

Chapter ERC 80

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED STATE SECTOR GENERAL EMPLOYEES WHO, AS OF SEPTEMBER 15, ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011

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ERC 80.01 Policy. This chapter implements the portion of s. 111.83 (3) (b), Stats., requiring that the commission conduct an annual election no later than December 1, to determine whether collective bargaining representation shall continue for represented state sector general employees who, as of September 15, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees, must file a petition on or before September 15 requesting the commission to conduct a secret ballot election to determine whether a minimum of 51 percent of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure for resolving outcome determinative issues, including which ballots should be counted. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

Note: In *Association of State Prosecutors v. Employment Relations Commission, Milwaukee County Circuit Court Consolidated Case Nos. 14-CV-9307, 14-CV-9658, 15-CV-0501, 15-CV-0328, 15-CV-0329* a Declaratory Judgment under s. 227.40, Stats was entered providing as follows:

THIS COURT ISSUES A DECLARATORY JUDGMENT that Wisconsin Employment Relations Commission exceeded its statutory authority in promulgating the Chapter ERC 70 and 80 requirement that an existing exclusive representative must file a Petition in order to qualify for a recertification election under Wis. Stat. ss. 111.83 (3)(b) and 111.70 (4) (d) 3. b.

THIS COURT ISSUES A DECLARATORY JUDGMENT under Wis. Stat. s. 227.40 (4) (a) that those provisions in Chapter ERC 70 and 80 requiring an existing exclusive representative to file a Petition in order to qualify for a recertification election are invalid.

Note: The decision noted above was affirmed by the Court of Appeals in *Wisconsin Association of State Prosecutors v. Wisconsin Employment Relations Commission, 2016 WI App 85*. The decision of the Court of Appeals was reversed by the Supreme Court in *2018 WI 17*.

ERC 80.02 Scope. (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units that are all of the following:

- (a) General state employee bargaining units as defined in s. 111.825, Stats.
- (b) Represented by an exclusive representative.

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of any of the following:

- (a) Public safety employees as defined in s. 111.81 (15r), Stats.
- (b) General state employees who are not represented for purposes of collective bargaining.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.03 Petition for election. (1) WHO MAY FILE. A petition for an annual election to determine whether a represented state sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the party or representative filing the petition. A petition is not filed unless it is accompanied by the applicable filing fee established by sub. (4), contains the required signature or signature facsimile, and has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of 2 copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (5), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON STATE EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the state employer.

(4) FEE SCHEDULE. For a bargaining unit of 1 to 100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101 to 250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251 to 500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501 to 1,000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1,001 to 3,000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1,500. For a bargaining unit of more than 3,000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2,000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters deter-

mined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) **SHOWING OF INTEREST.** No showing of interest is required in support of a petition by the existing representative. A 30 percent showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) **CONTENTS.** The petition shall include all of the following:

(a) The name, address, and affiliation, if any, of the petitioner, and the name, address, and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the state employer involved, and the name, address, and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(c) A description of the statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including all of the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to continue to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall continue to be represented by the petitioner for purposes of collective bargaining with the state employer.

(g) A statement that the petitioner has served a copy of the petition on the employer.

(h) Any other relevant facts.

(7) **TIME FOR FILING; CONSEQUENCES OF FAILURE TO TIMELY FILE; NOTICE.** (a) *Time for filing.* To be timely, a petition must be filed on or before September 15.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of September 15.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for a minimum of one year following the applicable date in subd. 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the state employer or of any employee in the bargaining unit involved, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission shall provide the exclusive representative an opportunity to respond to the request. When issued, copies of the notice shall be sent to the state employer, the former exclusive representative, and any interested party who requested the issuance of the notice.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.04 Withdrawal of petition. Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to with-

draw shall be granted unless withdrawal would result in an injustice to any party. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 80.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in s. ERC 80.03 (7) (b) and (c) but the date of dismissal of the withdrawn petition shall apply in place of the date specified in s. ERC 80.03 (7) (a).

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.05 Action following filing of petition.

(1) **FURNISHING OF PERSONNEL DATA BY STATE EMPLOYER.** Within 10 days of its receipt of the petition pursuant to s. ERC 80.03 (3), the state employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last 4 digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include each employee's mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the State employer shall, within the same time period, submit 2 sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the state employer furnishes the commission with personnel data, the state employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) **RESPONSE TO PERSONNEL DATA.** Within 10 days of receipt of the personnel data from the state employer, the petitioner shall electronically provide the commission and the state employer with an alphabetical list of the names of personnel that should be added to or deleted from the state employer's personnel list. The period of time for furnishing the list may be extended by the commission for good cause shown.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the state employer and on the list, if any, provided by a petitioning labor organization, shall be allowed to vote, subject to the right of the state employer and any petitioning labor organization to challenge the eligibility of the voter.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.07 Elections. (1) **NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT.** All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) **NOTICE OF ELECTION.** The state employer shall post notices to personnel concerning the election at times, locations, and in a form specified by the commission.

(3) **OBSERVERS.** Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) **CHALLENGE OF VOTERS.** Any party, observer, or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the election, the commission shall furnish a tally of ballots to the parties.

(6) **INCONCLUSIVE ELECTIONS.** When more than one proposed representative appears on the ballot, if a minimum of 51 percent of the eligible voters favor representation but no single representative receives the votes of a minimum of 51 percent of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.83 (4), Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, no runoff election is needed, and no timely objections are filed under s. ERC 80.09, the commission shall issue to the parties a certification of the results of the election.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.09 Objections to election. (1) FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and unless and until it has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of 2 copies of the objections shall be included.

(2) **SERVICE ON OTHER PARTIES.** The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.10 Commission action on challenges or objections. (1) HEARING. If challenges to voter eligibility or objections to election conduct may affect the election outcome and cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) **AFTER HEARING.** (a) As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(b) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(c) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(d) If the commission overrules all objections, it shall promptly issue a certification of the election results.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.11 Consequence of failure to achieve support of 51 percent of those eligible to vote in the annual certification election. If no representative is ultimately supported by a minimum of 51 percent of the employees eligible to vote, the commission shall issue a certification of the results of the election including a notice of the following:

(1) If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of commission's certification of results. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for a minimum of one year following the date specified in sub. (1).

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.

ERC 80.12 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

History: EmR1113: emerg. cr., eff. 11-15-11; CR 13-092: cr. Register June 2014 No. 702, eff. 7-1-14.