

Chapter 243

1977 REPLACEMENT PART

Public Employes' Rights and Benefits

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LIFE INSURANCE FOR POLICE AND FIREMEN

243.005 Definitions for ORS 243.005 to 243.045. As used in ORS 243.005 to 243.045:

(1) "Fireman" means persons employed by a city, county or district whose duties involve fire fighting and includes a volunteer fire fighter whose position normally requires less than 600 hours of service per year.

(2) "Police officer" includes police chiefs and policemen of a city who are classified as police officers by the council or other governing body of the city; sheriffs and those deputy sheriffs whose duties, as classified by the county governing body are the regular duties of police officers; employes of districts, whose duties, as classified by the governing body of the district are the regular duties of police officers; employes of the Department of State Police who are classified as police officers by the Superintendent of State Police; and employes of the Oregon State Penitentiary and of the Oregon State Correctional Institution whose duties, as assigned by the superintendent, include the custody of persons committed to the custody of or transferred to the penitentiary or correctional institution; but "police officer" does not include volunteer or reserve police officers or persons considered by the respective governing bodies to be civil deputies or clerical personnel.

(3) "Public employer" means a city, a county or the state, or one of its agencies or political subdivisions that employs police officers or firemen.

[1971 c.692 §6]

243.010 [Amended by 1955 c.203 §1; 1959 c.162 §1; 1969 c.597 §141; repealed by 1971 c.692 §14]

243.015 Life insurance for police and firemen. On or before July 1, 1973, the Department of General Services shall enter into a contract with an insurance company licensed to do business in this state to purchase insurance as described in ORS 243.025 for all police officers and firemen in the service of public employers.

[1971 c.692 §7; 1973 c.409 §1]

243.020 [Amended by 1955 c.203 §2; 1955 c.503 §1; 1957 c.204 §1; 1959 c.162 §2; repealed by 1971 c.692 §14]

243.025 Issuance of \$10,000 life insurance certificate. When the Department of General Services has awarded the contract under ORS 243.015, but not later than July 1, 1973, every police officer and fireman in the service of a public employer shall be issued, pursuant to the contract provided for in ORS

243.015, a certificate of insurance in the face amount of \$10,000, covering death caused by injury sustained during working hours as a police officer or fireman or death resulting from such an injury within 365 days. The insurance certificate shall set forth the names of any beneficiaries whom the insured may designate.

[1971 c.692 §8; 1973 c.409 §2]

243.030 [Amended by 1955 c.203 §3; repealed by 1955 c.503 §2]

243.035 Premiums and administrative costs to be budgeted and paid by public employers. (1) The premiums and administrative costs incurred by the Department of General Services for the insurance provided for in ORS 243.005 to 243.045 shall be paid by the affected public employers and shall not come from funds of the Public Employees' Retirement System.

(2) Every public employer shall include in its budget amounts sufficient to pay the annual premiums accruing on the policies of insurance issued pursuant to ORS 243.005 to 243.045, and amounts sufficient to reimburse the Department of General Services for its administrative expenses incurred under ORS 243.005 to 243.045.

[Subsection (1) enacted as 1971 c.692 §9; subsection (2) enacted as 1971 c.692 §10]

243.040 [Amended by 1955 c.203 §4; 1959 c.162 §3; repealed by 1971 c.692 §14]

243.045 Police and firemen considered common group for certain purposes. For purposes of the Insurance Code, police officers and firemen are considered to be associated in a common group formed for purposes other than the obtaining of insurance.

[1971 c.692 §11; 1973 c.409 §3]

243.050 [Amended by 1955 c.203 §5; 1959 c.162 §4; 1969 c.502 §6; repealed by 1971 c.692 §14]

243.055 Exemption from requirements of ORS 243.005 to 243.045 for certain public employers. (1) Notwithstanding ORS 243.005 to 243.045, if a public employer provides benefits equal to or better than the insurance required under ORS 243.025, as determined by the Insurance Commissioner, the public employer is exempt from the requirements of ORS 243.005 to 243.045 for so long as such benefits continue to be equal or better than the insurance required, as determined by the Insurance Commissioner.

(2) Determinations pursuant to subsection (1) of this section shall be made after reason-

able notice and opportunity for hearing as provided in ORS 183.310 to 183.500.

[1971 c.692 §12; 1973 c.612 §13]

243.060 [Amended by 1955 c.203 §6; 1957 c.204 §2; 1959 c.162 §5; 1969 c.502 §7; repealed by 1971 c.692 §14]

243.070 [Repealed by 1971 c.692 §14]

HEALTH BENEFIT PLANS

243.105 Definitions for ORS 243.105 to 243.205. As used in ORS 243.105 to 243.205, unless the context requires otherwise:

(1) "State agency" means every state officer, board, commission, department or other activity of state government.

(2) "Eligible employe" means an officer or employe of a state agency who elects to participate in one of the group benefit plans described in ORS 243.135, including state officials and officers and employes in the exempt, unclassified and classified service, but not including individuals:

(a) Engaged as independent contractors;

(b) Whose periods of employment in emergency work are on an intermittent or irregular basis, or who are employed on less than a half-time basis;

(c) Appointed under ORS 240.380 or 240.385;

(d) Provided sheltered employment or made-work by the state in an employment or industries program maintained for the benefit of such individuals; or

(e) Provided student health care services in conjunction with their enrollment as students at the state institutions of higher education.

(3) "Administrator" means the Administrator of the Personnel Division.

(4) "Health benefit plan" means a contract for group medical, surgical, hospital or any other remedial care recognized by state law and related services and supplies and shall include comparable benefits for employes who rely on spiritual means of healing.

(5) "Premium" means the monthly or other periodic charge for a benefit plan.

(6) "Payroll disbursing officer" means the state officer or official authorized to disburse moneys in payment of salaries and wages of employes of a state agency.

(7) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Insur-

ance Commissioner, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation.

(8) "Family member" means an eligible employe's spouse and any unmarried child or stepchild within age limits and other conditions imposed by the board with regard to unmarried children or stepchildren.

(9) "Board" means the State Employees' Benefit Board.

[1971 c.527 §1]

243.110 [1955 c.313 §1; 1959 c.540 §1; 1963 c.313 §1; repealed by 1967 c.627 §12]

243.115 State Employees' Benefit Board; membership; chairman. (1) There is hereby created in the Personnel Division of the Executive Department, a State Employees' Benefit Board to be composed as follows:

(a) The Governor or his designee;

(b) The Director of the Department of General Services;

(c) The Administrator of the Personnel Division of the Executive Department; and

(d) Four persons representing state employes, who shall be appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.

(2) In addition, one member of the Senate, appointed by the President of the Senate, and one member of the House of Representatives, appointed by the Speaker of the House, shall serve as advisory members without vote.

(3) The Administrator of the Personnel Division of the Executive Department shall serve as chairman of the board.

[1971 c.527 §2; 1973 c.792 §7]

243.120 [1963 c.331 §8; 1967 c.267 §1; repealed by 1967 c.627 §12]

243.125 Powers and duties of board; compensation and expenses of members.

(1) The board shall prescribe rules for the conduct of its business. Members of the board shall receive no compensation for their services, but shall be paid for their necessary and actual expenses while on official business. The board shall study all matters connected with the providing of adequate health care coverage for state employes on the best basis possible with relation both to the welfare of the employes and to the state. The board shall design benefits, devise specifications, analyze carrier responses to advertisements for bids and decide on the award of contracts. Con-

tracts shall be signed by the chairman on behalf of the board.

(2) Subject to ORS chapter 183, the board may make rules not inconsistent with ORS 243.105 to 243.205, 243.215 and 292.051 to determine the terms and conditions of eligible employe participation and coverage.

(3) The board shall prepare specifications, invite bids and do acts necessary to award contracts for health benefit plan and dental benefit plan coverage of eligible employes for a one- or two-year period commencing on August 1.

(4) The board may retain consultants when it determines the necessity and shall, subject to the State Merit System Law, employ such personnel as are required to perform the functions of the board.

[1971 c.527 §3; 1975 c.560 §1; 1975 c.667 §1a]

243.135 Board to contract for health benefit plans for public employes; terms and conditions. (1) The board shall contract for the following three types of health benefit plans:

(a) One type of plan that provides major medical benefits as its primary feature.

(b) One type of plan that provides basic benefits and major medical insurance.

(c) One type of plan that provides group hospital-medical-surgical benefits through a comprehensive group practice plan in its service area.

(2) The board may approve more than one carrier for each type of plan but the number of carriers shall be held to a number consistent with adequate service to eligible employes and their family members.

(3) Each health benefit plan shall provide options under which an eligible employe may arrange coverage for his family members.

(4) Payroll deductions for such costs as are not payable by the state may be made upon receipt of a signed authorization from the employe indicating his election to participate in the plan or plans selected and the deduction of a certain sum from his pay.

(5) In developing any health benefit plan described in subsection (1) of this section, the board may provide an option of additional coverage for eligible employes and their family members at an additional cost or premium.

(6) Transfer of enrollment from one plan to another shall be open to all eligible employes and their family members under rules

adopted by the board. Because of the special problems that may arise in individual instances under comprehensive group practice plan coverage involving acceptable physician-patient relations between a particular panel of physicians and particular eligible employes and their family members, the board shall provide a procedure under which any eligible employe may apply at any time to substitute a health service benefit plan for participation in a comprehensive group practice benefit plan.

[1971 c.527 §4; 1975 c.560 §2; 1977 c.313 §1]

243.145 Board authority with respect to health benefit plans; termination of participation of state agency. (1) The board shall have authority to employ whatever means are reasonably necessary to carry out the purposes of ORS 243.105 to 243.205, 243.215 and 292.051. Such authority shall include but is not limited to authority to seek clarification, amendment, modification, suspension or termination of any agreement or contract which in the board's judgment requires such action.

(2) Upon providing specific notice in writing to the carrier, employe organization, Executive Department and affected, eligible employes, and after affording opportunity for a public hearing upon the issues which may be involved, the board may enter an order withdrawing approval of any health benefit plan. Thirty days after entry of the order, the board shall terminate all withholding authorizations of eligible employes and terminate all state participation in the plan.

(3) The board by order may terminate the participation of any state agency if within three months the state agency fails to perform any action required by ORS 243.105 to 243.205, 243.215 and 292.051 or by board rule.

[1971 c.527 §5]

243.155 Board may contract without state participation for additional benefit plans to be provided at expense of participating employes. (1) The board may contract with carriers to provide, at the expense of participating employes and without state participation, for coverage, insurance or other benefit based on life, supplemental medical, supplemental dental and accidental death or disability insurance plans.

(2) If on or after September 9, 1971, any state agency contracts for any of the benefits described in subsection (1) of this section on behalf of any state employes, the administrative expenses thereof shall be paid by assess-

ment of the participating employees. Such contracts are subject to approval of the board before they become operative. The board may withdraw approval for any such benefit in the same manner as it withdraws approval under ORS 243.145.

[1971 c.527 §6; 1975 c.667 §2]

243.165 State Employees' Benefit Account; continuing appropriation for account. (1) There hereby is created in the General Fund an account to be known as the State Employees' Benefit Account, the balances of which are continuously appropriated to cover administrative expenses incurred in connection with the administration of ORS 243.105 to 243.205, 243.215 and 292.051.

(2) There hereby is appropriated to the State Employees' Benefit Account all refunds and dividends from any carrier or contractor because of any agreement or contract entered into between the carrier and the board and, subject to ORS 243.185, an amount not to exceed two percent of the monthly state and employe contributions for any benefit available under ORS 243.105 to 243.205, 243.215 and 292.051.

[1971 c.527 §7]

243.175 Computation of health benefit contributions by employe and state. (1) The monthly contribution of each eligible employe for health benefit plan coverage described in subsection (1) of ORS 243.135 shall be the total cost per month of the benefit coverage afforded him under the plan or plans, for which he exercises his option, including the administrative expenses therefor, less the portion thereof contributed by the state.

(2) The state contribution shall be the amount necessary to pay the cost of the health benefit plan or plans, including the cost of enrollment of all family members and the eligible employees, including the administrative expenses therefor, or the amount appropriated or otherwise authorized therefor by the Legislative Assembly, whichever is the lesser.

[1971 c.527 §8; 1973 c.225 §1; 1975 c.667 §3; 1977 c.570 §3]

243.180 Computation of dental benefit contributions by employe and state. (1) The monthly contribution of each eligible employe for dental benefit plan coverage shall be the total cost per month of the benefit coverage afforded him under the plan or plans, for which he exercises his option, including the administrative expenses there-

for, less the portion thereof contributed by the state.

(2) The state contribution shall be the amount necessary to pay the cost of the dental benefit plan or plans, including the cost of enrollment of eligible employees and the administrative expenses therefor, or the amount appropriated or otherwise authorized therefor by the Legislative Assembly, whichever is the lesser.

[1975 c.667 §5; 1977 c.570 §4]

243.185 Transfer of moneys from General Fund for payment of costs of health benefit plans. Subject to legislative approval of budgetary authorization for operation of the board and its administration of the health benefit plans and other duties under ORS 243.105 to 243.205, 243.215 and 292.051, an amount not to exceed two percent of the state and the employe contributions, as described in ORS 243.155 and 243.175, shall be forwarded by each payroll disbursing officer to the board and deposited by it in the State Treasury to the credit of the State Employees' Benefit Account to meet administrative and other costs authorized by ORS 243.105 to 243.205, 243.215 and 292.051. However, no such assessment shall be required for any month in which the balance in the account exceeds five percent of the monthly total of state and employe contributions.

[1971 c.527 §9]

243.195 Salary deduction for participating employe's monthly payment for health benefit plan; dispersal of moneys to benefit plan contractor. Upon receipt by him of the request in writing of an eligible or participating employe so to do, the payroll disbursing officer may deduct from the salary or wages of such employe the amount of money indicated in such request for payment of the applicable amount set forth in contracts made by such employees or in their behalf for benefits under ORS 243.105 to 243.205, 243.215 and 292.051. The payroll disbursing officer may disburse funds in payment of premiums to the carrier or health service benefit plan contractor.

[1971 c.527 §10]

243.205 Reports. The payroll disbursing officer shall submit reports to the State Employees' Benefit Board regarding health care coverage for eligible or participating employees as the board considers desirable.

[1971 c.527 §11]

243.215 Certain eligible employes permitted to receive state contributions for health benefit plans of their choice.

Any eligible employe unable to participate in one or more of the plans described in subsection (1) of ORS 243.135 solely because he is assigned to perform duties outside the state may be eligible to receive the monthly state contribution, less administrative expenses, as payment of all or part of the cost of a health benefit plan of his choice, subject to the approval of the board and such rules as the board may adopt.

[1971 c.527 §13]

SMOKING IN STATE OFFICES

243.220 Smoking in places of state employment; policy statement. The Legislative Assembly finds that because the smoking of tobacco creates a health hazard, it is necessary to protect the public health by restricting smoking in places of employment operated by the State of Oregon.

[1977 c.675 §1]

243.225 Personnel Division rules restricting smoking in places of state employment. (1) In accordance with the provisions of ORS chapter 183, the Personnel Division shall adopt rules restricting smoking in places of employment operated by departments or agencies of the State of Oregon. The rules of the division shall:

(a) Set standards for the designation of areas in a place of employment where smoking is permitted, including standards for ventilation and physical barriers.

(b) Require departments or agencies to designate areas in the place of employment where smoking is permitted pursuant to the standards of the division.

(c) Require departments or agencies supplying employes with lounges to provide smoke-free lounge areas for nonsmoking employes.

(d) Prohibit smoking in a place of employment in any area not designated as an area where smoking is permitted.

(2) The rules adopted by the division pursuant to subsection (1) of this section shall not apply to inclosed offices occupied exclusively by smokers, even though the offices may be visited by nonsmokers.

(3) Nothing in this section is intended to prevent departments or agencies from prohib-

iting smoking in the entire area of the place of employment.

[1977 c.675 §2]

AFFIRMATIVE ACTION

243.305 Policy of affirmative action and fair and equal employment opportunities and advancement. It is declared to be the public policy of Oregon that state government shall be a leader among employing entities within the state in providing to its citizens and employes, through a program of affirmative action, fair and equal opportunities for employment and advancement regardless of race, religion, national origin, age, sex, marital status, or a physical or mental handicap not shown to prevent adequate performance of available work. "Affirmative action" means a method of eliminating the effects of past and present discrimination, intended or unintended, that are evident or indicated by analysis of present employment patterns, practices and policies.

[1975 c.529 §1]

243.315 Director of Affirmative Action; duties; appointment; confirmation.

There is hereby created in the office of the Governor the position of Director of Affirmative Action. The primary duty of the occupant of this position shall be to direct an affirmative action program in all state agencies to implement the public policy stated in ORS 243.305. The director shall be appointed by the Governor, subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.

[1975 c.529 §2]

DEFERRED COMPENSATION PROGRAM

243.400 Definitions for ORS 243.400 to 243.495. As used in ORS 243.400 to 243.495, unless the context otherwise requires:

(1) "Council" means the Oregon Investment Council created by ORS 293.706.

(2) "Deferred compensation plan" means an agreement between the state and an eligible employe that provides for payment by the state at a future date for services currently rendered by the eligible employe, and under which the state promises to pay the eligible employe fixed or variable amounts for life or for a guaranteed number of years after retirement or termination of employment.

(3) "Deferred compensation program" means a program established by the State of Oregon and approved by the Emergency Board that has as its purposes the deferral of compensation to eligible employees and the deferral of income taxation on the deferred compensation.

(4) "Eligible employee" means an officer or employe of a state agency who elects to participate in one of the deferred compensation plans described in ORS 243.430, including state officials and officers and employes in the exempt, unclassified and classified service, but not including individuals:

(a) Engaged as independent contractors;

(b) Whose periods of employment in emergency work are on an intermittent or irregular basis;

(c) Appointed under ORS 240.380; or

(d) Provided sheltered employment or make-work by the state in an employment or industries program maintained for the benefit of such individuals.

(5) "Payroll disbursing officer" means the state officer or official authorized to disburse moneys in payment of salaries and wages of employes of a state agency.

(6) "State agency" means every state officer, board, commission, department or other activity of state government.
[1977 c.721 §2]

Note: Section 18, chapter 721, Oregon Laws 1977, provides:

Sec. 18. This Act takes effect on July 1, 1978.

243.410 Executive Department to provide deferred compensation program for state employes; choice of plans; Investment Council to design plans and award contracts. (1) The Executive Department shall provide, administer and maintain a deferred compensation program on behalf of the State of Oregon for the benefit of eligible employes. The council shall study all matters connected with the providing of a deferred compensation program on the best basis possible with relation both to the welfare of eligible employes and the State of Oregon. The deferred compensation program designed by the council shall allow an eligible employe to choose between at least two deferred compensation plans for each mode of investment or deposit included in the program.

(2) The council shall devise specifications for deferred compensation plans, advertise for

responses and bids, analyze responses and decide on the award of contracts.

[1977 c.721 §3]

Note: See note under 243.400

243.420 Approval of plans by Emergency Board. When the council has designed a deferred compensation program under ORS 243.400 to 243.495, 295.022 and 723.184, it shall submit that program to the Emergency Board for its approval. The council shall not advertise for bids on deferred compensation plans unless the deferred compensation program is approved by the Emergency Board.

[1977 c.721 §10]

Note: See note under 243.400.

243.430 Council to contract for deferred compensation plans. The council may enter into contracts with insurance companies, banks, mutual savings banks, credit unions, savings and loan institutions or other persons to accept deposits of money, to purchase fixed or variable life insurance or annuity contracts or to invest in mutual funds for the purpose of establishing deferred compensation plans for eligible employes.

[1977 c.721 §4]

Note: See note under 243.400.

243.440 Salary deduction for participating employe's monthly payment for deferred compensation plan; amount of deduction; payment to council. (1) The state may agree with an eligible employe that the employe's salary shall be reduced monthly by a stated amount for the purpose of funding a deferred compensation plan for the employe. In no event, however, shall the stated amount be less than \$25 per month, nor shall it exceed 15 percent of the eligible employe's gross monthly income.

(2) The payroll disbursing officer is authorized, upon written request of an eligible employe, to reduce each month the salary of the eligible employe by an amount of money designated by that employe in his contract with the state under this section. The payroll disbursing officer may pay that amount to the council for deposit in the revolving fund established by ORS 243.495.

[1977 c.721 §5]

Note: See note under 243.400.

243.445 Employe's choice of deferred compensation plans; choice not binding on council. When an eligible employe agrees to participate in a deferred compensation plan

under ORS 243.400 to 243.495, the employe may indicate his preference with respect to the mode of investment or deposit to be used by the state in investing or depositing his deferred income under the plan, but the employe's choice shall not be binding on the council.

[1977 c.721 §11]

Note: See note under 243.400.

243.450 Disclosure statement to be given to employe; contents. The Executive Department shall give each eligible employe who participates in a deferred compensation plan under the deferred compensation program, prior to the deferral of any part of that employe's salary, a disclosure statement in writing that contains for that plan all information, including the probable income and probable safety of the moneys deferred, that persons of reasonable prudence and discretion require when determining the permanent disposition of their funds.

[1977 c.721 §12]

Note: See note under 243.400.

243.460 Deferred compensation not considered current taxable income; effect of deferred compensation program on existing retirement programs. (1) The amount by which an eligible employe's salary is reduced under ORS 243.440 shall continue to be included as regular compensation for the purpose of computing the retirement, pension and social security benefits earned by the employe, but that amount shall not be considered current taxable income for the purpose of computing federal and state income taxes withheld on behalf of the employe.

(2) The deferred compensation program established by ORS 243.400 to 243.495, 295.022 and 723.184 exists and supplements retirement and pension systems established by the State of Oregon, and participation by an eligible employe in a deferred compensation plan shall not cause a reduction of any retirement or pension benefits provided to him by law.

[1977 c.721 §6]

Note: See note under 243.400.

243.470 Authority of department and council with respect to deferred compensation program. (1) Subject to ORS chapter 183, the Executive Department is authorized to adopt rules necessary to properly administer the provisions of ORS 243.400 to 243.495, 295.022 and 723.184 and determine the terms and conditions of eligible employe participa-

tion and coverage.

(2) The Executive Department shall maintain accounts and records necessary and appropriate to the efficient administration of ORS 243.400 to 243.495, 295.022 and 723.184 or which may be required by agencies of the State of Oregon or the United States.

(3) The Executive Department may contract with a private corporation or institution able and qualified to provide consolidated billing services, participant enrollment services, participant accounts, data processing, recordkeeping and other related services that are necessary or appropriate to the administration of ORS 243.400 to 243.495, 295.022 and 723.184.

(4) The council may retain consultants, who are not subject to the State Merit System Law, as necessary to assist the council in the administration of ORS 243.400 to 243.495, 295.022 and 723.184.

[1977 c.721 §8]

Note: See note under 243.400.

243.480 Personnel Division rules. The Personnel Division of the Executive Department shall adopt rules for enrollment of eligible employes in the deferred compensation program, for payroll deductions from those eligible employes and for transfer of the amounts so deducted to the council. The Personnel Division shall adopt forms that the division considers necessary or appropriate for the performance of its duties under ORS 243.400 to 243.495, 295.022 and 723.184.

[1977 c.721 §9]

Note: See note under 243.400.

243.490 Deferred assets to remain assets of state; obligation of state to participating employes. (1) All assets withheld or deferred by the state under ORS 243.400 to 243.495, 295.022 and 723.184 shall remain unrestricted assets of the State of Oregon until such time as the assets are distributed to the eligible employe or his beneficiary in accordance with the terms of the agreement between the eligible employe and the state. The obligation of the state to the eligible employe shall be a contractual obligation only with no preferred or special interest in deferred funds to such eligible employe.

(2) If the state acquires any contracts or other assets in connection with the duties assumed by it under ORS 243.400 to 243.495, 295.022 and 723.184, an eligible employe or his beneficiary has no right with respect to, or

claim against, those contracts or other assets. The contracts or other assets shall not be held as collateral security for the fulfilling of obligations of the State of Oregon under a deferred compensation plan, and shall be subject to the claims of creditors of the state.

[1977 c.721 §7]

Note: See note under 243.400.

243.495 State Employees' Deferred Compensation Revolving Fund; continuing appropriation of fund to council; status of fund. (1) There is hereby established the State Employees' Deferred Compensation Revolving Fund.

(2) All moneys withheld as deferred compensation from the salaries of eligible employees under ORS 243.400 to 243.495 and all interest and income from moneys invested by the council under the deferred compensation program shall be deposited in the revolving fund.

(3) The revolving fund shall be deposited with the State Treasurer. The revolving fund is continuously appropriated to and at the disposal of the council for investment or deposit as provided in ORS 243.400 to 243.495.

(4) All moneys in the revolving fund established under this section remain the unrestricted assets of the State of Oregon and are subject to recovery by the general creditors of the State of Oregon until such time as the moneys are distributed to an eligible employee or his beneficiary in accordance with the terms of the agreement between the eligible employee and the state.

[1977 c.721 §13]

Note: See note under 243.400.

243.510 [1955 c.368 §1; repealed by 1975 c.609 §25]

243.520 [1955 c.368 §2; repealed by 1975 c.609 §25]

243.530 [1955 c.368 §3; repealed by 1975 c.609 §25]

243.540 [1955 c.368 §4 repealed by 1975 c.609 §25]

243.610 [1955 c.382 §1; repealed by 1975 c.609 §25]

243.620 [1955 c.382 §2; 1961 c.507 §1; repealed by 1975 c.609 §25]

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 board to be appro-

priate for the purpose of collective bargaining.

(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, 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.

(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) "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.

(8) "Exclusive representative" means the labor organization which, 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) "Factfinding" 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. Such agreement shall reflect the opinion of a majority of the employees in the bargaining unit.

(11) "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 employe.

(12) "Labor organization" means any organization which has as one of its purposes representing employes in their employment relations with public employers.

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

(14) "Supervisory employe" 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 employes, or having responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. However, the exercise of any function of authority enumerated in this subsection shall not necessarily require the conclusion that the individual so exercising that function is a supervisor within the meaning of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

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

(16) "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 employes. The payment shall be equivalent to regular union dues and assessments, if any, or shall be an amount agreed upon by the public employer and the exclusive representative of the employes.

(17) "Public employe" means an employe of a public employer but does not include elected officials, persons appointed to serve on boards or commissions or persons who are "confidential employes" or "supervisory employes."

(18) "Public employer" means the State of Oregon or any political subdivision therein, including cities, counties, community colleges, school districts, special districts and public and quasi-public corporations, except mass transit districts organized under ORS 267.010 to 267.390. "Public employer" includes any individual designated by the public employer to act in its interests in dealing with public employes.

(19) "Strike" means a public employe's refusal in concerted action with others to report for duty, or his or her wilful 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 employe to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

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

(21) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision.

[Formerly 243.711; 1975 c.728 §1]

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 employes;

(2) Recognition by public employers of the right of public employes to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employe 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 employes;

(3) Experience in private and public employment has also proved that protection by law of the right of employes to organize and negotiate collectively safeguards employes 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 employes;

(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 employes 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 employes 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]

243.662 Rights of public employes to join labor organizations. Public employes 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 employe group representative; protection of employe nonassociation rights; representation of certain school district employes. (1) A labor organization certified by the Employment Relations Board or recognized by the public employer is the exclusive representative of the employes 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 employes, based on bona fide religious tenets or teachings of a church or religious body of which such employe is a member. Such employe 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 employe affected and the representative of the labor organization to which such employe would otherwise be required to pay dues. The employe shall furnish written proof to his employer that this has been done.

(2) Notwithstanding the provisions of subsection (1) of this section, an individual employe or group of employes 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 employes as the exclusive representative of the employes 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.

(4) Those employes who selected representation as provided in ORS 342.460 or 342.760 shall be allowed to continue such representation until challenged by ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785. Representation by committee shall not be recognized after July 1, 1974. In addition, those employes covered under both the teacher and the classified school employe consultation statutes shall have the opportunity to challenge the incumbent organization or committee during the first 30 days after the beginning of the 1973-74 school year.

[Formerly 243.735]

(Unfair Labor Practices)

243.672 Unfair labor practices; filing complaints. (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 employes 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 employe 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 employe 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 employes. If such a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing shall prohibit the deduction of the payment-in-lieu-of-dues from the salaries or wages of such employes.

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

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

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

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

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

(i) Communicate directly or indirectly with employes in the bargaining unit other than the designated bargaining representative during the period of negotiations regarding employment relations, except for matters relating to the performance of the work involved.

(2) It is an unfair labor practice for a public employe or for a labor organization or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce any employe 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 such 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) Communicate directly or indirectly during the period of negotiations with officials other than those designated to represent the employer regarding employment relations.

(3) No provision of ORS 243.650 to 243.782 makes an unfair labor practice any act that was performed before October 5, 1973.

(4) An injured party may file a written complaint with the board not later than 180 days following the occurrence of an unfair labor practice.

[1973 c.536 §4]

243.676 Processing of unfair labor practice complaints by board. (1) Whenever a written complaint is filed alleging that any person has engaged in or is engaging in any unfair labor practice listed in subsections (1) and (2) of ORS 243.672, the board or its agent shall:

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

(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.

(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 paragraph (c) of subsection (1) 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 he cease and desist from the unfair labor practice; and

(c) Take such affirmative action, including but not limited to the reinstatement of employes 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, 341.290, 662.705, 662.715 and 662.785.

(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, it shall issue an order dismissing the complaint.

(4) As used in subsections (1) to (3) of this section, "person" includes but is not limited to individuals, labor organizations, associations and public employers.

[1973 c.536 §5]

(Representation Matters)

243.682 Representation questions; investigation and hearings on petitions; elections. If a question of representation exists, the board shall:

(1) Upon application of a public employer, public employe 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 employes involved, the history of collective bargaining, and the desires of the employes. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate.

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

(a) A labor organization alleging that 30 percent of the employes 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 employes in an appropriate bargaining unit assert that the designated exclusive representative is no longer the representative of the majority of the employes 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 employe or group of employes alleging that 30 percent of the employes assert that the designated exclusive representative is no longer the representative of the majority of employes in the unit.

(3) Except as provided in ORS 243.692, if the board finds in a hearing conducted pur-

suant to subsection (2) of this section that a question of representation exists, it shall conduct an election by secret ballot, at a time and place convenient for the employes of the jurisdiction and also within a reasonable period of time after the filing has taken place, and certify the results thereof.

[1973 c.536 §7]

243.686 Representation elections; ballot form; determining organization to be certified; consent elections. (1) The board shall place on the ballot only those labor organizations designated to be placed on the ballot by more than 10 percent of the employes 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 voters, their names, addresses and job classifications to each candidate organization on the ballot at least 20 days before the election is to occur.

(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) (a) In conducting an election involving the faculty of a college or university administered by the State Board of Higher Education, the board shall place on the same ballot provisions for voting on two issues:

(A) For or against representation; and

(B) For those labor organizations designated to be placed on the ballot by more than 10 percent of the employes in an appropriate bargaining unit.

(b) If a majority of votes in subparagraph (A) of paragraph (a) of this subsection are cast in favor of no representation, the board shall not count the votes cast for labor organizations and shall certify no representative for the unit.

(c) If a majority of votes in subparagraph (A) of paragraph (a) of this subsection are cast in favor of representation, the board shall count the votes in subparagraph (B) of paragraph (a) of this subsection for the designated

labor organizations and, if an organization receives a majority of those votes cast, shall certify that organization as the exclusive representative. If no labor organization receives a majority of the votes cast in subparagraph (B) of paragraph (a) of this subsection, a runoff election shall be conducted. The ballot in the runoff election shall contain only the two labor organizations that received the largest number of votes.

(7) 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]

243.692 Limitation on successive representation elections. (1) No election shall be conducted pursuant to subsection (3) of ORS 243.682 in any appropriate bargaining unit within which 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 employe representative. However, a contract with a term of more than two years shall be a bar for only the first two years of its term.

(2) Notwithstanding subsection (1) of this section, the 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 employes 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 two years, a petition for election may be filed any time after two years from the effective date of the contract.

[1973 c.536 §9]

(Bargaining; Mediation; Factfinding)

243.696 Conduct of bargaining by two or more certified labor organizations; individual negotiation by majority representative. (1) Notwithstanding any other provision of this chapter, whenever two or more labor organizations are certified to represent state employes in like classifications, the State of Oregon and the certified

labor organization shall meet jointly at reasonable times and bargain in good faith for the purpose of establishing the compensation plan and other economic benefits, and those employment relations matters which require legislative action or are the subject of Personnel Division rulemaking authority. Nothing in this subsection shall prevent a labor organization which has met in such joint sessions and which represents the majority of employes in a classification from entering into an agreement with the state employer governing the compensation or other benefits of such employes when, after a reasonable time, the representative of the majority of employes in the classification and the representative of the minority of employes in the classification have not agreed as to the provisions of a proposed agreement.

(2) This section shall not apply to any subject which affects only a single agency, institution or other subordinate unit of the state.

(3) Questions concerning the application of subsections (1) and (2) of this section shall be referred to the board for determination.

[1973 c.536 §10]

243.702 Renegotiation of invalid agreements. (1) In the event any provision of a collective bargaining agreement is declared to be invalid by any court of competent jurisdiction, by ruling by the board or by inability of the employer or the employes to perform to the terms of the agreement, then upon request by either party all or any part of the entire collective bargaining agreement shall be reopened for negotiation.

(2) The public employer and the exclusive representative shall provide for and make every reasonable effort to conclude negotiations, including provisions for an effective date, a reopening date, and an expiration date, at a time to coincide, as nearly as possible, with the period during which the appropriate legislative bodies may act on the operating budget of the employers.

[1973 c.536 §11]

243.706 Agreement may provide for grievance and other disputes to be resolved by binding arbitration. (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.

(2) In addition to subsection (1) of this section, a public employer may enter into a

written agreement with the exclusive representative of its employes providing that a labor dispute over conditions and terms of a contract may be resolved through binding arbitration.

[1973 c.536 §12]

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 reasonable time; factfinding; effect of subsequent arbitration decision.

(1) If after a reasonable period of negotiation over the terms of an agreement or after a reasonable time following certification or recognition of an exclusive representative no agreement has been signed, either or both of the parties shall notify the board of the status of negotiations. Such notification shall contain a statement of each issue on which the public employer and the exclusive representative have failed to achieve an agreement through negotiation; or the board on its own motion may determine that the public employer and the exclusive representative have failed to achieve an agreement on a labor dispute through negotiations. Upon receipt of such notification the board shall assign a mediator upon request of either party or upon its own motion.

(2) Where the board on the request of one of the parties or on its own motion has determined that the parties have failed to achieve agreement through negotiation, the board 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.

(b) If the labor dispute has not been settled after 15 days of mediation, the parties jointly or individually may petition the board in writing to initiate factfinding. In lieu of a petition, the board on its own motion may initiate such factfinding if it deems it appropriate and in the public interest.

(c) 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, and if such agreement is reached said arbitration shall supersede the mediation and/or factfinding procedures set forth in this section.

[1973 c.536 §13]

243.720 [1963 c.579 §1; repealed by 1973 c.536 §39]

243.722 Factfinding procedure; costs; effect of subsequent arbitration decision.

(1) In carrying out the factfinding procedures authorized in paragraph (b) of subsection (2) of ORS 243.712, the public employer and the exclusive representative may select their own factfinder.

(2) Where the parties have not selected their own factfinder within five days after notification by the board that factfinding is to be initiated, the board shall submit to the parties a list of five qualified, disinterested persons. 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 "factfinder."

(a) When both parties desire a panel of three factfinders instead of one as provided in this subsection, the board shall submit to the parties a list of seven qualified, 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 "factfinders."

(b) When the parties have not designated the factfinder and notified the board of their choice within five days after receipt of the list, the board shall appoint the factfinder 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 factfinder only from the names remaining on the list.

(3) The factfinder shall establish dates and places of hearings. Upon the request of either party or the factfinder, the board shall issue subpoenas. The factfinder 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 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. 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. 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 factfinder's findings of facts and recommendations.

(4) The parties may voluntarily agree at any time during or after factfinding 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 factfinder's findings of facts and recommendations, the board shall not publicize such findings and recommendations.

(5) The cost of factfinding shall be borne equally by the parties involved in the dispute. [1973 c.536 §14]

(Strikes)

243.726 Public employe 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 employe who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board or recognized by the employer; or is included in an appropriate bargaining unit which provides for resolution of a labor dispute by referral 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, 341.290, 662.705, 662.715 and 662.785.

(2) It shall be lawful for a public employe 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 after:

(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) The proceedings for the prevention of any prohibited practice have been exhausted;

(c) Thirty days have elapsed since the board has made public the factfinder's findings of fact and recommendations; and

(d) 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.

(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 employes 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. The manner of selection of a board of arbitration shall be as set forth in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

(4) (a) No labor organization shall declare or authorize a strike of public employes which 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 employes which 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 chapter 33, 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.

[1973 c.536 §16]

243.730 [1963 c.579 §3; 1973 c.536 §3; renumbered 243.662]

243.732 Refusal to cross picket line as prohibited strike. Public employes, 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 policemen, firemen and certain guards prohibited. It shall be unlawful for any policeman, fireman or guard at a correctional institution or mental hospital to strike or recognize a picket line of a labor organization while in the performance of official duties.

[1973 c.536 §17]

273.740 [1963 c.579 §4; repealed by 1973 c.536 §39]

(Arbitration)

243.742 Binding arbitration where strike prohibited. (1) It is the public policy of the State of Oregon that where the right of employes to strike is by law prohibited, it is requisite to the high morale of such employes 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, 341.290, 662.705, 662.715 and 662.785, providing for compulsory arbitration, shall be liberally construed.

(2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation and factfinding of a labor dispute, have not culminated in a signed agreement between the parties who are prohibited from striking, the public employer or exclusive representative of its employes shall petition the board in writing to initiate binding arbitration. In lieu of a petition, the board on its own motion may initiate such arbitration if it deems it appropriate and in the public interest.

[1973 c.536 §18]

243.745 [1969 c.671 §6; repealed by 1973 c.536 §39]

243.746 Selection of arbitrator; arbitration procedure; sharing arbitration costs. (1) In carrying out the arbitration procedures authorized in subsection (2) of ORS 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 board that arbitration is to

be initiated, the board shall submit to the parties a list of five qualified, disinterested persons. 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":

(a) When both parties desire a panel of three arbitrators instead of one as provided in this subsection, the board shall submit to the parties a list of seven qualified, 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 "arbitrators."

(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.

(3) The arbitrator shall establish dates and places of hearings. Upon the request of either party or the arbitrator, the board shall issue subpoenas. 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, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(e) The average consumer prices for goods and services commonly known as the cost of living.

(f) The overall compensation presently received by the employes, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration or otherwise between the parties, in the public service or in private service.

(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 make written findings of fact and promulgate a written opinion and order upon the issues presented to him and upon the record made before him, and shall serve such findings, opinions and order upon the parties and upon the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be just and reasonable and based upon the factors 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]

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 When arbitration decision final; enforcement; effective date of awarded compensation increases; modifying award by stipulation. A majority decision of the arbitration panel, under ORS 243.706 and 243.726, 243.736 to 243.746, if supported by competent, material and substantial evidence on the whole record, based upon the factors set forth in subsection (4) of ORS 243.746 shall be final and binding upon the parties, and may be enforced at the instance of either party or the board in the circuit court for the county in which the dispute arose. The commencement of a new fiscal year after the initiation of arbitration procedures under ORS 240.060, 240.065,

240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785, but before the arbitration decision or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel under ORS 243.746, may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. However, if a new fiscal year has commenced since the initiation of arbitration procedures under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785, the foregoing limitation shall be inapplicable and such awarded increases may be retroactive to the commencement of such fiscal year. At any time the parties, by stipulation may amend or modify an award of arbitration.

[1973 c.536 §20]

243.756 Wages, hours and employment conditions to be unchanged during arbitration. During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

[1973 c.536 §21]

243.760 [1963 c.579 §6; repealed by 1973 c.536 §39]

243.762 Alternative arbitration procedure may be provided by collective bargaining agreement. Nothing in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785 is intended to prohibit a public employer and the exclusive representative of its employes from entering 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. The 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, 341.290, 662.705, 662.715 and 662.785 may remain in full force and effect after the board has determined that no conflict exists.

[1973 c.536 §15]

243.776 Rights and responsibilities of public employes. The rights and responsibilities prescribed for state officers and employes

in ORS 292.055 shall accrue to employes of all public employers.

[1973 c.536 §32]

243.778 Student representation when bargaining unit includes higher education faculty; duties of student representatives; applicability of confidentiality requirements. (1) When an appropriate bargaining unit includes members of the faculty of an institution of higher education, the duly organized and recognized entity of student government at that institution 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 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:

(a) "Institution of higher education" means an institution under the control of the State Board of Higher Education.

(b) "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]

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, 341.290, 662.705, 662.715 and 662.785, 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]

TAX-SHELTERED ANNUITIES FOR EDUCATIONAL EMPLOYEES

243.810 Definitions for ORS 243.810 to 243.830. As used in ORS 243.810 to 243.830, unless the context requires otherwise:

(1) "Educational institution" means an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(2) "Employer" means the State Board of Higher Education, any other state agency or a school district, employing an individual who performs services for an educational institution. [1965 c.606 §1]

243.820 Agreement for payment of annuity premium. (1) In order to obtain the advantages of section 403(b) of title 26, United States Code, or any equivalent provision of federal law, an employer subject to ORS 243.810 to 243.830 may agree with an individ-

ual employed by it, who performs services for an educational institution, that:

(a) The employee's salary will be reduced monthly by a stated amount, or the employee will forego monthly a salary increase of a stated amount; and

(b) The employer will contribute monthly an amount equal to the stated amount determined under paragraph (a) of this subsection for such month, as premiums for an annuity contract for such employee. The amount contributed by the employer shall not exceed the stated amount.

(2) Notwithstanding any other provision of law, pursuant to an agreement under subsection (1) of this section, the stated amounts shall be forwarded by the employer as annuity premiums to the company or association with which it has entered into an annuity contract for the benefit of such employee. [1965 c.606 §2]

243.830 Effect of agreement on retirement contributions and benefits. An agreement executed pursuant to ORS 243.820 by an employee who is subject to ORS 237.001 to 237.315, 239.002 to 239.263 or a similar retirement program for public employes, in no way affects the contributions to be made or the benefits to be provided for such employee under ORS 237.001 to 237.315, 239.002 to 239.263 or other program. Reduction of salary or foregoing a salary increase by a stated amount under ORS 243.820 shall not be deemed a reduction in salary for the purpose of such contributions and benefits. [1965 c.606 §3]

HIGHER EDUCATION SUPPLEMENTAL RETIREMENT BENEFITS

243.910 Definitions for ORS 243.910 to 243.940. As used in ORS 243.910 to 243.940:

(1) "Board" means the State Board of Higher Education.

(2) "Employes" means the persons appointed or employed by or under the authority of the board who hold academic rank as determined by the board.

(3) "System" means the Public Employes' Retirement System established by ORS 237.005. [1965 c.297 §1]

243.920 Assisting employes to obtain supplemental benefits; employe contribution. (1) The board may, in its discretion, assist its employes who are members of the system and who elect to be so assisted by filing an election as provided in ORS 243.940, in the purchase of retirement benefits supplementing the benefits to which those employes are entitled under the system. For this purpose the board and its employes may enter into contracts with one or more life insurance or annuity companies.

(2) Each employe who elects to be assisted under subsection (1) of this section shall, as a condition to such election, either:

(a) Agree to contribute through payroll deductions toward the purchase of the supplementary retirement benefits a percentage of the annual salary of the employe in excess of \$4,800 equal to the percentage rate applicable to contributions made by the employe under the system, the amounts deducted from payrolls as employe contributions to be paid promptly by the board to the life insurance or annuity company in accordance with the terms of the applicable contract; or

(b) Agree either to a reduction in salary or to the foregoing of a salary increase in accordance with ORS 243.820, in an amount not less than the amount otherwise required to be contributed under paragraph (a) of this subsection.

[1965 c.297 §2 (1), (2); 1969 c.626 §1]

243.930 Board contributions; investment; purchase of benefits. (1) If an employe assisted under subsection (1) of ORS 243.920 has made contributions to the Public Employes' Retirement Fund during each of five calendar years as provided in ORS 237.001 to 237.315, the board shall contribute an amount toward the purchase of the supplemental retirement benefits equal to the contributions toward the purchase made by the employe on his annual salary in excess of \$4,800. The amounts of those contributions by the board shall be paid promptly by the board to the life insurance or annuity company in accordance with the terms of the applicable contract.

(2) If an employe assisted under subsection (1) of ORS 243.920 has not made contributions to the Public Employes' Retirement Fund during each of five calendar years as provided in ORS 237.001 to 237.315, the board shall contribute an amount toward the purchase of the supplemental retirement benefits equal to that which it would contribute for

current service under the system with respect to the annual salary in excess of \$4,800 of the employe if the employe contributed under the system on that part of his salary.

(3) The amounts of contributions by the board under subsection (2) of this section, at intervals designated by the Public Employes' Retirement Board, shall be paid into the Public Employes' Retirement Fund. The Public Employes' Retirement Board shall keep a separate account for those amounts and prorated earnings thereof, and for investment purposes the moneys in the separate account shall be commingled with those of the Public Employes' Retirement Fund and shall be invested in the same manner as moneys of the Public Employes' Retirement Fund are invested.

(4) When an employe, with respect to whose annual salary in excess of \$4,800 the board has contributed under subsection (2) of this section, has made contributions to the Public Employes' Retirement Fund during each of five calendar years as provided in ORS 237.001 to 237.315, an amount equal to the contributions made under subsection (2) of ORS 243.920 shall be paid promptly to the life insurance or annuity company out of the separate account referred to in subsection (3) of this section, which hereby is appropriated for that purpose, for the purchase of additional supplemental retirement benefits for the employe. If the moneys in the separate account are not sufficient for that purpose, the amount of the deficiency shall be paid promptly by the board to the life insurance or annuity company for that purchase.

(5) If an employe is separated from the service of the board before he has made contributions to the Public Employes' Retirement Fund during each of five calendar years as provided in ORS 237.001 to 237.315, the amounts of contributions by the board paid into the Public Employes' Retirement Fund under subsection (3) of this section and prorated earnings thereof shall remain in the separate account referred to in subsection (3) of this section for the purpose described in subsection (4) of this section, and the employe is not entitled to any part thereof or any benefit derived therefrom.

[1965 c.297 §2 (3), (4); 1969 c.626 §2]

243.940 Employe election; cancellation of election. (1) Employes may elect to be assisted by the board under subsection (1) of ORS 243.920, or may cancel that election, only as provided in this section.

(2) An employe who is a member of the system before the board commences to assist its employes under subsection (1) of ORS 243.920 may elect to be so assisted by the board not later than one month before that commencement.

(3) An employe who becomes a member of the system after the board commences to assist its employes under subsection (1) of ORS 243.920 may elect to be so assisted by the board not later than one month before he becomes a member of the system.

(4) An employe who is a member of the system and who has not filed an election under subsection (2) or (3) of this section, or who has filed that election but thereafter canceled it, thereafter may elect to be assisted by the board under subsection (1) of ORS

243.920 only within the first 60 days of any calendar year commencing after the board commences to assist its employes under subsection (1) of ORS 243.920.

(5) An employe who has filed an election under subsection (2), (3) or (4) of this section may cancel that election only within the first 60 days of any calendar year commencing after the board commences to assist its employes under subsection (1) of ORS 243.920.

(6) An election or cancellation thereof under this section shall be filed in writing with the board. The board shall inform the Public Employes' Retirement Board in writing of all elections or cancellations so filed.

[1965 c.297 §3]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
October 1, 1977.

Thomas G. Clifford
Legislative Counsel

