

**5224.0130 MUSICIANS; COOPERATIVE ORCHESTRAS.**

Subpart 1. **Definition.** A cooperative orchestra is a musical group operated on a cooperative or partnership basis. All of the members have a voice in determining the membership, the engagements to be accepted, the division of the money received, and all other phases of the orchestra's operations. By common consent of the members one of the group may be designated as a leader whose duties are to act as spokesperson for the group and to negotiate engagements in the orchestra's name. A business manager or set manager or other nonplaying member may be a member of a cooperative orchestra.

Subp. 2. **Independent contractor.** All the members, including the leader, of an orchestra are independent contractors if all of the following criteria are met.

A. Payment is not on an hourly basis. Proceeds from engagements are used to pay expenses and the remainder is distributed as determined by members.

B. The group is free to work for other purchasers of its services.

C. The purchaser does not have the right to discharge a member of the group, or to dictate the style or manner of playing the music.

D. The group may be liable for damages for nonperformance if it quits prior to completing its engagement with a purchaser.

Subp. 3. **Employee.** Members of a cooperative orchestra are employees if all the following criteria are substantially met.

A. The individuality of the orchestra is subordinated to the enhancement of the purchaser's reputation.

B. The work relationship is not short term but is of a continuing nature.

C. The purchaser has the right to discharge the leader or any of the orchestra members, to change the style or type of music, to have first call on the services, and to restrict the orchestra's outside activities.

D. The purchaser pays the members on an hourly or time basis and bears the expenses of the orchestra.

**Statutory Authority:** *MS s 176.041; 176.83*

**History:** *10 SR 1852*

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