

Chapter ERB 15

REFERENDA WITH RESPECT TO FAIR-SHARE
 AGREEMENTS

(s. 111.70 (1) (h) and (2), Stats.)

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ERB 15.01 Scope. This chapter governs the general procedure relating to referenda with respect to fair-share agreements, pursuant to s. 111.70 (1) (h) and (2), Stats.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.02 Stipulation for referendum seeking authorization to implement fair-share agreement. (1) WHO MAY FILE. When a municipal employer and the labor organization representing employees of said municipal employer in an appropriate collective bargaining unit, in their negotiations with respect to the inclusion of a fair-share agreement in their collective bargaining agreement, jointly desire to determine whether the employees in said collective bargaining unit favor the implementation of a fair-share agreement, said municipal employer and said labor organization, or anyone lawfully authorized to act on their behalf, may file a stipulation for a referendum for said purpose.

(2) TIME FOR FILING. A stipulation for an initial referendum seeking authorization to implement a fair-share agreement shall be entertained by the commission, provided said stipulation is filed any time prior to the proposed implementation of the fair-share agreement involved.

(3) FORM, NUMBER OF COPIES. The stipulation shall be prepared on a form furnished by the commission and the original and 5 copies thereof shall be signed by the parties and filed with the commission.

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

(a) The names and addresses of the parties on whose behalf the referendum is stipulated.

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

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

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

(e) A statement by the municipal employer that it agrees, should the required number of employes vote in favor of implementing the fair-share agreement, that it will incorporate the fair-share agreement in the collective bargaining agreement covering the employes in the bargaining unit involved, and a statement by the labor organization that it agrees, should the required number of employes not vote in favor of the implementation of the fair-share agreement, to withdraw its request in negotiations that a fair-share agreement be included in the collective bargaining agreement covering the employes in the bargaining unit involved.

(f) A complete list of employes 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) 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 conducted after the filing of a petition for a referendum.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 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 labor organization and the municipal employer who are parties to the fair-share agreement, or anyone lawfully authorized to act on their behalf, either to initiate a referendum proceeding or subsequent to the filing of a petition and prior to a direction of referendum based on a hearing on such petition.

(2) **TIME FOR FILING.** A stipulation for an initial referendum to determine the continuation of a fair-share agreement shall be entertained by the commission, provided said stipulation is filed at any time following the implementation of the fair-share agreement involved.

(3) **FORM, NUMBER OF COPIES.** The stipulation shall be prepared on a form furnished by the commission, and the original and 5 copies thereof shall be signed by the parties and filed with the commission.

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

(a) The names and addresses of the parties on whose behalf the referendum is stipulated.

(b) An agreement that a hearing will 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 employes in said 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 covering the unit involved.

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

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(g) A complete list of employes 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) 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 conducted after the filing of a petition for a referendum.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.04 Petition for referendum. (1) WHO MAY FILE. A petition to determine the continuation of a fair-share agreement may be filed by a 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 shall be entertained by the commission, provided said petition is filed at any time following the implementation of the fair-share agreement involved.

(3) **FORM, NUMBER OF COPIES.** The petition shall be prepared on a form furnished by the commission, the original being signed and sworn to before any person authorized to administer oaths or acknowledgments. The original and 5 copies shall be filed with the commission.

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

(a) The name and address of the municipal employer who is a party to the fair-share agreement involved, and the name and telephone number of its principal representative.

(b) The name and address of the labor organization who is a party to the fair-share agreement involved, and the name and telephone number of its principal representative.

(c) A description of the collective bargaining unit involved, and the approximate number of employes in said 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 result thereof.

(g) A statement to the effect that at least thirty percent of the employes 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, whether it be the municipal employer or the labor organization who are the parties to the fair-share agreement involved, or whether it be a labor organization not a party to said fair-share agreement, and the name and telephone number of the petitioner's principal representative.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

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ERB 15.05 Showing of interest in support of petition. (1) FORM. The original of the petition must be accompanied by a showing of interest in writing, containing the signatures of at least 30% of the employes in the collective bargaining unit involved, and the dates on which such signatures were executed, and further containing a statement to the effect that the employes affixing their signatures oppose the continuance of the fair-share agreement involved.

(2) FURNISHING OF EMPLOYEE LIST BY EMPLOYER. If it appears to the commission that the showing of interest is sufficient, on its face, to warrant the processing of the petition, the municipal employer involved shall, within such period of time as established by the commission, furnish in writing to the commission a list containing the names of the employes in alphabetical order, employed in the collective bargaining unit involved. Such period of time for furnishing a list of employes may be extended by the commission for good cause shown.

(3) DETERMINATION OF SHOWING OF INTEREST. The commission shall administratively determine the sufficiency of the showing of interest upon the receipt from the employer of the names of the employes in the bargaining unit. Such determination shall not be subject to review, and, in said regard, parties other than the petitioner shall not be entitled to a copy, or any examination of, the showing of interest. If a labor organization files a petition, the failure of the employer to furnish the commission with names of the employes involved, within the time limits set by the commission, shall result in a determination by the commission that the showing of interest is sufficient to warrant the further processing of the petition. If the petition is filed by the employer and the employer fails to furnish the commission the names of the employes involved, within the time set by the commission, the petition shall be deemed insufficient and shall be dismissed.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.06 Withdrawal of petition. Any petition may be withdrawn with the consent of the commission under such conditions as the commission may impose to effectuate the policies of s. 111.70, Stats.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.07 Notice of hearing. (1) WHEN ISSUED; CONTENTS. Following the filing of a petition, if it appears to the commission that further proceedings are warranted, the commission shall issue and serve upon each of the parties and upon any known labor organizations directly affected, a notice of hearing, at a place fixed therein and, except by agreement of the parties or in unusual circumstances, at a time not less than 7 days after the service of such notice. A copy of the petition shall be served with such notice of hearing upon the parties other than the petitioner.

(2) WITHDRAWAL OR AMENDMENT. Any such notice of hearing may be withdrawn or amended before the close of the hearing by the commission.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.08 Hearing. (1) WHO SHALL CONDUCT. Hearings may be conducted by the commission, or any member or members thereof, or any member of its staff or other individual designated by the commission. At Register, October, 1986, No. 370

any time, a hearing officer may be substituted for the hearing officer previously presiding.

(2) **SCOPE OF HEARING.** The hearing shall be limited to pertinent matters necessary to determine questions relating to the referendum case. Matters relating to the determination of bargaining representatives or appropriate bargaining units or allegations of prohibited practices may not be litigated therein.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.09 Commission action. (1) FOLLOWING HEARING. In a referendum proceeding initiated by a petition, after the close of the hearing the commission may proceed either forthwith upon the record, or after oral argument or the submission of briefs, or further hearing, as it may deem proper, to determine issues with regard to the referendum proceeding and to direct a referendum, dismiss the petition, or make disposition of the matter.

(2) **FOLLOWING STIPULATION.** In a referendum proceeding initiated by a stipulation, the commission may proceed forthwith and direct a referendum.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.10 Referenda. (1) WHO SHALL CONDUCT AND EXTENSION OF THE TIME. All referenda shall be conducted under the supervision of the commission, which may extend the time within which any such referendum shall be held. All referenda shall be by secret ballot.

(2) **OBSERVERS.** Any party may be represented by observers, selected in accordance with such limitations as the commission may prescribe.

(3) **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 ballots of such challenged persons shall be impounded.

(4) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the referendum, the ballots shall be counted in the presence of, and with the assistance of, the parties or their observers, and the commission agent conducting the referendum shall cause to be furnished to the parties a tally of ballots.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.11 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 as provided below, the commission shall forthwith issue to the parties a certification of the results of the referendum.

(2) **EFFECT OF CERTIFICATION. (a)** Where the certification of the result of a referendum indicates that the required number of employes have not authorized the implementation of, or the continuation of, the fair-share agreement, said fair-share agreement shall not be implemented, or shall be immediately terminated, as the case may be.

(b) Where the certification of the result of a referendum indicates that the required number of employes have authorized the implementation of, or the continuation of, the fair-share agreement, said fair-share agree-

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ment shall become effective, or continue to remain in effect, as the case may be.

(c) Except for good cause shown, over and above the required showing of interest, the commission will not process a petition for a subsequent referendum, unless such petition is filed within the 60 day period immediately preceding the date on which either party to the collective bargaining agreement may notify the other party of its desire to reopen or terminate said collective bargaining agreement, provided that the result of the previous referendum has not been certified within 6 months preceding the commencement of said 60 day period.

(d) Should the municipal employer and the collective bargaining representative enter into a fair-share agreement at any time following the certification of the result of a referendum, wherein the required number of employees did not support the implementation of, or the continuation of a previous fair-share agreement, as the case may be, then a petition for a referendum to determine the continuation of such fair-share agreement shall be considered as a petition for an initial referendum.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.12 Objections to referendum. (1) FILING, FORM, COPIES. Within 5 days after the tally of ballots has been furnished, any party may file with the commission objections to the conduct of the referendum or conduct affecting the results of the referendum. Such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and 5 copies of such objections shall be signed and filed with the commission, the original being sworn to.

(2) **SERVICE ON OTHER PARTIES.** The party filing such objections shall at the same time serve a copy upon each of the other parties.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.

ERB 15.13 Hearing on challenges or objections. If challenges, which affect the result of the referendum, or objections raise issues which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing on said issues.

(1) **HEARING PROCEDURE.** The rules relating to conduct of hearings on referendum petitions shall govern hearing on challenges or objections.

(2) **COMMISSION ACTION.** After the close of the hearing the commission may proceed either forthwith upon the record, or after oral argument or the submission of briefs, as it may deem proper, to determine issues with regard to the challenges or objections, as the case may be, either sustaining or overruling the challenges or objections.

(a) If the commission directs that challenged ballots be opened and counted, said ballots shall be opened and counted, and the commission shall issue a revised tally and shall forthwith issue a certification of referendum.

(b) If the commission should sustain the objections, it may direct a new referendum to be held at such time and under such circumstances and conditions it deems appropriate.

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(c) If the commission should overrule the objections it shall forthwith issue a certification of the referendum.

History: Cr. Register, June, 1972, No. 198, eff. 7-1-72.