DRAFT CHAPTER ERC 70

INITIAL ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL EMPLOYEES WHO WERE SUBJECT TO AN EXTENSION OF THEIR COLLECTIVE BARGAINING AGREEMENT AS OF JULY 1, 2011

ERC 70.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., and the nonstatutory provisions of s. 9132 of 2011 Wisconsin Act 10 as amended by s. 3570f of 2011 Wisconsin Act 32 that require the commission to conduct an initial annual election in October 2011 to determine whether collective bargaining representation shall continue for municipal sector general employees who were subject to an extension of their collective bargaining agreement as of July 1, 2011. The existing exclusive representative of such employees that wishes to continue said representation or any other labor organization interested in representing such employees must file a petition on or before September 15, 2011 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast. for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before October 31, 2011.

ERC 70.02 Scope. (1) DEFINITION. As used in this chapter, an "extension" of a collective bargaining agreement shall mean a collective bargaining agreement that is all of the following:

(a) An overall agreement specifying wages, hours and conditions of employment.

(b) Without a definite expiration date.

(c) Subject to termination by either of the parties upon notification or advance notification to the other.

(2) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees defined in s. 111.70 (1) (fm), Stats., who, as of July 1, 2011 are both of the following:

(a) Represented by an exclusive representative.

(b) Subject to an extension of their collective bargaining agreement.

(3) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of any of the following:

(a) Public safety employees defined in s. 111.70 (1) (mm), Stats.

(b) Transit employees defined in s. 111.70 (1)(p), Stats.

(c) General municipal employees who are not represented for purposes of collective bargaining.

(d) General municipal employees who are represented for purposes of collective bargaining, but who are not subject to an extension of their collective bargaining agreement.

(4) ELECTIONS COVERED. This chapter applies only to the initial annual certification elections for each bargaining unit to which it applies.

(5) ELECTIONS NOT COVERED. This chapter does not apply to annual certification elections subsequent to the initial annual certification election for each bargaining unit to which it applies.

ERC 70.03 Petition for election (1) WHO MAY FILE. A petition for an initial annual election to determine whether a represented municipal sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, 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 is accompanied by the applicable fee established by s.ERC 70.03 (4), contains the required signature or signature facsimile and unless and 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 two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of $200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of $350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of $500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of $750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results

in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following: (a) The name, address and affiliation, if any, of the petitioner, 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 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.

(c) A description of the statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement covering the bargaining unit involved, including its nominal termination date, and the conditions under which it can be terminated.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an initial annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before September 15, 2011.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply: 1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of September 15, 2011.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following September 15, 2011.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission

will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 70.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 70.03 **(7)** (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 70.03 **(7)** (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 70.03 **(7)** (a).

ERC 70.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 70.03, the municipal employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical list of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 70.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right

of the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 70.07 Elections. **(1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge*. Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers. The commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 70.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 70.09, the commission shall issue to the parties a certification of the results of the election.

ERC 70.09 Objections to election. **(1)** FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 70.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 70.11 Consequence of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following: **(1)** The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date specified in sub. (1).

ERC 70.12 Petition for rehearing. 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. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

[END]

DRAFT CHAPTER ERC 71

INITIAL ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL SCHOOL DISTRICT EMPLOYEES WHO, AS OF SEPTEMBER 30, 2011 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR TO AN EXTENSION OF THEIR COLLECTIVE BARGAINING AGREEMENT

ERC 71.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an initial annual election, no later than December 1, 2011, to determine whether collective bargaining representation shall continue for represented municipal sector general school district employees who, as of September 30, 2011 are not subject to a collective bargaining agreement or to an extension of their collective bargaining agreement. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before September 30, 2011 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1, 2011.

ERC 71.02 Scope. (1) DEFINITION. As used in this chapter, an "extension" of a collective bargaining agreement shall mean a collective bargaining agreement that is all of the following:

(a) An overall agreement specifying wages, hours and conditions of employment.

(b) Without a definite expiration date.

(c) Subject to termination by either of the parties upon notification or advance notification to the other.

(2) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of September 30, 2011, are all of the following:

(a) School district employees.

(b) Represented by an exclusive representative.

(c) Not subject to a collective bargaining agreement.

(d) Not subject to an extension of their collective bargaining agreement.

(3) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of September 30, 2011, are any of the following:

(a) Public safety employees defined in s. 111.70 (1) (mm), Stats.

(b) Transit employees defined in s. 111.70 (1)(p), Stats.

(c) Nonschool district employees.

(4) ELECTIONS COVERED. This chapter applies only to the initial annual certification elections for each bargaining unit to which it applies.

(5) ELECTIONS NOT COVERED. This chapter does not apply to annual certification elections subsequent to the initial annual certification election for each bargaining unit to which it applies.

ERC 71.03 Petition for election (1) WHO MAY FILE. A petition for an initial annual election to determine whether a represented municipal sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, 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 is accompanied by the applicable fee established by s.ERC 71.03 (4), contains the required signature or signature facsimile and 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 two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of $200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of $350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of $500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of $750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor

organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following: (a) The name, address and affiliation, if any, of the petitioner, 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 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.

(c) A description of the statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement covering the bargaining unit involved, including its nominal termination date, and the conditions under which it can be terminated.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an initial annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before September 30, 2011.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of September 30, 2011.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following September 30, 2011. .

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission

will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 71.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 71.03 **(7)** (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 71.03 **(7)** (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 71.03 **(7)** (a).

ERC 71.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s.ERC 71.03, the municipal employer shall furnish to the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period in which the first timely petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. The commission shall designate the number of copies of the paper form list to be provided. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical list of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 71.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on

the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 71.07 Elections. **(1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. **(4)** CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge*. Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 71.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 71.09, the commission shall issue to the parties a certification of the results of the election.

ERC 71.09 Objections to election. **(1)** FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC

10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 71.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 71.11 Consequences of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following: **(1)** The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date specified in sub. (1).

ERC 71.12 Petition for rehearing. 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. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

[END]

DRAFT CHAPTER ERC 72

INITIAL ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL SCHOOL DISTRICT EMPLOYEES WHO, AS OF SEPTEMBER 30, 2011 ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT BUT NOT TO AN EXTENSION OF THEIR COLLECTIVE BARGAINING AGREEMENT

ERC 72.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., and the nonstatutory provision of s. 9332 of 2011 Wisconsin Act 32 requiring the commission to conduct an initial annual election, no later than December 1 following the earliest of expiration, termination, modification or extension of their collective bargaining agreement that contains provisions inconsistent with Sec. 111.70 (4) (d) 3. b., Stats., to determine whether collective bargaining representation shall continue for represented municipal sector general school district employees who, as of September 30, 2011 are subject to a collective bargaining agreement that contains provisions inconsistent with Sec. 111.70 (4) (d) 3. b., Stats., but not to an extension of their collective bargaining agreement. The existing exclusive representative of such employees that wishes to continue said representation or any other labor organization interested in representing such employees must file a petition no later than September 30 following the earliest of expiration, termination, modification or extension of their collective bargaining agreement requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues.. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1 following the earliest of expiration, termination, modification or extension of their collective bargaining agreement in effect on September 30, 2011.

ERC 72.02 Scope. (1) DEFINITIONS. (a) As used in this chapter, an "extension" of a collective bargaining agreement shall mean a collective bargaining agreement that is all of the following:

1. An overall agreement specifying wages, hours and conditions of employment.
2. Without a definite expiration date.
3. Subject to termination by either of the parties upon notification or advance notification to the other.

(b) As used in this chapter, "agreement that contains provisions inconsistent with Sec. 111.70 (4) (d) 3. b., Stats.," shall include any collective bargaining agreement that

expressly recognizes the petitioner as exclusive collective bargaining representative of the employees covered by the agreement.

(2) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of September 30, 2011, are all of the following:

(a) School district employees.

(b) Represented by an exclusive representative.

(c) Subject to a collective bargaining agreement that contains provisions inconsistent with Sec. 111.70 (4) (d) 3. b., Stats.

(d) Not subject to an extension of their collective bargaining agreement.

(3) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of September 30, 2011, are any of the following:

(a) Public safety employees defined in s. 111.70 (1) (mm), Stats.

(b) Transit employees defined in s. 111.70 (1)(p), Stats.

(c) Nonschool district employees.

(d) General municipal employees who are not represented for purposes of collective bargaining.

(e) General municipal employees who are both represented for purposes of collective bargaining, and not subject a collective bargaining agreement that contains provisions inconsistent with Sec. 111.70 (4) (d) 3. b., Stats.

(f) General municipal employees who are both represented for purposes of collective bargaining, and subject to an extension of their collective bargaining agreement.

(4) ELECTIONS COVERED. This chapter applies only to the initial annual certification elections for each bargaining unit to which it applies.

(5) ELECTIONS NOT COVERED. This chapter does not apply to annual certification elections subsequent to the initial annual certification election for each bargaining unit to which it applies.

(6) EFFECT OF CONSENT ELECTION CONDUCTED PRIOR TO THE EARLIEST OF EXPIRATION, TERMINATION, MODIFICATION OR EXTENSION OF COLLECTIVE BARGAINING AGREEMENT. Nothing in this chapter precludes a municipal employer and an existing representative from jointly requesting that the commission conduct an annual certification election under this chapter prior to the time this chapter becomes applicable by law to the bargaining unit involved. The conduct of any such consent election shall constitute the initial annual certification election for the bargaining unit, and shall satisfy the requirements otherwise imposed by Sec. 111.70 (4) (d) 3. b., Stats., and this chapter concerning the initial annual certification election for the bargaining unit.

ERC 72.03 Petition for election (1) WHO MAY FILE. A petition for an initial annual election to determine whether a represented municipal sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, 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 is accompanied by the applicable fee established by s. ERC 72.03 (4), contains the required signature or signature facsimile and unless and until the petition and 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 two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of $200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of $350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of $500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of $750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following: (a) The name, address and affiliation, if any, of the petitioner, 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 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.

(c) A description of the statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement covering the bargaining unit involved, including its nominal termination date, and the conditions under which it can be terminated.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an initial annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before September 30 following the earliest of expiration, termination, modification or extension of the collective bargaining agreement in effect on September 30, 2011.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply: 1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date in subpar. (7) (a).

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date in subpar. (7)(a).

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 72.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 72.03 **(7)** (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 72.03 **(7)** (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 72.03 **(7)** (a).

ERC 72.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s.ERC 72.03, the municipal employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical list of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 72.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right of the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 72.07 Elections. **(1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge*. Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers. The commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 72.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 72.09, the commission shall issue to the parties a certification of the results of the election.

ERC 72.09 Objections to election. **(1)** FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 72.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 72.11 Consequence of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following: **(1)** The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date specified in sub. (1).

ERC 72.12 Petition for rehearing. 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. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

DRAFT CHAPTER ERC 73

INITIAL ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL NONSCHOOL DISTRICT EMPLOYEES WHO, AS OF JANUARY 30, 2012, ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR TO AN EXTENSION OF THEIR COLLECTIVE BARGAINING AGREEMENT

ERC 73.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an initial annual election, no later than May 1, 2012, to determine whether collective bargaining representation shall continue for represented municipal sector general nonschool district employees who, as of January 30, 2012 are not subject to a collective bargaining agreement or to an extension of their collective bargaining agreement, The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before January 30, 2012 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as

soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before May 1, 2012.

ERC 73.02 Scope. (1) DEFINITION. As used in this chapter, an "extension" of a collective bargaining agreement shall mean a collective bargaining agreement that is all of the following:

(a) An overall agreement specifying wages, hours and conditions of employment.

(b) Without a definite expiration date.

(c) Subject to termination by either of the parties upon notification or advance notification to the other.

(2) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of January 30, 2012, are all of the following:

(a) Nonschool district employees.

(b) Represented by an exclusive representative.

(c) Not subject to a collective bargaining agreement.

(d) Not subject to an extension of their collective bargaining agreement.

(3) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of January 30, 2012, are any of the following:

(a) Public safety employees defined in s. 111.70 (1) (mm), Stats.

(b)Transit employees defined in s. 111.70 (1)(p), Stats.

(c) School district employees.

(4) ELECTIONS COVERED. This chapter applies only to the initial annual certification elections for each bargaining unit to which it applies.

(5) ELECTIONS NOT COVERED. This chapter does not apply to annual certification elections subsequent to the initial annual certification election for each bargaining unit to which it applies.

ERC 73.03 Petition for election (1) WHO MAY FILE. A petition for an initial annual election to determine whether a represented municipal sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, 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 is accompanied by the applicable fee established by s. ERC 73.03 (4), contains the required signature or signature facsimile and unless and 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 two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of $200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of $350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of $500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of $750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following: (a) The name, address and affiliation, if any, of the petitioner, 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 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.

(c) A description of the statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement covering the bargaining unit involved, including its nominal termination date, and the conditions under which it can be terminated.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an initial annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before January 30, 2012.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply: 1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of January 30, 2012.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following January 30, 2012.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 73.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 73.03 **(7)** (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 73.03 **(7)** (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 73.03 **(7)** (a).

ERC 73.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 73.03, the municipal employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also

include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical listing of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 73.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right of the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 73.07 Elections. **(1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge*. Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers.

The commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 73.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 73.09, the commission shall issue to the parties a certification of the results of the election.

ERC 73.09 Objections to election. **(1)** FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 73.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 73.11 Consequences of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following: **(1)** The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date specified in sub. (1).

ERC 73.12 Petition for rehearing. 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. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

[END]

DRAFT CHAPTER ERC 74

INITIAL ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL NONSCHOOL DISTRICT EMPLOYEES WHO, AS OF JANUARY 30, 2012 ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT BUT NOT TO AN EXTENSION OF THEIR COLLECTIVE BARGAINING AGREEMENT

ERC 74.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., and the nonstatutory provision s. 9332 of 2011 Wisconsin Act 32 requiring the commission to conduct an initial annual election, no later than May 1 following the earliest of expiration, termination, modification or extension of their collective bargaining agreement that contains provisions inconsistent with s 111.70 (4) (d) 3. b., Stats., to determine whether collective bargaining representation shall continue for represented municipal sector general nonschool district employees who, as of [day after Act 10 publication] are subject to a collective bargaining agreement that contains provisions inconsistent with s. 111.70 (4) (d) 3. b., Stats., but not to an extension of their collective bargaining agreement. The existing exclusive representative of such employees that wishes to continue said representation or any other labor organization interested in representing such employees must file a petition no later than January 30 following the earliest of expiration, termination, modification or extension of their collective bargaining agreement requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before May 1 following the earliest of expiration, termination, modification or extension of their collective bargaining agreement in effect on January 30, 2012.

ERC 74.02 Scope. (1) DEFINITIONS. (a) As used in this chapter, an "extension" of a collective bargaining agreement shall mean a collective bargaining agreement that is all of the following:

1. An overall agreement specifying wages, hours and conditions of employment.
2. Without a definite expiration date.
3. Subject to termination by either of the parties upon notification or advance notification to the other.

(b) As used in this chapter, "agreement that contains provisions inconsistent with Sec. 111.70 (4) (d) 3. b., Stats.," shall include any collective bargaining agreement that expressly recognizes the petitioner as exclusive collective bargaining representative of the employees covered by the agreement.

(2) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of January 30, 2012, are all of the following:

(a) Nonschool district employees.

(b) Represented by an exclusive representative.

(c) Subject to a collective bargaining agreement that contains provisions inconsistent with Sec. 111.70 (4) (d) 3. b., Stats.

(d) Not subject to an extension of their collective bargaining agreement.

(3) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of January 30, 2012 are any of the following:

(a) Public safety employees defined in s. 111.70 (1) (mm), Stats.

(b) Transit employees defined in s. 111.70 (1)(p), Stats.

(c) School district employees.

(d) General municipal employees who are not represented for purposes of collective bargaining.

(e) General municipal employees who are both represented for purposes of collective bargaining, and not subject to a collective bargaining agreement that contains provisions inconsistent with Sec. 111.70 (4) (d) 3. b., Stats.

(f) General municipal employees who are both represented for purposes of collective bargaining, and subject to an extension of their collective bargaining agreement.

(4) ELECTIONS COVERED. This chapter applies only to the initial annual certification elections for each bargaining unit to which it applies.

(5) ELECTIONS NOT COVERED. This chapter does not apply to annual certification elections subsequent to the initial annual certification election for each bargaining unit to which it applies.

(6) EFFECT OF CONSENT ELECTION CONDUCTED PRIOR TO THE EARLIEST OF EXPIRATION, TERMINATION, MODIFICATION OR EXTENSION OF COLLECTIVE BARGAINING AGREEMENT. Nothing in this chapter precludes a municipal employer and an existing representative from jointly requesting that the commission conduct an annual certification election under this chapter prior to the time this chapter becomes applicable by law to the bargaining unit involved. The conduct of any such consent election shall constitute the initial annual certification election for the bargaining unit, and shall satisfy the requirements otherwise imposed by Sec. 111.70 (4) (d) 3. b., Stats., and this chapter concerning the initial annual certification election for the bargaining unit.

ERC 74.03 Petition for election (1) WHO MAY FILE. A petition for an initial annual election to determine whether a represented municipal sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed by the exclusive representative of a bargaining unit to which this chapter applies or by any labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, 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 is accompanied by the applicable fee established by ERC 74.03 (4), contains the required signature or signature facsimile and 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 two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of $200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of $350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of $500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of $750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following: (a) The name, address and affiliation, if any, of the petitioner, 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 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.

(c) A description of the statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement covering the bargaining unit involved, including its nominal termination date, and the conditions under which it can be terminated.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an initial annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before January 30 following the earliest of expiration, termination, modification or extension of their collective bargaining agreement in effect on January 30, 2012.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply: 1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date in subpar. (7) (a).

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date in subpar. (7)(a).

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 74.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 74.03 **(7)** (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 74.03 **(7)** (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 74.03 **(7)** (a).

ERC 74.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 74.03, the municipal employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical list of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 74.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right of the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 74.07 Elections. **(1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge*. Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers. The commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 74.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 74.09, the commission shall issue to the parties a certification of the results of the election.

ERC 74.09 Objections to election. **(1)** FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 74.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 74.11 Consequence of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following: **(1)** The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date specified in sub. (1).

ERC 74.12 Petition for rehearing. 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. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

DRAFT CHAPTER ERC 80

INITIAL ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED STATE SECTOR GENERAL EMPLOYEES

ERC 80.01 Policy. This chapter implements the requirements of s. 111.83 (3) (b), Stats., that the commission conduct an initial annual election to determine whether state sector general employee collective bargaining units shall continue to be represented by an exclusive representative, and the nonstatutory requirements of s. 9155 (1) (b) of 2011 Wisconsin Act 10 as amended by s. 3570h of 2011 Wisconsin Act 32 that the vote be held in October of 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees, must file a petition on or before September 15, 2011 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure for resolving outcome-determinative issues after the ballots have been cast concerning which

ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before October 31, 2011.

ERC 80.02 Scope. (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units that are all of the following:

(a) General state employee bargaining units defined in s. 111.825, Stats.

(b) Represented by an exclusive representative as of July 1, 2011..

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of any of the following:

(a) Public safety employees defined in s. 111.81 (15r), Stats.

(b) General state employees who are not represented for purposes of collective bargaining.

(3) ELECTIONS COVERED. This chapter applies only to the initial annual certification elections for each bargaining unit to which it applies.

(4) ELECTIONS NOT COVERED. This chapter does not apply to annual certification elections subsequent to the initial annual certification election for each bargaining unit to which it applies.

ERC 80.03 Petition for election (1) WHO MAY FILE. A petition for an initial annual election to determine whether a represented state sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, 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 is accompanied by the applicable filing fee established by s.ERC 80.03 (3), contains the required signature or signature facsimile and has been 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 two copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON STATE EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the State employer.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of $200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the

commission a fee of $350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of $500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of $750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of $2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) CONTENTS. The petition shall include all of the following: (a) The name, address and affiliation, if any, of the petitioner, 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 state employer 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 statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement covering the bargaining unit involved, including its nominal termination date, and the conditions under which it can be terminated.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to continue to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an initial annual certification election to determine whether the bargaining unit shall continue to be represented by the petitioner for purposes of collective bargaining with the state employer.

(g) A statement that the petitioner has served a copy of the petition on the employer.

(g) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing*. To be timely, a petition must be filed on or before September 15, 2011.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of September 15, 2011.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following September 15, 2011.

(c) *Notice of consequences of failure to timely file petition.* At the request of the State employer or of any employee in the bargaining unit involved, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the State employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 80.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in . ERC 80.03 **(7)** (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 80.03 **(7)** (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 80.03 **(7)** (a).

ERC 80.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY STATE EMPLOYER. Within 10 days of its receipt of the petition pursuant to s.ERC 80.03, the State employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the State employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the State employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the State employer, the petitioner shall electronically provide the commission and the State employer with an alphabetical list of the names of personnel that should be added to or deleted from the State employer's personnel list.

ERC 80.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the State employer and on the list, if any, provided by a petitioning labor organization, shall be allowed to vote, subject to the right of the State employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 80.07 Elections. **(1)** NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The State employer shall post notices to personnel concerning the election, at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge*. Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.83 (4), Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 80.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 80.09, the commission shall issue to the parties a certification of the results of the election.

ERC 80.09 Objections to election. **(1)** FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and unless and until it has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of two copies of the objections shall be included.

(2) SERVICE ON OTHER PARTIES. The party filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 80.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 80.11 Consequence of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following: **(1)** The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the date specified in sub. (1).

ERC 80.12 Petition for rehearing. 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. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

[END]