

Chapter ERC 15

REFERENDA CONCERNING MUNICIPAL SECTOR FAIR-SHARE AGREEMENTS

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Note: Chapter ERB 15 was renumbered chapter ERC 15 under s. 13.93 (2m) (b) 1., Stats., Register, December, 1994, No. 468; Chapter ERC 15 as it existed on June 30, 2006, was repealed and a new chapter ERC 15 was created, Register June 2006 No. 606, effective July 1, 2006.

ERC 15.01 Scope. This chapter governs the general procedure relating to referenda with respect to municipal sector fair-share agreements under s. 111.70 (1) (f) and (2), Stats.

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

ERC 15.02 Stipulation for referendum seeking authorization to implement fair-share agreement. (1) WHO MAY FILE. A stipulation for a referendum to determine whether the employees in an appropriate bargaining unit favor the implementation of a fair-share agreement may be filed by the municipal employer and the exclusive representative of the employees in the bargaining unit involved or anyone authorized to act on their behalf.

(2) TIME FOR FILING. A stipulation for an initial referendum seeking authorization to implement a fair-share agreement shall be filed prior to the proposed implementation of the fair-share agreement involved.

(3) FORM, NUMBER OF COPIES, FILING AND SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signatures or a facsimile of the signatures of the parties or representatives filing the stipulation. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of 2 copies of the petition shall be included.

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

(a) The names and addresses of the parties on whose behalf the referendum is being stipulated, and the names, addresses and phone numbers of the parties' principal representatives. Fax numbers and e-mail addresses shall be included, if available.

(b) A request that the commission conduct a referendum to determine whether the of employees in the collective bargaining unit involved favors the implementation of the fair-share agreement.

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

(d) A description of the proposed fair-share agreement involved, including a statement of the agreed-upon standard for determining whether the required number of employees favors implementation of the fair-share agreement.

(e) A statement by the municipal employer that it agrees that, if the required number of employees votes in favor of implementing the fair-share agreement, then the municipal employer shall incorporate the fair-share agreement in the collective bargaining agreement covering the employees in the bargaining unit involved.

(f) A statement by the exclusive representative that it agrees that, if the required number of employees does not vote in favor of the implementation of the fair-share agreement, the exclusive representative shall withdraw its request in negotiations that a fair-share agreement be implemented covering the employees in the bargaining unit involved.

(g) A complete list of employees agreed upon by the parties as being included in the collective bargaining unit and eligible to vote.

(h) Suggested days of the week, time and place for the conduct of the referendum.

(5) PROCEDURE FOR RESOLVING REFERENDUM-RELATED DISPUTES. Questions arising in connection with the conduct of or the results of the referendum shall be processed in accordance with the procedures following a referendum directed as a result of a hearing under s. ERC 15.09.

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

ERC 15.03 Stipulation for referendum to determine the continuation of a fair-share. (1) WHO MAY FILE. A stipulation for a referendum to determine the continuation of a fair-share agreement may be filed by the exclusive representative and the municipal employer who are parties to the fair-share agreement, or anyone authorized to act on their behalf.

(2) TIME FOR FILING. A stipulation for a referendum 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, FILING AND SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signatures or a facsimile of the signatures of the parties or representatives filing the stipulation. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of 2 copies of the petition shall be included.

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

(a) The names and addresses of the parties on whose behalf the referendum is stipulated, and the names, addresses and phone numbers of the parties' principal representatives. Fax numbers and e-mail addresses shall be included, if available.

(b) An agreement that a hearing shall be waived and a request that the commission conduct a referendum to determine the continuation of a fair-share agreement.

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

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

(e) The date on which the most recent referendum, if any, was conducted, and the results of that referendum.

(f) A complete list of employees agreed upon by the parties as being included in the collective bargaining unit and eligible to vote.

(g) Suggested days of the week, time and place for the conduct of the referendum.

(5) PROCEDURE FOR RESOLVING REFERENDUM-RELATED DISPUTES. Questions arising in connection with the conduct of or the results of the referendum shall be processed under the procedures following a referendum directed as a result of a hearing under s. ERC 15.09.

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

ERC 15.04 Petition for referendum. (1) WHO MAY FILE. A petition to determine the continuation of a fair-share agreement may be filed by the municipal employer or by a labor organization, or by anyone acting on their behalf.

(2) TIME FOR FILING. A petition for an initial referendum 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 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 15.05 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). The showing of interest in support of the petition required by s. ERC 15.05, 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 municipal employer who is a party to the fair-share agreement involved, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the exclusive representative who is a party to the fair-share agreement involved, and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

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

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

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

(f) The date on which the most recent referendum, if any, was conducted, and the results.

(g) A statement to the effect that at least 30% of the employees in the collective bargaining unit involved desire a referendum to determine whether the fair-share agreement shall continue.

(h) 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.

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

ERC 15.05 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 employees in the collective bargaining unit involved, the dates on which the signatures were executed, and a statement that the employees signing oppose the continuance of the fair-share agreement involved.

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

ERC 15.06 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.

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

ERC 15.07 Commission pre-hearing 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 SHOWING OF INTEREST. Upon receipt of a petition, the commission shall determine the sufficiency of the showing of interest.

(a) *Furnishing of employee list by municipal employer.* If the commission determines that the showing of interest is sufficient, on its face, to warrant the processing of the petition, the municipal employer involved shall, within a period of time 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. The period of time for furnishing a list of employees may be extended by the commission for good cause shown.

(b) *Determination.* The commission shall determine the sufficiency of the showing of interest upon the receipt from the employer of the names of the employees in the bargaining unit. No party, other than the party submitting the showing of interest, may receive a copy of, or examine, the showing of interest. The commission shall inform all parties as to its determination regarding the sufficiency of the showing of interest. The commission shall not reveal the number or identity of persons supporting a showing of interest.

(3) CONCILIATION. If the commission determines that further proceedings are warranted, the commission may cause an effort to reach informal settlement of all or part of a referendum petition to be undertaken by a commission designee. A conciliator so designated shall attempt through mediation to assist the parties in reaching an informal agreement resolving some or all of the issues that might otherwise require a hearing. The pendency of conciliation shall not preclude the scheduling or conduct of a hearing if scheduling is specifically requested by any party prior to the conclusion of conciliation. If the conciliator concludes that further conciliation efforts are unlikely to produce a settlement, the processing of the case shall proceed, including the scheduling of a hearing, if appropriate.

(4) **NOTICE OF HEARING.** (a) *When issued.* Following the filing of a petition and following conciliation, if further proceedings are warranted, the commission or assigned examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing.

(b) *Contents.* The notice of hearing shall include all of the following:

1. A statement of the time, place, and nature of the hearing, including a statement that the referendum proceeding is a class 1 proceeding as defined in s. 227.01 (3) (a) to (c), Stats. Unless the parties have agreed otherwise or unless the commission or examiner finds that unusual circumstances require otherwise, the hearing shall be held not less than 10 days after the notice of hearing is served. The hearing may be rescheduled in the manner prescribed in s. ERC 18.06 (2) (d).

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A statement that the purpose of the hearing is to determine the issues, if any, with respect to whether and how the commission should conduct the referendum requested in the petition.

4. A statement that the municipal employer is required to have for examination at the hearing a list setting forth the names of all the employees in the bargaining unit and their classifications or positions in the employ of the municipal employer.

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

ERC 15.08 Motions. Practice and procedure regarding motions in referendum proceedings shall be as set forth in s. ERC 18.06.

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

ERC 15.09 Hearings. Hearings shall be open to the public and limited to the litigation of and oral argument on issues of fact or law regarding whether there exists a question for resolution by referendum among the eligible employees in the unit involved. The commission or examiner conducting the hearing shall inquire fully into all matters in issue, to obtain a full and complete record upon which the duties of the commission under s. 111.70 (2), Stats., may be properly performed. Practice and procedure for hearings in referendum proceedings shall otherwise be as set forth in s. ERC 18.08.

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

ERC 15.10 Direction of referendum or other dispositional order. As soon as possible after submission of the case, the commission shall, in writing, either direct a referendum, dismiss the petition, or make other orders regarding the disposition of the petition or stipulation. In cases where the commission is directing a referendum, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. In cases where the commission is resolving issues of fact or law, the commission's order shall be accompanied by its findings of fact and conclusions of law, and may be made available to the public through the commission website and in other commission publications.

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

ERC 15.11 Referendum. (1) **NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT.** All referenda shall be conducted by secret ballot and under the supervision of the commission. The commission shall determine on a case by case basis whether balloting shall be conducted on-site or by mail. The time within which the commission has directed a referendum to be conducted may be extended by the commission.

(2) **NOTICE OF REFERENDUM.** The municipal employer shall post notices to employees concerning the referendum and the

commission's policy on absentee ballots, at times, locations and in a form specified by the commission.

(3) **OBSERVERS.** Any party may be represented by observers, selected in accordance with limitations, if any, established by the commission.

(4) **CHALLENGE OF VOTERS.** Any observer or commission agent conducting the referendum may challenge, for good cause, the eligibility of any person to vote in the referendum. The challenged ballots shall be impounded without being opened or counted.

(5) **COUNT AND TALLY OF BALLOTS.** At the conclusion of the referendum, the ballots shall be counted in the presence of the parties or their observers, and the commission agent conducting the referendum shall furnish a tally of ballots to the parties.

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

ERC 15.12 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 15.13, the commission shall issue to the parties a certification of the results of the referendum.

(2) **EFFECT OF CERTIFICATION.** (a) *Opposing fair-share.* Where the certification of the results of a referendum indicates that the required number of employees has not authorized the implementation of, or the continuation of, the fair-share agreement, the fair-share agreement shall not be implemented, or shall be immediately terminated.

(b) *Favoring fair-share.* Where the certification of the results of a referendum indicates that the required number of employees has authorized the implementation of, or the continuation of, the fair-share agreement, the fair-share agreement shall become effective, or continue in effect.

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

ERC 15.13 Objections to referendum. (1) **FILING; FORM; COPIES.** Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the referendum or conduct affecting the results of the referendum. 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 2 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.

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

ERC 15.14 Commission action on challenges or objections. (1) **HEARING.** If ballot challenges potentially affecting the referendum outcome or objections 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 challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

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

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(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of referendum results.

(b) If the commission sustains one or more objections, it may direct a new referendum to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the referendum results.

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

ERC 15.15 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 the filing and processing of a petition for rehearing in a referendum proceeding shall be as set forth in s. ERC 18.11.

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