

Minority Report
B-Engrossed
House Bill 3170

Ordered by the Senate June 9
Including House Amendments dated April 21 and Senate Minority
Report Amendments dated June 9

Sponsored by nonconcurring members of the Senate Committee on Education: Senators KRUSE, LINTHICUM

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.

Extends collective bargaining rights to certain faculty members of public university with academic rather than administrative focus. **Permits faculty members to choose whether to join labor organization. Exempts faculty members who do not join labor organization from making in-lieu-of-dues payment to labor organization.**

Applies to bargaining units certified or recognized on or after effective date of Act [*and to collective bargaining agreements entered into on or after effective date of Act*].

A BILL FOR AN ACT

1
2 Relating to extending collective bargaining rights to certain faculty members of a public university;
3 creating new provisions; and amending ORS 243.650 and 243.682.

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

5 **SECTION 1.** ORS 243.650 is amended to read:

6 243.650. As used in ORS 243.650 to 243.782, 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.

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 This subsection may not be construed to prohibit a public employer and a certified or recognized
2 representative of its employees from discussing or executing written agreements regarding matters
3 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
4 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

10 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
11 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
12 employment.

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

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

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

20 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
21 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
22 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
23 gum chewing and similar matters of personal conduct, the standards and procedures for student
24 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
25 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
26 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
27 subsection.

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

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

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

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

1 make recommendations for settlement of the dispute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **(b) "Supervisory employee" includes a faculty member of a public university listed in ORS**
24 **352.002 or the Oregon Health and Science University who:**

25 **(A) Is employed as a president, vice president, provost, vice provost, dean, associate**
26 **dean, assistant dean, head or equivalent position; or**

27 **(B) Is employed in an administrative position without a reasonable expectation of teach-**
28 **ing, research or other scholarly accomplishments.**

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

30 [(a)] **(A)** A nurse, charge nurse or nurse holding a similar position if that position has not tra-
31 ditionally been classified as supervisory; [*or*]

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

35 **(C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health**
36 **and Science University who is not a faculty member described in paragraph (b) of this sub-**
37 **section.**

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

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

42 **SECTION 2.** ORS 243.682 is amended to read:

43 243.682. (1) If a question of representation exists, the Employment Relations Board shall:

44 (a) Upon application of a public employer, a public employee or a labor organization, designate
45 the appropriate bargaining unit, and in making its determination shall consider such factors as

1 community of interest, wages, hours and other working conditions of the employees involved, the
2 history of collective bargaining, and the desires of the employees. The board may determine a unit
3 to be the appropriate unit in a particular case even though some other unit might also be appro-
4 priate. **Unless a labor organization and a public employer agree otherwise, the board may not**
5 **designate as appropriate a bargaining unit that includes:**

6 (A) **A faculty member described in ORS 243.650 (23)(c)(C) who supervises one or more**
7 **other faculty members; and**

8 (B) **Any faculty member who is supervised by a faculty member described in subpara-**
9 **graph (A) of this paragraph.**

10 (b) Investigate and conduct a hearing on a petition that has been filed by:

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

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

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

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

22 (2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or
23 labor organization acting on behalf of the employees files a petition alleging that a majority of em-
24 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a
25 labor organization for that purpose, or when a group of unrepresented employees files a petition
26 stating that the unrepresented employees seek to be included in an existing bargaining unit, the
27 board shall investigate the petition. If the board finds that a majority of the employees in a unit
28 appropriate for bargaining or in a group of unrepresented employees seeking to be included in an
29 existing bargaining unit have signed authorizations designating the labor organization specified in
30 the petition as the employees' bargaining representative and that no other labor organization is
31 currently certified or recognized as the exclusive representative of any of the employees in the unit
32 or in the group of unrepresented employees seeking to be included in an existing bargaining unit,
33 the board may not conduct an election but shall certify the labor organization as the exclusive
34 representative unless a petition for a representation election is filed as provided in subsection (3)
35 of this section.

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

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

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

43 (C) Procedures to be used by the board to notify affected employees of the filing of a petition
44 requesting certification under subsection (3) of this section;

45 (D) Procedures for filing a petition to request a representation election, including a timeline of

1 not more than 14 days after notice has been delivered to the affected employees of a petition filed
2 under paragraph (a) of this subsection; and

3 (E) Procedures for expedited resolution of any dispute about the scope of the appropriate bar-
4 gaining unit. The resolution of the dispute may occur after an election is conducted.

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

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

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

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

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

22 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS 243.650 to**
23 **243.782.**

24 **SECTION 4. (1) As used in this section, “faculty member” means a faculty member de-**
25 **scribed in ORS 243.650 (23)(c)(C).**

26 **(2) Notwithstanding the provisions of ORS 243.666 (1), a faculty member may choose**
27 **whether to join a labor organization certified by the Employment Relations Board or recog-**
28 **nized by the public employer as the exclusive representative of faculty members in an ap-**
29 **propriate bargaining unit. A faculty member who desires to join a labor organization shall**
30 **provide written consent to be a member of the labor organization.**

31 **(3) Notwithstanding the provisions of ORS 243.650 (10) and 243.672 (1)(c), a faculty mem-**
32 **ber who does not provide written consent under subsection (2) of this section is not required**
33 **to pay any amounts in lieu of dues, fees, assessments or other charges regularly required**
34 **of members of a labor organization.**

35 **(4) A labor organization is not required to provide services to faculty members who do**
36 **not provide written consent under subsection (2) of this section.**

37 **SECTION 5. Section 4 of this 2017 Act and the amendments to ORS 243.650 and 243.682**
38 **by sections 1 and 2 of this 2017 Act apply to bargaining units certified or recognized on or**
39 **after the effective date of this 2017 Act.**

40