NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Wisconsin Employment Relations Commission will hold a public hearing regarding promulgated emergency rules and the proposed creation of permanent rules relating to annual union certification elections.

The hearing will be held on Tuesday, November 19, 2013 at 10:00 am at 4868 High Crossing Blvd., Madison, Wisconsin.

The hearing site is accessible to people with disabilities. However, if you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please contact Peter Davis at 608 243-2421 or peterg.davis@wisconsin.gov.

Comments on the proposed rule should be submitted by November 22, 2013 and can be faxed (608) 243-2433, emailed (peterg.davis@wisconsin.gov) or mailed/hand-delivered to 4868 High Crossing Blvd., Madison, Wisconsin 53704-7403.

Analysis Prepared By the Wisconsin Employment Relations Commission

Statutes Interpreted.

The promulgated emergency rules and proposed permanent administrative rules interpret ss. 111.70(4)(d)3.b. and 111.83(3)(b), Stats.

Statutory Authority.

Sections 111.71, 111.94, 227.11 and 227.24, Stats.

Explanation of Agency Authority.

The Municipal Employment Relations Act and the State Employment Labor Relations Act both require that the Commission adopt administrative rules to regulate various proceedings. In addition, Secs. 111.70(4)(d) 3.b. and 111.83(3)(b), Stats. require that the Commission assess a fee for the each annual certification election and the fee level must be established by administrative rule.

Related Statute or Rule.

None.

Rule Summary.

By these promulgated emergency rules and proposed rules, the Wisconsin Employment Relations Commission created and proposes to permanently create chs. ERC 70-71 and 80 concerning the cost, timing and procedures for any requested annual

certification elections required by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 to determine whether a bargaining unit of general (i.e., non-public safety and non-transit) employees in the municipal or state sector that is represented by a labor organization for collective bargaining with the employer involved shall continue to be represented by that organization or by another organization or shall not be so represented.

These rules do not require the retroactive conduct of elections that would have been conducted on or before December 1, 2012 and May 1, 2013 but for a March 2012 federal court order enjoining such elections under the State Employment Labor Relations Act and the Commission's related March 2012 determination to suspend the conduct of such elections under the Municipal Employment Relations Act until the federal court litigation was concluded.

These rules are not applicable to the plaintiffs in Case 11CV3744 unless and until the Circuit Court's decision is no longer in effect.

Under these rules, a labor organization continues to represent employees (and thus is eligible to file a certification election petition under these rules) unless that organization lost an initial annual certification election conducted by the Commission or was required to but failed to file a petition for an annual certification election prior to March 2012.

2011 Wisconsin Act 32 requires that the Commission charge a fee for conducting any requested election. These rules require that the labor organization or organizations requesting the election should pay the fee and that the following fee structure applies.

$200 1-100 eligible voters
$350 101-250 eligible voters
$500 251-500 eligible voters
$750 501-1000 eligible voters
$1500 1001-3000 eligible voters
$2000 over 3000 eligible voters

Under these rules, the timing of requested elections is as follows:

--no later than December 1 for units of all general state employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 80)-unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;
-- no later than December 1 for units of general municipal school district employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 70)-unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;
-- no later than May 1 for units of general municipal employees who, as of January 30, are not covered by a collective bargaining agreement or are covered by a collective

bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 71)-unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before January 30.

Under these rules, if a union does not timely file an election petition and fee, the union loses its status as the collective bargaining representative as of the filing deadline.

In each of the new chapters, the first section, Section ERC xx.01, describes the general policy and purpose of chapter.
Section ERC xx.02, include definitions of terms as used in the chapter and defines the scope of application of the chapter as is outlined above.
Sections ERC xx.03(1) limit the right to file a petition to the existing representative and other any labor organization interested in representing the bargaining unit. No provision is made for petitions by employees or by the employer because decertification automatically results if no timely petition is filed by a labor organization.
Sections ERC xx.03(5) provide that no showing of interest is required to support a petition filed by the existing exclusive representative of the bargaining unit, but that a petition filed by another organization must be supported by a 30% showing of interest. The practice and procedure for submission and determination of the showing of interest is made parallel to that in existing s. ERC 11.05 (2), which generally involve a commission determination as to the sufficiency of the showing of interest in the context of the employee personnel data provided by the employer, without providing a copy of the showing of interest to any party other than the party that submitted it.
Sections ERC xx.03(7) specify the time by which a petition must be filed and the consequences that follow from no timely petition being filed by any labor organization. Sections ERC xx.03 (7) (c) each provide that the commission will issue a notice equivalent to a decertification upon the request of any interested party or any affected employee.
Sections ERC xx.04 provide the procedures and consequences of a withdrawal of a petition. Each provides that if withdrawal of a petition leaves no pending timely petition, the consequences are the same as if the existing representative filed the only timely petition, an election was conducted, and no representative achieved the support of 51% of the eligible voters.
Sections ERC xx.05 describe the obligation of the employer and petitioning union(s) to provide the Commission with lists of proposed eligible voters and related information.
Sections ERC xx.06 provide for commission issuance of a direction of election or other dispositional order without an intervening hearing to resolve possible disputes concerning voter eligibility or other matters. In cases where the commission is directing an election, the direction shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by the petitioner or any other interested party, shall be allowed to complete and submit a ballot, subject to the right of any interested party to challenge the eligibility of the voter during post-balloting procedures.
Sections ERC xx.07 provide that all elections are to be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission, with the commission determining on a case by case basis whether the secret balloting shall be conducted on-site, by mail or automated telephone system. Each chapter also contains provisions generally paralleling those in s. ERC 11.09, regarding notice of election, observers, challenge of voters, and count and tally of ballots.

Sections ERC xx.07 (6) provide that if more than one proposed representative appears on the ballot and 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 receipt of a timely request of any party, may conduct a runoff election as provided in ss. 111.70 (4) (d) 4. or 111.83 (4), Stats.
Sections ERC xx.08 and xx.09 provide procedures concerning the commission's certification of results of election and the filing and service of objections to election.
Sections ERC xx.10 provide procedures for commission action on challenges or objections, including the conduct of a hearing if one is needed.
Sections ERC xx.11 list the consequences of no representative achieving support of 51% of the eligible voters in the election. Those consequences are that the commission will issue a certification of the results of the election decertifying the existing representative, and providing that for 12 months from the date of decertification the affected employees shall be nonrepresented and shall not be included in any substantially similar bargaining unit.
Sections ERC xx.12 outline the procedures by which any person aggrieved by a final order of the commission may file and have processed a petition for rehearing.

Summary of, and comparison with, existing or proposed federal regulations.

None

Comparison of proposed rules with rules promulgated by adjacent state labor relations Agencies.

Not applicable. A review of the following adjacent state rules reveals none providing procedures for certification elections conducted on an annual or other regularly periodic basis.

AGENCY Name and Source of Rules:
Minnesota Bureau of Mediation Services
Minnesota Rules,
Chapter 5505 - Private Rules
5505.0100 Definitions.
5505.0200 Purpose, Construction, And Waiver.
5505.0300 Request For Investigation.
5505.0400 Required Information.
5505.0500 Notice Of Hearing And Investigation.
5505.0600 Hearings.
5505.0700 Examination Of Witnesses.
5505.0800 Subpoenas.
5505.0900 Determination Of Representative.
5505.1000 Election Procedure.
5505.1100 Challenge Of Voter.
5505.1200 Consent Election.
5505.1300 Certification Order.
5505.1400 Objections To Certification.
5505.1500 Reconsideration Within One Year.
Chapter 5510 - Public Rules
Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner
Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice
Grievance Procedure
Chapter 520 LMC - Grant Rules
Chapter 5530 - Arbitration Roster Rules
5530.0100 Application.

5530.0200 Policy.
5530.0300 Definitions.
5530.0400 Role Of Bureau.
5530.0500 Status Of Arbitrators.
5530.0600 Arbitrator Qualifications.
5530.0700 Appointment To Roster.
5530.0800 Arbitrator Conduct And Standards.
5530.0900 Panel Selections And Referrals.
5530.1000 Arbitration Proceedings.
5530.1200 Performance Measures.
5530.1300 Disciplinary Or Removal Procedures.
Chapter 7315 - Independent Review Rules
7315.0210 Scope.
7315.0300 Policy.
7315.2300 Request For Rehearing.
7315.2400 Petition For Rehearing.
7315.2500 Consideration.
7315.2600 Determination.
7315.2700 Notice Of Rehearing.
7315.2800 Rehearing Procedure.
7315.2900 Decision After Rehearing.

Michigan Public Employment Relations Commission

Michigan Rules
R 423.101 - 423.499 - General Rules
Part 1. General Provisions
Part 2. Mediation Of Labor Disputes
Part 3. Fact Finding
Part 4. Representation Proceedings.
Part 5. Unfair Labor Practice Charges
Part 6. Motion Practice
Part 7. Hearings
Part 8. Filing And Service Of Documents
Part 9. Notice Of Public School Strike Or Lockout
R 423.501 - 423.514 Administration Of Compulsory Arbitration Act For Labor Disputes In Municipal Police And Fire Departments

Iowa Public Employment Relations Board

Iowa Rules [621]
Chapter 1 General Provisions
Chapter 2 General Practice And Hearing Procedures
Chapter 3 Prohibited Practice Complaints
Chapter 4 Bargaining Unit And Bargaining Representative Determination
Chapter 5 Elections
Chapter 6 Negotiations And Negotiability Disputes
Chapter 7 Impasse Procedures
Chapter 8 Internal Conduct Of Employee Organizations
Chapter 9 Administrative Remedies
Chapter 10 Declaratory Orders
Chapter 11 State Employee Appeals Of Grievance Decisions And Disciplinary Actions

Illinois Labor Relations Board

Title 80: Public Officials And Employees
Subtitle C: Labor Relations
Chapter IV: Illinois Labor Relations Board
Part 1200 General Procedures
Part 1210 Representation Proceedings
Part 1220 Unfair Labor Practice Proceedings
Part 1230 Impasse Resolution
Part 1240 Police Officer Decertification Proceedings

llinois Educational Labor Relations Board

Title 80: Public Officials and Employees
Subtitle C: Labor Relations
Chapter III: Illinois Educational Labor Relations Board
Part 1100 General Procedures

Part 1105 Hearing Procedures
Part 1110 Representation Procedures
Part 1120 Unfair Labor Practice Proceedings
Part 1125 Fair Share Fee Objections
Part 1130 Collective Bargaining And Impasse Resolution
Part 1135 University Of Illinois Bargaining Units

Summary of factual data.

Not applicable.

Initial Regulatory Flexibility Analysis.

The emergency rules and proposed rules have no impact on small business.

Fiscal Estimate.

Because the filing fees applicable to the annual certification elections are paid by the labor organizations seeking the elections, the emergency rules and proposed rules have no fiscal impact on any public or private sector employer or on the State of Wisconsin.

Economic Impact Analysis.

The emergency rules and proposed permanent rules do not have an economic impact on businesses, local governmental units or individuals. The rules do not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state. The rules provide the benefit of advising affected labor organizations and public sector employers as to how the Commission will conduct the elections mandated by the Legislature. Without the rules, the affected parties would have to guess as to how the elections would be conducted, what the level of the filing fee mandated by 2011 Wisconsin Act 32 will be, and who is obligated to pay said fee. There are no equivalent approaches available for comparison in the federal sector or contiguous states.

Agency Contact Person.
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CHAPTER ERC70

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL SCHOOL DISTRICT EMPLOYEES WHO, AS OF AUGUST 30 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011.

ERC 70.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than December 1, to determine whether collective bargaining representation shall continue for represented municipal sector general school district employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 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 August 30 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.

ERC 70.02 Scope (1) 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 August 30, are all of the following:
(a) School district employees.
(b) Represented by an exclusive representative.
(c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.
(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of August 30, 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.

ERC 70.03 Petition for election (1) WHO MAY FILE. A petition for an annual election to determine whether a represented municipal sector general school district 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 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 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.
(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 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 August 30.
(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:
1. If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.
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 applicable date in sub. (b). 1.
(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 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 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 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, 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 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 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) If no collective bargaining agreement is in effect, 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. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for

purposes of collective bargaining as of the expiration of the agreement.
(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 applicable 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.

CHAPTER ERC 71

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL NONSCHOOL DISTRICT EMPLOYEES WHO, AS OF JANUARY 30, ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011.

ERC 71.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than May 1, to determine whether collective bargaining representation shall continue for represented municipal sector general nonschool district employees who, as of January 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 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 January 30 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.

ERC 71.02 Scope. (1) 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, are all of the following:
(a) Nonschool district employees.
(b) Represented by an exclusive representative.
(c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.
(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of

employees who, as of January 30, 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.

ERC 71.03 Petition for election (1) WHO MAY FILE. A petition for an 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 71.03 (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 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.
(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 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.
(b) *Consequences of failure to timely file.* If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of January 30. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.
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 applicable date in sub. (b). 1.
(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 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 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 of 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. (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 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) If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as the date of commission's certification of results. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.
(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 applicable 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.

CHAPTER ERC 80

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED STATE SECTOR GENERAL EMPLOYEES WHO AS OF AUGUST 30 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011.

ERC 80.01 Policy. This chapter implements the portion of s. 111.83 (3) (b), Stats., requiring that the commission conduct an annual election no later than December 1, to determine whether collective bargaining representation shall continue for represented state sector general employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 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 August 30 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 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 December 1.

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.
(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.
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ERC 80.03 Petition for election (1) WHO MAY FILE. A petition for an 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.

(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 annual certification election to determine whether the bargaining unit shall continue to berepresented 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.

(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 August 30.

(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 August 30.

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 applicable date in sub. (b) 1.

(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 State 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.
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Effective Date.

These permanent rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.