

## Chapter ERC 21

### ELECTIONS TO DETERMINE BARGAINING REPRESENTATIVES AND APPROPRIATE COLLECTIVE BARGAINING UNITS

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**Note:** Chapter ERB 21 was renumbered chapter ERC 21 under s. 13.93 (2m) (b) 1, Stats., Register, December, 1994, No. 468.

**Note:** See s. 111.83, Stats.

**ERC 21.01 Scope.** This chapter governs the general procedure relating to elections to determine a collective bargaining representative for all employees in a unit appropriate for that purpose, and for a determination of said unit whenever such question arises, pursuant to subch. V, ch. 111, Stats.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67.

**ERC 21.02 Petition for election. (1) WHO MAY FILE.** A petition to determine a collective bargaining representative, and/or an appropriate collective bargaining unit involving state employees, may be filed by an employe or group of employes or any individual or labor organization acting in their behalf, or by the state employer or anyone acting on its behalf.

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

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

(a) The name, address and affiliation, if any, of the petitioner.

(b) The name and address of the state employer, if the employer is not the petitioner, and also the appointing officer thereof.

(c) A general description of the nature of the employer's state function.

(d) A description of the claimed appropriate collective bargaining unit and the approximate number of employes in said unit.

(e) The names, addresses and affiliations, if any, of any individuals or labor organizations, other than the petitioner, who may claim to represent any of the employes in the claimed appropriate collective bargaining unit.

(f) A brief statement setting forth the nature of the question that has arisen concerning representation.

(g) Any other relevant facts.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67; am. (2), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 21.03 Withdrawal of petition.** Any petition may be withdrawn with the consent of the commission under such conditions as the commission may impose to effectuate the policies of subch. V, ch. 111, Stats.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 21.04 Stipulation for election. (1) WHO MAY FILE.** A stipulation to determine a collective bargaining representative may be filed by an employe or group of employes or any individual or labor organization acting in their behalf and by the state employer, or anyone acting on its behalf, 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.** 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.

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

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

(b) An agreement that a hearing will be waived and that the commission conduct an election to determine the collective bargaining representative pursuant to ch. 111, Stats.

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

(d) A complete list of employes 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.

(f) A statement providing that questions arising in connection with the conduct or results of the election shall be processed in accordance with the procedures following an election directed as a result of a hearing.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67; am. (2) and (3) (b), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 21.05 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

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parties and upon any known individuals or labor organizations claiming to represent any employees 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.

(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, December, 1966, No. 132, eff. 1-1-67; am. (1) and (2), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 21.06 Hearings. (1) WHO SHALL CONDUCT.** Hearings may be conducted by the commission, or any member or members thereof, or any member of the staff, or other individual designated by the commission. At 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 election case. Allegations of prohibited practices, within the meaning of s. 111.84, Stats., may not be litigated therein.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67.

**ERC 21.07 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, or further hearing, as it may deem proper to determine issues with regard to the appropriate collective bargaining unit, with regard as to whether a question of representation exists, and to direct an election, dismiss the petition, or make other disposition of the matter.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 21.08 Elections. (1) WHO SHALL CONDUCT, EXTENSION OF TIME FOR; METHOD.** All elections shall be conducted under the supervision of the commission, which may extend the time within which any such election shall be held. All elections 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 election may challenge for good cause the eligibility of any person to vote in the election. The ballots of such challenged persons shall be impounded.

(4) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the election, 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 election shall cause to be furnished to the parties a tally of ballots.

(5) **INCONCLUSIVE ELECTIONS. (a) When conducted and procedure.** When more than one proposed representative appears on the ballot and the results are inconclusive the commission may conduct a run-off election as prescribed in s. 111.05 (3) (m), Stats.

(b) **Eligibility.** The commission may in its direction of run-off election, in its discretion, maintain the same eligibility date or establish a new eligibility date.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 21.09 Certification of results of election.** If challenged ballots are insufficient in number to affect the results, and if no run-off election is to be held, and no timely objections are filed as provided below, the commission shall forthwith issue to the parties a certification of the results of the election, either a certification of a collective bargaining unit or of representatives, or both, where appropriate.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 21.10 Objections to election. (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 election or conduct affecting the results of the election. 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 serve a copy upon each of the other parties.

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67; am. (1), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 21.11 Hearing on challenges or objections.** If challenges, which affect the results of the election, or objections raise a substantial question 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 hearing on election 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, the commission shall issue a revised tally and shall forthwith issue a certification of election.

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

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

**History:** Cr. Register, December, 1966, No. 132, eff. 1-1-67; am. intro., (2) intro., (2) (a), (b) and (c), Register, March, 1971, No. 183, eff. 4-1-71.