 2024, is amended to read:

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

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

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

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

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

(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

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

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

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

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

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

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

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

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

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

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

(20) "Public employer" means the State of Oregon, and the following political subdivisions: Cities, counties, community colleges, school districts, special districts, mass transit districts, metropolitan 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:

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

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

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

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

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

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

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

35 (B) A firefighter or an emergency communications worker prohibited from striking by ORS
 36 243.736 who assigns, transfers or directs the work of other employees but does not have the au-
 37 thority to hire, discharge or impose economic discipline on those employees;

38 (C) A guard at a [*correctional institution or*] mental hospital or a police officer who:

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

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

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

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

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

1 (i) Serves in a rank equivalent to or below the rank of sergeant;
 2 (ii) Is prohibited from striking by ORS 243.736; and
 3 (iii) Assigns, transfers or directs the work of other employees but does not hire, discharge or
 4 impose economic discipline on those employees[.]; or

5 **(F) A guard at a correctional institution who:**

6 **(i) Serves in a rank equivalent to or below the rank of lieutenant;**
 7 **(ii) Is prohibited from striking by ORS 243.736; and**
 8 **(iii) Assigns, transfers or directs the work of other employees but does not have the au-**
 9 **thority to hire, discharge or impose economic discipline on those employees.**

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

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

14 **SECTION 2.** ORS 243.682, as amended by section 2, chapter 84, Oregon Laws 2024, is amended
 15 to read:

16 243.682. (1) If a question of representation exists, the Employment Relations Board:

17 (a)(A)(i) Shall, upon application of a public employer, a public employee or a labor organization,
 18 designate the appropriate bargaining unit, and in making its determination shall consider such fac-
 19 tors as community of interest, wages, hours and other working conditions of the employees involved,
 20 the history of collective bargaining, and the desires of the employees. The board may determine a
 21 unit to be the appropriate unit in a particular case even though some other unit might also be ap-
 22 propriate.

23 (ii) May not designate as appropriate a bargaining unit that includes both guards at a
 24 correctional institution or mental hospital **who serve in a rank equivalent to the rank of lieu-**
 25 **tenant or sergeant** or police officers who serve in a rank equivalent to the rank of sergeant and
 26 rank-and-file subordinate employees. The limitation under this sub-subparagraph does not apply to
 27 a bargaining unit certified or recognized prior to April 4, 2024.

28 (B) Unless a labor organization and a public employer agree otherwise, may not designate as
 29 appropriate a bargaining unit that includes:

30 (i) A faculty member described in ORS 243.650 (23)(c)(D) who supervises one or more other fac-
 31 ulty members; and

32 (ii) Any faculty member who is supervised by a faculty member described in sub-subparagraph
 33 (i) of this subparagraph.

34 (b) Shall investigate and conduct a hearing on a petition that has been filed by:

35 (A) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
 36 unit desire to be represented for collective bargaining by an exclusive representative;

37 (B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining
 38 unit assert that the designated exclusive representative is no longer the representative of the ma-
 39 jority of the employees in the unit;

40 (C) A public employer alleging that one or more labor organizations has presented a claim to
 41 the public employer requesting recognition as the exclusive representative in an appropriate bar-
 42 gaining unit; or

43 (D) An employee or group of employees alleging that 30 percent of the employees assert that the
 44 designated exclusive representative is no longer the representative of the majority of employees in
 45 the unit.

(2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or labor organization acting on behalf of the employees files a petition alleging that a majority of employees in a unit appropriate for the purpose of collective bargaining wish to be represented by a labor organization for that purpose, or when a labor organization files a petition alleging that the majority in a group of unrepresented employees seek to be added to an existing bargaining unit, the board shall investigate the petition. If the board finds that a majority of the employees in a unit appropriate for bargaining or a majority of employees in a group of unrepresented employees that is appropriate to add to an existing bargaining unit have signed authorizations designating the labor organization specified in the petition as the employees' bargaining representative and that no other labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit or in the group of unrepresented employees seeking to be added to an existing bargaining unit, the board may not conduct an election but shall certify the labor organization as the exclusive representative unless a petition for a representation election is filed as provided in subsection (4) of this section.

(b) The board by rule shall develop guidelines and procedures for the designation by employees of a bargaining representative in the manner described in paragraph (a) of this subsection. The guidelines and procedures must include:

(A) Model collective bargaining authorization language that may be used for purposes of making the designations described in paragraph (a) of this subsection;

(B) Procedures to be used by the board to establish the authenticity of signed authorizations designating bargaining representatives;

(C) Procedures to be used by the board to notify affected employees of the filing of a petition requesting certification under subsection (4) of this section;

(D) Procedures for filing a petition to request a representation election, including a timeline of not more than 14 days after notice has been delivered to the affected employees of a petition filed under paragraph (a) of this subsection;

(E) Procedures that may be used for preparing and signing authorizations designating bargaining representatives using an electronic record and an electronic signature, as those terms are defined in ORS 84.004; and

(F) Procedures for expedited resolution of any dispute about the scope of the appropriate bargaining unit. The resolution of the dispute may occur after an election is conducted.

(c) Solicitation and rescission of a signed authorization designating bargaining representatives are subject to the provisions of ORS 243.672.

(3)(a) Except as otherwise provided in paragraph (b) of this subsection, a petition for representation submitted as an electronic record that includes a signed authorization using an electronic signature as described under subsection (2)(b)(E) of this section must:

(A) Include the following information:

(i) The name of signer;

(ii) The signer's electronic mail address or social media account;

(iii) The signer's telephone number;

(iv) The exact language that the signer is assenting to by providing the electronic signature;

(v) The date of submission of the electronic signature; and

(vi) The name of the public employer that employs the signer; and

(B) Be accompanied by a verification declaration by the petitioning party:

(i) Specifying the technology used to obtain and verify the signatures;

1 (ii) Providing the methods used to ensure the authenticity of the signature; and

2 (iii) Confirming that the information transmitted to the signer was the same information to
3 which the signer assented.

4 (b) If the technology used to provide the signed authorization does not support digital signatures
5 that are suited to satisfy the requirements of the verification declaration described in paragraph (a)
6 of this subsection, the petitioning party must submit evidence that, after the petitioning party ob-
7 tained an electronic signature, the party promptly transmitted a confirmation transmission to the
8 signer confirming that all of the information described under paragraph (a)(A)(i) to (vi) of this sub-
9 section is true.

10 (4)(a) Notwithstanding subsection (2) of this section, when a petition requesting certification has
11 been filed under subsection (2) of this section, an employee or a group of employees in the unit
12 designated by the petition, or one or more of the unrepresented employees seeking to be added to
13 an existing bargaining unit, may file a petition with the board to request that a representation
14 election be conducted.

15 (b) The petition requesting a representation election must be supported by at least 30 percent
16 of the employees in the bargaining unit designated by the petition, or 30 percent of the unrepre-
17 sented employees seeking to be added to an existing bargaining unit.

18 (c) The representation election shall be conducted on-site or by mail not later than 45 days after
19 the date on which the petition was filed.

20 (5) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to
21 subsection (1)(b) of this section that a question of representation exists, the board shall conduct an
22 election by secret ballot, at a time and place convenient for the employees of the jurisdiction and
23 also within a reasonable period of time after the filing has taken place, and certify the results of the
24 election.