Chapter ERB 10

GENERAL PROVISIONS

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ERB 10.01 Purpose and construction. These rules govern the conduct of all proceedings involving municipal employment relations before the Wisconsin employment relations commission and before fact finders, appointed pursuant to commission action, in municipal employment disputes. These rules shall be liberally construed to effectuate the purposes and provisions of subch. IV, ch. 111, Stats. The commission, or fact finder, as the case may be, may waive any requirements of these rules unless a party shows prejudice thereby.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.02 Policy. Nothing in these rules shall be construed to prevent the commission or fact finder, as the case may be, from using its or his best efforts to adjust any dispute arising between employes and employers.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.03 Chapters. Each of the chapters sets forth special rules applicable to the type of proceeding described in the caption of the chapter. Chapter ERB 10 sets forth 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.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62.

ERB 10.04 Resolution of conflicts. In any conflict between a general rule in ch. ERB 10 and a special rule in another chapter applicable to a particular type of proceeding, the special rule shall govern.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62.

ERB 10.05 Definitions. Words or phrases used herein which are defined in s. 111.70 (1), Stats., have the meaning therein set forth.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62.

ERB 10.06 Initiation of proceedings, method, forms, where to file. A proceeding may be initiated by filing an appropriate document as specified

in these rules. Blank forms for initiating proceedings under s. 111.70, Stats., may be obtained at any office of the commission upon request. The initiating document shall be filed with the commission at its Madison office.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.07 Transfer, consolidation and severance of proceedings. Whenever the commission deems it necessary, in order to effectuate the purposes of s. 111.70, Stats., or to avoid unnecessary costs or delay, it may remove or transfer any proceeding before a single commission member or examiner. Proceedings under several subsections of s. 111.70, Stats., may be combined or severed.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.08 Time for filing papers other than letters. (1) COMPUTATION OF TIME. In computing any period of time prescribed by or allowed by these rules 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, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has a right or is required to do some act within an initially prescribed period after service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period, provided, however, that such additional time shall not be added if the initial period has been extended, and further provided that a specific date has not been designated upon which the right is to be exercised or the act is to be performed.

(3) EXTENSION OF TIME. The commission, or individual having authority to dispose of the matter, may, by agreement of the affected parties for good cause shown, extend any time limit prescribed or allowed in these rules. Any such motion to extend any time limit shall, except for good cause shown, be received at least 3 days before the expiration of such time limit.

(4) COMPLETION OF FILING. Papers required by s. 111.70, Stats., this chapter, chs. ERB 11, 12, 13, 14, 15, 16, 17, 18, 30 and 31, or order of the commission, to be filed with the commission, its agent, a fact finder, an arbitrator or with a mediator-arbitrator, shall be deemed filed upon actual receipt at the place specified for such receipt before the close of business. Papers received after the last day of the time allowed for such filing will not be accepted as timely filed unless good cause be shown warranting waiver, in which case the commission, its agent, a fact finder, an arbitrator or the mediator-arbitrator, as the case may be, may upon receipt, deem the document filed at the time it was deposited in the United States mail or with a telegraph office, except that if a filing fee established by s. 111.71(2), Stats., is required to initiate a proceeding before the commis-

sion, the papers shall be deemed to be filed on the date on which the filing fee is received in the offices of the commission.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), (3) and (4), Register, March, 1971, No. 183, eff. 4-1-71; am. (4), Register, June, 1982, No. 318, eff. 7-1-82.

ERB 10.09 Form of documents other than correspondence. (1) TITLE. Documents shall clearly show the title of the proceeding and the docket number.

(2) WHERE TO FILE. All documents and papers filed prior to hearing shall be filed with the commission at its Madison office. During the course of the hearing, all matters shall be filed with the commission agent conducting the hearing. After the close of the hearing, all matters shall be filed with the commission at its Madison office.

(3) NUMBER OF COPIES; FORM. Except as otherwise provided in these rules, any document or paper filed with the commission, prior to or after hearing shall be submitted with 3 copies in addition to the original. All matter filed with the commission shall be printed, typed or otherwise legibly duplicated.

(4) SIGNATURE. The original of each document filed shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party himself, or by an officer of the party if it is a corporation or an unincorporated association.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (2) and (3), Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.10 Service of pleadings and other process, proof of service. (1) METHOD OF SERVICE. Notices of hearings, decisions, orders, and other process or papers issued by the commission, commission agents, or fact finders, or required to be served thereby, may be served on parties or persons residing or located in the state by registered or certified mail and proof of service established by return post office receipt. In case a party or person is located outside the state, service shall be as provided in s. 111.07 (2) (a), Stats. Service of papers or process by parties or persons and proof thereof may be made in the same manner as provided above.

(2) COMPLETION OF SERVICE. Service of any paper or process shall be regarded as completed when (a) delivered in person, (b) left at the principal office or place of business of the person served, (c) addressed to the last known address of the person served and deposited in the United States mail, (d) addressed to the last known address of the person served and deposited with a telegraph company, or (e) with regard to persons or parties located outside the state in the manner and at the time as provided in s. 111.07 (2) (a), Stats.

(3) UPON WHOM SERVED. All papers, except complaints, petitions for election and papers relating to subpoenas, shall be served upon all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law, and upon the commission, if not filed with it, or upon the fact finder, where appropriate, if not filed with either of them. Service upon such counsel or representative shall constitute service upon the party, but a copy shall also be transmitted to the party.

(4) STATEMENT OF SERVICE. The party or person serving the papers or process shall immediately submit to the commission or the individual

conducting the proceeding a written statement of such service, setting forth the names of the parties or persons served and the date and manner of service. Proof of service shall not be required unless a timely question is raised with respect to proper service. Failure to file a statement of service shall not affect the validity of the service.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), (3) and (4), Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.11 Motions and statements in opposition. (1) PRESENTATION. All motions shall be made in writing, except that motions made at a hearing may be stated orally on the record, and shall briefly state the order, ruling, or action sought and shall set forth with particularity the grounds therefor. Alternate relief may be requested. Any party may by motion request that the commission or individual conducting the proceeding take any action which they are authorized to take by these rules. Any statement opposing a motion shall be promptly filed and shall conform to the same requirements.

(2) DISPOSITION. The commission shall rule upon motions filed with it before or after hearing, except that in fact finding in municipal employment, motions filed after the appointment of the fact finder, before or after hearing, shall be filed with the fact finder. Motions made during a hearing shall be ruled on by the individual conducting the hearing, except motions referred to the commission, either during the hearing or at such time as the entire record is considered. All ruling on motions shall be in writing, or if announced at the hearing, may be stated orally on the record.

(3) RULINGS AND ORDERS PART OF THE RECORD. All motions, and any rulings or order thereon shall become part of the record.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (2), Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.12 Particular motions. (1) TO RESCHEDULE HEARING. Motion to reschedule hearing shall set forth (a) the grounds for same, (b) alternate dates for rescheduling, (c) the positions of all other parties. Except for good cause shown any motion for rescheduling must be received at least 2 days before the date set for hearing.

(2) TO INTERVENE. Any person desiring to intervene in any proceeding, shall, if prior to hearing, file a motion with the commission. Such motions shall state the grounds upon which such person claims an interest. Intervention at the hearing shall be made by oral motion stated on the record. Intervention may be permitted and upon such terms as the commission or the individual conducting the proceeding may deem appropriate.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (2), Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.13 Hearing, transcripts. (1) PUBLIC HEARING. All hearings shall be public.

(2) RESCHEDULING OF HEARING. Upon its own motion or proper cause shown by any of the parties, the commission, may prior to the opening of the hearing reschedule the date of such hearing.

(3) RIGHTS OF PARTIES AT HEARING. Any party shall have the right to appear by counsel or by any other qualified representative to present his

case by oral, documentary, or other evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. Any party shall be entitled, upon request, to a reasonable period for oral argument at an appropriate time during the hearing.

(4) EFFECT OF FAILURE TO APPEAR. Any party failing to appear and participate after due notice shall be deemed to have waived the rights set forth in sub. (2) above, to admit the accuracy of the uncontradicted evidence adduced by the parties present, and shall, unless good cause be shown, be precluded thereafter from introducing any evidence controverting any contentions or allegations. The commission or individual determining the matter may rely on the record as made.

(5) TRANSCRIPTS, OTHER THAN IN FACT FINDING IN MUNICIPAL EMPLOYMENT. Hearings shall be stenographically transcribed by the official reporter of the commission. Such transcripts shall be the sole official transcript. In prohibited practice cases the commission shall furnish one copy of the transcript to each of the parties. In election cases the commission may furnish one copy of the transcript to each of the parties. Copies of transcripts which are furnished to the parties will be furnished at no cost to them.

(6) CORRECTIONS OF TRANSCRIPT. Corrections of the official transcript may be made only when they involve errors affecting substance and shall be made only in the manner herein provided. Proposed corrections shall be submitted by stipulation or motion. Corrections pursuant to a motion, shall not be ordered except upon notice and opportunity for submission of statements in opposition. When corrections are so ordered the necessary physical corrections shall be made in the official transcript.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (2), (4) and (5), Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.14 Hearing subpoenas. Any member of the commission or any individual authorized to take testimony, shall on behalf of the commission, on written application of any party, issue subpoenas, requiring attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents in their possession or under their control. Application for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party, at whose request it was issued, and the proceeding involved.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.15 Depositions. Upon application and good cause shown, the commission or any individual authorized to take testimony, may order that the testimony of any person, including a party, be taken by deposition in the manner prescribed by and subject to the provisions of ch. 326, [887] Stats.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.16 Evidence. (1) EXAMINATION OF WITNESSES. Witnesses at the hearing shall be examined orally under oath or affirmation.

(2) RULES OF EVIDENCE. Hearings, so far as is practical, shall be conducted in accordance with the rules of evidence and official notice as provided in s. 227.10, [227.08] Stats.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.17 Duties of individuals conducting hearings. It shall be the duty of the individual conducting the hearing to inquire fully into all matters in issue, to obtain a full and complete record upon which the duties of the commission or the fact finder under s. 111.70, Stats., may be properly discharged.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.18 Powers of individuals conducting hearings. Individuals conducting hearing shall have the authority to take the following action, subject to these rules within the commission's power:

(1) To administer oaths and affirmations;

(2) To issue subpoenas in the name of the commission, except in fact finding cases, the commission shall issue the subpoenas;

(3) To rule upon offers of proof, receive relevant evidence, and exclude irrelevant, immaterial, or unduly repetitious evidence;

(4) To question witnesses;

(5) To take or cause depositions to be taken and to determine their scope;

(6) To regulate the time, place and course of the hearing;

(7) To dispose of procedural requests or other similar matters;

(8) During the course of the hearing to hold conferences for the settlement, simplification or adjustment of the issues by consent of the parties; and,

(9) To take any other action necessary under the foregoing or authorized under these rules.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. intro. par. and (2), Register, March, 1971, No. 183, eff. 4-1-71.

ERB 10.19 Close of hearing. A hearing shall be deemed closed when the evidence is closed and when any period fixed for filing of briefs, presentation of oral argument, if any, or both has expired. The hearing may be reopened on good cause shown.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62.

ERB 10.20 Waiver of procedures. The parties to any proceeding may agree to waive any one or more of the procedural steps or decisions which would otherwise precede the issuance of a final order or other final disposition issued by the commission or any authorized individual.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.