

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that pursuant to ss. 111.09, 111.71, 111.935 (2), 111.94, 111.9993, 227.11 and 227.24, Stats., and interpreting the Wisconsin Employment Peace Act (WEPA), the Municipal Employment Relations Act (MERA), the State Employment Labor Relations Act (SELRA) and the University of Wisconsin System Faculty and Academic Staff Labor Relations Act (FASLRA), the Wisconsin Employment Relations Commission will hold a public hearing to consider the amendment and creation of rules implementing 2009 Wisconsin Act 28's amendments to WEPA, MERA and SELRA and creation of FASLRA.

Hearing Information

The hearing will be held in the Commission's Conference Room at 1457 East Washington Avenue in the City of Madison, Wisconsin on the 11th day of March, 2010 at 10:00am. The hearing site is accessible to people with disabilities.

Copies of the Proposed Rules

Copies of the proposed rules can be obtained by contacting Peter Davis at peter.davis@wisconsin.gov or 608 266-2993.

Analysis Prepared By the Wisconsin Employment Relations Commission

Statutes Interpreted.

These proposed administrative rules interpret various provisions of 2009 Wisconsin Act 28 specifically including ss. 111.02 (6) (am), 111.02 (7) (a) (intro.), 111.02 (7) (a) 4, 111.02 (7m), 111.02 (9m) (intro.), 111.02 (9m) (b), 111.02 (10m), 111.05 (2), 111.05 (7), 111.70 (1) (a), 111.70 (1) (b), 111.70 (1) (j), 111.70 (1) (ne), 111.70 (3) (a) 4, 111.70 (3p), 111.70 (4) (cm) 5, 111.70 (4) (cm) 5s, 111.70 (4) (cm) 6. a, 111.70 (4) (cm) 6. am, 111.70 (4) (cm) 7, 111.70 (4) (cm) 7g, 111.70 (4) (cm) 7r. (intro.), 111.70 (4) (cm) 8m, 111.70 (4)(d) 2. a, 111.70 (4) (m) 6, 111.81 (3h), 111.81 (7) (g), 111.81 (9k), 111.81 (17m), 111.815 (1) and (2), 111.825 (2) (g), (h) and (i), 111.825 (2g), 111.825 (3), 111.825 (4), 111.83 (1), 111.83 (5m), 111.84 (2) (c), 111.905, 111.91 (1) (cg), 111.91 (2) (n), 111.91 (2) (nm), 111.91 (2c), 111.91 (1) (a), 111.92 (2m), 111.935 and 111.95-111.9993.

Statutory Authority

Sections 111.09, 111.71, 111.935 (2), 111.94, 111.9993 and 227.11, Stats.

Explanation of Agency Authority

The Wisconsin Employment Peace Act, the Municipal Employment Relations Act, the State Employment Labor Relations Act and the University of Wisconsin System Faculty and

Academic Staff Labor Relations Act all require that the Commission adopt administrative rules to regulate various proceedings.

Related Statute or Rule

None.

Plain Language Analysis

The Wisconsin Employment Relations Commission has reviewed its rules concerning procedures in the administration of the following portions of Chapter 111, Stats., for the purposes of correcting errors in its comprehensive 2006 rules review and revision, amending or creating new rules concerning changes Subchapters I, IV and V, and creating new rules concerning the newly-created Subchapter VI. Those Subchapters consist of the following Acts:

Subchapter I -- the (Wisconsin) Employment Peace Act (WEPA)

Subchapter IV -- the Municipal Employment Relations Act (MERA)

Subchapter V -- the State Employment Labor Relations Act (SELRA)

Subchapter VI -- the University of Wisconsin System Faculty and Academic Staff Labor Relations Act (FASLRA)

OVERALL OBJECTIVES

The overall objectives of the proposed rules are:

- correcting errors/omissions made during the comprehensive 2006 rules review/revision
- conforming to changes in WEPA, MERA and SELRA
- establishing procedures concerning the newly-created FAFSRA.
- removing internal inconsistencies

CHANGES COMMON TO ALL OR MANY CHAPTERS

The newly-created ch. ERC 34 closely parallels ch. ERC 32, with numerous references to the corresponding sections of ch. ERC 32.

Chs. ERC 60-68 concerning the newly-enacted FASLRA replicate the corresponding chapters in the SELRA rules in chs. 20-28. Accordingly, as in the 2006 review/revision, an effort has been made, wherever possible, to maintain parallelism among the chapters concerning parallel subject areas under WEPA, MERA, SELRA and FASLRA. To avoid unnecessary repetition, references to parallel provisions elsewhere in the rules have been utilized instead of repeating parallel text. In general, MERA rules have been referenced in the WEPA, SELRA and FASLRA chapters instead of repeating the parallel text. References to the hearing procedures in ch. ERC 18 have been utilized extensively throughout the rules.

Numerous references to "practice and procedures" have been changed to "practice and procedure" so that the usage of that phrase is uniform throughout the rules.

CHANGES SPECIFIC TO PARTICULAR CHAPTERS

Giving effect to revisions of the definitions of fair share and maintenance of membership agreements in ss. 111.02 (7m) and (9m), Stats., respectively, s. ERC 8.01 and the title of ch. ERC 8 have been revised to make that existing chapter regarding fair share and maintenance of membership referenda applicable to a s. 111.02 (7) (a), Stats., employer of day care providers.

Correcting an error in s. ERC 12.02 (6) (b) 4., that section regarding the contents of a complaint case notice of hearing has been revised so that it conforms with the existing requirement in s. ERC 12.03 (1) that each respondent shall file an answer.

Correcting an error in s. ERC 50.04 (4) a new second sentence has been added paralleling the second sentence of s. ERC 13.04 (4).

Under the newly-enacted ss. 111.935, Stats., the new ch. ERC 29 provides a procedure by which a labor organization can attain certification as the exclusive collective bargaining representative of a bargaining unit of research assistants (newly-defined in s. 111.81 (7m), Stats.), by means of a WERC administrative determination based on employee-signed authorization cards, in lieu of a secret ballot election. The new ch. ERC 29 has been generally patterned after the representation election procedures in ch. ERC 13. However, because there is no other Wisconsin labor relations provision for an authorization card majority based determination of representative, the new chapter includes a variety of new and unique elements:

- The new procedure has been structured as a separate chapter onto itself, rather than included in the SELRA representation elections chapter, ch. ERC 23.

- Consistent with the language of s. 111.935, Stats., that once a card majority is determined "the collective bargaining unit is established", the new procedure is made available only with regard to bargaining units that are currently unrepresented (e.g., Section title, s. ERC 29.01)

- The new procedure is an optional alternative to a secret ballot election, not a preclusive replacement of the secret ballot election procedure. (e.g., ss. ERC 29.01; see also, s. ERC 29.07 (4)).

- A labor organization is permitted to file both a petition under the new procedure and a petition for secret ballot election regarding the same bargaining unit. (s. ERC 29.02 (4) (b))

- The processing of a petition filed under the new procedure will take precedence over the processing of a petition for secret ballot election regarding the same bargaining unit filed by the same labor organization or by a competing labor organization. (s. ERC 29.07 (4)).

- Specific time and content standards for authorization card validity are included. A petition must be supported by authorization cards signed by a majority of the employees in the bargaining unit when the petition was filed. To be valid, authorization cards are to include the employee name and department, employee signature, and the date, time and location of signature; must contain the statutory definition of the bargaining unit involved; and must contain

statements reflecting that the employee favors representation by the named labor organization, that the card was signed freely and without coercion, that the card is in effect for one year and not revocable, but that the employee is permitted to sign another such card in support of a different labor organization; and the card must have been signed by the employee within one year prior to the date of filing of the petition. (s. ERC 29.02 (3) and 29.04 (2)).

- Specific provisions govern the effect of the filing of a competing labor organization's petition for card-based certification regarding the same bargaining unit as to which another labor organization's earlier such petition is pending. If the petitions are filed within 10 days of one another, both will be processed and a secret ballot election will be conducted in the unlikely event that both petitions are determined to have majority card support. A petition filed more than 10 days after the filing of an earlier petition regarding the same unit, will not be processed until the processing of the earlier petition is completed, and then only if the earlier petition is dismissed. (s. ERC 29.07 (3)).

- Gives certification based on authorization card majority the same effect as a certification based on secret ballot election. (s. ERC 29.07 (5)).

- Provides for WERC release of the numbers of bargaining unit employees and of valid cards counted. (s. ERC 29.04 (2) (b)).

- Specifies that post-determination objections procedures are available regarding objections to the conduct of the WERC's administrative determination as to the existence of an authorization card majority or to conduct affecting the results of the WERC's determination. (s. ERC 29.05).

- Prohibits disclosure of the cards or the names of employees signing cards unless objections cannot be fairly resolved without such disclosure. (s. ERC 29.06 (1)).

In response to the 2009 Act 28 repeal of the Qualified Economic Offer and replacement of special provisions regarding bargaining units of school district professional employees with special provisions regarding bargaining units of all school district employees, a new ch. ERC 34 has been created to cover all school district employee bargaining units, and the titles and scope sections of chs. ERC 32 and 33 have been amended. As a result, chs. ERC 32 and 34 will be the chapters generally applicable as regards disputes involving non-school district and school district employee bargaining units, respectively, with chs. ERC 33 and 33 Appendix applying only to petitions concerning school district professional employee collective bargaining agreements covering periods ending June 30, 2009. (ss. ERC 32.01, 33.01, and ch. ERC 34).

Chapters ERC 40 regarding the ad hoc roster and 50 regarding labor-management cooperation services have been updated to include references to the newly-enacted FASLRA. (ss. ERC 40.01 and 50.01).

New chs. ERC 60-68 have been created to provide procedures relating to the newly-enacted FASLRA. Because FASLRA parallels SELRA in many respects, the new chapters replicate the corresponding existing chs. ERC 30-38 concerning SELRA procedures.

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

None.

Comparison of proposed rules with rules promulgated by adjacent state labor relations agencies

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
CHANGES COMMON TO ALL OR MANY CHAPTERS		AGENCY Name and Source of Rules cited:
	<p align="center">1 What subject areas are covered by the agency's rules?</p> <p>Wisconsin Employment Relations Commission Chapters ERC</p> <p>Private Sector</p> <ol style="list-style-type: none"> 1. private sector general 2. private sector complaint 3. private sector representation election 4. private sector referendum 5. private sector grievance arbitration 6. private sector mediation 7. private sector unit clarification 8. private sector referendum UW Hospital and Clinics Authority 9. private sector discretionary declaratory rulings <p>Municipal Sector</p> <ol style="list-style-type: none"> 10. municipal sector general 11. municipal sector election 12. municipal sector complaint 13. municipal sector mediation 14. municipal sector fact finding 15. municipal sector referendum 16. municipal sector grievance arbitration 17. municipal sector unit clarification 18. municipal sector bargaining scope declaratory rulings 19. municipal sector discretionary declaratory rulings <p>State Sector</p> <ol style="list-style-type: none"> 20. state sector general 21. state sector election 22. state sector complaint 23. state sector grievance arbitration 24. state sector mediation 25. state sector fact finding 26. state sector referendum 27. state sector unit clarification 	<p>Minnesota Bureau of Mediation Services</p> <p>Minnesota Rules, Chapter 5505 - Private Rules</p> <ol style="list-style-type: none"> 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. <p>Chapter 5510 - Public Rules</p> <p>Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner</p> <p>Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice</p> <p>Grievance Procedure</p> <p>Chapter 520 LMC - Grant Rules</p> <p>Chapter 5530 - Arbitration Roster Rules</p> <ol style="list-style-type: none"> 5530.0100 Application. 5530.0200 Policy. 5530.0300 Definitions.

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
	<p>28. state sector discretionary declaratory rulings 29 authorization card majority determination of representative of unrepresented research assistants</p> <p>Municipal Sector Interest Arbitration 30. Municipal interest arbitration involving fire fighting and law enforcement personnel under s. 111.77, Stats. 31. Interest arbitration of disputes involving law enforcement bargaining units in 1st class cities 32. Collective bargaining and interest arbitration in municipal sector disputes not involving law enforcement, fire fighting or school district employees 33. Collective bargaining and interest arbitration in disputes relating to collective bargaining agreements affecting school district professional employees covering periods beginning before July 1, 2009. 33 Appendix. Wisconsin Employment Relations Commission qualified economic offer calculation relating to collective bargaining agreements affecting school district professional employees covering periods beginning before July 1, 2009. 34. Collective bargaining and interest arbitration in municipal sector disputes relating to collective bargaining agreements affecting school district employees covering periods beginning on or after July 1, 2009.</p> <p>Ad Hoc Roster 40. roster of ad hoc arbitrators and fact-finders</p> <p>Labor-Management Cooperation Services 50. labor management cooperation services</p> <p>UW System Faculty and Academic Staff Sector 20. faculty/academic staff sector general 21. faculty/academic staff sector election 22. faculty/academic staff sector complaint 23. faculty/academic staff sector grievance arbitration 24. faculty/academic staff sector mediation 25. faculty/academic staff sector fact finding 26. faculty/academic staff sector referendum 27. faculty/academic staff sector unit clarification 28. faculty/academic staff sector discretionary declaratory rulings</p>	<p>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.</p> <p>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</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
		<p>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</p> <p>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</p> <p>Illinois Educational Labor Relations Board Title 80: Public Officials and Employees Subtitle C: Labor Relations Chapter III: Illinois Educational Labor</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
		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

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
<p>The newly-created ch. ERC 34 closely parallels ch. ERC 32, with numerous references to the corresponding sections of ch. ERC 32.</p> <p>Chs. ERC 60-68 concerning the newly-enacted FAFSRA replicate the corresponding chapters in the SELRA rules in chs. 20-28. Accordingly, as in the 2006 review/revision, an effort has been made, wherever possible, to maintain parallelism among the chapters concerning parallel subject areas under WEPA, MERA, SELRA and FASLRA. To avoid unnecessary repetition, references to parallel provisions elsewhere in the rules have been utilized instead of repeating parallel text. In general, MERA rules have been referenced in the WEPA, SELRA and FASLRA chapters instead of repeating the parallel text. References to the hearing procedures in ch. ERC 18 have been utilized extensively throughout the rules.</p>	<p>2. What is the overall structure of the agency's rules?</p> <p>WERC - separate sets of rules for private, municipal, state and faculty/academic staff sectors plus ad hoc roster and LMC services (see above)</p>	<p>MN BMS - fewer chapters -- separate sets of rules for private and public sectors (public including municipal and state), plus LMC grants, ad hoc roster and rehearing procedures (see chapters list above)</p> <p>MI ERC - single set of rules covering private, municipal and state sectors plus separate set of rules for police-fire interest arbitration</p> <p>Iowa PERB - single set of rules covering municipal and state sectors (no private sector jurisdiction) fewer chapters. (see chapters list above)</p> <p>Ill. LRB - single set of rules covering municipal and state sectors (see chapters list above)</p> <p>Ill. Ed. LRB - single set of rules covering educational institutions in municipal and state sectors -- (see chapters list above)</p>
<p>Numerous references to "practice and procedures" have been changed to "practice and procedure" so that the usage of that phrase is uniform throughout the rules.</p>		

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CHANGES SPECIFIC TO PARTICULAR CHAPTERS		
<p>Giving effect to revisions of the definitions of fair share and maintenance of membership agreements in ss. 111.02 (7m) and (9m), Stats., respectively, s. ERC 8.01 and the title of ch. ERC 8 have been revised to make that existing chapter regarding fair share and maintenance of membership referenda applicable to a s. 111.02 (7) (a), Stats., employer of day care providers.</p>		
<p>Correcting an error in s. ERC 12.02 (6) (b) 4., that section regarding the contents of a complaint case notice of hearing has been revised so that it conforms with the existing requirement in s. ERC 12.03 (1) that each respondent shall file an answer.</p>		
<p>Correcting an error in s. ERC 50.04 (4) a new second sentence has been added paralleling the second sentence of s. ERC 13.04 (4).</p>		

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
<p>Under the newly-enacted ss. 111.935, Stats., the new ch. ERC 29 provides a procedure by which a labor organization can attain certification as the exclusive collective bargaining representative of a bargaining unit of research assistants (newly-defined in s. 111.81 (7m), Stats.), by means of a WERC administrative determination based on employee-signed authorization cards, in lieu of a secret ballot election. The new ch. ERC 29 has been generally patterned after the representation election procedures in ch. ERC 13.</p>	<p>3. Do the agency's rules provide a procedure by which a labor organization can attain certification as exclusive collective bargaining representative based on authorization cards in lieu of a secret ballot election?</p> <p>WERC - Yes, new ch. ERC 29, applicable only to research assistants in the UW System.</p>	<p>MN BMS - None found.</p> <p>MI ERC - None found.</p> <p>Iowa PERB - None found</p> <p>Ill. LRB - Yes. A "majority interest petition" procedure is available (e.g., 1200.10, 1210.80.)</p> <p>Ill. Ed. LRB - Yes. A "majority interest" procedure is available (e.g., 1110.10 j))</p>
<p>However, because there is no other Wisconsin labor relations provision for an authorization card majority based determination of representative, the new chapter includes a variety of new and unique elements:</p> <p>- The new procedure has been structured as a separate chapter onto itself, rather than included in the SELRA representation elections chapter, ch. ERC 23.</p>	<p>4. If the agency rules include card-based certification procedures, are they structured separately from rules regarding representation elections?</p> <p>WERC - Yes (see note in first column)</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - No. The majority interest procedures are integrated with other procedures for attaining exclusive representative status. (e.g., 1200.10) However, there are some separate subsections devoted exclusively to majority interest related provisions. (e.g., 1210.100 b))</p> <p>Ill. Ed. LRB - No. The majority interest procedures are integrated with other procedures for attaining exclusive representative status (e.g., 1200.10, 1210.80.). However, there are some separate subsections devoted exclusively</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
		to majority interest related provisions. (e.g., 111.10.105)
<p>- Consistent with the language of s. 111.935, Stats., that once a card majority is determined "the collective bargaining unit is established", the new procedure is made available only with regard to bargaining units that are currently unrepresented (e.g., Section title, s. ERC 29.01)</p>	<p>5. If the agency's rules include a card-based certification procedure, is that procedure limited to bargaining units that are currently unrepresented?</p> <p>WERC - Yes (see note in first column)</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Yes, majority interest process not an available means of replacing or decertifying an existing representative. (1110.105)</p> <p>Ill. Ed. LRB - Yes, majority interest process not an available means of replacing or decertifying an existing representative. (1210.20) However, majority interest process is available as a means of adding unrepresented employees to an existing represented bargaining unit. (1110.180 a) 1) h)).</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
<p>- The new procedure is an optional alternative to a secret ballot election, not a preclusive replacement of the secret ballot election procedure. (e.g., ss. ERC 29.01; see also, s. ERC 29.07 (4)).</p>	<p>6. If the agency's rules include a card-based certification procedure, does that procedure preclusively replace a secret ballot election procedure?</p> <p>WERC - No. The secret ballot election procedures in ERC 23 are also applicable to research assistants.</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - No. Secret ballot election procedures are also available. (e.g., 1200.10, 1210.80.)</p> <p>Ill. Ed. LRB - Secret ballot election procedures are also available. (e.g., 1110.50 b) 9))</p>
<p>- A labor organization is permitted to file both a petition under the new procedure and a petition for secret ballot election regarding the same bargaining unit. (s. ERC 29.02 (4) (b))</p>	<p>7. If the agency's rules include a card-based certification procedure, is a labor organization permitted to file and have pending at the same time both an election petition and a petition for authorization card-based certification regarding the same unit?</p> <p>WERC - Yes. However, the two petitions will not be processed simultaneously. (see WERC answer to question 7. below)</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Unclear. However, majority interest petition is processed as if it were an election petition if accompanying showing of interest reflects 30% or more support but less than majority support. (1110.105 r)).</p> <p>Ill. Ed. LRB - Unclear. However, filing and withdrawal of a majority interest petition can, in some circumstances, bar petitioner from filing any other representation petition for one year. (1110.50)</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
<p>- The processing of a petition filed under the new procedure will take precedence over the processing of a petition for secret ballot election regarding the same bargaining unit filed by the same labor organization or by a competing labor organization. (s. ERC 29.07 (4)).</p>	<p>8. If the agency's rules include a card-based certification procedure, does that procedure specify what effect a petition for secret ballot election by the same labor organization or a different labor organization would have on a pending petition for authorization card based certification?</p> <p>WERC - Yes. The petition for card based certification will be processed first, with the election petition processed only if the petition for card based certification is dismissed.</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Majority interest petition is processed as if it were an election petition if accompanying showing of interest reflects 30% or more support but less than majority support. (1110.105 r)). If competing organizations file petitions regarding the same or similar bargaining units, the Board will direct a secret ballot election to determine representation. (1210.100 b) 8)).</p> <p>Ill. Ed. LRB - Unclear. No specific provision found on that subject.</p>
<p>- Specific time and content standards for authorization card validity are included. (ss. ERC 29.02 (3) and 29.04 (2)).</p>	<p>9. If the agency's rules include a card-based certification procedure, does that procedure specify time and content standards for authorization card validity?</p> <p>WERC - Yes. A petition must be supported by authorization cards signed by a majority of the employees in the bargaining unit when the petition was filed.</p> <p>To be valid, authorization cards are to include the employee name and department, employee signature, and the date, time and location of signature; must contain the statutory definition of the bargaining unit involved; and must contain statements reflecting that the employee favors representation by the named labor organization, that the card was signed freely and without coercion, that the card is in effect for one year and not revocable, but that the employee is permitted to sign another such card in support of a different labor organization; and the card must have been signed by the employee within one year</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB -Yes. Majority interest petition can be supported by authorization cards, petitions or any other evidence that demonstrates that a majority of the employees in the bargaining unit at the time the petition was filed wish to be represented by the union for purposes of collective bargaining (1210.80 d) 2) a))</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
	<p>prior to the date of filing of the petition.</p>	<p>To be valid, evidence of interest must include the employee's name, an original legible signature dated by the employee and a statement that the employee understands that the card may be used in support of a petition to attain representative status without an election; the signature must be dated within 6 months prior to the filing of the petition. (1210.80 d) 2) c), d), e))</p> <p>Employees are allowed to withdraw previously-signed statements of support for a labor organization in limited circumstances. Specifically, "Employees may not withdraw authorization cards or other documents evidencing majority support after the filing of a majority interest petition, unless the basis for the withdrawal constitutes evidence of fraud or coercion on the part of the petitioner. " (1210.80 e) 6)</p> <p>Ill. Ed. LRB - Yes. Majority interest petition may be supported by current dues deduction authorizations, authorization cards, petitions or other evidence of interest as regards employees in the bargaining unit at the time the petition was filed. (1110.80 a))</p> <p>Evidence called for on model authorization card included in the rules would suffice as evidence of interest. The model card calls for a statement that the employee favors collective bargaining representation by the named labor organization, the employee's name and employment position, the employee's signature and the date of the signature. (1110.80 a) 3) The signature must be dated within 6 months prior to the filing of the petition (1110.80 d))</p>

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		<p>Unclear under what circumstances, if any, employees are permitted to withdraw previous manifestations of support for labor organization. The only provision found to refer to such withdrawal reads, "Upon the filing of a petition or at any time thereafter that the case is pending, a party may allege that the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer. (1110.105 s)).</p>
<p>- Specific provisions govern the effect of the filing of a competing labor organization's petition for card-based certification regarding the same bargaining unit as to which another labor organization's earlier such petition is pending. (s. ERC 29.07 (3)).</p>	<p>10. If the agency's rules include a card-based certification procedure, what provision is made regarding the effect of the filing of a competing labor organization's petition for card based certification regarding the same bargaining unit as to which another labor organization's earlier petition is pending?</p> <p>WERC - Yes. If the petitions are filed within 10 days of one another, both will be processed and a secret ballot election will be conducted in the unlikely event that both petitions are determined to have majority card support. A petition filed more than 10 days after the filing of an earlier petition regarding the same unit, will not be processed until the processing of the earlier petition is completed, and then only if the earlier petition is dismissed</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - If competing organizations file petitions regarding the same or similar bargaining units, the Board will direct a secret ballot election to determine representation. (1210.100 b) 8)).</p> <p>Ill. Ed. LRB - Unclear. No specific provision found on that subject. (see generally, 1110.70)</p> <p>Ill. Ed. LRB - Unclear. No specific provision found on that subject.</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
<p>- Gives certification based on authorization card majority the same effect as a certification based on a secret ballot election. (s. ERC 29.07 (5)).</p>	<p>11. If the agency's rules include a card-based certification procedure, is a card-based certification given the same effect as a certification based on secret ballot election?</p> <p>WERC - Yes.</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - No specific provision found to that effect, however, the general integration of majority interest process with election process strongly implies that certifications resulting from each process would be given the same effect.</p> <p>Ill. Ed. LRB - Yes, for example, certification based on majority interest is given the same certification bar effect on other subsequent representation petitions as an election based certification. (e.g., 1110.70)</p>
<p>- Provides for WERC release of the numbers of bargaining unit employees and of valid cards counted. (s. ERC 29.04 (2) (b)).</p>	<p>12. If the agency's rules include a card-based certification procedure, does the procedure provide for the agency's release of the numbers of bargaining unit employees and of the number of valid cards counted?</p> <p>WERC - Yes and yes.</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Yes, at least where the petition results in certification of the petitioner as representative. Preparation of "a tally of the finding of majority support" is specifically called for in connection with the certification of the petitioner as representative. (1210.100 b) 7) B)). However no similar reference is made as</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
		<p>regards instances in which the petition is dismissed on the grounds that the showing of interest is inadequate. (1210.11 b) 7) A)).</p> <p>Ill. Ed. LRB - Apparently not. Rules refer only to Board issuance of certification if Board concludes that petition is supported by majority interest. No reference to a tally of any kind. (see generally, 1110.105 e))</p>
<p>- Specifies that post-determination objections procedures are available regarding objections to the conduct of the WERC-s administrative determination as to the existence of an authorization card majority or to conduct affecting the results of the WERC's determination. (s. ERC 29.05).</p>	<p>13. If the agency's rules include a card-based certification procedure, is there a procedure for raising objections regarding conduct affecting the outcome of the procedure?</p> <p>WERC - Yes. Objections can be made to the conduct of the WERC administrative determination and/or to conduct affecting the results of the WERC's determination.</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - Yes. Any person (not just parties to the petition proceeding) may submit evidence of fraud or coercion regarding evidence of majority interest during agency investigation phase of processing of petition (1210.80 e) 3). Employer is required to submit any such evidence it may have within 14 days (or more if extended) of the filing of the petition. (1210.100 b) 3). If fraud or coercion by petitioner sufficient to affect the showing of majority interest is proven by clear and convincing evidence, Board will direct an election to determine representation. 1210.100 b) 5) B)</p> <p>Ill. Ed. LRB - Yes. Any person (not just parties to the petition proceeding) may submit evidence of fraud or coercion regarding evidence of majority interest</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
		<p>during agency investigation phase of processing of petition. (1110.80 g) Employer is required to submit any such evidence it may have within 14 days (or more if extended) of the filing of the petition. (1110.105 d). If fraud or coercion by petitioner sufficient to affect the showing of majority interest is proven by clear and convincing evidence, Board will direct an election to determine representation. (1110.105 h)) Where majority interest is not shown by petitioner, petitioner will nonetheless be certified as representative without an election upon a showing that petitioner would have had majority interest support but for the fact that ". . . the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer." (1110.105 s, t))</p>
<p>- Prohibits disclosure of the cards or the names of employees signing cards unless objections cannot be fairly resolved without such disclosure. (s. ERC 29.06 (1)).</p>	<p>14. If the agency's rules include a card-based certification procedure, does the procedure specify under what conditions, if any, the cards or the names of employees signing cards is subject to disclosure to parties other than the petitioner?</p> <p>WERC - Yes. The contents of the cards, including the names of employees signing the cards, will not be disclosed to other than the petitioner, unless objections cannot be fairly resolved without such disclosure.</p>	<p>MN BMS - No card based procedure found.</p> <p>MI ERC - No card based procedure found.</p> <p>Iowa PERB - No card based procedure found.</p> <p>Ill. LRB - "The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties." (1210.80 e) 1).</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
		<p>However, "The adequacy of the showing of interest shall be determined administratively by the Board or its agent. The showing of interest determination is not subject to litigation, except upon a finding of a material issue of fact or law relating to fraud or coercion in majority interest petition cases. " (1210.80 e) 3)</p> <p>Ill. Ed. LRB - "The Board shall maintain the confidentiality of the showing of interest. The evidence submitted in support of the showing of interest shall not be furnished to any of the parties." (1110.80 f) However, "Except as provided in 1110.105, the showing of interest shall not be subject to collateral attack and shall not be an issue at hearing." Section 1110.105 provides procedures for adjudicating allegations of fraud or coercion regarding the evidence of majority support. (1110.105 f)-i)).</p>

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
<p>In response to the 2009 Act 28 repeal of the Qualified Economic Offer and replacement of special provisions regarding bargaining units of school district professional employees with special provisions regarding bargaining units of all school district employees, a new ch. ERC 34 has been created to cover all school district employee bargaining units, and the titles and scope sections of chs. ERC 32, 33 and 33 Appendix have been revised. As a result, chs. ERC 32 and 34 will be the chapters generally applicable as regards disputes involving non-school district and school district employee bargaining units, respectively, with chs. ERC 33 and 33 Appendix applying only to petitions concerning collective bargaining agreements covering periods beginning before July 1, 2009. (ss. ERC 32.01, 33.01, ch. ERC 33 Appendix caption, and ch. ERC 34).</p>		
<p>Chapters ERC 40 regarding the ad hoc roster and 50 regarding labor-management cooperation services have been updated to include references to the newly-enacted FASLRA. (ss. ERC 40.01 and 50.01).</p>		

Description of or reference to WERC rule change	Question regarding other agencies' rules	Answer regarding other agencies/ rules
<p>New chs. ERC 60-68 have been created to provide procedures relating to the newly-enacted FASLRA. Because FASLRA essentially replicated SELRA in all respects, the new chapters replicate the corresponding existing chs. ERC 30-38 concerning SELRA procedures.</p>		
<p>---end of comparison table---</p>		

Summary of factual data and analytical methodologies.

Not applicable.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.

Not applicable.

Effect on small business.

None.

Fiscal Estimate

These proposed rules have no fiscal effect.

Agency Contact Person.

Peter G. Davis
PeterG.davis@wisconsin.gov
(608) 266-2993

Place where comments are to be submitted and deadline for submission.

Written comments should be received on or before March 22, 2010 by the Wisconsin Employment Relations Commission by email (PeterG.davis@wisconsin.gov.) fax (608) 266-6930) or mail sent to 1457 East Washington Avenue, Madison, Wisconsin 53707.