

# House Bill 2215

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for AFSCME Council 75)

## 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**.

Modifies definition of "public employee" for purposes of collective bargaining. Specifies that only appropriate bargaining unit for supervisory employees of public employer is unit that consists only of supervisory employees and excludes managerial or confidential employees.

## A BILL FOR AN ACT

1  
2 Relating to public employee collective bargaining; amending ORS 243.650 and 243.682.

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

4 **SECTION 1.** ORS 243.650, as amended by section 1, chapter 15, Oregon Laws 2014, is amended  
5 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.  
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-  
28 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

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

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

4 (7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-  
 5 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of  
 6 employment.

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

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

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

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

22 (f) For employee bargaining involving employees covered by ORS 243.736, “employment  
 23 relations” includes safety issues that have an impact on the on-the-job safety of the employees or  
 24 staffing levels that have a significant impact on the on-the-job safety of the employees.

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

34 (8) “Exclusive representative” means the labor organization that, as a result of certification by  
 35 the board or recognition by the employer, has the right to be the collective bargaining agent of all  
 36 employees in an appropriate bargaining unit.

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

40 (10) “Fair-share agreement” means an agreement between the public employer and the recog-  
 41 nized or certified bargaining representative of public employees whereby employees who are not  
 42 members of the employee organization are required to make an in-lieu-of-dues payment to an em-  
 43 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition  
 44 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union  
 45 security agreement declaring they desire that the agreement be rescinded, the board shall take a

1 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-  
2 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an  
3 election favor the union security agreement, the board shall certify deauthorization of the agree-  
4 ment. A petition for deauthorization of a union security agreement must be filed not more than 90  
5 calendar days after the collective bargaining agreement is executed. Only one such election may be  
6 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement  
7 between a public employer and the recognized or certified bargaining representative.

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

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

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

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

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

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

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

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

34 (19) "Public employee" means an employee of a public employer but does not include elected  
35 officials, persons appointed to serve on boards or commissions, incarcerated persons working under  
36 **Article I**, section 41, [*Article I*] of the Oregon Constitution, or persons who are confidential  
37 employees[,] **or managerial employees or who are** supervisory employees [*or managerial*  
38 *employees.*] **who spend a preponderance of employment time exercising the authority described**  
39 **in subsection (23) of this section.**

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

44 (21) "Public employer representative" includes any individual or individuals specifically desig-  
45 nated by the public employer to act in its interests in all matters dealing with employee represen-

1 tation, collective bargaining and related issues.

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

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

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

20 (b) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the  
 21 work of other employees but does not have the authority to hire, discharge or impose economic  
 22 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 **SECTION 2.** ORS 243.682 is amended to read:

28 243.682. (1) If a question of representation exists, the Employment Relations Board shall:

29 (a) Upon application of a public employer, public employee or a labor organization, designate the  
 30 appropriate bargaining unit, and in making its determination:

31 **(A)** Shall consider such factors as community of interest, wages, hours and other working con-  
 32 ditions of the employees involved, the history of collective bargaining, and the desires of the  
 33 employees[. *The board*];

34 **(B)** May determine a unit to be the appropriate unit in a particular case even though some  
 35 other unit might also be appropriate[.]; **and**

36 **(C) For supervisory employees of a public employer, may only determine that the appro-**  
 37 **pr****iate bargaining unit is a bargaining unit that consists only of supervisory employees and**  
 38 **excludes managerial and confidential employees.**

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

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

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

45 (C) A public employer alleging that one or more labor organizations has presented a claim to

1 the public employer requesting recognition as the exclusive representative in an appropriate bar-  
2 gaining unit; or

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

6 (2)(a) Notwithstanding subsection (1) of this section, when an employee, group of employees or  
7 labor organization acting on behalf of the employees files a petition alleging that a majority of em-  
8 ployees in a unit appropriate for the purpose of collective bargaining wish to be represented by a  
9 labor organization for that purpose, or when a group of unrepresented employees files a petition  
10 stating that the unrepresented employees seek to be included in an existing bargaining unit, the  
11 board shall investigate the petition. If the board finds that a majority of the employees in a unit  
12 appropriate for bargaining or in a group of unrepresented employees seeking to be included in an  
13 existing bargaining unit have signed authorizations designating the labor organization specified in  
14 the petition as the employees' bargaining representative and that no other labor organization is  
15 currently certified or recognized as the exclusive representative of any of the employees in the unit  
16 or in the group of unrepresented employees seeking to be included in an existing bargaining unit,  
17 the board may not conduct an election but shall certify the labor organization as the exclusive  
18 representative unless a petition for a representation election is filed as provided in subsection (3)  
19 of this section.

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

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

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

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

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

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

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

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

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

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

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

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