

**§966. Bargaining unit; how determined**

**1. Bargaining unit standards.** In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the executive director or the executive director's designee shall make the determination, except that anyone excepted from the definition of "public employee" under section 962 may not be included in a bargaining unit. The executive director or the executive director's designee conducting unit determination proceedings has the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relative or pertinent to the issues represented to them. In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or the executive director's designee shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards. This chapter is not intended to require the exclusion of principals, assistant principals or other supervisory employees from school system bargaining units that include teachers and nurses in supervisory positions. [RR 2023, c. 2, Pt. E, §54 (COR).]

**2. Bargaining unit compatibility.** The executive director of the board or the executive director's designee shall decide in each case whether, in order to ensure to employees the fullest freedom in exercising the rights guaranteed by this chapter and in order to ensure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining is the public employer unit or any subdivision thereof. A unit may not include both professional and nonprofessional employees unless a majority of the professional employees vote for inclusion in the unit, except that teachers may be included in a unit consisting of other certificated employees. [RR 2023, c. 2, Pt. E, §55 (COR).]

**3. Unit clarification.** Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation. [PL 1975, c. 697, §2 (NEW).]

**4. Unit merger; same bargaining agent.** If there is the same certified or currently recognized bargaining representative of public employees in multiple bargaining units with the same public employer, the public employer or certified or recognized bargaining representative may file a petition with the executive director to merge those bargaining units. Upon the finding of the executive director or the director's designee that the expanded unit would conform with the requirements set forth in this subsection, the executive director shall order an election within each bargaining unit to determine whether a majority of the employees voting in each bargaining unit wish to be within the expanded unit. The only question on the ballot in a merger election is approval or disapproval of the proposed merger. The executive director or the director's designee shall certify the bargaining agent for an expanded unit consisting of any bargaining units in which a majority of the employees voting approved the merger.

A. After an expanded unit is certified, the parties shall then bargain over modifications needed in order to provide for the wages, hours and working conditions or contract grievance arbitration for the newly included positions in any existing collective bargaining agreement or any collective bargaining agreement being negotiated.

When there is an unexpired collective bargaining agreement in the merged bargaining unit with a different expiration date from any other collective bargaining agreement in the merged bargaining unit, all contracts must be honored to their expiration dates unless mutually agreed to otherwise by the public employer and the bargaining agent. Collective bargaining agreements may be bargained on an interim basis in any merged bargaining unit so that all collective bargaining agreements expire on the same date. [PL 1993, c. 38, §1 (AMD).]

B. If a petition has been filed by a competing organization for decertification of the current bargaining agent for any of the bargaining units subject to the merger, then the decertification petition takes precedence over a petition to merge bargaining units. [PL 1989, c. 236 (NEW).]

C. A public employer or certified or recognized bargaining representative may not file more than once a year with the executive director to merge or combine bargaining units for the same bargaining unit. [PL 1989, c. 236 (NEW).]

D. The executive director or the director's designee conducting unit merger proceedings may administer oaths and may require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relating to the issues presented to the executive director or the director's designee. [PL 1989, c. 236 (NEW).]

E. A bargaining unit composed of a majority of supervisors may not merge under this subsection with any other bargaining unit. [PL 1989, c. 236 (NEW).]

F. A bargaining unit composed of teachers may not merge under this subsection with a bargaining unit of nonprofessional employees. [PL 1989, c. 236 (NEW).]

[PL 1993, c. 38, §1 (AMD).]

## SECTION HISTORY

PL 1969, c. 424, §1 (NEW). PL 1969, c. 578, §3 (AMD). PL 1971, c. 609, §4 (AMD). PL 1973, c. 458, §9 (AMD). PL 1975, c. 564, §20 (RPR). PL 1975, c. 697, §§1,2 (AMD). PL 1989, c. 236 (AMD). PL 1993, c. 38, §1 (AMD). RR 2023, c. 2, Pt. E, §§54, 55 (COR).

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