

## Chapter ERC 14

### FACT-FINDING IN DISPUTES INVOLVING CERTAIN 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. Chapter ERC 14 as it existed on June 30, 2006, was repealed and a new chapter ERC 14 was created, Register June 2006 No. 606, effective July 1, 2006.

**ERC 14.01 Scope.** This chapter governs the general procedure relating to fact-finding in municipal employment under s. 111.70 (4) (c) 3, Stats., involving municipal employees who are engaged in law enforcement and fire fighting functions in cities, villages or towns having a population of less than 2500 as determined by the most recent regular or special federal census.

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

**ERC 14.02 Petition for fact-finding. (1) WHO MAY FILE.** A petition to initiate fact-finding may be filed by a municipal employer or by the exclusive collective bargaining representative of a bargaining unit of municipal employees within the scope of s. ERC 14.01.

**(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 (4) have been received by the commission at its Madison office during normal business hours. 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 fact-finding. 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 1 copy of the request 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 of the request on the other party 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, 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 certified or recognized collective bargaining unit involved, as well as the approximate number of employees in the unit.

(d) A statement that after a reasonable period of negotiation the parties are deadlocked.

(e) A clear and concise statement of facts constituting the alleged deadlock.

(f) Any other relevant facts.

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

**ERC 14.03 Withdrawal of petition; effect on filing fee.** Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the com-

mission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any party. Neither the petitioning party's withdrawal of the petition for fact-finding 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 14.04 Commission investigation. (1) PURPOSE; NATURE; BY WHOM CONDUCTED.** 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. 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. 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, following communication with the parties, shall set a date, time and place for the conduct of the informal investigation and shall notify the parties in writing. The informal investigation may be adjourned or continued in the discretion of the commission or investigator. During the investigation the commission or investigator may meet jointly or separately with the parties for the purposes described in sub. (1) and may otherwise communicate with one or both parties for those purposes. 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.

**(3) FORMAL HEARING PROCEDURE.** If a formal hearing 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 procedure 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, after a reasonable period of negotiation, the parties are deadlocked.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. (3) Register June 2010 No. 654, eff. 7-1-10.

**ERC 14.05 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 Municipal Employment Relations Act.

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

**ERC 14.06 Certification of results of investigation. (1) WHEN ISSUED.** After consideration of either the report of the investigator conducting the informal investigation, or the record of the hearing, or both, the commission shall issue a certification of the results of the investigation with respect to whether fact-finding should be initiated.

(2) **CONTENTS.** The certification shall contain findings of fact and conclusions of law concerning the results of the investigation, and it shall include an order initiating fact-finding or dismissing the petition or taking other action that is consistent with the purpose of the Municipal Employment Relations Act.

(3) **APPOINTMENT OF FACT FINDER.** If the certification requires that fact-finding be initiated, the commission shall submit to the parties the names of 5 members of the commission's ad hoc panel of arbitrators and fact finders described in ch. ERC 40. Fact finder selection and panel composition shall be as provided in s. ERC 40.06 (3), with fact finders randomly selected from among the roster members available for service at the time the panel is selected. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each fact finder whose name is supplied to the parties by the commission. Each party, by its authorized representative, shall alternately strike one name from the list until one name remains. The order of proceeding in the selection process shall be determined by lot. The parties shall then advise the commission of the name of the person remaining on the list, and that person shall be appointed by the commission as the fact finder. Alternatively, at the joint request of the parties, the commission shall appoint a 3-member fact-finding board.

(4) **SERVICE ON THE PARTIES.** A copy of the commission's order appointing the fact finder shall be served, as set forth in s. ERC 10.07, on the parties and on the appointed fact finder.

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

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

**ERC 14.07 Hearing before the fact finder.** (1) **NOTICE OF HEARING.** Following the receipt of notification of an appointment and communications with the parties, the fact finder shall issue and serve on both parties, as set forth in s. ERC 10.07, a notice of hearing specifying the date, time and place at which the fact-finding hearing shall be conducted.

(2) **SCOPE AND NATURE OF HEARING.** The hearing shall be public and for the purpose of gathering information which shall assist the fact finder in reaching recommendations for the resolution of the dispute. Except as otherwise required by commission rules, proceedings before the fact finder 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 is available in electronic form on the commission website and in paper form on request from the commission.

(3) **HEARING PROCEDURE.** Hearings shall be within the control of the fact finder and shall be conducted as expeditiously as the nature of the dispute shall allow. In conducting the hearing the fact finder has the power to take the following actions:

- (a) Administer oaths and affirmations.
- (b) Issue subpoenas in the name of the commission.

**Note:** Fact finders may obtain appropriate subpoena forms from the commission's Madison office.

- (c) Rule on offers of proof and receive relevant evidence.
- (d) Regulate the course of the fact-finding hearing.
- (e) Dispose of procedural requests and similar matters.

(4) **WAIVER OF HEARING AND BRIEF.** With the consent of the fact finder, the parties may agree to waive the convening of a formal hearing or the filing of briefs, or both.

(5) **MEDIATION BY THE FACT FINDER.** Nothing in this chapter precludes the fact finder from attempting through mediation to assist the parties in reaching a voluntary settlement of the matters in dispute. Any mediation by the fact finder shall not be open to

the public unless mutually agreed by the parties or their representatives.

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

**ERC 14.08 Fact-finding recommendations.**

(1) **ISSUANCE.** After the close of the hearing, the fact finder shall prepare and issue fact-finding recommendations.

(2) **CONTENTS.** The fact-finding recommendations shall contain all of the following:

- (a) A statement of findings of fact and conclusions on all material issues presented on the record.
- (b) Recommendations for the solution of the dispute.
- (c) A memorandum stating the reasons for the fact finder's findings, conclusions and recommended solutions.

(3) **SERVICE.** Upon the completion of the recommendations the fact finder shall serve a copy of the recommendations on each of the parties as set forth in s. ERC 10.07 and on the commission as set forth in s. ERC 10.06 (1).

(4) **PUBLIC DOCUMENT WHEN ISSUED.** When issued, fact finder recommendations may be made available to the public. Copies may be purchased from the commission's Madison office, and the recommendations may also be available through the commission website and in other commission publications.

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

**ERC 14.09 Compensation of fact finder and other costs.**

The fees and expenses of the fact finder including the rental of hearing rooms, the conduct of the fact-finding hearing, and the preparation of the recommendations, shall be shared equally by the parties. The fees and expenses charged by the fact finder shall not exceed those described in the fact finder's biographical information and fee statement on file with the commission at the time the fact finder'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 fact finder.

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

**ERC 14.10 Fact finder's report of fees and expenses.**

After issuing recommendations or otherwise concluding service to the parties as a fact finder, the fact finder shall transmit to the commission, as set forth in s. ERC 10.06 (1), a report of the fees and expenses, if any, for which the fact finder charged the parties.

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

**ERC 14.11 Notification of acceptance or rejection of recommendations of the fact finder.**

(1) **WHO SHALL NOTIFY; WHO SHALL BE NOTIFIED.** 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.

(2) **SERVICE.** The notification shall be served within 30 days of the receipt of the fact finder's recommendations or within a different time period mutually agreed upon by the parties. The notification shall be served on each party as set forth in s. ERC 10.07. The notification shall be filed with the commission as set forth in s. ERC 10.06 (1).

(3) **CONTENTS.** The notification shall contain the following:

- (a) The identity of the proceeding.
- (b) The identity of the fact finder.
- (c) The date upon which the recommendations were issued.
- (d) A clear and concise statement as to the acceptance or rejection, in whole or in part, of each recommendation of the fact finder.

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