

## Report From Agency

### NOTICE OF SUBMISSION AND REPORT

The Wisconsin Employment Relations Commission proposes an order to amend ERC 10.08(1), (2), (3), (4), and (5) relating to increased filing fees.

SECTION 1. ERC 10.08 (1), (2), (3), (4), and (5) are amended to read:

**ERC 10.08 Fee schedule. (1) COMPLAINTS.** For a complaint alleging that a prohibited practice has been committed under s. 111.70(3), Stats., the complaining party or parties shall pay the commission a filing fee of ~~\$80~~ \$100.

**(2) GRIEVANCE ARBITRATION.** For a request that the commission or its staff act as a grievance arbitrator under s. 111.70(4)(c)2. or (cm)4., Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$250~~ \$400.

**(3) MEDIATION.** For a request that the commission or its staff act as a mediator under s. 111.70(4)(c)1. or (cm)3., Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$250~~ \$400.

**(4) FACT-FINDING.** For a request that the commission initiate fact-finding under s. 111.70(4)(c)3., Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$250~~ \$400, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid for the fact-finding.

**(5) INTEREST ARBITRATION.** For a request that the commission initiate interest arbitration under s. 111.70(4)(cm)6., or (jm) or 111.77(3), Stats., the parties to the dispute shall each pay the commission a filing fee of ~~\$250~~ \$400, except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid for the arbitration.

**SECTION 2. INITIAL APPLICABILITY.** This rule first applies to complaints and requests for grievance arbitration, mediation, fact-finding and interest arbitration services filed on the effective date of this rule.

**SECTION 3. EFFECTIVE DATE.** This rule 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.

## **Rule Summary**

### **Statutes interpreted.**

Sections 111.09, 111.71, and 111.94, Stats.

### **Statutory authority.**

Sections 111.09, 111.71, 111.94, and 227.11, Stats.

### **Explanation of agency authority.**

Sections 111.09, 111.71, and 111.94, Stats. require that the Commission collect a filing fee when it provides complaint, grievance arbitration, mediation, fact-finding and interest arbitration services.

### **Related statute or rule.**

None

### **Plain Language Analysis**

The proposed rule increases existing filing fees for Commission dispute resolution services in amounts necessary to fund 5.0 Program Revenue positions.

### **Summary of, and comparison with, existing or proposed federal regulations.**

The federal government does not charge a fee for complaint services (National Labor Relations Board) or mediation services (Federal Mediation and Conciliation Service). The federal government employees do not provide grievance arbitration, fact-finding or interest arbitration services.

### **Comparison with rules in adjacent states.**

No adjacent states charge a fee for complaint, grievance arbitration, mediation, fact-finding or interest arbitration services.

**Summary of factual data and analytical methodologies.**

During the last four fiscal years, the Commission has averaged \$381,400 in filing fee revenue.

The Commission estimates that increasing the existing filing fee levels will produce some reduction in the requests for Commission fee-related services but produce an additional \$167,800 in fee revenues annually.

Because the vast majority of filing fee revenue is derived from services for which the union and employer each pay 50% of the fee and because the vast majority of the Commission's fee-related services are provided to public sector employers and the unions representing their employees, the Commission anticipates that doubling the existing fees will increase the aggregate costs of public sector employers by \$84,000 annually and will have a negligible cost impact on private sector employers and unions

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.**

The Commission biannual reports and case data base indicate that small businesses rarely utilize the Commission's services.

**Effect on small business.**

Negligible.

**Agency contact person.**

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**Applicable Forms**

The proposed rule does not require any additional forms. Existing forms will be modified to reflect the applicable fee increase.

**Need for the Proposed Rule**

The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2003 Wisconsin Act 33 eliminated \$400,000 in General Program Revenue (GPR) and 4.0 GPR supported positions from the Commission's 2003-2005 budget and increased the number of Program Revenue (PR) filing fee supported positions by 2.0, from 3.0 to 5.0. The same legislation also abolished the Personnel Commission and transferred certain of that agency's former responsibilities to the Employment Relations Commission, without additional staff or funding.

The 2005-07 budget maintained the same reduced GPR funding and position levels and the additional PR positions as authorized in 2003 Wisconsin Act 33. The budget for 2007-09 maintains the same number of GPR and PR funded positions as the previous two budgets.

In order to support the 5.0 PR positions provided in the state budgets since 2003, the Employment Relations Commission doubled its filing fees in August, 2003. Despite that increase, filing fee income has averaged \$381, 359 over the past four fiscal years, an amount that was approximately \$130,350 less each year than the average budget-authorized PR position expenditures for those same years. As a result the Commission's PR fund balance has been reduced to a level that is wholly insufficient to meet current PR expenditures.

Unless filing fees are increased at the levels proposed, the revenue needed to support the 5.0 positions provided in the PR portion of the Commission's budget will not exist and the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

### **Persons Who Appeared at Public Hearing or Filed Comment**

Greg Spring  
Jina Jonen  
Ellen La Luzerne  
John Bodnar  
Karen Mawhinney  
Tim Smith  
Lauri Millot  
Steve Morrison  
Sandy Fults  
Rick Badger

### **Summary of Public Comments and WERC Response**

Union and employer representatives preferred a more limited level of increase and to have that increase phased in more slowly to allow for their budgets to adjust. Said representatives also expressed concerns that the fee increase might restrict access to Commission services. The Commission responded by indicating that the proposed fee level increase was needed to maintain the current level of Commission services and that the date of the proposed increase (by emergency rule) had been delayed as long as fiscally possible. No union or employer representative expressed a preference for a lower level of Commission services.

### **Modifications in Proposed Rule as a Result of Public Comment/Testimony**

None

### **Response to Legislative Council Staff Recommendations**

All recommendations have been accepted.

Dated at Madison, Wisconsin, this 10<sup>th</sup> day of March, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner