Chapter ERC 33

COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN DISPUTES RELATING TO COLLECTIVE BARGAINING AGREEMENTS ENTERED INTO ON OR AFTER AUGUST 12, 1993 AFFECTING SCHOOL DISTRICT PROFESSIONAL EMPLOYES

Note: Chapter ERB 33 was created as an emergency rule effective October 13, 1993. **Chapter ERB 33 was renumbered chapter ERC 33 under s. 13.93 (2m) (b) 1, Stats., Register, December, 1994, No. 468.**

ERC 33.01 Scope. This chapter governs the procedure relating to collective bargaining and interest arbitration pursuant to s. 111.70 (4) (cm), Stats., for collective bargaining agreements entered into on or after August 12, 1993 affecting school district professional employes, except for agreements entered into pursuant to an arbitration award as to which the investigation was closed before August 12, 1993.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.02 Policy. The 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 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 of disputes by arbitration as limited by s. 111.70 (4) (cm) 5s, Stats.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.03 Content of collective bargaining agreements. A collective bargaining agreement entered into on or after August 12, 1993 which covers any period of time prior to July 1, 1995 shall have an expiration date of June 30, 1995. If compliance with the requirement of a June 30, 1995 expiration date would require that the parties enter into an agreement with a term in excess of 3 years, the agreement shall have an expiration date of June 30, 1993, and any successor agreement shall have an expiration date of June 30, 1995. The successor agreement to a collective bargaining agreement expiring on June 30, 1995 shall have an expiration date of June 30, 1997. A collective bargaining agreement may contain provisions to reopen negotiations as to any period of any agreement whose expiration date is consistent with this subsection. A collective bargaining agreement shall not alter the salary range structure, number of steps or requirements for attaining a step or assignment of a position to a salary range for any professional school district employes who were assigned to salary ranges with steps that determined the level of progression within each salary range. A collective bargaining agreement may create or modify provisions requiring longevity or other payments which do not alter any existing salary range with steps that determine the level of progression within each salary range.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.04 Notice of commencement of negotiations. (1) WHO MUST FILE. Whenever a labor organization representing professional school district employes or a municipal employer requests to reopen negotiations under a binding collective bargaining agreement, or the parties otherwise commence negotiations if no agreement exists, the party requesting negotiations shall immediately notify the commission in writing of the request and a copy shall be served on the other party. If the requesting party fails to file the notice, the other party may notify the commission.

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

(a) The date on which one party notified the other party of its intent to either reopen negotiations under a binding collective bargaining agreement or to commence negotiations, where no 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, as well as the name, title, address and phone number of its principal agent.

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

(e) The effective date and termination date of the existing collective bargaining agreement, if any, and the date 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 the notice, and the date the notice was executed.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.05 Voluntary impasse resolution procedure. (1) WHO MUST FILE. Whenever a municipal employer and a labor organization 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.

(2) TIME FOR FILING. If the agreement is executed prior to the notice of commencement of negotiations required to be filed in s. ERC 33.04, such an agreement shall be filed at the time the notice of commencement of negotiations is filed with the commission. If such an agreement is executed after the filing of the notice of commencement of negotiations, it must be filed immediately after the execution.

(3) SCOPE. The provisions of s. 111.70 (4) (cm) 8m and 8p, Stats., and section 9120 (2xg) of 1993 Wis. Act 16 may not be superseded by any provision of a collective bargaining agreement resulting from a voluntary impasse resolution procedure. If the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under s. 111.70 (4) (cm) 7, Stats.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **correction in (2) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.06 Petition to initiate arbitration. (1) WHO MAY FILE. A petition to initiate arbitration may be filed by a municipal employer, a collective bargaining representative of municipal employes, 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. The original and 2 copies shall be filed with the commission at its office, and a copy shall, at the same time, be served on the other party involved by registered or certified mail.

(3) CONTENTS. The petition shall include:

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

(b) A general description of the collective bargaining unit and the approximate number of employes affected.

(c) 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.

(d) The date that notice was served to open negotiations and the identity of the party serving the notice.

(e) The date or dates that proposals were exchanged in open meeting.

(f) The number of negotiation meetings prior to mediation, if any, by the commission.

(g) The dates that mediation, if any, was conducted and the identity of the commission mediator.

(h) The termination date of the existing collective bargaining agreement, if any.

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

(j) The petitioning party's preliminary final offer containing its latest proposals on all issues in dispute.

(4) RESPONSIVE PRELIMINARY FINAL OFFER. Within 14 calendar days of the date the commission receives the petitioning party's preliminary final offer, the other party shall submit in writing its preliminary final offer on all disputed issues to the petitioning party and the commission.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.07 Stipulation to initiate arbitration. (1) WHO MAY FILE. A stipulation to initiate arbitration may be filed by a municipal employer and a collective bargaining representative of municipal employes 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 on a facsimile. The original and 2 copies shall be filed with the commission.

(3) CONTENTS. The contents of the stipulation shall contain the same information which is required under s. ERC 33.06 (3), except that the stipulation shall be signed by representatives of both parties and shall contain both parties' preliminary final offers on all issues in dispute which the parties shall exchange in writing before or at the time they submit the stipulation.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **correction in (3) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.08 Withdrawal of petition or stipulation. A 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 intent of s. 111.70 (4) (cm), Stats.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.09 Pre-investigation procedure. After a petition or stipulation has been filed, the commission shall appoint a staff investigator, who shall set a date, time and place for the conduct of an informal investigation or for the conduct of a formal hearing on the petition or stipulation.

If during any mediation by a commission mediator, the parties have exchanged and submitted to the mediator their single ultimate final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing under s. ERC 33.11 or 33.12. A waiver shall be in writing and may be filed with or subsequent to a petition or stipulation requesting arbitration.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **correction made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.10 Qualified economic offer. (1) TIME FOR MAKING A QUALIFIED ECONOMIC OFFER. A municipal employer may submit a qualified economic offer to a labor organization at any time after the commencement of negotiations but prior to the close of the investigation.

(2) CONTENTS. A qualified economic offer is a proposal in which the municipal employer obligates itself to at least comply with the salary and fringe benefit requirements of s. 111.70 (1) (nc), Stats., for the entirety of any collective bargaining agreement for any period after June 30, 1993.

(3) EXISTENCE. (a) A qualified economic offer exists if the municipal employer submits an offer to a labor organization which at least states the following:

1. For any period of time after June 30, 1993, covered by the proposed collective bargaining agreement, the municipal employer shall maintain all fringe benefits and its percentage contribution toward the cost thereof as required by s. 111.70 (1) (nc), Stats.

2. For each 12 month period or portion thereof which commences July 1, 1993, and is covered by this agreement, the municipal employer shall provide the minimum increase in salary which s. 111.70 (1) (nc) 1, Stats., requires for the purposes of a qualified economic offer, or may provide the decrease in salary which s. 111.70 (1) (nc) 2, Stats., allows for the purposes of a qualified economic offer.

(b) At the time it submits a qualified economic offer to the labor organization or 60 days prior to the stated expiration date of any existing collective bargaining agreement, whichever is earlier, the municipal employer's treasurer and superintendent or business manager shall provide the labor organization with completed commission qualified economic offer calculation Forms A and B. Forms A and B are appendices to this chapter. When completing Forms A and B, the treasurer and superintendent or business manager shall use all available cost and employe complement information and shall attest to the accuracy of the information. If additional cost or employe complement information becomes available, the treasurer and superintendent or business manager shall provide the labor organization with revised qualified economic offer calculation Forms A and B.

(4) PROCEDURE FOLLOWING SUBMISSION. The existence of a qualified economic offer does not alter the parties' obligation to engage in collective bargaining as defined in s. 111.70 (1) (a), Stats., or the municipal employer's obligation to maintain the dynamic status quo during any contract hiatus.

(5) IMPLEMENTATION OF A QUALIFIED ECONOMIC OFFER. (a) After a reasonable period of negotiations and an investigation by the commission or its investigator, if the parties are determined to be deadlocked in their negotiations, the municipal employer may implement its qualified economic offer if no collective bargaining agreement is in effect and it maintains all other economic provisions contained in the predecessor agreement (or, where the parties are negotiating a reopener under an existing agreement, if it maintains all other economic provisions of the existing agreement) except as modified only by the terms of the salary and fringe benefit qualified economic offer or as otherwise agreed to by the parties. The municipal employer shall provide the labor organization with at least 15 days notice of the exact manner in which the qualified economic offer will be implemented. If possible, notice of the manner of implementation shall be given before any determination of deadlock.

(b) If the exact percentage of a qualified economic offer's salary increase or decrease is contingent upon fringe benefit costs which are not known at the time of implementation, the municipal employer may only implement the maximum possible percentage salary increase under the offer. Where the municipal employer has implemented the maximum possible percentage salary increase under its qualified economic offer, the municipal employer may retroactively implement the exact salary increase or decrease of the qualified economic offer once fringe benefit costs are known.

(c) The municipal employer may require professional school district employes to reimburse the municipal employer for the difference between the exact implemented salary increase or decrease and any previously implemented increase and for the difference between any implemented increase or decrease and any salary increase received during a contract hiatus. Except as the parties otherwise agree, to complete any reimbursement, the municipal employer shall withhold the prorated amount necessary from each remaining employe paycheck which will be received prior to expiration of the bargaining agreement or an employe's cessation of employment, whichever occurs first.

(6) COMPLIANCE. Any dispute that the salary and fringe benefits have been or will be implemented in a manner consistent [with] s. 111.70 (1) (nc), Stats., and this chapter shall be filed by the labor organization with the commission as a motion to review implementation. Following any necessary hearing and receipt of any necessary written or oral argument, the commission shall issue a written decision determining whether the municipal employer's proposed or actual implementation is or was consistent with s. 111.70 (1) (nc), Stats., and this chapter. If the commission determines that any implementation was not consistent with s. 111.70 (1) (nc), Stats., and this chapter, the commission shall order the municipal employer to comply with s. 111.70 (1) (nc), Stats., and this chapter, and to take appropriate action including reimbursement to the municipal employer of excess salary payments in the same manner specified in sub. (5) and payment to employes of any monies owed with interest at the rate established by s. 814.04, Stats. The pendency of a motion to review implementation does not bar a municipal employer from implementing its qualified economic offer.

(7) The municipal employer's implementation of a qualified economic offer under this section shall not relieve the parties of their mutual obligation to reach agreement and

stipulate to agreement on all economic issues pursuant to s. 111.70 (4) (cm) 5s, Stats., before any unresolved noneconomic issues are subject to interest arbitration under this chapter.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.11 Informal investigation or formal hearing when the municipal employer has submitted a qualified economic offer. (1) PURPOSE. When the municipal employer has submitted a qualified economic offer, the commission or its investigator shall conduct an informal investigation or formal hearing to determine whether the parties are deadlocked in their negotiations. If it is determined that the parties are deadlocked, the commission or its investigator shall obtain the single ultimate final offers of the parties containing their final proposals on all noneconomic issues in dispute, and a stipulation 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 investigator may engage in an effort to mediate the dispute.

(2) INFORMAL INVESTIGATION PROCEDURE. The commission investigator shall set a date, time and place for the conduct of the informal investigation and shall notify the parties thereof in writing. The informal investigation may be adjourned or continued as the investigator deems necessary. Prior to the close of the investigation, the investigator shall obtain in writing the single ultimate final offers of the parties on the noneconomic issues in dispute and a stipulation on all matters agreed upon to be included in the new or amended collective bargaining agreement. If the investigator determines that the parties are deadlocked in their negotiations, the investigator shall advise the parties in writing of the date on which deadlock occurred. The investigator shall also obtain each party's written position regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the commission. If at the time of the exchange of final offers or during any additional time permitted by the investigator, no objection is raised that either final offer contains a proposal or proposals relating to non-mandatory subjects of bargaining or economic issues, the commission investigator shall serve a notice in writing upon the parties indicating the investigation is closed. The investigator may not close the investigation until the investigator 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 and that both final offers conform to the requirements of s. ERC 33.13 (2). If a party fails to submit a single ultimate final offer within the time prescribed by the investigator, the investigator shall close the investigation based on the last written position of the party. Following the close of the investigation, the commission investigator 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. The commission investigator shall also notify the commission as to whether both parties have agreed in writing to authorize the commission to include one or more nonresidents of Wisconsin on the arbitration panel to be submitted in the matter.

(3) FORMAL HEARING PRACTICE AND PROCEDURE. The commission or its investigator shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The commission or its investigator 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 investigator shall obtain and exchange the single ultimate final offers, stipulation of agreed upon items and written positions concerning non-resident arbitrators in the manner set forth in sub. (2). If a party fails to submit a single ultimate final offer within the time prescribed by the commission or its investigator, the commission or its investigator shall close the investigation based on the last written position of the party.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **correction in (2) and (3) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.12 Informal investigation or formal hearing when the municipal employer has not submitted a qualified economic offer. (1) PURPOSE. The purpose of the informal investigation shall be as set forth in s. ERC 32.09 (1).

(2) INFORMAL INVESTIGATION PROCEDURE. The informal investigation procedure shall be as set forth in s. ERC 32.09 (2). The investigator may not close the investigation until the investigator 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 and that both offers conform to the requirements of s. ERC 33.13 (2). If a party fails to submit a single ultimate final offer within the time prescribed by the investigator, the investigator shall close the investigation based on the last written position of the party.

(3) FORMAL HEARING PRACTICE AND PROCEDURE. Formal hearing practice and procedure shall be as set forth in s. ERC 32.09 (3).

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **corrections made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.13 Final offers. (1) CONTENTS GENERALLY. 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 under s. ERC 33.14 by the other party to the inclusion of the proposals in such a final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.70 (4) (cm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 33.14 or 33.15 or injunction proceedings referred to in s. ERC 33.22 (1).

(2) CONTENTS REGARDING ECONOMIC ISSUES, TERM OF AGREEMENT, REOPENER PROVISIONS AND SALARY STRUCTURE. (a) If the municipal employer submits a qualified economic offer applicable to any period beginning on or after July 1, 1993, final offers for the period may not contain any economic issues as defined in s. 111.70 (1) (dm), Stats.

(b) Final offers for any collective bargaining agreement entered into on or after August 12, 1993 which covers any period of time prior to July 1, 1995 shall have an expiration date of June 30, 1995. If compliance with the requirement of a June 30, 1995 expiration date would require that the parties enter into a contract with a term in excess

of 3 years, final offers for such an agreement shall have an expiration date of June 30, 1993, and final offers for any successor agreement shall have an expiration date of June 30, 1995. Final offers for the successor agreement to collective bargaining agreements which have an expiration date of June 30, 1995 shall have an expiration date of June 30, 1997.

(c) Final offers may not contain a provision for reopening of negotiations during the term of an existing agreement for any purpose other than negotiation of a successor agreement or with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation. Any other provisions for reopening of negotiations during the term of an existing agreement shall be agreed upon by the parties as a part of the stipulation of agreed upon items. Parties may agree to reopen negotiations as to any period of any agreement whose expiration date is consistent with this subsection.

(3) MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION. After the investigation, a party may modify its final offer only with the consent of the other party. A modification shall be in writing, supported by a written statement signed by the representative of the other party.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **corrections in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.14 Procedure for raising objection that proposals relate to non-mandatory subjects of bargaining. (1) OBJECTION. (a) *Time for raising an objection.* An 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.

(b) *During negotiations, mediation or investigation.* If either party, during negotiations or during commission mediation or investigation, raises an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, either party may seek a declaratory ruling before the commission pursuant to s. 111.70 (4) (b), Stats., s. ERC 33.15 and ch. ERC 18.

(c) *At time of call for final offers.* If either party, at such time as the commission or its investigator 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, raises an objection that a proposal or proposals by the other party related to a non-mandatory subject of bargaining, the offers shall not be deemed to be final offers. The commission or its investigator 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 the claim. The objection shall be signed and dated by a duly authorized representative of the objecting party, and copies of the objection shall, on the same date, be served on the other party, as well as the commission or its investigator conducting the investigation or hearing, in the manner and within a reasonable time as determined by the commission or its investigator. The objecting party shall then file a petition for declaratory ruling pursuant to s. 111.70 (4) (b), Stats., s. ERC 33.15 and ch. ERC 18.

(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 does not constitute a waiver of the right to file an objection under in sub. (1) (c).

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **corrections made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.15. Petition or stipulation to initiate a declaratory ruling proceeding. (1) WHO MAY FILE. Either party may file a petition, or both of the parties may file a stipulation, to initiate a declaratory ruling proceeding before the commission to determine whether a proposal or proposals relate to a mandatory subject of bargaining.

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

(3) WHEN TO FILE. A petition or stipulation may be filed with the commission during negotiations, mediation or investigation. If a petition or stipulation is filed after the investigator calls for final offers, the 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. A final offer may not 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. If the commission's decision is appealed the parties may agree to the conditional inclusion of such proposals in their final offers.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.16 Procedure for raising objection that a proposal is not subject to interest arbitration. (1) TIME FOR RAISING OBJECTION. After a stipulation is reached pursuant to s. ERC 33.11 (2) on all economic issues to be included in a new or reopened agreement and prior to close of the investigation of an interest arbitration petition, either party may raise an objection that a proposal is an economic issue not subject to interest arbitration.

(2) FILING AN OBJECTION. An objection that a proposal is an economic issue not subject to interest arbitration shall be filed with the commission as a petition for declaratory ruling pursuant to s. 227.41, Stats. During the pendency of a petition for declaratory ruling, the investigation of the petition for interest arbitration may not be closed.

(3) 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.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.

ERC 33.17 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 investigator following the conduct of the investigation or formal hearing, or after the consideration of the parties' stipulation to waive investigation or formal hearing, the commission shall issue a certification determining whether there has been substantial compliance with s. 111.70 (4) (cm), Stats., the commission may order compliance with s. 111.70 (4) (cm), Stats., if it would tend to result in a settlement.

(2) CONTENTS. The certification shall contain findings of fact and conclusions of law material in the matter, as well as an order either initiating arbitration or dismissing the petition or stipulation, consistent with the intent of s. 111.70 (4) (cm), Stats.

(3) SUBMISSION OF PANEL. If the certification requires that 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 an arbitrator within 10 days following the issuance of the certification from a panel of 7 arbitrators designated by the commission. Unless the parties mutually agree otherwise, the panel members shall be selected by a random computer process. Unless the parties have mutually agreed otherwise in writing, the panel shall not include individuals who are nonresidents of Wisconsin at the time the panel is submitted. In the absence of an agreement to another method of selection, the parties shall select the arbitrator by alternately striking names from the panel until a single name remains, who shall be the arbitrator. The order of proceeding in the selection process shall be determined by lot.

(4) TRIPARTITE PANEL. In lieu of the procedures set forth in sub. (3), both parties may request the commission to appoint a tripartite arbitration panel consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as chairperson. Unless the parties have mutually agreed otherwise in writing, the commission's designee shall be a resident of Wisconsin at the time of designation.

(5) RANDOM APPOINTMENT. In lieu of the procedures set forth in sub. (3), at the request of both parties the commission shall submit a list of 7 arbitrators from which each party will strike one name as specified in sub. (3). Unless the parties mutually agree otherwise, the panel members shall be selected by a random computer process. Unless the parties have mutually agreed otherwise in writing, the panel may not include individuals who are nonresidents of Wisconsin at the time the names of the panel members are submitted. Upon notification of the names stricken by each party, the commission shall select the arbitrator by lot from the 5 remaining names.

(6) SERVICE OF CERTIFICATION AND PANEL. Copies of the certification and the names of the panel members shall be served on the parties by certified mail.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.18. Order appointing arbitrator. (1) NOTIFICATION OF SELECTION. The parties, or either of them, shall notify the commission in writing as to the identity of the arbitrator selected by them immediately upon selection. In this section "arbitrator"refers to a single arbitrator, a tripartite arbitration panel, or the impartial chairperson of a tripartite arbitration panel.

(2) ORDER. Upon notification of the identity of the arbitrator selected or after completing designation or random selection of the arbitrator, the commission shall serve the parties with copies of its order of the appointment of the arbitrator. The commission shall at the same time submit a copy of the order to the selected 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 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 shall post copies of the notice where notices to the public are usually posted. In addition, using the procedures of s. 19.84, Stats., the municipal employer shall inform the public of the content of the notice.

(4) COPIES OF FINAL OFFERS. The single final offers submitted to the appointed arbitrator are public documents and copies 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 reproduction and postage.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.19. Public hearing and arbitration hearing. (1) TIME AND PLACE. The arbitrator shall within 10 days of his or her formal appointment, establish the date, time and place for the arbitration hearing and shall issue and serve upon the parties a notice of hearing specifying the date, time and a place within the school district where the hearing will be held. The hearing date shall not fall within the 10-day period. The hearing shall be open to the public.

(2) WITHDRAWAL OF FINAL OFFERS. The arbitrator shall notify the parties of a date, preceding the arbitration hearing, when a party shall provide written notice to the arbitrator, the other party, and the commission that said party is withdrawing its final offer. If both parties timely 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 commission shall endeavor to mediate the dispute.

(3) PETITION FOR PUBLIC HEARING. Five citizens of the jurisdiction served by the municipal employer involved may, within 10 days after the appointment of the arbitrator, file a request in writing with the commission that a public hearing be convened prior to the arbitration hearing. A request shall be deemed a petition under s. 111.70 (4) (cm) 6.b, Stats. The signers shall set forth their addresses and a statement that they are citizens of the jurisdiction served by the school district. A copy of the request shall be served on both the parties and the arbitrator.

(4) NOTICE OF PUBLIC HEARING. Upon receipt of a citizen petition and after the arbitration hearing has been sched-

uled by the arbitrator, the school district involved shall notify the public, as provided in s. ERC 33.18 (3), that a public hearing will be convened prior to the arbitration hearing. The notice shall identify the parties involved and shall set forth the date, time and place of the hearing. Copies of the notice shall be served by the municipal employer on the collective bargaining representative involved, the arbitrator, and the commission.

(5) PURPOSE OF PUBLIC HEARING. The public hearing shall provide an opportunity for both parties to explain or present supporting arguments for their positions and provide an opportunity to members of the public to offer their comments and suggestions.

(6) PROCEDURE IN PUBLIC HEARING. The 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 arbitrator may require 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.

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

(8) SCOPE OF ARBITRATION HEARING. The arbitration hearing shall involve matters necessary for the arbitrator to issue a compulsory and final and binding arbitration award by selecting the final offer and mutually agreed upon modifications of either party. In making such selection the 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.

(9) ARBITRATION HEARING PROCEDURE. Hearings shall be within the control of the arbitrator and shall be as expeditious as the nature of the dispute will allow. The arbitrator may:

(a) Administer oaths and affirmation;

(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 arbitration hearing; and

(e) Dispose of procedural requests and similar matters.

(10) WAIVER OF HEARING, TRANSCRIPT AND BRIEF. With the consent of the arbitrator, the parties may agree to waive the convening of a formal hearing, the preparation of a transcript of the arbitration hearing or the filing of briefs.

(11) MEDIATION. Nothing in this chapter or s. 111.70 (4) (cm), Stats., precludes the parties from mutually agreeing during arbitration to have the arbitrator or the commission or both attempt to mediate the dispute at any time prior to the issuance of an award, but no party shall be obligated to participate in mediation or to continue to participate in mediation.

(12) ISSUANCE OF AWARD. The 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 tripartite panel, each member shall execute the award, either affirming or dissenting. The arbitrator shall submit copies of an executed and signed award, as well as a statement reflecting fees and expenses, if any, to the parties and the commission. An arbitrator who repeatedly or egregiously fails to issue a decision within 60 days following receipt of final arguments or briefs, if any, shall be subject to removal from the commission's list of qualified arbitrators following notice and an opportunity to be heard. Reinstatement to the list may be granted where the commission is satisfied that the individual will be able to consistently issue timely awards under s. 111.70 (4) (cm) 6.d., Stats.

(13) COSTS. The fees and expenses of the arbitrator including, but not limited to, the conduct of the public hearing, arbitration hearings, the rental of hearing rooms, and the preparation of the award, shall be equally borne by the parties. The parties may obtain information with regard to the per diem and other charges of arbitrators upon request from the commission. Costs of subpoenas and witness fees shall be borne by the party requesting the subpoena or witness. Fees of and expenses incurred by the reporter, if any, shall be borne equally by the parties if the arbitrator desires a transcript, or where both parties have agreed that the hearing be transcribed. If only one party desires a transcript, that party is solely responsible for the fees and expenses incurred by the reporter and shall provide a copy of the transcript to the arbitrator. The fees and expenses of arbitrators selected by one of the parties to serve on a tripartite panel shall be paid by the party making the selection.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **correction in (4) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.20 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. The proceeding shall be a class 2 proceeding under s. 227.01 (3) (b), Stats., and shall be governed by 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 if:

(a) The interest arbitration award was procured by corruption, fraud or undue means;

(b) There was evident partiality on the part of the neutral arbitrator or corruption on the part of the arbitrator;

(c) The arbitrator was guilty of misconduct in refusing to conduct an arbitration hearing upon request, refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear supporting arguments or evidence pertinent and material to the controversy; or was guilty of any other misbehavior by which the rights of any party have been prejudiced; or

(d) The 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, May, 1994, No. 461, eff. 6-1-94; **correction in (1) (intro.) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.21 Modification of award. Where, in a proceeding for enforcement, it appears that an interest arbitration award was lawfully made, but that the award requires modification or correcting, the commission shall issue an order modifying or correcting the award. 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 the award is a mandatory subject of bargaining;

(2) 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 the award;

(3) The arbitrator has awarded upon a matter not submitted, unless it is a matter not affecting the merits of the award upon the matters submitted; or

(4) The award is imperfect in matter of form not affecting the merits of the controversy.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94.

ERC 33.22 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 the court, the parties shall submit to the commission new written final offers which are consistent with s. ERC 33.13 (2) on all disputed issues within the time limit set 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 a request, the commission or its investigator shall arrange a mutually satisfactory date and place for mediation.

(3) ARBITRATION. If, after mediation, within the time limits set by the court, the parties remain deadlocked, the commission shall transmit the new final offers to the arbitrator, or to a successor designated by the commission. The arbitrator or a successor shall immediately commence to arbitrate the dispute. The arbitration proceeding shall be in accordance with s. ERC 33.19.

History: Cr. Register, May, 1994, No. 461, eff. 6-1-94; **correction in (1) and (3) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1994, No. 468.**

ERC 33.23 Information. 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, May, 1994, No. 461, eff. 6-1-94.