

## Clearinghouse Rule 10-019

### ORDER OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

The Wisconsin Employment Relations Commission proposes an order to amend ERC 1-12, 14, 17, 19-28, 30-33, 40 and 50; and to create ERC 29, 34 and 60-68 relating to the administration of collective bargaining laws.

#### RULE SUMMARY

##### 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 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.

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, 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 school district professional employee collective bargaining agreements covering periods ending June 30, 2009. (ss. ERC 32.01, 33.01, ch. ERC 33 Appendix caption, 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 essentially replicated 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
<b>CHANGES COMMON TO ALL OR MANY CHAPTERS</b>		AGENCY Name and Source of Rules cited:
	<p align="center">1 What subject areas are covered by the agency's rules?</p> <p><b>Wisconsin Employment Relations Commission Chapters ERC</b></p> <p>Private Sector</p> <ol style="list-style-type: none"> <li>1. private sector general</li> <li>2. private sector complaint</li> <li>3. private sector representation election</li> <li>4. private sector referendum</li> <li>5. private sector grievance arbitration</li> <li>6. private sector mediation</li> <li>7. private sector unit clarification</li> <li>8. private sector referendum UW Hospital and Clinics Authority</li> <li>9. private sector discretionary declaratory rulings</li> </ol> <p>Municipal Sector</p> <ol style="list-style-type: none"> <li>10. municipal sector general</li> <li>11. municipal sector election</li> <li>12. municipal sector complaint</li> <li>13. municipal sector mediation</li> <li>14. municipal sector fact finding</li> <li>15. municipal sector referendum</li> <li>16. municipal sector grievance arbitration</li> <li>17. municipal sector unit clarification</li> <li>18. municipal sector bargaining scope declaratory rulings</li> <li>19. municipal sector discretionary declaratory rulings</li> </ol> <p>State Sector</p> <ol style="list-style-type: none"> <li>20. state sector general</li> <li>21. state sector election</li> <li>22. state sector complaint</li> <li>23. state sector grievance arbitration</li> <li>24. state sector mediation</li> <li>25. state sector fact finding</li> <li>26. state sector referendum</li> <li>27. state sector unit clarification</li> </ol>	<p><b>Minnesota Bureau of Mediation Services</b></p> <p>Minnesota Rules, Chapter 5505 - Private Rules</p> <ol style="list-style-type: none"> <li>5505.0100 Definitions.</li> <li>5505.0200 Purpose, Construction, And Waiver.</li> <li>5505.0300 Request For Investigation.</li> <li>5505.0400 Required Information.</li> <li>5505.0500 Notice Of Hearing And Investigation.</li> <li>5505.0600 Hearings.</li> <li>5505.0700 Examination Of Witnesses.</li> <li>5505.0800 Subpoenas.</li> <li>5505.0900 Determination Of Representative.</li> <li>5505.1000 Election Procedure.</li> <li>5505.1100 Challenge Of Voter.</li> <li>5505.1200 Consent Election.</li> <li>5505.1300 Certification Order.</li> <li>5505.1400 Objections To Certification.</li> <li>5505.1500 Reconsideration Within One Year.</li> </ol> <p>Chapter 5510 - Public Rules Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner</p> <p>Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice Grievance Procedure</p> <p>Chapter 520 LMC - Grant Rules Chapter 5530 - Arbitration Roster Rules</p> <ol style="list-style-type: none"> <li>5530.0100 Application.</li> <li>5530.0200 Policy.</li> <li>5530.0300 Definitions.</li> </ol>

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><b>Michigan Public Employment Relations Commission</b>  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>

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		<p><b>Iowa Public Employment Relations Board</b>  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><b>Illinois Labor Relations Board</b>  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><b>Illinois Educational Labor Relations Board</b>  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

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<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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<b>CHANGES SPECIFIC TO PARTICULAR CHAPTERS</b>		
<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>		

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<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>

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		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>

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

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

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

**Agency Contact Person.**

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(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 ([Peter.davis@wisconsin.gov](mailto:Peter.davis@wisconsin.gov)) fax (608) 266-6930 or mail sent to 1457 East Washington Avenue, Madison, Wisconsin 53707.

**Text of Proposed Rules**

SECTION 1. ERC 1.06, 1.07, 1.09, 2.02- 2.06, 2.09, 2.10, 3.02-3.13, 4.07-4.12, 4.14-4.16, 5.03-5.09, 6.03-6.07, 7.02-7.08, 8.05-8.09, 8.11-8.13, 9.02-9.11, 11.06-11.07, 11.12-11.13, 12.05, 12.10, 14.04 (3), 17.05-17.06, 19.05, 19.08-19.09, 20.07, 21.02-21.13, 22.02-22.09, 23.03-23.09, 24.03-24.07, 25.02-25.11, 26.05-26.13, 27.02-27.07, 28.02-28.08, 30.08 (3), 31.06 (3), 31.08-31.09, 32.09 (3), 32.11-32.12, 33.04-33.08, and 33.20 are amended to replace “procedures” with “procedure”.

SECTION 2. ERC 8 (Title) is amended to read:

REFERENDA CONCERNING FAIR-SHARE AND MAINTENANCE OF MEMBERSHIP AGREEMENTS INVOLVING THE UNIVERSITY OF WISCONSIN HOSPITALS AND CLINICS AUTHORITY OR A S. 111.02 (7) (A) 4., STATS., EMPLOYER OF DAY CARE PROVIDERS

SECTION 3. ERC 8.01 is amended to read:

This chapter governs the general procedure relating to referenda under s. 111.075, Stats., concerning fair-share and maintenance of membership agreements affecting bargaining units of employees of the University of Wisconsin Hospitals and Clinics Authority and of s. 111.02 (7) (a) 4., Stats., employers of day care providers.

SECTION 4. ERC 10.01 is amended to read:

Chapters ERC 10 to 19, 30 to ~~33~~ 34, 40 and 50 govern the conduct of all proceedings involving municipal employment relations before the Wisconsin Employment Relations Commission. As used in chs. ERC 10 to 19, 30 to ~~33~~ 34, 40 and 50, “the Municipal Employment Relations Act” means subch. IV of ch. 111, Stats. Chapters ERC 10 to 19 and 30 to ~~33~~ 34 shall be interpreted to serve the purposes and provisions of the Municipal Employment Relations Act, as shall chs. ERC 40 and 50 in connection with municipal sector employment. Nothing in Chapters ERC 10 to 19, 30 to ~~33~~ 34, 40 or 50 shall be construed to prevent the commission or persons employed or designated by the commission from using best efforts to adjust any dispute arising between employees and employers. The commission or examiner may waive requirements of chs. ERC 10 to 19, 30 to ~~33~~ 34, 40 and 50 to serve the purposes and provisions of the Municipal Employment Relations Act, unless a party shows that it would be prejudiced by the waiver.

SECTION 5. ERC 10.02 is amended to read:

Chapters ERC 11 to 19, 30 to ~~33~~ 34, 40 and 50 contain special rules applicable to the type of proceeding described in the caption of the chapter.

SECTION 6. ERC 10.03 is amended to read:

In any conflict between a provision of this chapter and a specific provision in chs. ERC 11 to 19, 30 to ~~33~~ 34, 40 or 50, the specific provision shall govern.

SECTION 7. ERC 10.06 (5) is amended to read:

Signature facsimile requirements of chs. ERC 10 to 19, 30 to ~~33~~ 34, 40 and 50 are met by a photocopy of a handwritten signature for documents filed in paper form; by a faxed copy of handwritten signature for documents filed by fax; and by either a graphic copy of a handwritten signature or a typed name preceded by “/s/” for documents filed via e-mail.

SECTION 8. ERC 10.09 is amended to read:

In computing any period of time prescribed by or allowed by chs. ERC 10 to 19, 30 to ~~33~~ 34, 40 or 50 or by order of the commission or individual conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run, shall not be included.

SECTION 9. ERC 12.02 (6) (b) 4. is amended to read:

A statement that each named respondent shall ~~have the right to~~ file an answer to the complaint, specifying the names and addresses of the persons to be served with a copy of the answer and the date by which the answer is to be served on those persons.

SECTION 10. ERC 17.02 (2) is amended to read:

The party filing the petition shall, at the same time, serve a copy on the other party, or its designated representative, ~~by~~ as set forth in s. ERC 10.07.

SECTION 11. ERC 20.01 is amended to read:

Chapters ERC 20 to ~~28~~ 29, 40 and 50 govern the conduct of all proceedings involving state employment relations before the Wisconsin Employment Relations Commission. As used in chs. ERC 20 to ~~28~~ 29, 40 and 50, “the State Employment Labor Relations Act” means subch. V of ch. 111, Stats. Chapters ERC 20 to ~~28~~ 29 shall be interpreted to serve the purposes and provisions of the State Employment Labor Relations Act, as shall chs. ERC 40 and 50 in connection with state sector employment. Nothing in Chapters ERC 20 to ~~28~~ 29, 40 or 50 shall be construed to prevent the commission or persons employed or designated by the commission from using best efforts to adjust any dispute arising between employees and employers. The commission or examiner may waive requirements of chs. ERC 20 to ~~28~~ 29, 40 and 50 to serve the purposes and provisions of the State Employment Labor Relations Act, unless a party shows that it would be prejudiced by the waiver.

SECTION 12. ERC 20.02 is amended to read:

Chapters ERC 21 to ~~28~~ 29, 40 and 50 contain special rules applicable to the type of proceeding described in the caption of the chapter.

SECTION 13. ERC 20.03 is amended to read:

In any conflict between a provision of this chapter and a specific provision in chs. ERC 21 to ~~28~~ 29, 40 or 50, the specific provision shall govern.

SECTION 14. ERC 20.09 is amended to read:

Computation of any period of time prescribed by or allowed by chs. ERC 20 to ~~28~~  
29, 40 or 50, or by order of the commission or individual conducting the  
proceeding, shall be as set forth in s. ERC 10.09.

SECTION 15. ERC 22.02 is amended to read:

A complaint that the employer, an employee or a person has engaged in a unfair  
labor practice defined, respectively, in s. 111.84 (1), (2), or (3), Stats.  
~~respectively~~, may be filed by any party or by a representative authorized to file on  
behalf of a party in interest.

SECTION 16. ERC 31.03 (2) is amended to read:

The party filing the petition shall, at the same time, serve a copy on the other  
party ~~by~~ as set forth in s. ERC 10.07.

SECTION 17. ERC 32 (Title) is amended to read:

COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN  
MUNICIPAL SECTOR DISPUTES NOT INVOLVING LAW  
ENFORCEMENT, FIRE FIGHTING OR SCHOOL DISTRICT  
~~PROFESSIONAL~~ EMPLOYEES

SECTION 18. ERC 32.01 is amended to read:

This chapter governs the procedure relating to collective bargaining and interest  
arbitration under s. 111.70 (4) (cm), Stats., affecting bargaining units of municipal  
employees other than law enforcement and fire fighting personnel and school  
district ~~professional~~ employees.

SECTION 19. ERC 32.09 (2) is amended to read:

If, at the time of the exchange of final offers or during any additional time  
permitted by the investigator, no objection is raised that either final offer contains  
a proposal relating to a non-mandatory subject of bargaining, the commission or  
investigator shall serve the parties ~~by~~ as set forth in s. ERC 10.07, a written notice  
that the investigation is closed.

SECTION 20. ERC 33 (Title) is amended to read:

COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN  
DISPUTES RELATING TO COLLECTIVE BARGAINING AGREEMENTS  
AFFECTING SCHOOL DISTRICT PROFESSIONAL EMPLOYEES  
EXPIRING BEFORE JULY 1, 2009

SECTION 21. ERC 33.01 is amended to read:

This chapter governs the procedure relating to collective bargaining and interest arbitration under s. 111.70 (4) (cm), Stats., for collective bargaining agreements affecting school district professional employees expiring before July 1, 2009.

SECTION 22. ERC 40.01 is amended to read:

To promote labor peace, the commission maintains a roster of individuals, not employed by the commission, who are available to serve as fact finders, grievance arbitrators, and interest arbitrators in statutory and contractual dispute resolution processes concerning private, municipal, ~~and~~ state and UW system faculty and academic staff sector labor disputes arising in Wisconsin.

SECTION 23. ERC 40.05 (1) is amended to read:

~~ANNUAL~~ UPDATES OF BIOGRAPHICAL AND FEE INFORMATION.

SECTION 24. ERC. 40.05 (3) is amended to read:

Interest arbitration awards shall be transmitted immediately to the commission in electronic form either by ~~diskette~~ physical storage media or e-mail.

SECTION 25. ERC 50.01 is amended to read:

This chapter governs the general procedure relating to the provision of training programs under ss. 111.09 (3), 111.71 (5) and 111.94 (3), Stats., to employers, employer associations and labor organizations on collective bargaining, and on areas of management and labor cooperation directly or indirectly affecting collective bargaining in the private, municipal, ~~and~~ state and UW system faculty and academic staff sectors, respectively.

SECTION 26. ERC 29 is created to read:

**Chapter ERC 29**

**AUTHORIZATION CARD MAJORITY DETERMINATION OF  
REPRESENTATIVE OF UNREPRESENTED RESEARCH ASSISTANTS**

**ERC 29.01 Scope.**

**ERC 29.02 Petition for certification based on authorization card majority.**

**ERC 29.03 Withdrawal of petition.**

**ERC 29.04 Commission action on petition.**

**ERC 29.05 Objections to determination.**

**ERC 29.06 Commission action on objections.**

**ERC 29.07 Certification of results of determination.**

**ERC 29.08 Petition for rehearing.**

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**ERC 29.01 Scope.** This chapter governs the procedure for filing and processing of a petition filed on or after July 1, 2010, under s. 111.935, Stats., to determine a collective bargaining representative for unrepresented research assistants in a bargaining unit defined in s. 111.825 (2) (g), (h), or (i), Stats., by authorization cards in lieu of a secret ballot election. The procedure provided in this chapter is an available alternative to the secret ballot election procedures in ch. ERC 21 and ss. 111.83 and 111.825(4), Stats. The procedure provided in this chapter shall not apply to research assistants in bargaining units with an existing representative.

**ERC 29.02 Petition for certification based on authorization card majority. (1) WHO MAY FILE.** A petition to determine a collective bargaining representative for a bargaining unit of unrepresented research assistants may be filed by a labor organization.

**(2) FORM, NUMBER OF COPIES, AND FILING.** The petition shall be in writing and shall include the signature or a facsimile of the signature of the representative filing the petition. A petition is not filed unless it contains the required signature or signature facsimile and unless and until the petition has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of two copies of the petition shall be included. The original authorization cards required by sub. (3) shall be transmitted to the commission in paper form by physical delivery or mail. The petition is not filed until both the petition and the authorization cards have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

**(3) AUTHORIZATION CARDS.** The petition shall be supported by authorization cards, signed within one year of the filing of the petition, by a majority of the research assistants in the collective bargaining unit involved. Authorization cards shall include all of the following:

(a) The name and department of the research assistant.

(b) A statement reflecting that the research assistant favors establishment of a bargaining unit of research assistants exclusively represented for collective bargaining by the named labor organization. The statement shall include the statutory definition of the bargaining unit involved.

(c) A statement reflecting that the research assistant understands that the card may be used to support a petition for certification of the named labor organization as the exclusive representative of the bargaining unit based on an authorization card majority without a secret ballot election being conducted.

(d) A statement reflecting that the research assistant has signed the card freely and without coercion by anyone.

(e) Statements reflecting that the research assistant understands that the signed card shall be effective for one year after the date the card is signed, that the card shall not be subject to revocation, but that signing the card does not prevent the research assistant from signing another such card supporting representation by another labor organization.

(f) The signature of the research assistant.

(g) The date, time and place (building/street address and city) of signature.

**(4) 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 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 collective bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of employees in the unit.

(d) A statement that the collective bargaining unit involved is not currently represented for purposes of collective bargaining.

e) Any other relevant facts.

**(5) EFFECT OF PENDENCY ON OTHER PROCEEDINGS.** The pendency of a petition for certification by authorization card majority shall have the following effects on other proceedings:

(a) The pendency of the petition shall preclude the petitioner from separately filing another petition for certification by authorization card majority regarding the same bargaining unit.

(b) The pendency of the petition shall have no effect on the petitioner's right to separately file a petition for a secret ballot election regarding the same bargaining unit, except as provided in s. ERC 29.07 (4).

**ERC 29.03 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.

**ERC 29.04 Commission action on petition. (1) SERVICE OF PETITION.** Upon receipt of a petition, the commission shall serve a copy of the petition on all interested parties identified in the petition.

**(2) DETERMINATION OF AUTHORIZATION CARD MAJORITY.** The commission shall determine whether the authorization cards, signed within one year of the filing of the petition, are sufficient to constitute a majority of the employees in the bargaining unit involved.

(a) *Furnishing of employee list by employer.* The employer involved shall, within 14 calendar days or other period of time established by the commission, furnish in writing to the commission a list containing the names of the employees, in alphabetical order, employed in the collective bargaining unit involved during the payroll period which includes the date the petition was filed. The period of time for furnishing a list of employees may be extended by the commission for good cause shown.

(b) *Determination.* The commission shall determine the sufficiency of the authorization cards upon the receipt from the employer of the names of the employees in the bargaining unit. Except as provided in s. ERC 29.06 (1), no party, other than the party submitting the authorization cards to the commission, may receive a copy of, or examine, the authorization cards. The commission shall inform all parties as to its determination whether the authorization cards are sufficient to constitute a majority of the employees in the bargaining unit involved. The commission shall also provide all parties with a tally specifying the number of employees in the collective bargaining unit, the total number of cards submitted in support of the petition, and the number of valid authorization cards.

**ERC 29.05 Objections to determination. (1) FILING; FORM; COPIES.** Within 8 days after the commission's issuance of its determination and tally, any party may file with the commission objections to the conduct of the determination or to conduct affecting the results of the determination. 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 29.06 Commission action on objections. (1) HEARING.** If the objections potentially affect the determination outcome and 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 objections shall be as set forth in ss. ERC 18.06 to 18.08, except that authorization cards submitted in support of the petition shall not be disclosed to anyone other than the petitioner unless one or more objections cannot be fairly resolved without such disclosure.

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

(a) If the commission's resolution of the objections affects the previously issued determination or tally, the commission shall issue a revised determination and tally.

(b) If the commission overrules all objections, it shall promptly issue a certification of the results of the determination as provided in s. ERC 29.07.

**ERC 29.07 Certification of results of determination. (1) WHEN ISSUED.** If no timely objections are filed, or after disposition of any timely-filed objections, the commission shall issue a certification of the results of its determination based on authorization cards.

(2) CONTENTS. The certification shall either certify the petitioner as exclusive representative of the bargaining unit involved or dismiss the petition.

(3) EFFECT OF COMPETING PETITION. (a) *Petitions filed 10 or fewer days later.* If one or more competing petitions for certification by authorization card majority regarding the same bargaining unit are filed within 10 calendar days of the filing of a petition, each of the petitions will be processed. If more than one of the petitions would support the certification of a representative, then the commission shall direct a secret ballot election to determine the representation of the bargaining unit involved.

(b) *Petitions filed more than 10 days later.* If a competing petition for certification by authorization card majority is filed more than ten calendar days after the filing of a petition regarding the same bargaining unit, the later-filed petition will be processed only if and when the earlier-filed petition is dismissed. If the earlier-filed petition results in certification of a representative, the later-filed petition will be dismissed without being processed.

(4) EFFECT ON PENDING PETITION FOR ELECTION. The processing of a petition for certification by authorization card majority shall take precedence over the processing of a petition for an election regarding the same bargaining unit. If a petition for certification by authorization card majority is filed during the pendency of a petition for election regarding the same bargaining unit, the processing of the election petition shall be held in abeyance until the processing of the petition for certification by authorization card majority has been completed. If the petition for certification by authorization card majority results in the certification of a representative, the petition for election will be dismissed.

(5) EFFECT OF CERTIFICATION OF REPRESENTATIVE. A certification of representative based on authorization card majority shall have the same effect as provided in s. 111.83 (1), Stats., for a certification of representative based on a secret ballot election. A representative certified based on authorization card majority shall be subject to a change or discontinuance of representation as provided in s. 111.83 (6), Stats., for a representative certified on the basis of a secret ballot election.

**ERC 29.08 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.

SECTION 27. ERC 34 is created to read:

### **Chapter ERC 34**

#### **COLLECTIVE BARGAINING AND INTEREST ARBITRATION IN MUNICIPAL SECTOR DISPUTES RELATING TO COLLECTIVE BARGAINING AGREEMENTS AFFECTING SCHOOL DISTRICT EMPLOYEES**

**ERC 34.01 Scope.**

**ERC 34.02 Policy.**

**ERC 34.03 Notice of commencement of negotiations.**

**ERC 34.04 Voluntary impasse resolution procedure.**

**ERC 34.05 Petition to initiate arbitration.**

**ERC 34.06 Stipulation to initiate arbitration.**

**ERC 34.07 Withdrawal of petition or stipulation.**

**ERC 34.08 Pre-investigation procedure.**

**ERC 34.09 Informal investigation or formal hearing.**

**ERC 34.10 Final offers.**

**ERC 34.11 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining.**

- ERC 34.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining.**
- ERC 34.13 Certification of results of investigation or hearing, or certification based on stipulation.**
- ERC 34.14 Order appointing arbitrator.**
- ERC 34.15 Proceedings before the arbitrator.**
- ERC 34.16 Enforcement of award.**
- ERC 34.17 Modification of award.**
- ERC 34.18 Procedure following court injunction of a strike posing an imminent threat to public health or safety.**
- ERC 34.19 Information.**
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**ERC 34.01 Scope.** This chapter governs the procedure relating to collective bargaining and interest arbitration under s. 111.70 (4) (cm), Stats. affecting school district employees.

**ERC 34.02 Policy.** The policy of the state is to encourage voluntary settlement of labor disputes in municipal employment through the procedures of collective bargaining. If the procedures fail, the parties should have available to them a fair, speedy, effective and above all, peaceful procedure for settlement including, where a deadlock exists after negotiations and after mediation by the commission, a procedure for the resolution of the dispute by interest arbitration. Parties subject to s. 111.70 (4) (cm), Stats., shall, upon request, provide the commission with information the commission considers necessary to meet its statutory responsibilities to report on the operation of the interest arbitration law under s. 111.70 (4) (cm), Stats., and on its effect on collective bargaining in the state.

**ERC 34.03 Notice of commencement of negotiations.** Practice and procedure regarding notice of commencement of negotiations under this chapter shall be as set forth in s. ERC 32.03.

**ERC 34.04 Voluntary impasse resolution procedure.** Practice and procedure regarding voluntary impasse resolution procedures under this chapter shall be as set forth in s. ERC 32.04, except that if the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under s. 111.70 (4) (cm) 7r., Stats.

**ERC 34.05 Petition to initiate arbitration.** Practice and procedure regarding a petition to initiate arbitration under this chapter shall be as set forth in s. ERC 32.05 except that a petition to initiate arbitration may be filed by a municipal employer, a recognized or certified collective bargaining representative of municipal employees in a bargaining unit described in s. ERC 34.01, or by anyone authorized to act on their behalf.

**ERC 34.06 Stipulation to initiate arbitration.** Practice and procedure regarding a stipulation to initiate arbitration under this chapter shall be as set forth in s. ERC 32.05 except that a stipulation to initiate arbitration may be filed by a municipal employer and a

collective bargaining representative of municipal employees in a bargaining unit described in s. ERC 32.01, or by anyone authorized to act on their behalf.

**ERC 34.07 Withdrawal of petition or stipulation; effect on filing fee.** Practice and procedure regarding withdrawal of a petition filed under this chapter and regarding the effect of withdrawal on the filing fee shall be as set forth in s. ERC 32.07.

**ERC 34.08 Pre-investigation procedure.** Under this chapter, pre-investigation practice and procedure shall be as set forth in s. ERC 32.08.

**ERC 34.09 Informal investigation or formal hearing.** Under this chapter, practice and procedure for informal investigation or formal hearing shall be as set forth in s. ERC 32.09.

**ERC 34.10 Final offers. (1) CONTENTS GENERALLY.** Final offers shall contain proposals relating only to mandatory subjects of bargaining, except either final offer may contain proposals relating to permissive subjects of bargaining if there is no timely objection under s. ERC 34.11 or 34.12 by the other party to the inclusion of the proposals in a final offer. Absent a timely objection, the proposals shall be treated as mandatory subjects of bargaining for the duration of the s. 111.70 (4) (cm), Stats., impasse resolution process, including any exchanges of final offers which may follow declaratory ruling proceedings under s. ERC 34.12 or injunction proceedings referred to in s. ERC 34.18 (1).

**(2) CONTENTS REGARDING TERM OF AGREEMENT AND REOPENER PROVISIONS.** Except for the initial collective bargaining agreement between the parties affecting the employees involved, where the parties have not agreed upon the term of the agreement as a part of the stipulation of agreed upon items, final offers shall provide for no other term of agreement than 2 years. Final offers shall not contain a provision for reopening of negotiations during the term of an existing agreement for any purpose other than negotiation of a successor agreement or with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation. Any other provisions for reopening of negotiations during the term of an existing agreement shall be agreed upon by the parties as a part of the stipulation of agreed upon items.

**(3) MODIFICATION OF FINAL OFFERS FOLLOWING CLOSE OF INVESTIGATION.** Following the close of the investigation, a party may modify its final offer only with the consent of the other party. Any modification shall be in writing, supported by a written statement signed by the representative of the other party.

**ERC 34.11 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining.** In proceedings under this chapter, practice and procedure for raising an objection that a proposal is a non-mandatory subject of bargaining shall be as set forth in s. ERC 30.10.

**ERC 34.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining.** In proceedings under this chapter, practice and procedure regarding a petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining shall be as set forth in s. ERC 30.11.

**ERC 34.13 Certification of results of investigation or hearing, or certification based on stipulation.** Under this chapter, practice and procedure regarding commission certification of results of investigation or hearing or based on stipulation shall be as set forth in s. ERC 32.13.

**ERC 34.14 Order appointing arbitrator.** Practice and procedure regarding an order appointing arbitrator in proceedings under this chapter shall be as set forth in s. ERC 32.14.

**ERC 34.15 Proceedings before the arbitrator.** Practice and procedure regarding proceedings before the arbitrator under this chapter shall be as set forth in s. ERC 32.15, except that the arbitrator shall give weight to the factors enumerated under s. 111.70 (4) (cm) 7r., Stats.

**ERC 34.16 Enforcement of award.** Practice and procedure for enforcement of awards issued under this chapter shall be as set forth in s. ERC 32.16.

**ERC 34.17 Modification of award.** Practice and procedure regarding modification of an award issued under this chapter shall be as set forth in ERC 32.17.

**ERC 34.18 Procedure following court injunction of a strike posing an imminent threat to public health or safety.** Under this chapter, practice and procedure following court injunction of a strike posing an imminent threat to public health or safety shall be as set forth in s. ERC 32.18.

**ERC 34.19 Information.** Parties subject to s. 111.70 (4) (cm), Stats., shall, upon request, provide the commission with information the commission deems necessary to meet its statutory responsibilities to report on the operation of the arbitration law under s. 111.70 (4) (cm), Stats., and on its effect on collective bargaining in the state.

SECTION 28. ERC 60 is created to read:

## **Chapter ERC 60**

### **GENERAL UNIVERSITY OF WISCONSIN SYSTEM FACULTY AND ACADEMIC STAFF PROVISIONS**

**ERC 60.01 Purpose and interpretation.**

**ERC 60.02 Chapters.**

**ERC 60.03 Resolution of conflicts.**

**ERC 60.04 Definitions.**

**ERC 60.05 Transfer, consolidation and severance of proceedings.**

**ERC 60.06 Filing with the commission or with commission personnel.**

**ERC 60.07 Service on a party or representative.**

**ERC 60.08 Fee schedule.**

**ERC 60.09 Computation of time.**

**ERC 60.10 Forms.**

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**ERC 60.01 Purpose and interpretation.** Chapters ERC 40, 50 and 60 to 68 govern the conduct of all proceedings involving UW System faculty and academic staff employment relations before the Wisconsin Employment Relations Commission. As used in chs. ERC 40, 50 and 60 to 68, "University of Wisconsin System Faculty and Academic Staff Labor Relations Act" means subch. VI of ch. 111, Stats. Chapters ERC 60 to 68 shall be interpreted to serve the purposes and provisions of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act, as shall chs. 40 and 50 in connection with UW faculty and academic staff sector employment. Nothing in chs. ERC 40, 50, or 60 to 68 shall be construed to prevent the commission or persons employed or designated by the commission from using best efforts to adjust any dispute arising between employees and employers. The commission or examiner may waive requirements of chs. ERC 40, 50 or 60 to 68 to serve the purposes and provisions of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act, unless a party shows that it would be prejudiced by the waiver.

**ERC 60.02 Chapters.** Chapters ERC 40, 50 and 60 to 68 contain special rules applicable to the type of proceeding described in the caption of the chapter. Chapter ERC 60 contains general rules applicable to all types of proceedings in UW faculty and academic staff employment relations and should be read in conjunction with the chapter governing the particular proceeding.

**ERC 60.03 Resolution of conflicts.** In any conflict between a general rule in ch. ERC 60 and a specific provision in chs. ERC 40, 50 or 61 to 68, the specific provision shall govern.

**ERC 60.04 Definitions.** Words or phrases used in this chapter which are defined in s. 111.96, Stats., have the meaning as in s. 111.96, Stats.

**ERC 60.05 Transfer, consolidation and severance of proceedings.** Whenever the commission finds it necessary, in order to serve the purposes of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act, or to avoid unnecessary costs or delay, it may transfer any proceeding before an examiner to another examiner or to the commission. Proceedings under more than one subsection of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act may be combined or severed.

**ERC 60.06 Filing with the commission or with commission personnel.** Practice and procedure regarding filing documents with the commission or with commission personnel shall be as set forth in s. ERC 10.06

**ERC 60.07 Service on a party or representative.** Practice and procedure for service on a party or representative shall be as set forth in s. ERC 10.07.

**ERC 60.08 Fee schedule. (1) COMPLAINTS.** For a complaint alleging that an unfair labor practice has been committed under s. 111.991, Stats., the complaining party or parties shall pay the commission a filing fee as set forth in s. ERC 10.08 (1).

(2) GRIEVANCE ARBITRATION. For a request that the commission or its staff act as a grievance arbitrator under s. 111.993, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (2).

(3) MEDIATION. For a request that the commission or its staff act as a mediator under s. 111.994, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (3).

(4) FACT-FINDING. For a request that the commission initiate fact-finding under s. 111.995, Stats., the parties to the dispute shall each pay the commission a filing fee as set forth in s. ERC 10.08 (4), except that if the parties have previously paid a mediation filing fee for the same dispute under sub. (3), no fee shall be paid for the fact-finding.

(5) TRANSCRIPTS. Any party requesting the commission to provide a transcript of a commission proceeding shall pay a fee as set forth in s. ERC 10.08 (6).

**ERC 60.09 Computation of time.** Computation of any period of time prescribed by or allowed by chs. ERC 40, 50 or 60 to 68, or by order of the commission or individual conducting the proceeding, shall be as set forth in s. ERC 10.09.

**ERC 60.10 Forms.** Lists and copies of commission forms may be obtained from the commission's Madison office or the agency website.

**Note:** The address of the commission's website is <http://werc.wi.gov>

**Note:** For the commission's Madison office, the mailing address is PO Box 7870, Madison WI 53707-7870 and the physical address is 1457 East Washington Avenue, Madison, WI 53703.

SECTION 29. ERC 61 is created to read:

## Chapter ERC 61

### ELECTIONS TO DETERMINE BARGAINING REPRESENTATIVE FOR UW FACULTY AND ACADEMIC STAFF SECTOR PERSONNEL

- ERC 61.01 Scope.**
  - ERC 61.02 Petition for election.**
  - ERC 61.03 Withdrawal of petition.**
  - ERC 61.04 Stipulation for election.**
  - ERC 61.05 Commission pre-hearing action on petition.**
  - ERC 61.06 Motions.**
  - ERC 61.07 Hearings.**
  - ERC 61.08 Direction of election or other dispositional order.**
  - ERC 61.09 Elections.**
  - ERC 61.10 Certification of results of election.**
  - ERC 61.11 Objections to election.**
  - ERC 61.12 Commission action on challenges or objections.**
  - ERC 61.13 Petition for rehearing.**
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**ERC 61.01 Scope.** This chapter governs the general procedure relating to elections under ss. 111.98 and 111.990, Stats., affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in 111.98 (5), Stats. This chapter also governs the general procedure relating to unit-determination elections under ss. 111.98 and 111.990, Stats.

**ERC 61.02 Petition for election.** A petition to determine a collective bargaining representative or an appropriate collective bargaining unit may be filed by one or more UW faculty and academic staff employees specified in s. 111.98 (1), Stats. or by one or more academic staff supervisors specified in s. 111.98 (5), Stats., or by a labor organization acting on their behalf, or by the employer or anyone authorized to act on its behalf. Practice and procedure for filing and processing a petition under this chapter shall otherwise be as set forth in s. ERC 11.02.

**ERC 61.03 Withdrawal of petition.** Practice and procedure for withdrawal of an election petition shall be as set forth in s. ERC 11.03.

**ERC 61.04 Stipulation for election.** Where the employer, and one or more individual employees or supervisors or a labor organization acting on their behalf, and the exclusive representative, if any, of an existing unit agree that a question of representation has arisen concerning employees or concerning supervisors, those parties may jointly file a stipulation for an election to resolve that question. Practice and procedure concerning a stipulation for an election shall otherwise be as set forth in s. ERC 11.04.

**ERC 61.05 Commission pre-hearing action on petition.** Practice and procedure regarding commission pre-hearing action on a petition for an election shall be as set forth in s. ERC 11.05.

**ERC 61.06 Motions.** Practice and procedure regarding motions in election proceedings shall be as set forth in s. ERC 18.06.

**ERC 61.07 Hearings. (1) SCOPE.** Hearings shall be open to the public and limited to the litigation of and oral argument on issues of fact or law regarding whether the unit described in the petition is an appropriate unit, and, if so, regarding the issues, if any, with respect to whether there exists a question of representation among the eligible personnel in that unit. Practice and procedure regarding hearings in election proceedings shall otherwise be as set forth in s. ERC. 18.08.

**ERC 61.08 Direction of election or other dispositional order.** Practice and procedure regarding a commission direction of election or other dispositional order in an election proceeding shall be as set forth in s. ERC 11.08.

**ERC 61.09 Elections.** Practice and procedure for conducting elections shall be as set forth in s. ERC 11.09, except that the statutory reference in s. ERC 11.09 (6) shall be to s. 111.990 (3), Stats.

**ERC 61.10 Certification of results of election.** Practice and procedure for certification of results of an election shall be as set forth in s. ERC 11.10.

**ERC 61.11 Objections to election.** Practice and procedure for filing objections to the conduct of an election shall be as set forth in s. ERC 11.11.

**ERC 61.12 Commission action on challenges or objections.** Practice and procedure for commission action on challenges or objections in election proceedings shall be as set forth in s. ERC 11.12.

**ERC 61.13 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.

SECTION 30. ERC 62 is created to read:

## Chapter ERC 62

### UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR UNFAIR LABOR PRACTICES

**ERC 62.01 Scope.**

**ERC 62.02 Complaint.**

**ERC 62.03 Answer to complaint.**

**ERC 62.04 Motions.**

**ERC 62.05 Hearings.**

**ERC 62.06 Findings of fact, conclusions of law and order.**

**ERC 62.07 Interlocutory findings of fact, conclusions of law and order.**

**ERC 62.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order.**

**ERC 62.09 Review of findings of fact, conclusions of law and order issued by examiner.**

**ERC 62.10 Petition for rehearing.**

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**ERC 62.01 Scope.** This chapter governs the general procedure relating to complaints of UW System faculty and academic staff sector unfair labor practices as defined in s. 111.991, Stats.

**ERC 62.02 Complaint.** A complaint that the employer, an employee, or a person has engaged in a unfair labor practice defined, respectively, in s. 111.991 (1), (2) or (3), Stats., may be filed by any party or by a representative authorized to file on behalf of a party in interest. Practice and procedure for complaint filing and processing shall otherwise be as set forth in s. ERC 12.02, except that the statutory references in s. ERC 12.02 (1) and (2) (c) shall be to s. 111.991 (1), (2) and (3), Stats.; the references to "prohibited practices" shall be to "unfair labor practices"; and references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin System Faculty and Academic Staff Labor Relations Act."

**ERC 62.03 Answer to complaint.** Each respondent named in the complaint shall file an answer to the complaint with the commission on or before the date designated in the notice of hearing. Practice and procedure for filing and processing an answer shall be as set forth in s. ERC 12.03.

**ERC 62.04 Motions.** Practice and procedure for motions concerning unfair labor practice proceedings shall be as set forth in s. ERC 12.04.

**ERC 62.05 Hearings.** Practice and procedure for hearings concerning unfair labor practice complaints shall be as set forth in s. ERC 18.08, except that references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

**ERC 62.06 Findings of fact, conclusions of law and order.** After the close of the evidence and the submission of closing arguments, or on granting a motion for dismissal of a complaint, the commission or examiner shall issue written findings of fact, conclusions of law and order to the parties. Practice and procedure concerning the issuance of findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.06, except that references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

**ERC 62.07 Interlocutory findings of fact, conclusions of law and order.** Practice and procedure for interlocutory findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.07.

**ERC 62.08 Setting aside, modifying, changing or reversing findings of fact, conclusions of law and order.** Practice and procedure for setting aside, modifying, changing or reversing findings of fact, conclusions of law and order in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.08.

**ERC 62.09 Review of findings of fact, conclusions of law and order issued by examiner.** Practice and procedure for commission review of findings of fact, conclusions of law and order issued by an examiner in unfair labor practice complaint proceedings shall be as set forth in s. ERC 12.09.

**ERC 62.10 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.

SECTION 31. ERC 63 is created to read:

## Chapter ERC 63

### ARBITRATION OF UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR GRIEVANCE DISPUTES

**ERC 63.01 Scope.**

**ERC 63.02 Policy.**

**ERC 63.03 Request for commission-employed arbitrator.**

**ERC 63.04 Commission action on request for commission-employed arbitrator.**

**ERC 63.05 Proceedings before commission-employed arbitrator.**

**ERC 63.06 Request for ad hoc arbitrator not employed by the commission.**

**ERC 63.07 Commission action on request for ad hoc arbitrator.**

**ERC 63.08 Proceedings before ad hoc arbitrator.**

**ERC 63.09 Ad hoc arbitrator's award and report.**

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**ERC 63.01 Scope.** This chapter governs the general procedure relating to grievance arbitration proceedings and designation of grievance arbitrators under s. 111.993, Stats., affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in 111.98 (5), Stats.

**ERC 63.02 Policy.** To promote the prompt, peaceful and just settlement of labor disputes arising from the interpretation or application of a collective bargaining agreement affecting terms and conditions of UW System faculty and academic staff employment in Wisconsin, the commission offers various grievance arbitration services involving designation of grievance arbitrators who are either employed by the commission or who are on the commission's ad hoc roster of arbitrators and fact-finders not employed by the commission.

**ERC 63.03 Request for commission-employed arbitrator.** A request that the commission provide the services of a commission-employed arbitrator may be filed by the exclusive representative, the municipal employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. Practice and procedure regarding filing a request for services of a commission-employed arbitrator shall be as set forth in s. ERC 16.03.

**ERC 63.04 Commission action on request for commission-employed arbitrator.** Practice and procedure for commission action on a request for services of a commission-employed arbitrator shall be as set forth in s. ERC 16.04.

**ERC 63.05 Proceedings before commission-employed arbitrator.** Practice and procedure for proceedings before a commission-employed arbitrator shall be as set forth in s. ERC 16.05.

**ERC 63.06 Request for ad hoc arbitrator not employed by the commission.** A request that the commission provide the parties with a list of one or more ad hoc arbitrators, not employed by the commission, to provide grievance arbitration services may be filed by the exclusive representative, the employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. Practice and procedure regarding filing a request for ad hoc arbitrator services shall be as set forth in s. ERC 16.06.

**ERC 63.07 Commission action on request for ad hoc arbitrator.** Practice and procedure for commission action on a request for services of an ad hoc arbitrator shall be as set forth in s. ERC 16.07.

**ERC 63.08 Proceedings before ad hoc arbitrator.** Practice and procedure for proceedings before an ad hoc arbitrator shall be as set forth in s. ERC 16.08.

**ERC 63.09 Ad hoc arbitrator's award and report.** Practice and procedure regarding an ad hoc arbitrator's award and report shall be as set forth in s. ERC 16.09.

SECTION 32. ERC 64 is created to read:

## Chapter ERC 64

### MEDIATION OF UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR LABOR DISPUTES

**ERC 64.01 Scope.**

**ERC 64.02 Policy.**

**ERC 64.03 Request for mediation services.**

**ERC 64.04 Commission action on request for mediation services.**

**ERC 64.05 Mediation initiated by the commission.**

**ERC 64.06 Mediation proceedings.**

**ERC 64.07 Report to commission.**

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**ERC 64.01 Scope.** This chapter governs the general procedure relating to mediation of labor disputes under s. 111.994, Stats., affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in 111.98 (5), Stats.

**ERC 64.02 Policy.** To promote the prompt and peaceful settlement of labor disputes affecting terms and conditions of UW System faculty and academic staff sector employment in Wisconsin, the commission offers various mediation services involving designation of mediators to assist the parties in reaching a voluntary settlement. In order to maintain and enhance the effectiveness of the mediation function, the commission has established rules and procedures designed to maintain confidentiality of the mediation process.

**ERC 64.03 Request for mediation services.** A request for mediation services may be filed by the employer or by the exclusive collective bargaining representative of a bargaining unit of UW System faculty and academic staff personnel, or by anyone authorized to act on their behalf. Practice and procedure for filing a request for mediation services shall be as set forth in s. ERC 13.03.

**ERC 64.04 Commission action on request for mediation services.** Practice and procedure for commission action on a request for mediation services shall be as set forth in s. ERC 13.04, except that references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

**ERC 64.05 Mediation initiated by the commission.** Practice and procedure for mediation initiated by the commission shall be as set forth in s. ERC 13.05, except that the reference to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

**ERC 64.06 Mediation proceedings.** Practice and procedure in mediation proceedings shall be as set forth in s. ERC 13.06.

**ERC 64.07 Report to commission.** Practice and procedure regarding a report to the commission by the mediator shall be as set forth s. ERC 13.07.

SECTION 33. ERC 65 is created to read:

## **Chapter ERC 65**

### **FACT-FINDING IN UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR DISPUTES**

**ERC 65.01 Scope.**

**ERC 65.02 Petition for fact-finding.**

**ERC 65.03 Withdrawal of petition; effect on filing fee.**

**ERC 65.04 Commission investigation.**

**ERC 65.05 Consolidation of proceedings.**

**ERC 65.06 Certification of results of investigation.**

**ERC 65.07 Hearing before the fact finder.**

**ERC 65.08 Fact-finding recommendations.**

**ERC 65.09 Compensation of fact finder and other costs.**

**ERC 65.10 Fact finder's report of fees and expenses.**

**ERC 65.11 Notification of acceptance or rejection of recommendations of the fact finder.**

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**ERC 65.01 Scope.** This chapter governs the general procedure relating to fact-finding in UW System faculty and academic staff sector employment under s. 111.995, Stats., affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in 111.98 (5), Stats.

**ERC 65.02 Petition for fact-finding.** Practice and procedure for filing a petition to initiate fact-finding under this chapter shall be as set forth in s. ERC 14.02.

**ERC 65.03 Withdrawal of petition; effect on filing fee.** Practice and procedure regarding withdrawal of a petition for fact finding and the effect of a withdrawal on the filing fee shall be as set forth in s. ERC 14.03.

**ERC 65.04 Commission investigation.** After a petition has been filed, the commission shall conduct an investigation to determine whether the parties are deadlocked after a reasonable period of negotiation. Practice and procedure for the investigation in a fact-finding proceeding shall be as set forth in s. ERC 14.04.

**ERC 65.05 Consolidation of proceedings.** The commission may consolidate fact-finding proceedings to avoid unnecessary costs, delay, or multiplicity of proceedings or

to otherwise serve the purposes of the UW System Faculty And Academic Staff Labor Relations Act.

**ERC 65.06 Certification of results of investigation.** Practice and procedure regarding commission certification of the results of an investigation in a fact-finding proceeding shall be as set forth in s. ERC 14.06, except that the reference to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin Faculty and Academic Staff Labor Relations Act."

**ERC 65.07 Hearing before the fact finder.** Practice and procedure regarding hearings before the fact finder shall be as set forth in s. ERC 14.07.

**ERC 65.08 Fact-finding recommendations.** After the close of the hearing, the fact finder shall prepare and issue fact-finding recommendations. Practice and procedure regarding fact-finding recommendations shall be as set forth in s. ERC 14.08.

**ERC 65.09 Compensation of fact finder and other costs.** Practice and procedure regarding compensation of the fact finder and the allocation of other costs in a fact finding proceeding shall be as set forth in s. ERC 14.09.

**ERC 65.10 Fact finder's report of fees and expenses.** Practice and procedure regarding the fact finder's report of fees and expenses shall be as set forth in s. ERC 14.10.

**ERC 65.11 Notification of acceptance or rejection of recommendations of the fact finder.** Each party involved in fact-finding shall notify, in writing, the other parties and the commission of its acceptance or rejection, in whole or in part, of the fact finder's recommendations. Practice and procedure regarding notification of acceptance or rejections of recommendations of the fact finder shall be as set forth in s. ERC 14.11.

SECTION 34. ERC 66 is created to read:

## **Chapter ERC 66**

### **REFERENDA CONCERNING UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR FAIR-SHARE AGREEMENTS**

**ERC 66.01 Scope.**

**ERC 66.02 Petition for referendum.**

**ERC 66.03 Showing of interest in support of petition.**

**ERC 66.04 Withdrawal of petition.**

**ERC 66.05 Commission pre-hearing action on petition.**

**ERC 66.06 Motions.**

**ERC 66.07 Hearings.**

**ERC 66.08 Direction of referendum or other dispositional order.**

**ERC 66.09 Referendum.**

**ERC 66.10 Certification of results of referendum.**

**ERC 66.11 Objections to referendum.**

**ERC 66.12 Commission action on challenges or objections.**

**ERC 66.13 Petition for rehearing.**

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**ERC 66.01 Scope.** This chapter governs the general procedure relating to referenda under s. 111.85, Stats., concerning fair-share agreements affecting bargaining units of UW System faculty and academic staff employees specified in s. 111.98, Stats.

**ERC 66.02 Petition for referendum. (1) WHO MAY FILE.** A petition to authorize or determine the continuation of a fair-share agreement for a bargaining unit may be filed by the employer or by the exclusive representative of the bargaining unit involved or by anyone acting on behalf of either party.

(2) TIME FOR FILING. (a) *Concerning authorization.* A petition to authorize a fair-share agreement for a bargaining unit may be filed at any time after an exclusive representative of the bargaining unit involved has been certified.

(b) *Concerning continuation.* A petition to determine the continuation of a fair-share may be filed at any time following the implementation of the fair-share or maintenance of membership agreement involved.

(3) FORM, NUMBER OF COPIES, AND FILING. 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 in interest or representative filing the petition. A petition is not filed unless it contains the required signature or signature facsimile and unless and until the petition and the showing of interest in support of the petition required by s. ERC 66.03 have 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. The showing of interest in support of the petition required by s. ERC 66.03, shall be transmitted to the commission in paper form by physical delivery or mail.

(4) CONTENTS. The petition shall include all of the following:

(a) The name and address of the employer and the name, address and phone number of its principal representative. Fax numbers and e-mail addresses shall be included, if available.

(b) The name and address of the exclusive representative of the bargaining unit 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 collective bargaining unit involved, and the approximate number of personnel in the unit.

(d) A description of the fair-share agreement involved.

(e) The date of execution, the effective date, and the expiration date of the collective bargaining agreement, if any, containing a fair-share agreement affecting the bargaining unit involved.

(f) A statement to the effect that at least 30% of the personnel in the collective bargaining unit involved support the authorization or discontinuation of a fair-share agreement requested in the petition.

(g) The name and address of the petitioner, and the name, address and phone number of the petitioner's principal representative. Fax numbers and e-mail addresses shall be included, if available.

**ERC 66.03 Showing of interest in support of petition.** The petition shall be supported by a showing of interest in writing, containing the printed names and signatures of at least 30% of the personnel in the bargaining unit involved, the dates on which the signatures were executed, and a statement that the personnel signing support the authorization or discontinuation of a fair-share agreement requested in the petition.

**ERC 66.04 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.

**ERC 66.05 Commission pre-hearing action on petition.** Practice and procedure for commission pre-hearing action in referendum proceedings shall be as set forth in s. ERC 15.07.

**ERC 66.06 Motions.** Practice and procedure regarding motions in referendum proceedings shall be as set forth in s. ERC 18.06.

**ERC 66.07 Hearings.** Practice and procedure regarding hearings in referendum proceedings shall be as set forth in s. ERC 15.09, except that the statutory reference in s. ERC 15.09 shall be to s. 111.992, Stats.

**ERC 66.08 Direction of referendum or other dispositional order.** Practice and procedure regarding a commission direction of election or other dispositional order in referendum proceedings shall be as set forth in s. ERC 15.10.

**ERC 66.09 Referendum.** Practice and procedure regarding conduct of a referendum shall be as set forth in s. ERC 15.11.

**ERC 66.10 Certification of results of referendum.** (1) WHEN ISSUED. If challenged ballots are insufficient in number to affect the results and no timely objections are filed under s. ERC 66.11, the commission shall issue to the parties a certification of the results of the referendum.

(2) EFFECT OF CERTIFICATION. (a) *Not favoring fair-share.* Where the certification of the results of a referendum indicates that the required number of personnel has not authorized the implementation of, or the continuation of, a fair-share agreement, no fair-share agreement shall be implemented and any existing fair-share or maintenance of membership agreement shall be terminated at the termination of the collective bargaining agreement, or one year from the date of the certification of result of the referendum, whichever is earlier.

(b) *Favoring fair-share.* Where the certification of the results of a referendum indicates that the required number of personnel has authorized the implementation of, or the continuation of a fair-share agreement, the fair-share agreement in effect, if any, shall be continued in effect, or the fair-share agreement shall take effect 60 days after the date of the certification or on an earlier date agreed upon between the employer and the exclusive representative involved.

**ERC 66.11 Objections to referendum.** Practice and procedure for filing objections to the conduct of a referendum shall be as set forth in s. ERC 15.13.

**ERC 66.12 Commission action on challenges or objections.** Practice and procedure for commission action on challenges or objections in referendum proceedings shall be as set forth in s. ERC 15.14.

**ERC 66.13 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 of a petition for rehearing in a referendum proceeding shall be as set forth in s. ERC 18.11.

SECTION 35. ERC 67 is created to read:

## Chapter ERC 67

### CLARIFICATION OF UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR BARGAINING UNITS

**ERC 67.01 Scope.**

**ERC 67.02 Petition for unit clarification.**

**ERC 67.03 Withdrawal of petition.**

**ERC 67.04 Commission pre-hearing action on petition.**

**ERC 67.05 Motions.**

**ERC 67.06 Hearings.**

**ERC 67.07 Order clarifying bargaining unit or other dispositional order.**

**ERC 67.08 Petition for rehearing.**

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**ERC 67.01 Scope.** This chapter governs the general procedure relating to clarification of UW System faculty and academic staff sector bargaining units under the University of Wisconsin System Faculty and Academic Staff Labor Relations Act to determine whether one or more positions are properly included in or excluded from an existing collective bargaining unit of UW System faculty and academic staff employees specified in s. 111.98, Stats., or a bargaining unit of academic staff supervisors specified in 111.98 (5), Stats.

**ERC 67.02 Petition for unit clarification.** A petition to determine whether one or more positions shall be included in or excluded from an existing collective bargaining unit may be filed by the exclusive representative of the bargaining unit or by the employer or by an authorized representative of one of those parties. Practice and procedure for filing and processing of a petition for unit clarification shall otherwise be as set forth in s. ERC 17.02.

**ERC 67.03 Withdrawal of petition.** Practice and procedure regarding withdrawal of a petition for unit clarification shall be as set forth in s. ERC 17.03.

**ERC 67.04 Commission pre-hearing action on petition.** Practice and procedure for commission pre-hearing action on a petition for unit clarification shall be as set forth in s. ERC 17.04.

**ERC 67.05 Motions.** Practice and procedure regarding motions in unit clarification proceedings shall be as set forth in s. ERC 18.06.

**ERC 67.06 Hearings.** Practice and procedure for hearings in unit clarification proceedings shall be as set forth in s. ERC 17.06, except that the reference to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin System Faculty and Academic Staff Labor Relations Act."

**ERC 67.07 Order clarifying bargaining unit or other dispositional order.** Practice and procedure regarding commission issuance of an order clarifying bargaining unit or other dispositional order in a unit clarification proceeding shall be as set forth in s. ERC 17.07.

**ERC 67.08 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 regarding a petition for rehearing in a unit clarification proceeding shall be as set forth in s. ERC 18.11.

SECTION 36. ERC 68 is created to read:

### **Chapter ERC 68**

#### **DISCRETIONARY UW SYSTEM FACULTY AND ACADEMIC STAFF SECTOR DECLARATORY RULINGS UNDER CH. 227, STATS.**

**ERC 68.01 Scope.**

**ERC 68.02 Petition.**

**ERC 68.03 Statement in response to petition.**

**ERC 68.04 Withdrawal of petition.**

**ERC 68.05 Motions.**

**ERC 68.06 Commission action on petition.**

**ERC 68.07 Notice of hearing.**

**ERC 68.08 Hearings.**

**ERC 68.09 Findings of fact, conclusions of law and declaratory ruling.**

**ERC 68.10 Effect of declaratory ruling.**

**ERC 68.11 Petition for rehearing.**

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**ERC 68.01 Scope.** This chapter governs the general procedure relating to discretionary declaratory rulings requested under s. 227.41 (2), Stats., concerning the University of Wisconsin System Faculty and Academic Staff Labor Relations Act and rules concerning its administration.

**ERC 68.02 Petition.** Any interested person may file a petition requesting that the commission issue a declaratory ruling about the applicability to any person, property or state of facts of any provision of the University of Wisconsin System Faculty and Academic Staff Labor Relations Act or any rule concerning its administration. Practice and procedure for filing a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.02, except that references to the "Municipal Employment Relations Act" shall be to the "University of Wisconsin System Faculty and Academic Staff Labor Relations Act."

**ERC 68.03 Statement in response to petition.** Practice and procedure regarding filing of a statement in response to a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.03.

**ERC 68.04 Withdrawal of petition.** Practice and procedure regarding withdrawal of a petition for discretionary declaratory ruling shall be as set forth in s. ERC 19.04.

**ERC 68.05 Motions.** Practice and procedure regarding motions in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.06

**ERC 68.06 Commission action on petition.** Practice and procedure regarding commission action on a petition for a discretionary declaratory ruling shall be as set forth in s. ERC 19.06.

**ERC 68.07 Notice of hearing.** Practice and procedure regarding a notice of hearing in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 19.07.

**ERC 68.08 Hearings.** Practice and procedure regarding hearings in discretionary declaratory ruling proceedings shall be as set forth in s. ERC 18.08.

**ERC 68.09 Findings of fact, conclusions of law and declaratory ruling.** Practice and procedure regarding issuance of findings of fact, conclusions of law and declaratory ruling in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 18.09

**ERC 68.10 Effect of declaratory ruling.** The effect of a discretionary declaratory ruling issued under this chapter shall be as set forth in s. ERC 19.10.

**ERC 68.11 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 in a discretionary declaratory ruling proceeding shall be as set forth in s. ERC 18.11.

#### **EFFECTIVE DATE.**

These rules shall take effect on July 1, 2010, the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

#### **FISCAL ESTIMATE**

These rules have no fiscal effect.











