

## Chapter ERC 95

## ARBITRATION OPTION FOR CLASSIFICATION APPEALS

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**Note:** Chapter PC 6 was renumbered Chapter ERC 95 under s. 13.92 (4) (b) 1., Stats., Register December 2014 No. 708.

**ERC 95.01 Definitions.** In this chapter:

(1) “Arbitration hearing” means an informal administrative hearing conducted pursuant to this chapter.

(2) “Arbitrator” means the individual designated by the commission to preside at an arbitration hearing.

(3) “Classification appeal” means an appeal arising from decisions made under s. 230.09 (2) (a) or (d), Stats.

(4) “Contested case hearing” means a formal administrative hearing conducted pursuant to chs. ERC 93 and 94.

**Note:** Appeals involving classification decisions such as allocation, reallocation or reclassification are included as classification appeals filed under s. 230.09 (2) (a) or (d), Stats.

**History:** Cr. Register, May, 1996, No. 485, eff. 6–1–96; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2014 No. 708.

**ERC 95.02 Procedure followed prior to arbitration hearing.** (1) **ELECTION TO PROCEED BY ARBITRATION.** (a) An appellant in a classification appeal may elect to proceed by arbitration hearing rather than by contested case hearing. Except as permitted in par. (b), an appeal shall proceed by contested case hearing if the appellant fails to make an election at the prehearing conference and fails to make an election by any later date set by the commission.

(b) A decision to proceed by arbitration hearing or by contested case hearing made under par. (a), can be changed only upon agreement of the parties and with approval of the arbitrator.

(c) Where consolidation of more than one classification appeal is requested by any party or the commission, such request shall be granted unless appellants disagree on whether to proceed by arbitration hearing or by contested case hearing, or unless the commission determines that the requested consolidation is undesirable for other reasons.

**Note:** This provision clarifies that all appellants must agree to proceed in the same manner (for example, all agree to proceed by arbitration, or all agree to proceed by formal hearing) as a prerequisite to consolidation.

(2) **DISCLOSURE OF WITNESS LISTS AND EXHIBITS.** Each party shall file and serve on the opposing party and on the commission, a list of witnesses and copies of exhibits. These materials shall be received by the commission and by the opposing party at least 3 working days prior to the arbitration hearing. The arbitrator may bar any evidence which the offering party failed to timely disclose under this subsection.

**Note:** For example, compliance with the “3 working days” requirement in s. ERC 95.02 (2), means that the commission and opposing party must each receive a party’s witness list and copies of exhibits no later than 4:30 p.m. on the Thursday preceding a Tuesday hearing, where neither that Thursday, nor the intervening Friday or Monday, is a legal holiday listed in s. 230.35 (4) (a), Stats.

**History:** Cr. Register, May, 1996, No. 485, eff. 6–1–96.

**ERC 95.03 Arbitration hearings.** (1) **RECORD OF ARBITRATION HEARING.** Each party shall have an opportunity to request

that any document filed and served under s. ERC 95.02 (2), be considered by the arbitrator in reaching the decision. The requested documents shall be marked by the arbitrator as exhibits and shall be made part of the commission’s file. Parties shall have an opportunity to ask questions of every witness.

(2) **EXCLUSION OF WITNESSES AT ARBITRATION HEARING.** At the request of either party and for the purpose of keeping witness testimony untainted by the testimony of prior witnesses, the arbitrator may order the exclusion of witnesses.

**History:** Cr. Register, May, 1996, No. 485, eff. 6–1–96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2014 No. 708.

**ERC 95.04 Decision and judicial review.** (1) **THE ARBITRATOR’S DECISION.** The arbitrator shall render a decision orally at the conclusion of the arbitration hearing affirming, modifying or rejecting respondent’s action. The arbitrator shall promptly file the decision with the commission.

(2) **COMMISSION REVIEW OF THE ARBITRATOR’S DECISION.** The commission shall issue a final decision which adopts the arbitrator’s decision.

(3) **COURT REVIEW.** The decision of the commission is subject to limited court review under ss. 227.53 to 227.57, Stats.

**History:** Cr. Register, May, 1996, No. 485, eff. 6–1–96.

**ERC 95.05 Additional provisions incorporated by reference.** The provisions set forth in chs. ERC 93 and 94, are applicable to arbitration hearings, except as noted in the following subsections:

(1) The arbitrator has the discretion to determine if the following provisions of ch. ERC 94, shall apply to an arbitration hearing:

- (a) Section ERC 94.03 (3) relating to opening statements.
- (b) Section ERC 94.03 (4) relating to the order of proceeding.
- (c) Section ERC 94.03 (6) (b) relating to the scope of cross examination.

(2) The following provisions of chs. ERC 93 and 94, are inapplicable to an arbitration hearing:

- (a) Section ERC 93.02 relating to the exchange of documents and witness lists prior to hearing.
- (b) Section ERC 93.03 relating to discovery.
- (c) Section ERC 94.03 (5) relating to evidence.
- (d) Section ERC 94.04 relating to proposed decisions and orders.
- (e) Section ERC 94.05 relating to motions for fees and costs.
- (f) Section ERC 94.06 relating to written objections and oral arguments.
- (g) Section ERC 94.07 relating to computation of interest.
- (h) Section ERC 94.08 relating to the time limit for decisions.
- (i) Section ERC 94.09 relating to requests for rehearing.

**History:** Cr. Register, May, 1996, No. 485, eff. 6–1–96; corrections made under s. 13.92 (4) (b) 7., Stats., Register December 2014 No. 708.