

**§1286. Bargaining unit; how determined**

**1. Unit determination.** In the event of a dispute between the public employer and an employee or employees over the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees over 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 "judicial employee" under section 1282 may not be included in a bargaining unit. The executive director or the executive director's designee conducting unit determination proceedings may administer oaths and 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.

[RR 2023, c. 2, Pt. E, §127 (COR).]

**2. Criteria.** 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.

[RR 2023, c. 2, Pt. E, §128 (COR).]

**3. Determination of unit appropriateness.** In determining the unit appropriate for purposes of collective bargaining, the executive director or the executive director's designee shall seek to ensure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to ensure a clear and identifiable community of interest among employees concerned and to avoid excessive fragmentation among bargaining units.

[RR 2023, c. 2, Pt. E, §129 (COR).]

**4. Unit clarification.** When there is a certified or currently recognized bargaining representative and when 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, the public employer or any recognized or certified bargaining agent may file with the executive director 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 1983, c. 702 (NEW).]

**SECTION HISTORY**

PL 1983, c. 702 (NEW). RR 2023, c. 2, Pt. E, §§127-129 (COR).

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