

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4.1(3) *Withdrawal of petitions.* Petitions may be withdrawn only with the consent of the board.
[ARC 3278C, IAB 8/30/17, effective 8/10/17]

621—4.2(20) Unit determination.

4.2(1) *Content of petition.* A petition for bargaining unit determination shall be on an agency-prescribed form and filed with the agency. The petition shall contain an identification and description of the proposed unit.

4.2(2) *Notice to parties.* Upon the filing of a proper petition, the agency shall serve copies thereof upon other interested parties by certified mail, return receipt requested. The agency shall file a notice to employees, giving notice that the petition has been filed and setting forth the rights of employees under the Act. The employer shall promptly post the petition and notice to employees in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the public employer shall also promptly distribute the petition and notice to employees by those means.

4.2(3) *Notice of hearing.* The board or administrative law judge shall file a notice of hearing setting forth the time, date and place of the hearing and any other relevant information. The public employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the employer shall also promptly distribute the notice to employees by those means.

4.2(4) *Intervention.* See rule 621—2.4(20).

4.2(5) *Professional and nonprofessional elections.* Should the agency determine, in any case, that professional and nonprofessional employees are appropriately included in the same bargaining unit, the agency shall file an order directing that an election be conducted to determine whether the professional and nonprofessional employees wish to be represented in a single bargaining unit. The election shall be conducted in accordance with rule 621—5.8(20).

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 representatives of the parties involved and shall be filed with the agency 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 agency fails to tentatively approve the stipulation, the agency shall notify the parties and, unless the parties amend the stipulation in a manner to gain tentative approval of the agency, the matter shall proceed to hearing. If the agency tentatively approves the stipulation, the agency shall file a public notice of proposed decision. The public employer shall promptly post copies of 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 the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees

by additional means, such as by e-mail or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the notice available for distribution to the public upon request.

b. 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, further, state the date by which written objection to the proposed decision must be filed with the agency and the address to which such objections should be sent.

c. Objections to the proposed decision must be filed with the agency, electronically, by ordinary mail or by personal delivery, 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 agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. If the agency deems the objections to be of substance, the parties may, with agency approval, amend their proposed decision to conform therewith, and the objecting party shall be notified by the agency 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.

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

4.3(1) *Form of petition.* Petitions for bargaining representative determination (election petition) shall be on an agency-prescribed form and filed with the agency. 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 of 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 majority of the employees in the bargaining unit wish to continue to be represented by a certified employee organization.

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, by ordinary mail or personal delivery, evidence that the petition or application for intervention is supported by 30 percent of the employees in the bargaining unit. 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 petitions for decertification, evidence of interest shall be as provided above, except the evidence of interest shall instead 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 or decertification petition, submit to the agency a list of the names and job classifications of the employees in the unit which is the subject of the petition or, in the

case of a combined petition, the employees in the unit requested by the petitioner. The agency 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 agency shall determine the sufficiency of the showing of interest by whatever means it deems appropriate.

4.3(4) Notice. Upon the filing of a petition for certification, decertification or representation, the agency shall file a notice to employees, giving notice that an election petition has been filed and setting forth the rights of employees under the Act. The employer shall promptly post the notice in the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the employer shall also promptly distribute the notice to employees by those means.

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).
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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 an agency-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 a certification petition. Rules 621—4.1(20), 621—4.2(20), 621—4.3(20) and 621—4.4(20) shall apply. A petition for reconsideration of an agency-established bargaining unit covering state employees may not be filed for at least one year after the initial unit determination.

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621—4.6(20) Amendment of unit.

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

a. The names, addresses, telephone numbers and e-mail addresses of the public employer, the employee organization, and their respective representatives.

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, the number of employees, if any, in each classification, and whether each job classification qualifies as a public safety employee.

e. A statement identifying the current status of the unit as either a public safety or a non-public safety unit and the change, if any, to the status of the unit which would result from the requested amendment.

f. 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, rule 621—4.2(20) shall apply.

4.6(3) Elections; when required. When a question of representation exists, the agency will conduct an amendment of unit election pursuant to rule 621—5.9(20). A question of representation exists when 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.

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621—4.7(20) Unit clarification. A petition to clarify the inclusion or exclusion of job classifications or employees in an agency-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 subrule 4.6(1).

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621—4.8(20) Amendment of certification.

4.8(1) Petitions. A petition for the amendment of a certified employee organization's certification may be filed by the certified employee organization, the public employer or the agency to reflect an act or occurrence affecting the organization or the public employer, such as a name change or merger.

4.8(2) Employee organization. The employee organization must file its petition with the following:

a. An affidavit(s) that establishes:

(1) 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

(2) Substantial continuity of representation has been maintained.

b. Updated agency reports if there is a change in the employee organization's name or if there is a change to the employee organization's governing body. The reports shall include the following:

(1) An updated PERB annual report that covers the time period from the last annual report to the time of the filing of the petition.

(2) An updated PERB registration report.

(3) An updated constitution and bylaws.

c. Final agency reports for dissolved organizations resulting from a merger. The final agency report shall include a PERB annual report that covers the time period from the last annual report to the time of the merger and shall reflect the closing of the books and accounts of the dissolved employee organization.

4.8(3) Public employer. The public employer must file its petition with an affidavit, affidavits or other documents, such as board minutes, establishing a change in the name of the public employer.

4.8(4) Agency. The agency may, at any time, file a petition with a document or documents establishing the basis for the amendment.

4.8(5) Public employer posting, decisions and objection period. When a petition for amendment of certification is filed which the agency deems sufficient to fulfill the requirements of this rule, the agency shall file a public notice of its proposed decision to amend the employee organization's certification upon the non-petitioning interested parties. Upon receipt, the public employer shall promptly 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 the manner and locations customarily used for the posting of information to employees. If the public employer customarily distributes information to employees by additional means, such as by e-mail or hard copy, the employer shall also promptly distribute such notice to employees by those means. The public employer shall also have copies of the proposed decision available for distribution to the public upon request.

a. The 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 .

b. Objections to the proposed decision must be filed with the agency, electronically, by ordinary mail or by personal delivery, by the date specified in the notice. 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, telephone number and e-mail address. The agency shall promptly advise the parties of the objections and make any investigation deemed appropriate. When an objection is raised, the agency may investigate and dismiss the objection or conduct a hearing pursuant to 621—Chapter 2.

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

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