

## Chapter ERC 14

### FACT FINDING IN DISPUTES INVOLVING MUNICIPAL EMPLOYERS AND MUNICIPAL EMPLOYEES

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**Note:** Chapter ERB 14 was renumbered chapter ERC 14 under s. 13.93 (2m) (b) 1., Stats., Register, December, 1994, No. 468.

**Note:** See s. 111.70, Stats.

**ERC 14.01 Scope.** This chapter governs the general procedure relating to fact finding in municipal employment pursuant to s. 111.70, Stats.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62.

**ERC 14.02 Petition for fact finding. (1) WHO MAY FILE; WHERE TO FILE; FORM AND JURAT; NUMBER OF COPIES; SERVICE ON OTHER PARTY.** A petition for fact finding may be filed by a labor organization which either has been certified by the commission as the representative of the employees of a municipal employer in a collective bargaining unit, or which has been recognized by a municipal employer as the representative of its employees in a collective bargaining unit; or by a representative of a majority of the members of a police or sheriff or county traffic officer department (who may be required to post a bond pursuant to s. 111.70 (4) (j), Stats.); or by a municipal employer or anyone lawfully authorized to act in its behalf. The petition shall be prepared on a form furnished by the commission, the original being signed and sworn to before any person authorized to administer oaths or acknowledgements. Five additional copies thereof, together with the original, shall be filed with the commission. The party filing the petition, shall, at the same time, cause a copy of said petition to be served on the other party or its representative, by registered or certified mail.

**Note:** Chapter 247, Laws of 1971, repealed s. 111.70 (4) (j), Stats.

**(2) CONTENTS.** The petition shall include the following:

(a) The name, address and affiliation of the labor organization involved, and its principal representative, or where appropriate, the name, address, and principal representative of a majority of the members of the police or sheriff or county traffic officer department involved.

(b) The name, address, and principal representative of the municipal employer involved.

(c) A description of the certified or recognized collective bargaining unit involved, as well as the approximate number of employees in such unit.

(d) A statement setting forth the basis of the petition, either that after a reasonable period of negotiation the parties are deadlocked; or that the party other than the petitioner has failed or refused to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

(e) A statement to the effect that, within the knowledge of the petitioner, said deadlock or failure or refusal to meet and negotiate in good faith in a bona fide effort to arrive at a settlement, does not involve discipline or discharge cases under civil service provisions of a state or local ordinance.

(f) A clear and concise statement of facts constituting said alleged deadlock, or said failure or refusal to meet and negotiate in good faith.

(g) A statement as to whether or not the municipal employer involved has established fact finding procedures (if so, the petitioner must attach a copy of such fact finding procedures).

(h) Any other relevant facts.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 14.03 Withdrawal of petition.** A petition may be withdrawn only with the consent of the commission under such conditions as the commission may establish to effectuate the policies of s. 111.70, Stats.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 14.04 Commission investigation. (1) SCOPE.** After a petition has been filed, the commission shall make an investigation to determine whether or not the parties are deadlocked after a reasonable period of negotiation or whether or not either party failed or refused to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement, and whether or not the municipal employer involved has established fact finding procedures substantially in compliance with s. 111.70, Stats.

**(2) NATURE, WHO SHALL CONDUCT.** In such investigation the board may assign a commission agent to conduct an informal investigation to assist the commission in making its determination; or the commission may conduct a formal hearing for that purpose; or it may utilize both procedures.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (2), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 14.05 Informal investigation.** It shall be the duty of the commission agent conducting the informal investigation to ascertain facts essential to the investigation by interviewing the parties, their representatives, or other parties or persons having knowledge of the matter and by the examination of any documents, correspondence and any other like material pertaining to the matter. The commission agent shall not retain in his or her possession the original of any documents, correspondence or any other like material, which might be presented as evidence in a formal commission hearing. Upon completion of the investigation the commission agent shall report the findings to the commission, either orally or in writing, as the commission may direct.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1994, No. 468.

**ERC 14.06 Consolidation of proceedings.** Whenever the commission deems it necessary, in order to effectuate the purposes of s. 111.70, Stats., or to avoid unnecessary costs, delay, or multiplicity of proceedings, the commission may consolidate fact finding proceedings.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 14.07 Notice of hearing. (1) WHEN ISSUED; CONTENTS.** If it should appear to the commission that a hearing is war-

ranted, the commission shall issue and serve, upon each of the parties, a notice of hearing at a place feasible in the jurisdiction of the municipal employer involved, on a date and at such time therein fixed.

(2) **AMENDMENT OR WITHDRAWAL.** Any such notice of hearing may be amended or withdrawn at any time before the close of the hearing by the commission or commission agent conducting the hearing.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (2), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 14.08 Hearings. (1) SCOPE AND NATURE.** The commission hearing in fact finding cases shall be limited to pertinent matters necessary to establish the facts to determine whether, after a reasonable period of negotiation, the parties are deadlocked; or whether the municipal employer or labor organization has failed or refused to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement; and whether or not the municipal employer involved has established fact finding procedures substantially in compliance with s. 111.70, Stats.; and such hearing shall be public.

(2) **WHO SHALL CONDUCT.** The hearing may be conducted by the full commission, or any member or members thereof, or any member of its staff or any individual designated by the commission, all acting on behalf of the commission. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (2), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 14.09 Certification of results of investigation.**

(1) **WHEN ISSUED.** After consideration of either the report of the commission agent conducting the informal investigation, or the record adduced in the hearing, or both, the commission shall issue a certification of the results of said investigation with respect to the question as to whether or not a fact finding should be initiated, and, if fact finding is to be initiated, as to whether the municipal employer involved has established fact finding procedures substantially in compliance with s. 111.70, Stats.

(2) **CONTENTS.** Said certification shall contain findings of fact and conclusions with regard to the investigation, either initiating fact finding or dismissing the petition, or such other action, consistent with the purpose of s. 111.70, Stats., which the commission may deem appropriate.

(3) **APPOINTMENT OF FACT FINDER.** If the certification requires that fact finding be initiated and that the commission should appoint the fact finder, the selection of the fact finder shall be made from a panel established by the commission. The commission may immediately appoint the fact finder or it may submit to the parties the names of either 3 or 5 persons from the panel. Each party by its authorized representative shall alternately strike one name from such list of persons. The person remaining on the list shall be appointed by the commission as the fact finder.

(4) **SERVICE ON THE PARTIES; RECORD.** A copy of the commission's certification shall be immediately served upon the parties, and, if a fact finder is designated, upon the fact finder selected. The commission shall also therewith submit to the fact finder a

copy of any written informal investigation report, and a copy of the record before the commission in the matter.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), (2), (3) and (4), Register, March, 1971, No. 183, eff. 4-1-71.

**ERC 14.10 Hearing before the fact finder. (1) NOTICE OF HEARING.** Following the receipt of notification of an appointment the fact finder shall issue and serve, upon each of the parties, a notice of hearing at a place feasible in the jurisdiction of the municipality involved at a date and at such time as therein fixed.

(2) **AMENDMENT OR WITHDRAWAL.** Any such notice of hearing may be amended or withdrawn at any time before the close of the hearing by the fact finder.

(3) **SCOPE AND NATURE OF HEARING.** The hearing shall be public, shall concern pertinent matters necessary for the fact finder to determine the facts in the dispute and which, in the opinion of the fact finder, assists in reaching his or her recommendation for the solution of the dispute.

(4) **RESCHEDULING HEARING.** Upon his or her own motion, or upon proper cause shown by any of the parties, the fact finder may prior to the opening of the hearing reschedule the date of such hearing.

(5) **TRANSCRIPTS.** Unless waived by the parties and consented to by the fact finder, hearings shall be stenographically reported and transcribed. Such transcripts shall be the sole official transcript. Costs involved for the original of such transcript shall be borne equally by the parties. Copies of the transcript shall be available to the parties and to the public at rates set by s. 814.69, Stats.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1994, No. 468.

**ERC 14.11 Fact finding report. (1) ISSUANCE.** After the close of the hearing the fact finder shall prepare and make a fact finding report.

(2) **CONTENTS.** Such report shall contain:

(a) A statement of findings of fact and conclusions, upon all material issues presented on the record;

(b) Recommendations for the solution of the dispute and

(c) A memorandum stating the reasons and basis for such findings, conclusions and recommended solutions.

(3) **SERVICE.** Upon the completion of the report the fact finder shall cause copies of same to be served on the parties, as well as the commission.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (3), Register, March, 1971, No. 183, eff. 4-1-71; correction in (3) made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1994, No. 468.

**ERC 14.12 Compensation of fact finder.** The fact finder designated by the commission to conduct the fact finding proceeding shall be entitled to a per diem compensation for days spent in hearing in a sum not to exceed \$150 per day and for days spent in preparation and issuance of the report in a sum not to exceed \$100 per day. The fact finder shall also be compensated for ordinary expenses incurred for travel, meals and room allowance, and other necessary expenses incurred in the proceeding.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, March, 1971, No. 183, eff. 4-1-71; correction made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1994, No. 468.