	<b>UNION/MANAGEMENT RELATIONS</b>	<b>Human Resource Manual</b>
	<b>Exclusions</b>	<b>Section 606</b>

## EXCLUSIONS

### PURPOSE

1. The *Nunavut Public Service Act* excludes certain employees from being members of a bargaining unit. This section outlines the criteria and process to be followed in determining which employees these are.

### APPLICATION


2. These guidelines and procedures apply to all employees except teachers.

### DEFINITIONS

3. **Bargaining Unit** is a unit of employees, established by the *Nunavut Public Service Act*, for the purpose of collective bargaining.
4. **Teacher** is a teacher who is an employee; this includes teachers of grades kindergarten through 12, as defined in the *Education Act*.

### PROVISIONS

5. The Nunavut Employees Union (NEU) is the bargaining agent of all employees except teachers. Nunavut Teachers Association (NTA) is the bargaining agent for teachers.
6. A position is not eligible for inclusion in a bargaining unit if:
  - it is a position referred to in 49.1(2) of the *Legislative Assembly and Executive Council Act*; this includes all employees of the Legislative Assembly;
  - it is that of the superintendent of schools, an assistant superintendent of schools or a supervisor of schools within the meaning of the *Education Act*;
  - it is in the Department of Human Resources; or
  - in the opinion of the Minister, the employee is employed as follows:

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- (1) as a deputy head, a head of a secretariat of the Executive Council, an assistant deputy minister, a director, a regional director, an assistant director, an area director, a regional superintendent or an auditor;

  - Positions that qualify for exclusion under this criterion include all deputy heads, those that direct a departmental work unit and would normally be the first or second level response in the grievance process, and auditors.
- (2) in a division or section of the Department of Finance, with duties and responsibilities that include developing and administering policies, procedures and guidelines respecting human resource management, program evaluation, financial planning and resource allocation;

  - This criterion addresses positions in the Department of Finance that develop and administer policies that would result in a conflict if the employee was a member of the bargaining unit. An example of such a position is that of compensation analyst.
- (3) as one that provides support or advice directly to the Executive Council, a committee of the Executive Council or a member of the Executive Council;


  - This criterion addresses positions that report or provide advice directly to the Executive Council, a member or a committee of the council as a major part of their duties and responsibilities. Examples of such positions would include executive assistants and advisors, and support staff to Cabinet.
- (4) as a legal officer or in a position that provides translation services to a legal officer on a regular basis;

  - This criterion addresses positions that represent the GN on legal matters in court, arbitration and in front of Tribunals, and those that provide translation services for the legal division. Such positions would include


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lawyers who litigate on behalf of the GN, staff relations consultants and their interpreters. This does not include employees who are lawyers who do not litigate.

- (5) in a position with duties and responsibilities that include providing advice and assistance on a regular basis, respecting the terms and conditions of employment, including collective bargaining;
- Positions that qualify under this clause are those such as compensation analysts who provide employment and collective agreement advice and assistance.
- (6) in a position with duties and responsibilities that include carrying out the following on a regular basis:
- (a) staffing;
  - (b) interpreting employment contracts;
  - (c) resolving workplace disputes;
  - (d) responding to grievances; or
  - (e) providing advice in respect of the matters referred to in subparagraphs (a) to (d);
- When deciding if a position should be excluded from the bargaining unit it must be determined that in carrying out the normal day to day functions of their positions employees would be placed in a conflict if they were included in the bargaining unit. Having access to confidential information does not justify exclusion from the bargaining unit.
  - The positions that usually fall into this category are those of departmental human resource practitioners, consultants or officers in which these duties and /or responsibilities comprise a relatively high percentage of the positions' job description. Those positions providing support or back up services to the practitioners, consultants or officers are not usually included.

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- (7) in a position with management responsibilities that include directly assigning work to, assessing the performance of, and imposing discipline on other employees;
    - This criterion addresses positions that have substantial management responsibilities within a large division or regional office, positions with supervisory responsibilities in which there are other compelling reasons for exclusion, such as geographical remoteness from their supervisor.
  - (8) as a dentist or a medical practitioner;
    - This criterion addresses dentists' or medical practitioners' positions, but it does not include positions which report to the dentists or medical practitioners.
  - (9) in a position that provides administrative or secretarial support directly to:
    - (a) a person referred to in paragraphs (1), (2), (5), 6) or (7).
      - Excluding positions under this clause addresses those employees involved in preparing responses to the union on matters such as grievances and other disputes. Under this criterion, one person per division is the usual number that might be excluded.
7. When a position is created with a new job description, or the duties of a position change and a job description is revised, the department requesting the exclusion forwards a copy of the job description and organization chart along with the rationale for the exclusion request to the director of Job Evaluation. The Job Evaluation and Staffing Action Request Form should also reference the appropriate section of the *Public Service Act* to which the exclusion applies. See Chapter 400 for more information on the preparation of these documents.
8. A Job Evaluation consultant reviews the duties of the position against the criteria in the *Public Service Act*, and then makes a recommendation to the director of Job Evaluation regarding exclusion.

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9. If necessary, the human resource practitioner or other departmental official notifies the employee of his/her change in status and the corresponding changes to his/her terms and conditions of employment. The department ensures that the employee information in the Human Resource Information System correctly reflects the exclusion, and notifies the union of any change.

### **AUTHORITIES AND REFERENCES**

10. Nunavut Public Service Act  
Section 41 – Collective Agreements
11. Legislative Assembly and Executive Council Act
12. Human Resource Manual  
Section 402, Evaluating Positions
13. Main Collective Agreement with the NEU  
Article 12 Check Off and Information

### **CONTACTS**

14. For clarification or further information, please contact:

**Director Job Evaluation  
Department of Human Resources  
Iqaluit, Nunavut  
975-6227**

or

**Director Employee Relations  
Department of Human Resources  
Iqaluit, Nunavut  
975-6211**