ORDER OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

The Wisconsin Employment Relations Commission adopts an order to amend ERC 33 Appendix, Form D; to repeal and recreate ERC 1-18, 20-25, 30-33; and to create ERC 19, 26-28, 40 and 50 relating to the administration of collective bargaining laws.

Sections 111.09 (1), 111.11, 111.70(4)(c) 3.b., 111.70(4)(cm) 8 and 8s, 111.70 (8)(c), and 111.71 (1), 111.88(3), 111.94(1) and 227.11(2)(a), Stats., give the Commission the authority to amend, repeal and recreate and create these proposed administrative rules.

ANALYSIS PREPARED BY THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

The Wisconsin Employment Relations Commission has undertaken a comprehensive review and revision of its rules concerning procedures in the administration of the following portions of Chapter 111, Stats.,

Subchapter I -- the (Wisconsin) Employment Peace Act (WEPA)
Subchapter III -- concerning Public Utilities
Subchapter IV -- the Municipal Employment Relations Act (MERA)
Subchapter V -- the State Employment Labor Relations Act (SELRA)

Because the Public Utilities statute was declared to be pre-empted by federal law many years ago in AMALGAMATED ASSOCIATION V. WERB, 340 US 383 (1951), the ERC chapters relating to Subchapter III have been eliminated. Accordingly, none of the references to rules changes below relate to the rules concerning the Public Utilities statute.

The rules changes shall first apply to cases filed (under chs. ERC 1-28, 30-33 and 50) or matters that arise (under ch. ERC 40) 60 days after the first day of the month following publication in the Wisconsin administrative register.

OVERALL OBJECTIVES

The overall objectives of the rules review project have been as follows:

-- correcting/updating outdated statutory references
-- conforming to the related statutes
-- conforming to the agency's established practices
-- removing internal inconsistencies
-- removing requirements that are unnecessarily burdensome
-- improving ease of understanding
-- adapting to changes in communications technology

CHANGES IN CHAPTER TITLES, NUMBERING AND TABLE OF CONTENTS

The proposed changes in the table of contents are shown in two tables appended to this summary.

The first table compares the subject matter of existing chapters with the subject matter of the various chapters after revision. Chapter renumbering is noted in parentheses in the "New Subject" column of that table.

The second table compares the existing title for each chapter number with the title of the same-numbered chapter after revision.

As those tables show, the agency has retained the existing basic chapter numbering scheme under which state sector chapters remain numbered ch. ERC 20 et. seq. despite the fact that both chs. ERC 10 et. seq. and 30 et. seq. relate to the municipal sector. As a further result of those choices, there are no new chapters currently numbered chs. ERC 29, 34-39 or 41-49.

CHANGES COMMON TO ALL OR MANY CHAPTERS

An effort has been made, wherever possible, to maintain or establish parallelism among the chapters concerning parallel subject areas under WEPA, MERA and SELRA. To avoid unnecessary repetition, references to parallel provisions elsewhere in the rules have been utilized instead of repeating parallel text. In general, MERA rules have been referenced in the WEPA and SELRA chapters instead of repeating the parallel text. References to the hearing procedures in ch. ERC 18 have been utilized extensively throughout the rules.

The general chapters concerning WEPA, MERA and SELRA have been greatly shortened, with unnecessarily complex general rules eliminated and with other provisions replicated in full or by references in each of the substantive chapters to which they apply. In that way, as many as possible of the rules concerning a particular type of case will now be found in or referred to in the chapter specific to that type of case. Those changes are intended to improve the ease of use and understandability of each substantive chapter without unnecessarily lengthening the rules overall.

Throughout the rules, legalistic expressions such as "pursuant," "thereof," "deemed" etc. have been replaced with plainer English. In addition, the term "employe" has been replaced with "employee".

Throughout the rules, changes have been made to enable filing with the commission by delivery, mail, fax or e-mail, (compare, e.g., old ERC 10.10 (2) with new ERC 10.06 (1) and (2)). Exceptions to that approach have been made where a particular mode of transmittal is specifically required by law (e.g., new ERC 10.07 (1) (g) requiring compliance with Sec. 111.07 (2) (a), Stats., as regards service of hearing notices and complaints on persons or parties located outside the state). Exceptions have also been made where a particular mode of transmittal is warranted by strong policy considerations (e.g., new ERC 11.02 (2), requiring that a showing of

interest supporting a representation election petition be filed in paper form by personal delivery or mail).

Changes have also been made to enable service of parties by delivery, mail, fax, or other means authorized by the person served, with initiating parties called upon to include the fax and e-mail addresses of parties and representatives if available (compare e.g., old ERC 10.08 (4) and 12.03 (2) with new ERC 10.07 and 12.03 (2)). Those changes are intended to permit the commission and parties to serve parties by e-mail, but only as regards recipients who authorize service by that method.

For parties who choose to file in paper form, the number of copies required to be submitted has been reduced to the number the agency typically needs in its processing of the case (compare e.g., old 10.02 (3) with, e.g., new 12.02 (1)).

Requirements of service both on parties and on their representatives have been changed to make service only on parties' representatives the norm. An additional copy is required to be sent to parties themselves only where specifically required by law (compare, e.g., old ERC 10.10 (3) with new ERC 10.06 (3) and 10.07 (2)).

As a result of the above rule changes regarding filing and service, almost all of the old rules requirements for filing or service of documents by certified or registered mail have been eliminated (compare old ERC 10.10 (1), 12.02 (3), 14.02 (1), 18.02 (2), 18.03 (2), 25.02 (1), 31.05 (2), 32.05 (2), 33.06 (2) and 33.17 (6) with, e.g., new ERC 10.06 and 10.07). The only exceptions are those specifically provided by statute (e.g., new ERC 10.07 (1) (g) and 12.02 (3) invoking the specific requirements of Sec. 111.07 (2) (a), Stats., regarding service of complaints and notices of complaint hearings on persons or parties located outside the state.)

To emphasize the importance of impartiality of decision-makers and mediators, provisions on that subject have been added to all chapters relating to case handling (e.g., new ERC 12.05 and others referring to 18.08 (3) (c), 13.04 (3), 16.04 (4), and 16.07 (4)).

CHANGES COMMON TO CHAPTERS INVOLVING HEARINGS IN STATUTORY PROCEEDINGS

Topics related to the conduct of hearings have been moved to the various substantive chapters and combined, reorganized and in some respects expanded as appropriate to the chapter involved. The resultant hearings provisions fall into the following four categories:

- hearings in statutory proceedings by agency personnel (e.g., new ERC 11.05 (4) and 11.07 regarding election cases; new ERC 12.02 (6) and 12.05 regarding complaint cases; new ERC 18.07-18.08 regarding declaratory ruling cases; and new ERC 14.04 (3) regarding formal investigations by agency personnel prior to orders initiating fact finding or interest arbitration);

- grievance arbitration hearings by agency personnel (e.g., new ERC 16.05);

- grievance arbitration hearings by ad hoc arbitrators (e.g., new ERC 16.08); and

- impasse resolution hearings by ad hoc fact finders and interest arbitrators (e.g., new ERC 14.07).

With limited exceptions regarding complaint hearings, the following changes have been made in the various chapters that involve hearings in statutory proceedings.

The general provisions in old ERC 10.13 (1) and 20.13 (1) to the effect that hearings are open to the public has been moved to each chapter regarding hearings in statutory proceedings (e.g., new 18.08 (1)). However, the rules regarding grievance arbitration hearings provide that grievance hearings shall not be open to the public unless the parties jointly agree otherwise (e.g., new ERC 16.05 and 16.08). In that regard, the rules are consistent with the applicable ethics code (see, e.g., new ERC 16.05 and 16.08) and consistent with grievance arbitration practice by ad hoc and WERC-employed arbitrators in both public and private sector cases.

The general provisions in old ERC 10.14 and 20.14 regarding hearing subpoenas has been moved to the various substantive chapters involving hearings and revised to include subpoenas issued by parties' representatives and to cover subpoena enforcement (e.g., new ERC 18.08 (6) (d)).

The general provisions in old ERC 10.15 and 20.15 regarding depositions has been moved to the motions sections of the various substantive chapters involving hearings and revised to narrowly limit use of depositions (e.g., new 18.06 (2) (b)).

The general provisions in old ERC 10.16 (2) and 20.16 (2) regarding the rules of evidence applicable in hearings has been moved to the various substantive chapters involving hearings in statutory proceedings. The evidence rules have been reorganized and expanded, incorporating evidentiary standards contained in Sec. 227.45, Stats. (compare old ERC 10.14 and 10.16 and 20.14 and 20.16 with new ERC 18.08 (6)).

The general provisions in old ERC 10.17 and 20.17 making the person conducting the hearing responsible "to inquire fully into all matters in issue" and "to obtain a full and complete record" have been moved to the various substantive chapters involving hearings other than complaints (e.g., new ERC 18.08 (1)). That language is also made applicable to complaint hearings by reference to new ERC 18.08 in, e.g., new ERC 12.05.

Language common to all chapters involving statutory proceeding hearings has been added concerning objections, close of evidence, written closing arguments and waiver of procedures (new ERC 18.08 (7) to (10) to which, e.g., new ERC 12.05 refers.) The general provisions rules in old ERC 10.19 and 20.19 entitled “close of hearing” have been renamed “close of evidence” and moved to the various specific chapters involving hearings (e.g., new 18.08 (8)). Separate references have been included in the various chapters regarding hearing type cases regulating the exhaustion of time for submission of final arguments (e.g., new ERC 18.08 (9)).

The old provision concerning contempt in complaint cases (old ERC 2.15) has been made applicable to all statutory proceeding hearings, expanded and modified to include a procedure providing an opportunity to be heard before sanctions are imposed (new ERC 18.08 (11)).

For completeness and parallelism, rules describing rehearing procedures consistent with Sec. 227.49, Stats., have been added to each of the substantive chapters that involves hearings (e.g., new ERC 11.13, 12.10 and 18.11).

CHANGES SPECIFIC TO PARTICULAR CHAPTERS

General Provisions (ERC 1, ERC 10, ERC 20)

As described below, the general provisions chapters have been greatly shortened, eliminating some unnecessarily complex provisions and revising and moving many of the retained provisions into each of the substantive chapters to which they apply. References to parallel provisions of ch. ERC 10 have been included in chs. ERC 1 and 20 instead of replicating the parallel text in full.

The "purpose" and "policy" rules have been combined. The general interpretation standard has been revised to provide that rules are to be interpreted "to serve the purposes and provisions of the statutes" rather than the existing "liberally construed to effectuate the purposes of [the statute]." (E.g., compare old ERC 10.01 and 10.02 with new ERC 10.01).

The scope of the general provisions has been limited to functions performed by the commission and its staff. References to the applicability of the general provisions to fact finders are eliminated and no new references to their applicability to interest arbitrators have been added (compare, e.g., old ERC 10.01 with new ERC 10.01). These changes have been made because rules applicable to the functions performed by the commission and its staff are sometimes not suitable to ad hoc fact finders and interest arbitrators. It is therefore considered preferable to place procedures concerning fact finders and interest arbitrators exclusively in the respective separate substantive chapters (new ERC 14, 25, and 30-33).

The standard for waiver of a rule has been modified so that "The commission or examiner may waive the requirements of [a rule] to serve the purposes and provisions of the [statute], unless a party shows that it would be prejudiced by the waiver," whereas the existing language had provided that "the commission may waive any requirement of these rules unless a party shows prejudice thereby." (Compare, e.g., old ERC 10.01 with new ERC 10.01). This change is intended to promote compliance with comprehensively updated rules instead of widespread reliance on waivers of outdated rules, but to also continue to allow for waivers of rules in appropriate circumstances.

Most existing general provisions rules regarding initiation of proceedings, method, forms, where to file, filing, form, number of copies and service have been deleted from the general provisions chapters. Most of those provisions have been replicated in each of the various substantive chapters to which they relate (compare e.g., old ERC 10.06, 10.08, 10.09 and 10.10

with new ERC 10.06, 10.07, 12.02 (1) and (2)). General provisions have been retained regarding filing and service (e.g., new ERC 10.06 and 10.07).

Provisions regarding the computation of time have been simplified by elimination of unnecessarily complex provisions regarding "Additional time after service by mail" and "extension of time." (Compare old ERC 10.08 and 20.08 with new ERC 1.09, 10.09 and 20.09).

Signature requirements have been moved to those substantive chapters involving pleadings, petitions or stipulations, and revised to treat a signature facsimile as equivalent to an actual signature. Those changes enable all documents to be electronically transmitted to the commission except showing of interest documents (compare old ERC 10.09 (4) and 20.09 (4) with e.g., new ERC 12.02 (1) and 26.02 (3)). Requests for services generally do not require a signature or signature facsimile (e.g., new ERC 16.03 (1)).

Statement of service requirements have been simplified. The new provisions require only that the commission be provided with the names of those receiving copies of the document involved rather than a formal and more elaborate affidavit of service (compare, old ERC 10.10 (4) and 20.10 (4) with new ERC 1.06, 10.06 (3) and 20.06).

Rules regarding motions have been included in the various substantive chapters to which they apply and expanded to include provisions concerning the limited nature and extent of pre-hearing discovery (e.g., new ERC 12.04 and 18.06). The previously specified time limit for filing a motion to reschedule hearing has been eliminated (compare e.g., old ERC 10.12 (1) with, e.g., new ERC 12.04 (2) (e)).

Topics related to the conduct of hearings have been moved to the various substantive chapters and combined, reorganized and in some respects expanded as appropriate to the chapter involved. Several examples involving hearings in statutory proceedings have been noted in the preceding section of this Summary.

The general provisions in old ERC 1.08, 10.21 and 20.21 concerning fee payment requirements now appear only in each of the various substantive chapters to which filing fees are applicable (e.g., new ERC 12.02 (1) and 16.03 (1)). A schedule of filing fees and transcript fees has been retained in each of the revised general provisions chapters (new ERC 1.08, 10.08 and 20.08), with the specific fees specified by reference to parallel provisions of ERC 10.08.

The $80 filing fee specified for complaints and the $250 per party filing fee specified for mediation, fact finding, interest arbitration and grievance arbitration cases reflect fee levels established by prior commission action (new ERC 10.08).

Complaints (ERC 2, ERC 12, ERC 22)

The complaint chapters have been substantially reorganized, revised, updated and expanded. They incorporate the changes common to many chapters noted above. With limited exceptions, they also incorporate the changes common to statutory hearing chapters noted above, as well. References to parallel provisions of ch. ERC 12 have been included in chs. ERC 2 and

22 instead of replicating the parallel text in full. In addition, a reference to ERC 18.08 has been included in ERC 12.05 instead of replicating the parallel text in full.

The requirement in old ERC 12.02 (1) and 22.02 (1) that the complaint be sworn to has been eliminated.

The old provisions regarding amendment and withdrawal of complaint have been revised to specify standards for amendment and withdrawal of complaints (compare old ERC 12.03 (5) and 22.03 (5) with, e.g., new ERC 12.02 (4)). The amendment standards preclude amendments that "would unduly delay or disrupt the proceeding, or would result in an injustice to any party." (e.g., new ERC 12.02 (4) (a)). The withdrawal standard provides that a motion to withdraw "shall be granted unless withdrawal would result in an injustice to any party." (e.g., new ERC 12.02 (4) (b)).

Provisions have been added to describe the nature and effects of the complaint conciliation process. Those provisions establish a procedural presumption that parties agree to hold hearing scheduling in abeyance pending conclusion of conciliation unless a party requests otherwise (compare old ERC 12.04 (2) and 22.04 (2) with e.g., new ERC 12.02 (6) (a)).

Provisions specifying the contents of the complaint case notice of hearing have been added (e.g., new ERC 12.02 (6)) including references to the newly revised deadline for a motion to make complaint more definite and certain and the newly revised consequences of failure to answer described below.

The old provisions requiring a motion to make complaint more definite and certain to be filed within 5 days after service of the complaint have been revised. The new provisions require such a motion to be filed within 10 days after the earlier of the date of issuance of the notice of hearing or the date the commission notified the parties that the commission has received a request for scheduling of a hearing without awaiting the results of conciliation (compare old ERC 12.03 (3) and 22.03 (3) with new ERC 12.02 (7)).

The old provision requiring respondents to file an answer remains in the new rules (e.g., new ERC 12.03 (1)). However, the old provisions precluding a respondent who fails to timely answer from offering evidence and argument contrary to complaint allegations (old ERC 2.04, 12.03 (6) and (7), 22.03 (6) and (7)) have been revised (e.g., new ERC 12.03 (1)). The revisions provide that failure to file a timely answer waives all affirmative defenses without precluding respondent from offering evidence and argument contrary to complaint allegations. The revisions also specify that the answer shall be due on the date specified in the notice of hearing. These changes modify the existing agency practice of routinely waiving all effects of a failure to answer.

The new rules concerning motions in complaint cases specify what pre-hearing discovery is and is not available, narrowly limiting the scope of such discovery consistent with existing agency practice and the requirements of Sec. 227.45 (7), Stats., (compare old ERC 10.15 and 20.15 with, e.g., new ERC 12.04 (2) (c) and the 12.05 reference to 18.08 (6) (b)).

The old provisions concerning the consequences of a party's failure to appear at a properly noticed hearing (old ERC 10.13 (4) and 20.13 (4)) have been revised to those contained in, e.g., new ERC 12.05 reference to 18.08 (3) (b). Those revisions make a "for good cause shown" exception applicable to all consequences of a failure to appear. They also expressly protect the right of a non-appearing party to submit timely post-hearing arguments that evidence submitted at an *ex parte* hearing was insufficient to prove complaint allegations.

The old provision concerning contempt that appeared only in the private sector complaint rules (old ERC 2.15) has been made applicable in all sectors and to all statutory proceeding hearings. It has also been expanded and modified to include a procedure providing an opportunity to be heard before sanctions are imposed (new ERC 18.08 (11) to which, e.g., new ERC 12.05 refers.)

Scope of Bargaining Declaratory Rulings (ERC 18)

In addition to the changes common to many chapters, new ch. ERC 18 has been expanded to include motions, notice of hearing, and hearing procedure rules to which reference is made by various other chapters involving hearings in statutory proceedings. Those provisions common to chapters involving statutory proceeding hearings are summarized in an earlier section of this Summary.

The provisions of new ERC 18.08 are used as the hearing procedures referred to in chapters involving complaint proceedings (e.g., new ERC 12.05), and the notice of hearing, motions and hearing provisions of new ERC 18.06-18.08 are referred to in the various other chapters involving statutory proceedings, (e.g., new ERC 14.04 (3), 30.08 (3), 31.06 (3), and 32.09 (3).

Rules concerning motions likely to arise in this type of case have been added (compare old ERC 10.11 and 10.12 with new ERC 18.06).

The rules concerning "notice of hearing" have been retained with minor revisions (compare old ERC 18.06 with new ERC 18.07).

The old rule concerning "inclusion of additional parties" (old ERC 18.06 (2)) has been replaced by the intervention reference in the particular motions subsection (new ERC 18.06 (2) (a)).

Discretionary Ch. 227, Stats., Declaratory Rulings (new ERC 9, new ERC 19 and new ERC 28)

These new chapters have been added concerning discretionary declaratory ruling proceedings under Sec. 227.41 (2), Stats. The basic provisions refer to parallel provisions in the revised ERC 18, above, but they are modified as necessary to reflect differences between Sec. 111.70 (4) (b), Stats., scope of bargaining declaratory ruling proceedings and discretionary declaratory ruling proceedings under Sec. 227.41 (2), Stats.

Grievance Arbitration (new ERC 5 and ERC 16 and 23)

Chapters ERC 16 and 23 have been substantially revised and a parallel new ch. ERC 5 has been added regarding private sector grievance arbitration cases. These chapters include the common changes described above. References to parallel provisions of ch. ERC 16 have been included in chs. ERC 5 and 23 instead of replicating the parallel text in full.

These chapters separately provide procedures regarding requests for arbitrators employed by the commission and procedures regarding requests for ad hoc roster arbitrators not employed by the commission (see, e.g., new ERC 16.03-16.05 and 16.06-16.09).

In conformity with existing agency practice, these chapters newly include options for parties requesting grievance arbitration services. The newly added options permit parties to request a computer selected panel of available commission-employed arbitrators or to jointly request designation of a particular commission-employed arbitrator or one of a specified group of commission-employed arbitrators (e.g., new ERC 16.03 (2) (c)). However, the new rules also provide that, although the commission may consider parties' joint requests for panels of commission-employed arbitrators or for designation of particular commission-employed arbitrators, such requests are not be binding on the commission, (e.g., new ERC 16.04 (2)).

In further conformity with existing agency practice, these chapters newly include fee administration provisions limiting refunds to instances of the other party's non-acquiescence in arbitration. They also newly describe the circumstances in which multiple filing fees will be assessed consistent with s. 111.71 (2), Stats., (compare old ERC 1.08 (2), 10.21 (2) and 20.21 (2) with, e.g., new ERC 16.03 (1).

Specific language regarding commission-employed arbitrator impartiality and related procedures has been added in, e.g., new ERC 16.04 (4) and general impartiality language has been added regarding ad hoc grievance arbitrators (e.g., new ERC 16.07 (4)).

In conformity with existing agency practice, these chapters newly include language regarding the ordinarily public nature of awards and publication-related procedures (e.g., new ERC 16.04 (5) and 16.09).

In conformity with existing agency policy, these chapters newly include language making the National Academy of Arbitrators, Federal Mediation and Conciliation Service and American Arbitration Association Code of Professional Responsibility applicable to all grievance arbitration proceedings (e.g., new ERC 16.05 regarding commission-employed grievance arbitrators and new ERC 16.08 regarding ad hoc grievance arbitrators).

In conformity with existing agency practice, these chapters newly include language regarding random arbitrator selection and references to new ERC 40.06 (3) providing additional details regarding arbitrator selection and panel composition (e.g., new ERC 16.07 (1)).

Roster of Interest Arbitrators and Fact Finders (new ERC 40)

This new ERC chapter consists in large part of provisions of a longstanding agency policy on the subject.

The provisions regarding roster member eligibility requirements have been revised to more fully describe the existing agency policy and practice. The revision states that the "neutral status" required for roster eligibility mandates that "roster members shall not engage in any employment or hold any title or office that conflicts with the role of a neutral in labor-management dispute resolution." (new ERC 40.02 (1) (c)).

The provisions regarding selection and composition of panels more fully describe the existing agency practice (new ERC 40.06).

Mediation (new ERC 6, ERC 13 and ERC 24)

These chapters incorporate various of the common changes noted above and are (re)organized somewhat along lines of the revised grievance arbitration in, e.g., new ch. ERC 23. References to parallel provisions of ch. ERC 13 have been included in ch. ERC 6 and 24 instead of replicating the parallel text in full.

The new provisions concerning requests for mediation services call for parties requesting mediation to more clearly identify and describe the nature of the dispute involved (e.g., new ERC 13.03 (3) (d)).

In conformity with existing agency practice, new language offers requesting parties the option of jointly requesting assignment of a particular mediator or assignment of one of several mediators (e.g., new ERC 13.03 (3) (e)). However, the new rules also provide that, although the commission may consider parties' joint requests for designation of particular mediators, such requests are not be binding on the commission, (e.g., new ERC 13.03 (2)).

Provisions have been added describing the circumstances in which multiple filing fees will be assessed consistent with s. 111.71 (2), Stats., (compare old ERC 1.06 (3), 10.21 (3) and 20.21 (3) with e.g., new ERC 13.03 (2)).

Consistent with agency practice, the revised rules address only mediation services by commission-employed mediators (compare e.g., old ERC 13.03 and 24.03 with, e.g., new ERC 13.03 (3) (e)).

The rules concerning the confidentiality of the mediation process have been revised to follow Sec. 904.085, Stats. However, the old rule text has been retained and conditionally made applicable if that statute is repealed or for any other reason not applicable (compare old ERC 13.04 (2) and 24.04 (2) with , e.g., new ERC 13.04 (4)).

A provision has been added to make it clear that if mediation is initiated by the commission, rather than by a request of one or both parties, then no filing fee is payable (e.g., new ERC 13.05).

Fact Finding (ERC 14 and ERC 25)

These chapters have been reorganized and revised substantially, generally conforming to the revised ch. ERC 32 where applicable. References to parallel provisions of ch. ERC 14 have been included in ch. ERC 25 instead of replicating the parallel text in full.

The old separate rules concerning transcripts (old ERC 14.10 (5) and 25.10 (5)) have been eliminated. The fact finder compensation rule has been expanded to refer to transcript and other costs and revised to empower only the parties and not the fact finder to decide that the hearing will be transcribed (e.g., new ERC 14.09).

Consistent with agency practice, new language provides that, except as otherwise provided in the commission's rules, the fact finding hearing shall be conducted in accordance with the Code of Responsibility of the National Academy of Arbitrators, the Federal Mediation Service and the American Arbitration Association (e.g., new ERC 14.07 (2)).

New language has been added to ch. ERC 14 and the existing language of ch. ERC 25 has been revised concerning the obligation of each party to notify the other and the commission regarding whether it accepts or rejects the recommendations of the fact finder (compare old ERC 25.13 with new ERC 14.11 and new 25.11).

Interest Arbitration under Sec. 111.77, Stats (ERC 30)

This chapter has been generally revised to conform to ch. ERC 32 except where statutory differences prevent doing so.

The scope definition has been conformed to changes in Sec. 111.77 making it applicable to Milwaukee County law enforcement supervisory personnel and to a lower population threshold of "2500 or more" (compare old and new ERC 30.01).

Consistent with agency practice, language has been newly added to the effect that withdrawal of the petition or stipulation does not relieve either party of its obligation to pay the filing fee once the petition or stipulation has been filed (new ERC 30.04 and 30.06).

Paralleling ch. ERC 32 and consistent with agency practice, rules have been added specifying the requirements regarding final offer contents and precluding a close of investigation unless offers conform to those requirements (new ERC 30.09).

Paralleling ch. ERC 32 and consistent with agency practice, procedures have been provided for raising objections to non-mandatory subjects and for resolving those objections via declaratory ruling (new ERC 30.10 and 30.11).

Consistent with agency practice, a provision has been newly added providing that, except as otherwise provided in the commission's rules, the arbitration hearing shall be conducted in accordance with the Code of Responsibility of the National Academy of Arbitrators, the Federal Mediation Service and the American Arbitration Association (new ERC 30.14 (3)).

A revised rule concerning costs includes a provision limiting arbitrator charges to rates in the arbitrator's biographical and fee information on file with commission (new ERC 30.17).

A provision has been added describing the method of enforcing/vacating a Sec. 111.77, Stats., interest award (new ERC 30.18).

Interest Arbitration under Sec. 111.70 (4) (cm), Stats (ERC 32)

Where applicable, the common changes noted above have been incorporated.

The scope definition in old ERC 32.01 has been revised to eliminate the outdated effective date (new ERC 32.01).

Fee administration language has been added to the withdrawal section (new ERC 32.07).

Conforming to Sec. 111.70 (4) (cm) 6. am., Stats., provisions have been added allowing the investigation to be closed based on the last written position of a party failing to submit a final offer within the time period established by the investigator (new ERC 32.09 (2) and (3)).

Consistent with agency practice, a provision has been newly added providing that, except as otherwise provided in the commission's rules, the arbitration hearing shall be conducted in accordance with the Code of Responsibility of the National Academy of Arbitrators, the Federal Mediation Service and the American Arbitration Association (new ERC 32.15 (8))

The costs provision has been revised to empower only the parties and not the arbitrator to decide that the hearing will be transcribed (new ERC 32.15 (13)).

The old "Civil liability" subheading has been changed to "Attorney fees, interest and other costs" (compare old and new ERC 32.16 (2)).

Interest Arbitration for School District Professionals (ERC 33)

This chapter has been revised, where applicable, to incorporate the common changes noted above and the other changes made in ch. ERC 32. References to parallel provisions of ch. ERC 32 have been included in ch. ERC 33 instead of replicating the parallel text in full.

Fee administration language has been added to the rule concerning withdrawal of a petition (new ERC 33.10 (4)).

In order to conform with the Court of Appeals decision in RACINE EDUCATION ASSOCIATION V. WERC, 238 Wis.2d 33 (CtApp, 2000), the definition of a Qualified Economic

Offer has been revised to remove the words "at least" and "minimum" (compare old and new ERC 33.10 (2)).

To conform to statutory changes in Sec. 111.70 (4) (cm) 5s, Stats., language has been added regarding agreement by operation of law (new ERC 33.10 (4), (7) and (8) and 33.16 (1)).

The costs provision (old ERC 33.19 (13)) has been revised to eliminate the right of the arbitrator to insist on a transcript that neither party desires (new ERC 33.19 referring to ERC 32.14 (13)).

The "Civil liability" subheading of old ERC 33.20 (2) has been changed to "Attorney fees, interest; other costs" (new ERC 33.20 referring to 32.16 (2)).

In an effort to remind school districts of their teacher unit settlement reporting obligation under s. 111.70 (4) (cm) 8s., Stats., ch. ERC 33 and its Appendix have been revised to include a new rule specifically referring to the obligation to submit Form D in the Appendix, and Form D has been revised somewhat to make it easier to understand and use. (new ERC 33.23 and revised Form D in Appendix to ch. ERC 33.)

Interest Arbitration for Milwaukee Police under Sec. 111.70 (4) (jm) (ERC 31)

This newly created chapter conforms to agency practice regarding City of Milwaukee police interest arbitration cases. It parallels revised ch. ERC 32 except to the extent required by statutory differences.

Consistent with Sec. 111.70 (4) (jm) 2. and 4., Stats., the parties are precluded from submitting to arbitration subjects that were not certified by the commission as being at impasse. However, the parties are permitted to change their positions regarding the certified subjects at any time prior to a deadline established by the arbitrator (new ERC 31.07 (2)).

Representation Elections (ERC 3, ERC 11 and ERC 21)

These chapters have been revised to incorporate the changes common to many chapters and to statutory hearing chapters noted above, and to make them parallel with each other except to the extent required by statutory differences. References to parallel provisions of ch. ERC 11 have been included in chs. ERC 3 and 21 instead of replicating the parallel text in full.

Language has been added reflecting the agency's existing practice of requiring a showing of interest in support of a petition for a representation election in certain cases (e.g., new ERC 11.02 (3)). Where a showing of interest is required, the new language requires that it be submitted in paper form by personal delivery or mail (e.g., new ERC 11.02 (2)). Related procedures for agency determination of the sufficiency of the showing of interest are also added (e.g., new ERC 11.05 (2)).

Language has been added reflecting the agency's existing practice regarding efforts to reach an informal settlement of all or part of the issues presented by a representation election petition (e.g., new ERC 11.05 (3)).

Unit Clarifications (new ERC 7, new ERC 17 and new ERC 27)

These chapters are all newly created. They incorporate the changes common to many chapters and to statutory hearing chapters noted above, and they otherwise generally conform to agency practice regarding the resolution of bargaining unit clarification issues. References to parallel provisions of ch. ERC 17 have been included in chs. ERC 7 and 27 instead of replicating the parallel text in full.

Consistent with agency practice, the procedures prescribed for unit clarification proceedings closely parallel those provided for representation election proceedings.

Union Security Referenda (ERC 4, new ERC 8, ERC 15 and new ERC 26)

Chapters ERC 4 and 15 have been revised to incorporate the changes common to many chapters and to statutory hearing chapters noted above, where applicable, and to parallel the revised representation election chapters except where statutory differences require otherwise.

Chapters ERC 8 and 26 are newly created. They parallel the revised ch. ERC 15 except where statutory differences require otherwise. References to parallel provisions of ch. ERC 15 have been included in chs. ERC 8 and 26 instead of replicating the parallel text in full.

Statutory differences result in variations among the chapters regarding who may file a petition regarding continuation of a union security agreement. New ERC 15.04 (1) permits a petition concerning continuation to be filed by "the municipal employer or a labor organization" as provided in Sec. 111.70 (2), Stats. In contrast, new ERC 4.04 (1), 8.02 (1), and 26.02 (1) limit continuation petition filings to the employer or the exclusive representative of the bargaining unit involved under Secs. 111.06 (c) 1., 111.075 (2) (a) and 111.85 (2) (a), Stats., respectively).

Statutory differences regarding whether approval of an authorization referendum must be achieved before implementation of a union security arrangement, result in variations among the chapters regarding whether provisions are included for a pre-implementation petition for an authorization referendum (compare new ERC 4.03 (2), 8.02 (2) and 26.02 (2) with the absence of such a provision from new ERC 15.04 (1)).

Showing of interest procedures are set forth in new ERC 8.03, 15.05 and 26.03, in conformity with the showing of interest provisions in Secs. 111.075, 111.70 (2) and 111.85, Stats., respectively.

Labor-Management Cooperation Services (new ERC 50)

This new ERC chapter consists in large part of longstanding agency practices on the subject.

The proposed rules specify how to obtain LMC services (new ERC 50.03), how and when the cost of those services will be determined and paid (new ERC 50.04 (1) and (5) and 50.06), and assure the confidentiality of information shared with agency personnel by parties during LMC activities (new ERC 50.04 (4)).

WERC Rules Review Project -- Chapter Subject Comparison		
ERC Ch. #	**existing subject**	**new subject**
1	private sector general	private sector general
2	private sector complaint	private sector complaint
3	private sector representation	private sector election
4	private sector referendum	private sector referendum
5	utilities general	private sector grievance arbitration (old 5 to be eliminated)
6	utilities dispute filing	private sector mediation (old 6 to be eliminated)
7	utilities procedure	private sector unit clarification (old 7 to be eliminated)
8	utilities hearings	private sector referendum UW Hospital and Clinics Authority (old 8 to be eliminated)
9	list of all published forms	private sector discretionary declaratory rulings (old 9 to be eliminated)
10	municipal sector general	municipal sector general
11	municipal sector representation	municipal sector election
12	municipal sector complaint	municipal sector complaint
13	municipal sector mediation	municipal sector mediation
14	municipal sector fact finding	municipal sector fact finding
15	municipal sector referendum	municipal sector referendum
16	municipal sector grievance arbitration	municipal sector grievance arbitration
17	municipal sector supervisory unit representation elections	municipal sector unit clarification (old 17 now included in 11)
18	municipal sector bargaining scope declaratory rulings	municipal sector bargaining scope declaratory rulings
19	none	municipal sector discretionary declaratory rulings
20	state sector general	state sector general
21	state sector representation	state sector election
22	state sector complaint	state sector complaint
23	state sector grievance arbitration	state sector grievance arbitration
24	state sector mediation	state sector mediation
25	state sector fact finding	state sector fact finding
26	none	state sector referendum

27	none	state sector unit clarification

WERC Rules Review Project -- Chapter Subject Comparison		
ERC Ch. #	**existing subject**	**new subject**
28	none	state sector discretionary declaratory rulings
29	none	open
30	police-fire - 111.77 interest arbitration	police-fire - 111.77 interest arbitration
31	old non police-fire interest arbitration	Milwaukee police interest arbitration
32	interest arbitration for other than police, fire or teachers	interest arbitration for other than police, fire or teachers
33	teacher collective bargaining and interest arbitration	teacher collective bargaining and interest arbitration
App	appendix to ERC 33	appendix to ERC 33
34	none	open
40	none	ad hoc roster
41	none	open
42	none	
43	none	
44	none	
50	none	Labor-management cooperation services
51	none	open

WERC Rules Review Project -- Chapter Title Comparison		
ERC Ch. #	**existing title**	**new title**
EMPLOYMENT PEACE ACT		PROCEDURE IN THE ADMINISTRATION OF THE WISCONSIN EMPLOYMENT PEACE ACT
1	**General provisions**	**General private sector provisions**
2	**Unfair labor practices**	**Private sector unfair labor practices**
3	**Election and certification of representatives**	**Elections to determine bargaining representative or bargaining unit for private sector employees**
4	**Referendum concerning all-union agreements**	**Referenda concerning all-union agreements**
PUBLIC UTILITIES		(same chapter group heading as above)
5	**General provisions**	**Arbitration of private sector grievance disputes**
6	**Filing of a dispute**	**Mediation of private sector labor disputes**
7	**Procedure**	**Clarification of private sector bargaining units**
8	**Hearings**	**Referenda concerning fair-share and maintenance of membership agreements involving the University of Wisconsin Hospitals and Clinics Authority**
9	**List of published forms**	**Discretionary private sector declaratory rulings under ch. 227, Stats.**
PROCEDURE IN THE ADMINISTRATION OF SUBCH. IV OF CH. 111, STATS.		PROCEDURE IN THE ADMINISTRATION OF THE MUNICIPAL EMPLOYMENT RELATIONS ACT
10	**General provisions**	**General municipal sector provisions**
11	**Elections to determine bargaining representatives and appropriate bargaining units**	**Elections to determine bargaining representative or bargaining unit for municipal sector personnel**
12	**Prevention of prohibited practices**	**Municipal sector prohibited practices**
13	**Mediation of labor disputes**	**Mediation of municipal sector labor disputes**
14	**Fact finding in disputes involving municipal employers and municipal employees**	**Fact finding in disputes involving certain municipal employers and municipal employees**
15	**Referenda with respect to fair-share agreements**	**Referenda concerning municipal sector fair-share agreements**

WERC Rules Review Project -- Chapter Title Comparison		
ERC Ch. #	**existing subject**	**new subject**
16	**Arbitration of labor disputes**	**Arbitration of municipal sector grievance disputes**
17	**Elections to determine bargaining representative for supervisory law enforcement or supervisory fire fighter personnel**	**Clarification of municipal sector bargaining units**
18	**Declaratory rulings**	**Municipal sector scope of bargaining declaratory rulings**
19	none	**Discretionary municipal sector declaratory rulings under ch. 227, Stats.**
PROCEDURE IN THE ADMINISTRATION OF SUBCH. V OF CH. 111, STATS.		PROCEDURE IN THE ADMINISTRATION OF THE STATE EMPLOYMENT LABOR RELATIONS ACT
20	**General provisions**	**General state sector provisions**
21	**Elections to determine bargaining representatives and appropriate bargaining unit**	**Elections to determine bargaining representative for state sector personnel**
22	**Prevention of Prohibited Practices**	**State sector unfair labor practices**
23	**Arbitration of grievance disputes**	**Arbitration of state sector grievance disputes**
24	**Mediation of state sector labor disputes**	**Mediation of state sector labor disputes**
25	**Fact finding in state sector disputes**	**Fact finding in state sector disputes**
26	none	**Referenda concerning state sector fair-share and maintenance of membership agreements**
27	none	**Clarification of state sector bargaining units**
28	none	**Discretionary state sector declaratory rulings under ch. 227, Stats.**
29	none	open
MUNICIPAL INTEREST ARBITRATION AND MEDIATION-ARBITRATION		PROCEDURE IN THE ADMINISTRATION OF MUNICIPAL SECTOR INTEREST DISPUTE RESOLUTION PROCESSES
30	**Final and binding arbitration involving fire fighting and law enforcement personnel**	**Municipal interest arbitration involving fire fighting and law enforcement personnel under s. 111.77, Stats.**

WERC Rules Review Project -- Chapter Title Comparison		
ERC Ch. #	**existing subject**	**new subject**
31	**Mediation-arbitration involving municipal employes other than fire fighting and law enforcement personnel**	**Interest arbitration of disputes involving law enforcement bargaining units in 1st class cities**
32	**Mediation-arbitration in disputes relating to negotiations commenced on or after May 7, 1986**	**Collective bargaining and interest arbitration in municipal sector disputes not involving law enforcement, fire fighting or school district professional employees**
33	**Collective bargaining and interest arbitration in disputes relating to collective bargaining agreements entered into after August 12, 1993 affecting school district professional employees**	**Collective bargaining and interest arbitration in disputes relating to collective bargaining agreements affecting school district professional employees**
App	**Appendix -- Wisconsin Employment Relations Commission minimum qualified economic offer calculation.**	**Wisconsin Employment Relations Commission qualified economic offer calculation**
34	none	open
none		PROCEDURE IN THE ADMINISTRATION OF THE WERC ROSTER OF AD HOC ARBITRATORS AND FACT FINDERS
40	none	**Roster of ad hoc arbitrators and fact finders**
41	none	open
42	none	
43	none	
44	none	
none		PROCEDURE IN THE ADMINISTRATION OF LABOR-MANAGEMENT COOPERATION SERVICES
50	none	**Labor-management cooperation services**
51	none	open

SECTION 1. Chapters ERC 1-18 are repealed and recreated to read:

Chapter ERC 1

GENERAL PRIVATE SECTOR PROVISIONS

ERC 1.01 Purpose and interpretation.
ERC 1.02 Chapters.
ERC 1.03 Resolution of conflicts.
ERC 1.04 Definitions.
ERC 1.05 Transfer, consolidation and severance of proceedings.
ERC 1.06 Filing with the commission or with commission personnel.
ERC 1.07 Service on a party or representative.
ERC 1.08 Fee schedule.
ERC 1.09 Computation of time.
ERC 1.10 Forms.

ERC 1.01 Purpose and interpretation. Chapters ERC 1 to 9, 40, and 50 govern the conduct of all proceedings involving private sector employment relations before the Wisconsin Employment Relations Commission. As used in chs. ERC 1 to 9, 40, and 50, "the Wisconsin Employment Peace Act" means subch. I of ch. 111, Stats. Chapters ERC 1 to 9 shall be interpreted to serve the purposes and provisions of the Wisconsin Employment Peace Act, as shall chs. ERC 40 and 50 in connection with private sector employment. Nothing in chs. ERC 1 to 9, 40, or 50 shall be construed to prevent the commission or persons employed or designated by the commission from using best efforts to adjust any dispute arising between employees and employers. The commission or examiner may waive requirements of chs. ERC 1 to 9, 40, or 50 to serve the purposes and provisions of the Wisconsin Employment Peace Act, unless a party shows that it would be prejudiced by the waiver.

ERC 1.02 Chapters. Chapters ERC 2 to 9, 40, and 50 contain special rules applicable to the type of proceeding described in the caption of the chapter. This chapter contains general rules applicable to all types of proceedings in private sector employment relations and should be read in conjunction with the chapter governing the particular proceeding.

ERC 1.03 Resolution of conflicts. In any conflict between a provision of this chapter and a specific provision in chs. ERC 2 to 9, 40, or 50, the specific provision shall govern.

ERC 1.04 Definitions. Words or phrases used in this chapter which are defined in s. 111.02, Stats., have the meaning as in s. 111.02, Stats.

ERC 1.05 Transfer, consolidation and severance of proceedings. Whenever the commission finds it necessary, in order to serve the purposes of the Wisconsin Employment Peace Act, or to avoid unnecessary costs or delay, it may transfer any proceeding before an examiner to another examiner or to the commission. Proceedings under more than one subsection of the Wisconsin Employment Peace Act may be combined or severed.

ERC 1.06 Filing with the commission or with commission personnel. Practice and procedures regarding filing documents with the commission or with commission personnel shall be as set

forth in s. ERC 10.06.

ERC 1.07 Service on a party or representative. Practice and procedures for service on a party or representative shall be as set forth in s. ERC 10.07.

ERC 1.08 Fee schedule. (1) COMPLAINTS. For a complaint alleging that an unfair labor practice has been committed under s. 111.06, Stats., the complaining party or parties shall pay the commission a filing fee as set forth in s. ERC 10.08 (1).

(2) GRIEVANCE ARBITRATION. For a request that the commission or its staff act as a grievance arbitrator under s. 111.10, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (2).

(3) MEDIATION. For a request that the commission or its staff act as a mediator under s. 111.11, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (3).

(4) TRANSCRIPTS. Any party requesting the commission to provide a transcript of a commission proceeding shall pay a fee as set forth in s. ERC 10.08 (6).

ERC 1.09 Computation of time. Practice and procedures for computing any period of time prescribed by or allowed by chs. ERC 1 to 9, 40, or 50 or by order of the commission or individual conducting the proceeding, shall be as set forth in s. ERC 10.09.

ERC 1.10 Forms. Lists and copies of commission forms may be obtained from the commission's Madison office or the agency website.

Note: The address of the commission's website is http:\\werc.wi.gov
Note: For the commission's Madison office, the mailing address is PO Box 7870, Madison WI 53707-7870 and the physical address is 18 South Thornton Avenue, Madison, WI 53703.

Chapter ERC 2

PRIVATE SECTOR UNFAIR LABOR PRACTICES

ERC 2.01 Scope.
ERC 2.02 Complaint.
ERC 2.03 Answer to complaint.
ERC 2.04 Motions.
ERC 2.05 Hearings.
ERC 2.06 Findings of fact, conclusions of law and order.
ERC 2.07 Interlocutory findings of fact, conclusions of law and order.
ERC 2.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order.
ERC 2.09 Review of findings of fact, conclusions of law and order issued by examiner.
ERC 2.10 Petition for rehearing.

ERC 2.01 Scope. This chapter governs the general procedure relating to complaints of unfair labor practices as defined in s. 111.06, Stats.

ERC 2.02 Complaint. A complaint that any employer, employee, or person has engaged in an unfair labor practice defined, respectively, in s. 111.06 (1), (2) or (3), Stats., may be filed by any party or by a representative authorized to file on behalf of a party. Practice and procedures for complaint filing and processing shall otherwise be as set forth in s. ERC 12.02, except that the statutory references in s. ERC 12.02 (1) and (2) (c) shall be to s. 111.06 (1), (2) or (3), Stats.; references to "prohibited practices" shall be to "unfair labor practices"; and references to the "Municipal Employment Relations Act" shall be to the "Wisconsin Employment Peace Act."

ERC 2.03 Answer to complaint. Each respondent named in the complaint shall file an answer to the complaint with the commission on or before the date designated in the notice of hearing. Practice and procedures for filing and processing an answer shall be as set forth in s. ERC 12.03.

ERC 2.04 Motions. Practice and procedures for motions concerning unfair labor practice complaints shall be as set forth in s. ERC 12.04.

ERC 2.05 Hearings. Practice and procedures for hearings concerning unfair labor practice complaints shall be as set forth in s. ERC 12.05, except that references to the Municipal Employment Relations Act shall be to the Wisconsin Employment Peace Act.

ERC 2.06 Findings of fact, conclusions of law and order. After the close of the evidence and the submission of closing arguments, or on granting a motion for dismissal of a complaint, the commission or examiner shall issue written findings of fact, conclusions of law and order to the parties. Practice and procedures concerning the issuance of findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.06, except that references to the Municipal Employment Relations Act shall be to the Wisconsin Employment Peace Act.

ERC 2.07 Interlocutory findings of fact, conclusions of law and order. The practice and procedure for interlocutory findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.07.

ERC 2.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order. The practice and procedure for setting aside, modifying, changing or reversion findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.08.

ERC 2.09 Review of findings of fact, conclusions of law and order issued by examiner. Practice and procedures for commission review of findings of fact, conclusions of law and order issued by an examiner in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.09.

ERC 2.10 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 procedures for filing and processing a petition for rehearing shall be as set forth in s. ERC 12.10.

Chapter ERC 3

ELECTIONS TO DETERMINE BARGAINING REPRESENTATIVE FOR PRIVATE SECTOR EMPLOYEES

ERC 3.01 Scope.
ERC 3.02 Petition for election.
ERC 3.03 Withdrawal of petition.
ERC 3.04 Stipulation for election.
ERC 3.05 Commission pre-hearing action on petition.
ERC 3.06 Motions.
ERC 3.07 Hearings.
ERC 3.08 Direction of election or other dispositional order.
ERC 3.09 Elections.
ERC 3.10 Certification of results of election.
ERC 3.11 Objections to election.
ERC 3.12 Commission action on challenges or objections.
ERC 3.13 Petition for rehearing.

ERC 3.01 Scope. This chapter governs the general procedure for filing and processing of a petition to determine a collective bargaining representative or an appropriate collective bargaining unit under s. 111.05, Stats., involving employees of private sector employers.

ERC 3.02 Petition for election. A petition for a representation or unit-determination election may be filed by an employee or employees, or by a labor organization acting on their behalf, or by the employer or anyone authorized to act on its behalf. Practice and procedures for filing and processing of a petition to determine a collective bargaining representative or an appropriate collective bargaining unit shall otherwise be as set forth in s. ERC 11.02.

ERC 3.03 Withdrawal of petition. Practice and procedures for withdrawal of an election petition shall be as set forth in s. ERC 11.03.

ERC 3.04 Stipulation for election. Where an employer, and one or more individual employees or a labor organization acting on their behalf, and the exclusive representative, if any, of an existing unit agree that a question of representation or unit determination has arisen concerning employees of the employer, those parties may jointly file a stipulation for an election to resolve that question. Practice and procedures concerning a stipulation for an election shall be as set forth in s. ERC 11.04.

ERC 3.05 Commission pre-hearing action on petition. Practice and procedures regarding commission pre-hearing action on a petition for an election shall be as set forth in s. ERC 11.05.

ERC 3.06 Motions. Practice and procedures concerning motions in election proceedings shall be as set forth in s. ERC 11.06.

ERC 3.07 Hearings. Practice and procedures concerning hearings in election proceedings shall be as set forth in s. ERC 11.07.

ERC 3.08 Direction of election or other dispositional order. Practice and procedures regarding a commission direction of election or other dispositional order in an election proceeding shall be as set forth in s. ERC 11.08.

ERC 3.09 Elections. Practice and procedures for conducting elections shall be as set forth in s. ERC 11.09, except that the statutory reference in ERC 11.09 (6) shall be to s. 111.05, Stats.

ERC 3.10 Certification of results of election. Practice and procedures for certification of results of an election shall be as set forth in s. ERC 11.10.

ERC 3.11 Objections to election. Practice and procedures for filing objections to the conduct of an election shall be as set forth in s. ERC 11.11.

ERC 3.12 Commission action on challenges or objections. Practice and procedures for commission action on challenges or objections in election proceedings shall be as set forth in s. ERC 11.12.

ERC 3.13 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 procedures for filing and processing a petition for rehearing shall be as set forth in s. ERC 11.13.

Chapter ERC 4

REFERENDA CONCERNING ALL-UNION AGREEMENTS

ERC 4.01 Scope.
ERC 4.02 Policy.
ERC 4.03 Petition seeking referendum authorizing all-union agreement.
ERC 4.04 Petition seeking referendum to determine the continuation of all-union agreement.
ERC 4.05 Stipulation seeking referendum authorizing implementation of an all-union agreement.
ERC 4.06 Stipulation seeking referendum to determine the continuation of all-union agreement.
ERC 4.07 Withdrawal of petition.
ERC 4.08 Commission pre-hearing action on petition.
ERC 4.09 Motions.
ERC 4.10 Hearings.
ERC 4.11 Direction of referendum or other dispositional order.
ERC 4.12 Referendum.
ERC 4.13 Certification of results of referendum.
ERC 4.14 Objections to referendum.
ERC 4.15 Commission action on challenges or objections.
ERC 4.16 Petition for rehearing.

ERC 4.01 Scope. This chapter governs the general procedure relating to referenda to authorize or determine the continuation of private sector all-union agreements under s. 111.06 (1) (c), Stats.

ERC 4.02 Policy. Except as provided in s. 111.06 (1) (c) 2., 3., and 4., Stats., before implementation of an all-union agreement between an employer and a voluntarily recognized, rather than certified, exclusive representative, the employer or exclusive representative shall petition the commission for a referendum to determine whether the required number of employees in the bargaining unit involved favors authorization of an all-union agreement. After lawful implementation, an all-union agreement is subject to termination as a result of a discontinuation referendum. A discontinuation referendum shall be conducted only if the commission determines that there is reasonable ground to believe that the required number of employees does not favor the continuation of the all-union agreement.

ERC 4.03 Petition seeking referendum authorizing all-union agreement. **(1)** WHO MAY FILE. A petition seeking a referendum authorizing an all-union agreement may be filed by the employer or by the exclusive representative of an appropriate bargaining unit, or by anyone acting on its behalf.

(2) TIME FOR FILING. A petition for initial authorization of an all-union agreement may be filed at any time after the parties have agreed that an all-union agreement shall be implemented

upon the requisite referendum result favoring its implementation and before the implementation of the all-union agreement.

(3) FORM, NUMBER OF COPIES, AND FILING. 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 contains the required signature or signature facsimile and unless and until the petition has been actually 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 two copies of the petition shall be included.

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

(a) The name and address of the employer involved, 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 exclusive representative of the bargaining unit 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 collective bargaining unit involved, and the approximate number of employees in the unit.

(d) A description of the proposed all-union agreement involved.

(e) The date on which the most recent referendum, if any, was conducted, and the results of that referendum.

(f) The name and address of the petitioner, and the name, address and phone number of the petitioner's principal representative. Fax numbers and e-mail addresses shall be included, if available.

ERC 4.04 Petition seeking referendum to determine the continuation of all-union agreement. (1) WHO MAY FILE. A petition seeking a referendum to determine the continuation of an all-union agreement may be filed by either party to the all-union agreement, or by anyone acting on their behalf.

(2) TIME FOR FILING. A petition to determine the continuation of an all-union agreement may be filed at any time after an all-union agreement has been implemented.

(3) FORM, NUMBER OF COPIES, AND FILING. 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 contains the required signature or signature facsimile and unless and

until the petition has been actually 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 two copies of the petition shall be included.

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

(a) The name and address of the employer involved, 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 exclusive representative of the bargaining unit 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 collective bargaining unit involved, and the approximate number of employees in the unit.

(d) A description of the all-union agreement involved.

(e) The date on which the most recent referendum, if any, was conducted, and the results of that referendum.

(f) The name and address of the petitioner, and the name, address and phone number of the petitioner's principal representative. Fax numbers and e-mail addresses shall be included, if available.

(g) A statement that reasonable grounds exist to believe that the employees in the bargaining unit do not favor continued authorization of the all-union agreement. The grounds need not be stated in the petition.

ERC 4.05 Stipulation seeking referendum authorizing implementation of an all-union agreement. **(1)** WHO MAY FILE. When an employer and the exclusive representative of employees of the employer in an appropriate collective bargaining unit, in their negotiations with respect to the inclusion of an all-union agreement in their collective bargaining agreement, jointly desire to determine whether the employees in the collective bargaining unit favor the implementation of an all-union agreement, the employer and exclusive representative or anyone authorized to act on their behalf, may file a stipulation for a referendum for that purpose.

(2) TIME FOR FILING. A stipulation for a referendum seeking authorization to implement an all-union agreement shall be filed prior to the proposed implementation of the all-union agreement involved.

(3) FORM, NUMBER OF COPIES, FILING AND SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signatures or a facsimile of the signatures of the parties or representatives filing the

stipulation. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of two copies of the petition shall be included.

(4) CONTENTS. The stipulation shall include all of the following:

(a) The names and addresses of the parties on whose behalf the referendum is being stipulated, and the names, addresses and phone numbers of the parties' principal representatives. Fax numbers and e-mail addresses shall be included, if available.

(b) A request that the commission conduct a referendum to determine whether the employees in the collective bargaining unit involved favor the implementation of an all-union agreement.

(c) A description of the collective bargaining unit involved, and the approximate number of employees in the unit.

(d) A description of the all-union agreement involved.

(e) A statement by the employer that it agrees that, if the required number of employees votes in favor of authorizing the all-union agreement, then the employer shall incorporate the all-union agreement in the collective bargaining agreement covering the employees in the bargaining unit involved.

(f) A statement by the exclusive representative that it agrees that, if the required number of employees does not vote in favor of authorizing the all-union agreement, the exclusive representative shall withdraw its request that an all-union agreement be implemented covering the employees in the bargaining unit involved.

(g) A complete list of employees agreed upon by the parties as being included in the collective bargaining unit and eligible to vote.

(h) Suggested days of the week, time and place for the conduct of the referendum.

(5) PROCEDURE FOR RESOLVING REFERENDUM-RELATED DISPUTES. Questions arising in connection with the conduct of or the results of the referendum shall be processed in accordance with the procedures following a referendum directed as a result of a hearing under s. ERC 4.10.

ERC 4.06 Stipulation seeking referendum to determine the continuation of all-union agreement. **(1)** WHO MAY FILE. A stipulation for a referendum to determine the continuation of an all-union agreement may be filed by the exclusive representative and the employer who are parties to the all-union agreement, or anyone authorized to act on their behalf.

(2) TIME FOR FILING. A stipulation for a referendum to determine the continuation an all-

union agreement may be filed at any time following the implementation of the all-union agreement involved.

(3) FORM, NUMBER OF COPIES, FILING AND SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signatures or a facsimile of the signatures of the parties or representatives filing the stipulation. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of two copies of the petition shall be included.

(4) CONTENTS. The stipulation shall include all of the following:

(a) The names and addresses of the parties on whose behalf the referendum is stipulated, and the names, addresses and phone numbers of the parties' principal representatives. Fax numbers and e-mail addresses shall be included, if available.

(b) An agreement that a hearing shall be waived and a request that the commission conduct a referendum to determine the continuation of an all-union agreement.

(c) A description of the collective bargaining unit involved, and the approximate number of employees in the unit.

(d) A description of the all-union agreement involved.

(e) The date on which the most recent referendum, if any, was conducted, and the results of that referendum.

(f) A complete list of employees agreed upon by the parties as being included in the collective bargaining unit and eligible to vote.

(g) Suggested days of the week, time and place for the conduct of the referendum.

(5) PROCEDURE FOR RESOLVING REFERENDUM-RELATED DISPUTES. Questions arising in connection with the conduct of or the results of the referendum shall be processed under the procedures following a referendum directed as a result of a hearing under s. ERC 4.10.

ERC 4.07 Withdrawal of petition. Practice and procedures for withdrawal of a petition in referendum proceedings shall be as set forth in s. ERC 15.06.

ERC 4.08 Commission pre-hearing action on petition. Practice and procedures for commission pre-hearing action in referendum proceedings shall be as set forth in s. ERC 15.07.

ERC 4.09 Motions. Practice and procedures regarding motions in referendum proceedings shall be as set forth in s. ERC 18.06.

ERC 4.10 Hearings. Practice and procedures regarding hearings in referendum proceedings shall be as set forth in s. ERC 15.09.

ERC 4.11 Direction of referendum or other dispositional order. Practice and procedures regarding a commission direction of election or other dispositional order in referendum proceedings shall be as set forth in s. ERC 15.10.

ERC 4.12 Referendum. Practice and procedures regarding conduct of a referendum shall be as set forth in s. ERC 15.11.

ERC 4.13 Certification of results of referendum. (1) WHEN ISSUED. If challenged ballots are insufficient in number to affect the results and no timely objections are filed under s. ERC 4.14, the commission shall issue to the parties a certification of the results of the referendum.

(2) EFFECT OF CERTIFICATION. (a) *Not favoring all-union agreement*. Where the certification of the results of a referendum indicates that the required number of employees has not authorized the implementation of, or the continuation of, the all-union agreement, the all-union agreement shall not be implemented, or shall be terminated at the termination of the collective bargaining agreement of which it is then a part or at the end of one year from the date of the commission's certification of the result of the referendum, whichever is earlier.

(b) *Favoring all-union agreement*. Where the certification of the results of a referendum indicates that the required number of employees has authorized the continuation of, or implementation of, the all-union agreement shall continue or shall become effective as of the date of the commission's certification of the result of the referendum, or on a later date agreed upon between the employer and the exclusive representative involved.

ERC 4.14 Objections to referendum. Practice and procedures for filing objections to the conduct of a referendum shall be as set forth in s. ERC 15.13.

ERC 4.15 Commission action on challenges or objections. Practice and procedures for commission action on challenges or objections in referendum proceedings shall be as set forth in s. ERC 15.14.

ERC 4.16 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 procedures for filing and processing a petition for rehearing in a referendum proceeding shall be as set forth in s. ERC 15.15.

Chapter ERC 5

ARBITRATION OF PRIVATE SECTOR GRIEVANCE DISPUTES

ERC 5.01 Scope.
ERC 5.02 Policy.
ERC 5.03 Request for commission-employed arbitrator.
ERC 5.04 Commission action on request for commission-employed arbitrator.
ERC 5.05 Proceedings before commission-employed arbitrator.
ERC 5.06 Request for ad hoc arbitrator not employed by the commission.
ERC 5.07 Commission action on request for ad hoc arbitrator.
ERC 5.08 Proceedings before ad hoc arbitrator.
ERC 5.09 Ad hoc arbitrator's award and report.

ERC 5.01 Scope. This chapter governs the general procedure relating to grievance arbitration proceedings and designation of grievance arbitrators under s. 111.10, Stats.

ERC 5.02 Policy. To promote the prompt, peaceful and just settlement of labor disputes arising from the interpretation or application of a collective bargaining agreement affecting terms and conditions of private sector employment in Wisconsin, the commission offers various grievance arbitration services involving designation of grievance arbitrators who are either employed by the commission or who are on the commission's ad hoc roster of arbitrators and fact-finders not employed by the commission.

ERC 5.03 Request for commission-employed arbitrator. A request that the commission provide the services of a commission-employed arbitrator may be filed by the exclusive representative, the employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. Practice and procedures regarding filing a request for services of a commission-employed arbitrator shall be as set forth in s. ERC 16.03.

ERC 5.04 Commission action on request for commission-employed arbitrator. Practice and procedures for commission action on a request for services of a commission-employed arbitrator shall be as set forth in s. ERC 16.04.

ERC 5.05 Proceedings before commission-employed arbitrator. Practice and procedures for proceedings before a commission-employed arbitrator shall be as set forth in s. ERC 16.05.

ERC 5.06 Request for ad hoc arbitrator not employed by the commission. A request that the commission provide the parties with a list of one or more ad hoc arbitrators, not employed by the commission to provide grievance arbitration services may be filed by the exclusive representative, the employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. Practice and procedures regarding filing a request for services of an ad hoc arbitrator, not employed by the commission, shall be as set forth in s. ERC 16.06.

ERC 5.07 Commission action on request for ad hoc arbitrator. Practice and procedures for commission action on a request for services of an ad hoc arbitrator shall be as set forth in s. ERC 16.07.

ERC 5.08 Proceedings before ad hoc arbitrator. Practice and procedures for proceedings before an ad hoc arbitrator shall be as set forth in s. ERC 16.08.

ERC 5.09 Ad hoc arbitrator's award and report. Practice and procedures regarding an ad hoc arbitrator's award and report shall be as set forth in s. ERC 16.09.

Chapter ERC 6

MEDIATION OF PRIVATE SECTOR LABOR DISPUTES

ERC 6.01 Scope.
ERC 6.02 Policy.
ERC 6.03 Request for mediation services.
ERC 6.04 Commission action on request for mediation services.
ERC 6.05 Mediation initiated by the commission.
ERC 6.06 Mediation proceedings.
ERC 6.07 Report to commission.

ERC 6.01 Scope. This chapter governs the general procedure relating to mediation of private sector labor disputes between employees or their representatives, and employers or their representatives under s. 111.11, Stats.

ERC 6.02 Policy. To promote the prompt and peaceful settlement of labor disputes affecting terms and conditions of private sector employment in Wisconsin, the commission offers various mediation services involving designation of mediators to assist the parties in reaching a voluntary settlement. In order to maintain and enhance the effectiveness of the mediation function, the commission has established rules and procedures designed to maintain confidentiality of the mediation process.

ERC 6.03 Request for mediation services. A request for mediation services may be filed by a employer or by the exclusive collective bargaining representative of a bargaining unit of employees, or by anyone authorized to act on their behalf. Practice and procedures for filing a request for mediation services shall be as set forth in s. ERC 13.03.

ERC 6.04 Commission action on request for mediation services. Practice and procedures for commission action on a request for mediation services shall be as set forth in s. ERC 13.04.

ERC 6.05 Mediation initiated by the commission. Practice and procedures for mediation initiated by the commission shall be as set forth in s. ERC 13.05, except that the reference to the "Municipal Employment Relations Act" shall be to the "Wisconsin Employment Peace Act."

ERC 6.06 Mediation proceedings. Practice and procedures in mediation proceedings shall be as set forth in s. ERC 13.06.

ERC 6.07 Report to commission. Practice and procedures regarding a report to the commission by the mediator shall be as set forth in s. ERC 13.07.

Chapter ERC 7

CLARIFICATION OF PRIVATE SECTOR BARGAINING UNITS

ERC 7.01 Scope.
ERC 7.02 Petition for unit clarification.
ERC 7.03 Withdrawal of petition.
ERC 7.04 Commission pre-hearing action on petition.
ERC 7.05 Motions.
ERC 7.06 Hearings.
ERC 7.07 Order clarifying bargaining unit or other dispositional order.
ERC 7.08 Petition for rehearing.

ERC 7.01 Scope. This chapter governs the general procedure relating to clarification of private sector bargaining units under the Wisconsin Employment Peace Act to determine whether one or more positions are properly included in or excluded from an existing collective bargaining unit.

ERC 7.02 Petition for unit clarification. A petition to determine whether one or more positions shall be included in or excluded from an existing collective bargaining unit may be filed by the exclusive representative of the bargaining unit or by the employer or by an authorized representative of one of those parties. Practice and procedures for filing and processing of a petition for unit clarification shall otherwise be as set forth in s. ERC 17.02.

ERC 7.03 Withdrawal of petition. Practice and procedures for withdrawal of a petition for unit clarification shall be as set forth in s. ERC 17.03.

ERC 7.04 Commission pre-hearing action on petition. Practice and procedures for commission pre-hearing action on a petition for unit clarification shall be as set forth in s. ERC 17.04.

ERC 7.05 Motions. Practice and procedures for motions in unit clarification proceedings shall be as set forth in s. ERC 18.06.

ERC 7.06 Hearings. Practice and procedures for hearings in unit clarification proceedings shall be as set forth in s. ERC 17.06, except that references to the Municipal Employment Relations Act shall be to the Wisconsin Employment Peace Act.

ERC 7.07 Order clarifying bargaining unit or other dispositional order. Practice and procedures regarding commission issuance of an order clarifying bargaining unit or other dispositional order in a unit clarification proceeding shall be as set forth in s. ERC 17. 07.

ERC 7.08 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

procedures for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

Chapter ERC 8

REFERENDA CONCERNING FAIR-SHARE AND MAINTENANCE OF MEMBERSHIP AGREEMENTS INVOLVING THE UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY

ERC 8.01 Scope.
ERC 8.02 Petition for referendum.
ERC 8.03 Showing of interest in support of petition.
ERC 8.04 Withdrawal of petition.
ERC 8.05 Commission pre-hearing action on petition.
ERC 8.06 Motions.
ERC 8.07 Hearings.
ERC 8.08 Direction of referendum or other dispositional order.
ERC 8.09 Referendum.
ERC 8.10 Certification of results of referendum.
ERC 8.11 Objections to referendum.
ERC 8.12 Commission action on challenges or objections.
ERC 8.13 Petition for rehearing.

ERC 8.01 Scope. This chapter governs the general procedure relating to referenda under s. 111.075, Stats., concerning fair-share and maintenance of membership agreements affecting bargaining units of employees of the University of Wisconsin Hospitals and Clinics Authority.

ERC 8.02 Petition for referendum. **(1)** WHO MAY FILE. A petition to authorize or determine the continuation of a fair-share or maintenance of membership agreement for a bargaining unit may be filed by the employer or by the exclusive representative of the bargaining unit involved or by anyone acting on behalf of either party.

(2) TIME FOR FILING. (a) *Concerning authorization.* A petition to authorize a fair-share or maintenance of membership agreement for a bargaining unit may be filed at any time after an exclusive representative of the bargaining unit involved has been certified.

(b) *Concerning continuation.* A petition to determine the continuation of a fair-share or maintenance of membership agreement may be filed at any time following the implementation of the fair-share or maintenance of membership agreement involved.

(3) FORM, NUMBER OF COPIES, AND FILING. 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 contains the required signature or signature facsimile and unless and until the petition and the showing of interest in support of the petition required by s. ERC 8.03 have been actually 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 two copies of the

petition shall be included. The showing of interest in support of the petition required by s. ERC 8.03, shall be transmitted to the commission in paper form by physical delivery or mail.

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

(a) The name and address of the employer 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 exclusive representative of the bargaining unit 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 collective bargaining unit involved, and the approximate number of employees in the unit.

(d) A description of the fair-share or maintenance of membership agreement involved.

(e) The date of execution, the effective date, and the expiration date of the collective bargaining agreement, if any, containing a fair-share or maintenance of membership agreement affecting the bargaining unit involved.

(f) A statement to the effect that at least 30% of the employees in the collective bargaining unit involved desire the referendum requested in the petition.

(g) The name and address of the petitioner, and the name, address and phone number of the petitioner's principal representative. Fax numbers and e-mail addresses shall be included, if available.

ERC 8.03 Showing of interest in support of petition. The petition shall be supported by a showing of interest in writing, containing the printed names and signatures of at least 30% of the employees in the bargaining unit involved, the dates on which the signatures were executed, and a statement that the employees signing support the authorization or discontinuation of a fair-share or maintenance of membership agreement requested in the petition.

ERC 8.04 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 withdraw shall be granted unless withdrawal would result in an injustice to any party.

ERC 8.05 Commission pre-hearing action on petition. (1) SERVICE OF PETITION. Upon receipt of a petition, the commission shall serve a copy of the petition on all interested parties identified in the petition.

(2) DETERMINATION OF SHOWING OF INTEREST. Upon receipt of a petition, the commission shall determine the sufficiency of the showing of interest. Practice and procedures for determination of the showing of interest shall be as set forth in s. ERC 15.07 (2).

(3) CONCILIATION. If the commission determines that further proceedings are warranted, the commission may cause an effort to reach informal settlement of all or part of a referendum petition to be undertaken by a commission designee. Practice and procedures for conciliation shall be as set forth in s. ERC 15.07 (3).

(4) NOTICE OF HEARING. Following the filing of a petition and following conciliation, if further proceedings are warranted, the commission or assigned examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing. Practice and procedures regarding a notice of hearing in a referendum proceeding shall be as set forth in s. ERC 15.07 (4)

ERC 8.06 Motions. Practice and procedures regarding motions in referendum proceedings shall be as set forth in s. ERC 18.06.

ERC 8.07 Hearings. Practice and procedures for hearings in referendum proceedings shall be as set forth in s. ERC 15.09.

ERC 8.08 Direction of referendum or other dispositional order. Practice and procedures regarding commission issuance of a direction of referendum or other dispositional order in a referendum proceeding shall be as set forth in s. ERC 15.10.

ERC 8.09 Referendum. Practice and procedures regarding conduct of a referendum shall be as set forth in s. ERC 15.11.

ERC 8.10 Certification of results of referendum. (1) WHEN ISSUED. If challenged ballots are insufficient in number to affect the results and no timely objections are filed under s. ERC 8.11, the commission shall issue to the parties a certification of the results of the referendum.

(2) EFFECT OF CERTIFICATION. (a) *Favoring neither fair-share nor maintenance of membership*. Where the certification of the results of a referendum indicates that the required number of employees has not authorized the implementation of, or the continuation of, either a fair-share or maintenance of membership agreement, no fair-share or maintenance of membership agreement shall be implemented and any existing fair-share or maintenance of membership agreement shall be terminated at the termination of the collective bargaining agreement, or one year from the date of the certification of result of the referendum, whichever is earlier.

(b) *Favoring maintenance of membership but not fair-share.* Where the certification of the results of a referendum indicates that the required number of employees has authorized the implementation of, or the continuation of, the maintenance of membership agreement but have not authorized the implementation of, or the continuation of a fair-share agreement, no fair-share agreement shall be implemented. The maintenance of membership agreement in effect, if any, shall be continued in effect, or the maintenance of membership agreement shall take effect 60 days after the date of the certification or on an earlier date agreed upon between the employer and the exclusive representative involved.

(c) *Favoring fair-share*. Where the certification of the results of a referendum indicates that the required number of employees has authorized the implementation of, or the continuation of a fair-share agreement, the fair-share agreement in effect, if any, shall be continued in effect, or the fair-share agreement shall take effect 60 days after the date of the certification or on an earlier date agreed upon between the employer and the exclusive representative involved.

ERC 8.11 Objections to referendum. Practice and procedures for filing objections to the conduct of a referendum shall be as set forth in s. ERC 15.13.

ERC 8.12 Commission action on challenges or objections. Practice and procedures for commission action on challenges or objections in referendum proceedings shall be as set forth in s. ERC 15.14.

ERC 8.13 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 procedures for filing and processing a petition for rehearing in a referendum proceeding shall be as set forth in s. ERC 15.15.

Chapter ERC 9

DISCRETIONARY PRIVATE SECTOR DECLARATORY RULINGS UNDER CH. 227, STATS.

ERC 9.01 Scope.
ERC 9.02 Petition.
ERC 9.03 Statement in response to petition.
ERC 9.04 Withdrawal of petition.
ERC 9.05 Motions.
ERC 9.06 Commission action on petition.
ERC 9.07 Notice of hearing.
ERC 9.08 Hearings.
ERC 9.09 Findings of fact, conclusions of law and declaratory ruling.
ERC 9.10 Effect of declaratory ruling.
ERC 9.11 Petition for rehearing.

ERC 9.01 Scope. This chapter governs the general procedure relating to discretionary declaratory rulings requested under s. 227.41, Stats., concerning the Wisconsin Employment Peace Act and rules concerning its administration.

ERC 9.02 Petition. Any interested person may file a petition requesting that the commission issue a declaratory ruling about the applicability to any person, property or state of facts of any provision of the Wisconsin Employment Peace Act or any rule concerning its administration. Practice and procedures for filing a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.02, except that references to the "Municipal Employment Relations Act" shall be to the "Wisconsin Employment Peace Act."

ERC 9.03 Statement in response to petition. Practice and procedures regarding filing of a statement in response to a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.03.

ERC 9.04 Withdrawal of petition. Practice and procedures regarding withdrawal of a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.04.

ERC 9.05 Motions. Practice and procedures regarding motions in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.06.

ERC 9.06 Commission action on petition. Practice and procedures regarding commission action on a petition for a discretionary declaratory ruling shall be as set forth in s. ERC 19.06

ERC 9.07 Notice of hearing. Practice and procedures regarding a notice of hearing in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 19.07.

ERC 9.08 Hearings. Practice and procedures for hearings in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 19.08

ERC 9.09 Findings of fact, conclusions of law and declaratory ruling. After submission of the case, the commission shall either make and file its findings of fact, conclusions of law and declaratory ruling or issue an order denying the petition. Practice and procedures regarding commission issuance of findings of fact, conclusions of law and declaratory ruling in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 18.09.
ERC 9.10 Effect of declaratory ruling. The effect of a discretionary declaratory ruling issued under this chapter shall be as set forth in s. ERC 19.10.

ERC 9.11 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 procedures for filing and processing a petition for rehearing in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 19.11.

Chapter ERC 10

GENERAL MUNCIPAL SECTOR PROVISIONS

ERC 10.01 Purpose and interpretation.
ERC 10.02 Chapters.
ERC 10.03 Resolution of conflicts.
ERC 10.04 Definitions.
ERC 10.05 Transfer, consolidation and severance of proceedings.
ERC 10.06 Filing with the commission or with commission personnel.
ERC 10.07 Service on a party or representative.
ERC 10.08 Fee schedule.
ERC 10.09 Computation of time.
ERC 10.10 Forms.

ERC 10.01 Purpose and interpretation. Chapters ERC 10 to 19, 30 to 33, 40, and 50 govern the conduct of all proceedings involving municipal employment relations before the Wisconsin Employment Relations Commission. As used in chs. ERC 10 to 19, 30 to 33, 40, and 50, "the Municipal Employment Relations Act" means subch. IV of ch. 111, Stats. Chapters ERC 10 to 19 and 30 to 33 shall be interpreted to serve the purposes and provisions of the Municipal Employment Relations Act, as shall chs. ERC 40 and 50 in connection with municipal sector employment. Nothing in Chapters ERC 10 to 19, 30 to 33, 40, or 50 shall be construed to prevent the commission or persons employed or designated by the commission from using best efforts to adjust any dispute arising between employees and employers. The commission or examiner may waive requirements of chs. ERC 10 to 19, 30 to 33, 40, and 50 to serve the purposes and provisions of the Municipal Employment Relations Act, unless a party shows that it would be prejudiced by the waiver.

ERC 10.02 Chapters. Chapters ERC 11 to 19, 30 to 33, 40, and 50 contain special rules applicable to the type of proceeding described in the caption of the chapter. This chapter contains general rules applicable to all types of proceedings in municipal employment relations and should be read in conjunction with the chapter governing the particular proceeding.

ERC 10.03 Resolution of conflicts. In any conflict between a provision of this chapter and a specific provision in chs. ERC 11 to 19, 30 to 33, 40, or 50, the specific provision shall govern.

ERC 10.04 Definitions. Words or phrases used in this chapter which are defined in s. 111.70 (1), Stats., have the meaning as in s. 111.70 (1), Stats.

ERC 10.05 Transfer, consolidation and severance of proceedings. Whenever the commission finds it necessary, in order to serve the purposes of s. 111.70, Stats., or to avoid unnecessary costs or delay, it may transfer any proceeding before an examiner to another examiner or to the commission. Proceedings under more than one subsection of the Municipal Employment Relations Act may be combined or severed.

ERC 10.06 Filing with the commission or with commission personnel. **(1)** COMPLETION OF

FILING WITH THE COMMISSION. Except as otherwise specifically provided in the rules chapter applicable to the document involved, filing of a document with the commission is completed when the document and any associated filing fee is actually received by the commission at its Madison office during normal business hours by physical delivery, mail, fax or e-mail. The commission's normal business hours at all work locations are 7:45 AM to 4:30 PM, Monday through Friday, excluding legal holidays. E-mail communications to the commission shall be directed to the commission's central e-mail address.

Note: For the commission's Madison office, the mailing address is PO Box 7870, Madison WI 53707-7870, the physical delivery address is 18 South Thornton Avenue, Madison, WI 53703, the fax number is 608-266-6930, and the central e-mail address is werc@werc.state.wi.us.

(2) COMPLETION OF FILING WITH COMMISSION PERSONNEL. Filing of documents with individual commission personnel is completed when the document is actually received, either at the commission's Madison office during normal business hours or at the individual commission employee's work location during normal business hours, by physical delivery, mail, fax or e-mail. The commission's normal business hours at all work locations are 7:45 AM to 4:30 PM, Monday through Friday, excluding legal holidays. E-mail communications to individual commission personnel may be directed either to the commission's central e-mail address or to the commission employee's e-mail address. The e-mail addresses of individual commission employees are available from the commission's Madison office and on the commission's website.

(3) UPON WHOM SERVED. Except as otherwise specifically provided in the rules chapter applicable to the document involved, all documents filed with the commission or with an individual commission employee shall be served on the attorney or other representative of each party and on all parties not represented by an attorney or other representative. Serving a party's attorney or representative shall constitute serving the party. Where specifically required by the rules chapter applicable to the document involved, a copy shall also be transmitted to the represented party.

(4) STATEMENT OF SERVICE. Documents filed with the commission or with an individual commission employee shall identify who has been or is being served with a copy.

(5) SIGNATURE FACSIMILE. Signature facsimile requirements of chs. ERC 10 to 19, 30 to 33, 40, and 50 are met by a photocopy of a handwritten signature for documents filed in paper form; by a faxed copy of a handwritten signature for documents filed via fax; and by either a graphic copy of a handwritten signature or a typed name preceded by "/s/" for documents filed via e-mail.

ERC 10.07 Service on a party or representative. (1) COMPLETION OF SERVICE ON A PARTY OR REPRESENTATIVE. Service of any document is completed when any of the following occur:

(a) The document has been delivered in person.

(b) The document has been left at the principal office or place of business of the person served.

(c) The document has been addressed to the last known address of the person served and deposited in the United States mail.

(d) The document has been addressed to the last known address of the person served and deposited with a telegraph company.

(e) The document has been faxed to the last known fax number of the person served.

(f) The document has been transmitted to the person served by any other means authorized by the person served.

(g) For service of complaints and notices of complaint hearings on persons or parties located outside the state, the document has been served in the manner and at the time provided in s. 111.07 (2) (a), Stats.

(2) UPON WHOM SERVED. All documents shall be served on the attorney or other representative of each party and on all parties not represented by counsel. Serving a party's counsel or representative shall constitute serving the party. Where specifically required by the rules chapter applicable to the document involved, a copy shall also be transmitted to the represented party.

ERC 10.08 Fee schedule. (1) COMPLAINTS. For a complaint alleging that a prohibited practice has been committed under s. 111.70 (3), Stats., the complaining party or parties shall pay the commission a filing fee of $80.

(2) GRIEVANCE ARBITRATION. For a request that the commission or its staff act as a grievance arbitrator under s. 111.70 (4) (c) 2., or (cm) 4., Stats., the parties to the dispute shall each pay the commission a filing fee of $250.

(3) MEDIATION. For a request that the commission or its staff act as a mediator under s. 111.70 (4) (c) 1. or (cm) 3., Stats., the parties to the dispute shall each pay the commission a filing fee of $250.

(4) FACT-FINDING. For a request that the commission initiate fact-finding under s. 111.70 (4) (c) 3., Stats., the parties to the dispute shall each pay the commission a filing fee of $250, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid for the fact-finding.

(5) INTEREST ARBITRATION. For a request that the commission initiate interest arbitration under s. 111.70 (4) (cm) 6., (4) (jm) or 111.77 (3), Stats., the parties to the dispute shall each pay the commission a filing fee of $250, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid for the arbitration.

(6) TRANSCRIPTS. Any party requesting the commission to provide a transcript of a commission proceeding shall pay a fee of $8.00 per page or the actual per page fee of the court

reporter, whichever is less.

ERC 10.09 Computation of time. In computing any period of time prescribed by or allowed by chs. ERC 10 to 19, 30 to 33, 40, or 50 or by order of the commission or individual conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

ERC 10.10 Forms. Lists and copies of commission forms may be obtained from the commission's Madison office or the agency website.

> **Note:** The address of the commission's website is http:\\werc.wi.gov

Chapter ERC 11

ELECTIONS TO DETERMINE BARGAINING REPRESENTATIVE FOR MUNICIPAL SECTOR PERSONNEL

ERC 11.01 Scope.
ERC 11.02 Petition for election.
ERC 11.03 Withdrawal of petition.
ERC 11.04 Stipulation for election.
ERC 11.05 Commission pre-hearing action on petition.
ERC 11.06 Motions.
ERC 11.07 Hearings.
ERC 11.08 Direction of election or other dispositional order.
ERC 11.09 Elections.
ERC 11.10 Certification of results of election.
ERC 11.11 Objections to election.
ERC 11.12 Commission action on challenges or objections.
ERC 11.13 Petition for rehearing.

ERC 11.01 Scope. This chapter governs the general procedure for filing and processing of a petition to determine a collective bargaining representative or an appropriate bargaining unit of municipal employees under s. 111.70 (4) (d), Stats., or of supervisory law enforcement or supervisory fire fighter personnel under s. 111.70 (8) (b), Stats.

ERC 11.02 Petition for election. **(1)** WHO MAY FILE. A petition to determine a collective bargaining representative or an appropriate collective bargaining unit may be filed by a municipal employee or law enforcement or fire fighting supervisor, or by a labor organization acting on their behalf, or by a municipal employer or anyone authorized to act on its behalf.

(2) FORM, NUMBER OF COPIES, AND FILING. 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 contains the required signature or signature facsimile and unless and until the petition has been actually 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 two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), 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) SHOWING OF INTEREST. If the petition is filed by other than the municipal employer, and if any or all of the personnel in the bargaining unit claimed appropriate in the petition are

currently represented for purposes of collective bargaining by other than the petitioner, then the petition shall be supported by a showing of interest in writing, containing the printed names and signatures of at least 30% of the personnel in the collective bargaining unit involved, the dates on which the signatures were executed, and a statement that the personnel signing support the petitioner's request for an election.

(4) 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 municipal employer involved, if the municipal employer is not the petitioner, 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 claimed appropriate collective bargaining unit, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

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

(e) A brief statement setting forth the nature of the question that has arisen concerning representation or unit determination.

(f) Any other relevant facts.

ERC 11.03 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 withdraw shall be granted unless withdrawal would result in an injustice to any party.

ERC 11.04 Stipulation for election. **(1)** WHO MAY FILE. Where a municipal employer, and an individual municipal employee or law enforcement or fire fighting supervisor or a labor organization acting on their behalf, and the exclusive representative, if any, of an existing unit agree that a question of representation or unit determination has arisen concerning municipal employees or concerning supervisory law enforcement or fire fighting personnel, those parties may jointly file a stipulation for an election to resolve that question. A stipulation to determine a collective bargaining representative may be filed either to initiate an election proceeding or subsequent to the filing of a petition and prior to a direction of election based on a hearing on the petition.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The stipulation 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 parties or representatives filing the stipulation. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually received by the commission at its Madison

office during normal business hours specified in s. ERC 10.06 (1). The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of two copies of the stipulation shall be included.

(3) CONTENTS. The stipulation shall include all of the following:

(a) The names and addresses of the parties on whose behalf the election is stipulated, and the names, addresses and phone numbers of the parties' principal representatives. Fax numbers and e-mail addresses shall be included, if available.

(b) An agreement that a hearing is waived and requesting the commission to conduct an election.

(c) A description of the collective bargaining unit agreed to be appropriate by the parties.

(d) A complete list of personnel agreed upon by the parties as being included in the collective bargaining unit and eligible to vote.

(e) Suggested days of the week, time and place for the conduct of the election.

(4) PROCEDURE FOR RESOLVING ELECTION-RELATED DISPUTES. Questions arising in connection with the conduct of, or results of, the election shall be processed in accordance with the procedures following an election directed as a result of a hearing under s. ERC 11.07.

ERC 11.05 Commission pre-hearing action on petition. (1) SERVICE OF PETITION. Upon receipt of a petition, the commission shall serve a copy of the petition on all interested parties identified in the petition.

(2) DETERMINATION OF SHOWING OF INTEREST. In cases in which a showing of interest is required under s. ERC 11.02 (3), the commission shall determine the sufficiency of the showing of interest.

(a) *Furnishing of personnel list by municipal employer*. The municipal employer involved shall, within a period of time established by the commission, furnish in writing to the commission a list containing the names of the personnel, in alphabetical order, employed in the collective bargaining unit involved. The period of time for furnishing a list of personnel may be extended by the commission for good cause shown.

(b) *Determination*. The commission shall determine the sufficiency of the showing of interest upon the receipt from the employer of the names of the personnel in the bargaining unit. No party, other than the party submitting the showing of interest, may receive a copy of, or examine, the showing of interest. The commission shall inform all parties as to its determination regarding the sufficiency of the showing of interest. The commission shall not reveal the number or identity of persons supporting a showing of interest.

(3) CONCILIATION. If the commission determines that further proceedings are warranted,

the commission may cause an effort to reach informal settlement of all or part of an election petition to be undertaken by a commission designee. A conciliator so designated shall attempt through mediation to assist the parties in reaching an informal agreement resolving some or all of the issues that might otherwise require a hearing. The pendency of conciliation shall not preclude the scheduling or conduct of a hearing if scheduling is specifically requested by any party prior to the conclusion of conciliation. If the conciliator concludes that further conciliation efforts are unlikely to produce a settlement, the processing of the case shall proceed, including the scheduling of a hearing, if appropriate.

(4) NOTICE OF HEARING. (a) *When issued*. Following the filing of a petition and following conciliation, if further proceedings are warranted, the commission or assigned examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing.

(b) *Contents.* The notice of hearing shall include all of the following:

1. A statement of the time, place, and nature of the hearing, including a statement that the election proceeding is a class 1 proceeding as defined in s. 227.01 (3) (a) to (c), Stats. Unless the parties have agreed otherwise or unless the commission or examiner finds that an emergency requires otherwise, the hearing shall be held not less than 10 days after the notice of hearing is served. The hearing may be rescheduled in the manner prescribed in s. ERC 18.06 (2) (d).

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A statement that the purpose of the hearing is to determine whether the unit described in the petition is an appropriate unit, and, if so, to determine the issues, if any, with respect to whether there exists a question of representation or unit determination among the eligible personnel in that unit.

4. A statement that all parties are required to have with them for examination at the hearing any contract or correspondence between the municipal employer and any labor organization or person representing any of the personnel of the municipal employer relating to the representation of the municipal employer's personnel.

5. A statement that the municipal employer is required to have for examination at the hearing an organizational chart, if any, setting forth its entire organizational structure and a list setting forth the names of all the personnel, and their classifications or positions in the employ of the municipal employer.

ERC 11.06 Motions. Practice and procedures regarding motions in election proceedings shall be as set forth in s. ERC 18.06.

ERC 11.07 Hearings. Practice and procedures regarding hearings in election proceedings shall be as set forth in s. ERC 18.08.

ERC 11.08 Direction of election or other dispositional order. As soon as possible after submission of the case, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition or stipulation. 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. In cases where the commission is resolving issues of fact or law, the commission's order shall be accompanied by its findings of fact and conclusions of law, and may be made available to the public through the commission website and in other commission publications.

ERC 11.09 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. The commission shall determine on a case by case basis whether balloting shall be conducted on-site or by mail. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election and the commission's policy on absentee ballots, at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any party may be represented by observers, selected in accordance with limitations, if any, established by the commission.

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

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the ballots shall be counted in the presence of the parties or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot and the results are inconclusive, the commission, on request of any party, may conduct a run-off election as provided in s. 111.70 (4) (d) 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.

ERC 11.10 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no run-off election is needed, and no timely objections are filed under s. ERC 11.11, the commission shall issue to the parties a certification of the results of the election.

ERC 11.11 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 the conduct of the election or 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 two 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.

ERC 11.12 Commission action on challenges or objections. (1) HEARING. If ballot challenges potentially affecting the election outcome or objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedures for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

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

(a) 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.

(b) 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.

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

ERC 11.13 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 procedures for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

Chapter ERC 12

MUNICIPAL SECTOR PROHIBITED PRACTICES

ERC 12.01 Scope.
ERC 12.02 Complaint.
ERC 12.03 Answer to complaint.
ERC 12.04 Motions.
ERC 12.05 Hearings.
ERC 12.06 Findings of fact, conclusions of law and order.
ERC 12.07 Interlocutory findings of fact, conclusions of law and order.
ERC 12.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order.
ERC 12.09 Review of findings of fact, conclusions of law and order issued by examiner.
ERC 12.10 Petition for rehearing.

ERC 12.01 Scope. This chapter governs the general procedure relating to complaints of prohibited practices as defined in s. 111.70 (3), Stats.

ERC 12.02 Complaint. (1) WHO MAY FILE; FORM; NUMBER OF COPIES; FILING FEE. A complaint that any municipal employer, municipal employee, or person has engaged in a prohibited practice defined, respectively, in ss. 111.70 (3) (a), (b) or (c), Stats., may be filed by any party or by a representative authorized to file on behalf of a party. The complaint 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 complaint. At the time of filing, the filing fee established by s. ERC 10.08 (1) shall be submitted to the commission. A complaint is not filed unless it contains the required signature or signature facsimile and unless and until the complaint and fee have been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The complaint shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the complaint is filed in paper form, a total of three copies of the complaint shall be included, together with one additional copy for each named respondent. The fee may be transmitted to the commission by physical delivery or mail. As used in this chapter, "party" has the same meaning as "party in interest."

(2) CONTENTS. The complaint shall contain all of the following:

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

(b) The name, address and phone number of each respondent, and any other party named in the complaint. Fax numbers and e-mail addresses shall be included, if available.

(c) A clear and concise statement of the facts constituting the alleged prohibited practice or practices, including the time and place of occurrence of particular acts and the provisions of s. 111.70 (3), Stats., alleged to have been violated.

(d) A statement of the remedy or remedies the complainant is requesting the commission to order.

(3) SERVICE. After the filing of a complaint, the commission shall serve a copy of the complaint on each respondent named in the complaint. At the same time, the commission shall serve all parties named in the complaint with a notice that the scheduling of a hearing shall be held in abeyance pending the results of conciliation unless a party specifically requests otherwise. Service shall be by mail to the parties at their last known post-office address, except that service of a party located outside the state and who has no known post-office address within Wisconsin shall be in the manner provided in s. 111.07 (2) (a), Stats.

(4) AMENDMENT AND WITHDRAWAL. (a) *Amendment*. Any complainant may request permission to amend its complaint at any time prior to the issuance of a final order by the commission or examiner. A motion to amend a complaint shall be granted by the commission or examiner unless the amendment would unduly delay or disrupt the proceeding, or would otherwise result in an injustice to any party.

(b) *Withdrawal*. Any complaint may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission or examiner. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. The commission shall not refund fees based on a withdrawal of a complaint.

(5) CONCILIATION. The commission may cause an effort to reach informal settlement of all or part of a complaint to be undertaken by a commission designee. A conciliator so designated shall attempt through mediation to assist the parties in reaching an informal agreement resolving some or all of the issues that might otherwise require a hearing. The pendency of conciliation shall not preclude the scheduling or conduct of a hearing if scheduling is specifically requested by any party prior to the conclusion of conciliation. If the conciliator concludes that further conciliation efforts are unlikely to produce a settlement, the processing of the case shall proceed, including the scheduling of a hearing, if appropriate.

(6) NOTICE OF HEARING. (a) *When and by whom issued*. At the specific request of a party or at the unsuccessful conclusion of conciliation, the commission or examiner shall schedule a date and time for the hearing and serve all parties named in the complaint and their representatives with a notice of hearing.

(b) *Contents.* The notice of hearing shall include all of the following:

1. A statement of the time, place, and nature of the hearing, including whether the case is a class 2 or 3 proceeding as defined in s. 227.01 (3) (a) to (c), Stats. All complaint cases shall be designated as class 3 proceedings, except that cases in which a requested remedy involves a

penalty, such as deprivation of a respondent's rights, immunities, privileges or remedies granted or afforded by the Municipal Employment Relations Act, shall be designated as a class 2 proceeding. Unless the parties have agreed otherwise, the hearing shall be held not less than 10 nor more than 40 days after the complaint was filed or a hearing was requested. The hearing may be rescheduled in the manner prescribed in s. ERC 12.04 (2) (e).

2. A statement of the legal authority and jurisdiction under which the hearing is to be held, and, in the case of a class 2 proceeding, a reference to the particular statutes and rules involved.

3. A short and plain statement of the matters asserted, by reference to the pleadings on file, or otherwise.

4. A statement that each named respondent shall have the right to file an answer to the complaint, specifying the names and addresses of the persons to be served with a copy of the answer and the date by which the answer is to be served on those persons.

5. A statement that, to be timely, a motion to make the complaint more definite and certain under sub. (7) shall be received by the commission within 10 days after the earlier of the date the notice of hearing was issued or the date the commission notified the parties that the commission has received a request under sub. (5) that the hearing be scheduled prior to the conclusion of conciliation.

6. A statement that affirmative defenses not raised by a timely answer are waived.

(7) MOTION TO MAKE MORE DEFINITE AND CERTAIN. If a complaint is alleged to be so indefinite as to hinder a party in the preparation of its answer to the complaint, the party may, by motion, request the commission or examiner to order the complainant to file a statement supplying specified information to make the complaint more definite and certain. If the commission has notified the parties that it has received a request under sub. (5) for the hearing to be scheduled prior to the conclusion of conciliation, then a motion to make the complaint more definite and certain shall be filed no later than 10 days after the date of the commission's notice. Otherwise, the motion shall be filed no later than 10 days after the date the notice of hearing was issued. The commission or examiner may require a complainant to clarify its complaint at any time the commission or examiner finds it necessary and appropriate to do so.

ERC 12.03 Answer to complaint.**(1)** WHO SHALL FILE; FORM; NUMBER OF COPIES; FAILURE TO TIMELY FILE. Each respondent named in the complaint shall file an answer to the complaint with the commission on or before the date designated in the notice of hearing. The answer shall be in writing and shall bear the signature or a facsimile of the signature of the party or representative filing the answer. The answer shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the answer is filed in paper form, a total of three copies shall be provided to the commission. Affirmative defenses not raised by a timely answer are waived.

(2) SERVICE. Copies of the answer shall be served by the respondent on the complainant or other persons who are designated in the notice of hearing as required to be served, on or

before the date designated in the notice of hearing, by a method set forth in s. ERC 10.07.

(3) CONTENTS. The answer shall contain all of the following:

(a) A specific admission or denial of each allegation of the complaint or part of an allegation, or a denial based on a statement that the filing party is without knowledge about the allegation.

(b) A specific detailed statement of any affirmative defense.

(4) AMENDMENT. The respondent may, for good cause shown and on motion granted, amend the answer on the terms and within the period established by the commission or examiner.

ERC 12.04 Motions. (1) GENERALLY. (a) *Presentation*. All motions shall be made in writing, except that motions made at a hearing may be stated orally on the record, and all motions shall briefly state the order, ruling, or action sought and shall state the grounds for the motion. Alternate relief may be requested. Any party may by motion request that the commission or examiner take any action which they are authorized by law to take. Any statement opposing a motion shall be promptly filed and shall conform to the same requirements as this paragraph provides for motions. Written motions, and written statements opposing them, may be transmitted to the commission as set forth in s. ERC 10.06 (1). If the motion is filed in paper form, a total of two copies of the motion shall be included. The party filing a written motion or written statement opposing a motion shall, at the same time, serve a copy on each of the other parties or their representatives, as set forth in s. ERC 10.07.

(b) *Disposition*. The commission or examiner shall rule on all motions. Motions made during a hearing shall be ruled on either during the hearing or when the entire record is considered. All rulings on motions shall be in writing, or if made at the hearing, may be stated orally on the record.

(c) *Rulings and orders part of record*. All motions and any related rulings or orders shall become part of the record.

(2) PARTICULAR MOTIONS. (a) *To intervene*. Any person desiring to intervene shall file a motion with the commission or examiner stating the reasons the person is claiming to have an interest in the proceeding. Intervention may be permitted upon the terms the commission or examiner finds appropriate.

(b) *To make complaint more definite and certain*. A motion to make a complaint more definite and certain shall comply with s. ERC 12.02 (7).

(c) *For pre-hearing discovery.* Except as noted in subds. 1. and 2., pre-hearing discovery is not available in prohibited practice complaint proceedings.

1. In any class 2 proceeding, each party shall have the right, prior to the date set for hearing, to take and preserve evidence as provided in ch. 804, Stats. On motion by a party or by

the person from whom discovery is sought in any class 2 proceeding, and for good cause shown, the commission or examiner may make any order in accordance with s. 804.01, Stats., which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

2. In any class 1 or class 3 proceeding, each party shall have the right to take and preserve evidence with respect to a witness who is any of the following:

a. Beyond reach of the subpoena of the commission hearing examiner.

b. About to go out of the state, not intending to return in time for the hearing.

c. So sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing.

d. A member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives the privilege.

(d) *To correct transcript*. A motion to correct transcript shall comply with s. ERC 18.08 (5).

(e) *To reschedule hearing.* A motion to reschedule hearing shall set forth the reasons for the request, alternate dates for rescheduling, and the positions of all other parties regarding the request.

(f) *To dismiss.* A motion to dismiss shall state the basis for the requested dismissal. A motion to dismiss shall not be granted before an evidentiary hearing has been conducted except where the pleadings, viewed in the light most favorable to the complainant, permit no interpretation of the facts alleged that would make dismissal inappropriate.

ERC 12.05 Hearings. Practice and procedures for hearings in prohibited practice complaint proceedings shall be as set forth in s. ERC 18.08, except that the rule reference in s. ERC 18.08 (6) (b) shall be to s. ERC 12.04 (2) (c).

ERC 12.06 Findings of fact, conclusions of law and order. (1) ISSUANCE. After the close of the evidence and the submission of closing arguments, or on granting a motion for dismissal of a complaint, the commission or examiner shall issue written findings of fact, conclusions of law and order to the parties. Copies of decisions may be purchased by the public from the commission's Madison office and may also be available on the commission website or in other commission publications.

(2) CONTENTS. The findings of fact and conclusions of law shall be made regarding all material issues of fact and law presented on the record. The order, which shall state the determination as to the rights of the parties, may dismiss or may sustain the complaint in whole or in part or require the respondent to cease and desist from the prohibited practices found and

take affirmative action that shall effectuate the policies of the Municipal Employment Relations Act.

ERC 12.07 Interlocutory findings of fact, conclusions of law and order. The commission may, after the close of the hearing and pending the final determination by it of any controversy, make and issue interlocutory findings of fact, conclusions of law and order when doing so shall effectuate the policies of the Municipal Employment Relations Act, which may be enforced in the same manner as final orders.

ERC 12.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order. Within 20 days from the date findings of fact, conclusions of law and order are issued, they may be set aside, modified, changed or reversed by the commission or examiner if any mistake is discovered in the decision or on grounds of newly discovered evidence, provided that no petition for review of an examiner's findings, conclusions and order has been filed with the commission. If within that 20 day period no order is issued setting aside, modifying, changing or reversing the findings of fact, conclusions of law and order and no petition for review of an examiner's findings, conclusions and order has been filed, then the examiner's findings, conclusions and order shall become the commission's by operation of law under s. 111.07 (5), Stats.

ERC 12.09 Review of findings of fact, conclusions of law and order issued by examiner. (1) RIGHT TO FILE PETITION, TIME TO FILE PETITION. Within 20 days from the date a copy of the findings of fact, conclusions of law and order of an examiner was mailed to the last known address of the parties, any party dissatisfied with the findings of fact, conclusions of law and order may file a written petition with the commission as set forth in s. ERC 10.06 (1), and shall, at the same time, serve copies of the petition on the other parties as set forth in s. ERC 10.07, to review the findings of fact, conclusions of law and order. If the commission is satisfied that a party has been prejudiced because of exceptional delay in the receipt of a copy of any findings of fact, conclusions of law and order, it may extend the time another 20 days for filing the petition for review.

(2) DISPOSITION. If a petition for commission review is timely filed, the commission shall promptly establish a schedule for the submission of written arguments by the parties beginning with the party that filed the petition for commission review. The commission shall then review the record and issue to the parties its own findings of fact, conclusions of law and order in the matter. Copies of decisions may be purchased by the public from the commission's Madison office and may also be available on the commission website or in other commission publications.

ERC 12.10 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 procedures regarding the filing and processing of a petition for rehearing in a prohibited practice complaint case shall be as set forth in s. 18.11.

Chapter ERC 13

MEDIATION OF MUNICIPAL SECTOR LABOR DISPUTES

ERC 13.01 Scope.
ERC 13.02 Policy.
ERC 13.03 Request for mediation services.
ERC 13.04 Commission action on request for mediation services.
ERC 13.05 Mediation initiated by the commission.
ERC 13.06 Mediation proceedings.
ERC 13.07 Report to commission.

ERC 13.01 Scope. This chapter governs the general procedure relating to mediation of labor disputes under s. 111.70 (4) (c) 1. and (cm) 3., Stats., involving collective bargaining units of municipal employees or units of supervisory law enforcement or supervisory fire fighter personnel of a municipal employer.

ERC 13.02 Policy. To promote the prompt and peaceful settlement of labor disputes affecting terms and conditions of municipal sector employment in Wisconsin, the commission offers various mediation services involving designation of mediators to assist the parties in reaching a voluntary settlement. In order to maintain and enhance the effectiveness of the mediation function, the commission has established rules and procedures designed to maintain confidentiality of the mediation process.

ERC 13.03 Request for mediation services. (1) WHO MAY FILE. A request for mediation services may be filed by a municipal employer or by the exclusive collective bargaining representative of a bargaining unit of municipal employees or by the certified or recognized negotiation representative of a unit of firefighter or law enforcement supervisors, or by anyone authorized to act on their behalf.

(2) FORM; FILING; FILING FEE; SERVICE. A request that the commission provide the services of a mediator shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The request is not filed until it and the filing fee established by s. ERC 10.08 (3) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If any request for mediator services concerns issues arising as a result of more than one unrelated event or occurrence, each separate event or occurrence shall be treated as a separate request for which a separate filing fee shall be assessed. The request shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the request is filed in paper form, a total of one copy of the request shall be included. The fee may be transmitted to the commission by physical delivery or mail. Unless the request is submitted jointly, the party filing the request shall, at the same time, serve a copy of the request on the other party as set forth in s. ERC 10.07.

(3) CONTENTS. A request for mediation services shall include all of the following:

(a) The name and address of the municipal employer involved, 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 exclusive representative 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 statement whether the general nature of the dispute is a collective bargaining agreement negotiation dispute, a grievance dispute, or another type of labor dispute.

(d) A statement identifying the particular dispute involved by providing the following information regarding the following types of disputes:

1. For a collective bargaining agreement negotiation dispute, the bargaining unit and number of personnel involved, the expiration date of any existing collective bargaining agreement, and the status of any other collective bargaining agreement negotiations pending between the parties.

2. For a grievance dispute, the bargaining unit and grievance involved, and the number of personnel potentially affected by the grievance.

3. For another type of labor dispute, a description of the issues in dispute and the number of personnel potentially affected.

(e) A request that the commission take one of the following actions:

1. Select and designate a member of the commission or of its staff to act as mediator.

2. Designate as mediator a particular commissioner or commission staff member jointly requested by the parties, or one of a number of particular commissioners or commission staff members jointly requested by the parties, if available.

(f) A statement whether the request is being submitted by the exclusive representative, the municipal employer, or both.

(g) The date on which the mediation request is transmitted to the commission.

ERC 13.04 Commission action on request for mediation services. (1) ACQUIESCENCE; REFUND OF FILING FEE. If the request to initiate mediation is filed by only one party, the commission shall immediately contact the other party to the dispute to inquire as to its acquiescence to mediation. If that party opposes proceeding to mediation, the commission shall so advise the initiating party, shall return the filing fee, and shall not act further on the request. The filing fee is refundable only in the event of the other party's non-acquiescence to mediation; neither the requesting party's withdrawal of the request for mediation nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

(2) DESIGNATION OF MEDIATOR. If mediation has been jointly initiated or acquiesced in, the commission shall designate the mediator. Parties' joint requests for designation of particular mediators may be considered by the commission but shall not be binding on the commission

(3) MEDIATOR IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as mediators.

(4) CONFIDENTIAL NATURE OF FUNCTION. Commission mediators shall maintain confidentiality as required by s. 904.085, Stats. To the extent that s. 904.085 is or becomes inapplicable for any reason, the following confidentiality provisions shall become applicable. Any information disclosed by the parties to the mediator in the performance of duties shall not be divulged voluntarily or because of compulsion unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator in that person's confidential capacity shall be confidential and shall not be disclosed to any unauthorized person without the prior consent of the commission. The mediator shall not produce any confidential records of, or testify about any mediation conducted by the mediator, before any court, board (including the Wisconsin Employment Relations Commission), investigative body, arbitrator or fact finder without the written consent of the commission. In the absence of written consent of the commission, the mediator shall respectfully decline, by reason of this subsection, to produce or present confidential records or documents of any nature or to give testimony concerning confidential mediation information.

ERC 13.05 Mediation initiated by the commission. Where no request for mediation services has been filed, the commission may, on its own initiative, offer mediation services to the parties to a labor dispute where the commission considers it necessary to do so to serve the purposes of the Municipal Employment Relations Commission. In those cases, no filing fee shall be applicable, and the mediation meetings shall be conducted as provided in s. ERC 13.06 (2) or as established by the commission if the parties and the commission cannot agree on meeting times and places.

ERC 13.06 Mediation proceedings. (1) NATURE. The mediator may hold separate or joint meetings with the parties or their representatives, or mediate by means of other communications with one or both parties or their representatives. Mediation meetings and mediation communications shall not be open to the public unless otherwise mutually agreed by the parties or their representatives.

(2) WHERE AND WHEN CONDUCTED. The mediator shall, after conferring with the parties, set a date, time and place for the conduct of the mediation and shall notify the parties of those arrangements in writing.

ERC 13.07 Report to commission. If requested by the commission, the mediator shall, either orally or in writing, report to the commission about the progress of the mediation efforts, as well as the terms of the settlement of the dispute.

Chapter ERC 14

FACT-FINDING IN DISPUTES INVOLVING CERTAIN MUNICIPAL EMPLOYERS AND MUNICIPAL EMPLOYEES

ERC 14.01 Scope.
ERC 14.02 Petition for fact-finding.
ERC 14.03 Withdrawal of petition; effect on filing fee.
ERC 14.04 Commission investigation.
ERC 14.05 Consolidation of proceedings.
ERC 14.06 Certification of results of investigation.
ERC 14.07 Hearing before the fact finder.
ERC 14.08 Fact-finding recommendations.
ERC 14.09 Compensation of fact finder and other costs.
ERC 14.10 Fact finder's report of fees and expenses.
ERC 14.11 Notification of acceptance or rejection of recommendations of the fact finder.

ERC 14.01 Scope. This chapter governs the general procedure relating to fact-finding in municipal employment under s. 111.70 (4) (c) 3, Stats., involving municipal employees who are engaged in law enforcement and fire fighting functions in cities, villages or towns having a population of less than 2500 as determined by the most recent regular or special federal census.

ERC 14.02 Petition for fact-finding. (1) WHO MAY FILE. A petition to initiate fact-finding may be filed by a municipal employer or by the exclusive collective bargaining representative of a bargaining unit of municipal employees within the scope of s. ERC 14.01.

(2) FORM; NUMBER OF COPIES; FILING; SERVICE. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The petition is not filed until it and the filing fee established by s. ERC 10.08 (4) have been received by the commission at its Madison office during normal business hours. If the parties have previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the fact-finding. 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 one copy of the request shall be included. The fee may be transmitted to the commission by physical delivery or mail. The party filing the petition shall, at the same time, serve a copy of the request on the other party as set forth in s. ERC 10.07.

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

(a) The name and address of the municipal employer involved, 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 exclusive representative 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 certified or recognized collective bargaining unit involved, as well as the approximate number of employees in the unit.

(d) A statement that after a reasonable period of negotiation the parties are deadlocked.

(e) A clear and concise statement of facts constituting the alleged deadlock.

(f) Any other relevant facts.

ERC 14.03 Withdrawal of petition; effect on filing fee. 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 withdraw shall be granted unless withdrawal would result in an injustice to any party. Neither the petitioning party's withdrawal of the petition for fact-finding nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

ERC 14.04 Commission investigation. (1) PURPOSE; NATURE; BY WHOM CONDUCTED. After a petition has been filed, the commission shall conduct an investigation to determine whether the parties are deadlocked after a reasonable period of negotiation. The investigation shall be conducted either by the commission or by an investigator assigned by the commission. The investigation shall consist either of an informal investigation or a formal hearing or both. During the informal investigation or formal hearing, the commission or investigator may engage in an effort to mediate the dispute.

(2) INFORMAL INVESTIGATION PROCEDURE. If an informal investigation is conducted, the commission or investigator, following communication with the parties, shall set a date, time and place for the conduct of the informal investigation and shall notify the parties in writing. The informal investigation may be adjourned or continued in the discretion of the commission or investigator. During the investigation the commission or investigator may meet jointly or separately with the parties for the purposes described in sub. (1) and may otherwise communicate with one or both parties for those purposes. Following the close of the investigation, the investigator shall report the findings to the commission, either orally or in writing, as the commission may direct.

(3) FORMAL HEARING PROCEDURE. If a formal hearing is conducted, the commission or investigator, following communication with the parties, shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The formal hearing may be adjourned or continued in the discretion of the commission or investigator. Hearing practice and procedures shall be as set forth in ss. ERC 18.06 to 18.08, except that the purpose and scope of the hearing shall be limited to establishing the facts needed to determine whether, after a reasonable period of negotiation, the parties are deadlocked.

ERC 14.05 Consolidation of proceedings. The commission may consolidate fact-finding proceedings to avoid unnecessary costs, delay, or multiplicity of proceedings or to otherwise serve the purposes of the Municipal Employment Relations Act.

ERC 14.06 Certification of results of investigation. (1) WHEN ISSUED. After consideration of either the report of the investigator conducting the informal investigation, or the record of the hearing, or both, the commission shall issue a certification of the results of the investigation with respect to whether fact-finding should be initiated.

(2) CONTENTS. The certification shall contain findings of fact and conclusions of law concerning the results of the investigation, and it shall include an order initiating fact-finding or dismissing the petition or taking other action that is consistent with the purpose of the Municipal Employment Relations Act.

(3) APPOINTMENT OF FACT FINDER. If the certification requires that fact-finding be initiated, the commission shall submit to the parties the names of 5 members of the commission's ad hoc panel of arbitrators and fact finders described in ch. ERC 40. Fact finder selection and panel composition shall be as provided in s. ERC 40.06 (3), with fact finders randomly selected from among the roster members available for service at the time the panel is selected. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each fact finder whose name is supplied to the parties by the commission. Each party, by its authorized representative, shall alternately strike one name from the list until one name remains. The order of proceeding in the selection process shall be determined by lot. The parties shall then advise the commission of the name of the person remaining on the list, and that person shall be appointed by the commission as the fact finder. Alternatively, at the joint request of the parties, the commission shall appoint a 3-member fact-finding board.

(4) SERVICE ON THE PARTIES. A copy of the commission's order appointing the fact finder shall be served, as set forth in s. ERC 10.07, on the parties and on the appointed fact finder.

(5) FACT FINDER IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as fact finders or to be included in a panel of fact finders.

ERC 14.07 Hearing before the fact finder. (1) NOTICE OF HEARING. Following the receipt of notification of an appointment and communications with the parties, the fact finder shall issue and serve on both parties, as set forth in s. ERC 10.07, a notice of hearing specifying the date, time and place at which the fact-finding hearing shall be conducted.

(2) SCOPE AND NATURE OF HEARING. The hearing shall be public and for the purpose of gathering information which shall assist the fact finder in reaching recommendations for the resolution of the dispute. Except as otherwise required by commission rules, proceedings before the fact finder shall be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code is available in electronic form on the commission website and in paper form on request from the commission.

(3) HEARING PROCEDURE. Hearings shall be within the control of the fact finder and shall be conducted as expeditiously as the nature of the dispute shall allow. In conducting the hearing the fact finder has the power to take the following actions:

(a) Administer oaths and affirmations.

(b) Issue subpoenas in the name of the commission.

Note: Fact finders may obtain appropriate subpoena forms from the commission's Madison office.

(c) Rule on offers of proof and receive relevant evidence.

(d) Regulate the course of the fact-finding hearing.

(e) Dispose of procedural requests and similar matters.

(4) WAIVER OF HEARING AND BRIEF. With the consent of the fact finder, the parties may agree to waive the convening of a formal hearing or the filing of briefs, or both.

(5) MEDIATION BY THE FACT FINDER. Nothing in this chapter precludes the fact finder from attempting through mediation to assist the parties in reaching a voluntary settlement of the matters in dispute. Any mediation by the fact finder shall not be open to the public unless mutually agreed by the parties or their representatives.

ERC 14.08 Fact-finding recommendations. (1) ISSUANCE. After the close of the hearing, the fact finder shall prepare and issue fact-finding recommendations.

(2) CONTENTS. The fact-finding recommendations shall contain all of the following:

(a) A statement of findings of fact and conclusions on all material issues presented on the record.

(b) Recommendations for the solution of the dispute.

(c) A memorandum stating the reasons for the fact finder's findings, conclusions and recommended solutions.

(3) SERVICE. Upon the completion of the recommendations the fact finder shall serve a copy of the recommendations on each of the parties as set forth in s. ERC 10.07 and on the commission as set forth in s. ERC 10.06 (1).

(4) PUBLIC DOCUMENT WHEN ISSUED**.** When issued, fact finder recommendations may be made available to the public. Copies may be purchased from the commission's Madison office, and the recommendations may also be available through the commission website and in other commission publications.

ERC 14.09 Compensation of fact finder and other costs. The fees and expenses of the fact

finder including the rental of hearing rooms, the conduct of the fact-finding hearing, and the preparation of the recommendations, shall be shared equally by the parties. The fees and expenses charged by the fact finder shall not exceed those described in the fact finder's biographical information and fee statement on file with the commission at the time the fact finder's name was supplied to the parties by the commission. Costs of subpoenas and witness fees shall be borne by the party requesting the subpoena or witness. Fees and expenses charged by the reporter, if any, shall be borne equally by the parties if both parties agreed that the hearing would be transcribed. If only one party desires a transcript, that party is solely responsible for the fees and expenses incurred by the reporter and shall provide a copy of the transcript to the fact finder.

ERC 14.10 Fact finder's report of fees and expenses. After issuing recommendations or otherwise concluding service to the parties as a fact finder, the fact finder shall transmit to the commission, as set forth in s. ERC 10.06 (1), a report of the fees and expenses, if any, for which the fact finder charged the parties.

ERC 14.11 Notification of acceptance or rejection of recommendations of the fact finder.
(1) WHO SHALL NOTIFY; WHO SHALL BE NOTIFIED. Each party involved in fact-finding shall notify, in writing, the other parties and the commission of its acceptance or rejection, in whole or in part, of the fact finder's recommendations.

(2) SERVICE. The notification shall be served within 30 days of the receipt of the fact finder's recommendations or within a different time period mutually agreed upon by the parties. The notification shall be served on each party as set forth in s. ERC 10.07. The notification shall be filed with the commission as set forth in s. ERC 10.06 (1).

(3) CONTENTS. The notification shall contain the following:

(a) The identity of the proceeding.

(b) The identity of the fact finder.

(c) The date upon which the recommendations were issued.

(d) A clear and concise statement as to the acceptance or rejection, in whole or in part, of each recommendation of the fact finder.

Chapter ERC 15

REFERENDA CONCERNING MUNICIPAL SECTOR FAIR-SHARE AGREEMENTS

ERC 15.01 Scope.
ERC 15.02 Stipulation for referendum seeking authorization to implement fair-share agreement.
ERC 15.03 Stipulation for referendum to determine the continuation of a fair-share agreement.
ERC 15.04 Petition for referendum.
ERC 15.05 Showing of interest in support of petition.
ERC 15.06 Withdrawal of petition.
ERC 15.07 Commission pre-hearing action on petition.
ERC 15.08 Motions.
ERC 15.09 Hearings.
ERC 15.10 Direction of referendum or other dispositional order.
ERC 15.11 Referendum.
ERC 15.12 Certification of results of referendum.
ERC 15.13 Objections to referendum.
ERC 15.14 Commission action on challenges or objections.
ERC 15.15 Petition for rehearing.

ERC 15.01 Scope. This chapter governs the general procedure relating to referenda with respect to municipal sector fair-share agreements under s. 111.70 (1) (f) and (2), Stats.

ERC 15.02 Stipulation for referendum seeking authorization to implement fair-share agreement. **(1)** WHO MAY FILE. A stipulation for a referendum to determine whether the employees in an appropriate bargaining unit favor the implementation of a fair-share agreement may be filed by the municipal employer and the exclusive representative of the employees in the bargaining unit involved or anyone authorized to act on their behalf.

(2) TIME FOR FILING. A stipulation for an initial referendum seeking authorization to implement a fair-share agreement shall be filed prior to the proposed implementation of the fair-share agreement involved.

(3) FORM, NUMBER OF COPIES, FILING AND SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signatures or a facsimile of the signatures of the parties or representatives filing the stipulation. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of two copies of the petition shall be included.

(4) CONTENTS. The stipulation shall include all of the following:

(a) The names and addresses of the parties on whose behalf the referendum is being stipulated, and the names, addresses and phone numbers of the parties' principal representatives. Fax numbers and e-mail addresses shall be included, if available.

(b) A request that the commission conduct a referendum to determine whether the of employees in the collective bargaining unit involved favors the implementation of the fair-share agreement.

(c) A description of the collective bargaining unit involved, and the approximate number of employees in the unit.

(d) A description of the proposed fair-share agreement involved, including a statement of the agreed-upon standard for determining whether the required number of employees favors implementation of the fair-share agreement.

(e) A statement by the municipal employer that it agrees that, if the required number of employees votes in favor of implementing the fair-share agreement, then the municipal employer shall incorporate the fair-share agreement in the collective bargaining agreement covering the employees in the bargaining unit involved.

(f) A statement by the exclusive representative that it agrees that, if the required number of employees does not vote in favor of the implementation of the fair-share agreement, the exclusive representative shall withdraw its request in negotiations that a fair-share agreement be implemented covering the employees in the bargaining unit involved.

(g) A complete list of employees agreed upon by the parties as being included in the collective bargaining unit and eligible to vote.

(h) Suggested days of the week, time and place for the conduct of the referendum.

(5) PROCEDURE FOR RESOLVING REFERENDUM-RELATED DISPUTES. Questions arising in connection with the conduct of or the results of the referendum shall be processed in accordance with the procedures following a referendum directed as a result of a hearing under s. ERC 15.09.

ERC 15.03 Stipulation for referendum to determine the continuation of a fair-share agreement. **(1)** WHO MAY FILE. A stipulation for a referendum to determine the continuation of a fair-share agreement may be filed by the exclusive representative and the municipal employer who are parties to the fair-share agreement, or anyone authorized to act on their behalf.

(2) TIME FOR FILING. A stipulation for a referendum to determine the continuation of a fair-share agreement may be filed at any time following the implementation of the fair-share agreement involved.

(3) FORM, NUMBER OF COPIES, FILING AND SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include

the signatures or a facsimile of the signatures of the parties or representatives filing the stipulation. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of two copies of the petition shall be included.

(4) CONTENTS. The stipulation shall include all of the following:

(a) The names and addresses of the parties on whose behalf the referendum is stipulated, and the names, addresses and phone numbers of the parties' principal representatives. Fax numbers and e-mail addresses shall be included, if available.

(b) An agreement that a hearing shall be waived and a request that the commission conduct a referendum to determine the continuation of a fair-share agreement.

(c) A description of the collective bargaining unit involved, and the approximate number of employees in the unit.

(d) A description of the fair-share agreement involved.

(e) The date on which the most recent referendum, if any, was conducted, and the results of that referendum.

(f) A complete list of employees agreed upon by the parties as being included in the collective bargaining unit and eligible to vote.

(g) Suggested days of the week, time and place for the conduct of the referendum.

(5) PROCEDURE FOR RESOLVING REFERENDUM-RELATED DISPUTES. Questions arising in connection with the conduct of or the results of the referendum shall be processed under the procedures following a referendum directed as a result of a hearing under s. ERC 15.09.

ERC 15.04 Petition for referendum. **(1)** WHO MAY FILE. A petition to determine the continuation of a fair-share agreement may be filed by the municipal employer or by a labor organization, or by anyone acting on their behalf.

(2) TIME FOR FILING. A petition for an initial referendum to determine the continuation of a fair-share agreement may be filed at any time following the implementation of the fair-share agreement involved.

(3) FORM, NUMBER OF COPIES, AND FILING. 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 contains the required signature or signature facsimile and unless and until the petition and the showing of interest in support of the petition required by s. ERC 15.05

have been actually 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). The showing of interest in support of the petition required by s. ERC 15.05, shall be transmitted to the commission in paper form by physical delivery or mail.

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

(a) The name and address of the municipal employer who is a party to the fair-share agreement involved, 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 exclusive representative who is a party to the fair-share agreement 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 collective bargaining unit involved, and the approximate number of employees in the unit.

(d) A description of the fair-share agreement involved.

(e) The date of execution, the effective date, the reopening date, if any, and the expiration date of the collective bargaining agreement containing the fair-share agreement involved.

(f) The date on which the most recent referendum, if any, was conducted, and the results.

(g) A statement to the effect that at least 30% of the employees in the collective bargaining unit involved desire a referendum to determine whether the fair-share agreement shall continue.

(h) The name and address of the petitioner, and the name, address and phone number of the petitioner's principal representative. Fax numbers and e-mail addresses shall be included, if available.

ERC 15.05 Showing of interest in support of petition. The petition shall be supported by a showing of interest in writing, containing the printed names and signatures of at least 30% of the employees in the collective bargaining unit involved, the dates on which the signatures were executed, and a statement that the employees signing oppose the continuance of the fair-share agreement involved.

ERC 15.06 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 withdraw shall be granted unless withdrawal would result in an injustice to any party.

ERC 15.07 Commission pre-hearing action on petition. (1) SERVICE OF PETITION. Upon receipt of a petition, the commission shall serve a copy of the petition on all interested parties identified in the petition.

(2) DETERMINATION OF SHOWING OF INTEREST. Upon receipt of a petition, the commission shall determine the sufficiency of the showing of interest.

(a) *Furnishing of employee list by municipal employer.* If the commission determines that the showing of interest is sufficient, on its face, to warrant the processing of the petition, the municipal employer involved shall, within a period of time established by the commission, furnish in writing to the commission a list containing the names of the employees, in alphabetical order, employed in the collective bargaining unit involved. The period of time for furnishing a list of employees may be extended by the commission for good cause shown.

(b) *Determination*. The commission shall determine the sufficiency of the showing of interest upon the receipt from the employer of the names of the employees in the bargaining unit. No party, other than the party submitting the showing of interest, may receive a copy of, or examine, the showing of interest. The commission shall inform all parties as to its determination regarding the sufficiency of the showing of interest. The commission shall not reveal the number or identity of persons supporting a showing of interest.

(3) CONCILIATION. If the commission determines that further proceedings are warranted, the commission may cause an effort to reach informal settlement of all or part of a referendum petition to be undertaken by a commission designee. A conciliator so designated shall attempt through mediation to assist the parties in reaching an informal agreement resolving some or all of the issues that might otherwise require a hearing. The pendency of conciliation shall not preclude the scheduling or conduct of a hearing if scheduling is specifically requested by any party prior to the conclusion of conciliation. If the conciliator concludes that further conciliation efforts are unlikely to produce a settlement, the processing of the case shall proceed, including the scheduling of a hearing, if appropriate.

(4) NOTICE OF HEARING. (a) *When issued*. Following the filing of a petition and following conciliation, if further proceedings are warranted, the commission or assigned examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing.

(b) *Contents.* The notice of hearing shall include all of the following:

1. A statement of the time, place, and nature of the hearing, including a statement that the referendum proceeding is a class 1 proceeding as defined in s. 227.01 (3) (a) to (c), Stats. Unless the parties have agreed otherwise or unless the commission or examiner finds that unusual circumstances require otherwise, the hearing shall be held not less than 10 days after the notice of hearing is served. The hearing may be rescheduled in the manner prescribed in s. ERC 18.06 (2) (d).

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A statement that the purpose of the hearing is to determine the issues, if any, with

respect to whether and how the commission should conduct the referendum requested in the petition.

4. A statement that the municipal employer is required to have for examination at the hearing a list setting forth the names of all the employees in the bargaining unit and their classifications or positions in the employ of the municipal employer.

ERC 15.08 Motions. Practice and procedure regarding motions in referendum proceedings shall be as set forth in s. ERC 18.06.

ERC 15.09 Hearings. Hearings shall be open to the public and limited to the litigation of and oral argument on issues of fact or law regarding whether there exists a question for resolution by referendum among the eligible employees in the unit involved. The commission or examiner conducting the hearing shall inquire fully into all matters in issue, to obtain a full and complete record upon which the duties of the commission under s. 111.70 (2), Stats., may be properly performed. Practice and procedure for hearings in referendum proceedings shall otherwise be as set forth in s. ERC 18.08.

ERC 15.10 Direction of referendum or other dispositional order. (1) ISSUANCE; CONTENTS; PUBLICATION. As soon as possible after submission of the case, the commission shall, in writing, either direct a referendum, dismiss the petition, or make other orders regarding the disposition of the petition or stipulation. In cases where the commission is directing a referendum, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. In cases where the commission is resolving issues of fact or law, the commission's order shall be accompanied by its findings of fact and conclusions of law, and may be made available to the public through the commission website and in other commission publications.

ERC 15.11 Referendum. **(1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All referenda shall be conducted by secret ballot and under the supervision of the commission. The commission shall determine on a case by case basis whether balloting shall be conducted on-site or by mail. The time within which the commission has directed a referendum to be conducted may be extended by the commission.

(2) NOTICE OF REFERENDUM. The municipal employer shall post notices to employees concerning the referendum and the commission's policy on absentee ballots, at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any party may be represented by observers, selected in accordance with limitations, if any, established by the commission.

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

(5) COUNT AND TALLY OF BALLOTS. At the conclusion of the referendum, the ballots shall be counted in the presence of the parties or their observers, and the commission agent conducting

the referendum shall furnish a tally of ballots to the parties.

ERC 15.12 Certification of results of referendum. (1) WHEN ISSUED. If challenged ballots are insufficient in number to affect the results and no timely objections are filed under s. ERC 15.13, the commission shall issue to the parties a certification of the results of the referendum.

(2) EFFECT OF CERTIFICATION. (a) *Opposing fair-share*. Where the certification of the results of a referendum indicates that the required number of employees has not authorized the implementation of, or the continuation of, the fair-share agreement, the fair-share agreement shall not be implemented, or shall be immediately terminated.

(b) *Favoring fair-share*. Where the certification of the results of a referendum indicates that the required number of employees has authorized the implementation of, or the continuation of, the fair-share agreement, the fair-share agreement shall become effective, or continue in effect.

15.13 Objections to referendum. **(1)** FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the referendum or conduct affecting the results of the referendum. 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 two 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.

ERC 15.14 Commission action on challenges or objections. (1) HEARING. If ballot challenges potentially affecting the referendum outcome or objections raise a substantial question which 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. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) 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 referendum results.

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

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

ERC 15.15 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 regarding the filing and processing of a petition for rehearing in a referendum proceeding shall be as set forth in s. ERC 18.11.

Chapter ERC 16

ARBITRATION OF MUNICIPAL SECTOR GRIEVANCE DISPUTES

ERC 16.01 Scope.
ERC 16.02 Policy.
ERC 16.03 Request for commission-employed arbitrator.
ERC 16.04 Commission action on request for commission-employed arbitrator.
ERC 16.05 Proceedings before commission-employed arbitrator.
ERC 16.06 Request for ad hoc arbitrator not employed by the commission.
ERC 16.07 Commission action on request for ad hoc arbitrator.
ERC 16.08 Proceedings before ad hoc arbitrator.
ERC 16.09 Ad hoc arbitrator's award and report.

ERC 16.01 Scope. This chapter governs the general procedure relating to grievance arbitration proceedings and designation of grievance arbitrators under s. 111.70 (4) (c) 2 and (4) (cm) 4., Stats., involving collective bargaining units of municipal employees and for units of supervisory law enforcement or supervisory fire fighter personnel of a municipal employer.

ERC 16.02 Policy. To promote the prompt, peaceful and just settlement of labor disputes arising from the interpretation or application of a collective bargaining agreement affecting terms and conditions of municipal employment in Wisconsin, the commission offers various grievance arbitration services involving designation of grievance arbitrators who are either employed by the commission or who are on the commission's ad hoc roster of arbitrators and fact-finders not employed by the commission.

ERC 16.03 Request for commission-employed arbitrator. (1) FORM, FILING, FILING FEE, SERVICE. A request that the commission provide the services of a commission-employed arbitrator may be filed by the exclusive representative, the municipal employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. The request shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The request is not filed until it and the filing fee established by s. ERC 10.08 (2) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If any request for commission-employed arbitrator services concerns issues arising as a result of more than one unrelated event or occurrence, each separate event or occurrence shall be treated as a separate request for which a separate filing fee shall be assessed. The request shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the request is filed in paper form, a total of one copy of the request shall be included. The fee may be transmitted to the commission by physical delivery or mail. Unless the request is submitted jointly, the party filing the request shall, at the same time, serve a copy of the request on the other party as set forth in s. ERC 10.07.

(2) CONTENTS. A request for the services of a commission-employed arbitrator shall include all of the following:

(a) A statement of the alleged issues in dispute, or a copy of the grievance and the municipal employer's response to the grievance.

(b) A copy of the collective bargaining agreement in effect.

(c) A request that the commission take one of the following actions:

1. Select and designate a member of the commission or of its staff to act as an arbitrator or as chair of an arbitration board.

2. Supply a panel listing a specified number of commissioners or commission staff members for the parties' use in selecting an arbitrator or chair of an arbitration board.

3. Designate as grievance arbitrator or chair of an arbitration board a particular commissioner or commission staff member jointly requested by the parties, or one of a number of particular commissioners or commission staff members jointly requested by the parties, if available.

(d) The names, addresses and phone numbers of the principal representatives of the parties involved. Fax numbers and e-mail addresses shall be included, if available.

(e) A statement whether the request is being submitted by the exclusive representative, the municipal employer, or both.

(f) The date on which the arbitration request is transmitted to the commission.

ERC 16.04 Commission action on request for commission-employed arbitrator. (1) ACQUIESCENCE; REFUND OF FILING FEE. If the request to initiate arbitration is filed by only one party, the arbitrator shall promptly contact the other party to the dispute to inquire as to its acquiescence to arbitration. If that party asserts that the other party has no right to arbitrate the dispute involved, the arbitrator shall so advise the initiating party, shall cause the filing fee to be returned, and shall not act further on the request. The filing fee is refundable only in the event of the other party's non-acquiescence to arbitration; neither the requesting party's withdrawal of the request for arbitration nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

(2) DESIGNATION OF ARBITRATOR. If arbitration has been jointly initiated or acquiesced in, the commission shall either designate the arbitrator, or submit to the parties a panel of individuals for their consideration in the selection of an arbitrator or arbitration board chair. Parties' requests for panels or parties' joint requests for designation of particular arbitrators may be considered by the commission but shall not be binding on the commission. Panels of commission-employed arbitrators shall be randomly selected from commissioners and staff members available for service at the time the panel is generated.

(3) COMPENSATION OF COMMISSION-EMPLOYED ARBITRATORS. When acting as a grievance arbitrator, a member of the commission or of its staff shall not receive any

compensation from the parties in the performance of that function.

(4) ARBITRATOR IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators. Designated commission-employed arbitrators shall recuse themselves from participation in proceedings in which they are or become incapable of rendering an award without evident partiality or the appearance of partiality. Parties have the right to request, on grounds of lack of impartiality, that a commission-employed arbitrator voluntarily recuse himself or herself from participation in a proceeding. The filing of a recusal request does not necessarily require that the arbitrator recuse himself or herself from further participation in the proceeding. Parties dissatisfied with the arbitrator's response to a recusal request have the right to request, on grounds of a lack of impartiality, that the commission remove a commission-employed arbitrator from a proceeding.

(5) PUBLIC NATURE OF AWARDS WHEN ISSUED**.** After issuance to the parties, grievance awards issued by commission-employed arbitrators shall be available for purchase by the public from the commission's Madison office. Copies may also be made available on the commission website and in other commission publications. Grievance awards shall not be made public where to do so would reveal a party's trade secrets. Requests that an award not be made public on trade secret grounds may be filed with the commission-employed arbitrator but shall be acted upon by the commission.

ERC 16.05 Proceedings before commission-employed arbitrator. Proceedings before any commission-employed grievance arbitrator or grievance arbitration board chair, selected through the procedures described in this chapter, including subpoena practice, shall be as provided in ch. 788, Stats. Except as otherwise required by commission rules, proceedings before the commission-employed grievance arbitrator shall also be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission. Hearings conducted by a commission-employed arbitrator shall not be open to the public unless the parties jointly agree otherwise.

ERC 16.06 Request for ad hoc arbitrator not employed by the commission. (1) FORM, FILING, SERVICE. A request that the commission provide the parties with a list of one or more ad hoc arbitrators, not employed by the commission, to provide grievance arbitration services may be filed by the exclusive representative, the municipal employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. The request shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The request for grievance arbitration services is not filed until it has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The request shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the request is filed in paper form, a total of one copy of the request shall be included. Unless the request is submitted jointly, the party filing the request shall, at the same time, serve a copy of the request on the

other party as set forth in s. ERC 10.07.

(2) CONTENTS. (a) An identification of the grievance or issues in dispute.

(b) A request that the commission take one of the following actions:

1. Select and designate as grievance arbitrator or as chair of an arbitration board a member of the commission's ad hoc roster of arbitrators, not employed by the commission. described in ch. ERC 40.

2. Supply a panel listing a specified number of members of the commission's ad hoc roster of arbitrators, not employed by the commission, for the parties' use in selecting an arbitrator or chair of an arbitration board.

(c) The names, addresses and phone numbers of the principal representatives of the parties involved. Fax numbers and e-mail addresses shall be included, if available.

(d) A statement whether the request is being submitted by the exclusive representative, the municipal employer or both.

ERC 16.07 Commission action on request for ad hoc arbitrator. **(1)** DESIGNATION OF ARBITRATOR OR ISSUANCE OF PANEL. In response to a request for ad hoc arbitrator services, the commission shall, as requested, either designate the arbitrator, or submit to the parties a panel of individuals for the parties' consideration in the selection of an arbitrator or arbitration board chair. Arbitrator selection and panel composition shall be as provided in s. ERC 40.06 (3), with arbitrators randomly selected from among the roster members available for service at the time the request is processed. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each arbitrator whose name is supplied to the parties by the commission.

(2) REQUESTS FOR SUBSTITUTE PANEL OR SUBSTITUTE FOR ARBITRATOR ON PANEL. The commission shall provide an additional panel or the name of a substitute arbitrator for an arbitrator on a panel only at the joint request of the parties.

(3) COMPENSATION OF AD HOC ARBITRATORS. Ad hoc arbitrators shall be compensated by the parties for fees and expenses. The fees and expenses charged by the arbitrator shall not exceed those described in the arbitrator's biographical information and fee statement on file with the commission at the time the arbitrator's name was supplied to the parties by the commission.

(4) ARBITRATOR IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators.

ERC 16.08 Proceedings before ad hoc arbitrator. Proceedings before any ad hoc grievance arbitrator or grievance arbitration board chair selected through the procedures described in this chapter, including subpoena practice, shall be as provided in ch. 788, Stats. Except as otherwise required by commission rules, proceedings before the ad hoc grievance arbitrator or arbitration

board chair shall also be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission. Hearings conducted by an ad hoc arbitrator or grievance arbitration board chair shall be not be open to the public unless the parties jointly agree otherwise.

ERC 16.09 Ad hoc arbitrator's award and report. Any ad hoc arbitrator or arbitration board chair designated by the commission or selected by the parties from a panel designated by the commission shall, after the arbitrator has submitted an award to the parties, file a copy of the award with the commission, as well as a report reflecting a breakdown of fees and expenses, if any. When received by the commission, grievance awards by ad hoc arbitrators shall be available to the public for purchase from the commission's Madison office. Grievance awards shall not be made public if doing so would reveal a party's trade secrets. Requests that an award not be made public on trade secret grounds may be filed with the ad hoc arbitrator but shall be acted on by the commission.

Chapter ERC 17

CLARIFICATION OF MUNICIPAL SECTOR BARGAINING UNITS

ERC 17.01 Scope.
ERC 17.02 Petition for unit clarification.
ERC 17.03 Withdrawal of petition.
ERC 17.04 Commission pre-hearing action on petition.
ERC 17.05 Motions.
ERC 17.06 Hearings.
ERC 17.07 Order clarifying bargaining unit or other dispositional order.
ERC 17.08 Petition for rehearing.

ERC 17.01 Scope. This chapter governs the general procedure relating to clarification of municipal sector bargaining units under the Municipal Employment Relations Act to determine whether one or more positions are properly included in or excluded from an existing collective bargaining unit of municipal employees or from an existing unit of supervisory law enforcement or supervisory fire fighter personnel of a municipal employer.

ERC 17.02 Petition for unit clarification. **(1)** WHO MAY FILE. A petition to determine whether one or more positions shall be included in or excluded from an existing collective bargaining unit may be filed by the exclusive representative of the bargaining unit or by the municipal employer or by an authorized representative of one of those parties.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. 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 contains the required signature or signature facsimile and unless and until the petition has been actually 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 two copies of the petition shall be included. The party filing the petition shall, at the same time, serve a copy on the other party, or its designated representative, by as set forth in s. ERC 10.07.

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

(a) The name and address of the municipal employer, 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 exclusive representative of the bargaining unit, 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 existing collective bargaining unit, specifying existing inclusions and exclusions, the approximate number of personnel in the unit, whether the exclusive representative is voluntarily recognized or certified, and, if certified, the decision number of the commission certification involved.

(d) A statement identifying the positions and number of employees in the positions requested to be included in, or excluded from, the existing bargaining unit and the reason for the proposed inclusion or exclusion of each position.

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

ERC 17.03 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 withdraw shall be granted unless withdrawal would result in an injustice to any party.

ERC 17.04 Commission pre-hearing action on petition. (1) CONCILIATION. If the commission determines that further proceedings are warranted, the commission may cause an effort to reach informal settlement of all or part of a unit clarification petition to be undertaken by a commission designee. A conciliator so designated shall attempt through mediation to assist the parties in reaching an informal agreement resolving some or all of the issues that might otherwise require a hearing. The pendency of conciliation shall not preclude the scheduling or conduct of a hearing if scheduling is specifically requested by any party prior to the conclusion of conciliation. If the conciliator concludes that further conciliation efforts are unlikely to produce a settlement, the processing of the case shall proceed, including the scheduling of a hearing, if appropriate.

(2) NOTICE OF HEARING. (a) *When issued*. Following the filing of a petition and following conciliation, if further proceedings are warranted, the commission or assigned examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing.

(b) *Contents.* The notice of hearing shall include all of the following:

1. A statement of the time, place, and nature of the hearing, including a statement that the unit clarification proceeding is a class 1 proceeding as defined in s. 227.01 (3) (a) to (c), Stats. Unless the parties have agreed otherwise or unless the commission or examiner finds that unusual circumstances require otherwise, the hearing shall be held not less than 10 days after the notice of hearing is served. The hearing may be rescheduled in the manner prescribed in s. ERC 18.06 (2) (d).

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A statement that the purpose of the hearing is to determine whether the existing bargaining unit described in the petition shall be clarified to include or exclude positions referenced in the petition.

ERC 17.05 Motions. Practice and procedures for motions in unit clarification proceedings shall be as set forth in s. ERC 18.06.

ERC 17.06 Hearings. Hearings shall be open to the public and limited to the litigation of and oral argument on issues of fact or law regarding whether the existing unit described in the petition shall be clarified to include or exclude the positions referenced in the petition. The commission or examiner conducting the hearing shall inquire fully into all matters in issue, to obtain a full and complete record upon which the duties of the commission under the Municipal Employment Relations Act may be properly performed**.** Practice and procedures for hearings in unit clarification proceedings shall otherwise be as set forth in s. ERC 18.08.

ERC 17.07 Order clarifying bargaining unit or other dispositional order. ISSUANCE; CONTENTS; PUBLICATION. As soon as possible after submission of the case, the commission shall, in writing, either clarify the bargaining unit or dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is resolving issues of fact or law, the commission's order shall be accompanied by its findings of fact and conclusions of law, and may be made available to the public through the commission website and in other commission publications.

ERC 17.08 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 regarding filing and processing of a petition for rehearing in a unit clarification proceeding shall be as set forth in s. ERC 18.11.

Chapter ERC 18

MUNICIPAL SECTOR SCOPE OF BARGAINING DECLARATORY RULINGS

ERC 18.01 Scope.
ERC 18.02 Petition.
ERC 18.03 Statement in response to petition.
ERC 18.04 Withdrawal of petition.
ERC 18.05 Stipulation for declaratory ruling.
ERC 18.06 Motions.
ERC 18.07 Notice of hearing.
ERC 18.08 Hearings.
ERC 18.09 Findings of fact, conclusions of law and declaratory ruling.
ERC 18.10 Application of declaratory ruling in prohibited practice proceedings.
ERC 18.11 Petition for rehearing.

ERC 18.01 Scope. This chapter governs the general procedure relating to declaratory rulings issued under s. 111.70 (4) (b), Stats.

ERC 18.02 Petition. **(1)** WHO MAY FILE. A petition for the determination of a dispute concerning the duty to bargain on any subject may be filed by a municipal employer or by the exclusive collective bargaining representative of municipal employees.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The petition shall be in writing in the form described below 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 contains the required signature or signature facsimile and unless and until the petition has been actually 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 two copies of the petition shall be included. The petition shall be captioned as follows:

"STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
(NAME OF PETITIONER)
Requesting a Sec. 111.70 (4) (b) Stats., Declaratory Ruling
Involving a Dispute Between the Petitioner and
(NAME OF OTHER PARTY)
---"

The party filing the petition shall, at the same time, serve a copy on the other party, or its designated representative, as set forth in s. ERC 10.07.

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

(a) The name and address of the municipal employer involved, 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 exclusive representative 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 certified or recognized collective bargaining unit involved, as well as the approximate number of employees in the unit.

(d) A clear and concise statement of the subject or subjects over which a dispute has arisen concerning the duty to bargain.

(e) A statement of the position of the petitioner as to whether or not the parties are under a duty to bargain on the subject or subjects listed in the petition.

(4) STATEMENT IN SUPPORT OF PETITION. The petitioner shall attach to each copy of the petition a clear and concise statement of the facts and arguments relied upon by the petitioner in support of the position taken by the petitioner.

ERC 18.03 Statement in response to petition. (1) WHO SHALL FILE. The party other than the petitioner shall, within a time established by the commission, file with the commission a statement in response to the petition.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The statement in response shall be in writing and shall include the caption of the case and the signature or a facsimile of the signature of the party or representative filing the statement. The statement shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the statement is filed in paper form, a total of two copies shall be provided to the commission. The party filing the statement in response shall, at the same time, serve a copy on the petitioner or its designated representative, as set forth in s. ERC 10.07.

(3) CONTENTS. The statement in response shall include all of the following:

(a) A statement of the position taken by the responding party as to whether the parties are under a duty to bargain on the subject or subjects listed in the petition.

(b) A clear and concise statement of the facts and arguments relied upon by the responding party in support of its position regarding the petition.

(c) Corrections, as necessary, of the names, addresses, phone numbers, fax numbers, e-mail addresses, affiliations and representatives in the petition, or of the description of the collective bargaining unit involved, or the number of employees in the unit.

ERC 18.04 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 withdraw shall be granted unless withdrawal would result in an injustice to any party.

ERC 18.05 Stipulation for declaratory ruling. **(1)** WHO MAY FILE. Where a municipal employer and the exclusive representative of employees of the municipal employer in an appropriate collective bargaining unit are in dispute concerning the duty to bargain on any subject, those parties may jointly file a stipulation for a declaratory ruling with regard to the dispute.

(2) FORM, NUMBER OF COPIES AND FILING. The stipulation for a declaratory ruling shall be in writing in the form described below and shall contain the signatures or facsimiles of the signatures of both parties or their designated representatives. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually 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 two copies of the petition shall be included. The stipulation shall be captioned as follows:

"STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation between
(NAME OF MUNICIPAL EMPLOYER)
and
(NAME OF EXCLUSIVE REPRESENTATIVE)
Requesting a Sec. 111.70 (4) (b), Stats., Declaratory Ruling
Involving a Dispute Between the Parties
---

(3) CONTENTS. The stipulation shall include all of the following:

(a) The caption in the form noted above.

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

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

(d) A description of the certified or recognized collective bargaining unit involved, as well as the approximate number of employees in the unit.

(e) A clear and concise statement of the subject or subjects over which a dispute has arisen concerning the duty to bargain.

(f) A statement of any stipulated facts.

(g) A clear and concise statement of the position taken by each party as to whether the parties are under a duty to bargain on the subject or subjects listed in the stipulation.

(4) STATEMENTS IN SUPPORT OF POSITION. Each party to the stipulation shall attach to the stipulation, or within an agreed period of time set forth in the stipulation, file with the commission, a detailed statement of the arguments relied upon in support of its position in the matter, and shall, at the same time, serve a copy on the other party, as set forth in s. ERC 10.06 (1). If the statement is filed in paper form, a total of two copies shall be provided to the commission.

ERC 18.06 Motions. (1) GENERALLY. (a) *Presentation*. All motions shall be made in writing, except that motions made at a hearing may be stated orally on the record, and all motions shall briefly state the order, ruling, or action sought and shall state the grounds for the motion. Alternate relief may be requested. Any party may by motion request that the commission or examiner take any action which they are authorized by law to take. Any statement opposing a motion shall be promptly filed and shall conform to the same requirements as this paragraph provides for motions. Written motions, and written statements opposing them, shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the motion is filed in paper form, a total of two copies of the motion shall be included. The party filing a written motion or written statement opposing a motion shall, at the same time, serve a copy on each of the other parties or their representatives, as set forth in s. ERC 10.07.

(b) *Disposition*. The commission or examiner shall rule on all motions. Motions made during a hearing shall be ruled on either during the hearing or when the entire record is considered. All rulings on motions shall be in writing, or if made at the hearing, may be stated orally on the record.

(c) *Rulings and orders part of record*. All motions and any related rulings or orders shall become part of the record.

(2) PARTICULAR MOTIONS. (a) *To intervene*. Any person desiring to intervene shall file a motion with the commission or examiner stating the reasons the person is claiming to have an interest in the proceeding. Intervention may be permitted on terms the commission or examiner finds appropriate.

(b) *For pre-hearing discovery.* Pre-hearing discovery is not available in proceedings under this chapter except that each party may take and preserve evidence with respect to a witness who is any of the following:

1. Beyond reach of the subpoena of the commission hearing examiner.

2. About to go out of the state, not intending to return in time for the hearing.

3. So sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing.

4. A member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives the privilege.

(c) *To correct transcript*. A motion to correct transcript shall comply with s. ERC 18.08 (5).

(d) *To reschedule hearing.* A motion to reschedule hearing shall state the reasons for the request, alternate dates for rescheduling, and the positions of all other parties regarding the request.

(e) *To dismiss.* A motion to dismiss shall state the basis for the requested dismissal. A motion to dismiss shall not be granted before an evidentiary hearing has been conducted except where the pleadings, viewed in the light most favorable to the petitioner, permit no interpretation of the facts alleged that would make dismissal inappropriate.

ERC 18.07 Notice of hearing. **(1)** WHEN ISSUED. Following the filing of a petition, if the commission determines that a hearing is warranted, the commission or examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing.

(2) CONTENTS. The notice of hearing shall include all of the following:

(a) A statement of the time, place, and nature of the hearing, including a statement that the proceeding involved is a class 1 proceeding as defined in s. 227.01 (3) (a) to (c), Stats. Unless the parties have agreed otherwise or unless the commission or examiner finds that unusual circumstances require otherwise, the hearing shall be held not less than 10 days after the notice of hearing is served. The hearing may be rescheduled in the manner prescribed in s. ERC 18.06 (2) (d).

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A short and plain statement of the matters asserted, by reference to the pleadings on file, or otherwise.

ERC 18.08 Hearings. (1) SCOPE. Hearings shall be open to the public and limited to the litigation of and oral argument on issues of fact or law raised by the parties and remaining for disposition. The commission or examiner conducting the hearing shall inquire fully into all matters in issue, to obtain a full and complete record upon which the duties of the commission may be properly performed.

(2) BY WHOM CONDUCTED. The hearing shall be conducted by an examiner assigned by the commission unless the commission decides to hear the case.

(3) RIGHTS OF PARTIES AT HEARING. (a) *Opportunity to be heard.* Any party shall have the right to appear in person or by counsel or by any other representative to present the case by oral, documentary, or other evidence, and to conduct cross examination. Any party shall be entitled, on request, to a reasonable period for oral argument at an appropriate time during the hearing and to submit closing arguments in writing within a time period after the hearing specified for that purpose by the commission or examiner.

(b) *Effect of failure to appear.* Unless good cause is shown, any party failing to appear and participate after due notice waives the rights listed in par. (a), except the right to submit closing arguments in writing within a time period after the hearing specified for that purpose by the commission or examiner, and shall not later introduce any evidence. The commission or examiner may rely on the record as made at the hearing.

(c) *Impartiality.* Parties have the right to have their case heard and decided by impartial individuals. Commission members and examiners shall recuse themselves from participation in proceedings which they are or become incapable of hearing or deciding without evident partiality or the appearance of partiality. Parties have the right to request by motion, on grounds of lack of impartiality, that a commission member or examiner voluntarily recuse himself or herself from participation in a proceeding. The filing of a recusal request does not necessarily require that the commission member or examiner recuse himself or herself from further participation in the proceeding. Parties dissatisfied with the commission member or examiner's response to a recusal request have the right to request by motion, on grounds of a lack of impartiality, that the commission remove the commission member or examiner from participation in a proceeding.

(4) POWERS OF COMMISSION OR EXAMINER CONDUCTING HEARING. Subject to this chapter, the commission or examiner conducting a hearing may take the following action:

(a) Administer oaths and affirmations.

(b) Issue subpoenas in the name of the commission.

(c) Rule on offers of proof, receive relevant evidence and exclude irrelevant, immaterial, or unduly repetitious evidence.

(d) Question witnesses.

(e) Take or cause depositions to be taken and to determine their scope.

(f) Regulate the time, place and course of the hearing.

(g) Dispose of procedural requests or other similar matters.

(h) During the course of the hearing, hold conferences for the settlement, simplification

or adjustment of the issues by consent of the parties.

(i) Take any other action necessary under the foregoing or authorized by law.

(5) TRANSCRIPTS; TRANSCRIPT CORRECTIONS. Hearings shall be stenographically transcribed by a commission-selected reporter. Any party requesting the commission to provide a transcript of a commission proceeding shall pay the fee specified in s. ERC 10.08 (6). Corrections of the official transcript may be made by stipulation or motion when they involve errors affecting substance. When corrections are ordered, the necessary physical corrections shall be made in the official transcript.

(6) EVIDENCE. (a) *Stipulations of fact*. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) *Witnesses*. Except as provided in s. ERC 18.06 (2) (b), witnesses shall be examined orally under oath at the hearing.

(c) *Rules of evidence*. Hearings in proceedings under this chapter shall be conducted in accordance with the rules of evidence and official notice provided in s. 227.45, Stats. That section provides, in part, that the commission or examiner shall not be bound by common law or statutory rules of evidence; shall admit all testimony having reasonable probative value; shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05, Stats.; and shall give effect to rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(d) *Compelling witness attendance or evidence production at hearing*. The commission or examiner or a party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence at the hearing.

1. 'Subpoenas issued by commission or examiner.' The commission or examiner may issue a subpoena at the request of a party or on the commission's or examiner's own motion. In advance of the time set in the subpoena for attendance, each witness who appears by subpoena shall receive for attendance the fees and mileage provided for witnesses in civil cases in courts of record in s. 814.67, Stats. The service of the subpoena and the payment of the witness and mileage fee shall be the responsibility of the party, if any, requesting the subpoena or of the commission if the subpoena was issued on the commission's or examiner's own motion.

2. 'Subpoenas issued by a party's attorney of record.' A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4), Stats., and shall be served in the manner provided in s. 805.07 (5), Stats., including payment of attendance fees and mileage provided for witnesses in civil cases in courts of record in s. 814.67, Stats. The attorney shall, at the time of issuance, send a copy of the subpoena to the commission or examiner.

3. 'Enforcement of subpoenas.' Any person who shall willfully and unlawfully fail or

neglect to appear or testify or to produce books, papers and records as required by a subpoena issued under subds. 1. or 2., shall, on commission application to a circuit court, be ordered to appear before the commission or examiner, to testify or produce evidence if so ordered, and failure to obey the order of the court may be punished by the court as a contempt of court. Any party may, by motion, request that the commission enforce a subpoena by application to a circuit court.

(7) OBJECTIONS. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally with a short statement of the grounds of the objection and included in the transcript of the hearing. An objection is not waived by the objecting party's further participation in the hearing.

(8) CLOSE OF EVIDENCE. Once the commission or examiner declares the taking of evidence completed, no additional evidence may be submitted except on motion for good cause.

(9) WRITTEN CLOSING ARGUMENTS. Any party shall be entitled, on request made before the close of the evidence, to file a written brief within a time period set by the commission or examiner. The filing of briefs may also be directed on the commission's or examiner's own motion when warranted by the nature of the proceeding or particular issues.

(10) WAIVER OF PROCEDURES. The parties to any proceeding, with the approval of the commission or examiner, may agree to waive any one or more of the procedural steps or decisions which would otherwise precede the issuance by the commission or examiner of a final order or other final disposition.

(11) SANCTIONS FOR DISRUPTIVE OR CONTEMPTUOUS CONDUCT. (a) *Sanctions*. If a party, representative or other person, without reasonable excuse, fails to cease engaging in disruptive or contemptuous conduct in connection with a proceeding after being directed to do so by the commission or examiner, the commission or examiner may take any action authorized by s. 227.46 (1), Stats., and appropriate in relation to the disruptive or contemptuous conduct.

(b) *Opportunity to show cause*. Before issuing a sanctions order in writing or orally on the record, the examiner or commission shall provide the affected party, representative or other person a reasonable opportunity to show cause why the proposed sanctions order should not be issued.

ERC 18.09 Findings of fact, conclusions of law and declaratory ruling. **(1)** ISSUANCE. After submission of the case, the commission shall make and file its findings of fact, conclusions of law and declaratory ruling. The date on which a hearing is closed, the date on which the last brief is received, or the date on which the last document necessary to the decision of the case is received, whichever is later, shall be regarded as the date of the submission of the case.

(2) CONTENTS. The findings of fact and conclusions of law shall be made upon all material issues of fact and law presented on the record. The declaratory ruling shall state the determination as to the duty to bargain on the subject or subjects submitted.

(3) PUBLIC DOCUMENT WHEN ISSUED**.** When issued, the commission's findings of fact,

conclusions of law and declaratory ruling are available for purchase from the commission's Madison office and may also be available on the commission's website and in other commission publications.

ERC 18.10 Application of declaratory ruling in prohibited practice proceedings. The findings of fact, conclusions of law and declaratory ruling shall bind all of the parties on all facts found and issues determined in the declaratory ruling in a prohibited practice proceeding pending or commenced after the issuance of the declaratory ruling.

ERC 18.11 Petition for rehearing. (1) RIGHT TO FILE; TIME TO FILE; CONTENTS. A petition for rehearing shall not be a prerequisite for appeal or review. 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. The petition for rehearing shall be transmitted to the commission as set forth in s. ERC 10.06 (1). A petition for rehearing is not filed until the petition has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The commission may order a rehearing on its own motion within 20 days after service of a final order. The commission is not required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) EFFECT OF PETITION. The filing of a petition for rehearing shall not suspend or delay the effective date of the commission's order, and the order shall take effect on the date established by the commission and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) BASES FOR GRANTING. Rehearing shall be granted only on the basis of any of the following:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) ON WHOM SERVED. Copies of petitions for rehearing shall be served on all parties of record as set forth in s. ERC 10.07. Parties may file replies to the petition. A party filing a reply shall also serve a copy on each of the other parties, as set forth in s. ERC 10.07.

(5) DISPOSITION ALTERNATIVES. The commission may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the commission does not enter an order disposing of the petition within the 30-day period, the petition is denied by operation of law at the end of the 30-day period.

(6) REHEARING PROCEEDINGS. Upon granting a rehearing, the commission shall set the matter for further proceedings as soon as practicable. Rehearing proceedings shall conform as

nearly as may be to the proceedings in an original hearing except as the commission may otherwise direct. If in the commission's judgment, after rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify or suspend it accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

SECTION 2. Chapter ERC 19 is created to read:

Chapter ERC 19

DISCRETIONARY MUNICIPAL SECTOR DECLARATORY RULINGS UNDER CH. 227, STATS.

ERC 19.01 Scope.
ERC 19.02 Petition.
ERC 19.03 Statement in response to petition.
ERC 19.04 Withdrawal of petition.
ERC 19.05 Motions.
ERC 19.06 Commission action on petition.
ERC 19.07 Notice of hearing.
ERC 19.08 Hearings.
ERC 19.09 Findings of fact, conclusions of law and declaratory ruling.
ERC 19.10 Effect of declaratory ruling.
ERC 19.11 Petition for rehearing.

ERC 19.01 Scope. This chapter governs the general procedure relating to discretionary declaratory rulings requested under s. 227.41 (2), Stats., concerning the Municipal Employment Relations Act and rules concerning its administration.

ERC 19.02 Petition. **(1)** WHO MAY FILE. Any interested person may file a petition requesting that the commission issue a declaratory ruling about the applicability to any person, property or state of facts of any provision of the Municipal Employment Relations Act or any rule concerning its administration.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The petition shall be in writing in the form described below 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 contains the required signature or signature facsimile and unless and until the petition has been actually 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 two copies of the petition shall be included. The petition shall be captioned as follows:

"STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
(NAME OF PETITIONER)
Requesting a Sec. 227.41 (2) Stats., Declaratory Ruling
Involving a dispute between Petitioner and
(NAME OF OTHER PARTY)
----------"

The party filing the petition shall, at the same time, serve a copy, as set forth in s. ERC 10.07, on any other party the petitioner seeks to bind to the declaratory ruling.

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

(a) The name and address 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 any other party the petitioner seeks to bind to the declaratory ruling, and the name, address and phone number of its principal representative, if any. Fax numbers and e-mail addresses shall be included, if available.

(c) A statement identifying the rule or statute about which the declaratory ruling is requested.

(d) A clear and concise statement of the declaratory ruling the petitioner is requesting the commission to issue.

(4) STATEMENT IN SUPPORT OF PETITION. The petitioner shall attach to each copy of the petition a clear and concise statement of the facts and arguments relied upon by the petitioner in support of the position taken by the petitioner.

ERC 19.03 Statement in response to petition. (1) WHO SHALL FILE. Any party named in the petition other than the petitioner may, within a time established by the commission, file with the commission a statement in response to the petition.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The statement in response shall be in writing and shall include the caption of the case and the signature or a facsimile of the signature of the party or representative filing the statement. The statement shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the statement is filed in paper form, a total of two copies shall be provided to the commission. The party filing the statement in response shall, at the same time, serve a copy on the petitioner or its designated representative, as set forth in s. ERC 10.07.

(3) CONTENTS. The statement in response shall include all of the following:

(a) A statement of the position taken by the responding party as to what action the commission should take regarding the petition.

(b) A clear and concise statement of the facts and arguments relied upon by the responding party in support of its position regarding the petition.

(c) Corrections, as necessary, of the names, addresses, phone numbers, fax numbers, e-mail addresses, affiliations and representatives in the petition.

ERC 19.04 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

withdraw shall be granted unless withdrawal would result in an injustice to any party.

ERC 19.05 Motions. Practice and procedures regarding motions in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.06.

ERC 19.06 Commission action on petition. Within a reasonable time after receipt of a petition under this chapter, the commission may either deny the petition in writing or schedule the matter for hearing. If the commission denies the petition, it shall promptly notify the person who filed the petition of its decision, including a brief statement of the reasons for the denial.

ERC 19.07 Notice of hearing. **(1)** WHEN ISSUED. If the commission determines that a hearing is warranted, the commission or examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing.

(2) CONTENTS. The notice of hearing shall include all of the following:

(a) A statement of the time, place, and nature of the hearing, including a statement that the declaratory ruling proceeding under s. 227.41 (2), Stats., is a class 1 proceeding as defined in s. 227.01 (3) (a) to (c), Stats. Unless the parties have agreed otherwise or unless the commission or examiner finds that unusual circumstances require otherwise, the hearing shall be held not less than 10 days after the notice of hearing is served. The hearing may be rescheduled in the manner prescribed in s. ERC 18.06 (2) (d).

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A short and plain statement of the matters asserted, by reference to the pleadings on file, or otherwise.

ERC 19.08 Hearings. Practice and procedures for hearings in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.08.

ERC 19.09 Findings of fact, conclusions of law and declaratory ruling. Practice and procedures regarding commission issuance of findings of fact, conclusions of law and declaratory ruling in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.09.

ERC 19.10 Effect of declaratory ruling. Unless it is altered or set aside by a court, a declaratory ruling issued under this chapter shall bind the commission and all parties to the proceedings on the facts found and issues determined by the commission.

ERC 19.11 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 of a petition for rehearing in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 18.11.

SECTION 3. Chapters ERC 20-25 are repealed and recreated to read:

Chapter ERC 20

GENERAL STATE SECTOR PROVISIONS

ERC 20.01 Purpose and interpretation.
ERC 20.02 Chapters.
ERC 20.03 Resolution of conflicts.
ERC 20.04 Definitions.
ERC 20.05 Transfer, consolidation and severance of proceedings.
ERC 20.06 Filing with the commission or with commission personnel.
ERC 20.07 Service on a party or representative.
ERC 20.08 Fee schedule.
ERC 20.09 Computation of time.
ERC 20.10 Forms.

ERC 20.01 Purpose and interpretation. Chapters ERC 20 to 28, 40, and 50 govern the conduct of all proceedings involving state employment relations before the Wisconsin Employment Relations Commission. As used in chs. ERC 20 to 28, 40, and 50, "State Employment Labor Relations Act" means subch. V of ch. 111, Stats. Chapters ERC 20 to 28 shall be interpreted to serve the purposes and provisions of the State Employment Labor Relations Act, as shall chs. 40 and 50 in connection with state sector employment. Nothing in chs. ERC 20 to 28, 40, or 50 shall be construed to prevent the commission or persons employed or designated by the commission from using best efforts to adjust any dispute arising between employees and employers. The commission or examiner may waive requirements of chs. ERC 20 to 28, 40, or 50 to serve the purposes and provisions of the State Employment Labor Relations Act, unless a party shows that it would be prejudiced by the waiver.

ERC 20.02 Chapters. Chapters ERC 21 to 28, 40, and 50 contain special rules applicable to the type of proceeding described in the caption of the chapter. Chapter ERC 20 contains general rules applicable to all types of proceedings in state employment relations and should be read in conjunction with the chapter governing the particular proceeding.

ERC 20.03 Resolution of conflicts. In any conflict between a general rule in ch. ERC 20 and a specific provision in chs. ERC 21 to 28, 40, or 50, the specific provision shall govern.

ERC 20.04 Definitions. Words or phrases used in this chapter which are defined in s. 111.81, Stats., have the meaning as in s. 111.81, Stats.

ERC 20.05 Transfer, consolidation and severance of proceedings. Whenever the commission finds it necessary, in order to serve the purposes of the State Employment Labor Relations Act, or to avoid unnecessary costs or delay, it may transfer any proceeding before an examiner to another examiner or to the commission. Proceedings under more than one subsection of the State Employment Labor Relations Act may be combined or severed.

ERC 20.06 Filing with the commission or with commission personnel. Practice and procedure regarding filing documents with the commission or with commission personnel shall be as set

forth in s. ERC 10.06

ERC 20.07 Service on a party or representative. Practice and procedures for service on a party or representative shall be as set forth in s. ERC 10.07.

ERC 20.08 Fee schedule. (1) COMPLAINTS. For a complaint alleging that an unfair labor practice has been committed under s. 111.84, Stats., the complaining party or parties shall pay the commission a filing fee as set forth in s. ERC 10.08 (1).

(2) GRIEVANCE ARBITRATION. For a request that the commission or its staff act as a grievance arbitrator under s. 111.86, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (2).

(3) MEDIATION. For a request that the commission or its staff act as a mediator under s. 111.87, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (3).

(4) FACT-FINDING. For a request that the commission initiate fact-finding under s. 111.88, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (4), except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid for the fact-finding.

(5) TRANSCRIPTS. Any party requesting the commission to provide a transcript of a commission proceeding shall pay a fee as set forth in s. ERC 10.08 (6).

ERC 20.09 Computation of time. Computation of any period of time prescribed by or allowed by chs. ERC 20 to 28, 40, or 50, or by order of the commission or individual conducting the proceeding, shall be as set forth in s. ERC 10.09.

ERC 20.10 Forms. Lists and copies of commission forms may be obtained from the commission's Madison office or the agency website.

Note: The address of the commission's website is http:\\werc.wi.gov
Note: For the commission's Madison office, the mailing address is PO Box 7870, Madison WI 53707-7870 and the physical address is 18 South Thornton Avenue, Madison, WI 53703.

Chapter ERC 21

ELECTIONS TO DETERMINE BARGAINING REPRESENTATIVE FOR STATE SECTOR PERSONNEL

ERC 21.01 Scope.
ERC 21.02 Petition for election.
ERC 21.03 Withdrawal of petition.
ERC 21.04 Stipulation for election.
ERC 21.05 Commission pre-hearing action on petition.
ERC 21.06 Motions.
ERC 21.07 Hearings.
ERC 21.08 Direction of election or other dispositional order.
ERC 21.09 Elections.
ERC 21.10 Certification of results of election.
ERC 21.11 Objections to election.
ERC 21.12 Commission action on challenges or objections.
ERC 21.13 Petition for rehearing.

ERC 21.01 Scope. This chapter governs the general procedure relating to elections under s. 111.83, Stats., affecting bargaining units of state employees specified in s. 111.825, Stats., or bargaining units of supervisors specified in s. 111.825 (5), Stats. This chapter also governs the general procedure relating to unit-determination elections under s. 111.83 (5), Stats.

ERC 21.02 Petition for election. A petition to determine a collective bargaining representative or an appropriate collective bargaining unit may be filed by one or more state employees specified in s. 111.825, Stats. or by one or more supervisors specified in s. 111.825 (5), Stats., or by a labor organization acting on their behalf, or by the employer or anyone authorized to act on its behalf. Practice and procedures for filing and processing a petition under this chapter shall otherwise be as set forth in s. ERC 11.02.

ERC 21.03 Withdrawal of petition. Practice and procedures for withdrawal of an election petition shall be as set forth in s. ERC 11.03.

ERC 21.04 Stipulation for election. Where the employer, and one or more individual employees or supervisors or a labor organization acting on their behalf, and the exclusive representative, if any, of an existing unit agree that a question of representation has arisen concerning employees or concerning supervisors, those parties may jointly file a stipulation for an election to resolve that question. Practice and procedures concerning a stipulation for an election shall otherwise be as set forth in s. ERC 11.04.

ERC 21.05 Commission pre-hearing action on petition. Practice and procedures regarding commission pre-hearing action on a petition for an election shall be as set forth in s. ERC 11.05.

ERC 21.06 Motions. Practice and procedures regarding motions in election proceedings shall be as set forth in s. ERC 18.06.

ERC 21.07 Hearings. (1) SCOPE. Hearings shall be open to the public and limited to the litigation of and oral argument on issues of fact or law regarding whether the unit described in the petition is an appropriate unit, and, if so, regarding the issues, if any, with respect to whether there exists a question of representation among the eligible personnel in that unit. Practice and procedures regarding hearings in election proceedings shall otherwise be as set forth in s. ERC. 18.08.

ERC 21.08 Direction of election or other dispositional order. Practice and procedures regarding a commission direction of election or other dispositional order in an election proceeding shall be as set forth in s. ERC 11.08.

ERC 21.09 Elections. Practice and procedures for conducting elections shall be as set forth in s. ERC 11.09, except that the statutory reference in s. ERC 11.09 (6) shall be to s. 111.83 (4), Stats.

ERC 21.10 Certification of results of election. Practice and procedures for certification of results of an election shall be as set forth in s. ERC 11.10.

ERC 21.11 Objections to election. Practice and procedures for filing objections to the conduct of an election shall be as set forth in s. ERC 11.11.

ERC 21.12 Commission action on challenges or objections. Practice and procedures for commission action on challenges or objections in election proceedings shall be as set forth in s. ERC 11.12.

ERC 21.13 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 procedures for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

Chapter ERC 22

STATE SECTOR UNFAIR LABOR PRACTICES

ERC 22.01 Scope.
ERC 22.02 Complaint.
ERC 22.03 Answer to complaint.
ERC 22.04 Motions.
ERC 22.05 Hearings.
ERC 22.06 Findings of fact, conclusions of law and order.
ERC 22.07 Interlocutory findings of fact, conclusions of law and order.
ERC 22.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order.
ERC 22.09 Review of findings of fact, conclusions of law and order issued by examiner.
ERC 22.10 Petition for rehearing.

ERC 22.01 Scope. This chapter governs the general procedure relating to complaints of state sector unfair labor practices as defined in s. 111.84, Stats.

ERC 22.02 Complaint. A complaint that the employer, an employee, or a person has engaged in a unfair labor practice defined, respectively, in s. 111.84 (1), (2) or (3), Stats., respectively, may be filed by any party or by a representative authorized to file on behalf of a party in interest. Practice and procedures for complaint filing and processing shall otherwise be as set forth in s. ERC 12.02, except that the statutory references in s. ERC 12.02 (1) and (2) (c) shall be to s. 111.84 (1), (2) and (3), Stats.; the references to "prohibited practices" shall be to "unfair labor practices"; and references to the "Municipal Employment Relations Act" shall be to the "State Employment Labor Relations Act."

ERC 22.03 Answer to complaint. Each respondent named in the complaint shall file an answer to the complaint with the commission on or before the date designated in the notice of hearing. Practice and procedures for filing and processing an answer shall be as set forth in s. ERC 12.03.

ERC 22.04 Motions. Practice and procedures for motions concerning unfair labor practice proceedings shall be as set forth in s. ERC 12.04.

ERC 22.05 Hearings. Practice and procedures for hearings concerning unfair labor practice complaints shall be as set forth in s. ERC 18.08, except that references to the Municipal employment Relations Act shall be to the State Employment Labor Relations Act.

ERC 22.06 Findings of fact, conclusions of law and order. After the close of the evidence and the submission of closing arguments, or on granting a motion for dismissal of a complaint, the commission or examiner shall issue written findings of fact, conclusions of law and order to the parties. Practice and procedures concerning the issuance of findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.06, except that references to the Municipal Employment Relations Act shall be to the State

Employment Labor Relations Act.

ERC 22.07 Interlocutory findings of fact, conclusions of law and order. Practice and procedures for interlocutory findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.07.

ERC 22.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order. Practice and procedures for setting aside, modifying, changing or reversing findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.08.

ERC 22.09 Review of findings of fact, conclusions of law and order issued by examiner. Practice and procedures for commission review of findings of fact, conclusions of law and order issued by an examiner in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.09.

ERC 22.10 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.

Chapter ERC 23

ARBITRATION OF STATE SECTOR GRIEVANCE DISPUTES

ERC 23.01 Scope.
ERC 23.02 Policy.
ERC 23.03 Request for commission-employed arbitrator.
ERC 23.04 Commission action on request for commission-employed arbitrator.
ERC 23.05 Proceedings before commission-employed arbitrator.
ERC 23.06 Request for ad hoc arbitrator not employed by the commission.
ERC 23.07 Commission action on request for ad hoc arbitrator.
ERC 23.08 Proceedings before ad hoc arbitrator.
ERC 23.09 Ad hoc arbitrator's award and report.

ERC 23.01 Scope. This chapter governs the general procedure relating to grievance arbitration proceedings and designation of grievance arbitrators under s. 111.86, Stats., affecting bargaining units of state employees specified in s. 111.825, Stats., or bargaining units of supervisors specified in s. 111.825 (5), Stats.

ERC 23.02 Policy. To promote the prompt, peaceful and just settlement of labor disputes arising from the interpretation or application of a collective bargaining agreement affecting terms and conditions of state employment in Wisconsin, the commission offers various grievance arbitration services involving designation of grievance arbitrators who are either employed by the commission or who are on the commission's ad hoc roster of arbitrators and fact-finders not employed by the commission.

ERC 23.03 Request for commission-employed arbitrator. A request that the commission provide the services of a commission-employed arbitrator may be filed by the exclusive representative, the municipal employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. Practice and procedures regarding filing a request for services of a commission-employed arbitrator shall be as set forth in s. ERC 16.03.

ERC 23.04 Commission action on request for commission-employed arbitrator. Practice and procedures for commission action on a request for services of a commission-employed arbitrator shall be as set forth in s. ERC 16.04.

ERC 23.05 Proceedings before commission-employed arbitrator. Practice and procedures for proceedings before a commission-employed arbitrator shall be as set forth in s. ERC 16.05.

ERC 23.06 Request for ad hoc arbitrator not employed by the commission. A request that the commission provide the parties with a list of one or more ad hoc arbitrators, not employed by the commission, to provide grievance arbitration services may be filed by the exclusive representative, the employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. Practice and procedures regarding filing a request for ad hoc arbitrator services shall be as set forth in s. ERC 16.06.

ERC 23.07 Commission action on request for ad hoc arbitrator. Practice and procedures for commission action on a request for services of an ad hoc arbitrator shall be as set forth in s. ERC 16.07.

ERC 23.08 Proceedings before ad hoc arbitrator. Practice and procedures for proceedings before an ad hoc arbitrator shall be as set forth in s. ERC 16.08.

ERC 23.09 Ad hoc arbitrator's award and report. Practice and procedures regarding an ad hoc arbitrator's award and report shall be as set forth in s. ERC 16.09.

Chapter ERC 24

MEDIATION OF STATE SECTOR LABOR DISPUTES

ERC 24.01 Scope.
ERC 24.02 Policy.
ERC 24.03 Request for mediation services.
ERC 24.04 Commission action on request for mediation services.
ERC 24.05 Mediation initiated by the commission.
ERC 24.06 Mediation proceedings.
ERC 24.07 Report to commission.

ERC 24.01 Scope. This chapter governs the general procedure relating to mediation of labor disputes under s. 111.87, Stats., affecting bargaining units of state employees specified in s. 111.825, Stats., or bargaining units of supervisors specified in s. 111.825 (5), Stats.

ERC 24.02 Policy. To promote the prompt and peaceful settlement of labor disputes affecting terms and conditions of state sector employment in Wisconsin, the commission offers various mediation services involving designation of mediators to assist the parties in reaching a voluntary settlement. In order to maintain and enhance the effectiveness of the mediation function, the commission has established rules and procedures designed to maintain confidentiality of the mediation process.

ERC 24.03 Request for mediation services. A request for mediation services may be filed by the employer or by the exclusive collective bargaining representative of a bargaining unit of state personnel, or by anyone authorized to act on their behalf. Practice and procedures for filing a request for mediation services shall be as set forth in s. ERC 13.03.

ERC 24.04 Commission action on request for mediation services. Practice and procedures for commission action on a request for mediation services shall be as set forth in s. ERC 13.04, except that references to the "Municipal Employment Relations Act" shall be to the "State Employment Labor Relations Act."

ERC 24.05 Mediation initiated by the commission. Practice and procedures for mediation initiated by the commission shall be as set forth in s. ERC 13.05, except that the reference to the "Municipal Employment Relations Act" shall be to the "State Employment Labor Relations Act."

ERC 24.06 Mediation proceedings. Practice and procedures in mediation proceedings shall be as set forth in s. ERC 13.06.

ERC 24.07 Report to commission. Practice and procedures regarding a report to the commission by the mediator shall be as set forth s. ERC 13.07.

Chapter ERC 25

FACT-FINDING IN STATE SECTOR DISPUTES

ERC 25.01 Scope.
ERC 25.02 Petition for fact-finding.
ERC 25.03 Withdrawal of petition; effect on filing fee.
ERC 25.04 Commission investigation.
ERC 25.05 Consolidation of proceedings.
ERC 25.06 Certification of results of investigation.
ERC 25.07 Hearing before the fact finder.
ERC 25.08 Fact-finding recommendations.
ERC 25.09 Compensation of fact finder and other costs.
ERC 25.10 Fact finder's report of fees and expenses.
ERC 25.11 Notification of acceptance or rejection of recommendations of the fact finder.

ERC 25.01 Scope. This chapter governs the general procedure relating to fact-finding in state sector employment under s. 111.88, Stats., affecting bargaining units of state employees specified in s. 111.825, Stats., or bargaining units of supervisors specified in s. 111.825 (5), Stats.

ERC 25.02 Petition for fact-finding. A petition to initiate fact-finding may only be filed jointly, by the employer and the exclusive collective bargaining representative of personnel in an appropriate collective bargaining unit, or by their authorized representatives. Practice and procedures for filing a petition to initiate fact-finding under this chapter shall otherwise be as set forth in s. ERC 14.02.

ERC 25.03 Withdrawal of petition; effect on filing fee. Practice and procedures regarding withdrawal of a petition for fact finding and the effect of a withdrawal on the filing fee shall be as set forth in s. ERC 14.03.

ERC 25.04 Commission investigation. After a petition has been filed, the commission shall conduct an investigation to determine whether the parties are deadlocked after a reasonable period of negotiation. Practice and procedures for the investigation in a fact-finding proceeding shall be as set forth in s. ERC 14.04.

ERC 25.05 Consolidation of proceedings. The commission may consolidate fact-finding proceedings to avoid unnecessary costs, delay, or multiplicity of proceedings or to otherwise serve the purposes of the State Employment Labor Relations Act.

ERC 25.06 Certification of results of investigation. Practice and procedures regarding commission certification of the results of an investigation in a fact-finding proceeding shall be as set forth in s. ERC 14.06, except that the reference to the "Municipal Employment Relations Act" shall be to the "State Employment Labor Relations Act."

ERC 25.07 Hearing before the fact finder. Practice and procedures regarding hearings before the fact finder shall be as set forth in s. ERC 14.07.

ERC 25.08 Fact-finding recommendations. After the close of the hearing, the fact finder shall prepare and issue fact-finding recommendations. Practice and procedures regarding fact-finding recommendations shall be as set forth in s. ERC 14.08.

ERC 25.09 Compensation of fact finder and other costs. Practice and procedures regarding compensation of the fact finder and the allocation of other costs in a fact finding proceeding shall be as set forth in s. ERC 14.09.

ERC 25.10 Fact finder's report of fees and expenses. Practice and procedures regarding the fact finder's report of fees and expenses shall be as set forth in s. ERC 14.10.

ERC 25.11 Notification of acceptance or rejection of recommendations of the fact finder. Each party involved in fact-finding shall notify, in writing, the other parties and the commission of its acceptance or rejection, in whole or in part, of the fact finder's recommendations. Practice and procedures regarding notification of acceptance or rejections of recommendations of the fact finder shall be as set forth in s. ERC 14.11.

SECTION 4. Chapters ERC 26-28 are created to read:

Chapter ERC 26

REFERENDA CONCERNING STATE SECTOR FAIR-SHARE AND MAINTENANCE OF MEMBERSHIP AGREEMENTS

ERC 26.01 Scope.
ERC 26.02 Petition for referendum.
ERC 26.03 Showing of interest in support of petition.
ERC 26.04 Withdrawal of petition.
ERC 26.05 Commission pre-hearing action on petition.
ERC 26.06 Motions.
ERC 26.07 Hearings.
ERC 26.08 Direction of referendum or other dispositional order.
ERC 26.09 Referendum.
ERC 26.10 Certification of results of referendum.
ERC 26.11 Objections to referendum.
ERC 26.12 Commission action on challenges or objections.
ERC 26.13 Petition for rehearing.

ERC 26.01 Scope. This chapter governs the general procedure relating to referenda under s. 111.85, Stats., concerning fair-share and maintenance of membership agreements affecting bargaining units of state employees specified in s. 111.825, Stats., or bargaining units of supervisors specified in s. 111.825 (5), Stats.

ERC 26.02 Petition for referendum. **(1)** WHO MAY FILE. A petition to authorize or determine the continuation of a fair-share or maintenance of membership agreement for a bargaining unit may be filed by the employer or by the exclusive representative of the bargaining unit involved or by anyone acting on behalf of either party.

(2) TIME FOR FILING. (a) *Concerning authorization.* A petition to authorize a fair-share or maintenance of membership agreement for a bargaining unit may be filed at any time after an exclusive representative of the bargaining unit involved has been certified.

(b) *Concerning continuation.* A petition to determine the continuation of a fair-share or maintenance of membership agreement may be filed at any time following the implementation of the fair-share or maintenance of membership agreement involved.

(3) FORM, NUMBER OF COPIES, AND FILING. 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 in interest or representative filing the petition. A petition is not filed unless it contains the required signature or signature facsimile and unless and until the petition and the showing of interest in support of the petition required by s. ERC 26.03 have been actually 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 two copies of the

petition shall be included. The showing of interest in support of the petition required by s. ERC 26.03, shall be transmitted to the commission in paper form by physical delivery or mail.

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

(a) The name and address of the employer 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 exclusive representative of the bargaining unit 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 collective bargaining unit involved, and the approximate number of personnel in the unit.

(d) A description of the fair-share or maintenance of membership agreement involved.

(e) The date of execution, the effective date, and the expiration date of the collective bargaining agreement, if any, containing a fair-share or maintenance of membership agreement affecting the bargaining unit involved.

(f) A statement to the effect that at least 30% of the personnel in the collective bargaining unit involved support the authorization or discontinuation of a fair-share or maintenance of membership agreement requested in the petition.

(g) The name and address of the petitioner, and the name, address and phone number of the petitioner's principal representative. Fax numbers and e-mail addresses shall be included, if available.

ERC 26.03 Showing of interest in support of petition. The petition shall be supported by a showing of interest in writing, containing the printed names and signatures of at least 30% of the personnel in the bargaining unit involved, the dates on which the signatures were executed, and a statement that the personnel signing support the authorization or discontinuation of a fair-share or maintenance of membership agreement requested in the petition.

ERC 26.04 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 withdraw shall be granted unless withdrawal would result in an injustice to any party.

ERC 26.05 Commission pre-hearing action on petition. Practice and procedures for commission pre-hearing action in referendum proceedings shall be as set forth in s. ERC 15.07.

ERC 26.06 Motions. Practice and procedures regarding motions in referendum proceedings shall be as set forth in s. ERC 18.06.

ERC 26.07 Hearings. Practice and procedure regarding hearings in referendum proceedings

shall be as set forth in s. ERC 15.09, except that the statutory reference in s. ERC 15.09 shall be to s. 111.85, Stats.

ERC 26.08 Direction of referendum or other dispositional order. Practice and procedures regarding a commission direction of election or other dispositional order in referendum proceedings shall be as set forth in s. ERC 15.10.

ERC 26.09 Referendum. Practice and procedures regarding conduct of a referendum shall be as set forth in s. ERC 15.11.

ERC 26.10 Certification of results of referendum. (1) WHEN ISSUED. If challenged ballots are insufficient in number to affect the results and no timely objections are filed under s. ERC 26.11, the commission shall issue to the parties a certification of the results of the referendum.

(2) EFFECT OF CERTIFICATION. (a) *Favoring neither fair-share nor maintenance of membership*. Where the certification of the results of a referendum indicates that the required number of personnel has not authorized the implementation of, or the continuation of, either a fair-share or maintenance of membership agreement, no fair-share or maintenance of membership agreement shall be implemented and any existing fair-share or maintenance of membership agreement shall be terminated at the termination of the collective bargaining agreement, or one year from the date of the certification of result of the referendum, whichever is earlier.

(b) *Favoring maintenance of membership but not fair-share.* Where the certification of the results of a referendum indicates that the required number of personnel has authorized the implementation of, or the continuation of, the maintenance of membership agreement but has not authorized the implementation of, or the continuation of a fair-share agreement, no fair-share agreement shall be implemented. The maintenance of membership agreement in effect, if any, shall be continued in effect, or the maintenance of membership agreement shall take effect 60 days after the date of the certification or on an earlier date agreed upon between the employer and the exclusive representative involved.

(c) *Favoring fair-share*. Where the certification of the results of a referendum indicates that the required number of personnel has authorized the implementation of, or the continuation of a fair-share agreement, the fair-share agreement in effect, if any, shall be continued in effect, or the fair-share agreement shall take effect 60 days after the date of the certification or on an earlier date agreed upon between the employer and the exclusive representative involved.

ERC 26.11 Objections to referendum. Practice and procedures for filing objections to the conduct of a referendum shall be as set forth in s. ERC 15.13.

ERC 26.12 Commission action on challenges or objections. Practice and procedures for commission action on challenges or objections in referendum proceedings shall be as set forth in s. ERC 15.14.

ERC 26.13 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 procedures for filing and processing of a petition for rehearing in a referendum proceeding shall be as set forth in s. ERC 18.11.

Chapter ERC 27

CLARIFICATION OF STATE SECTOR BARGAINING UNITS

ERC 27.01 Scope.
ERC 27.02 Petition for unit clarification.
ERC 27.03 Withdrawal of petition.
ERC 27.04 Commission pre-hearing action on petition.
ERC 27.05 Motions.
ERC 27.06 Hearings.
ERC 27.07 Order clarifying bargaining unit or other dispositional order.
ERC 27.08 Petition for rehearing.

ERC 27.01 Scope. This chapter governs the general procedure relating to clarification of state sector bargaining units under the State Employment Labor Relations Act to determine whether one or more positions are properly included in or excluded from an existing collective bargaining unit of state employees specified in s. 111.825, Stats., or from an existing collective bargaining unit of supervisors specified in s. 111.825 (5), Stats.

ERC 27.02 Petition for unit clarification. A petition to determine whether one or more positions shall be included in or excluded from an existing collective bargaining unit may be filed by the exclusive representative of the bargaining unit or by the employer or by an authorized representative of one of those parties. Practice and procedures for filing and processing of a petition for unit clarification shall otherwise be as set forth in s. ERC 17.02.

ERC 27.03 Withdrawal of petition. Practice and procedures regarding withdrawal of a petition for unit clarification shall be as set forth in s. ERC 17.03.

ERC 27.04 Commission pre-hearing action on petition. Practice and procedures for commission pre-hearing action on a petition for unit clarification shall be as set forth in s. ERC 17.04.

ERC 27.05 Motions. Practice and procedures regarding motions in unit clarification proceedings shall be as set forth in s. ERC 18.06.

ERC 27.06 Hearings. Practice and procedures for hearings in unit clarification proceedings shall be as set forth in s. ERC 17.06, except that the reference to the Municipal Employment Relations Act shall be to the State Employment Labor Relations Act.

ERC 27.07 Order clarifying bargaining unit or other dispositional order. Practice and procedures regarding commission issuance of an order clarifying bargaining unit or other dispositional order in a unit clarification proceeding shall be as set forth in s. ERC 17.07.

ERC 27.08 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 regarding a petition for rehearing in a unit clarification proceeding shall be as set forth in s. ERC 18.11.

Chapter ERC 28

DISCRETIONARY STATE SECTOR DECLARATORY RULINGS UNDER CH. 227, STATS.

ERC 28.01 Scope.
ERC 28.02 Petition.
ERC 28.03 Statement in response to petition.
ERC 28.04 Withdrawal of petition.
ERC 28.05 Motions.
ERC 28.06 Commission action on petition.
ERC 28.07 Notice of hearing.
ERC 28.08 Hearings.
ERC 28.09 Findings of fact, conclusions of law and declaratory ruling.
ERC 28.10 Effect of declaratory ruling.
ERC 28.11 Petition for rehearing.

ERC 28.01 Scope. This chapter governs the general procedure relating to discretionary declaratory rulings requested under s. 227.41 (2), Stats., concerning the State Employment Labor Relations Act and rules concerning its administration.

ERC 28.02 Petition. Any interested person may file a petition requesting that the commission issue a declaratory ruling about the applicability to any person, property or state of facts of any provision of the State Employment Labor Relations Act or any rule concerning its administration. Practice and procedures for filing a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.02, except that references to the "Municipal Employment Relations Act" shall be to the "State Employment Labor Relations Act."

ERC 28.03 Statement in response to petition. Practice and procedures regarding filing of a statement in response to a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.03.

ERC 28.04 Withdrawal of petition. Practice and procedures regarding withdrawal of a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.04.

ERC 28.05 Motions. Practice and procedures regarding motions in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.06

ERC 28.06 Commission action on petition. Practice and procedures regarding commission action on a petition for a discretionary declaratory ruling shall be as set forth in s. ERC 19.06.

ERC 28.07 Notice of hearing. Practice and procedures regarding a notice of hearing in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 19.07.

ERC 28.08 Hearings. Practice and procedures regarding hearings in discretionary declaratory

ruling proceedings shall be as set forth in s. ERC 18.08.

ERC 28.09 Findings of fact, conclusions of law and declaratory ruling. Practice and procedure regarding issuance of findings of fact, conclusions of law and declaratory ruling in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 18.09

ERC 28.10 Effect of declaratory ruling. The effect of a discretionary declaratory ruling issued under this chapter shall be as set forth in s. ERC 19.10.

ERC 28.11 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 in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 18.11.

SECTION 5. Chapters ERC 30-33 are repealed and recreated to read:

Chapter ERC 30

MUNICIPAL INTEREST ARBITRATION INVOLVING FIRE FIGHTING AND LAW ENFORCEMENT PERSONNEL UNDER S. 111.77, STATS.

ERC 30.01 Scope.
ERC 30.02 Policy.
ERC 30.03 Petition to initiate final and binding arbitration.
ERC 30.04 Withdrawal of petition, effect on filing fee.
ERC 30.05 Stipulation to initiate final and binding arbitration.
ERC 30.06 Withdrawal of stipulation; effect on filing fee.
ERC 30.07 Pre-investigation procedure.
ERC 30.08 Informal investigation or formal hearing.
ERC 30.09 Final offers.
ERC 30.10 Procedure for raising objection that proposal is a non-mandatory subject of bargaining.
ERC 30.11 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining.
ERC 30.12 Certification of results of investigation or hearing, or certification based on stipulation.
ERC 30.13 Selection of arbitrator or board of arbitration.
ERC 30.14 Arbitration hearing.
ERC 30.15 Proceedings before the arbitrator.
ERC 30.16 Issuance of award.
ERC 30.17 Costs.
ERC 30.18 Enforcement or modification of award.

ERC 30.01 Scope. This chapter governs the general procedure relating to arbitration proceedings and the appointment of arbitrators to resolve disputes under s. 111.77, Stats., in collective bargaining involving law enforcement supervisors employed by a county having a population of 500,000 or more and fire fighting and law enforcement personnel in the employ of municipal employers having a population of 2,500 or more, except police departments in 1st class cities as defined in ss. 62.05 and 990.001 (15), Stats. Population shall be as determined by the most recent regular or special federal census.

ERC 30.02 Policy. The policy of the state is to promote the prompt, peaceful and just resolution of labor disputes arising in collective bargaining affecting wages, hours and conditions of employment of applicable fire fighting and law enforcement personnel in the employ of the applicable municipal employers. Where proceedings are initiated under this chapter by one or both parties, the commission shall, where an impasse exists, require the parties involved to proceed to final and binding municipal interest arbitration on the issue or issues at impasse. The commission may furnish to the parties a panel of arbitrators from which they may select an arbitrator or arbitrators to be appointed by the commission to issue a compulsory final and binding award to resolve the issue or issues at impasse.

ERC 30.03 Petition to initiate final and binding arbitration. (1) WHO MAY FILE. When an applicable municipal employer and the recognized or certified collective bargaining representative of applicable fire fighter or law enforcement personnel have reached an impasse in their collective bargaining on wages, hours and conditions of employment to be incorporated in a collective bargaining agreement, the municipal employer or the exclusive representative or anyone authorized to act on their behalf, may file a petition with the commission to initiate compulsory final and binding arbitration.

(2) TIME FOR FILING. The petition shall be filed after the parties have complied with the conditions stated s. 111.77 (1) and (2), Stats.

(3) FORM; NUMBER OF COPIES; FILING; SERVICE. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The petition is not filed until it and the filing fee established by s. ERC 10.08 (5) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If the parties have previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the arbitration. 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 one copy of the petition and of all required enclosures shall be included. The fee may be transmitted to the commission by physical delivery or mail.

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

(a) The name and address of the municipal employer involved 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 collective bargaining representative 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 collective bargaining unit involved and the approximate number of employees in the unit.

(d) A general statement as to the alleged issue or issues at impasse.

(e) A statement whether the petitioner desires that the arbitration be limited to the entire last and final offers of each party, or whether the parties have agreed otherwise.

(f) Relevant facts pertaining to the parties' compliance with s. 111.77 (1) and (2), Stats.

(g) The name, address, phone number and signature, or signature facsimile, of the person signing the petition. Fax numbers and e-mail addresses shall be included, if available.

ERC 30.04 Withdrawal of petition; effect on filing fee. A 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 withdraw shall be granted unless withdrawal would result in an injustice to any party. Neither the withdrawal of the petition nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

ERC 30.05 Stipulation to initiate final and binding arbitration. (1) WHO MAY FILE. When an applicable municipal employer and the recognized or certified collective bargaining representative of applicable fire fighter or law enforcement personnel have reached an impasse in their collective bargaining on wages, hours and conditions of employment to be incorporated in a collective bargaining agreement between them, the parties or anyone authorized to act on their behalf, may jointly file a stipulation with the commission to initiate compulsory final and binding arbitration.

(2) TIME FOR FILING. A stipulation to initiate compulsory final and binding arbitration shall be filed after the parties have complied with the conditions stated s. 111.77 (1) and (2), Stats.

(3) FORM; NUMBER OF COPIES; FILING; SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The stipulation is not filed until it and the filing fee established by s. ERC 10.08 (5) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If the parties have previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the arbitration. The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of one copy of the petition and of all required enclosures shall be included. The fee may be transmitted to the commission by physical delivery or mail.

(4) CONTENTS. The stipulation shall include all of the following:

(a) The name and address of the municipal employer involved 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 collective bargaining representative 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 collective bargaining unit involved and the approximate number of employees involved.

(d) A general statement as to the issue or issues agreed upon as being at impasse.

(e) An indication as to whether the parties desire that the arbitration be limited to the entire last and final offers of each party, or whether the parties have agreed otherwise.

(f) Relevant facts pertaining to the parties' compliance with s. 111.77 (1) and (2), Stats.

(g) The signature, or signature facsimile, title, address, and phone number of the persons signing the stipulation. Fax numbers and e-mail addresses shall be included, if available.

ERC 30.06 Withdrawal of stipulation; effect on filing fee. A stipulation 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 withdraw shall be granted unless withdrawal would result in an injustice to any party. Neither the withdrawal of the stipulation nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

ERC 30.07 Pre-investigation procedure. After a petition or stipulation has been filed, unless the parties have agreed in writing on another procedure, the commission shall assign a commission-employed investigator who shall, after conferring with the parties, set a date, time and place for the conduct of an informal investigation or for the conduct of a formal hearing with respect to the petition or stipulation. If, during any mediation by a commission mediator, the parties have exchanged and submitted to the mediator their total final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing described in s. ERC 30.08. A waiver shall be written and may accompany the petition or stipulation for initiation of interest arbitration or be filed separately later.

ERC 30.08 Informal investigation or formal hearing. (1) PURPOSE. After a petition or stipulation has been filed, the commission shall conduct an investigation to determine whether the parties are at an impasse in their negotiations after a reasonable period of negotiation. The investigation shall be conducted either by the commission or by an investigator assigned by the commission. The investigation shall consist either of an informal investigation or a formal hearing or both. If it is determined that the parties are at an impasse, the commission or investigator shall obtain the single final offers of the parties containing their final proposals on issues in dispute, and shall obtain a stipulation signed by the parties on all matters agreed upon to be included in the new or amended collective bargaining agreement. During the informal investigation or formal hearing, the commission or investigator may engage in an effort to mediate the dispute.

(2) INFORMAL INVESTIGATION PROCEDURE. If an informal investigation is conducted, the commission or investigator shall, after conferring with the parties, set a date, time and place for the conduct of the informal investigation and shall notify the parties of those arrangements in writing. The informal investigation may be adjourned or continued as the commission or investigator finds necessary. During the investigation the commission or investigator may meet jointly or separately with the parties or otherwise communicate with one or both of the parties, for the purposes described in sub. (1). Prior to the close of the investigation, the investigator shall obtain in writing the final offers of the parties on the issues in dispute and a stipulation in writing on all matters agreed upon to be included in the new or amended collective bargaining agreement. If, at the time of the exchange of final offers or during any additional time permitted by the investigator, no objection is raised that either final offer contains a proposal relating to a non-mandatory subject of bargaining, the commission or investigator shall serve the parties, as set forth in s. ERC 10.07, with a written notice that the investigation is closed. The commission or investigator shall not close the investigation until the commission or investigator is satisfied

that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer, and that the final offers conform to the requirements of s. ERC 30.09. Following the close of the investigation the investigator shall report the findings to the commission, either orally or in writing, as the commission may direct, and at the same time transmit to the commission the final offers and the stipulation received from the parties.

(3) FORMAL HEARING PRACTICE AND PROCEDURE. If a formal investigation is conducted, the commission or investigator, following communication with the parties, shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The formal hearing may be adjourned or continued in the discretion of the commission or investigator. Hearing practice and procedures shall be as set forth in ss. ERC 18.06 to 18.08, except that the purpose and scope of the hearing shall be limited to establishing the facts needed to determine whether, after a reasonable period of negotiation, the parties are at an impasse. Prior to the close of the hearing, the commission or its investigator shall obtain and exchange the single ultimate final offers and stipulation of agreed upon items.

ERC 30.09 Final offers. (1) CONTENTS GENERALLY. Final offers shall contain proposals relating only to mandatory subjects of bargaining, except either final offer may contain proposals relating to permissive subjects of bargaining if there is no timely objection under s. ERC 30.10 or 30.11 by the other party to the inclusion of the proposals in a final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.77, Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 30.11.

(2) MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION. Following the close of the investigation, a party may modify its final offer only with the consent of the other party. Any modification shall be in writing, supported by a written statement signed by the representative of the other party.

ERC 30.10 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining. (1) TIME FOR RAISING OBJECTION. Any objection that a proposal is a non-mandatory subject of bargaining may be raised at any time after the commencement of negotiations, but prior to the close of the informal investigation or formal hearing.

(a) *During negotiations, mediation or investigation*. Should either party assert, during negotiations or during commission mediation or investigation, that a proposal by the other party is a non-mandatory subject of bargaining, either party may commence a declaratory ruling proceeding before the commission under s. 111.70 (4) (b), Stats., and s. ERC 30.11

(b) *After call for final offers*. Should either party assert, after the commission or investigator calls for the parties to exchange proposed final offers and before the close of the informal investigation or formal hearing, that a proposal by the other party is a non-mandatory subject of bargaining, the commission or investigator shall not close the investigation or hearing, but shall direct in writing the objecting party to reduce the objection to writing by commencing, within a reasonable time determined by the commission or investigator, a declaratory ruling

proceeding before the commission under s. 111.70 (4) (b), Stats., and s. ERC 30.11.

(2) EFFECT OF BARGAINING ON PERMISSIVE SUBJECTS. Bargaining with regard to permissive subjects of bargaining during negotiations and prior to the close of the investigation does not constitute a waiver of the right to raise an objection as set forth in this section.

ERC 30.11 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining. (1) WHO MAY FILE. Either party may file a petition, or both of the parties may file a stipulation, to initiate a declaratory ruling proceeding before the commission.

(2) WHERE TO FILE. A petition or stipulation shall be filed with the commission, and if a petition is filed a copy shall be served on the other party at the same time.

(3) WHEN TO FILE. A petition or stipulation may be filed with the commission during negotiations, mediation or investigation, as provided in s. ERC 18.02 or 18.05. If a petition or stipulation is filed after the investigator calls for final offers, the petition or stipulation for declaratory ruling shall be filed within the time determined by the commission or investigator under s. ERC 30.10 (1) (b). Failure to file a petition or stipulation for declaratory ruling within the time period determined by the commission or investigator shall constitute a waiver of the objection, and the proposal involved shall be treated as a mandatory subject of bargaining.

(4) PROCEDURE FOLLOWING ISSUANCE OF DECLARATORY RULING. Following the issuance and service of the declaratory ruling as provided for in ss. ERC 18.09 and 10.07, the commission or its investigator shall conduct further investigation or hearing for the purpose of obtaining the final offer of each party before closing the investigation. Neither final offer may include any proposal which the commission has found to be a non-mandatory subject of bargaining unless consented to in writing by the other party. If the commission's decision is appealed, the parties may agree to the conditional inclusion of the proposals in their final offers.

ERC 30.12 Certification of results of investigation or hearing, or certification based on stipulation. (1) WHEN ISSUED. After consideration of either the report of the informal investigation, or the record adduced in the formal hearing, or the parties' stipulation to waive the investigation, the commission shall issue a certification of the result of the investigation or hearing, or on the basis of the stipulation, with respect to a determination as to whether compulsory final and binding arbitration should be initiated, and serve copies on the parties as set forth in s. ERC 10.07.

(2) CONTENTS. The certification shall contain findings of fact and conclusions of law material in the matter, and an order either initiating compulsory final and binding arbitration and designating the form of arbitration, or dismissing the petition or stipulation, consistent with the purposes and policy of s. 111.77, Stats. The commission shall designate Form 2 final offer package arbitration as defined in s. 111.77 (4) (b), Stats. as the form of arbitration unless the parties have previously agreed either to non-final offer non-package Form 1 arbitration as defined in s. 111.77 (4) (a), Stats., or to their own procedures for resolving the impasse.

(3) SUBMISSION OF PANEL. If the certification requires arbitration and the parties have not previously agreed to their own procedures for resolving the impasse, the parties shall be directed to select an arbitrator within 10 days after the issuance of the certification, or within a different time period agreed upon between the parties, from a panel of 5 arbitrators designated by the commission. Selection of arbitrators for inclusion on the panel shall be as provided in s. ERC 40.06 (3), with arbitrators randomly selected from among the roster members available for service at the time the request is processed. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each arbitrator whose name is supplied to the parties by the commission. In the absence of an agreement to another method of selection, the parties shall select the arbitrator by alternately striking names from the panel until a single name remains, who shall be the arbitrator. The order of proceeding in the selection process shall be determined by lot.

(4) SERVICE OF CERTIFICATION AND PANEL. Copies of the certification and the names of the panel members shall be served on the parties as set forth in s. ERC 10.07.

(5) ARBITRATOR IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators.

ERC 30.13 Order appointing arbitrator. (1) NOTIFICATION OF SELECTION. The parties, or either of them, shall notify the commission in writing, as set forth in s. ERC 10.06 (1), of the identity of the arbitrator selected by them immediately after the selection is made. In this chapter, "arbitrator" refers to a single arbitrator, a board of multiple neutral arbitrators, a tripartite arbitration panel or the impartial chairperson of an arbitration board or panel.

(2) ORDER. Upon receipt of the notification of the identity of the arbitrator selected, the commission shall serve the parties with copies of its order appointing the arbitrator, as set forth in s. ERC 10.07. The order appointing the arbitrator shall specify the form of arbitration as designated in the order described in s. ERC 30.12 (2). The commission shall, at the same time, submit a copy of the appointment order to the selected arbitrator, as well as copies of the final offers of the parties.

(3) COPIES OF FINAL OFFERS. The single final offers submitted to the appointed arbitrator shall be considered public documents and copies may be obtained from the commission, by any person upon written request, following the issuance of the order appointing the arbitrator, at the cost of reproduction and postage.

ERC 30.14 Arbitration hearing. (1) NOTICE OF HEARING. Following the receipt of notification of appointment, the chairperson of the board of arbitration, or the single arbitrator shall serve, as set forth in s. ERC 10.07, each of the parties and the other members of the board of arbitration, if any, with a notice of hearing, establishing the date, time and place for the arbitration hearing.

(2) AMENDMENT OR WITHDRAWAL. The notice of hearing may be amended or withdrawn at any time before the close of the arbitration hearing.

(3) SCOPE OF HEARING. The hearing shall be public and for the purpose of gathering

information on the basis of which the arbitrator or board of arbitration shall issue a compulsory final and binding arbitration award on the issue or issues in dispute. The arbitrator or board of arbitration shall give weight to the factors set forth in s. 111.77 (6), Stats., and the parties shall be prepared to present evidence and argument relating to the factors involved. Except as otherwise required by commission rules, proceedings before the arbitrator shall be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission.

ERC 30.15 Proceedings before the arbitrator. The arbitration proceedings shall be governed by ch. 788, Stats., except as specifically provided in s. 111.77, Stats. Nothing in this chapter is intended to preclude the arbitrator from using best efforts to encourage the parties to resolve the dispute by voluntary agreement. Any mediation by the arbitrator shall not be open to the public unless mutually agreed by the parties or their representatives. At the joint request of the parties, the arbitrator may issue a consent award ordering implementation of the terms of a written voluntary agreement between the parties resolving part or all of the dispute involved.

ERC 30.16 Issuance of award. The arbitrator shall issue the arbitration award in writing as expeditiously as possible following the receipt of final arguments or briefs. If the award is issued by a board of arbitration each arbitrator shall sign the award, either affirming or dissenting. After the award is signed, a copy of the award and a statement of the arbitrator's fees and expenses shall be submitted immediately to the commission as set forth in s. ERC 10.06 (1) and to the parties as set forth in s. ERC 10.07. When received by the commission, interest awards shall be made available to the public. Copies may be purchased by the public from the commission's Madison office, and may also be available on the commission website or in other commission publications.

ERC 30.17 Costs. The fees and expenses of the arbitrator including the rental of hearing rooms, the conduct of the hearing, and the preparation of the award, shall be shared equally by the parties. The fees and expenses charged by the arbitrator shall not exceed those described in the arbitrator's biographical information and fee statement on file with the commission at the time the arbitrator's name was supplied to the parties by the commission. Costs of subpoenas and witness fees shall be borne by the party requesting the subpoena or witness. Fees and expenses charged by the reporter, if any, shall be borne equally by the parties if both parties agreed that the hearing would be transcribed. If only one party desires a transcript, that party is solely responsible for the fees and expenses incurred by the reporter and shall provide a copy of the transcript to the arbitrator. The fees and expenses of arbitrators, if any, selected by one of the parties to serve on a tripartite panel shall be paid by the party making the selection.

ERC 30.18 Enforcement or modification of award. Standards and procedures for enforcement or modification of awards issued under s. 111.77, Stats., shall be as provided in ch. 788, Stats.

Chapter ERC 31

INTEREST ARBITRATION OF DISPUTES INVOLVING LAW ENFORCEMENT BARGAINING UNITS IN 1ST CLASS CITIES

ERC 31.01 Scope.
ERC 31.02 Policy.
ERC 31.03 Petition to initiate arbitration.
ERC 31.04 Stipulation to initiate arbitration.
ERC 31.05 Withdrawal of petition or stipulation; effect on filing fee.
ERC 31.06 Informal investigation or formal hearing.
ERC 31.07 Final offers.
ERC 31.08 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining.
ERC 31.09 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining.
ERC 31.10 Certification of results of investigation or hearing, or certification based on stipulation.
ERC 31.11 Order appointing arbitrator.
ERC 31.12 Proceedings before the arbitrator.
ERC 31.13 Costs.
ERC 31.14 Enforcement or modification of award.

ERC 31.01 Scope. This chapter governs the procedure relating to interest arbitration under s. 111.70 (4) (jm), Stats., affecting bargaining units of municipal employees employed by police departments of 1st class cities as defined in ss. 62.05 and 990.001 (15), Stats.

ERC 31.02 Policy. The policy of the state is to encourage voluntary settlement of labor disputes in municipal employment through the procedures of collective bargaining. If the procedures fail, the parties should have available to them a fair, speedy, effective, and above all, peaceful procedure for settlement, including, where a deadlock exists after negotiations and after mediation by the commission, a procedure for the resolution of the dispute by interest arbitration.

ERC 31.03 Petition to initiate arbitration. (1) WHO MAY FILE. A petition to initiate arbitration may be filed by a municipal employer or the exclusive representative of municipal employees in a bargaining unit described in s. ERC 31.01 or anyone authorized to act on their behalf.

(2) FORM; NUMBER OF COPIES; FILING; SERVICE. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The petition is not filed until it and the filing fee established by s. ERC 10.08 (5) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If the parties have previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the arbitration. 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 two copies of the petition

shall be included. The fee may be transmitted to the commission by physical delivery or mail. The party filing the petition shall, at the same time, serve a copy on the other party by as set forth in s. ERC 10.07.

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

(a) The name and address of the municipal employer involved 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 exclusive representative involved, as well as the name, title, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(c) A general description of the collective bargaining unit involved and the approximate number of employees included in the unit.

(d) A statement that the parties have reached an impasse on matters relating to wages, hours and conditions of employment or other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats.

(e) The date when notice was served to open negotiations and the identity of the party serving the notice.

(f) The number of negotiation meetings prior to mediation, if any, by the commission.

(g) The dates on which mediation, if any, was conducted and the identity of the commission mediator.

(h) The termination date of the existing collective bargaining agreement, if any.

(i) The identity of the party filing the petition; the name, title and signature, or signature facsimile, of the person signing the petition; and the date when the petition was transmitted to the commission. Fax numbers and e-mail addresses shall be included, if available

ERC 31.04 Stipulation to initiate arbitration. (1) WHO MAY FILE. A stipulation to initiate arbitration may be filed by a municipal employer and the exclusive representative of municipal employees in a bargaining unit described in s. ERC 31.01, or anyone authorized to act on their behalf.

(2) FORM; NUMBER OF COPIES; FILING; SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The stipulation is not filed until it and the filing fee established by s. ERC 10.08 (5) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If the parties have previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the arbitration. The stipulation shall be transmitted to the commission

as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of two copies of the stipulation shall be included. The fee may be transmitted to the commission by physical delivery or mail.

(3) CONTENTS. The stipulation shall contain the same information as set forth in s. ERC 31.03 (3) for a petition to initiate arbitration, except that the stipulation shall include the signature, or signature facsimile, of a representative of each party.

ERC 31.05 Withdrawal of petition or stipulation; effect on filing fee. A petition or stipulation 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 withdraw shall be granted unless withdrawal would result in an injustice to any party. Neither the withdrawal of the petition or stipulation nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

ERC 31.06 Informal investigation or formal hearing. (1) PURPOSE. After a petition or stipulation has been filed, the commission shall conduct an investigation to determine whether the parties have reached an impasse on matters relating to wages, hours and conditions of employment or other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats. The investigation shall be conducted either by the commission or by an investigator assigned by the commission. The investigation shall consist either of an informal investigation or a formal hearing or both. If it is determined that the parties have reached an impasse, the commission or investigator shall obtain the parties' written final offers on the issues in dispute, and shall obtain a stipulation signed by the parties on all matters agreed upon to be included in the new or amended collective bargaining agreement. During the informal investigation or formal hearing, the commission or investigator may engage in an effort to mediate the dispute.

(2) INFORMAL INVESTIGATION PROCEDURE. If an informal investigation is conducted, the commission or investigator shall, after conferring with the parties, set a date, time and place for the conduct of the informal investigation and shall notify the parties of those arrangements in writing. The informal investigation may be adjourned or continued as the commission or investigator finds necessary. During the investigation the commission or investigator may meet jointly or separately with the parties or otherwise communicate with one or both of the parties, for the purposes described in sub. (1). Prior to the close of the investigation the investigator shall obtain in writing the final offers of the parties on the issues in dispute and a stipulation in writing on all matters agreed upon to be included in the new or amended collective bargaining agreement. If, at the time of the exchange of final offers or during any additional time permitted by the investigator, no objection is raised that either final offer contains a proposal not subject to arbitration under s. 111.70 (4) (jm) 4., Stats., the commission or investigator shall serve the parties, as set forth in s. ERC 10.07, with a written notice that the investigation is closed. The commission or investigator shall not close the investigation until the commission or investigator is satisfied that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer. Following the close of the investigation the investigator shall report the findings to the commission, either orally or in writing, as the commission may direct, and at the same time transmit to the commission the final offers and the stipulation received from the parties.

(3) FORMAL HEARING PRACTICE AND PROCEDURE. If a formal investigation is conducted, the commission or investigator, following communication with the parties, shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The formal hearing may be adjourned or continued in the discretion of the commission or investigator. Hearing practice and procedures shall be as set forth in ss. ERC 18.06 to 18.08, except that the purpose and scope of the hearing shall be limited to establishing the facts needed to determine whether the parties have reached an impasse on matters relating to wages, hours and conditions of employment and other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats. Prior to the close of the hearing the commission or its investigator shall obtain and exchange the parties' final offers, and the parties' stipulation of agreed upon items, if any.

ERC 31.07 Final offers. (1) CONTENTS GENERALLY. Final offers shall contain proposals relating only to wages, hours and conditions of employment or other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats., except either final offer may contain proposals relating to permissive subjects of bargaining if there is no timely objection under s. ERC 31.08 or 31.09 by the other party to the inclusion of the proposals in a final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.70 (4) (jm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 31.09.

(2) MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION. Following the close of the investigation, a party may modify its proposal on any of the subjects in dispute when the investigation was closed without the consent of the other party, unless and until the arbitrator appointed under s. ERC 31.11 declares otherwise. However, following the close of the investigation, a party shall not submit to the arbitrator a proposal on a subject not in dispute when the investigation was closed without the written consent of the other party.

ERC 31.08 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining. In proceedings under this chapter, practice and procedures for raising an objection that a proposal is a non-mandatory subject shall be as set forth in s. ERC 30.10.

ERC 31.09 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining. In proceedings under this chapter, practice and procedures regarding a petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining shall be as set forth in s. ERC 30.11.

ERC 31.10 Certification of results of investigation or hearing, or certification based on stipulation. (1) WHEN ISSUED. After consideration of its own investigation or the report of the investigator, or the record adduced in the formal hearing, or a stipulation of the parties to waive the investigation, the commission shall issue a certification determining whether the parties have reached an impasse on matters relating to wages, hours and conditions of employment or other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats.

(2) CONTENTS. The certification shall contain findings of fact and conclusions of law material in the matter, as well as an order either initiating arbitration or dismissing the petition or

stipulation, consistent with the purposes and policies of s. 111.70 (4) (jm), Stats. If the certification requires arbitration, it shall authorize arbitration with regard to each of the subjects contained in the final offers of the parties at the time the investigation was closed.

(3) SUBMISSION OF PANEL. If the certification requires arbitration, the parties shall also be directed to select an arbitrator within 30 days after the issuance of the certification, or within a different time period agreed upon between the parties, from a panel of 7 arbitrators designated by the commission. The panel shall not include individuals who are residents of the city involved in the case. Selection of arbitrators for inclusion on the panel shall otherwise be as provided in s. ERC 40.06 (3), with arbitrators randomly selected from among the roster members available for service at the time the request is processed. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each arbitrator whose name is supplied to the parties by the commission. In the absence of an agreement to another method of selection, the parties shall select the arbitrator by alternately striking names from the panel until a single name remains, who shall be the arbitrator. The order of proceeding in the selection process shall be determined by lot.

(4) SERVICE OF CERTIFICATION AND PANEL. Copies of the certification and the names of the panel members shall be served on the parties as set forth in s. ERC 10.07.

(5) ARBITRATOR IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators.

ERC 31.11 Order appointing arbitrator. (1) NOTIFICATION OF SELECTION. The parties, or either of them, shall promptly notify the commission in writing, as set forth in s. ERC 10.06 (1), of the identity of the arbitrator selected by them.

(2) ORDER. Upon receipt of the notification of the identity of the arbitrator selected, the commission shall serve the parties with copies of its order appointing the arbitrator, as set forth in s. ERC 10.07. The commission shall, at the same time, submit a copy of the appointment order to the selected arbitrator, as well as copies of the final offers of the parties.

(3) COPIES OF FINAL OFFERS. The final offers submitted to the appointed arbitrator shall be considered public documents and copies may be obtained from the commission, by any person upon written request, following the issuance of the order appointing the arbitrator, at the cost of reproduction and postage.

ERC 31.12 Proceedings before the arbitrator. **(1)** GENERALLY. The arbitration proceedings shall be governed by ch. 788, Stats., except as specifically provided in s. 111.70 (4) (jm), Stats. Except as otherwise required by commission rules, proceedings before the arbitrator shall be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission.

(2) NATURE AND SCOPE OF THE ARBITRATION HEARING. Following the receipt of the appointment order, the arbitrator shall, after conferring with the parties, serve, as set forth in s. ERC 10.07, each of the parties with a notice of hearing, establishing the date, time and place for the arbitration hearing. The hearing shall be public and for the purpose of gathering information on the basis of which the arbitrator shall issue an award on the issue or issues in dispute. The arbitrator shall consider the factors set forth in s. 111.70 (4) (jm) 3., 5. and 6., Stats., and the parties shall be prepared to present evidence and argument relating to the factors involved.

(3) MEDIATION. Nothing in this chapter is intended to preclude the arbitrator from using best efforts to encourage the parties to resolve the dispute by voluntary agreement. Any mediation by the arbitrator shall not be open to the public unless mutually agreed by the parties or their representatives. At the joint request of the parties, the arbitrator may issue a consent award ordering implementation of the terms of a written voluntary agreement between the parties resolving part or all of the dispute involved.

(4) ISSUANCE OF AWARD AND REPORT OF ARBITRATOR'S FEES AND EXPENSES**.** The arbitrator shall issue the arbitration award in writing after the receipt of final arguments or briefs. After the award is signed, a copy of the award and a statement of the arbitrator's fees and expenses shall be submitted immediately to the commission as set forth in s. ERC 10.06 (1) and to the parties as set forth in s. ERC 10.07. When received by the commission, interest awards shall be made available to the public. Copies may be purchased by the public from the commission’s Madison office and may also be available on the commission website or in other commission publications.

ERC 31.13 Costs. The fees and expenses of the arbitrator including the rental of hearing rooms, the conduct of the hearing, and the preparation of the award, shall be shared equally by the parties. The fees and expenses charged by the arbitrator shall not exceed those described in the arbitrator's biographical information and fee statement on file with the commission at the time the arbitrator's name was supplied to the parties by the commission. Costs of subpoenas and witness fees shall be borne by the party requesting the subpoena or witness. Fees and expenses charged by the reporter, if any, shall be borne equally by the parties if both parties agreed that the hearing would be transcribed. If only one party desires a transcript, that party is solely responsible for the fees and expenses incurred by the reporter and shall provide a copy of the transcript to the arbitrator.

ERC 31.14 Enforcement or modification of award. Standards and procedures for enforcement or modification of awards issued under s. 111.70 (4) (jm), Stats., shall be as provided in s. 111.70 (4) (jm) 11., Stats.

Chapter ERC 32

COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN MUNICIPAL SECTOR DISPUTES NOT INVOLVING LAW ENFORCEMENT, FIRE FIGHTING OR SCHOOL DISTRICT PROFESSIONAL EMPLOYEES

ERC 32.01 Scope.
ERC 32.02 Policy.
ERC 32.03 Notice of commencement of negotiations.
ERC 32.04 Voluntary impasse resolution procedure.
ERC 32.05 Petition to initiate arbitration.
ERC 32.06 Stipulation to initiate arbitration.
ERC 32.07 Withdrawal of petition or stipulation.
ERC 32.08 Pre-investigation procedure.
ERC 32.09 Informal investigation or formal hearing.
ERC 32.10 Final offers.
ERC 32.11 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining.
ERC 32.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining.
ERC 32.13 Certification of results of investigation or hearing, or certification based on stipulation.
ERC 32.14 Order appointing arbitrator.
ERC 32.15 Proceedings before the arbitrator.
ERC 32.16 Enforcement of award.
ERC 32.17 Modification of award.
ERC 32.18 Procedure following court injunction of a strike posing an imminent threat to public health or safety.
ERC 32.19 Information.

ERC 32.01 Scope. This chapter governs the procedure relating to collective bargaining and interest arbitration under s. 111.70 (4) (cm), Stats. affecting bargaining units of municipal employees other than law enforcement and fire fighting personnel and school district professional employees.

ERC 32.02 Policy. The policy of the state is to encourage voluntary settlement of labor disputes in municipal employment through the procedures of collective bargaining. If the procedures fail, the parties should have available to them a fair, speedy, effective and above all, peaceful procedure for settlement including, where a deadlock exists after negotiations and after mediation by the commission, a procedure for the resolution of the dispute by interest arbitration. Parties subject to s. 111.70 (4) (cm), Stats., shall, upon request, provide the commission with information the commission considers necessary to meet its statutory responsibilities to report on the operation of the interest arbitration law under s. 111.70 (4) (cm), Stats., and on its effect on collective bargaining in the state.

ERC 32.03 Notice of commencement of negotiations. (1) WHO SHALL FILE. Whenever a municipal employer or the exclusive collective bargaining representative of a bargaining unit of municipal employees requests to reopen negotiations under a binding collective bargaining agreement, or the parties otherwise commence negotiations if no agreement exists, the party requesting negotiations shall immediately notify the commission in writing of the request and a copy shall be served on the other party as set forth in s. ERC 10.07. If the requesting party fails to file the notice, the other party may do so.

(2) FORM; NUMBER OF COPIES; FILING; SERVICE. The notice shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The notice is not filed until it has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The notice shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the notice is filed in paper form, a total of one copy of the notice shall be included. The party filing the notice shall, at the same time, serve a copy on the other party as set forth in s. ERC 10.07.

(3) CONTENTS. The notice shall contain all of the following information:

(a) The date on which the party filing the notice notified the other party of its intent to either reopen negotiations under an existing collective bargaining agreement or to commence negotiations where no agreement exists.

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

(c) The name and address of the exclusive collective bargaining representative involved, as well as the name, title, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(d) A general description of the collective bargaining unit involved and the approximate number of employees included in the unit.

(e) The effective date and termination date of the existing collective bargaining agreement, if any, and the date specified in the agreement on which notice to open negotiations shall be served on the other party.

(f) A statement indicating whether the parties have agreed to a voluntary impasse resolution procedure.

(g) The identity, title and signature, or signature facsimile, of the person filing the notice, and the date on which the notice was transmitted to the commission.

ERC 32.04 Voluntary impasse resolution procedure. (1) WHO SHALL FILE; NUMBER OF COPIES; FILING; SERVICE. Whenever a municipal employer and the recognized or certified exclusive representative of a bargaining unit of the municipal employer's employees agree in writing to a

dispute settlement procedure for the resolution of an impasse in their negotiations leading to a collective bargaining agreement, as provided in s. 111.70 (4) (cm) 5., Stats., a copy shall be filed by the parties with the commission. The procedure shall be in writing in a form of the parties' choosing. The procedure is not filed until it has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The procedure shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the procedure is filed in paper form, a total of one copy shall be included. The party filing the procedure shall, at the same time, serve a copy of the procedure on the other party as set forth in s. ERC 10.07.

(2) TIME FOR FILING. If the procedure was entered into prior to the filing of the notice of commencement of negotiations required to be filed in s. ERC 32.03, the procedure shall be filed at the time the notice of commencement of negotiations is filed with the commission. If the agreement was entered into after the filing of the notice of commencement of negotiations, it shall be filed promptly after signing.

(3) SCOPE. The provisions of s. 111.70 (4) (cm) 8m., Stats., shall not be superseded by a voluntary impasse resolution procedure. In addition, if the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under s. 111.70 (4) (cm) 7., 7g. and 7r., Stats.

ERC 32.05 Petition to initiate arbitration. (1) WHO MAY FILE. A petition to initiate arbitration may be filed by a municipal employer, a recognized or certified collective bargaining representative of municipal employees in a bargaining unit described in s. ERC 32.01, or by anyone authorized to act on their behalf.

(2) FORM; NUMBER OF COPIES; FILING; SERVICE. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The petition is not filed until it and the filing fee established by s. ERC 10.08 (5) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If the parties have previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the arbitration. 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 two copies of the petition and of all required enclosures shall be included. The fee may be transmitted to the commission by physical delivery or mail. The party filing the petition shall, at the same time, serve a copy of the request on the other party as set forth in s. ERC 10.07.

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

(a) The name and address of the municipal employer involved 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 exclusive collective bargaining representative involved, as well as the name, title, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(c) A general description of the collective bargaining unit involved and the approximate number of employees included in the unit.

(d) A statement that the parties are deadlocked after a reasonable period of negotiation and after mediation by the commission, if any, and other settlement procedures, if any, established by the parties have been exhausted, with respect to a dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement.

(e) The date when notice was served to open negotiations and the identity of the party serving same.

(f) The date or dates when proposals were exchanged in open meeting.

(g) The number of negotiation meetings prior to mediation, if any, by the commission.

(h) The dates on which mediation, if any, was conducted and the identity of the commission mediator.

(i) The termination date of the existing collective bargaining agreement, if any.

(j) The identity of the party filing the petition; the name, title and signature, or signature facsimile, of the individual signing the petition; and date when the petition was transmitted to the commission.

(k) The petitioning party's preliminary final offer containing its latest proposals on all issues in dispute.

(4) RESPONSIVE PRELIMINARY FINAL OFFER. Within 14 days of the date the commission receives the petitioning party's preliminary final offer, the other party shall submit in writing its preliminary final offer on all disputed issues to the petitioning party as set forth in s. ERC 10.07, and to the commission as set forth in s. ERC 10.06 (1).

ERC 32.06 Stipulation to initiate arbitration. (1) WHO MAY FILE. A stipulation to initiate arbitration may be filed by a municipal employer and a collective bargaining representative of municipal employees in a bargaining unit described in s. ERC 32.01, or by anyone authorized to act on their behalf.

(2) FORM; NUMBER OF COPIES; FILING; SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The stipulation is not filed until it and the filing fee established by s. ERC 10.08 (5) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If the parties have previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the arbitration. The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of two copies of the petition and of all required enclosures shall be included. The fee may be transmitted to the

commission by physical delivery or mail.

(3) CONTENTS. The stipulation shall contain the same information as set forth in s. ERC 32.05 (3) for a petition to initiate arbitration, except that the stipulation shall include the signature, or signature facsimile, of a representative of each party and shall contain each party's preliminary final offers on all issues in dispute which the parties shall exchange in writing before or at the time they submit the stipulation.

ERC 32.07 Withdrawal of petition or stipulation; effect on filing fee. A petition or stipulation 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 withdraw shall be granted unless withdrawal would result in an injustice to any party. Neither the withdrawal of the petition or stipulation nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

ERC 32.08 Pre-investigation procedure. After a petition or stipulation has been filed, the commission or a commission-employed investigator shall conduct an investigation with respect to the petition or stipulation, by means of either an informal investigation or a formal hearing. If, during any prior mediation by a commission mediator, the parties have exchanged and submitted to the mediator their total final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing described in s. ERC 32.09. A waiver shall be written and may accompany the petition or stipulation for initiation of interest arbitration or be filed separately later.

ERC 32.09 Informal investigation or formal hearing. (1) PURPOSE. The purpose of the investigation shall be to determine whether the parties are deadlocked in their negotiations after a reasonable period of negotiation. If it is determined that the parties are deadlocked, the commission or investigator shall obtain the single final offers of the parties containing their final proposals on issues in dispute, and shall obtain a stipulation signed by the parties on all matters agreed upon to be included in the new or amended collective bargaining agreement. During the informal investigation or formal hearing, the commission or investigator may engage in an effort to mediate the dispute.

(2) INFORMAL INVESTIGATION PROCEDURE. If an informal investigation is conducted, the commission or investigator shall, after conferring with the parties, set a date, time and place for the conduct of the informal investigation and shall notify the parties of those arrangements in writing. The informal investigation may be adjourned or continued as the commission or investigator deems necessary. During the investigation the commission or investigator may meet jointly or separately with the parties or otherwise communicate with one or both of the parties, for the purposes described in sub. (1). Prior to the close of the investigation the investigator shall obtain in writing the final offers of the parties on the issues in dispute and a stipulation in writing on all matters agreed upon to be included in the new or amended collective bargaining agreement. The investigator shall also obtain each party's position regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the commission. If, at time of the exchange of final offers or during any additional time permitted by the investigator, no objection is raised that either final offer contains a proposal relating to a non-mandatory subject of bargaining, the commission or investigator shall serve the parties by as set

forth in s. ERC 10.07, a written notice that the investigation is closed. The commission or investigator shall not close the investigation until the commission or investigator is satisfied that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer and that both final offers conform to the requirements of s. ERC 32.10 (2). If a party fails to submit a single ultimate final offer within the time prescribed by the commission or investigator, the commission or investigator shall close the investigation based on the last written position of the party. Following the close of the investigation the investigator shall report the findings to the commission, either orally or in writing, as the commission may direct, and at the same time transmit to the commission the final offers and the stipulation received from the parties. The commission investigator shall also notify the commission whether both parties have agreed to authorize the commission to include one or more nonresidents of Wisconsin on the arbitration panel to be submitted in the matter.

(3) FORMAL HEARING PRACTICE AND PROCEDURE. If a formal investigation is conducted, the commission or investigator, following communication with the parties, shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The formal hearing may be adjourned or continued in the discretion of the commission or investigator. Hearing practice and procedures shall be as set forth in ss. ERC 18.06 to 18.08, except that the purpose and scope of the hearing shall be limited to establishing the facts needed to determine whether, after a reasonable period of negotiation, the parties are deadlocked. Prior to the close of the hearing the commission or investigator shall obtain and exchange the single ultimate final offers, stipulation of agreed upon items and positions concerning non-resident arbitrators in the manner set forth in sub. (2). If a party fails to submit a single ultimate final offer within the time prescribed by the commission or investigator, the commission or investigator shall close the investigation based on the last written position of the party.

ERC 32.10 Final offers. (1) CONTENTS GENERALLY. Final offers shall contain proposals relating only to mandatory subjects of bargaining, except either final offer may contain proposals relating to permissive subjects of bargaining if there is no timely objection under s. ERC 32.11 or 32.12 by the other party to the inclusion of the proposals in a final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.70 (4) (cm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 32.12 or injunction proceedings referred to in s. ERC 32.18 (1).

(2) CONTENTS REGARDING TERM OF AGREEMENT AND REOPENER PROVISIONS. Except for the initial collective bargaining agreement between the parties affecting the employees involved, where the parties have not agreed upon the term of the agreement as a part of the stipulation of agreed upon items, final offers shall provide for no other term of agreement than 2 years. Final offers shall not contain a provision for reopening of negotiations during the term of an existing agreement for any purpose other than negotiation of a successor agreement or with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation. Any other provisions for reopening of negotiations during the term of an existing agreement shall be agreed upon by the parties as a part of the stipulation of agreed upon items.

(3) MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION. Following the close of the investigation, a party may modify its final offer only with the consent of the other party. Any modification shall be in writing, supported by a written statement signed by the representative of the other party.

ERC 32.11 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining. In proceedings under this chapter, practice and procedures for raising an objection that a proposal is a non-mandatory subject of bargaining shall be as set forth in s. ERC 30.10.

ERC 32.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining. In proceedings under this chapter, practice and procedures regarding a petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining shall be as set forth in s. ERC 30.11.

ERC 32.13 Certification of results of investigation or hearing, or certification based on stipulation. (1) WHEN ISSUED. After consideration of the report of the investigation or of the parties' stipulation to waive the investigation, the commission shall issue a certification determining whether there has been substantial compliance with s. 111.70 (4) (cm), Stats., and whether the parties are deadlocked. If the commission determines that there has not been substantial compliance with the requirements of s. 111.70 (4) (cm), Stats., the commission may order compliance if it would tend to result in a settlement.

(2) CONTENTS. The certification shall contain findings of fact and conclusions of law material in the matter, as well as an order either initiating arbitration or dismissing the petition or stipulation, consistent with the purposes and policies of s. 111.70 (4) (cm), Stats.

(3) SUBMISSION OF PANEL. If the certification requires arbitration and the parties have not previously agreed to their own procedures for resolving the deadlock, the parties shall be directed to select an arbitrator within 10 days after the issuance of the certification, or within a different time period agreed upon between the parties, from a panel of 7 arbitrators designated by the commission. Unless the parties have mutually agreed otherwise, the panel shall not include individuals who are nonresidents of Wisconsin at the time the panel is submitted. Selection of arbitrators for inclusion on the panel shall be as provided in s. ERC 40.06 (3), with arbitrators randomly selected from among the roster members available for service at the time the request is processed. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each arbitrator whose name is supplied to the parties by the commission. In the absence of an agreement to another method of selection, the parties shall select the arbitrator by alternately striking names from the panel until a single name remains, who shall be the arbitrator. The order of proceeding in the selection process shall be determined by lot.

(4) TRIPARTITE PANEL. In lieu of the procedures set forth in sub. (3), both parties may request the commission to appoint a tripartite arbitration panel consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as chairperson. Unless the parties have mutually agreed otherwise in writing, the

commission's designee shall be a resident of Wisconsin at the time of designation.

(5) RANDOM APPOINTMENT. In lieu of the procedures set forth in sub. (3), at the request of both parties the commission shall submit a list of 7 arbitrators from which each party shall strike one name by the method specified in sub. (3). Unless the parties have mutually agreed otherwise in writing, the panel shall not include individuals who are nonresidents of Wisconsin at the time the names of the panel members are submitted. Upon notification of the names stricken by each party, the commission shall select the arbitrator by lot from the 5 remaining names.

(6) SERVICE OF CERTIFICATION AND PANEL. Copies of the certification and the names of the panel members shall be served on the parties as set forth in s. ERC 10.07.

(7) ARBITRATOR IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators.

ERC 32.14 Order appointing arbitrator. (1) NOTIFICATION OF SELECTION. The parties, or either of them, shall notify the commission in writing, as set forth in s. ERC 10.06 (1), of the identity of the arbitrator selected by them immediately after the selection is made. In this chapter, "arbitrator" refers to a single arbitrator, a board of multiple neutral arbitrators, a tripartite arbitration panel or the impartial chairperson of an arbitration board or panel.

(2) ORDER. Upon receipt of the notification of the identity of the arbitrator selected or after completing designation or random selection of the arbitrator, the commission shall serve the parties with copies of its order appointing the arbitrator, as set forth in s. ERC 10.07. The commission shall, at the same time, submit a copy of the appointment order to the selected arbitrator, as well as copies of the final offers of the parties. A notice to the public shall be appended to the order setting forth the nature of the order, the identity of the arbitrator and the procedures for obtaining copies of final offers and for requesting a public hearing.

(3) PUBLIC NOTICE. Immediately upon receipt of the notice, the municipal employer involved shall cause a copy or copies to be posted where notices to the public are usually posted. In addition, the municipal employer shall inform the public of the content of the notice in the same manner that it informs the public of public meetings.

(4) COPIES OF FINAL OFFERS. The single final offers submitted to the appointed arbitrator shall be considered public documents and copies may be obtained from the commission, by any person upon written request, following the issuance of the order appointing the arbitrator, at the cost of reproduction and postage.

ERC 32.15 Proceedings before the arbitrator. (1) NOTICE OF ARBITRATION HEARING. The arbitrator shall within 10 days of his or her formal appointment, establish the date, time and place for the arbitration hearing and shall issue and serve upon the parties, as set forth in s. ERC 10.07, a notice of hearing specifying the date, time and a place within the jurisdiction of the municipal employer involved where the hearing shall be held. The hearing date shall not fall within the 10-day period. The arbitration hearing shall be open to the public.

(2) WITHDRAWAL OF FINAL OFFERS. The arbitrator shall notify the parties of the date, predating the arbitration hearing date, by which a party shall provide written notice to the arbitrator, the other party, and the commission that the party is withdrawing its final offer. If both parties timely withdraw their final offers and mutually agreed upon offer modifications, and the exclusive representative gives 10 days written notice to the municipal employer and the commission of its intent to strike, the commission shall endeavor to mediate the dispute.

(3) PETITION FOR PUBLIC HEARING. Any 5 citizens of the jurisdiction served by the municipal employer involved may, within 10 days after the appointment of the arbitrator, file a request in writing with the commission, as set forth in s. ERC 10.07, that a public hearing be convened prior to the arbitration hearing. A request shall be treated as a petition within the meaning of s. 111.70 (4) (cm) 6. b., Stats. The signers shall include their addresses and a statement that they are citizens of the jurisdiction served by the municipal employer involved. Upon receipt of the request, the commission shall serve a copy on both the parties and the arbitrator.

(4) NOTICE OF PUBLIC HEARING. Upon receipt of a citizen petition and after the arbitration hearing has been scheduled by the arbitrator, the municipal employer involved shall notify the public, in the manner set forth in s. ERC 32.14 (3), that a public hearing shall be convened prior to the arbitration hearing. The notice shall identify the parties involved and shall set forth the date, time and place of the hearing. Copies of the notice shall be served by the municipal employer, as set forth in s. ERC 10.07, on the collective bargaining representative involved, on the arbitrator, and the commission.

(5) PURPOSE OF PUBLIC HEARING. The public hearing shall be for the purpose of providing the opportunity for both parties to explain or present supporting arguments for their positions and to provide an opportunity to members of the public to offer their comments and suggestions.

(6) PROCEDURE IN PUBLIC HEARING. The arbitrator shall take reasonable steps to ensure that the public hearing is orderly and that it does not result in undue delay or cost to the parties. The arbitrator may require members of the public who desire to offer comments and suggestions to register; may determine the sequence in which the parties and the members of the public shall be heard; and may determine when the hearing shall be terminated.

(7) TRANSCRIPTS OF PUBLIC HEARING. Either party or any person participating in the public hearing may make their own arrangements to have a transcript of the public hearing prepared at their own expense. Arbitration proceedings shall not be delayed for the purpose of awaiting the preparation of a transcript of the public hearing. If the public hearing is recorded or transcribed, the arbitrator shall be furnished a copy upon request.

(8) SCOPE OF ARBITRATION HEARING. The arbitration hearing shall be public and for the purpose of gathering information which shall assist the arbitrator in issuing a compulsory and final and binding arbitration award selecting the final offer and mutually agreed upon offer modifications, of either party. In making that offer selection, the arbitrator shall give weight to the factors set forth in s. 111.70 (4) (cm) 7., 7g. and 7r., Stats., and the parties shall be prepared to present evidence and argument relative to the factors involved. Except as otherwise required

by commission rules, proceedings before the arbitrator shall also be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission.

(9) ARBITRATION HEARING PROCEDURE. Hearings shall be within the control of the arbitrator and shall be as expeditious as the nature of the dispute shall allow. In conducting the hearing, the arbitrator has the power to do any of the following:

(a) Administer oaths and affirmations.

(b) Issue subpoenas in the name of the commission.

Note: Arbitrators may obtain appropriate subpoena forms from the commission's Madison office.

(c) Rule on offers of proof and receive relevant evidence.

(d) Regulate the course of the arbitration hearing.

(e) Dispose of procedural requests and similar matters.

(10) WAIVER OF HEARING AND BRIEF. With the consent of the arbitrator, the parties may agree to waive the convening of a formal hearing or the filing of briefs, or both.

(11) MEDIATION. Nothing in this chapter or s. 111.70 (4) (cm), Stats., precludes the parties from mutually agreeing during arbitration to have the arbitrator or the commission or both attempt to mediate the dispute at any time prior to the issuance of an award, but no party shall be obligated to participate in mediation or to continue to participate in mediation. Any mediation by the arbitrator shall not be open to the public unless mutually agreed by the parties or their representatives. At the joint request of the parties, the arbitrator may issue a consent award ordering implementation of the terms of a written voluntary agreement between the parties resolving part or all of the dispute involved.

(12) ISSUANCE OF AWARD. (a) *How issued*. The arbitrator shall issue the arbitration award in writing as expeditiously as possible following the receipt of final arguments or briefs, if any. If the award is issued by a tripartite panel, each panel member shall sign the award, either affirming or dissenting. After the award is signed, a copy of the award and a statement of the arbitrator's fees and expenses shall be submitted immediately to the commission as set forth in s. ERC 10.06 (1) and to the parties as set forth in s. ERC 10.07.

(b) *Public document when issued*. When received by the commission, interest awards shall be made available to the public. Copies may be purchased by the public from the commission's Madison office and may also be available on the commission website or in other commission publications.

(c) *Timeliness standards and procedures*. Arbitrators who repeatedly or egregiously fail to issue their decision within 60 days following receipt of final arguments or briefs, if any, shall be subject to removal from the commission's roster of arbitrators and fact finders following notice and an opportunity to be heard as provided in s. ERC 40.04. Reinstatement to the list may be granted where the commission is satisfied that the individual shall be able to consistently issue timely awards under s. 111.70 (4) (cm) 6. d., Stats. Unless informal communications satisfy the commission that there is good cause not to do so, an arbitrator's issuance of one or more s. 111.70 (4) (cm) 6. d., Stats., awards in a calendar year that are untimely by a total of more than thirty (30) days shall be a sufficient basis for convening a hearing to determine whether the arbitrator has "repeatedly" or "egregiously" failed to issue timely s. 111.70 (4) (cm) 6. d., Stats., awards.

(13) COSTS. The fees and expenses of the arbitrator including the conduct of the public hearing, arbitration hearings, the rental of hearing rooms, and the preparation of the award, shall be shared equally by the parties. The fees and expenses charged by the arbitrator shall not exceed those described in the arbitrator's biographical information and fee statement on file with the commission at the time the arbitrator's name was supplied to the parties by the commission. Costs of subpoenas and witness fees shall be paid by the party requesting the subpoena or witness. Fees and expenses charged by the reporter, if any, shall be shared equally by the parties if both parties have agreed that the hearing be transcribed. If only one party desires a transcript, that party is solely responsible for the fees and expenses charged by the reporter and shall provide a copy of the transcript to the arbitrator. The fees and expenses of arbitrators selected by one of the parties to serve on a tripartite panel shall be paid by the party making the selection.

ERC 32.16 Enforcement of award. (1) PROCEDURE. If either party refuses or otherwise fails to implement an interest arbitration award lawfully made by failing to incorporate it into a written collective bargaining agreement, the other party may file a complaint of prohibited practices as provided in ch. ERC 12. The resulting complaint proceeding shall be a class 2 proceeding within the meaning of s. 227.01 (3) (b), Stats., governed by the provisions of ss. 111.07 and 111.70 (4) (a), Stats. In determining whether an interest arbitration award was lawfully made, the commission shall find that the award was not lawfully made under the following circumstances:

(a) Where the interest arbitration award was procured by corruption, fraud or undue means;

(b) Where there was evident partiality on the part of the neutral arbitrator or corruption on the part of an arbitrator;

(c) Where the arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear supporting arguments or evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
;

(d) Where the arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final and definite interest arbitration award was not made.

(2) ATTORNEY FEES; INTEREST; OTHER COSTS. Any party refusing to include an arbitration award or decision under s. 111.70 (4) (cm), Stats., in a written collective bargaining agreement or failing to implement the award or decision, unless good cause is shown, shall be liable for attorney fees, interest on delayed monetary benefits, and other costs incurred in any action by the non-offending party to enforce the award or decision.

ERC 32.17 Modification of award. If, in a proceeding for enforcement, it is determined that an interest arbitration award is lawfully made, but that the award requires modification or correction, the commission shall issue an order modifying or correcting the award. An interest arbitration award may be modified or corrected where:

(1) A court enters an order, which is not subject to further appeal, reversing a commission ruling that a particular proposal contained in the award is a mandatory subject of bargaining;

(2) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;

(3) Where the arbitrator has awarded upon a matter not submitted, unless it is a matter not affecting the merits of the award upon the matters submitted;

(4) Where the award is imperfect in matter of form not affecting the merits of the controversy.

ERC 32.18 Procedure following court injunction of a strike posing an imminent threat to public health or safety. (1) NEW FINAL OFFERS. Following the issuance of a court order enjoining a strike which poses an imminent threat to the public health and safety, and under the order of the court, the parties shall submit to the commission, in writing, as set forth in s. ERC 10.06 (1), new final offers on all disputed issues, within the time limit established for those submissions by the court.

(2) MEDIATION. Within the time limit set by the court for the submission of new final offers, the parties may mutually request, in writing, as set forth in s. ERC 10.07, that the commission provide mediation services to the parties in an attempt to resolve the deadlock. Upon receipt of a request the commission or commission assigned mediator shall arrange a mutually satisfactory date and place for mediation.

(3) ARBITRATION. If, after mediation within the time limits set by the court, the parties remain in deadlock, the commission shall transmit the new final offers to the arbitrator, or to a successor arbitrator designated by the commission. The arbitrator or successor arbitrator shall immediately commence arbitration of the dispute in accordance with s. ERC 32.15.

ERC 32.19 Information. Parties subject to s. 111.70 (4) (cm), Stats., shall, upon request, provide the commission with information the commission deems necessary to meet its statutory responsibilities to report on the operation of the arbitration law under s. 111.70 (4) (cm), Stats., and on its effect on collective bargaining in the state.

Chapter ERC 33

COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN DISPUTES RELATING TO COLLECTIVE BARGAINING AGREEMENTS AFFECTING SCHOOL DISTRICT PROFESSIONAL EMPLOYEES

ERC 33.01 Scope.
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ERC 33.22 Procedure following court injunction of a strike posing an imminent threat to public health or safety.
ERC 33.23 Report of Cost of School District Professional Employee Agreement
ERC 33.24 Other Information.

ERC 33.01 Scope. This chapter governs the procedure relating to collective bargaining and interest arbitration under s. 111.70 (4) (cm), Stats., for collective bargaining affecting school district professional employees.

ERC 33.02 Policy. The policy of the state is to encourage voluntary settlement of labor disputes in municipal employment through the procedures of collective bargaining. If the procedures fail, the parties should have available to them a fair, speedy, effective and above all, peaceful

procedure for settlement, including, where a deadlock exists after negotiations, and after mediation by the commission, a procedure for the resolution of disputes by arbitration as limited by s. 111.70 (4) (cm) 5s., Stats.

ERC 33.03 Content of collective bargaining agreements. A collective bargaining agreement shall have a term of 2 years expiring on June 30 of the odd-numbered year. A collective bargaining agreement may contain provisions to reopen negotiations as to any period of any agreement whose expiration date is consistent with this subsection.

ERC 33.04 Notice of commencement of negotiations. Practice and procedures regarding notice of commencement of negotiations under this chapter shall be as set forth in s. ERC 32.03.

ERC 33.05 Voluntary impasse resolution procedure. Practice and procedures regarding voluntary impasse resolution procedures under this chapter shall be as set forth in s. ERC 32.04.

ERC 33.06 Petition to initiate arbitration. Practice and procedures regarding a petition to initiate arbitration under this chapter shall be as set forth in s. ERC 32.05.

ERC 33.07 Stipulation to initiate arbitration. Practice and procedures regard a stipulation to initiate arbitration under this chapter shall be as set forth in s. ERC 32.06.

ERC 33.08 Withdrawal of petition or stipulation; effect on filing fee. Practice and procedures regarding withdrawal of a petition filed under this chapter and regarding the effect of withdrawal on the filing fee shall be as set forth in s. ERC 32.07.

ERC 33.09 Pre-investigation procedure. Under this chapter, pre-investigation practice and procedure shall be as set forth in s. ERC 32.08.

ERC 33.10 Qualified economic offer. (1) TIME FOR MAKING A QUALIFIED ECONOMIC OFFER. A municipal employer may submit a qualified economic offer to the exclusive representative at any time after the commencement of negotiations but prior to the close of the investigation.

(2) CONTENTS. A qualified economic offer is a proposal in which the municipal employer obligates itself to comply with the salary and fringe benefit requirements of s. 111.70 (1) (nc), Stats., for the entirety of any collective bargaining agreement.

(3) EXISTENCE. (a) A qualified economic offer exists if the municipal employer submits an offer to the exclusive representative which states the following:

1. For any period of time covered by the proposed collective bargaining agreement, the municipal employer shall maintain all fringe benefits and its percentage contribution toward the cost thereof as required by s. 111.70 (1) (nc), Stats.

2. For each 12 month period or portion which is covered by the agreement, the municipal employer shall provide the increase in salary which s. 111.70 (1) (nc) 1., Stats., requires for the purposes of a qualified economic offer, or may provide the decrease in salary which s. 111.70 (1)

(nc) 2., Stats., allows for the purposes of a qualified economic offer.

(b) At the time it submits a qualified economic offer to the exclusive representative or 60 days prior to the stated expiration date of any existing collective bargaining agreement, whichever is earlier, the municipal employer's treasurer and superintendent or business manager shall provide the exclusive representative with completed commission qualified economic offer calculation Forms A and B. Forms A and B are appendices to this chapter. When completing Forms A and B, the treasurer and superintendent or business manager shall use all available cost and employee complement information and shall attest to the accuracy of the information. If additional cost or employee complement information becomes available, the treasurer and superintendent or business manager shall provide the exclusive representative with revised qualified economic offer calculation Forms A and B.

(4) PROCEDURE FOLLOWING SUBMISSION. Except as provided in sub. (8), the existence of a qualified economic offer does not alter the parties' obligation to engage in collective bargaining as defined in s. 111.70 (1) (a), Stats., or the municipal employer's obligation to maintain the dynamic status quo during any contract hiatus.

(5) IMPLEMENTATION OF A QUALIFIED ECONOMIC OFFER. (a) After a reasonable period of negotiations and an investigation by the commission or its investigator, if the parties are determined to be deadlocked in their negotiations, the municipal employer may implement its qualified economic offer if no collective bargaining agreement is in effect and it maintains all other economic provisions contained in the predecessor agreement, or, where the parties are negotiating a reopener under an existing agreement, if it maintains all other economic provisions of the existing agreement except as modified only by the terms of the salary and fringe benefit qualified economic offer or as otherwise agreed to by the parties. The municipal employer shall provide the exclusive representative with at least 15 days notice of the exact manner in which the qualified economic offer shall be implemented. If possible, notice of the manner of implementation shall be given before any determination of deadlock.

(b) If the exact percentage of a qualified economic offer's salary increase or decrease is contingent upon fringe benefit costs which are not known at the time of implementation, the municipal employer may only implement the maximum possible percentage salary increase under the offer. Where the municipal employer has implemented the maximum possible percentage salary increase under its qualified economic offer, the municipal employer may retroactively implement the exact salary increase or decrease of the qualified economic offer once fringe benefit costs are known.

(c) The municipal employer may require professional school district employees to reimburse the municipal employer for the difference between the exact implemented salary increase or decrease and any previously implemented increase and for the difference between any implemented increase or decrease and any salary increase received during a contract hiatus. Except as the parties otherwise agree, to complete any reimbursement, the municipal employer shall withhold the prorated amount necessary from each remaining employee paycheck which shall be received prior to expiration of the bargaining agreement or an employee's cessation of employment, whichever occurs first.

(6) MOTION TO REVIEW IMPLEMENTATION. Any claim that the salary and fringe benefits have been or shall be implemented in a manner inconsistent with s. 111.70 (1) (nc), Stats., and this chapter shall be filed by the exclusive representative with the commission as a motion to review implementation. A motion to review implementation shall specify the basis for the moving party's claim and the remedy the moving party is requesting the commission to order. Following any necessary hearing and receipt of any necessary written or oral argument, the commission shall issue a written decision determining whether the municipal employer's proposed or actual implementation is or was consistent with s. 111.70 (1) (nc), Stats., and this chapter. If the commission determines that any implementation was not consistent with s. 111.70 (1) (nc), Stats., and this chapter, the commission shall order the municipal employer to comply with s. 111.70 (1) (nc), Stats., and this chapter, and to take appropriate action including reimbursement to the municipal employer of excess salary payments in the same manner specified in sub. (5) and payment to employees of any monies owed with interest at the rate established by s. 814.04, Stats. The pendency of a motion to review implementation does not bar a municipal employer from implementing its qualified economic offer.

(7) ADDITIONAL OBLIGATION FOLLOWING IMPLEMENTATION. Except as provided in sub. (8), the municipal employer's implementation of a qualified economic offer under this section shall not relieve the parties of their mutual obligation to reach agreement and stipulate to agreement on all economic issues under s. 111.70 (4) (cm) 5s., Stats., before any unresolved noneconomic issues are subject to interest arbitration under this chapter.

(8) AGREEMENT BY OPERATION OF LAW. On the 90th day prior to expiration of the period included within the qualified economic offer, if no agreement exists on that day, the parties are deemed to have stipulated to the inclusion in a new or revised collective bargaining agreement of all provisions of any predecessor collective bargaining agreement concerning economic issues, or of all provisions of any existing collective bargaining agreement concerning economic issues if the parties have reopened negotiations under an existing agreement, as modified by the terms of the qualified economic offer and as otherwise modified by the parties. In such a collective bargaining unit, on and after that 90th day, a municipal employer that refuses to bargain collectively with respect to the terms of that stipulation, applicable to the 90-day period prior to expiration of the period included within the qualified economic offer, does not violate s. 111.70 (3) (a) 4., Stats. Any such unilateral implementation during the 90-day period prior to expiration of the period included within a qualified economic offer operates as a full, final and complete settlement of all economic issues between the parties for the period included within the qualified economic offer. The failure of an exclusive representative to recognize the validity of such a lawful qualified economic offer does not affect the obligation of the municipal employer to submit economic issues to arbitration under s. 111.70 (4) (cm) 6., Stats.

ERC 33.11 Informal investigation or formal hearing when the municipal employer has submitted a qualified economic offer. Under this chapter, practice and procedure for informal investigation or formal hearing when the municipal employer has submitted a qualified economic offer shall be as set forth in s. ERC 32.09.

ERC 33.12 Informal investigation or formal hearing when the municipal employer has not

submitted a qualified economic offer. Under this chapter, practice and procedure for informal investigation or formal hearing when the municipal employer has not submitted a qualified economic offer shall be as set forth in s. ERC 32.09.

ERC 33.13 Final offers. **(1)** CONTENTS GENERALLY. Final offers shall contain proposals relating only to mandatory subjects of bargaining, except either final offer may contain proposals relating to permissive subjects of bargaining if there is no timely objection under s. ERC 33.14 or 33.15 by the other party to the inclusion of the proposals in a final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.70 (4) (cm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 33.15 or injunction proceedings referred to in s. ERC 33.22 (1).

(2) CONTENTS REGARDING ECONOMIC ISSUES, TERM OF AGREEMENT, REOPENER PROVISIONS AND SALARY STRUCTURE. (a) If the municipal employer submits a qualified economic offer, final offers shall not contain any economic issues as defined in s. 111.70 (1) (dm), Stats.

(b) Final offers for any collective bargaining agreement shall have a term of 2 years expiring on June 30 of the odd-numbered year.

(c) Final offers shall not contain a provision for reopening of negotiations during the term of an existing agreement for any purpose other than negotiation of a successor agreement or with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation. Any other provisions for reopening of negotiations during the term of an existing agreement shall be agreed upon by the parties as a part of the stipulation of agreed upon items. Parties may agree to reopen negotiations as to any period of any agreement whose expiration date is consistent with this subsection.

(d) Final offers shall not contain a proposal to alter the salary range structure, number of steps, or requirements for attaining a step or assignment of a position to a salary range.

(3) MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION. After the investigation, a party may modify its final offer only with the consent of the other party. A modification shall be in writing, supported by a written statement signed by the representative of the other party.

ERC 33.14 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining. Under this chapter, the procedure for raising an objection that a proposal is a non-mandatory subject of bargaining shall be as set forth in s. ERC 30.10.

ERC 33.15 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining. Under this chapter, the procedure for initiating a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining shall be as set forth in s. ERC 30.11

ERC 33.16 Procedure for raising objection that a proposal is not subject to interest arbitration. (1) TIME FOR RAISING OBJECTION. After a stipulation is reached under ss. ERC 33.11 and 32.09 (2) or after an agreement is reached by operation of law under s. ERC 33.10 (8) on all economic issues to be included in a new or reopened agreement and prior to close of the investigation of an interest arbitration petition, either party may raise an objection that a proposal is an economic issue not subject to interest arbitration.

(2) FILING AN OBJECTION. An objection that a proposal is an economic issue not subject to interest arbitration shall be filed with the commission as a petition for declaratory ruling under s. 227.41, Stats., and ch. ERC 19. During the pendency of a petition for declaratory ruling, the investigation of the petition for interest arbitration shall not be closed.

(3) PROCEDURE FOLLOWING ISSUANCE OF DECLARATORY RULING. Following the issuance and service of the declaratory ruling, the commission or its investigator shall conduct further investigation or hearing for the purpose of obtaining the final offer of each party before closing the investigation.

ERC 33.17 Certification of results of investigation or hearing, or certification based on stipulation. Under this chapter, practice and procedure regarding commission certification of results of investigation or hearing or based on stipulation shall be as set forth in s. ERC 32.13.

ERC 33.18 Order appointing arbitrator. Practice and procedure regarding an order appointing arbitrator in proceedings under this chapter shall be as set forth in s. ERC 32.14.

ERC 33.19 Proceedings before the arbitrator. Practice and procedure regarding proceedings before the arbitrator under this chapter shall be as set forth in s. ERC. 32.15.

ERC 33.20 Enforcement of award. Practice and procedures for enforcement of awards issued under this chapter shall be as set forth in s. ERC 32.16.

ERC 33.21 Modification of award. Practice and procedure regarding modification of an award issued under this chapter shall be as set forth in s. ERC 32.17.

ERC 33.22 Procedure following court injunction of a strike posing an imminent threat to public health or safety. Under this chapter, practice and procedure following court injunction of a strike posing an imminent threat to public health or safety shall be as set forth in s. ERC 32.18.

ERC 33.23 Report of Cost of School District Professional Employee Agreement (1) WHO MUST FILE**.** As required by s. 111.70 (4) (cm) 8s., Stats., whenever a municipal employer enters into a collective bargaining agreement affecting school district professional employees, the municipal employer shall calculate and report the total increased cost to the municipal employer of the compensation and fringe benefits provided for by the agreement.

(2) TIME TO FILE; FORM; FILING. As soon as possible after the effective date of the collective bargaining agreement covering school district professional employees, the municipal

employer shall calculate and report the total increased cost to the municipal employer of the compensation and fringe benefits provided for by the agreement. The report shall be in writing and shall provide the information called for on Form D which is an appendix to this chapter. The report 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 report shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the report is filed in paper form, a total of one copy of the report shall be included.

(3) SERVICE ON EXCLUSIVE REPRESENTATIVE. The municipal employer shall, at the same time, serve the exclusive representative of the school district professional employees involved with a copy of the report as set forth in s. ERC 10.07.

ERC 33.24 Other Information Parties subject to s. 111.70 (4) (cm), Stats., shall, upon request, provide the commission with information the commission deems necessary to meet its statutory responsibilities to report on the operation of the arbitration law under s. 111.70 (4) (cm), Stats., and on its effect on collective bargaining in the state.

SECTION 6. Chapter ERC 33 Appendix, Form D is amended to read:

FORM D

Pursuant to s. 111.70 (4) (cm) 8s, Stats., the municipal employer shall file a completed copy of this form with the Wisconsin ~~e~~Employment ~~r~~Relations ~~c~~Commission and the labor organization as soon as possible after the effective date of any collective bargaining agreement covering school district professional ~~employes for any period after June 30, 1993.~~ employees.

Name of school district: _____

Name of labor organization: _____

Date agreement became effective: _____

Period ~~after June 30, 1993~~ covered by the agreement: _____

Total increased percentage salary cost for each 12-month period ~~of the post-June 30, 1993 period~~ covered by the agreement[1]:

_____ - for 12-months ending _____ total increased percentage salary cost was ___%

_____ - for 12-months ending _____ total increased percentage salary cost was ___%

Total increased percentage fringe benefit cost for each 12-month period ~~of the post-June 30, 1993 period~~ covered by the agreement[1]:

- for 12-months ending _____ total increased percentage fringe cost was ___%
- for 12-months ending _____ total increased percentage fringe cost was ___%

Dated this_____ day of _____, 2_____

By: _____

[1] Calculate these costs using the same method and employees used to complete commission Forms A and B.

SECTION 7. Chapters ERC 40 and 50 are created to read:

CHAPTER ERC 40

ROSTER OF AD HOC ARBITRATORS AND FACT FINDERS

ERC 40.01 Policy.
ERC 40.02 Qualifications for admission to roster.
ERC 40.03 Application for admission to roster.
ERC 40.04 Removal from roster.
ERC 40.05 On-going requirements of roster members.
ERC 40.06 Roster administration.

ERC 40.01 Policy. To promote labor peace, the commission maintains a roster of individuals, not employed by the commission, who are available to serve as fact finders, grievance arbitrators, and interest arbitrators in statutory and contractual dispute resolution processes concerning private, municipal and state sector labor disputes arising in Wisconsin. The following criteria and procedures for admission and removal of roster members and for providing panels of roster members to disputants have been developed to insure the quality and professionalism of the services provided by roster members when serving as neutrals in labor disputes under ch. 111, Stats.

ERC 40.02 Qualifications for admission to roster. The roster shall be limited to individuals who are competent and willing to participate in grievance arbitration, interest arbitration and fact-finding. The qualifications used by the commission for admission to and continued service on its roster are as follows:

(1) ELIGIBILITY REQUIREMENTS. (a) *Residency*. Roster members shall maintain their principal place of residence in one of the following states: Wisconsin, Illinois, Indiana, Iowa, Michigan or Minnesota. Maintenance of a mail box or mail delivery point is not sufficient to satisfy this requirement.

(b) *Appointment acceptance*. Roster members shall be willing to accept appointments in all of the following types of proceedings:

1. Fact-finding.

2. Contract grievance arbitration.

3. Interest arbitration.

(c) *Neutral status*. Roster members shall not engage in any employment or hold any title or office that conflicts with the role of a neutral in labor-management dispute resolution. Roster members shall not be, and shall not have been for at least one year, an advocate for public or private sector employees, employee organizations, employers or employer organizations. For purposes of this chapter, an "advocate" is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant in labor relations matters,

including to the following subjects:

1. Union representation and recognition.

2. Collective bargaining.

3. Equal employment opportunity.

4. Arbitration.

5. Unfair labor practices.

6. Labor-related litigation.

7. Wage and benefit administration.

8. Unemployment compensation.

9. Worker compensation.

10. Occupational health and safety standards.

11. Minimum wage.

12. Other labor standards matters.

(2) KNOWLEDGE, SKILLS AND ABILITIES, AND QUALIFICATIONS. The knowledge, skills and abilities, and qualifications for roster members shall be as follows:

(a) Knowledge of labor relations concepts, principles and practices regarding the following:

1. Contract administration and negotiations.

2. Interest arbitration and grievance arbitration.

3. Labor laws.

4. Local government laws.

5. Related matters.

(b) Acceptability to parties in Wisconsin labor relations disputes.

(c) Impartiality, meaning lack of any real or apparent conflict of interest, and ability to render neutral decisions.

(d) Knowledge of hearing procedures, ability to conduct hearings and to develop an accurate record of proceedings.

(e) Ability to analyze testimony and exhibits and to render competent, well-reasoned and accurate decisions.

(f) Knowledge of, and compliance with, the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission.

(g) Ability to produce written decisions within reasonable time limits. Roster members are encouraged to render awards and fact-finding recommendations not later than 60 days from the date of closing of the record as determined by the roster member, unless otherwise agreed by the parties or specified by law.

(h) Knowledge of relevant commission rules and policies.

(i) General knowledge of public sector finance and the ability to calculate costs of wages and fringe benefits.

(j) Ability to effectively apply mediation techniques.

(k) High moral character and integrity.

(3) EXPERIENCE. (a) *As a neutral*. Individuals who have functioned as a labor relations neutral for at least eight years may apply for admission to the ad hoc arbitrator roster. The applicants shall provide eight arbitration awards, including two interest arbitration awards, if the applicant has issued interest awards, or other writing samples. These experience requirements may be waived or reduced if the applicant satisfactorily demonstrates sufficient knowledge and experience in labor law and labor relations, along with proficient writing skills.

(b) *As an advocate*. Individuals who have functioned as labor relations advocates for at least eight years may apply for admission to the roster provided that at the time of application the applicant has not been a labor relations advocate for at least one year. Ten writing samples such as briefs or reports shall be submitted, and applicants may be requested to write eight practice arbitration awards, including up to two interest arbitration awards, based on facts provided by the commission. The award writing requirement may be waived or reduced if the applicant demonstrates sufficient knowledge and experience in labor law and labor relations, along with proficient writing skills.

(c) *As an academic*. Individuals who have taught accredited labor relations courses or accredited labor relations-related courses on the college level for at least eight years may apply

for admission to the roster. Ten writing samples, such as awards, reports or research papers, shall be submitted. The applicants may be requested to write eight practice arbitration awards, four of which shall be interest arbitration awards. This requirement may be waived or reduced if the applicant satisfactorily demonstrates sufficient knowledge and experience in labor law and labor relations, and proficient writing skills.

(d) *Combination of neutral, advocate or academic experience*. The commission may consider any combination of experience identified in pars. (a) to (c) and other relevant experience.

(e) *Training program participants.* Notwithstanding pars (a) to (d), any person may apply for admission to the ad hoc roster following successful completion of training under s. 111.71 (5), Stats. Applicants for training may be referred to an evaluator selected by the commission for an assessment of skills and abilities reasonably required in order to function successfully as a neutral in labor relations dispute resolution. A program may be designed to provide appropriate training to address applicants' identified needs. The applicant may be charged a reasonable fee for participation in the training. The fee shall reflect preparation and actual training time reasonably expended on behalf of an applicant.

(4) REFERENCES. Applicants for admission to the roster shall supply the names, addresses and phone numbers of at least six professional references, three of which shall be labor organization references and three of which shall be employer references.

ERC 40.03 Application for admission to roster. (1) APPLICATION FORM; SUBMISSION; CONSIDERATION. Qualified individuals who are interested in being admitted by the commission to the roster may obtain an application form from the commission. The completed application along with writing samples and references shall be transmitted to the commission as set forth in s. ERC 10.06 (1). The commission shall review the completed applications and shall decide whether an applicant shall be admitted to the roster. The commission shall base its decision on the criteria listed in s. ERC 40.02. After reviewing the application, the commission may interview the candidate to obtain additional information relevant to the individual's qualifications. Candidates shall provide complete and accurate information on the application and during the interview. Failure to do so may result in rejection. Individuals shall notify the commission of any changes in status which are relevant to the individual's qualifications.

(2) NOTIFICATION OF APPLICATION DISPOSITION. A candidate who is found to be qualified to serve on the roster shall be added to the roster if the commission determines there is a need for additional individuals to be added. Each applicant shall be notified in writing of the commission's decision and reasons.

(3) INTEGRITY OF ADMISSION PROCESS. No candidate may attempt to influence the commission or staff members regarding admission to the roster by any improper means, including gifts or other inducements to agency personnel. However, nothing in this chapter is intended to preclude a potential applicant from requesting information or advice from the commission concerning the likelihood of the potential applicant's future admission to the roster.

ERC 40.04 Removal from roster. (1) NATURE AND CONDITIONS OF ROSTER MEMBERSHIP**.** Admission to the roster does not create a right to continued roster membership or a right to be placed on any given panel. Except as noted in s. ERC 40.06 (3), roster members do not have a right to be placed on a minimum number of panels in any fixed period, such as a month or a year.

(2) BASES FOR REMOVAL. Roster members may be removed on the commission's own motion or at the request of an individual or organization. Removal shall be at the discretion of the commission, based on the following:

(a) Failure to comply with this chapter.

(b) Failure to meet, on a continuing basis, the commission's roster member qualifications.

(c) Failure to provide the commission with complete and accurate biographical data and to keep the commission informed of changes in residence and availability to arbitrate cases.

(d) Repeated delinquency in submitting awards.

(e) Refusal to comply with requests from the commission concerning arbitration activities and potential conflicts of interest.

(f) Unacceptability to the parties, which may be evidenced by a low rate of selection over a period of time.

(g) Failure to disclose to the commission any personal relationships or other circumstances which might reasonably raise a question regarding the roster arbitrator's or fact finder's impartiality.

(h) Failure to adhere to appropriate ethical principles.

(3) REQUEST FOR REMOVAL. Any individual or organization may submit to the commission, as set forth in s. ERC 10.06 (1), a request that a roster member be removed from the roster. The request shall be in writing and shall contain:

(a) The name, address and phone number of the requesting party. Fax number and e-mail address shall be included, if available.

(b) The dispute or disputes in which the requesting party has interacted with the roster member.

(c) The specific allegations on which the request is based.

(d) The signature or signature facsimile of the person submitting the request.

(e) The date on which the request was prepared.

(4) COMMISSION ACTION. Subsequent to receipt of information indicating a possible basis for a roster member's removal, or subsequent to receipt of a request for removal of a roster member, the commission, or its designee, shall conduct a preliminary investigation. The commission shall then determine the appropriate action, if any, to be taken, including whether the roster member should be removed from the roster. A roster member who is being considered for removal shall be provided with prior written notice, as set forth in s. ERC 10.07, including a statement setting forth the basis for the commission's consideration of the member's removal. The roster member shall have an opportunity both to provide a written statement of reasons why removal should not take place and to physically meet with the commission to be heard on that subject. The decision of the commission shall be final and shall be placed in a written notice including the reasons for the commission's decision.

ERC 40.05 On-going requirements of roster members. (1) ANNUAL UPDATE OF BIOGRAPHICAL AND FEE INFORMATION. Roster members shall file an updated biographical and fee information statement when material changes in that information occur and shall keep the commission informed about any material changes in status.

(2) TRAINING COURSE ATTENDANCE. Roster members may be required to attend periodic training courses in order to remain on the roster.

(3) AWARD SUBMISSION. Roster members shall immediately file with the commission, as set forth in s. ERC 10.06 (1), at its Madison office a copy of all awards and fact-finding recommendations issued by them in cases for which they were selected through commission procedures. Interest awards shall be transmitted immediately to the commission in electronic form either by diskette or e-mail.

ERC 40.06 Roster administration. (1) SEPARATE IN-STATE AND OUT-OF-STATE ROSTERS; SIZE OF ROSTERS. Separate in-state and out-of-state rosters shall be maintained so that the size of each roster does not ordinarily exceed fifty (50) members. Notwithstanding the fifty (50) member limits, candidates shall be added to the roster who have either successfully completed training under s. 111.71 (5), Stats., or whose qualifications are such that their addition to the roster would clearly serve the underlying purposes of ch. 111, Stats.

(2) CHANGE OF IN-STATE OR OUT-OF-STATE STATUS. If a member of the in-state roster leaves Wisconsin for more than 60 consecutive days, the roster member shall notify the commission prior to departure and shall be placed on inactive status for the period of their absence. A member of the out-of-state roster who moves to Wisconsin shall become a member of the in-state roster.

(3) SELECTION AND COMPOSITION OF PANELS. The panels of roster members' names submitted to parties by the commission in grievance arbitration under chs. ERC 5, 16 and 23, interest arbitration under chs. ERC 30 to 33 or fact-finding cases under chs. ERC 14 and 25 shall be generated by computer in a manner designed both to permit any roster member available to accept appointments to be selected for any panel and to equalize the number of times each in-state roster member's name is sent out and to equalize the number of times each out-of-state roster member's name is sent out during any period of availability to accept appointments. Unless

otherwise jointly requested by the parties, one out-of-state roster member shall be included on each grievance panel, on each s. 111.77, Stats., and ch. ERC 30 police-fire interest panel, on each fact-finding panel under ch. ERC 14 or 25 and on each s. 111.70 (4) (jm), Stats., and ch. ERC 31 police interest panel. Unless otherwise jointly requested by the parties, one out-of-state roster member shall be included on the seven name panel provided in s. 111.70 (4) (cm), Stats. and ch. ERC 32 or 33, cases in which the parties agree not to limit the panel to in-state arbitrators. No resident of the city which is party to the dispute shall be included on a s. 111.70 (4) (jm), Stats., and ch. ERC 31 police interest panel.

Chapter ERC 50

LABOR-MANAGEMENT COOPERATION SERVICES

ERC 50.01 Scope.
ERC 50.02 Policy.
ERC 50.03 Request for labor-management cooperation services.
ERC 50.04 Commission action on request for labor-management cooperation services.
ERC 50.05 Labor-management cooperation program activities.
ERC 50.06 Costs of labor management cooperation services.
ERC 50.07 Report to commission.

ERC 50.01 Scope. This chapter governs the general procedure relating to the provision of training programs under ss. 111.09 (3), 111.71 (5) and 111.94 (3), Stats., to employers, employer associations and labor organizations on collective bargaining, and on areas of management and labor cooperation directly or indirectly affecting collective bargaining in the private, municipal and state sectors, respectively.

ERC 50.02 Policy. To promote the prompt and peaceful settlement of labor disputes affecting terms and conditions of employment in Wisconsin, the commission offers various training programs to employers and labor organizations on collective bargaining, and on areas of management and labor cooperation directly or indirectly affecting collective bargaining. In order to maintain and enhance the effectiveness of the training function, the commission has established rules and procedures designed to assure that the fees charged for participation in those programs are reasonable and to maintain confidentiality of the training and related processes.

ERC 50.03 Request for labor-management cooperation services. (1) PRE-REQUEST PROCEDURES. Any representative of an employer, employer association or labor organization interested in obtaining commission labor-management cooperation services may contact the agency's Coordinator of Labor-Management Cooperation Programs regarding the nature and availability of agency programs to address the needs of the parties involved. The Coordinator shall make inquiries, as necessary, to determine both the suitability of available programs to the needs of the inquiring party or parties involved and the willingness and readiness of both the labor and management groups involved for participation in the available programs.

(2) WHO MAY FILE. A request for labor-management cooperation training or related services may only be filed jointly by an employer or employer association and by the exclusive collective bargaining representative of one or more bargaining units of employees of the employer or employer association, or by anyone authorized to act on their behalf.

(3) FORM; FILING; SERVICE. A request that the commission provide labor-management cooperation training or related services shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The request is not filed until it has been

received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The request shall be transmitted to the commission as set forth in s. ERC 10.06 (1).

(4) CONTENTS. A request for labor management cooperation services shall include all of the following:

(a) The name and address of the employer or employer association involved, 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 each exclusive representative involved, and the name, address and phone number of the principal representative of each. Fax numbers and e-mail addresses shall be included, if available.

(c) A statement specifying the type of services requested, including but not limited to general labor-management cooperation training, consensus bargaining training and facilitation, labor-management committee effectiveness training and facilitation, refresher training for one of the above, or some other type of service.

(d) A statement specifying the numbers of labor and management representatives to participate in the program.

(e) The date on which the request for services is transmitted to the commission.

ERC 50.04 Commission action on request for labor-management cooperation services. (1) PROGRAM APPROVAL DETERMINATION. Following receipt of a request for labor-management cooperation services, the commission or its designee shall determine whether, when, to what extent and at what cost it will provide the services requested, and the commission's determinations in those respects shall be communicated to the requesting parties in writing.

(2) DESIGNATION OF TRAINERS AND FACILITATORS. If the parties agree to participate in the program on the terms approved by the commission, the commission shall designate the trainer and facilitator as appropriate, and the trainers and facilitator so designated shall proceed to provide the approved services.

(3) TRAINER AND FACILITATOR IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as trainers and facilitators.

(4) CONFIDENTIAL NATURE OF FUNCTION. Commission trainers and facilitators shall maintain confidentiality as required of mediators by s. 904.085, Stats. Any information disclosed by the parties to the trainer or facilitator in the performance of duties shall not be divulged voluntarily or because of compulsion unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the trainer or facilitator in that person's confidential capacity shall be confidential and shall not be disclosed to any unauthorized person without the prior consent of the commission. The trainer or facilitator shall not produce

any confidential records of, or testify about, any training or facilitation conducted by the trainer or facilitator, before any court, board (including the Wisconsin Employment Relations Commission), investigative body, arbitrator or fact finder without the written consent of the commission. In the absence of written consent of the commission, the trainer or facilitator shall respectfully decline, by reason of this subsection, to produce or present confidential records or documents of any nature or to give testimony concerning confidential training or facilitation information.

(5) BILLING OF PROGRAM FEES AND EXPENSES. The commission shall bill the parties for fees and expenses associated with the parties' participation in the agency's labor-management cooperation programs, in accordance with fee and expense specifications shared with the parties in advance of the program.

ERC 50.05 Labor-management cooperation program activities (1) NATURE. The trainer and facilitator may hold separate or joint meetings with the parties or their representatives, or train or facilitate by means of other communications with one or both parties or their representatives. Training and facilitation meetings and related communications shall not be open to the public unless otherwise mutually agreed by the parties or their representatives.

(2) WHERE AND WHEN CONDUCTED. The trainer and facilitator shall set a date, time and place for the conduct of the training and facilitation that is agreeable to all parties and shall confirm those arrangements in writing to all parties.

ERC 50.06 Costs of labor management cooperation services. The fees and expenses charged for participation in labor-management cooperation programs shall be reasonable and consistent with those charged by the commission during the same time period for other labor management cooperation programs in the private, municipal and state sector, respectively. Unless the parties involved agree otherwise, those costs shall be split equally between labor and management.

ERC 50.07 Report to commission. If requested by the commission, the trainer and facilitators shall, either orally or in writing, report to the commission about the progress of the training and facilitation, as well as the terms of the settlement of disputes resolved during the course of the program.

SECTION 8. INITIAL APPLICABILITY. These rules first apply to cases filed (ERC 1-28, 30-33 and 50) or matters that arise (ERC 40) 60 days after the effective date of these rules.

SECTION 9. EFFECTIVE DATE. These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin this 26th day of April, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

/s/ Judith Neumann

Judith Neumann, Chair

/s/ Paul Gordon

Paul Gordon, Commissioner

/s/ Susan J. M. Bauman

Susan J. M. Bauman, Commissioner