Michigan Civil Service Commission

Regulation 6.04

Subject: Determination of Exclusive Recognition		
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1. Purpose

This regulation provides procedures for determining an exclusive representative for a bargaining unit.

2. CSC Rule References

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.*

(b) Unit redetermination. *The director, upon request of the state employer or a labor organization, may abolish, redefine, realign, or merge, in whole or in part, recognized units, if the director determines that the existing units are no longer the most appropriate units. The state employer*

and all labor organizations that may be affected by a change in the existing units shall meet and discuss the proposed changes before a request is filed with the director.

(1) *Any abolition, redefinition, realignment, or merger of a unit takes effect only at the end of the term of an affected collective bargaining agreement, unless the state employer and the exclusive representative agree to an earlier date.*

(2) *The state employer or a labor organization may file with the civil service commission an application for leave to appeal a unit determination by the director. The application must be filed within 28 calendar days after the director's decision is released. The director's decision is stayed if a timely application is received by the commission.*

(c) ***Exceptions.*** *This rule applies only to the actions to redefine recognized units. This rule does not apply to actions that result from (1) the creation or abolition of one or more classifications, (2) the merger of two or more existing classifications into a single classification, or (3) the designation of an eligible position as an excluded position.*

(d) ***Transfer of recognition rights.*** *Two or more existing exclusive representatives may agree to combine some or all of their existing business operations and staff. Any such combination that results in a transfer of recognition rights is subject to the review and approval of the state personnel director and requires the prior affirmative vote of a majority of the members voting.*

6-6.2 Petition for Election; Showing of Interest

(a) ***Petition for election.*** *An eligible employee, or any individual or labor organization acting on behalf of an eligible employee, may petition for a unit election. The petition must be accompanied by suitable evidence that at least 30 percent of the eligible employees in the unit either want to be represented by another identified organization or no longer want to be represented by an exclusive representative.*

(b) ***Showing of interest.*** *The state personnel director shall order an election if the director finds a bona fide question of representation exists and the petitioner shows the interest of 30 percent or more of the eligible employees actively at work in the unit. Otherwise, the director shall dismiss the petition as insufficient. Although the director shall consider any irregularity that might otherwise preclude the existence of a bona fide question of representation, the sufficiency of showings of interest is a matter for administrative determination. The director's decision is not subject to collateral attack by the parties. When a petition is dismissed, the petitioning party must be informed of the reason for the dismissal. The petitioning party may file an application for leave to appeal the director's decision to the civil service commission. A petitioner whose petition is dismissed cannot file another petition in the same unit within the 12-month period following the date of the dismissal.*

(c) ***Intervenors.*** *When the state personnel director authorizes an election, another organization may intervene and be placed on the ballot if the organization submits suitable evidence that at least 10 percent of the eligible employees actively at work in the unit wish to be represented by the intervening organization.*

(d) Certification elections. *Certification elections are conducted and supervised by the state personnel director upon determination of the eligible voters by agreement or hearing. The ballots for a certification election must contain an appropriate space for employees to indicate that no representation is desired.*

6-6.3 Certification; Run-off Election

The state personnel director shall certify a labor organization as the exclusive representative of all eligible employees in a unit if the organization receives a majority of valid ballots cast in the certification election. If none of the choices on the ballot receives a majority of the votes cast, the state personnel director shall conduct a run-off election. The run-off ballot contains only the two choices receiving the most and the second most votes in the original election.

(a) Election bar. *If the members choose "no representation," the state personnel director shall not conduct an election in the unit for 24 months after the election results are certified. If an exclusive representative is certified, the state personnel director shall not accept a new petition in the unit for 24 months after the certification.*

(b) Contract bar. *Notwithstanding subsection (a), if the civil service commission has approved a collective bargaining agreement for a unit, the state personnel director shall not consider any new petitions during the term of the agreement except during the window period.*

(c) Window period. *If the collective bargaining agreement is a unitary agreement, election petitions may be accepted only during a 2-month window period ending 6 months before the expiration of the agreement that would otherwise constitute a bar to an election. If the agreement is divided into economic and noneconomic sections, election petitions may be accepted only during a 2-month window period ending 6 months before the expiration of the noneconomic section of the agreement.*

(d) Post-election provisions; certification. *When a newly elected exclusive representative is certified in a unit after an election and replaces an exclusive representative, the following conditions will be observed:*

(1) *The former exclusive representative shall immediately cease to represent the employees in the unit.*

(2) *The newly elected exclusive representative may either assume and administer the existing contract until its expiration or repudiate the existing contract.*

(3) *In either case, the newly elected exclusive representative shall negotiate a new contract with the office of state employer.*

(4) *No dues or service fees may be paid to the former exclusive representative beyond those deducted for the pay period in which the certification is issued.*

(5) *Dues and service fees cannot be deducted and paid to the new exclusive representative until the requirements of the regulations on dues deductions are fulfilled.*

(e) Post-election provisions; decertification. *When an exclusive representative is decertified in a unit after an election, the following conditions will be observed:*

(1) *The former exclusive representative shall immediately cease to represent the employees in the unit.*

(2) *Any primary or secondary collective bargaining agreements are immediately void and the unit members are subject to the rates of compensation and other conditions of employment applicable to other nonexclusively represented employees.*

(3) *After the end of the pay period in which the decertification is issued, the state shall not deduct dues or service fees from any classified employee or pay dues or service fees to the former exclusive representative, except dues and service fees deducted through the pay period in which the decertification is issued.*

6-6.4 Excluded Positions

(a) Designation. *The state employer, in consultation with the appointing authorities, shall designate the confidential, managerial, and supervisory excluded positions. If the state employer intends to change the designation of an eligible position to an excluded position, the state employer shall give written notice to any affected exclusive representative at least 29 calendar days before the designation becomes effective.*

(b) Review of designation. *If an exclusive representative disagrees with an intended designation of the state employer, the exclusive representative may petition the state personnel director to review the designation. The exclusive representative must file its petition with the director no later than 28 calendar days after the date of the notice of intent.*

(c) Procedure. *If a petition is filed, the director may solicit additional information from interested persons and may hold an informal conference to discuss the intended designation. The director shall administratively determine whether a position is an excluded position.*

(d) Appeal to commission. *The decision of the director is final unless the state employer, the attorney general, the secretary of state, or an exclusive representative aggrieved by the decision files an application for leave to appeal with the civil service commission within 28 calendar days after the decision.*

(e) Exclusive procedure. *The procedure authorized in this rule is the exclusive procedure for resolving disputes concerning the designation of an eligible position as an excluded position.*

3. Standards

A. Most Appropriate Unit.

A most appropriate unit is a group of classifications that the State Personnel Director has determined meets all of the following criteria:

1. Contains a broad occupational unit of employees with a community of interest.

2. Facilitates primary negotiation of statewide issues and administration of state government as a whole.
3. Includes all employees in a broad grouping of occupationally-related classifications, except employees in excluded managerial, supervisory, or confidential positions.

B. Exclusive Recognition.

Exclusive recognition refers to the certified representation status of a labor organization as the sole and exclusive representative of all employees in a unit. The director shall assign newly created classifications to the most appropriate unit, if applicable, subject to review as provided in § 3.F.

C. Requesting an Election.

1. **Petition for Election.** An employee, group of employees, individual, or employee organization may request a certification or decertification election in a unit by submitting a petition for election to the State Personnel Director on a form provided by the director.
2. **Showing of Interest.** When filed, a petition must be supported by a showing of interest of 30 percent of the eligible employees actively at work in a unit on a form that meets the following minimum requirements:
   a. The form contains the words "REQUEST FOR EXCLUSIVE REPRESENTATION" or "REQUEST FOR DECERTIFICATION" in the largest size type used on the form.
   b. The form contains the words "I, the undersigned State of Michigan classified employee, wish to be exclusively represented by [(name of employee organization) or 'no organization'] under the provisions of Chapter 6 of the Civil Service Commission Rules."
   c. The form includes a place for the employee's name to be printed.
   d. The form includes places for the employee's signature and the date of the employee's signature.
   e. The form includes a place for the employee's identification number.

   Any showing of interest forms that do not meet these requirements must be submitted to and approved by Hearings, Employee Relations and Mediation before circulation for employees' signatures.
3. **Sufficiency-of-interest determinations.** The sufficiency of a showing of interest is a matter of administrative determination by the director and is not subject to collateral attack by the parties. After a petition is filed, the Office of the State Employer shall provide a list of eligible employees to the director. The director shall determine whether a bona fide question of representation exists and whether petitioners have

shown the interest of at least 30 percent of the eligible employees actively at work in the unit. The director shall advise a petitioner of the reasons for any dismissal. The petitioning party may appeal a dismissal to the Civil Service Commission.

4. **Intervenors.** An employee, group of employees, individual, or employee organization may petition to intervene. The petition must be filed within 14 days of the director's sufficiency-of-interest determination and must be supported by a showing of interest of 10 percent of the eligible employees actively at work in the unit. The director shall similarly determine the sufficiency of a showing of interest to intervene. After demonstrating a sufficient showing of interest, an intervenor may attend any hearing that the director schedules and may appear on the election ballot.

5. **Excluded Employees.** Before the initial election in a unit and after the director's sufficiency-of-interest determination, the Office of the State Employer shall give the petitioner a list of the names of all employees in the classifications assigned to the unit. The petitioner may raise objections concerning the inclusion of any managerial, confidential, or supervisory employee on the list of eligible voters. If the employer and the petitioner cannot mutually resolve and settle all issues concerning excluded positions, the director shall schedule a hearing to resolve any unsettled question before making a final determination. Otherwise, no hearing is required before the director makes a determination. Upon final determination of the eligible voters, the director shall order an election.

6. **Petition Bar.** A petitioner cannot file a petition if the petitioner has filed a petition in the same unit within the previous 12 months.

7. **Contract Bar.** Election petitions cannot be processed if a valid collective bargaining agreement is in effect, except during the two-month period ending six months before the contract expires. An otherwise valid agreement acts as a bar pending Commission review, ratification, or modification. The director shall not order elections in any unit with a valid collective bargaining agreement that was not prematurely extended and is of fixed duration. No collective bargaining agreement shall bar an election when over three years have elapsed since the latter of the agreement's execution or last timely renewal.

D. Conduct of Elections.

1. **Eligible Voter List.** The Office of the State Employer shall provide the petitioner, any intervenors, and the State Personnel Director with a list of all eligible voters in the unit and their addresses of record within 14 calendar days after the director issues an election order. Eligible voters are those state employees who are (1) actively at work, (2) on a leave of absence with pay, (3) on a leave of absence of definite duration without pay, (4) on seasonal layoff, or (5) on a recall list. Former employees on waived-rights leaves of absence are not eligible. The payroll ending date for which this list is run is the cutoff date for voting eligibility.

2. **Ballot Distribution.** Civil Service staff shall mail ballots to all eligible voters no later than 14 calendar days after the provision of the names and addresses of the eligible voters.
3. **No Exclusive Representation Choice.** The ballots must contain a space for employees to indicate that no exclusive representation is desired.
4. **Deadline.** Only properly marked ballots received by the director within 14 calendar days from the date of mailing by the director can be considered in determining the election results.
5. **Numbering and Registration of Ballots.** All ballots must be numbered and registered. The number on each returned ballot must be checked against the register to ensure that only one ballot is received from an eligible employee and that no ballots are received from non-existent or ineligible employees.
6. **Ballot Counting.** The director shall order a count of the ballots returned and certify the outcome of the election to the petitioner, intervenors, and employer within seven calendar days of the deadline for receiving the marked ballots. The petitioner, intervenors, and Office of the State Employer can have one observer for each counting station when the ballots are counted.
7. **Certification of Election Results.** The director shall certify the employee organization receiving the majority of the valid votes cast in the election as the sole and exclusive representative of all employees in the unit. If a majority of the valid votes are cast for decertification or no representation, the director shall certify the withdrawal of authority of the certified organization to act as the unit's exclusive representative. If none of the choices on the ballot receive a majority of the valid votes cast, the director shall certify the results and conduct a runoff election between the two choices receiving the greatest number of votes. The runoff election is conducted in the same manner as the first election.
8. **Adjustments of Time Limitations.** The director may make reasonable adjustments in dates and time limitations in procedures and election orders for the conduct of representation elections.

E. Election Bar.

No new election in a unit can be conducted during the two years after an election when a majority of valid votes were cast for the choice of no representation. No petition for another employee organization or for decertification can be considered by the director during the two years following the certification of representation status.

F. Appeal of Representation Determinations.

The director may authorize Civil Service staff to conduct hearings to resolve any representation question or dispute. Representation determinations by the director may

be appealed to the Civil Service Commission. No appeal of any representation determination, question, or dispute can result in a stay of proceedings, unless ordered by the Employment Relations Board or the Civil Service Commission.

G. Objections to Representation Elections.

An interested party may file objections to the conduct of a representation election or conduct improperly affecting the results of an election with the director.

1. **Filing.** The following conditions govern the filing of objections:
   a. Objections must be filed within seven calendar days after the election results are furnished to the parties.
   b. Objections must be in writing and contain a statement of facts upon which the objections are based and the reasons for the objections.
   c. A copy of the objections must be simultaneously served upon each of the other parties.
2. **Hearings.** The following procedures govern the hearing of objections:
   a. If the filing of the objections meets the requirements of this procedure, the director shall designate an impartial hearing officer to take evidence on the objections through a hearing within three weeks after the filing of the objections.
   b. The hearing is conducted on the scheduled date and consecutive weekdays thereafter until completed. Postponements are allowed only if special extenuating circumstances are found. The inability of a particular attorney or representative to appear due to scheduling difficulties is not a sufficient basis for postponement or delay.
   c. At the hearing, the parties may call, examine, and cross examine witnesses and may introduce into the record documentary and other evidence. In the discretion of the hearing officer, depositions of witnesses may be ordered, taken, and entered as substantive evidence.
   d. The hearing officer shall issue a written decision. The hearing officer shall dismiss or sustain each objection. If the hearing officer orders that any challenged ballots be opened and counted, an amended tabulation and certification of election results must be issued. If the hearing officer sustains objections that could change the result of an election, the hearing officer shall direct that a new election be conducted.
3. **Appeals.** The decision of a hearing officer may be appealed to the Civil Service Commission within seven calendar days from its issuance.

CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-373-3024; or to MCSC-OGC@mi.gov.