



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-092

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

a. Section 111.70 (4) (d) 3. b., Stats., provides that the employees in the bargaining unit may not be included in a substantially similar collective bargaining unit for a period of one year if a representative is decertified. Why is “at least” used in s. ERC 70.03 (7) (b) 2. when the statute does not include “at least”? This same comment applies to ss. ERC 70.11 (2), 71.03 (7) (b) 2., 71.11 (2), 80.03 (7) (b) 2., and 80.11 (2).

b. Section ERC 70.01, in part, provides the following: “Once a timely petition has been filed, an existing representative’s exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.” It appears that this provision allows a representative to continue representation if an election is not completed prior to December 1. Section 111.70 (4) (d) 3. b., Stats., requires that an election occur no later than December 1. Under what authority does the proposed rule allow a representative to continue the representation despite the lack of an election prior to December 1? A similar comment applies to ss. ERC 71.01 and 80.01.

2. Form, Style and Placement in Administrative Code

a. The rule summary should contain all of the headings described in s. 1.02 (2) (a), Manual, including the headings described in s. 1.02 (2) (a) 9. and 13., Manual.

b. The proposed rule should be divided into numbered SECTIONS. [s. 1.04, Manual.] Before ch. ERC 70, insert “SECTION 1. ERC 70 and 71 are created to read:”. Before ch. ERC 80, insert “SECTION 2. ERC 80 is created to read:”.

c. Throughout the proposed rule, references to “two” should be replaced with “2” and references to “four” should be replaced with “4”. [s. 1.01 (5), Manual.]

d. Chapter titles should be centered. [s. 1.05 (2) (a), Manual.]

e. In s. ERC 70.02, a period should be inserted after the title. [s. 1.05 (2) (b), Manual.] This same comment also applies to ss. ERC 70.03, 71.03, and 80.03.

f. The fee schedule in s. ERC 70.03 (4) would be better drafted as a list to eliminate the need to repeat the same language for each fee listed. Also, do not use parentheses to indicate an optional plural form of the word “organizations” in the last sentence. Instead, use the singular form. [s. 1.01 (9) (e), Manual.] These same comments also apply to ss. ERC 71.03 (4) and 80.03 (4).

g. In s. ERC 70.03 (6) (f) (intro.), insert “all of” after “including”. [s. 1.03 (3), Manual.] This same comment also applies to ss. ERC 71.03 (6) (f) (intro.) and 80.03 (6) (f) (intro.).

h. In s. ERC 70.03 (7) (c), the word “will”, when used, should be “shall”. This same comment also applies to ss. ERC 70.11 (intro.), 71.03 (7) (c), 71.11 (intro.), 80.03 (7) (c), and 80.11 (intro.).

i. In s. ERC 70.07 (4), delete the par. (a) and title. Subdividing into paragraphs is improper form if there is only one paragraph. [s. 1.03 (1), Manual.] This same comment also applies to ss. ERC 71.07 (4) and 80.07 (4).

j. In s. ERC 70.10 (2), the introductory sentence that leads to pars. (a) to (c) does not follow the format for introductory material in s. 1.03 (3), Manual. Rather than use an introductory sentence, the (intro.) could be numbered par. (a) and pars. (a) to (c) could be numbered pars. (b) to (d). Alternatively, add a phrase to the end of s. ERC 70.10 (2) (intro.) that introduces the subparts and ends in a colon, such that each subunit forms a complete sentence when read with the introductory material. This same comment also applies to ss. ERC 71.10 (2) and 80.10 (2).

k. In s. ERC 71.03 (7) (b), insert a “1.” after the paragraph title.

l. The effective date section should be labeled as SECTION 3. [s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. ERC 70.03 (2), “s. ERC 70.03 (4)” should be replaced with “sub. (4)”. [s. 1.07 (2), Manual.] A similar comment also applies to ss. ERC 71.03 (2) and 80.03 (2).

b. In s. ERC 70.03 (2), the reference to “sub. (3)” in the second-to-last sentence should be “sub. (5)”. This same comment also applies to ss. ERC 71.03 (2) and 80.03 (2).

c. In s. ERC 70.03 (7) (b) 2., the reference should be to “subd. 1.”, not “sub. (b) 1.”. [s. 1.07 (2), Manual.] This same comment also applies to ss. ERC 71.03 (7) (b) 2. and 80.03 (7) (b) 2.

d. In s. ERC 70.04, “ss. ERC 70.03 (7) (b) and (c)” should be replaced with “s. ERC 70.03 (7) (b) and (c)”. [s. 1.07 (2), Manual.] A similar comment also applies to ss. ERC 71.04 and 80.04.

e. In s. ERC 70.05 (1), the reference to s. ERC 70.03 should be more specifically to s. ERC 70.03 (3). A similar comment also applies to ss. ERC 71.05 (1) and 80.05 (1).

f. In s. ERC 80.04, “s” should be inserted before “. ERC 80.03 (7) (a)”. [s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the rule summary, the agency might consider revising its description of the federal and state court litigation to reflect recent activity in the litigation and providing a more detailed description of the litigation.

b. In the rule summary, under the description of s. ERC xx.02, the reference to definitions should be removed. Those sections do not contain definitions.

c. Throughout the proposed rule, “%” should be replaced with “percent”.

d. In the title for ch. ERC 70, “**ERC70**” should be replaced with “**ERC 70**”.

e. In ch. ERC 70 (title), a comma should be inserted after “**AUGUST 30**” to be consistent with the title of ch. ERC 71. Similarly, in ch. ERC 80 (title), commas should be inserted before and after “**AS OF AUGUST 30**”.

f. In s. ERC 70.01, a comma should be inserted after “or any other labor organization interested in representing such employees”. This same comment also applies to s. ERC 71.01.

g. In s. ERC 70.01, “outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues” should be replaced with “outcome-determinative issues, including which ballots should be counted”. This same comment also applies to ss. ERC 71.01 and 80.01.

h. In s. ERC 70.02 (2) (a), “as” should be inserted before “defined”. This same comment also applies to ss. ERC 70.02 (2) (b), 71.02 (2) (a) and (b), and 80.02 (1) (a) and (2) (a).

i. In s. ERC 70.03 (2), delete the second period in the middle of line 3.

j. In s. ERC 70.03 (2), why are both “actually received” and “received” used when referring to the commission’s receipt of a petition? The agency might consider replacing “actually received” with “received”. This same comment also applies to s. ERC 71.03 (2).

k. In s. ERC 70.03 (7) (c), what is meant by “an opportunity to respond to the propriety of the request”? The agency should clarify this. This same comment also applies to ss. ERC 71.03 (7) (c) and 80.03 (7) (c).

l. In s. ERC 70.04, “but with the date of dismissal of the withdrawn petition applying” should be replaced with “but the date of dismissal of the withdrawn petition shall apply”. This same comment also applies to ss. ERC 71.04 and 80.04.

m. In s. ERC 70.05 (1), “the employees” should be replaced with “each employee’s” on line 7, and “the employee’s” should be replaced with “each employee’s” on line 8. [s. 1.01 (9) (e), Manual.] This same comment also applies to ss. ERC 71.05 (1) and 80.05 (1).

n. In s. ERC 70.07 (5), the agency should specify how telephonic votes will be counted. Only the counting of physical ballots is currently specified. This same comment also applies to ss. ERC 71.07 (5) and 80.07 (5).

o. In s. ERC 70.07 (6), should “eligible voters” be replaced with “employees eligible to vote”? This same comment also applies to ss. ERC 71.07 (6) and 80.07 (6).

p. In s. ERC 70.08, delete the first use of the word “and”. This same comment also applies to ss. ERC 71.08 and 80.08.

q. In s. ERC 70.09 (1), a party may file “objections to the conduct of the election or conduct affecting the results of the election”. It would be helpful to clarify how, if at all, these two concepts differ from each other. This same comment also applies to ss. ERC 71.09 (1) and 80.09 (1).

r. Section ERC 70.10 is titled “Commission action on challenges or objections”. Are challenges and objections different? This same comment also applies to ss. ERC 71.10 and 80.10.

s. In s. ERC 70.10 (1), “which” should be replaced with “that”. This same comment also applies to ss. ERC 71.10 (1) and 80.10 (1).

t. In s. ERC 71.03 (1), “only” should be removed. This same comment also applies to s. ERC 80.03 (1).

u. In s. ERC 71.03 (2), delete “and unless” on line 5.

v. In s. ERC 71.11 (1), “as the date of commission’s certification” should be replaced with “as of the date of the commission’s certification”.

w. Throughout ch. ERC 80, use lowercase “state” in place of “State”. [s. 1.01 (4), Manual.]

x. In s. ERC 80.03 (6) (f) 3., “berepresented” should be replaced with “be represented”.