

Chapter ERC 31

INTEREST ARBITRATION OF DISPUTES INVOLVING LAW ENFORCEMENT BARGAINING UNITS IN 1ST CLASS CITIES

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Note: Chapter ERB 31 was promulgated as an emergency rule effective January 1, 1978. Chapter ERB 31 was renumbered chapter ERC 31 under s. 13.93 (2m) (b) 1., Stats., Register, December, 1994, No. 468; **Chapter ERC 31 as it existed on June 30, 2006, was repealed and a new chapter ERC 31 was created, Register June 2006 No. 606, effective July 1, 2006.**

ERC 31.01 Scope. This chapter governs the procedure relating to interest arbitration under s. 111.70 (4) (jm), Stats., affecting bargaining units of municipal employees employed by police departments of 1st class cities as defined in ss. 62.05 and 990.001 (15), Stats.

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

ERC 31.02 Policy. The policy of the state is to encourage voluntary settlement of labor disputes in municipal employment through the procedures of collective bargaining. If the procedures fail, the parties should have available to them a fair, speedy, effective, and above all, peaceful procedure for settlement, including, where a deadlock exists after negotiations and after mediation by the commission, a procedure for the resolution of the dispute by interest arbitration.

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

ERC 31.03 Petition to initiate arbitration. (1) WHO MAY FILE. A petition to initiate arbitration may be filed by a municipal employer or the exclusive representative of municipal employees in a bargaining unit described in s. ERC 31.01 or anyone authorized to act on their behalf.

(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 2 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.

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

(a) The name and address of the municipal employer 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 involved, as well as the name, title, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

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

(d) A statement that the parties have reached an impasse on matters relating to wages, hours and conditions of employment or other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats.

(e) The date when notice was served to open negotiations and the identity of the party serving the notice.

(f) The number of negotiation meetings prior to mediation, if any, by the commission.

(g) The dates on which mediation, if any, was conducted and the identity of the commission mediator.

(h) The termination date of the existing collective bargaining agreement, if any.

(i) The identity of the party filing the petition; the name, title and signature, or signature facsimile, of the person signing the petition; and the date when the petition was transmitted to the commission. 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 31.04 Stipulation to initiate arbitration.

(1) WHO MAY FILE. A stipulation to initiate arbitration may be filed by a municipal employer and the exclusive representative of municipal employees in a bargaining unit described in s. ERC 31.01, or anyone authorized to act on their behalf.

(2) FORM; NUMBER OF COPIES; FILING; SERVICE. The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The stipulation 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 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 stipulation shall be included. The fee may be transmitted to the commission by physical delivery or mail.

(3) CONTENTS. The stipulation shall contain the same information as set forth in s. ERC 31.03 (3) for a petition to initiate arbitration, except that the stipulation shall include the signature, or signature facsimile, of a representative of each party.

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

ERC 31.05 Withdrawal of petition or stipulation; effect on filing fee.

A petition or stipulation 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. Neither the withdrawal of the petition or stipulation nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

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

ERC 31.06 Informal investigation or formal hearing.

(1) PURPOSE. After a petition or stipulation has been filed, the commission shall conduct an investigation to determine whether the parties have reached an impasse on matters relating to wages, hours and conditions of employment or other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats. The investigation shall be conducted either by the commission or by an investigator assigned by the commission. The investigation shall consist either of an informal investigation or a formal hearing or both. If it is determined that the parties have reached an impasse, the commission or investigator shall obtain the parties' written final offers on the issues in dispute, and shall obtain a stipulation signed by the parties on all matters agreed upon to be included in the new or amended collective bargaining agreement. During the informal investigation or formal hearing, the commission or investigator may engage in an effort to mediate the dispute.

(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 finds 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. 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 not subject to arbitration under s. 111.70 (4) (jm) 4., Stats., the commission or investigator shall serve the parties, as set forth in s. ERC 10.07, with 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. 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.

(3) FORMAL HEARING PRACTICE AND PROCEDURE. If a formal investigation is conducted, the commission or investigator, following communication with the parties, shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The formal hearing may be adjourned or continued in the discretion of the commission or investigator. Hearing practice and procedures shall be as set forth in ss. ERC 18.06 to 18.08, except that the purpose and scope of the hearing shall be limited to establishing the facts needed to determine whether the parties have reached an impasse on matters relating to wages, hours and conditions of employment and other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats. Prior to the close of the hearing the commission or its investigator shall obtain and exchange the parties' final offers, and the parties' stipulation of agreed upon items, if any.

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

ERC 31.07 Final offers. (1) CONTENTS GENERALLY. Final offers shall contain proposals relating only to wages, hours and conditions of employment or other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats., except either final offer may contain proposals relating to permissive subjects of bargaining if there is no timely objection under s. ERC 31.08 or 31.09 by the other party to the inclusion of the proposals in a final offer. Absent

a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.70 (4) (jm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 31.09.

(2) MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION. Following the close of the investigation, a party may modify its proposal on any of the subjects in dispute when the investigation was closed without the consent of the other party, unless and until the arbitrator appointed under s. ERC 31.11 declares otherwise. However, following the close of the investigation, a party shall not submit to the arbitrator a proposal on a subject not in dispute when the investigation was closed without the written consent of the other party.

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

ERC 31.08 Procedures for raising objection that a proposal is a non-mandatory subject of bargaining. In proceedings under this chapter, practice and procedures for raising an objection that a proposal is a non-mandatory subject shall be as set forth in s. ERC 30.10.

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

ERC 31.09 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining. In proceedings under this chapter, practice and procedures regarding a petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining shall be as set forth in s. ERC 30.11.

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

ERC 31.10 Certification of results of investigation or hearing, or certification based on stipulation.

(1) WHEN ISSUED. After consideration of its own investigation or the report of the investigator, or the record adduced in the formal hearing, or a stipulation of the parties to waive the investigation, the commission shall issue a certification determining whether the parties have reached an impasse on matters relating to wages, hours and conditions of employment or other matters subject to arbitration under s. 111.70 (4) (jm) 4., Stats.

(2) CONTENTS. The certification shall contain findings of fact and conclusions of law material in the matter, as well as an order either initiating arbitration or dismissing the petition or stipulation, consistent with the purposes and policies of s. 111.70 (4) (jm), Stats. If the certification requires arbitration, it shall authorize arbitration with regard to each of the subjects contained in the final offers of the parties at the time the investigation was closed.

(3) SUBMISSION OF PANEL. If the certification requires arbitration, the parties shall also be directed to select an arbitrator within 30 days after the issuance of the certification, or within a different time period agreed upon between the parties, from a panel of 7 arbitrators designated by the commission. The panel shall not include individuals who are residents of the city involved in the case. Selection of arbitrators for inclusion on the panel shall otherwise be as provided in s. ERC 40.06 (3), with arbitrators randomly selected from among the roster members available for service at the time the request is processed. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each arbitrator whose name is supplied to the parties by the commission. In the absence of an agreement to another method of selection, the parties shall select the arbitrator by alternately striking names from the panel until a single name remains, who shall be the arbitrator. The order of proceeding in the selection process shall be determined by lot.

(4) SERVICE OF CERTIFICATION AND PANEL. Copies of the certification and the names of the panel members shall be served on the parties as set forth in s. ERC 10.07.

(5) **ARBITRATOR IMPARTIALITY.** The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators.

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

ERC 31.11 Order appointing arbitrator. (1) NOTIFICATION OF SELECTION. The parties, or either of them, shall promptly notify the commission in writing, as set forth in s. ERC 10.06 (1), of the identity of the arbitrator selected by them.

(2) **ORDER.** Upon receipt of the notification of the identity of the arbitrator selected, the commission shall serve the parties with copies of its order appointing the arbitrator, as set forth in s. ERC 10.07. The commission shall, at the same time, submit a copy of the appointment order to the selected arbitrator, as well as copies of the final offers of the parties.

(3) **COPIES OF FINAL OFFERS.** The final offers submitted to the appointed arbitrator shall be considered public documents and copies may be obtained from the commission, by any person upon written request, following the issuance of the order appointing the arbitrator, at the cost of reproduction and postage.

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

ERC 31.12 Proceedings before the arbitrator.

(1) **GENERALLY.** The arbitration proceedings shall be governed by ch. 788, Stats., except as specifically provided in s. 111.70 (4) (jm), Stats. Except as otherwise required by commission rules, proceedings before the arbitrator shall 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.

(2) **NATURE AND SCOPE OF THE ARBITRATION HEARING.** Following the receipt of the appointment order, the arbitrator shall, after conferring with the parties, serve, as set forth in s. ERC 10.07, each of the parties with a notice of hearing, establishing the date, time and place for the arbitration hearing. The hearing shall be public and for the purpose of gathering information on the basis of which the arbitrator shall issue an award on the issue or issues in dispute. The arbitrator shall consider the factors set forth in s. 111.70 (4) (jm) 3., 5. and 6., Stats., and the parties shall be pre-

pared to present evidence and argument relating to the factors involved.

(3) **MEDIATION.** Nothing in this chapter is intended to preclude the arbitrator from using best efforts to encourage the parties to resolve the dispute by voluntary agreement. Any mediation by the arbitrator shall not be open to the public unless mutually agreed by the parties or their representatives. At the joint request of the parties, the arbitrator may issue a consent award ordering implementation of the terms of a written voluntary agreement between the parties resolving part or all of the dispute involved.

(4) **ISSUANCE OF AWARD AND REPORT OF ARBITRATOR'S FEES AND EXPENSES.** The arbitrator shall issue the arbitration award in writing after the receipt of final arguments or briefs. After the award is signed, a copy of the award and a statement of the arbitrator's fees and expenses shall be submitted immediately to the commission as set forth in s. ERC 10.06 (1) and to the parties as set forth in s. ERC 10.07. When received by the commission, interest awards shall be made available to the public. Copies may be purchased by the public from the commission's Madison office and may also be available on the commission website or in other commission publications.

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

ERC 31.13 Costs. The fees and expenses of the arbitrator including the rental of hearing rooms, the conduct of the hearing, and the preparation of the award, shall be shared equally by the parties. The fees and expenses charged by the arbitrator shall not exceed those described in the arbitrator's biographical information and fee statement on file with the commission at the time the arbitrator's name was supplied to the parties by the commission. Costs of subpoenas and witness fees shall be borne by the party requesting the subpoena or witness. Fees and expenses charged by the reporter, if any, shall be borne equally by the parties if both parties agreed that the hearing would be transcribed. If only one party desires a transcript, that party is solely responsible for the fees and expenses incurred by the reporter and shall provide a copy of the transcript to the arbitrator.

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

ERC 31.14 Enforcement or modification of award. Standards and procedures for enforcement or modification of awards issued under s. 111.70 (4) (jm), Stats., shall be as provided in s. 111.70 (4) (jm) 11., Stats.

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