



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 12-001

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

a. Section 111.70 (4) (d) 3. b., Stats., provides that the employees in the bargaining unit may not be included in a substantially similar collective bargaining unit for a period of one year if a representative is decertified. Why is “at least” used in s. ERC 70.03 (7) (b) 2. when the statute does not include “at least”? This same comment applies to ss. ERC 71.03 (7) (b) 2., 72.03 (7) (b) 2., 73.03 (7) (b) 2., 74.03 (7) (b) 2., and 80.03 (7) (b) 2.

b. Section ERC 70.11 (1) provides that the existing representative is no longer entitled to exclusive representative status as of the date that the results are certified, if no representative is supported by at least 51% of employees eligible to vote. [See also s. ERC 70.03 (7) (b) 1.] Section 111.70 (4) (d) 3. b., Stats., provides that if no representative receives the required number of votes, the current representative is decertified and the employees are not represented, *at the expiration of the collective bargaining agreement*. If employees are subject to an extension of a collective bargaining agreement, why is the representative decertified as of the date that the results are certified?

c. The date of the initial certification elections in s. ERC 72.01 relates to the expiration, termination, modification, or extension of a collective bargaining agreement. Section 9332 of 2011 Wisconsin Act 32 also lists renewal. Should the list in s. ERC 72.01 also mention renewal of a collective bargaining agreement? This same comment applies to s. ERC 74.01.

2. Form, Style and Placement in Administrative Code

a. Chapters ERC 70, 71, and 80 contain rules relating to initial certification elections that occurred in 2011. Is it necessary for the agency to promulgate chs. ERC 70, 71, and 80, now that the elections to which those chapters relate have already occurred?

b. The rule summary should contain all of the headings described in s. 1.02 (2) (a), Manual, including the headings described in s. 1.02 (2) (a) 9. and 13.

c. The proposed rule should be divided into numbered SECTIONS. [s. 1.04, Manual.] Before ch. ERC 70, insert "SECTION 1. ERC 70 to 74 are created to read:". Before ch. ERC 80, insert "SECTION 2. ERC 80 is created to read:".

d. Throughout the proposed rule, references to "two" should be replaced with "2" and references to "four" should be replaced with "4". [s. 1.01 (5), Manual.]

e. In s. ERC 70.02 (1), the agency should consider having a separate section for definitions. This will provide better guidance for the reader who is looking for the definitions. This same comment applies to ss. ERC 71.02 (1), 72.02 (1), 73.02 (1), and 74.02 (1).

f. Section ERC 70.02 (1) (a) provides a definition of "collective bargaining agreement". This should be a separate definition, and not part of the definition of "extension". This same comment applies to ss. ERC 71.02 (1), 72.02 (1), 73.02 (1), and 74.02 (1).

g. The fee schedule in s. ERC 70.03 (4) would be better drafted as a list to eliminate the need to repeat the same language for each fee listed. Also, do not use parentheses to indicate an optional plural form of the word "organizations" in the last sentence. Instead, use the singular form. [s. 1.01 (9) (e), Manual.] These same comments apply to ss. ERC 71.03 (4), 72.03 (4), 73.03 (4), 74.03 (4), and 80.03 (4).

h. In s. ERC 70.03 (6) (f) (intro.), insert "all of" after "including". [s. 1.03 (3), Manual.] This same comment applies to ss. ERC 71.03 (6) (f) (intro.), 72.03 (6) (f) (intro.), 73.03 (6) (f) (intro.), 74.03 (6) (f) (intro.), and 80.03 (6) (f) (intro.).

i. In s. ERC 70.03 (7) (c), the word "will", when used, should be "shall". This same comment applies to ss. ERC 71.03 (7) (c), 72.03 (7) (c), 73.03 (7) (c), 74.03 (7) (c), and 80.03 (7) (c).

j. Delete the par. (a) and title in s. ERC 70.07 (4). Subdividing into paragraphs is improper form if there is only one paragraph. [s. 1.03 (1), Manual.] This same comment applies to ss. ERC 71.07 (4), 72.07 (4), 73.07 (4), 74.07 (4), and 80.07 (4).

k. In s. ERC 71.07 (4), "(4) Challenge of voters." is repeated twice.

l. In s. ERC 73.03 (7) (b), insert a "1." after the paragraph title.

m. In s. ERC 73.11 (2), the “2” should be enclosed in parentheses. [s. 1.03 (2) (c), Manual.]

n. The effective date section should be labeled as SECTION 3. [s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the introductory clause, “ERC 70-74” should be replaced with “ERC 70 to 74”. [ss. 1.01 (9) (d) and 1.07 (2), Manual.]

b. Section 9332 of 2011 Wisconsin Act 32 should be included in the list of statutes interpreted in the rule summary. This nonstatutory provision is cited in ss. ERC 72.01 and 74.01.

c. Throughout the proposed rule, “Sec.” should be replaced with “s.” [s. 1.07 (2), Manual.]

d. In s. ERC 70.03 (2), “s. ERC 70.03 (4)” should be replaced with “sub. (4)”. [s. 1.07 (2), Manual.] A similar comment applies to ss. ERC 71.03 (2), 72.03 (2), 73.03 (2), 74.03 (2), and 80.03 (2).

e. In s. ERC 70.03 (2), the reference to “sub. (3)” in the second-to-last sentence should be “sub. (5)”. This same comment applies to ss. ERC 71.03 (2), 72.03 (2), 73.03 (2), 74.03 (2), and 80.03 (2).

f. In s. ERC 70.04, “ss. ERC 70.03 (7) (b) and (c)” should be replaced with “s. ERC 70.03 (7) (b) and (c)”. [s. 1.07 (2), Manual.] A similar comment applies to ss. ERC 71.04, 72.04, 73.04, 74.04, and 80.04.

g. In s. ERC 70.05 (1), the reference to s. ERC 70.03 should be more specifically to s. ERC 70.03 (3). A similar comment applies to ss. ERC 71.05 (1), 72.05 (1), 73.05 (1), 74.05 (1), and 80.05 (1).

h. In s. ERC 71.03 (7) (b) 2., the reference should be to “subd. 1.”, not “sub. (b) 1.” [s. 1.07 (2), Manual.] This same comment applies to s. ERC 73.03 (7) (b) 2.

i. In s. ERC 72.03 (7) (b) 1., “sub. par. (7) (a)” should be “par. (a)”. [s. 1.07 (2), Manual.] This same comment applies to s. ERC 74.03 (7) (b) 1.

j. In s. ERC 72.03 (7) (b) 2., the reference to “subpar. (7) (b)” should be to “par. (a)”. [s. 1.07 (2), Manual.] A similar comment applies to s. ERC 74.03 (7) (b) 2.

k. In s. ERC 80.04, “s” should be inserted before “. ERC 80.03 (7) (a)”. [s. 1.07 (2), Manual.]

l. In the fiscal estimate section, “ERC 70-74” should be replaced with “chs. ERC 70 to 74”. [s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Throughout the proposed rule, there are several instances in which periods and commas are missing or misplaced. For example, a comma should be inserted after “September 22, 2011” in s. ERC 70.01 and a period should be inserted after the title of s. ERC 70.03.

b. In the rule summary, “201-500 eligible voters” should be replaced with “251-500 eligible voters” in the description of the fee structure.

c. In s. ERC 70.01, delete the period after the word “cast” in the second-to-last sentence.

d. In s. ERC 70.01, “outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues” should be replaced with “outcome-determinative issues, including which ballots should be counted”. This same comment applies to ss. ERC 71.01, 72.01, 73.01, 74.01, and 80.01.

e. In s. ERC 70.02 (1), delete “shall mean” and insert “means”. [s. 1.01 (7) (c), Manual.] This same comment applies to ss. ERC 71.02 (1), 72.02 (1), 73.02 (1), and 74.02 (1).

f. In s. ERC 70.02 (4) and (5), the agency should specify what “it” refers to. This same comment applies to ss. ERC 71.02 (4) and (5), 72.02 (4) and (5), 73.02 (4) and (5), 74.02 (4) and (5), and 80.02 (3) and (4).

g. In s. ERC 70.03 (2), delete “and unless” on the third and fourth lines. A similar comment applies to ss. ERC 72.03 (2) and 73.03 (2).

h. In s. ERC 70.07 (1), it appears that “by mail” should be inserted after “on-site,” to be consistent with similar text in chs. ERC 71 to 74 and 80.

i. In s. ERC 70.07 (5), the agency should specify how telephonic votes will be counted. Only the counting of physical ballots is currently specified. This same comment applies to ss. ERC 71.07 (5), 72.07 (5), 73.07 (5), 74.07 (5), and 80.07 (5).

j. In s. ERC 70.07 (6), should “eligible voters” be replaced with “employees eligible to vote”? This same comment applies to ss. ERC 71.07 (6), 72.07 (6), 73.07 (6), 74.07 (6), and 80.07 (6).

k. In s. ERC 70.08, delete the first use of the word “and”. This same comments applies to ss. ERC 71.08, 72.08, 73.08, 74.08, and 80.08.

l. In s. ERC 70.09 (1), a party may file “objections to the conduct of the election or conduct affecting the results of the election”. It would be helpful to clarify how, if at all, these two concepts differ from each other. This same comment applies to ss. ERC 71.09 (1), 72.09 (1), 73.09 (1), 74.09 (1), and 80.09 (1).

m. Section ERC 70.10 is titled “Commission action on challenges or objections”. Are challenges and objections different? This same comment applies to ss. ERC 71.10, 72.10, 73.10, 74.10, and 80.10.

n. In s. ERC 70.10 (1), “which” should be replaced with “that”. This same comment applies to ss. ERC 71.10 (1), 72.10 (1), 73.10 (1), 74.10 (1), and 80.10 (1).

o. In s. ERC 71.11 (1), the text at the beginning of the subsection should not be in bold text.

p. In s. ERC 72.01, it appears that, in some instances, the “their” before “collective bargaining agreement” should be replaced with “a”. This same comment applies to s. ERC 74.01.

q. In s. ERC 72.02 (1) (b), delete “shall include” and insert “includes”. [s. 1.01 (7) (c), Manual.] This same comment applies to s. ERC 74.02 (1) (b).

r. In s. ERC 72.03 (1), “only” should be removed. This same comment applies to ss. ERC 73.03 (1) and 80.03 (1).

s. In s. ERC 72.05 (1), it appears that “last 4 digits of the” should be inserted before “social security numbers” to be consistent with similar text in chs. ERC 70, 71, 73, 74, and 80.