

Chapter ERC 32

**COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN MUNICIPAL SECTOR
DISPUTES NOT INVOLVING LAW ENFORCEMENT OR FIRE FIGHTING EMPLOYEES**

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Note: Chapter ERB 32 was created as an emergency rule effective May 14, 1986. Chapter ERB 32 was renumbered chapter ERC 32 under s. 13.93 (2m) (b) 1., Stats., Register, December, 1994, No. 468. Chapter ERC 32 as it existed on June 30, 2006, was repealed and a new chapter ERC 32 was created, Register June 2006 No. 606, effective July 1, 2006.

ERC 32.01 Scope. This chapter governs the procedure relating to collective bargaining and interest arbitration under s. 111.70 (4) (cm), Stats., affecting bargaining units of municipal employees other than law enforcement and fire fighting personnel.

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 32.02 Policy. The policy of the state 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 the dispute by interest arbitration. Parties subject to s. 111.70 (4) (cm), Stats., shall, upon request, provide the commission with information the commission considers necessary to meet its statutory responsibilities to report on the operation of the interest arbitration law under s. 111.70 (4) (cm), Stats., and on its effect on collective bargaining in the state.

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

ERC 32.03 Notice of commencement of negotiations. (1) **WHO SHALL FILE.** Whenever a municipal employer or the exclusive collective bargaining representative of a bargaining unit of municipal employees 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 as set forth in s. ERC 10.07. If the requesting party fails to file the notice, the other party may do so.

(2) **FORM; NUMBER OF COPIES; FILING; SERVICE.** The notice shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The notice is not filed until it has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The notice shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the notice is filed in paper form, a total of 1 copy of the notice shall be included. The party filing the notice shall, at the same time, serve a copy on the other party as set forth in s. ERC 10.07.

(3) **CONTENTS.** The notice shall contain all of the following information:

(a) The date on which the party filing the notice notified the other party of its intent to either reopen negotiations under an existing collective bargaining agreement or to commence negotiations where no agreement exists.

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

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

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

(e) The effective date and termination date of the existing collective bargaining agreement, if any, and the date specified in the agreement on which notice to open negotiations shall be served on the other party.

(f) A statement indicating whether the parties have agreed to a voluntary impasse resolution procedure.

(g) The identity, title and signature, or signature facsimile, of the person filing the notice, and the date on which the notice was transmitted to the commission.

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

ERC 32.04 Voluntary impasse resolution procedure. (1) **WHO SHALL FILE; NUMBER OF COPIES; FILING; SERVICE.** Whenever a municipal employer and the recognized or certified exclusive representative of a bargaining unit of the municipal employer's employees 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. The procedure shall be in writing in a form of the parties' choosing. The procedure is not filed until it has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The procedure shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the procedure is filed in paper form, a total of 1 copy shall be included. The party filing the procedure shall, at the same time, serve a copy of the procedure on the other party as set forth in s. ERC 10.07.

(2) **TIME FOR FILING.** If the procedure was entered into prior to the filing of the notice of commencement of negotiations required to be filed in s. ERC 32.03, the procedure shall be filed at the time the notice of commencement of negotiations is filed with the commission. If the agreement was entered into after the

filing of the notice of commencement of negotiations, it shall be filed promptly after signing.

(3) SCOPE. The provisions of s. 111.70 (4) (cm) 8m., Stats., shall not be superseded by a voluntary impasse resolution procedure. In addition, 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., 7g. and 7r., Stats.

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

ERC 32.05 Petition to initiate arbitration. (1) WHO MAY FILE. A petition to initiate arbitration may be filed by a municipal employer, a recognized or certified collective bargaining representative of municipal employees in a bargaining unit described in s. ERC 32.01, or by anyone authorized to act on their behalf.

(2) 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 2 copies of the petition and of all required enclosures shall be included. The fee may be transmitted to the commission by physical delivery or mail. The party filing the petition shall, at the same time, serve a copy of the request on the other party as set forth in s. ERC 10.07.

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

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

(d) 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.

(e) The date when notice was served to open negotiations and the identity of the party serving same.

(f) The date or dates when proposals were exchanged in open meeting.

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

(h) The dates on which mediation, if any, was conducted and the identity of the commission mediator.

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

(j) The identity of the party filing the petition; the name, title and signature, or signature facsimile, of the individual signing the petition; and date when the petition was transmitted to the commission.

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

(4) RESPONSIVE PRELIMINARY FINAL OFFER. Within 14 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 as set

forth in s. ERC 10.07, and to the commission as set forth in s. ERC 10.06 (1).

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

ERC 32.06 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 employees in a bargaining unit described in s. ERC 32.01, or by anyone authorized to act on their behalf.

(2) 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 two copies of the petition and of all required enclosures shall be included. The fee may be transmitted to the commission by physical delivery or mail.

(3) CONTENTS. The stipulation shall contain the same information as set forth in s. ERC 32.05 (3) for a petition to initiate arbitration, except that the stipulation shall include the signature, or signature facsimile, of a representative of each party and shall contain each party's 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 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

ERC 32.07 Withdrawal of petition or stipulation; effect on filing fee.

A petition or 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 petition or 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 32.08 Pre-investigation procedure. After a petition or stipulation has been filed, the commission or a commission-employed investigator shall conduct an investigation with respect to the petition or stipulation, by means of either an informal investigation or a formal hearing. If, during any prior 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 32.09. 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 32.09 Informal investigation or formal hearing.

(1) PURPOSE. The purpose of the investigation shall be to determine whether the parties are deadlocked in their negotiations after a reasonable period of negotiation. If it is determined that the parties are deadlocked, 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

deems 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. The investigator shall also obtain each party's 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 relating to a non-mandatory subject of bargaining, the commission or investigator shall serve the parties as set forth in s. ERC 10.07, 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 both final offers conform to the requirements of s. ERC 32.10 (2). If a party fails to submit a single ultimate final offer within the time prescribed by the commission or investigator, the commission or investigator shall close the investigation based on the last written position of the party. 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. The commission investigator shall also notify the commission whether both parties have agreed 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. 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 deadlocked. Prior to the close of the hearing the commission or investigator shall obtain and exchange the single ultimate final offers, stipulation of agreed upon items and 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 investigator, the commission or investigator shall close the investigation based on the last written position of the party.

History: CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06; **CR 10-019: am. (2) and (3) Register June 2010 No. 654, eff. 7-1-10.**

ERC 32.10 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 32.11 or 32.12 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. 111.70 (4) (cm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 32.12 or injunction proceedings referred to in s. ERC 32.18 (1).

(2) CONTENTS REGARDING TERM OF AGREEMENT AND REOPENER PROVISIONS. Except for the initial collective bargaining agreement between the parties affecting the employees involved, where the parties have not agreed upon the term of the agreement as a part of the stipulation of agreed upon items, final offers shall provide

for no other term of agreement than 2 years. Final offers shall 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.

(3) 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 32.11 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining. In proceedings under this chapter, practice and procedure for raising an objection that a proposal is a non-mandatory subject of bargaining shall be as set forth in s. ERC 30.10.

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 32.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining. In proceedings under this chapter, practice and procedure regarding a petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining shall be as set forth in s. ERC 30.11.

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 32.13 Certification of results of investigation or hearing, or certification based on stipulation.

(1) WHEN ISSUED. After consideration of the report of the investigation or of the parties' stipulation to waive the investigation, the commission shall issue a certification determining whether there has been substantial compliance with s. 111.70 (4) (cm), Stats., and whether the parties are deadlocked. If the commission determines that there has not been substantial compliance with the requirements of s. 111.70 (4) (cm), Stats., the commission may order compliance 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 purposes and policies of s. 111.70 (4) (cm), Stats.

(3) SUBMISSION OF PANEL. If the certification requires arbitration 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 after the issuance of the certification, or within a different time period agreed upon between the parties, from a panel of 7 arbitrators designated by the commission. Unless the parties have mutually agreed otherwise, the panel shall not include individuals who are nonresidents of Wisconsin at the time the panel is submitted. 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) **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 shall strike one name by the method specified in sub. (3). Unless the parties have mutually agreed otherwise in writing, the panel shall 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 as set forth in s. ERC 10.07.

(7) **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 32.14 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 or after completing designation or random selection of the arbitrator, the commission shall serve the parties with copies of its order appointing the arbitrator, as set forth in s. ERC 10.07. 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. 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 procedures for obtaining copies of final offers and for requesting a public hearing.

(3) **PUBLIC NOTICE.** Immediately upon receipt of the notice, the municipal employer involved shall cause a copy or copies to be posted where notices to the public are usually posted. In addition, the municipal employer shall inform the public of the content of the notice in the same manner that it informs the public of public meetings.

(4) **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 32.15 Proceedings before the arbitrator.

(1) **NOTICE OF ARBITRATION HEARING.** 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, as set forth in s. ERC 10.07, a notice of hearing specifying the date, time and a place within the jurisdiction of the municipal employer involved where the hearing shall be held. The hearing date shall not fall within the 10-day period. The arbitration hearing shall be open to the public.

(2) **WITHDRAWAL OF FINAL OFFERS.** The arbitrator shall notify the parties of the date, predating the arbitration hearing date, by which a party shall provide written notice to the arbitrator, the other party, and the commission that the party is withdrawing its

final offer. If both parties timely withdraw their final offers and mutually agreed upon offer modifications, and the exclusive representative 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.** Any 5 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, as set forth in s. ERC 10.07, that a public hearing be convened prior to the arbitration hearing. A request shall be treated as a petition within the meaning of s. 111.70 (4) (cm) 6. b., Stats. The signers shall include their addresses and a statement that they are citizens of the jurisdiction served by the municipal employer involved. Upon receipt of the request, the commission shall serve a copy 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 scheduled by the arbitrator, the municipal employer involved shall notify the public, in the manner set forth in s. ERC 32.14 (3), that a public hearing shall 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, as set forth in s. ERC 10.07, on the collective bargaining representative involved, on the arbitrator, and the commission.

(5) **PURPOSE OF PUBLIC HEARING.** The public hearing shall be for the purpose of providing the opportunity for both parties to explain or present supporting arguments for their positions and to 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 OF PUBLIC HEARING.** 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 their own expense. Arbitration proceedings shall not be delayed for the purpose of awaiting the preparation of a transcript of the public hearing. 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 be public and for the purpose of gathering information which shall assist the arbitrator in issuing a compulsory and final and binding arbitration award selecting the final offer and mutually agreed upon offer modifications, of either party. In making that offer selection in cases involving school district employees, the arbitrator shall give weight to the factors set forth in s. 111.70 (4) (cm) 7r., Stats., and the parties shall be prepared to present evidence and argument relative to the factors involved. In making that offer selection in cases subject to this chapter not involving school district employees, the arbitrator shall give weight to the factors set forth in s. 111.70 (4) (cm) 7., 7g. and 7r., Stats., and the parties shall be prepared to present evidence and argument relative to the factors involved. Except as otherwise required by commission rules, proceedings before the arbitrator shall also 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.

(9) ARBITRATION HEARING PROCEDURE. Hearings shall be within the control of the arbitrator and shall be as expeditious as the nature of the dispute shall allow. In conducting the hearing, the arbitrator has the power to do any of the following:

- (a) Administer oaths and affirmations.
- (b) Issue subpoenas in the name of the commission.

Note: Arbitrators may obtain appropriate subpoena forms from the commission's Madison office.

- (c) Rule on offers of proof and receive relevant evidence.
- (d) Regulate the course of the arbitration hearing.
- (e) Dispose of procedural requests and similar matters.

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

(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. 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.

(12) ISSUANCE OF AWARD. (a) *How issued.* 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 panel member 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.

(b) *Public document when issued.* 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.

(c) *Timeliness standards and procedures.* Arbitrators who repeatedly or egregiously fail to issue their decision within 60 days following receipt of final arguments or briefs, if any, shall be subject to removal from the commission's roster of arbitrators and fact finders following notice and an opportunity to be heard as provided in s. ERC 40.04. Reinstatement to the list may be granted where the commission is satisfied that the individual shall be able to consistently issue timely awards under s. 111.70 (4) (cm) 6. d., Stats. Unless informal communications satisfy the commission that there is good cause not to do so, an arbitrator's issuance of one or more s. 111.70 (4) (cm) 6. d., Stats., awards in a calendar year that are untimely by a total of more than thirty (30) days shall be a sufficient basis for convening a hearing to determine whether the arbitrator has "repeatedly" or "egregiously" failed to issue timely s. 111.70 (4) (cm) 6. d., Stats., awards.

(13) COSTS. The fees and expenses of the arbitrator including the conduct of the public hearing, arbitration hearings, the rental of hearing rooms, 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 paid by the party requesting the subpoena or witness. Fees and expenses charged by the reporter, if any, shall be shared equally by the parties if both parties have agreed that the hearing be transcribed. If only one party desires a transcript, that party is solely responsi-

ble for the fees and expenses charged 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 02-037: cr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. (8) Register June 2010 No. 654, eff. 7-1-10.

ERC 32.16 Enforcement of the 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 resulting complaint proceeding shall be a class 2 proceeding within the meaning of s. 227.01 (3) (b), Stats., governed by the provisions of ss. 111.07 and 111.70 (4) (a), Stats. In determining whether an interest arbitration award was lawfully made, the commission shall find that the award was not lawfully made under the following circumstances:

- (a) Where the interest arbitration award was procured by corruption, fraud or undue means;
- (b) Where there was evident partiality on the part of the neutral arbitrator or corruption on the part of an arbitrator;
- (c) Where the arbitrator was guilty of misconduct in 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 of any other misbehavior by which the rights of any party have been prejudiced;
- (d) Where 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) ATTORNEY FEES; INTEREST; OTHER COSTS. 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 non-offending party to enforce the award or decision.

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

ERC 32.17 Modification of award. If, in a proceeding for enforcement, it is determined that an interest arbitration award is lawfully made, but that the award requires modification or correction, 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)** Where 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)** Where 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;
- (4)** Where the award is imperfect in matter of form not affecting the merits of the controversy.

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

ERC 32.18 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 under the order of the court, the parties shall submit to the commission, in writing, as set forth in s. ERC 10.06 (1), new final offers on all disputed issues, within the time limit established for those submissions by the court.

(2) MEDIATION. Within the time limit set by the court for the submission of new final offers, the parties may mutually request, in writing, as set forth in s. ERC 10.07, that the commission provide mediation services to the parties in an attempt to resolve the

deadlock. Upon receipt of a request the commission or commission assigned mediator 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 in deadlock, the commission shall transmit the new final offers to the arbitrator, or to a successor arbitrator designated by the commission. The arbitrator or successor arbitrator shall immediately commence arbitration of the dispute in accordance with s. ERC 32.15.

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

ERC 32.19 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 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.