

included in the new or amended collective bargaining agreement. The investigator shall also obtain each party's written position regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the commission. At the same time the parties shall exchange copies of their final offers, and shall retain copies of the stipulation of agreed upon matters. If at 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 or proposals relating to non-mandatory subjects of bargaining, the commission agent shall serve a notice in writing upon the parties indicating the investigation is closed. The commission or its agent may not close the investigation until the commission or its agent is satisfied that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer and that both final offers conform to the requirements of s. ERB 32.10 (2). Following the close of the investigation the commission agent shall report the findings to the commission, either orally or in writing, as the commission may direct, and at the same time transmit to the commission the final offers and the stipulation received from the parties. The commission agent shall also notify the commission as to whether both parties have agreed in writing to authorize the commission to include one or more nonresidents of Wisconsin on the arbitration panel to be submitted in the matter.

(3) **FORMAL HEARING PRACTICE AND PROCEDURE.** The commission or its agent shall set a date, time and place for the conduct of the formal hearing and notify the parties by formal notice. The commission or its agent may adjourn or continue the hearing. Hearing practice and procedure shall be as set forth in ch. ERB 10. Prior to the close of the hearing the commission or its agent shall obtain and exchange the final offers, stipulation of agreed upon items and written positions concerning non-resident arbitrators in the manner set forth in sub. (2).

History: Cr. Register, October, 1986, No. 370, eff. 11-1-86.

ERB 32.10 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 by the other party to the inclusion of the proposals in such 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. ERB 32.12 or injunction proceedings referred to in s. ERB 32.18 (1).

(2) **CONTENTS REGARDING TERM OF AGREEMENT AND REOPENER PROVISIONS.** Except for the initial collective bargaining agreement between the parties affecting the employes 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 may 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 negoti-

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ations during the term of an existing agreement must 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.

History: Cr. Register, October, 1986, No. 370, eff. 11-1-86; reprinted to restore missing material in (2), Register, May, 1987, No. 377.

ERB 32.11 Procedure for raising objection that proposals relate to non-mandatory subjects of bargaining. (1) **TIME FOR RAISING OBJECTION.** Any objection that a proposal relates to a non-mandatory subject of bargaining may be raised at any time after the commencement of negotiations, but prior to the close of the informal investigation or formal hearing.

(a) *During negotiations, mediation or investigation.* Should either party, during negotiations or during commission mediation or investigation raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, either party may commence a declaratory ruling before the commission pursuant to s. 111.70 (4) (b), Stats., and ch. ERB 18.

(b) *At time of call for final offers.* Should either party, at such time as the commission or its agent calls for and obtains and exchanges the proposed final offers of the parties, or within a reasonable time thereafter as determined by the commission or its investigator, raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, the offers shall not be deemed to be final offers. The commission or its agent shall not close investigation or hearing but shall direct the objecting party to reduce the objection to writing, identifying the proposal or proposals claimed to involve a non-mandatory subject of bargaining and the basis for the claim. Such objection shall be signed and dated by a duly authorized representative of the objecting party, and copies of the objection shall, on the same date, be served on the other party, as well as the commission or its agent conducting the investigation or hearing, in the manner and within a reasonable time as determined by the commission or its investigator.

(2) **EFFECT OF BARGAINING ON PERMISSIVE SUBJECTS.** Bargaining with regard to permissive subjects of bargaining during negotiations and prior to the close of the investigation does not constitute a waiver of the right to file an objection as set forth in sub. (1) (b).

History: Cr. Register, October, 1986, No. 370, eff. 11-1-86.

ERB 32.12 Petition or stipulation to initiate a declaratory ruling proceeding to determine whether a proposal or proposals relate to mandatory subjects of bargaining. (1) **WHO MAY FILE.** Either party may file a petition, or both of the parties may file a stipulation, to initiate such a declaratory ruling proceeding before the commission.

(2) **WHERE TO FILE.** A petition or stipulation shall be filed with the commission, and if a petition is filed a copy shall be served on the other party at the same time.

(3) **WHEN TO FILE.** A petition or stipulation may be filed with the commission during negotiations, mediation or investigation. If a petition or Register, May, 1987, No. 377

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stipulation is filed after the investigator calls for final offers, the petition or stipulation for declaratory ruling must be filed within 10 days following the service on the commission or its investigator of the written objec-

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