

2013 ORS § 243.650¹

Definitions for ORS 243.650 to 243.782

As used in ORS 243.650 (Definitions for ORS 243.650 to 243.782) to 243.782 (Representation by counsel authorized), 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 are required by law to submit their differences to a third party for a final and binding decision.

- (6)** Confidential employee means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.
- (7)** (a) Employment relations includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.
- (b) Employment relations does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.
- (c) After June 6, 1995, employment relations does not include subjects that the Employment Relations Board determines to have a greater impact on managements prerogative than on employee wages, hours, or other terms and conditions of employment.
- (d) Employment relations does not include subjects that have an insubstantial or de minimis effect on public employee wages, hours, and other terms and conditions of employment.
- (e) For school district bargaining, employment relations excludes class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, the time between student classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS 329.704 (Local 21st Century Schools Councils), requirements for expressing milk under ORS 653.077 (Expressing milk in workplace), and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.
- (f) For employee bargaining involving employees covered by ORS 243.736 (Strikes by deputy district attorneys and certain emergency and public safety personnel), employment relations includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that have a significant impact on the on-the-job safety of the employees.
- (g) For all other employee bargaining except school district bargaining and except as provided in paragraph (f) of this subsection, employment relations excludes staffing levels and safety issues (except those staffing levels and safety issues that have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

- (8)** Exclusive representative means the labor organization that, as a result of certification by the board or recognition by the employer, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit.
- (9)** Fact-finding means identification of the major issues in a particular labor dispute by one or more impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.
- (10)** Fair-share agreement means an agreement between the public employer and the recognized 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 (Certified or recognized labor organization as exclusive employee group representative). 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 the Oregon University System who possesses authority to formulate and carry out management decisions or who represents managements 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 section 41, Article I 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 quasi-public corporations.
- (21)** Public employer representative includes any individual or individuals specifically designated by the public employer to act in its interests in all matters dealing with employee representation, collective bargaining and related issues.
- (22)** Strike means a public employees refusal in concerted action with others to report for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his or her absence in whole or in part from the full, faithful or proper performance of his or her duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.
- (23)** Supervisory employee means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert

supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, a nurse, charge nurse or similar nursing position may not be deemed to be supervisory unless that position has traditionally been classified as supervisory.

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

(25) Voluntary arbitration means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision. [Formerly 243.711; 1975 c.728 §1; 1978 c.5 §1; 1987 c.792 §1; 1995 c.286 §1; 1999 c.59 §61; 2001 c.104 §75; 2007 c.141 §1a; 2007 c.144 §3; 2013 c.302 §1]

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See also annotations under ORS 243.711 in permanent edition.

Notes of Decisions

The selection of a fair-share ratification procedure need only be some procedure which reasonably reflects the opinion of the majority of the bargaining unit members. *Oregon City Fedn. of Teachers v. Employe Relations Bd.*, 23 Or App 540, 543 P2d 297 (1975)

A courts review of the Employment Relations Boards decision as to what is a mandatory subject for collective bargaining is limited to determining whether the decision is lawful in substance and is supported by substantial evidence. *Springfield Educ. Assn. v. Springfield Sch. Dist.* 19, 24 Or App 751, 547 P2d 647 (1976), as modified by 25 Or App 407, 549 P2d 1141 (1976)

Substitute teachers are public employes within definition of this section. *Eugene School District v. Substitute Teacher Organization*, 31 Or App 1255, 572 P2d 650 (1977)

In a proceeding before the Employment Relations Board to certify a bargaining unit, an order by the board denying a motion to dismiss such a proceeding on the ground that the employer is not a public employer and holding that it is, to the contrary, a public employer, is not a final order so as to be appealable under the terms of ORS 183.480 (Judicial review of agency orders). *Lane Council of Governments v. Lane Council of Governments Employes Association*, 277 Or 631, 561 P2d 1012 (1977), on reconsideration 278 Or 335, 563 P2d 729 (1977)

Notwithstanding that it was improper for public employer to classify employe as supervisory employe, and thus place him on list of positions excluded from

collective bargaining, without first giving notice to union as required by bargaining agreement, employe was not then entitled to disobey order not to attend union meeting, but was required to remain at job and then file grievance under procedure provided by bargaining agreement. *Whitney v. Employment Division*, 280 Or 35, 569 P2d 1078 (1977)

Sheriff is public employer within meaning of this section. *Hockema v. OSEA*, 34 Or App 527, 579 P2d 282 (1978), Sup Ct review denied

Where collective bargaining agreement included provision requiring fair share payments-in-lieu-of-dues, and it was intent of parties to agreement that vote approving of agreement would constitute ratification of fair share requirement, subsequent judicial decision mandating separate vote for ratification of fair share provision was not retroactive and did not require repayment of previously withheld fair share payments. *Oregon City Federation of Teachers v. OCEA*, 36 Or App 27, 584 P2d 303 (1978)

Collective bargaining agreement requiring payments of only those nonunion members who had been union members during term of agreement but had dropped out of union was not fair share agreement within meaning of this section. *Stines v. OSEA*, 287 Or 643, 601 P2d 799 (1979)

Although teachers summer vacation was mandatory bargaining subject, scheduling summer vacation and teachers workdays were permissive bargaining subjects. *Eugene Education Assn. v. Eugene School Dist.*, 46 Or App 733, 613 P2d 79 (1980)

Determination of whether certain aspects of public schoolteacher evaluations were conditions of employment and therefore employment relations subject to mandatory collective bargaining was properly made by Employment Relations Board in exercise of interpretive rather than legislative authority as statute embodies complete expression of legislative policy not subject to refinement by ERB. *Springfield Educ. Assn. v. Springfield School Dist.*, 290 Or 217, 621 P2d 547 (1980)

Firefighters safety proposal was mandatory subject for bargaining where ERB found safety is of like character to statutory examples of employment relations and firefighters proved that preponderant purpose of specific language of proposal was to protect employes. *International Assoc. of Firefighters, Local 314 v. City of Salem*, 68 Or App 793, 684 P2d 605 (1984), Sup Ct review denied

Employment Relations Board has authority to determine propriety of payment-in-lieu-of-dues amount agreed upon by public employer and exclusive representative of employees. *Carlson v. AFSCME*, 73 Or App 755, 700 P2d 260 (1985), Sup Ct review denied

Prohibition in ORS 260.432 (Solicitation of public employees) against requiring public employee to support political cause does not supersede right of exclusive representative of employees to collect payment-in-lieu-of-dues to support political position affecting rights of represented employees. *Carlson v. AFSCME*, 73 Or App

755, 700 P2d 260 (1985), Sup Ct review denied

When fair share provision exempts from its operation certain state agencies, but is otherwise in all respects fair share agreement, it is invalid under this section because it does not require contribution by all nonunion members of bargaining unit. *Stevens v. OPEU*, 82 Or App 264, 728 P2d 97 (1986), Sup Ct review denied

Because legislature explicitly included matters concerning...vacations within definition of employment relations in this section, Employment Relations Board erred in interpreting employment relations to include only those vacation proposals that affect employment conditions to a greater extent than management rights. *Portland Fire Fighters Assoc. v. City of Portland*, 305 Or 275, 751 P2d 770 (1988)

City of Salems reserve police officer program involved matters concerning direct or indirect monetary benefits within meaning of employment relations. *Salem Police Employees Union v. City of Salem*, 308 Or 383, 781 P2d 335 (1989)

Collective bargaining agreement which required continuing payments to all employees except for those working less than 15 hours per week was fair share agreement. *Bates v. Portland Federation of Teachers*, 106 Or App 221, 807 P2d 306 (1991)

Where union collected fair share payments from nonunion public employees without complying with safeguards instituted to protect employees rights of free speech and association, restitution was appropriate remedy. *Elvin v. OPEU*, 313 Or 165, 832 P2d 36 (1992)

Employment Relations Board misinterpreted employment relations by treating workload as if workload were same as five enumerated items in this section. *Tualatin Valley Bargaining v. Tigard School Dist.*, 314 Or 274, 840 P2d 657 (1992)

Whether other conditions of employment includes proposal depends on specific facts of each case. *Tualatin Valley Bargaining v. Tigard School Dist.*, 314 Or 274, 840 P2d 657 (1992)

Determination whether subject has greater impact on managements prerogative than on wages, hours or other terms is irrelevant for matter specifically listed as being subject of employment relations. *Eugene Police Employees Association v. City of Eugene*, 157 Or App 341, 972 P2d 1191 (1998), Sup Ct review denied

Academically licensed refers to positions requiring academic training and involving provision of direct professional service to students, whether or not requiring formal licensing. *Linn-Benton-Lincoln Education Association v. Linn-Benton-Lincoln ESD*, 163 Or App 558, 989 P2d 25 (1999)

Where change in minimum qualifications necessary for position has impact on direct or indirect monetary benefits, impact of change in minimum qualifications is subject to mandatory bargaining. *Beaverton Police Association v. City of Beaverton*, 194 Or App 531, 95 P3d 1160 (2004)

Atty. Gen. Opinions

Right of a nonlawyer union business agent to represent a member before the Public Employe Relations Board, (1972) Vol 35, p 1088; American Association of University Professors as a labor organization, (1972) Vol 35, p 1105; seniority as a related economic issue, (1972) Vol 35, p 1134; Retirement benefit credit for unused sick leave, request by school district, (1973) Vol 36, p 665; uniform collective bargaining for state employes in same class of position, (1978) Vol 38, p 1694; permissible payment which may be required from nonmembers with respect to Fair Share Agreements, (1978) Vol 38, p 1855

Law Review Citations

28 WLR 259 (1992); 32 WLR 69, 707 (1996)

§§ 243.650 (Definitions for ORS 243.650 to 243.782) to 243.782 (Representation by counsel authorized)

See also annotations under ORS 243.711 to 243.760 in permanent edition.

Notes of Decisions

Savings clause in chapter 536, Oregon Laws 1973, did not prevent application of expanded bargaining rights to collective bargaining agreement then in force. Redmond Sch. Dist. No. 2J v. Pub. Employe Relations Bd., 19 Or App 212, 527 P2d 143 (1974)

The board had authority to review, section by section, a city ordinance governing labor relations between the city and its employes and to hold invalid those provisions purporting to govern matters of predominantly state-wide concern and which were in conflict with the 1973 Act. City of Beaverton v. Intl. Assn. of Fire Fighters, 20 Or App 293, 531 P2d 730 (1975), Sup Ct review denied

Board order, defining appropriate bargaining unit and ordering representation election, was interlocutory in nature and was not final order subject to judicial review within meaning of ORS 183.480 (Judicial review of agency orders). City of Hermiston v. Employment Relations Board, 280 Or 291, 570 P2d 663 (1977)

Employment Relations Boards policy of adhering to arbitration decisions in subsequent related proceedings advances legislative purpose, and is proper exercise of authority to administer this act. Siegel v. Gresham Grade Teachers Association, 32 Or App 541, 574 P2d 692 (1978)

Public Employes Collective Bargaining Law did not bar state agency from using state time and funds to campaign against labor organization in representation election. OSEA v. Department of Commerce, 34 Or App 727, 579 P2d 872 (1978)

Juvenile counselor appointed pursuant to [former] ORS 419.604 [bad link] did not

acquire collective bargaining rights granted by these sections where there was no showing that juvenile court judge had expressly authorized employer representatives to bargain on counselors behalf concerning terms and conditions of his employment. *Schmidt v. Jackson County Juv. Dept.*, 49 Or App 349, 619 P2d 1307 (1980)

Employment Relations Board employed scope of review contrary to Public Employee Relations Act when it reviewed merits of arbitration award rather than only its repugnancy to Public Employee Relations Act. *Willamina Ed. Assoc. v. Willamina Sch. Dist.* 30J, 50 Or App 195, 623 P2d 658 (1981)

Since Public Employee Collective Bargaining Act is general law addressed primarily to substantive social, economic and other regulatory objectives of this state which do not affect freedom of local community to choose its own political form, it does not mandate structural and organizational arrangements of local governments contrary to Oregon Constitution, Article XI, section 2. *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 639 P2d 90 (1981)

States decision to enact Public Employee Collective Bargaining Act supersedes city's power to allow its voters to arbitrate unresolved labor disputes and grant of power by Oregon Constitution, Article IV, section 1 to legislate by popular vote does not affect states power in this area. *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 639 P2d 90 (1981)

Arbitrators failure to conclude that school district violated collective bargaining agreement by violating statutory requirements incorporated into agreement was not sufficiently egregious to be reversible as being repugnant to act. *Eugene Educ. Assoc. v. Eugene School Dist 4J*, 58 Or App 140, 648 P2d 60 (1982)

Employment Relations Board formulation of test for review of arbitration awards in enforcement proceedings which would permit enforcement of arbitrators award unless (1) parties did not, in a written contract, agree to accept such an award as final and binding or (2) enforcement of the award would be contrary to public policy, was consistent with policies of Public Employee Collective Bargaining Act. *Willamina Sch. Dist. 30J v. Willamina Ed. Assn.*, 60 Or App 629, 655 P2d 189 (1982)

Public Employee Collective Bargaining Act requirement that juvenile court judge bargain in good faith with representatives of juvenile counselors and refrain from establishing terms and conditions of counselors employment in violation of applicable contractual provisions did not constitute an undue burden or interference with his judicial functions under [former] ORS 419.604 [bad link] or the separation of powers provision contained in Article III, section 1 of the Oregon Constitution. *Circuit Court v. AFSCME*, 61 Or App 311, 657 P2d 1237 (1983), *affd* 295 Or 542, 669 P2d 314 (1983)

Public Employee Collective Bargaining Act applies to the Judicial Department and is not inconsistent with ORS 1.002 (Supreme Court) or 1.008 (Personnel plan, fiscal plan and property plan). *Lent v. ERB*, 63 Or App 400, 664 P2d 1110 (1983), Sup Ct review denied

Employment Relations Board did not exceed statutory authority under Public Employees Collective Bargaining Act in designating appropriate bargaining unit which consists of police dispatchers who are employees who can strike and police officers who are forbidden from striking. *City of Canby v. Canby Police Association*, 68 Or App 317, 680 P2d 1033 (1984), Sup Ct review denied

Statutory purpose to provide uniform basis for employee organizing and bargaining would be subverted by holding that statute authorizing county civil service system supersedes collective bargaining required by this Act. *AFSCME v. Clackamas County*, 69 Or App 488, 687 P2d 1102 (1984)

Board had authority to order restitution where union collected fair share payments from nonunion public employees without complying with safeguards instituted to protect employees rights of free speech and association. *Elvin v. OPEU*, 313 Or 165, 832 P2d 36 (1992)

Atty. Gen. Opinions

School law on mediation as an exclusive procedure, (1971) Vol 35, p 961; seniority as a related economic issue, (1972) Vol 35, p 1134; legality of binding arbitration in public employment collective bargaining, (1972) Vol 36, p 18; validity of collective bargaining agreements between county intermediate education district and local education association on transfer of sick leave, (1975) Vol 37, p 328; authority of teachers to strike during contract year in absence of collective bargaining agreements, and to engage in picketing, (1975) Vol 37, p 732

Law Review Citations

51 OLR 7-69 (1971); 54 OLR 337-371 (1975); 56 OLR 457 (1977); 21 WLR 454 (1985); 70 OLR 969 (1991); 28 WLR 259 (1992); 32 WLR 69, 707 (1996)

Chapter 243

Notes of Decisions

Effect of Public Employee Relations Act is to modify authority of Personnel Division so that, while division retains responsibility for establishing general job salary grades and classifications, specific salary within each range which is paid to employee in public employee bargaining unit is subject to negotiation or arbitration under terms of this chapter. *AFSCME v. Executive Dept.*, 52 Or App 457, 628 P2d 1228 (1981), Sup Ct review denied

Provision of collective bargaining agreement giving present employees lateral transfer rights was valid under ORS 240.321 (Collective bargaining) and fact that its implementation resulted in male succeeding female employee did not violate state affirmative action statutes. *State Executive Dept. v. OPEU*, 91 Or App 124, 754

P2d 582 (1988)

Atty. Gen. Opinions

State agencies paying carpooling employees parking fees, (1974) Vol 36, p 1015

Law Review Citations

51 OLR 23, 44 (1971)

Related Statutes³

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Collective bargaining rights of court administrators and staff
- 182.320
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- 182.375
State Productivity Improvement Revolving Fund
- 183.502
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- 192.405
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- 741.201
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Laws applicable to Oregon Community Power

¹ Legislative Counsel Committee, *CHAPTER 243—Public Employee Rights and Benefits*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors243.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 243*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano243.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

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