

Chapter ERC 30

MUNICIPAL INTEREST ARBITRATION INVOLVING FIRE FIGHTING AND LAW ENFORCEMENT PERSONNEL UNDER S. 111.77, STATS.

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Note: Chapter ERB 30 was renumbered chapter ERC 30 under s. 13.93 (2m) (b) 1., Stats., Register, December, 1994. Chapter ERC 30 as it existed on June 30, 2006, was repealed and a new chapter ERC 30 was created, Register June 2006 No. 606, effective July 1, 2006.

ERC 30.01 Scope. This chapter governs the general procedure relating to arbitration proceedings and the appointment of arbitrators to resolve disputes under s. 111.77, Stats., in collective bargaining involving law enforcement supervisors employed by a county having a population of 500,000 or more and fire fighting and law enforcement personnel in the employ of municipal employers having a population of 2,500 or more, except police departments in 1st class cities as defined in ss. 62.05 and 990.001 (15), Stats. Population shall be as determined by the most recent regular or special federal census.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.02 Policy. The policy of the state is to promote the prompt, peaceful and just resolution of labor disputes arising in collective bargaining affecting wages, hours and conditions of employment of applicable fire fighting and law enforcement personnel in the employ of the applicable municipal employers. Where proceedings are initiated under this chapter by one or both parties, the commission shall, where an impasse exists, require the parties involved to proceed to final and binding municipal interest arbitration on the issue or issues at impasse. The commission may furnish to the parties a panel of arbitrators from which they may select an arbitrator or arbitrators to be appointed by the commission to issue a compulsory final and binding award to resolve the issue or issues at impasse.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.03 Petition to initiate final and binding arbitration. (1) **WHO MAY FILE.** When an applicable municipal employer and the recognized or certified collective bargaining representative of applicable fire fighter or law enforcement personnel have reached an impasse in their collective bargaining on wages, hours and conditions of employment to be incorporated in a collective bargaining agreement, the municipal employer or the exclusive representative or anyone authorized to act on their behalf, may file a petition with the commission to initiate compulsory final and binding arbitration.

(2) **TIME FOR FILING.** The petition shall be filed after the parties have complied with the conditions stated s. 111.77 (1) and (2), Stats.

(3) **FORM; NUMBER OF COPIES; FILING; SERVICE.** The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The petition is not filed until it and the filing fee established by s. ERC 10.08 (5) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If the parties have

previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the arbitration. The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of 1 copy of the petition and of all required enclosures shall be included. The fee may be transmitted to the commission by physical delivery or mail.

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

(a) The name and address of the municipal employer involved and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the collective bargaining representative involved and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

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

(d) A general statement as to the alleged issue or issues at impasse.

(e) A statement whether the petitioner desires that the arbitration be limited to the entire last and final offers of each party, or whether the parties have agreed otherwise.

(f) Relevant facts pertaining to the parties' compliance with s. 111.77 (1) and (2), Stats.

(g) The name, address, phone number and signature, or signature facsimile, of the person signing the petition. Fax numbers and e-mail addresses shall be included, if available.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.04 Withdrawal of petition; effect on filing fee. A petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. Neither the withdrawal of the petition nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.05 Stipulation to initiate final and binding arbitration. (1) **WHO MAY FILE.** When an applicable municipal employer and the recognized or certified collective bargaining representative of applicable fire fighter or law enforcement personnel have reached an impasse in their collective bargaining on wages, hours and conditions of employment to be incorporated in a collective bargaining agreement between them, the parties or anyone authorized to act on their behalf, may jointly file a stipulation with the commission to initiate compulsory final and binding arbitration.

(2) **TIME FOR FILING.** A stipulation to initiate compulsory final and binding arbitration shall be filed after the parties have complied with the conditions stated s. 111.77 (1) and (2), Stats.

(3) **FORM; NUMBER OF COPIES; FILING; SERVICE.** The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The stipulation is not filed until it and the filing fee established by s. ERC 10.08 (5) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If the parties have previously paid a mediation filing fee for the same dispute under s. ERC 10.08 (3), no fee shall be paid for the arbitration. The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of 1 copy of the petition and of all required enclosures shall be included. The fee may be transmitted to the commission by physical delivery or mail.

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

(a) The name and address of the municipal employer involved and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the collective bargaining representative involved and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

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

(d) A general statement as to the issue or issues agreed upon as being at impasse.

(e) An indication as to whether the parties desire that the arbitration be limited to the entire last and final offers of each party, or whether the parties have agreed otherwise.

(f) Relevant facts pertaining to the parties' compliance with s. 111.77 (1) and (2), Stats.

(g) The signature, or signature facsimile, title, address, and phone number of the persons signing the stipulation. Fax numbers and e-mail addresses shall be included, if available.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.06 Withdrawal of stipulation; effect on filing fee. A stipulation may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. Neither the withdrawal of the stipulation nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.07 Pre-investigation procedure. After a petition or stipulation has been filed, unless the parties have agreed in writing on another procedure, the commission shall assign a commission-employed investigator who shall, after conferring with the parties, 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. If, during any mediation by a commission mediator, the parties have exchanged and submitted to the mediator their total final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing described in s. ERC 30.08. A waiver shall be written and may accompany the petition or stipulation for initiation of interest arbitration or be filed separately later.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.08 Informal investigation or formal hearing. (1) **PURPOSE.** After a petition or stipulation has been filed, the commission shall conduct an investigation to determine whether

the parties are at an impasse in their negotiations after a reasonable period of negotiation. The investigation shall be conducted either by the commission or by an investigator assigned by the commission. The investigation shall consist either of an informal investigation or a formal hearing or both. If it is determined that the parties are at an impasse, the commission or investigator shall obtain the single final offers of the parties containing their final proposals on issues in dispute, and shall obtain a stipulation signed 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 investigator may engage in an effort to mediate the dispute.

(2) **INFORMAL INVESTIGATION PROCEDURE.** If an informal investigation is conducted, the commission or investigator shall, after conferring with the parties, set a date, time and place for the conduct of the informal investigation and shall notify the parties of those arrangements in writing. The informal investigation may be adjourned or continued as the commission or investigator finds necessary. During the investigation the commission or investigator may meet jointly or separately with the parties or otherwise communicate with one or both of 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 and a stipulation in writing on all matters agreed upon to be included in the new or amended collective bargaining agreement. 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 relating to a non-mandatory subject of bargaining, the commission or investigator shall serve the parties, as set forth in s. ERC 10.07, with a written notice that the investigation is closed. The commission or investigator shall not close the investigation until the commission or 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 the final offers conform to the requirements of s. ERC 30.09. Following the close of the investigation the 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.

(3) **FORMAL HEARING PRACTICE AND PROCEDURE.** If a formal investigation is conducted, the commission or investigator, following communication with the parties, shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The formal hearing may be adjourned or continued in the discretion of the commission or investigator. Hearing practice and procedure shall be as set forth in ss. ERC 18.06 to 18.08, except that the purpose and scope of the hearing shall be limited to establishing the facts needed to determine whether, after a reasonable period of negotiation, the parties are at an impasse. Prior to the close of the hearing, the commission or its investigator shall obtain and exchange the single ultimate final offers and stipulation of agreed upon items.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 30.09 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 30.10 or 30.11 by the other party to the inclusion of the proposals in a final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.77, Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 30.11.

(2) **MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION.** Following the close of the investigation, a party

may modify its final offer only with the consent of the other party. Any modification shall be in writing, supported by a written statement signed by the representative of the other party.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.10 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining.

(1) **TIME FOR RAISING OBJECTION.** Any objection that a proposal is 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 assert, during negotiations or during commission mediation or investigation, that a proposal by the other party is a non-mandatory subject of bargaining, either party may commence a declaratory ruling proceeding before the commission under s. 111.70 (4) (b), Stats., and s. ERC 30.11

(b) *After call for final offers.* Should either party assert, after the commission or investigator calls for the parties to exchange proposed final offers and before the close of the informal investigation or formal hearing, that a proposal by the other party is a non-mandatory subject of bargaining, the commission or investigator shall not close the investigation or hearing, but shall direct in writing the objecting party to reduce the objection to writing by commencing, within a reasonable time determined by the commission or investigator, a declaratory ruling proceeding before the commission under s. 111.70 (4) (b), Stats., and s. ERC 30.11.

(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 raise an objection as set forth in this section.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.11 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining. (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.

(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, as provided in s. ERC 18.02 or 18.05. If a petition or stipulation is filed after the investigator calls for final offers, the petition or stipulation for declaratory ruling shall be filed within the time determined by the commission or investigator under s. ERC 30.10 (1) (b). Failure to file a petition or stipulation for declaratory ruling within the time period determined by the commission or investigator shall constitute a waiver of the objection, and the proposal involved shall be treated as a mandatory subject of bargaining.

(4) **PROCEDURE FOLLOWING ISSUANCE OF DECLARATORY RULING.** Following the issuance and service of the declaratory ruling as provided for in ss. ERC 18.09 and 10.07, 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. If the commission's decision is appealed, the parties may agree to the conditional inclusion of the proposals in their final offers.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.12 Certification of results of investigation or hearing, or certification based on stipulation. (1) WHEN ISSUED.

After consideration of either the report of the informal investigation, or the record adduced in the formal hear-

ing, or the parties' stipulation to waive the investigation, the commission shall issue a certification of the result of the investigation or hearing, or on the basis of the stipulation, with respect to a determination as to whether compulsory final and binding arbitration should be initiated, and serve copies on the parties as set forth in s. ERC 10.07.

(2) **CONTENTS.** The certification shall contain findings of fact and conclusions of law material in the matter, and an order either initiating compulsory final and binding arbitration and designating the form of arbitration, or dismissing the petition or stipulation, consistent with the purposes and policy of s. 111.77, Stats. The commission shall designate Form 2 final offer package arbitration as defined in s. 111.77 (4) (b), Stats., as the form of arbitration unless the parties have previously agreed either to non-final offer non-package Form 1 arbitration as defined in s. 111.77 (4) (a), Stats., or to their own procedures for resolving the impasse.

(3) **SUBMISSION OF PANEL.** If the certification requires arbitration and the parties have not previously agreed to their own procedures for resolving the impasse, the parties shall be directed to select an arbitrator within 10 days after the issuance of the certification, or within a different time period agreed upon between the parties, from a panel of 5 arbitrators designated by the commission. Selection of arbitrators for inclusion on the panel shall be as provided in s. ERC 40.06 (3), with arbitrators randomly selected from among the roster members available for service at the time the request is processed. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each arbitrator whose name is supplied to the parties by the commission. 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) **SERVICE OF CERTIFICATION AND PANEL.** Copies of the certification and the names of the panel members shall be served on the parties as set forth in s. ERC 10.07.

(5) **ARBITRATOR IMPARTIALITY.** The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.13 Order appointing arbitrator. (1) NOTIFICATION OF SELECTION. The parties, or either of them, shall notify the commission in writing, as set forth in s. ERC 10.06 (1), of the identity of the arbitrator selected by them immediately after the selection is made. In this chapter, "arbitrator" refers to a single arbitrator, a board of multiple neutral arbitrators, a tripartite arbitration panel or the impartial chairperson of an arbitration board or panel.

(2) **ORDER.** Upon receipt of the notification of the identity of the arbitrator selected, the commission shall serve the parties with copies of its order appointing the arbitrator, as set forth in s. ERC 10.07. The order appointing the arbitrator shall specify the form of arbitration as designated in the order described in s. ERC 30.12 (2). The commission shall, at the same time, submit a copy of the appointment order to the selected arbitrator, as well as copies of the final offers of the parties.

(3) **COPIES OF FINAL OFFERS.** The single final offers submitted to the appointed arbitrator shall be considered public documents and copies may be obtained from the commission, by any person upon written request, following the issuance of the order appointing the arbitrator, at the cost of reproduction and postage.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.14 Arbitration hearing. (1) NOTICE OF HEARING. Following the receipt of notification of appointment, the chairperson of the board of arbitration, or the single arbitrator shall serve, as set forth in s. ERC 10.07, each of the parties and the other members of the board of arbitration, if any, with a notice of

hearing, establishing the date, time and place for the arbitration hearing.

(2) **AMENDMENT OR WITHDRAWAL.** The notice of hearing may be amended or withdrawn at any time before the close of the arbitration hearing.

(3) **SCOPE OF HEARING.** The hearing shall be public and for the purpose of gathering information on the basis of which the arbitrator or board of arbitration shall issue a compulsory final and binding arbitration award on the issue or issues in dispute. The arbitrator or board of arbitration shall give weight to the factors set forth in s. 111.77 (6), Stats., and the parties shall be prepared to present evidence and argument relating to the factors involved. Except as otherwise required by commission rules, proceedings before the arbitrator shall be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.15 Proceedings before the arbitrator. The arbitration proceedings shall be governed by ch. 788, Stats., except as specifically provided in s. 111.77, Stats. Nothing in this chapter is intended to preclude the arbitrator from using best efforts to encourage the parties to resolve the dispute by voluntary agreement. Any mediation by the arbitrator shall not be open to the public unless mutually agreed by the parties or their representatives. At the joint request of the parties, the arbitrator may issue a consent award ordering implementation of the terms of a written voluntary agreement between the parties resolving part or all of the dispute involved.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.16 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 the award is issued by a board of arbitration each arbitrator shall sign the award, either affirming or dissenting. After the award is signed, a copy of the award and a statement of the arbitrator's fees and expenses shall be submitted immediately to the commission as set forth in s. ERC 10.06 (1) and to the parties as set forth in s. ERC 10.07. When received by the commission, interest awards shall be made available to the public. Copies may be purchased by the public from the commission's Madison office, and may also be available on the commission website or in other commission publications.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.17 Costs. The fees and expenses of the arbitrator including the rental of hearing rooms, the conduct of the hearing, and the preparation of the award, shall be shared equally by the parties. The fees and expenses charged by the arbitrator shall not exceed those described in the arbitrator's biographical information and fee statement on file with the commission at the time the arbitrator's name was supplied to the parties by the commission. Costs of subpoenas and witness fees shall be borne by the party requesting the subpoena or witness. Fees and expenses charged by the reporter, if any, shall be borne equally by the parties if both parties agreed that the hearing would 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, if any, selected by one of the parties to serve on a tripartite panel shall be paid by the party making the selection.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 30.18 Enforcement or modification of award. Standards and procedures for enforcement or modification of awards issued under s. 111.77, Stats., shall be as provided in ch. 788, Stats.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.