

CR 10-019

ORDER OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

The Wisconsin Employment Relations Commission proposes an order to amend ss. ERC 1.02, 1.04, 1.06, 1.07, 1.09, 2.02- 2.06, 2.09, 2.10, 3.02-3.13, 4.07-4.12, 4.14-4.16, 5.03-5.09, 6.03-6.07, 7.02-7.08, 8 (Title), 8.01, 8.05-8.09, 8.11-8.13, 9.02-9.09, 9.11, 10.02, 10.02, 10.04, 11.06-11.07, 11.12-11.13, 12.02 (6) (b) 4., 12.05, 12.10, 14.04 (3), 17.02 (2), 17.05-17.06, 19.05, 19.08-19.09, 20.01, 20.02, 20.03, 20.04, 20.07, 20.09, 21.02-21.13, 22.02-22.09, 23.03-23.09, 24.03-24.07, 25.02-25.04, 25.06-25.11, 26.05-26.09, 26.11-26.13, 27.02-27.07, 28.02-28.08, 30.08 (3), 31.03 (2), 31.06 (3), 31.08-31.09, 32 (Title), 32.01, 32.09 (2), 32.09 (3), 32.11-32.12, 32.15 (8), ERC 33 (Title), 33.01, 33.04-33.08, 33.20, ERC 33 APPENDIX (Title), 40.01, 40.05 (1), 40.05 (3), 40.06 (3), 50.01 and 50.04 (4) and are amended, and to create ERC 29 and 60-68 relating to the administration of collective bargaining laws.

RULE SUMMARY

Statutes Interpreted.

These proposed administrative rules interpret various provisions of 2009 Wisconsin Act 28 specifically including ss. 111.02 (6) (am), 111.02 (7) (a) (intro.), 111.02 (7) (a) 4, 111.02 (7m), 111.02 (9m) (intro.), 111.02 (9m) (b), 111.02 (10m), 111.05 (2), 111.05 (7), 111.70 (1) (a), 111.70 (1) (b), 111.70 (1) (j), 111.70 (1) (ne), 111.70 (3) (a) 4., 111.70 (3p), 111.70 (4) (cm) 5., 111.70 (4) (cm) 5s., 111.70 (4) (cm) 6. a., 111.70 (4) (cm) 6. am., 111.70 (4) (cm) 7, 111.70 (4) (cm) 7g., 111.70 (4) (cm) 7r. (intro.), 111.70 (4) (cm) 8m., 111.70 (4)(d) 2. a., 111.70 (4) (m) 6., 111.81 (3h), 111.81 (7) (g), 111.81 (9k), 111.81 (17m), 111.815 (1) and (2), 111.825 (2) (g), (h) and (i), 111.825 (2g), 111.825 (3), 111.825 (4), 111.83 (1), 111.83 (5m), 111.84 (2) (c), 111.905, 111.91 (1) (cg), 111.91 (2) (n), 111.91 (2) (nm), 111.91 (2c), 111.92 (1) (a), 111.92 (2m), 111.935 and 111.95-111.9993, Stats.

Statutory Authority

Sections 111.09, 111.71, 111.935 (2), 111.94, 111.9993 and 227.11, Stats.

Explanation of Agency Authority

The Wisconsin Employment Peace Act, the Municipal Employment Relations Act, the State Employment Labor Relations Act and the University of Wisconsin System Faculty and Academic Staff Labor Relations Act all require that the Commission adopt administrative rules to regulate various proceedings.

Related Statute or Rule

None.

Plain Language Analysis

The Wisconsin Employment Relations Commission has reviewed its rules concerning procedures in the administration of the following portions of ch. 111, Stats., for the purposes of correcting errors in its comprehensive 2006 rules review and revision, amending or creating new rules concerning changes to Subchapters I, IV and V, and creating new rules concerning the newly-created Subchapter VI. Those Subchapters consist of the following Acts:

Subchapter I -- the (Wisconsin) Employment Peace Act (WEPA)

Subchapter IV -- the Municipal Employment Relations Act (MERA)

Subchapter V -- the State Employment Labor Relations Act (SELRA)

Subchapter VI -- the University of Wisconsin System Faculty and Academic Staff Labor Relations Act (FASLRA)

OVERALL OBJECTIVES

The overall objectives of the proposed rules are:

- correcting errors/omissions made during the comprehensive 2006 rules review/revision
- conforming to changes in WEPA, MERA and SELRA
- establishing procedures concerning the newly-created FASLRA.
- removing internal inconsistencies

CHANGES COMMON TO ALL OR MANY CHAPTERS

Chs. ERC 60-68 concerning the newly-enacted FASLRA replicate the corresponding chapters in the SELRA rules in chs. 20-28. Accordingly, as in the 2006 review/revision, an effort has been made, wherever possible, to maintain parallelism among the chapters concerning parallel subject areas under WEPA, MERA, SELRA and FASLRA. To avoid unnecessary repetition, references to parallel provisions elsewhere in the rules have been utilized instead of repeating parallel text. In general, MERA rules have been referenced in the WEPA, SELRA and FASLRA chapters instead of repeating the parallel text. References to the hearing procedures in ch. ERC 18 have been utilized extensively throughout the rules.

Numerous references to "practice and procedures" have been changed to "practice and procedure" so that the usage of that phrase is uniform throughout the rules.

CHANGES SPECIFIC TO PARTICULAR CHAPTERS

Giving effect to revisions of the definitions of fair share and maintenance of membership agreements in s. 111.02 (7m) and (9m), Stats., respectively, s. ERC 8.01 and the title of ch. ERC 8 have been revised to make that existing chapter regarding fair share and maintenance of membership referenda applicable to a s. 111.02 (7) (a), Stats., employer of day care providers.

Correcting an error in s. ERC 12.02 (6) (b) 4., that section regarding the contents of a complaint case notice of hearing has been revised so that it conforms with the existing requirement in s. ERC 12.03 (1) that each respondent shall file an answer.

Correcting an error in s. ERC 50.04 (4), a new second sentence has been added paralleling the second sentence of s. ERC 13.04 (4).

Under the newly-enacted ss. 111.935, Stats., the new ch. ERC 29 provides a procedure by which a labor organization can attain certification as the exclusive collective bargaining representative of a bargaining unit of research assistants (newly-defined in s. 111.81 (17m), Stats.), by means of a WERC administrative determination based on employee-signed authorization cards, in lieu of a secret ballot election. The new ch. ERC 29 has been generally patterned after the representation election procedures in ch. ERC 13. However, because there is no other Wisconsin labor relations provision for an authorization card majority based determination of representative, the new chapter includes a variety of new and unique elements:

- The new procedure has been structured as a separate chapter onto itself, rather than included in the SELRA representation elections chapter, ch. ERC 23.

- Consistent with the language of s. 111.935, Stats., that once a card majority is determined "the collective bargaining unit is established", the new procedure is made available only with regard to bargaining units that are currently unrepresented (e.g., Section title, s. ERC 29.01)

- The new procedure is an optional alternative to a secret ballot election, not a preclusive replacement of the secret ballot election procedure. (e.g., s. ERC 29.01; see also, s. ERC 29.07 (4)).

- A labor organization is permitted to file both a petition under the new procedure and a petition for secret ballot election regarding the same bargaining unit. (s. ERC 29.02 (5) (b))

- The processing of a petition filed under the new procedure will take precedence over the processing of a petition for secret ballot election regarding the same bargaining unit filed by the same labor organization or by a competing labor organization. (s. ERC 29.07 (4)).

- Specific time and content standards for authorization card validity are included, along with a model authorization card. A petition must be supported by authorization cards signed within one year of the filing of the petition, by a majority of the employees employed in the bargaining unit during the payroll period when the petition was filed or employed in the bargaining unit on such other date or dates as the commission, for good cause, may establish. To be valid, authorization cards must substantially conform to the model card or otherwise include: the employee's name, campus and department; the name of labor organization; the employee's signature and the date of signature. The card must also contain statements reflecting that the research assistant favors establishment of a bargaining unit of research assistants exclusively represented for collective bargaining by the labor organization and understands that such representation may be based upon a majority of authorization cards, and that the card was signed freely and without coercion. Once signed, authorization cards are in effect for one year and not revocable. However, signing a card does not prevent the employee from signing another such card supporting representation by another labor organization. (s. ERC 29.04 (2), 29.02 (3)).

- Specific provisions govern the effect of the filing of a competing labor organization's petition for card-based certification regarding the same bargaining unit as to which another labor organization's earlier such petition is pending. If the petitions are filed within 10 days of one another, both will be processed and a secret ballot election will be conducted in the unlikely event that both petitions are determined to have majority card support. A petition filed more than 10 days after the filing of an earlier petition regarding the same unit, will not be processed until the processing of the earlier petition is completed, and then only if the earlier petition is dismissed. (s. ERC 29.07 (3)).

- Gives certification based on authorization card majority the same effect as a certification based on secret ballot election. (s. ERC 29.07 (5)).

- Provides for WERC release of the numbers of bargaining unit employees and of valid cards counted. (s. ERC 29.04 (2) (b)).

- Specifies that post-determination objections procedures are available regarding objections to the conduct of the WERC's administrative determination as to the existence of an authorization card majority or to conduct affecting the results of the WERC's determination. (s. ERC 29.05).

- Prohibits disclosure of the cards or the names of employees signing cards unless objections cannot be fairly resolved without such disclosure. (s. ERC 29.06 (1)).

In response to the 2009 Act 28 repeal of the Qualified Economic Offer and replacement of special provisions regarding bargaining units of school district professional employees with special provisions regarding bargaining units of all school district employees, the title and scope of ch. ERC 32 has been expanded to include disputes involving school district employees, and the references to arbitral criteria in s. ERC 32.15 (8) have been modified accordingly. The title and scope of ERC 33 and 33 Appendix have also been revised. As a result, ch. ERC 32 will be the chapter generally applicable as regards municipal sector disputes that do not involve law enforcement or fire-fighting personnel, with chs. ERC 33 and 33 Appendix applying only to petitions concerning school district professional employee collective bargaining agreements covering periods ending June 30, 2009. (ss. ERC 32.01 and 33.01, ch. ERC 33 Appendix caption)

Chapter ERC 40 regarding the ad hoc roster and ch. ERC 50 regarding labor-management cooperation services have been updated to include references to the newly-enacted FASLRA. (ss. ERC 40.01 and 50.01).

New chs. ERC 60-68 have been created to provide procedures relating to the newly-enacted FASLRA. Because FASLRA essentially replicated SELRA in many respects, the new chapters replicate the corresponding existing chs. ERC 30-38 concerning SELRA procedures.

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

None.

Comparison of proposed rules with rules promulgated by adjacent state labor relations agencies

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|--|--|
| CHANGES COMMON TO ALL OR MANY CHAPTERS | | AGENCY Name and Source of Rules cited: |
| | <p align="center">1 What subject areas are covered by the agency's rules?</p> <p>Wisconsin Employment Relations Commission Chapters ERC</p> <p>Private Sector</p> <ol style="list-style-type: none"> 1. private sector general 2. private sector complaint 3. private sector representation election 4. private sector referendum 5. private sector grievance arbitration 6. private sector mediation 7. private sector unit clarification 8. private sector referendum UW Hospital and Clinics Authority 9. private sector discretionary declaratory rulings <p>Municipal Sector</p> <ol style="list-style-type: none"> 10. municipal sector general 11. municipal sector election 12. municipal sector complaint 13. municipal sector mediation 14. municipal sector fact-finding 15. municipal sector referendum 16. municipal sector grievance arbitration 17. municipal sector unit clarification 18. municipal sector bargaining scope declaratory rulings 19. municipal sector discretionary declaratory rulings <p>State Sector</p> <ol style="list-style-type: none"> 20. state sector general 21. state sector election 22. state sector complaint 23. state sector grievance arbitration 24. state sector mediation 25. state sector fact-finding 26. state sector referendum 27. state sector unit clarification | <p>Minnesota Bureau of Mediation Services</p> <p>Minnesota Rules, Chapter 5505 - Private Rules</p> <p>5505.0100 Definitions. 5505.0200 Purpose, Construction, And Waiver. 5505.0300 Request For Investigation. 5505.0400 Required Information. 5505.0500 Notice Of Hearing And Investigation. 5505.0600 Hearings. 5505.0700 Examination Of Witnesses. 5505.0800 Subpoenas. 5505.0900 Determination Of Representative. 5505.1000 Election Procedure. 5505.1100 Challenge Of Voter. 5505.1200 Consent Election. 5505.1300 Certification Order. 5505.1400 Objections To Certification. 5505.1500 Reconsideration Within One Year.</p> <p>Chapter 5510 - Public Rules Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice Grievance Procedure Chapter 520 LMC - Grant Rules Chapter 5530 - Arbitration Roster Rules 5530.0100 Application. 5530.0200 Policy. 5530.0300 Definitions.</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|---|---|
| | <p>28. state sector discretionary declaratory rulings 29 authorization card majority determination of representative of unrepresented research assistants</p> <p>Municipal Sector Interest Arbitration 30. Municipal interest arbitration involving fire fighting and law enforcement personnel under s. 111.77, Stats. 31. Interest arbitration of disputes involving law enforcement bargaining units in 1st class cities 32. Collective bargaining and interest arbitration in municipal sector disputes not involving law enforcement or fire fighting employees 33. Collective bargaining and interest arbitration in disputes relating to collective bargaining agreements affecting school district professional employees covering periods beginning before July 1, 2009. 33 Appendix. Wisconsin Employment Relations Commission qualified economic offer calculation relating to collective bargaining agreements affecting school district professional employees covering periods beginning before July 1, 2009.</p> <p>Ad Hoc Roster 40. roster of ad hoc arbitrators and fact-finders</p> <p>Labor-Management Cooperation Services 50. labor management cooperation services</p> <p>UW System Faculty and Academic Staff Sector 60. faculty/academic staff sector general 61. faculty/academic staff sector election 62. faculty/academic staff sector complaint 63. faculty/academic staff sector grievance arbitration 64. faculty/academic staff sector mediation 65. faculty/academic staff sector fact-finding 66. faculty/academic staff sector referendum 67. faculty/academic staff sector unit clarification 68. faculty/academic staff sector discretionary declaratory rulings</p> | <p>5530.0400 Role Of Bureau. 5530.0500 Status Of Arbitrators. 5530.0600 Arbitrator Qualifications. 5530.0700 Appointment To Roster. 5530.0800 Arbitrator Conduct And Standards. 5530.0900 Panel Selections And Referrals. 5530.1000 Arbitration Proceedings. 5530.1200 Performance Measures. 5530.1300 Disciplinary Or Removal Procedures. Chapter 7315 - Independent Review Rules 7315.0210 Scope. 7315.0300 Policy. 7315.2300 Request For Rehearing. 7315.2400 Petition For Rehearing. 7315.2500 Consideration. 7315.2600 Determination. 7315.2700 Notice Of Rehearing. 7315.2800 Rehearing Procedure. 7315.2900 Decision After Rehearing.</p> <p>Michigan Public Employment Relations Commission Michigan Rules R 423.101 - 423.499 - General Rules Part 1. General Provisions Part 2. Mediation Of Labor Disputes Part 3. Fact Finding Part 4. Representation Proceedings. Part 5. Unfair Labor Practice Charges Part 6. Motion Practice Part 7. Hearings Part 8. Filing And Service Of Documents Part 9. Notice Of Public School Strike Or Lockout R 423.501 - 423.514 Administration Of Compulsory Arbitration Act For Labor Disputes In Municipal Police And Fire Departments</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|--|---|
| | | <p>Iowa Public Employment Relations Board Iowa Rules [621] Chapter 1 General Provisions Chapter 2 General Practice And Hearing Procedures Chapter 3 Prohibited Practice Complaints Chapter 4 Bargaining Unit And Bargaining Representative Determination Chapter 5 Elections Chapter 6 Negotiations And Negotiability Disputes Chapter 7 Impasse Procedures Chapter 8 Internal Conduct Of Employee Organizations Chapter 9 Administrative Remedies Chapter 10 Declaratory Orders Chapter 11 State Employee Appeals Of Grievance Decisions And Disciplinary Actions</p> <p>Illinois Labor Relations Board Title 80: Public Officials And Employees Subtitle C: Labor Relations Chapter IV: Illinois Labor Relations Board Part 1200 General Procedures Part 1210 Representation Proceedings Part 1220 Unfair Labor Practice Proceedings Part 1230 Impasse Resolution Part 1240 Police Officer Decertification Proceedings</p> <p>Illinois Educational Labor Relations Board Title 80: Public Officials and Employees Subtitle C: Labor Relations Chapter III: Illinois Educational Labor</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|--|---|
| | | Relations Board Part 1100 General Procedures Part 1105 Hearing Procedures Part 1110 Representation Procedures Part 1120 Unfair Labor Practice Proceedings Part 1125 Fair Share Fee Objections Part 1130 Collective Bargaining And Impasse Resolution Part 1135 University Of Illinois Bargaining Units |
| | | |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|--|--|---|
| <p>Chs. ERC 60-68 concerning the newly-enacted FASLRA replicate the corresponding chapters in the SELRA rules in chs. 20-28. Accordingly, as in the 2006 review/revision, an effort has been made, wherever possible, to maintain parallelism among the chapters concerning parallel subject areas under WEPA, MERA, SELRA and FASLRA. To avoid unnecessary repetition, references to parallel provisions elsewhere in the rules have been utilized instead of repeating parallel text. In general, MERA rules have been referenced in the WEPA, SELRA and FASLRA chapters instead of repeating the parallel text. References to the hearing procedures in ch. ERC 18 have been utilized extensively throughout the rules.</p> | <p>2. What is the overall structure of the agency's rules?</p> <p>WERC - separate sets of rules for private, municipal, state and faculty/academic staff sectors plus ad hoc roster and LMC services (see above)</p> | <p>MN BMS - fewer chapters -- separate sets of rules for private and public sectors (public including municipal and state), plus LMC grants, ad hoc roster and rehearing procedures (see chapters list above)</p> <p>MI ERC - single set of rules covering private, municipal and state sectors plus separate set of rules for police-fire interest arbitration</p> <p>Iowa PERB - single set of rules covering municipal and state sectors (no private sector jurisdiction) fewer chapters. (see chapters list above)</p> <p>Ill. LRB - single set of rules covering municipal and state sectors (see chapters list above)</p> <p>Ill. Ed. LRB - single set of rules covering educational institutions in municipal and state sectors -- (see chapters list above)</p> |
| <p>Numerous references to "practice and procedures" have been changed to "practice and procedure" so that the usage of that phrase is uniform throughout the rules.</p> | | |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|--|---|---|
| CHANGES SPECIFIC TO PARTICULAR CHAPTERS | | |
| Giving effect to revisions of the definitions of fair share and maintenance of membership agreements in ss. 111.02 (7m) and (9m), Stats., respectively, s. ERC 8.01 and the title of ch. ERC 8 have been revised to make that existing chapter regarding fair share and maintenance of membership referenda applicable to a s. 111.02 (7) (a), Stats., employer of day care providers. | | |
| Correcting an error in s. ERC 12.02 (6) (b) 4., that section regarding the contents of a complaint case notice of hearing has been revised so that it conforms with the existing requirement in s. ERC 12.03 (1) that each respondent shall file an answer. | | |
| Correcting an error in s. ERC 50.04 (4) a new second sentence has been added paralleling the second sentence of s. ERC 13.04 (4). | | |
| | | |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|--|--|---|
| <p>Under the newly-enacted ss. 111.935, Stats., the new ch. ERC 29 provides a procedure by which a labor organization can attain certification as the exclusive collective bargaining representative of a bargaining unit of research assistants (newly-defined in s. 111.81 (7m), Stats.), by means of a WERC administrative determination based on employee-signed authorization cards, in lieu of a secret ballot election. The new ch. ERC 29 has been generally patterned after the representation election procedures in ch. ERC 13.</p> | <p>3. Do the agency's rules provide a procedure by which a labor organization can attain certification as exclusive collective bargaining representative based on authorization cards in lieu of a secret ballot election?</p> <p>WERC - Yes, new ch. ERC 29, applicable only to research assistants in the UW System.</p> | <p>MN BMS - None found.</p> <p>MIERC - None found.</p> <p>Iowa PERB - None found</p> <p>Ill. LRB - Yes. A "majority interest petition" procedure is available (e.g., 1200.10, 1210.80.)</p> <p>Ill. Ed. LRB - Yes. A "majority interest" procedure is available (e.g., 1110.10 j))</p> |
| <p>However, because there is no other Wisconsin labor relations provision for an authorization card majority based determination of representative, the new chapter includes a variety of new and unique elements:</p> <p>- The new procedure has been structured as a separate chapter onto itself, rather than included in the SELRA representation elections chapter, ch. ERC 23.</p> | <p>4. If the agency rules include card-based certification procedures, are they structured separately from rules regarding representation elections?</p> <p>WERC - Yes (see note in first column)</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - No. The majority interest procedures are integrated with other procedures for attaining exclusive representative status. (e.g., 1200.10) However, there are some separate subsections devoted exclusively to majority interest related provisions. (e.g., 1210.100 b))</p> <p>Ill. Ed. LRB - No. The majority interest procedures are integrated with other procedures for attaining exclusive representative status (e.g., 1200.10, 1210.80.). However, there are some separate subsections devoted exclusively</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|--|---|
| | | to majority interest related provisions. (e.g., 111.10.105) |
| <p>- Consistent with the language of s. 111.935, Stats., that once a card majority is determined "the collective bargaining unit is established", the new procedure is made available only with regard to bargaining units that are currently unrepresented (e.g., Section title, s. ERC 29.01)</p> | <p>5. If the agency's rules include a card-based certification procedure, is that procedure limited to bargaining units that are currently unrepresented?</p> <p>WERC - Yes (see note in first column)</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Yes, majority interest process not an available means of replacing or decertifying an existing representative. (1110.105)</p> <p>Ill. Ed. LRB - Yes, majority interest process not an available means of replacing or decertifying an existing representative. (1210.20) However, majority interest process is available as a means of adding unrepresented employees to an existing represented bargaining unit. (1110.180 a) 1) h)).</p> |
| | | |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|--|---|--|
| <p>- The new procedure is an optional alternative to a secret ballot election, not a preclusive replacement of the secret ballot election procedure. (e.g., ss.ERC 29.01; see also, s. ERC 29.07 (4)).</p> | <p>6. If the agency's rules include a card-based certification procedure, does that procedure preclusively replace a secret ballot election procedure?</p> <p>WERC - No. The secret ballot election procedures in ERC 23 are also applicable to research assistants.</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - No. Secret ballot election procedures are also available. (e.g., 1200.10, 1210.80.)</p> <p>Ill. Ed. LRB - Secret ballot election procedures are also available. (e.g., 1110.50 b) 9))</p> |
| <p>- A labor organization is permitted to file both a petition under the new procedure and a petition for secret ballot election regarding the same bargaining unit. (s. ERC 29.02 (4) (b))</p> | <p>7. If the agency's rules include a card-based certification procedure, is a labor organization permitted to file and have pending at the same time both an election petition and a petition for authorization card-based certification regarding the same unit?</p> <p>WERC - Yes. However, the two petitions will not be processed simultaneously. (see WERC answer to question 8. below)</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Unclear. However, majority interest petition is processed as if it were an election petition if accompanying showing of interest reflects 30% or more support but less than majority support. (1110.105 r)).</p> <p>Ill. Ed. LRB - Unclear. However, filing and withdrawal of a majority interest petition can, in some circumstances, bar petitioner from filing any other representation petition for one year. (1110.50)</p> |
| | | |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|--|---|
| <p>- The processing of a petition filed under the new procedure will take precedence over the processing of a petition for secret ballot election regarding the same bargaining unit filed by the same labor organization or by a competing labor organization. (s. ERC 29.07 (4)).</p> | <p>8. If the agency's rules include a card-based certification procedure, does that procedure specify what effect a petition for secret ballot election by the same labor organization or a different labor organization would have on a pending petition for authorization card based certification?</p> <p>WERC - Yes. The petition for card based certification will be processed first, with the election petition processed only if the petition for card based certification is dismissed.</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Majority interest petition is processed as if it were an election petition if accompanying showing of interest reflects 30% or more support but less than majority support. (1110.105 r)). If competing organizations file petitions regarding the same or similar bargaining units, the Board will direct a secret ballot election to determine representation. (1210.100 b) 8)).</p> <p>Ill. Ed. LRB - Unclear. No specific provision found on that subject.</p> |
| <p>- Specific time and content standards for authorization card validity are included. (ss. ERC 29.02 (3) and 29.04 (2)).</p> | <p>9. If the agency's rules include a card-based certification procedure, does that procedure specify time and content standards for authorization card validity?</p> <p>WERC - Yes. A petition must be supported by authorization cards signed within one year of the filing of the petition, by a majority of the employees employed in the bargaining unit during the payroll period when the petition was filed or employed in the bargaining unit on such other date or dates as the commission, for good cause, may establish.</p> <p>To be valid, authorization cards are to substantially conform to the model card or otherwise include: the employee's name, campus and department; the name of labor organization; the employee's signature and the date of signature. The card must also contain statements reflecting that the research assistant favors establishment of a bargaining unit of research assistants exclusively represented for collective bargaining by the labor</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB -Yes. Majority interest petition can be supported by authorization cards, petitions or any other evidence that demonstrates that a majority of the employees in the bargaining unit at the time the petition was filed wish to be represented by the union for purposes of collective bargaining (1210.80 d) 2) a))</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|---|--|
| | <p>organization and understands that such representation may be based upon a majority of authorization cards, and that the card was signed freely and without coercion. Once signed, authorization cards are in effect for one year and not revocable. However, signing a card does not prevent the employee from signing another such card supporting representation by another labor organization. (s. ERC 29.04 (2), 29.02 (3)).</p> | <p>To be valid, evidence of interest must include the employee's name, an original legible signature dated by the employee and a statement that the employee understands that the card may be used in support of a petition to attain representative status without an election; the signature must be dated within 6 months prior to the filing of the petition. (1210.80 d) 2) c), d), e))</p> <p>Employees are allowed to withdraw previously-signed statements of support for a labor organization in limited circumstances. Specifically, "Employees may not withdraw authorization cards or other documents evidencing majority support after the filing of a majority interest petition, unless the basis for the withdrawal constitutes evidence of fraud or coercion on the part of the petitioner." (1210.80 e) 6)</p> <p>Ill. Ed. LRB - Yes. Majority interest petition may be supported by current dues deduction authorizations, authorization cards, petitions or other evidence of interest as regards employees in the bargaining unit at the time the petition was filed. (1110.80 a))</p> <p>Evidence called for on model authorization card included in the rules would suffice as evidence of interest. The model card calls for a statement that the employee favors collective bargaining representation by the named labor organization, the employee's name and employment position, the employee's signature and the date of the signature. (1110.80 a) 3) The signature must be dated within 6 months prior to the filing of the petition (1110.80 d))</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|--|--|--|
| | | <p>Unclear under what circumstances, if any, employees are permitted to withdraw previous manifestations of support for labor organization. The only provision found to refer to such withdrawal reads, "Upon the filing of a petition or at any time thereafter that the case is pending, a party may allege that the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer. (1110.105 s)).</p> |
| <p>- Specific provisions govern the effect of the filing of a competing labor organization's petition for card-based certification regarding the same bargaining unit as to which another labor organization's earlier such petition is pending. (s. ERC 29.07 (3)).</p> | <p>10. If the agency's rules include a card-based certification procedure, what provision is made regarding the effect of the filing of a competing labor organization's petition for card based certification regarding the same bargaining unit as to which another labor organization's earlier petition is pending?</p> <p>WERC - Yes. If the petitions are filed within 10 days of one another, both will be processed and a secret ballot election will be conducted in the unlikely event that both petitions are determined to have majority card support. A petition filed more than 10 days after the filing of an earlier petition regarding the same unit, will not be processed until the processing of the earlier petition is completed, and then only if the earlier petition is dismissed</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - If competing organizations file petitions regarding the same or similar bargaining units, the Board will direct a secret ballot election to determine representation. (1210.100 b) 8)).</p> <p>Ill. Ed. LRB - Unclear. No specific provision found on that subject. (see generally, 1110.70)</p> <p>Ill. Ed. LRB - Unclear. No specific provision found on that subject.</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|---|--|
| <p>- Gives certification based on authorization card majority the same effect as a certification based on a secret ballot election. (s. ERC 29.07 (5)).</p> | <p>11. If the agency's rules include a card-based certification procedure, is a card-based certification given the same effect as a certification based on secret ballot election?</p> <p>WERC - Yes.</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - No specific provision found to that effect, however, the general integration of majority interest process with election process strongly implies that certifications resulting from each process would be given the same effect.</p> <p>Ill. Ed. LRB - Yes, for example, certification based on majority interest is given the same certification bar effect on other subsequent representation petitions as an election based certification. (e.g., 1110.70)</p> |
| <p>- Provides for WERC release of the numbers of bargaining unit employees and of valid cards counted. (s. ERC 29.04 (2) (b)).</p> | <p>12. If the agency's rules include a card-based certification procedure, does the procedure provide for the agency's release of the numbers of bargaining unit employees and of the number of valid cards counted?</p> <p>WERC - Yes and yes.</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Yes, at least where the petition results in certification of the petitioner as representative. Preparation of "a tally of the finding of majority support" is specifically called for in connection with the certification of the petitioner as representative. (1210.100 b) 7) B)). However no similar reference is made as</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|--|---|--|
| | | <p>regards instances in which the petition is dismissed on the grounds that the showing of interest is inadequate. (1210.11 b) 7) A)).</p> <p>Ill. Ed. LRB - Apparently not. Rules refer only to Board issuance of certification if Board concludes that petition is supported by majority interest. No reference to a tally of any kind. (see generally, 1110.105 e))</p> |
| <p>- Specifies that post-determination objections procedures are available regarding objections to the conduct of the WERC-s administrative determination as to the existence of an authorization card majority or to conduct affecting the results of the WERC's determination. (s. ERC 29.05).</p> | <p>13. If the agency's rules include a card-based certification procedure, is there a procedure for raising objections regarding conduct affecting the outcome of the procedure?</p> <p>WERC - Yes. Objections can be made to the conduct of the WERC administrative determination and/or to conduct affecting the results of the WERC's determination.</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Yes. Any person (not just parties to the petition proceeding) may submit evidence of fraud or coercion regarding evidence of majority interest during agency investigation phase of processing of petition (1210.80 e) 3). Employer is required to submit any such evidence it may have within 14 days (or more if extended) of the filing of the petition. (1210.100 b) 3). If fraud or coercion by petitioner sufficient to affect the showing of majority interest is proven by clear and convincing evidence, Board will direct an election to determine representation. 1210.100 b) 5) B)</p> <p>Ill. Ed. LRB - Yes. Any person (not just parties to the petition proceeding) may submit evidence of fraud or coercion regarding evidence of majority interest</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|--|--|
| | | <p>during agency investigation phase of processing of petition. (1110.80 g) Employer is required to submit any such evidence it may have within 14 days (or more if extended) of the filing of the petition. (1110.105 d). If fraud or coercion by petitioner sufficient to affect the showing of majority interest is proven by clear and convincing evidence, Board will direct an election to determine representation. (1110.105 h) Where majority interest is not shown by petitioner, petitioner will nonetheless be certified as representative without an election upon a showing that petitioner would have had majority interest support but for the fact that ". . . the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer." (1110.105 s, t))</p> |
| <p>- Prohibits disclosure of the cards or the names of employees signing cards unless objections cannot be fairly resolved without such disclosure. (s. ERC 29.06 (1)).</p> | <p>14. If the agency's rules include a card-based certification procedure, does the procedure specify under what conditions, if any, the cards or the names of employees signing cards is subject to disclosure to parties other than the petitioner?</p> <p>WERC - Yes. The contents of the cards, including the names of employees signing the cards, will not be disclosed to other than the petitioner, unless objections cannot be fairly resolved without such disclosure.</p> | <p>MN BMS - No card based procedure found.</p> <p>MIERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - "The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties." (1210.80 e) 1).</p> |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|--|--|
| | | <p>However, "The adequacy of the showing of interest shall be determined administratively by the Board or its agent. The showing of interest determination is not subject to litigation, except upon a finding of a material issue of fact or law relating to fraud or coercion in majority interest petition cases. " (1210.80 e) 3)</p> <p>Ill. Ed. LRB - "The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties." (1110.80 f) However, "Except as provided in 1110.105, the showing of interest shall not be subject to collateral attack and shall not be an issue at hearing." Section 1110.105 provides procedures for adjudicating allegations of fraud or coercion regarding the evidence of majority support. (1110.105 f)-i).</p> |
| | | |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|---|---|---|
| <p>In response to the 2009 Act 28 repeal of the Qualified Economic Offer and replacement of special provisions regarding bargaining units of school district professional employees with special provisions regarding bargaining units of all school district employees, the title and scope of ch. ERC 32 has been expanded to include disputes involving school district employees, and the references to arbitral criteria in s. ERC 32.15 (8) have been modified accordingly. The title and scope of ERC 33 and 33 Appendix have also been revised. As a result, ch. ERC 32 will be the chapter generally applicable as regards municipal sector disputes that do not involve law enforcement or fire-fighting personnel, with chs. ERC 33 and 33 Appendix applying only to petitions concerning school district professional employee collective bargaining agreements covering periods ending June 30, 2009. (ss. ERC 32.01 and 33.01, ch. ERC 33 Appendix caption)</p> | | |
| <p>Chapters ERC 40 regarding the ad hoc roster and 50 regarding labor-management cooperation services have been updated to include references to the newly-enacted FASLRA. (ss. ERC 40.01 and 50.01).</p> | | |
| | | |

| Description of or reference to WERC rule change | Question regarding other agencies' rules | Answer regarding other agencies/ rules |
|--|---|---|
| <p>New chs. ERC 60-68 have been created to provide procedures relating to the newly-enacted FASLRA. Because FASLRA essentially replicated SELRA in all respects, the new chapters replicate the corresponding existing chs. ERC 30-38 concerning SELRA procedures.</p> | | |
| <p>---end of comparison table---</p> | | |

Summary of factual data and analytical methodologies.

Not applicable.

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

Not applicable.

Effect on small business.

None.

AGENCY CONTACT PERSON.

Peter G. Davis
Peter.Davis@werc.state.wi.us
(608) 266-2993

ACCESS TO REVISED FORMS

The Wisconsin Employment Relations Commission is modifying, as needed, its existing forms and its website table of forms to accommodate the changes reflected in these proposed rules. The modified forms and form table can be obtained through the Commission's website at <http://werc.wi.gov>, by mail at P.O. Box 7870 Madison, Wisconsin 53707-7870, by fax at (608) 266-6930, by telephone at (608) 266-1381 or in person at 1457 East Washington Avenue, Madison, Wisconsin.

NEED FOR PROPOSED RULES

These proposed rules are needed to: (1) correct errors/omissions/internal inconsistencies made during the WERC's comprehensive 2006 rules review/revision; (2) conform to changes in WEPA, MERA and SELRA, including the repeal of the MERA Qualified Economic Offer provisions, and the establishment of UW-research assistant bargaining unit representation based on an authorization card majority in lieu of a secret ballot election; (3) establish procedures for the general and specific administration of the newly created FASLRA which are consistent and parallel with the procedures for administration of all statutes administered by the Commission relating to complaint, election, unit clarification, declaratory ruling, grievance arbitration, fact-finding, mediation and union security proceedings.

BASIS AND PURPOSE OF PROPOSED RULES

These proposed rules seek to give effect to recent changes in WEPA, MERA and SELRA and to the recent creation of FASLRA in ways that promote the ability of parties to easily and effectively use the services of the Wisconsin Employment Relations Commission and

thereby enhance the Commission's ability to fulfill its statutory purpose of seeking and improving labor peace among unions, employers and employees in Wisconsin.

TEXT OF PROPOSED RULES

SECTION 1. ERC 1.06, 1.07, 1.09, 2.02- 2.06, 2.09, 2.10, 3.02-3.13, 4.07-4.12, 4.14-4.16, 5.03-5.09, 6.03-6.07, 7.02-7.08, 8.05-8.09, 8.11-8.13, 9.02-9.09, 9.11, 11.06-11.07, 11.12-11.13, 12.05, 12.10, 14.04 (3), 17.05-17.06, 19.05, 19.08-19.09, 20.07, 21.02-21.13, 22.02-22.09, 23.03-23.09, 24.03-24.07, 25.02-25.04, 25.06-25.11, 26.05-26.06, 26.08-26.09, 26.11-26.13, 27.02-27.07, 28.02-28.08, 30.08 (3), 31.06 (3), 31.08-31.09, 32.09 (3), 32.11-32.12, 33.04-33.08, and 33.20 are amended to replace "procedures" with "procedure".

SECTION 2. ERC 1.04, 10.04 and 20.04 are amended to insert "given" after the phrase "have the meaning as".

SECTION 3. ERC 1.02 is amended to read:

ERC 1.02 Chapters. Chapters ERC 2 to 9, 40, and 50 contain special rules applicable to the type of proceeding described in the caption of the chapter. This chapter contains general rules applicable to all types of proceedings in private sector employment relations and shall be read in conjunction with the chapter governing the particular proceeding.

SECTION 4. ERC 2.05 is amended to read:

ERC 2.05 Hearings. ~~Practice and procedures~~Practice and procedure for hearings concerning unfair labor practice complaints shall be as set forth in s. ERC 12.05, except that references to the "Municipal Employment Relations Act" shall be to the "Wisconsin Employment Peace Act."

SECTION 5. ERC 2.06 is amended to read:

ERC 2.06 Findings of fact, conclusions of law and order. After the close of the evidence and the submission of closing arguments, or on granting a motion for dismissal of a complaint, the commission or examiner shall issue written findings of fact, conclusions of law and order to the parties. ~~Practice and procedures~~Practice and procedure concerning the issuance of findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.06, except that references to the "Municipal Employment Relations Act" shall be to the "Wisconsin Employment Peace Act."

SECTION 6. ERC 7.06 is amended to read:

ERC 7.06 Hearings. ~~Practice and procedures~~ Practice and procedure for hearings in unit clarification proceedings shall be as set forth in s. ERC 17.06, except that references to the "Municipal Employment Relations Act" shall be to the "Wisconsin Employment Peace Act."

SECTION 7. ERC 8 (Title) is amended to read:

REFERENDA CONCERNING FAIR-SHARE AND MAINTENANCE OF MEMBERSHIP AGREEMENTS INVOLVING THE UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY OR AN EMPLOYER OF A DAY CARE PROVIDER UNDER s. 111.02 (7) (a) 4., STATS.

SECTION 8. ERC 8.01 is amended to read:

ERC 8.01 Scope. This chapter governs the general procedure relating to referenda under s. 111.075, Stats., concerning fair-share and maintenance of membership agreements affecting bargaining units of employees of the University of Wisconsin Hospitals and Clinics Authority and of an employer of a day care provider under s. 111.02 (7) (a) 4, Stats.

SECTION 9. ERC 10.02 is amended to read:

ERC 10.02 Chapters. Chapters ERC 11 to 19, 30 to 33, 40, and 50 contain special rules applicable to the type of proceeding described in the caption of the chapter. This chapter contains general rules applicable to all types of proceedings in municipal employment relations and shall be read in conjunction with the chapter governing the particular proceeding.

SECTION 10. ERC 12.02 (6) (b) 4. is amended to read:

4. A statement that each named respondent shall ~~have the right to file~~ an answer to the complaint, specifying the names and addresses of the persons to be served with a copy of the answer and the date by which the answer is to be served on those persons.

SECTION 11. ERC 17.02 (2) is amended to read:

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the party or representative filing the petition. A petition is not filed unless it contains the required signature or signature facsimile and unless and until the petition has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). 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 two copies of the petition shall be included. The party filing the petition shall, at the same

time, serve a copy on the other party, or its designated representative, ~~by~~ as set forth in s. ERC 10.07.

SECTION 12. ERC 20.01 is amended to read:

ERC 20.01 Purpose and interpretation. Chapters ERC 20 to ~~2829~~, 40, and 50 govern the conduct of all proceedings involving state employment relations before the Wisconsin Employment Relations Commission. As used in chs. ERC 20 to ~~2829~~, 40, and 50, "State Employment Labor Relations Act" means subch. V of ch. 111, Stats. Chapters ERC 20 to ~~2928~~ shall be interpreted to serve the purposes and provisions of the State Employment Labor Relations Act, as shall chs. 40 and 50 in connection with state sector employment. Nothing in chs. ERC 20 to ~~2928~~, 40, or 50 shall be construed to prevent the commission or persons employed or designated by the commission from using best efforts to adjust any dispute arising between employees and employers. The commission or examiner may waive requirements of chs. ERC 20 to ~~2928~~, 40, or 50 to serve the purposes and provisions of the State Employment Labor Relations Act, unless a party shows that it would be prejudiced by the waiver.

SECTION 13. ERC 20.02 is amended to read:

ERC 20.02 Chapters. Chapters ERC 21 to ~~2928~~, 40, and 50 contain special rules applicable to the type of proceeding described in the caption of the chapter. Chapter ERC 20 contains general rules applicable to all types of proceedings in state employment relations and shall be read in conjunction with the chapter governing the particular proceeding.

SECTION 14. ERC 20.03 is amended to read:

ERC 20.03 Resolution of conflicts. In any conflict between a general rule in ch. ERC 20 and a specific provision in chs. ERC 21 to ~~2928~~, 40, or 50, the specific provision shall govern.

SECTION 15. ERC 20.09 is amended to read:

ERC 20.09 Computation of time. Computation of any period of time prescribed by or allowed by chs. ERC 20 to ~~2829~~, 40, or 50, or by order of the commission or individual conducting the proceeding, shall be as set forth in s. ERC 10.09.

SECTION 16. ERC 21.07 is amended to read:

ERC 21.07 Hearings. (1) SCOPE. ~~Hearings shall be open to the public and limited to the litigation of and oral argument on issues of fact or law regarding whether the unit described in the petition is an appropriate unit, and, if so, regarding the~~

issues, if any, with respect to whether there exists a question of representation among the eligible personnel in that unit. Practice and procedure regarding hearings in election proceedings shall otherwise be as set forth in s. ~~ERC 18.08~~ s. ERC 11.07.

SECTION 17. ERC 22.02 is amended to read:

ERC 22.02 Complaint. A complaint that the employer, an employee, or a person has engaged in a unfair labor practice defined, respectively, in s. 111.84 (1), (2) or (3), Stats., respectively, may be filed by any party or by a representative authorized to file on behalf of a party in interest. ~~Practice and procedures~~ Practice and procedure for complaint filing and processing shall otherwise be as set forth in s. ERC 12.02, except that the statutory references in s. ERC 12.02 (1) and (2) (c) shall be to s. 111.84 (1), (2) and (3), Stats.; the references to "prohibited practices" shall be to "unfair labor practices"; and references to the "Municipal Employment Relations Act" shall be to the "State Employment Labor Relations Act."

SECTION 18. ERC 22.05 is amended to read:

ERC 22.05 Hearings. ~~Practice and procedures~~ Practice and procedure for hearings concerning unfair labor practice complaints shall be as set forth in s. ERC 18.08, except that references to the "~~Municipal employment~~ Employment Relations Act" shall be to the "State Employment Labor Relations Act."

SECTION 19. ERC 22.06 is amended to read:

ERC 22.06 Findings of fact, conclusions of law and order. After the close of the evidence and the submission of closing arguments, or on granting a motion for dismissal of a complaint, the commission or examiner shall issue written findings of fact, conclusions of law and order to the parties. ~~Practice and procedures~~ Practice and procedure concerning the issuance of findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.06, except that references to the "~~Municipal Employment Relations Act~~" shall be to the "State Employment Labor Relations Act."

SECTION 20. ERC 27.06 is amended to read:

ERC 27.06 Hearings. ~~Practice and procedures~~ Practice and procedure for hearings in unit clarification proceedings shall be as set forth in s. ERC 17.06, except that the reference to the "~~Municipal Employment Relations Act~~" shall be to the "State Employment Labor Relations Act."

SECTION 21. ERC 29 is created to read:

Chapter ERC 29

**AUTHORIZATION CARD MAJORITY DETERMINATION OF
REPRESENTATIVE OF UNREPRESENTED RESEARCH ASSISTANTS**

ERC 29.01 Scope.

ERC 29.02 Petition for certification based on authorization card majority.

ERC 29.03 Withdrawal of petition.

ERC 29.04 Commission action on petition.

ERC 29.05 Objections to determination.

ERC 29.06 Commission action on objections.

ERC 29.07 Certification of results of determination.

ERC 29.08 Petition for rehearing.

ERC 29.01 Scope. This chapter governs the procedure for filing and processing of a petition filed on or after July 1, 2010, under s. 111.935, Stats., to determine a collective bargaining representative for unrepresented research assistants in a bargaining unit defined in s. 111.825 (2) (g), (h), or (i), Stats., by authorization cards in lieu of a secret ballot election. The procedure provided in this chapter is an available alternative to the secret ballot election procedures in ch. ERC 21 and ss. 111.83 and 111.825(4), Stats. The procedure provided in this chapter does not apply to research assistants in bargaining units with an existing representative.

ERC 29.02 Petition for certification based on authorization card majority. (1) WHO MAY FILE. A petition to determine a collective bargaining representative for a bargaining unit of unrepresented research assistants may be filed by a labor organization.

(2) FORM, NUMBER OF COPIES, AND FILING. The petition shall be in writing and shall include the signature or a facsimile of the signature of the representative filing the petition. A petition is not filed unless it contains the required signature or signature facsimile and unless and until the petition has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). 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 two copies of the petition shall be included. The original authorization cards required by sub. (3) shall be transmitted to the commission in paper form by physical delivery or mail. The petition is not filed until both the petition and the authorization cards have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) AUTHORIZATION CARDS. (a) The petition shall be supported by authorization cards, signed within one year of the filing of the petition, by a majority of the research assistants in the collective bargaining unit involved.

(b) Authorization cards shall either substantially conform to the model card set forth in par. (c) or shall include all of the following:

1. The name, campus and department of the research assistant, in printed or otherwise legible form.

2. The name of the labor organization referred to in the card, in printed or otherwise legible form.

3. Statements reflecting that the research assistant favors establishment of a bargaining unit of research assistants exclusively represented for collective bargaining by the labor organization and understands that such representation may be based upon a majority of authorization cards without an election.

4. A statement reflecting that the research assistant has signed the card freely and without coercion by anyone.

5. The signature of the research assistant.

6. The date of signature.

(c) Model authorization card.

Research Assistant Authorization Card

Name (please print) _____

Campus and Department (please print) _____

Labor Organization (please print) _____

I favor establishment of a bargaining unit of research assistants exclusively represented for collective bargaining by the above labor organization. I understand that such representation may be based upon a majority of authorization cards without an election. I have signed this card freely and without coercion by anyone.

Research Assistant's Signature _____
date of signature.

(d) Authorization cards shall be effective for one year after the date the card is signed and shall not be subject to revocation.

(e) The signing of a card shall not prevent the research assistant from signing another such card supporting representation by another labor organization.

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

(a) The name, address and affiliation, if any, of the petitioner, 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 employer 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, specifying inclusions and exclusions, as well as the approximate number of employees in the unit.

(d) A statement that the collective bargaining unit involved is not currently represented for purposes of collective bargaining.

(e) Any other relevant facts.

(5) EFFECT OF PENDENCY ON OTHER PROCEEDINGS. The pendency of a petition for certification by authorization card majority shall have the following effects on other proceedings:

(a) The pendency of the petition shall preclude the petitioner from separately filing another petition for certification by authorization card majority regarding the same bargaining unit.

(b) The pendency of the petition shall have no effect on the petitioner's right to separately file a petition for a secret ballot election regarding the same bargaining unit, except as provided in s. ERC 29.07 (4).

ERC 29.03 Withdrawal of petition. Any 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.

ERC 29.04 Commission action on petition. (1) SERVICE OF PETITION. Upon receipt of a petition, the commission shall serve a copy of the petition on all interested parties identified in the petition.

(2) DETERMINATION OF AUTHORIZATION CARD MAJORITY. (a) The commission shall determine whether the authorization cards, signed within one year of the filing of the petition, are sufficient to constitute a majority of the employees in the bargaining unit involved.

(b) *Furnishing of employee list by employer.* The employer involved shall, within 14 days, furnish in writing to the commission a list containing the names of the employees, in alphabetical order, employed in the collective bargaining unit involved during the payroll period which includes the date the petition was filed. For good cause shown, the commission may extend the time for furnishing a list of employees or

establish a different date or dates when an employee must have been employed to be included on the list.

(c) *Determination.* The commission shall determine the sufficiency of the authorization cards upon the receipt from the employer of the names of the employees in the bargaining unit. Except as provided in s. ERC 29.06 (1), no party, other than the party submitting the authorization cards to the commission, may receive a copy of, or examine, the authorization cards. The commission shall inform all parties as to its determination whether the authorization cards are sufficient to constitute a majority of the employees in the bargaining unit involved. The commission shall also provide all parties with a tally specifying the number of employees in the collective bargaining unit, the total number of cards submitted in support of the petition, and the number of valid authorization cards.

ERC 29.05 Objections to determination. (1) FILING; FORM; COPIES. Within 8 days after the commission's issuance of its determination and tally, any party may file with the commission objections to the conduct of the determination or to conduct affecting the results of the determination. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and unless and until it has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) **SERVICE ON OTHER PARTIES.** The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 29.06 Commission action on objections. (1) HEARING. If the objections potentially affect the determination outcome and raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on objections shall be as set forth in ss. ERC 18.06 to 18.08, except that authorization cards submitted in support of the petition shall not be disclosed to anyone other than the petitioner unless one or more objections cannot be fairly resolved without such disclosure.

(2) **AFTER HEARING.** (a) As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each objection.

(b) If the commission's resolution of the objections affects the previously issued determination or tally, the commission shall issue a revised determination and tally.

(c) If the commission overrules all objections, it shall promptly issue a certification of the results of the determination as provided in s. ERC 29.07.

ERC 29.07 Certification of results of determination. (1) WHEN ISSUED. If no timely objections are filed, or after disposition of any timely-filed objections, the commission shall issue a certification of the results of its determination based on authorization cards.

(2) CONTENTS. The certification shall either certify the petitioner as exclusive representative of the bargaining unit involved or dismiss the petition.

(3) EFFECT OF COMPETING PETITION. (a) *Petitions filed 10 or fewer days later.* If one or more competing petitions for certification by authorization card majority regarding the same bargaining unit are filed within 10 days of the filing of a petition, each of the petitions will be processed. If more than one of the petitions would support the certification of a representative, then the commission shall direct a secret ballot election to determine the representation of the bargaining unit involved.

(b) *Petitions filed more than 10 days later.* If a competing petition for certification by authorization card majority is filed more than ten days after the filing of a petition regarding the same bargaining unit, the later-filed petition will be processed only if and when the earlier-filed petition is dismissed. If the earlier-filed petition results in certification of a representative, the later-filed petition will be dismissed without being processed.

(4) EFFECT ON PENDING PETITION FOR ELECTION. The processing of a petition for certification by authorization card majority shall take precedence over the processing of a petition for an election regarding the same bargaining unit. If a petition for certification by authorization card majority is filed during the pendency of a petition for election regarding the same bargaining unit, the processing of the election petition shall be held in abeyance until the processing of the petition for certification by authorization card majority has been completed. If the petition for certification by authorization card majority results in the certification of a representative, the petition for election will be dismissed.

(5) EFFECT OF CERTIFICATION OF REPRESENTATIVE. A certification of representative based on authorization card majority shall have the same effect as provided in s. 111.83 (1), Stats., for a certification of representative based on a secret ballot election. A representative certified based on authorization card majority shall be subject to a change or discontinuance of representation as provided in s. 111.83 (6), Stats., for a representative certified on the basis of a secret ballot election.

ERC 29.08 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

SECTION 22. ERC 31.03 (2) is amended to read:

(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 two copies of the petition 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 on the other party ~~by~~ as set forth in s. ERC 10.07.

SECTION 23. ERC 32 (Title) is amended to read:

**COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN
MUNICIPAL SECTOR DISPUTES NOT INVOLVING LAW
ENFORCEMENT, OR FIRE FIGHTING ~~OR SCHOOL DISTRICT~~
PROFESSIONAL EMPLOYEES**

SECTION 24. ERC 32.01 is amended to read:

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 ~~and school district professional employees.~~

SECTION 25. ERC 32.09 (2) is amended to read:

(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 ~~by~~ 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.

SECTION 26. ERC 32.15 (8) is amended to read:

(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) ~~7., 7g. and 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.

SECTION 27. ERC 33 (Title) is amended to read:

COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN
DISPUTES RELATING TO COLLECTIVE BARGAINING AGREEMENTS

EXPIRING BEFORE JULY 1, 2009, AFFECTING SCHOOL DISTRICT
PROFESSIONAL EMPLOYEES

SECTION 28. ERC 33.01 is amended to read:

ERC 33.01 Scope. This chapter governs the procedure relating to collective bargaining and interest arbitration under s. 111.70 (4) (cm), Stats., for collective bargaining agreements expiring before July 1, 2009, affecting school district professional employees.

SECTION 29. ERC 33 APPENDIX (Title) is amended to read:

QUALIFIED ECONOMIC OFFER CALCULATION RELATING TO
COLLECTIVE BARGAINING AGREEMENTS EXPIRING BEFORE JULY 1,
2009, AFFECTING SCHOOL DISTRICT PROFESSIONAL EMPLOYEES

SECTION 30. ERC 40.01 is amended to read:

ERC 40.01 Policy. To promote labor peace, the commission maintains a roster of individuals, not employed by the commission, who are available to serve as fact finders, grievance arbitrators, and interest arbitrators in statutory and contractual dispute resolution processes concerning private, municipal, ~~and state~~ and UW System faculty and academic staff sector labor disputes arising in Wisconsin. The following criteria and procedures for admission and removal of roster members and for providing panels of roster members to disputants have been developed to insure the quality and professionalism of the services provided by roster members when serving as neutrals in labor disputes under ch. 111, Stats.

SECTION 31. ERC 40.05 (1) is amended to read:

ERC 40.05 On-going requirements of roster members. (1) ~~ANNUAL UPDATE UPDATES~~ OF BIOGRAPHICAL AND FEE INFORMATION. Roster members shall file an updated biographical and fee information statement when material changes in that information occur and shall keep the commission informed about any material changes in status.

SECTION 32. ERC. 40.05 (3) is amended to read:

(3) AWARD SUBMISSION. Roster members shall immediately file with the commission, as set forth in s. ERC 10.06 (1), at its Madison office a copy of all awards and fact-finding recommendations issued by them in cases for which they were selected through commission procedures. Interest arbitration awards shall be transmitted immediately to the commission in electronic form either by ~~diskette~~ physical storage media or e-mail.

SECTION 33. ERC 40.06 (3) is amended to read:

(3) SELECTION AND COMPOSITION OF PANELS. The panels of roster members' names submitted to parties by the commission in grievance arbitration under chs. ERC 5, 16, ~~and 23 and 63~~, interest arbitration under chs. ERC 30 to 33 or fact-finding cases under chs. ERC 14, ~~and 25 and 65~~ shall be generated by computer in a manner designed both to permit any roster member available to accept appointments to be selected for any panel and to equalize the number of times each in-state roster member's name is sent out and to equalize the number of times each out-of-state roster member's name is sent out during any period of availability to accept appointments. Unless otherwise jointly requested by the parties, one out-of-state roster member shall be included on each grievance panel, on each s. 111.77, Stats., and ch. ERC 30 police-fire interest panel, on each fact-finding panel under ch. ERC 14, ~~or 25 or 65~~ and on each s. 111.70 (4) (jm), Stats., and ch. ERC 31 police interest panel. Unless otherwise jointly requested by the parties, one out-of-state roster member shall be included on the seven name panel provided in s. 111.70 (4) (cm), Stats. and ch. ERC 32 or 33, cases in which the parties agree not to limit the panel to in-state arbitrators. No resident of the city which is party to the dispute shall be included on a s. 111.70 (4) (jm), Stats., and ch. ERC 31 police interest panel.

SECTION 34. ERC 50.01 is amended to read:

ERC 50.01 Scope. This chapter governs the general procedure relating to the provision of training programs under ss. 111.09 (3), 111.71 (5) and 111.94 (3), Stats., to employers, employer associations and labor organizations on collective bargaining, and on areas of management and labor cooperation directly or indirectly affecting collective bargaining in the private, municipal, ~~and state and~~ UW System faculty and academic staff sectors, respectively.

SECTION 35. ERC 50.04 (4) is amended to read:

(4) CONFIDENTIAL NATURE OF FUNCTION. Commission trainers and facilitators shall maintain confidentiality as required of mediators by s. 904.085, Stats. To the extent that s. 904.085 is or becomes inapplicable for any reason, the following confidentiality provisions shall become applicable. Any information disclosed by the parties to the trainer or facilitator in the performance of duties shall not be divulged voluntarily or because of compulsion unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the trainer or facilitator in that person's confidential capacity shall be confidential and shall not be disclosed to any unauthorized person without the prior consent of the commission. The trainer or facilitator shall not produce any confidential records of, or testify about, any training or facilitation conducted by the trainer or facilitator, before any court, board (including the Wisconsin Employment Relations Commission), investigative body, arbitrator or fact finder

without the written consent of the commission. In the absence of written consent of the commission, the trainer or facilitator shall respectfully decline, by reason of this subsection, to produce or present confidential records or documents of any nature or to give testimony concerning confidential training or facilitation information.

SECTION 36. ERC 60 is created to read:

Chapter ERC 60

GENERAL UW SYSTEM FACULTY AND ACADEMIC STAFF PROVISIONS

ERC 60.01 Purpose and interpretation.

ERC 60.02 Chapters.

ERC 60.03 Resolution of conflicts.

ERC 60.04 Definitions.

ERC 60.05 Transfer, consolidation and severance of proceedings.

ERC 60.06 Filing with the commission or with commission personnel.

ERC 60.07 Service on a party or representative.

ERC 60.08 Fee schedule.

ERC 60.09 Computation of time.

ERC 60.10 Forms.

ERC 60.01 Purpose and interpretation. Chapters ERC 40, 50 and 60 to 68 govern the conduct of all proceedings involving UW System faculty and academic staff employment relations before the Wisconsin Employment Relations Commission. As used in chs. ERC 40, 50 and 60 to 68, "University of Wisconsin System Faculty and Academic Staff Labor Relations Act" means subch. VI of ch. 111, Stats. Chapters ERC 60 to 68 shall be interpreted to serve the purposes and provisions of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act, as shall chs. ERC 40 and 50 in connection with UW faculty and academic staff sector employment. Nothing in chs. ERC 40, 50, or 60 to 68 shall be construed to prevent the commission or persons employed or designated by the commission from using best efforts to adjust any dispute arising between employees and employers. The commission or examiner may waive requirements of chs. ERC 40, 50 or 60 to 68 to serve the purposes and provisions of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act, unless a party shows that it would be prejudiced by the waiver.

ERC 60.02 Chapters. Chapters ERC 40, 50 and 60 to 68 contain special rules applicable to the type of proceeding described in the caption of the chapter. Chapter ERC 60 contains general rules applicable to all types of proceedings in UW faculty and academic staff employment relations and ~~should~~ shall be read in conjunction with the chapter governing the particular proceeding.

ERC 60.03 Resolution of conflicts. In any conflict between a general rule in ch. ERC 60 and a specific provision in chs. ERC 40, 50 or 61 to 68, the specific provision shall govern.

ERC 60.04 Definitions. Words or phrases used in this chapter which are defined in s. 111.96, Stats., have the meaning as given in s. 111.96, Stats.

ERC 60.05 Transfer, consolidation and severance of proceedings. Whenever the commission finds it necessary, in order to serve the purposes of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act, or to avoid unnecessary costs or delay, it may transfer any proceeding before an examiner to another examiner or to the commission. Proceedings under more than one subsection of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act may be combined or severed.

ERC 60.06 Filing with the commission or with commission personnel. Practice and procedure regarding filing documents with the commission or with commission personnel shall be as set forth in s. ERC 10.06.

ERC 60.07 Service on a party or representative. Practice and procedure for service on a party or representative shall be as set forth in s. ERC 10.07.

ERC 60.08 Fee schedule. (1) COMPLAINTS. For a complaint alleging that an unfair labor practice has been committed under s. 111.991, Stats., the complaining party or parties shall pay the commission a filing fee as set forth in s. ERC 10.08 (1).

(2) GRIEVANCE ARBITRATION. For a request that the commission or its staff act as a grievance arbitrator under s. 111.993, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (2).

(3) MEDIATION. For a request that the commission or its staff act as a mediator under s. 111.994, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (3).

(4) FACT-FINDING. For a request that the commission initiate fact-finding under s. 111.995, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (4), 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) TRANSCRIPTS. Any party requesting the commission to provide a transcript of a commission proceeding shall pay a fee as set forth in s. ERC 10.08 (6).

ERC 60.09 Computation of time. Computation of any period of time prescribed by or allowed by chs. ERC 40, 50 or 60 to 68, or by order of the commission or individual conducting the proceeding, shall be as set forth in s. ERC 10.09.

ERC 60.10 Forms. Lists and copies of commission forms may be obtained from the commission's Madison office or the agency website.

Note: The address of the commission's website is <http://werc.wi.gov>

Note: For the commission's Madison office, the mailing address is PO Box 7870, Madison WI 53707-7870 and the physical address is 1457 East Washington Avenue, Madison, WI 53703.

SECTION 37. ERC 61 is created to read:

Chapter ERC 61

ELECTIONS TO DETERMINE BARGAINING REPRESENTATIVE FOR UW FACULTY AND ACADEMIC STAFF SECTOR PERSONNEL

ERC 61.01 Scope.

ERC 61.02 Petition for election.

ERC 61.03 Withdrawal of petition.

ERC 61.04 Stipulation for election.

ERC 61.05 Commission pre-hearing action on petition.

ERC 61.06 Motions.

ERC 61.07 Hearings.

ERC 61.08 Direction of election or other dispositional order.

ERC 61.09 Elections.

ERC 61.10 Certification of results of election.

ERC 61.11 Objections to election.

ERC 61.12 Commission action on challenges or objections.

ERC 61.13 Petition for rehearing.

ERC 61.01 Scope. This chapter governs the general procedure relating to elections under ss. 111.98 and 111.990, Stats., affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in s. 111.98 (5), Stats. This chapter also governs the general procedure relating to unit-determination elections under ss. 111.98 and 111.990, Stats.

ERC 61.02 Petition for election. A petition to determine a collective bargaining representative or an appropriate collective bargaining unit may be filed by one or more UW faculty and academic staff employees specified in s. 111.98 (1), Stats. or by one or more academic staff supervisors specified in s. 111.98 (5), Stats., or by a labor organization acting on their behalf, or by the employer or anyone authorized to act on its behalf. Practice and procedure for filing and processing a petition under this chapter shall otherwise be as set forth in s. ERC 11.02.

ERC 61.03 Withdrawal of petition. Practice and procedure for withdrawal of an election petition shall be as set forth in s. ERC 11.03.

ERC 61.04 Stipulation for election. Where the employer, and one or more individual employees or supervisors or a labor organization acting on their behalf, and the exclusive representative, if any, of an existing unit agree that a question of representation has arisen concerning employees or concerning supervisors, those parties may jointly file a stipulation for an election to resolve that question. Practice and procedure concerning a stipulation for an election shall otherwise be as set forth in s. ERC 11.04.

ERC 61.05 Commission pre-hearing action on petition. Practice and procedure regarding commission pre-hearing action on a petition for an election shall be as set forth in s. ERC 11.05.

ERC 61.06 Motions. Practice and procedure regarding motions in election proceedings shall be as set forth in s. ERC 18.06.

ERC 61.07 Hearings. Practice and procedure regarding hearings in election proceedings shall be as set forth in s. ERC. 11.07.

ERC 61.08 Direction of election or other dispositional order. Practice and procedure regarding a commission direction of election or other dispositional order in an election proceeding shall be as set forth in s. ERC 11.08.

ERC 61.09 Elections. Practice and procedure for conducting elections shall be as set forth in s. ERC 11.09, except that the statutory reference in s. ERC 11.09 (6) shall be to s. 111.990 (3), Stats.

ERC 61.10 Certification of results of election. Practice and procedure for certification of results of an election shall be as set forth in s. ERC 11.10.

ERC 61.11 Objections to election. Practice and procedure for filing objections to the conduct of an election shall be as set forth in s. ERC 11.11.

ERC 61.12 Commission action on challenges or objections. Practice and procedure for commission action on challenges or objections in election proceedings shall be as set forth in s. ERC 11.12.

ERC 61.13 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

SECTION 38. ERC 62 is created to read:

Chapter ERC 62

UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR UNFAIR LABOR PRACTICES

ERC 62.01 Scope.

ERC 62.02 Complaint.

ERC 62.03 Answer to complaint.

ERC 62.04 Motions.

ERC 62.05 Hearings.

ERC 62.06 Findings of fact, conclusions of law and order.

ERC 62.07 Interlocutory findings of fact, conclusions of law and order.

ERC 62.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order.

ERC 62.09 Review of findings of fact, conclusions of law and order issued by examiner.

ERC 62.10 Petition for rehearing.

ERC 62.01 Scope. This chapter governs the general procedure relating to complaints of UW System faculty and academic staff sector unfair labor practices as defined in s. 111.991, Stats.

ERC 62.02 Complaint. A complaint that the employer, an employee, or a person has engaged in a unfair labor practice defined, respectively, in s. 111.991 (1), (2) or (3), Stats., may be filed by any party or by a representative authorized to file on behalf of a party in interest. Practice and procedure for complaint filing and processing shall otherwise be as set forth in s. ERC 12.02, except that the statutory references in s. ERC 12.02 (1) and (2) (c) shall be to s. 111.991 (1), (2) and (3), Stats.; the references to "prohibited practices" shall be to "unfair labor practices"; and references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin System Faculty and Academic Staff Labor Relations Act."

ERC 62.03 Answer to complaint. Each respondent named in the complaint shall file an answer to the complaint with the commission on or before the date designated in the notice of hearing. Practice and procedure for filing and processing an answer shall be as set forth in s. ERC 12.03.

ERC 62.04 Motions. Practice and procedure for motions concerning unfair labor practice proceedings shall be as set forth in s. ERC 12.04.

ERC 62.05 Hearings. Practice and procedure for hearings concerning unfair labor practice complaints shall be as set forth in s. ERC 18.08, except that references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

ERC 62.06 Findings of fact, conclusions of law and order. After the close of the evidence and the submission of closing arguments, or on granting a motion for dismissal of a complaint, the commission or examiner shall issue written findings of fact, conclusions of law and order to the parties. Practice and procedure concerning the issuance of findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.06, except that references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

ERC 62.07 Interlocutory findings of fact, conclusions of law and order. Practice and procedure for interlocutory findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.07.

ERC 62.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order. Practice and procedure for setting aside, modifying, changing or reversing findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.08.

ERC 62.09 Review of findings of fact, conclusions of law and order issued by examiner. Practice and procedure for commission review of findings of fact, conclusions of law and order issued by an examiner in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.09.

ERC 62.10 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

SECTION 39. ERC 63 is created to read:

Chapter ERC 63

ARBITRATION OF UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR GRIEVANCE DISPUTES

ERC 63.01 Scope.

ERC 63.02 Policy.

ERC 63.03 Request for commission-employed arbitrator.

ERC 63.04 Commission action on request for commission-employed arbitrator.

ERC 63.05 Proceedings before commission-employed arbitrator.

ERC 63.06 Request for ad hoc arbitrator not employed by the commission.

ERC 63.07 Commission action on request for ad hoc arbitrator.

ERC 63.08 Proceedings before ad hoc arbitrator.

ERC 63.09 Ad hoc arbitrator's award and report.

ERC 63.01 Scope. This chapter governs the general procedure relating to grievance arbitration proceedings and designation of grievance arbitrators under s. 111.993, Stats., affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in s. 111.98 (5), Stats.

ERC 63.02 Policy. To promote the prompt, peaceful and just settlement of labor disputes arising from the interpretation or application of a collective bargaining agreement affecting terms and conditions of UW System faculty and academic staff employment in Wisconsin, the commission offers various grievance arbitration services involving designation of grievance arbitrators who are either employed by the commission or who are on the commission's ad hoc roster of arbitrators and fact-finders not employed by the commission.

ERC 63.03 Request for commission-employed arbitrator. A request that the commission provide the services of a commission-employed arbitrator may be filed by the exclusive representative, the municipal employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. Practice and procedure regarding filing a request for services of a commission-employed arbitrator shall be as set forth in s. ERC 16.03.

ERC 63.04 Commission action on request for commission-employed arbitrator. Practice and procedure for commission action on a request for services of a commission-employed arbitrator shall be as set forth in s. ERC 16.04.

ERC 63.05 Proceedings before commission-employed arbitrator. Practice and procedure for proceedings before a commission-employed arbitrator shall be as set forth in s. ERC 16.05.

ERC 63.06 Request for ad hoc arbitrator not employed by the commission. A request that the commission provide the parties with a list of one or more ad hoc arbitrators, not employed by the commission, to provide grievance arbitration services may be filed by the exclusive representative, the employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. Practice and procedure regarding filing a request for ad hoc arbitrator services shall be as set forth in s. ERC 16.06.

ERC 63.07 Commission action on request for ad hoc arbitrator. Practice and procedure for commission action on a request for services of an ad hoc arbitrator shall be as set forth in s. ERC 16.07.

ERC 63.08 Proceedings before ad hoc arbitrator. Practice and procedure for proceedings before an ad hoc arbitrator shall be as set forth in s. ERC 16.08.

ERC 63.09 Ad hoc arbitrator's award and report. Practice and procedure regarding an ad hoc arbitrator's award and report shall be as set forth in s. ERC 16.09.

SECTION 40. ERC 64 is created to read:

Chapter ERC 64

MEDIATION OF UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR LABOR DISPUTES

ERC 64.01 Scope.

ERC 64.02 Policy.

ERC 64.03 Request for mediation services.

ERC 64.04 Commission action on request for mediation services.

ERC 64.05 Mediation initiated by the commission.

ERC 64.06 Mediation proceedings.

ERC 64.07 Report to commission.

ERC 64.01 Scope. This chapter governs the general procedure relating to mediation of labor disputes under s. 111.994, Stats., affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in s. 111.98 (5), Stats.

ERC 64.02 Policy. To promote the prompt and peaceful settlement of labor disputes affecting terms and conditions of UW System faculty and academic staff sector employment in Wisconsin, the commission offers various mediation services involving designation of mediators to assist the parties in reaching a voluntary settlement. In order to maintain and enhance the effectiveness of the mediation function, the commission has established rules and procedures designed to maintain confidentiality of the mediation process.

ERC 64.03 Request for mediation services. A request for mediation services may be filed by the employer or by the exclusive collective bargaining representative of a bargaining unit of UW System faculty and academic staff personnel, or by anyone authorized to act on their behalf. Practice and procedure for filing a request for mediation services shall be as set forth in s. ERC 13.03.

ERC 64.04 Commission action on request for mediation services. Practice and procedure for commission action on a request for mediation services shall be as set forth in s. ERC 13.04, except that references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

ERC 64.05 Mediation initiated by the commission. Practice and procedure for mediation initiated by the commission shall be as set forth in s. ERC 13.05, except that the reference to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

ERC 64.06 Mediation proceedings. Practice and procedure in mediation proceedings shall be as set forth in s. ERC 13.06.

ERC 64.07 Report to commission. Practice and procedure regarding a report to the commission by the mediator shall be as set forth s. ERC 13.07.

SECTION 41. ERC 65 is created to read:

Chapter ERC 65

FACT-FINDING IN UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR DISPUTES

ERC 65.01 Scope.

ERC 65.02 Petition for fact-finding.

ERC 65.03 Withdrawal of petition; effect on filing fee.

ERC 65.04 Commission investigation.

ERC 65.05 Consolidation of proceedings.

ERC 65.06 Certification of results of investigation.

ERC 65.07 Hearing before the fact finder.

ERC 65.08 Fact-finding recommendations.

ERC 65.09 Compensation of fact finder and other costs.

ERC 65.10 Fact finder's report of fees and expenses.

ERC 65.11 Notification of acceptance or rejection of recommendations of the fact finder.

ERC 65.01 Scope. This chapter governs the general procedure relating to fact-finding in UW System faculty and academic staff sector employment under s. 111.995, Stats., affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in s. 111.98 (5), Stats.

ERC 65.02 Petition for fact-finding. Practice and procedure for filing a petition to initiate fact-finding under this chapter shall be as set forth in s. ERC 14.02.

ERC 65.03 Withdrawal of petition; effect on filing fee. Practice and procedure regarding withdrawal of a petition for fact-finding and the effect of a withdrawal on the filing fee shall be as set forth in s. ERC 14.03.

ERC 65.04 Commission investigation. After a petition has been filed, the commission shall conduct an investigation to determine whether the parties are deadlocked after a reasonable period of negotiation. Practice and procedure for the investigation in a fact-finding proceeding shall be as set forth in s. ERC 14.04.

ERC 65.05 Consolidation of proceedings. The commission may consolidate fact-finding proceedings to avoid unnecessary costs, delay, or multiplicity of proceedings or to otherwise serve the purposes of the UW System Faculty And Academic Staff Labor Relations Act.

ERC 65.06 Certification of results of investigation. Practice and procedure regarding commission certification of the results of an investigation in a fact-finding proceeding shall be as

set forth in s. ERC 14.06, except that the reference to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

ERC 65.07 Hearing before the fact finder. Practice and procedure regarding hearings before the fact finder shall be as set forth in s. ERC 14.07.

ERC 65.08 Fact-finding recommendations. After the close of the hearing, the fact finder shall prepare and issue fact-finding recommendations. Practice and procedure regarding fact-finding recommendations shall be as set forth in s. ERC 14.08.

ERC 65.09 Compensation of fact finder and other costs. Practice and procedure regarding compensation of the fact finder and the allocation of other costs in a fact-finding proceeding shall be as set forth in s. ERC 14.09.

ERC 65.10 Fact finder's report of fees and expenses. Practice and procedure regarding the fact finder's report of fees and expenses shall be as set forth in s. ERC 14.10.

ERC 65.11 Notification of acceptance or rejection of recommendations of the fact finder. Each party involved in fact-finding shall notify, in writing, the other parties and the commission of its acceptance or rejection, in whole or in part, of the fact finder's recommendations. Practice and procedure regarding notification of acceptance or rejections of recommendations of the fact finder shall be as set forth in s. ERC 14.11.

SECTION 42. ERC 66 is created to read:

Chapter ERC 66

REFERENDA CONCERNING UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR FAIR-SHARE AGREEMENTS

ERC 66.01 Scope.

ERC 66.02 Petition for referendum.

ERC 66.03 Showing of interest in support of petition.

ERC 66.04 Withdrawal of petition.

ERC 66.05 Commission pre-hearing action on petition.

ERC 66.06 Motions.

ERC 66.07 Hearings.

ERC 66.08 Direction of referendum or other dispositional order.

ERC 66.09 Referendum.

ERC 66.10 Certification of results of referendum.

ERC 66.11 Objections to referendum.

ERC 66.12 Commission action on challenges or objections.

ERC 66.13 Petition for rehearing.

ERC 66.01 Scope. This chapter governs the general procedure relating to referenda under s. 111.992, Stats., concerning fair-share agreements affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats.

ERC 66.02 Petition for referendum. (1) WHO MAY FILE. A petition to authorize or determine the continuation of a fair-share agreement for a bargaining unit may be filed by the employer or by the exclusive representative of the bargaining unit involved or by anyone acting on behalf of either party.

(2) TIME FOR FILING. (a) *Concerning authorization.* A petition to authorize a fair-share agreement for a bargaining unit may be filed at any time after an exclusive representative of the bargaining unit involved has been certified.

(b) *Concerning continuation.* A petition to determine the continuation of a fair-share agreement may be filed at any time following the implementation of the fair-share agreement involved.

(3) FORM, NUMBER OF COPIES, AND FILING. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the party in interest or representative filing the petition. A petition is not filed unless it contains the required signature or signature facsimile and unless and until the petition and the showing of interest in support of the petition required by s. ERC 66.03 have been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). 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 shall be included. The showing of interest in support of the petition required by s. ERC 66.03, shall be transmitted to the commission in paper form by physical delivery or mail.

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

(a) The name and address of the employer 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 representative of the bargaining unit 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 personnel in the unit.

(d) A description of the fair-share agreement involved.

(e) The date of execution, the effective date, and the expiration date of the collective bargaining agreement, if any, containing a fair-share agreement affecting the bargaining unit involved.

(f) A statement to the effect that at least 30% of the personnel in the collective bargaining unit involved support the authorization or discontinuation of a fair-share agreement requested in the petition.

(g) The name and address of the petitioner, and the name, address and phone number of the petitioner's principal representative. Fax numbers and e-mail addresses shall be included, if available.

ERC 66.03 Showing of interest in support of petition. The petition shall be supported by a showing of interest in writing, containing the printed names and signatures of at least 30% of the personnel in the bargaining unit involved, the dates on which the signatures were executed, and a statement that the personnel signing support the authorization or discontinuation of a fair-share agreement requested in the petition.

ERC 66.04 Withdrawal of petition. Any 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.

ERC 66.05 Commission pre-hearing action on petition. Practice and procedure for commission pre-hearing action in referendum proceedings shall be as set forth in s. ERC 15.07.

ERC 66.06 Motions. Practice and procedure regarding motions in referendum proceedings shall be as set forth in s. ERC 18.06.

ERC 66.07 Hearings. Practice and procedure regarding hearings in referendum proceedings shall be as set forth in s. ERC 15.09, except that the statutory reference in s. ERC 15.09 shall be to s. 111.992, Stats.

ERC 66.08 Direction of referendum or other dispositional order. Practice and procedure regarding a commission direction of election or other dispositional order in referendum proceedings shall be as set forth in s. ERC 15.10.

ERC 66.09 Referendum. Practice and procedure regarding conduct of a referendum shall be as set forth in s. ERC 15.11.

ERC 66.10 Certification of results of referendum. (1) WHEN ISSUED. If challenged ballots are insufficient in number to affect the results and no timely objections are filed under s. ERC 66.11, the commission shall issue to the parties a certification of the results of the referendum.

(2) EFFECT OF CERTIFICATION. (a) Not favoring fair-share. Where the certification of the results of a referendum indicates that the required number of personnel has not authorized the implementation of, or the continuation of, a fair-share agreement, no fair-share agreement shall be implemented and any existing fair-share agreement shall be terminated at the termination of

the collective bargaining agreement, or one year from the date of the certification of result of the referendum, whichever is earlier.

(b) *Favoring fair-share.* Where the certification of the results of a referendum indicates that the required number of personnel has authorized the implementation of, or the continuation of a fair-share agreement, the fair-share agreement in effect, if any, shall be continued in effect, or the fair-share agreement shall take effect 60 days after the date of the certification or on an earlier date agreed upon between the employer and the exclusive representative involved.

ERC 66.11 Objections to referendum. Practice and procedure for filing objections to the conduct of a referendum shall be as set forth in s. ERC 15.13.

ERC 66.12 Commission action on challenges or objections. Practice and procedure for commission action on challenges or objections in referendum proceedings shall be as set forth in s. ERC 15.14.

ERC 66.13 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing of a petition for rehearing in a referendum proceeding shall be as set forth in s. ERC 18.11.

SECTION 43. ERC 67 is created to read:

Chapter ERC 67

CLARIFICATION OF UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR BARGAINING UNITS

ERC 67.01 Scope.

ERC 67.02 Petition for unit clarification.

ERC 67.03 Withdrawal of petition.

ERC 67.04 Commission pre-hearing action on petition.

ERC 67.05 Motions.

ERC 67.06 Hearings.

ERC 67.07 Order clarifying bargaining unit or other dispositional order.

ERC 67.08 Petition for rehearing.

ERC 67.01 Scope. This chapter governs the general procedure relating to clarification of UW System faculty and academic staff sector bargaining units under the University of Wisconsin System Faculty and Academic Staff Labor Relations Act to determine whether one or more positions are properly included in or excluded from an existing collective bargaining unit of UW

System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in s. 111.98 (5), Stats.

ERC 67.02 Petition for unit clarification. A petition to determine whether one or more positions shall be included in or excluded from an existing collective bargaining unit may be filed by the exclusive representative of the bargaining unit or by the employer or by an authorized representative of one of those parties. Practice and procedure for filing and processing of a petition for unit clarification shall otherwise be as set forth in s. ERC 17.02.

ERC 67.03 Withdrawal of petition. Practice and procedure regarding withdrawal of a petition for unit clarification shall be as set forth in s. ERC 17.03.

ERC 67.04 Commission pre-hearing action on petition. Practice and procedure for commission pre-hearing action on a petition for unit clarification shall be as set forth in s. ERC 17.04.

ERC 67.05 Motions. Practice and procedure regarding motions in unit clarification proceedings shall be as set forth in s. ERC 18.06.

ERC 67.06 Hearings. Practice and procedure for hearings in unit clarification proceedings shall be as set forth in s. ERC 17.06, except that the reference to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin System Faculty and Academic Staff Labor Relations Act."

ERC 67.07 Order clarifying bargaining unit or other dispositional order. Practice and procedure regarding commission issuance of an order clarifying bargaining unit or other dispositional order in a unit clarification proceeding shall be as set forth in s. ERC 17.07.

ERC 67.08 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure regarding a petition for rehearing in a unit clarification proceeding shall be as set forth in s. ERC 18.11.

SECTION 44. ERC 68 is created to read:

Chapter ERC 68

DISCRETIONARY UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR DECLARATORY RULINGS UNDER CH. 227, STATS.

ERC 68.01 Scope.

ERC 68.02 Petition.

ERC 68.03 Statement in response to petition.
ERC 68.04 Withdrawal of petition.
ERC 68.05 Motions.
ERC 68.06 Commission action on petition.
ERC 68.07 Notice of hearing.
ERC 68.08 Hearings.
ERC 68.09 Findings of fact, conclusions of law and declaratory ruling.
ERC 68.10 Effect of declaratory ruling.
ERC 68.11 Petition for rehearing.

ERC 68.01 Scope. This chapter governs the general procedure relating to discretionary declaratory rulings requested under s. 227.41 (2), Stats., concerning the University of Wisconsin System Faculty and Academic Staff Labor Relations Act and rules concerning its administration.

ERC 68.02 Petition. Any interested person may file a petition requesting that the commission issue a declaratory ruling about the applicability to any person, property or state of facts of any provision of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act or any rule concerning its administration. Practice and procedure for filing a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.02, except that references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin System Faculty and Academic Staff Labor Relations Act."

ERC 68.03 Statement in response to petition. Practice and procedure regarding filing of a statement in response to a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.03.

ERC 68.04 Withdrawal of petition. Practice and procedure regarding withdrawal of a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.04.

ERC 68.05 Motions. Practice and procedure regarding motions in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.06

ERC 68.06 Commission action on petition. Practice and procedure regarding commission action on a petition for a discretionary declaratory ruling shall be as set forth in s. ERC 19.06.

ERC 68.07 Notice of hearing. Practice and procedure regarding a notice of hearing in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 19.07.

ERC 68.08 Hearings. Practice and procedure regarding hearings in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.08.

ERC 68.09 Findings of fact, conclusions of law and declaratory ruling. Practice and procedure regarding issuance of findings of fact, conclusions of law and declaratory ruling in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 18.09.

ERC 68.10 Effect of declaratory ruling. The effect of a discretionary declaratory ruling issued under this chapter shall be as set forth in s. ERC 19.10.

ERC 68.11 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 18.11.

EFFECTIVE DATE.

These rules shall take effect on the later of July 1, 2010, or on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

FISCAL ESTIMATE

These rules have no fiscal effect

LIST OF PERSONS WHO APPEARED AT PUBLIC HEARINGS

Timothy Hawks, Legal Counsel for AFT-Wisconsin

Norman Holsinger -- AFT Senior Representative

Peter Rickman, Co-President, Teaching Assistants' Association, AFT #3220

C. J Tolani -- AFT-WI Representative and UW-Milwaukee graduate student

SUMMARY OF PUBLIC COMMENTS AND WERC RESPONSES

| | |
|--|---|
| COMMENTS OFFERED DURING PUBLIC HEARING AT WERC MADISON OFFICE ON MARCH 11, 2010 | |
| Timothy Hawks , Legal Counsel for AFT-Wisconsin | |
| The portion of ERC 29.02 (3) (b) requiring the statutory bargaining unit description to be included on the authorization card should be eliminated. The unit description would unnecessarily add to the contents of the card without a significant purpose being served by doing so. | We have adopted this suggestion. However, we have added a requirement that the card specify the employee's campus as well as the employee's department. (see s. ERC 29.02 (3) (b), (3) (b) 1., and (3) (c)) |
| The portions of ERC 29.02 (3) (g) requiring specification of the time and place the worker signs the card should be eliminated. Those requirements are likely to be intimidating to potential signators, thereby unnecessarily discouraging them from | We have adopted this suggestion. We have removed all requirements for specification of the time or place of signature. We are persuaded that the limited value that information |

| | |
|---|--|
| <p>WERC has commendably used other states' experience in fashioning ch. ERC 29. However, some of the content requirements for authorization cards go beyond the norms reflected in other states' rules, and are unnecessary, onerous, distracting and potentially intimidating to workers.</p> | <p>(see responses to Timothy Hawks' public hearing and written comments)</p> |
| <p>Authorization cards should be as simple as possible to avoid having their contents and requirements distract from the merits of discussions about unionization between organizers and workers. Unnecessary card content requirements are inherently intimidating and coercive of workers. Required inclusion of various unnecessary statements as to the worker's understandings, conveys the idea that signing a card is somehow unusual or potentially harmful to the worker's interests, and that a worker would be well advised to err on the side of caution by not signing.</p> | <p>(see responses to Timothy Hawks' public hearing and written comments)</p> |
| <p>Requiring the time and location of signature is onerous, unnecessary and intimidating. No other states have such requirements. If those requirements become a part of the Wisconsin rules, some workers are likely to choose not to sign a card because of fear that they could later be criticized or disciplined for engaging in union-related activities at the workplace and/or during the employee's work hours. If intended to prevent fraud, those requirements are unnecessarily duplicative of other protections elsewhere in the rules, and would not serve that purpose in any event.</p> | <p>(see responses to Timothy Hawks' public hearing and written comments)</p> |
| <p>C. J. Tolani -- AFT-WI Representative and UW-Milwaukee graduate student</p> | |
| <p>Time and place of signature requirements should be eliminated. Requiring time and place of signature will intimidate workers fearful of employer reprisals for discussing union business on work time or employer premises, and thereby cause employees not to sign cards. That potential harm to worker free choice outweighs any useful purpose served by those requirements.</p> | <p>(see responses to Timothy Hawks' public hearing and written comments)</p> |
| <p>Requiring that the worker's name be printed would be a useful improvement.</p> | <p>We have adopted this suggestion. (see s. ERC 29.02 (3) (b) 1.)</p> |

| | |
|---|---|
| | |
| WRITTEN COMMENTS RECEIVED BY WERC | |
| | |
| Timothy Hawks -- March 15, 2010 written comments on behalf of AFT-Wisconsin and two of its affiliates, the Teaching Assistants' Association and the Milwaukee Graduate Assistants' Association. | |
| Delete the last sentence of Section 29.02(3)(b) which reads: "The statement shall include the statutory definition of the bargaining unit involved." The requirement may not be necessary as there is little room for confusion among the three bargaining units described by the statute. The elimination of this sentence simplifies the card. | (see responses above to Timothy Hawks' public hearing comments) |
| Delete the phrase in Section 29.02(3)(e) which reads: "... , but that signing the card does not prevent the research assistant from signing another such card supporting representation by another labor organization." As AFT National Representative Norm Holsinger testified, this statement undercuts the "exclusive" representational status of a labor organization. It tends to "disorganize" the bargaining unit. | We have removed the requirement that the authorization card include information regarding how long the card remains effective, that it may not be revoked and that signing one organization's card does not prevent the employee from signing that supporting another labor organization. However, we have retained the substance of those provisions elsewhere in s. ERC 29.02 (3). We prefer a procedure that allows an employee to sign cards supporting more than one labor organization, rather than attempting to develop procedures for revocation of cards and of counting only the earliest or latest as valid. We think it is possible that an employee might favor having either of two organizations as the exclusive representative of the bargaining unit involved. Honoring those preferences is not inconsistent with the notion that, if any organization attains representative status, that status would be as the exclusive representative of the bargaining unit. (see s. ERC 29.02 (3) (d) and (e)) |
| | |

| | |
|---|---|
| <p>Delete the phrase in Section 29.02(3)(g) which reads: "... , time and place (building/street address and city)". During the course of discussion at the hearing the AFT witnesses noted that they did not object to identification of the city as the place of signature, but that a detailed specification of the "time" and the "building/street address" of the person asked to sign the card would have the consequence of chilling participation in the process, intimidating in its detail, for little practical benefit in terms of establishing the authenticity of the signature.</p> | <p>(see responses above to Timothy Hawks' public hearing comments)</p> |
| <p>Add an example of an acceptable card as part of the rules. An example of a card used in Massachusetts and identified by that Board as acceptable may be found at http://www.mass.gov/Elwd/docs/dlr/forns/written_majority_authorization_card.pdf.</p> | <p>(see responses above to Timothy Hawks' public hearing comments)</p> |
| <p>Written comments of Kurt Kobelt, Director, Legal Department, Wisconsin Education Association Council, Madison -- dated February 12, 2010</p> | |
| <p>Please accept this as WEAC's comments in response to the notice of proposed rule changes scheduled for a public hearing on March 11, 2010, which also solicited written comments.</p> | |
| <p>We question whether it is necessary to establish an entirely new ERC 34 which largely incorporates ERC 32 by reference. It would be more appropriate to make modest changes to ERC 32 to reflect application to school district employees.</p> | <p>We have adopted this suggestion. We have adjusted ch. ERC 32 (title) and ss. ERC 32.01 and 32.15 (8) as needed to accommodate the broadened scope of ch. ERC 32.</p> |
| <p>With respect to ERC 33, we are aware of only a small number of open contracts that have expired before July 1, 2009. It would be appropriate to insert some sunset language indicating the chapter is no longer operative by some date certain, e.g., two years and the proceed to remove it. Otherwise, this chapter will remain on the books long after it has any application.</p> | <p>We have not adopted this suggestion at this time. We do not believe we have the statutory authority to establish a date after which the open contracts that would have expired before July 1, 2009, must be entered into. When it becomes clear that there are no such open contracts, the Commission would be amenable to repeal of ch. ERC 33.</p> |

| | |
|--|--|
| <p>The proposed card check procedures also depart from well-established procedures for verifying authorization cards in the private sector under the NLRA in several respects. Private sector authorization cards typically utilize the language set forth in ERC 29.02(3)(a) and (b) but not (c) and (d). The NLRB can order recognition based upon such authorization cards alone under Gissell where egregious employer misconduct makes a fair rerun election impossible to conduct. In these cases, the NLRB does not require any showing that employees were aware that the card may be used to achieve recognition without an election as proposed under (c). Nor is there any requirement of a showing that the card be signed freely and without coercion for the card to be used to impose a bargaining obligation. We see no reason why these rather paternalistic requirements should be imposed here.</p> | <p>We have not removed the requirement of a statement that the card has been signed freely and without coercion. We consider that requirement to be an appropriate means of promoting free choice by employees. (see s. ERC 29.02 (3) (b) 3. and (3) (c))</p> <p>Regarding the objection to requiring a card statement about the use that may be made of the card, we have required that cards contain a statement that reads, "I understand that such representation may be based upon a majority of authorization cards without an election." We think that language promotes informed employee choice by simply conveying the card majority concept free of additional potentially confusing legal terminology. (see ss. ERC 29.02 (3) (b) 3. and (3) (c))</p> <p>We have removed the requirement that the authorization card include information regarding how long the card remains effective, that it may not be revoked and that signing one organization's card does not prevent the employee from signing that supporting another labor organization. However, we have retained the substance of those provisions elsewhere in s. ERC 29.02 (3). (see s. ERC 29.02 (3) (d) and (e))</p> |
| | |
| | |
| <p>Written comments of Alan N. Crist, UW-System Associate Vice President for Human Resources and Workforce Diversity -- submitted March 22, 2010</p> | |
| | |
| <p>UW System's comments are as follows:</p> | |
| | |

| | |
|--|--|
| <p>The proposed rules would require research assistants' authorization cards to include the statutory definition of the bargaining unit involved. AFT views this requirement as unnecessary. The UW System believes this requirement should be retained.</p> | <p>We have not adopted this change, but we have added a requirement that the authorization card identify not only the employee's department but also the employee's campus. (see s. ERC 29.02 (3) (b), and (3) (b) 1., and (3) (c))</p> |
| <p>The proposed rules would require research assistants' authorization cards to include the date, time and place of signature. AFT opposes including time and place of signature on the card. The UW System concurs with AFT's comments; time and place of signature are unnecessary.</p> | <p>We have adopted this suggestion. We have removed all requirements for specification of the time or place of signature. We are persuaded that the limited value that information would have in the event of a dispute regarding card validity is outweighed by the potentially chilling effect the requirement would have on employees being solicited. (see s. ERC 29.02 (3) (b) and (c))</p> |
| <p>Under the proposed rules, signing an authorization card does not prevent a research assistant from signing another card supporting representation by another labor organization. AFT opposes this requirement. The UW System believes that this requirement should be retained to protect research assistants' freedom to choose their collective bargaining representatives. Signing one card should not constrain research assistants' ability to change their mind on the issue of representation.</p> | <p>We have retained the objected to concept in the rules, but we have removed the provision that required it to be set forth on the authorization card. (see s. ERC 29.02 (b), (d) and (e))</p> |
| <p>AFT supports inclusion of a model authorization card in the rules. The UW System supports this proposal.</p> | <p>We have adopted this suggestion by adding a model card. The model card is described as an optional alternative to any other card that meets the enumerated requirements. (see s. ERC 29.02 (3) (b) and (c))</p> |
| <p>A March 9, 2010 Associated Press article states that WEAC has objected to including a statement on the authorization card making the research assistant aware that the authorization card may be used to support a petition for certification based on</p> | <p>Regarding requiring a card statement about the use that may be made of the card, we have required that cards contain a statement that reads, "I understand that such representation may be based upon a majority of</p> |

| | |
|---|--|
| <p>an authorization card majority without a secret ballot election being conducted. The UW System objects to removing this requirement. The certification of a labor organization as the research assistants' representative based on a card majority is new and unique in state labor relations. As a result, there is likely to be some confusion about the effect of signing a card. It is imperative that individuals asked to sign cards fully understand how their authorization can be used.</p> | <p>authorization cards without an election." We think that language promotes informed employee choice by simply conveying the card majority concept free of additional potentially confusing legal terminology. (see ss. ERC 29.02 (3) (b) 3. and (3) (c))</p> |
| <p>ERC 29.04 (2) (a) requires the employer to furnish a list containing the names of the employees employed in the bargaining unit during the "payroll period which includes the date the petition was filed." While this language works well for annual employees, it is not suitable for employee groups that work on both a 9-month and 12-month basis. The number of research assistants on the payroll during the summer months (June, July and August) is substantially lower than the number employed during the academic year. Using a list of research assistants employed in the summer will disenfranchise those research assistants who work only during the academic year. We respectfully propose the following change to ERC 29.04 (2) (a).</p> <p>The employer involved shall, within 14 calendar days or other period established by the commission, furnish in writing to the commission a list containing the names of the employees, in alphabetical order, employed in the collective bargaining unit involved during the payroll period which includes the date the petition was filed <u>unless the petition is submitted outside the nine-month academic year i.e., summer months (June, July, and August). If the petition is submitted after the last day of one academic year and before the first day of the next academic year, the employer will furnish a list containing the names of the employees, in alphabetical order, employed in the collective bargaining unit involved during the last payroll period of</u></p> | <p>We have not adopted the specific language proposed, but we have added language stating that, for good cause shown, the commission may establish a different date or dates when an employee must have been employed to be included on the list than the default standard of "during the payroll period which includes the date the petition was filed." (see s. ERC 29.04 (2) (b)) .</p> |

| | |
|--|--|
| <p><u>the prior academic year.</u> The period of time for furnishing a list of employees may be extended by the commission for good cause shown.</p> | |
| <p>ERC 61.05 refers to ERC 11.05 for the Commission pre-hearing action on petition procedures. ERC 11.05 is not as specific as ERC 29.04 (2) (a) regarding the time period for furnishing the list that determines the bargaining unit members eligible to vote. As with research assistants, the number of faculty and academic staff on the payroll in the summer is substantially lower than those on payroll during the academic year. Using a list of faculty and academic staff on the payroll in the summer will disenfranchise those faculty and academic staff who work only during the academic year. We respectfully request that ERC 61.05 be modified with the language below to include a specific procedure for furnishing the employee list.</p> <p>Notwithstanding ERC 61.05, the employer involved shall, within 14 calendar days or other period established by the commission, furnish in writing to the commission a list containing the names of the employees, in alphabetical order,</p> | <p>We have not adopted this suggestion.</p> <p>It is true that we have included in the unique ch. ERC 29 card majority procedures some more specific default provisions regarding the time period for furnishing the list and the standard for determining when an employee must have been employed to be included on the list. However, we find it more appropriate to apply to FASLRA elections the less specific s. ERC 11.05 (2) (a) provisions that are applicable to all elections conducted under MERA, SELRA and WEPA. Maintaining the administrative flexibility afforded by those less specific standards is preferable to adopting the more specific standards proposed in the comment.</p> |

| | |
|---|--|
| <p>employed in the collective bargaining unit involved during the payroll period which includes the date the petition was filed <u>unless the petition is submitted outside the nine-month academic year i.e., summer months (June, July, and August). If the petition is submitted after the last day of one academic year and before the first day of the next academic year, the employer will furnish a list containing the names of the employees, in alphabetical order, employed in the collective bargaining unit involved during the last payroll period of the prior academic year. The period of time for furnishing a list of employees may be extended by the commission for good cause shown.</u></p> | |
| <p>Timothy Hawks -- supplemental written comments dated 3-26-10</p> | |
| <p>I write on behalf of AFT-Wisconsin, the Teaching Assistants' Association and the Milwaukee Graduate Assistants Association to respond to the comments made by Al Crist, Associate Vice President for Human Resources. Please know that the labor organizations agree with Mr. Crist's remarks except as follows:</p> | |

| | |
|--|--|
| <p>The UW System argues that the requirement that the cards include the "statutory definition of the bargaining unit involved" be retained but offers no reason for doing so. The labor organizations repeat that they are interested in keeping the cards as simple and direct as possible. The Research Assistants in anyone of the three bargaining units affected by this legislation can be reasonably expected to know which one they are in; It is self-evident. Under the proposed rules, signing an authorization card does not prevent a Research Assistant from signing another card supporting representation by another labor organization. AFT opposes this requirement.</p> | <p>We have adopted this suggestion. However, we have added a requirement that the card specify the employee's campus as well as the employee's department. (see s. ERC 29.02 (3) (b), (3) (b) 1., and (3) (c))</p> |
|--|--|

The UW System 'believes that the rule specifically allowing RA's to sign cards for more than one bargaining agent should be retained to protect research assistants' freedom to choose their collective bargaining representatives. The labor organizations agree with UW's reasoning, but insist that the 'freedom' is exercised when a Research Assistant signs a card. In any event, if the WERC permits the proposed rule to stand, then further clarification is appropriate. Does the first organization receive notice of the second signature? Will the signature "count" for both organizations? Is there a limit on the number of cards an RA may sign?

We have retained the objected to concept, but we have removed the requirement that it be set forth on the authorization card. We prefer a procedure that allows an employee to sign cards supporting more than one labor organization, rather than attempting to develop procedures for revocation of cards and of counting only the earliest or latest as valid. We think it is possible that an employee might favor having either of two organizations as the exclusive representative of the bargaining unit involved. Honoring those preferences is not inconsistent with the notion that, if any organization attains representative status, that status would be as the exclusive representative of the bargaining unit.

In response to the requests for further clarification: No, the first organization does not receive notification of WERC's receipt of a second signature. Yes, the signature will count for both organizations. No, there is no limit on the number of cards a research assistant may sign.

| | |
|--|--|
| <p>The University writes, in response to WEAC's position opposing inclusion of a statement on the card that the signature can be used to determine representation without an election, that: "The certification of a labor organization as the research assistants' representative based on a card majority is new and unique in state labor relations." This is factually incorrect. Seventeen states have card check representation procedures, and one, New York, has had them since the passage of the Wagner Act. The last representation election among state employees in the State of Wisconsin was years ago; and the last one involving any UW employees was more than a decade ago. It is doubtful that any RA's have an erroneous opinion about the significance of the card based upon their understanding of prior labor relations representation procedures in Wisconsin. Research Assistants can be reasonably expected to require the employer and the labor organizations to explain to them the significance of signing a card. Again the labor organizations' interest is to keep these card as simple and as clear as possible.</p> | <p>Regarding requiring a card statement about the use that may be made of the card, we have required that cards contain a statement that reads, "I understand that such representation may be based upon a majority of authorization cards without an election." We think that language promotes informed employee choice by simply conveying the card majority concept free of additional potentially confusing legal terminology. (see ss. ERC 29.02 (3) (b) 3. and (3) (c))</p> |
|--|--|

LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

| |
|---|
| <p>CLEARINGHOUSE RULE 10-019</p> |
| <p>Comments dated March 9, 2010</p> |
| <p>[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]</p> |
| <p><i>2. Form, Style and Placement in Administrative Code</i></p> |
| <p>a. In the introductory clause, the rule sections treated by the proposed rule should be specifically identified, and a comma should be inserted before "relating." [so 1.02 (1), Manual.]</p> |
| <p>b. In the plain language analysis of the rule summary, a change to s. ERC 50.04 (4) is described under the subsection titled "Changes Specific to Particular Chapters." However, s. ERC 50.04 (4) does not appear in the proposed. rule.</p> |
| <p>c. In the rule preface comparison of the rule with rules in adjacent states, the crossreference in the answer to question 7 appears to be incorrect.</p> |
| |

| |
|---|
| d. The rule text should be paginated. |
| e. The SECTIONS in the proposed rule should be arranged in the numerical order of the rule section treated in each SECTION. For example, the treatments in SECTIONS 16 to 21 should be placed after the treatment in SECTION 26, and the treatments in SECTIONS 22 to 25 should be placed after the treatment in SECTION 27. [s. 1.04 (1), Manual.] |
| f. In SECTION I, it appears that the following rule sections are included in the treatment but do not include "procedures" in their text: ss. ERC 9.10, 25.05, and 26.10. |
| g. In SECTION 3, the text of the rule should begin with "ERC 8.01 Scope." Similarly, the text in SECTION 7 should begin with "ERC 10.06 (5) SIGNATURE FACSIMILE." SECTIONS 3 to 25 should be reviewed for correcting this problem, where appropriate. |
| h. In SECTIONS 3 and 21, the period at the end of each section should not be underscored; they are in the text of the current rule; [so 1.06, Manual.] |
| i. The agency should review SECTIONS 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16,22, and 24 to ensure that the text of the proposed rule sections accurately reflects the text in the current rule. For example, many of the current rule sections treated in the above-referenced SECTIONS contain commas and additional text that are not reflected in the proposed rule. |
| j. In SECTION 19, "at" on the first line should not be underscored; it is in the text of the current rule. [so 1.06, Manual.] |
| k. In SECTION 22, ", and state <u>and</u> UW system faculty and academic staff" should replace ", and state and UW system faculty and academic staff." [The comma should be underscored; s. 1.06, Manual.] |
| l. In SECTION 24, "arbitration" should be underscored. [s; 1.06, Manual.] |
| m. In s. ERC 29.04 (2), the introductory material should be renumbered as par. (a) and the remaining paragraphs should be renumbered accordingly. [See also s. ERC 29.06 (2).] |
| n. In SECTION 27, the title of s. ERC 34.07 does not match the title in the chapter introduction. |
| o. In SECTION 27, the text in s. ERC 34.08 should not be underscored. [s. 1.06, Manual.] |
| p. In s. ERC 60.02, the word "should" should be replaced by the word "shall." |
| q. In s. ERC 60.04, the word "given" should be inserted after the phrase "have the meaning as." |
| r. In SECTION 29, s. ERC 61.07 should not contain a subsection because subsections should only be created when at least two subsections are created. [so 1.03 (1), Manual.] |
| s. In the effective date section, does the agency want the effective date to be July 1, 2010, or the first |

| |
|---|
| day of the month following publication? The agency should clarify this. |
| <i>4. Adequacy of References to Related Statutes, Rules and Forms</i> |
| a. In the statutes interpreted section of the rule summary, a period should follow any reference to a subdivision or subdivision paragraph. For example, "s. 111.02 (7) (a) 4." should replace "s. 111.02 (7) (a) 4." [See s. 1.03 (1) (c), Manual.] In addition, "Stats." should be inserted at the end of the series of statutory references in the introductory clause. [so 1.07 (2), Manual.] |
| b. In the statutes interpreted section of the rule summary, should "111.92 (1) (a)" replace "111.91 (1)(a)"? |
| c. In the plain language analysis of the rule summary, "ch. 111, Stats." should replace "Chapter 111, Stats." in the first paragraph. [s. 1.07 (2), Manual.] |
| d. In the plain language analysis of the rule summary, "s. 111.02 (7m) and (9m), Stats." should replace "ss. 111.02 (7m) and (9m), Stats." in the first paragraph under the subsection titled "Changes Specific to Particular Chapters." [so 1.07, Manual.] |
| e. In the plain language analysis of the rule summary, "s. 111.81 (17m), Stats." should replace "s. 111.81 (7m), Stats;" in the fourth paragraph under the subsection titled "Changes Specific to Particular Chapters." |
| f. In the plain language analysis of the rule summary, "s. ERC 29.02 (5) (b)" should replace "s. ERC 29.02 (4) (b)" in the eighth paragraph under the subsection titled "Changes Specific to Particular Chapters." |
| g. In the plain language analysis of the rule summary, "Chapter ERC 40" should replace "Chapters ERC 40" and "ch. ERC 50" should replace "50" in the second-to-last paragraph in the subsection titled "Changes Specific to Particular Chapters." [See also the second-to-last page of the other states comparison; s. 1.07, Manual.] |
| h. In SECTION 27, "s. ERC 34.18" should replace "s. ERC 34.18 (1)" in s. ERC 34.10 (1). |
| i. In SECTION 27, "s." should be inserted before "ERC 32.17" in s. ERC 34.17. [s. 1.07, Manual.] |
| j. In SECTION 28, references to ch. ERC 60 should instead reference "this chapter." [so 1.07, Manual.] |
| k. In SECTION 28, "chs. ERC 40 and 50" should replace "chs. 40 and 50" in s. ERC 60.01. [so 1.07, Manual.] |
| l. In SECTION 29, "s." should be inserted before "111.98 (5), Stats." in s. ERC 61.01. [so 1.07, Manual.] The same comment applies to s. ERC 63.01 in SECTION 31; s. ERC 64.01 in SECTION 32; s. ERC 65.01 in SECTION 33; and s. ERC 67.01 in SECTION 35. |
| m. Section ERC 66.02 (3) references a form provided by the Wisconsin Employment Relations |

| |
|---|
| Commission. The requirements of s. 227.14 (3), Stats., should be met. |
| |
| <i>5. Clarity. Grammar. Punctuation and Use of Plain Language</i> |
| |
| a. In the plain language analysis of the rule summary, "to" should be inserted between "changes" and "Subchapters I, IV and V" in the first paragraph. |
| |
| b. In the place where comments are to be submitted section of the rule summary, the "0" in the phone number following "608" should be replaced with a hyphen. |
| |
| c. In the title to ch. ERC 8 and in s. ERC 8.01, the appropriate phrase with respect to daycare providers is "an employer of a day care provider under s. 111.02 (7) (a) 4., Stats." In the chapter title, the notations "s." and "(a)" both should be in lowercase. |
| |
| d. In s. ERC 29.01, the word "shall" should be replaced by the word "does." |
| |
| e. In SECTION 26, "and" should replace "but" in s. ERC 29.02 (,3) (e). |
| |
| f. In SECTION 26, "(e)" should replace "e)" in s. ERC 29.02 (4) (e). [so 1.03 (1) (c), Manual.] |
| |
| g. Section ERC 29.05 (1) refers to "eight days," while s. ERC 29.07 (3) (b) refers to "10 calendar days." Contrasting the two provisions, a reader might conclude that the reference in s. ERC 29.05 (1) is to business days. The normal practice in statutory drafting is that a reference to days refers to calendar days and that a specific reference to business days will be used when necessary. |
| |
| h. In SECTION 27, "chapter" should replace "chaapter" in s. ERC 34.07. |
| |
| i. In SECTION 28, a period should be inserted at the end of the text in s. ERC 60.06. |
| |
| j. In SECTION 34, "agreement" should be inserted between "fair-share" and "may" in s. ERC 66.02 (2) (b). |
| |
| k. In SECTION 34, references to maintenance of membership agreements should be removed in ss. ERC 66.02 (2) (b) and 66.10 (2) (a). |
| |
| l. In SECTION 34, "2" should replace "two" in s. ERC 66.02 (3). |
| |
| m. In SECTION 36, a period should be inserted at the end of the text in s. ERC 68.09. |

RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS

The Wisconsin Employment Relations Commission has adopted all of the Legislative Council Staff recommendations in the table above, except for those listed in the table below.

| | |
|---|--|
| <i>2. Form, Style and Placement in Administrative</i> | |
|---|--|

| | |
|--|---|
| <i>Code</i> | |
| | |
| h. In SECTION 27, "s. ERC 34.18" should replace "s. ERC 34.18 (1)" in s. ERC 34.10 (1). | This correction became unnecessary because proposed ch. ERC 34 has been eliminated and incorporated into existing ch. ERC 32. |
| | |
| i. In SECTION 27, "s." should be inserted before "ERC 32.17" in s. ERC 34.17. [s. 1.07, Manual.] | This correction became unnecessary because proposed ch. ERC 34 has been eliminated and incorporated into existing ch. ERC 32. |
| | |
| n. In SECTION 27, the title of s. ERC 34.07 does not match the title in the chapter introduction. | This correction became unnecessary because proposed ch. ERC 34 has been eliminated and incorporated into existing ch. ERC 32. |
| | |
| o. In SECTION 27, the text in s. ERC 34.08 should not be underscored. [s. 1.06, Manual.] | This correction became unnecessary because proposed ch. ERC 34 has been eliminated and incorporated into existing ch. ERC 32. |
| | |
| <i>4. Adequacy of References to Related Statutes. Rules and Forms</i> | |
| j. In SECTION 28, references to ch. ERC 60 should instead reference "this chapter." [so 1.07, Manual.] | j. We have not adopted this proposed change. To change "60" to "this chapter" in any of the five instances in proposed s. ERC 60.01 would be unnecessarily confusing to the reader. To avoid that confusion, we have retained the treatment paralleling that used in ss. ERC 1.01, 10.01 and 20.01. |
| | |
| <i>5. Clarity. Grammar. Punctuation and Use of Plain Language</i> | |
| | |
| h. In SECTION 27, "chapter" should replace "chaapter" in s. ERC 34.07. | This correction became unnecessary because proposed ch. ERC 34 has been eliminated and incorporated into existing ch. ERC 32. |
| | |

Dated at Madison, Wisconsin, this ____ day of _____, 2010,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith M. Neumann, Chair

Susan J. M. Bauman, Commissioner

Paul Gordon, Commissioner