

## Chapter ERC 16

### ARBITRATION OF MUNICIPAL SECTOR GRIEVANCE DISPUTES

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**Note:** Chapter ERB 16 was renumbered chapter ERC 16 under s. 13.93 (2m) (b) 1., Stats., Register, December, 1994, No. 468; Chapter ERC 16 as it existed on June 30, 2006, was repealed and a new chapter ERC 16 was created, Register June 2006 No. 606, effective July 1, 2006.

**ERC 16.01 Scope.** This chapter governs the general procedure relating to grievance arbitration proceedings and designation of grievance arbitrators under s. 111.70 (4) (c) 2. and (4) (cm) 4., Stats., involving collective bargaining units of municipal employees and for units of supervisory law enforcement or supervisory fire fighter personnel of a municipal employer.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

**ERC 16.02 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 municipal 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.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

**ERC 16.03 Request for commission-employed arbitrator.** (1) FORM, FILING, FILING FEE, SERVICE. 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. The request shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The request is not filed until it and the filing fee established by s. ERC 10.08 (2) have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). If any request for commission-employed arbitrator services concerns issues arising as a result of more than one unrelated event or occurrence, each separate event or occurrence shall be treated as a separate request for which a separate filing fee shall be assessed. The request shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the request is filed in paper form, a total of 1 copy of the request shall be included. The fee may be transmitted to the commission by physical delivery or mail. Unless the request is submitted jointly, the party filing the request shall, at the same time, serve a copy of the request on the other party as set forth in s. ERC 10.07.

(2) CONTENTS. A request for the services of a commission-employed arbitrator shall include all of the following:

(a) A statement of the alleged issues in dispute, or a copy of the grievance and the municipal employer's response to the grievance.

(b) A copy of the collective bargaining agreement in effect.

(c) A request that the commission take one of the following actions:

1. Select and designate a member of the commission or of its staff to act as an arbitrator or as chair of an arbitration board.

2. Supply a panel listing a specified number of commissioners or commission staff members for the parties' use in selecting an arbitrator or chair of an arbitration board.

3. Designate as grievance arbitrator or chair of an arbitration board a particular commissioner or commission staff member jointly requested by the parties, or one of a number of particular commissioners or commission staff members jointly requested by the parties, if available.

(d) The names, addresses and phone numbers of the principal representatives of the parties involved. Fax numbers and e-mail addresses shall be included, if available.

(e) A statement whether the request is being submitted by the exclusive representative, the municipal employer, or both.

(f) The date on which the arbitration request is transmitted to the commission.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

**ERC 16.04 Commission action on request for commission-employed arbitrator.** (1) ACQUIESCENCE; REFUND OF FILING FEE. If the request to initiate arbitration is filed by only one party, the arbitrator shall promptly contact the other party to the dispute to inquire as to its acquiescence to arbitration. If that party asserts that the other party has no right to arbitrate the dispute involved, the arbitrator shall so advise the initiating party, shall cause the filing fee to be returned, and shall not act further on the request. The filing fee is refundable only in the event of the other party's non-acquiescence to arbitration; neither the requesting party's withdrawal of the request for arbitration nor the parties' settlement of the underlying dispute is a basis on which the filing fee shall be refunded.

(2) DESIGNATION OF ARBITRATOR. If arbitration has been jointly initiated or acquiesced in, the commission shall either designate the arbitrator, or submit to the parties a panel of individuals for their consideration in the selection of an arbitrator or arbitration board chair. Parties' requests for panels or parties' joint requests for designation of particular arbitrators may be considered by the commission but shall not be binding on the commission. Panels of commission-employed arbitrators shall be randomly selected from commissioners and staff members available for service at the time the panel is generated.

(3) COMPENSATION OF COMMISSION-EMPLOYED ARBITRATORS. When acting as a grievance arbitrator, a member of the commission or of its staff shall not receive any compensation from the parties in the performance of that function.

(4) ARBITRATOR IMPARTIALITY. The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators. Designated commission-employed arbitrators shall recuse themselves from participation in proceedings in which they are or become in-

capable of rendering an award without evident partiality or the appearance of partiality. Parties have the right to request, on grounds of lack of impartiality, that a commission-employed arbitrator voluntarily recuse himself or herself from participation in a proceeding. The filing of a recusal request does not necessarily require that the arbitrator recuse himself or herself from further participation in the proceeding. Parties dissatisfied with the arbitrator's response to a recusal request have the right to request, on grounds of a lack of impartiality, that the commission remove a commission-employed arbitrator from a proceeding.

**(5) PUBLIC NATURE OF AWARDS WHEN ISSUED.** After issuance to the parties, grievance awards issued by commission-employed arbitrators shall be available for purchase by the public from the commission's Madison office. Copies may also be made available on the commission website and in other commission publications. Grievance awards shall not be made public where to do so would reveal a party's trade secrets. Requests that an award not be made public on trade secret grounds may be filed with the commission-employed arbitrator but shall be acted upon by the commission.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

**ERC 16.05 Proceedings before commission-employed arbitrator.** Proceedings before any commission-employed grievance arbitrator or grievance arbitration board chair, selected through the procedures described in this chapter, including subpoena practice, shall be as provided in ch. 788, Stats. Except as otherwise required by commission rules, proceedings before the commission-employed grievance arbitrator shall also be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission. Hearings conducted by a commission-employed arbitrator shall not be open to the public unless the parties jointly agree otherwise.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

**ERC 16.06 Request for ad hoc arbitrator not employed by the commission. (1) FORM, FILING, SERVICE.** 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 municipal employer or anyone authorized by a collective bargaining agreement to submit disputes to grievance arbitration. The request shall be in writing on a form provided by the commission, or a facsimile of the commission's form. The request for grievance arbitration services is not filed until it has been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The request shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the request is filed in paper form, a total of 1 copy of the request shall be included. Unless the request is submitted jointly, the party filing the request shall, at the same time, serve a copy of the request on the other party as set forth in s. ERC 10.07.

**(2) CONTENTS.** (a) An identification of the grievance or issues in dispute.

(b) A request that the commission take one of the following actions:

1. Select and designate as grievance arbitrator or as chair of an arbitration board a member of the commission's ad hoc roster

of arbitrators, not employed by the commission, described in ch. ERC 40.

2. Supply a panel listing a specified number of members of the commission's ad hoc roster of arbitrators, not employed by the commission, for the parties' use in selecting an arbitrator or chair of an arbitration board.

(c) The names, addresses and phone numbers of the principal representatives of the parties involved. Fax numbers and e-mail addresses shall be included, if available.

(d) A statement whether the request is being submitted by the exclusive representative, the municipal employer or both.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

**ERC 16.07 Commission action on request for ad hoc arbitrator. (1) DESIGNATION OF ARBITRATOR OR ISSUANCE OF PANEL.** In response to a request for ad hoc arbitrator services, the commission shall, as requested, either designate the arbitrator, or submit to the parties a panel of individuals for the parties' consideration in the selection of an arbitrator or arbitration board chair. Arbitrator selection and panel composition shall be as provided in s. ERC 40.06 (3), with arbitrators randomly selected from among the roster members available for service at the time the request is processed. The commission shall supply the parties with copies of the biographical and fee information on file with the commission regarding each arbitrator whose name is supplied to the parties by the commission.

**(2) REQUESTS FOR SUBSTITUTE PANEL OR SUBSTITUTE FOR ARBITRATOR ON PANEL.** The commission shall provide an additional panel or the name of a substitute arbitrator for an arbitrator on a panel only at the joint request of the parties.

**(3) COMPENSATION OF AD HOC ARBITRATORS.** Ad hoc arbitrators shall be compensated by the parties for fees and expenses. The fees and expenses charged by the arbitrator shall not exceed those described in the arbitrator's biographical information and fee statement on file with the commission at the time the arbitrator's name was supplied to the parties by the commission.

**(4) ARBITRATOR IMPARTIALITY.** The commission shall designate only competent, impartial and disinterested persons to act as arbitrators or to be included in a panel of arbitrators.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

**ERC 16.08 Proceedings before ad hoc arbitrator.** Proceedings before any ad hoc grievance arbitrator or grievance arbitration board chair selected through the procedures described in this chapter, including subpoena practice, shall be as provided in ch. 788, Stats. Except as otherwise required by commission rules, proceedings before the ad hoc grievance arbitrator or arbitration board chair shall also be conducted in accordance with the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes as approved and amended from time to time by the National Academy of Arbitrators, American Arbitration Association and Federal Mediation and Conciliation Service. The Code, as amended, is available in electronic form on the commission website and in paper form on request from the commission. Hearings conducted by an ad hoc arbitrator or grievance arbitration board chair shall not be open to the public unless the parties jointly agree otherwise.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.

**ERC 16.09 Ad hoc arbitrator's award and report.** Any ad hoc arbitrator or arbitration board chair designated by the commission or selected by the parties from a panel designated by the commission shall, after the arbitrator has submitted an award to the parties, file a copy of the award with the commission, as

well as a report reflecting a breakdown of fees and expenses, if any. When received by the commission, grievance awards by ad hoc arbitrators shall be available to the public for purchase from the commission's Madison office. Grievance awards shall not be made public if doing so would reveal a party's trade secrets. Re-

quests that an award not be made public on trade secret grounds may be filed with the ad hoc arbitrator but shall be acted on by the commission.

**History:** CR 02-037: cr. Register June 2006 No. 606, eff. 7-1-06.