Hawai‘i Labor Relations Board
Ka Papa Limahana O Hawai‘i

Report to the Hawai‘i State Legislature
Pursuant to House Concurrent Resolution No. 61, House Draft 1
Regular Session of 2023

December 2023

Acknowledgements

The Hawai‘i Labor Relations Board (HLRB) gratefully acknowledges Edgar Ruiz, Director of The Council of State Governments West (CSG West) and the staff at CSG West, for providing the HLRB with a wealth of information on state public sector collective bargaining; Leslie Scott Parker, Executive Director, National Association of State Personnel Executives (NASPE), for contributing to the information provided to HLRB by CSG West; and Carole Tanaka, Research Librarian, Hawai‘i Legislative Reference Bureau Library, Annie Killelea, Archivist, Hawai‘i State Archives, and the diligent staff at the Hawai‘i State Archives, for their assistance in locating historical documents referenced in this report. The HLRB would also like to recognize the legislatures and various government departments, agencies, boards, and commissions of all 50 states for their commitment to providing online access to statutes and other government records to the public.

Table of Contents

1. Introduction

On April 24, 2023, the House of Representatives of the 32nd Legislature of the State of Hawai‘i, Regular Session of 2023, with the Senate concurring, adopted House Concurrent Resolution No. 61, House Draft 1 (H.C.R. 61, H.D. 1), requesting the Hawai‘i Labor Relations Board (HLRB) to establish objective standards and criteria for splitting off a group of state workers into a new bargaining unit to assist the Legislature in determining the appropriateness of requests that come before it.[1]

As requested, this report presents the HLRB's findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2024. The HLRB respectfully declines to establish objective standards and criteria for splitting off a group of state workers into a new bargaining unit or to include any proposed legislation for the reasons explained below.

2. The Hawai‘i State Legislature Reserved for Itself the Authority to Determine and Designate Appropriate Bargaining Units

2.1 Background

In 1968, the Hawai‘i Constitution was amended to extend to public employees in the State of Hawai‘i the right to organize for the purpose of collective bargaining. Specifically, Article XII (Organization; Collective Bargaining), section 2 (Public Employees) of the Hawai‘i Constitution was amended to provide that:

> Persons in public employment shall have the right to organize for the purpose of collective bargaining *as prescribed by law* [emphasis added].[2]

The proviso "as prescribed by law" reflected the intent of the delegates to the 1968 Hawai‘i Constitutional Convention to entrust the Hawai‘i State Legislature (Legislature) with the discretion to determine the scope and extent of collective bargaining rights for public employees.[3]

---

[1] H. Con. Res. 61, Haw. 32nd Leg. (2023), https://www.capitol.hawaii.gov/sessions/session2023/bills/HCR61_HD1_.PDF (last visited on December 18, 2023).

[2] In 1978, the constitutional provision pertaining to collective bargaining in public employment was renumbered and amended. Presently, Article XIII (Organization; Collective Bargaining), section 2 (Public Employees) of the Hawai‘i Constitution, provides that:

> Persons in public employment shall have the right to organize for the purpose of collective bargaining *as provided by law* [emphasis added].

[3] See, Proceedings of the Constitutional Convention of Hawaii of 1968, Vol. 1, pp. 104-05 (Dept. Com. No. 2) and pp. 206-07 (S.C. Rep. No. 4).

2.2 Act 171, Session Laws of Hawai‘i 1970

To implement the constitutional mandate of then Article XII, section 2, the Legislature, in 1970, passed Senate Bill No. 1696-70, Senate Draft 1, House Draft 3, Conference Draft 1 (S.B. 1696-70, S.D. 1, H.D. 3, C.D. 1), Relating to Collective Bargaining in Public Employment, which was signed into law by Governor John A. Burns and became Act 171, Session Laws of Hawai‘i (SLH) 1970.

During the process of enacting S.B. 1696-70, S.D. 1, H.D. 3, C.D. 1, the Legislature made clear its intent, in the public interest, to designate statutory bargaining units for public employees and to make those units applicable statewide. The Senate Committee on Public Employment explained:

> (1) **Appropriate bargaining units.** Your Committee realizes that the determination of appropriate bargaining units by the public employment relations board, according to criteria such as community of interest,[4] history of collective bargaining, etc., is the prevailing practice throughout the states which have enacted collective bargaining laws. A review of the effectiveness of such criteria and the inherent problems and disputes arising out of such determination, shows that the creation of many bargaining units as there are ways to interpret such criteria results and [sic] unnecessary fragmentation makes administration efficiency impossible. For the purposes of maintaining the merit principles and the principle of equal pay for equal work, avoiding multiplicity of bargaining units which would be administratively unmanageable, and minimizing jurisdictional disputes, your Committee has, in the public interest, designated those units which shall be appropriate for the purpose of collective bargaining. The designated units are occupational categories based on existing compensation plans, the nature of work involved, and the essentiality of services provided to the public. All designated units are applicable statewide to maintain uniformity among the several counties and to discourage "leap-frogging" tactics among employee organizations which may otherwise be representing employees within the same occupational category in different counties.[5]

[4] An overwhelming majority of states with statutory standards and criteria for determining appropriate bargaining units list "community of interest" as an essential criterion. See Section 3 of this report.

[5] S. Journal, 5th Leg., S.C. Rep. 715-70 (Haw. 1970).

The Committee on Conference incorporated this statement of intent into its report recommending final passage of the bill, as amended.[6] It is important to highlight that the Legislature did make several important findings or determinations.

First, the Legislature recognized the prevailing practice of most states to empower an agency to determine appropriate bargaining units according to criteria such as community of interest, history of collective bargaining, etc. but rejected this common practice finding it was ineffective, resulted in fragmentation, and made administration efficiency impossible. Second, the Legislature, for purposes of maintaining the merit principles and principle of equal pay for equal work, and to avoid multiplicity of bargaining units which would be administratively unmanageable, and to minimize jurisdictional disputes, retained to itself the discretion to designate bargaining units that would be appropriate for collective bargaining. Third, the Legislature determined that the bargaining units would be comprised of occupational categories based on existing compensation plans, that nature of work involved, and essentiality of services provided to the public. And fourth, the Legislature determined that the designated bargaining units would be applicable statewide to maintain uniformity among the several counties and to discourage "leap-frogging" tactics among employee organizations representing employees in different counties.

Clearly, the Legislature examined the prevailing practices of the day but rejected delegating that authority to an agency such as the Hawai‘i Public Employment Relations Board, predecessor to the Hawai‘i Labor Relations Board, and instead retained to itself the sole authority to: 1) set the standards and criteria; and 2) statutorily determine the appropriate bargaining units.

2.3 Chapter 89, Hawai‘i Revised Statutes

Act 171, SLH 1970, was codified as Chapter 89, Hawai‘i Revised Statutes (HRS), Collective Bargaining in Public Employment. At the time, the Legislature, in its discretion, designated 13 statutory public employee bargaining units. Since then, the Legislature has established two more bargaining units,[7] resulting in 15 public employee bargaining units today. For more than 50 years since the enactment of Chapter 89, HRS, the Legislature's prerogative to create new bargaining units, or to modify existing ones, has remained unchallenged.

---

[6] H. Journal, 5th Leg., C.C. Rep. 24 (Haw. 1970).

[7] Act 137, SLH 2013 (S.B. 883, S.D. 2, H.D. 2) created bargaining unit 14, to be comprised of state law enforcement officers and state and county ocean safety and water safety officers. Prior to the enactment of S.B. 883, S.D. 2, H.D. 2 (2013), state law enforcement officers and state and county ocean safety and water safety officers were included in bargaining unit 03 (white collar nonsupervisory workers) and bargaining unit 04 (white collar supervisors).

Act 31, SLH 2020 (H.B. 1698, H.D. 1, S.D.1) established bargaining unit 15, to create a separate bargaining unit for state and county ocean safety and water safety officers, who were initially included in bargaining unit 03 (white collar nonsupervisory workers) and bargaining unit 04 (white collar supervisors), then moved to bargaining unit 14.

Presently, subsection 89-6(a), HRS, recognizes 15 public employee bargaining units, qualified by subsections (b) and (c), as follows:

> **§89-6 Appropriate bargaining units.** (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:
>
> (1) Nonsupervisory employees in blue collar positions;
> (2) Supervisory employees in blue collar positions;
> (3) Nonsupervisory employees in white collar positions;
> (4) Supervisory employees in white collar positions;
> (5) Teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;[8]
> (6) Educational officers and other personnel of the department of education under the same pay schedule;
> (7) Faculty of the University of Hawaii and the community college system;
> (8) Personnel of the University of Hawaii and the community college system, other than faculty;
> (9) Registered professional nurses;
> (10) Institutional, health, and correctional workers;[9]
> (11) Firefighters;
> (12) Police officers;
> (13) Professional and scientific employees, who cannot be included in any of the other bargaining units;[10]
> (14) State law enforcement officers; and
> (15) State and county ocean safety and water safety officers.
>
> (b) Because of the nature of work involved and the essentiality of certain occupations that require specialized training,

[8] Act 394, SLH 1988 added part-time employees working less than twenty hours a week who are equal to one-half a full-time equivalent for inclusion in unit (5).

[9] Act 399, SLH 1988 redescribed unit (10) from nonprofessional hospital and institutional workers to institutional, health and correctional workers.

[10] Act 253, SLH 2000 redescribed unit (13) from professional and scientific employees, other than registered professional nurses to professional and scientific employees, who cannot be included in any other bargaining units.

> supervisory employees who are eligible for inclusion in units (9) through (15) shall be included in units (9) through (15), respectively, instead of unit (2) or (4).
>
> (c) The classification systems of each jurisdiction shall be the bases for differentiating blue collar from white collar employees, professional from institutional, health and correctional workers, supervisory from nonsupervisory employees, teachers from educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination. The nature of the work, including whether a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall be considered also.

Notably, subsection 89-6(a), as originally enacted, designated units (9) through (13) as optional appropriate bargaining units that allowed employees in any of the optional units, including supervisory employees by mutual agreement among supervisory and nonsupervisory employees within the unit, to vote for separate units or for inclusion in their respective units (1) through (4).[11] Today, that original provision of the law has evolved into subsection 89-6(b), HRS, which mandates that supervisory employees who are eligible for inclusion in units (9) through (15) shall be included in units (9) through (15) instead of unit (2) or (4).

Similarly, subsection 89-6(c), HRS, renumbered today as subsection 89-6(f), HRS, initially identified seven classes of individuals in public employment who are excluded from collective bargaining. As originally enacted by the Legislature in 1970, subsection 89-6(c), HRS, provided that:

> No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, part time employee working less than twenty hours per week, temporary employee of three months duration or less, or any commissioned and enlisted personnel of the Hawaii national guard, shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.[12]

[11] See, Act 171, SLH 1970.

[12] Id.

Over the ensuing years, the Legislature expanded what is today known as subsection 89-6(f), HRS, to include eighteen classes of individuals in public employment who are excluded from collective bargaining,[13] as follows:

> **§89-6 Appropriate bargaining units.**
>
> * * *
>
> (f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:
>
> (1) Elected or appointed official;
>
> (2) Member of any board or commission; provided that nothing in this paragraph shall prohibit a member of a collective bargaining unit from serving on a governing board of a charter school, on the state public charter school commission, or as a charter school authorizer established under chapter 302D;
>
> (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a

[13] Act 36, SLH 1973 added employee of the executive office of the governor, household employee at Washington Place, employee of the executive office of the mayor, staff of the legislative branch of the State, city and county of Honolulu and counties of Hawaii, Maui and Kauai, employee of the executive office of the lieutenant governor, inmate, kokua, patient, ward or student of a state institution, and student help to the list of individuals excluded from collective bargaining.

Act 13, SLH 1976 added staff of the legislative branch of the city and county of Honolulu and counties of Hawaii, Maui and Kauai except employees of the clerks' offices of said city and county and counties to the list of individuals excluded from collective bargaining.

Act 184, SLH 1987 added legal counsel of a public employer to the list of individuals excluded from collective bargaining.

Act 311, SLH 1987 added secretary to top-level managerial and administrative personnel to the list of individuals excluded from collective bargaining.

Act 253, SLH 2000 created an enumerated list of individuals excluded from collective bargaining and added staff of the HLRB to the list.

Act 65, SLH 2002 added employee of the Hawaii national guard youth challenge academy to the list of individuals excluded from collective bargaining.

Act 202, SLH 2005 added employee of the office of elections to the list of individuals excluded from collective bargaining.

Act 298, SLH 2006, Act 115, SLH 2007, and Act 130, SLH 2012 qualified exclusion (2) member of any board or commission by adding and subsequently amending a proviso that allows a member of a collective bargaining unit to serve on a charter school board or the state public charter school commission, or as a charter school authorizer established under chapter 302D.

department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;

(4) Secretary to top-level managerial and administrative personnel under paragraph (3);

(5) Individual concerned with confidential matters affecting employee-employer relations;

(6) Part-time employee working less than twenty hours per week, except part-time employees included in unit (5);

(7) Temporary employee of three months' duration or less;

(8) Employee of the executive office of the governor or a household employee at Washington Place;

(9) Employee of the executive office of the lieutenant governor;

(10) Employee of the executive office of the mayor;

(11) Staff of the legislative branch of the State;

(12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;

(13) Any commissioned and enlisted personnel of the Hawaii national guard;

(14) Inmate, kokua, patient, ward, or student of a state institution;

(15) Student help;

(16) Staff of the Hawaii labor relations board;

(17) Employees of the Hawaii national guard youth challenge academy; or

(18) Employees of the office of elections.

Ultimately, the discretion to designate appropriate bargaining units and to determine whether certain individuals should be included or excluded from collective bargaining is in the hands of the Legislature. If the Legislature continues to follow the intent expressed by the original drafters of Chapter 89, HRS, it should remain "mindful of maintaining the merit principles and the principle of equal pay for equal work, avoiding multiplicity of bargaining units which would be administratively unmanageable, and minimizing jurisdictional disputes" when designating, in the public interest, appropriate bargaining units by "occupational categories based on existing compensation plans, the nature of work involved, and the essentiality of services provided to the public."[14]

[14] See, S. Journal, 5th Leg., S.C. Rep. 715-70 (Haw. 1970), *supra*.

3. States With Standards and Criteria for Determining Appropriate Bargaining Units for State or Other Public Employees

In deference to the Legislature's discretion to determine the scope and extent of collective bargaining rights for public employees, the HLRB declines to impose objective standards and criteria for splitting off a group of state workers into a new bargaining unit. Instead, the HLRB presents, for the Legislature's consideration, standards and criteria used in other states to determine appropriate bargaining units for state or other public employees.

3.1 Alaska

Under the Alaska Public Employment Relations Act (AS 23.40.070 to 23.40.260), the Alaska Labor Relations Agency determines an appropriate bargaining unit, as follows:

> **Sec. 23.40.090. Collective bargaining unit.**
> The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 - 23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

Alaska Stat. § 23.40.090 (2022).

3.2 California

California state government employees are covered by the Ralph C. Dills Act (Government Code sections 3512-3524). The California Public Employment Relations Board determines appropriate bargaining units in accordance with section 3521 of the Ralph C. Dills Act, which provides the following:

> **3521.** (a) In determining an appropriate unit, the board shall be governed by the criteria in subdivision (b). However, the board shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding is seeking or agrees to an election in such a unit.
>
> (b) In determining an appropriate unit, the board shall take into consideration all of the following criteria:
>
> (1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established

common goals; the history of employee representation in state government and in similar employment; the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements; and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the state government, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of state government and its employees to serve the public.

(4) The number of employees and classifications in a proposed unit and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees of the employer.

(6) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a separate unit of representation based upon occupation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers.

(c) There shall be a presumption that professional employees and nonprofessional employees should not be included in the same unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the citeria [sic] set forth in subdivision (b) establishes.

Cal. Gov. Code § 3521.

3.3 Colorado

Colorado recently enacted the Collective Bargaining by County Employees Act (C.R.S. § 8-3.3-101 et seq.), which provides for the Colorado Director of the Division of Labor Standards and Statistics, Department of Labor and Employment, to determine the appropriate bargaining unit for certain county employees under C.R.S. § 8-3.3-110, as follows:

> **8-3.3-110. Determination of appropriate bargaining unit.**
> (1) The director shall, upon receipt of a petition for a representation election, designate the appropriate bargaining unit for collective bargaining in accordance with this section. The designation must be determined by:
>
> (a) Consent of the parties; or
>
> (b) If there is not agreement between the parties, an administrative determination of the director.
>
> (2) In determining the appropriateness of a bargaining unit, the director shall consider:
>
> (a) The desires of the public employees;
>
> (b) The similarity of duties, skills, and working conditions of the public employees involved;
>
> (c) The wages, hours, and other working conditions of the public employees;
>
> (d) The administrative structure and size of the public employer;
>
> (e) The history of collective bargaining with that public employer, if any, and with similar public employers; and
>
> (f) Other factors that are normally or traditionally taken into consideration in determining the appropriateness of bargaining units in the public sector.

C.R.S. § 8-3.3-110 (2023).

3.4 Connecticut

In Connecticut, the Connecticut State Board of Labor Relations determines the appropriateness of a public employee bargaining unit under subsection 5-275(b) of Chapter 68, Collective Bargaining for State Employees, as follows:

> **Sec. 5-275. Employee organization designated as exclusive representative. Bargaining unit determination. Petitions seeking clarification or modification of existing units.**
>
> * * *

> (b) The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall: (1) Take into consideration, but shall not limit consideration to, the following: (A) Public employees must have an identifiable community of interest, and (B) the effects of overfragmentation; (2) not decide that any unit is appropriate if (A) such unit includes both professional and nonprofessional employees, unless a majority of such professional employees vote for inclusion in such unit, or (B) such unit includes both Department of Correction employees at or above the level of lieutenant and Department of Correction employees below the level of lieutenant; (3) take into consideration that when the state is the employer, it will be bargaining on a state-wide basis unless issues involve working conditions peculiar to a given governmental employment locale; (4) permit the faculties of (A) The University of Connecticut, (B) the Connecticut State University System, and (C) the Technical Education and Career System to each comprise a separate unit, which in each case shall have the right to bargain collectively with their respective boards of trustees or their designated representatives; and (5) permit the community college faculty and the technical college faculty as they existed prior to July 1, 1992, to continue to comprise separate units, which in each case shall have the right to bargain collectively with its board of trustees or its designated representative. Nonfaculty professional staff of the above institutions may by mutual agreement be included in such bargaining units, or they may form a separate bargaining unit of their own. This section shall not be deemed to prohibit multiunit bargaining.

Conn. Gen Stat § 5-275 (2023).

3.5 Delaware

Section 1310(d) of the Delaware Public Employment Relations Act empowers the Delaware Public Employment Relations Board to determine appropriate bargaining units, as follows:

§ 1310. Bargaining unit determination.

* * *

(d) In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate. The Board or its designee shall exclude supervisory employees from all appropriate units created subsequent to September 23, 1994.

19 Del. Code § 1310 (2023).

3.6 Florida

In determining an appropriate public employee bargaining unit, the Florida Public Employees Relations Commission is guided by sections 447.307(4) and 447.3075 of Chapter 477, Labor Organizations, Part II, Public Employees (ss.447.201-447.609) of the Florida Statutes:

447.307 Certification of employee organization. –

* * *

(4) In defining a proposed bargaining unit, the commission shall take into consideration:

(a) The principles of efficient administration of government.

(b) The number of employee organizations with which the employer might have to negotiate.

(c) The compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public.

(d) The power of the officials of government at the level of the unit to agree, or make effective recommendations to another administrative authority or to a legislative body, with respect to matters of employment upon which the employee desires to negotiate.

(e) The organizational structure of the public employer.

(f) Community of interest among the employees to be included in the unit, considering:

1. The manner in which wages and other terms of employment are determined.
2. The method by which jobs and salary classifications are determined.
3. The interdependence of jobs and interchange of employees.
4. The desires of the employees.
5. The history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship.

(g) The statutory authority of the public employer to administer a classification and pay plan.

(h) Such other factors and policies as the commission may deem appropriate.

However, no unit shall be established or approved for purposes of collective bargaining which includes both professional and nonprofessional employees unless a majority of each group votes for inclusion in such unit.

Fla. Stat. § 447-307(4) (2023).

447.3075 Law enforcement bargaining units; separate units required; establishment. –
Notwithstanding any other provision of law, administrative rule, or administrative agency decision to the contrary, any state law enforcement agency that has 1,200 or more officers shall be in a bargaining unit that is separate from officers in other state law enforcement agencies. If the application of this section requires that a new state law enforcement bargaining unit be created, a question concerning representation is not deemed to have arisen regarding the new unit or the existing unit.

Fla. Stat. § 447-3075 (2023).

3.7 Illinois

The Illinois Labor Relations Board determines units appropriate for the purposes of collective bargaining under 5 ILCS 315/9(b) of the Illinois Public Relations Act (5 ILCS 315/), as follows:

Sec. 9. Elections; recognition.

* * *

(b) The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as: historical pattern of recognition; community of interest including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours and other working conditions of the employees involved; and the desires of the employees. For purposes of this subsection, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit. Except with respect to non-State fire fighters and paramedics employed by fire departments and fire protection districts, non-State peace officers and peace officers in the Illinois State Police, a single bargaining unit determined by the Board may not include both supervisors and nonsupervisors, except for bargaining units in existence on the effective date of this Act. With respect to non-State fire fighters and paramedics employed by fire departments and fire protection districts, non-State peace officers and peace officers in the Illinois State Police, a single bargaining unit determined by the Board may not include both supervisors and nonsupervisors, except for bargaining units in existence on January 1, 1986 (the effective date of Public Act 84-1104).

In cases involving an historical pattern of recognition, and in cases where the employer has recognized the union as the sole and exclusive bargaining agent for a specified existing unit, the Board shall find the employees in the unit then represented by the union pursuant to the recognition to be the appropriate unit.

Notwithstanding the above factors, where the majority of public employees of a craft so decide, the Board shall designate such craft as a unit appropriate for the purposes of collective bargaining.

The Board shall not decide that any unit is appropriate if such unit includes both professional and nonprofessional employees, unless a majority of each group votes for inclusion in such unit.

See 5 ILCS 315/9.

3.8 Iowa

In 2017, the Iowa Legislature made significant changes to Chapter 20 – Public Employment Relations (Collective Bargaining) of the Iowa Code. Despite major changes, Iowa continues to permit public employees to organize and bargain collectively with the government, and provides for the Iowa Public Employment Relations Board to determine appropriate bargaining units, as follows:

> **Section 20.13 - Bargaining unit determination.**
>
> 1. Board determination of an appropriate bargaining unit shall be upon petition filed by a public employer, public employee, or employee organization.
>
> 2. Within thirty days of receipt of a petition, the board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate bargaining unit. In defining the unit, the board shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendations of the parties involved.
>
> 3. Appeals from such order shall be governed by the provisions of chapter 17A.
>
> 4. Professional and nonprofessional employees shall not be included in the same bargaining unit unless a majority of both agree.

Iowa Code § 20.13 (2022).

3.9 Kansas

The Kansas Public Employee Relations Board is responsible for determining an appropriate unit of public employees under subsections 75-4327(e) and (f) of the Kansas Public Employer-Employee Relations Act (K.S.A. § 75-4321 et seq.), as follows:

> **75-4327. Public employee organizations; recognition and certification; membership; meet and confer; determination and certification of appropriate unit; rules and regulations; assessment of election costs.**
>
> * * *

(e) Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (1) The principle of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 75-4325, and amendments thereto; and (7) the recommendations of the parties involved.

(f) A recognized employee organization shall not include: (1) Both professional and other employees, unless a majority of the professional employees vote for inclusion in the organization; (2) uniform police employees and public property security guards with any other public employees, but such employees may form their own separate homogenous units; or (3) uniformed firemen with any other public employees, but such employees may form their own separate homogenous units. The employees of a public safety department of cities which has both police and fire protection duties shall be an appropriate unit.

See K.S.A. § 75-4327 (2023).

3.10 Maine

Section 979-E of the Maine State Employees Labor Relations Act requires the executive director of the Maine Labor Relations Board (MLRB) or their designee to determine appropriate bargaining units. Specifically, section 979-E, paragraph 2, provides:

§979-E. Bargaining unit; how determined

* * *

2. In order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to insure a clear and identifiable community of interest among employees concerned, and to avoid excessive fragmentation among bargaining units in State Government, the executive director of the board or his

designee shall decide in each case the unit appropriate for purposes of collective bargaining.

See 26 MRS § 979-E (2023).

The MLRB's Rules of Procedures, 12-180 Chapter 11, section 22, provide criteria for appropriate bargaining units, as follows:

§ 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.

Maine MLRB Rules 12-180 Chapter 11 § 22.

Moreover, the University of Maine System Labor Relations Act provides for the establishment of specific bargaining units for higher education under 26 MRS § 1024-A, as follows:

§1024-A. Bargaining units

1. Legislative intent. It is the express legislative intent that, in order to foster meaningful collective bargaining, units shall be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a university system-wide basis with one unit for each of the following occupational groups:

A. Faculty;
B. Professional and administrative staff;
C. Clerical, office, laboratory and technical;
D. Service and maintenance;
E. Supervisory classified; and
F. Police.

It is intended that Cooperative Extension Service employees be included in appropriate units.

2. Academy units. It is the express legislative intent to foster meaningful collective bargaining for employees of the Maine Maritime Academy. Therefore, in accordance with this policy, bargaining units shall be structured with one unit for each of the following occupational groups:

A. Faculty;
B. Administrative staff; and
C. Classified employees.

3. Community colleges. It is the express legislative intent to foster meaningful collective bargaining for employees of the community colleges. Therefore, in accordance with this policy, the

bargaining units shall be structured with one unit in each of the following occupational groups:

A. Faculty and instructors;

B. Administrative staff;

C. Supervisory;

D. Support services;

E. Institutional services; and

F. Police.

4. Assignment to bargaining units. In the event of a dispute over the assignment of jobs or positions to a unit, the executive director shall examine the community of interest, including work tasks among other factors, and make an assignment to the appropriate statutory bargaining unit set forth in subsection 1, 2 or 3.

5. Additional bargaining units. Notwithstanding subsection 1, 2 or 3, the Legislature recognizes that additional or modified university system-wide units, academy units or community college units may be appropriate in the future. The employer or employee organizations may petition the executive director for the establishment of additional or modified university system-wide units, academy units or community college units. The executive director or a designee shall determine the appropriateness of those petitions, taking into consideration the community of interest and the declared legislative intent to avoid fragmentation whenever possible and to insure employees the fullest freedom in exercising the rights guaranteed by this chapter. The executive director or a designee conducting unit determination proceedings may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them.

6. Students.

A. When collective bargaining is to take place between the university and the faculty or professional and administrative staff, the board of trustees shall appoint 3 currently enrolled students who are broadly representative of the various campuses to meet and confer with the university and who may meet and confer with the bargaining agent prior to collective bargaining.

B. During the course of collective bargaining, the student representatives designated under paragraph A shall be

allowed to meet and confer with the university bargaining team at reasonable intervals during the course of negotiations, these meetings to occur at least upon receipt by the university of the initial bargaining proposal of the bargaining agent and before final agreement on a contract or any major provisions thereof. The students shall be bound by the same rules of negotiation, including, but not limited to, those regarding confidentiality, as the participants in the negotiations.

7. Unit clarification. Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

26 MRS § 1024-A (2023).

3.11 Maryland

Maryland's new Maryland Public Employee Relations Act, effective July 1, 2023, created the Maryland Public Employee Relations Board, which is responsible for determining the appropriateness of bargaining units, as follows:

§ 22-403. Appropriateness of bargaining units
In general
(a)(1) Except as otherwise provided in this title, Title 6, Subtitle 4 or 5 of the Education Article, Title 16, Subtitle 7 of the Education Article, or Title 3 of the State Personnel and Pensions Article, the Board shall determine the appropriateness of each bargaining unit.

(2) If there is no dispute about the appropriateness of the establishment of the bargaining unit, the Board shall issue an order defining an appropriate bargaining unit.

(3) If there is a dispute about the appropriateness of the establishment of the bargaining unit, the Board shall:

(i) conduct a hearing; and

(ii) issue an order defining an appropriate bargaining unit.

Difference from petition

(b) If the appropriate bargaining unit as determined by the Board differs from the bargaining unit described in the petition, the Board may:

(1) dismiss the petition; or

(2) direct an election in the appropriate bargaining unit if at least 30% of the signatures included in the petition are of employees in the appropriate bargaining unit.

Public employees only

(c) A bargaining unit may consist only of public employees.

Md. Code, State Gov't § 22-403 (2023).

Prior to the enactment of the Maryland PERA, the Maryland State Labor Relations Board was empowered to establish guidelines for creating new bargaining units under Md. Code, State Pers. & Pens. § 3-205(b)(1), as follows:

§ 3-205. Administration and enforcement of title; guidelines for creating new bargaining unit; exclusive representation elections; unfair labor practices and lockouts

* * *

(b) Creation of new bargaining unit guidelines; monitoring of elections; investigation of unfair labor practices and lockouts. — In addition to any other powers or duties provided for elsewhere in this title, the Board may:

(1) (i) establish guidelines for creating new bargaining units that include a consideration of:

1. the effect of overfragmentation on the employer;
2. the administrative structures of the State employer;
3. the recommendations of the parties;
4. the recommendations of the Executive Director;
5. the desires of the employees involved;
6. the communities of interest of the employees involved; and
7. the wages, hours, and other working conditions of the employees;

(ii) establish standards for determining an appropriate bargaining unit; and

(iii) investigate and resolve disputes about appropriate bargaining units[.]

See Md. Code, State Pers. & Pens. § 3-205 (2012).

However, Md. Code, State Pers. & Pens. § 3-205 (2012) was repealed effective July 1, 2023. Under current Md. Code, State Pers & Pens. § 3-102(d)(1), public employee bargaining units are statutorily mandated, as follows:

> **§ 3-102. Application of title**
>
> * * *
>
> **Bargaining units**
>
> (d)(1) Subject to Title 22, Subtitle 4 of the State Government Article, a bargaining unit shall consist only of employees defined in regulations adopted by the Secretary [of Budget and Management] and not specifically excluded by subsection (b) of this section.
>
> (2)(i) Each system institution, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College shall have separate bargaining units.
>
> (ii) Appropriate bargaining units shall consist of:
>
> 1. all eligible nonexempt employees, as described in the federal Fair Labor Standards Act, except eligible sworn police officers;
> 2. all eligible exempt employees, as described in the federal Fair Labor Standards Act; and
> 3. all eligible sworn police officers.
>
> (3)(i) Except as provided in subparagraph (ii) of this paragraph, the Secretary or the Secretary's designee shall have the authority to assign classification titles and positions to bargaining units as appropriate.
>
> (ii) The following individuals and entities shall assign classification titles and positions to bargaining units at the following institutions:
>
> 1. at a system institution, the President of the system institution; and
> 2. at Morgan State University, St. Mary's College of Maryland, or Baltimore City Community College, the governing board of the institution.
>
> (4) Notwithstanding any other provision of law:
>
> (i) Maryland Transportation Authority police officers at the rank of first sergeant and below shall have a separate bargaining unit; and
>
> (ii) faculty at the Maryland School for the Deaf shall have a separate bargaining unit.

See Md. Code, State Pers. & Pens. § 3-102 (2023).

3.12 Massachusetts

Massachusetts General Laws Part I (Administration of the Government), Title XXI (Labor and Industries), Chapter 150E (Labor Relations: Public Employees), Section 3: Bargaining units; rules and regulations; procedures; officers excepted, provides for the Massachusetts Department of Labor Relations (DLR) to establish procedures for the determination of appropriate bargaining units, as follows:

> Section 3. The commission shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation. No unit shall include both professional and nonprofessional employees unless a majority of such professional employees votes for inclusion in such unit; provided, however, that in any fire department, or any department in whole or in part engaging in, or having the responsibility of, fire fighting, no uniformed member of the department subordinate to a fire commission, fire commissioner, public safety director, board of engineers or chief of department shall be classified as a professional, confidential, executive, administrative or other managerial employee for the purpose of this chapter.
>
> No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director or chief of a department or agency of the commonwealth or any political subdivision thereof, or clerk, temporary clerk or assistant clerk of any court, or chief probation officer or acting chief probation officer of any court or region, including, without limitation within the term, any division or department of the trial court or any other managerial or confidential employee shall be included in an appropriate bargaining unit or entitled to coverage under this chapter.
>
> The appropriate bargaining unit in the case of the uniformed members of the state police shall be all such uniformed members in titles below the rank of lieutenant. The appropriate bargaining units for judicial employees within the provisions of this chapter shall be a public safety professional unit composed of all probation officers and court officers, and a unit composed of all

> nonmanagerial or nonconfidential staff and clerical personnel employed by the judiciary; provided that court officers in the superior court department for Suffolk and Middlesex counties shall be represented by such other bargaining units as they may elect.
>
> The appropriate bargaining unit in the case of employees of the state lottery commission shall be all employees below the rank of assistant director.

Mass. Gen. Laws Ch. 150E § 3.

The Massachusetts DLR provides a comprehensive summary of appropriate bargaining units for public employee collective bargaining in section III. (Summary of Law) D. (Appropriate Bargaining Units) of the Massachusetts Public Employee Collective Bargaining Law Guide.

3.13 Michigan

In Michigan, the Michigan Civil Service Commission determines appropriate collective bargaining units under section 423.213 of the Michigan Public Employment Relations Act, as follows:

> **423.213 Decision as to appropriate collective bargaining unit; supervisor of fire fighting personnel.**
>
> The commission shall decide in each case, to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939, as amended, being section 423.9e of the Michigan Compiled Laws: Provided, That in any fire department, or any department in whole or part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor.

Mich. Comp. Laws § 423.213.

Under Chapter 6-6.1(a) of the Michigan Civil Service Commission Rules, appropriate units are legislatively established by the Michigan State Personnel Director, as follows:

> **6-6 Determination of Representation**
> **6-6.1 Unit Determination and Redetermination**

> **(a) Unit determination.** The state personnel director shall legislatively establish the most appropriate units of eligible employees organized along broad occupational lines with a community of interest.

Michigan Civil Service Commission Rules, p. 103 (April 13, 2022).

3.14 Minnesota

The Commissioner of the Minnesota Bureau of Mediation Services determines appropriate units under section 179A.09 of the Minnesota Public Employment Labor Relations Act, as follows:

> **179A.09 UNIT DETERMINATION.**
>
> Subdivision 1. **Criteria.** In determining the appropriate unit, the commissioner shall consider the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, history, extent of organization, the recommendation of the parties, and other relevant factors. The commissioner shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.
>
> Subd. 2. **Prohibitions.** The commissioner shall not designate an appropriate unit which includes essential employees with other employees.
>
> Subd. 3. **Division of units.** If a designated appropriate unit contains both peace officers subject to licensure under sections 626.84 to 626.863 and essential employees who are not peace officers, the commissioner, at the request of a majority of either the peace officers or the other essential employees within the unit, shall divide the unit into two separate appropriate units, one for the peace officers and one for the other essential employees.

Minn. Stat. § 179A.09 (2023).

3.15 Missouri

The Missouri State Board of Mediation administers Missouri's public sector labor law (Mo. Rev. Stat. § 105.500 et seq.), which defines a "bargaining unit" as:

> **105.500. Definitions. —** For purposes of sections 105.500 to 105.598, unless the context otherwise requires, the following words and phrases mean:
>
> (1) **"Bargaining unit"**, a unit of public employees at any plant or installation or in a craft or in a function of a public body that establishes a clear and identifiable community of interest among the public employees concerned[.]

Mo. Rev. Stat. § 105.500 (2023).

Issues as to appropriate bargaining units based on whether or not employees share a community of interest are determined by the Missouri State Board of Mediation, subject to appeal:

> **105.525. Issues as to appropriate bargaining units and majority representative status to be decided by board — appeal to circuit court. —** Issues with respect to appropriateness of bargaining units and majority representative status, as determined under section 105.575, shall be resolved by the board. In the event that the appropriate administrative body or any of the bargaining units shall be aggrieved by the decision of the board, an appeal may be had to the circuit court of the county where the administrative body is located or in the circuit court of Cole County.

Mo. Rev. Stat. § 105.525 (2018).

3.16 Montana

The Montana Board of Personnel Appeals determines the appropriate bargaining unit for a group of public employees under Title 39 (Labor), Chapter 31 (Collective Bargaining for Public Employees), Part 2 (Public Employee Self-Organization and Certification of Bargaining Representative), subsection 202(1) of the Montana Code Annotated, as follows:

> **39-31-202. Board to determine appropriate bargaining unit -- factors to be considered.** (1) In order to ensure employees the

> fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

See 39-31-202, MCA (2023).

3.17 Nebraska

The Nebraska State Employees Collective Bargaining Act (SECBA) (Neb. Rev. Stat. § 81-1369, et seq.) establishes twelve statutory bargaining units for all state agencies except the University of Nebraska, the Nebraska state colleges, and other constitutional offices, based on criteria set forth in Neb. Rev. Stat. § 81-1373(1). Nebraska's SECBA also provides for the Nebraska Commission of Industrial Relations to determine appropriate bargaining units for other constitutional offices under Neb. Rev. Stat. § 81-1373(4). Neb. Rev. Stat. § 81-1373 provides:

> **81-1373.**
> **Bargaining units; created; other employee units.**
> (1) For the purpose of implementing the state employees' right to organize for the purpose of collective bargaining, there are hereby created twelve bargaining units for all state agencies except the University of Nebraska, the Nebraska state colleges, and other constitutional offices. The units shall consist of state employees whose job classifications are occupationally and functionally related and who share a community of interest. The bargaining units shall be:
>
> (a) Maintenance, Trades, and Technical, which unit is composed of generally recognized blue collar and technical classes, including highway maintenance workers, carpenters, plumbers, electricians, print shop workers, auto mechanics, engineering aides and associates, and similar classes;
>
> (b) Administrative Support, which unit is composed of clerical and administrative nonprofessional classes, including typists, secretaries, accounting clerks, computer operators, office service personnel, and similar classes;

(c) Health and Human Care Nonprofessional, which unit is composed of institutional care classes, including nursing aides, psychiatric aides, therapy aides, and similar classes;

(d) Social Services and Counseling, which unit is composed of generally professional-level workers providing services and benefits to eligible persons. Classes shall include job service personnel, income maintenance personnel, social workers, counselors, and similar classes;

(e) Administrative Professional, which unit is composed of professional employees with general business responsibilities, including accountants, buyers, personnel specialists, data processing personnel, and similar classes;

(f) Protective Service, which unit is composed of institutional security personnel, including correctional officers, building security guards, and similar classes;

(g) Law Enforcement, which unit is composed of employees holding powers of arrest, including Nebraska State Patrol officers and sergeants, conservation officers, fire marshal personnel, and similar classes. Sergeants, investigators, and patrol officers employed by the Nebraska State Patrol as authorized in section 81-2004 shall be presumed to have a community of interest with each other and shall be included in this bargaining unit notwithstanding any other provision of law which may allow for the contrary;

(h) Health and Human Care Professional, which unit is composed of community health, nutrition, and health service professional employees, including nurses, doctors, psychologists, pharmacists, dietitians, licensed therapists, and similar classes;

(i) Examining, Inspection, and Licensing, which unit is composed of employees empowered to review certain public and business activities, including driver-licensing personnel, revenue agents, bank and insurance examiners who remain in the State Personnel System under sections 8-105 and 44-119, various public health and protection inspectors, and similar classes;

(j) Engineering, Science, and Resources, which unit is composed of specialized professional scientific occupations, including civil and other engineers, architects, chemists, geologists and surveyors, and similar classes;

(k) Teachers, which unit is composed of employees required to be licensed or certified as a teacher; and

(l) Supervisory, which unit is composed of employees who are supervisors as defined in section 48-801.

All employees who are excluded from bargaining units pursuant to the Industrial Relations Act, all employees of the personnel division of the Department of Administrative Services, and all employees of the Division of Employee Relations of the Department of Administrative Services shall be excluded from any bargaining unit of state employees.

(2) Any employee organization, including one which represents other state employees, may be certified or recognized as provided in the Industrial Relations Act as the exclusive collective-bargaining agent for a supervisory unit, except that such unit shall not have full collective-bargaining rights but shall be afforded only meet-and-confer rights.

(3)(a) It is the intent of the Legislature that the professional staff employee classifications, including the managerial-professional employee classification, and the office and service staff employee classification, be grouped in broad occupational units for the University of Nebraska and the Nebraska state colleges established on a university-wide or college-system-wide basis, including all campuses within the system.

(b) Any unit entirely composed of supervisory employees of the University of Nebraska or the Nebraska state colleges shall be afforded only meet-and-confer rights.

(c) Any bargaining unit seeking to represent an academic-administrative staff employee classification consisting of faculty, including adjunct faculty, of the University of Nebraska or of any administrative unit of the university may organize and seek

recognition or certification by the commission on an administrative unit-wide basis as otherwise determined pursuant to the Industrial Relations Act.

(d) The bargaining units for academic, faculty, and teaching employees of the Nebraska state colleges shall continue as they existed on April 9, 1987, and any adjustments thereto or new units therefor shall continue to be determined pursuant to the Industrial Relations Act.

(4) Other constitutional offices shall continue to subscribe to the procedures for unit determination in the Industrial Relations Act, except that the commission is further directed to determine the bargaining units in such manner as to (a) reduce the effect of overfragmentation of bargaining units on the efficiency of administration and operations of the constitutional office and (b) be consistent with the administrative structure of the constitutional office. Any unit entirely composed of supervisory employees of a constitutional office shall be afforded only meet-and-confer rights.

Neb. Rev. Stat. § 81-1373.

3.18 Nevada

The Nevada Government Employee-Management Relations Act (NRS 288-010 et seq.) provides for each local government employer, after consultation with the recognized organization, or the Nevada Government Employee-Management Relations Board on appeal, to determine which group or groups of employees constitute an appropriate unit or units under paragraphs 1 and 5 of NRS 288.170, as follows:

NRS 288.170 Determination of bargaining unit; appeal to Board.

1. Each local government employer which has recognized one or more employee organizations shall determine, after consultation with the recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating. The primary criterion for that determination must be the community of interest among the employees concerned.

* * *

5. If any employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the Board. Subject to judicial review, the decision of the Board is binding

upon the local government employer and employee organizations involved. The Board shall apply the same criterion as specified in subsection 1.

See NRS 288.170.

3.19 New Hampshire

Under section 273-A:8 of the New Hampshire Public Employee Labor Relations Act (N.H. Rev. Stat. § 273-A:1 et seq.), the New Hampshire Public Employee Labor Relations Board or its designee determines appropriate bargaining units, as follows:

273-A:8 Determining Bargaining Unit.

I. The board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10. In making its determination the board should take into consideration the principle of community of interest. The community of interest may be exhibited by one or more of the following criteria, although it is not limited to such:

(a) Employees with the same conditions of employment;

(b) Employees with a history of workable and acceptable collective negotiations;

(c) Employees in the same historic craft or profession;

(d) Employees functioning within the same organizational unit.

In no case shall the board certify a bargaining unit of fewer than 10 employees with the same community of interest. For purposes of this section, probationary employees shall be counted to satisfy the employee minimum number requirement. In no case shall such probationary employees vote in any election conducted under the provisions of this chapter to certify an employee organization as the exclusive representative of a bargaining unit.

> II. The board may certify a bargaining unit composed of professional and non-professional employees only if both the professional and non-professional employees, voting separately, vote to join the proposed bargaining unit. Persons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise.
>
> III. In the event the bargaining unit is determined by the board's designee, the decision may be appealed to the board for final determination.

N.H. Rev. Stat. § 273-A:8.

3.20 New Jersey

In New Jersey, negotiating units are defined in the first paragraph of section 34:13A-5.3 of the New Jersey Employer-Employee Relations Act (N.J. Rev. Stat. § 34:13A-1 et seq.):

> **§ 34:13A-5.3. Employee organizations; right to form or join; collective negotiations; grievance procedures**
>
> Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined

> with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.
>
> * * *

N.J. Rev. Stat. § 34:13A-5.3.

In the event of a dispute, the New Jersey Public Employment Relations Commission through the New Jersey Division of Public Employment Relations, determines which unit of employees is appropriate for collective negotiation under subsection 34:13A-6(d) of the New Jersey Employer-Employee Relations Act:

> **34:13A-6. Powers and duties**
>
> * * *
>
> (d) The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or, (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit. All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision, and not inconsistent with it, are to that extent hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpenas [sic] as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

See N.J. Rev. Stat. § 34:13A-6.

3.21 New Mexico

The New Mexico Public Employee Bargaining Act (N.M. Stat. § 10-7E-1 et seq.) provides for the New Mexico Public Employee Labor Relations Board or a local labor relations

board to determine appropriate bargaining units for collective bargaining under section 10-7E-13 of the Public Employee Bargaining Act, as follows:

> **10-7E-13. Appropriate bargaining units.**
>
> A. The board or local board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved. Occupational groups shall generally be identified as blue-collar, secretarial clerical, technical, professional, paraprofessional, police, fire and corrections. The parties, by mutual agreement, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.
>
> B. Within thirty days of a disagreement arising between a public employer and a labor organization concerning the composition of an appropriate bargaining unit, the board or local board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit.
>
> C. The board or local board shall not include in an appropriate bargaining unit supervisors, managers or confidential employees.
>
> D. Jobs included within a bargaining unit pursuant to a local ordinance in effect on January 1, 2020 shall remain in that bargaining unit.

§ 10-7E-13 NMSA 1978.

3.22 New York

Under paragraph 1, section 207 of the New York State Public Employees' Fair Employment Act – The Taylor Law, in the event of a dispute, the New York State Public Employment Relations Board or government determines appropriate employer-employee negotiating units, as follows:

> **§ 207 Determination of Representation Status.** For purposes of resolving disputes concerning representation status, pursuant to

section two hundred five or two hundred six of this article, the board or government, as the case may be, shall

1. define the appropriate employer-employee negotiating unit taking into account the following standards:

(a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit;

(b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and

(c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public.

* * *

N.Y. Civ. Serv. L. § 207 (2014).

3.23 Ohio

Under section 4117.06 of Title 41 (Labor and Industry), Chapter 7117 (Public Employees' Collective Bargaining) of the Ohio Revised Code, the Ohio State Employment Relations Board determines appropriate collective bargaining units, as follows:

> **Section 4117.06 State employment relations board to determine collective bargaining unit.**
>
> (A) The state employment relations board shall decide in each case the unit appropriate for the purposes of collective bargaining. The determination is final and conclusive and not appealable to the court.
>
> (B) The board shall determine the appropriateness of each bargaining unit and shall consider among other relevant factors: the desires of the employees; the community of interest; wages, hours, and other working conditions of the public employees; the effect of over-fragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer; and the history of collective bargaining.

(C) The board may determine a unit to be the appropriate unit in a particular case, even though some other unit might also be appropriate.

(D) In addition, in determining the appropriate unit, the board shall not:

(1) Decide that any unit is appropriate if the unit includes both professional and nonprofessional employees, unless a majority of the professional employees and a majority of the nonprofessional employees first vote for inclusion in the unit;

(2) Include guards or correction officers at correctional or mental institutions, special police officers appointed in accordance with sections 5119.08 and 5123.13 of the Revised Code, psychiatric attendants employed at mental health forensic facilities, youth leaders employed at juvenile correction facilities, or any public employee employed as a guard to enforce against other employees rules to protect property of the employer or to protect the safety of persons on the employer's premises in a unit with other employees;

(3) Include members of a police or fire department or members of the state highway patrol in a unit with other classifications of public employees of the department;

(4) Designate as appropriate a bargaining unit that contains more than one institution of higher education; nor shall it within any such institution of higher education designate as appropriate a unit where such designation would be inconsistent with the accreditation standards or interpretations of such standards, governing such institution of higher education or any department, school, or college thereof. For the purposes of this division, any branch or regional campus of a public institution of higher education is part of that institution of higher education.

(5) Designate as appropriate a bargaining unit that contains employees within the jurisdiction of more than one elected county office holder, unless the county-elected office holder and the board of county commissioners agree to such other designation;

(6) With respect to members of a police department, designate as appropriate a unit that includes rank and file members of the

department with members who are of the rank of sergeant or above;

(7) Except as otherwise provided by division (A)(3) of section 3314.10 or division (B) of section 3326.18 of the Revised Code, designate as appropriate a bargaining unit that contains employees from multiple community schools established under Chapter 3314. or multiple science, technology, engineering, and mathematics schools established under Chapter 3326. of the Revised Code. For purposes of this division, more than one unit may be designated within a single community school or science, technology, engineering, and mathematics school.

This section shall not be deemed to prohibit multiunit bargaining.

Ohio Rev. Code § 4117.06.

3.24 Oregon

Section 243.650 of Chapter 243 (Public Employee Rights and Benefits) of the Oregon Revised Statutes (ORS), defines "appropriate bargaining unit" as follows:

ORS 243.650
Definitions for ORS 243.650 to 243.809

(1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. However, an appropriate bargaining unit may not include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

ORS 243.650.

If a question of representation exists, the Oregon Employment Relations Board must determine an appropriate bargaining unit as provided in ORS 243.682(1)(a):

ORS 243.682
Representation questions

(1) If a question of representation exists, the Employment Relations Board shall:

(a) Upon application of a public employer, a public employee or a labor organization, designate the appropriate bargaining unit, and in making its determination shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate. Unless a labor organization and a public employer agree otherwise, the board may not designate as appropriate a bargaining unit that includes:

(A) A faculty member described in ORS 243.650 (Definitions for ORS 243.650 to 243.809) (23)(c)(C) who supervises one or more other faculty members; and

(B) Any faculty member who is supervised by a faculty member described in subparagraph (A) of this paragraph.

* * *

See ORS 243.682.

Furthermore, section 115-025-0020 of Oregon Administrative Rules (OAR) Chapter 115 (Employment Relations Board) Division 25 (Public Employee Representation) sets forth rules for determining an appropriate unit for collective bargaining, as follows:

115-025-0020
Appropriate Unit

(1) Petitions to create a new bargaining unit or to change an existing unit must include a description of the proposed unit. The proposed unit must be an appropriate unit for collective bargaining. The proposed unit does not need to be the most appropriate unit.

(2) Subject to ORS 243.650(1), 243.650(19) and 243.682(1)(a), a bargaining unit may consist of all of the employees of the

employer, or any department, division, section or area, or any part or combination thereof, if found to be appropriate by the Board.

(3) When considering whether a proposed bargaining unit is appropriate, among the things the Board considers are community of interest (e.g., similarities of duties, skills and benefits; interchange or transfer of employees; promotional ladders; common supervision; etc.); wages, hours and other working conditions of the employees involved; the history of collective bargaining; and the desires of the employees.

(4) Questions concerning public employee status will not be decided in proceedings to determine the appropriate bargaining unit for a representation matter, unless the representation matter cannot be certified without the resolution of such questions.

OAR 115-025-0020.

3.25 Pennsylvania

Under section 604 of the unconsolidated Pennsylvania Public Employe [sic] Relations Act of 1970 (Act 195), the Pennsylvania Labor Relations Board must determine the appropriateness of a unit, as follows:

> Section 604. The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:
>
> (1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over-fragmentization.
>
> (2) Not decide that any unit is appropriate if such unit includes both professional and nonprofessional employes, unless a majority of such professional employes vote for inclusion in such unit.
>
> (3) Not permit guards at prisons and mental hospitals, employes directly involved with and necessary to the functioning of the courts of this Commonwealth, or any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employes, each may form separate homogenous employe organizations with the proviso that organizations of the latter designated employe group may not be affiliated with any other

organization representing or including as members, persons outside of the organization's classification.

(4) Take into consideration that when the Commonwealth is the employer, it will be bargaining on a Statewide basis unless issues involve working conditions peculiar to a given governmental employment locale. This section, however, shall not be deemed to prohibit multi-unit bargaining.

(5) Not permit employes at the first level of supervision to be included with any other units of public employes but shall permit them to form their own separate homogenous units. In determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed.

See 43 P.S. § 1101.604.

3.26 Rhode Island

Under section 28-7-15 of the Rhode Island State Labor Relations Act (R.I. Gen. Laws §28-7-1 et seq.), the Rhode Island State Labor Relations Board is responsible for determining units appropriate for collective bargaining:

§ 28-7-15. Determination of bargaining unit.

The board shall decide in each case whether, in order to ensure to employees the full benefit of their right to self organization, to collective bargaining, and otherwise to effectuate the policies of this chapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or any other unit provided, that in any case where the majority of employees of a particular craft make that decision, the board shall designate the craft as a unit appropriate for the purpose of collective bargaining.

R.I. Gen. Laws § 28-7-15.

The General Rules and Regulations of the Rhode Island State Labor Relations Board provide further clarification on this matter:

1.14 Petition for Investigation of Controversies as to Representation: Procedural

* * *

I. Determination of the Scope of the Bargaining Unit

1. In a contested case, the Board's task is to determine "an" appropriate unit, not the "most" appropriate unit.

2. The petitioning party has the burden of defining an appropriate unit.

3. The burden to show that the unit is inappropriate falls to the objecting party.

4. Bargaining units will be decided on the basis of whether or not the particular employees share a "community of interest", as well as determining a unit that has a direct relevancy to the circumstances in which collective bargaining is to take place. In applying the "community of interest" standard, the Board may consider a number of criteria including, but not limited to those factors set forth in the definition of "community of interest" in § 1.2(A)(11) of this Part.

5. The Board has significant discretion in determining the scope of a bargaining unit and can decide, in each instance, what weight shall be applied to the various criteria. There is no set formula for determining the proper scope of a bargaining unit.

See 465-RICR-10-00-1.14 I.

1.2 Definitions

A. As used in these Regulations and decisions of the Board, the following terms shall be defined as hereinafter set forth:

* * *

11. "Community of interest" means the critical consideration in determining the scope of bargaining units. In determining whether a proposed bargaining unit shares a community of interest, the Board may consider the following factors, among others:
    a. The similarity in scale and manner of determining earnings;
    b. Similarity of employment benefits, hours of work, and other terms and conditions of employment;
    c. Similarity in the kind of work performed;
    d. Similarity in the qualifications, skills, and training of the employees;

e. Frequency of contact or interchange among employees;
f. Geographic proximity;
g. Continuity or integration of production processes;
h. Common supervision and determination of labor relations policies;
i. Relationship to the administrative organization of the Employer;
j. The history of collective bargaining;
k. The desires of the affected employees; and
l. The extent of Union organization within the Employer's ranks.

See 465-RICR-10-00-1.2 A.11.

3.27 South Dakota

Under section 3-18-4 of Chapter 3-18 (Public Employees' Unions) of the codified laws of South Dakota, the South Dakota Department of Labor and Regulation or its designee is required to rule on the designation of an appropriate representation unit, as follows:

> **3-18-4. Investigation and hearing on refusal to grant formal recognition or on question of designation of representation unit.**
>
> When a governmental agency declines to grant formal recognition or when a question concerning the designation of a representation unit is raised by the governmental agency, labor or employee organization, or employees, the Department of Labor and Regulation or any person designated by it shall, at the request of any of the parties, investigate such question and, after a hearing if requested by any party, rule on the definition of the appropriate representation unit. The department shall certify to the parties in writing the proper definition of the unit. In defining the unit, the department shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the principles and the coverage of uniform comprehensive position classification and compensation plans in the governmental agency, the history and extent of organization, occupational classification, administrative and supervisory levels of authority, geographical location, and the recommendations of the parties.

S.D. Codified L. § 3-18-4.

3.28 Vermont

Under section 927 of the Vermont State Employees Labor Relations Act (3 V.S.A. § 901 et seq.), the Vermont Labor Relations Board determines the unit appropriate for purposes of collective bargaining, as follows:

> **§ 927. Appropriate unit**
>
> (a) The Board shall decide the unit appropriate for the purpose of collective bargaining in each case and those employees to be included therein, in order to assure the employees the fullest freedom in exercising the rights guaranteed by this chapter.
>
> (b) In determining whether a unit is appropriate under subsection (a) of this section, the extent to which the employees have organized is not controlling.
>
> (c) The Board may decline recognition to any group of employees as a collective bargaining unit if, upon investigation and hearing, it is satisfied that the employees will not constitute an appropriate unit for purposes of collective bargaining or if recognition will result in over-fragmentation of state employee collective bargaining units. In case such a determination is made, the provisions of subchapter 3 of this chapter shall not become operative in that instance.

3 V.S.A. § 927 (2023).

The Vermont Labor Relations Board has posted on its website a document entitled, Resolving Unit Determination Issues, which discusses unit determination issues in detail.

3.29 Washington

The Revised Code of Washington (RCW) provides for the Washington Public Employment Relations Commission (PERC) to determine an appropriate unit for employeescovered by Washington's State Collective Bargaining laws (RCW 41.80.001 et seq.), under RCW 41.80.070, as follows:

> **RCW 41.80.070**
> **Bargaining units—Certification.**
>
> (1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, unless the unit does not meet the requirements of (a) and (b) of this subsection. The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for

certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modifications of existing units, the commission shall consider: The duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation. However, a unit is not appropriate if it includes:

(a) Both supervisors and nonsupervisory employees. A unit that includes only supervisors may be considered appropriate if a majority of the supervisory employees indicates by vote that they desire to be included in such a unit; or

(b) More than one institution of higher education. For the purposes of this section, any branch or regional campus of an institution of higher education is part of that institution of higher education.

(2) The exclusive bargaining representatives certified to represent the bargaining units existing on June 13, 2002, shall continue as the exclusive bargaining representative without the necessity of an election.

(3) If a single employee organization is the exclusive bargaining representative for two or more units, upon petition by the employee organization, the units may be consolidated into a single larger unit if the commission considers the larger unit to be appropriate. If consolidation is appropriate, the commission shall certify the employee organization as the exclusive bargaining representative of the new unit.

Wash. Rev. Code § 41.80.070 (2023).

Likewise, the RCW provides for the Washington PERC to determine appropriate bargaining units for employees covered by Washington's Public Employees' Collective Bargaining laws (RCW 41.56.010 et seq.) under RCW 41-56.060, as follows:

RCW 41.56.060
Determination of bargaining unit—Bargaining representative.

(1) The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the

bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. The commission shall determine the bargaining representative by: (a) Examination of organization membership rolls; (b) comparison of signatures on organization bargaining authorization cards, as provided under RCW 41.56.095; or (c) conducting an election specifically therefor.

(2) For classified employees of school districts and educational service districts:

(a) Appropriate bargaining units existing on July 24, 2005, may not be divided into more than one unit without the agreement of the public employer and the certified bargaining representative of the unit; and

(b) In making bargaining unit determinations under this section, the commission must consider, in addition to the factors listed in subsection (1) of this section, the avoidance of excessive fragmentation.

Wash. Rev. Code § 41.56.060 (2023).

3.30 Wisconsin

Wisconsin's State Employment Labor Relations Act (Wis. Stat. § 111.81 et seq.) establishes collective bargaining units for all state employees covered under the Act, as follows:

111.825 Collective bargaining units.

(1) It is the legislative intent that in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, collective bargaining units for employees in the classified service of the state are structured on a statewide basis with one collective bargaining unit for each of the following occupational groups:

(a) Administrative support.

(b) Blue collar and nonbuilding trades.

(c) Building trades crafts.

(cm) Law enforcement.

(d) Security and public safety.

(e) Technical.

(f) Professional:

1. Fiscal and staff services.

2. Research, statistics and analysis.

3. Legal.

4. Patient treatment.

5. Patient care.

6. Social services.

7. Education.

8. Engineering.

9. Science.

(g) Public safety employees.

(1r) Except as provided in sub. (2), collective bargaining units for employees who are employed by the University of Wisconsin System, other than employees who are assigned to the University of Wisconsin-Madison, are structured with one collective bargaining unit for each of the following occupational groups:

(a) Administrative support.

(b) Blue collar and nonbuilding trades.

(c) Building trades crafts.

(cm) Law enforcement.

(d) Security and public safety.

(e) Technical.

(eb) The program, project and teaching assistants of the University of Wisconsin-Milwaukee.

(ec) The program, project and teaching assistants of the Universities of Wisconsin-Eau Claire, Green Bay, La Crosse, Oshkosh, Parkside, Platteville, River Falls, Stevens Point, Stout, Superior and Whitewater.

(ef) Instructional staff employed by the board of regents of the University of Wisconsin System who provide services for a charter school established by contract under s. 118.40 (2r) (cm), 2013 stats.

(eh) Research assistants of the University of Wisconsin-Milwaukee.

(ei) Research assistants of the Universities of Wisconsin-Eau Claire, Green Bay, La Crosse, Oshkosh, Parkside, Platteville, River Falls, Stevens Point, Stout, Superior, and Whitewater.

(em) The program, project, and teaching assistants of the University of Wisconsin-Extension.

(er) Research assistants of the University of Wisconsin-Extension.

(f) Professional:

1. Fiscal and staff services.

2. Research, statistics, and analysis.

3. Legal.

4. Patient treatment.

5. Patient care.

6. Social services.

7. Education.

8. Engineering.

9. Science.

(1t) Except as provided in sub. (2), collective bargaining units for employees employed by the University of Wisconsin System and assigned to the University of Wisconsin-Madison are structured with one collective bargaining unit for each of the following occupational groups:

(a) Administrative support.

(b) Blue collar and nonbuilding trades.

(c) Building trades crafts.

(cm) Law enforcement.

(d) Security and public safety.

(e) Technical.

(em) The program, project, and teaching assistants of the University of Wisconsin-Madison.

(er) Research assistants of the University of Wisconsin-Madison.

(f) Professional:

1. Fiscal and staff services.

2. Research, statistics, and analysis.

3. Legal.

4. Patient treatment.

5. Patient care.

6. Social services.

7. Education.

8. Engineering.

9. Science.

(2) Collective bargaining units for employees in the unclassified service of the state shall be structured with one collective bargaining unit for each of the following groups:

(d) Assistant district attorneys.

(e) Attorneys employed in the office of the state public defender.

(3) The commission shall assign employees to the appropriate collective bargaining units set forth in subs. (1), (1r), (1t), and (2).

(4) Any labor organization may petition for recognition as the exclusive representative of a collective bargaining unit specified in sub. (1), (1r), (1t), or (2) in accordance with the election procedures set forth in s. 111.83, provided the petition is accompanied by a 30 percent showing of interest in the form of signed authorization cards. Each additional labor organization seeking to appear on the ballot shall file petitions within 60 days of the date of filing of the original petition and prove, through signed authorization cards, that at least 10 percent of the employees in the collective bargaining unit want it to be their representative.

(5) Although supervisors are not considered employees for purposes of this subchapter, the commission may consider a petition for a statewide collective bargaining unit of professional supervisors or a statewide unit of nonprofessional supervisors in the classified service, but the representative of supervisors may not be affiliated with any labor organization representing employees. For purposes of this subsection, affiliation does not include membership in a national, state, county or municipal federation of national or international labor organizations. The certified representative of supervisors who are not public safety employees may not bargain collectively with respect to any matter other than wages as provided in s. 111.91 (3), and the certified representative of supervisors who are public safety employees may not bargain collectively with respect to any matter other than wages and fringe benefits as provided in s. 111.91 (1).

(6)

(a) The commission shall assign only an employee of the department of administration, department of transportation, University of Wisconsin-Madison, or board of regents of the University of Wisconsin System who engages in the detection and prevention of crime, who enforces the laws and who is authorized to make arrests for violations of the laws; an employee of the

department of administration, department of transportation, University of Wisconsin-Madison, or board of regents of the University of Wisconsin System who provides technical law enforcement support to such employees; and an employee of the department of transportation who engages in motor vehicle inspection or operator's license examination to a collective bargaining unit under sub. (1) (cm), (1r) (cm), or (1t) (cm), whichever is appropriate.

(b) The commission may assign only a public safety employee to the collective bargaining unit under sub. (1) (g).

(7) Notwithstanding sub. (3), if on July 1, 2015, an employee of the University of Wisconsin System is assigned to a collective bargaining unit under s. 111.825 (2) (a), (b), (c), (g), (h), or (i), 2013 stats., or sub. (1) the commission shall assign the person to the corresponding collective bargaining unit under sub. (1r) or (1t), whichever is appropriate. Except as otherwise provided in this subchapter, the commission may not assign any other persons to the collective bargaining units under sub. (1r) or (1t).

Wis. Stat. § 111.825 (2023).

However, under 111.70(4)(d)2.a. of the Wisconsin Municipal Employment Relations Act (Wis. Stat. § 111.70 et seq.), the Wisconsin Employment Relations Commission determines appropriate collective bargaining units for municipal employees, as follows:

111.70 Municipal employment.

* * *

(4) Powers of the commission. The commission shall conduct any election under this subsection by secret ballot and shall adhere to the following provisions relating to bargaining in municipal employment in addition to other powers and duties provided in this subchapter:

* * *

(d) *Selection of representatives and determination of appropriate units for collective bargaining.*

* * *

2.

a. The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal workforce. The commission may decide whether, in a particular case, the municipal employees in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a collective bargaining unit. Before making its determination, the commission may provide an opportunity for the municipal employees concerned to determine, by secret ballot, whether they desire to be established as a separate collective bargaining unit. The commission may not decide, however, that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission may not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both school district employees and general municipal employees who are not school district employees. The commission may not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both public safety employees and general municipal employees, if the group includes both transit employees and general municipal employees, or if the group includes both transit employees and public safety employees. The commission may not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both craft employees and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. The commission shall place the professional employees who are assigned to perform any services at a charter school, as defined in s. 115.001 (1), in a separate collective bargaining unit from a unit that

> includes any other professional employees whenever at least 30 percent of those professional employees request an election to be held to determine that issue and a majority of the professional employees at the charter school who cast votes in the election decide to be represented in a separate collective bargaining unit.

Wis. Stat. § 111.70(4)(d)2.a. (2023).

4. States Without Standards and Criteria for Determining Appropriate Bargaining Units for State or Other Public Employees

The 19 remaining states are all right-to-work states and either have no comprehensive public sector collective bargaining laws or prohibit public employees from collective bargaining.

4.1 Alabama

Alabama is a right-to-work state, see 2022 Code of Alabama, Title 25 - Industrial Relations and Labor. Chapter 7 - Labor Unions and Labor Relations. Article 2 - Right to Work. (§ 25-7-30 et seq.), and firefighters are the only public sector employees in Alabama with a statutory right to join or refrain from joining a labor organization. See Ala. Code § 11-43-143.

4.2 Arizona

Arizona is a right-to-work state, see Title 23 (Labor) Chapter 8 (Labor Relations) Article 1 (Right to Work) of the Arizona Revised Statutes (§§ 23-1301 to 23-1307), however, Executive Order 2008-30, signed by then Governor Janet Napolitano on December 17, 2008, established a meet and confer process for employees of executive agencies of state government.

4.3 Arkansas

In Arkansas, public employee collective bargaining is prohibited under section 21-1-802 of Title 21 (Public Officers and Employees), Chapter 1 (General Provisions), Subchapter 8 – Collective Bargaining), of the Code of Arkansas:

> **§ 21-1-802. Collective bargaining prohibited**.
>
> (a) A public employer shall not recognize a labor union or other public employee association as a bargaining agent of public employees.
>
> (b) A public employer shall not collectively bargain or enter into any collective bargaining contract with a labor union or other public employee association or its agents with respect to any

matter relating to public employees, public employees' employment with a public employer, or public employees' tenure with a public employer.

A.C.A. § 21-1-802 (2023).

4.4 Georgia

Georgia permits public employees to join labor organizations. See, O.C.G.A. Title 34, Ch. 6, Art. 2 (§§34-6-20 to 34-6-28). However, except for firefighters, see O.G.C.A. § 25-5-4, Georgia law prevents public employees from entering into collective bargaining contracts with labor unions. See, e.g., O.C.G.A. § 16-8-16 (definition of criminal theft by extortion includes threatening to "bring about or continue a strike, boycott, or other collective unofficial action"); O.C.G.A. § 20-2-989.10 (teachers prohibited from collective bargaining); O.C.G.A. § 45-7-54(e) (prohibits payroll deductions to any organization that engages in collective bargaining with the state); O.C.G.A. Title 45, Ch. 19, Art. 1 (§§ 45-19-1 to 45-19-5) (public employees have a right to express complaints or opinions on any matter related to the conditions of public employment but have no right to strike).

4.5 Idaho

Idaho state law does not require public employers to bargain collectively with their employees, see Title 44 (Labor), Chapter 20 (Right to Work) of the Idaho Code (I.C. §§ 44-2001 to 44-2014), however, a municipality, if it chooses, has the implied authority to engage in collective bargaining with city employees. See Idaho Atty. Gen. Guideline, dated December 22, 1989.

4.6 Indiana

Indiana prohibits collective bargaining between the state and employee organizations under section 4-15-17-4 of the Indiana Code (IC):

IC 4-15-17-4 Prohibition on collective bargaining

Sec. 4. Collective bargaining between the state and employee organizations and strikes by state employees are illegal.

Indiana Code § 4-15-17-4 (2023).

4.7 Kentucky

Kentucky's Right to Work Act specifically addresses public employees right to collective bargain under 336.130(1) of the Kentucky Revised Statutes (K.R.S.):

> **336.130 Employees may organize, bargain collectively, strike, picket -- Protection of employees -- Conduct prohibited -- Effect of violence or injury to person or property.**
>
> (1) Employees may, free from restraint or coercion by the employers or their agents, associate collectively for self-organization and designate collectively representatives of their own choosing to negotiate the terms and conditions of their employment to effectively promote their own rights and general welfare. Employees, collectively and individually, may strike, engage in peaceful picketing, and assemble collectively for peaceful purposes, except that *no public employee, collectively or individually, may engage in a strike or a work stoppage. Nothing in this statute and KRS 65.015, 67A.6904, 67C.406, 70.262, 78.470, 78.480, 336.132, 336.134, 336.180, 336.990, and 345.050 shall be construed as altering, amending, granting, or removing the rights of public employees to associate collectively for self-organization and designate collectively representatives of their own choosing to negotiate the terms and conditions of their employment to effectively promote their own rights and general welfare* [emphasis added].

See K.R.S. § 336.130 (2022).

4.8 Louisiana

Louisiana law allows public employers the right to collectively bargain with their employees in the form of labor organizations but does not allow public employers to restrict membership or representation in those organizations. 92-432 (Ops. La. Atty. Gen. Oct. 30, 1992), citing Louisiana Rev. Stat. §§ 23:821 to 23:890 (Labor Organizations, and Labor Disputes). As explained in the Louisiana Attorney General's opinion:

> The Louisiana State Labor Code is found in LSA-R.S. 23:821-890. LSA-R.S. 23:822 declares the public policy of Louisiana specifically to be that of permitting and encouraging employees to organize and to negotiate the terms and conditions of their employment free from interference, restraint, and coercion and to designate in a similar manner, representatives for the purpose of collective bargaining. This statute, by its terms, does not differentiate between employees engaged in public as opposed to private employment.
>
> In addition, LSA-R.S. 42:457 recognizes and permits the right of any "state, parish, or city employee" to authorize the

employing "department, board, or agency" to withhold union dues from his salary and to remit these funds to the appropriate union.

Id. See also Louisiana Rev. Stat. § 23:822 and Louisiana Rev. Stat. § 42-457.

4.9 Mississippi

In Mississippi, a person's right to work is enshrined in its state constitution. Miss. Const. Ann. Art. 7, § 198A. In addition, Mississippi law declares, as public policy, that the right of a person to work shall not be denied or abridged on account or membership or non-membership in a labor union or labor organization. Miss. Code Ann. § 71-1-47.

4.10 North Carolina

North Carolina prohibits collective bargaining agreements between public employers and employee unions:

> **§ 95-98. Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.**
>
> Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect. (1959, c. 742.)

N.C. Gen. Stat. § 95-98.

4.11 North Dakota

Chapter 34-11.1 of North Dakota's Public Employees Relations Act (Cent. Code 34-11.1-01 et. seq.) allows public employees the right to be in a union but is more of a right to work law than a comprehensive labor relations scheme. Specifically, section 34-11.1-03 of the Public Employees Relations Act provides:

> **34-11.1-03. Membership in organizations.**
>
> No employee may be denied the right to be a member of an organization of employees or be intimidated or coerced in a

> decision to communicate or affiliate with an organization. Public employees have the right to request payroll deduction of dues for membership in an organization of employees.

N.D. Cent. Code 34-11.1-03.

4.12 Oklahoma

The Oklahoma Municipal Employee Collective Bargaining Act, Title 11, § 51-200 et seq. of the Oklahoma Municipal Code, which allowed municipal employees to organize and choose representatives for the purpose of collective bargaining, was repealed effective November 1, 2011. See Oklahoma Statutes, Title 11. Cities and Towns. Now, only police and firefighters and (Title 11, § 51-101 et seq.) and teachers (Title 70 § 509.1 et seq.) are afforded collective bargaining rights under Oklahoma law. See Oklahoma Statutes, Title 11. Cities and Towns and Oklahoma Statutes, Title 70. Schools.

4.13 South Carolina

Public employees in South Carolina do not have the right to collective bargaining. For explanation, see Branch et al. v. City of Myrtle Beach et al., Op. No. 25131 (S.C. Sup. Ct. filed May 15, 2000), where the South Caroline Supreme Court reversed the Court of Appeals finding that South Carolina's right-to-work statute applies to public employment.

4.14 Tennessee

Public employers in Tennessee have no duty to bargain with their employees unless specifically authorized. In 2011, Tennessee repealed collective bargaining rights for teachers and replaced them with the Professional Educators Collaborative Conferencing Act of 2011. Tenn. Code Ann. § 49-5-601, et seq. However, certain Tennessee transit workers maintain some collective bargaining rights. Tenn. Code Ann. § 7-56-102.

4.15 Texas

In Texas, collective bargaining by public employees is prohibited under section 617.002 of the Texas Government Code:

> **Sec. 617.002. COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES PROHIBITED.** (a) An official of the state or of a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.
>
> (b) A contract entered into in violation of Subsection (a) is void.

> (c) An official of the state or of a political subdivision of the state may not recognize a labor organization as the bargaining agent for a group of public employees.

See Tex. Gov't Code § 617.002.

4.16 Utah

Most public employees in Utah do not have a statutory right to collective bargaining. In fact, Utah specifically excludes "a state or political subdivision of a state" from the definition of "employer" under its collective bargaining laws. See Title 34 (Labor in General), Chapter 20 (Employment Relations and Collective Bargaining) of the Utah Code (§ 34-20-1 et seq.).

4.17 Virginia

Title 40.1. Labor and Employment, Chapter 4. Labor Unions, Strikes, Etc., Article 2.1. Collective Bargaining for Governmental Employees, subsection 40.1-57.2A of the Code of Virginia was amended with a proviso, effective May 1, 2021, that partially lifted the prohibition on public sector collective bargaining:

> **§ 40.1-57.2. Collective bargaining.**
> A. No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service *unless, in the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board* [emphasis added].

See Virginia Code § 40.1-57.2.

4.18 West Virginia

Public employees in West Virginia have no right, statutory or otherwise, to engage in collective bargaining. See W.Va. Code § 18-5-45a, citing Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n, 183 W.Va. 15 (1990), where the West Virginia Supreme Court of Appeals held that "[public] employees have no right to strike in the absence of express legislation or, at the very least, appropriate statutory provisions for collective bargaining, mediation, and arbitration."

4.19 Wyoming

Wyoming permits workers to organize for the purpose of collective bargaining, see Wyo. Stat. § 27-7-101, et seq., and also grants workers the right to work, see Wyo. Stat. § 27-7-108, et seq., but Wyoming laws are not specific to public employees nor do they provide a comprehensive labor relations scheme.

5. Conclusion

Considering the full legislative history of section 89-6, HRS, the Hawai‘i Labor Relations Board without further guidance and authorization from the Legislature, is unable to fashion or propose any objective standards and criteria for splitting off a group of state workers into a new bargaining unit to assist the Legislature in determining the appropriateness of requests that come before it. A survey of the 50 states revealed two general categories of laws: 1) those that authorize an agency or board to determine appropriate bargaining units based on statutory or other criteria; and 2) those that limit or prohibit public sector bargaining but reserve that determination to lawmakers. Hawai‘i, as may be expected, does not fit squarely into either category. Chapter 89, HRS, is unique to Hawai‘i and is reflective of our history, culture, and politics.

Since the inception of Act 171, SLH 1970, the Legislature has determined the appropriateness of bargaining units, initially establishing 13 bargaining units. For over 43 years, the number of bargaining units remained the same until the Legislature amended the law through Act 137, SLH 2013, to create bargaining unit 14, comprised of state law enforcement officers and state and county ocean safety and water safety officers, who were formerly included in bargaining units 03 and 04. Seven years later, the Legislature amended the law again through Act 31, SLH, 2020, to create bargaining unit 15, comprised of only state and county ocean safety and water safety officers, who were previously placed in bargaining unit 14. In both actions, the Legislature clearly met its constitutional responsibilities under Article XIII, section 2 of the Hawai‘i Constitution and demonstrated its exclusive legislative authority to establish appropriate bargaining units under Chapter 89, HRS.

Should the Legislature desire to relinquish the power to determine new bargaining units, as other states have done, it should itself, carefully examine and review the statutory standards and criteria of other states and amend Chapter 89, HRS, to: 1) establish standards and criteria for determining bargaining units; and 2) give the responsibility and authority of determining new bargaining units to the Hawai‘i Labor Relations Board.

Appendix

H.C.R. No. 61, H.D. 1 Requesting the Hawaii Labor Relations Board to Establish Objective Standards and Criteria for Splitting Off a Group of State Workers into a New Bargaining Unit

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.C.R. NO. 61 H.D. 1

HOUSE CONCURRENT RESOLUTION

REQUESTING THE HAWAII LABOR RELATIONS BOARD TO ESTABLISH OBJECTIVE STANDARDS AND CRITERIA FOR SPLITTING OFF A GROUP OF STATE WORKERS INTO A NEW BARGAINING UNIT.

WHEREAS, the National Labor Relations Act, title 29 United States Code sections 151-169 (Act), declares that the policy of the United States is to be carried out "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection"; and

WHEREAS, under the Act a unit of employees is a group of two or more employees who share a community of interest and may reasonably be grouped together for purposes of collective bargaining; the determination of what is an appropriate unit for these purposes is, under the Act, left to the discretion of the National Labor Relations Board (Board); and

WHEREAS, this broad discretion is limited by several other provisions of the Act, including the Board's inability to approve as appropriate a unit that includes both professional and nonprofessional employees, unless a majority of the professional employees involved vote to be included in the mixed unit; and

WHEREAS, under the Act, the appropriateness of a bargaining unit is generally determined on the basis of a community of interest of the employees involved, where, among other factors, those who have the same or substantially similar interests concerning wages, hours, and working conditions are grouped together in a bargaining unit; and

WHEREAS, section 89-6, Hawaii Revised Statutes, recognizes fifteen bargaining units and also lists categories of individuals who shall not be included in any appropriate bargaining unit or be entitled to coverage under that chapter; and

WHEREAS, this body continues to consider measures requesting that additional bargaining units be established but lacks objective standards and criteria to evaluate whether a new bargaining unit is appropriate; and

WHEREAS, the creation of a new bargaining unit has significant impacts for not only the employees receiving the benefit of collective bargaining, but also the employer who must then negotiate on subjects including wages, hours, conditions of employment, and benefits; and

WHEREAS, the protection of fair working conditions and workers' rights are important topics that should not be addressed in a haphazard manner but with the benefit of standards and criteria that can be applied without bias; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirty-second Legislature of the State of Hawaii, Regular Session of 2023, the Senate concurring, that the Hawaii Labor Relations Board is requested to establish objective standards and criteria for splitting off a group of state workers into a new bargaining unit to assist the Legislature in determining the appropriateness of requests that come before it; and

BE IT FURTHER RESOLVED that the Hawaii Labor Relations Board is requested to submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2024; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor and Chief Negotiator of the Office of Collective Bargaining.