

Making A Position Confidential

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SUBJECT: Making A Position Confidential
TO: All Holders of Employee Relations Manual
FROM: Kenneth A. Walo, Director

We have received numerous inquiries from departments within the past several months concerning the correct procedure for "making a position confidential." Most often, the situation is one where a reclass is put in for an individual employee and, in addition to the reclass request, the department requests that the **new classification** be placed in the Maine Management Service (MMS) and be 'made confidential.' The request for reclassification is first reviewed by BHR and, if the reclass is approved, sent over to BOER for a determination as to appropriate bargaining unit/confidential status. BOER reviews these with an eye toward the requirements set forth in the State Employees Labor Relations Act (SELRA) and Maine Labor Relations Board (MLRB) decisions interpreting that law, and not based on MMS criteria. Some positions may meet MMS criteria but not meet the criteria for exclusion from coverage of SELRA. BOER unilaterally assigns bargaining unit status to these **newly-created classifications** , or determines that they should be "confidential" and excluded from coverage under SELRA, understanding that when the new classification is reviewed by the MLRB as part of a review of the entire department, we will need to justify our decision to exclude the classification from bargaining unit status. If the MLRB does not agree with our initial unilateral determination it will be changed at that time.

The State cannot unilaterally remove **an existing classification** from a bargaining unit and "make it confidential." There are only two ways to change the bargaining unit status of an **existing classification** : The first requires agreement between MSEA, AFSCME or MTA and the State that a position or positions in a classification be made confidential. Tim Belcher, Counsel for MSEA, has stated repeatedly that he will not agree to exclude existing classifications from bargaining units through this process, although he has on some occasions been willing to switch positions from one bargaining unit to another. The second way is to go through the unit clarification process of the MLRB. The State and MSEA have a signed agreement to review each department in the executive branch and, once a department goes through this review process, it may not go before the MLRB again seeking to make positions confidential until all executive branch departments have had their turn at the process. At this time, all departments have not been through the review process. Because of this situation, if your department has already been through this process, you may not have existing classifications considered for confidential status at this time.

If you have any questions about this issue please do not hesitate to call BOER.