Chapter ERC 31

MEDIATION — ARBITRATION INVOLVING MUNICIPAL EMPLOYES OTHER THAN FIRE FIGHTING AND LAW ENFORCEMENT PERSONNEL

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Note: Chapter ERB 31 was promulgated as an emergency rule effective January 1, 1978. **Chapter ERB 31 was renumbered chapter ERC 31 under s. 13.93 (2m) (b) 1, Stats., Register, December, 1994, No. 468.**

Note: See s. 111.70 (4) (cm), Stats.

ERC 31.01 Scope. This chapter governs the procedure relating to mediation-arbitration pursuant to s. 111.70 (4) (cm), Stats., for negotiations commencing before May 7, 1986 affecting municipal employes other than law enforcement and fire fighting personnel. For the purposes of this chapter, the commencement of negotiations shall be whenever either party receives a request or notice from the other to reopen negotiations under a binding agreement or to otherwise commence negotiations under a binding agreement or to otherwise commence negotiations if no agreement exists.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; emerg. am. eff. 5-14-86; am. Register, October, 1986, No. 370, eff. 11-1-86.

ERC 31.02 Policy. This policy of the state and of this chapter is to encourage voluntary settlement of labor disputes in municipal employment through the procedures of collective bargaining. If such 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 thereof by mediation-arbitration. 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.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; emerg. am. eff. 5-14-86; am. Register, October, 1986, No. 370, eff. 11-1-86.

ERC 31.03 Notice of commencement of negotiations. (1) WHO MUST FILE. Whenever a labor organization representing municipal employes or a municipal employer requests to reopen negotiations under a binding collective bargaining agreement, or the parties otherwise commence negotiations if no such agreement exists, the party requesting negotiations shall immediately notify the commission in writing at its Madison office of such request and a copy thereof shall be served on the other party. Should the requesting party fail to file such notice, the other party may so notify the commission.

(2) CONTENTS. The notice shall be on a form provided by the commission, or on a facsimile thereof, and shall contain the following:

(a) The date on which the party filing the notice notified the other party as to the intent to either reopen negotiations under a binding collective bargaining agreement or to commence negotiations, where no such agreement exists.

(b) The name of the municipal employer, as well as the name, title, address and phone number of its principal representative.

(c) The name of the labor organization, or other representative involved, as well as the name, title, address and phone number of its principal representative.

(d) A general description of the collective bargaining unit involved and the approximate number of employes included therein.

(e) The effective date and termination date of the existing collective bargaining agreement, if any, as well as the date reflected in the agreement on which notice to open negotiations must be served on the other party.

(f) A statement indicating whether the parties have agreed to a voluntary impasse resolution procedure.

(g) The identity of the party filing the notice, as well as the signature and title of the individual signing same, and the date upon which the notice was executed.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.04 Voluntary impasse resolution procedure. (1) WHO MUST FILE. Whenever a municipal employer and a labor organization, or other representative involved, 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 at its Madison office.

(2) TIME FOR FILING. If such an agreement is executed prior to the notice of commencement of negotiations required to be filed in s. ERC 31.03, such an agreement must be filed at the time the notice of commencement of negotiations is filed with the commission. If such an agreement is executed during negotiations, with or without mediation, it must be filed immediately after execution.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; correction in (2) (c) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.

ERC 31.05 Petition to initiate mediation-arbitration. (1) WHO MAY FILE. A petition to initiate mediation-arbitration may be filed by a municipal employer or by a collective bargaining representative of municipal employes other than fire fighting or law enforcement personnel, or by anyone authorized to act on their behalf.

(2) FORM, NUMBER OF COPIES, AND FILING. The petition shall be prepared on a form provided by the commission, or a facsimile thereof. The original and 2 copies shall be filed with the commission at its Madison office, and a copy shall, at the same time, be served on the other party involved by registered or certified mail.

(3) CONTENTS. (a) The name and address of the municipal employer involved and the name and telephone number of its principal representative.

(b) The name and address of the collective bargaining representative involved and the name and telephone number of its principal representative.

(c) A general description of the collective bargaining unit involved and the approximate number of employes included therein.

(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) Relevant facts pertaining to the following:

1. The date on which notice was served to open negotiations and the identity of the party serving same.

2. The date or dates on which proposals were exchanged in open meeting.

3. The number of negotiation meetings prior to mediation, if any, by the commission.

4. The dates on which mediation, if any, was conducted and the identity of the commission mediator.

5. The termination date of the existing collective bargaining agreement, if any.

(f) The identity of the party filing the petition, as well as the signature and title of the individual signing same, and the date upon which the petition was executed.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.06 Stipulation to initiate mediation-arbitration. (1) WHO MAY FILE. A stipulation to initiate mediation-arbitration may be filed by a municipal employer and by a collective bargaining representative of municipal employes other than fire fighting or law enforcement personnel, or by anyone authorized to act on their behalf.

(2) FORM, NUMBER OF COPIES AND FILING. The stipulation shall be prepared on a form provided by the commission, or a facsimile thereof. The original and 2 copies shall be filed with the commission at its Madison office.

(3) CONTENTS. The contents of the stipulation shall contain the same information which is required to be set forth in a petition to initiate mediation-arbitration, except that the stipulation shall be signed by representatives of both parties.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.07 Withdrawal of petition or stipulation. Any petition may be withdrawn by the petitioner, and a stipulation may be withdrawn by the parties executing same, with the consent of the commission under such conditions as the commission may impose to effectuate the policies of s. 111.70 (4) (cm), Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.08 Pre-investigation procedure. After a petition or stipulation has been filed, the commission shall appoint an investigator from its staff, who shall 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 as the case may be. If during any mediation by a commission mediator, the parties have exchanged and submitted their total final offers, as well as a stipulation on matters agreed upon, to the mediator, the parties may, after the filing of a petition or stipulation requesting the initiation of mediation-arbitration, execute in writing, a waiver of informal investigation or formal hearing on said petition or stipulation and file same with the commission at its Madison office.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.09 Informal investigation or formal hearing. (1) PURPOSE. It shall be the duty of the commission or its agent conducting the informal investigation or formal hearing, to adduce facts pertinent to a determination as to whether the parties are deadlocked in their negotiations, and if so, to obtain the single final offers of the parties containing their final proposals on issues in dispute, and to further obtain a stipulation executed 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 its agent may engage in an effort to mediate the dispute.

(2) INFORMAL INVESTIGATION PROCEDURE. The commission or its agent shall set a date, time and place for the conduct of informal investigation and shall notify the parties thereof in writing. The informal investigation may be adjourned or continued as the commission or its agent deems necessary. During said investigation the commission or its agent may meet jointly or separately with 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, as well as a stipulation in writing on all matters agreed upon to be included in the new or amended collective bargaining agreement. At the same time the parties shall exchange copies of their final offers, and shall retain

copies of such stipulation, and if at said time, or during any additional time permitted by the investigator, no objection is raised that either final offer contains a proposal or proposals relating to nonmandatory subjects of bargaining, the commission agent shall serve a notice in writing upon the parties indicating the investigation is closed. The commission or its agent shall not close the investigation until the commission or its agent 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 commission agent 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. The commission or its agent shall set a date, time and place for the conduct of the formal hearing and so notify the parties thereof by formal notice. The commission or its agent may adjourn or continue the hearing. Hearing practice and procedure shall be as set forth in ch. ERC 10. Prior to the close of the hearing the commission or its agent shall obtain and exchange the final offers and stipulation in the same manner set forth in sub. (2).

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; correction in (3) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.

ERC 31.10 Final offers. 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 by the other party to the inclusion of such proposals in such final offer, and lacking such timely objection, such proposals shall be treated as mandatory subjects of bargaining.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.11 Procedure for raising objection that proposals relate to non-mandatory subjects of bargaining. (1) TIME FOR RAISING OBJECTION. Any objection that a proposal relates to 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, during negotiations or during commission mediation or investigation raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, either party may commence a declaratory ruling before the commission pursuant to s. 111.70 (4) (b), Stats., and ch. ERC 18, seeking a determination as to whether the proposal or proposals involved relate to a non-mandatory subject or subjects of bargaining.

(b) *At time of call for final offers.* Should either party, at such time as the commission or its agent calls for and obtains and exchanges the proposed final offers of the parties, or within a reasonable time thereafter as determined by the commission or its investigator, raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, such offers shall not be deemed to be final offers and the commission or its agent shall not close the investigation or hearing but shall direct the objecting party to reduce the objection to writing, identifying the proposal or proposals claimed to involve a non-mandatory subject of bargaining and the basis for such claim. Such objection shall be signed and dated by a duly authorized representative of the objecting party, and copies thereof shall, on the same date, be served on the other party, as well as the commission or its agent conducting the investigation or hearing, in the manner and within such reasonable time as determined by the commission or its investigator.

(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 shall not constitute a waiver of the right to file an objection as set forth in sub. (1) (b).

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; correction in (1) (a) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.

ERC 31.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal or proposals relate to mandatory subjects of bargaining. (1) WHO MAY FILE. Either party may file a petition, or both of the parties may file a stipulation, to initiate such a declaratory ruling proceeding before the commission.

(2) WHERE TO FILE. Such a petition or stipulation shall be filed with the commission at its Madison office, and if a petition is filed a copy thereof shall be served on the other party at the same time.

(3) WHEN TO FILE. Such a petition or stipulation may be filed with the commission during negotiations, mediation or investigation. If such a petition or stipulation is filed after the investigator calls for final offers, such a petition or stipulation for declaratory ruling must be filed within 10 days following the service on the commission or its investigator of the written objection that a proposal or proposals relate to non-mandatory subjects of bargaining. Failure to file such a petition or stipulation within this time period shall constitute a waiver of the objection and the proposal or proposals involved therein shall be treated as mandatory subjects of bargaining.

(4) 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. 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. Should the commission's decision be appealed the parties may agree to the conditional inclusion of such proposals in their final offers.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.13 Certification of results of investigation or hearing, or certification based on stipulation. (1) WHEN ISSUED. After consideration of either the report of the commission or its agent following the conduct of the investigation or formal hearing, or after the consideration of the stipulation by the commission, the commission shall issue a certification wherein it shall determine whether there has been substantial compliance with s. 111.70 (4) (cm), Stats., and whether the parties are deadlocked, and thus

whether mediation-arbitration should be initiated. If the commission determines that there has not been substantial compliance with the requirements of s. 111.70 (4) (cm), Stats., it may order such compliance if it would tend to result in a settlement.

(2) CONTENTS. Said certification shall contain findings of fact and conclusions material in the matter, as well as an order either initiating mediation-arbitration or dismissing the petition or stipulation, consistent with the purposes and policies set forth in s. 111.70 (4) (cm), Stats.

(3) SUBMISSION OF PANEL. Should the certification require that mediation-arbitration be initiated and the parties have not previously agreed to their own procedures for resolving the deadlock, the parties shall be directed to select a mediator-arbitrator within 10 days following the issuance of the certification from a panel of 5 mediator-arbitrators designated by the commission. In the absence of an agreement to another method of selection, the parties shall select the mediator-arbitrator by alternately striking names from said panel until a single name remains, who shall be the mediator-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 panel shall be served on the parties by certified or registered mail.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.14 Order appointing mediator-arbitrator. (1) NOTIFICATION OF SELECTION. The parties, or either of them, shall notify the commission in writing as to the identity of the mediator-arbitrator selected by them immediately upon such selection. As hereinafter used, the term "mediator-arbitrator" refers to a single mediator-arbitrator, a neutral mediation-arbitration panel, or the impartial chairperson of a tripartite mediation-arbitration panel.

(2) ORDER. Upon receipt of the notification of the identity of the mediator-arbitrator selected, the commission shall serve the parties with copies of its order of the appointment of said mediator-arbitrator. The commission shall at the same time submit a copy of the order to the selected mediator-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 mediator-arbitrator and the procedure for obtaining copies of final offers and requesting a public hearing.

(3) PUBLIC NOTICE. Immediately upon receipt of the notice, the municipal employer involved shall cause a copy of copies thereof to be posted where notices to the public are usually posted. In addition, the municipal employer shall inform the public of the content of said 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 mediator-arbitrator shall be considered public documents and copies thereof may be obtained from the commission, by any person upon written request, following the issuance of the order making such appointment, at the cost of reproducing same and postage.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.15 Initial mediation-arbitration session. (1) TIME AND PLACE. The mediator-arbitrator shall, within 10 days of his or her formal appointment, establish the date, time and place for the conduct of the initial mediation-arbitration session. Such date shall not fall within the 10-day period.

(2) 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 mediator-arbitrator, file a request in writing with the commission that the initial mediation-arbitration session be held in public hearing. Such a request shall be deemed a petition within the meaning of s. 111.70 (4) (cm) 6b, Stats. The signers thereof shall set forth their addresses and a statement that they are citizens of the jurisdiction served by the municipal employer involved. Any signor of such request shall serve copies thereof on the parties involved, as well as on the appointed mediator-arbitrator.

(3) NOTICE OF PUBLIC HEARING. Upon receipt of a citizen petition, and at such time as the time for the initial mediation-arbitration session has been set by the mediator-arbitrator, the municipal employer involved shall notify the public, in the manner set forth in s. ERC 31.14 (3), that the initial mediation-arbitration session will be in the nature of a public hearing. Said notice shall identify the parties involved and shall set forth the date, time and place of said hearing. Copies of such notice shall be served by the municipal employer on the collective bargaining representative involved, on the mediator-arbitrator, and the commission.

(4) PURPOSE OF PUBLIC HEARING. Said public hearing shall be for the purpose of providing the opportunity of 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.

(5) PROCEDURE IN PUBLIC HEARING. The mediator-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 mediator-arbitrator may require that 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.

(6) TRANSCRIPTS. Either party or any person participating in the public hearing may make their own arrangements to have a transcript of the hearing prepared at their own expense. Mediation-arbitration proceedings shall not be delayed for the purpose of awaiting the preparation of a transcript. If the meeting is recorded or transcribed, the mediator-arbitrator shall be furnished a copy upon request.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; correction in (3) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.

ERC 31.16 Mediation during mediation-arbitration. (1) WHEN INITIATED. After the close of the public hearing, if any, held pursuant to s. 111.70 (4) (cm) 6b, Stats., and s. ERC 31.16, the mediator-arbitrator shall endeavor to mediate the dispute on the basis of the final offers of the parties as transmitted to the mediator-arbitrator by the commission. In the absence of such a public hearing the

mediator-arbitrator shall endeavor such mediation at the initial session with the parties.

(2) WHEN AND WHERE CONDUCTED. Mediation meetings shall be conducted at such time and place agreed to by the mediator-arbitrator and the parties.

(3) NATURE. The mediator-arbitrator may hold separate or joint meetings with the parties and such meetings shall be of an executive, private and non-public nature, except if otherwise mutually agreed to by the parties. Such meetings shall be governed by the provisions of ch. ERC 13.

(4) FURTHER MEDIATION BY COMMISSION MEDIATOR. During the mediation by the mediator-arbitrator, and if so requested by the mediator-arbitrator, the mediator of the commission's staff, if available, shall endeavor to mediate the dispute. Should the mediator not be available, the commission shall designate another staff member to participate in such mediation.

(5) AMENDMENT TO FINAL OFFERS. During such period of mediation either party, with the consent of the other may modify its final offer. Any such modification shall be in writing, supported by a written statement signed by the representative of the other party to the effect that the modification was made with the consent of the other party.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; correction in (1) and (3) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.

ERC 31.17 Arbitration by mediator-arbitrator. (1) NOTICE OF INTENT TO ARBITRATE. If the parties have failed to resolve their deadlock after a reasonable period of mediation as determined by the mediator-arbitrator, as a result of the mediator-arbitrator's efforts, or that of the commission mediator, the mediator-arbitrator shall notify the parties in writing of his or her intent to resolve the deadlock by final and binding arbitration. Said notification shall set a date, not to exceed 10 days from date of said notice, by which either or both of the parties may withdraw their final offers and mutually agreed upon modifications thereof. If both parties withdraw their final offers and mutually agreed upon modifications, and the labor organization gives 10 days written notice to the municipal employer and the commission of its intent to strike, the mediator-arbitrator or commission agent shall endeavor to mediate the dispute.

(2) NOTICE OF ARBITRATION MEETING. Unless both parties withdraw their final offers and mutually agreed upon modifications thereof, the mediator-arbitrator, acting as arbitrator, shall, on his or her own motion or at the request of either party, proceed to schedule a final and binding arbitration meeting in the matter and shall issue and serve upon the parties a notice of meeting at a place within the jurisdiction of the municipal employer involved, and on a date and time fixed therein. Said meeting shall be open to the public.

(3) AMENDMENT OR WITHDRAWAL. Any such notice of meeting may be amended or withdrawn at any time before the close of the arbitration meeting.

(4) SCOPE OF MEETING. The arbitration meeting shall concern pertinent matters necessary for the mediator-arbitrator to issue a compulsory and final and binding arbitration award by selecting the final offer and mutually agreed upon modifications thereof, of either party. In making such selection the mediator-arbitrator shall give weight to the factors set forth in s. 111.70 (4) (cm) 7, Stats., and the parties shall be prepared to present evidence and argument relative to the factors involved.

(5) MEETING PROCEDURE BEFORE THE MEDIATOR-ARBITRATOR ACTING AS ARBITRATOR. Meetings before the mediator-arbitrator acting as arbitrator shall be within the control of the mediator-arbitrator and shall be as expeditious as the nature of the dispute will allow. In conducting same, the mediator-arbitrator shall have the power to:

(a) Administer oaths and affirmations;

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

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

(d) Regulate the course of the meeting; and

(e) Dispose of procedural requests and similar matters.

(6) WAIVER OF TRANSCRIPT AND BRIEFS. With the consent of the mediator-arbitrator, acting as arbitrator, the parties may agree to waive preparation of a transcript of the arbitration meeting and the filing of briefs.

(7) ISSUANCE OF AWARD. The mediator-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 panel of mediator-arbitrators each member thereof must execute same, either affirming or dissenting from said award. Upon the execution and signing of the award, copies thereof, as well as a statement reflecting fees and expenses, if any, shall be submitted to the parties and to the commission.

(8) COSTS. The fees and expenses of the mediator-arbitrator including, but not limited to, the conduct of the public hearing, mediation meetings and arbitration meetings, the rental of hearing rooms, and the preparation of the award, shall be borne by the parties on an equal basis. The parties may obtain information with regard to the per diem and other charges of mediator-arbitrators upon request from the commission. Costs involved with respect to subpoenas and witness fees shall be born by the party at whose request subpoenas are issued and at whose request witnesses appear. Costs with respect to fees of and expenses incurred by the reporter, it any, shall also be borne equally by the parties where the mediator-arbitrator desires a transcript, or where both parties have agreed that the meeting be transcribed. In the absence of such an agreement and where only one party desires a transcript, the party so requesting is solely responsible for the fees and expenses incurred by the reporter, and such party shall provide a copy of the transcript to the mediator-arbitrator. The fees and expenses of mediator-arbitrators or arbitrators selected by the parties to serve on a tripartite panel shall be paid by the party making such selection.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.18 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. Such proceeding shall be

deemed to be a class 2 proceeding within the meaning of s. 227.44 (2) (b), Stats., and shall be 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 said 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 mediator-arbitrator(s) or corruption on the part of any of the mediator-arbitrator(s);

(c) Where the mediator-arbitrator was guilty of misconduct in refusing to conduct an arbitration meeting upon request or refusing to postpone the meeting 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 mediator-arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final and definite interest arbitration award was not made.

(2) CIVIL LIABILITY. 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 nonoffending party to enforce the award or decision.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; corrections in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.

ERC 31.19 Modification of award. If, in a proceeding for enforcement, it appears that an interest arbitration award is lawfully made, but that the award requires modification or correcting, the commission shall issue an order modifying or correcting same. 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 said 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 said award;

(3) Where the mediator-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.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

ERC 31.20 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 pursuant to the order of said court, the parties shall submit, in writing, new final offers on all disputed issues, to the commission within the time limit set therefor by the court.

(2) MEDIATION. Within the time limit set by the court for the submission of new final offers, the parties may mutually, in writing, request that the commission proffer its mediation services to the parties in an attempt to resolve their deadlock. Upon receipt of such request the commission or its agent shall arrange a mutually satisfactory date and place for such mediation.

(3) ARBITRATION. If, after such mediation, within the time limits set by the court, the parties remain in deadlock, the commission shall transmit the new final offers to the mediator-arbitrator, or to a successor designated by the commission. The mediator-arbitrator or a successor shall immediately commence to arbitrate the dispute. The arbitration proceeding shall be in accordance with ss. ERC 31.17 (2) to (8) and 31.18.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; correction in (3) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.