

## Chapter 662

### Labor Disputes

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**LIMITATIONS ON JUDICIAL INTERFERENCE WITH LABOR DISPUTES**

**662.010 Definitions.** 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 employers 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 him or it, and if he or it:

(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.

**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 his freedom of labor and thereby to obtain acceptable terms and conditions of employment, wherefor, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing to negotiate the terms and conditions of his employment and that he 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; therefor, 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 a labor or employer organization as 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 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 he will withdraw from an employment relation in the event that he 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 which 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 the doing in concert of the 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.

**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 prop-

erty are unable or unwilling to furnish adequate protection.

**662.090 Notice of hearing; issuance of temporary injunction without notice.** (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's fee 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 decree may be rendered in the same suit or proceeding against the complainant and surety, upon a hearing to assess damages 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 his ordinary remedy by suit at law or in equity.

**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 his 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.

662.140 to 662.200 [Reserved for expansion]

### **HOT CARGO AND SECONDARY BOYCOTT**

**662.210 Definitions.** As used in ORS 662.210 to 662.240:

(1) "Employee" includes any natural person who works for any person for compensation.

(2) "Employer" includes any person acting in the interest of an employer, directly or indirectly, and any association of employers, including growers and other hirers of labor.

(3) "Hot cargo" means any combination or agreement resulting in a refusal by employees to handle goods or to perform any services for their employer because of a dispute between some other employer and his employees or a labor organization or any combination or agreement resulting in a refusal by employers to handle goods or perform any services for another employer because of an agreement between such other employer and his employees or a labor organization.

(4) "Labor organization" means any organization of any kind, or any agency or 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.

(5) "Secondary boycott" means any combination or agreement to cease performing,

or to cause any employee to cease performing any services for any employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization or any combination or agreement to cease performing, or to cause any employer to cease performing any services for another employer, or to cause any loss or injury to such other employer, or to his employees, for the purpose of inducing or compelling such other employer to refrain from doing business with, or handling the products of any other employer, because of an agreement between the latter and his employees or a labor organization.

**662.220 Statement of purpose.** The purpose of ORS 662.210 to 662.240 is to preserve tranquility among the citizens of this state and to insure the unobstructed production and distribution of the products of our factories and fields, and for the continued protection and preservation of our democratic way of life and for the general welfare of the people of this state.

**662.230 Unlawful labor practices.** (1) Hot cargo and secondary boycott hereby are declared to be unlawful.

(2) Any act, combination or agreement which directly or indirectly causes, induces or compels a violation of this section, or inflicts any loss, injury or damage on anyone because of his refusal to violate this section is unlawful.

**662.240 Legal and equitable relief.** Any person injured or threatened with injury by any violation of ORS 662.230 is entitled to injunctive relief therefrom in a proper case, and may recover any damages resulting therefrom in any courts having jurisdiction in this state.

662.250 to 662.300 [Reserved for expansion]

**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]

662.350 to 662.400 [Reserved for expansion]

**ARBITRATION OF LABOR DISPUTES;  
STATE BOARD OF CONCILIATION**

**662.410 Definitions.** As used in ORS 662.420 to 662.550, unless the context requires otherwise, "board" means the State Board of Conciliation.

**662.420 Conciliation and investigation of labor controversies.** When a controversy or difference, not involving a question which may be the subject of an action or proceeding in a court of this state, exists between an employer and his employees, or whenever it comes to the knowledge of the State Board of Conciliation that a strike or lockout is seriously threatened in the state, involving an employer and his employees, the board shall immediately put itself in communication with such employer and employees and ascertain the cause of such difference, strike or lockout, and endeavor to persuade such employer and employees to adjust the same. If such employer and employees are unable to adjust the difference existing between them, then either of the parties to the controversy, the Governor, the officials of the city in which such strike or lockout may exist or, if outside any incorporated city or town, the officials of the county in which the same may be, may request the board to make an investigation of the causes of such strike or lockout.

**662.430 Hearing; notice; production of evidence.** (1) Upon receiving a request to investigate a strike or lockout, the board shall immediately proceed to such city or county and make an investigation by a public hearing and issue notice of the time and place and purpose of such hearing to the employer and his employees.

(2) The board may issue subpoenas requiring the attendance of such witnesses and the production of such records, books and papers, as it may deem necessary to make a thorough investigation of the merits and causes of the strike or lockout. Subpoenas may be signed and oaths administered by any member of the board.

(3) The notices and subpoenas shall be delivered to the sheriff of the county in which the board is holding its investigation, and shall be served in the same manner as similar process is served in the circuit courts of this state.

**662.440 Findings and recommendations; submission to board of arbitration.** (1) The board shall proceed with due diligence to

complete the investigation of such strike or lockout, and shall make such findings and recommendations to the respective parties as it may deem just.

(2) If either or both of the parties are not satisfied with such findings and recommendations, then either party may make written application to the board to have the controversy or difference submitted to the board of arbitration.

(3) The application shall contain a concise statement of the grievances complained of, and an agreement to abide by such award as the board of arbitration may make.

**662.450 Filing findings in case of refusal to submit to arbitration.** If either of the parties refuses to accept the findings and recommendations of the State Board of Conciliation, or refuses to consent to the appointment of a board of arbitration and to agree to accept and abide by the award of the board of arbitration, then the State Board of Conciliation shall prepare written findings, and determine therein the party who is responsible for the existence or continuance of the strike or lockout and deliver a copy of such findings to each of the parties to the controversy, filing one copy with the clerk of the county court of the county in which the investigation was held and one copy in the office of the Commissioner of the Bureau of Labor. The last two copies shall be public documents.

**662.460 Board of arbitration; selection of members; powers.** (1) The board of arbitration shall consist of three arbitrators. Such board may be mutually agreed upon, or the employer may designate one arbitrator and the employees or their duly authorized agent another, and the arbitrators so designated shall select a third, who shall be chairman of the board. If the two arbitrators are unable to agree upon the third member within two days from the date of their appointment, then the State Board of Conciliation shall appoint such third arbitrator.

(2) The board of arbitration shall have all the powers and authority conferred upon the State Board of Conciliation under ORS 662.520 in investigating such controversy, strike or lockout.

**662.470 Filing of findings and award.**

(1) The board of arbitration shall, within 10 days from the date of the final hearing, file a copy of its findings and award with:

(a) Each party to the controversy.

(b) The clerk of the county court of the county in which the hearing is held.

(c) The State Board of Conciliation.

(d) The Commissioner of the Bureau of Labor.

(2) However, the State Board of Conciliation may allow an extension of time to file such findings and award, not to exceed 20 days.

**662.480 Compensation of board of arbitration.** (1) Each member of a board of arbitration shall receive \$15 for each day of actual service, not exceeding 20 days, for any arbitration, to be certified as due by the chairman of the board. Such claim, upon presentation thereof to the Secretary of State, shall be audited and paid in the manner provided by law out of the moneys appropriated for the purposes of ORS 662.410 to 662.550.

(2) No claim for services shall be allowed any member of the board of arbitration until the findings and award have been filed as required by ORS 662.470.

**662.490 Compensation of witnesses.** (1) Each witness summoned by the State Board of Conciliation, or by the board of arbitration, shall receive compensation in the amounts allowed to persons under ORS 21.730.

(2) The chairman of the State Board of Conciliation or the chairman of the board of arbitration, as the case may be, shall certify the amount due each witness and present a claim therefor to the Secretary of State. Such claim shall be audited and paid in the manner provided by law out of the moneys appropriated for the purposes of ORS 662.410 to 662.550.

**662.500 State Board of Conciliation; appointment, term, qualification of members; oath of office.** (1) The State Board of Conciliation which shall consist of three commissioners hereby is created.

(2) Immediately upon the expiration of the commissioner's term ending in January 1954, the Governor shall appoint a commissioner who, on account of his previous vocation, employment, affiliation or interests shall be classified as a representative of management.

(3) Immediately upon the expiration of the commissioner's term ending in January 1955, the Governor shall appoint a commissioner who, on account of his previous vocation, employment, affiliation or interests

shall be classified as a representative of labor.

(4) The third member of the board shall be chosen by the commissioners appointed by the Governor by the date of expiration of the term of the commissioner whom the third member is to succeed. If the two commissioners appointed by the Governor are unable to agree upon the third member of the board by such date, then the Governor shall appoint such third member of the board.

(5) The commissioners first appointed by the Governor, for full terms commencing after January 1952, shall be appointed for terms expiring on the third Monday in January 1958, and the third Monday in January 1959, respectively, and the term of the third commissioner, first appointed after January 1952, for a full term, shall expire on the first Monday in January 1957. Thereafter the commissioners shall be appointed, in the same manner and from the same classes as provided in this section for terms of four years respectively.

(6) Before entering on the duties of his office, each commissioner shall take and subscribe to an oath or affirmation that he will support the Constitutions of the United States and of this state, and faithfully and honestly discharge the duties of such office of commissioner. The oath or affirmation shall be filed in the office of the Secretary of State.

**662.510 Removal of commissioner; filling vacancy.** (1) The Governor may, at any time, remove any commissioner for inefficiency, neglect of duty or malfeasance in office.

(2) Before such removal he shall give such commissioner a copy of the charges against him and shall fix the time when he can be heard in his own defense, which shall not be less than 10 days thereafter. The hearing shall be open to the public.

(3) If the commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the commissioner and his findings thereon, with a record of the proceedings.

(4) Such power of removal shall be absolute, and there shall be no right of review by any court on any condition whatsoever. Upon the removal of the commissioner a successor shall be appointed to fill out the unexpired term, to be selected in



the same manner and from the same class as the removed commissioner.

**662.520 Powers of board generally.** (1) The board shall possess all the powers and authority in respect to administering oaths, subpoenaing witnesses and compelling their attendance, preserving order during the sittings of the board, punishing for contempt, and requiring the production of books, papers and writings, and all other powers and privileges, in their nature applicable and necessary in conducting its business, in the same manner as is conferred by law on all the judges of the circuit court of this state in the trial of any cause.

(2) The board shall have access to any reports, documents or records filed with or in the custody of any officer in this state.

**662.530 Organization and meetings.** The board shall meet at the state capital in suitable rooms provided by the state in the offices of the Bureau of Labor. The board shall elect one of its members as chairman and another member as secretary. The board shall establish such rules of procedure as may be necessary to conduct the business of the board.

**662.540 Annual report.** On or before July 31 of each year the State Board of Conciliation shall make a report to the Governor, containing such statements, facts and explanations as will disclose its methods and work, with such suggestions as to legislation conducive to the adjustment of disputes between employers and employees as it may deem proper.

**662.550 Compensation and payment of commissioners.** Each member of the board shall receive \$15 for each day of actual service, and his necessary traveling and other expenses. Each month the chairman of the board shall certify the amount due each member of the board for services rendered and expenses incurred in the performance of his official duties under ORS 662.410 to 662.540. On presentation of a claim therefor the Secretary of State shall audit same in the manner provided by law and draw his warrant on the State Treasurer out of the moneys appropriated therefor.

**662.560 to 662.600** [Reserved for expansion.]

## SELECTION OR REJECTION OF COLLECTIVE BARGAINING AGENT; PICKETING

**662.610 Definitions.** When used in ORS 662.610 to 662.790, the term:

(1) "Appropriate bargaining unit" is the unit appropriate, in order to assure to employees the fullest freedom in exercising the rights guaranteed by ORS 662.610 to 662.790, for the purposes of collective bargaining and may be the employer unit, craft unit, plant unit or subdivision thereof.

(2) "Employee" includes any employee and shall not be limited to the employees of a particular employer and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any action declared to be unlawful by ORS 662.610 to 662.790.

(3) "Employer" includes all persons and associations of employers employing others and all persons acting in the interest of an employer, but does not include any person subject to the Federal Railway Labor Act, as amended from time to time, nor the state or any political or governmental subdivision thereof; nor does the term "employer" include an individual holding a supervisory position which traditionally has been included within bargaining units in contracts between employers and labor organizations.

(4) "Examiner" means the labor examiner or special examiner appointed pursuant to ORS 662.700.

(5) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with an employer or employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work and which is not dominated, administered or financially or otherwise assisted by such employer.

(6) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers. [1953 c.723 §1]

**662.620 Employees' right to select or reject labor organization as bargaining agent.** Except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, employees shall have the right

to select or reject labor organizations seeking or claiming to represent them in bargaining collectively with their employers concerning wages, hours and other terms and conditions of employment, as provided in ORS 662.610 to 662.790. [1953 c.723 §2]

**662.630 Petition for election to select bargaining agent; election within appropriate bargaining unit; bargaining agent selected to be the exclusive representative for collective bargaining.** (1) Whenever any labor organization which has not within the last preceding twelve-month period been recognized or certified as the bargaining agent of an appropriate bargaining unit claims to represent a majority of the employees in such appropriate bargaining unit for the purpose of collective bargaining and in writing serves notice of such claim on the employer, the employer, or any of his or its employees, or a labor organization may petition, in writing, the examiner to hold an election by secret ballot at an appropriate place to determine whether or not the employees desire to be represented by a labor organization. Such petition shall be filed with the examiner. If he determines the unit is appropriate he shall proceed forthwith to cause an election to be held by secret ballot of the employees in the unit. If the appropriateness of the unit as set forth in the petition is disputed by an interested person the examiner shall determine the appropriate unit after notice and hearing. Employees in the appropriate unit shall be eligible to vote at said election. A majority vote of those voting in the unit shall determine whether or not a labor organization has been designated a bargaining agent. The examiner shall certify that such appropriate unit either has or has not selected a representative for collective bargaining according to the results of the election, and shall notify interested parties. No election shall be directed by the examiner in any bargaining unit or any subdivision thereof within which during the preceding twelve-month period a valid election has been held.

(2) The notice of and the method of conducting the election shall be in such form and manner as the examiner shall determine.

(3) The certified bargaining agent of an appropriate bargaining unit shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining; but any individual employee or group of employees shall have the right at any time to present grievances to their employer in

person or through representatives of their own choosing. [1953 c.723 §3]

**662.640 Hearing to determine what employees constitute appropriate bargaining unit.** Subject to the requirements of ORS 662.650 concerning rules of evidence, the examiner shall prescribe rules and regulations to assure the interested persons a fair hearing upon the determination of the appropriate bargaining unit. A transcript of the testimony taken by the examiner shall be made and filed in the office of the examiner. Upon the preponderance of the testimony taken the examiner shall determine the unit that is appropriate and shall state his findings of fact, serve a copy of the same on the interested persons and issue and cause to be served on the interested persons an order declaring such unit to be appropriate. [1953 c.723 §4]

**662.650 Power of examiner to issue subpoenas; rules of evidence to govern conduct of hearings; place of hearings.** (1) In the conduct of any hearing under ORS 662.610 to 662.790 the examiner shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates directly to any matter involved in any such hearing. The examiner may administer oaths and affirmations and may examine witnesses.

(2) In the conduct of any hearing under ORS 662.610 to 662.790, the examiner, so far as practicable, shall conduct the hearing in accordance with the rules of evidence applicable in circuit courts of this state.

(3) Hearings shall be held in a county where the question has arisen or exists. [1953 c.723 §5]

**662.660 Witness fees.** Each witness who appears before the examiner by his order, shall be entitled to receive for his attendance the fees and mileage now provided for witnesses in civil cases in the circuit courts. Fees and mileage due shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the examiner. No witness shall be entitled to receive double mileage fees, and no witness subpoenaed at the instance of parties other than the examiner is entitled to compensation from the state for attendance or travel unless the examiner certifies that his testimony was material to the matter of the hearing. [1953 c.723 §6]

**662.670 Contumacy or refusal to obey subpoenas may be punished.** In case of contumacy or refusal to obey a subpoena issued to any person, any circuit court, or judge thereof, within the jurisdiction of which the hearing is conducted 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 examiner, shall by order require such person, if the judge determines such person has without reasonable cause or legal excuse refused to obey the subpoena or to produce evidence or give testimony, to appear before the examiner, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order may be punished by the court as a contempt. [1953 c.723 §7]

**662.680 Self-incrimination no excuse for refusal of witness to attend hearing or to testify; immunity of witness from prosecution.** No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the examiner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [1953 c.723 §8]

**662.690 Service of complaints, orders and process of the examiner.** Complaints, orders and other process and papers of the examiner may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or at the place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same; and the return postoffice receipt or telegraph receipt therefor, when registered and mailed or telegraphed as aforesaid, shall be proof of service of the same. [1953 c.723 §9]

**662.700 Division of Labor Elections established; appointment of labor examiner**

and special examiners. There hereby is established as a state agency a Division of Labor Elections. This division shall be under the supervision and control of a labor examiner, who shall be appointed by the Governor and shall serve at his pleasure. The Governor may, from time to time, appoint special examiners. Such special examiners when appointed shall have the same power and authority as the labor examiner, in matters to which assigned. The labor examiner may, subject to the State Civil Service Law, employ and discharge clerks and other assistants as needed, fix their compensation, and assign them their duties. [1953 c.723 §10]

**662.710 Charges of unlawful acts; examiner may issue complaint, hold hearing, make findings and issue orders.** (1) Whenever it is charged that any person has engaged in or is engaging in any action declared to be unlawful by ORS 662.610 to 662.790, the examiner, or any agent or agency designated by him for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect and containing a notice of hearing before the examiner at a place therein fixed, not less than five days after the serving of the complaint. No complaint based upon any alleged unlawful action occurring more than six months prior to the filing of the charge with the examiner and the service of a copy thereof upon the person against whom such charge is made shall be issued. Any such complaint may be amended at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise give testimony at the place and time fixed in the complaint. In the discretion of the examiner conducting the hearing any other person may be allowed to intervene in the proceeding and to present testimony.

(2) A transcript of the testimony taken by the examiner shall be made and filed in the office of the examiner. Thereafter, in his discretion, the examiner upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the examiner is of the opinion that any person named in the complaint has engaged in or is engaging in any action declared to be unlawful by ORS 662.610 to 662.790, the examiner shall state his findings of fact, serve a copy of the same on the interested

persons and issue and cause to be served on the person named in the complaint an order declaring such election invalid or requiring such person to cease and desist the unlawful action, or both. In the event the election is declared invalid the examiner shall cause another election to be held. If upon the preponderance of the testimony taken the examiner is not of the opinion that the person named in the complaint has engaged in or is engaging in any action declared to be unlawful by ORS 662.610 to 662.790, the examiner shall state his findings of fact, serve a copy of the same on the interested persons and issue and cause to be served on the person making the charge an order dismissing the complaint. [1953 c.723 §12]

**662.720 Judicial review of examiner's orders.** Any person aggrieved by a final order of an examiner made pursuant to ORS 662.610 to 662.790 may obtain a review of such order in the circuit court of the county wherein the hearing was held, by filing in such court, within 10 days following service on such person of the order, a written petition praying that the order of the examiner be modified or set aside. A copy of such petition shall forthwith be served upon the examiner who made the order and thereupon the aggrieved party shall file in the court a transcript of the entire record of the hearing before the examiner, including the pleadings and testimony upon which the order of the examiner was entered, and shall cause notice thereof to be served upon other interested parties to the hearing. Thereupon, the court shall have jurisdiction of the proceeding before the examiner and of the question determined therein and shall have power to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so modified, or setting aside the order of the examiner. No objection that has not been urged before the examiner shall be considered by the court. The findings of the examiner with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The jurisdiction of the court shall be exclusive and its decree shall be final, except that the same shall be subject to review on appeal as in the case of any other appealable decree. In the event the court sets aside, in whole, the order of the examiner, it shall direct the examiner to conduct, within 15 days after the entry of the decree of the court, a rehearing of all or any part of the

matter originally before the examiner. [1953 c.723 §13]

**662.730 Enforcement of examiner's orders through the circuit court.** The examiner or any interested person may petition the circuit court of the county in which a hearing has been held to require the enforcement of any order of the examiner made in connection with such hearing. Excepting for the time of filing, the proceedings thereunder shall conform to those set forth in ORS 662.720 and the court shall have authority to make any appropriate order or decree in addition to those therein set forth. The orders or decrees of the court shall be final, except that the same shall be subject to review on appeal as in the case of any other appealable order or decree. [1953 c.723 §14]

**662.740 Examiner may modify or set aside his orders and permit presentation of additional evidence, when.** Until petition to review, or to enforce an order, has been filed with the court, the examiner may upon reasonable notice and in such manner as he deems proper, modify or set aside, in whole or in part, any finding or order made or issued by him. The examiner, upon the setting aside in whole or in part of a finding or order made by him, may permit, upon the application of an interested party, such party to adduce additional evidence if it is shown to the satisfaction of the examiner that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the previous hearing before the examiner. Any additional evidence adduced shall be made a part of the transcript. [1953 c.723 §15]

**662.750 Unlawful acts relating to the selection or failure to select a labor organization as a bargaining agent.** It shall be unlawful for any person directly or indirectly to compel, intimidate, coerce or discriminate against any employee in the exercise of said employee's free choice in selecting or rejecting a labor organization as the representative of employees for the purpose of collective bargaining, or directly or indirectly to compel, intimidate or coerce any employer or employee because employees of said employer, or of any other employer, have not selected a labor organization as their representative for said purpose. The word "coerce" includes picketing. Without limiting the foregoing unlawful acts, picketing for the purpose of compelling, intimidating, coercing or influ-

encing an employee of any employer to join a labor organization shall be a violation of this section. [1953 c.723 §16]

**662.760 Employer's contract with labor organization requiring membership therein as a condition of employment not precluded by ORS 662.610 to 662.790.** Nothing contained in ORS 662.610 to 662.790 shall preclude an employer from making an agreement with a labor organization requiring membership therein as a condition of employment. [1953 c.723 §19]

**662.770 Picketing under certain conditions declared unlawful.** It shall be unlawful for any person to picket any employee or employer unless such person has been certified or is recognized as the bargaining representative of such employee or of an appropriate unit of employees of such employer under the provisions of federal law or the provisions of ORS 662.610 to 662.790. [1953 c.723 §17]

**662.780 Courts given power to enforce ORS 662.610 to 662.790.** (1) Courts of competent jurisdiction shall have power to en-

force the provisions of ORS 662.610 to 662.790 by appropriate order or decree. Such proceeding shall be given precedence over all other civil cases. No relief under ORS 662.610 to 662.790 shall be given by any court except after hearing the testimony of witnesses in open court, with opportunity for cross examination, in support of the allegations of a complaint or petition made under oath, and testimony in opposition thereto, if offered. Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court directs, to all persons against whom relief is sought.

(2) The orders or decrees of the court shall be final, except that the same shall be subject to review on appeal as in the case of any other appealable order or decree. [1953 c.723 §18]

**662.790 Provisions of ORS 662.010 to 662.130 not applicable to proceedings under ORS 662.610 to 662.790.** ORS 662.010 to 662.130 shall not be applicable to proceedings brought under ORS 662.610 to 662.790. [1953 c.723 §20]

## CHAPTERS 663 TO 669

[Reserved for expansion]

