

EMPLOYMENT RELATIONS BOARD

STATUTES AND RULES



**STATE OF OREGON
OCTOBER 2014**

**528 Cottage Street NE, Suite 400
Salem, Oregon 97301-3807
Phone (503) 378-3807
Fax (503) 373-0021
e-mail: EmpRel.Board@oregon.gov
web site: www.oregon.gov/ERB**

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Links are also available through the agency's website <http://www.oregon.gov/ERB/pages/index.aspx>.

Although copies of statutes are included in this Rulebook, they are not necessarily the most current version of the statute. Persons using this rulebook as a reference guide would be well-advised to make certain that they are using the current version of a statute.

EMPLOYMENT RELATIONS BOARD

PUBLISHED OCTOBER 2014

**EMPLOYMENT RELATIONS BOARD
OREGON ADMINISTRATIVE RULES, CHAPTER 115
OREGON REVISED STATUTES**

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OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 1 – PROCEDURAL RULES

DIVISION 1
PROCEDURAL RULES

Notice of Proposed Rule

115-001-0000 Prior to the adoption, amendment, or repeal of any rule, the Employment Relations Board shall give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.

(2) By mailing a copy of the notice to persons on the Employment Relations Board's mailing list established pursuant to ORS 183.335(7).

(3) By mailing a copy of the notice to the following persons, organizations and publications:

- (a) AFL-CIO;
- (b) American Federation of State, County and Municipal Employees, Council 75;
- (c) Association of Engineering Employees;
- (d) Amalgamated Transit Union, Division 757;
- (e) Association of Oregon Counties;
- (f) League of Oregon Cities;
- (g) Local Government Personnel Institute;
- (h) Oregon Education Association;
- (i) AFT-Oregon, AFT, AFL-CIO;
- (j) Oregon Labor Press;
- (k) Oregon Nurses Association;
- (l) Oregon School Boards Association;
- (m) Oregon School Employees Association;
- (n) Oregon Public Employees Union, SEIU, Local 503;
- (o) State of Oregon, Department of Administrative Services/Human Resources Division and Labor Relations Unit;
- (p) Teamsters Joint Council 37;
- (q) Capitol Press Room;
- (r) Oregon State Firefighters Council;

- (s) Cascade Employers Association;
- (t) Confederation of Oregon School Administrators;
- (u) Oregon Community College Association;
- (v) Teamsters Local 670;
- (w) Oregon Council of Police Associations;
- (x) Department of Justice, Labor and Employment Section;
- (y) Teamsters Local 223;
- (z) Teamsters Local 206;
- (aa) Oregon State System of Higher Education;
- (bb) Oregon Health Sciences University;
- (cc) Oregon Judicial Department.

Stat. Auth.: ORS 240.086(3) & ORS 243.766(7)
Stats. Implemented: ORS 183.341(4)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 3-1985, f. 10-29-85, ef. 10-31-85; ERB 2-1993, f. & cert. ef. 12-15-93; ERB 1-1994, f. 6-23-94, cert. ef. 7-1-94; ERB 3-1998, f. & cert. ef. 1-26-98

Model Rules of the Attorney General

115-001-0005 Procedures not otherwise specified in these rules shall be in accordance with the Model Rules of Procedure adopted by the Attorney General.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedures is available from the agency.]

Stat. Auth.: ORS 183, ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(3)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-1982, f. & ef. 1-21-82; ERB 3-1985, f. 10-29-85, ef. 10-1-85; ERB 1-1994, f. 6-23-94, cert. ef. 7-1-94

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 10 – GENERAL/POLICY AND DEFINITIONS

DIVISION 10
GENERAL/POLICY AND DEFINITIONS

Purpose of Rules

115-010-0000 The purpose of these rules is to implement and give effect to the provisions of state law in achieving the following objectives:

- (1) To provide uniform procedures to resolve questions of representation, unit clarification and deauthorization.
- (2) To remedy statutorily defined unfair labor practices.
- (3) To render assistance to employers and employee organizations in resolving their differences without resort to strikes, lockouts or other forms of conflict.
- (4) To foster and protect a merit system of personnel administration in the state government.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

Statutory Authority for Rules

115-010-0005 These rules are adopted under the authority provided by ORS 240.086(3) and 243.766(7).

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 240.086, 240.560, 243.672(3) & 243.676
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-2014, f. 8-20-14, cert. ef. 9-3-14

Definition of Terms

- 115-010-0010** (1) "Board" means the Employment Relations Board.
- (2) "Board Agent" means any agent designated by the Board to act in its behalf.
- (3) "Complainant" means a party who has filed an unfair labor practice complaint or a complaint alleging a violation of ORS 240.309.
- (4) "Conciliator" means the head of the State Conciliation Services.

(5) "Date of Filing" means the date of receipt by the Board.

(6) "Date of Service" means the date of mailing or the date of personal service.

(7) "Day" means calendar day unless otherwise specified.

(8) "Party" is any person, labor organization or employer filing a petition, complaint, charge or State Personnel Relations System appeal with the Board; any person, labor organization or employer named as a party in a petition, complaint, charge or State Personnel Relations System appeal, or any other person, labor organization or employer whose timely motion to intervene has been granted.

(9) "Petitioner" means a party who files a petition with the Board.

(10) "Recommended Order" means the Order of an Administrative Law Judge or other Board Agent consisting of Proposed Rulings on Motions and Evidentiary Matters, Findings of Fact, Conclusions of Law and a Recommended Order.

(11) "Respondent" means a party who is required to respond to a complaint, petition or charge.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 4-1985, f. 10-29-85, ef. 10-31-85; ERB 3-1995, f. 11-30-95, cert. ef. 12-1-95

Computation of Time

115-010-0012 Unless otherwise specifically provided in these rules, time will be computed by excluding the first day and including the last day unless the last day falls upon a legal holiday, Saturday, or a day when the office is closed before the end of or all of the normal workday, in which case the last day also is excluded.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), 243.766(7) & 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-2011(Temp), f. 8-25-11, cert. ef. 9-1-11 thru 12-31-11; ERB 4-2011, f. 12-28-11, cert. ef. 12-29-11

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 10 – GENERAL/POLICY AND DEFINITIONS

Organization and Records

The Employment Relations Board

115-010-0015 The Employment Relations Board is composed of three members, including a chairperson, appointed by the Governor. The chairperson is the agency administrator.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.065
Hist.: ERB 1-1980, f. & ef. 1-9-80

Board Meetings

115-010-0020 (1) At least five days advance notice of regular meetings shall be given to the media and persons known to have a special interest in the matters to be considered.

(2) Ordinarily, Board meetings, including contested case hearings, shall be open to the public. When circumstances warrant, the Board may close contested case hearings and the Board retains the right to go into executive session to deliberate for the ruling on contested case matters.

(3) The Board shall meet at such times and places as specified by the chairperson or at the request of two members of the Board. Advance notice of the time and place of each meeting shall be given to each Board member. Two members shall constitute a quorum.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 3-1998, f. & cert. ef. 1-26-98

Record of Meetings

115-010-0025 The minutes of all meetings and proceedings of the Board shall be prepared and maintained by the chairperson and shall be approved by the Board.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

Enforcement

115-010-0030 The Board may apply for and obtain court process in the enforcement of these rules and Board orders and against any practices found to be in violation of these rules or Board orders.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.766(4)
Hist.: ERB 1-1980, f. & ef. 1-9-80

Board Public Records

115-010-0032 (1) Inspection. All records of the Board, which are defined as public records and are not exempt from disclosure under ORS 192.410 to 192.505, shall be available for inspection by members of the public at the current principal offices of the Board, in Salem, Oregon. Inspection of such records will be permitted:

- (a) Upon request by an interested person of the custodian of such records;
- (b) During normal work hours of the Board;
- (c) At reasonable times, provided there is no undue disruption of the work of the Board or its agents.

(2) Custodians and Certification:

(a) The following agents of the Board are designated as custodians of Board public records:

(A) Board Administrative Assistant, for case logs, case reports, correspondence and other files maintained by and for the Board itself;

(B) Administrator of Conciliation Service for records concerning mediation, fact finding, and interest arbitration;

(C) Administrator of Hearings Division for matters contained in representation and unfair labor practice case files and for matters contained in State Personnel Relations System case files.

(b) Each custodian shall designate an alternate to act in his or her absence;

(c) Custodians and alternates shall certify, upon request, released copies of Board public records as true copies.

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 10 – GENERAL/POLICY AND DEFINITIONS

(3) All requests for copies of Board public records must be made in writing.

(4) The Employment Relations Board may assess a fee to provide public records. The requesting party must agree to pay the fee before the records will be made available. The amount of the fee will be the actual cost to locate, compile, make available for inspection, prepare copies (whether in paper, audio, microfilm, machine readable format, or other format), and deliver the public records.

(5) The following fees shall be charged for copies of Board public records or other nonexempt documents:

(a) One dollar and fifty cents per page for copies of any Board transcript or document of public record that is certified as a true copy;

(b) Twenty-five cents per page for copies of documents that are not certified, including paper, electronic, or facsimile copies.

(c) Fifteen dollars for a copy of the first compact disk (CD) recording of a hearing and ten dollars for each subsequent CD;

(d) Fifteen dollars for a computer disk containing copies of Board forms;

(e) One hundred fifty dollars per calendar year to receive copies of final Board Orders once a month;

(f) No fees will be charged to state agencies for providing copies of Board transcripts, tapes, Orders or any document or exhibit included in a case record which is not exempt from disclosure under ORS 192.410 to 192.505.

Stat. Auth.: ORS 240 & 243.766(7)
Stats. Implemented: ORS 192.410 & 192.500
Hist.: ERB 4-1980, f. 8-15-80, ef. 8-18-80; ERB 4-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1988, f. & cert. ef. 4-25-88; ERB 2-1989, f. 11-28-89, cert. ef. 12-4-89; ERB 2-1993, f. & cert. ef. 12-15-93; ERB 3-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07

Hearings

Use of Board Agents

115-010-0035 The Board may appoint a Board agent to hold any hearing that the law or rules require the Board to hold.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.080
Hist.: ERB 1-1980, f. & ef. 1-9-80

Notice of Hearings

115-010-0040 (1) Time and Place of Hearings. The time and place of hearing will be set by the Board or its agent and notice thereof served personally or by registered or certified mail upon all interested parties at least ten days in advance of the hearing date.

(2) Postponements. Any party who desires a postponement shall promptly upon receipt of notice of the hearing, make written request for such postponement, stating the reason therefor in detail. For good cause shown, the Board or its agent may grant such postponement, and may, at any time, order a postponement upon his/her own motion except as limited by OAR 115-035-0040, and except as provided by OAR 115-045-0025. The Board or its agent, in deciding a request for postponement, shall consider whether such request was promptly made.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

Hearings by Electronic Devices

115-010-0043 (1) The Board at its discretion may conduct a hearing or portion of a hearing by an electronic device, such as telephone, video, and Internet devices. A party seeking to have a hearing or to offer evidence by an electronic device shall, whenever practical, make the request ten business days prior to the scheduled hearing date. Less notice may be allowed as appropriate. In determining whether all or part of the hearing is to be heard by an electronic device, the Board shall consider the circumstances of the particular

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 10 – GENERAL/POLICY AND DEFINITIONS

case including: The amount of notice given the Board and opposing parties, availability of equipment, length of hearing, amount of documentary evidence to be utilized during the proposed testimony, number and location of witnesses, the degree to which witness credibility is at issue, the hardship on the parties, objections of an opposing party, and cost to the Board.

(2) Where all or part of a hearing is conducted by an electronic device, the parties shall have representation rights otherwise accorded for hearings under Board rules in such proceedings. In hearings conducted by an electronic device:

(a) Witnesses must testify from their own recollection;

(b) Witnesses' recollection may be refreshed only from documents that are premarked and provided to the parties;

(c) Witnesses may not read from notes unless such are provided to the opposing party; and

(d) Representatives may not communicate with witnesses during their testimony, except on the record.

(3) A party desiring to offer exhibits into evidence in the case or during a portion of the case heard by an electronic device shall provide an original and copy to the Board and a copy to each of the other parties at least five business days before the date of the scheduled electronic device hearing.

(4) For electronic device hearings, the Board shall pay the fees for use of the electronic device, the site at which the Board conducts the hearing, and the site at which witnesses testify; the parties shall pay any separate fees for the sites from which their representatives participate in the hearing.

(5) The Board may conduct oral argument, under OAR 115-010-0095, or conduct other business through hearings held by an electronic device. A party presenting oral argument in an electronic device hearing shall

pay all site and electronic device fees associated with the hearing.

Stat. Auth.: ORS 240 & ORS 243.766(7)

Stats. Implemented: ORS 243.766(7)

Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 2-1993, f. & cert. ef. 12-15-93; ERB 1-2000, f. & cert. ef. 12-1-00

Motions

115-010-0045 (1) A request for any ruling, order, or other relief may be made by filing a written motion. The motion need not be in any particular form.

(2) Before filing a motion, the moving party shall make a good-faith effort to confer with the non-moving party to seek resolution of the matter. The motion must describe all efforts and the result of the effort.

(3) Any response to a motion must be filed within 14 days of the date the motion is served.

(4) Replies from the moving party to the response are allowed only when requested or authorized by the Board Agent.

(5) Written motions shall be filed with the Board or its agent. A copy of the written motion must be served upon other parties to the proceeding. The Board or its agent shall be provided with proof of service.

(6) Motions made at hearing may be stated orally on the record, and shall briefly identify the grounds for the motion and the order or relief sought.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 240.560 & 243.676

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-2014, f. 8-20-14, cert. ef. 9-3-14

Rules of Evidence

115-010-0050 The rules of evidence except for division 65 shall be:

(1) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 10 – GENERAL/POLICY AND DEFINITIONS

(3) All offered evidence, not objected to, may be received by the Board or its agent subject to the Board or its agent's discretion to exclude irrelevant, immaterial or unduly repetitious matter.

(4) Evidence objected to may be received by the Board agent with rulings on its admissibility or exclusion to be made at the time a proposed order is issued.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

Subpoenas

115-010-0055 (1) Subpoenas for the attendance of witnesses, for the production of records or other documents in Board hearings or for the production of records or other documents prior to hearing but after service of the petition or complaint, unless issued by the Board on its own motion, shall be issued for the parties only upon application in writing and a showing of general relevance and reasonable scope of the testimony of a witness/records or documents. The application should identify the case by title and case number, name specific witnesses, records and other documents for which subpoena is requested, and describe the general relevance and reasonable scope thereof. Subpoenaed witnesses shall receive fees and mileage as prescribed by ORS 44.415 for witnesses in civil proceedings. The fees and mileage shall be paid by the party that subpoenas the witness.

(2) Subpoenas may be issued by attorneys of record in the manner and form prescribed by ORS 183.440.

(3) All subpoenas shall be served within a reasonable time prior to the hearing or date designated for the production of records or documents.

(4) Any party desiring to contest a subpoena issued in any hearing of the Board may do so by filing a motion to quash with a copy of the

subpoena the party seeks to quash prior to the outset of a hearing on the merits.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 4-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1988, f. & cert. ef. 4-25-88; ERB 1-2000, f. & cert. ef. 12-1-00

Witnesses

115-010-0060 (1) All testimony to be considered at a hearing, except matters officially noticed or entered by stipulation, shall be sworn or affirmed.

(2) Refusal of a witness to answer any question ruled to be proper shall, in the discretion of the Board or its agent, be grounds for excusing the witness or striking any or all testimony given by the witness.

(3) A party may not call the opposing party's representative as a witness absent a showing that such testimony is necessary and will not be cumulative or repetitive. Notice of intention to call the opposing party's representative as a witness, together with a supporting affidavit, must be filed with the Board no later than 14 days before the hearing date.

(4) Subsection (3) of this rule does not apply to a party appearing *pro se*.

Stat. Auth.: ORS 240.086(3) & ORS 243.766(7)
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1994, f. 6-23-94, cert. ef. 7-1-94; ERB 2-1998, f. & cert. ef. 1-26-98

Depositions

115-010-0065 Board or its agents may order the taking of depositions for perpetuation of testimony provided, however, that: The statutory criteria for granting requests for depositions in civil court proceedings for perpetuation of testimony shall apply, except as herein modified. A request for deposition to perpetuate testimony shall be filed with the Board in a timely manner so that, if ordered, it

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can be taken in sufficient time to be prepared for use in any hearing scheduled on a complaint or petition, unless all parties agree to a continuance to accomplish same. Such request shall be filed in writing in triplicate and a true copy thereof shall be simultaneously served on all other parties in the proceeding. Proof of such service shall accompany the request. The request shall set forth the name and address of the witness, materiality of his/her testimony, reasons why perpetuation of such testimony is required, and specify the time the deposition will be completed for use by the parties. The request shall ask for an order that the testimony of such witness be taken at no expense to the Board, before an officer authorized to administer oaths under state law, and shall set forth the name of such officer, and the time and place for said deposition.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 3-1998, f. & cert. ef. 1-26-98

Prehearing Procedures

115-010-0068 (1) The Board or its agent may convene prehearing conferences with the parties' representatives for the purpose of:

- (a) Scheduling hearing dates, witnesses for hearing and further prehearing conferences;
- (b) Disposing of pending motions;
- (c) Formulating and simplifying issues;
- (d) Discussing settlement of any or all of the issues;
- (e) Avoiding submission of unnecessary or cumulative exhibits or other evidence;
- (f) Stipulating to facts;
- (g) Discussing the need for any special hearing procedures; or
- (h) Discussing any other matters that may assist in the disposition of the matter.

(2) At the discretion of the Board or its agent, the prehearing conference may be held

by telephone or in person and may be recorded.

(3) Each party shall provide an exhibit list, witness list and exhibits to the other parties. These documents must be received no later than seven days before the scheduled hearing, unless the Board Agent directs otherwise.

(4) A party that fails to comply with prehearing requirements set forth in the rule or ordered by the Board or its agent shall be denied the right to offer such evidence or make argument regarding such matter at the hearing unless good cause is shown.

(5) The Board or its agent may rule prior to hearing on one or more of the claims or defenses, or a portion of any claim or defense, asserted in a complaint or answer. The Board agent may defer issuing a proposed order on any such prehearing ruling until after a hearing is held and a proposed order is issued on remaining claims or defenses.

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 240.086, 240.560, 243.672(3) & 243.676
Hist.: ERB 2-1993, f. & cert. ef. 12-15-93; ERB 2-2014, f. 8-20-14, cert. ef. 9-3-14

Conduct of Hearings

115-010-0070 (1) General Procedure:

(a) The Board or its agent will open the hearing with a brief introduction of parties and issues;

(b) Parties may make opening statements;

(c) Parties may present evidence in support of their respective positions. Cross-examination of witnesses will be allowed the opposing party(ies);

(d) A party may make closing argument orally or, when requested by the party, in a post-hearing brief.

(2) Conference During Hearing. In any proceeding, the Board or its agent may, in his/her discretion, call the parties together for a conference prior to the taking of testimony or may recess the hearing for such conference to resolve evidentiary or procedural matters. The

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results of such conference shall be stated on the record.

(3) Stipulation as to Facts. The parties to any proceeding or investigation may, by stipulation and subject to approval by the Board or its agent, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties thereto and may be regarded and used as evidence at the hearing.

(4) Continuances. On the motion of a party or upon his/her own motion, the Board or its agent may continue the hearing. The date of such continued hearing may be fixed at the time of the hearing or by later written notice to the parties.

(5) Burden of Proof:

(a) Representation, clarification and unit redesignation hearings are investigatory. Their purpose is to develop a full factual record. There is no burden of proof. The Board or its agent shall determine the order of presentation of evidence and may examine witnesses, require the production of documents and call witnesses not called by the parties;

(b) Unfair labor practice complaint hearings are adversarial. The complainant has the burden of proof and the burden of going forward with the evidence. The respondent has the burden of proving affirmative defenses, if any;

(c) For burden of proof in State Personnel Relations System cases, see OAR 115-045-0030.

(6) Exhibits:

(a) A party intending to offer exhibits shall, where practicable, have them marked for identification and presented to opposing party(ies) in a prehearing conference with the Board or its agent prior to the opening of any Board hearing;

(b) A party offering an exhibit shall provide two copies to the Board or its agent and a copy to opposing party(ies) prior to seeking its admission into evidence. Except in unusual circumstances, failure to provide such copies

shall constitute a basis for declining to admit the exhibit;

(c) A party seeking to offer solid objects other than documents shall provide photograph(s) which will be received in lieu of such solid objects. A copy of the photograph must be provided to the other party(ies);

(d) A party relying on voluminous or bulky documents shall provide the Board or its agent and other party(ies) with written extracts of matters therein which are being relied upon. If a party seeks admission of the whole document, the party shall bear the Board cost for reproducing such document if it is subsequently required as part of the record forwarded to the parties and the courts on any appeal.

(e) A party wishing to submit a transcript of an audio recording as an exhibit must also submit a notarized statement from the transcriptionist that the document is a verbatim transcript of the audio recording. A copy of the audio recording and transcript must be provided to the opposing party no less than 14 days before the first day of hearing.

(7) If a party chooses to have a certified transcript of the hearing prepared, the Board will be provided, at no charge, with a certified copy of such transcript.

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 240.086, 240.560,
243.672(3) & 243.766(7)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 4-1980, f.
8-15-80, ef. 8-18-80; ERB 4-1985, f. 10-29-85, ef.
10-31-85; ERB 1-1988, f. & cert. 4-25-88; ERB 1-
1991, f. 11-21-91, cert. ef. 12-1-91; ERB 2-1998, f.
& cert. ef. 1-26-98; ERB 2-2014, f. 8-20-14, cert. ef.
9-3-14

Conduct at Hearing

115-010-0075 All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with the Board agent's effort to retain order are grounds for removal from the hearing.

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Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS
243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

Briefs

115-010-0077 (1) Briefs shall not ordinarily be required of the parties to a contested case hearing. Where briefs are required, or permitted, they must be captioned with the Board case title and number, and must be typewritten or printed with double spacing on letter-sized paper.

(2) Briefs must substantially comply with the following format:

- (a) Brief statement of pertinent facts;
- (b) Statement and discussion of disputed issues supported by available precedent;
- (c) Concise summary of reasons for granting requested relief.

(3) Briefs shall not exceed 30 pages, unless expressly permitted by the Board or its agent.

(4) Three copies of the briefs must be filed with the Board. Copies of briefs must be served on the other party(ies) in the case, and proof of such service must accompany the brief when filed.

(5) Unless the parties agree otherwise, briefs must be filed within 14 days from the conclusion of the hearing. Once a brief filing date has been established, parties must ask the Board Agent for an extension of time. Parties must provide the Board Agent with the other parties' positions to the extension request.

(6) The Board or its agent may disregard any brief which fails to comply with this rule.

(7) Reply briefs will not be accepted, unless expressly permitted by the Board or its agent.

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 240.086, 240.560,
243.672(3) & 243.766(7)
Hist.: ERB 4-1980, f. 8-15-80, ef. 8-18-80; ERB 4-
1985, f. 10-29-85, ef. 10-31-85; ERB 2-1998, f. &
cert. ef. 1-26-98, ERB 2-2014, f. 8-20-14, cert. ef. 9-
3-14

Board Employees as Witnesses

115-010-0080 A Board employee may not be called and may not appear as a witness in a case in which he/she has been involved without approval of the Board.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS
243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

Recommended Order

115-010-0085 Unless a majority of the Board hears the case or considers the entire record, the Board agent shall issue a Recommended Order and serve a copy on each party.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(3), ORS
243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 4-1985, f.
10-29-85, ef. 10-31-85

**Objections to Board Agent's
Recommended Order**

115-010-0090 The parties shall have 14 days from date of service of a Recommended Order to file specific written objections with the Board. Upon good cause shown, the Board may extend the time within which the objections shall be filed. When objections are filed, the party making the objections shall serve a copy of the objections on all parties of record in the case and provide the Board with proof of service. A failure to so serve, and provide proof of service shall in the absence of good cause shown, invalidate any such objections as being untimely and the Board may disregard same in making a final determination in the case.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS
243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

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Board Review

115-010-0095 (1) If timely objections are filed, parties will be given an opportunity to present oral argument to the Board. If a party desires to submit written argument in lieu of oral argument, it must be filed with the Board not less than five days before the date set for argument and the party filing the written argument shall serve a copy on parties of record. The Board shall be provided with proof of service.

(2) If parties wish to submit written memoranda in aid of oral argument in addition to argument, such written memoranda must be filed with the Board not less than five days before the date set for oral argument and copies must be served upon parties of record. The Board shall be provided with proof of service.

(3) Review by the Board of a Board agent's Proposed Rulings on Motions and Evidentiary Matters, Findings of Fact, Conclusions of Law and a Recommended Order shall be confined to the record. The order of the Board shall be in writing and shall be sent to the parties.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

Petitions for Reconsideration or Rehearing

115-010-0100 Petitions for reconsideration or rehearing may be filed, but not later than 14 days from date of service of the order, and must include proof of service of a copy of the petition upon other parties to the proceeding. Petitions shall state specifically the grounds for reconsideration. The Board may, at its discretion, set such petitions for oral argument.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-1998, f. & cert. ef. 1-26-98

Service of Documents

115-010-0105 All documents shall be served upon the named parties unless there is a representative of record in which case documents may be served on the representative.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 1-1980, f. & ef. 1-9-80

Ex Parte Communications

115-010-0110 (1) At any time that petitions, complaints, objections, election challenges, or other contested case matters have been set for hearing by the Board or its agents, if any party or counsel in the case communicates with the Board, board member, or the board agent assigned to such case, concerning any fact in dispute in the case, the Board, board member or board agent, as appropriate, shall notify all other parties and counsel in the case of such communications, either orally or in writing, and shall expressly include a statement of such communication, notification to other parties and counsel, and responses received thereto in the record of the case.

(2) The mere noting of such ex parte communications in the record will not be considered evidence of the facts in dispute unless otherwise agreed by all parties to the case. The Board and its agents shall rely only on the admissible evidence of record in determining the merits of any disputed issue in a case.

(3) This rule shall not apply to matters presented or obtained during preliminary investigation of the petition, complaint, objections, or challenge, made by Board agents prior to the service of the notice of hearing in a case, and shall not apply to requests for subpoenas.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3), ORS 243.766(7) & ORS 663.320
Hist.: ERB 4-1980, f. 8-15-80, ef. 8-18-80

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Facsimile Filings

115-010-0115 (1) Any complaint, answer, petition or other document required or allowed to be filed with the Board or served on a party may be filed or served by means of a telephonic facsimile communication device. The Board fax number is (503) 373-0021.

(2) Filings with the Board by facsimile are subject to the following conditions:

(a) A filing must conform with all applicable rules. Except for (2)(e) below, only one copy of a document need be filed by facsimile even when multiple copies otherwise would be required;

(b) A complaint or answer will not be considered filed until the filing fees required by ORS 243.672(3) have been paid.

(c) The Board will charge twenty five dollars for each filing by means of facsimile;

(d) When reception of a document begins after 5 p.m., the date of filing of that document, for purposes of Board rules, shall be the date of the next regular workday.

(e) A party filing a complaint or answer by fax must simultaneously mail to the Board three copies of the complaint or answer.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 240.086(3), 243.766(7) & 663.320

Hist.: ERB 2-1989, f. 11-28-89, cert. ef. 12-4-89; ERB 2-1993, f. & cert. ef. 12-15-93; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07

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CHAPTER 115, DIVISION 15 – DECLARATORY RULINGS

The Board deleted Division 15, Declaratory Rulings, as we are required to use the rules adopted by the Department of Justice. Those rules may be found at OAR 137-002-0010 through OAR 137-002-0060. They are located at the following link:

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_002.html

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 20 – EXISTING LOCAL CHARTERS AND ORDINANCES

DIVISION 20
EXISTING LOCAL CHARTERS AND
ORDINANCES

Method of Review

115-020-0000 Any provisions of local charters and ordinances adopted pursuant thereto in existence on October 5, 1973, which are not in conflict with the rights and duties established in ORS 243.650 through 243.782 may remain in full force and effect after the Board has determined that no conflict exists. Such a determination will be made by the Board only after reviewing and hearing comments on such charters and ordinances at a public meeting. At least ten days public notice of such hearing shall be given, setting forth the date, time and place of the hearing and the purpose for which it is called.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.772

Hist.: ERB 1-1980, f. & ef. 1-9-80

Petition for Determination

115-020-0005 Any interested party may petition the Board for a ruling as to whether a provision of a local charter and ordinances adopted pursuant thereto is in conflict with the rights and duties established in ORS 243.650 through 243.782. The petition shall state the name of the local government, the full text of the provision in the local charter and/or ordinances and the date they were adopted. Upon receipt of such a petition, the Board shall set the matter for hearing.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.772

Hist.: ERB 1-1980, f. & ef. 1-9-80

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 25 – PUBLIC EMPLOYEE REPRESENTATION

DIVISION 25
PUBLIC EMPLOYEE
REPRESENTATION

Representation Petitions

115-025-0000 (1) Who may file:

(a) A petition for an election to certify a public employee representative may be filed by any labor organization claiming to represent 30 percent of the public employees in an alleged appropriate bargaining unit. A petition for certification also may be filed by any labor organization claiming that 30 percent of the employees in a bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the bargaining unit and that they want the petitioning labor organization to represent them;

(b) A petition for an election to certify a public employee representative may be filed by a public employer alleging that one or more labor organizations have presented to it a request to be recognized or continue to be recognized as employee representative and that the employer has a good faith doubt as to the continued majority status of the incumbent labor organization based on reasonable objective standards;

(c) A petition under ORS 243.682(2)(a) to certify a public employee representative without an election may be filed by an employee, group of employees or a labor organization claiming that a majority of employees in an appropriate unit wish to be represented by a labor organization and that no other labor organization is certified or recognized as the exclusive representative of any employee in the proposed unit;

(d) A petition for decertification may be filed by a public employee or group of public employees alleging that 30 percent of the employees in a bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit;

(e) A petition for redesignation of a bargaining unit represented by a recognized or certified exclusive representative may be filed by a public employer contending that the existing bargaining unit includes an employee or employees who should not be included in such bargaining unit under the criteria set forth in ORS 243.682(1)(a). The timeliness requirements of OAR 115-025-0015 shall serve as a bar to petitions under this subsection even if an election is not held. A petition for a redesignation where a contract exists must be filed not more than 180 days and not less than 150 days before the end of the contract period. If a contract is for more than three years, a petition may be filed not more than 180 days and not less than 150 days before the end of the expiration of the first three years of the contract or anytime after three years from the effective date of the contract. However, if a new contract is negotiated during the fourth year of the contract and prior to the filing of a petition for election, the new contract shall serve as a contract bar. An order redesignating a unit where a contract exists shall be effective upon expiration of the contract.

(2) Petitions shall be filed in writing with the Board on a form approved by the Board. The Board Agent shall serve a copy of the petition upon the parties disclosed therein.

Stat. Auth.: ORS 240 & 243

Stats. Implemented: ORS 243.682

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1981(Temp), f. 8-6-81, ef. 8-10-81; ERB 1-1982, f. & ef. 1-19-82; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08

Petitions for Clarification of Bargaining Unit

115-025-0005 (1) Filing Petitions for Clarification of a Bargaining Unit:

(a) Other than petitions filed under subsection (b) of this section, petitions for clarification of a bargaining unit may be filed by the recognized or certified representative or

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CHAPTER 115, DIVISION 25 – PUBLIC EMPLOYEE REPRESENTATION

by the public employer when no question of representation exists, subject to other applicable requirements of this rule.

(b) A group of unrepresented employees may file a petition under ORS 243.682(2)(a) to include the unrepresented employees in an existing bargaining unit without an election when no question of representation exists, subject to other applicable requirements of this rule. The petition filed under this subsection may also be jointly filed with the recognized or certified representative of the existing bargaining unit.

(c) For purposes of this rule, a question of representation exists only when the employees who are the subject of such a petition are unrepresented and as a group would constitute an appropriate unit as determined by the Board. All petitions shall be filed in writing on a form approved by the Board. The petitioner shall designate one or more of the following subsections on the form to indicate the clarification issue(s) the petitioner intends to raise. After the filing of objections, if any, the Board Agent may determine the issues raised by the petition. If the Board Agent determines that the issue raised is different than that designated on the form, the Board Agent shall determine whether the petition complies with the requirements of the appropriate subsection(s).

(2) When the issue raised by the clarification petition is one of public employee status under ORS 243.650(6), (16), or (23), the petition may be filed at any time; except that where a position sought to be excluded is expressly by title included within the unit description, a petition may be filed only during the open period provided for in OAR 115-025-0015(4).

(a) The Board may order a self-determination election among the affected employees as a result of a petition filed by a labor organization under this subsection of this rule if the Board determines that an election would be appropriate to further the policy expressed in ORS 243.662; for example,

where the affected employees, as a class, were excluded from voting when the bargaining unit was certified and subsequently were treated as being excluded from the unit.

(b) A petition filed by a group of unrepresented employees under ORS 243.682(2)(a) and subsection (1)(b) of this rule will be processed in accordance with subsection (7) of this rule and OAR 115-025-0065.

(3) When the issue raised by the clarification petition is whether certain positions are or are not included in a bargaining unit under the express terms of a certification description or collective bargaining agreement, a petition may be filed at any time; except that the petitioning party shall be required to exhaust any grievance in process that may resolve the issue before such a petition shall be deemed timely by the Board.

(4) When the issue raised by the clarification petition is whether certain unrepresented positions should be added to an existing bargaining unit, the petition must be supported by a 30 percent showing of interest among the unrepresented employees sought to be added to the existing unit, unless the petition is filed pursuant to subsection (1)(b) of this rule, in which case the petition must be supported by a majority of employees as required by subsection (7)(a) of this rule. If the employees sought to be added to the unit occupy positions that existed and were filled at the time of the most recent certification or recognition agreement, the petition must be filed during the open period provided for in OAR 115-025-0015(4) and will be subject to the provisions of 115-025-0015(1) and (3). If the employees sought to be added to the unit occupy positions that were created or were filled after the most recent certification or recognition agreement, the petition may be filed at any time and will not be subject to the provisions of 115-025-0015. Except for unit clarification petitions described in subsections (1)(b) and (7) of this rule, if the Board

OREGON ADMINISTRATIVE RULES
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determines that it would be appropriate to add the unrepresented positions to the existing bargaining unit, the Board shall order a self-determination election in which the unrepresented employees will vote either to be represented within the existing bargaining unit or for no representation. The election shall be conducted by a Board Agent in accordance with the provisions of 115-025-0055 and 115-025-0060, to the extent such rules are applicable to a self-determination election. If a majority of the unrepresented employees who vote cast ballots in favor of representation, the existing bargaining unit shall be clarified to include those employees.

(5) When the issue raised by the clarification petition is whether two or more bargaining units of the same employer's employees which are represented by the same labor organization should be merged, the petition must be filed during the open period provided for in OAR 115-025-0015(4), as that rule applies to the larger (or largest) of the bargaining units. A petition for clarification through merger must be supported by petitions (or cards) signed by more than 50 percent of the employees in each unit certifying that they wish their unit to be merged with the other unit. When the Board approves a clarification through merger, and the employees in the smaller unit are covered by a collective bargaining agreement, the employment conditions for the employees in the smaller unit will remain governed by their collective bargaining agreement until that agreement expires, prior to which the parties are obligated to begin negotiations for inclusion of the smaller unit employees under the larger unit agreement. The Board shall order a clarification through merger when it determines that the description of the merged unit, which must include all employees in the existing units, describes an appropriate unit.

(6) When the issue raised by the clarification petition is whether a group of employees who are represented within (as a fragment of) another bargaining unit more

appropriately belongs in a unit represented by the petitioning labor organization, the petition must be supported by a petition (or cards) signed by more than 50 percent of the employees in the affected group certifying that they wish to be represented by the petitioning labor organization as part of that organization's bargaining unit. The petition must be filed during the open period provided for in OAR 115-025-0015(4), as that rule applies to the petitioning organization's bargaining unit. If the Board determines that it would be appropriate to add the positions in question to the petitioning organization's bargaining unit, the Board shall order a self-determination election in which the employees in question will vote either to be represented within the existing bargaining unit or by the petitioning organization's bargaining unit. The election shall be conducted by a Board Agent in accordance with the provisions of 115-025-0055 and 115-025-0060, to the extent such rules are applicable to a self-determination election. If a majority of the employees who vote cast ballots in favor of representation by the petitioning organization, the Board shall order the clarification.

(7) Adding Unrepresented Employees by Clarification Petition:

(a) When the issue raised by the clarification petition is whether to add a group of unrepresented employees to an existing bargaining unit under ORS 243.682(2)(a) and subsection (1)(b) of this rule, the unrepresented employees will be added to the existing unit without an election if the Board finds that a majority of employees in the group of employees seeking to be included in the existing bargaining unit have signed authorization cards designating the labor organization specified in the petition as the exclusive representative, and no other labor organization is certified or recognized as the exclusive representative of any of the employees in the group of unrepresented employees seeking to be included in the existing bargaining unit. Authorization cards

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submitted under this subsection must be signed by employees within 180 days of the filing of the petition for clarification without an election.

(b) Notwithstanding subsection (a) of this section, one or more of the unrepresented employees to be included in the existing bargaining unit may file a petition with the Board requesting that an election take place, as set forth in OAR 115-025-0075. In order for the petition for election to be granted, the petition must be accompanied by a showing of interest from at least 30 percent of the unrepresented employees to be included in the existing bargaining unit.

Stat. Auth.: ORS 240, 243.766(2) & 243.766(7)
Stats. Implemented: ORS 243.682
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1988, f. & cert. ef. 4-25-88; ERB 1-1990, f. 7-19-90, cert. ef. 8-1-90; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 4-1998, f. & cert. ef. 1-26-98; ERB 1-2014(Temp), f. & cert. ef. 3-14-14 thru 9-10-14; ERB 3-2014, f.8-25-14, cert. ef. 9-10-14

Petitions for Amendment of Certification or Recognition

115-025-0008 A petition for amendment of certification or recognition may be filed when no question of representation exists. Such a petition shall be filed in writing with the Board on a form provided by the Board. Amendment may be appropriate to reflect a change in name or affiliation of the exclusive representative or a change in name of the employer. To show that no question of representation exists, the petitioner will be required to prove that the affiliation election was conducted in accordance with at least minimal due process.

Stat. Auth.: ORS 240 & 243
Stats. Implemented: ORS 243.682
Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 6-1985, f. 10-29-85, ef. 10-31-85

Petitions to Revoke Certification or Recognition

115-025-0009 A petition to revoke an existing Board certification or employer

recognition of an exclusive representative may be filed at any time by an employer or exclusive representative. The Board will order revocation only upon a showing that:

- (1) No collective bargaining agreement is in effect; and
- (2) The labor organization disclaims further interest in representing the bargaining unit or the labor organization is defunct.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.682
Hist.: ERB 1-1988, f. & cert. ef. 4-25-88

Contents of Petitions

115-025-0010 (1) Certification of Public Employee Representative Filed by a Labor Organization Under ORS 243.682(1). A petition for an election to certify a public employee representative shall, when filed by a labor organization, contain the following:

(a) Name, address, telephone number of the public employer and the employer representative to contact, including his/her title, if known;

(b) A description of the bargaining unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(c) Name, address, and telephone number of the recognized or certified exclusive representative, if any, and the date of prior certification or recognition and the expiration date of any applicable contract, if known to the petitioner;

(d) Names, addresses, and telephone numbers of any other interested labor organizations, if known to the petitioner;

(e) Any other relevant facts;

(f) Name and affiliation, if any, of the petitioner and its address and telephone number;

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(g) The signature of the petitioner's representative, including his/her title and telephone number; and

(h) A petition shall be accompanied by a showing of interest of not less than 30 percent of the employees in the unit alleged to be appropriate. "Showing of interest" means the evidence of support a petitioner must show in a bargaining unit or proposed bargaining unit before its petition will be acted upon. The showing may be made by original authorization cards or petitions which must include a statement of a desire by affected employees to be represented by the petitioner for purposes of collective bargaining and which must be signed and dated by employees in the unit during the 90 days preceding the filing of the petition; by dues records or payroll deduction records showing the employees to be current members of a petitioning organization; or, by an existing or the most recently expired bargaining agreement applicable to the bargaining unit, to which the petitioning organization was a party.

(2) Certification of Public Employee Representative Filed by a Public Employer:

(a) A petition filed by a public employer shall state that a request for representation or continued representation has been made by one or more labor organizations and that the public employer has a good faith doubt concerning the majority representative of its employees;

(b) A petition shall include all of the information set forth in section (1) of this rule, except subsections (1)(f) and (h) of this rule.

(3) Decertification of Public Employee Representative Filed by an Employee or a Group of Employees. A petition for decertification of public employee representative shall contain the following:

(a) A statement that the labor organization certified by the Board or recognized by the public employer no longer represents a majority of the employees in the bargaining

unit in which it is currently recognized or certified;

(b) The petition also shall contain the information set forth in section (1) of this rule; and

(c) The petition shall be accompanied by a showing of interest of not less than 30 percent of the employees in the unit in which an employee representative has been recognized or certified. The showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective bargaining by the recognized or certified representative. (See subsection (1)(h) of this rule for definition of "showing of interest".)

(4) Clarification of Unit or Amendment of Certification Filed by the Recognized or Certified Representative or by the Public Employer. A unit clarification or amendment of certification petition filed by the recognized or certified representative of a public employer or filed by a public employer shall, in addition to setting forth the information required by section (1) of this rule, except subsections (1)(b) and (h) of this rule, further contain the following:

(a) A description of the present bargaining unit and the date of the certification or recognition;

(b) Proposed clarification or amendment of the unit; and

(c) A statement by petitioner setting forth specific reasons as to why clarification or amendment is requested.

(5) Certification of Public Employee Representative Without an Election. An employee, a group of employees, or a labor organization may file a petition under ORS 243.682(2) to certify a public employee representative without a representation election. The petition shall contain the following:

(a) The name, address, telephone number and affiliation, if any, of the labor organization for which certification is sought;

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(b) A statement that the petitioner seeks certification without an election based on the Board's card check procedures;

(c) The name, address and telephone number of the public employer and the employer representative to contact, including his/her title, if known;

(d) A description of the bargaining unit claimed to be appropriate for the purpose of exclusive representation by the labor organization named in the petition. The bargaining unit description shall indicate the general classifications or job titles of employees to be included and those to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(e) A statement that no other labor organization is currently certified or recognized as the exclusive bargaining representative of any employee in the proposed unit;

(f) Any other relevant facts;

(g) The name, mailing address, telephone number and signature of the petitioner(s) or petitioner's representative; and

(h) A petition shall be accompanied by signed authorization cards, arranged alphabetically, from a majority of the employees in the proposed unit designating the labor organization named in the petition as the exclusive bargaining representative. Authorizations which do not substantially comply with OAR 115-025-0065(2) shall not be counted.

(6) Unit Clarification Without an Election, A petition filed under ORS 243.682(2)(a) and OAR 115-025-0005(1)(b), (2), or (4) to add a group of unrepresented employees to an existing bargaining unit must be submitted on a form approved by the Board.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.682

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert.

ef. 1-1-08; ERB 1-2014(Temp), f. & cert. ef. 3-14-14 thru 9-10-14; ERB 3-2014, f.8-25-14, cert. ef. 9-10-14

Timeliness of Petitions

115-025-0015 (1) Election Bar. No election may be held, and no petition for certification without an election may be filed, for a bargaining unit or a subdivision of one in which a valid election has been held or a petition for certification without an election has been filed during the preceding 12-month period. In mail ballot elections, the date of the election shall be the deadline for return of ballots to the Board. In on-site elections, the date of the election shall be the last day that the polls are open. In mixed on-site and mail ballot elections, the date of the election will be the latest of the foregoing dates.

(2) Contract Bar. The existence in an appropriate bargaining unit of a written collective bargaining agreement with a term of up to three years' duration shall be a bar to any election involving employees covered by the contract for its entire term. A contract with a term of more than three years shall be a bar for only the first three years of its term. A contract renewed either by new agreement or as the result of an automatic renewal provision shall have the same effect as a new contract. However, the short term extension of an existing contract to afford the parties time to negotiate a new contract shall not operate as a bar. The Board shall rule that a contract will not be given the effect of barring an election if it finds that unusual circumstances exist under which the contract is no longer a stabilizing influence and an election should be held to restore stability to the representation of employees in the unit.

(3) Certification Bar. The certification of an exclusive bargaining representative will serve as a bar to an election for a period of one year from the date of certification unless:

(a) The certified labor organization has dissolved or has become defunct;

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(b) A schism developed in the certified labor organization so that it cannot effectively represent bargaining unit members;

(c) The size of the bargaining unit has fluctuated radically within a short period of time; or

(d) Other changed circumstances warrant waiver of the certification bar.

(4) Open Period for Filing. A petition for an election where a contract exists must be filed not more than 90 days and not less than 60 days before the end of the contract period. If a contract is for more than three years, a petition for an election may be filed not more than 90 and not less than 60 days before the end of the expiration of the first three years of the contract or anytime after three years from the effective date of the contract. However, if a new contract is negotiated during the fourth year of the contract and prior to the filing of a petition for election the new contract shall serve as a contract bar.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.682
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1988, f. & cert. ef. 4-25-88; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08

Validity of Showing of Interest

115-025-0020 The authorization cards or showing of interest submitted under Division 25 of these rules shall not be furnished to any of the parties, except that the petitioner may examine cards or petition signatures that are deemed invalid. The authorization cards, showing of interest cards or petition shall be destroyed when the file is closed. The Board or its agents shall determine the adequacy of the authorization cards or showing of interest and such decision shall not be subject to collateral attack.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.682
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 2-2007(Temp), f. 7-20-07,

cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08

Amendments to Petitions

115-025-0023 (1) The board agent may require amendments to correct representation petitions filed under OAR 115-025-0000 or clarification petitions filed under OAR 115-025-0005 where the petitions are timely but are lacking in specificity or detail due to a failure to fully comply with OAR 115-025-0010(1) or (5), or because of inadvertent omissions from requested information blocks on the Board petition forms. A petition may be dismissed if petitioner fails to amend the petition within ten days of such board agent request without good cause.

(2) A petitioner may amend a petition under OAR 115-025-0000 or 115-025-0005 at any time before it is served on respondents. Once the petition is duly served, amendments may only be made with approval of the board agent.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.682
Hist.: ERB 1-1988, f. & cert. ef. 4-25-88; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08

Withdrawal or Dismissal of Petition

115-025-0025 (1) Withdrawal of Petition. A petitioner may withdraw its petition with the approval of the Board or its agent. If a petition is withdrawn after the Recommended Order is issued, after a Consent Election Agreement is executed by the parties or after a representation election is requested under OAR 115-025-0070 in response to a petition seeking certification without an election, the withdrawal will be granted with prejudice and the petitioner may not submit a new petition for the bargaining unit for a period of six months from the date the withdrawal was approved.

(2) Dismissal of Petition. If the Board determines after an investigation that the petition has not been timely or properly filed,

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that no valid question concerning the representation of employees exists in an appropriate unit, or that the petition should not be processed for other reasons, it may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such withdrawal, it may dismiss the petition. Such action may be taken by the Board at any time prior to the closing of the case. A petitioner may, within 14 days of the date of service of the dismissal, request reconsideration of such action by the Board. This request shall contain a complete statement setting forth the facts and reasons upon which the request is based. On its own motion, the Board may or may not hear oral argument on a request for reconsideration. The Board may affirm the dismissal, or set the dismissal aside and remand the matter for hearing.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.682
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 1-2008, f. 3-12-08, cert. ef. 3-17-08

Posting Notice of Petition

115-025-0030 (1) Upon receipt of a petition under OAR 115-025-0010(1), (2), (3) or (4), a Board Agent will cause a notice of the petition to be posted in the work areas granting maximum access to employees in the existing or proposed unit. Copies of the notice shall be served on the public employer and any known exclusive representative. The notice shall set forth:

- (a) The name of the petitioning organization or employer.
- (b) A description of the unit involved.
- (c) A statement that parties and interested persons will have 14 days from the date of the notice to file:
 - (A) Objections to the appropriateness of the proposed unit;

(B) Objections to the positions to be included or excluded;

(C) Objections to the petitioner's designation of the issue(s) in cases filed under OAR 115-025-0005;

(D) Petition to intervene as provided in OAR 115-025-0035.

(d) Interested persons may notify the Board Agent of their specific objections. Such objections must also be served on the petitioner. Upon good cause shown, the Board Agent may call an interested person as a witness.

(2) Upon receipt of a petition for certification without an election under OAR 115-025-0010(5), or a petition for unit clarification without an election under OAR 115-025-0010(6), a Board Agent will cause a notice of the petition to be posted in the work areas granting maximum access to employees in the proposed bargaining unit. Copies of the notice shall be served on the public employer. Copies of the notice of a petition for unit clarification without an election will also be served on the recognized or certified representative of the existing bargaining unit if that representative did not jointly file the petition with the group of unrepresented employees. The notice shall set forth:

(a) A statement that certification or clarification without an election has been requested;

(b) The name of the labor organization which seeks certification, or. In the case of a unit clarification petition, the name of the recognized or certified representative of the existing bargaining unit;

(c) A description of the proposed bargaining unit, or, in the case of a unit clarification petition, a description of the existing bargaining unit and the unrepresented group of employees to be added to that existing unit;

(d) A statement that there are 14 days from the date of the notice to file:

(A) Objections to the appropriateness of the unit;

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(B) Objections that a labor organization is currently certified or recognized as the exclusive representative of one or more employees in the proposed unit, or, in the case of a unit clarification petition, that another labor organization is certified or recognized as the exclusive representative of any of the employees in the group of unrepresented employees seeking to be included in the bargaining unit;

(C) Objections to the positions to be included or excluded; or

(D) A request for an election pursuant to ORS 243.682(3).

(e) Interested persons may notify the Board Agent of their specific objections. Such objections must also be served on the petitioner. Upon good cause shown, the Board Agent may call an interested person as a witness.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.682 & 243.686
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1988, f. & cert. ef. 4-25-88; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 1-2008, f. 3-12-08, cert. ef. 3-17-08; ERB 1-2014(Temp), f. & cert. ef. 3-14-14 thru 9-10-14; ERB 3-2014, f.8-25-14, cert. ef. 9-10-14

Intervention

115-025-0035 (1) Except in petitions for certification without an election under OAR 115-025-0010(5), a labor organization may intervene as a candidate for representative of a bargaining unit if it files a representation petition within 14 days from the date of a notice of petition and supports its petition with a showing of interest of ten percent of the employees in the unit. A labor organization may intervene for the purpose of representing a bargaining unit of employees different from that sought by the petitioner, but including some of the employees in the bargaining unit proposed by the petitioner. In such case, it must file a petition for representation within 14 days from the date of the notice of petition

and be supported by a showing of interest of 30 percent of the employees in its proposed unit.

(2) A labor organization currently certified or recognized as the exclusive representative of all or a major portion of the employees in the requested bargaining unit will be included as a party in interest in any hearing on the petition and included on the ballot in any resulting election unless it files a disclaimer pursuant to OAR 115-025-0060(3).

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.682 & 243.686
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08

Filing Objections/Interventions

115-025-0037 Concurrently with the filing of any intervention or objections to any petitions under Division 25 of these rules, the intervening or objecting party shall serve a copy of such intervention/objections upon all known interested parties and petitioner, and provide the Board with proof of such service.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.682 & 243.686
Hist.: ERB 1-1988, f. & cert. ef. 4-25-88

Consent Election Agreements

115-025-0040 The parties may waive a hearing and enter into a consent election agreement after 14 days from the date of the notice of petition. Such agreement shall include a description of the unit, time and place of the election and the payroll period to be used in determining the employees eligible to vote. The bargaining unit set out in the consent agreement shall be deemed an appropriate bargaining unit when the consent agreement is approved by the Board.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.686(7)
Hist.: ERB 1-1980, f. & ef. 1-9-80

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Hearing on Petitions; Notice; Conduct and Evidence

115-025-0045 When a valid petition has been filed and objections or intervening petitions have been timely filed, the hearing generally will be held no later than 21 days after the objection period ends. Ten days' written notice of hearing shall be given to all parties. The hearing notice shall include, but need not be limited to:

(1) Notice:

(a) A statement of the time, place and nature of the hearing;

(b) A description of any proposed bargaining unit(s) which may be involved;

(c) The name of the public employer, labor organization, objectors and intervenors, if any; and

(d) A statement of the legal authority and jurisdiction under which the hearing is being held.

(2) Notice not Part of Record. The contents of the notice shall not be a part of the hearing record, and any party wishing to rely upon these as exhibits shall make an appropriate submission at the hearing.

(3) Conduct and Evidence. Hearings under this section are for the purpose of developing a full factual record to be considered by the Board. The rules of evidence for hearings conducted under this section shall be:

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible;

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded;

(c) All offered evidence, not objected to, may be received by the Board Agent subject to the Board Agent's discretion to exclude unreliable, irrelevant, immaterial or unduly repetitious matter;

(d) Evidence objected to may be received by the Board Agent who will rule on its admissibility or exclusion when he/she issues a Recommended Order; and

(e) The Board Agent shall determine the order of going forward with the evidence.

(4) If objections are filed to the Board Agent's recommended order, oral argument before the Board on such objections generally will be held not later than 21 days after the objections are received.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.682(2)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 2-1998, f. & cert. ef. 1-26-98

Appropriate Bargaining Unit(s)

115-025-0050 (1) A bargaining unit may consist of all of the employees of the employer, or any department, division, section or area, or any part or combination thereof, if found to be appropriate by the Board.

(2) In considering whether a bargaining unit is appropriate, the Board shall consider such factors as community of interest (e.g., similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, common supervisor, etc.), wages, hours and other working conditions of the employees involved, the history of collective bargaining and the desires of the employees. The Board may determine a unit to be an appropriate unit although some other unit might also be appropriate. However, the Board may not certify as appropriate, in any school district with 50 or more public employees, a bargaining unit that includes both academically licensed and unlicensed or nonacademically licensed employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions.

(3) Bargaining unit(s) shall not include elected officials, persons appointed to serve on boards and commissions, incarcerated persons working under Section 41, Article I of the Oregon Constitution, or managerial, confidential or supervisory employees. However, questions concerning public

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employee status shall not be decided in proceedings to determine the appropriate bargaining unit for a representation election unless the results of such an election cannot be certified without the resolution of such questions.

Stat. Auth.: ORS 240 & 243
Stats. Implemented: ORS 243.682(1)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 3-1981(Temp), f. 10-5-81, ef. 10-9-81; ERB 1-1982, f. & ef. 1-19-82; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95

Notice of Election; Improper Use of Notice

115-025-0055 Notices of election shall be furnished by a Board agent to the public employer for suitable posting. Such notices shall set forth the details and procedures for the election, the appropriate unit, the employee eligibility period, and date(s), hour(s) and place(s) of the election and shall contain a sample ballot. The public employer shall promptly post notices in areas given maximum access to affected employees. The reproduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed or upon motion of the Board.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.686
Hist.: ERB 1-1980, f. & ef. 1-9-80

Election Procedures

115-025-0060 (1) Eligibility to Vote. Public employees eligible to vote in an election will be those employed on the date of the election who were employed on a payroll date agreed upon by the parties or on a date specified by the Board. The Board may include as eligible voters other employees who have reasonable expectations of continued

employment including but not limited to seasonal employees or employees on layoff.

(2) List of Eligible Voters. The public employer shall submit an alphabetical list of eligible voters, their names, addresses and job classifications to the Board at least 20 days before the date of the on-site election or 20 days before the date set for the Board to mail out ballots in a mail ballot election unless otherwise expressly agreed by the parties. The Board shall provide each labor organization with a copy of the list of eligible voters.

(3) Disclaimer. A labor organization may request in writing to have its name removed from the ballot disclaiming any representation interest for the employees in the unit. Such disclaimer must be filed not less than ten days before the date of the election in an on-site election or not less than ten days before the date ballots are mailed in a mail ballot election. When a disclaimer is filed and accepted after a consent agreement for an election is signed or after an election is ordered, the Board will not entertain a representation petition filed by the disclaiming organization for the bargaining unit for a period of six months from acceptance of the disclaimer.

(4) Voting. Voting shall be by secret ballot with an opportunity to vote for any one of the candidates on the ballot or for no representation. The election may be conducted on site or by mail. In a mail ballot election, a ballot that is not delivered through the U.S. mail or in person by the voter is void. For purposes of scheduling an election by mail, the date on which ballots are to be returned shall be the date of the election. The choice on the ballot receiving the majority of valid votes cast shall be adjudged the winner. If there are only two choices on the ballot in an initial election or runoff election and the balloting results in a tie vote, the Board Agent shall certify that no representative has been chosen. These provisions apply to all representation elections.

(5) Runoff Election. In any representation election where there are more than two choices

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on the ballot and none of the choices receives a majority of the valid votes cast, a runoff election shall be conducted. The ballot in a runoff election shall contain the two choices on the original ballot that received the largest number of votes. Employees eligible to vote in the original election and who are still employees on the date of the runoff election shall be eligible to vote.

(6) Observers. Any party may be represented at the polling place(s) by observers of its own selection except that employer observers cannot be supervisors employed by the employers. Labor organization observers must be eligible voters. The number and the function of the observers shall be determined by the Board Agent conducting the election.

(7) Challenged Ballots. Any party or the Board Agent may challenge, for good cause, the eligibility of any person to participate in the election. Challenges submitted prior to the tally must be in writing, supported by a statement describing the challenge, and provided to the other parties to the election. At the tally, challenges may be made orally. The ballots of challenged persons shall be impounded.

(8) Tally of Ballots. The Board shall notify the parties of the date of the ballot count and advise the parties they are entitled to have a representative present at the count. Upon the conclusion of the ballot count, the Board Agent shall furnish the parties a tally of ballots in person or by mail. The tally shall be deemed furnished to the parties on the date of the ballot count.

(9) Objections to Conduct of Election or Conduct Affecting the Results of the Election. Within ten days after the tally of ballots has been furnished, any party of record may file with the Board an original and one copy of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a clear and concise statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the

results of the election. Failure to file timely objections shall be grounds for dismissal of the objections. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be provided to the Board.

(10) Certification of Representative or Results of Election. If no objections are filed within ten days and any challenged ballots are insufficient in number to affect the results of the election, the Board Agent shall issue to the parties a certification of the results of the election, including certification of representative, where appropriate.

(11) Resolution of Objections and Challenged Ballots. When timely objections are filed or where the challenged ballots are sufficient in number to affect the results of the election, the Board Agent shall conduct an investigation and shall, when appropriate, issue a notice of hearing. The dispute will be processed in the manner set forth in OAR 115-035-0060(4). The objecting or challenging party shall bear the burden of proof and of going forward in the hearing. If the Board Agent exercised a challenge because the voter's name was not on the list of eligible voters, the party seeking to have the vote counted shall have the burden of proof and the burden of going forward.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.686

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 3-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 4-1998, f. & cert. ef. 1-26-98; ERB 1-2010(Temp), f. & cert. ef. 4-13-10 thru 10-10-10; ERB 2-2010, f. 9-23-10, cert. ef. 10-1-10

Certification or Unit Clarification Without Election

115-025-0065 (1) Upon receipt of a petition under OAR 115-025-0010(5) for certification without an election or under OAR 115-025-0010(6) for unit clarification without an election, a Board Agent shall commence an investigation and shall cause a notice of the

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petition to be posted as described in OAR 115-025-0030(2).

(2) Authorization Cards.

(a) An authorization card submitted in support of a petition for certification or unit clarification without an election must, at a minimum, contain the following:

(A) The employee's name typed or legibly printed;

(B) The employee's signature;

(C) The date of the employee's signature;

(D) A statement that the employee designates the named labor organization as the employee's exclusive representative for purposes of collective bargaining with the employee's employer; and

(E) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative without an election.

(b) An employee authorization card must be signed and dated within the 180-day period before the petition was filed.

(c) Authorization cards shall be submitted in alphabetical order.

(d) An employee authorization card that does not comply with this subsection shall be deemed invalid.

(3) Eligible Employees. For the purpose of determining the adequacy of the authorization cards, public employees who were employed on the filing date of the petition for certification or clarification without an election are included in the proposed bargaining unit and are considered eligible in the processing of the petition. The Board may also include as eligible other employees who have a reasonable expectation of continuing employment, including but not limited to seasonal employees or employees on layoff.

(4) List of Eligible Employees. Within 7 days after a public employer receives notice under OAR 115-025-0030(2) that a petition has been filed seeking a certification or

clarification without an election, it will submit to the Board an alphabetical list of employees in the proposed bargaining unit, including their names, addresses and job classifications. The Board will provide a copy of the list to the labor organization named in the petition.

(5) Challenges to the List of Eligible Employees.

(a) Challenges to the inclusion of a name on or exclusion of a name from the list of eligible employees must be filed with the Board within 7 days after the Board provides the labor organization a copy of the list under section (4) of this rule.

(b) The Board Agent shall determine whether a majority of employees on the list supplied by the employer has signed valid authorization cards. The Board Agent shall then determine whether there is a sufficient number of challenged names to affect the result.

(A) If the number of challenges is insufficient to potentially affect the result, then the challenges shall be dismissed.

(B) If the number of challenges is sufficient to potentially affect the result, the Board Agent shall investigate and, when appropriate, issue a notice of hearing on the challenges. The hearing will be conducted as set forth in OAR 115-025-0045. The challenging party shall bear the burden of proof.

(6) Authentication. The Board shall determine whether each otherwise valid authorization card was signed by an eligible employee;

(7) Objections. Objections to a petition for certification without an election must be filed within 14 days of the date of the notice posted pursuant to OAR 115-025-0030(2). Hearings on such objections shall be conducted under 115-025-0045.

(8) Certification. If it is determined in a petition seeking certification without an election that a majority of an appropriate unit has signed valid authorization cards designating the labor organization named in

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the petition as the exclusive representative, and that no other labor organization is currently certified or recognized as the exclusive representative for any employee in the proposed bargaining unit, then the Board shall certify the labor organization named in the petition as the exclusive representative without an election unless a timely petition for election is filed under OAR 115-025-0075. If it is determined in a petition for unit clarification without an election that a majority of an unrepresented group of employees has signed valid authorization cards to be included in an existing bargaining unit, that the proposed petitioner-for unit is appropriate, and that no other labor organization is certified or recognized as the exclusive representative of any of the employees in the group of unrepresented group to the designated existing bargaining unit without an election, unless a timely petition for election is filed under OAR 115-025-0075.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.682
Hist.: ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 1-2008, f. 3-12-08, cert. ef. 3-17-08; ; ERB 1-2014(Temp), f. & cert. ef. 3-14-14 thru 9-10-14; ERB 3-2014, f.8-25-14, cert. ef. 9-10-14

Objections to Petition for Certification Without Election or Petition for Unit Clarification Without Election

115-025-0070 Objections to a petition for certification or unit clarification without election, including objections to the scope of the appropriate bargaining unit, shall be expedited and resolved under the procedures of OAR 115-025-0045. If an election is requested under OAR 115-025-0075, the resolution may occur after the election. The Board may delay counting the ballots until all objections are resolved.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.682
Hist.: ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 1-2014(Temp), f. & cert. ef. 3-14-14

thru 9-10-14; ERB 3-2014, f.8-25-14, cert. ef. 9-10-14

Petition for Representation Election or Unit Clarification Election

115-025-0075 (1) Petition for Election. After a petition for certification without an election has been filed under OAR 115-025-0010(5), an employee or group of employees in the proposed bargaining unit may petition the Board for a representation election. The petition for an election must be filed within 14 days from the date of the notice posted under OAR 115-025-0030(2), and it must be accompanied by a showing of interest from at least 30 percent of the employees in the bargaining unit designated in the petition for certification without an election. After a petition for unit clarification without an election has been filed under OAR 115-025-0010(6), one or more of the unrepresented employees may petition the Board for a unit clarification election. The petition for an election must be filed within 14 days from the notice posted under OAR 115-025-0030(2), and it must be accompanied by a showing of interest from at least 30 percent of the unrepresented employees to be added to the existing bargaining unit.

(2) Showing of Interest. For purposes of this section, a showing of interest must contain the employee's name typed or printed legibly, the employee's signature, the date of the employee's signature, and a statement to the effect that the employee requests an election on whether the Board should certify the named labor organization as the exclusive bargaining representative for the employees of the employer, or in the case of a unit clarification petition, that the employee requests an election on whether the group of unrepresented employees should be added to the existing bargaining unit. The showing of interest shall be submitted in alphabetical order.

(3) Notice and Election. If the Board determines that the petition for election is accompanied by a sufficient showing of interest, the Board shall conduct an election by

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secret ballot. The Board Agent shall require the employer to post notice of the election under OAR 115-025-0055 at least 14 days before the election. The election may be conducted on site or by mail. In an election by mail, the date of the election shall be the date on which the ballots are to be returned to the Board. Ballots must be delivered to the Board in person by the voter or by US mail. Ballots not so delivered by the date of the election shall be void. The election shall be completed within 45 days from the date of the petition requesting an election.

(4) Procedures. All employees in the bargaining unit designated in the petition for certification without an election or all employees designated to be added to the existing bargaining unit in the petition for unit clarification without an election shall be eligible to vote. The two choices on the ballot shall be no representation or the labor organization named in the petition for certification or unit clarification without an election. The election shall follow the procedures in OAR 115-025-0060(4) and (7)-(12).

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.682
Hist.: ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 1-2014(Temp), f. & cert. ef. 3-14-14 thru 9-10-14; ERB 3-2014, f.8-25-14, cert. ef. 9-10-14

Merger of School Districts

115-025-0090 (1) Application of Rule. This rule shall apply when there is a "merger," as defined in ORS 330.003, of school districts. As used in this rule, the term "labor organization" includes, in addition to the definition under ORS 243.650(13), an entity composed of two or more local affiliates of a state or national labor organization.

(2) Petition for Certification. A labor organization may file a petition for certification as the exclusive representative of a group of employees of a surviving school district. A petition shall be filed on a form

provided by the Board and a copy shall be served by a Board Agent on parties disclosed in the petition:

(a) Time for Filing. A petition for certification may be filed at any time after the final action, by the state board of education or by a boundary board, necessary to effect a merger and before the merger takes effect;

(b) Contents of Petition. The petition must include:

(A) A description of the proposed bargaining unit for which certification is sought;

(B) A statement that the labor organization currently represents a majority of the employees who will be included in the proposed bargaining unit when the merger takes effect. This statement must be supported by collective bargaining agreements or certifications of representative and must include the number of employees in the proposed bargaining unit and the number of employees represented by the labor organization in each current unit;

(C) The name of the superintendent of schools and the name, address and telephone number for each district affected by the merger;

(D) A statement of when final action was taken by the State Board of Education or boundary board necessary to effect a merger and when the merger is effective.

(c) Posting of Notice. The Board shall send a notice of the filing of a petition for certification to each affected school district. Each district shall post copies of the notice in work areas granting maximum access to affected employees. The notice shall include a description of the proposed bargaining unit and shall state the rights of interested parties under OAR chapter 115, division 025. The notice shall remain posted for at least ten regular school days;

(d) Objections by Surviving District. The surviving school district, within 14 days of the date the notice is posted, may file objections to

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the petition for certification on the ground that the proposed unit is not appropriate or that the district has a good faith doubt that a majority of the employees in the proposed bargaining unit will desire certification of the petitioners as their exclusive representative:

(A) Objections to Unit. If the proposed unit description on its face describes an appropriate bargaining unit, objections to the appropriateness of the unit or to the inclusion or exclusion of certain employees will not delay the certification of representative unless the Board finds that the resolution of the objections may affect the majority support for the petitioning labor organization. A hearing will be held on any valid objections after certification of representative by this Board;

(B) Good Faith Doubt. An objection based on a district's good faith doubt concerning the petitioner's majority support among employees in the proposed bargaining unit must include a statement of the objective basis for the doubt. If the board finds, based on the objection and any supporting material, that the district's doubt is reasonable, the petition for certification shall be dismissed.

(e) Certification. If no employer objections are filed or are sufficient to delay certification, and no petition for an election affecting employees in the proposed unit is pending, the Board shall issue a certification of representative as soon as is practicable, unless the Board finds the petition to be otherwise defective.

(3) Petition for Election. A labor organization claiming to represent at least 30 percent of the employees in a proposed bargaining unit in a surviving district may file a petition for representation at any time after the final official action, by the State Board of Education or a boundary board, necessary to effect a merger of school districts, unless a certification of representative for substantially the same group of employees has been issued by the Board:

(a) Showing of Interest. A labor organization's claim to represent 30 percent of

the employees must be supported by showing of interest cards or petitions, as provided for in OAR 115-025-0010(1)(h), by collective bargaining agreements or certifications showing current representation by the labor organization of at least 30 percent of the employees who will be in the proposed bargaining unit, or by a combination of a showing of interest and agreements or certification;

(b) Conduct of Election. After a petition is filed under section (3) of this rule, procedures concerning the petition and any subsequent election will be governed by the other provisions of OAR chapter 115, division 025, except that a labor organization's petition to intervene as a candidate under OAR 115-025-0035(1) may be supported by a ten percent showing of interest or by a showing that it currently represents at least ten percent of the employees who will be in the proposed bargaining unit or by a combination of the two showings equaling ten percent support.

(4) Voluntary Recognition. Nothing in this rule is intended to prevent an employer from recognizing a labor organization pursuant to ORS 243.666(3).

Stat. Auth.: ORS 240.086(3)

Stats. Implemented: ORS 243.682 & 330.003

Hist.: ERB 1-1992, f. & cert. ef. 6-15-92; ERB 3-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98

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CHAPTER 115, DIVISION 30 –PUBLIC EMPLOYEE
DEAUTHORIZATION OF FAIR SHARE AGREEMENT

DIVISION 30
PUBLIC EMPLOYEE
DEAUTHORIZATION OF
FAIR SHARE AGREEMENT

Deauthorization

115-030-0000 (1) Petition:

(a) A petition to rescind a fair share agreement in the collective bargaining agreement between a public employee and a labor organization may be filed by an employee or group of employees. The petition must be accompanied by a statement signed by 30 percent or more of the employees in the bargaining unit stating that they desire to rescind the fair share agreement. To be valid, signatures must be obtained after the subject collective bargaining agreement is enforceable under ORS 243.672(1)(h) and (2)(e);

(b) The petition must be filed not more than 90 days after the collective bargaining agreement is executed and only one such election shall be conducted in a bargaining unit during the term of a collective bargaining agreement;

(c) Such petition shall be filed in writing with the Board on a form provided by the Board;

(d) Upon receipt of the petition, the Board or its agent shall serve a copy thereof upon the parties disclosed in the petition.

(2) Contents of Petition. The petition shall contain:

(a) The date of execution of the bargaining agreement. If possible, include a copy of the agreement with the petition;

(b) A statement that 30 percent or more of the employees in the bargaining unit desire to rescind the fair share agreement between the public employer and the labor organization;

(c) The name and address of the public employer;

(d) The name, address and telephone number of the employer's representative;

(e) A description of the bargaining unit involved;

(f) The name, address and telephone number of the labor organization representing the employees;

(g) The number of employees in the bargaining unit;

(h) The name and address of the person designated to accept service of documents for petitioners;

(i) Any other relevant facts; and

(j) The signature of the petitioner.

(3) Withdrawal or Dismissal of Petition:

(a) Withdrawal. A petitioner may withdraw its petition with approval of the Board;

(b) Dismissal of Petition. If the Board determines after an investigation that the petition has not been timely or properly filed, it may request the petitioner to withdraw the petition, or in the absence of such withdrawal it may dismiss the petition. In the event of dismissal of the petition for deauthorization, the petitioner may, within 14 days from the date of service of the dismissal, request reconsideration of such action by the Board. This request shall contain a complete statement setting forth the facts and reasons upon which the request is based.

(4) Election:

(a) Directed Election. After investigating the petition and determining that 30 percent or more of the employees in the bargaining unit desire to rescind the fair share agreement, the Board shall direct a secret ballot election;

(b) Election Notices. Notices of election shall be furnished by the Board Agent to the public employer for posting. Such notices shall set forth the details and procedures for the election, a definition of eligible voters and the date(s), hour(s), and place(s) of the election and shall contain a sample ballot. The public employer shall promptly post such notices in areas granting maximum access to affected employees;

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(c) Eligibility to Vote. Employees eligible to vote in an election will be bargaining unit members employed on the date of the election who were employed on a payroll date specified by the Board. The Board may include as eligible voters other employees who have reasonable expectation of continued employment including but not limited to seasonal employees or employees on layoff;

(d) List of Eligible Voters. The public employer shall submit an alphabetical list of eligible voters, their names, home addresses and job classifications to the labor organization(s), petitioner and to this Board at least 20 days before the election;

(e) Election Procedures. To the extent not inconsistent herewith, election procedures provided in these rules for representation elections, including the period for filing objections, shall be applicable. However, nothing in these rules shall be construed to afford the parties a hearing prior to the election as a matter of right. The Board may, in its discretion, set such a hearing if its investigation reveals that a hearing is necessary under the circumstances of the case;

(f) Post Election Hearings. When objections are filed or where the challenged ballots are sufficient in number to affect the results of the election, the Board shall conduct an investigation and shall, where appropriate, issue a notice of hearing designating a Board Agent to hear the matters alleged and to issue a report and recommendations. The objecting or challenging party shall bear the burden of proof regarding all matters alleged in its objections to the conduct of the election or conduct affecting the results of the election. The findings and recommendations shall be brought before the Board in the manner provided in these rules for all other Board Agent findings and recommendations.

(5) Certification of Results of Election. If no objections are filed within the time set forth above and if the challenged ballots are insufficient in number to affect the results of

the election, the Board or its agent shall certify the results of the election to the parties. If a majority of the votes cast in the election do not favor the fair share agreement, the Board shall certify deauthorization. If a majority of the votes cast favor continuation of the fair share agreement, the Board shall so certify.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.650(10)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 7-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1988, f. & cert. ef. 4-25-88

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IN PUBLIC EMPLOYMENT

DIVISION 35
UNFAIR LABOR PRACTICE
COMPLAINTS IN PUBLIC
EMPLOYMENT

Filing an Unfair Labor Practice Complaint

115-035-0000 (1) Who may file. An injured party may file a complaint alleging that a person(s) has engaged in or is engaging in an unfair labor practice as defined in ORS 243.672. An original and three copies of complaint shall be filed with the Board on forms approved by the Board.

(2) Contents of Complaint. The complaint shall contain the following information:

(a) The name and address of the person(s) making the complaint (referred to in these rules as complainant);

(b) The name and address of the person(s) against whom the complaint is made (referred to in these rules as respondent);

(c) A clear and concise statement of the facts constituting each alleged violation, followed by the specific section and subsection of the law allegedly violated. Such statement shall include relevant individuals (by name or initials), places, and dates; and followed by the specific section and subsection the law allegedly violated;

(d) The signature of the person filing the complaint.

(3) Supporting Data. At the time the complaint is filed, the complainant may submit documentary evidence that may be relevant to the issues raised by the complaint.

(4) Filing fee. A filing fee of \$300 must be paid at the time the complaint is filed. The complaint is not considered filed until the Board has received the filing fee. Complaints that are filed without a filing fee will not be considered.

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 243.672(3)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1994, f. 6-23-94, cert. ef. 7-1-94; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95,

cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11; ERB 2-2014, f. 8-20-14, cert. ef. 9-3-14

Investigation of Complaint

115-035-0005 A Board Agent shall investigate the complaint to determine if an issue of fact or law exists which warrants a hearing. Information submitted by a party as part of the investigatory process is confidential and will not be furnished under any circumstances to other parties except with the permission of the submitting party.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.676(1)(b)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85

Amendment of Complaint

115-035-0010 (1) At Request of Board Agent. When a complaint appears to raise an issue of fact or law, but such complaint is incomplete by reason of insufficiently detailed allegations or inadvertent omissions, the Board Agent, with notice to all parties, may request that the complainant amend its complaint within ten days of the request. Failure of the complainant to timely amend the complaint without good cause will subject the complaint to dismissal. If the complaint, as amended, does not raise an issue of fact or law which warrants a hearing, it shall be dismissed.

(2) Upon Request of Complainant. Complainant may amend the complaint on its own motion at any time before service of the complaint. Thereafter, amendments to the complaint may be made only with the approval of the Board Agent. If amendment is allowed, respondent shall be given a reasonable period of time to amend its answer.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.676

Hist.: ERB 1-1980, f. & ef. 1-9-80

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Withdrawal of Complaint

115-035-0015 Complainant may not withdraw a complaint after issuance of a recommended order without a showing of good cause unless the respondent agrees with the withdrawal.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.676
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 3-1995, f. 11-30-95, cert. ef. 12-1-95

Dismissal of Complaint

115-035-0020 If investigation reveals that no issue of fact or law exists which warrants a hearing, the Board may dismiss the complaint. Notice of such dismissal shall be served on the parties personally or by mail.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.676(1)(b)
Hist.: ERB 1-1980, f. & ef. 1-9-80

Petition for Reconsideration of Dismissal

115-035-0025 The complainant shall have 14 days from the date of service to file objections to the dismissal of the complaint and request reconsideration by the Board. This request shall contain a complete statement setting forth the facts and reasons upon which the request for reconsideration is based. The complainant shall serve a copy of the request upon all parties of record in the case and furnish the Board with proof of service. The Board, at its discretion, may grant reconsideration. In reviewing a petition for reconsideration, the Board may set the issue for oral argument.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.676(1)(b)
Hist.: ERB 1-1980, f. & ef. 1-9-80

Service of Notice and Complaint

115-035-0030 If a question of fact or law exists which warrants a hearing, the Board shall serve a notice of hearing and (if not provided previously) a copy of the complaint upon the party against which the complaint is

made, either personally or by registered or certified mail.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.676(1)(c)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91

Answer to Complaint

115-035-0035 (1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent states in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. Complainant shall be required to establish a prima facie case. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and set forth any affirmative defenses.

(2) Supporting Data. At the time that the answer is filed, the respondent shall either submit a written statement setting forth its version of the relevant facts, or include such information in the body of the answer. This information shall include individuals involved (by name or initials), dates and places, together with any documentary evidence that may be relevant to the issues raised by the complaint or by the answer, including available information in support of any affirmative defenses.

(3) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the complainant or its representative of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(4) Amendments. A respondent may amend its answer with the approval of the Board Agent. If an amendment is allowed, complainant shall be given a reasonable period of time to amend its complaint.

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(5) Failure to File. If the respondent fails to file a timely answer, absent a showing of good cause, it will not be allowed to present evidence at the hearing as to the facts alleged. Respondent will be restricted to making legal arguments.

(6) Filing Fee. A filing fee of \$300 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 240.086(3) & 243.766(7)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11; ERB 2-2014, f. 8-20-14, cert. ef. 9-3-14

Notice of Hearings

115-035-0040 (1) Time and Place of Hearings. The time and place of hearing will be set by the Board Agent and notice thereof served personally or by registered or certified mail upon all parties of record at least ten days in advance of the hearing date. The hearing will be set no later than 20 days from the date of service of the complaint or amended complaint unless both parties agree to extend the hearing to a date certain with Board Agent approval.

(2) Postponements. Any party who desires a postponement shall, promptly upon receipt of notice of the hearing, make written request of the Board Agent for such postponement, stating the reason therefor in detail. The written request should state whether the other party agrees, objects or has no objection to a postponement. The Board Agent, in considering a request for postponement, shall consider whether such request was mutually agreeable to the parties and was promptly made. For good cause shown, the Board Agent may grant such postponement and may, at any

time, order a postponement upon his/her own motion. In no event will the hearing be postponed beyond 20 days from date of service of the complaint or amended complaint unless both parties agree to extend the hearing to a date certain with Board Agent approval.

(3) Consolidation or Severance of Cases. The Board Agent on motion of a party or on the Board Agent's own motion may consolidate or sever cases or charges for purposes of hearing and/or issuance of a Recommended Order.

Stat. Auth.: ORS 240.086(3) and ORS 243.766(7)

Stats. Implemented: ORS 243.676(1)(c)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 2-2014, f. 8-20-14, cert. ef. 9-3-14

Conduct of Hearings

115-035-0042 (1) General Procedure:

(a) The Board Agent will open the hearing with a brief introduction of parties and issues.

(b) Parties may make opening statements.

(c) Parties may present evidence in support of their respective positions. Cross-examination of witnesses will be allowed opposing party(ies).

(d) Parties may make closing arguments.

(2) Conference during Hearings. In any proceedings, the Board Agent may, in his/her discretion, call the parties together for a conference prior to the taking of testimony or may recess the hearing for such conference to resolve evidentiary or procedural matters. The results of such conference shall be summarized on the record.

(3) Stipulation as to Facts. The parties to any proceeding or investigation may, by stipulation and subject to approval by the Board or its Agent, agree upon the facts or any portion thereof involved in the controversy. Such stipulation shall be binding upon the parties thereto and may be used as evidence in the case.

(4) Continuances. If it appears, on the motion of a party, that further evidence or

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argument should be received, the Board Agent may, in his/her discretion, continue the hearing. The date of such continued hearing may be fixed at the time of hearing or by later written notice to the parties.

(5) **Appearances.** Parties shall enter appearances at the beginning of the hearing and give their name and address in writing to the Board Agent conducting the hearing who will include the same in the record. The Board Agent may, in addition, require appearances to be stated orally so that the identity and interest of all parties present will be known to those at the hearing.

(6) **Burden of Proof.** The complainant shall have the burden of proof and shall also have the burden of going forward with the evidence. Respondent shall have the burden of proving affirmative defenses. Opportunity shall be afforded to all parties of record participating to examine each witness and to state objections to evidence offered.

(7) **Rules of Evidence.** The rules of evidence shall be:

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible;

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded;

(c) All offered evidence, not objected to, may be received by the Board Agent subject to the Board Agent's discretion to exclude irrelevant, immaterial or unduly repetitious matter;

(d) Evidence objected to may be received by the Board Agent with rulings on its admissibility or exclusion to be made at the time a proposed order is issued.

(8) **Conduct at Hearing.** All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with the Board Agent's effort to maintain order are grounds for removal from the hearing.

(9) **Rights of Party not Answering or Failing to Specifically Deny an Allegation.** A party that fails to answer a complaint or fails to deny an allegation will not be allowed to present or rebut evidence as to the facts alleged. However, the party may present legal argument.

(10) **Post-Hearing Briefs.** When post-hearing briefs are permitted by a Board Agent, they must be filed within 14 days from the conclusion of the hearing. Extension of time for filing will be permitted only upon good cause shown.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.676(1)(c)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85

Motions; Intervention

115-035-0045 (1) **Motions.** All motions, including motions for intervention, shall be typewritten or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. Written motions shall be filed with the Board agent, together with proof of service of a copy thereof upon the other parties.

(2) **Motions to Intervene.** Any person desiring to intervene in any proceeding shall make a motion for intervention no later than seven days before the date set for hearing, stating the grounds upon which such person claims to have an interest in the proceeding. The Board agent may permit intervention to such extent and upon such terms as he/she may deem proper.

(3) **Filing Fee.** A filing fee of \$300 must be paid by the intervenor when the motion for intervention is filed. The motion will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 240.086(3) & 243.766(7)

Stats. Implemented: ORS 243.676(1)(c) & 243.672(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

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Post-Hearing Procedures

115-035-0050 (1) Recommended Order. The Board agent shall prepare and serve on the parties a Recommended Order consisting of Rulings on Motions and Evidentiary Matters, Findings of Fact, Conclusions of Law and a Recommended Order.

(2) Objections to Recommended Order. The parties shall have 14 days from date of service of the Recommended Order to file specific written objections with the Board. (See also OAR 115-010-0090.)

(3) Board Review.

(a) Oral or Written Argument. If objections are filed to the Recommended Order, parties will be given an opportunity to present oral argument to the Board. If a party desires to submit written argument in lieu of oral argument, it must be filed with the Board not less than five days before the date set for argument and the party filing the written argument shall serve a copy on all parties of record in the case and provide proof of service to the Board;

(b) Memorandum in Aid of Oral Argument. If parties wish to submit written memorandum in aid of oral argument in addition to argument, it must be filed with the Board and served on the parties not less than five days before the date set for oral argument. Parties shall provide the Board with proof of service;

(c) Review of Record. Review by the Board of a Board agent's Proposed Rulings on Motions and Evidentiary Matters, Findings of Fact, Conclusions of Law and a Recommended Order shall be confined to the record. The Order of the Board shall be in writing and shall be sent to the parties.

(4) Petitions for Reconsideration or Rehearing. Petitions for reconsideration or rehearing may be filed but not later than 14 days from date of service of the Order. Petitions shall state specifically the grounds for reconsideration or rehearing. The Board may, at its discretion, set such petitions for oral argument.

(5) Service of Documents. All documents shall be served upon named parties unless there is a representative of record, in which case documents may be served on the representative.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.676(2) & ORS 243.676(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80

Representation Costs

115-035-0055 (1) General:

(a) Pursuant to ORS 243.676(2)(d) and (3)(b), the Board shall award representation costs to the prevailing party in unfair labor practice cases. An award of representation costs shall not exceed \$5,000 except such limitation shall not apply in cases where civil penalties would be appropriate;

(b) Prevailing party is the party in whose favor a Board Order is issued. Where one charge (or more) in a complaint is upheld while one charge (or more) in a complaint is dismissed, each party may be regarded as a prevailing party and may file a petition for representation costs for the portion of the case upon which it prevailed, provided that:

(A) Separate charges in a complaint are based on clearly distinct and independent operative facts; i.e. the charges could have been plead and litigated without material reliance on the allegations of the other(s), and the separate charges concerned the enforcement of rights independent of the other(s); or

(B) A complaint presents two or more scope of bargaining questions which are dealt with by the Board in separate conclusions of law.

(c) "Representation costs" shall include only the following:

(A) The actual amount of fees charged by the representative for services directly connected with prosecuting or defending against the unfair labor practice charge; or

(B) Where the prevailing party is not charged a specific fee for the case (because the

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representative is paid on a retainer basis or is an employee of the party, for example), the reasonable value of the representative's services directly connected with prosecuting or defending against the unfair labor practice charge. "Reasonable value" is equivalent to the fees charged by practitioners of similar skill and experience under paragraph (c)(A) of this section, and thus includes such secretarial and other overhead costs as are customarily included in those fees.

(2) Petition for Representation Costs. A prevailing party must file a petition for representation costs within 21 days of the date of the issuance of the Board Order in the case for which costs are requested. A copy of the petition, together with a supporting affidavit, shall be served upon the opposing party at the time the petition is filed and proof of service shall be provided to the Board. The Board will dismiss petitions which do not comply with this rule. The petition shall include:

(a) A statement of the facts upon which petitioner relies in claiming that it is the prevailing party; and

(b) A statement of the amount of the costs requested, supported by an affidavit that describes in detail the actual amount of the fees incurred by petitioner or, where the petitioner was not charged fees, the basis for the amount of costs requested;

(3) Objections to Petitions for Representation Costs.

(a) Opposing parties shall have 21 days from the date of service of such petitions to file written objections. Such objections shall be served on the petitioner at the time the objections are filed and proof of service shall be provided to the Board;

(b) A party objecting to costs based on excessive time spent must submit a supporting affidavit describing the amount of time spent on the case by the objecting party; and

(c) A party objecting to costs based on excessive hourly rate must submit a supporting

affidavit identifying the hourly rate and total costs incurred by the objecting party.

(4) Designating the Amount of Representation Costs. The Board shall consider the following factors in designating the amount of representation costs to be awarded:

(a) Consistency with the policies and purposes of the PECBA, including but not limited to the following considerations:

(A) The issue in the case was one of first impression before the Board; or

(B) Respondent was guilty of an aggravated or pervasive unfair labor practice or the repetition of a type of conduct previously found to be unlawful; or

(C) A complaint or a defense was frivolous or otherwise without merit; or

(D) A party was an individual who, due to the circumstances of the case, had to rely upon his/her personal financial resources.

(b) The appropriate charges for the services rendered, based on:

(A) The time and labor customarily required in the same or similar cases;

(B) Hourly charges customarily made by representatives for rendering similar services;

(C) The novelty and difficulty of the issues and the amount of preparation, research or briefing required; and

(D) The skill requisite to perform the services properly.

(c) Awards in similar cases.

(5) Findings and Order. The Board shall make findings and issue an order awarding representation costs pursuant to these rules and based upon the petition and objections filed by the parties. Consistent with subsection (1)(a) and section (4) of this rule, the Board may award all or a portion of the costs requested. The Board will not act on a petition until the appeal period has run or, where an appeal has been filed, during the pendency of the appeal.

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Filings that do not strictly comply with these rules will be dismissed.

Stat. Auth.: ORS 240.086(3) and ORS 243.766(7)
Stats. Implemented: ORS 243.676(2)(d) & ORS 243.676(3)(b)
Hist.: ERB 4-1980, f. 8-15-80, ef. 8-18-80; ERB 1-1982, f. & ef. 1-19-82; ERB 2-1983(Temp), f. 9-30-83, ef. 10-15-83; ERB 1-1984, f. & ef. 4-11-84; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 2-2014, f. 8-20-14, cert. ef. 9-3-14

Attorney Fees For Appeals

115-035-0057 Pursuant to ORS 243.676(2)(e), the Board shall designate the amount of and award attorney fees to the prevailing party on an appeal of a Board Order, subject to the following:

(1) Petitions for attorney fees must be filed with the Board within 21 days of the date of the appellate judgment. In all other respects, petitions for attorney fees and objections to such petitions shall be filed in accordance with OAR 115-035-0055(2) and (3).

(2) The prevailing party is the party designated as such in the appellate judgment issued by the Court of Appeals or the Supreme Court following the ultimate appellate decision regarding a particular case.

(3) The Board shall consider the factors listed in OAR 115-035-0055(4) in designating the amount of attorney fees to be awarded. Additionally, the Board may consider whether a remand of a case did or did not result in a significant modification of the original Board Order. The Board shall issue attorney fee awards in accordance with OAR 115-035-0055(5). An award of attorney fees on appeal shall not exceed \$5,000 except such limitation shall not apply in cases where civil penalties would have been appropriate as a remedy in the Board proceeding.

Stat. Auth.: ORS 240.086(3) and ORS 243.766(7)
Stats. Implemented: ORS 243.676(2)(e)
Hist.: ERB 2-1983(Temp), f. 9-30-83, ef. 10-15-83; ERB 1-1984, f. & ef. 4-11-84; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1989(Temp), f. 6-15-89 & cert. ef. 6-23-89; ERB 2-1989, f. 11-28-89, cert.

ef. 12-4-89; ERB 3-1995, f. 11-30-95, cert. ef. 12-1-95

Expedited Procedures for Unfair Labor Practice Complaints Pertaining to Scope of Collective Bargaining Negotiations

115-035-0060 (1) Purpose of Procedures:

(a) This procedure is designed to reduce the time required for a determination of whether a contract proposal is a mandatory, permissive or prohibited subject of bargaining;

(b) When expedited consideration is granted in accordance with this rule, a Board order generally shall be issued within 45 days of the date on which the expedited complaint is filed.

(2) Eligibility for Expedited Consideration Within Board Discretion:

(a) Upon request of a complainant, expedited consideration may be given only to complaints which are limited to allegations that respondent has unlawfully refused, under ORS 243.672(1)(e) or (2)(b), to bargain over a mandatory subject(s) of bargaining or has unlawfully pursued a permissive subject of bargaining. Further, the filing of such a limited complaint shall not as a matter of right entitle complainant to expedited consideration. The decision to consider a complaint under this procedure is solely within the discretion of the Board. The Board's decision will be made on the basis of its schedule and work load, its investigation of the charge and its estimation of the relative importance to the parties and to the public of a more rapid decision on the question presented;

(b) Any complaint which alleges matters in addition to allegations that respondent has unlawfully refused, under ORS 243.672(1)(e) or (2)(b), to bargain over a mandatory subject(s) of bargaining will not be eligible for expedited consideration. In the event the Board determines that a complaint merits expedited consideration under this section, only scope of bargaining matters presented therein will be considered; the same or substantially similar allegations contained in other complaints filed by the same

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complainant against the same respondent will be stricken by the Board or its agents.

(3) Filing of Complaints. Expedited complaints filed under this section shall be filed in accordance with Board OAR 115-035-0000, but in addition they must be accompanied by the following:

(a) An affidavit setting forth the:

(A) Precise language of the last bargaining proposal on a subject(s) in dispute;

(B) Date(s) when the proposal(s) was made; and

(C) Date(s) when the respondent allegedly refused to bargain over the proposal(s).

(b) A specific statement of any legal authority in support of complainant's contention that respondent has unlawfully refused to bargain over the proposal(s).

(4) Processing Complaints. Expedited complaints under this section shall be processed in accordance with this Division of the Board's Rules, except for the following:

(a) When an expedited complaint raises a question of fact or law which warrants a hearing, the complaint will be served on the respondent and the notice of hearing served on both parties. The complaint must be answered within ten days;

(b) Normally, the Board and not a Board Agent will hear the matter;

(c) Post-hearing briefs will be permitted only on request of the Board;

(d) If a complaint is withdrawn after the matter is heard, it shall be with prejudice.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.676

Hist.: ERB 2-1980(Temp), f. 1-31-80, ef. 2-1-80; ERB 3-1980, f. 7-16-80, ef. 8-1-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 3-1998, f. & cert. ef. 1-26-98

Expedited Consideration of Complaints Alleging that an Unfair Labor Practice Has Been Committed During or Arising Out of the Collective Bargaining Procedures Set Forth in ORS 243.712 and 243.722

115-035-0065 (1) Whenever a complaint is filed alleging that an unfair labor practice has been committed during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, that complaint shall be processed in accordance with OAR 115-035-0060(4) and this Division of the Board's rules where applicable, except that.

(2) The hearing on the complaint may be conducted by the Board, rather than its agent; and, if so, there will be no Recommended Order or post-hearing procedures in connection therewith; rather, the Board will issue final Rulings on Motions and Evidentiary Matters, Findings of Fact, Conclusions of Law and an Order, generally within 45 days of the date on which the expedited complaint is filed.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.676 & ORS 243.726(5)

Hist.: ERB 2-1980(Temp), f. 1-31-80, ef. 2-1-80; ERB 3-1980, f. 7-16-80, ef. 8-1-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 4-1998, f. & cert. ef. 1-26-98

Expedited Procedures for Other Unfair Labor Practice Complaints

115-035-0068 (1) Purpose of Procedure. This procedure is designed to reduce the time required for the processing of complaints which meet the standards set out below and which do not come within OAR 115-035-0060 and 115-035-0065. When expedited consideration is granted in accordance with this rule, a Board Order generally shall be issued within 45 days of the date on which the expedited complaint is filed.

(2) Eligibility for Expedited Consideration Within Board Discretion. The decision to expedite a complaint under this rule is solely within the discretion of the Board. The Board's decision will be made on the basis of its

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schedule and work load, its investigation of the charge and its estimation of the complexity of the facts and legal issues in the case, the necessity for prompt action and the possibility of immediate and irreparable injury, loss or damage to the complainant, or person(s) on whose behalf the complaint has been filed, if the complaint is not processed on an expedited basis.

(3) Filing of Complaints. Expedited complaints filed under this section shall be filed in accordance with Board OAR 115-035-0000, but in addition they must be accompanied by the following:

(a) An affidavit setting forth the:

(A) Complainant's estimation of the length of the hearing and complexity of the issues;

(B) Specific harm, injury or loss anticipated if the complaint is not expedited; and

(C) Specific reason the harm, injury or loss is irreparable.

(b) A specific statement of any legal authority in support of complainant's position.

(4) Processing Complaints. Expedited complaints under this section shall be processed in accordance with OAR 115-035-0060(4) and this Division of the Board's rules where applicable.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.676

Hist.: ERB 8-1985, f. 10-29-85, ef. 10-31-85

Consent Orders

115-035-0070 If the parties to a contested case settle all factual, legal and remedial issues prior to the issuance of a final order, such settlement agreement may be submitted to the Board in the form of a consent order. The consent order must contain a statement of the case and a recitation of the complete agreement of the parties. Upon approval by the Board, the consent order shall be issued. In the event the parties do not submit an agreement regarding representation costs, the Board will consider timely representation cost petitions submitted under OAR 115-035-0055.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.676

Hist.: ERB 3-1982(Temp), f. & ef. 8-19-82; ERB 1-1983, f. 2-16-83, ef. 2-25-83; ERB 2-1983(Temp), f. 9-30-83, ef. 10-15-83; ERB 1-1984, f. & ef. 4-11-84; ERB 8-1985, f. 10-29-85, ef. 10-31-85

Civil Penalty; Fee Reimbursement

115-035-0075 (1) The Board may award a civil penalty of up to \$1,000 to a prevailing party in an unfair labor practice case when as a result of a hearing:

(a) The Board finds that the party committing an unfair labor practice did so repetitively, knowing that the action taken was an unfair labor practice and took such action disregarding that knowledge; or that the action constituting an unfair practice was egregious; or

(b) The Board dismisses a complaint and finds that the complaint was frivolously filed or was filed with the intent to harass the prevailing party.

(2) Pleadings. Any request for a civil penalty must be included in a party's complaint or answer. The request must include a statement as to why a civil penalty is appropriate in the case under these rules, with a clear and concise statement of the facts alleged in support of the statement. A party may move to amend its complaint or answer to request a civil penalty at any time prior to the conclusion of the evidentiary hearing.

(3) Filing fee reimbursement. The Board may order filing 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. A request for filing fee reimbursement must comply with the procedure established in section (2) of this rule.

Stat. Auth.: ORS 243.766(7) & ORS 240.086(3)

Stats. Implemented: ORS 243.672(3) & ORS 243.676(4)

Hist.: ERB 2-1983(Temp), f. 9-30-83, ef. 10-15-83; ERB 1-1984, f. & ef. 4-11-84; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95

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Mediation

115-040-0000 (1) Negotiations concerning a new or reopened collective bargaining agreement.

(a) After a 150-calendar-day period of good faith negotiations, or earlier if the parties so agree, either or both parties to a labor dispute may notify the Board of their failure to reach agreement over the terms of a collective bargaining agreement and may request assignment of a mediator. Such notification and request shall be in writing and shall contain a statement as to each issue in dispute and a statement describing when negotiations commenced. Upon receipt of the notification and request, the State Conciliator shall appoint a mediator and notify the parties of the appointment.

(b) The 150-calendar-day period of negotiations begins:

(A) When an exclusive representative is recognized or certified; or

(B) Where the parties are negotiating over the terms of a successor agreement or pursuant to a contractual reopener provision, when the parties meet for the first bargaining session and each party has received the other party's initial proposal.

(c) Any time after 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Notification of an impasse shall be filed in writing with the State Conciliator, and copies of the notification shall be submitted to the parties on the same day the notification is filed with the State Conciliator.

(d) Within seven days of the declaration of impasse, each party shall submit to the mediator in writing the final offer of the party, including a cost summary of the offer. Each party's proposed contract language shall be titled "Final Offer." Each party shall submit a

copy of the final offer and cost summary to the other party on the same day it is submitted to the mediator. Upon receipt of the final offers and cost summaries, the mediator shall make them public.

(e) A party's cost summary shall separately list each disputed contract proposal in its final offer that is reasonably anticipated to impact the public employer's budget. For the first year of the proposed contract, the cost summary shall show the estimated cost difference between each of the party's proposals and the employer's current budget in the area(s) affected by the proposals. For subsequent proposed contract years, the cost summary shall show the estimated increase in costs that would be incurred by the employer for each such proposal over the costs projected for the prior year of the proposed contract. The cost summary also must show the estimated total cost differences for all disputed proposals. The cost summary must include an explanation of how the estimated costs for each proposal were calculated.

(2) Mid-contract negotiations.

(a) At any time during a 90-day period of expedited negotiations concerning a proposed change in employment relations not covered by a collective bargaining agreement or concerning the renegotiation of contract terms pursuant to ORS 243.702, the parties may jointly request mediation. A joint request must be filed in writing with the State Conciliator and signed by a representative of each party. Upon receipt of a joint request, the State Conciliator shall assign a mediator and notify the parties of the assignment.

(b) Mediation of a labor dispute subject to expedited negotiations shall not continue past the 90-day period. The 90-day period of expedited negotiations begins:

(A) When the employer notifies the exclusive representative in writing of anticipated changes that impose a duty to bargain; or

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(B) When a party requests in writing renegotiation of contract terms pursuant to ORS 243.702.

(3) At the request of the Governor, the Board shall instruct the State Conciliator to investigate any existing or imminent labor dispute in the public sector and provide the Governor with a report of the findings.

Stat. Auth.: ORS 240.086(3) & ORS 243.766(7)
Stats. Implemented: ORS 243.712 & ORS 243.650 – ORS 243.782
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1993, f. 9-30-93, cert. ef. 10-1-93; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-1999, f. & cert. ef. 1-28-99; ERB 1-2000, f. & cert. ef. 12-1-00

Conciliation Service Fees

115-040-0005 (1) Interest Mediation: When mediation concerns negotiations over the terms of a collective bargaining agreement, the board will charge a fee for mediation services. The local public employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. The fee charged by the board may not exceed:

- (a) \$1,000 for the first two mediation sessions (\$500 per party);
- (b) \$500 for the third mediation session (\$250 per party);
- (c) \$750 for the fourth mediation session (\$375 per party); and
- (d) \$1,000 for each additional mediation session (\$500 per party).

(2) Grievance Mediation: When mediation concerns a grievance arising under a collective bargaining agreement, a local public employer and an exclusive representative each will be charged \$250.

(3) Unfair Labor Practice Mediation: When mediation concerns a pending unfair labor practice complaint, a local public employer and an exclusive representative each will be charged \$250.

(4) Interest-Based Training: The Conciliation Service shall offer training in interest-based bargaining, labor/management

cooperation, problem solving and similar programs specifically designed for particular local public employer/exclusive representative needs. Fees for such training shall be \$2,500 for two-day training programs, \$1,500 for one-day refresher training, and \$700 for half-day training programs. The fees for facilitations and related travel time shall be \$60 per hour.

(5) Billing: For mediation services, parties will be billed when the first mediation session occurs. For training, parties will be billed when the training session occurs, with the employer and exclusive representative sharing equally the costs unless the parties agree otherwise.

(6) Definitions: "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district, mass transit district, metropolitan service district, public service corporation or municipal corporation and a public and quasi-public corporation. "Exclusive representative" has the meaning given that term in ORS 243.650(8).

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 240.610(2)
Hist.: ERB 1-1995(Temp), f. 6-26-95, cert. ef. 7-1-95; ERB 5-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

Factfinding

115-040-0010 Where the parties to a labor dispute jointly petition the Board to appoint a factfinder within 30 days after the mediator makes public their final offers, the State Conciliator shall acknowledge in writing the request and factfinding shall occur under the following conditions:

(1) Selection of Factfinder(s):

(a) The parties shall have five days after receipt of the State Conciliator's written acknowledgment in which to mutually select their own factfinder(s). If they fail to do so, the Board will submit to them a list of seven

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qualified factfinders along with a list of Oregon factfindings or interest arbitrations for which each person has issued an award. From the list, each party shall alternately strike three names, with the order of striking being determined by lot. The remaining individual shall be the factfinder;

(b) When both parties desire a panel of three factfinders, they shall so notify the Board and the Board will then submit a list of seven factfinders. From that list each party shall alternately strike two names, with the order of striking being determined by lot. The remaining three persons shall be the factfinders;

(c) The parties shall advise the Board of their choice within five days after receipt of the list. If they fail to do so, the Board shall appoint the factfinder(s) from the list. If, however, one of the parties strikes the names as provided above and the other party fails to do so, the Board shall appoint the factfinder(s) only from the names remaining on the list;

(d) If the factfinder(s) selected or appointed is unable to accept appointment, the parties shall notify the Board and the Board shall then submit another list of names.

(2) Financial or Personal Interest of Factfinder. No person shall serve as a factfinder in any factfinding in which he/she has any financial or personal interest in the result of the factfinding, unless the parties, in writing, waive such disqualification.

(3) Notice of appointment. Upon selection of the factfinder, the parties shall notify the Board and the factfinder of the selection.

(4) Disclosure by Factfinder. Prior to accepting appointment, the prospective factfinder shall disclose any circumstances likely to create an appearance of bias or which otherwise could disqualify the factfinder from serving. Upon receipt of such information, the Board shall immediately disclose it to the parties. If either party then declines to accept the factfinder, the vacancy thus created shall be filled in the same manner as that governing the making of the original appointment.

(5) Vacancies. If any factfinder should resign, die, withdraw, refuse or be unable to, or be disqualified to fulfill the duties of factfinder, the Board shall, upon satisfactory proof, declare the appointment vacant. Vacancies shall be filled in the same manner as that governing the original appointment, and the matter shall be reheard by the new factfinder, unless the parties mutually agree to a different procedure.

(6) Time and Place of Hearing. The factfinder shall fix the time and place for each hearing.

(7) Representation by Counsel. Any party may be represented by counsel or by other authorized representative.

(8) List of Issues. Each party shall submit a written list of the issues, including proposed contract language, if any, dealing with those issues, on which the parties have failed to reach agreement to the factfinder and to the other party at least seven days before the date of the factfinding hearing. If a party fails to timely provide such a list of issues to the other party, the factfinder may set over the hearing if the factfinder determines that such failure resulted in substantial prejudice to a party.

(9) Subpoenas. Subpoenas may be issued by the factfinder or in the manner provided in OAR 115-010-0055.

(10) Attendance at Hearings. The factfinding hearing shall be open to the public unless otherwise mutually agreed to by the parties.

(11) Adjournments. The factfinder, for good cause shown, may adjourn the hearing upon the request of a party or upon the factfinder's own initiative, and shall adjourn when all parties agree thereto.

(12) Oaths. In the discretion of the factfinder, all witnesses who testify at the hearing may be sworn or make an affirmation.

(13) Order of Proceedings. The order of presentation at the hearing shall be as mutually agreed between the parties or as determined by the factfinder.

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(14) Exhibits. Each exhibit introduced by a party shall be filed with the factfinder and a copy shall be provided to the other party. The exhibits filed with the factfinder shall be retained by the factfinder unless the parties otherwise agree.

(15) Evidence. The parties may offer such evidence as they desire and shall produce such additional evidence as the factfinder may deem necessary to an understanding and determination of the dispute. The factfinder shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the parties except where any of the parties is absent in default or has waived the right to be present. Parties shall have the right to cross-examine. In making findings of fact and recommendations, the factfinder shall base them on the criteria set out in ORS 243.746(4)(a)-(h).

(16) Factfinding in the Absence of a Party. The factfinder may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain a continuance or recess. Findings of fact and recommendations shall not be made solely on the default of a party. The factfinder shall require the other party to submit such evidence as required for the making of findings of fact and recommendations.

(17) Closing of Hearing(s). The factfinder shall declare the hearing closed after the parties have completed presenting their cases. If the factfinder allows the filing of post-hearing briefs or other documents, the hearing shall be deemed closed as of the final date set by the factfinder for the filing of such briefs or other documents.

(18) Reopening of Hearings. The hearing may be reopened by the factfinder at any time before the findings of fact and recommendations are made, except if the reopening of the hearing would prevent the issuance of the factfinding report within the

time provided by law. Both parties must agree upon an extension of such time limit.

(19) Waiver of Rules. Any party who proceeds with factfinding with knowledge that any provision or requirement of these rules has not been complied with, and who fails to object thereto in writing, shall be deemed to have waived the right to object.

(20) Waiver of Oral Hearing. The parties may provide, by written agreement, for the waiver of oral hearings.

(21) Serving of Notices. Any papers, notices or process necessary or proper for the initiation or continuation of factfinding under these rules may be served upon a party:

- (a) By mail addressed to such party or its representative at their last known address; or
- (b) By personal service.

(22) Time of Findings of Fact and Recommendations. Not more than 30 days from the date of conclusion of the hearing, the factfinder shall make written findings of fact and recommendations for resolution of the dispute and shall serve such findings and recommendations upon the parties and upon the Board. Service may be personal or by registered or certified mail. The factfinder shall make every effort to notify the parties, at least five days prior to the date of service, of the date upon which service is expected to be made.

(23) Form of Findings of Fact and Recommendations. The findings of fact and recommendations shall be in writing and shall be signed either by the factfinder or by a concurring majority, if there be more than one factfinder.

(24) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. Expenses of the factfinding, including fees, required travel and other expenses of the factfinder and the expenses of any witnesses or the cost of any proofs produced at the direct request of the factfinder, shall be borne equally by the parties.

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(25) Interpretation and Application of Rules. The factfinder shall interpret and apply the foregoing rules which relate to the factfinder's authority and responsibilities. When there is more than one factfinder and a difference arises among them concerning the meaning or application of any such rules, it shall be decided by majority vote.

(26) Parties' Responsibility After Factfinding. Not more than five working days after the findings and recommendations have been sent, the parties shall notify the Board and each other whether or not they accept the recommendations of the factfinder.

(27) Challenges Relating to Bias or Qualifications of Factfinder: A party may challenge a selected or appointed factfinder by charging that the factfinder is biased or not qualified. A petition raising such a challenge must be filed with the Board within 15 days of the selection or appointment of the factfinder. The petition must include a statement of facts upon which the challenge is based. The other party to the underlying labor dispute will be asked to respond to the petition. The Board will hold a hearing on the petition within 10 days of the date of filing. The hearing will be conducted according to the provisions of OAR 115, Division 010 to the extent that they are applicable and practicable in light of the statutory time lines. The Board will issue a final and binding decision regarding the factfinder's neutrality or qualifications within 10 days of the hearing.

Stat. Auth.: ORS 240 & ORS 243.766(7)
Stats. Implemented: ORS 243.712(2)(b), ORS 243.712(2)(c), ORS 243.712(2)(e) & ORS 243.722
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 11-1985, f. 10-29-85, ef. 10-31-85; ERB 2-1989, f. 11-28-89, cert. ef. 12-4-89; ERB 2-1993, f. & cert. ef. 12-15-93; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-2000, f. & cert. ef. 12-1-00

Binding Interest Arbitration

115-040-0015 (1) Applicability of Rule. This rule shall apply in all cases concerning which the Board initiates arbitration of a labor

dispute relating to negotiations over employment relations.

(2) Court-Ordered Arbitration. When arbitration is ordered by a circuit court pursuant to ORS 243.726(3)(c), the affected employer or labor organization, or both jointly, shall notify the Board of the court order within five days of the date the order was issued. Such notification must be accompanied by a copy of the court order. The Board will initiate arbitration within five days of its receipt of the notification.

(3) Voluntary Arbitration. When an employer and a labor organization, pursuant to ORS 243.706(2) or 243.712(2)(e), agree to submit any or all of the issues in a negotiations labor dispute to arbitration, either party or both may request the Board to initiate arbitration. Such a request must be accompanied by a copy of the agreement to arbitrate. The Board will initiate arbitration within five days of its receipt of the request.

(4) Arbitration Where Strike is Prohibited. When a negotiations labor dispute exists between an employer and a labor organization that represents a bargaining unit that includes employees prohibited from striking by ORS 243.736, the Board shall initiate arbitration when:

(a) The parties have included with their final offers to the mediator a petition to initiate arbitration or, where the labor dispute is subject to expedited negotiations, the 90-day period has expired and a party requests that the Board initiate arbitration. The Board shall notify the parties that arbitration has been initiated;

(b) The labor organization has complied with the notice requirement of section (5) of this rule.

(5) A labor organization that represents a bargaining unit which it contends includes strike-prohibited employees must file notice of such contention with the Board and the employer at least 180 days prior to the expiration of the contract covering such bargaining unit, unless such notice was

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previously filed and there has been no substantial change in the composition of the unit since that filing, or within 30 days after the labor organization demands bargaining for an initial contract. If the labor organization fails to file such notice and subsequently requests the Board to initiate arbitration, the Board shall notify the employer of the request and the employer shall have ten days to file objections on the basis that the unit does not include strike-prohibited employees or that the unit should be redesignated because it also includes strike-permitted employees. The Board shall resolve such objections prior to the initiation of arbitration.

(6) Selection of Arbitrator:

(a) When the parties are notified by the Board that arbitration is to be initiated they shall have five days after receipt of such notice to mutually select an arbitrator. Where the parties have not selected their own arbitrator within five days after notification by the Board that arbitration is to be initiated, the Board shall submit to the parties a list of seven qualified, disinterested, unbiased persons, including a list of Oregon interest arbitrations and factfindings for which each person has issued an award. Each party shall alternately strike three names from the list. The order of striking shall be determined by lot. The remaining individual shall be designated the arbitrator;

(b) When the parties have not designated the arbitrator and notified the Board of their choice within five days after receipt of the list, the Board shall appoint the arbitrator from the list. However, if one of the parties strikes the names as prescribed in this subsection and the other party fails to do so, the Board shall appoint the arbitrator only from the names remaining on the list.

(7) Arbitration Rules and Procedures:

(a) Financial or Personal Interest of Arbitrator. No person shall serve as an arbitrator in any arbitration proceeding in which he/she has any financial or personal interest in the result of the arbitration, unless

the parties, in writing, waive such disqualification;

(b) Notice of Appointment. Upon selection of the arbitrator the parties shall notify the Board and the arbitrator of his/her selection;

(c) Disclosure by Arbitrator. Prior to accepting his/her appointment, the prospective arbitrator shall disclose any circumstances likely to create a presumption of bias or which he/she believes might disqualify him/her as an impartial arbitrator. Upon receipt of such information, the Board shall immediately disclose it to the parties. If either party declines to waive the presumptive disqualifications, the vacancy thus created shall be filled in the same manner as that governing the making of the original appointment;

(d) Vacancies. If any arbitrator should resign, die, withdraw, refuse or be unable to, or be disqualified to perform the duties of his/her appointment, the Board shall, upon satisfactory proof, declare the appointment vacant. Vacancies shall be filled in the same manner as that governing the original appointment, and the matter shall be reheard by the new arbitrator, unless the parties mutually agree to a different procedure;

(e) Time and Place of Hearing. The arbitrator, with the agreement of the parties, shall fix the time and place for each hearing, but the hearing may not be earlier than 30 days following the submission of the final offer packages to the mediator where such packages are submitted;

(f) Representation by Counsel. Any party may be represented by counsel or by other authorized representative;

(g) Last Best Offers. Each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects not less than 14 days prior to the date of hearing. Neither party may change its last best offer package unless pursuant to stipulation of the parties; except that if a party provides notice of a change in its position within 24 hours of the 14-day deadline, the

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other party will be allowed an additional 24 hours to modify its position;

(h) Subpoenas. Subpoenas may be issued by the arbitrator or in the manner provided in OAR 115-010-0055;

(i) Attendance at Hearings. The arbitration hearing shall be open to the public unless otherwise mutually agreed to by the parties;

(j) Adjournments. The arbitrator, for good cause shown, may adjourn the hearing upon the request of a party or upon his own initiative, and shall adjourn when all parties agree thereto;

(k) Oaths. In the discretion of the arbitrator, all witnesses who testify at the hearing may be sworn or make an affirmance;

(l) Order of Proceedings. The order of presentation at the hearing shall be as mutually agreed between the parties or as determined by the arbitrator;

(m) Exhibits. Each exhibit introduced by a party shall be filed with the arbitrator and a copy shall be provided to the other party. The exhibits filed with the arbitrator shall be retained by him unless the parties otherwise agree, or unless the arbitrator otherwise permits;

(n) Evidence. The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the parties except where any of the parties is absent in default or has waived his/her right to be present. Parties shall have the right to cross-examine;

(o) Arbitration in the Absence of a Party. The arbitrator may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain a continuance or recess. Findings of fact and order shall not be made solely on the default of a party. The

arbitrator shall require the other party to submit such evidence as he/she may require for the making of findings of fact and order;

(p) Closing of Hearing(s):

(A) The arbitrator shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits;

(B) If the arbitrator allows the filing of post-hearing briefs or other documents, the hearing shall be deemed closed as of the final date set by the arbitrator for the filing of such briefs or other documents.

(q) Waiver of Rules. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state his/her objection thereto in writing, shall be deemed to have waived his/her right to object;

(r) Waiver of Oral Hearing. The parties may provide, by written agreement, for the waiver of oral hearing;

(s) Serving of Notices. Any papers, notices or process necessary or proper for the initiation or continuation of arbitration under these rules may be served upon a party:

(A) By mail addressed to such party or his/her attorney at his/her last known address; or

(B) By personal service.

(t) Time of Arbitration Findings and Order. Not more than 30 days from the date of conclusion of the hearing, the arbitrator shall make written findings of fact and promulgate a written opinion and order upon the issues presented to him/her and upon the record made before him/her and shall serve such findings, opinion and order upon the parties and the Board. Services may be personal or by registered or certified mail. The arbitrator shall select only one of the last best offer packages submitted by the parties;

(u) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. Expenses of arbitration, including fees, required travel and other expenses of the arbitrator and the expenses of

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any witnesses or the cost of any proofs produced at the direct request of the arbitrator, shall be borne equally by the parties;

(v) Interpretation and Application of Rules. The arbitrator shall interpret and apply these rules insofar as they relate to his/her powers and duties;

(w) Reopening of Hearing. The hearing may be reopened by the arbitrator on his/her own motion, or on the motion of either party for good cause shown, at any time before the arbitration findings and order are made, but, if the reopening of the hearing would prevent the making of the findings of fact and arbitration order within the specific time provided by law, the matter may not be reopened, unless both parties agree upon an extension of such time limit.

(8) Criteria. The arbitrator shall base his/her findings, opinions and order upon the following criteria, giving first priority to subsection (a) and secondary priority to subsections (b) to (h):

(a) The interest and welfare of the public.

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

(c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

(d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received.

(e) Comparison of the overall compensation of other employees performing similar

services with the same or other employees in comparable communities. As used in this subsection, "comparable" is limited to communities of the same or nearest population range within Oregon. Notwithstanding the provisions of this subsection, the following additional definitions of "comparable" apply in the situations described as follows:

(A) For any city with a population of more than 325,000, "comparable" includes comparison to out-of-state cities of the same or similar size;

(B) For counties with a population of more than 400,000, "comparable" includes comparison to out-of-state counties of the same or similar size; and

(C) For the State of Oregon, "comparable" includes comparison to other states.

(f) The CPI-All Cities Index, commonly known as the cost of living.

(g) The stipulations of the parties.

(h) Such other factors, consistent with subsections (a) to (g) of this section as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in subsections (a) to (g) of this section provide sufficient evidence for an award.

(9) Employment Conditions Pending Arbitration. During the pendency of arbitration proceedings that occur after the expiration of a previous collective bargaining agreement, all wages and benefits shall remain frozen at the level last in effect before the agreement expired, except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise.

(10) Arbitration Decision Final and Binding; Record of Hearing. The Arbitration

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decision shall be final and binding upon the parties if based on the factors set forth in section (8) of this rule and if supported by competent, material and substantial evidence on the whole record of the arbitration hearing. The parties shall cause to be made a record of all testimony, by tape recording or other method. The arbitrator shall resolve any dispute over the type of record to be made. The arbitrator or one of the parties, as agreed by the parties or directed by the arbitrator, shall maintain custody of such record, along with all other evidence produced by the parties, for at least 180 days after the date of the arbitration decision. However, when the hearing is recorded by a court reporter but the parties agree not to have the reporter's notes transcribed, those notes may remain in the custody of the reporter.

(11) Challenges Relating to Bias or Qualifications of Arbitrator: A party may challenge a selected or appointed arbitrator by charging that the arbitrator is biased or not qualified. A petition raising such a challenge must be filed with the Board within 15 days of the selection or appointment of the arbitrator. The petition must include a statement of facts upon which the challenge is based. The other party to the underlying labor dispute will be asked to respond to the petition. The Board will hold a hearing on the petition within 10 days of the date of filing. The hearing will be conducted according to the provisions of OAR 115, Division 010 to the extent that they are applicable and practicable in light of the statutory time lines. The Board will issue a final and binding decision regarding the arbitrator's neutrality or qualifications within 10 days of the hearing.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.706(2), ORS 243.742 & ORS 243.746
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 11-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1987(Temp), f. & ef. 11-3-87; ERB 1-1988, f. & cert. ef. 4-25-88; ERB 2-1989, f. 11-28-89, cert. ef. 12-4-89; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-2000, f. & cert. ef. 12-1-00

Interest Arbitration Enforcement

115-040-0017 Pursuant to ORS 243.752, a party alleging that another party is refusing or failing to comply with an interest arbitration award may seek enforcement of the award by filing an unfair labor practice complaint with the Board charging a violation of 243.672(1)(f) or (2)(c). The Board generally will hold an expedited hearing on the matter, if requested to do so, under the procedures provided by OAR 115-035-0065.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.752
Hist.: ERB 2-1983(Temp), f. 9-30-83, ef. 10-15-83; ERB 1-1984, f. & ef. 4-11-84

Notice of Intent to Strike

115-040-0018 The exclusive representative shall send notice of intent to strike to the Board and the employer by certified mail. The notice shall state the reasons for the intent to strike including the unresolved bargaining issues. The Board and the employer must receive the certified notice ten days prior to the first date of the strike. However, the Board will not declare a strike unlawful when the exclusive representative has entrusted the notice to the postal service for certified mailing at such time that timely delivery could reasonably be expected, provided that both the Board and the employer have actually received written notice of intent to strike at least ten days before the strike begins.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.726(2)(c)
Hist.: ERB 11-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1998, f. & cert. ef. 1-26-98

Petition to Declare a Strike Unlawful

115-040-0020 When it is alleged in good faith by a public employer that a labor organization representing a group of its employees has declared or authorized a strike by such employees and that such strike is or would be in violation of ORS 243.726 or 243.732, the employer may petition the Board for a declaration that the strike is or would be unlawful. The petition shall contain a detailed statement of the facts upon which petitioner

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bases its request for a declaration of an unlawful strike. A copy of the petition shall be served upon the labor organization which is alleged to have declared or authorized the unlawful strike and proof of service shall be provided to the Board. Upon receipt of such a petition, the Board shall either dismiss the petition or set it for a hearing before the Board. If a hearing is set, the Board will expedite processing of the petition to attempt to issue a decision prior to the beginning of the strike. The procedure for the hearing shall be that set out in OAR 115-035-0042. Notice of the hearing shall be by personal service or certified mail, and shall be personally served or mailed at least seven days prior to the date of the hearing, unless the parties, with the approval of the Board, otherwise agree. The Board shall issue its decision within seven days of the close of the hearing on the petition.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.726(4)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 5-1980, f. 10-14-80, ef. 10-17-80; ERB 2-1998, f. & cert. ef. 1-26-98

Panel of Arbitrators and Factfinders

115-040-0030 (1) The State Conciliation Service of the Employment Relations Board shall maintain a panel of qualified labor arbitrators and factfinders for referral, upon request, to the parties to a labor dispute. Panel members are expected to conform to the ethical standards and procedures set forth in the code of professional responsibility for arbitrators of labor disputes as approved by the National Academy of Arbitrators.

(2) Persons seeking to be listed on the panel must complete and submit an application form. The form may be obtained from the State Conciliation Service of the Employment Relations Board. Upon receipt of a completed application, including the application fee in subsection (4) of this section, the Chair and the Conciliator will review the completed application in light of the criteria set forth below and decide whether to include an

applicant on the panel. Each applicant will be notified in writing of the decision:

(a) General Criteria. Applicants will be accepted on the panel if they:

(A) Are experienced in decision-making roles in the resolution of collective bargaining or labor relations disputes; or

(B) Have extensive experience in relevant positions in collective bargaining; or

(C) Have relevant academic experience at the college or university level; and

(D) Are capable of conducting an orderly hearing, can analyze testimony and exhibits and can prepare clear and concise findings and awards within reasonable time limits, and appear, based on references, to be acceptable to the parties.

(b) Proof of Qualification. The qualifications listed in subsection (2)(a) of this rule, are preferably demonstrated by the submission of actual arbitration awards and/or factfinding reports prepared by the applicant while serving as an impartial arbitrator or factfinder chosen by the parties to disputes. Equivalent experience acquired in training, internship or other development programs, or experience such as that acquired as a hearing officer or judge in labor relations controversies also may be considered.

(c) Advocacy:

(A) An advocate is a person who or a member of a firm/business which represents employers or labor organizations, as an employee, attorney or consultant, in matters related to collective bargaining;

(B) No advocate shall be listed on the panel. A person who becomes an advocate while listed on the panel must notify the Conciliator immediately.

(d) Duration of Listing. A member will be removed from the panel by the Chair and Conciliator whenever the member:

(A) No longer meets the criteria for admission;

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(B) Has been repeatedly and flagrantly delinquent in submitting awards;

(C) Has refused to make reasonable and periodic reports to the State Conciliation Service, as required;

(D) Has been the subject of complaints by parties who use the State Conciliation Service Panel and facilities and cause for removal has been shown;

(E) Is determined to be unacceptable to the parties who use the State Conciliation Service Arbitration and Factfinding Panel. The determination of unacceptability may be based on the State Conciliation Service records showing the number of times the arbitrator/factfinder's name has been proposed to the parties and the number of times it has been selected; or

(F) Fails to pay the annual fee in subsection (4) of this section within 90 days of billing;

(3) Procedures for Cancellation or Suspension of a Listing. The Conciliator, at the direction of the Board Chair, will review the reasons alleged for the cancellation or suspension. Prior to a cancellation or suspension of a listing, a panel member will be provided 30 days written notice of the proposed action. The notice will specify the action that is proposed, the reasons for the action, and the results of any review conducted by the Conciliator into this matter. The notice will also provide an opportunity for the panel member to submit a response or information to the Board Chair, or a designated representative, showing why the listing should not be canceled or suspended. The Board Chair's decision shall be in writing and shall be a final decision.

(4) An applicant to the panel of qualified arbitrators and factfinders shall pay a \$50 application fee. A member of the panel shall pay an annual fee of \$100 to remain on the panel.

(5) Nothing contained herein should be construed to limit the right of parties to select jointly any arbitrator or arbitration procedure acceptable to them.

(6)(a) Arbitrators and factfinders selected by the parties pursuant to State Conciliation Service procedures shall promptly notify the Service of their selection;

(b) Arbitrators and factfinders selected pursuant to State Conciliation Service procedures shall promptly provide the State Conciliation Service with copies of decisions or recommendations.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.722(2) & 243.746(2)

Hist.: ERB 1-1984, f. & ef. 4-11-84; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 5-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 5-2007, f. 12-17-07, cert. ef. 1-1-08

Lists of Arbitrators or Factfinders

115-040-0032 (1) When, pursuant to statute or at the request of a party, the State Conciliator submits a list of arbitrators or factfinders to the parties to a dispute, the names on the list shall be drawn at random from the panel described in OAR 115-040-0030. However, the State Conciliator will attempt to comply with a joint request of the parties to restrict the list in any of the following ways:

(a) Only arbitrators who are listed on the labor arbitration panel of the American Arbitration Association;

(b) Only arbitrators whose resumes filed with the State Conciliator show that they are engaged exclusively or primarily in the practice of arbitration or mediation;

(c) Only arbitrators who reside in Oregon;

(d) Only arbitrators who reside in Oregon or Washington;

(e) Only arbitrators who have issued at least two factfinding recommendations under ORS 243.722 or at least one interest arbitration award under ORS 243.752, if the dispute at issue is to be resolved through interest arbitration.

(2) Parties may jointly request a second list of arbitrators or factfinders. A second list will consist of names drawn at random from the

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panel without regard to any restrictions requested by the parties.

(3) Financial or Personal Interest of Arbitrator. No person shall serve as an arbitrator in any arbitration proceeding in which he/she has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification;

(4) Disclosure by Arbitrator. Prior to accepting his/her appointment, the prospective arbitrator shall disclose any circumstances likely to create a presumption of bias or which he/she believes might disqualify him/her as an impartial arbitrator. Upon receipt of such information, the Board shall immediately disclose it to the parties. If either party declines to waive the presumptive disqualifications, the vacancy thus created shall be filled in the same manner as that governing the making of the original appointment;

(5) Vacancies. If any arbitrator should resign, die, withdraw, refuse or be unable to, or be disqualified to perform the duties of his/her appointment, the Board shall, upon satisfactory proof, declare the appointment vacant. Vacancies shall be filled in the same manner as that governing the original appointment, and the matter shall be reheard by the new arbitrator, unless the parties mutually agree to a different procedure.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.722(2) & ORS 243.746(2)

Hist.: ERB 2-1989, f. 11-28-89, cert. ef. 12-4-89; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00

Arbitration Subpoenas

115-040-0033 (1) In an arbitration proceeding under ORS 243.706, the arbitrators, or a majority of the arbitrators, may:

(a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

(A) Compel the attendance of a witness properly served by either party; and

(B) Require from either party the production of books, papers and documents the arbitrators find are relevant to the proceeding;

(b) Administer oaths or affirmations to witnesses; and

(c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

(2) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each party to the arbitration proceeding.

(3) The arbitrators issuing a subpoena under this section may rule on objections to the issuance of the subpoena.

(4) If a person fails to comply with a subpoena issued under this section or if a witness refuses to testify on a matter on which the witness may be lawfully questioned, the party who requested the subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the application of the attorney of record for the party or on the application of the arbitrators, or a majority of the arbitrators, the court may require the person or witness to show cause why the person or witness should not be punished for contempt of court to the same extent and purpose as if the proceedings were pending before the court.

(5) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415(2)

Stat. Auth.: ORS 243.766(7), 240.086(3)

Stats. Implemented: ORS 243.706

Hist.: ERB 1-2000, f. & cert. ef. 12-1-00

Filing of Arbitrator and Factfinder Decisions

115-040-0035 All arbitrators and factfinders listed on the State Conciliation Panel pursuant to OAR 115-040-0030 shall provide the State Conciliation Service with one copy of all written decisions or

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recommendations issued concerning a labor dispute involving public employees, public employers or labor organizations as defined by ORS 243.650.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 243.722(2) & ORS 243.746(2)
Hist.: ERB 11-1985, f. 10-29-85, ef. 10-31-85

Exemption from Disclosure Under ORS 192.410 to 192.505 and Inadmissibility of Mediation Communication Pursuant to OEC Rule 408

115-040-0040 (1) Except to the extent that rules of this agency adopted pursuant to Oregon Laws 1997, chapter 670 make mediation communications confidential, any mediation communications that are public records, as defined in ORS 192.410(4), are not confidential unless the substance of such communication is confidential under state or federal law. Mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(2) Nothing in this rule affects any confidentiality created by other law.

(3) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408).

(4) The words and phrases used in this rule have the same meaning as given to them in Oregon Laws 1997, chapter 670, section 11.

Stat. Auth.: ORS 243.766(7), ORS 240.086(3) & OL 1997, Ch. 670
Stats. Implemented: ORS 192.410 - ORS 192.505
Hist.: ERB 5-1998(Temp), f. & cert. ef. 5-1-98 thru 10-27-98; ERB 6-1998, f. & cert. ef. 10-27-98

Applicability of Mediator Disclosure Rules

115-040-0041 (1) OAR 115-040-0041 to 115-040-0044 apply only to mediations in which:

(a) The agency is a party or is mediating a dispute as to which the agency has regulatory authority; and

(b) That are:

(A) Conducted under OAR 115-040-0000, ORS 243.712, OAR 115-075-0000 and ORS 662.425; or

(B) Involves other joint requests for mediation from labor and management.

(2) OAR 115-040-0041 to 115-040-0044 do not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in Oregon Laws 1997, chapter 670, section 7.

(3) Nothing in OAR 115-040-0041 to 115-040-0044 affects any confidentiality created by other law.

(4) The words and phrases used in OAR 115-040-0041 to 115-040-0044 have the same meaning as given to them in Oregon Laws 1997, chapter 670, sections 7 and 11.

Stat. Auth.: ORS 243.766(7), ORS 240.086(3) & OL 1997, Ch. 670
Stats. Implemented: ORS 192.410 - ORS 192.505
Hist.: ERB 5-1998(Temp), f. & cert. ef. 5-1-98 thru 10-27-98; ERB 6-1998, f. & cert. ef. 10-27-98

Mediator May Not Disclose Mediation Communications in Subsequent Proceedings

115-040-0042 Except as provided in this rule, a mediator may not disclose or be compelled to disclose mediation communications in mediations described in OAR 115-040-0041(1) and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless all the parties to the mediation and the mediator agree in writing to the disclosure.

(1) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, a mediator may disclose mediation communications to the extent that those communications may be

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necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(2) A mediator may disclose confidential mediation communication directly related to child abuse or elder abuse if the mediator is a person who has a duty to report child abuse under ORS 419B.010 or elder abuse under 124.050 to 124.095.

(3) A mediator may disclose confidential mediation communications if the mediator reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or bodily injury to any person.

(4) A mediator may disclose a mediation communication if, as a condition of a professional license, the mediator is compelled by law or the rule of a court to disclose a communication related to the conduct of another licensed professional.

(5) When the only parties to the mediation are public bodies, mediation communications and mediation agreements are not confidential except to the extent those communications or agreements are exempt from disclosure under ORS 192.410 to 192.505 and may be disclosed and introduced into evidence in any subsequent proceeding.

(6) When the parties to the mediation include a private party and two or more public bodies, mediation communications are not confidential if the laws, rules or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential and may be disclosed and introduced into evidence in any subsequent proceeding.

(7) When a person acts as the mediator in the mediation and also acts as the hearing officer in a contested case involving some or all of the same matters, the communications in the mediation are not confidential and may be

disclosed and introduced into evidence in any subsequent proceeding.

(8) A mediator may disclose mediation communications described in OAR 115-040-0043 and such communications may be introduced into evidence in any subsequent proceeding to the extent provided in that rule.

(9) The terms of any mediation agreement are not confidential, may be disclosed and may be introduced as evidence in any subsequent proceeding.

Stat. Auth.: ORS 243.766(7), ORS 240.086(3) & OL 1997, Ch. 670

Stats. Implemented: ORS 192.410 - ORS 192.505
Hist.: ERB 5-1998(Temp), f. & cert. ef. 5-1-98 thru 10-27-98; ERB 6-1998, f. & cert. ef. 10-27-98

Mediator May Disclose Certain Mediation Communications

115-040-0043 For the purposes of OAR 115-040-0042, a mediator may disclose the following mediation communications and such communications may be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding:

(1) A request for mediation;

(2) Communications from the Conciliation Service establishing the time and place of mediation;

(3) Notification of declaration of impasse submitted to the Board;

(4) Communication from the Conciliation Service establishing the time for filing final offers;

(5) Final offers and cost summaries submitted by the parties to the mediators;

(6) Petitions to initiate factfinding or interest arbitration submitted to the Board;

(7) Strike notices submitted to the Board.

Stat. Auth.: ORS 243.766(7), ORS 240.086(3) & OL 1997, Ch. 670

Stats. Implemented: ORS 192.410 - ORS 192.505
Hist.: ERB 5-1998(Temp), f. & cert. ef. 5-1-98 thru 10-27-98; ERB 6-1998, f. & cert. ef. 10-27-98

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Notice of Disclosure of Mediation Communications

115-040-0044 (1) When a mediation is of a type described in OAR 115-040-0041(1), the agency must provide written notice to all parties to the mediation and the mediator informing them of the extent to which mediation communications may be confidential.

(2) The notice required by this rule must be in writing and must include:

(a) An explanation of the agency's role in the mediation, including:

(A) Whether the agency is a party; and

(B) Whether the mediator is an employee, contractor or agent of the agency.

(b) A statement that:

(A) Mediation communications in mediations not described in OAR 115-040-0041(1) are not confidential unless provided otherwise by rules of this agency adopted pursuant to Oregon Laws 1997, chapter 670, section 3, or by other state or federal law; and

(B) The parties to the mediation may agree in writing to less confidentiality and greater disclosure of mediation communications.

(c) At least one of the following:

(A) A copy of OAR 115-040-0040 and OAR 115-040-0041 to 115-040-0044;

(B) A summary of OAR 115-040-0040 and OAR 115-040-0041 to 115-040-0044; or

(C) Citations to the rules affecting the confidentiality of mediation communications and a statement indicating where a copy of these rules can be obtained.

(3) Any notice required by this rule is not confidential and may be disclosed.

Stat. Auth.: ORS 243.766(7), ORS 240.086(3) & OL 1997, Ch. 670

Stats. Implemented: ORS 192.410 - ORS 192.505

Hist.: ERB 5-1998(Temp), f. & cert. ef. 5-1-98 thru 10-27-98; ERB 6-1998, f. & cert. ef. 10-27-98

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COLLECTIVE BARGAINING
(Generally)

243.650 Definitions for ORS 243.650 to 243.782. 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. 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 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

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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 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. 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

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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 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.

(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

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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.]

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.

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

(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 2. The amendments to ORS 243.650 by section 1 of this 2014 Act apply only to collective bargaining agreements executed on or after the effective date of this 2014 Act.

SECTION 3. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

Approved by the Governor March 3, 2014

Filed in the office of Secretary of State March 3, 2014

Effective date March 3, 2014

[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]

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 obligate public employers, public employees 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. [1973 c.536 §2]

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243.662 Rights of public employees to join labor organizations. Public employees have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations. [Formerly 243.730]

243.666 Certified or recognized labor organization as exclusive employee group representative; protection of employee nonassociation rights. (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 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 or group of 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. [Formerly 243.735; 1983 c.740 §65]

243.668 Legislative findings.

(1) The Legislative Assembly finds that:

(a) It is the policy of this state that public funds may not be used to subsidize interference with an employee's choice to join or to be represented by a labor union.

(b) Some public employers use public funds to aid or subsidize efforts to deter union organizing.

(c) Use of public funds to deter union organizing is contrary to the purposes for which the funds were appropriated and is wasteful of scarce public resources.

(2) The purpose of ORS 243.670 (Prohibition of actions by public employer to assist, promote or deter union organizing) is to maintain the neutrality of public bodies in labor organizing by forbidding the use of public funds for unintended purposes and to conserve public resources by ensuring that public funds are used as intended. [2013 c.663 §3]

Note: 243.668 (Legislative findings) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

243.670 Prohibition of actions by public employer to assist, promote or deter union organizing; rules. (1) As used in this section:

(a) "Assist, promote or deter union organizing" means any attempt by a public

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employer to influence the decision of any or all of its employees or the employees of its subcontractors regarding:

(A) Whether to support or oppose a labor organization that represents or seeks to represent those employees; or

(B) Whether to become a member of any labor organization.

(b) "Public funds" means moneys drawn from the State Treasury or any special or trust fund of the state government, including any moneys appropriated by the state government and transferred to any public body, as defined in ORS 174.109 (Public body defined), and any other moneys under the control of a public official by virtue of office.

(c) "Public property" means any real property or facility owned or leased by a public employer.

(2) A public employer may not:

(a) Use public funds to support actions to assist, promote or deter union organizing;

(b) Discharge, demote, harass or otherwise take adverse action against any individual because the individual seeks to enforce this section or testifies, assists or participates in any manner in an investigation, hearing or other proceeding to enforce this section.

(3) If an employee requests the opinion of the employee's employer or supervisor about union organizing, nothing in this section prohibits the employer or supervisor from responding to the request of the employee.

(4) This section does not apply to an activity performed, or to an expense incurred, in connection with:

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement.

(b) Allowing a labor organization or its representatives access to the public employer's facilities or property.

(c) Performing an activity required by federal or state law or by a collective bargaining agreement.

(d) Negotiating, entering into or carrying out an agreement with a labor organization.

(e) Paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement.

(5)(a) This section shall be enforced by the Employment Relations Board, which shall adopt rules necessary to implement and administer compliance. A resident of this state may intervene as a plaintiff in any action brought under this section.

(b) Nothing in this section prohibits a public employer from spending public funds for the purpose of representing the public employer in a proceeding before the board or in a judicial review of that proceeding. [2013 c.663 §4]

Note: 243.670 (Prohibition of actions by public employer to assist, promote or deter union organizing) was added to and made a part of 243.650 (Definitions for ORS 243.650 to 243.782) to 243.782 (Representation by counsel authorized) by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Unfair Labor Practices)

243.672 Unfair labor practices; complaints; filing fees. (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 in or because of the exercise of rights guaranteed in ORS 243.662.

(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

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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.

(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.

(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).

(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.

(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.

(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

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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. [1973 c.536 §4; 1995 c.286 §2; 2007 c.296 §1; 2011 c.593 §2; 2013 c.663 §6]

243.676 Processing of unfair labor practice complaints; civil penalties.

(1) Whenever a written complaint is filed alleging that any person has engaged in or is engaging in any unfair labor practice listed in ORS 243.672(1) and (2) and 243.752, the Employment Relations Board or its agent shall:

(a) Cause to be served upon such person a copy of the complaint;

(b) Investigate the complaint to determine if a hearing on the unfair labor practice charge is warranted. If the investigation reveals that no issue of fact or law exists, the board may dismiss the complaint; and

(c) Set the matter for hearing if the board finds in its investigation made pursuant to paragraph (b) of this subsection that an issue of fact or law exists. The hearing shall be before the board or an agent of the board not more than 20 days after a copy of the complaint has been served on the person.

(2) Where, as a result of the hearing required pursuant to subsection (1)(c) of this section, the board finds that any person named in the complaint has engaged in or is engaging in any unfair labor practice charged in the complaint, the board shall:

(a) State its findings of fact;

(b) Issue and cause to be served on such person an order that the person cease and desist from the unfair labor practice;

(c) Take such affirmative action, including but not limited to the reinstatement of

employees with or without back pay, as necessary to effectuate the purposes of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290;

(d) Designate the amount and award representation costs, if any, to the prevailing party; and

(e) Designate the amount and award attorney fees, if any, to the prevailing party on appeal, including proceedings for Supreme Court review, of a board order.

(3) Where the board finds that the person named in the complaint has not engaged in or is not engaging in an unfair labor practice, the board shall:

(a) Issue an order dismissing the complaint; and

(b) Designate the amount and award representation costs, if any, to the prevailing party.

(4)(a) The board may award a civil penalty to any person as a result of an unfair labor practice complaint hearing, in the aggregate amount of up to \$1,000 per case, without regard to attorney fees, if:

(A) The complaint has been affirmed pursuant to subsection (2) of this section and the board finds that the person who has committed, or who is engaging, in an unfair labor practice has done so repetitively, knowing that the action taken was an unfair labor practice and took the action disregarding this knowledge, or that the action constituting the unfair labor practice was egregious; or

(B) The complaint has been dismissed pursuant to subsection (3) of this section, and that the complaint was frivolously filed, or filed with the intent to harass the other person, or both.

(b) Notwithstanding paragraph (a) of this subsection, if the board finds that a public employer named in the complaint violated ORS 243.670 (Prohibition of actions by public employer to assist, promote or deter union organizing) (2), the board shall impose a civil penalty equal to triple the amount of funds the

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public employer expended to assist, promote or deter union organizing.

(5) As used in subsections (1) to (4) of this section, "person" includes but is not limited to individuals, labor organizations, associations and public employers. [1973 c.536 §5; 1979 c.219 §1; 1983 c.504 §1; 1983 c.559 §1; 2013 c.663 §7]

(Representation Matters)

243.682 Representation questions; investigation and hearings on petitions; certification without election; rules; elections. (1) If a question of representation exists, the Employment Relations Board shall:

(a) Upon application of a public employer, public employee or a labor organization, designate the appropriate bargaining unit, and in making its determination shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.

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

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

(B) A labor organization alleging that 30 percent of the employees in an appropriate bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employees in the unit;

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

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

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

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

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

(B) Procedures to be used by the board to establish the authenticity of signed

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authorizations designating bargaining representatives;

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

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

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

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

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

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

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

(4) Except as provided in ORS 243.692, if the board finds in a hearing conducted pursuant to subsection (1)(b) of this section that a question of representation exists, the board shall conduct an election by secret ballot, at a time and place convenient for the

employees of the jurisdiction and also within a reasonable period of time after the filing has taken place, and certify the results of the election. [1973 c.536 §7; 2007 c.833 §1; 2013 c.663 §8]

Note: Section 9, chapter 663, Oregon Laws 2013, provides:

243.684 Requirements for petition for representation. A petition for representation filed under ORS 243.682(2) alleging that a majority of employees in the unit appropriate for the purpose of collective bargaining wish to be represented by a labor organization for that purpose must include a statement of a desire by the employees to be represented for the purpose of collective bargaining and must be signed and dated by 30 percent of the employees in the unit during the 180 days prior to the filing of the petition with the Employment Relations Board. [2013 c.663 §5]

Note: 243.684 (Requirements for petition for representation) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 243 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

243.686 Representation elections; ballot form; determining organization to be certified; consent elections. (1) The Employment Relations Board shall place on the ballot only those labor organizations designated to be placed on the ballot by more than 10 percent of the employees in an appropriate bargaining unit.

(2) The ballot shall contain a provision for marking no representation.

(3) The board shall determine who is eligible to vote in the election and require the employer to provide a complete list of all such eligible persons, their names, addresses and job classifications to each candidate organization on the ballot at least 20 days before the election is to occur.

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(4) The labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

(5) In any election where there are more than two choices on the ballot and none of the choices receives a majority of the votes cast, a runoff election shall be conducted. The ballot in the runoff election shall contain the two choices on the original ballot that received the largest number of votes.

(6) Nothing in this section is intended to prohibit the waiving of hearings by stipulation for the purpose of a consent election, in conformity with the rules of the board. [1973 c.536 §8; 1983 c.83 §27; 1997 c.11 §4; 2010 c.22 §1]

243.692 Limitation on successive representation elections. (1) No election shall be conducted under ORS 243.682 (4) in any appropriate bargaining unit within which during the preceding 12-month period an election was held, nor during the term of any lawful collective bargaining agreement between a public employer and an employee representative. However, a contract with a term of more than three years shall be a bar for only the first three years of its term.

(2) Notwithstanding subsection (1) of this section, the Employment Relations Board shall rule that a contract will not be given the effect of barring an election if it finds that:

(a) Unusual circumstances exist under which the contract is no longer a stabilizing force; and

(b) An election should be held to restore stability to the representation of employees in the unit.

(3) A petition for an election where a contract exists must be filed not more than 90 calendar days and not less than 60 calendar days before the end of the contract period. If the contract is for more than three years, a petition for election may be filed any time after three years from the effective date of the

contract. [1973 c.536 §9; 1999 c.572 §1; 2007 c.833 §2]

(Bargaining; Mediation; Fact-Finding)

243.696 State agency representatives in bargaining; Chief Justice as representative of judicial branch. (1) The Oregon Department of Administrative Services shall represent all state agencies which have bargaining units in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of exempt, unclassified and classified employees, except those unclassified employees governed by the provisions of ORS 240.240. The department may delegate such collective bargaining responsibility to operating agencies as may be appropriate.

(2) The Chief Justice of the Supreme Court shall represent the judicial department in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of officers and employees of the courts of this state who are state officers or employees. The Chief Justice may delegate such collective bargaining responsibility to the state court administrator. [1973 c.536 §10; 1979 c.468 §25; 1983 c.763 §64]

243.698 Expedited bargaining process; notice; implementation of proposed changes. (1) When the employer is obligated to bargain over employment relations during the term of a collective bargaining agreement and the exclusive representative demands to bargain, the bargaining may not, without the consent of both parties and provided the parties have negotiated in good faith, continue past 90 calendar days after the date the notification specified in subsection (2) of this section is received.

(2) The employer shall notify the exclusive representative in writing of anticipated changes that impose a duty to bargain.

(3) Within 14 calendar days after the employer's notification of anticipated changes

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specified in subsection (2) of this section is sent, the exclusive representative may file a demand to bargain. If a demand to bargain is not filed within 14 days of the notice, the exclusive representative waives its right to bargain over the change or the impact of the change identified in the notice.

(4) The expedited bargaining process shall cease 90 calendar days after the written notice described in subsection (2) of this section is sent, and the employer may implement the proposed changes without further obligations to bargain. At any time during the 90-day period, the parties jointly may agree to mediation, but that mediation shall not continue past the 90-day period from the date the notification specified in subsection (2) of this section is sent. Neither party may seek binding arbitration during the 90-day period. [1995 c.286 §13]

Note: 243.698 was added to and made a part of 243.650 to 243.782 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

243.702 Renegotiation of invalid provisions in agreements. (1) In the event any words or sections of a collective bargaining agreement are declared to be invalid by any court of competent jurisdiction, by ruling by the Employment Relations Board, by statute or constitutional amendment or by inability of the employer or the employees to perform to the terms of the agreement, then upon request by either party the invalid words or sections of the collective bargaining agreement shall be reopened for negotiation.

(2) Renegotiation of a collective bargaining agreement pursuant to this section is subject to ORS 243.698. [1973 c.536 §11; 1995 c.286 §4]

243.706 Agreement may provide for grievance and other disputes to be resolved by binding arbitration or other resolution process; powers of arbitrator. (1) A public employer may enter into a written agreement with the exclusive representative of an

appropriate bargaining unit setting forth a grievance procedure culminating in binding arbitration or any other dispute resolution process agreed to by the parties. As a condition of enforceability, any arbitration award that orders the reinstatement of a public employee or otherwise relieves the public employee of responsibility for misconduct shall comply with public policy requirements as clearly defined in statutes or judicial decisions including but not limited to policies respecting sexual harassment or sexual misconduct, unjustified and egregious use of physical or deadly force and serious criminal misconduct, related to work. In addition, with respect to claims that a grievant should be reinstated or otherwise relieved of responsibility for misconduct based upon the public employer's alleged previous differential treatment of employees for the same or similar conduct, the arbitration award must conform to the following principles:

(a) Some misconduct is so egregious that no employee can reasonably rely on past treatment for similar offenses as a justification or defense to discharge or other discipline.

(b) Public managers have a right to change disciplinary policies at any time, notwithstanding prior practices, if such managers give reasonable advance notice to affected employees and the change does not otherwise violate a collective bargaining agreement.

(2) In addition to subsection (1) of this section, a public employer may enter into a written agreement with the exclusive representative of its employees providing that a labor dispute over conditions and terms of a contract may be resolved through binding arbitration.

(3) In an arbitration proceeding under this section, the arbitrators, or a majority of the arbitrators, may:

(a) Issue subpoenas on their own motion or at the request of a party to the proceeding to:

(A) Compel the attendance of a witness properly served by either party; and

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(B) Require from either party the production of books, papers and documents the arbitrators find are relevant to the proceeding;

(b) Administer oaths or affirmations to witnesses; and

(c) Adjourn a hearing from day to day, or for a longer time, and from place to place.

(4) The arbitrators shall promptly provide a copy of a subpoena issued under this section to each party to the arbitration proceeding.

(5) The arbitrators issuing a subpoena under this section may rule on objections to the issuance of the subpoena.

(6) If a person fails to comply with a subpoena issued under this section or if a witness refuses to testify on a matter on which the witness may be lawfully questioned, the party who requested the subpoena or seeks the testimony may apply to the arbitrators for an order authorizing the party to apply to the circuit court of any county to enforce the subpoena or compel the testimony. On the application of the attorney of record for the party or on the application of the arbitrators, or a majority of the arbitrators, the court may require the person or witness to show cause why the person or witness should not be punished for contempt of court to the same extent and purpose as if the proceedings were pending before the court.

(7) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the public employer, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). [1973 c.536 §12; 1995 c.286 §5; 1999 c.75 §1]

243.710 [1963 c.579 §2; repealed by 1969 c.671 §1 (243.711 enacted in lieu of 243.710)]

243.711 [1969 c.671 §2 (enacted in lieu of 243.710); 1973 c.536 §1; renumbered 243.650]

243.712 Mediation upon failure to agree after 150-day period; impasse; final offer; fact-finding; effect of subsequent

arbitration decision. (1) If after a 150-calendar-day period of good faith negotiations over the terms of an agreement or 150 days after certification or recognition of an exclusive representative, no agreement has been signed, either or both of the parties may notify the Employment Relations Board of the status of negotiations and the need for assignment of a mediator. Any period of time in which the public employer or labor organization has been found by the Employment Relations Board to have failed to bargain in good faith shall not be counted as part of the 150-day period. This provision cannot be invoked by the party found to have failed to bargain in good faith. The parties may agree to request a mediator before the end of the 150-day period. Upon receipt of such notification, the board shall appoint a mediator and shall notify the parties of the appointment. The 150 days of negotiation shall begin when the parties meet for the first bargaining session and each party has received the other party's initial proposal.

(2) The board on the request of one of the parties shall render assistance to resolve the labor dispute according to the following schedule:

(a) Mediation shall be provided by the State Conciliation Service as provided by ORS 662.405 to 662.455. Any time after 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Notification of an impasse shall be filed in writing with the board, and copies of the notification shall be submitted to the parties on the same day the notification is filed with the board.

(b) Within seven days of the declaration of impasse, each party shall submit to the mediator in writing the final offer of the party, including a cost summary of the offer. Upon receipt of the final offers, the mediator shall make public the final offers, including any proposed contract language and each party's cost summary dealing with those issues, on

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which the parties have failed to reach agreement. Each party's proposed contract language shall be titled "Final Offer."

(c) Within 30 days after the mediator makes public the parties' final offers, the parties may agree and must jointly petition the Employment Relations Board to appoint a fact finder. If the parties jointly petition for fact-finding, a fact finder shall be appointed and the hearing conducted as provided in ORS 243.722.

(d) If no agreement has been reached 30 days after the mediator makes public the final offers, or if the parties participated in fact-finding, 30 days after the receipt of the fact finder's report, the public employer may implement all or part of its final offer, and the public employees have the right to strike. After a collective bargaining agreement has expired, and prior to agreement on a successor contract, the status quo with respect to employment relations shall be preserved until completion of impasse procedures except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise.

(e) Nothing in this section shall be construed to prohibit the parties at any time from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration. The arbitration shall be scheduled and conducted in accordance with ORS 243.746. The arbitration shall supersede the dispute resolution procedures set forth in ORS 243.726 and 243.746. [1973 c.536 §13; 1987 c.84 §1; 1995 c.286 §6]

243.716 Use of volunteers not contracting out for services. The use of volunteers to provide services shall not be considered contracting out for services. The use of reserve police personnel that does not require layoff

shall not be considered contracting out for services. [1995 c.286 §14]

Note: 243.716 was added to and made a part of 243.650 to 243.782 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

243.720 [1963 c.579 §1; repealed by 1973 c.536 §39]

243.722 Fact-finding procedure; costs; basis for findings and opinions; effect of subsequent arbitration decision. (1) In carrying out the fact-finding procedures authorized in ORS 243.712(2)(c), the public employer and the exclusive representative may select their own fact finder.

(2)(a) Where the parties have not selected their own fact finder within five days after written acknowledgment by the Employment Relations Board that fact-finding has been jointly initiated, the board shall submit to the parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon fact-finding interest arbitrations for which each person has issued an award shall be included. Each party shall alternately strike three names from the list. The order of striking shall be determined by lot. The remaining individual shall be designated the "fact finder."

(b) When both parties desire a panel of three fact finders instead of one as provided in this subsection, the board shall submit to the parties a list of seven qualified, unbiased, disinterested persons. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining three persons shall be designated "fact finders."

(c) When the parties have not designated the fact finder and notified the board of their choice within five days after receipt of the list, the board shall appoint the fact finder from the list. However, if one of the parties strikes the names as prescribed in this subsection and the other party fails to do so, the board shall

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appoint the fact finder only from the names remaining on the list.

(d) The concerns regarding the bias and qualifications of the person designated by lot or by appointment may be challenged by a petition filed directly with the board. A hearing shall be held by the board within 10 days of filing the petition and the board shall issue a final and binding decision regarding the person's neutrality within 10 days of the hearing.

(3) The fact finder shall establish dates and places of hearings. Upon the request of either party or the fact finder, the board shall issue subpoenas. The fact finder may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute. Not more than 30 days from the date of conclusion of the hearings, the fact finder shall make written findings of fact and recommendations for resolution of the dispute and shall serve such findings and recommendations upon the parties and upon the board. Service may be personal or by registered or certified mail. Not more than five working days after the findings and recommendations have been sent, the parties shall notify the board and each other whether or not they accept the recommendations of the fact finder. If the parties do not accept them, the board, five days after receiving notice that one or both of the parties do not accept the findings, shall publicize the fact finder's findings of facts and recommendations.

(4) The parties may voluntarily agree at any time during or after fact-finding to submit any or all of the issues in dispute to final and binding arbitration, and if such agreement is reached prior to the publication of the fact finder's findings of facts and recommendations, the board shall not publicize such findings and recommendations.

(5) The cost of fact-finding shall be borne equally by the parties involved in the dispute.

(6) Fact finders shall base their findings and opinions on the matters prescribed in this

subsection in accordance with the criteria set out in ORS 243.746 (4)(a) to (h). [1973 c.536 §14; 1995 c.286 §7]

(Strikes)

243.726 Public employee strikes; equitable relief against certain strikes; effect of unfair labor practice charge on prohibited strike. (1) Participation in a strike shall be unlawful for any public employee who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the Employment Relations Board or recognized by the employer; or is included in an appropriate bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbitration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290.

(2) It shall be lawful for a public employee who is not prohibited from striking under subsection (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike over mandatory subjects of bargaining provided:

(a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes have been complied with in good faith;

(b) Thirty days have elapsed since the board has made public the fact finder's findings of fact and recommendations or the mediator has made public the parties' final offers;

(c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike and stating the reasons for its intent to strike to the board and the public employer;

(d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 (1) or renegotiation under ORS 243.698; and

(e) The union's strike does not include unconventional strike activity not protected

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under the National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice under ORS 243.672 (2)(f).

(3)(a) Where the strike occurring or is about to occur creates a clear and present danger or threat to the health, safety or welfare of the public, the public employer concerned may petition the circuit court of the county in which the strike has taken place or is to take place for equitable relief including but not limited to appropriate injunctive relief.

(b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of Marion County.

(c) If, after hearing, the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall include an order that the labor dispute be submitted to final and binding arbitration within 10 days of the court's order pursuant to procedures in ORS 243.746.

(4)(a) No labor organization shall declare or authorize a strike of public employees that is or would be in violation of this section. When it is alleged in good faith by the public employer that a labor organization has declared or authorized a strike of public employees that is or would be in violation of this section, the employer may petition the board for a declaration that the strike is or would be unlawful. The board, after conducting an investigation and hearing, may make such declaration if it finds that such declaration or authorization of a strike is or would be unlawful.

(b) When a labor organization or individual disobeys an order of the appropriate circuit court issued pursuant to enforcing an order of the board involving this section and ORS 243.736, they shall be punished according to the provisions of ORS 33.015 to 33.155, except that the amount of the fine shall be at the discretion of the court.

(5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike. The board upon the filing of an unfair

labor charge alleging that a public employer has committed an unfair labor practice during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the court of competent jurisdiction for appropriate relief or a restraining order.

(6) As used in this section, "danger or threat to the health, safety or welfare of the public" does not include an economic or financial inconvenience to the public or to the public employer that is normally incident to a strike by public employees. [1973 c.536 §16; 1979 c.257 §1; 1989 c.1089 §1; 1991 c.724 §28; 1995 c.286 §8]

243.730 [1963 c.579 §3; 1973 c.536 §3; renumbered 243.662]

243.732 Refusal to cross picket line as prohibited strike. Public employees, other than those engaged in a nonprohibited strike, who refuse to cross a picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of ORS 243.726, pertaining to prohibited strikes. [1973 c.536 §23]

243.735 [1969 c.671 §5; 1973 c.536 §6; renumbered 243.666]

243.736 Strikes by deputy district attorneys and certain emergency and public safety personnel. (1) It is unlawful for any of the following public employees to strike or recognize a picket line of a labor organization while in the performance of official duties:

- (a) Deputy district attorneys;
- (b) Emergency telephone worker;
- (c) Employee of the Oregon Youth Authority who has custody, control or supervision of youth offenders;
- (d) Firefighter;
- (e) Guard at a correctional institution or mental hospital;

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(f) Parole and probation officer who supervises adult offenders; and

(g) Police officer.

(2) As used in this section, “emergency telephone worker” means a person whose official focal duties are receiving information through a 9-1-1 emergency reporting system under ORS 403.105 to 403.250, relaying the information to public or private safety agencies or dispatching emergency equipment or personnel in response to the information. [1973 c.536 §17; 1985 c.232 §1; 1989 c.793 §20; 2003 c.216 §1; 2007 c.646 §1; 2009 c.376 §1]

243.738 Strikes by employees of mass transit districts, transportation districts and municipal bus systems. (1) It is unlawful for any employee of a mass transit district, transportation district or municipal bus system to strike or recognize a picket line of a labor organization while in the performance of official duties.

(2) As used in this section:

(a) “Mass transit district” means a mass transit district established under ORS 267.010 to 267.390.

(b) “Transportation district” means a transportation district established under ORS 267.510 to 267.650. [2007 c.641 §2]

Note: 243.738 was added to and made a part of 243.650 to 243.782 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

243.740 [1963 c.579 §4; repealed by 1973 c.536 §39]

(Arbitration)

243.742 Binding arbitration when strike prohibited. (1) It is the public policy of the State of Oregon that where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees

and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290, providing for compulsory arbitration, shall be liberally construed.

(2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation of a labor dispute, have not culminated in a signed agreement between the parties who are prohibited from striking, the public employer and exclusive representative of its employees shall include with the final offer filed with the mediator a petition to the Employment Relations Board in writing which initiates binding arbitration for bargaining units with employees referred to in ORS 243.736 (1). Arbitration shall be scheduled by mutual agreement not earlier than 30 days following the submission of the final offer packages to the mediator. Arbitration shall be scheduled in accordance with the procedures prescribed in ORS 243.746. [1973 c.536 §18; 1995 c.286 §9]

243.745 [1969 c.671 §6; repealed by 1973 c.536 §39]

243.746 Selection of arbitrator; arbitration procedure; last best offers; bases for findings and opinions; sharing arbitration costs. (1) In carrying out the arbitration procedures authorized in ORS 243.712 (2)(e), 243.726 (3)(c) and 243.742, the public employer and the exclusive representative may select their own arbitrator.

(2) Where the parties have not selected their own arbitrator within five days after notification by the Employment Relations Board that arbitration is to be initiated, the board shall submit to the parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon interest arbitrations and fact-findings for which each person has issued an award shall be included. Each party shall alternately strike three names from the list. The order of striking shall be determined by

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lot. The remaining individual shall be designated the “arbitrator”:

(a) When the parties have not designated the arbitrator and notified the board of their choice within five days after receipt of the list, the board shall appoint the arbitrator from the list. However, if one of the parties strikes the names as prescribed in this subsection and the other party fails to do so, the board shall appoint the arbitrator only from the names remaining on the list.

(b) The concerns regarding the bias and qualifications of the person designated by lot or by appointment may be challenged by a petition filed directly with the board. A hearing shall be held by the board within 10 days of filing of the petition and the board shall issue a final and binding decision regarding the person’s neutrality within 10 days of the hearing.

(3) The arbitrator shall establish dates and places of hearings. Upon the request of either party or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date of the hearing, each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects, and neither party may change the last best offer package unless pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for the hearing may thereafter be changed only for compelling reasons or by mutual consent of the parties. If either party provides notice of a change in its position within 24 hours of the 14-day deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute.

(4) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement,

unresolved mandatory subjects submitted to the arbitrator in the parties’ last best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary priority to paragraphs (b) to (h) of this subsection as follows:

(a) The interest and welfare of the public.

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

(c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

(d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received.

(e) Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, “comparable” is limited to communities of the same or nearest population range within Oregon. Notwithstanding the provisions of this paragraph, the following additional definitions of “comparable” apply in the situations described as follows:

(A) For any city with a population of more than 325,000, “comparable” includes comparison to out-of-state cities of the same or similar size;

(B) For counties with a population of more than 400,000, “comparable” includes comparison to out-of-state counties of the same or similar size;

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(C) Except as otherwise provided in subparagraph (D) of this paragraph, for the State of Oregon, “comparable” includes comparison to other states; and

(D) For the Department of State Police troopers, “comparable” includes the base pay for city police officers employed by the five most populous cities in this state.

(f) The CPI-All Cities Index, commonly known as the cost of living.

(g) The stipulations of the parties.

(h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and order. The opinion and order shall be served on the parties and the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be based on the criteria prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute. [1973 c.536 §19; 1995 c.286 §10; 2001 c.104 §76; 2009 c.878 §1]

243.750 [1963 c.579 §5; repealed by 1969 c.671 §3 (243.751 enacted in lieu of 243.750)]

243.751 [1969 c.671 §4 (enacted in lieu of 243.750); repealed by 1973 c.536 §39]

243.752 Arbitration decision final; enforcement; effective date of compensation increases; modifying award. (1) A majority

decision of the arbitration panel, under ORS 243.706, 243.726, 243.736, 243.742 and 243.746, if supported by competent, material and substantial evidence on the whole record, based upon the factors set forth in ORS 243.746 (4), shall be final and binding upon the parties. Refusal or failure to comply with any provision of a final and binding arbitration award is an unfair labor practice. Any order issued by the Employment Relations Board pursuant to this section may be enforced at the instance of either party or the board in the circuit court for the county in which the dispute arose.

(2) The arbitration panel may award increases retroactively to the first day after the expiration of the immediately preceding collective bargaining agreement. At any time the parties, by stipulation, may amend or modify an award of arbitration. [1973 c.536 §20; 1981 c.423 §1; 1983 c.504 §2]

243.756 Employment conditions during arbitration. During the pendency of arbitration proceedings that occur after the expiration of a previous collective bargaining agreement, all wages and benefits shall remain frozen at the level last in effect before the agreement expired, except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise. [1973 c.536 §21; 1995 c.286 §11]

243.760 [1963 c.579 §6; repealed by 1973 c.536 §39]

243.762 Alternative arbitration procedure under collective bargaining agreement. Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290 is intended to prohibit a public employer and the exclusive representative of its employees from entering

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into a collective bargaining agreement which provides for a compulsory arbitration procedure which is substantially equivalent to ORS 243.742 to 243.756. [1973 c.536 §22]

(Miscellaneous)

243.766 Board duties in administration of collective bargaining laws; rules. The Employment Relations Board shall:

(1) Establish procedures for, investigate and resolve any disputes concerning the designation of an appropriate bargaining unit.

(2) Establish procedures for, resolve disputes with respect to, and supervise the conduct of elections for the determination of employee representation.

(3) Conduct proceedings on complaints of unfair labor practices by employers, employees and labor organizations and take such actions with respect thereto as it deems necessary and proper.

(4) Petition the appropriate circuit court for enforcement of any order issued by the board pursuant to ORS 243.650 to 243.782.

(5) Hold such hearings and make such inquiries as it deems necessary to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents and issue subpoenas.

(6) Conduct studies on problems relating to public employment relations and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and labor organizations necessary to carry out its functions and responsibilities; make available to public employers, labor organizations, mediators, members of fact-finding boards, arbitrators and other concerned parties statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiation.

(7) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with ORS chapter 183. [1973 c.536 §24]

243.770 [1965 c.390 §5; 1971 c.582 §10; repealed by 1973 c.536 §39]

243.772 Effect of collective bargaining laws on local charters and ordinances. Any provisions of local charters and ordinances adopted pursuant thereto in existence on October 5, 1973, and not in conflict with the rights and duties established in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290 may remain in full force and effect after the Employment Relations Board has determined that no conflict exists. [1973 c.536 §15]

243.775 [1995 c.600 §2; renumbered 243.800 in 1997]

243.776 Rights and responsibilities of public employees. The rights and responsibilities prescribed for state officers and employees in ORS 292.055 shall accrue to employees of all public employers. [1973 c.536 §32]

243.778 Student representation when bargaining unit includes public university faculty; duties of student representatives; confidentiality requirements. (1) When an appropriate bargaining unit includes members of the faculty of a public university listed in ORS 352.002, the duly organized and recognized entity of student government at that university may designate three representatives to meet and confer with the public employer of those members of the faculty and the exclusive representative of that appropriate bargaining unit prior to collective bargaining.

(2) During the course of collective bargaining between the public employer and the exclusive representative described in

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subsection (1) of this section, the representatives of student government designated under subsection (1) of this section shall:

(a) Be allowed to attend and observe all meetings between the public employer and the exclusive representative at which collective bargaining occurs;

(b) Have access to all written documents pertaining to the collective bargaining negotiations exchanged by the public employer and the exclusive representative, including copies of any prepared written transcripts of the bargaining session;

(c) Be allowed to comment in good faith during the bargaining sessions upon matters under consideration; and

(d) Be allowed to meet and confer with the exclusive representative and the public employer regarding the terms of an agreement between them prior to the execution of a written contract incorporating that agreement.

(3) Rules regarding confidentiality and release of information shall apply to student representatives in the same manner as employer and employee bargaining unit representatives.

(4) As used in this section, “meet and confer” means the performance of the mutual obligation of the representatives of student government designated under subsection (1) of this section, the exclusive representative and the public employer, or any two of them, to meet at the request of one of them at reasonable times at a place convenient to all to conduct in good faith an interchange of views concerning the duties of each under this section, employment relations of the faculty, the negotiation of an agreement and the execution of a written agreement. [1975 c.679 §2; 2011 c.637 §78]

243.780 [1965 c.543 §§2,3,4; 1969 c.80 §35b; repealed by 1973 c.536 §39]

243.782 Representation by counsel authorized. (1) For purposes of proceedings commenced pursuant to ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055 and 341.290, a person may be represented by counsel or any other agent authorized by such person.

(2) As used in subsection (1) of this section, “person” means any individual, a labor organization or a public employer. [1973 c.536 §33]

243.785 [1969 c.671 §7; repealed by 1973 c.536 §39]

243.787 [1969 c.671 §8; repealed by 1973 c.536 §39]

243.789 [1969 c.671 §11; repealed by 1973 c.536 §39]

243.791 [1969 c.671 §12; repealed by 1973 c.536 §39]

243.793 [1969 c.671 §9; repealed by 1973 c.536 §39]

243.795 [1969 c.671 §10; repealed by 1973 c.536 §39]

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DIVISION 45
APPEALS, HEARINGS AND
INVESTIGATIONS IN THE STATE
SERVICE UNDER THE STATE
PERSONNEL RELATIONS LAW

Definition of Terms

115-045-0000 As used in these rules, unless the context clearly requires otherwise:

(1) "Appeal" means any request for review of a personnel action.

(2) "Appellant" means a person who requests review of a personnel action.

(3) "Appointing Authority" means an officer or agency having the power to make appointments to positions in the state service.

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

(5) "Class" or "Class of Positions" means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

(6) "Date of Filing" means the date of receipt by the Board.

(7) "Date of Service" means the date of mailing or the date of personal service.

(8) "Day" means a calendar day unless otherwise specified.

(9) "Demotion" means a change of an employee from a position in one class to a position in another class which has a lower maximum salary range number.

(10) "Management Service" means all positions not in the unclassified or exempt service which are "confidential," "managerial" or "supervisory" as defined by ORS 243.650(6), (16) and (23) respectively.

(11) "Personnel Action" means any action taken with reference to an applicant, employee or position.

(12) "Recommended Order" means the order of an Administrative Law Judge or other

Board agent consisting of recommended rulings, findings of fact, conclusions of law, and a proposed order.

(13) "Respondent" means a party against whom action or relief is sought.

(14) "Regular Employee" means an employee who has been appointed to a position in the classified service in accordance with state law after successfully completing a trial service period or has been otherwise granted regular status through specific provisions of law.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.015
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-1998, f. & cert. ef. 1-26-98; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01

Computation of Time

115-045-0002 Time is computed by excluding the first day and including the last day unless the last day falls upon any legal holiday or on Saturday in which case the last day also is excluded.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95

Appeals

Filing of Appeals

115-045-0005 Filing of appeals must be in accordance with these rules. An appeal must be in writing and filed not later than 30 days after the effective date of the action being appealed. An appeal shall be considered filed when it is received by the Board or postmarked, if mailed postpaid and properly addressed. Amendments or supplements to appeals will be accepted only on a showing of good cause.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(1)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2003(Temp), f. & cert. ef. 8-

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1-03 thru 1-31-04; Administrative correction 8-2-04;
ERB 1-2005, f. & cert. ef. 1-24-05

**Regular Employee Appeals from
Suspension, Reduction in Pay, Demotion
and Dismissal Actions**

115-045-0010 (1) A regular employee who is suspended, reduced in pay, demoted or dismissed may appeal

the action to the Board.

(2) The appeal must be in writing and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reasons why appellant believes the action was not in good faith for cause or was taken for political, religious or racial reasons, sex, marital state or age; and

(c) The correction action being requested.

(3) Notice of appeal must be filed with the Board no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240 & 243
Stats. Implemented: ORS 240.086(1) & 240.560
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

**Appeals Concerning Temporary
Appointments**

115-045-0017 (1) Any employee may file a complaint alleging a violation of ORS 240.309. The complaint must be in writing and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reason complainant believes the action violates ORS 240.309; and

(c) The corrective action being requested.

(2) The complaint must be filed with the Board no later than 30 days after the employee knew or should have known of the action being appealed.

Stat. Auth.: ORS 240.086(3)
Stats. Implemented: ORS 240.086(1) & 240.309
Hist.: ERB 2-1990, f. 11-8-90, cert. ef. 11-19-90;
ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95

**Other Appeals from Other Personnel
Actions**

115-045-0020 (1) A classified employee may appeal any personnel action affecting the person (including trial service removals) that is alleged to be arbitrary or contrary to law, rule or policy, or taken for political reasons.

(2) The appeal must be in writing, and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reasons why the appellant believes the action was arbitrary, contrary to law, rule or policy, or taken for political reasons; and

(c) The corrective action being requested.

(3) The written appeal must be filed no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240 & 243
Stats. Implemented ORS 240.086(1)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; Renumbered from 115-045-0015; ERB 1-2001, f. 2-16-01, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

**Dismissal Appeals by Management Service
Employees with Immediate Prior Regular
Classified Service**

115-045-0021 (1) A management service employee with immediate prior regular classified service status who is dismissed from state service may appeal the dismissal to the board.

(2) The appeal must be in writing and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reasons why the employee believes the action was not in good faith for cause or

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was taken for political, religious or racial reasons, sex, marital status or age; and

(c) The corrective action being requested.

(3) The written appeal must be filed with the board no later than 30 days after the effective date of such action

Stat. Auth.: ORS 240 & 243
Stats. Implemented: ORS 240.560
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f.12-1-00, cert. ef. 7-1-01, Renumbered from 115-045-0010; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Other Management Service Employee Appeals

115-045-0023 (1) Disciplinary Actions. A management service employee who is reprimanded, reduced in pay, suspended, demoted or removed from management service may appeal such action to the Board.

(2) Nondisciplinary actions. A management service employee who is removed from the management service for nondisciplinary reasons, assigned, reassigned or transferred may appeal such action to the Board.

(3) Appeals must be in writing and must contain a statement specifying:

(a) The action being appealed;

(b) The reasons why the appellant believes the action was contrary to ORS 240.570(3) (for disciplinary actions) or ORS 240.570(2) (for nondisciplinary actions); and

(c) The corrective action being requested.

(4) The written appeal must be filed no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240.086(3) & 243
Stats. Implemented: ORS 240.570
Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 1-1985(Temp), f. & ef. 8-19-85; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 3-1993, f. & cert. ef. 12-15-93; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; Renumbered from 115-045-0024; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert.

ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Hearings

115-045-0025 (1) The Board agent may investigate and attempt to resolve the dispute with the parties. If the case cannot be resolved within a reasonable time, it will be scheduled for public hearing and an order of the Board.

(2) Time and Place of Hearings. The time and place of hearing will be set by the Board agent. Notice of the hearing shall be served personally or by registered or certified mail on the agency head and all other interested parties at least ten days in advance of the hearing date. For disciplinary actions, the hearing will be set no later than 30 days from the date the appeal was filed, unless the parties to the hearing agree to a postponement.

(3) Postponements. When the parties to a hearing agree to a postponement, they shall promptly submit a written request for postponement to the Board agent. For good cause shown, the Board agent may grant a postponement. A hearing on an appeal under ORS 240.560 will not be postponed beyond 30 days from the date the appeal was filed, unless the parties to the hearing and the Board agent agree to a postponement.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Conduct of Hearings

115-045-0030 (1) General Procedure:

(a) The Board agent will open the hearing with a brief introduction of parties and issues;

(b) Parties may make opening statements;

(c) Parties may present evidence in support of their respective positions. Cross-examination of witnesses will be allowed opposing party(ies); and

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(d) Parties may make closing arguments.

(2) Conference During Hearings. In any proceeding, the Board agent may, in his/her discretion, call the parties together for a conference prior to the taking of testimony or may recess the hearing for such conference to resolve undisputed or procedural matters. The results of such conference shall be summarized on the record.

(3) Fact Stipulations. The parties to any proceeding or investigation may, by stipulation and subject to approval by the Board or its agent, agree upon the facts or any portion thereof involved in the controversy, such stipulation shall be binding upon the parties thereto and may be used as evidence in the case.

(4) Continuances. If it appears on the motion of a party that further testimony or argument should be received, the Board agent may, in his/her discretion, continue the hearing. The date of such continued hearing may be fixed at the time of hearing or by later written notice to the parties.

(5) Representation. An appellant may be represented by counsel or may, on his/her own, request the issuance of subpoenas, examine and cross-examine witnesses, make statements, summarize testimony, and otherwise conduct his/her own case.

(6) Burden of Proof. In a hearing on an appeal from a disciplinary action under ORS 240.555 or 240.570(3), the respondent shall have the burden of proof and the burden of going forward with the evidence. The appellant shall have the burden of proving affirmative defenses. In all other cases, the appellant shall have the burden of proof and the burden of going forward with the evidence.

(7) Rules of Evidence. See OAR 115-010-0050.

(8) Conduct at Hearing. All parties to hearings, their counsel and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with the Board

agent's effort to maintain order are grounds for removal from the hearing.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(3)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01

Motions

115-045-0035 All motions shall be typewritten or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. Written motions shall be filed with the Board agent, together with the proof of service of a copy thereof upon the other parties.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 240.086(3)
Hist.: ERB 1-1980, f. & ef. 1-9-80

Post-Hearing Procedures

115-045-0040 (1) Recommended Order. The Board agent shall prepare and serve on the parties a recommended order consisting of rulings, findings of fact, conclusions of law and a proposed order.

(2) Objections to Recommended Order. The parties shall have 14 days from date of service of the Recommended Order to file specific written objections with the Board. (See also OAR 115-010-0090.)

(3) Board review:

(a) Oral or Written Argument. If objections are filed to the Recommended Order, parties will be given an opportunity to present oral argument to the Board. If a party desires to submit written argument in lieu of oral argument, it must be filed with the Board not less than five days before the date set for argument and the party filing the written argument shall serve a copy on all parties of record in the case and provide proof of service to the Board;

(b) Memorandum in Aid of Oral Argument. If parties wish to submit written memoranda in aid of oral argument in addition to argument, it

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must be filed with the Board not less than five days before the date set for oral argument and copies must be served upon all parties of record. Parties shall provide the Board with proof of service;

(c) Review of Record. Review by the Board of a Board agent's recommended order shall be confined to the record. The Order of the Board shall be in writing and shall be sent to the parties.

(4) Petitions for Reconsideration or Rehearing. Petitions for reconsideration or rehearing may be filed, but not later than 14 days from date of service of the Order. Petitions shall state specifically the grounds for reconsideration or rehearing. The Board may, at its discretion, set such petitions for oral argument.

(5) Service of Documents. All documents shall be served upon named parties unless there is a representative of record, in which case documents may be served on the representative.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 50 – REVIEW AND ENFORCEMENT OF
STATE PERSONNEL RELATIONS ARBITRATION AWARDS

DIVISION 50
REVIEW AND ENFORCEMENT OF
STATE PERSONNEL RELATIONS
ARBITRATION AWARDS

Petition for Enforcement

115-050-0001 Pursuant to ORS 240.086(2), an arbitrator's award will be enforced by the Board upon petition by the prevailing party provided:

- (1) More than 14 days have elapsed since the date of the award;
- (2) No petition for review under OAR 115-050-0010 has been timely filed by the party against whom the award was made; and
- (3) The petition for enforcement is served on the other party with proof of service provided the Board and the petition is accompanied by a copy of the award.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(2)
Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 10-1985, f. 10-29-85, ef. 10-31-85

Petition for Review

115-050-0010 A party against whom an arbitrator's award is made may petition the Board for review of that award provided:

- (1) The petition for review is filed with the Board within 14 days of the date of the award;
- (2) A copy of the petition is served on the party in whose favor the award was made and proof of service is provided the Board;
- (3) The petition specifies which paragraph(s) of ORS 240.086(2) is (are) claimed as the basis for exception to the award, with a clear and concise statement of the facts upon which any exception is based; and
- (4) The petition is accompanied by a copy of the award.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(2)
Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 10-1985, f. 10-29-85, ef. 10-31-85

Answers to Petitions

115-050-0020 An opposing party shall have 14 days from the date of filing of a petition within which to file an answer or objections to a petition for enforcement or review. Such an answer must be served on the petitioning party and be accompanied by proof of such service.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(2)
Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 10-1985, f. 10-29-85, ef. 10-31-85

Hearings on Petitions

115-050-0030 (1) The Board or its agent shall hold a hearing on petitions for review or enforcement if the petition and answer raise an issue of law or fact warranting a hearing. Such hearings shall be conducted in accordance with OAR 115-045-0025, 115-045-0030, 115-045-0035 and 115-045-0040 (where applicable).

(2) The party filing the petition for review shall have the burden of proof and the burden of going forward with the evidence.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 240.086(2)
Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 10-1985, f. 10-29-85, ef. 10-31-85

OREGON REVISED STATUTES, CHAPTER 240
STATE PERSONNEL RELATIONS

ADMINISTRATIVE PROVISIONS

240.005 Short title. This chapter shall be known as the State Personnel Relations Law. [Amended by 1979 c.468 §2]

240.010 Purpose of chapter. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles. [Amended by 1979 c.468 §3]

240.011 Policy on public service contracts; review. (1) The Legislative Assembly declares that the interests of the state are best served by a system that goes beyond consideration of mere short-term cost to encompass other benefits, such as efficiency, continuity of operations, public protection and avoidance of the spoils system. The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations, services and functions of all public agencies.

(2) It is the policy of the state that contracts for public services entered into by any public agency be entered with full knowledge of costs and benefits to the public and that contracts be subject to ongoing review to insure accountability of the contractor for the quantity and quality of contracted services. [1989 c.862 §1(1),(2)]

Note: 240.011 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.012 Job sharing; policy statement. The Legislative Assembly finds that job sharing is an efficient and effective technique which should be used to improve management of state agencies. It further finds that job sharing offers employment opportunities to those who otherwise may be unable to

participate in state employment and contribute to state operations. [1977 c.462 §1]

Note: 240.012 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.013 Job-sharing positions; adjustment of benefits and detriments. Insofar as reasonably possible, individuals who hold job-sharing positions shall be entitled to benefits and privileges and suffer detriments under this chapter in proportion to their seniority as adjusted in the proportion that their monthly time employed bears to the monthly time employed by individuals holding full-time positions. [1979 c.302 §7]

240.015 Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) “Administrator” means the Administrator of the Personnel Division.

(2) “Appointing authority” means an officer or agency having power to make appointments to positions in the state service.

(3) “Board” means the Employment Relations Board.

(4) “Class” or “classification” means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

(5) “Division” means, except in the phrase “division of the service,” the Personnel Division referred to in ORS 240.055.

(6) “Division of the service” means a state department or any division or branch thereof, any agency of the state government, or any branch of the state service, all the positions in which are under the same appointing authority.

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(7) “Job-sharing position” means a full-time position in the classified service that is classified as one that may be held by more than one individual on a shared time basis whereby the individuals holding the position work less than full-time.

(8) “Regular employee” means an employee who has been appointed to a position in the classified service in accordance with this chapter after completing the trial service period.

(9) “State service” means all offices and positions in the employ of the state other than those of commissioned, warrant and enlisted personnel in the military and naval services thereof. However, as provided in ORS 396.330, the term includes members of the Oregon National Guard or Oregon State Defense Force who are not serving pursuant to provisions of Title 10 or 32 of the United States Code and who are employed as state employees in the Oregon Military Department. [Amended by 1959 c.690 §1; 1969 c.80 §30; 1975 c.147 §9; 1979 c.302 §4; 1979 c.468 §4a; 1995 c.114 §1; 2005 c.22 §182]

240.055 Personnel Division. The Department of Civil Service that has heretofore functioned under ORS chapter 240 is hereby renamed the Personnel Division and transferred into the Oregon Department of Administrative Services. [Amended by 1969 c.80 §31]

240.057 Administrator of Personnel Division; appointment. The Personnel Division shall be under the supervision and control of an administrator who shall be appointed by and hold office at the pleasure of the Director of the Oregon Department of Administrative Services. [1979 c.468 §7]

240.060 Employment Relations Board; qualification of members; outside activities.

(1) The Civil Service Commission that has functioned under this chapter shall be continued as a board of three members to be known as the Employment Relations Board.

Each member of the board shall be a citizen of the state known to be in sympathy with the application of merit principles to public employment and shall be of recognized standing and known interest in public administration and in the development of efficient methods of selecting and administering personnel. In the selection of the members of the Employment Relations Board, the Governor shall give due consideration to the interests of labor, management and the public. Each member of the board shall be trained or experienced in labor-management relations and labor law or the administration of the collective bargaining process. No member of the board shall hold, or be a candidate for, any public office.

(2) Except as provided in subsection (3) of this section, a member of the board shall not hold any other office or position of profit, pursue any other business or vocation, or serve on or under any committee of any political party, but shall devote the member’s entire time to the duties of the office of the member.

(3) A member of the board may:

(a) Serve as an arbitrator, fact finder or mediator for parties located outside of the State of Oregon;

(b) Teach academic or professional classes for entities that are not subject to the board’s jurisdiction;

(c) Have a financial interest but an inactive role in a business unrelated to the duties of the board; and

(d) Publish, and receive compensation or royalties for, books or other publications that are unrelated to the member’s duties, provided that activity does not interfere with the performance of the member’s duties.

(4) A member of the board shall be on leave status or act outside of normal work hours when pursuing any activity described in subsection (3)(a) and (b) of this section. [Amended by 1969 c.80 §32; 1973 c.536 §26; 1975 c.147 §10; 1977 c.808 §1; 1999 c.248 §1]

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240.065 Appointment; terms; vacancies.

(1) The members of the Employment Relations Board shall be appointed by the Governor for a term of four years.

(2) Each member shall be appointed for a term ending four years from the date of the expiration of the term for which the predecessor of the member was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Appointments to the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. [Amended by 1969 c.80 §34; 1973 c.536 §27; 1973 c.792 §6a; 1977 c.808 §2; 1991 c.67 §59]

240.070 [Repealed by 1967 c.73 §3 (240.071 enacted in lieu of 240.070)]

240.071 Compensation and expenses of members. A member shall be paid in accordance with the provisions of ORS 240.240. However, the Personnel Division shall adopt a salary plan that requires the chairperson of the Employment Relations Board to receive a higher salary than the other members. In addition, subject to any other applicable law regulating travel and other expenses of state officers, a member shall receive the actual and necessary travel and other expenses incurred in the performance of official duties. [1967 c.73 §4 (enacted in lieu of 240.070); 1969 c.80 §34a; 1969 c.314 §16; 1975 c.518 §1; 1977 c.808 §3]

240.075 Removal of members. A member of the Employment Relations Board shall be removable by the Governor only for cause, after being given a copy of charges against the member and an opportunity to be heard publicly on such charges before the Governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the Secretary of State.

240.080 Chairperson appointed by Governor; meetings; quorum; hearings. The Governor shall appoint one of the members of the Employment Relations Board as chairperson, who shall serve for a term not to exceed four years. The chairperson shall be the chief administrative officer of the board. The board shall meet at such times and places as are specified by call of the chairperson or a majority of the board. All hearings shall be open to the public. A majority of the members of the board constitutes a quorum for the transaction of business. Any agent designated by the board to make investigations and conduct hearings may administer oaths and affirmations, examine witnesses and receive evidence. [Amended by 1973 c.536 §29; 1977 c.808 §4]

240.085 [Repealed by 1969 c.80 §35 (240.086 enacted in lieu of 240.085)]

240.086 Duties of board; rules. The duties of the Employment Relations Board shall be to:

(1) Review any personnel action affecting an employee, who is not in a certified or recognized appropriate collective bargaining unit, that is alleged to be arbitrary or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct.

(2) Review and enforce arbitration awards involving employees in certified or recognized appropriate collective bargaining units. The awards shall be enforced unless the party against whom the award is made files written exceptions thereto for any of the following causes:

(a) The award was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the arbitrator.

(c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and

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material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(e) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(g) The award is in violation of law.

(3) Adopt such rules or hold such hearings as it finds necessary to perform the duties, functions and powers imposed on or vested in it by law. [1969 c.80 §35a (enacted in lieu of 240.085); 1971 c.575 §5; 1975 c.605 §14; 1979 c.468 §5]

240.088 Review of arbitration awards after written exceptions filed. (1) If after a hearing on the exceptions filed as provided in ORS 240.086 (2), it appears to the Employment Relations Board that the award should be vacated or modified, the board may by order refer the award back to the arbitrator with proper instructions for correction or rehearing. Upon failure of the arbitrator to follow the instructions, the board shall have jurisdiction over the case and proceed to its final determination by order.

(2) Review of arbitration awards shall be limited exclusively to that provided under ORS 240.086 and this section, except for such judicial review as may be provided for under ORS 183.480. [1979 c.468 §6]

240.090 [Repealed by 1969 c.80 §92]

240.091 [Repealed by 1979 c.468 §1]

240.093 [1971 c.576 §3; repealed by 1979 c.468 §1]

240.095 [Amended by 1969 c.80 §37; 1969 c.489 §5; repealed by 1979 c.468 §1]

240.097 [1969 c.489 §2; repealed by 1979 c.468 §1]

240.099 [1969 c.658 §2; repealed by 1973 c.536 §39]

240.100 Administer oaths; subpoena witnesses; compel production of papers. Each member of the Employment Relations Board may administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. [Amended by 1969 c.80 §38]

240.105 Use of public facilities of state or municipalities. All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the Personnel Division or Employment Relations Board the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter or ORS 243.005 to 243.215, 243.305, 243.315 and 243.401 to 243.945. The division or board shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it. [Amended by 1969 c.80 §38a]

240.110 [Amended by 1969 c.80 §39; repealed by 1973 c.794 §34]

240.115 Action to secure compliance with chapter. The Employment Relations Board may maintain such action or proceeding at law or in equity as it considers necessary or appropriate to secure compliance with this chapter and its rules and orders thereunder.

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240.120 [Amended by 1969 c.80 §39a; repealed by 1973 c.794 §34]

240.123 Board personnel; executive secretary of board; general counsel. (1) The Employment Relations Board shall employ such personnel as it considers necessary for efficient administration of its vested duties, and fix the compensation of its employees in accordance with the compensation plan for classified employees.

(2) The board shall designate one of its employees as its executive secretary and delegate to the executive secretary such administrative duties and responsibilities as it finds advisable. The executive secretary shall be in the classified service.

(3) The board shall designate a member of the Oregon State Bar as its general counsel to assist it in the performance of its functions and duties. Notwithstanding ORS chapter 180 and independently of the Attorney General, the general counsel may represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested. The general counsel shall not appear before the board in any capacity other than general counsel to the board. The board may also delegate to its general counsel such other administrative duties and responsibilities as it finds advisable. [1969 c.80 §35e; 1973 c.536 §30; 1977 c.808 §5; 1979 c.468 §8]

240.125 [Amended by 1969 c.80 §40; repealed by 1979 c.468 §1]

240.130 [Amended by 1969 c.80 §41; repealed by 1979 c.468 §1]

240.131 Employment Relations Board Administrative Account. The Employment Relations Board Administrative Account is established separate and distinct from the General Fund. The account consists of all moneys received by the Employment Relations Board, other than moneys appropriated to the board by the Legislative

Assembly. All moneys in the account are continuously appropriated to the board for the payment of all expenses incurred by the board. Interest earned by the account shall be credited to the General Fund. [2007 c.296 §4]

Note: 240.131 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.135 [Amended by 1969 c.80 §42; repealed by 1979 c.468 §1]

240.140 [Amended by 1969 c.80 §42a; repealed by 1979 c.468 §1]

240.145 Duties of administrator; rules. The Administrator of the Personnel Division, subject to the approval of the Director of the Oregon Department of Administrative Services, shall direct and supervise all the administrative and technical activities of the Personnel Division. In addition to the duties imposed upon the administrator elsewhere in this chapter, the administrator shall:

(1) Establish and maintain a roster of all employees in state service, in which there shall be set forth, as to each employee, the class title of the position held, the salary or pay; any change in class title, pay, status or merit rating; and any other data about the employee that the division deems necessary.

(2) Select for appointment, under this chapter, such employees of the division and such experts and special assistants as are necessary to carry out effectively the provisions of this chapter.

(3) Prepare such rules, policies and procedures, tests and eligible lists as are necessary to carry out the duties, functions and powers of the Personnel Division under this chapter.

(4) Devise plans for and cooperate with appointing authorities and other supervisory

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officers in the conduct of employee training programs, to the end that the quality of service rendered by state personnel may be continually improved.

(5) Investigate from time to time the operation and effect of this chapter and the rules thereunder, and report findings and recommendations to the director of the department.

(6) Make annual reports to the director of the department regarding the work of the division, and such special reports as the director considers desirable. [Amended by 1969 c.80 §43; 1971 c.695 §1; 1979 c.468 §9]

240.150 [Amended by 1969 c.348 §1; repealed by 1979 c.468 §37]

240.155 [Amended by 1969 c.80 §44; repealed by 1979 c.468 §1]

240.160 Agency personnel officers. A division of the service may designate a staff employee to serve as personnel officer for that division of the service. Such a personnel officer shall administer, within the division of the service, training and educational programs developed by the administrative head thereof in cooperation with appointing authorities and others and shall have such other functions of the Personnel Division as are authorized by the Administrator of the Personnel Division. [Amended by 1969 c.80 §45]

240.165 Cost of operating Personnel Division divided among various agencies of state government. (1) The administrative expenses and costs of operating the Personnel Division shall be paid by the various divisions of the service in the state government. To establish an equitable division of the costs, the amount to be paid by each division of the service shall be determined in such proportion as the service rendered to each division of the service bears to the total service rendered by the Personnel Division.

(2) The Personnel Division, at such times as its administrator deems proper, shall estimate in advance the expenses that will be incurred during a given period of not to exceed six months and, upon approval by the Director of the Oregon Department of Administrative Services, the division shall render to each division of the service affected thereby an invoice for its pro rata share of such expenses. Each division of the service shall pay such invoice as an administrative expense of that division of the service from funds or appropriations available to that division of the service in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division of the service are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service. [Amended by 1969 c.80 §46; 1969 c.489 §6]

240.167 Cost of operating Employment Relations Board divided among various divisions of state government. (1) The administrative expenses and costs of operation of the Employment Relations Board in behalf of the state service shall be paid by the various divisions of the service in the state government. The board shall determine the amount of the expenses and costs to be paid by each division of the service on the basis of the proportion that the number of employees of that division in the classified service bears to the total number of employees of all divisions of the service in the classified service, or on any other basis that the board determines to be equitable.

(2) The Employment Relations Board, at such times as its executive secretary considers proper, shall estimate in advance the expenses and costs that will be incurred during a period of not to exceed six months and shall render to each division of the service in the state government affected thereby an invoice for its pro rata share of such expenses and costs. Each division shall pay such invoice promptly as an administrative expense of that division

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from funds appropriated to or otherwise available for expenditure by that division, in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service. [1969 c.658 §4; 1979 c.66 §1]

240.170 Oregon Department of Administrative Services Operating Fund. All moneys received by the Personnel Division pursuant to the state personnel management program shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund and are appropriated continuously out of that fund for the payment of all expenses incurred by the division for administration of the state personnel management program. [Amended by 1957 c.437 §2; 1969 c.80 §47; 1969 c.489 §8; 1993 c.500 §8a; 2007 c.296 §6]

240.180 [1969 c.80 §36; 1971 c.734 §20; repealed by 1979 c.468 §1]

240.185 Maximum number of state employees; applicability; exceptions. (1) On and after January 1, 1984, the number of persons employed by the state shall not exceed 1.5 percent of the state's population of the prior year.

(2) The population figure shall be that required by ORS 190.510 to 190.610.

(3) This section applies to all full-time equivalent budgeted positions.

(4) This section does not apply to the Governor, the Secretary of State, the State Treasurer, the Supreme Court or the Legislative Assembly in the conduct of duties vested in any of them by the Oregon Constitution. However, this exception applies only to the office of the Governor and not to the executive branch of government.

(5) This section does not apply to personnel who administer unemployment insurance benefits programs of the Employment Department, to personnel who administer programs required to be implemented as a condition for the continued certification of the Employment Division Law by the United States Secretary of Labor or to personnel who administer programs implemented by the United States Department of Labor under federal law if the state is required to enter into contracts to provide such programs.

(6) This section does not apply to personnel whose positions are funded by the gifts, grants and contracts program in the Oregon University System.

(7) In order to assess the effect of subsection (1) of this section, the Oregon Department of Administrative Services by December 31 of each even-numbered year shall conduct a workload analysis of each state agency, regardless of whether the agency is exempt from the application of subsection (1) of this section. The workload analysis of each agency shall be submitted to the Legislative Assembly prior to its convening in the subsequent odd-numbered year regular session and shall accompany the agency's budget request before the Joint Ways and Means Committee. [1979 c.604 §1; 1983 c.340 §1; 1989 c.863 §1; 2009 c.762 §49; 2011 c.545 §17]

Note: 240.185 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**CATEGORIES OF SERVICE;
CLASSIFICATION AND
COMPENSATION PLANS**

240.190 Policy on comparability of value of work and compensation and classification. (1) It is declared to be the public policy of the State of Oregon to attempt

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to achieve an equitable relationship between the comparability of the value of work, as defined in ORS 292.951, performed by persons in state service and the compensation and the classification structure within the state system. To further the effort to achieve and maintain equity for undervalued jobs and job classifications, the state shall employ a neutral and objective method of determining the comparability of the value of work. The first priority in attaining equitable relationships shall be achieving compensation equity for the most undervalued classes in the lowest salary ranges.

(2) State management, in each branch of government, shall, when establishing or modifying personnel plans and policies in compensation and classification matters, or in collective bargaining, arbitration and grievance procedures, hold equity in compensation and classification matters as an important consideration. Where applicable, an exclusive representative of a collective bargaining unit shall hold the same considerations to achieve consistency with the policies stated in this section and ORS 292.951 to 292.971.

(3) No employee shall have wages decreased in order to achieve the policy set forth in this section. [1983 c.814 §1; 1987 c.772 §2]

Note: 240.190 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.195 Categories of positions in state service. Positions in the service of the state are divided into the following categories:

(1) The classified service as provided in ORS 240.210.

(2) The unclassified service as provided in ORS 240.205.

(3) The exempt service as defined in ORS 240.200.

(4) The management service as provided in ORS 240.212. [1955 c.738 §1; 1981 c.409 §1]

240.200 Exempt service. The exempt service shall comprise:

(1) Officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Members of boards and commissions who serve on a part-time basis and who, if compensated, receive compensation on a per diem basis.

(3) Judges, referees, receivers, jurors and notaries public.

(4) Officers and employees of the Legislative Assembly.

(5) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislative Assembly or a committee thereof, or by authority of the Governor.

(6) Any other position designated by law as exempt. [1955 c.738 §2; 1969 c.80 §48; 1969 c.199 §17; 1975 c.427 §1; 1983 c.763 §29]

240.205 Unclassified service. The unclassified service shall comprise:

(1) One executive officer and one secretary for each board or commission, the members of which are elected officers or are appointed by the Governor.

(2) The director of each department of state government, each full-time salaried head of a state agency required by law to be appointed by the Governor and each full-time salaried member of a board or commission required by law to be appointed by the Governor.

(3) The administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

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(4) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in ORS 240.200 (1) and in subsections (1) to (3) of this section. "Deputy" means the deputy or deputies to an executive or administrative officer listed in subsections (1) to (3) of this section who is authorized to exercise that officer's authority upon absence of the officer. "Principal assistant" means a manager of a major agency organizational component who reports directly to an executive or administrative officer listed in subsections (1) to (3) of this section or deputy and who is designated as such by that executive or administrative officer with the approval of the Director of the Oregon Department of Administrative Services.

(5) Employees in the Governor's office and the principal assistant and private secretary in the Secretary of State's division.

(6) The director, principals, instructors and teachers in the school operated under ORS 346.010.

(7) Apprentice trainees only during the prescribed length of their course of training.

(8) Licensed physicians and dentists employed in their professional capacities and student nurses, interns, and patient or inmate help in state institutions.

(9) Lawyers employed in their professional capacities.

(10) All members of the Oregon State Police appointed under ORS 181.250.

(11) The Deputy Superintendent of Public Instruction appointed under ORS 326.300 and associate superintendents in the Department of Education.

(12) Temporary seasonal farm laborers engaged in single phases of agricultural production or harvesting.

(13) Any individual employed and paid from federal funds received under a federal program intended primarily to alleviate unemployment. However, persons employed under this subsection shall be treated as

classified employees for purposes of ORS 243.650 to 243.782.

(14) Managers, department heads, directors, producers and announcers of the state radio and television network.

(15) Employees, including managers, of the foreign trade offices of the Oregon Business Development Department located outside the country.

(16) Any other position designated by law as unclassified. [Amended by 1953 c.699 §3; 1955 c.738 §4; 1957 c.597 §1; 1959 c.230 §1; 1959 c.566 §4; 1961 c.645 §1; 1965 c.405 §2; 1969 c.80 §49; 1969 c.199 §18; 1969 c.564 §3; 1969 c.599 §§66a,66b; 1971 c.301 §19; 1971 c.467 §25c; 1975 c.3 §1; 1975 c.393 §1a; 1975 c.427 §2a; 1977 c.271 §1; 1979 c.747 §1; 1979 c.468 §11; 1981 c.518 §3; 1981 s.s. c.3 §40; 1983 c.763 §30; 1985 c.388 §1; 1985 c.565 §38; 1991 c.149 §3; 1991 c.887 §2; 1993 c.741 §19; 1995 c.612 §13; 2001 c.883 §42; 2007 c.858 §61; 2009 c.562 §17; 2011 c.9 §28; 2011 c.547 §40; 2011 c.731 §8]

240.207 [1969 c.564 §2; 1979 c.468 §29; repealed by 1995 c.612 §24]

240.210 Classified service. The classified service comprises all positions in the state service existing on June 16, 1945, or thereafter created and which are not listed in ORS 240.200, 240.205 or 240.212. [Amended by 1955 c.738 §7; 1981 c.409 §2]

240.212 Management service. The management service shall comprise all positions not in the unclassified or exempt service that have been determined to be confidential employees, supervisory employees or managerial employees, as defined in ORS 243.650. [1981 c.409 §6; 1995 c.286 §25]

240.215 Classification plan; job share; career ladder; transfers. (1) The Personnel Division of the Oregon Department of Administrative Services shall adopt a

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classification plan which shall group all positions in the classified service in classifications based on their duties, authority and responsibilities; and which shall set forth for each classification, a class title, a statement of the minimum qualifications, duties, authority and responsibilities thereof. Each classification of positions may be subdivided and classes may be grouped and ranked in an appropriate manner.

(2) The allocation of positions within the various operating agencies to the classifications in the classification plan shall be performed by the agency appointing authority with post-audit review by the division. Agencies shall allocate positions to the available class that most accurately describes the work based upon the assigned duties, authorities and responsibilities. If a position is found to be misallocated, the agency shall change the allocation of the position to the proper class for the work, whether or not the assigned duties have changed since the previous allocation decision.

(3) In adopting a classification system, the division shall consult with appointing authorities to determine the positions in a class of positions that can be classified as job-sharing positions.

(4) The division shall group jobs into broad, statewide classes, whenever possible, consistent with good management practices and ORS 240.190 and 243.650 to 243.782. In this process, the division shall work to reduce the total number of classes, in conjunction with developing career ladders and voluntary cross-agency transfers in concert with employees of the agency. It is intended that employees be provided the necessary training in those instances where additional skills are required. [Amended by 1969 c.80 §50; 1979 c.302 §5; 1979 c.468 §10a; 1993 c.724 §11; 1995 c.155 §1]

240.217 Certain reclassifications prohibited. Whenever class specifications for a class of positions in the classified service are

changed to reflect revised or added responsibilities that require either the same level or a higher level of competence, such change will not result in a downward reclassification of the class. [1978 c.6 §2]

Note: 240.217 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.220 [Amended by 1969 c.80 §51; repealed by 1979 c.468 §1]

240.225 [Repealed by 1979 c.468 §1]

240.227 Salary for legislator appointed to exempt, unclassified or management service. (1) Except as otherwise provided by section 30, Article IV of the Oregon Constitution, notwithstanding any statute or salary plan establishing the salary for a position in the exempt, unclassified or management service, a Senator or Representative who is appointed to a position in the exempt, unclassified or management service during the Senator's or Representative's term of office shall receive a salary established as follows:

(a) If the salary for the position to which the Senator or Representative is appointed has been increased during the Senator's or Representative's term of office, the Senator or Representative shall receive a salary equal to that established for the position immediately prior to the commencement of the Senator's or Representative's term of office until the term of office of the Senator or Representative expires.

(b) If the salary for the position to which the Senator or Representative is appointed decreased or remained unchanged during the Senator's or Representative's term of office, the Senator or Representative shall receive the salary established by the applicable statute or salary plan.

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(2) As used in this section, “term of office” means the particular four-year or two-year period for which the Senator or Representative was elected pursuant to section 4, Article IV of the Oregon Constitution. In the event that the Senator or Representative was appointed to fill a vacancy in the Legislative Assembly, “term of office” means the remainder of the four-year or two-year period for which the Senator or Representative was appointed, beginning on the date of appointment. “Term of office” does not mean the Senator’s or Representative’s duration of service in the Legislative Assembly. [1987 c.879 §23]

240.230 [Repealed by 1979 c.468 §1]

240.233 [1955 c.738 §8; 1969 c.80 §52; 1975 c.139 §1; repealed by 1979 c.468 §1]

240.235 Compensation plan for classified service. (1) The Personnel Division shall establish and implement a merit pay system which shall take into consideration individual performance and organizational accomplishment, prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received, obligations established by collective bargaining agreements, and the state’s financial condition and policies. The merit pay system may provide for monetary awards to employees for past meritorious service and contribution to the mission and goals of the employing agency.

(2) Modifications of the merit pay system may be adopted by the division and shall be effective only when approved by the Director of the Oregon Department of Administrative Services.

(3) Except as provided in subsection (4) of this section, each employee in the classified service shall be paid a rate within the salary range set forth in the merit pay system for the class of positions in which employed.

(4) Following any modification of the classification plan affecting a position, the division may provide that the rate of compensation of the employee holding such position shall not be reduced by reason of any such modification. An employee holding such a position shall not be eligible for any salary increase during such period of time that the employee’s salary is above the maximum of the salary range of the classification to which the employee’s position is allocated. [Amended by 1961 c.451 §1; 1969 c.80 §53; 1975 c.305 §1; 1979 c.468 §12]

240.240 Application of chapter to unclassified or management service. (1) The unclassified service or, except as provided in ORS 240.250, the management service shall not be subject to this chapter, except that employees and officers in the unclassified or management service shall be subject to the laws, rules and policies pertaining to any type of leave with pay except as otherwise provided in subsections (4) and (5) of this section, and shall be subject to the laws, rules and policies pertaining to salary plans except as otherwise provided in subsections (3) and (5) of this section.

(2) With regard to any unclassified or management service position for which the salary is not fixed by law, and except as otherwise provided in subsections (3) and (5) of this section, the Personnel Division shall adopt a salary plan which is equitably applied to various categories in the unclassified or management service and is in reasonable conformity with the general salary structure of the state. The division shall maintain this unclassified and management salary plan in accordance with the procedures established for the classified salary plan as provided in ORS 240.235.

(3) The Secretary of State and the State Treasurer, for the purpose of maintaining a salary plan for unclassified and management service positions in their departments, may request the advice and assistance of the division.

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(4) With regard to unclassified instructors and teachers under annual teaching contracts for an academic year in the school operated under ORS 346.010, arrangements for leave with pay shall be established by the Department of Education.

(5) With regard to unclassified positions in the Oregon Business Development Department's foreign offices, the salary plan and arrangements for leave with pay shall be established by the Director of the Oregon Business Development Department. [1955 c.738 §5; 1969 c.80 §54; 1971 c.695 §2; 1975 c.427 §4; 1981 c.409 §3; 1985 c.121 §1; 1991 c.149 §4; 1995 c.612 §14; 2007 c.858 §62; 2009 c.562 §18]

240.245 Application of chapter to exempt service. The exempt service shall not be subject to the provisions of this chapter, except that, with regard to any position for which salaries are not fixed by law, the officer authorized by law to appoint or fill such position shall maintain a salary plan equitably applied to the exempt position and in reasonable conformity with the general salary structure of the state. [1955 c.738 §3; 1969 c.80 §55]

240.250 Rules applicable to management service. The Personnel Division shall adopt rules, policies and procedures necessary for the management service. The rules may cover any wages, hours, terms and conditions of employment addressed by this chapter, even if, absent the rule, those wages, hours, terms and conditions would not otherwise apply to the management service. The rules shall further merit principles in the examination, selection and promotion of individuals for the management service. [1981 c.409 §7; 1985 c.121 §2]

240.305 [Amended by 1975 c.427 §5; repealed by 1979 c.468 §1]

**METHOD OF SELECTING
EMPLOYEES FOR SERVICE IN
CLASSIFIED POSITIONS**

240.306 Recruitment, selection and promotion of state employees; criteria; procedures; duties of department. (1) Recruiting, selecting and promoting employees shall be on the basis of their relative ability, knowledge, experience and skills, determined by open competition and consideration of qualified applicants, without regard to an individual's race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, political affiliation or other nonjob related factors, with proper regard for an individual's privacy. Nothing in this subsection shall be construed to enlarge or diminish the obligation of the state or the rights of employees concerning claims of employment discrimination as prescribed by applicable state and federal employment discrimination laws.

(2) The Oregon Department of Administrative Services shall establish procedures to provide for statewide open recruitment and selection for classifications that are common to state agencies. The procedures shall include adequate public notice, affirmative action to seek out underutilized members of protected minorities, and job related testing. The department may delegate to individual operating agencies the responsibility for recruitment and selection of classifications where appropriate.

(3) Competition for appropriate positions may be limited to facilitate employment of those with a substantial disability or who are economically disadvantaged, or for purposes of implementing a specified affirmative action program.

(4) Appointments to positions in state service shall be made on the basis of qualifications and merit by selection from eligible lists established by the department or a delegated operating agency.

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(5)(a) Noncompetitive selection and appointment procedures may be used for unskilled or semiskilled positions, or where job related ranking measures are not practical or appropriate.

(b) Noncompetitive selection and appointment or direct appointment also may be used by agency appointing authorities to fill positions that:

(A) Require special or unique skills such as expert professional level or executive positions; or

(B) Have critical timing requirements affecting recruitment.

(6) Minimum qualifications and performance requirements and duties of a classification may be appropriately modified to permit the appointment and promotion of trainees to positions normally filled at full proficiency level.

(7) The department or delegated agencies shall establish systems to provide opportunities for promotion through meritorious service, training, education and career development assignments. The department shall certify to the eligibility of persons selected for promotion or delegate that responsibility to operating agencies in appropriate situations. Provision shall be made to bring persons into state service through open competition at higher levels when the competition provides abilities not available among existing employees, enrich state service or contribute to improved employment opportunity for underrepresented groups. [1979 c.468 §20; 1985 c.635 §1; 1989 c.224 §28; 1997 c.51 §1; 2007 c.100 §22]

240.307 Procedure for enforcement of ORS 240.309; rules. (1) Any complaint alleging violation of ORS 240.309 shall be filed with the Employment Relations Board.

(2) Any employee may file a complaint with the board alleging violation of ORS 240.309.

(3) If the employee makes a prima facie case showing that the employer has violated

ORS 240.309, then the burden of rebutting the prima facie case is on the employer.

(4)(a) Any employer found to be in violation of ORS 240.309 by the board may be required to pay any affected employee damages for any loss of wages, benefits and rights. The board may also require the agency to discontinue the improper practices.

(b) Any award granted to an affected employee by the board shall be in addition to any penalty imposed under ORS 240.990.

(5) Subject to the requirements of ORS 183.452, the state agency need not be represented by legal counsel in these proceedings before the Employment Relations Board. The board may adopt, by rule, special informal proceedings to review these matters and may, in its discretion, rely on any grievance procedure records developed by the state agency. If the board adopts a rule under this subsection, the employer shall not be required to comply with ORS 183.452 (2)(b) for hearings conducted under the board rule. Any court review of the board's decision under this section shall give special deference to the informality of the proceedings in reviewing the sufficiency of the record. [1990 c.3 §3; 1999 c.448 §7]

240.309 Temporary appointments; limitations; duration; extension; periodic reports; post-audit review; investigation; exceptions. (1) Temporary employment shall be used for the purpose of meeting emergency, nonrecurring or short-term workload needs of the state.

(2) A temporary employee may be given a nonstatus appointment without open competition and consideration only for the purposes enumerated in this section. Temporary appointments shall not be used to defeat the open competition and consideration system.

(3) A temporary employee may not be employed in a permanent, seasonal, intermittent or limited duration position except

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to replace an employee during an approved leave period.

(4) Employment of a temporary employee for the same workload need, other than for leave, may not exceed six calendar months. The decision to extend the period of employment may be delegated by the Personnel Division of the Oregon Department of Administrative Services to other state agencies. Approval to extend shall be allowed only upon an appointing authority's finding that the original emergency continues to exist and that there is no other reasonable means to meet the emergency. Agency actions under this subsection are subject to post-audit review by the Oregon Department of Administrative Services as provided in ORS 240.311.

(5) Employment of a temporary employee for different workload needs shall not exceed the equivalent of six calendar months in a 12-month period.

(6) A temporary employee shall not be denied permanent work because of the temporary status. Temporary service shall not be used as any portion of a required trial service period.

(7) The Personnel Division of the Oregon Department of Administrative Services shall report the use of temporary employees, by agency, once every six months, including the duration and reason for use or extensions, if any, of temporary appointments. The reports shall be made available upon request to interested parties, including employee organizations. If any interested party alleges misuse of temporary employees, the division shall investigate, report its findings and take appropriate action.

(8) The Department of Justice may use temporary status appointments for student law clerks for a period not to exceed 24 months.

(9) The chief administrative law judge of the Office of Administrative Hearings may use temporary status appointments for student law clerks for a period not to exceed 24 months. Student law clerks appointed under this subsection may not act as administrative law

judges or conduct hearings for the Office of Administrative Hearings.

(10) The Public Utility Commission may use temporary status appointments for student law clerks for a period not to exceed 24 months.

(11) A state agency may use temporary status appointments for a period not to exceed 48 months for student interns who are enrolled in high school or who are under 19 years of age and are training to receive a General Educational Development (GED) certificate. Student interns are not eligible for benefits under ORS 243.105 to 243.285. [1985 c.635 §3; 1990 c.3 §1; 1993 c.98 §5; 1993 c.724 §12; 2001 c.312 §1; 2003 c.75 §20; 2009 c.177 §1]

240.310 [Amended by 1969 c.80 §56; 1975 c.427 §6; repealed by 1979 c.468 §1]

240.311 Delegation of authority and responsibility by division; post-audit review. (1) Delegations of authority and responsibility to operating agencies shall be subject to appropriate post-audit review by the Personnel Division.

(2) Controversies between operating agencies and the division arising from post-audit reviews shall be resolved by the Director of the Oregon Department of Administrative Services. [1979 c.468 §22]

240.315 [Amended by 1969 c.80 §57; 1975 c.427 §7; repealed by 1979 c.468 §1]

240.316 Trial service; regular status; procedures for transfer, demotion and separation of employees. (1)(a) Persons initially appointed to or promoted to a permanent or seasonal position in state service shall be subject to a trial service period.

(b) An appointing authority has the discretion to subject an employee to a trial service period when:

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(A) A management service employee or a classified, unrepresented employee transfers to a different agency;

(B) A management service employee or a classified, unrepresented employee transfers back to the same agency after an absence of more than one year;

(C) A former management service employee or former classified, unrepresented employee is reemployed by the same agency after an absence of more than one year; or

(D) A former management service employee or former classified, unrepresented employee is reemployed by a different agency.

(c) Any employee who serves the trial service period designated by the Personnel Division or a delegated operating agency for a given classification or as described in paragraph (b) of this subsection shall be given regular employee status.

(2) Employees who have acquired regular status will not be subject to separation except for cause as defined by ORS 240.555 or lack of work, curtailment of funds, or reorganization requiring a reduction in force.

(3) Procedures shall be established by the division to provide for the layoff and opportunity for reemployment of employees separated for reasons other than cause, which shall take into account the needs of the service, qualifications, quality of performance, relative merit and length of service.

(4) Procedures shall also be established by the division for the transfer, discipline or demotion of employees for the good of the service or separation of employees whose conduct or performance continues to be improper or inadequate after reasonable attempts have been made to correct it, where appropriate. [1979 c.468 §23; 1981 c.155 §1; 1989 c.134 §1; 1989 c.890 §11]

240.320 [Amended by 1969 c.80 §58; repealed by 1979 c.468 §1]

240.321 Collective bargaining; effect of collective bargaining agreements on

personnel rules; grievance procedures. (1) All collective bargaining between the state and its agencies and any certified or recognized exclusive employee representative of classified employees shall be under the direction and supervision of the Director of the Oregon Department of Administrative Services.

(2) Notwithstanding any of the provisions of ORS 240.235, 240.306, 240.316, 240.430 and 240.551, employees of state agencies who are in certified or recognized appropriate bargaining units shall have all aspects of their wages, hours and other terms and conditions of employment determined by collective bargaining agreements between the state and its agencies and the exclusive employee representatives of such employees pursuant to the provisions of ORS 243.650 to 243.762, except with regard to the recruitment and selection of applicants for initial appointment to state service.

(3) The provisions of rules adopted by the Oregon Department of Administrative Services, the subjects of which are incorporated into collective bargaining agreements, shall not be applicable to employees within appropriate bargaining units covered by such agreements.

(4) The department shall ensure the speedy resolution of employee grievances by adopting a grievance procedure resulting in a final employer determination within 60 days of the filing of a written grievance, with appeal thereafter to the Employment Relations Board, the Civil Rights Division of the Bureau of Labor and Industries, or other appropriate review agency. Employees in collective bargaining units shall have their grievances resolved as provided for by the collective bargaining agreement. [1979 c.468 §24; 1997 c.23 §1]

240.325 [Amended by 1969 c.80 §59; repealed by 1979 c.468 §1]

240.330 [Amended by 1969 c.80 §60; repealed by 1979 c.468 §1]

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240.335 [Repealed by 1979 c.468 §1]

240.340 [Amended by 1959 c.689 §5; 1959 c.694 §1; 1969 c.80 §61; 1973 c.189 §1; 1973 c.827 §23; 1975 c.427 §8; 1979 c.861 §7; repealed by 1979 c.468 §1]

240.345 [Amended by 1969 c.80 §62; repealed by 1979 c.468 §1]

240.350 [Amended by 1969 c.80 §63; repealed by 1979 c.468 §1]

240.355 [Amended by 1969 c.80 §64; 1971 c.695 §3; 1975 c.325 §1; repealed by 1979 c.468 §1]

240.360 [Amended by 1955 c.140 §1; 1969 c.80 §65; 1975 c.427 §9; repealed by 1979 c.468 §1]

240.365 [Amended by 1969 c.80 §66; 1969 c.347 §1; 1975 c.427 §10; repealed by 1979 c.468 §37]

240.370 [Amended by 1971 c.696 §1; repealed by 1979 c.468 §1]

240.375 [Amended by 1959 c.375 §1; 1969 c.80 §67; repealed by 1979 c.468 §1]

240.379 [1981 c.557 §2; 1987 c.743 §1; 1989 c.224 §29; repealed by 1997 c.221 §1]

240.380 [Amended by 1971 c.695 §6; repealed by 1979 c.468 §1]

240.384 [1981 c.557 §3; 1989 c.224 §30; repealed by 1997 c.221 §1]

240.385 [Repealed by 1971 c.695 §10]

240.387 [1971 c.697 §2; repealed by 1979 c.468 §1]

240.390 [Repealed by 1979 c.468 §1]

240.391 [1979 c.217 §2; 1987 c.743 §2; 1989 c.224 §31; 1991 c.402 §2; 1993 c.9 §1; repealed by 2005 c.45 §1]

240.392 [1979 c.217 §3; 1989 c.224 §32; repealed by 1997 c.221 §1]

240.393 [1979 c.217 §4; 1981 c.557 §4; 1989 c.224 §33; repealed by 1997 c.221 §1]

240.394 [1979 c.217 §5; 1983 c.740 §63; 1989 c.224 §34; repealed by 1997 c.221 §1]

240.395 Suspension of merit system in emergencies; reinstatement. (1) In the event of emergency or abnormal employment conditions due to disaster, national defense, war or conflict in which the Armed Forces of the United States are participating and because of which Oregon citizens are subject to induction into the Armed Forces, if a critical shortage of persons available and employable to fill positions and discharge duties in the classified service results, and the Personnel Division so finds and the Governor so certifies, the examination, certification and appointment procedures required by law shall be suspended for the duration of the emergency as to all or any classes of positions in which there is a shortage of employees.

(2) When the division determines that the emergency or abnormal condition no longer exists, and the Governor so certifies, the regular examination, certification and employment procedures shall be reestablished. Temporary appointments made with the approval of the division during the emergency period shall terminate 90 days after the date of establishment of eligible lists for positions to which temporary appointments have been made. [Amended by 1969 c.80 §68]

240.400 Designation by appointing authority of staff employees to act as alternates. An appointing authority may file in writing with the Personnel Division names of staff employees to act in the name of the appointing authority and to perform any act or

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duty of the appointing authority authorized under the provisions of this chapter. [1971 c.695 §5; 1979 c.468 §14]

240.405 [Amended by 1961 c.647 §1; 1963 c.185 §1; 1969 c.80 §69; 1969 c.346 §1; repealed by 1979 c.468 §1]

**EMPLOYER-REQUESTED
INTERVIEWS**

240.406 Right of unclassified or exempt employee to be accompanied to employer-requested interview. An employee in the state service employed in an unclassified or exempt position who is not a confidential employee, managerial employee or supervisory employee, as defined in ORS 243.650, and who is not represented by an exclusive representative as defined in ORS 243.650 may be accompanied by an individual selected by the employee to be present during any interview with the employee requested by the appointing authority, manager or supervisor of the employee. [2011 c.687 §6]

**REMOVAL DURING TRIAL SERVICE;
SEASONAL EMPLOYEES;
MERIT RATINGS**

240.410 Removals during trial period. At any time during the trial service period, the appointing authority may remove an employee if, in the opinion of the appointing authority, the trial service indicates that such employee is unable or unwilling to perform duties satisfactorily or that the habits and dependability of the employee do not merit continuance in the service. [Amended by 1979 c.468 §15]

240.415 [Repealed by 1979 c.468 §1]

240.420 [Repealed by 1961 c.646 §1]

240.425 Regular seasonal employees. Positions which occur, terminate and recur periodically and regularly regardless of the

duration thereof shall be designated by rule, policy or procedure of the Personnel Division as seasonal positions. An employee who satisfactorily serves in a seasonal position the trial service period designated by the division or a delegated operating agency for the classification to which the seasonal position is allocated is entitled to permanent status as a regular seasonal employee. [Amended by 1969 c.80 §70; 1981 c.156 §1]

240.430 Merit ratings. In cooperation with appointing authorities, the Personnel Division shall establish a system of merit ratings to determine the quality of performance and relative merit of employees in the classified service. [Amended by 1969 c.80 §71; 1979 c.468 §16]

**STATE MANAGEMENT
CREDENTIALS PROGRAM**

240.435 State Management Credentials Program required; purpose. The Oregon Department of Administrative Services shall establish a state management credentials program for state agency managers and employees on a career track to become agency managers. The state management credentials program shall include training opportunities for agency employees and training requirements for existing agency managers. The purpose of the state management credentials program is to insure that agency managers have the necessary training and skills to be effective leaders and team builders and to provide training in management skills as part of a professional development program for nonmanagement agency employees. To that end, the department shall:

- (1) Identify necessary job skills for state managers, including team-building skills;
- (2) Identify skills and training needs for state managers to meet workplace requirements in the future;
- (3) Identify incentives for employees to participate in the program; and

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(4) Identify continuing education resources in the public sector and through in-service training to implement the state management credentials program. [1993 c.724 §13a(1)]

Note: 240.435 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

240.505 [Repealed by 1979 c.468 §1]

240.510 [Amended by 1963 c.199 §3; 1969 c.80 §72; repealed by 1979 c.468 §1]

240.515 [Amended by 1953 c.353 §2; 1961 c.450 §1; 1969 c.80 §73; 1973 c.471 §1; repealed by 1979 c.468 §1]

240.520 [Amended by 1969 c.80 §74; repealed by 1979 c.468 §1]

240.525 [Repealed by 1979 c.468 §1]

240.530 [Repealed by 1979 c.468 §1]

240.535 [Amended by 1969 c.80 §75; repealed by 1979 c.468 §1]

240.540 [Amended by 1969 c.80 §76; repealed by 1979 c.468 §1]

240.545 [Repealed by 1979 c.468 §1]

**WORKING HOURS, LEAVES,
DISCIPLINE, REEMPLOYMENT**

240.546 Payments in lieu of sick leave with pay; rules; exclusions. The Personnel Division may adopt rules, policies and procedures for state agencies to provide employees in the classified and unclassified service with payments on account of sickness in lieu of accrued and any future sick leave with pay. The Legislative Assembly, state courts and Department of Education may

similarly adopt rules, policies and procedures providing unclassified employees with such payments. Payments on account of sickness may be made directly or from an insured plan, but the payments may not include medical treatment, hospitalization, dental or eye or other health care or duplicate any group insurance coverage otherwise provided in whole or in part by employer contributions. [1981 c.567 §9; 1995 c.612 §15; 2005 c.751 §3]

240.550 [Repealed by 1979 c.468 §1]

240.551 Working hours, holidays, leaves of absence and vacations of employees in state classified service. The Personnel Division shall establish the hours of work, holidays, leaves of absence with and without pay and vacations of employees in the state classified service. The division may delegate this responsibility to individual operating agencies where appropriate. [1979 c.468 §21]

240.555 Suspension, reduction, demotion or dismissal. The appointing authority in any division of the service may suspend, reduce, demote or dismiss an employee thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service. [Amended by 1969 c.80 §77; 1975 c.427 §11; 1979 c.468 §17]

240.560 Appeal procedure. (1) A regular employee who is reduced, dismissed, suspended or demoted, shall have the right to appeal to the Employment Relations Board not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The appeal must be in writing. The appeal is timely if it is received by the board or postmarked, if mailed postpaid and properly addressed, not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The board shall hear the appeal within 30 days after the board receives the appeal, unless the parties to the

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hearing agree to a postponement. The board shall furnish the division of the service concerned with a copy of the appeal in advance of the hearing.

(2) The hearing shall be conducted as provided for a contested case in ORS chapter 183.

(3) If the board finds that the action complained of was taken by the appointing authority for any political, religious or racial reasons, or because of sex, marital status or age, the employee shall be reinstated to the position and shall not suffer any loss in pay.

(4) In all other cases, if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employee in the position without the loss of pay. In lieu of affirming the action, the board may modify the action by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the board shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority. [Amended by 1957 c.205 §1; 1959 c.689 §6; 1969 c.80 §78; 1971 c.734 §35; 1975 c.427 §12; 1977 c.400 §1; 1977 c.770 §6; 1993 c.778 §24; 2003 c.213 §1]

240.563 Judicial review. Judicial review of orders under ORS 240.560 shall be as provided in ORS chapter 183. [1971 c.734 §31]

240.565 [Amended by 1969 c.80 §79; repealed by 1979 c.468 §1]

240.570 Classified employee filling position in unclassified, exempt or management service. (1) Positions in the unclassified, management and exempt services may be filled by classified employees. After an employee is terminated from the unclassified or exempt service or removed from the management service, for reasons other than

those specified in ORS 240.555, the state agency that employed the employee before the appointment to the unclassified, exempt or management service may, at the agency's sole discretion, restore the employee to a position held in the agency before the appointment if the employee meets the position requirements. If an employee is restored to a former position, the employee is subject to any applicable agency collective bargaining agreement.

(2) An appointing authority may assign, reassign and transfer management service employees for the good of the service and may remove employees from the management service due to reorganization or lack of work.

(3) A management service employee is subject to a trial service period established pursuant to rules of the Personnel Division under ORS 240.250. Thereafter, the management service employee may be disciplined by reprimand, salary reduction, suspension or demotion or may be removed or dismissed from the management service if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.

(4) Management service employees who are assigned, reassigned, transferred or removed, as provided in subsection (2) of this section, and employees who are disciplined, removed or dismissed from the management service as authorized in subsection (3) of this section may appeal to the Employment Relations Board in the manner provided by ORS 240.560.

(5)(a) Management service employees with immediate prior former regular status in the classified service who are removed from trial service pursuant to ORS 240.410 have a right to be restored to their former positions.

(b) Except as provided in paragraph (a) of this subsection, management service employees with immediate prior former regular status in the classified service who are appointed to the management service and who have not been dismissed from the management service for a reason specified in ORS 240.555:

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(A) Prior to January 1, 2015, have the right to restoration to the classified service for three years from the date of appointment to the management service.

(B) After December 31, 2014, have no right to restoration to the classified service. [1955 c.738 §6; 1979 c.468 §18; 1981 c.409 §4; 1985 c.121 §3; 1987 c.269 §1; 2005 c.766 §1; 2014, c.22, §1, eff. Jan. 1, 2015]

240.572 [1977 c.271 §3; repealed by 1979 c.468 §1]

240.575 [1971 c.542 §2; repealed by 1979 c.468 §1]

240.580 Service credits for service in unclassified service. An employee who is initially appointed to a position in the unclassified service as a member of the Oregon State Police under ORS 181.250, who separates voluntarily from that service and who, within two years after the separation, is appointed to a position in the classified service, whether within a bargaining unit covered by a collective bargaining agreement or not, and acquires regular employee status shall be entitled, for purposes of layoff and opportunity for reemployment after separation for reasons other than cause, to service credit for the service in the unclassified service preceding the service in the classified service. ORS 240.321 (3) does not apply to service credit granted under this section. [1983 c.746 §2; 2011 c.547 §41]

240.590 Reemployment of employee in exempt service. An employee in the exempt service who has been employed full-time for at least 12 months consecutively in such service may be noncompetitively reemployed in a position for which qualified within two years from the date of separation, if separated from state service in good standing. However, such reemployment shall occur only after current bargaining unit members have exhausted any rights under an applicable collective bargaining agreement. [1985 c.635 §5]

MEDIATION FEE

240.610 Mediation service fee; interest-based problem solving training fee; amount; payment; disposition of fees. (1) Notwithstanding ORS 662.435, when the Employment Relations Board assigns a mediator under ORS 243.712 or 662.425 to resolve a labor dispute or labor controversy between a local public employer and the exclusive representative of the public employees of that employer, the board may charge a fee for the mediation services provided by the board. The local public employer and the exclusive representative shall each pay one-half of the amount of the fee to the board.

(2) Notwithstanding any other law, the fee charged by the board under this section may not exceed:

(a) \$1,000 for the first two mediation sessions;

(b) \$500 for the third mediation session;

(c) \$750 for the fourth mediation session; and

(d) \$1,000 for each additional mediation session.

(3) Notwithstanding any other law, in addition to fees for mediation services, the board may establish fees for training in interest-based problem solving. The fees are not subject to the provisions of subsection (2) of this section.

(4) Fees received by the board under this section shall be deposited to the credit of the Employment Relations Board Administrative Account.

(5) As used in this section:

(a) “Exclusive representative” and “labor dispute” have the meanings given those terms in ORS 243.650.

(b) “Local public employer” means any political subdivision in this state, including a city, county, community college, school district, special district and a public and quasi-

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public corporation. [1993 c.711 §2; 1995 c.79 §84; 1995 c.448 §1; 2007 c.296 §7; 2011 c.593 §1]

240.705 [Repealed by 1967 c.630 §5]

PROHIBITED CONDUCT

240.710 Certain acts unlawful. (1) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification, or appointment made under this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules.

(2) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(3) No employee of the Personnel Division, examiner or other person shall defeat, deceive or obstruct any person in the right of the person to examination, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.
[Amended by 1969 c.80 §80]

240.740 [1983 c.808 §2; repealed by 1989 c.890 §12]

240.750 When discipline action not to be retained in personnel file. No copy of a personnel discipline action that has been communicated orally or in writing to the employee and subsequently reduced in severity or eliminated through collective bargaining, grievance or personnel process shall be placed or otherwise retained in the personnel file of the employee unless agreed to by the employer and the employee. [1985 c.813 §2]

Note: 240.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

MISCELLANEOUS

240.850 Policy on work environments; duties of state agencies. It is the policy of the State of Oregon to encourage cooperative, participatory work environments and team-based management practices in all state agencies. To that end, when feasible and appropriate, state agencies shall:

(1) Delegate responsibility for decision-making and service delivery to the lowest possible level;

(2) Involve all workers, especially frontline workers, in the development and design of processes and program improvements;

(3) Simplify and eliminate internal administrative rules and policies that unduly impede the attainment of the agency's mission and delivery of services;

(4) Eliminate layers of organizational hierarchies;

(5) Envision state government as a high performance organization in which training and technology are viewed as an investment in the workforce; and

(6) Promote continuous improvement of state services through the involvement of all workers in process design and performance-based outcome development. [1993 c.724 §13b]

Note: 240.850 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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240.855 Telecommuting; state policy; agencies to adopt written policies; biennial report. (1) As used in this section:

(a) "State agency" means any state office, department, division, bureau, board and commission, whether in the executive, legislative or judicial branch.

(b) "Telecommute" means to work from the employee's home or from an office near the employee's home, rather than from the principal place of employment.

(2) It is the policy of the State of Oregon to encourage state agencies to allow employees to telecommute when there are opportunities for improved employee performance, reduced commuting miles or agency savings.

(3) Each state agency shall adopt a written policy that:

(a) Defines specific criteria and procedures for telecommuting;

(b) Is applied consistently throughout the agency; and

(c) Requires the agency, in exercising its discretion, to consider an employee request to telecommute in relation to the agency's operating and customer needs.

(4) Each state agency that has an electronic bulletin board, home page or similar means of communication shall post the policy adopted under subsection (3) of this section on the bulletin board, home page or similar site.

(5) The Oregon Department of Administrative Services, in consultation with the State Department of Energy, shall provide a biennial report to the Joint Committee on Technology, or a similar committee of the Legislative Assembly, containing at least the following:

(a) The number of employees telecommuting;

(b) The number of trips, miles and hours of travel time saved annually;

(c) A summary of efforts made by the state agency to promote and encourage telecommuting;

(d) An evaluation of the effectiveness of efforts to encourage employees to telecommute; and

(e) Such other matters as may be requested by the committee. [Formerly 283.550]

Note: 240.855 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

240.990 Penalties. (1) Subject to ORS 153.022, any person who willfully violates any provision of this chapter or of the rules thereunder commits a Class A misdemeanor.

(2) Any person who fails to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any investigation or hearing authorized by this chapter commits a Class A misdemeanor.

(3) A state officer or employee who fails to comply with any provision of this chapter or of any rule, regulation or order thereunder is subject to all penalties and remedies provided by law for failure of a public officer or employee to do an act required of a public officer or employee by law.

(4) Any person who is convicted of a Class A misdemeanor under this chapter shall, for a period of five years, be ineligible for appointment to or employment in a position in the state service, and if the person is an officer or employee of the state, shall be deemed guilty of malfeasance in office and shall be subject to forfeit of the office or position. [Amended by 1999 c.1051 §301; 2011 c.597 §172]

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DIVISION 60
PRIVATE EMPLOYEE
REPRESENTATION

Representation Petitions

115-060-0000 (1) Who may file:

(a) A petition for certification of a private employee representative may be filed by an employee, group of employees, or any individual or labor organization acting in their behalf, alleging that a substantial number of employees wish to be represented for collective bargaining and that the employer declined to recognize their representative;

(b) Petitions for certification of private employee representative may be filed by a private employer alleging that one or more individuals or labor organizations have presented to it a request to be recognized or continue to be recognized as exclusive representative and that the employer has a good faith doubt as to the continued majority status of the incumbent labor organization based on reasonable objective standards;

(c) A petition for decertification may be filed by an employee or group of employees, alleging that a substantial number of employees no longer want the certified or recognized individual or labor organization to represent them.

(2) Petitions shall be filed in writing with the Board on a form provided by the Board. The Board Agent shall serve a copy of the petition upon the parties disclosed therein.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 663.025
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 12-1985, f. 10-29-85, ef. 10-31-85

Petitions for Clarification or Amendment of Bargaining Unit

115-060-0005 (1) Petitions for clarification or amendment of certification may be filed by the recognized or certified representative or by the private employer when no question of representation exists. The petition must be submitted in writing on a form approved by the Board. The petitioner shall designate one or

more of the following subsections on the form to indicate the clarification issue(s) the petitioner intends to raise. After the filing of objections, if any, the Board Agent may determine the issue raised by the petition. If the Board Agent determines that the issue raised is different than that designated on the form, the Board Agent shall determine whether the petition complies with the requirements of the appropriate subsection(s).

(2) When the issue raised by the clarification petition is one of employee status under ORS 663.005(3), the petition may be filed at any time; except that where a position sought to be excluded is expressly by title included within the unit description, a petition may be filed only during the open period provided for in OAR 115-060-0015(4). The Board may order a self-determination election among the affected employees as a result of a petition filed by a labor organization under this subsection of this rule, if the Board determines that an election would be appropriate to further the policies expressed in ORS Chapter 663.

(3) When the issue raised by the clarification petition is whether certain positions are or are not included in a bargaining unit under the express terms of a certification description or collective bargaining agreement, a petition may be filed at any time; except that the petitioning party shall be required to exhaust any grievance in process that may resolve the issue before such a petition shall be deemed timely by the Board.

(4) When the issue raised by the clarification petition is whether certain unrepresented positions should be added to an existing bargaining unit, the petition must be supported by a 30 percent showing of interest among the unrepresented employees sought to be added to the existing unit. If the employees sought to be added to the unit occupy positions that existed and were filled at the time of the most recent certification or recognition agreement, the petition must be filed during the open period provided for in OAR 115-060-0015(4) and will be subject to the provisions of OAR 115-060-

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0015(1) and (3). If the employees sought to be added to the unit occupy positions that were created or were filled after the most recent certification or recognition agreement, the petition may be filed at any time and will not be subject to the provisions of OAR 115-060-0015. If the Board determines that it would be appropriate to add the unrepresented positions to the existing bargaining unit, the Board shall order a self-determination election in which the unrepresented employees will vote either to be represented within the existing bargaining unit or for no representation. The election shall be conducted by a Board Agent in accordance with the provisions of OAR 115-060-0050 and 115-060-0055, to the extent such rules are applicable to a self-determination election. If a majority of the unrepresented employees who vote cast ballots in favor of representation, the existing bargaining unit shall be clarified to include the positions of the unrepresented employees.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 663.020

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-1998, f. & cert. ef. 1-26-98

Contents of Petition

115-060-0010 (1) Certification of Private Employee Representative Filed by an Employee/Group of Employees/Individual/Labor Organization. A petition for certification of private employee representative filed by an employee/group of employees/individual/labor organization, shall contain the following:

(a) Name, address, telephone number of the private employer, as well as the name of a multi-employer association, if such organization is involved in the unit requested;

(b) The address(es) of the establishment involved;

(c) The general nature of the employer's business;

(d) A description of the bargaining unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be

included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(e) Name, address and telephone number of the recognized or certified exclusive representative, if any, and the date of prior certification or recognition and the expiration date of any applicable contract, if known to the petitioner;

(f) Names, address(es) and telephone numbers of any other interested labor organizations, if known to the petitioner;

(g) Whether a strike or picketing is in progress at the establishment involved, and, if so, the approximate number of employees participating, and the date such strike or picketing commenced;

(h) A statement as to whether a valid election has been held within the alleged unit or at the establishment within the preceding 12 months;

(i) Any other relevant facts;

(j) Name and affiliation, if any, of the petitioner and its address and telephone number;

(k) The signature of the petitioner's representative, including his title and telephone number;

(l) A petition shall be accompanied by a showing of interest of not less than 30% of the employees in the unit alleged to be appropriate. "Showing of interest" means the evidence of support a petitioner must show in a bargaining unit or proposed bargaining unit before its petition will be acted upon. The showing may be made by authorization cards or petitions which must include a statement of a desire by affected employees to be represented by the petitioner for the purposes of collective bargaining and which must be signed and dated by employees in the unit during the 90 days preceding the filing of the petition; by dues records or payroll deduction records showing the employees to be current members of a petitioning organization; or, by an existing or the most recently expired bargaining agreement

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in the unit, to which the petitioning organization was a party;

(m) If a petition was filed with the National Labor Relations Board, state what action, if any, was taken.

(2) Certification of Private Employee Representative Filed by Private Employer.

(a) A petition filed by a private employer shall state that a request for representation or continued representation has been made by one or more labor organizations and that the private employer has a good faith doubt concerning the majority representative of its employees;

(b) A petition shall contain all of the information set forth in section (1) of this rule, except subsections (j) and (l) thereof.

(3) Decertification of Private Employee Representative Filed by an Employee/Group of Employees/Individual/Labor Organization.

(a) A petition for decertification shall contain the following:

(A) A statement that the individual or labor organization currently certified or recognized by the private employer no longer represents a majority of the employees in the bargaining unit in which it is currently certified or recognized;

(B) A petition shall contain the information set forth in section (1) of this rule; and

(C) A petition shall be accompanied by a showing of interest of not less than 30 percent of the employees in the unit alleged to be appropriate.

(b) "Showing of interest" means the evidence of support a petitioner must show in a bargaining unit or proposed bargaining unit before its petition will be acted upon. The showing may be made by authorization cards or petitions which must be signed and dated by employees in the unit during the 90 days preceding the filing of the petition; by dues records or payroll deduction records showing the employees to be current members of the petitioning organization; or, by an existing or the most recently expired bargaining agreement

in the unit, to which the petitioning organization was party.

(4) Clarification of Unit or Amendment of Certification Filed by the Recognized Individual/Labor Organization/Private Employer. A petition shall, in addition to setting forth the information required by section (1) of this rule, except subsections (d) and (l) thereof, further contain the following:

(a) A description of the present bargaining unit and the date of the certification or recognition;

(b) Proposed clarification or amendment of the unit; and

(c) A statement by petitioner setting forth specific reasons as to why clarification or amendment is requested.

Stat. Auth.: ORS 240 & ORS 243

Stats. Implemented: ORS 663.025

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 12-1985, f. 10-29-85, ef. 10-31-85

Timeliness of Petitions

115-060-0015 (1) Election Bar. No election may be held for a bargaining unit or a subdivision of one in which a valid election has been held during the preceding 12-month period.

(2) Contract Bar. No representation election shall be conducted during the term of any lawful collective bargaining agreement between an employer and a labor organization. However, an agreement with a term of more than three years shall be a bar for only the first three years of its term.

(3) Certification Bar. The certification of an exclusive bargaining representative will serve as a bar to an election for a period of one year from the date of certification unless:

(a) The certified labor organization has dissolved or has become defunct; or

(b) A schism developed in the certified labor organization so that it cannot effectively represent bargaining unit members; or

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(c) The size of the bargaining unit has fluctuated radically within a short period of time; or

(d) Other changed circumstances warrant waiver of the certification bar.

(4) Open Period for Filing. A petition for an election where a contract exists must be filed not more than 90 days and not less than 60 days before the end of the contract period. If a contract is for more than three years, a petition for election may be filed not more than 90 days and not less than 60 days before the end of the expiration of the first three years of the contract or any time after three years from the effective date of the contract. However, if a new contract is negotiated after the third year of the contract, and prior to the filing of a petition for an election, the new contract shall serve as a contract bar.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 663.025
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 12-1985, f. 10-29-85, ef. 10-31-85

Validity of Showing of Interest

115-060-0020 The showing of interest submitted pursuant to OAR 115-060-0010(1) and (3) shall not be furnished to any of the parties. The Board or its agents shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.025
Hist.: ERB 1-1980, f. & ef. 1-9-80

Withdrawal or Dismissal of Petition

115-060-0025 (1) Withdrawal of Petition. A petitioner may withdraw its petition with the approval of the Board or its agent. If a petition is withdrawn after the Recommended Order is issued, the withdrawal will be granted with prejudice and the petitioner may not submit a new petition for the bargaining unit for a period of six months from the date the withdrawal was approved.

(2) Dismissal of Petition. If the Board Determines after an investigation that the

petition has not been timely or properly filed, that no valid question concerning the representation of employees exists in an appropriate unit, or that the petition should not be processed for other reasons, it may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such withdrawal, it may dismiss the petition. Such action may be taken by the Board at any time prior to the closing of the case. A petitioner may, within 14 days of the date of service of the dismissal, request reconsideration of such action by the Board. This request shall contain a complete statement setting forth the facts and reasons upon which the request is based. On its own motion, the Board may or may not hear oral argument on a request for reconsideration. The Board may affirm the dismissal, or set the dismissal aside and remand the matter for hearing.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.025
Hist.: ERB 1-1980, f. & ef. 1-9-80

Posting Notice of Petition

115-060-0028 Upon receipt of a petition under OAR 115-060-0000, a Board Agent will cause a notice of the petition to be posted in the work areas granting maximum access to the employees in the existing or proposed unit. Copies of the notice shall be served on the private employer and any known exclusive representative. The notice shall set forth:

- (1) The name of the petitioning organization or employer;
- (2) A description of the unit involved; and
- (3) A statement that parties and interested persons will have 14 days from the date of the notice to file:
 - (a) Objections to the appropriateness of the proposed unit;
 - (b) Objections to the positions to be included or excluded;
 - (c) Any other objections to the petition;
 - (d) Petition to intervene as provided in OAR 115-060-0030.

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(4) Interested persons may notify the Board Agent of their objections. Upon good cause shown, the Board Agent may call an interested person as a witness.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 663.025
Hist.: ERB 12-1985, f. 10-29-85, ef. 10-31-85

Intervention

115-060-0030 (1) An employee, a group of employees or an individual or labor organization acting in their behalf may intervene as a candidate for representation of the bargaining unit if it files a motion to intervene and supports its motion with a showing of interest of ten percent of the employees in the bargaining unit. A labor organization may intervene for the purpose of representing a bargaining unit of employees different than that sought by the petitioner, but including some of the employees in the bargaining unit proposed by the petitioner. In such case, it must file a motion supported by a showing of interest of 30% percent of the employees in its proposed unit.

(2) A labor organization currently certified or recognized as the exclusive representative of all or a major portion of the employees in the requested bargaining unit will be included as a party in interest in any hearing on the petition and included on the ballot in any resulting election unless it files a disclaimer pursuant to OAR 115-060-0055(3).

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 663.025
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 12-1985, f. 10-29-85, ef. 10-31-85

Consent Election Agreement

115-060-0035 The parties may waive a hearing and enter into a consent election agreement. Such agreement shall include a description of the bargaining unit, time and place of the election and the payroll period to be used in determining the employees eligible to vote. The bargaining unit set out in the consent agreement shall be deemed an appropriate bargaining unit when the consent

agreement is approved by the Board or its agent. The parties may agree to a mail ballot election with the approval of the Board or its agent.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.025
Hist.: ERB 1-1980, f. & ef. 1-9-80

Hearing on Petitions; Notice; Conduct and Evidence

115-060-0040 When a valid petition has been filed and the parties, including timely objectors or intervenors, after a reasonable time, are unable to settle the issues raised by the petition in a manner approved by a Board agent, the matter shall be set for hearing. Ten days' written notice of hearing shall be given to all parties. The notice shall include, but need not be limited to:

(1) Notice:

(a) A statement of the time, place and nature of the hearing;

(b) A description of any proposed bargaining unit(s) which may be involved;

(c) The name of the private employer, individual, labor organization, objectors and intervenors, if any; and

(d) A statement of the legal authority and jurisdiction under which the hearing is being held.

(2) Notice not Part of Record. The contents of the notice shall not be a part of the hearing record, and any party wishing to rely upon these as exhibits shall make an appropriate submission at the hearing.

(3) Conduct and Evidence. Hearings under this section are considered investigatory. There is no burden of proof. Their purpose is to develop a full factual record to be considered by the Board. The rules of evidence for hearings conducted under this section shall be:

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible;

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded;

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(c) All offered evidence, not objected to, may be received by the Board agent subject to the Board agent's discretion to exclude irrelevant, immaterial or unduly repetitious matter;

(d) Evidence objected to may be received by the Board agent who will rule on its admissibility or exclusion when he/she issues a Recommended Order;

(e) The Board agent shall determine the order of going forward with the evidence; and

(f) See procedures set out in OAR 115-010-0035 through 115-010-0105.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 663.025

Hist.: ERB 1-1980, f. & ef. 1-9-80

Appropriate Bargaining Unit(s)

115-060-0045 (1) A bargaining unit may consist of all employees of the employer, craft unit, plant unit, or subdivision thereof, if found to be appropriate by the Board. See ORS 663.020(1)(a), (b) and (c) for statutory exceptions.

(2) In considering whether a bargaining unit is appropriate, the Board shall consider such factors as community of interest (e.g., similarity of duties, skills, benefits, interchange or transfer of employees, promotional ladders, common supervisor, etc.), wages, hours and other working conditions of the employees involved the history of collective bargaining and the desires of the employees. The Board may determine a unit to be an appropriate unit although some other unit might also be appropriate.

(3) Bargaining unit(s) shall not include statutory exclusions as defined in ORS 663.005(3)(a) through (i).

Stat. Auth.: ORS 243

Stats. Implemented: ORS 663.020

Hist.: ERB 1-1980, f. & ef. 1-9-80

Notice of Election; Improper Use of Notices

115-060-0050 (1) Notices of election shall be furnished by a Board agent to the private employer for suitable posting. Such notices shall set forth the details and procedures for the election, the appropriate unit, the employee eligibility period, and date(s), hour(s) and place(s) of the election and shall contain a sample ballot. The private employer shall promptly post notices in areas giving maximum access to affected employees.

(2) The reproduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed or upon motion of the Board.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 663.030

Hist.: ERB 1-1980, f. & ef. 1-9-80

Election Procedures

115-060-0055 (1) Eligibility to Vote. Private employees eligible to vote in an election will be those employed on the date of the election and who were employed on a payroll date agreed upon by the parties or on a date specified by the Board. The Board may, at its discretion, include as eligible voters seasonal employees, employees on layoff, or other employees who have reasonable expectations of continued employment.

(2) List of Eligible Voters. The private employer shall submit an alphabetical list of eligible voters, their names, addresses and job classifications to each labor organization which will appear on the ballot and to the Board at least ten days before the date of the on-site election or ten days before the date set for the Board to mail out ballots in a mail ballot election unless otherwise expressly agreed by the parties.

(3) Disclaimer. A labor organization may request in writing to have its name removed from the ballot disclaiming any representation

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interest for the employees in the unit. Such disclaimer must be filed not less than ten days before the date of the election. When a disclaimer is filed and accepted after a consent agreement for an election is signed or after an election is ordered, the Board will not entertain a petition filed by the disclaiming organization for the bargaining unit for a period of six months from acceptance of the disclaimer.

(4) Voting. Voting shall be by secret ballot with an opportunity to vote for any one of the candidates on the ballot or for no representation. The election shall be conducted on site or it may be conducted by mail. For purposes of scheduling an election by mail, the date on which ballots are to be returned shall be the date of the election. The choice on the ballot receiving the majority of valid votes cast shall be adjudged the winner. If there are only two choices on the ballot in an initial election or runoff election and the balloting results in a tie vote, the Board Agent shall certify that no representative has been chosen. These provisions apply to all representation elections.

(5) Runoff Election. In any representation election where there are more than two choices on the ballot and none of the choices receive a majority of the valid votes cast, a runoff election shall be conducted. The ballot in a runoff election shall contain the two choices on the original ballot that received the largest number of votes. Employees eligible to vote in the original election and who are still employees on the date of the runoff election shall be eligible to vote.

(6) Observers. Any party may be represented at the polling place(s) by observers of its own selection except that employer observers cannot be supervisors of employees involved in the election. Labor organization observers must be eligible voters. The number and the function of the observers shall be determined by the Board Agent conducting the election.

(7) Challenged Ballots. Any party or the Board Agent may challenge, for good cause, the eligibility of any person to participate in the

election. The ballots of such challenged persons shall be impounded.

(8) Tally of Ballots. Upon the conclusion of the ballot count, the Board Agent shall furnish the parties a tally of ballots in person or by mail. The tally shall be deemed furnished on the day of the ballot count.

(9) Objections to Conduct of Election or Conduct Affecting the Results of the Election. Within ten days after the tally of ballots has been furnished, any party of record may file with the Board an original and one copy of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a clear and concise statement of the reasons therefor. Such filings must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Failure to comply with this subsection shall be grounds for dismissal of the objections. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be provided to the Board.

(10) Certification of Representative or Results of Election. If no objections are filed within ten days; and, if the challenged ballots are insufficient in number to affect the results of the election, the Board Agent shall forthwith issue to the parties a certification of the results of the election, including certification of representative, where appropriate.

(11) Resolution of Objections and Challenged Ballots. When timely objections are filed or where the challenged ballots are sufficient in number to affect the results of the election, the Board Agent shall conduct an investigation and shall, when appropriate, issue a notice of hearing designating a Board Agent to hear the matters alleged and to issue a report and recommendations. The objecting or challenging party shall bear the burden of proof and of going forward in the hearing. If the Board Agent exercised a challenge because the voter's name was not on the list of eligible voters, the party seeking to have the vote counted shall have the burden of proof and the

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burden of going forward. The findings and recommendations shall be brought before the Board in the manner provided in these rules for all other Board Agent findings and recommendations.

Stat. Auth.: ORS 240 & ORS 243

Stats. Implemented: ORS 663.030

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 12-1985, f. 10-29-85, ef. 10-31-85

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 65 –PRIVATE EMPLOYEE DEAUTHORIZATION OF
UNION SECURITY AGREEMENT

DIVISION 65
PRIVATE EMPLOYEE
DEAUTHORIZATION OF UNION
SECURITY AGREEMENT

Deauthorization

115-065-0000 (1) Petition:

(a) A petition to rescind the provision in the bargaining agreement between a private employer and a labor organization requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees. The petition must be accompanied by a statement signed by 40 percent or more of the employees in the bargaining unit stating that they desire to rescind the union security agreement;

(b) Such petition shall be filed in writing with the Board on a form provided by the Board and shall be filed with the Board;

(c) Upon receipt of the petition, the Board or its agent shall serve a copy thereof upon the parties disclosed in the petition.

(2) Contents of Petition: The petition shall contain:

(a) A statement that 40 percent or more of the employees in a bargaining unit desire to rescind the union security provisions between their employer and the labor organization;

(b) The name, address and telephone number of the establishment;

(c) The name, address and telephone numbers of the employers' representatives;

(d) The general nature of the employer's business;

(e) A description of the bargaining unit involved;

(f) The name, address and telephone number of the labor organization representing the employees;

(g) The number of employees in the bargaining unit;

(h) The date of execution and expiration of the bargaining agreement in effect covering the

unit involved. If possible, include a copy of the agreement with the petition;

(i) The name and address of the person designated to accept service of documents for petitioners;

(j) Any other relevant facts;

(k) Signed by petitioner(s) with his/her address and telephone number; and

(l) If filed with the National Labor Relations Board, what action, if any, was taken.

(3) Election:

(a) Directed Election. After investigating the petition and upon an appropriate showing that 40 percent or more of the employees in the bargaining unit desire to rescind the union security provision, the Board shall direct a secret ballot election;

(b) Election Notices. Notices of election shall be furnished by the Board agent to the employer for posting. Such notices shall set forth the details and procedures for the election, a definition of eligible voters and the date(s), hour(s) and place(s) of the election and shall contain a sample ballot;

(c) Eligibility to Vote. Employees eligible to vote in an election will be bargaining unit members employed on the date of the election and who were employed on a payroll date specified by the Board;

(d) List of Eligible Voters. The public employer shall submit an alphabetical list of eligible voters, their names, addresses and job classifications to the labor organization and to this Board at least ten days before the election;

(e) Dismissal of Petition. In the event of dismissal of the petition for deauthorization, the petitioner may, within 14 days from date of service of the dismissal, request reconsideration of such action by the Board. This request shall contain a complete statement setting forth the facts and reasons upon which the request is based;

(f) Election Procedures. To the extent not inconsistent herewith, election procedures provided in these rules for representation

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 65 –PRIVATE EMPLOYEE DAUTHORIZATION OF
UNION SECURITY AGREEMENT

elections in private employment shall be applicable. However, nothing in these rules shall be construed to afford the parties either a pre-election objection period or a pre-election hearing as a matter of right. The Board, in its discretion, may set such a hearing if its investigation reveals that a hearing is necessary under the circumstances of the case;

(g) Certification of Results of Election. If no objections are filed within the time set forth above and if the challenged ballots are insufficient in number to affect the results of the election, the Board or its agent shall certify the results of the election to the parties. If a majority of the votes cast in the election do not favor the fair share agreement, the Board shall certify deauthorization. If a majority of the votes cast favor continuation of the fair share agreement, the Board shall so certify;

(h) Election Bar. No election shall be conducted pursuant to this section in a bargaining unit or a subdivision within which, in the preceding 12 months, a valid election has been held.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 663.035

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 3-1998, f. & cert. ef. 1-26-98

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 70 – UNFAIR LABOR PRACTICE CHARGES
IN PRIVATE EMPLOYMENT

DIVISION 70
UNFAIR LABOR PRACTICE CHARGES
IN PRIVATE EMPLOYMENT

Filing an Unfair Labor Practice Charge

115-070-0000 (1) Who May File. An injured party may file a charge alleging that a person(s) has engaged in or is engaging in an unfair labor practice. Such charge shall be filed in triplicate with the Board on forms provided by the Board.

(2) Content of Charge. The charge shall contain the following information:

(a) The name and address of the person making the charge;

(b) The name and address of the person(s) against whom the charge is made;

(c) A description of the nature of the business involved;

(d) A clear and concise statement of the facts constituting each alleged violation followed by the specific section and subsection of the law allegedly violated. Such statements shall include the names of persons committing specific complained of acts and the dates when such acts allegedly occurred; and

(e) The signature of the person filing the charge.

(3) Supporting Data. At the time the charge is filed, the charging party shall submit a written statement setting forth its version of the relevant facts, including names, dates, and places, together with any documentary evidence which may be relevant to the issues raised by the charge.

(4) Service of Charge. Concurrent with the filing of the charge, the filing party shall serve a copy of the charge upon the person against whom the charge is made and certify such service to the Board.

(5) Filing fee. A filing fee of \$300 must be paid at the time the charge is filed. Charges that are filed without a filing fee are subject to dismissal for that reason.

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 663.175 & 663.180

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

Investigation of Charge

115-070-0005 A Board agent shall investigate the charge to determine if an issue of fact or law exists which warrants issuance of a complaint.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.180
Hist.: ERB 1-1980, f. & ef. 1-9-80

Action When Complaint not Issued

115-070-0010 If investigation reveals that no issue of fact or law exists which warrants issuance of a complaint, the Board may decline to issue a complaint. Such declination shall be in writing explaining the grounds thereof.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.180
Hist.: ERB 1-1980, f. & ef. 1-9-80

Petition for Reconsideration

115-070-0015 The charging party shall have 14 days from the date of service to file objections to the declination to issue a complaint and request reconsideration by the Board. This request shall contain a complete statement setting forth the facts and reasons upon which the request for reconsideration is based. The charging party shall serve a copy of the request upon all parties of record in the case. The Board, at its discretion, may grant reconsideration. In reviewing a petition for reconsideration, the Board may set the issue for oral argument.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.180
Hist.: ERB 1-1980, f. & ef. 1-9-80

Issuance of Complaint and Notice of Hearing

115-070-0020 If it appears to the Board that proceedings on the charge should be instituted, it shall issue a cause to be served on all affected parties a formal complaint in the name of the

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CHAPTER 115, DIVISION 70 – UNFAIR LABOR PRACTICE CHARGES
IN PRIVATE EMPLOYMENT

Board and a notice of hearing before a Board agent at a place therein fixed and at a time not less than 20 days after service of the complaint and notice of hearing. The complaint and notice of hearing shall be served personally or by certified mail.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.180
Hist.: ERB 1-1980, f. & ef. 1-9-80

Withdrawal of Complaint

115-070-0025 Any complaint issued by the Board may be withdrawn by it prior to the hearing.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.185
Hist.: ERB 1-1980, f. & ef. 1-9-80

Amendment of Complaint

115-070-0030 A complaint may be amended by the Board at its discretion at any time before the issuance of an order based thereon.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.185
Hist.: ERB 1-1980, f. & ef. 1-9-80

Answer to the Complaint

115-070-0035 (1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent shall state in the answer that he/she is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and shall set forth any affirmative defenses.

(2) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the charging party or his/her attorney of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) Filing Fee. A filing fee of \$300 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 663.185(2)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; ERB 3-2007, f. 12-17-07, cert. ef. 12-26-07; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

Hearings

Notice of Hearings:

115-070-0040 (1) Time and Place of Hearings. The time and place of hearing will be contained in the complaint and notice of hearing.

(2) Postponements. Any party who desires a postponement shall promptly, upon receipt of notice of the hearing, make written request of the Board Agent for such postponement, stating the reason therefor in detail. The Board Agent, in considering a request for postponement, shall consider whether such request was promptly made. For good cause shown, the Board Agent may grant such postponement and may, at any time, order a postponement upon his/her own motion.

(3) Consolidation or Severance of Cases. The Board Agent on motion of a party or on the Board Agent's own motion may consolidate or sever cases or charges for purposes of hearing and/or issuance of a recommended order.

Stat. Auth.: ORS 240 & ORS 243
Stats. Implemented: ORS 663.185
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 13-1985, f. 10-29-85, ef. 10-31-85

Conduct of Hearings

115-070-0045 (1) General Procedure:

- (a) The Board Agent will open the hearing with a brief introduction of parties and issues;
- (b) Parties may make opening statements;
- (c) Parties may present evidence in support of their respective positions. Cross-examination

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 70 – UNFAIR LABOR PRACTICE CHARGES
IN PRIVATE EMPLOYMENT

of witnesses will be allowed opposing party(ies);

(d) Parties may make closing arguments.

(2) Conference During Hearings. In any proceedings, the Board Agent may, in his/her discretion, call the parties together for a conference prior to the taking of testimony or may recess the hearing for such conference to resolve evidentiary or procedural matters. The results of such conference shall be summarized on the record.

(3) Stipulation as to Facts. The parties to any proceeding or investigation may, by stipulation, and subject to approval by the Board or its agent, agree upon the facts or any portion thereof involved in the controversy. Such stipulation shall be binding upon the parties thereto and may be used as evidence in the case.

(4) Continuances. If it appears, on the motion of a party, that further testimony or argument should be received, the Board Agent may, in his/her discretion, continue the hearing. The date of such continued hearing may be fixed at the time of hearing or by later written notice to the parties.

(5) Appearances. Parties shall enter appearances at the beginning of the hearing and give their names and addresses in writing to the Board Agent conducting the hearing who will include the same in the record. The Board Agent may, in addition, require appearances to be stated orally so that the identity and interests of all parties present will be known to those at the hearing.

(6) Burden of Proof. The charging party shall have the burden of proof and shall also have the burden of going forward with the evidence. Respondent shall have the burden of proving affirmative defenses. Opportunity shall be afforded to all parties of record participating to examine each witness and to state objections to evidence offered.

(7) Rules of Evidence. The rules of evidence applicable to civil actions shall apply.

(8) Conduct at Hearing. All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with the Board Agent's effort to maintain order are grounds for removal from the hearing.

(9) Rights of Party not Answering or Failing to Specifically Deny an Allegation. A party that fails to answer a complaint or fails to deny an allegation will not be allowed to present or rebut evidence as to the facts alleged. However, the party may present legal argument.

(10) Post-Hearing Briefs. When post-hearing briefs are permitted by a Board Agent, they must be filed within 14 days from the conclusion of the hearing. Extension of time for filing will be permitted only upon good cause shown.

Stat. Auth.: ORS 240 & ORS 243

Stats. Implemented: ORS 663.185 & ORS 663.190

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 13-1985, f. 10-29-85, ef. 10-31-85

Motions; Intervention

115-070-0050 (1) Motions. All motions, including motions for intervention, shall be typewritten or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. Written motions shall be filed with the Board agent, together with proof of service of a copy thereof upon the other parties.

(2) Motions to Intervene. Any person desiring to intervene in any proceeding shall make a motion for intervention no later than seven days before the date set for hearing, stating the grounds upon which such person claims to have an interest in the proceeding. The Board Agent may permit intervention to such extent and upon such terms as he/she may deem proper.

(3) Filing Fee. A filing fee of \$300 must be paid by the intervenor when the motion for intervention is filed. The motion will not be considered to be filed until the fee is paid.

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 70 – UNFAIR LABOR PRACTICE CHARGES
IN PRIVATE EMPLOYMENT

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 663.185(2) & ORS 663.190
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

Post-Hearing Procedures

115-070-0055 (1) Recommended Order. The Board agent shall prepare and serve on the parties a Recommended Order consisting of Rulings on Motions and Evidentiary Matters, Findings of Fact, Conclusions of Law and a Recommended Order.

(2) Objections to Recommended Order. The parties shall have 14 days from date of service of the Recommended Order to file specific written objections with the Board. (See also OAR 115-010-0090.)

(3) Board Review:

(a) Oral or Written Argument. If objections are filed to the Recommended Order, parties will be given an opportunity to present oral argument to the Board. If a party desires to submit written argument in lieu of oral argument, it must be filed with the Board and served on the parties not less than five days before the date set for argument. The party filing the written argument shall provide proof of service to the Board;

(b) Memorandum in Aid of Oral Argument. If parties wish to submit written memorandum in aid of oral argument in addition to argument, it must be filed with the Board not less than five days before the date set for oral argument and copies must be served upon parties of record. Parties shall provide the Board with proof of service;

(c) Review of Record. Review by the Board of a Board agent's Proposed Rulings on Motions and Evidentiary Matters, Findings of Fact, Conclusions of Law and a Recommended Order shall be confined to the record. The Order of the Board shall be in writing and shall be sent to the parties.

(4) Petitions for Reconsideration or Rehearing. Petitions for reconsideration or rehearing shall be filed not more than ten days

from date of service of the Order and shall state specifically the grounds thereof. The Board may, at its option, set such petitions for oral argument.

(5) Service of Documents. All documents shall be served upon named parties unless there is a representative of record, in which case documents may be served on the representative.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 663.185 & ORS 663.195
Hist.: ERB 1-1980, f. & ef. 1-9-80

DIVISION 75
DISPUTE RESOLUTION IN PRIVATE
EMPLOYMENT

Notice of Labor Controversy

Mediation:

115-075-0000 (1) When any party to a labor controversy notifies the Conciliation Service that such dispute exists or is imminent, the Conciliator shall set a time and place for mediation conference and invite the disputants to participate in mediation of their differences.

(2) The Conciliator may, on his own motion and in the public interest, offer mediation services in any labor controversy.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 662.425

Hist.: ERB 1-1980, f. & ef. 1-9-80

List of Qualified Arbitrators

115-075-0005 The Conciliation Service shall maintain a list of qualified arbitrators for referral to the parties, upon request, to a labor dispute.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 662.445

Hist.: ERB 1-1980, f. & ef. 1-9-80

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 80 – DISPUTE RESOLUTION FOR NURSES IN
HEALTH CARE FACILITIES

DIVISION 80
DISPUTE RESOLUTION FOR NURSES IN
HEALTH CARE FACILITIES

Where State Jurisdiction Is Not
Pre-empted by Federal Law

Definition of Terms

115-080-0000 (1) "Employee" means a licensed professional or practical nurse performing services for compensation for a health care facility.

(2) "Health Care Facility" means a private hospital or nursing home, agency or establishment having as one of its principal purposes the preservation of health or the care of sick or infirm individuals, or both. However, such facility does not include a facility employing fewer than four employees.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 662.785
Hist.: ERB 1-1980, f. & ef. 1-9-80

Request for Mediation

115-080-0005 Any party may, after protracted collective bargaining in good faith fail to reach agreement, request the Conciliator to mediate the labor dispute. Such request shall be in writing on a form provided by the Board and shall contain a statement of each issue on which the parties have been unable to reach agreement, together with date(s), number of hours and number of bargaining sessions held.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 662.785
Hist.: ERB 1-1980, f. & ef. 1-9-80

Mediation

115-080-0010 (1) Upon a request for mediation, the Board may, in its discretion, assign a mediator to the dispute [at no expense to the parties], or it may decline and direct the parties to resume good faith bargaining. When a mediator is assigned to the dispute, both parties shall participate actively and in good faith in the mediation of the dispute.

(2) When mediation concerns negotiations over the terms of a collective bargaining agreement, the board will charge a fee for

mediation services. The employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. The fee charged by the board may not exceed:

- (a) \$1,000 for the first two mediation sessions (\$500 per party);
- (b) \$500 for the third mediation session (\$250 per party);
- (c) \$750 for the fourth mediation session (\$375 per party); and
- (d) \$1,000 for each additional mediation session (\$500 per party).

Stat. Auth.: ORS 240.086(3) & 243.766(7)
Stats. Implemented: ORS 662.425(1)
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-28-11; ERB 3-2011, f. 12-28-11, cert. ef. 12-29-11

Factfinding

115-080-0015 If the dispute has not been settled within ten days of mediation, either or both of the parties may apply to the Board for a factfinding inquiry concerning the dispute. Upon such application, the Board shall forthwith make an investigation of the dispute. Upon completion of its investigation, the Board or its agent shall make written findings of fact and serve a copy thereof upon each of the parties. The cost of factfinding shall be borne equally by the parties to the dispute.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 662.785
Hist.: ERB 1-1980, f. & ef. 1-9-80

OREGON REVISED STATUTES 662.010 THROUGH 662.455
LABOR DISPUTES

**LIMITATIONS ON JUDICIAL
AUTHORITY IN LABOR DISPUTES**

662.010 Definitions for ORS 662.010 to 662.130. As used in ORS 662.010 to 662.130 and for the purposes of those sections:

(1) "Labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(2) A case involves or grows out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein, or who are employees of the same employer, or who are members of the same or an affiliated organization of employers or employees, whether such dispute is: (a) Between one or more employers or associations of employers and one or more employees or associations of employees; (b) between one or more employers or associations of employers and one or more employees or associations of employees; or (c) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a labor dispute of persons participating or interested therein.

(3) A person or association is a person participating or interested in a labor dispute if relief is sought against the person or association, and if the person or association:

(a) Is engaged in the same industry, trade, craft or occupation in which such dispute occurs.

(b) Has a direct or indirect interest therein.

(c) Is a member, officer or agent of any association composed in whole or in part of employers or employees engaged in such

industry, trade, craft or occupation. [Amended by 1987 c.158 §130]

662.020 Declaration of policy as to labor organizations. In the interpretation of ORS 662.010 to 662.130, and in determining the jurisdiction and authority of the courts of this state, as such jurisdiction and authority are defined and limited in those statutes, the public policy of Oregon is declared as follows: Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in a corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect the individual unorganized worker's freedom of labor and thereby to obtain acceptable terms and conditions of employment, wherefore, though the worker should be free to decline to associate with the worker's fellows, it is necessary that the worker have full freedom of association, self-organization and designation of representatives of the worker's own choosing to negotiate the terms and conditions of employment and that the worker shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the definitions of and limitations contained in ORS 662.010 to 662.130 upon the jurisdiction and authority of the courts of this state hereby are enacted.

662.030 Restrictions in employment contracts on affiliation with labor or employer organization unenforceable. Any undertaking or promise described in this section or any other undertaking or promise in conflict with the public policy declared in ORS 662.020 is declared to be contrary to the public policy of Oregon and is not enforceable in any court of this state and does not afford any basis for the granting of legal or equitable

OREGON REVISED STATUTES 662.010 THROUGH 662.455
LABOR DISPUTES

relief by any such court, including specifically, every undertaking or promise made after June 6, 1931, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association or corporation, and any employee or prospective employee of the same, whereby:

(1) Either party to such contract or agreement undertakes or promises not to join, become or remain a member of any labor organization or of any employer organization.

(2) Either party to such contract or agreement undertakes or promises that the party will withdraw from an employment relation in the event that the party joins, becomes or remains a member of any labor organization or of any employer organization.

662.040 Injunctions in labor disputes generally restricted. No court, nor any judge thereof, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with ORS 662.010 to 662.130, nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in ORS 662.020.

662.050 Specific acts that are not enjoined. No court, nor any judge thereof, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute from doing, whether singly or in concert, any of the following acts:

(1) Ceasing or refusing to perform any work or to remain in any relation of employment.

(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any undertaking or promise, as is described in ORS 662.030.

(3) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value.

(4) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state.

(5) Giving publicity to the existence of, or facts involved in, any labor dispute, whether by advertising, speaking, patrolling or by any other method not involving fraud or violence or intimidation.

(6) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute.

(7) Advising or notifying any person of any intention to do any of the acts specified in subsections (1) to (6) of this section.

(8) Agreeing with other persons to do or not to do any of the acts specified in subsections (1) to (7) of this section.

(9) Advising, urging or otherwise causing or inducing without fraud or violence or intimidation, the acts specified in subsections (1) to (8) of this section, regardless of any undertaking or promise, as is described in ORS 662.030.

662.060 Restrictions on injunctions to prohibit doing in concert acts enumerated in ORS 662.050. No court, nor any judge thereof, shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in ORS 662.050.

OREGON REVISED STATUTES 662.010 THROUGH 662.455
LABOR DISPUTES

662.070 Liability of associations and officers and members of associations for unlawful acts of individuals. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of this state for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

662.080 Hearing and findings of certain facts are prerequisites to injunction. No court, nor any judge thereof, shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect:

(1) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the persons, association or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof.

(2) That substantial and irreparable injury to complainant's property will follow.

(3) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief.

(4) That complainant has no adequate remedy at law.

(5) That the public officers charged with the duty to protect complainant's property are

unable or unwilling to furnish adequate protection.

662.090 Notice of hearing; issuance of temporary injunction without notice; attorney fees. (1) The hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property. However, if a complainant also alleges that, unless a temporary restraining order is issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of the five days.

(2) No temporary restraining order or temporary injunction shall be issued except on condition that complainant first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney fee at trial and on appeal and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(3) The undertaking mentioned in subsection (2) of this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a judgment may be rendered in the same action or proceeding against the complainant and surety, upon a hearing to assess damages

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of which hearing complainant and surety shall have reasonable notice, the complainant and surety submitting themselves to the jurisdiction of the court for that purpose. This section does not deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue the ordinary remedy of the party by action for legal or equitable remedies. [Amended by 1979 c.284 §188; 1981 c.897 §98]

662.100 Compliance with obligations involved in dispute and making reasonable effort to settle as prerequisites to injunctive relief. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute, either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

662.110 Findings of fact prerequisite to injunction; scope of injunction. (1) No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction.

(2) Every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific acts as may expressly be complained of in the bill of complaint or petition filed in such case and as shall expressly be included in the findings of fact made and filed by the court.

662.120 Appeal to Supreme Court. Whenever any court or judge thereof issues or denies any temporary injunction in a case involving or growing out of a labor dispute,

the court shall, upon the request of any party to the proceedings and on filing the usual bond for costs, forthwith certify, as in ordinary cases, the record of the case to the Supreme Court for its review. Upon the filing of such record in the Supreme Court, the appeal shall be heard and the temporary injunctive order affirmed, modified or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters, except older matters of the same character.

662.130 Contempt proceedings; jury trial; change of judge. (1) In all cases arising under ORS 662.010 to 662.130 in which a person is charged with contempt in a court of this state, the accused shall enjoy the right to a speedy and public trial by an impartial jury wherein the contempt has been committed; provided, this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders or process of the court.

(2) The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated as provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

(3) Except as provided in subsections (1) and (2) of this section, proceedings for imposition of sanctions for contempt shall be conducted as provided under ORS 33.015 to 33.155. [Amended by 1991 c.724 §29]

STRIKEBREAKERS

662.205 Definitions for ORS 662.205 to 662.225. As used in ORS 662.205 to 662.225:

(1) “Employee” means any individual who performs services for wages or salary.

(2) “Employer” means any person, partnership, firm, corporation, association or other entity, or any agent thereof, that employs an individual to perform services for a wage or salary.

(3) “For the duration of a strike or lockout” includes that period of time beginning one month before initiation of a strike or lockout and ending one month after termination of the strike or lockout.

(4) “Lockout” means any refusal by an employer to permit employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of their employment.

(5) “Professional strikebreaker” means a person who currently offers to replace an employee involved in a strike or lockout, for the duration of that strike or lockout; and who, within the preceding five-year period, has on two or more previous occasions offered to replace an employee involved in a strike or lockout. However, professional strikebreaker does not include any person who is the owner of a partnership, firm, corporation, association or other entity or the family of the owner or any person designated as supervisory personnel. As used in this section, owner includes a producer of agricultural commodities or a member of a cooperative association.

(6) “Strike” means any concerted act of employees in a lawful refusal under applicable state or federal law to perform work or services for an employer. [1975 c.645 §1; 1987 c.158 §131]

662.210 [Repealed by 1971 c.729 §47]

662.215 Prohibitions on use of professional strikebreakers; restrictions on recruiting employees during strike. No employer shall:

(1) Knowingly utilize any professional strikebreaker to replace an employee involved in a strike or lockout, for the duration of that strike or lockout.

(2) Recruit, solicit or advertise for individuals to replace employees involved in a strike or lockout, for the duration of the strike or lockout, unless the employer gives notice to such individual that there is a strike or lockout at the place at which employment is offered and that the employment offered is for the purpose of replacing an employee involved in the strike or lockout, for the duration of such strike or lockout. [1975 c.645 §2]

662.220 [Repealed by 1971 c.729 §47]

662.225 Prohibited conduct by professional strikebreaker. No professional strikebreaker shall knowingly become employed or offer to become employed for the purpose of replacing an employee involved in a strike or lockout, for the duration of that strike or lockout. [1975 c.645 §3]

662.230 [Repealed by 1971 c.729 §47]

662.240 [Repealed by 1971 c.729 §47]

662.310 [Repealed by 1953 c.723 §22]

662.320 [Repealed by 1953 c.723 §22]

662.330 [Repealed by 1953 c.723 §22]

662.340 [Repealed by 1953 c.723 §22]

STATE CONCILIATION SERVICE

662.405 Declaration of policy. It hereby is declared to be the public policy of the State of Oregon that the best interests of the people of this state are served by fostering collective bargaining and by the prevention of or the

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prompt settlement of labor controversies, strikes and lockouts; that sound and stable industrial peace and the advancement of the general welfare of the state and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and employees; that the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate government facilities for conciliation, mediation and voluntary arbitration to aid and encourage employers and employees to reach and maintain agreements concerning rates of pay, hours and working conditions and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining. [1957 c.122 §1]

662.410 [Repealed by 1957 c.122 §5]

662.415 State Conciliation Service established; purpose. A State Conciliation Service hereby is established within the Employment Relations Board with the primary responsibility for fostering collective bargaining by rendering voluntary assistance to employers and employees in resolving their differences without resort to strikes, lockouts or other forms of conflict. [1957 c.122 §2(1); 1969 c.671 §13]

662.420 [Repealed by 1957 c.122 §5]

662.425 Mediation services; fees. (1) When any party to a labor controversy notifies the State Conciliation Service that a labor controversy exists or is imminent, the conciliator, if the conciliator determines that a labor controversy exists or is imminent, shall immediately set a time and place for a mediation session and invite the parties to attend to participate in mediation of their differences. The State Conciliation Service

shall charge a fee in the amount described in ORS 240.610 for each mediation session conducted under this section. Each party to the mediation shall pay one-half of the applicable fee.

(2) When it comes to the attention of the conciliator that a labor controversy exists or is imminent, the conciliator may offer mediation services if the conciliator deems it to be in the public interest.

(3) At the request of the Governor, the Employment Relations Board shall instruct the conciliator to investigate any existing or imminent labor dispute, or controversy in the public sector and report the facts of the dispute and the matters in issue to the Governor. [1957 c.122 §3; 1969 c.671 §14; 2011 c.593 §3]

662.430 [Repealed by 1957 c.122 §5]

662.435 Services for state agencies and political subdivisions. The services and facilities of the State Conciliation Service and the conciliator shall be made available to the State of Oregon or any of its agencies, boards, commissions or other branches or any of the political subdivisions of the state and to the public employees of the State of Oregon in all its agencies, boards, commissions or other branches or its political subdivisions in the same manner as such facilities are available to private employers and their employees. [1957 c.122 §4; 1959 c.184 §1; 1969 c.671 §15]

662.440 [Repealed by 1957 c.122 §5]

662.445 List of qualified arbitrators; fees. (1) The State Conciliation Service shall maintain a list of qualified arbitrators who may be available to the parties to a labor controversy if the parties so request.

(2) An individual who applies to be included on the list of qualified arbitrators shall pay the State Conciliation Service an application fee of \$50. A qualified arbitrator who is included on the list shall pay the State

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Conciliation Service an annual fee of \$100 to remain on the list.

(3) Fees received by the State Conciliation Service under this section shall be deposited to the credit of the Employment Relations Board Administrative Account. [1957 c.122 §2(3); 2007 c.477 §§1,3]

662.450 [Repealed by 1957 c.122 §5]

662.455 Conciliator and other employees.

The head of the State Conciliation Service shall be the conciliator who shall be appointed by the Executive Secretary of the Employment Relations Board, with the approval of the board. The conciliator and all other employees of the State Conciliation Service shall be subject to the State Personnel Relations Law. [1957 c.122 §2(2); 1969 c.671 §16]

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ELECTIONS

663.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) “Board” means the Employment Relations Board.

(2) “Conciliator” means the head of the State Conciliation Service.

(3) “Employee” includes any employee, and is not limited to the employees of a particular employer unless this chapter explicitly states otherwise, and includes any individual whose work has ceased as a consequence of, or in connection with, a current labor dispute and who has not obtained any other regular and substantially equivalent employment, but does not include an individual:

(a) Employed in agricultural labor as defined in ORS 657.045;

(b) Employed by the parent or spouse of the individual;

(c) Employed in the domestic service of any family or person at home;

(d) Having the status of an independent contractor;

(e) Employed as a supervisor;

(f) Employed by an employer subject to the Railway Labor Act, as amended (45 U.S.C. 151 to 163 and 181 to 188);

(g) Employed in the building and construction industry;

(h) Employed by any other person who is not an employer as defined in subsection (4) of this section; or

(i) Employed by an employer subject to the jurisdiction of the National Labor Relations Board under its existing jurisdictional standards, pursuant to the Labor Management Relations Act of 1947, as amended (29 U.S.C. 141 to 187).

(4) “Employer” includes any person acting as an agent of an employer, directly or indirectly, but does not include:

(a) The United States or any wholly owned government corporation, or any Federal Reserve Bank.

(b) This state, or any county, city or political subdivision or agency thereof.

(c) Any person subject to the Railway Labor Act, as amended (45 U.S.C. 151 to 163 and 181 to 188).

(d) Any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of a labor organization.

(e) Any person involved in the building and construction industry.

(f) Any person subject to the jurisdiction of the National Labor Relations Board under its existing jurisdictional standards, pursuant to the Labor Management Relations Act of 1947, as amended (29 U.S.C. 141 to 187).

(5) “Labor dispute” includes any controversy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) “Labor organization” means an organization of any kind, or an agency or an employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(7) “Professional employee” means:

(a) An employee engaged in work:

(A) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

(B) Involving the consistent exercise of discretion and judgment in its performance;

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(C) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

(D) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(b) An employee who:

(A) Has completed the courses of specialized intellectual instruction and study described in paragraph (a)(D) of this subsection; and

(B) Is performing related work under the supervision of a professional person to qualify the employee to become a professional employee as defined in paragraph (a) of this subsection.

(8) "Representative" includes an individual or labor organization.

(9) "Supervisor" means any individual, other than a licensed professional or practical nurse, 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 with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(10) "Unfair labor practice" means any unfair labor practice listed in ORS 663.120 to 663.165. [Formerly 662.505; 1975 c.147 §12; 1975 c.163 §2; 2003 c.14 §408]

663.010 "Collective bargaining" defined. For the purposes of this chapter, "collective bargaining" is the performance of the mutual obligation of the employer and the

representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party. However, this obligation does not compel either party to agree to a proposal or require the making of a concession. [Formerly 662.515]

663.015 Designated collective bargaining representatives to be exclusive; grievances excepted. Representatives designated or selected for the purposes of collective bargaining, by the majority of the employees in a unit appropriate for such purposes, are the exclusive representatives of all the employees in that unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment. However, an individual employee or a group of employees may at any time present grievances to their employer and have such grievances adjusted, without the intervention of the bargaining representative, if:

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

(2) The bargaining representative has been given opportunity to be present at the adjustment. [Formerly 662.525]

663.020 Determination of appropriate unit for purposes of collective bargaining.

(1) The Employment Relations Board shall decide in each case whether the unit appropriate for the purposes of collective bargaining is the employer unit, craft unit, plant unit, or subdivision thereof. However, the board shall not decide that:

(a) A unit is appropriate for such purposes if the unit includes both professional employees and employees who are not professional

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employees, unless a majority of the professional employees vote for inclusion in the unit;

(b) A craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior determination of the board unless a majority of the employees in the proposed craft unit vote against separate representation; or

(c) A unit is appropriate for such purposes if it includes, together with other employees, an individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises. However, no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(2) In determining whether a unit is appropriate for the purposes specified in subsection (1) of this section, the extent to which the employees have organized is not controlling. [Formerly 662.545]

663.025 Filing of representation petition; investigation; hearing; election. (1) A petition may be filed with the Employment Relations Board, in accordance with regulations prescribed by the board:

(a) By an employee or group of employees, or any individual or labor organization acting in their behalf, alleging that a substantial number of employees:

(A) Wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in ORS 663.015; or

(B) Assert that the individual or labor organization that has been certified or is being currently recognized by their employer as the bargaining representative is no longer a representative as defined in ORS 663.015; or

(b) By an employer, alleging that one or more individuals or labor organizations have presented to the employer a claim to be recognized as the representative defined in ORS 663.015.

(2) The board shall investigate the petition and if, upon the basis of its findings, the board has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing before the board itself, a member thereof or its agent appointed for that purpose. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot marked at the place of election and certify the results thereof.

(3) In determining whether or not a question of representation exists, the same regulations and rules of decision apply irrespective of the identity of the persons filing the petition or the kind of relief sought.

(4) Nothing in this chapter prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the board. [Formerly 662.555; 1975 c.147 §13; 2003 c.14 §409]

663.030 Conduct of representation election. No election shall be directed in any bargaining unit or any subdivision within which, in the preceding 12 months, a valid election has been held. Employees engaged in an economic strike who are not entitled to reinstatement are eligible to vote, under regulations of the Employment Relations Board consistent with the purposes and provisions of this chapter, in any election conducted within 12 months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted by the board, the ballot providing

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for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election. [Formerly 662.565; 1975 c.147 §13a]

663.035 Filing of deauthorization petition; election; limitation. (1) Upon the filing with the Employment Relations Board by 40 percent or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization requiring membership as a condition of employment, of a petition alleging that they desire that the authority of the labor organization to make such an agreement be rescinded, the board shall direct the conciliator to take a secret ballot, marked at the place of election, of the employees in the unit and to certify the results thereof to the labor organization and to the employer.

(2) No election shall be conducted pursuant to this section in a bargaining unit or a subdivision within which, in the preceding 12 months, a valid election has been held. [Formerly 662.575]

663.040 Filing charge of illegal election practice; investigation; new election. Any person may file with the Employment Relations Board a charge that employees eligible to vote in an election under this chapter have been coerced or restrained in the exercise of this right. The board shall investigate the charge. If, upon the basis of its findings, the board concludes that employees eligible to vote in the election were so coerced or restrained, the board may order another election. [Formerly 662.585; 1975 c.147 §14]

663.045 Obtaining advisory opinions on assertion of federal jurisdiction; findings of board to be public records. (1) In carrying out this chapter, the Employment Relations Board may, pursuant to any applicable federal law, rule or regulation, petition the National Labor Relations Board for an advisory opinion as to whether that agency will assert

jurisdiction over a labor dispute which is the subject of a proceeding then pending before the board.

(2) All findings, conclusions, and determinations of the board under this chapter shall be public records. [Formerly 662.595]

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663.100 Determination of agent. For the purposes of this chapter, in determining whether a person is acting as an “agent” of a second person so as to make the second person responsible for the acts of the first person, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling. [1971 c.729 §3; 1987 c.158 §133]

663.105 Supervisory personnel as union members. Nothing in this chapter prohibits an individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this chapter is compelled to treat as employees, for the purpose of collective bargaining, individuals defined as supervisors in ORS 663.005. [1971 c.729 §4]

663.110 Employee organization, bargaining rights; union security agreements; payments to charitable institutions in lieu of union dues and other fees. Employees have the right to self-organization; to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Employees also have the right to refrain from any or all of such activities except to the extent that this right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by ORS 663.125. However, agreements involving

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union security including an all-union agreement or agency 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 must 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 pay dues. The employee shall furnish written proof that this has been done. If the employee and representative of the labor organization do not reach agreement on the matter, the Employment Relations Board shall designate such organization. [1971 c.729 §5; 2003 c.14 §410]

663.115 Right to strike. Nothing in this chapter, except as specifically provided for therein, either interferes with, impedes or diminishes in any way the right to strike, or affects the limitations or qualifications on that right. [1971 c.729 §6]

663.120 Employer unfair labor practices. It is an unfair labor practice for an employer:

- (1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in ORS 663.110;
- (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. However, subject to rules published by the Employment Relations Board pursuant to ORS chapter 183, an employer may permit employees to confer with the employer during working hours without loss of time or pay;
- (3) To discharge or otherwise discriminate against an employee because the employee has filed charges or given testimony under this chapter; or

(4) To refuse to bargain collectively with the employees' exclusive representative, as defined in ORS 663.015. [1971 c.729 §7; 1975 c.83 §1]

663.125 Other employer unfair labor practices. It is an unfair labor practice for an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in a labor organization. However:

(1) Nothing in this chapter or in any other statute of this state precludes an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this section or in ORS 663.120 as an unfair labor practice) to require as a condition of employment membership therein on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later:

(a) If the labor organization is the representative of the majority of the employees in the appropriate collective-bargaining unit covered by the agreement when made; and

(b) Unless following an election held within one year preceding the effective date of the agreement, at least a majority of the employees eligible to vote in the election have voted to rescind the authority of the labor organization to make such an agreement.

(2) No employer shall justify any discrimination against an employee for nonmembership in a labor organization if the employer has reasonable grounds for believing that membership was:

(a) Not available to the employee on the same terms and conditions generally applicable to other members; or

(b) Denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. [1971 c.729 §8]

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663.130 Union unfair labor practices. It is an unfair labor practice for a labor organization or its agents:

(1) To cause or attempt to cause an employer to discriminate against an employee in violation of ORS 663.125 or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(2) To refuse to bargain collectively with an employer, if it is the elected and certified representative of the employees;

(3) To cause or attempt to cause an employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; or

(4) To restrain or coerce:

(a) An employer in the selection of representatives for the purposes of collective bargaining or the adjustment of grievances; or

(b) Employees in the exercise of the rights guaranteed in ORS 663.110. However, this paragraph does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. [1971 c.729 §9]

663.135 Excessive membership fee. It is an unfair labor practice for a labor organization or its agents to require of employees covered by an agreement authorized under ORS 663.125 the payment, as a condition precedent to becoming a member of the organization, of a fee in an amount which the Employment Relations Board finds excessive or discriminatory under all the circumstances. In making such a finding the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected. [1971 c.729 §10]

663.140 Encouraging certain strikes; refusals to handle products. It is an unfair labor practice for a labor organization or its agents to engage in, or to induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or to threaten, coerce or restrain any person, where in either case an object thereof is forcing or requiring:

(1) An employer or self-employed person to join a labor or employer organization or to enter into an agreement that is prohibited by ORS 663.155;

(2) A person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of employees of the employer unless such labor organization has been certified as the elected representative of such employees. However, nothing in this subsection makes unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(3) An employer to recognize or bargain with a particular labor organization as the representative of employees of the employer if another labor organization has been certified as the elected representative of such employees; or

(4) An employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless the employer is failing to conform to an order of the Employment Relations Board or certification of the conciliator determining the bargaining representative for employees performing the work. [1971 c.729 §11; 2005 c.22 §473]

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663.145 Refusal to enter upon premises where strike in progress; truthful strike publicity not prohibited. (1) Notwithstanding ORS 663.140, nothing in ORS 663.130 to 663.150 makes unlawful a refusal by any person to enter upon the premises of an employer (other than the person's own employer), if the employees of that employer are engaged in a strike ratified or approved by an elected and certified representative of the employees whom the employer is required to recognize.

(2) For the purposes of ORS 663.140 only, nothing in that section prohibits publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product is produced by an employer with whom the labor organization has a primary dispute and is distributed by another employer, as long as such publicity does not have an effect of inducing an individual employed by any person other than the primary employer in the course of employment to refuse to pick up, deliver or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution. [1971 c.729 §12]

663.150 Picketing to force recognition of or bargaining with union. (1) It is an unfair labor practice for a labor organization or its agents to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer when an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of the employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(a) Where the employer has lawfully recognized in accordance with this chapter any other labor organization and a petition for a representation election may not appropriately be filed;

(b) Where, within the preceding 12 months, a valid election has been conducted; or

(c) Where the picketing has been conducted without a petition for an election and certification having been filed.

However:

(A) When such a petition has been filed the Employment Relations Board forthwith, without regard to the absence of a showing of a substantial interest on the part of the labor organization and without an investigation or hearing, shall conduct an election by secret ballot, marked at the place of election, in such unit as the board finds to be appropriate, and to certify the results thereof.

(B) Nothing in this section prohibits any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of the picketing is to induce an individual employed by any other person in the course of employment, not to pick up, deliver or transport any goods or not to perform any services.

(2) Nothing in this section permits any act that otherwise would be an unfair labor practice under ORS 663.130 to 663.150. [1971 c.729 §13; 1975 c.147 §14a; 2007 c.71 §218]

663.155 Contract with employer to refrain from dealing in products of another employer. It is an unfair labor practice for a labor organization and an employer to enter into a contract or agreement, express or implied, whereby the employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person. Any contract or agreement entered into after January 1, 1972, containing such an agreement is to such extent unenforceable and void. [1971 c.729 §15]

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663.160 Expression of views not containing threats or promises of benefit not unfair labor practice. The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, does not constitute evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit. [1971 c.729 §16]

663.165 Procedure for terminating or modifying existing collective bargaining contract; notice; negotiation meetings. (1) Notwithstanding ORS 663.010, if there is in effect a collective-bargaining contract covering employees in an industry, the duty to bargain collectively also means that no party to the contract shall terminate or modify the contract, unless the party desiring termination or modification:

(a) Serves a written notice upon the other party to the contract of the proposed termination or modification 60 days before the expiration date thereof, or in the event the contract contains no expiration date, 60 days before the time it is proposed to make such termination or modification;

(b) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(c) Notifies the State Conciliation Service within 30 days after notice of the existence of a dispute, if no agreement has been reached by that time; and

(d) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of 60 days after such notice is given or until the expiration date of the contract, whichever occurs later.

(2) The duties imposed upon employers, employees and labor organizations by subsection (1)(b), (c) and (d) of this section:

(a) Become inapplicable upon an intervening election and certification under

which the labor organization or individual which is a party to the contract has been superseded as or ceased to be the representative of the employees; and

(b) Do not require either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if the modification is to become effective before the terms and conditions can be reopened under the provisions of the contract.

(3) Any employee who engages in a strike within the 60-day period specified in this section loses status as an employee of the employer engaged in the particular labor dispute, for the purposes of this chapter, but the loss of status for the employee terminates if the employee is reemployed by the employer. [1971 c.729 §17]

663.170 Unfair labor practice provisions not retroactive. (1) No provision of this chapter makes an unfair labor practice any act that was performed before January 1, 1972.

(2) ORS 663.125 and 663.130 (1) do not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into before January 1, 1972, unless the agreement was renewed or extended after January 1, 1972. [1971 c.729 §18]

REMEDIES

663.175 Authority of board to prevent unfair labor practices; authority not to affect other lawful adjustment means. As provided in ORS 663.175 to 663.260, the Employment Relations Board may prevent any person from engaging in an unfair labor practice listed in ORS 663.120 to 663.165. This power is not affected by any other means of adjustment or prevention established by agreement, law, ordinance, regulation or otherwise. [1971 c.729 §19]

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663.180 Filing of charges of unfair practice; fees; board investigation; issuance of complaints. (1) A person may file with the Employment Relations Board a charge that another person has engaged in or is engaging in an unfair labor practice. The person filing the charge shall pay a fee of \$300 to the board. The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.

(2) If it is charged that a person has engaged in or is engaging in an unfair labor practice, the board shall cause an investigation to be made. If, on the basis of this investigation, it appears to the board that an issue of fact or law exists as to a violation of ORS 663.120 to 663.165, the board shall issue a complaint. The complaint shall contain a notice of hearing before the board, at a place fixed in the notice, not less than five days after the serving of the complaint.

(3) Notwithstanding subsection (2) of this section, the board may not issue a complaint based upon an unfair labor practice occurring more than six months before the filing of the charge with the board, and the service of a copy of the charge upon the person against whom the charge is made, unless the person aggrieved by the unfair labor practice was prevented from filing the charge by reason of service in the Armed Forces of the United States, in which event the six-month period shall be computed from the day of discharge. [1971 c.729 §20; 1975 c.147 §15; 2007 c.296 §2; 2011 c.593 §4]

663.185 Amendment of complaint; filing answer; intervenors; fees; conduct of proceedings. (1) The Employment Relations Board may amend a complaint at any time before the issuance of an order based on the complaint.

(2) The person so complained of may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the

complaint. The person filing the answer shall pay a fee of \$300 to the board. 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.

(3) As far as practicable, the board shall conduct the proceeding in accordance with the rules of evidence applicable to civil actions.

(4) The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account. [1971 c.729 §21; 1979 c.284 §190; 2007 c.296 §3; 2011 c.593 §5]

663.190 Record of testimony at hearings. The testimony taken at the hearing shall be reduced to writing and filed with the Employment Relations Board. Thereafter, in its discretion, the board on notice may take further testimony or hear argument, which shall similarly be reduced to writing. [1971 c.729 §22]

663.195 Orders and findings of board. (1) If, on the preponderance of the evidence taken and in the record, the Employment Relations Board is not of the opinion that the person named in the complaint has engaged in or is engaging in an unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint.

(2) If, on the preponderance of evidence taken and in the record, the board is of the opinion that a person named in the complaint has engaged in or is engaging in an unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on that person an order requiring the person to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

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(3) No order of the board shall require the reinstatement as an employee of an individual who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause. [1971 c.729 §23]

663.200 Employee reinstatement orders; reports showing compliance with orders.

(1) Except as provided in ORS 663.195 (3), if an order directs reinstatement of an employee, back pay may be required of the employer or labor organization responsible for the discrimination suffered by the employee.

(2) In determining whether a complaint shall issue alleging a violation of ORS 663.120 (1) or (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope.

(3) An order further may require a person to make reports from time to time showing the extent to which it has complied with the order. [1971 c.729 §24]

663.205 Modification, setting aside orders by board; contents of record in certain representation matters. (1) Until the record of a case has been filed in court as provided in ORS 663.210 or 663.220, the Employment Relations Board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside in whole or in part any finding or order made or issued by it.

(2) If an order of the board made pursuant to ORS 663.190, 663.195 and 663.200 is based in whole or in part upon facts certified following an investigation relating to a representation election and there is a petition for the enforcement or review of the order, the certification and the record of the investigation shall be included in the transcript of the entire record required to be filed under ORS 663.210 or 663.220. The judgment of the court

enforcing, modifying or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony and proceedings set forth in the transcript. [1971 c.729 §25; 2003 c.576 §536]

663.210 Enforcement of orders by Court of Appeals; injunctive relief; notice of filing enforcement petition; authority of court in reviewing order.

The Employment Relations Board may petition the Court of Appeals for the enforcement of an order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. On the filing of the petition the court shall cause notice thereof to be served upon such person, and thereupon it has jurisdiction of the proceeding and the question determined therein. It may grant such temporary relief or restraining order as it considers just and proper, and make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board. [1971 c.729 §26; 2003 c.576 §537]

663.215 Scope of court review of order; additional evidence; modification of findings by board. (1) No objection that has not been urged before the Employment Relations Board shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, are conclusive.

(2) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the board, the court may order the additional evidence to be taken before the board, and to be made a part of the record.

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(3) The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file modified or new findings. With respect to questions of fact the modified or new findings, if supported by substantial evidence on the record considered as a whole, are conclusive. [1971 c.729 §27]

663.220 Appeal of board's order to Court of Appeals; authority of court in reviewing order. (1) Any person aggrieved by a final order of the Employment Relations Board granting or denying in whole or in part the relief sought may obtain a review of the order in the Court of Appeals by filing in the court a written petition praying that the order of the board be modified or set aside. A copy of the petition shall be transmitted forthwith by the clerk of the court to the board and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the board.

(2) On the filing of the petition, the court shall proceed in the same manner as in the case of an application by the board under ORS 663.210, and it has the same jurisdiction to grant to the board temporary relief or restraining order as it considers just and proper, and in like manner to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, are in like manner conclusive. [1971 c.729 §28; 2003 c.576 §538]

663.225 Hearing of petitions; review proceedings not to stay board's order. (1) Petitions filed under ORS 663.175 to 663.260 shall be heard expeditiously, and if possible within 10 days after they are docketed.

(2) The commencement of proceedings under ORS 663.210, 663.215 and 663.220 does not, unless specifically ordered by the

court, operate as a stay of the Employment Relations Board's order. [1971 c.729 §29]

663.230 Court jurisdiction in granting injunctive relief or reviewing order not limited by ORS 662.010 to 662.130. When granting appropriate temporary relief or a restraining order, or making and entering a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part an order of the Employment Relations Board, as provided in ORS 663.175 to 663.260, the jurisdiction of the court is not limited by ORS 662.010 to 662.130. [1971 c.729 §30; 2003 c.576 §539]

663.235 Injunctive relief authorized upon issuance of unfair labor practice complaint; notice to defendant; court jurisdiction. The Employment Relations Board, on issuance of a complaint charging that any person has engaged in or is engaging in an unfair labor practice, may petition the Court of Appeals for appropriate temporary relief or restraining order. On the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon has jurisdiction to grant to the board such temporary relief or restraining order as the court considers just and proper. [1971 c.729 §31]

663.240 Priority of hearing certain unfair labor practice cases. If it is charged that a person has engaged in an unfair labor practice within the meaning of ORS 663.125 or 663.130 (1), the charge shall be given priority over all other cases except cases of like character where it is filed or referred and cases given priority under ORS 663.250, 663.255 and 663.260. [1971 c.729 §32]

663.245 Hearing unfair labor practice cases involving jurisdictional disputes; dismissal of charges upon voluntary adjustment of dispute. If it is charged that a person has engaged in an unfair labor practice

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within the meaning of ORS 663.140 (4), the Employment Relations Board shall hear and determine the dispute out of which the unfair labor practice arose unless, within 10 days after notice that the charge has been filed, the parties to the dispute submit to the board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. On compliance by the parties to the dispute with the decision of the board or upon voluntary adjustment of the dispute, the charge shall be dismissed. [1971 c.729 §33]

663.250 Priority of investigating certain unfair labor practice charges; injunctive relief pending disposition of case; notice of petition; court authority. (1) If it is charged that a person has engaged in an unfair labor practice within the meaning of ORS 663.140 (1) to (3) or 663.150 or 663.155, the preliminary investigation of the charge shall be made forthwith and given priority over all other cases except cases of like character where it is filed or referred. If, after investigation, the Employment Relations Board or its agent has reasonable cause to believe the charge is true and that a complaint should issue, the board shall petition the Court of Appeals for appropriate injunctive relief pending the final adjudication of the board with respect to the matter.

(2) On the filing of such a petition the court:

(a) Shall cause notice thereof to be served upon any person involved in the charge. Such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony.

(b) Has jurisdiction to grant such injunctive relief or temporary restraining order as it considers just and proper, notwithstanding any other provision of law.

(3) In situations where such relief is appropriate, the procedure specified in this section applies to charges with respect to ORS 663.140 (4). [1971 c.729 §34; 1975 c.147 §16]

663.255 Injunctive relief without notice; when board not to apply for injunctive relief. Notwithstanding ORS 663.250:

(1) No temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable. Such a temporary restraining order is effective for no longer than five days and is void at the expiration of that period.

(2) The Employment Relations Board shall not apply for a restraining order under ORS 663.235 if a charge against the employer under ORS 663.120 (2) has been filed and, after the preliminary investigation, the board has reasonable cause to believe that the charge is true and that a complaint should issue. [1971 c.729 §35; 1975 c.147 §17]

663.260 Service of process on union; making union party to suit. The service of legal process upon an officer or agent of a labor organization constitutes service upon the labor organization and makes the organization a party to the suit. [1971 c.729 §36]

663.265 Application of ORS 663.270 to 663.295 to hearings and investigations. ORS 663.270 to 663.295 apply to all hearings and investigations which, in the opinion of the Employment Relations Board, are necessary and proper for the exercise of the powers vested in it by this chapter. [1971 c.729 §37]

663.270 Access of board to evidence relating to subject matter of investigation or proceedings; revocation of subpoenas requiring improper information; administration of oaths; taking testimony and evidence. (1) The Employment Relations Board or its duly authorized agents at all reasonable times shall have access to, for the purpose of examination, and the right to copy, any evidence of a person being investigated or proceeded against that relates to any matter under investigation or in question. The board,

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upon application of a party to such proceedings, forthwith shall issue to that party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in the proceeding or investigation requested in the application.

(2) Within five days after the service of a subpoena on a person requiring the production of any evidence in possession or under the control of the person, the board on petition of that person shall revoke the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in the proceedings, or if in its opinion the subpoena does not describe with sufficient particularity the evidence whose production is required.

(3) The board or its agent designated by it for such purposes, may administer oaths and affirmations, examine witnesses and receive evidence. Attendance of witnesses and the production of such evidence may be required at any designated place of hearing. [1971 c.729 §38; 1975 c.147 §18]

663.275 Refusal to obey subpoenas punished as contempt of court. In case of contumacy or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Employment Relations Board or its agent, has jurisdiction to issue to the person an order requiring the person to appear before the board or its agent to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. [1971 c.729 §39; 1975 c.147 §19]

663.280 Immunity from punishment of persons testifying, producing evidence required by subpoena. No person shall be excused from attending and testifying or from

producing books, records, correspondence, documents or other evidence in obedience to a subpoena issued under ORS 663.270, on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, except that the individual so testifying is not exempt from prosecution and punishment for perjury committed in so testifying. [1971 c.729 §40]

663.285 Method of serving process of board; fees for witnesses summoned by board. (1) Complaints, orders, and other process and papers of the Employment Relations Board or its designated agent issued under this chapter may be served personally, by registered or certified mail, by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving setting forth the manner of service is proof of service. The return post-office receipt or telegraph receipt therefor, when registered and mailed or telegraphed, is proof of service.

(2) Witnesses summoned before the board or its designated agent under this chapter shall be paid the fees and mileage provided for witnesses in ORS 44.415 (2). Witnesses whose depositions are taken and the persons taking the same are severally entitled to the same fees as are paid for like services in the courts of this state. [1971 c.729 §41; 1975 c.147 §20; 1989 c.980 §18]

663.290 Place of service of court process. All process of any court to which application may be made under this chapter may be served wherever the defendant or other person required to be served resides or may be found. [1971 c.729 §42]

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663.295 Governmental officers and agencies to furnish evidence related to board proceedings. All officers, departments and agencies of this state, when directed by the Governor, shall furnish the Employment Relations Board, upon its request, all records, papers and information in their possession relating to any matter before the board. [1971 c.729 §43]

663.300 [Formerly 662.605; repealed by 1975 c.147 §21]

663.305 [Formerly 662.615; repealed by 1975 c.147 §21]

663.310 [Formerly 662.625; repealed by 1975 c.147 §21]

663.315 [Formerly 662.635; repealed by 1975 c.147 §21]

663.320 [Formerly 662.645; repealed by 1975 c.147 §21]

663.325 [Formerly 662.655; repealed by 1975 c.147 §21]

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OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 85 – TEACHER LAYOFF/RECALL

DIVISION 85

**ARBITRATION PROCEDURES FOR
REDUCTION OR RECALL OF
TEACHER STAFF PURSUANT TO ORS
342.934(7)**

Appeals from a Decision on Reduction in Staff or Recall

115-085-0000 An appeal from a decision on reduction in staff or recall shall be by arbitration under the rules provided in this Division or by a procedure mutually agreed upon by the employee representatives and the employer. An appeal under the Board rules is initiated by a written request for arbitration which shall be filed with the Board not later than 60 days from the occurrence which is being appealed. An appeal under a procedure mutually agreed upon by the employee representatives and the employer shall not be governed by the rules provided in this Division except to the extent agreed upon.

Stat. Auth.:

Stats. Implemented: ORS 342.934(7)

Hist.: ERB 14-1985, f. 10-29-85, ef. 10-31-85

Selection of Arbitrator

115-085-0005 (1) Upon written request for initiation of arbitration pursuant to ORS 342.934(7), the Board shall submit to the parties a list of five qualified, disinterested arbitrators. Each party shall alternately strike two names from the list. The order of striking shall be determined by lot. The remaining individual shall be designated the arbitrator.

(2) When the parties have not designated the arbitrator and notified the Board of their choice within five days after receipt of the list, the Board shall appoint the arbitrator from the list. However, if one of the parties strikes the names as prescribed in this section and the other party fails to do so, the Board shall appoint the arbitrator only from the names remaining on the list.

Stat. Auth.:

Stats. Implemented: ORS 342.934(7)

Hist.: ERB 14-1985, f. 10-29-85, ef. 10-31-85

Arbitration Rules and Procedures

115-085-0010 (1) Financial or Personal Interest of Arbitrator. No person shall serve as an arbitrator in any arbitration proceeding in which he/she has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

(2) Notice of Appointment and Hearing Issue(s). Upon selection of the arbitrator the parties shall notify the Board and the arbitrator of his/her selection and of the issue(s) which will be before the arbitrator in the hearing.

(3) Disclosure by Arbitrator of Disqualification. Prior to accepting his/her appointment, the prospective arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him/her as an impartial arbitrator. Upon receipt of such information, the Board shall immediately disclose it to the parties. If either party declines to waive the presumptive disqualifications, the vacancy thus created shall be filled in the same manner as that governing the making of the original appointment.

(4) Vacancies. If any arbitrator should resign, die, withdraw, refuse or be unable to, or disqualified to perform the duties of his/her appointment, the Board shall, upon proof satisfactory to it, declare the appointment vacant. Vacancies shall be filled in the same manner as that governing the making of the original appointment, and the matter shall be reheard de novo by the new arbitrator, unless the parties otherwise agree.

(5) Time and Place of Hearing. The arbitrator shall fix the time and place for each hearing.

(6) Representation by Counsel. Any party may be represented by counsel or by other authorized representative.

(7) Subpoenas. Subpoenas will be issued only by request of the Board not less than five days prior to the date set for the arbitration hearing. Parties should make their request to

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the Board in the manner provided in OAR 115-010-0055.

(8) Attendance at Hearings. The arbitration hearing shall be open to the public unless otherwise mutually agreed to by the parties.

(9) Adjournments. The arbitrator, for good cause shown, may adjourn the hearing upon the request of a party or upon his/her own initiative, and shall adjourn when all parties so agree.

(10) Oaths. In the discretion of the arbitrator, all witnesses who testify at the hearing may be sworn or make an affirmation.

(11) Order of Proceedings. The order of presentation at the hearing shall be as mutually agreed between the parties or as determined by the arbitrator.

(12) Exhibits. Each exhibit introduced by a party shall be filed with the arbitrator and a copy shall be provided to the other party. The exhibits filed with the arbitrator shall be retained by him unless the parties otherwise agree, or unless the arbitrator otherwise permits.

(13) Evidence. The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the parties except where any of the parties is absent in default or have waived his/her right to be present. Parties shall have the right to cross-examine. In making his/her findings of fact and award, the arbitrator shall consider the factors set forth in ORS 342.934(7).

(14) Arbitration in the Absence of a Party. The arbitrator may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain a continuance or recess. The arbitrator shall not render findings of fact and award solely on the default of a party. The arbitrator shall require the other

party to submit such evidence as he/she may require for the making of findings of fact and award.

(15) Multiple Reductions. At the arbitrator's discretion upon request from either party, appeals from multiple reductions may be considered in a single arbitration.

(16) Closing of Hearing(s):

(a) The arbitrator shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits;

(b) If the arbitrator allows the filing of post-hearing briefs of other documents, the hearing shall be deemed closed as of the final date set by the arbitrator for the filing of such briefs or other documents.

(17) Waiver of Rules. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state his/her objection in writing, shall be deemed to have waived his/her right to object.

(18) Waiver of Oral Hearing. The parties may provide, by written agreement, for the waiver of oral hearing.

(19) Serving of Notices. Any papers, notices or process necessary or proper for the initiation or continuation of arbitration under these rules may be served upon a party:

(a) By mail addressed to such party or his attorney at his last known address; or

(b) By personal service.

(20) Time of Arbitration Findings and Order. No more than 30 days from the date of conclusion of the hearing, the arbitrator shall issue written findings of fact, opinion and award based upon the issues presented to him/her and upon the record made before him/her and shall serve such findings, opinion and order upon the parties and the Board. Service may be personal or by registered or certified mail. The findings, opinion and award shall be based upon factors prescribed in these rules and law.

(21) Expenses. The expenses of witnesses for either side shall be paid by the party

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producing such witnesses. Expenses of arbitration, including fees, required travel and other expenses of the arbitrator and the expenses of any witnesses or the cost of any proofs produced at the direct request of the arbitrator, shall be borne equally by the parties.

(22) Interpretation and Application of Rules. The arbitrator shall interpret and apply these rules insofar as they relate to his/her powers and duties.

(23) Arbitrator's Authority. The arbitrator is authorized to reverse the staff reduction decision or the recall decision made by the district only if the district:

- (a) Exceeded its jurisdiction;
- (b) Failed to follow the procedure applicable to the matter before it;
- (c) Made a finding or order not supported by substantial evidence in the whole record; or
- (d) Improperly construed the applicable law.

Stat. Auth.: ORS 240 & ORS 243

Stats. Implemented: ORS 342.934(7)

Hist.: ERB 14-1985, f. 10-29-85, ef. 10-31-85

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 86 – LIST OF HEARINGS OFFICERS FOR
FAIR DISMISSAL HEARINGS

DIVISION 86

**LIST OF HEARINGS OFFICERS
FOR FAIR DISMISSAL HEARINGS**

Compilation of List of Hearings Officers

115-086-0000 Pursuant to ORS 342.905, the Board shall maintain a list of no fewer than 10 persons who are experienced in public education and employment relations to serve as hearings officers in cases regarding teacher dismissal or nonextension. The Board shall give priority consideration for inclusion on such list to persons jointly recommended by the Oregon School Boards Association and the Oregon Education Association. If there are insufficient joint recommendations, the Board may select other persons for the list who have the requisite experience and neutrality to serve as hearings officers.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 342.905
Hist.: ERB 1-1998, f. & cert. ef. 1-26-98

Provision of List

115-086-0010 (1) Within five days of being notified by the Fair Dismissal Appeals Board that an appeal of a dismissal or nonextension has been filed, the Board will provide the parties the list of hearings officers.

(2) The parties will notify the Board of their selection of a hearings officer prior to the date of the hearing.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 342.905
Hist.: ERB 1-1998, f. & cert. ef. 1-26-98

Removal from List

115-086-0020 A hearing officer may be removed from the list maintained by the Board whenever the hearing officer:

(1) Has repeatedly failed to hold hearings within the required time period or has repeatedly failed to timely issue proposed findings of fact;

(2) Has been the subject of complaints by parties who use the list, and cause for removal is shown.

Stat. Auth.: ORS 243
Stats. Implemented: ORS 342.905
Hist.: ERB 1-1998, f. & cert. ef. 1-26-98