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Chapter ERC 18

MUNICIPAL SECTOR SCOPE OF BARGAINING DECLARATORY RULINGS

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Note: Chapter ERB 18 was renumbered chapter ERC 18 under s. 13.93 (2m) (b) 1., Stats., Register, December, 1994, No. 468. Chapter ERC 18 as it existed on June 30, 2006, was repealed and a new chapter ERC 18 was created, Register June 2006 No. 606, effective July 1, 2006.

ERC 18.01 Scope. This chapter governs the general procedure relating to declaratory rulings issued under s. 111.70 (4) (b), Stats.

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

ERC 18.02 Petition. (1) WHO MAY FILE. A petition for the determination of a dispute concerning the duty to bargain on any subject may be filed by a municipal employer or by the exclusive collective bargaining representative of municipal employees.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The petition shall be in writing in the form described below 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 has 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). If the petition is filed in paper form, a total of 2 copies of the petition shall be included. The petition shall be captioned as follows:

"STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of
(NAME OF PETITIONER)
Requesting a Sec. 111.70 (4) (b), Stats., Declaratory Ruling
Involving a Dispute Between the Petitioner and
(NAME OF OTHER PARTY)

The party filing the petition shall, at the same time, serve a copy on the other party, or its designated representative, 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 clear and concise statement of the subject or subjects over which a dispute has arisen concerning the duty to bargain.

(e) A statement of the position of the petitioner as to whether or not the parties are under a duty to bargain on the subject or subjects listed in the petition.

(4) STATEMENT IN SUPPORT OF PETITION. The petitioner shall attach to each copy of the petition a clear and concise statement of the facts and arguments relied upon by the petitioner in support of the position taken by the petitioner.

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

ERC 18.03 Statement in response to petition.

(1) WHO SHALL FILE. The party other than the petitioner shall, within a time established by the commission, file with the commission a statement in response to the petition.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The statement in response shall be in writing and shall include the caption of the case and the signature or a facsimile of the signature of the party or representative filing the statement. The statement shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the statement is filed in paper form, a total of 2 copies shall be provided to the commission. The party filing the statement in response shall, at the same time, serve a copy on the petitioner or its designated representative, as set forth in s. ERC 10.07.

(3) CONTENTS. The statement in response shall include all of the following:

(a) A statement of the position taken by the responding party as to whether the parties are under a duty to bargain on the subject or subjects listed in the petition.

(b) A clear and concise statement of the facts and arguments relied upon by the responding party in support of its position regarding the petition.

(c) Corrections, as necessary, of the names, addresses, phone numbers, fax numbers, e-mail addresses, affiliations and representatives in the petition, or of the description of the collective bargaining unit involved, or the number of employees in the unit.

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

ERC 18.04 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 18.05 Stipulation for declaratory ruling.

(1) WHO MAY FILE. Where a municipal employer and the exclusive representative of employees of the municipal employer in an appropriate collective bargaining unit are in dispute concerning the duty to bargain on any subject, those parties may jointly file a stipulation for a declaratory ruling with regard to the dispute.

(2) FORM, NUMBER OF COPIES AND FILING. The stipulation for a declaratory ruling shall be in writing in the form described below and shall contain the signatures or facsimiles of the signatures of both parties or their designated representatives. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually

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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). If the petition is filed in paper form, a total of 2 copies of the petition shall be included. The stipulation shall be captioned as follows:

“STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Stipulation between
(NAME OF MUNICIPAL EMPLOYER)
and
(NAME OF EXCLUSIVE REPRESENTATIVE)
Requesting a Sec. 111.70 (4) (b), Stats., Declaratory Ruling
Involving a Dispute Between the Parties

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

- (a) The caption in the form noted above.
- (b) The name, address and phone number of the municipal employer involved and of its principal representative. Fax numbers and e-mail addresses shall be included, if available.
- (c) The name, address, phone number and affiliation, if any, of the exclusive representative involved and of its principal representative. Fax numbers and e-mail addresses shall be included, if available.
- (d) A description of the certified or recognized collective bargaining unit involved, as well as the approximate number of employees in the unit.
- (e) A clear and concise statement of the subject or subjects over which a dispute has arisen concerning the duty to bargain.
- (f) A statement of any stipulated facts.
- (g) A clear and concise statement of the position taken by each party as to whether the parties are under a duty to bargain on the subject or subjects listed in the stipulation.

(4) STATEMENTS IN SUPPORT OF POSITION. Each party to the stipulation shall attach to the stipulation, or within an agreed period of time set forth in the stipulation, file with the commission, a detailed statement of the arguments relied upon in support of its position in the matter, and shall, at the same time, serve a copy on the other party, as set forth in s. ERC 10.06 (1). If the statement is filed in paper form, a total of 2 copies shall be provided to the commission.

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

ERC 18.06 Motions. (1) GENERALLY. (a) *Presentation.* All motions shall be made in writing, except that motions made at a hearing may be stated orally on the record, and all motions shall briefly state the order, ruling, or action sought and shall state the grounds for the motion. Alternate relief may be requested. Any party may by motion request that the commission or examiner take any action which they are authorized by law to take. Any statement opposing a motion shall be promptly filed and shall conform to the same requirements as this paragraph provides for motions. Written motions, and written statements opposing them, shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the motion is filed in paper form, a total of 2 copies of the motion shall be included. The party filing a written motion or written statement opposing a motion shall, at the same time, serve a copy on each of the other parties or their representatives, as set forth in s. ERC 10.07.

(b) *Disposition.* The commission or examiner shall rule on all motions. Motions made during a hearing shall be ruled on either during the hearing or when the entire record is considered. All rulings on motions shall be in writing, or if made at the hearing, may be stated orally on the record.

(c) *Rulings and orders part of record.* All motions and any related rulings or orders shall become part of the record.

(2) PARTICULAR MOTIONS. (a) *To intervene.* Any person desiring to intervene shall file a motion with the commission or examiner stating the reasons the person is claiming to have an interest in the proceeding. Intervention may be permitted on terms the commission or examiner finds appropriate.

(b) *For pre-hearing discovery.* Pre-hearing discovery is not available in proceedings under this chapter except that each party may take and preserve evidence with respect to a witness who is any of the following:

- 1. Beyond reach of the subpoena of the commission hearing examiner.
- 2. About to go out of the state, not intending to return in time for the hearing.
- 3. So sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing.
- 4. A member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives the privilege.

(c) *To correct transcript.* A motion to correct transcript shall comply with s. ERC 18.08 (5).

(d) *To reschedule hearing.* A motion to reschedule hearing shall state the reasons for the request, alternate dates for rescheduling, and the positions of all other parties regarding the request.

(e) *To dismiss.* A motion to dismiss shall state the basis for the requested dismissal. A motion to dismiss shall not be granted before an evidentiary hearing has been conducted except where the pleadings, viewed in the light most favorable to the petitioner, permit no interpretation of the facts alleged that would make dismissal inappropriate.

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

ERC 18.07 Notice of hearing. (1) WHEN ISSUED. Following the filing of a petition, if the commission determines that a hearing is warranted, the commission or examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing.

(2) CONTENTS. The notice of hearing shall include all of the following:

(a) A statement of the time, place, and nature of the hearing, including a statement that the proceeding involved 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).

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

(c) A short and plain statement of the matters asserted, by reference to the pleadings on file, or otherwise.

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

ERC 18.08 Hearings. (1) SCOPE. Hearings shall be open to the public and limited to the litigation of and oral argument on issues of fact or law raised by the parties and remaining for disposition. 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 may be properly performed.

(2) BY WHOM CONDUCTED. The hearing shall be conducted by an examiner assigned by the commission unless the commission decides to hear the case.

(3) RIGHTS OF PARTIES AT HEARING. (a) *Opportunity to be heard.* Any party shall have the right to appear in person or by counsel or by any other representative to present the case by oral, documentary, or other evidence, and to conduct cross examina-

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tion. Any party shall be entitled, on request, to a reasonable period for oral argument at an appropriate time during the hearing and to submit closing arguments in writing within a time period after the hearing specified for that purpose by the commission or examiner.

(b) *Effect of failure to appear.* Unless good cause is shown, any party failing to appear and participate after due notice waives the rights listed in par. (a), except the right to submit closing arguments in writing within a time period after the hearing specified for that purpose by the commission or examiner, and shall not later introduce any evidence. The commission or examiner may rely on the record as made at the hearing.

(c) *Impartiality.* Parties have the right to have their case heard and decided by impartial individuals. Commission members and examiners shall recuse themselves from participation in proceedings which they are or become incapable of hearing or deciding without evident partiality or the appearance of partiality. Parties have the right to request by motion, on grounds of lack of impartiality, that a commission member or examiner voluntarily recuse himself or herself from participation in a proceeding. The filing of a recusal request does not necessarily require that the commission member or examiner recuse himself or herself from further participation in the proceeding. Parties dissatisfied with the commission member or examiner's response to a recusal request have the right to request by motion, on grounds of a lack of impartiality, that the commission remove the commission member or examiner from participation in a proceeding.

(4) POWERS OF COMMISSION OR EXAMINER CONDUCTING HEARING. Subject to this chapter, the commission or examiner conducting a hearing may take the following action:

- (a) Administer oaths and affirmations.
- (b) Issue subpoenas in the name of the commission.
- (c) Rule on offers of proof, receive relevant evidence and exclude irrelevant, immaterial, or unduly repetitious evidence.
- (d) Question witnesses.
- (e) Take or cause depositions to be taken and to determine their scope.
- (f) Regulate the time, place and course of the hearing.
- (g) Dispose of procedural requests or other similar matters.
- (h) During the course of the hearing, hold conferences for the settlement, simplification or adjustment of the issues by consent of the parties.
- (i) Take any other action necessary under the foregoing or authorized by law.

(5) TRANSCRIPTS; TRANSCRIPT CORRECTIONS. Hearings shall be stenographically transcribed by a commission-selected reporter. Any party requesting the commission to provide a transcript of a commission proceeding shall pay the fee specified in s. ERC 10.08 (6). Corrections of the official transcript may be made by stipulation or motion when they involve errors affecting substance. When corrections are ordered, the necessary physical corrections shall be made in the official transcript.

(6) EVIDENCE. (a) *Stipulations of fact.* Stipulations of fact may be introduced in evidence with respect to any issue.

(b) *Witnesses.* Except as provided in s. ERC 18.06 (2) (b), witnesses shall be examined orally under oath at the hearing.

(c) *Rules of evidence.* Hearings in proceedings under this chapter shall be conducted in accordance with the rules of evidence and official notice provided in s. 227.45, Stats. That section provides, in part, that the commission or examiner shall not be bound by common law or statutory rules of evidence; shall admit all testimony having reasonable probative value; shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05, Stats.; and shall give effect to rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of

proof of evidence not admitted may be made and shall be noted in the record.

(d) *Compelling witness attendance or evidence production at hearing.* The commission or examiner or a party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence at the hearing.

1. 'Subpoenas issued by commission or examiner.' The commission or examiner may issue a subpoena at the request of a party or on the commission's or examiner's own motion. In advance of the time set in the subpoena for attendance, each witness who appears by subpoena shall receive for attendance the fees and mileage provided for witnesses in civil cases in courts of record in s. 814.67, Stats. The service of the subpoena and the payment of the witness and mileage fee shall be the responsibility of the party, if any, requesting the subpoena or of the commission if the subpoena was issued on the commission's or examiner's own motion.

2. 'Subpoenas issued by a party's attorney of record.' A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4), Stats., and shall be served in the manner provided in s. 805.07 (5), Stats., including payment of attendance fees and mileage provided for witnesses in civil cases in courts of record in s. 814.67, Stats. The attorney shall, at the time of issuance, send a copy of the subpoena to the commission or examiner.

3. 'Enforcement of subpoenas.' Any person who shall willfully and unlawfully fail or neglect to appear or testify or to produce books, papers and records as required by a subpoena issued under subds. 1. or 2., shall, on commission application to a circuit court, be ordered to appear before the commission or examiner, to testify or produce evidence if so ordered, and failure to obey the order of the court may be punished by the court as a contempt of court. Any party may, by motion, request that the commission enforce a subpoena by application to a circuit court.

(7) OBJECTIONS. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally with a short statement of the grounds of the objection and included in the transcript of the hearing. An objection is not waived by the objecting party's further participation in the hearing.

(8) CLOSE OF EVIDENCE. Once the commission or examiner declares the taking of evidence completed, no additional evidence may be submitted except on motion for good cause.

(9) WRITTEN CLOSING ARGUMENTS. Any party shall be entitled, on request made before the close of the evidence, to file a written brief within a time period set by the commission or examiner. The filing of briefs may also be directed on the commission's or examiner's own motion when warranted by the nature of the proceeding or particular issues.

(10) WAIVER OF PROCEDURES. The parties to any proceeding, with the approval of the commission or examiner, may agree to waive any one or more of the procedural steps or decisions which would otherwise precede the issuance by the commission or examiner of a final order or other final disposition.

(11) SANCTIONS FOR DISRUPTIVE OR CONTEMPTUOUS CONDUCT. (a) *Sanctions.* If a party, representative or other person, without reasonable excuse, fails to cease engaging in disruptive or contemptuous conduct in connection with a proceeding after being directed to do so by the commission or examiner, the commission or examiner may take any action authorized by s. 227.46 (1), Stats., and appropriate in relation to the disruptive or contemptuous conduct.

(b) *Opportunity to show cause.* Before issuing a sanctions order in writing or orally on the record, the examiner or commission shall provide the affected party, representative or other per-

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son a reasonable opportunity to show cause why the proposed sanctions order should not be issued.

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ERC 18.09 Findings of fact, conclusions of law and declaratory ruling. (1) ISSUANCE. After submission of the case, the commission shall make and file its findings of fact, conclusions of law and declaratory ruling. The date on which a hearing is closed, the date on which the last brief is received, or the date on which the last document necessary to the decision of the case is received, whichever is later, shall be regarded as the date of the submission of the case.

(2) CONTENTS. The findings of fact and conclusions of law shall be made upon all material issues of fact and law presented on the record. The declaratory ruling shall state the determination as to the duty to bargain on the subject or subjects submitted.

(3) PUBLIC DOCUMENT WHEN ISSUED. When issued, the commission's findings of fact, conclusions of law and declaratory ruling are available for purchase from the commission's Madison office and may also be available on the commission's website and in other commission publications.

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

ERC 18.10 Application of declaratory ruling in prohibited practice proceedings. The findings of fact, conclusions of law and declaratory ruling shall bind all of the parties on all facts found and issues determined in the declaratory ruling in a prohibited practice proceeding pending or commenced after the issuance of the declaratory ruling.

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

ERC 18.11 Petition for rehearing. (1) RIGHT TO FILE; TIME TO FILE; CONTENTS. A petition for rehearing shall not be a prerequisite for appeal or review. 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. The petition for rehearing shall be transmitted to the commission as set forth in s. ERC 10.06 (1). A petition for rehearing is not filed until the petition has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The commission may order a rehearing on its own motion

within 20 days after service of a final order. The commission is not required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) EFFECT OF PETITION. The filing of a petition for rehearing shall not suspend or delay the effective date of the commission's order, and the order shall take effect on the date established by the commission and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) BASES FOR GRANTING. Rehearing shall be granted only on the basis of any of the following:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) ON WHOM SERVED. Copies of petitions for rehearing shall be served on all parties of record as set forth in s. ERC 10.07. Parties may file replies to the petition. A party filing a reply shall also serve a copy on each of the other parties, as set forth in s. ERC 10.07.

(5) DISPOSITION ALTERNATIVES. The commission may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the commission does not enter an order disposing of the petition within the 30-day period, the petition is denied by operation of law at the end of the 30-day period.

(6) REHEARING PROCEEDINGS. Upon granting a rehearing, the commission shall set the matter for further proceedings as soon as practicable. Rehearing proceedings shall conform as nearly as may be to the proceedings in an original hearing except as the commission may otherwise direct. If in the commission's judgment, after rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify or suspend it accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

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