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The Public Employee Choice Act

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SECRETARY OF STATE

Be It Enacted by the people of the state of Oregon:

SECTION 1. The people of Oregon find that:

- (1) A person shall have the individual freedom of choice in the pursuit of public employment.**
- (2) A person shall not be required to be a member of a labor organization as a condition of public employment.**
- (3) A person shall not be required to make compulsory payments to a labor organization as a condition of public employment.**
- (4) A labor organization shall not be required to collectively bargain for or provide representation services to public employees who choose to not join a labor organization.**

SECTION 2. Sections 3, 4, 7, 10, 11, and 12 of this 2016 Act are added to and made part of ORS 243.650 to 243.782.

SECTION 3.

- (1) This 2016 Act fundamentally changes public employee collective bargaining so that independent employees may not be required to make payments to a labor organization against their will and labor organizations may not be required to provide services to independent employees. Independent employees may not benefit from labor organization bargaining, representation, or services without sharing representation costs.**
- (2) Independent employees may not be included in appropriate bargaining units. Independent employees shall be treated as employees who work in a workplace that is not represented by an exclusive representative. Independent employees shall have their wages, benefits, and other terms of employment based on their individual education, experience, training, skills, and performance. Any such term of employment that is based on individual education, experience, training, skills, and performance is valid, nondiscriminatory, and may not constitute an unfair labor practice. Employers may not base wages, benefits, and other employment terms for independent employees on a collective bargaining agreement or other agreement which the independent employee did not sign.**
- (3) Union employees shall have their wages, benefits, and other terms of employment set according to the applicable collective bargaining agreement negotiated between their exclusive representative and employer. Any term of employment for a union employee that is based on a collective bargaining agreement is valid, nondiscriminatory, and may not constitute an unfair labor practice.**
- (4) A comparison of the employment terms and conditions for union employees with those of independent employees may not form the basis of an unfair labor practice or discrimination claim.**

SECTION 4.

(1) Compulsory payments to labor organizations by public employees who choose to not join a labor organization shall be prohibited.

(2) Public employees who choose to not join or pay a labor organization may not benefit from labor organization bargaining, representation, or services without sharing representation costs.

SECTION 5. ORS 243.650 is amended to read:

ORS 243.650. As used in ORS 243.650 to 243.782, 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. An appropriate bargaining unit may only include employees who join a labor organization, known as "union employees." An appropriate bargaining unit shall exclude employees who choose not to join or pay a labor organization, known as "independent employees." Labor organizations are not required to represent and bargain on behalf of independent employees. [However, a] 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 who have chosen to join a labor organization [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 who have chosen to join a labor organization 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 who have chosen to join a labor organization 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. "Collective bargaining" excludes the activities of independent employees. Independent employees are not parties to, included in, or covered by collective bargaining agreements.

(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 management's 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, requirements for expressing milk under ORS 653.077, 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, "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 **who have chosen to join a labor organization** [*in an appropriate bargaining unit*]. **Exclusive representatives are not required to represent independent employees.**

(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. 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.]

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

(11) [(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.

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

(13) [(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.

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

(15) [(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 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.

(16) [(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.]

(17) [(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. **Public employees who choose to join a labor organization are "union employees." Public employees who choose not to join a labor organization are "independent employees."**

(18) [(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.

(19) [(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.

(20) [(22)] "Strike" means a public employee's 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.

(21) [(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, "supervisory employee" does not include:

(a) A nurse, charge nurse or nurse holding a similar position if that position has not traditionally been classified as supervisory; or

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

(22) [(24)] "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672. **A comparison of the employment terms for union employees with the employment terms for independent employees, and any effects of those employment terms, may not form the basis of an unfair labor practice.**

(23) [(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.

SECTION 6. ORS 243.656 is amended to read:

243.656 Policy statement. The Legislative Assembly finds and declares that:

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

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

(3) Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards employees and the public from injury, impairment and interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working

conditions, and by establishing greater equality of bargaining power between public employers and public employees;

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

(5) It is the purpose of ORS 243.650 to 243.782 to **prohibit compulsory payments to labor organizations by public employees who choose to not join a labor organization. It is also the purpose of ORS 243.650 to 243.782 to obligate public employers, public employees who choose to join a labor organization,** and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers.

SECTION 7. Public employees who choose to not join a labor organization or to not annually renew membership in such an organization shall not be required to pay dues or payments-in-lieu-of-dues to a labor organization, another organization, or third party as a condition of employment.

SECTION 8. ORS 243.666 is amended to read:

243.666. (1) A labor organization certified by the Employment Relations Board or recognized by the public employer is the exclusive representative of the employees of a public employer **who annually indicate in writing that they choose to join and be represented by a labor organization** for the purposes of collective bargaining with respect to employment relations. *[Nevertheless any agreements entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof to the employer of the employee that this has been done.]*

(2) Notwithstanding the provisions of subsection (1) of this section, an individual employee **who is represented by a labor organization** or group of **such** employees at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization, if:

(a) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.

(3) Nothing in this section prevents a public employer from recognizing a labor organization which represents at least a majority of employees as the exclusive representative of the employees of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative in accordance with ORS 243.686.

SECTION 9. ORS 243.672 is amended to read:

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

(a) Interfere with, restrain or coerce employees who engage in collective bargaining *[in or because of the exercise of rights guaranteed in ORS 243.662]*. **Nothing in this section prohibits employers from establishing employment terms pursuant to subsection (5). A comparison of employment terms for union employees to the employment terms for independent employees, and any effects of such terms, may not form the basis of an unfair labor practice.**

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization. *[Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the payment-in-lieu-of-dues from the salaries or wages of the employees.]* **Nothing in this section prohibits employers from establishing employment terms pursuant to subsection (5). A comparison of employment terms for union employees to the employment terms for independent employees, and any effects of such terms, may not form the basis of an unfair labor practice.**

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

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

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

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

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

(i) Violate ORS 243.670(2).

(j) **Enter into a contract that requires public employees who choose to not join a labor organization to make compulsory payments to a labor organization.**

(k) **Base wages, benefits, and other employment terms for an independent employee on any collective bargaining agreement or other agreement which the independent employee did not sign.**

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

(a) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782. **This subsection shall not require a labor organization to represent, provide services to, or bargain on behalf of independent employees.**

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

(c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

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

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

(f) For any labor organization to engage in unconventional strike activity not protected for private sector employees under the National Labor Relations Act on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

(g) For a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other statewide elected officials are not considered members of a governing body for purposes of this paragraph. Nothing in this paragraph may be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

(h) For any labor organization to enter into a contract which requires public employees who choose to not join a labor organization to make compulsory payments to a labor organization.

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

(4) Employers are prohibited from basing wages, benefits, and other employment terms for independent employees on a collective bargaining agreement or other agreement which the independent employee did not sign. Employers are prohibited from basing wages, benefits, and other employment terms for union employees on the employment terms of independent employees.

(5) Employers shall base wages, benefits, and other employment terms for an independent employee on the employee's individual education, experience, training, skills, and performance. Any such term of employment that is based on individual education, experience, training, skills, and performance is valid, nondiscriminatory, and may not constitute an unfair labor practice. Employers shall base wages, benefits, and other employment terms for union employees on the applicable collective bargaining agreement negotiated between the exclusive representative and employer. Any term of employment

for a union employee that is based on a collective bargaining agreement is valid, nondiscriminatory, and may not constitute an unfair labor practice. A comparison of the employment terms for union employees with the employment terms for independent employees, and any effects of those employment terms, may not form the basis of an unfair labor practice.

SECTION 10.

(1) A labor organization is not required to collectively bargain for or provide any type of service to public employees who choose not to join a labor organization and who do not pay for such services.

(2) As used in this section, "representation services" means representation regarding employment relations.

SECTION 11. Notwithstanding any other provision of law, public employees who choose not to join a labor organization may not benefit from labor organization bargaining, representation, or services without sharing representation costs.

SECTION 12. This 2016 Act shall be interpreted to effectuate the dual purpose of prohibiting compulsory payments by independent employees to labor organizations and prohibiting the receipt of labor organization services and benefits by independent employees without sharing representation costs.

SECTION 13. The Public Employee Choice Act shall not apply to any collective bargaining agreement or contract between an employer and a labor organization entered into before the effective date of the Act but shall apply to a renewal, extension, or modification of any kind of a contract or agreement or to a new contract or agreement entered into after the effective date the Act.