

**Chapter 11: BARGAINING UNIT COMPOSITION AND REPRESENTATION MATTERS**

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**SUMMARY:** This chapter contains rules concerning petitions to create, modify, or merge bargaining units, petitions to hold bargaining agent elections, petitions to merge bargaining agents, hearings on unit composition issues, procedures for bargaining agent certification and decertification, and appeals on representation matters.

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**REPRESENTATION PETITIONS: PETITIONS TO CREATE OR MODIFY BARGAINING UNITS AND PETITIONS TO HOLD BARGAINING AGENT ELECTIONS****§ 1. Types of Representation Petitions**

Petitions are used to request Maine Labor Relations Board (Board) proceedings to create or modify a bargaining unit or to conduct a bargaining agent election. The following are the different types of representation petitions used at the Board.

1. **Unit Determination Petition.** When there is a disagreement on the categories of jobs to be included in a bargaining unit, a petition for unit determination should be filed with the Board in which the petitioner proposes an appropriate bargaining unit. A unit determination petition is also used when the goal is to sever a group of positions from an existing unit to create a new separate unit or to expand an existing unit by adding a new group of jobs.
- 1-A. **Majority sign-up petition.** A majority sign-up petition is used when a majority of the employees in a unit appropriate for bargaining have signed valid authorizations designating the employees' organization specified in the petition as their bargaining agent and no other individual or labor organization is currently certified or recognized as the bargaining agent of any of the employees in the unit. When a majority sign-up petition concerns a proposed bargaining unit, the petition will be presumed to be a concurrent petition for unit determination.
2. **Election Petition.** An election petition is necessary for a bargaining agent election, a decertification election or a combined election to decertify the incumbent and certify a new bargaining agent.
3. **Unit Clarification.** A unit clarification petition is used when either the employer or the incumbent bargaining agent wishes to modify an existing bargaining unit. A unit clarification petition is the only way to modify the composition of a unit during the term of a collective bargaining agreement, absent agreement of the parties.

4. **Unit Merger Petition.** A petition for a unit merger election is used when two bargaining units that are represented by the same bargaining agent want to combine to form a single bargaining unit.
- 4-A. **Bargaining Agent Merger Petition.** A petition for a bargaining agent merger election is used when two or more bargaining agents that are members or affiliates of the same public employee organization want to combine to form a single bargaining agent.
5. **Petition to Intervene.** A petition to intervene is appropriate when a third party wishes to become a party in a unit determination hearing, majority sign-up petition or a bargaining agent election or decertification.
6. **Petition to contest exclusionary designation.** A petition to contest exclusionary designation may be filed by an individual who has been excluded from collective bargaining because his or her position does not fit within the statute's definition of covered employee.

## § 2. Petitions Are Necessary When Parties Disagree

Petitions are necessary when the parties are unable to agree on the composition of the bargaining unit or on the designation of the bargaining agent.

## § 3. When Parties Agree, Petitions Are Not Necessary

Petitions are not necessary when the parties have agreed on the composition of the bargaining unit or when the employer has agreed to voluntarily recognize the bargaining agent.

1. **Agreement on Bargaining Unit.** When the parties agree that certain categories of jobs constitute an appropriate unit, the parties shall sign an Agreement on Appropriate Bargaining Unit form (MLRB Form 1) and file it with the Board. The unit agreed to in a properly-filed MLRB Form 1 may not be challenged by either party for a period of one year from the date of filing with the Board. The MLRB Form 1 may be modified or withdrawn by agreement of the parties at any time, as long as there is no pending question concerning representation. An MLRB Form 1 submitted to modify a unit should indicate that nature of the modification.
2. **Voluntary Recognition of Bargaining Agent.** When the parties agree that a prospective bargaining agent represents the majority of employees in an established bargaining unit, they shall file a Voluntary Recognition Form (MLRB Form 3) with the Board. The voluntary recognition may not be challenged for one year from the completion of the posting period required by the executive director under section 15 of this Chapter.
3. **Notice to Employees of Agreement or Recognition.** Once a voluntary recognition form or an agreement on appropriate bargaining unit has been properly filed, the executive director shall issue Notices to Employees of the filing. The notices must advise employees of the unit agreement or voluntary recognition, generally describe the rights of employees and explain the legal effect of the filing. The notices must be distributed or posted by the employer in accordance with section 15 of this Chapter.

#### § 4. Petitions Are Formal Requests for Board Action

Petitions are formal requests for Board action. All petitions must be in writing and must contain a declaration by the petitioner or the petitioner's representative under penalty of law that its contents are true and correct to the best of the declarant's information and belief.

#### § 5. Who May File Petitions

Generally, a petition may be filed by any public employer or any public employee, group of public employees, or public employee organization representing the employees, whether or not formally organized. The specific limitations on who may file petitions are listed below.

1. **Unit Determination Petitions.** A unit determination petition may be filed by an employer, an employee, a group of employees or any individual or employee organization acting on their behalf.
- 1-A. **Majority Sign-up Petition.** A majority sign-up petition may be filed by an employee, a group of employees or any individual or employee organization acting on their behalf.
2. **Bargaining Agent Election Petitions.** A bargaining agent election petition may be filed by an employer, an employee, or a group of employees or any individual or employee organization acting on their behalf.
3. **Decertification Election.** A decertification election petition or a petition to decertify the incumbent bargaining agent and elect a new bargaining agent may be filed by an employee, a group of employees or any individual or employee organization acting on their behalf. Neither the employer nor the incumbent bargaining agent may file a decertification petition or cause a decertification petition to be filed.
4. **Unit Clarification Petition.** A unit clarification petition may be filed only by the incumbent certified or recognized bargaining agent or the employer.
5. **Petition for Unit Merger Election.** A petition for a unit merger election may be filed only by the employer or the incumbent bargaining agent.
- 5-A. **Petition for Bargaining Agent Merger Election.** A petition for a bargaining agent merger election may be filed only by two or more certified bargaining agents that are members or affiliates of the same public employee organization.
6. **Petition to Intervene.** A petition to intervene may be filed by an organization seeking to intervene in a unit determination proceeding, a majority sign-up petition a bargaining agent election or a decertification election.
7. **Petition to Contest Designation as Excluded Employee.** Any employee who desires to contest the appropriateness of an exclusionary designation which would operate or has operated to exclude that employee from the coverage of an otherwise applicable Labor Relations Act may seek a determination on the appropriateness of that exclusion by filing a unit determination petition.

## § 6. When to File Petitions

The following time restrictions apply to the filing of petitions with the Board.

1. **Contract Bar.** If a valid collective bargaining agreement is in effect which covers any or all of the employees or positions included in the petition, the unit determination petition, election petition or decertification petition must be filed in the window period beginning 90 and ending 60 days prior to the expiration date of that contract. A petition filed more than 90 days or less than 60 days prior to the expiration of the contract will be dismissed. Representation proceedings properly initiated by filings during the window period may be processed at any time after the filing regardless of the existence of a collective bargaining agreement. If there is no collective bargaining agreement in effect or the collective bargaining agreement has expired and a successor agreement has not become effective, a unit determination petition, an election petition or a decertification petition may be filed at any time. This contract bar rule does not apply to unit clarification petitions or merger petitions.
2. **Certification Bar.** No question concerning representation may be raised within one year of a voluntary recognition, certification by majority sign-up, certification by election or attempted certification. An election in which the incumbent bargaining agent is decertified and in which no other prospective bargaining agent appeared on the ballot is not considered a certification or attempted certification within the meaning of this rule.
3. **Limitation on Unit Clarification Petitions.** A unit clarification petition may be filed only by the employer or the incumbent certified or recognized bargaining agent. A unit clarification petition is not appropriate unless the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of the bargaining unit, the parties are unable to agree on appropriate modifications and there is no question concerning representation. Unit clarification petitions may be denied if the question raised should properly be settled through the election process, or the petition requests the clarification of unit placement questions which could have been but were not raised prior to the conclusion of negotiations which resulted in an agreement containing a bargaining unit description. Unit clarification petitions must not be filed with such frequency as to constitute harassment.

## § 7. Contents of Petition

The petition must be filed with the Board in accordance with the filing requirements of Chapter 10, section 7. Petition forms are available from the Board. The petition must contain:

1. **Petitioner's Name.** The name, address and telephone number of the petitioner and any representative for correspondence other than the petitioner.
2. **Employer's Name.** The name and address of the employer of the affected employees and the name, address and phone number of a representative of the employer authorized to receive notices or requests for information, if known by the petitioner.
3. **Bargaining Unit Description.** A description of the existing collective bargaining unit or the unit claimed to be appropriate and the estimated total number of employees in that unit. The description must include the job classifications of employees included in or

excluded from the existing or proposed unit and an estimate of the number of employees in each included classification. If less than all positions in any specific job classification are proposed to be included or excluded from the unit, the description must include a listing of the positions to be included and excluded.

4. **Collective Bargaining Agreement.** A copy of the current or most recent collective bargaining agreement covering the bargaining unit, if any.
5. **Name of Employee Organizations.** The names, addresses and telephone numbers of any employee or employee organization other than the petitioner claiming to represent any of the employees in the proposed unit and a copy of each written agreement covering any employee in that unit.
6. **Name of Proposed Bargaining Agent.** The name of the prospective bargaining agent as it will appear on the ballot, if election is requested.
7. **Other facts.** Any other facts relevant to the petition.
8. **Remedy Sought.** A statement of the action or remedy sought from the Board.
9. **Employer Petition.** A petition for unit determination or bargaining agent election submitted by the employer must include a statement that one or more employees or employee organizations have presented to it a claim to be recognized as the representatives in a bargaining unit.
10. **Agreement Attempted.** A petition for unit determination submitted by either the employer, an employee or an employee organization must state that the parties are unable to agree on an appropriate bargaining unit.
11. **Showing of Interest.** A petition for unit determination, bargaining agent election, or decertification submitted by an employee or employee organization must be accompanied by showing of interest forms from 30 percent of the employees in the proposed or existing bargaining unit. If both a unit determination and a bargaining agent election are sought, the same showing of interest forms may be used for both purposes.
- 11-A. **Employee Authorization.** A petition for bargaining agent certification by majority sign-up submitted by an employee, group of employees or any individual or employee organization acting on their behalf must be accompanied by employee authorization forms from a majority of the employees in the proposed or existing bargaining unit. If both a unit determination and a majority sign-up certification are sought, the employee authorization forms may be used in place of the showing of interest forms.
12. **Unit Clarification Petition.** A unit clarification petition must include a listing of the job classifications to be added or removed from the unit and an allegation that since the formation of the unit the circumstances have changed enough to warrant modification of the unit. The petition must also include a brief description of the nature of the changed circumstances and a statement that the parties are unable to agree on modifications. Showing of interest forms are not necessary for unit clarification petitions.
13. **Petition to Contest Designation as Excluded Employee.** A petition to contest designation as an excluded employee must include items specified in subsections 1, 2, 4

and 5 above and must include a statement of the specific facts upon which the dispute regarding the exclusion is based. No showing of interest is required.

## § 8. Showing of Interest and Employee Authorization

The required showing of interest forms that accompany a petition for unit determination, bargaining agent election or decertification, and the required employee authorization forms that accompany a petition for bargaining agent certification by majority sign-up, must be submitted to the Board only. The Board will determine the adequacy of the showing of interest or employee authorization based upon the estimated number of employees in the proposed unit. The showing of interest forms and employee authorization forms must comply with the following requirements.

1. **Form of Evidence.** The showing of interest or employee authorization must consist of original separate documents, with a separate document being signed by each individual prospective unit employee who supports creation of the bargaining unit or representation, and may be in the form of effective membership or authorization cards or statements. A digital copy of these documents may be filed with the Board in lieu of the originals, provided the petitioner retain the originals and provide them to Board staff if requested. Any form of evidence filed with the Board pursuant to this rule must contain, at a minimum:
  - A. The signature of the employee;
  - B. The typewritten or printed name of the employee;
  - C. A handwritten indication of the date the employee's signature was obtained; and
  - D. For a showing of interest, a statement that the person signing desires to be represented by the petitioner for the purposes of collective bargaining.
  - E. For an employee authorization, a statement that the person signing designates the employee organization as the person's bargaining representative for the purposes of collective bargaining.

Any signature which is undated or which shows that it was obtained more than 6 months prior to the filing of the showing of interest or employee authorization with the Board is invalid for the purposes of calculating the showing of interest or employee authorization. Sample showing of interest forms and employee authorization forms are available from the Board.

2. **Acceptance of Evidence.** The executive director shall make the determination administratively on whether the showing of interest or employee authorization evidence is satisfactory in form or quantity. That determination is subject to review only by the Board, on the basis that specific portions of the showing were obtained by collusion, coercion, forgery, intimidation, fraud or misrepresentation, or are otherwise invalid.

## § 9. Review; Amendment; Action on Petition

The executive director shall review the petition for sufficiency upon filing with the Board and take action in accordance with this rule.

1. **Grounds for Dismissal.** The executive director shall dismiss a petition if it is not filed and adequate showing of interest forms or employee authorization forms are not submitted within the time periods specified by section 6 of this Chapter.
2. **Order to Show Cause.** At the executive director's discretion, the executive director may offer a party the opportunity to show cause why the petition should not be dismissed prior to dismissing the petition.
3. **Permitted Amendments.** If the petition is filed in a timely manner but is not complete, the executive director shall serve on the petitioner a notice of errors and insufficiencies in the petition and shall provide a copy of that notice to the respondent. Amendments to petitions must be made within 15 calendar days of service of the notice of insufficiencies. Permitted amendments are effective as if made on the date the petition was filed.
4. **Dismissal; Appeal.** Insufficient petitions which are not amended during the time period specified in paragraph 3 must be summarily dismissed by the executive director, subject to appeal to the Board under section 30 of this Chapter. The notice of appeal must state with specificity the grounds upon which the request for review is based. The Board shall review the appropriateness of the summary dismissal as a matter of law and may also permit evidence of a party's excusable neglect regarding failure to amend. The Board shall allow oral argument upon request and may require that the parties file briefs.
5. **Notification of Parties.** If the petition is complete, the executive director shall transmit an official copy of the petition to the respondent within 24 hours with a letter indicating whether a response is required. This transmission may be made by electronic means.

## § 10. Posting of Petition on Internet

The Board shall post a true copy of each properly filed petition on the Board's internet site. Insufficient petitions are not posted; amended petitions must be posted on the day the curative amendment is granted. The purpose of the posting is to inform the public of the filing of the petition. The posted petition may not be removed until either the election is held, the unit has been agreed upon by the parties, a unit determination hearing has been conducted or the petition has been withdrawn.

## § 11. Response to Unit Determination Petition

A written response to a unit determination petition must be filed with the Board within 15 calendar days of the date the Board provided the respondent with a copy of the petition. The response must indicate whether the respondent agrees that the unit proposed by the petitioner is appropriate and the basis of any objection. A copy of the response must be simultaneously served on the petitioner and any other respondents. If no response is filed by a respondent within the 15-day response period, or within an extension of time allowed by the executive director, the respondent will be deemed to have agreed to the appropriateness of the unit as proposed by the petitioner.

1. **Challenge to Showing of Interest.** If the employer wishes to challenge the showing of interest, the employer must include with its response an alphabetized list of all employees in the classifications specified by the petitioner for inclusion in any proposed unit. The alphabetized list must indicate the job classification of each employee. If the employer fails to provide the list, the Board will determine the adequacy of the showing of interest based upon the petitioner's estimated number of employees in the proposed unit. If the employer challenges the authenticity of the signatures, copies of the employees' signatures must be provided for comparison by the Board.
2. **Disagreement on Appropriateness of Unit.** If the respondent disagrees with any proposed unit, the response must include a detailed description of the unit which it considers to be appropriate. The respondent shall estimate the total number of employees in that unit, state the classifications of employees sought to be included in and excluded from the unit and estimate the number of employees in each classification.
3. **Exclusions Claimed.** If less than all positions in any specific classification are proposed by the respondent to be included in or excluded from the unit, the response must contain a listing and description of the positions to be included and excluded together with the statutory basis for each proposed inclusion and exclusion.

## § 12. Response to Unit Clarification Petition

A written response to a unit clarification petition must be filed with the Board within 15 calendar days of the date the Board provided the respondent with a copy of the petition. The respondent shall file with the Board a written response indicating whether it agrees with the modification proposed in the petition and the basis of any objection. A copy of the response must be simultaneously served on the petitioner. If no response is filed by a respondent within the 15-day response period, or within an extension of time allowed by the executive director, the respondent will be deemed to have agreed to the modification.

### § 12-A. Response to Majority Sign-up Petition

1. **Notice to Employees.** Once a majority sign-up petition has been properly filed, the executive director shall issue Notices to Employees of the filing. The notices must advise employees of the majority sign-up petition, generally describe the rights of employees and explain the legal effect of the filing. The notices must be distributed or posted by the employer in accordance with section 15 of this Chapter.
2. **Objections.** A party wishing to object to the filing of a majority sign-up petition must do so within 15 calendar days of the date the Board transmitted an official copy of the petition to the respondent. The permissible objections are limited to the following:
  - A. A party may object to the petition on the basis that one or more employees in the proposed or existing bargaining unit are currently represented by a bargaining agent.
  - B. A party may object to the petition on the basis that the executive director incorrectly determined that the petition was filed within the time frames



established by section 6 of this Chapter. A party making such an objection must submit evidence supporting a reversal of the initial finding.

- C. A party may object to the petition based upon a good faith doubt of the sufficiency of the employee authorization submitted. Any party making such an objection shall file with the objection an alphabetized list of the employees in the bargaining unit. The executive director will verify the contents of the list with the employer if it was submitted by a party other than the employer. If a party challenges the authenticity of the signatures, copies of the employees' signatures must be provided by the employer for comparison by the Board.
  - D. If there has not been any collective bargaining activity in the bargaining unit for 5 or more years, that is, there has been no contract in effect for over 5 years and no negotiation sessions or attempts to negotiate have occurred, the employer may respond to a majority sign-up petition by objecting to the continued appropriateness of the bargaining unit and requesting a unit determination hearing. If the bargaining unit has been inactive for less than 5 years and is unrepresented at the time the petition is filed, the employer may respond by objecting to the appropriateness of the bargaining unit only if the employer alleges that there has been a substantial change in the circumstances since the expiration of the last collective bargaining agreement that warrants modification of the unit. The employer's response must include a description of the changed circumstances affecting the continued appropriateness of the bargaining unit and a description of the unit it considers appropriate.
3. **Majority Support.** If the executive director determines that the petition is sufficient, the executive director will examine the demonstration of support. If the executive director finds that a majority of the employees in a unit appropriate for bargaining have signed employee authorization forms designating the employees' organization specified in the petition as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board or the executive director shall certify the employees' organization as the bargaining agent.
  4. **Minority Support.** If the valid employee authorization forms do not demonstrate majority support, but constitute at least a 30 percent demonstration of support, the executive director shall call an election, pursuant to this Chapter, to determine whether the organization represents a majority of the members in the bargaining unit. If the employee authorization forms represent less than a 30 percent demonstration of support, the executive director shall dismiss the petition.

### § 13. Response to Election Petition or Decertification Petition

A party wishing to object to the filing of a bargaining agent election petition or a decertification election petition must do so within 5 working days of the date the Board provided an official copy of the petition to the respondent. If no response is filed by a respondent within the 5-day response period, the election will be scheduled. The permissible objections are limited to the following:

1. **Objection to Timeliness of Filing.** A party may object to the petition on the basis that the executive director incorrectly determined that the petition was filed within the time

frames established by section 6 of this Chapter. A party making such an objection must submit evidence supporting a reversal of the initial finding, such as a copy of an applicable collective bargaining agreement.

2. **Objection to Showing of Interest.** A party may object to the petition based upon a good faith doubt of the sufficiency of the showing of interest submitted. Any party making such an objection shall file with the objection an alphabetized list of the employees in the bargaining unit. The executive director will verify the contents of the list with the employer if it was submitted by a party other than the employer. If a party challenges the authenticity of the signatures, copies of the employees' signatures must be provided by the employer for comparison by the Board.
3. **Objection to Continued Appropriateness of the Bargaining Unit.** If there has not been any collective bargaining activity in the bargaining unit for five or more years, that is, there has been no contract in effect for over 5 years and no negotiation sessions or attempts to negotiate have occurred, the employer may respond to an election petition by objecting to the continued appropriateness of the bargaining unit and requesting a unit determination hearing. If the bargaining unit has been inactive for less than 5 years and is unrepresented at the time the petition is filed, the employer may respond by objecting to the appropriateness of the bargaining unit only if the employer alleges that there has been a substantial change in the circumstances since the expiration of the last collective bargaining agreement that warrants modification of the unit. The employer's response must include a description of the changed circumstances affecting the continued appropriateness of the bargaining unit and a description of the unit it considers appropriate.

#### § 14. Notices of Hearing and Notices of Election

Once a response is received or the period for filing a response has expired, the executive director shall schedule an election or a unit hearing or other type of representation hearing, if a hearing is necessary to resolve the dispute. The executive director shall issue Notices to employees and distribute them as provided by this rule.

1. **Notice of Hearing.** When a unit determination hearing or other type of representation hearing is scheduled, the executive director shall prepare a Notice of Hearing for delivery to the parties and posting by the employer. The Notice must advise employees that a petition was filed and must include a statement of the time, place and nature of the hearing, the names of the parties as determined by the executive director, and a statement of the unit claimed to be appropriate by the petitioner, by the employer and by any intervenors. The Notice must generally describe the method by which the matter will be resolved, the rights of employees and the opportunity for employees to participate in the proceeding.
2. **Notice of Election.** When a bargaining agent election or decertification election is scheduled, the executive director shall prepare a Notice of Election for posting by the employer that contains the information required by section 44 of this Chapter. The notices must advise employees of the pendency of the bargaining agent election petition and the period within which intervention petitions may be filed, and must generally inform employees of their rights.

### § 15. Posting of Notices by Employer

Whenever the executive director prepares a notice under this Chapter, the executive director shall administratively determine whether the employer shall post the notices or forward them to all affected employees by postpaid first class mail, electronic mail or by other acceptable means. The executive director shall specify the places and periods of posting, and the manner of determining the date of its commencement. The posting period may not be less than 7 calendar days, except for extraordinary circumstances. The employer shall take reasonable precautions to ensure that posted notices are not altered, covered, defaced or removed before the completion of the posting period and shall notify the executive director of satisfaction of the posting requirements.

### § 16. Posting of Notices by the Board

Any notice prepared under this Chapter and distributed to an employer must also be posted on the Board's internet site.

### § 17. Petitions to Intervene

A petition to intervene in a previously requested unit determination proceeding, majority sign-up petition, bargaining agent election or decertification election must meet the requirements set forth in this rule.

1. **Form and Filing for Intervention.** A petition to intervene must conform to the requirements of section 7 of this Chapter, subsections 1 through 8.
2. **Showing of Interest.** The petition must be accompanied by written evidence that at least 10 percent of the employees in the unit proposed in the petition which initiated the proceedings desire to be represented by the intervention petitioner for the purposes of collective bargaining. This showing of interest evidence must be filed with the Board only and is subject to the requirements of section 8 of this Chapter.
3. **Time of Filing.** A petition to intervene in a unit determination proceeding, a majority sign-up petition, a bargaining agent election or a decertification election must be filed no later than 10 calendar days after the date of posting of the Notice of Hearing or Notice of Election required by section 14 or the Notice to Employees required by section 12-A of this Chapter.
4. **Review of Petition.** The executive director shall administratively examine the petition to intervene and its supporting documents for compliance with the pertinent statutory and rule requirements and take appropriate action, which may include granting or dismissing the petition.
5. **Notification to Parties.** If the petition is complete, the executive director shall transmit an official copy of the petition to the other parties within 24 hours with a letter indicating whether a response is required. This transmission may be made by electronic means.
6. **Posting of Petition.** The Board shall post a true copy of each granted petition to intervene on the Board's internet site in accordance with section 10 of this Chapter.

7. **Withdrawal of Initial Petition.** Withdrawal of the initial unit determination petition, majority sign-up petition or election petition does not affect the processing of a timely-filed petition for intervention where the intervenor successfully supplements its showing of interest or employee authorization so as to constitute at least a 30 percent showing. The executive director shall specify a reasonable time period for such supplementation. Originally filed cards or forms are considered current for the purposes of supplementation.

(§ 18 - § 20. *Reserved.*)

## UNIT DETERMINATION AND UNIT CLARIFICATION HEARINGS AND APPEALS

### § 21. Notice of Unit Hearing

If necessary to resolve the dispute over the composition of the bargaining unit, the executive director may hold an evidentiary hearing. When a hearing is scheduled, a Notice of Hearing must be issued and distributed in accordance with section 14 of this Chapter. The Notice of Hearing and any amendments to it must be posted on the Board's internet site and a copy mailed or electronically transmitted to any person or organization that has previously requested notice of all proceedings on the petition.

### § 22. Criteria for Appropriate Bargaining Units

In determining whether a particular position should be included in a unit or whether a proposed unit is appropriate, the hearing examiner is required to apply the specific provisions in the Act governing the employees in question.

1. **Excluded Employees.** Persons who are excluded from the definition of employee under the applicable Act, 26 M.R.S.A. §962(6), §979-A(6), §1022(11) or §1282(5), may not be included in a bargaining unit.
2. **Units Established by Statute.** Bargaining units at the University of Maine System, the Maine Maritime Academy and the Maine Community College System must conform to the units established in 26 M.R.S.A. §1024-A to the extent required by that section.
3. **Community of Interest.** In determining whether a community of interest among employees exists, the hearing examiner shall, at a minimum, consider the following factors:
  - A. Similarity in the kind of work performed;
  - B. Common supervision and determination of labor relations policy;
  - C. Similarity in the scale and manner of determining earnings;
  - D. Similarity in employment benefits, hours of work and other terms and conditions of employment;

- E. Similarity in the qualifications, skills and training of employees;
- F. Frequency of contact or interchange among the employees;
- G. Geographic proximity;
- H. History of collective bargaining;
- I. Desires of the affected employees;
- J. Extent of union organization; and
- K. The employer's organizational structure.

### **§ 23. Conduct of Hearing**

The executive director shall conduct the hearing, if a hearing is held. The executive director may order the consolidation of petitions for hearing. As hearing examiner, the executive director has the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relevant to issues raised by a unit determination petition, a unit clarification petition, or responses to the petition. The hearing examiner may also require the submission of written statements of fact, position or law prior to hearing. Any party may file a written application for subpoenas with the executive director in accordance with Chapter 12, §17. Witnesses subpoenaed by the Board are entitled to the same fees as are paid to witnesses in the Superior Court. A person served with a subpoena issued by the executive director may not refuse or neglect to appear or to testify or to produce books and papers relevant to the investigation, inquiry or hearing as commanded in that subpoena. Upon failure of any party to comply with a subpoena, the executive director may, absent constitutional, statutory or other privilege, disregard all related evidence offered by that party.

### **§ 24. Nature of Hearing**

The purpose of the hearing is to develop a full and complete factual record. Each party bears the responsibility of producing evidence to support its contentions regarding the description of an appropriate unit or the proposed clarification. All testimony offered must be taken under oath or affirmation. A hearing transcript will be prepared for the Board and made available to the parties pursuant to Chapter 10, section 9.

### **§ 25. Rules Regarding Evidence**

The strict rules of evidence observed by courts do not apply to representation hearings. The following rules regarding evidence apply:

1. **Evidence.** The hearing examiner shall admit evidence if it is the kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant or unduly repetitive evidence may be excluded.

2. **Rules of Privilege.** The hearing examiner shall observe the rules of privilege recognized by law.
3. **Written Evidence; Exception.** No sworn written evidence may be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.

## § 26. Rights of Parties

Any party to the hearing shall have the right to be represented by counsel or by other representative, to examine and cross-examine witnesses and to offer documentary and other evidence. Stipulations may be offered with respect to any issue. Parties may request the issuance of subpoenas. The rules and procedures governing the issuance of subpoenas are set forth in Chapter 12, §17. The hearing examiner shall allow oral argument upon request; and, after consultation with the parties, may require briefs to be submitted. Any brief permitted to be filed must be filed in accordance with the filing requirements of Chapter 10, section 7. A copy of any brief filed with the Board must simultaneously be served on all parties to the matter.

## § 27. *Ex Parte* Communications Prohibited

No party or other person legally interested in the outcome of a hearing may communicate *ex parte* either directly or indirectly with the hearing examiner assigned to the case, in connection with any issue of fact, law or procedure.

## § 28. Report and Order

The hearing examiner shall render a report and order within a reasonable time either dismissing the petition in whole or in part or clarifying the unit, determining requests for exclusionary designations, determining an appropriate unit and directing an election or designating the organizations to appear on the ballot. If the report and order establishes a bargaining unit different from that proposed, the hearing examiner may require the supplementation of the showing of interest forms or employee authorization forms prior to scheduling an election or certifying a bargaining agent by majority sign-up. The hearing examiner may also take other appropriate action.

## § 29. Misconduct at a Hearing; Refusal of Witness to Answer Questions

Misconduct at a unit hearing is subject to the sanctions provided in Chapter 12, section 24.

## § 30. Appeal to Board

Any party in interest aggrieved by any ruling or determination of the executive director regarding a representation matter may appeal that ruling or determination to the Board. The appeal must be made in writing and must be made within 15 calendar days of the date of the ruling or determination. Objections to the conduct of an election by a Board agent must be made in accordance with section 54 of this Chapter.

1. **Nature of Appeal.** The appellate proceeding is not a hearing *de novo*. On appeal, the Board reviews the decision of the hearing examiner on the basis of the evidence presented to the examiner. An appealing party's request for a transcript of the proceedings before a hearing examiner must be made with the notice of appeal and in accordance with Chapter 10, section 9.
2. **Memorandum of Appeal.** Within 20 calendar days of the later of either the issuance of the hearing examiner's report and order or service of a requested transcript of the underlying representation proceedings, the appealing party shall file a memorandum of appeal stating, with specificity, all exceptions that it takes to the hearing examiner's findings of fact, conclusions of law or order. The memorandum must contain citations to the specific record evidence or transcript portions which support each of the exceptions. The memorandum of appeal filed with the Board must be filed in accordance with the filing requirements of Chapter 10, section 7 and must simultaneously be served on all opposing parties.
3. **Notice of Hearing.** The hearing must be scheduled within a reasonable time from the filing of an appeal. The Board shall give at least 7 days' notice of the time and place of such hearing to all parties in interest.
4. **Rights of Parties to the Hearing.** Any party to the appeal proceeding, as determined by the Board, has the right to be represented by counsel or by other representative for the purpose of offering oral argument requested by a party or written argument required by the Board. Stipulations may be offered with respect to any issue. The burden of proving material error on a given issue rests with the party appealing that issue. The Board shall allow oral argument and may require briefs to be submitted. Briefs must be filed in accordance with the filing requirements of Chapter 10, section 7 and must be simultaneously served on all other parties.
5. **Ex Parte Communications Prohibited.** No party or other person legally interested in the outcome of the appeal may communicate *ex parte* either directly or indirectly with any Board member or assigned Board attorney in connection with any issue of fact, law or procedure.
6. **Powers of the Chair.** The Chair shall have all the powers set forth in Chapter 12, section 13 of these Rules.
7. **Decision and Order of the Board.** The Board shall issue its decision and order, in writing, pursuant to and consistent with its powers under 26 M.R.S.A. §§ 968, 979-G, 1028 or 1288. A decision and order must include findings of fact and conclusions of law and must either affirm or modify the ruling or determination of the hearing examiner and specify the reasons for that action. A copy of the decision must be mailed or electronically transmitted to all parties in interest or their representatives of record.

(§ 31 - § 40. *Reserved.*)

## **ELECTIONS OF BARGAINING AGENT AND DECERTIFICATION ELECTIONS**

### **§ 41. Election Procedures Same**

The election procedures established by this chapter apply to all representation elections conducted by the Board. Decertification election procedures and requirements are the same regardless of whether the bargaining agent facing challenge was certified by the Board or attained its status through voluntary recognition. Questions of representation raised by an election petition and a decertification petition for the same bargaining unit must be resolved in one election.

### **§ 42. Form of Elections**

The executive director shall conduct all elections by secret ballot, at times and places and in such manner as the executive director may direct. When determining the method of voting and the selection of polling sites, the executive director shall consider the total number of eligible voters, the nature and geographic location of the work stations of eligible voters, the number of eligible voters at each work station, and the expressed desire of the parties, if any. The executive director may require the parties to attend a pre-election conference or participate in a telephone conference call to give relevant information upon which to base a decision regarding the date, time, place and manner of the election or to ascertain the identity of eligible voters. The determination of all disputed questions by the executive director regarding the date, time, place and manner of the election may be appealed to the Board within 5 working days of that ruling or determination, in accordance with section 54 of this Chapter.

### **§ 43. Voter Eligibility**

The employees eligible to vote are those who were employed on the last pay date prior to the filing of the petition, who are employed on the date of the election, and who meet the applicable requirements defining covered employees set forth in 26 M.R.S.A. §§ 962(6), 979-A(6), 1022(11) or 1282(5). Employees not working on election day because of illness, vacation, leave of absence or other reason are eligible to vote if they have a reasonable expectation of continued employment.

### **§ 44. Voter List**

At least 15 calendar days prior to the election or prior to the distribution of ballots for any election to be conducted by mail, or 7 calendar days following receipt of the Notice of Election, whichever is earlier, the employer shall actually deliver to each labor organization that is a party to the proceeding and to any individual petitioner a list of the names and addresses of the employees in the unit who are employed at the time of the submission of the list and who are otherwise eligible to vote under section 43 of this Chapter. A copy of this voter list must also be simultaneously filed with the Board. In case of mail balloting, the Board may accept pre-addressed, gummed labels from the employer in satisfaction of this requirement. In large units, if the employer is not able to provide pre-addressed labels, the Board may demand the list of eligible voters up to 20 calendar days prior to the date of mail ballot distribution.



**§ 45. Notice of Election**

At least 15 calendar days prior to the election, or prior to the distribution of ballots for any election to be conducted by mail, the executive director shall prepare and distribute a Notice of Election. The Notice of Election must specify the classifications or categories of employees in the bargaining unit for which the election is to be conducted, rules concerning eligibility to vote, the choices presented to the voter, and a sample ballot. For a mail-ballot election, the notice must indicate the date the ballots will be mailed or distributed to the prospective voters, the date and time the ballots will be counted and the latest date and time by which the completed ballots must be received at the offices of the Board in order to be counted. For an on-site election, the notice must specify the dates and polling places for the election and the hours the polls will be open. The notice may contain additional information and instructions as the executive director may consider appropriate.

**§ 46. Posting of Notice of Election**

Copies of the Notice of Election and the sample ballot must be sent to all employee organizations appearing on the ballot and to the employer. A copy of the Notice of Election and the sample ballot must be posted on the Board's internet site at least 15 calendar days prior to the election. The employer shall post the Notice of Election and the sample ballot provided by the Board for at least 10 calendar days prior to the election or the distribution of mail ballots. Supplemental or amended Notices of Election and sample ballots must be posted by the employer upon receipt. The employer shall post the notices and sample ballots at all work locations where notices are customarily posted for the benefit of employees in the sought-after bargaining unit. This posting requirement may be modified by mutual written agreement of all parties filed with and approved by the executive director. The executive director may tailor the posting requirements in such a way as to provide adequate notice to employees. The employer shall take reasonable precautions to ensure that the notices and sample ballots are not altered, covered, defaced or removed before the completion of the election.

**§ 47. Ballot Format**

The executive director shall prepare and distribute official ballots. Ballots must contain the name of each representative and the choice of "no representative." The incumbent bargaining agent, if any, will automatically appear on the ballot as the first alternative. The order of appearance on the ballot of other alternatives is determined by the chronological order of filing or appearance in the records of the Board. In a runoff election, the order of appearance on the ballot is determined by the order of appearance on the ballot at the prior inconclusive election. The format of the official ballot is the same whether the election is conducted on site or by mail.

**§ 48. Conduct of Election**

The voting procedures used in a Board-conducted election must maintain the anonymity of the ballots to the greatest extent possible. The procedures established by this section must be followed unless the parties otherwise agree and obtain the consent of the executive director.

1. **Mail Ballot Election Procedure.** On the date scheduled for mailing ballots, the executive director shall mail to each eligible voter an official ballot, a "Secret Ballot

Envelope," a "Mail Ballot Envelope" and voting instructions. The instructions must tell the voter to return the ballot to the Board in the two envelopes as follows: the voted ballot must be placed in the smaller envelope marked "Secret Ballot Envelope" and having any additional instructions considered necessary by the executive director. The second and larger envelope is the "Mail Envelope" in which the "Secret Ballot Envelope" is placed and mailed or delivered to the Board. The "Mail Envelope" must be pre-addressed and postage paid and must have a space on it that identifies the voter by name and employer and contains any additional identifying marks the executive director considers necessary. Voter failure to comply with the identity requirements on the "Mail Envelope" or destruction of any identifying mark on it is sufficient cause to disqualify that ballot from being counted. At the time designated for counting the ballots, each "Mail Envelope" must be authenticated by comparison with the list of eligible voters. "Secret Ballot Envelopes" must then be removed from the "Mail Envelopes" and deposited in a suitable container along with other "Secret Ballot Envelopes" to preserve the anonymity of the ballots. The "Secret Ballot Envelopes" must then be opened, the ballots removed and counted at random, and the results recorded and witnessed as provided in subsection 3. All challenges to mail ballots which are based on or concern the identity of the voter or voter eligibility, and which are made pursuant to section 50 of this Chapter, must be raised prior to the removal of the "Secret Ballot Envelope" from the "Mail Envelope."

2. **On-Site Election Procedure.** The executive director shall designate the boundaries of the polling areas in the Notice of Election but may modify the boundaries of the polling areas at the election site. No electioneering of any kind is allowed within such area or areas. Any violation of this rule by any party or its representative or agent may be grounds for setting aside an election outcome favorable to the offending party. If it is necessary to conduct the election at more than one location, the ballots from each election location must be sequestered by the executive director until counted. These ballots must be sealed in an envelope or other appropriate container and delivered to the location where the ballots will be counted. The ballot count must occur at the time and place previously determined and announced by the executive director. If the election is conducted at only one election site, the ballots may be counted and the results certified promptly after the polls are closed.
3. **Election Observers.** Each party to the election may be represented by one observer at each polling place. A party so represented may designate that observer, and in the case of multiple sites, one of its observers, as its agent or representative for the purpose of observing the count of the ballots and for certifying, on a form to be supplied by the Board, the accuracy of that count. In an election conducted by mail balloting, the parties may each designate an election observer to be present at the counting of the mail ballots cast in the election. Except in the case of mail balloting, Employer observers must be persons without supervisory authority over the employees who are voting, and must not be eligible voters.
4. **Destruction of Ballots.** Ballots may be destroyed 6 months after the election.

#### § 49. Elections in School Units During Summer

If an election in a school bargaining unit composed primarily of persons employed during the school year only is scheduled to occur during the summer break, the election may be delayed until the reopening of the school at the discretion of the executive director.

**§ 50. Challenged Ballots**

Any prospective voter may be challenged for cause. A challenged voter must be permitted to vote in the following manner: The ballot must be sealed by the challenged voter in an envelope marked only "Secret Ballot." That "Secret Ballot Envelope" must be sealed by the challenged voter in a separate "Challenged Ballot Envelope" on which the voter is identified and the cause of challenge disclosed. The employee shall then report to the Board election agent conducting the election, and must then be allowed to put the "Challenged Ballot Envelope" into the container with the regularly cast ballots. In a mail ballot election, the Board agent shall write on the outer mail envelope the cause of the challenge and set the challenged ballot aside. If the challenged ballots are insufficient in number to affect the result of the election, no determination with respect to them may be made. If the challenged ballots are sufficient in number to affect the result of the election, the executive director shall resolve the challenge. If the executive director concludes that a hearing is necessary to resolve the challenge, the hearing procedures provided in sections 21 to 30 apply.

**§ 51. Void Ballots**

Ballots that have been mutilated, spoiled, marked with more than one choice or which do not clearly reveal the intent of the voter, as well as mail ballots that are returned without the voter's signature or other required identifying mark on the mail envelope may be determined to be "void ballots" by the executive director. A void ballot may not be counted as favoring any alternative proposition appearing on the ballot. The executive director shall liberally view ballots in favor of validity.

**§ 52. Appeal on Challenged or Voided Ballots**

The decision of the executive director concerning challenged or void ballots may be appealed to the Board within 5 working days of the announcement of the ruling or determination. The appeals procedure before the Board shall in all other respects conform to section 30 of this Chapter. The Board's decision on review of challenged or void ballots may affirm, vacate, hold in abeyance or modify any previous certification issued as a result of the election.

**§ 53. Report of Election and Certification of Representative**

Upon the conclusion of any election, the executive director shall prepare a report of the result of the election and serve this report upon the parties. When an organization receives the majority of valid votes cast, the executive director shall certify it as the bargaining agent and include this certification with the report of election. If in a decertification election the incumbent bargaining agent obtains a majority of the valid votes cast, the executive director shall recertify it as the bargaining agent, whereupon the statutory one-year bar referred to in section 6 of this Chapter applies.

**§ 54. Objections to Conduct of Board Agent**

Within 5 working days after the election results are reported by the executive director, any party who intends to object to any action of the executive director in conducting an election shall file written objection with the Board and shall serve a copy of the objection upon all other parties to the election. The objection must contain a plain statement of the grounds of the objection. The Board shall hear the matter in accordance with section 30 of this Chapter, make its determination

with respect to the objections and shall then affirm, vacate, hold in abeyance or modify the certification of the Board's designee, or of the executive director, or take such other action as it may deem appropriate. Any defect in making an objection may warrant dismissal by the Board.

#### **§ 55. Objection to Conduct of Party**

Any objection to the conduct of a party to an election must be by a prohibited practice complaint filed in accordance with 26 M.R.S.A. §§ 968, 979-H, 1029 or 1289, as appropriate, and in conformity with Chapter 12 of these Rules. Activities of a party to an election which materially compromise the secret ballot process, effectively disenfranchise eligible voters or otherwise interfere with a free and fair election are grounds for such an objection.

#### **§ 56. Requirement of Majority**

In all elections a majority of the valid votes cast determine the outcome of the election. In initial or runoff elections where the ballot affords only the alternatives of one bargaining representative and "no representative," a tie in the tally of votes cast results in no representative.

#### **§ 57. Runoff Election**

The executive director shall conduct a runoff election when an election in which the ballot provided for three or more choices ultimately results in no choice receiving a majority of the valid ballots cast. A runoff election may not be held until any objections filed have been resolved by the Board.

1. **Eligibility of Voters in Runoff Election.** Only employees who were eligible to vote in the initial election and who remain in the bargaining unit on the date of the runoff election are eligible to vote in the runoff election.
2. **Ballot Format in Runoff Election.** The ballot in the runoff election must provide for selection between the choices receiving the largest and second largest numbers of valid votes in the initial election. The order of appearance of the choices on the rerun ballot are based on the order of appearance in the initial election.

#### **§ 58. Cancelled Elections; Reruns**

If a scheduled election is cancelled at the request of the petitioner, the petitioner is barred for a period of one year from participating in an election in that or a similar unit of those employees. When an election is rescheduled or rerun due to a party's prohibited practices, that party may be ordered to pay the costs occasioned by the rescheduled or rerun election.

(§ 59 - § 60. *Reserved.*)

## MERGER OF BARGAINING UNITS

### § 61. Unit merger

Bargaining units subject to the Municipal Public Employees Labor Relations Law may be merged in accordance with 26 M.R.S.A. §966(4) and these rules. If the same certified or currently recognized bargaining agent represents multiple bargaining units with the same public employer, either the employer or the bargaining agent may file a request to merge those bargaining units with the executive director.

1. **When Parties Agree on Merger.** When the certified or recognized bargaining agent and the public employer agree to merge two or more bargaining units into one, they shall sign an agreement to that effect and submit it to the Board. The standard Agreement on Appropriate Unit Form may be used for this purpose, indicating that the purpose of the agreement is to merge the units. The Board will prepare a Notice to Employees describing the agreement to merge units and giving the affected employees a reasonable period in which to object. If an objection is received by the Board from an employee in any of the affected units, a merger election will be conducted in accordance with subsection 2.
2. **Unit Merger Election Requested.** When a petition for a unit merger election is filed or when an employee objects to a merger agreed upon by the parties, the executive director shall order a unit merger election. The election will determine whether a majority of the employees voting in each bargaining unit wish to be within the expanded unit. The only question on the ballot in a unit merger election is approval or disapproval of the proposed merger. The executive director shall certify the bargaining agent for an expanded unit consisting of any bargaining units in which a majority of the employees voting approved the merger. The election procedures must otherwise conform with sections 41 to 58.
3. **Decertification Elections Take Precedence.** If a petition has been filed by a competing organization for decertification of the current bargaining agent for any of the bargaining units subject to the merger, then the decertification petition takes precedence over a petition to merge bargaining units.
4. **Frequency.** Unsuccessful petitioners may not renew their merger requests within one year of the date of the filing of an unsuccessful petition.
5. **Supervisors and Teachers.** A bargaining unit composed of a majority of supervisors may not merge under this rule with any other unit nor may a bargaining unit of teachers merge with a bargaining unit of nonprofessional employees. In such cases, a unit determination petition is necessary.

## MERGER OF BARGAINING AGENTS

### § 62. Bargaining agent merger

Bargaining units subject to the Municipal Public Employees Labor Relations Law may be merged in accordance with 26 M.R.S.A. §967(3) and these rules. Two or more bargaining agents who are

certified by the executive director and who are members or affiliates of the same public employee organization may petition to merge.

1. **Bargaining agent merger requested.** When a petition for a bargaining agent merger election is filed, the executive director shall order a bargaining agent merger election. The election will determine whether a majority of the employees represented by the petitioning bargaining agents are in favor of merging the bargaining agents. The only question on the ballot in a bargaining unit merger election is the approval or disapproval of the proposed merger of the bargaining agents. On an affirmative vote of the majority of the employees represented by each petitioning bargaining agent, the executive director shall certify the merged bargaining agent. The election procedures must otherwise conform with sections 41 to 58.
2. **Contract.** After a merger is ordered, the parties to a contract in which one party to that contract is one of the merged bargaining agents shall honor the terms of the contract unless the public employer and the merged bargaining agent agree to different terms.

(§ 63 - § 70. *Reserved.*)

## UPDATING RECORDS AT BOARD OFFICES

### § 71. Notification of Contract Expiration

When a party notifies the executive director of the pending expiration of a contract as required by the applicable statute, that notice will be used as evidence of continued activity of the unit for purposes of section 82 of this Chapter.

### § 72. Copies of Collective Bargaining Agreements

If a valid collective bargaining agreement is supplied to the Board, it will be used to update the Board's records to reflect changes in the name of the previously certified or recognized bargaining agent, in the composition of the bargaining unit, and as evidence of continued activity of the unit for the purposes of section 82 of this Chapter. No notice to employees of the changes will be posted. As space limitations require, the Board may elect to retain only those portions of the collective bargaining agreement it considers necessary.

(§ 73 - § 80. *Reserved.*)

## REVOCATION OF BARGAINING AGENT CERTIFICATION

### § 81. Disclaimer of Interest

A certified or recognized bargaining agent may disclaim interest in representing a bargaining unit in accordance with this rule.

1. **Contents of Request.** A certified or recognized bargaining agent wishing to disclaim interest in representing a bargaining unit must file a written request with the executive director. The request must include an assertion by the bargaining agent that no collective bargaining agreement covering bargaining unit members is in effect and that the bargaining agent has no outstanding financial obligations related to election costs, the grievance process, including arbitration, or impasse resolution proceedings.
2. **Posting of Disclaimer Notice.** If there is no collective bargaining agreement in effect and the bargaining agent asserts that there are no outstanding financial obligations, the executive director will prepare a Notice of Disclaimer for posting by the employer or for distribution directly to the affected employees. If there is a collective bargaining agreement in effect, the Notice of Disclaimer will not be distributed until the contract has expired. The Board may require the disclaiming union to provide the Board with the mailing addresses of all unit members to enable the Board to distribute notices of the petition for disclaimer.
3. **Objection to Disclaimer.** The petition to disclaim must be denied upon the objection of any interested party. An objection must be received within 15 calendar days of the issuance of the Notice.
4. **Consideration of Objection.** After receipt of an objection to a petition to disclaim, the executive director shall consider the nature of the objection and take appropriate action. This action may include formal or informal mechanisms to resolve the dispute, granting or denying the petition to disclaim or scheduling a decertification election. The decision of the executive director may be appealed to the Board in accordance with section 30 of this Chapter.
5. **Effect of Disclaimer.** Upon approval of a request to disclaim interest, the executive director shall revoke certification or recognition. The petitioner is not allowed to file, or intervene in, a petition to represent employees in the disclaimed bargaining unit for a one-year period following the date of the order revoking certification or recognition.

### § 82. Revocation of Certification in Inactive Unit

The executive director may revoke the certification of a bargaining agent that has been inactive for 5 or more years if there is no evidence of any activity in the Board's records and no evidence of activity is received by the Board following the notice requirements of this rule.

1. **Inactive Bargaining Unit.** If the Board's records indicate that a certified or recognized bargaining agent has been inactive for a period of five or more years, the Board may solicit information from the parties on the continued existence of a collective bargaining relationship in that bargaining unit. The Board may request a copy of any document

demonstrating that a collective bargaining relationship exists or existed during the previous 5 years or that the bargaining agent submitted a written request to meet and negotiate during that same time period. If any evidence is presented that indicates that the bargaining agent has been active during the previous 5 years, the Board may not revoke certification under this section. Evidence should be liberally viewed in favor of continued certification.

2. **Posting of Notice.** If the Board is not able to find any evidence that the bargaining agent has been active in the past 5 years by contacting the employer, the bargaining agent of record or any likely successors, the Board must issue a Notice to Employees concerning the potential revocation of bargaining agent certification before any action may be taken. The notice must state the name of the certified or recognized bargaining agent, the nature and date of the most recent collective bargaining activity known to the Board and the time period during which objections to the Board revocation of certification must be filed. This posting period must be at least 15 calendar days and, for school units, may not include school vacation periods.
3. **Objections.** Any party objecting to the Board revocation of certification must contact the Board within the time period specified in the notice and provide evidence in support of its position within a reasonable time thereafter. The collective bargaining activity serving as the basis of the objection must have occurred prior to the date of the Notice to Employees issued by the Board.
4. **Notice to Other Parties.** Any Notice of Revocation of Certification distributed will also be sent to any person or organization that has previously notified the Board of its desire to receive such notices.

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STATUTORY AUTHORITY:

26 M.R.S. §968 sub-§3

EFFECTIVE DATE:

January 1, 2001 – filing 2000-525

NON-SUBSTANTIVE CORRECTION:

February 20, 2001 - adjusted title of § 9

AMENDED:

April 1, 2020 – filing 2020-035

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