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CLEARINGHOUSE RULE 99-104

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. ERC 33.01, the first word of the stricken material should not be capitalized. In addition, a comma should be inserted before the stricken material and stricken to be consistent with the current rule. Finally, the period at the end of the stricken material should not be stricken because the remaining portion of the section needs end punctuation.

b. In s. ERC 33.13 (2) (b), the "(b)" should not be capitalized. Also, since the entire current paragraph is stricken and new material is added, the paragraph should be repealed and recreated, rather than amended.

c. Because s. ERC 13.13 (2) (d) is being created, it should not be underscored.

d. SECTION 6 of the rule purports to repeal and recreate "Appendix A" of the current rule. However, the Appendix to the current rule contains Forms A, B and C. It appears that the intent of SECTION 6 is only to repeal and recreate Form C of the Appendix. The treatment clause of SECTION 6 should be modified accordingly.

4. Adequacy of References to Related Statutes, Rules and Forms

The statutory reference in the effective date provision of the rule should be to s. 227.22 (2) (intro.), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In ss. ERC 33.03 and 33.12 (2) (b), “odd numbered” should be hyphenated.
- b. In Form C, which is amended by SECTION 6 of the rule, the material in each lettered paragraph should end with a colon rather than a period.

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-104

AN ORDER to amend ERC 33.01, 33.03, 33.05 (3) and 33.13 (2) (b); to repeal and recreate chapter ERC 33, Appendix Form C; and to create ERC 33.13 (2) (d), relating to school district professional employe collective bargaining agreements and the calculation of a qualified economic offer.

Submitted by **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

07-02-99 RECEIVED BY LEGISLATIVE COUNCIL.

07-27-99 REPORT SENT TO AGENCY.

RNS:RJC:jal;rjc

1999 Session

FISCAL ESTIMATE
DOA-2048 N(R10/98)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Emergency Rule / 99-104
Amendment No. if Applicable

Subject

Calculation of a Qualified Economic Offer

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This emergency rule has no independent fiscal effect.

This emergency rule implements Sections 111.70(1)(fm) and 111.70(1)(nc)1.b.. and c., Stats., which require that any fringe benefit savings be used to fund salary increases for professional school district employes as part of a qualified economic offer.

Required expenditure of fringe benefit savings will increase costs for those school districts that have not used fringe benefit savings to fund salary increases as a part of contract settlement for professional school district employes.

The existence and level of fringe benefit savings will vary from school district to school district and depend on matters such as the level of cost increase or decrease for matters such as health insurance and retirement. Therefore, the level of increase cannot be calculated with any certainty.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Authorized Signature Telephone No.

Date

PETER DAVIS WERC

266-2993

6-11-99

October 7, 1999

TO: Members of the Senate Labor Committee

Senator Russell Decker Senator David Zien
Senator Roger Breske Senator Margaret Farrow

FROM: Senator Jim Baumgart, Chair

Re: Clearinghouse Rule referred to Senate Labor Committee

The following rule was referred to the Committee on October 5, 1999.

CLEARINGHOUSE RULE 99-104

Relating to school district professional employe collective bargaining agreements and the calculation of a qualified economic offer.

Submitted by the Wisconsin Employment Relations Commission

Enclosed is a copy of the rules. If you have any concerns or questions about the rule or want a public hearing on the rule, please advise immediately.

cc: Dan Fernbach, Legislative Council Attorney
Sincerely,

Jim Baumgart
State Senator
9th Senate District

JB:ae

James R. Meier
Chairperson
A. Henry Hempe
Commissioner
Paul A. Hahn
Commissioner



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State of Wisconsin
Wisconsin Employment Relations Commission

September 30, 1999

The Honorable Fred Risser
President
Wisconsin Senate
Room 220 South, State Capitol
Madison, WI 53707-7882

Re: Proposed Administrative Rule 99-104

Dear President Risser:

Pursuant to s. 227.19, Stats., the Wisconsin Employment Relations Commission hereby submits its Notice and Report on proposed administrative rule 99-104.

Very truly yours,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis
General Counsel

PGD/rb
09299903
Enclosure

PROPOSED ORDER OF THE WISCONSIN
EMPLOYMENT RELATIONS COMMISSION

The Wisconsin Employment Relations Commission proposes an order to amend ERC 33.01, 33.03, and 33.05(3); to repeal and recreate ERC 33.13(2)(b) and ERC 33, Appendix A, Form C; and to create ERC 33.13(d) relating to school district professional employe collective bargaining agreements and the calculation of a qualified economic offer.

Sections 111.70(4)(cm)8 and 111.71(1), Stats., give the Commission the authority to amend and to repeal and recreate these proposed administrative rules.

ERC 33.01 relates to the scope of administrative rules governing the collective bargaining and interest arbitration processes for school district professional employes and contains language that has become obsolete due to the passage of time. The proposed amendment will remove the obsolete reference to collective bargaining "agreements entered into pursuant to arbitration award as to which the investigation was closed before August 12, 1993." There are no such agreements at the present time and there will not be any such agreements in the future.

ERC 33.03 relates to the content of collective bargaining agreements for school district professional employes and contains language that has become obsolete due to the passage of time and language that conflicts with existing law because of amendments to applicable statutory provisions. The proposed amendment will: (1)

remove the obsolete references to collective bargaining agreements expiring on June 30, 1993, 1995 and 1997 and add a general reference to the requirement in s. 111.70(4)(cm)8m.b., Stats., that all school district professional employee collective bargaining agreements shall be for a term of 2 years expiring on June 30 of the odd numbered year; and (2) make the rule consistent with s. 111.70(4)(cm)8p., Stats., by removing the prohibition against agreements which modify the salary schedule structure for school district professional employees.

ERC 33.05(3) relates to voluntary impasse resolution procedures and contains language that has become obsolete and language that is incomplete because of amendments to applicable statutory provisions. The proposed amendments will: (1) remove the obsolete references to "section 9120 of 1993 Wis. Act 16; and (2) make the rule consistent with the requirement in s. 111.70 (4)(cm)5, Stats., that an interest arbitrator functioning under a voluntary impasse resolution procedure give weight to the factors enumerated in s. 111.70(4)(cm)7, 7g. and 7r., Stats.

ERC 33.13(2)(b) relates to the specific content of final offers in interest arbitration of school district professional employee contracts and contains language that has become obsolete due to the passage of time. The proposed repeal and recreation will remove the obsolete references to collective bargaining agreements expiring on June 30, 1995, 1997 and 1999 and add a general reference to the requirement in s. 111.70(4)(cm)8m.b., Stats., that all school district professional employee collective

bargaining agreements shall be for a term of 2 years expiring on June 30 of the odd numbered year.

ERC 33.13(2)(d) relates to the requirement in s. 111.70(4)(cm)8p., Stats., that the salary schedule structure for school district professional employes can only be modified by the voluntary agreement of a school district and the union representing the school district's professional employes. Proposed ERC 33.13(2)(d) would prohibit a school district or union from seeking to compel the other party to involuntarily modify a salary schedule structure by including such a proposal in an interest arbitration final offer.

The proposed repeal and recreation of ERC 33, Appendix A, Form C is required by 1997 Wisconsin Act 237's amendment to the statutory definition of a qualified economic offer through the creation of s. 111.70(1)(fm), Stats., and the amendment of ss. 111.70(1)(nc)1.b and c., Stats. As recreated, ERC 33, Appendix A, Form C will allow a school district to accurately calculate the level of salary increase, if any, which the district must offer to the labor organization representing the district's professional employes as part of a qualified economic offer. As recreated, ERC 33, Appendix A, Form C implements the statutory requirement that fringe benefit savings be used to fund salary increases as part of a qualified economic offer.

SECTION 1. ERC 33.01 is amended to read:

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.~~

SECTION 2. ERC 33.03 is amended to read:

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 shall have a term of 2 years expiring on June 30 of the odd-numbered

year. 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 school district professional 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.~~

ok

SECTION 3. ERC 33.05(3) is amended to read:

ERC 33.05(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, 7g. and 7r., Stats.

SECTION 4. ERC 33.13(2)(b) is repealed and recreated to read:

~~ERC 33.13(2)(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.~~

Final offers for any collective bargaining agreement shall have a term of 2 years expiring on June 30 of the odd-numbered year.

SECTION 5. ERC 33.13(2)(d) is created to read:

ERC 33.13(2)(d) Final offers may not contain a proposal to alter the salary range structure, number of steps, or requirements for attaining a step or assignment of a position to a salary range.

SECTION 6. ERC 33, Appendix A, Form C is repealed and recreated to read:

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
QUALIFIED ECONOMIC OFFER INSTRUCTIONS

FORM C

Utilize the following instructions to determine the components of a minimum qualified economic offer.

Note: If payment of any appropriate salary increase would raise your fringe benefit costs (due to resultant social security and retirement cost increases) above 1.7% of Step 3 (base cost), then reduce the salary increase in the amount necessary to keep the combined cost of fringe benefits, steps, lanes/promotions, and average salary increase at 3.8% of Step 3 (base cost).

DEVELOPING A MINIMUM QUALIFIED ECONOMIC OFFER

When calculating any appropriate salary increase or decrease, include any increased or decreased salary cost in extended contracts, co-curricular pay, extra duty pay, etc., which is produced by salary schedule increases or decreases or payment of steps or lanes.

1. Complete Forms A and B.
2. Using the information on Form A, determine how the law requires you to proceed by identifying the cost combination that applies to the first 12-month period of your offer.
 - A. If the combined costs identified by Step 6 (fringe benefits), Step 8 (steps), and Step 10 (promotions/lanes) are less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
 1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
 2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.
 3. Pay all eligible employees any salary increase to which they are entitled by virtue of a promotion or additional professional qualifications.

4. Pay an average salary increase to all employees in an amount determined by the difference between 3.8% of Step 3 (base cost) and the combined cost of Step 6 (fringe benefits), Step 8 (steps) and Step 10 (promotions/lanes) and in a manner which does not alter the relationship between steps and lanes in your existing salary structure. The options available for distribution of the general salary increase are a uniform dollar amount increase on each salary cell; or a uniform % increase to each salary cell; or an increase in the base which increases each cell in accordance with the existing salary structure.
- B. If the combined costs identified by Step 6 (fringe benefits), Step 8 (steps) and Step 10 (promotions/lanes) are 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
 2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.
 3. Pay all eligible employees any salary increase to which they are entitled by virtue of a promotion or additional professional qualifications.
- C. If the combined costs identified by Step 6 (fringe benefits), Step 8 (steps), and Step 10 (promotions/lanes) are more than 3.8% of Step 3 (base cost), but the combined costs of Step 6 (fringe benefits) and Step 8 (steps) are less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:
1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
 2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.
 3. Calculate the prorated portion of Step 9 (promotions/lanes) which can be funded by 3.8% of Step 3 (base cost) minus the cost of Step 5 (fringe benefits) and Step 7 (steps). To identify the proration percentage, identify

the amount of money available to fund promotions/lanes and divide by the amount of money necessary to fully fund promotions/lanes.

Pay the same prorated salary increase to all eligible employees entitled thereto by virtue of an additional promotion or the additional attainment of professional qualifications. For example, if the foregoing calculation would allow payment of one-half of the Step 9 (promotions/lanes) salary increase to eligible Step 1 employees, you must pay one-half of the salary increase to which your actual employees are entitled by virtue of promotions/additional qualifications during the first 12 months of your offer.

D. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps) are 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
2. Pay all eligible employees any salary increase to which they are entitled by virtue of an additional year of service on the salary schedule. Include longevity payments if they are part of the salary schedule.

E. If the combined costs identified by Step 6 (fringe benefits) and Step 8 (steps) are more than 3.8% of Step 3 (base cost), but the cost of Step 6 (fringe benefits) is less than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.
2. Calculate the prorated portion of Step 7 (steps) which can be funded by 3.8% of Step 3 (base cost) minus the cost identified by Step 5 (fringe benefits). To identify the proration percentage, identify the amount of money available to fund steps and divide by the amount of money necessary to fully fund steps.

Pay the same prorated salary increase to all eligible employees entitled thereto by virtue of an additional year of employment on the salary schedule. Include longevity payments if they are part of the salary schedule. For example, if the foregoing calculation would allow payment of half of the Step 7 (steps) salary increase to eligible Step 1 employees, you

must pay one-half of the salary increase to which any of your actual employees are entitled by virtue of an additional year of service on the salary schedule during the first 12 months of your offer.

F. If the cost identified by Step 6 (fringe benefits) is 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.

G. If the cost identified by Step 6 (fringe benefits) is more than 3.8% of Step 3 (base cost), then you must do the following for all employees who are actually represented by the labor organization for the purposes of collective bargaining and contract administration:

1. Maintain all fringe benefits identified on Form B and the district's percentage contribution toward the cost thereof.

2. You may decrease the salary of all employees in an amount determined by the difference between the cost identified by Step 6 (fringe benefits) and 3.8% of Step 3 (base cost) and in a manner which does not alter the relationship between steps and lanes on your existing salary structure. The options available for distribution of the average salary decrease are a uniform dollar amount decrease on each salary cell; or a uniform % decrease on each salary cell; or a decrease in the base which decreases each cell in accordance with the existing salary structure.

For the second year or portion thereof, repeat your evaluation of options A-G utilizing the costs identified in Steps 13-18 of Form A.

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2), (intro.), Stats.

ANALYSIS - RULE 99-104

Need for the Proposed Rule

Proposed administrative rule 99-104 tells school districts and unions representing school district professional employees how to calculate a qualified economic offer under s. 111.70(1)(nc), Stats.

Modifications Resulting From Public Hearing

No public hearing was held.

Response to Legislative Council Staff Recommendations

All recommendations have been accepted.