

Chapter ERC 33

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

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Note: Chapter ERB 33 was created as an emergency rule effective October 13, 1993. Chapter ERB 33 was renumbered chapter ERC 33 under s. 13.93 (2m) (b) 1, Stats., Register, December, 1994, No. 468. Chapter ERC 33 as it existed on June 30, 2006, was repealed and a new chapter ERC 33 was created, Register June 2006 No. 606, effective July 1, 2006.

ERC 33.01 Scope. This chapter governs the procedure relating to collective bargaining and interest arbitration under s. 111.70 (4) (cm), Stats., for collective bargaining agreements expiring before July 1, 2009, affecting school district professional employees.

History: CR 02-037: r. and recr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 33.02 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 disputes by arbitration as limited by s. 111.70 (4) (cm) 5s., Stats.

Note: Section 111.70 (4) (cm) 5s., Stats., was repealed effective 7-1-09, as to collective bargaining agreements with a term beginning July 1, 2009.

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

ERC 33.03 Content of collective bargaining agreements. A collective bargaining agreement shall have a term of 2 years expiring on June 30 of the odd-numbered year. A collective bargaining agreement may contain provisions to reopen negotiations as to any period of any agreement whose expiration date is consistent with this subsection.

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

ERC 33.04 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.

History: CR 02-037: r. and recr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 33.05 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.

History: CR 02-037: r. and recr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 33.06 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.

History: CR 02-037: r. and recr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 33.07 Stipulation to initiate arbitration. Practice and procedure regard a stipulation to initiate arbitration under this chapter shall be as set forth in s. ERC 32.06.

History: CR 02-037: r. and recr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 33.08 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.

History: CR 02-037: r. and recr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 33.09 Pre-investigation procedure. Under this chapter, pre-investigation practice and procedure shall be as set forth in s. ERC 32.08.

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

ERC 33.10 Qualified economic offer. (1) TIME FOR MAKING A QUALIFIED ECONOMIC OFFER. A municipal employer may submit a qualified economic offer to the exclusive representative at any time after the commencement of negotiations but prior to the close of the investigation.

(2) CONTENTS. A qualified economic offer is a proposal in which the municipal employer obligates itself to comply with the salary and fringe benefit requirements of s. 111.70 (1) (nc), Stats., for the entirety of any collective bargaining agreement.

Note: Section 111.70 (1) (nc), Stats., was repealed effective 7-1-09, as to collective bargaining agreements with a term beginning July 1, 2009.

(3) EXISTENCE. (a) A qualified economic offer exists if the municipal employer submits an offer to the exclusive representative which states the following:

1. For any period of time covered by the proposed collective bargaining agreement, the municipal employer shall maintain all fringe benefits and its percentage contribution toward the cost thereof as required by s. 111.70 (1) (nc), Stats.

2. For each 12 month period or portion which is covered by the agreement, the municipal employer shall provide the increase in salary which s. 111.70 (1) (nc) 1., Stats., requires for the purposes of a qualified economic offer, or may provide the decrease

in salary which s. 111.70 (1) (nc) 2., Stats., allows for the purposes of a qualified economic offer.

Note: Section 111.70 (1) (nc), Stats., was repealed effective 7-1-09, as to collective bargaining agreements with a term beginning July 1, 2009.

(b) At the time it submits a qualified economic offer to the exclusive representative or 60 days prior to the stated expiration date of any existing collective bargaining agreement, whichever is earlier, the municipal employer's treasurer and superintendent or business manager shall provide the exclusive representative with completed commission qualified economic offer calculation Forms A and B. Forms A and B are appendices to this chapter. When completing Forms A and B, the treasurer and superintendent or business manager shall use all available cost and employee complement information and shall attest to the accuracy of the information. If additional cost or employee complement information becomes available, the treasurer and superintendent or business manager shall provide the exclusive representative with revised qualified economic offer calculation Forms A and B.

(4) **PROCEDURE FOLLOWING SUBMISSION.** Except as provided in sub. (8), the existence of a qualified economic offer does not alter the parties' obligation to engage in collective bargaining as defined in s. 111.70 (1) (a), Stats., or the municipal employer's obligation to maintain the dynamic status quo during any contract hiatus.

(5) **IMPLEMENTATION OF A QUALIFIED ECONOMIC OFFER.** (a) After a reasonable period of negotiations and an investigation by the commission or its investigator, if the parties are determined to be deadlocked in their negotiations, the municipal employer may implement its qualified economic offer if no collective bargaining agreement is in effect and it maintains all other economic provisions contained in the predecessor agreement, or, where the parties are negotiating a reopening under an existing agreement, if it maintains all other economic provisions of the existing agreement except as modified only by the terms of the salary and fringe benefit qualified economic offer or as otherwise agreed to by the parties. The municipal employer shall provide the exclusive representative with at least 15 days notice of the exact manner in which the qualified economic offer shall be implemented. If possible, notice of the manner of implementation shall be given before any determination of deadlock.

(b) If the exact percentage of a qualified economic offer's salary increase or decrease is contingent upon fringe benefit costs which are not known at the time of implementation, the municipal employer may only implement the maximum possible percentage salary increase under the offer. Where the municipal employer has implemented the maximum possible percentage salary increase under its qualified economic offer, the municipal employer may retroactively implement the exact salary increase or decrease of the qualified economic offer once fringe benefit costs are known.

(c) The municipal employer may require professional school district employees to reimburse the municipal employer for the difference between the exact implemented salary increase or decrease and any previously implemented increase and for the difference between any implemented increase or decrease and any salary increase received during a contract hiatus. Except as the parties otherwise agree, to complete any reimbursement, the municipal employer shall withhold the prorated amount necessary from each remaining employee paycheck which shall be received prior to expiration of the bargaining agreement or an employee's cessation of employment, whichever occurs first.

(6) **MOTION TO REVIEW IMPLEMENTATION.** Any claim that the salary and fringe benefits have been or shall be implemented in a manner inconsistent with s. 111.70 (1) (nc), Stats., and this chapter shall be filed by the exclusive representative with the commission as a motion to review implementation. A motion to review implementation shall specify the basis for the moving party's claim and the remedy the moving party is requesting the commission to order. Following any necessary hearing and receipt of any necessary written or oral argument, the commission shall issue a written decision

determining whether the municipal employer's proposed or actual implementation is or was consistent with s. 111.70 (1) (nc), Stats., and this chapter. If the commission determines that any implementation was not consistent with s. 111.70 (1) (nc), Stats., and this chapter, the commission shall order the municipal employer to comply with s. 111.70 (1) (nc), Stats., and this chapter, and to take appropriate action including reimbursement to the municipal employer of excess salary payments in the same manner specified in sub. (5) and payment to employees of any monies owed with interest at the rate established by s. 814.04, Stats. The pendency of a motion to review implementation does not bar a municipal employer from implementing its qualified economic offer.

Note: Section 111.70 (1) (nc), Stats., was repealed effective 7-1-09, as to collective bargaining agreements with a term beginning July 1, 2009.

(7) **ADDITIONAL OBLIGATION FOLLOWING IMPLEMENTATION.** Except as provided in sub. (8), the municipal employer's implementation of a qualified economic offer under this section shall not relieve the parties of their mutual obligation to reach agreement and stipulate to agreement on all economic issues under s. 111.70 (4) (cm) 5s., Stats., before any unresolved noneconomic issues are subject to interest arbitration under this chapter.

Note: Section 111.70 (4) (cm) 5s., Stats., was repealed effective 7-1-09, as to collective bargaining agreements with a term beginning July 1, 2009.

(8) **AGREEMENT BY OPERATION OF LAW.** On the 90th day prior to expiration of the period included within the qualified economic offer, if no agreement exists on that day, the parties are deemed to have stipulated to the inclusion in a new or revised collective bargaining agreement of all provisions of any predecessor collective bargaining agreement concerning economic issues, or of all provisions of any existing collective bargaining agreement concerning economic issues if the parties have reopened negotiations under an existing agreement, as modified by the terms of the qualified economic offer and as otherwise modified by the parties. In such a collective bargaining unit, on and after that 90th day, a municipal employer that refuses to bargain collectively with respect to the terms of that stipulation, applicable to the 90-day period prior to expiration of the period included within the qualified economic offer, does not violate s. 111.70 (3) (a) 4., Stats. Any such unilateral implementation during the 90-day period prior to expiration of the period included within a qualified economic offer operates as a full, final and complete settlement of all economic issues between the parties for the period included within the qualified economic offer. The failure of an exclusive representative to recognize the validity of such a lawful qualified economic offer does not affect the obligation of the municipal employer to submit economic issues to arbitration under s. 111.70 (4) (cm) 6., Stats.

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

ERC 33.11 Informal investigation or formal hearing when the municipal employer has submitted a qualified economic offer. Under this chapter, practice and procedure for informal investigation or formal hearing when the municipal employer has submitted a qualified economic offer shall be as set forth in s. ERC 32.09.

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

ERC 33.12 Informal investigation or formal hearing when the municipal employer has not submitted a qualified economic offer. Under this chapter, practice and procedure for informal investigation or formal hearing when the municipal employer has not submitted a qualified economic offer shall be as set forth in s. ERC 32.09.

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

ERC 33.13 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 33.14 or 33.15 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 bar-

gaining 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 33.15 or injunction proceedings referred to in s. ERC 33.22.

(2) CONTENTS REGARDING ECONOMIC ISSUES, TERM OF AGREEMENT, REOPENER PROVISIONS AND SALARY STRUCTURE. (a) If the municipal employer submits a qualified economic offer, final offers shall not contain any economic issues as defined in s. 111.70 (1) (dm), Stats.

Note: Section 111.70 (1) (dm), Stats., was repealed effective 7-1-09, as to collective bargaining agreements with a term beginning July 1, 2009.

(b) Final offers for any collective bargaining agreement shall have a term of 2 years expiring on June 30 of the odd-numbered year.

(c) 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. Parties may agree to reopen negotiations as to any period of any agreement whose expiration date is consistent with this subsection.

(d) Final offers shall not contain a proposal to alter the salary range structure, number of steps, or requirements for attaining a step or assignment of a position to a salary range.

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

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

ERC 33.14 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining. Under this chapter, the 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.

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

ERC 33.15 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal is a mandatory subject of bargaining. Under this chapter, the procedure for initiating 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.

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

ERC 33.16 Procedure for raising objection that a proposal is not subject to interest arbitration. (1) TIME FOR RAISING OBJECTION. After a stipulation is reached under ss. ERC 33.11 and 32.09 (2) or after an agreement is reached by operation of law under s. ERC 33.10 (8) on all economic issues to be included in a new or reopened agreement and prior to close of the investigation of an interest arbitration petition, either party may raise an objection that a proposal is an economic issue not subject to interest arbitration.

(2) FILING AN OBJECTION. An objection that a proposal is an economic issue not subject to interest arbitration shall be filed with the commission as a petition for declaratory ruling under s. 227.41, Stats., and ch. ERC 19. During the pendency of a petition for declaratory ruling, the investigation of the petition for interest arbitration shall not be closed.

(3) PROCEDURE FOLLOWING ISSUANCE OF DECLARATORY RULING. Following the issuance and service of the declaratory ruling, the commission or its investigator shall conduct further investigation or hearing for the purpose of obtaining the final offer of each party before closing the investigation.

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

ERC 33.17 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.

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

ERC 33.18 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.

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

ERC 33.19 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.

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

ERC 33.20 Enforcement of award. Practice and procedure for enforcement of awards issued under this chapter shall be as set forth in s. ERC 32.16.

History: CR 02-037: r. and recr. Register June 2006 No. 606, eff. 7-1-06; CR 10-019: am. Register June 2010 No. 654, eff. 7-1-10.

ERC 33.21 Modification of award. Practice and procedure regarding modification of an award issued under this chapter shall be as set forth in s. ERC 32.17.

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

ERC 33.22 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.

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

ERC 33.23 Report of cost of school district professional employee agreement. (1) WHO MUST FILE. As required by s. 111.70 (4) (cm) 8s., Stats., whenever a municipal employer enters into a collective bargaining agreement affecting school district professional employees, the municipal employer shall calculate and report the total increased cost to the municipal employer of the compensation and fringe benefits provided for by the agreement.

Note: Section 111.70 (4) (cm) 8s., Stats., was repealed effective 7-1-09, as to collective bargaining agreements with a term beginning July 1, 2009.

(2) TIME TO FILE; FORM; FILING. As soon as possible after the effective date of the collective bargaining agreement covering school district professional employees, the municipal employer shall calculate and report the total increased cost to the municipal employer of the compensation and fringe benefits provided for by the agreement. The report shall be in writing and shall provide the information called for on Form D which is an appendix to this chapter. The report 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 report shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the report is filed in paper form, a total of 1 copy of the report shall be included.

(3) SERVICE ON EXCLUSIVE REPRESENTATIVE. The municipal employer shall, at the same time, serve the exclusive representative of the school district professional employees involved with a copy of the report as set forth in s. ERC 10.07.

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

ERC 33.24 Other 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.

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