

CHAPTER 4  
BARGAINING UNIT AND BARGAINING  
REPRESENTATIVE DETERMINATION

**621—4.1(20) General procedures.**

**4.1(1) *Separate or combined petitions.*** Request for bargaining unit determination and bargaining representative determination shall be by petitions which may be filed separately. Where a request has been made to a public employer to bargain collectively with a designated group of public employees and the board has not previously determined the bargaining unit, the petitions shall be filed jointly or on a combined form provided by the board.

**4.1(2) *Intervention and additional parties.*** See rule 2.4(20).

**4.1(3) *Withdrawal of petitions.*** Petitions may be withdrawn only with the consent of the board. Petitions withdrawn after the commencement of a hearing, or withdrawn after direction of an election where no hearing was conducted, may not be refiled by the withdrawing party for a period of six months following the board order permitting withdrawal.

**621—4.2(20) Unit determination.**

**4.2(1) *Content of petition.*** A petition for bargaining unit determination shall be on a form provided by the board and shall be filed by delivery to the board. The petition shall contain an identification and description of the proposed unit.

**4.2(2) *Notice to parties.*** Upon receipt of a proper petition, the board shall serve copies thereof upon other interested parties by certified mail, return receipt requested. Upon the filing of a petition for unit determination, the board shall furnish to the employer a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under the Act. Notices shall be posted by the public employer in conspicuous places customarily used for the posting of notices to employees.

**4.2(3) *Notice of hearing.*** The board or administrative law judge shall issue a notice of hearing by ordinary mail to all interested parties setting forth the time, date and place of the hearing and any other relevant information. The board or administrative law judge shall provide additional copies of the notice of hearing to the public employer, which shall be posted by the public employer in conspicuous places customarily used for the posting of information to employees.

**4.2(4) *Intervention.*** See rule 2.4(20).

**4.2(5) *Professional and nonprofessional elections.*** If, in any case, the board should determine that professional employees and nonprofessional employees could be represented in a single bargaining unit, the board shall direct and supervise an election among such employees to determine whether they wish to be represented in a single or in separate bargaining units. The election shall be by secret ballot under conditions as the board may prescribe. Absentee ballots shall be as provided for in 5.2(5). The elections may, in the discretion of the board, be conducted in whole or in part by mail ballots provided for in 5.1(3). A majority affirmative vote of those voting in each category shall be necessary to include professional and nonprofessional employees within the same bargaining unit. The rules concerning voting lists, as set forth in 5.1(2), shall apply.

**4.2(6) *Informal settlement of bargaining unit determination.*** Cases on bargaining unit determination may be informally settled in the following manner:

*a.* The petitioning party shall prepare a stipulation setting forth in detail the composition of the bargaining unit as agreed upon by all parties. The stipulation shall be signed by the authorized representative of the parties involved and shall be forwarded to the board for informal review and tentative approval. In the event the parties agree to a combined unit of professional and nonprofessional employees, the stipulation shall set forth both those job classifications included within the professional category and those job classifications included within the nonprofessional category. If the board fails to tentatively approve the stipulation, the board shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the board, the matter shall proceed to hearing. If the board tentatively approves the stipulation, the board shall prepare a public notice of proposed decision and shall deliver copies to the parties. The public employer shall post the notice of the proposed

decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in conspicuous places customarily used for the posting of information to employees. The public employer shall also have copies of the proposed decision available for distribution to the public upon request.

*b.* Notice of the proposed decision shall be on a form provided by the board which shall identify the parties; specify the terms of the proposed decision; list the names, addresses and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed; and, further, state the date by which written objection to the proposed decision must be filed with the board and the address to which such objections should be sent.

*c.* Objections to the proposed decision must be filed with the board by the date posted in the notice of proposed decision. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address and telephone number. The board shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the board deems the objections to be of substance, the parties may, with board approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the board of the amendment. If the objections cannot be informally resolved, they may be dismissed or resolved at hearing.

*d.* Final board decision on the informed settlement shall be reserved until expiration of the time for filing of objections. If no objections have been filed; or if filed objections have been resolved through amendment of the proposed decision; or if filed objections, after inquiry by the board, were found to be frivolous, the board shall endorse the proposed decision as final.

*e.* If interested parties are unable to informally settle a case on bargaining unit determination within 15 days of service of a petition, the board or administrative law judge may order any interested party to file with the board its proposed unit description.

**621—4.3(20) Bargaining representative determination (election petitions).**

**4.3(1) *Form of petition.*** A petition for bargaining representative determination (election petition) shall be on a form provided by the board and shall be filed by delivery to the board. These petitions shall be of three types:

*a.* A certification petition, filed by an employee organization requesting that through an election it be certified as the exclusive bargaining representative in an appropriate unit of public employees. The name of the employee organization which appears on the petition, or the petition as amended, shall be the name which appears on the election ballot.

*b.* A decertification petition, filed by an employee requesting an election to determine whether a certified bargaining representative does, in fact, represent a majority of the employees in the bargaining unit, and

*c.* A representation petition, filed by a public employer requesting an election to determine the bargaining representative, if any, of the employees in the bargaining unit.

**4.3(2) *Showing of interest—certification—decertification—intervention.*** Whenever a petition for certification or decertification is filed, or whenever intervention is requested for the purpose of being placed on an election ballot, the petitioner or intervenor shall submit therewith evidence that the petition or application for intervention is supported by employees in the unit in the following percentages: Thirty percent for certification or decertification and 10 percent for intervention in election proceedings. In petitions for certification or applications for intervention, such interest showing shall be dated and signed not more than one year prior to its submission; shall contain the job classification of the signatory; and shall contain a statement that the signatory is a member of the employee organization or has authorized it to bargain collectively on the signatory's behalf. In appropriate cases, an authenticated dues checkoff list may be used for this purpose. In petitions for decertification, evidence of interest shall be as provided above and shall further contain a statement that the signatory no longer wishes to be represented by the certified employee organization. When a representation petition is filed by an employer, no show of interest will be required.

**4.3(3) *Determination of showing of interest.*** The public employer shall, within seven days of receipt of notice of a certification petition, submit to the board a list of the names and job classifications of the employees in the unit requested by the petitioner. The board shall administratively determine the sufficiency of the showing of interest upon receipt of the list. This determination, including the identification and number of signers of the showing of interest, shall be confidential and not subject to review, and parties other than the party submitting the interest showing shall not be entitled to a copy or examination of the showing of interest. If the employer fails to furnish the list of employees, the board shall determine the sufficiency of the showing of interest by whatever means it deems appropriate. In election proceedings where the petitioner withdraws its petition pursuant to subrule 4.1(3), in the presence of an intervenor, the election shall not be conducted unless the intervenor produces a 30 percent showing of interest within a time period determined by the board.

**4.3(4) *Notice.*** Upon the filing of a petition for certification, decertification or representation, the board shall furnish to the employer a notice to employees, giving notice to employees that an election petition has been filed and setting forth the rights of employees under the Act. Such notices shall be posted by the public employer in conspicuous places customarily used for the posting of information to employees.

**4.3(5) *Direction of election.*** Whenever an election petition is filed which conforms to these rules and the Act and the appropriate bargaining unit has been previously determined, an election shall be directed and conducted.

**4.3(6) *Intervention.*** See 4.1(2).

#### **621—4.4(20) Concurrent (combined) petitions.**

**4.4(1) *When to file.*** A combined petition for both bargaining unit determination and bargaining representative determination shall be filed whenever a question of representation exists and the bargaining unit has not been previously determined by the board.

**4.4(2) *Content of petition.*** A combined petition for unit determination and representative determination (election) shall be on a form provided by the board and shall be filed by delivery to the board.

**4.4(3) *Notice of petition, hearing, and notice to employees.*** Upon receipt of a combined petition, notice shall be as provided in 4.2(2), 4.2(3) and 4.3(4).

**4.4(4) *Showing of interest.*** Showing of interest shall be as provided in 4.3(2) and 4.3(3). Should the board determine an appropriate unit different than that requested, any employee organization affected may request a reasonable period of time to submit additional evidence of interest sufficient to satisfy the requirements of the Act.

**4.4(5) *Scope of hearing.*** Hearings on combined petitions shall resolve all issues with regard to both bargaining unit determination and bargaining representative determination.

**4.4(6) *Intervention.*** See 4.1(2).

**4.4(7) *Professional and nonprofessional elections.*** See 4.2(5).

**621—4.5(20) Unit reconsideration.** A petition for reconsideration of a board-established bargaining unit may be filed by an employee organization, public employer, or an employee of the public employer. This petition may be filed only in combination with an election petition. The rules set forth in 4.1(20), 4.2(20), 4.3(20) and 4.4(20) shall apply, except that the board may investigate the petition and, if it determines that the petitioner has not established grounds that the previous board determination of the bargaining unit is inappropriate, the board may dismiss the petition. A petition for reconsideration of a board-established bargaining unit covering state employees may not be filed until after one year of the initial unit determination.

#### **621—4.6(20) Amendment of unit.**

**4.6(1) *Petition.*** A petition for amendment of a board determined bargaining unit may be filed by the public employer or the certified employee organization. The petition shall contain:

- a. Name and address of the public employer and the employee organization.

- b. An identification and description of the proposed amended unit.
- c. The names and addresses of any other employee organizations which claim to represent any employees affected by the proposed amendment or a statement that the petitioner has no knowledge of any other such organization.
- d. Job classifications of the employees as to whom the issue is raised and the number of employees, if any, in each classification.
- e. A specific statement of the petitioner's reasons for seeking amendment of the unit and any other relevant facts.

**4.6(2) Procedure—decision.** Insofar as applicable, the rules set forth in 4.2(20) shall apply, except that the board may conduct an investigation and issue a decision and order without hearing.

**4.6(3) Elections; when required.** A question of representation exists, and the board will conduct a representation election, if the job classification(s) sought to be amended into a bargaining unit was in existence at the time the employee organization was certified to represent the bargaining unit and the job classification(s) separately constitutes an appropriate bargaining unit.

**621—4.7(20) Unit clarification.** A petition to clarify the inclusion or exclusion of job classifications or employees in a board determined bargaining unit may be filed by the public employer, an affected public employee, or the certified employee organization. Such petition must be in the absence of a question of representation. Insofar as applicable, the procedures for such filing shall be as provided in subrules 4.6(1) and 4.6(2).

**621—4.8(20) Amendment of certification.**

**4.8(1)** A petition for the amendment of a certified employee organization's certification to reflect an act or occurrence affecting the organization, such as a name change or merger, must be accompanied by affidavit(s) establishing that:

- a. The act or occurrence which the requested amendment would reflect was authorized by and accomplished in accordance with the certified employee organization's constitution and bylaws, which provided members with adequate due process, and
- b. Substantial continuity of representation has been maintained.

**4.8(2)** When a petition for amendment of certification is filed pursuant to this rule, the board shall mail copies of a public notice of proposed decision to the parties. The public employer shall post the notice of proposed decision, for a period of not less than one calendar week, in a prominent place in the main office of the public employer accessible to the general public and in conspicuous places customarily used for the posting of information to employees. The public employer shall also have copies of the proposed decision available for distribution to the public upon request.

a. Notice of the proposed decision shall identify the parties; specify the terms of the proposed decision; list the names, addresses and telephone numbers of the parties or their authorized representatives to whom inquiries by the public should be directed, and state the date by which written objection to the proposed decision must be filed with the board and the address to which the objections should be sent.

b. Objections to the proposed decision must be filed with the board by the date posted in the notice of proposed decision. Objections shall be in writing and shall set out the specific grounds of objection. The objecting party must identify itself and provide a mailing address and telephone number. The board shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised the board may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

c. Final board decision shall be reserved until expiration of the time for filing objections. If no objections have been filed, the board may endorse the proposed decision as final.

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