

**§979-E. Bargaining unit; how determined**

1. 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 his designee shall make the determination, except that anyone excepted from the definition of state employee under section 979-A may not be included in a bargaining unit. The executive director or his designee conducting unit determination proceedings shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, 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 his 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.  
[PL 1975, c. 697, §8 (AMD).]

2. In order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to insure a clear and identifiable community of interest among employees concerned, and to avoid excessive fragmentation among bargaining units in State Government, the executive director of the board or his designee shall decide in each case the unit appropriate for purposes of collective bargaining.  
[PL 1975, c. 612, §1 (AMD).]

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, §9 (NEW).]

**SECTION HISTORY**

PL 1973, c. 774 (NEW). PL 1975, c. 612, §1 (AMD). PL 1975, c. 697, §§8,9 (AMD).

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