

STATE OF WISCONSIN

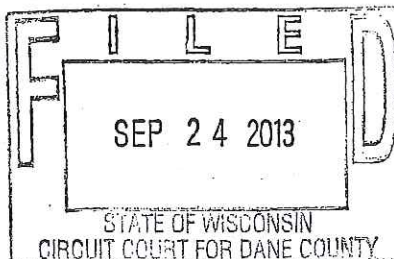
CIRCUIT COURT
Branch 10

DANE COUNTY

Ad

MADISON TEACHERS INC., et al.,

Plaintiffs,



Case No. 11-CV-3774

SCOTT WALKER, et al.,

Defendants.

NOTICE OF BRIEFING SCHEDULE
MOTION TO HOLD DEFENDANTS JAMES R. SCOTT AND
RODNEY G. PASCH IN CONTEMPT OF COURT
AND FOR REMEDIAL SANCTIONS

Notice is hereby given that briefs shall be served upon opposing counsel and filed with the court (mail to Room 7103, Dane County Courthouse, 215 S. Hamilton Street, Madison WI 53703) on or before the following dates:

Response/brief may be filed **not later than October 4, 2013.**

Reply/brief may be filed **not later than October 11, 2013.**

Hearing, if necessary, will be held on October 18, 2013 at 1:30 pm.

This notice shall be served with the motion and notice of hearing.

Dated: September 24, 2013.

AMY WAGNER, CLERK
CIRCUIT COURT BRANCH 10

RECEIVED

SEP 24 2013

WI DEPT OF JUSTICE
DIVISION OF LEGAL SERVICES

ATTORNEYS AT LAW

HAWKS QUINDEL, S.C.

222 East Erie Street, Suite 210
P.O. Box 442
Milwaukee, WI 53201-0442

MILWAUKEE OFFICE

SHAREHOLDERS

Katherine L. Charlton
Timothy E. Hawks
Summer H. Murshid
Barbara Zack Quindel
Israel Ramon
Richard Saks
Daniel R. Schoshinski
Amy L. Shapiro
B. Michele Sumara

414-271-8650
Fax 414-271-8442
www.hq-law.com
Offices also in Madison

EMERITUS

Richard Perry

ASSOCIATES

Larry A. Johnson
Lyris Medrano
Kashoua Yang

OF COUNSEL TO FIRM

Walter F. Kelly
Robert J. Lemer
Howard N. Myers
Vicki Schaut
Jeffrey P. Sweetland

HAND DELIVERED BY MESSENGER

September 24, 2013

Honorable Juan B. Colás
Dane County Courthouse, Room 703
215 South Hamilton St.
Madison, WI 53703-3290

**Re: *MTI et al. v. Walker et al.*
Case No. 11CV3774
Motion for Contempt of Court**

Dear Judge Colás:

Please find enclosed for filing the enclosed: Notice of Motion, Motion To Hold Defendants James R. Scott and Rodney G. Pasch In Contempt of Court and For Remedial Sanctions, Brief and Affidavits supporting the motion. By copy of this letter counsel of record have been served these documents.

Kindly have your clerk date stamp copies of these documents and return the copies to our messenger. Thank you.

Very truly yours,

HAWKS QUINDEL, S.C.
Attorneys for Movants

By



Timothy E. Hawks, SBN 1005646
thawks@hq-law.com

Aaron N. Halstead, SBN 1001507
Hawks Quindel, SC
PO Box 2155

Madison, WI 53701-2155
ahalstead@hq-law.com

Stephen G. Pieroni, SBN 1015275
Wisconsin Education Association Council
PO Box 8003
Madison, WI 53708-8003
pieronis@weac.org

Enc.

Cc:

Lester A. Pines

A. Nicol Padway

Steven C. Kilpatrick

STATE OF WISCONSIN

CIRCUIT COURT
Branch 10

DANE COUNTY

Madison Teachers, Inc. *et al.*,
Plaintiffs,

v.

Case No. 11CV3774

Scott Walker, *et al.*,
Defendants.

NOTICE OF MOTION


TO: M. Nicol Padway
Steven C. Kilpatrick

PLEASE TAKE NOTICE that the attached Motion To Hold Defendants James R. Scott and Rodney G. Pasch In Contempt of Court and For Remedial Sanctions will be brought on by the Movants for a hearing before the Honorable Juan B. Colás at the Dane County Courthouse, Room 703, 215 South Hamilton St., Madison, Wisconsin on the 18th day of ~~September~~ ^{October}, 2013 at 1:30 p.m. or as soon thereafter as the parties may be heard.

September 24, 2013

Respectfully submitted,
Attorneys for Movants

By:


Timothy E. Hawks, SBN 1005646
Hawks Quindel, S.C.
PO Box 442
Milwaukee, WI 53201-0442
414-271-8650
414-271-8442 Fax
thawks@hq-law.com

Stephen G. Pieroni, SBN 1015275
Wisconsin Education Association Council
PO Box 8003
Madison, WI 53708-8003

608-276-7711
866-958-1817 Fax
pieronis@weac.org

Aaron N. Halstead, SBN 1001507
Hawks Quindel, S.C.
PO Box 2155
Madison, WI 53701-2155
608-257-0040
608-256-0236 Fax
ahalstead@hq-law.com

Lester A. Pines, SBN 01016543
Cullen Weston Pines & Bach LLP
122 West Washington Avenue, Suite 900
Madison, Wisconsin 53703
(608) 251-0101
(608) 251-2883 Fax
pines@cwpb.com
Attorneys for Movant
Kenosha Education Association

STATE OF WISCONSIN

CIRCUIT COURT
Branch 10

DANE COUNTY

Madison Teachers, Inc. *et al.*,
Plaintiffs,

v.

Case No. 11CV3774

Scott Walker, *et al.*,
Defendants.

**MOTION TO HOLD DEFENDANTS JAMES R. SCOTT AND RODNEY G. PASCH
IN CONTEMPT OF COURT AND FOR REMEDIAL SANCTIONS**

Pursuant to Wis. Stat. §785.03(1)(a), Movants, Wisconsin Education Association Council; AFT-Wisconsin, AFL-CIO; SEIU Healthcare Wisconsin, CTW, CLC; Wisconsin Federation of Nurses and Health Care Professionals, AFT, AFL-CIO; District Council 40, AFSCME, AFL-CIO; and Kenosha Education Association, by their attorneys, hereby move the Court for an order holding the Defendants Scott and Pasch in contempt of court and for remedial sanctions for their violation of this Court's Decisions and Orders of September 14, 2012 and September 17, 2013.

As grounds for this motion, Movants represent as follows:

1. Wisconsin Education Association Council; AFT-Wisconsin, AFL-CIO; SEIU Healthcare Wisconsin, CTW, CLC; Wisconsin Federation of Nurses and Health Care Professionals, AFT, AFL-CIO; District Council 40, AFSCME, AFL-CIO; and Kenosha Education Association and, are all labor unions which are either certified collective bargaining representatives, pursuant to Wis. Stat. §111.70 *et seq.*, or which have local unions or affiliated unions which are such certified collective bargaining agents.

2. On September 14, 2012, this Court issued a Decision and Order declaring that Wis. Stat. §§66.0506, 118.245, 111.70(1)(f), 111.70(3g), 111.70(4)(d)3 and 111.70(4)(mb) violate the Wisconsin and United States Constitutions and are null and void.

3. On September 17, 2013, this Court issued a Decision and Order stating unequivocally that Defendants are “[p]lainly” bound by the September 14, 2012 Decision and Order and “may not enforce . . . under any circumstances, against anyone” the statutes found unconstitutional by the September 14, 2012 Decision and Order.

4. That a judgment declaring a statute facially unconstitutional may not be enforced against anyone, under any circumstance was known to Defendants, including, but not limited to Defendants Scott and Pasch, Commissioners of the Wisconsin Employment Relations Commission (WERC), who are defendants in their official capacity, because that has been the law in Wisconsin since at least 1998. *See State v. Konrath*, 218 Wis.2d 290, 305 n.13, 577 N.W.2d 601 (1998).

5. On July 9, 2013, with the approval of Defendant Scott Walker, in his official capacity, Defendants promulgated emergency administrative rules to govern the activities of the WERC in its administration of annual certification elections, thereby implementing and enforcing Wis. Stat. §111.70(4)(d)3.

6. Defendant Scott, as chairperson of the WERC, is the administrator and supervisor of the activities of the WERC staff who, among other things, implements and enforces the WERC’s administrative rules.

7. Subsequently, under Defendant Scott’s direction, the WERC implemented the July 9, 2013 emergency rules and has been enforcing them against Movants and their affiliated bargaining units. Such conduct by Defendants is continuing despite this Court’s declaration in

the September 14, 2012 Decision and Order that Wis. Stat. §111.70(4)(d)3, which requires annual recertification elections, is unconstitutional, null and void.

8. Pursuant to the WERC emergency rules, Defendants Scott and Pasch are requiring Movants' affiliated bargaining units to undergo annual certification elections the first of which Defendants Scott and Pasch have scheduled for November 1-21, 2013, pursuant to Wis. Stat. §111.70(4)(d)3.

9. On implementing the WERC emergency rules, under the direction of Defendants Scott and Pasch, the WERC required Movants' affiliated bargaining units representing school district employees to have filed petitions for annual certification elections and paid fees to cover such elections by August 30, 2013 or be decertified, pursuant to Wis. Stat. §111.70(4)(d)3.

10. By enforcing Wis. Stat. §111.70(4)(d)3, knowing that this Court declared the statute to be unconstitutional, null and void, and knowing that the Court's declaratory judgment prohibited them from enforcing Wis. Stat. §111.70(4)(d)3 against anyone, including nonparties, Defendants Scott and Pasch are in contempt of this Court's September 14, 2012 and September 17, 2013 Orders.

11. Because the actions of Defendants Scott and Pasch are in contempt of the Court's Orders of September 14, 2012 and September 17, 2013, and because the contemptuous conduct of the Defendants Scott and Pasch directly affected Movants and their affiliated labor organizations, in that they subject Movants to rules enforcing a statute that had been declared unconstitutional, Movants are persons aggrieved by Defendants' continuing contempt of court, within the meaning of Wis. Stat. §785.03(1)(a).

12. To remedy Defendants' continuing contempt of court, Movants request that the Court find Scott and Pasch in contempt of its September 14, 2012 order and order that

Defendants Scott and Pasch do the following pursuant to Wis. Stat. §785.04(1), to remedy their contempt:


- A. Cease and desist from their refusal to comply with this Court's Decisions and Orders of September 14, 2012 and September 17, 2013;
- B. Cease and desist from implementing the emergency rules for administration of annual certification elections, set forth in Wis. Stat. §111.70(4)(d)3;
- C. Inform all the public and all interested parties, including all "municipal employers" as defined by Wis. Stat. § 111.70(1)(j) that ECR 70.03 will not be implemented or enforced;
- D. Take no further steps of any kind to implement ECR 70.03;
- E. Direct that all fees assessed and received by the Wisconsin Employment Relations Commission since July 3, 2013 from any entity as payment for any annual certification election petitions submitted pursuant to ERC 70.03 and its election fees schedule, be refunded forthwith to that entity;
- F. Personally pay a forfeiture not to exceed \$2,000 for each day that they fail to comply with the Court's remedial order on this motion; and,
- G. Personally pay to the Movants the reasonable attorneys' fees and costs that they have incurred in prosecuting this Motion;
- H. Comply with any further relief the Court deems appropriate to achieve full compliance by them with this Court's Decision and Order of September 14, 2012.

The grounds for this motion are more fully set forth in Movants' Brief.

September 24, 2013


Respectfully submitted,
Attorneys for Movants

By:


Timothy E. Hawks, SBN 1005646
Hawks Quindel, S.C.
PO Box 442
Milwaukee, WI 53201-0442
414-271-8650
414-271-8442 Fax
thawks@hq-law.com

Stephen G. Pieroni, SBN 1015275
Wisconsin Education Association Council
PO Box 8003
Madison, WI 53708-8003
608-276-7711
866-958-1817 Fax
pieronis@weac.org

Aaron N. Halstead, SBN 1001507
Hawks Quindel, S.C.
PO Box 2155
Madison, WI 53701-2155
608-257-0040
608-256-0236 Fax
ahalstead@hq-law.com


Lester A. Pines, SBN 01016543
Cullen Weston Pines & Bach LLP
122 West Washington Avenue, Suite 900
Madison, Wisconsin 53703
(608) 251-0101
(608) 251-2883 Fax
pines@cwpb.com
Attorneys for Movant
Kenosha Education Association

Madison Teachers, Inc. *et al.*,
Plaintiffs,

v.

Case No. 11CV3774

Scott Walker, *et al.*,
Defendants.

**BRIEF IN SUPPORT OF THE MOTION TO HOLD DEFENDANTS JAMES R. SCOTT
AND RODNEY G. PASCH IN CONTEMPT OF COURT
AND FOR REMEDIAL SANCTIONS**

INTRODUCTION

Pursuant to Wis. Stat. § 785.03(1)(a), the aggrieved persons, the Movants Wisconsin Education Association Council; AFT-Wisconsin, AFL-CIO; SEIU Healthcare Wisconsin, CTW, CLC; Wisconsin Federation of Nurses and Health Care Professionals, AFT, AFL-CIO; District Council 40, AFSCME, AFL-CIO; and Kenosha Education Association have moved the Court for an order holding James R. Scott (Scott) and Rodney G. Pasch (Pasch) in contempt for their continuing violations of the Court's Decision and Order of September 14, 2012.

There can be no doubt that, Scott and Pasch have adopted and are enforcing emergency administrative rule, ECR 70.03 *et seq* to implement the annual certification election requirement found in Wis. Stat. §111.70(4)(d)3 that the Court declared in its September 14, 2012 Decision & Order was unconstitutional. Scott and Pasch, named defendants in this case, were fully aware of the contents of the Court's September 14, 2012 Order. And, prior to the implementation of ECR 70.03 by Scott and Pasch, they knew that under well-established Wisconsin law when a statute that has been declared facially unconstitutional, as Wis. Stat. §111.70(4)(d)3 was, it may not be

enforced against anyone. Nevertheless, Scott and Pasch, even after the Court in its September 17, 2013 decision cited that principle of law to them, have persisted in enforcing Wis. Stat. §111.70(4)(d)3 through ECR 70.03 against the Movants, their affiliated local unions and other unions which are not parties to this litigation.

On September 20, 2013, Movants, aggrieved persons under Wis. Stat. § § 785.03(1)(a), served notice on Scott and Pasch of their intent to file this motion and provided them with the opportunity to cure their contempt of the Court's September 14, 2012 Order. They refused to do so, claiming that they will be conducting re-certification elections merely because the unions who have petitioned for such elections want them to do so. (Hawks Aff. Exhibit B.)

Scott and Pasch must not be allowed to continue their contemptuous course of conduct. They are officials who took an oath to defend and uphold the Wisconsin and United States Constitutions. Their contemptuous behavior is unprecedented. It displays an utter disrespect and contempt for the judiciary, in general, and the Court and its September 14, 2012 ruling, in particular. The Court cannot allow such contemptuous behavior to stand. Scott and Pasch must be held in contempt of court.

After holding them in contempt, as a remedy that will allow them to purge their contempt, the Court should order Scott and Pasch to forthwith and without delay do the following:

- Cease and desist from their refusal to comply with this Court's Decisions and Orders of September 14, 2012 and September 17, 2013;
- Cease and desist from implementing the emergency rules for administration of annual certification elections, set forth in Wis. Stat. §111.70(4)(d)3;

- Inform all the public and all interested parties, including all “municipal employers” as defined by Wis. Stat. § 111.70(1)(j) that ECR 70.03 will not be implemented or enforced;
- Take no further steps of any kind to implement ECR 70.03;
- Direct that all fees assessed and received by the Wisconsin Employment Relations Commission since July 3, 2013 from any entity as payment for any annual certification election petitions submitted pursuant to ERC 70.03 and its election fees schedule, be refunded forthwith to that entity;
- Personally pay a forfeiture not to exceed \$2,000 for each day that they fail to comply with the Court’s remedial order on this motion; and,
- Personally pay to the Movants the reasonable attorneys’ fees and costs that they have incurred in prosecuting this Motion;
- Comply with any further relief the Court deems appropriate to achieve full compliance by them with this Court’s Decision and Order of September 14, 2012.

This brief will fully explain why Scott and Pasch are in contempt and why the Court should forthwith issue the Movants proposed order.

ARGUMENT

A. Scott and Pasch are in Contempt of this Court’s Orders of September 14, 2012 and September 17, 2013

On September 14, 2012, this Court issued a Decision and Order declaring that Wis. Stat. §§66.0506, 118.245, 111.70(1)(f), 111.70(3g), 111.70(4)(d)3 and 111.70(4)(mb) violate the Wisconsin and United States Constitutions and are null and void. On September 17, 2013, this Court issued a Decision and Order stating unequivocally that Scott and Pasch are “[p]lainly” bound by the September 14, 2012 Decision and Order and “may not enforce . . . under any

circumstances, against anyone” the statutes found unconstitutional by the September 14, 2012 Decision and Order.

Despite this Court’s Orders invalidating Wis. Stat. §111.70(4)(d)3, Scott and Pasch have implemented and are enforcing the statute against unions which were not parties to this litigation, including Movants and their affiliated local unions, and requiring that they undergo annual certification elections. Implementing Wis. Stat. §111.70(4)(d)3, on July 13, 2013, Scott and Pasch scheduled annual certification elections for school district unions for November 1-21, 2013. (Hawks aff., Para. 2)

Also on July 13, 2013, Defendant Walker approved and Scott and Pasch and issued emergency administrative rules for to WERC administer recertification elections in November 2013. (Hawks aff., Ex. A) Pursuant to the ERC 70.03 petitions for the November school district elections were to be filed with the WERC before August 30, 2013 or the union that failed to do so would be automatically decertified. The ERC 70.03 also required that the election petitions must have been accompanied by full payment of election fees, which were assessed according to a schedule determined by the number of members in the petitioning bargaining unit. The WERC rejected petitions that it determined were untimely and also rejected any petition that was accompanied by fees that the WERC determined were insufficient.

By adopting and implementing the emergency rules, scheduling certification elections, and enforcing ERC 70.03, et seq., against Movants and other nonparties, Scott and Pasch are acting in direct contravention of this Court’s clear orders striking down Wis. Stat. §111.70(4)(d)3 as unconstitutional, thus making it null and void *ab initio*.. Pursuant to Wis. Stat. §785.01(1)(b), Scott and Pasch’s behavior can only be characterized as the intentional “[d]isobedience,

resistance or obstruction of the authority, process or order of a court.”¹ There is no other possible explanation for their behavior.²

B. Movants are Aggrieved Persons Entitled to Relief From Scott and Pasch’ Continuing Contempt of Court

Chapter 785 expressly allows “[a] person aggrieved by a contempt of court” to seek remedial sanctions for contempt of court. Wis. Stat. §785.03(1). Nonparties have standing as persons aggrieved to seek judicial relief. In 1955, the Wisconsin Supreme Court recognized that an aggrieved person, within the meaning of Chapter 40, is “[a] person is aggrieved by a judgment whenever it operates on his rights of property or bears directly on his interest.” *Town of Greenfield v. Joint County Sch. Committee*, 271 Wis. 442, 447, 73 N.W.2d 580, 583 (1955). That court stated that “‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right or the imposition of a burden or obligation.” *Id.* at 447-448, 73 N.W.2d 583 (citation omitted). *See also*, *City of Oshkosh v. Winnebago County Sch. Comm.*, 9 Wis. 2d 32, 36-37, 100 N.W.2d 374, 376 (1960) (City of Oshkosh has a legal interest in the determination of its school district boundaries and is a person aggrieved under Ch. 40). In the context of review under Chapter 227, the Court of Appeals has also found that an aggrieved person may be a nonparty. *Wisconsin Power & Light Co. v. Public Serv. Comm’n*, 2009 WI App 164, ¶19 n.8,

¹ In fact, Wisconsin and federal courts have not required that such conduct be willful to be construed as contempt of court: The absence of willfulness does not relieve from civil contempt. “Civil contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance. *Since the purpose is remedial, it matters not with what the intent the defendant did the prohibited act.* *Id.* at ¶19 (quoting *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949) (emphasis in original)). Interpreting intentional conduct outside of any willfulness component thereby furthers the “underlying purpose of contempt,” which “is to uphold the authority and dignity of the Court. *Id.* at ¶20.

² A spokesperson for Scott and Pasch, the WERC Chief Legal Counsel, Peter Davis, publicly stated that the Circuit Court’s failure to issue an injunction allows Scott and Pasch to implement the statutes that the Court declared in its September 14, 2012 Decision and Order to be unconstitutional. See http://host.madison.com/wsj/news/local/govt-and-politics/both-sides-claim-win-in-act-ruling-state-vows-to/article_e6e2983d-7227-5851-8220-548b833e1c76.html (last visited 9/23/13) A copy of the newspaper article in which Davis is quoted is attached to the Affidavit of Lester A. Pines as Exhibit 1. Davis’ comment is contrary to the law in this state as to the effect of declaratory judgments.

322 Wis. 2d 501, 777 N.W.2d 106 (“the definition of ‘person aggrieved’ does not require the person to have been a party before the administrative agency”).

Movants Wisconsin Education Association Council; AFT-Wisconsin, AFL-CIO; SEIU Healthcare Wisconsin, CTW, CLC; Wisconsin Federation of Nurses and Health Care Professionals, AFT, AFL-CIO; District Council 40, AFSCME, AFL-CIO; and Kenosha Education Association are local unions or statewide labor organizations with affiliated local unions that are the exclusive collective bargaining representatives of certain employees. Movants are not parties to this lawsuit; however, Movants or their affiliated local unions are subject to the annual certification elections, which are imposed by Wis. Stat. §111.70(4)(d)3, as now implemented by Scott and Pasch and the WERC. Accordingly, Movants or their affiliated local unions are subject to and aggrieved by Scott and Pasch’ conduct enforcing Wis. Stat. §111.70(4)(d)3, adopting the emergency rules, scheduling the November 2013 certification elections, requiring election petitions filed by August 30, 2013, requiring election fees paid by August 30, 2013, and decertifying those unions which the WERC found to have filed petitions inconsistent with the emergency administrative rule procedures, all in direct contravention of this Court’s orders of September 14, 2012 and September 17, 2013.

Consistent with ECR 70.03 *et seq*, the WERC received election petitions from certain Movants or their affiliated local unions representing approximately 70,000 employees. Further, consistent with the WERC fee schedule, the WERC received over \$100,000 in fees accompanying the certification election petitions. The WERC rejected any untimely petition and any petition which was accompanied by election fees that the WERC determined were insufficient. As a result, Movants are entitled to sanctions that will terminate Scott and Pasch’ continuing contempt of court.

As to the Kenosha Education Association (KEA), there can be no doubt whatever that it is an “aggrieved person.” Under Wis. Stat. § 785.03(1)(a). The KEA did not submit a petition for a recertification pursuant to ECR 70.03 *et seq.* Consequently, Peter Davis, the Chief Legal Counsel, of the WERC informed the Kenosha Unified School District (KUSD) that the KEA, having failed to have submitted a petition for a recertification election by August 30, 2013 was “decertified.” Specifically, he stated in an email to KUSD officials:

I have advised all who have inquired that per WERC administrative rules, **the absence of a timely filed petition=loss of status as the collective bargaining representative as of 4:31pm August 30.** Many of those inquiries have been telephonic but I'll check my emails and if I find any such inquiries I'll send them to you.

I agree that the District can, if it wishes, confer with the KEA (and with any other entities/individuals) about any matters. **I'll note the obvious caveat=the WERC commissioners make the law=not me.**³

Affidavit of Lester A. Pines, Exhibit 2, p. 1 (emphasis added)

Decertification most certainly denied the KEA of a “property right” and it certainly imposed a “burden” on the KEA. KEA was decertified for its failure to comply with ECR 70.03 which Scott and Pasch proposed, which was approved by the Defendant Scott Walker on July 3, 2013 and which was used by Scott and Pasch to implement and enforce Wis. Stat. §111.70(4)(d)3, one of the statutes that the Court declared to be unconstitutional in its September 14, 2012 Decision & Order. (A copy of ERC 70.03 is attached to the Affidavit of Lester A. Pines as Exhibit 3).

C. Remedial Sanctions Are Appropriate to Terminate Scott and Pasch’ Continuing Contempt of Court

Wisconsin courts have statutory power to order remedial sanctions for contempt of court, pursuant to Chapter 785. This specific statutory power is also cognizant of the inherent power of the judiciary to enforce its own orders. The Supreme Court long ago recognized that Wisconsin

³ Davis’ statement provides an insight into how Scott and Pasch operate: they believe that they make the law. So it is easy to understand why they would act in contempt of a “mere” circuit court judge in Dane County.

courts have such “inherent power to protect its own decrees,” consistent with state and federal jurisprudence. *Upper Lakes Shipping, Ltd. v Seafarers’ Int’l Union*, 22 Wis. 2d 7, 17-18, 125 N.W.2d 324, 330 (1963). Courts have articulated their power to sanction contempt of court as authority inherent in and incident to the exercise of judicial authority:

The power to punish for contempt of court exists independently of statute for the reason that it is a necessary incident to the exercise of judicial power and is reasonably to be implied from the grant of such power.

Appeal of Chichon: Feuerstein v. Kalb, 227 Wis. 62, 278 N.W.1 (1938) (citations omitted); *State ex rel. Larsen v. Larsen*, 159 Wis. 2d 672, 676, 465 N.W.2d 225, 227 (Ct. App. 1990).

This Court’s power to order remedial relief is broad and is expressly authorized in Wis. Stat. §785.04:

(1) REMEDIAL SANCTION. A court may impose one or more of the following remedial sanctions:

(a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.

...

(c) A forfeiture not to exceed \$2,000 for each day the contempt of court continues.

(d) An order designed to ensure compliance with a prior order of the court.

(e) A sanction other than the sanctions specified in pars. (a) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

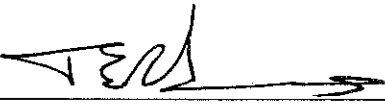
Movants respectfully ask this Court to order Scott and Pasch to comply with its Orders of September 14, 2012 and September 17, 2013, and to sanction Scott and Pasch by ordering the specific remedy articulated above.

CONCLUSION

Movants respectfully request that the Court find Scott and Pasch in contempt of its September 14, 2012 Order, and order them to comply with the remedial sanctions proposed by the Movants.

September 24, 2013

Respectfully submitted,

By: 
Timothy E. Hawks, SBN 1005646
Hawks Quindel, S.C.
PO Box 442
Milwaukee, WI 53201-0442
414-271-8650
414-271-8442 Fax
thawks@hq-law.com

Stephen G. Pieroni, SBN 1015275
Wisconsin Education Association Council
PO Box 8003
Madison, WI 53708-8003
608-276-7711
866-958-1817 Fax
pieronis@weac.org

Aaron N. Halstead, SBN 1001507
Hawks Quindel, S.C.
PO Box 2155
Madison, WI 53701-2155
608-257-0040
608-256-0236 Fax
ahalstead@hq-law.com

Attorneys for Movants

Wisconsin Education Association Council;
AFT-Wisconsin, AFL-CIO; SEIU Healthcare Wisconsin, CTW,
CLC; Wisconsin Federation of Nurses and Health Care
Professionals, AFT, AFL-CIO; District Council 40, AFSCME,
AFL-CIO

By: 

Lester A. Pines, SBN 01016543
Cullen Weston Pines & Bach LLP
122 West Washington Avenue, Suite 900
Madison, Wisconsin 53703
Telephone: (608) 251-0101
Fax: (608) 251-2883
pines@cwpb.com

Attorneys for Movant
Kenosha Education Association

Madison Teachers, Inc. *et al.*,
Plaintiffs,

v.

Case No. 11CV3774

Scott Walker, *et al.*,
Defendants.

**AFFIDAVIT OF TIMOTHY E. HAWKS
IN SUPPORT OF THE MOTION TO HOLD DEFENDANTS JAMES R. SCOTT AND
RODNEY G. PASCH IN CONTEMPT OF COURT AND FOR REMEDIAL SANCTIONS**

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

TIMOTHY E. HAWKS, being first duly sworn on oath, deposes and states as follows:

1. I am an attorney for AFT-Wisconsin, AFL-CIO and Movants and I make this affidavit on my personal knowledge in support of the motion for contempt of court.

2. On July 13, 2013, the WERC announced that it would conduct annual certification elections for state and school district bargaining units from November 1 to November 21, 2013. See <http://werc.wi.gov/Home/newsArchive.aspx> (last visited September 22, 2013).

3. Also on July 13, 2013, the WERC announced that the Governor approved the WERC emergency rules implementing Wis. Stat. §111.70(4)(d)3, to govern the Commission's administration of the annual certification elections.

4. Exhibit A is a true and correct copy of the WERC emergency rules.

5. The WERC has initially dismissed any untimely petition and any petition which was accompanied by an incorrect election fee, under the fee schedule imposed by the emergency rules.

6. Movants' affiliated local unions, representing approximately 70,000 employees, filed certification election petitions at the WERC.

7. The certification election petitions filed at the WERC were accompanied by petitioners' payments of over \$100,000 in election fees, pursuant to the WERC election fee schedule in the emergency administrative rules.

8. For those bargaining units whose petitions were rejected or denied, the WERC has announced its intention to decertify the the petitioning union to be decertified.

9. On Friday, September 20, 2013, counsel for Movants notified Defendants Scott and Pasch of Movants' intent to file the motion for contempt of court and providing Defendants the opportunity to cease and desist from the conduct that violates this Court's Orders.


10. Exhibit B is a true and correct copy of the notice to Defendants.

11. By letter dated Monday, September 23, 2013, Chairman Scott notified me that the WERC would not cease and desist such illegal conduct. (Exhibit C)

12. I have read the foregoing and state under oath that I have reason to believe and do believe it to be true and accurate.


TIMOTHY E. HAWKS, SBN 1005646

Subscribed and sworn to before me
this 24th day of September, 2013.


Notary Public, State of Wisconsin
My commission is permanent.

ORDER OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

The Wisconsin Employment Relations Commission hereby creates ERC 70, 71 and 80 relating to annual certification elections.

Analysis Prepared By the Wisconsin Employment Relations Commission

Statutes Interpreted.

These emergency administrative rules interpret ss. 111.70(4)(d)3.b. and 111.83(3)(b), Stats.

Statutory Authority

Sections 111.71, 111.94, 227.11 and 227.24, Stats.

Explanation of Agency Authority

The Municipal Employment Relations Act and the State Employment Labor Relations Act both require that the Commission adopt administrative rules to regulate various proceedings. In addition, Secs. 111.70(4)(d) 3.b. and 111.83(3)(b), Stats. require that the Commission assess a fee for the each annual certification election and the fee level must be established by administrative rule.



Related Statute or Rule

None.

Rule Summary

By these emergency rules, the Wisconsin Employment Relations Commission creates chs. ERC 70-71 and 80 concerning the cost, timing and procedures for any requested annual certification elections required by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 to determine whether a bargaining unit of general (i.e., non-public safety and non-transit) employees in the municipal or state sector that is represented by a labor organization for collective bargaining with the employer involved shall continue to be represented by that organization or by another organization or shall not be so represented.

These emergency rules do not require the retroactive conduct of elections that would have been conducted on or before December 1, 2012 and May 1, 2013 but for a March 2012 federal court order enjoining such elections under the State Employment Labor Relations Act and the Commission's related March 2012 determination to suspend the conduct of such elections under the Municipal Employment Relations Act until the federal court litigation was concluded.

These emergency rules are not applicable to the plaintiffs in Case 11CV3744 unless and until the Circuit Court's decision is no longer in effect.

Under these emergency rules, a labor organization continues to represent employees (and thus is eligible to file a certification election petition under these rules) unless that organization lost an initial annual certification election conducted by the Commission or was required to but failed to file a petition for an annual certification election prior to March 2012.

2011 Wisconsin Act 32 requires that the Commission charge a fee for conducting any requested election. These rules require that the labor organization or organizations requesting the election should pay the fee and that the following fee structure applies.

\$200	1-100 eligible voters
\$350	101-250 eligible voters
\$500	201-500 eligible voters
\$750	501-1000 eligible voters
\$1500	1001-3000 eligible voters
\$2000	over 3000 eligible voters

Under these rules, the timing of requested elections is as follows:

--no later than December 1 for units of all general state employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 80)-unions

wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;

-- no later than December 1 for units of general municipal school district employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 70)-unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;

-- no later than May 1 for units of general municipal employees who, as of January 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 71)-unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before January 30.

Under these rules, if a union does not timely file an election petition and fee, the union loses its status as the collective bargaining representative as of the filing deadline.

In each of the new chapters, the first section, Section ERC xx.01, describes the general policy and purpose of chapter.

Section ERC xx.02, include definitions of terms as used in the chapter and defines the scope of application of the chapter as is outlined above.

Sections ERC xx.03(1) limit the right to file a petition to the existing representative and other any labor organization interested in representing the bargaining unit. No provision is made for petitions by employees or by the employer because decertification automatically results if no timely petition is filed by a labor organization.

Sections ERC xx.03(5) provide that no showing of interest is required to support a petition filed by the existing exclusive representative of the bargaining unit, but that a petition filed by another organization must be supported by a 30% showing of interest. The practice and procedure for submission and determination of the showing of interest is made parallel to that in existing s. ERC 11.05 (2), which generally involve a commission determination as to the sufficiency of the showing of interest in the context of the employee personnel data provided by the employer, without providing a copy of the showing of interest to any party other than the party that submitted it.

Sections ERC xx.03(7) specify the time by which a petition must be filed and the consequences that follow from no timely petition being filed by any labor organization. Sections ERC xx.03 (7) (c) each provide that the commission will issue a notice equivalent to a decertification upon the request of any interested party or any affected employee.

Sections ERC xx.04 provide the procedures and consequences of a withdrawal of a petition. Each provides that if withdrawal of a petition leaves no pending timely petition, the consequences are the same as if the existing representative filed the only timely petition, an election was conducted, and no representative achieved the support of 51% of the eligible voters.

Sections ERC xx.05 describe the obligation of the employer and petitioning union(s) to provide the Commission with lists of proposed eligible voters and related information.

Sections ERC xx.06 provide for commission issuance of a direction of election or other dispositional order without an intervening hearing to resolve possible disputes concerning voter eligibility or other matters. In cases where the commission is directing an election, the direction shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by the petitioner or any other interested party, shall be allowed to complete and submit a ballot, subject to the right of any interested party to challenge the eligibility of the voter during post-balloting procedures.

Sections ERC xx.07 provide that all elections are to be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission, with the commission determining on a case by case basis whether the secret balloting shall be conducted on-site, by mail or automated telephone system. Each chapter also contains provisions generally paralleling those in s. ERC 11.09, regarding notice of election, observers, challenge of voters, and count and tally of ballots.

Sections ERC xx.07 (6) provide that if more than one proposed representative appears on the ballot and if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on receipt of a timely request of any party, may conduct a runoff election as provided in ss. 111.70 (4) (d) 4. or 111.83 (4), Stats.

Sections ERC xx.08 and xx.09 provide procedures concerning the commission's certification of results of election and the filing and service of objections to election.

Sections ERC xx.10 provide procedures for commission action on challenges or objections, including the conduct of a hearing if one is needed.

Sections ERC xx.11 list the consequences of no representative achieving support of 51% of the eligible voters in the election. Those consequences are that the commission will issue a certification of the results of the election decertifying the existing representative, and providing that for 12 months from the date of decertification the affected employees shall be nonrepresented and shall not be included in any substantially similar bargaining unit.

Sections ERC xx.12 outline the procedures by which any person aggrieved by a final order of the commission may file and have processed a petition for rehearing.

Summary of, and comparison with, existing or proposed federal regulations.

None

Comparison of proposed rules with rules promulgated by adjacent state labor relations agencies

Not applicable. A review of the following adjacent state rules reveals none providing procedures for certification elections conducted on an annual or other regularly periodic basis.

AGENCY Name and Source of Rules:

Minnesota Bureau of Mediation Services

Minnesota Rules,

Chapter 5505 - Private Rules

5505.0100 Definitions.

5505.0200 Purpose, Construction, And Waiver.

5505.0300 Request For Investigation.

5505.0400 Required Information.

5505.0500 Notice Of Hearing And Investigation.

5505.0600 Hearings.

5505.0700 Examination Of Witnesses.

5505.0800 Subpoenas.

5505.0900 Determination Of Representative.

5505.1000 Election Procedure.

5505.1100 Challenge Of Voter.

5505.1200 Consent Election.

5505.1300 Certification Order.

5505.1400 Objections To Certification.

5505.1500 Reconsideration Within One Year.

Chapter 5510 - Public Rules

Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner

Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice

Grievance Procedure

Chapter 520 LMC - Grant Rules

Chapter 5530 - Arbitration Roster Rules

5530.0100 Application.

5530.0200 Policy.

5530.0300 Definitions.

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.

Michigan Public Employment Relations Commission

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

Iowa Public Employment Relations Board

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

Illinois Labor Relations Board

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

Illinois Educational Labor Relations Board

Title 80: Public Officials And Employees

Subtitle C: Labor Relations

Chapter III: Illinois Educational Labor 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

Summary of factual data

Not applicable.

Initial Regulatory Flexibility Analysis

The emergency rules have no impact on small business.

Fiscal Estimate

Because the filing fees applicable to the annual certification elections are paid by the labor organizations seeking the elections, the emergency rules have no fiscal impact on any public or private sector employer or on the State of Wisconsin.

Agency Contact Person

Peter G. Davis
Chief Legal Counsel
PeterG.Davis@wisconsin.gov
(608) 266-2993

CHAPTER ERC70

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL SCHOOL DISTRICT EMPLOYEES WHO, AS OF AUGUST 30 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011

ERC 70.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than December 1, to determine whether collective bargaining representation shall continue for represented municipal sector general school district employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before August 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.

ERC 70.02 Scope (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of August 30, are all of the following:

- (a) School district employees.
- (b) Represented by an exclusive representative.
- (c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of August 30, are any of the following:

- (a) Public safety employees defined in s. 111.70 (1) (mm), Stats.
- (b) Transit employees defined in s. 111.70 (1)(p), Stats.
- (c) Nonschool district employees.

ERC 70.03 Petition for election (1) WHO MAY FILE. A petition for an annual election to determine whether a represented municipal sector general school district employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. 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 or representative filing the petition.. A petition is not filed unless it is accompanied by the applicable fee established by s.ERC 70.03 (4), contains the required signature or signature facsimile and 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. If a showing of interest in support of the petition is required by sub.

(3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) 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 municipal 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 bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing.* To be timely, a petition must be filed on or before August 30.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub.

(b). 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 70.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 70.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 70.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 70.03(7)(a).

ERC 70.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 70.03, the municipal employer shall furnish to the commission in an electronically sortable format an

alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period in which the first timely petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. The commission shall designate the number of copies of the paper form list to be provided. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) **RESPONSE TO PERSONNEL DATA.** Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical list of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 70.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 70.07 Elections. (1) **NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT.** All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) **NOTICE OF ELECTION.** The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) **OBSERVERS.** Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) **CHALLENGE OF VOTERS.** (a) *Who may challenge; nature of challenge.* Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers, and the

commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 70.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 70.09, the commission shall issue to the parties a certification of the results of the election.

ERC 70.09 Objections to election. (1) FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. 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 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 70.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections 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 challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

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

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 70.11 Consequences of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following:

(1) If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of

the date of the commission's certification of results. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

(2) The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date specified in sub. (1).

ERC 70.12 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.

CHAPTER ERC 71

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL NONSCHOOL DISTRICT EMPLOYEES WHO, AS OF JANUARY 30, ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011

ERC 71.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than May 1, to determine whether collective bargaining representation shall continue for represented municipal sector general nonschool district employees who, as of January 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before January 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before May 1.

ERC 71.02 Scope. (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of January 30, are all of the following:

- (a) Nonschool district employees.
- (b) Represented by an exclusive representative.
- (c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.

(2) **BARGAINING UNITS NOT COVERED.** This chapter does not apply to bargaining units of employees who, as of January 30, are any of the following:

- (a) Public safety employees defined in s. 111.70 (1) (mm), Stats.
- (b) Transit employees defined in s. 111.70 (1)(p), Stats.
- (c) School district employees.

ERC 71.03 Petition for election (1) WHO MAY FILE. A petition for an annual election to determine whether a represented municipal sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) **FORM.** 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 or representative filing the petition. A petition is not filed unless it is accompanied by the applicable fee established by s. ERC 71.03 (4), contains the required signature or signature facsimile and unless and 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. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) **SERVICE ON MUNICIPAL EMPLOYER.** At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) **FEE SCHEDULE.** For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) **SHOWING OF INTEREST.** No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) 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 municipal 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 bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.

(g) A statement that the petitioner has served a copy of the petition on the municipal employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing.* To be timely, a petition must be filed on or before January 30.

(b) *Consequences of failure to timely file.* If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of January 30. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub. (b). 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 71.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 71.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 71.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 71.03 (7) (a).

ERC 71.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 71.03, the municipal employer shall furnish the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical listing of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 71.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right of the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 71.07 Elections. (1) NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT. All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge.* Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be

impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers. The commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 71.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 71.09, the commission shall issue to the parties a certification of the results of the election.

ERC 71.09 Objections to election. (1) FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. 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 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 71.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections 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 challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

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

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 71.11 Consequences of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the

election including a notice of the following:

- (1) If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as the date of commission's certification of results. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.
- (2). The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date specified in sub.(1).

ERC 71.12 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.

CHAPTER ERC 80

ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED STATE SECTOR GENERAL EMPLOYEES WHO AS OF AUGUST 30 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011

ERC 80.01 Policy. This chapter implements the portion of s. 111.83 (3) (b), Stats., requiring that the commission conduct an annual election no later than December 1, to determine whether collective bargaining representation shall continue for represented state sector general employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees, must file a petition on or before August 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while providing for an orderly and fair procedure for resolving outcome determinative issues after the ballots have been cast concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.

ERC 80.02 Scope. (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units that are all of the following:

- (a) General state employee bargaining units defined in s. 111.825, Stats.
 - (b) Represented by an exclusive representative.
- (2) BARGAINING UNITS NOT COVERED.** This chapter does not apply to bargaining units of any of the following:

- (a) Public safety employees defined in s. 111.81 (15r), Stats.
- (b) General state employees who are not represented for purposes of collective bargaining.

ERC 80.03 Petition for election (1) WHO MAY FILE. A petition for an annual election to determine whether a represented state sector general employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed only by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. 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 or representative filing the petition. A petition is not filed unless it is accompanied by the applicable filing fee established by s.ERC 80.03 (3), contains the required signature or signature facsimile and has been 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. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON STATE EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the State employer.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

(6) 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 state 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 statutory bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.

(d) A description of the status of the most recent collective bargaining agreement.

(e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.

(f) A brief statement including the following:

1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.

2. That the petitioner wishes to continue to represent the bargaining unit.

3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall continue to be represented by the petitioner for purposes of collective bargaining with the state employer.

(g) A statement that the petitioner has served a copy of the petition on the employer.

(h) Any other relevant facts.

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing.* To be timely, a petition must be filed on or before August 30.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub. (b) 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the State employer or of any employee in the bargaining unit involved, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the State employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 80.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in . ERC 80.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 80.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 80.03 (7) (a).

ERC 80.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY STATE EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 80.03, the State employer shall furnish the commission in an electronically sortable format an alphabetical list of

the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period during which the first timely election petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. If the commission so directs, the State employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the State employer furnishes the commission with personnel data, the State employer shall furnish the petitioning labor organization with an electronically sortable alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) **RESPONSE TO PERSONNEL DATA.** Within 10 days of receipt of the personnel data from the State employer, the petitioner shall electronically provide the commission and the State employer with an alphabetical list of the names of personnel that should be added to or deleted from the State employer's personnel list.

ERC 80.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the State employer and on the list, if any, provided by a petitioning labor organization, shall be allowed to vote, subject to the right of the State employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 80.07 Elections. (1) **NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT.** All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) **NOTICE OF ELECTION.** The State employer shall post notices to personnel concerning the election, at times, locations and in a form specified by the commission.

(3) **OBSERVERS.** Any interested party may be represented by observers at on-site election locations and at locations at which vote counts are conducted. Observers shall be selected in accordance with limitations, if any, established by the commission.

(4) **CHALLENGE OF VOTERS.** (a) *Who may challenge; nature of challenge.* Any party, observer or commission agent conducting the election may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of challenged voters shall be impounded or otherwise segregated without being opened or counted.

(5) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the election, the physical ballots, if any, shall be counted in the presence of the parties or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) **INCONCLUSIVE ELECTIONS.** When more than one proposed representative appears on the ballot, if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on request of any party, may conduct a runoff election as provided in s. 111.83 (4), Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 80.08 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 80.09, the commission shall issue to the parties a certification of the results of the election.

ERC 80.09 Objections to election. (1) **FILING; FORM; COPIES.** Within 8 days after receiving the tally of ballots, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. 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 80.10 Commission action on challenges or objections. (1) **HEARING.** If ballot challenges may affect the election outcome or if objections 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 challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

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

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 80.11 Consequence of failure to achieve support of 51% of those eligible to vote in the annual certification election. If no representative is ultimately supported by at least 51% of the employees eligible to vote, the commission will issue a certification of the results of the election including a notice of the following:

(1) The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the date of the commission's certification of results.

(2) The employees in the bargaining unit shall not be included in a substantially similar

collective bargaining unit for at least a period of one year following the date specified in sub. (1).

ERC 80.12 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.

Statement of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can meet its obligation to conduct annual certification elections as required by ss. 111.70(4)(d) 3.b. and 111.83(3)(b), Stats.

Effective Date

These emergency rules shall take effect upon publication in the official state newspaper pursuant to ss. 227.24 (1)(c), Stats.

Dated at Madison, Wisconsin this 9th day of July, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

/s/ James R. Scott, Chair

/s/ Rodney G. Pasch, Commissioner

ATTORNEYS AT LAW

HAWKS QUINDEL, S.C.

222 East Erie Street, Suite 210
P.O. Box 442
Milwaukee, WI 53201-0442

MILWAUKEE OFFICE

SHAREHOLDERS

Katherine L. Charlton
Timothy E. Hawks
Summer H. Murshid
Barbara Zick Quindel
Israel Ramon
Richard Saks
Daniel R. Schoshinski
Amy L. Shapiro
B. Michele Sumara

414-271-8650

Fax 414-271-8442

www.hq-law.com

Offices also in Madison

EMERITUS

Richard Perry

ASSOCIATES

Larry A. Johnson

Lyns Medrano

Kashoua Yang

OF COUNSEL TO FIRM

Walter E. Kelly

Robert J. Lerner

Howard N. Myers

Vicki Schaut

Jeffrey R. Sweetland

September 20, 2013

HAND DELIVERED, BY U.S. POSTAL SERVICE AND
BY EMAIL TO JAMES.SCOTT@WISCONSIN.GOV
RODNEY.PASCH@WISCONSIN.GOV

James R. Scott, Chairman
Rodney G. Pasch, Commissioner
Wisconsin Employment Relations Commission
PO Box 7870
Madison, WI 53707-7870

Re: *Madison Teachers, Inc., et al. v. Scott Walker, et al.*
Case No. 11CV3774 (Dane County Circuit Court)
Motion for Contempt of Court

Dear Chairman Scott and Commissioner Pasch,

The undersigned represent WEAC, AFT-Wisconsin, SEIU Healthcare Wisconsin, the Wisconsin Federation of Nurses and Health Care Professionals, AFSCME, District Council 40 and the Kenosha Education Association. We are writing to notify you that, unless by Monday, September 23, 2013, you cease implementation and enforcement of the WERC rules governing certification elections of municipal bargaining units, we will seek to have you held in contempt of court.

On September 14, 2012, the Dane County Circuit Court issued a Decision and Order that Wis. Stat. §§66.0506, 118.245, 111.70(1)(f), 111.70(3g), 111.70(4)(mb) and 111.70(4)(d)3 violate the Wisconsin and United States Constitutions and are null and void. On September 17, 2013, the Court issued a Decision and Order stating unequivocally that Defendants are "[p]lainly" bound by the September 14, 2012 ruling and "may not enforce . . . under any circumstances, against anyone" the statutes found unconstitutional by the September 14, 2012 Decision and Order.

In contravention of the September 14, 2012 ruling and under your direction and control, the WERC created rules and implemented a process for holding annual certification elections to enforce Wis. Stat. §111.70(4)(d)3, which you knew had been declared unconstitutional, null and void. Judge Colas' September 17, 2013, order makes clear that all such actions by you, who



Chairman James R. Scott, WERC
Commissioner Rodney G. Pasch, WERC
Re: MTI v. Walker
Motion for Contempt of Court
September 20, 2013
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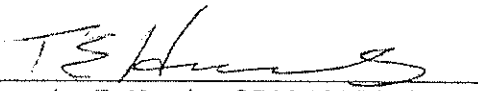
direct and control the staff of the WERC and are responsible for its activities, are enforcing a law that has been declared unconstitutional and that you may not do say against anyone, including non-parties. By having done so and by continuing to do so, you have been and are in contempt of the Court's orders.

Please notify us by the close of business Monday, September 23, 2013, if you, as defendants in the above case and administrators of the WERC, will abide by the Court's orders and will: (1) cease immediately any implementation of the rules for holding annual certification elections and direct the WERC staff to do the same; and (2) declare that all WERC actions taken to date pursuant to such rules are null and void. If you refuse to take such corrective action, we will seek immediately to have you held in contempt of court.

Very truly yours,

HAWKS QUINDEL, S.C.
Attorneys for Movants

By


Timothy E. Hawks, SBN 1005646
thawks@hq-law.com

Aaron N. Halstead, SBN 1001507
Hawks Quindel, SC
PO Box 2155
Madison, WI 53701-2155
ahalstead@hq-law.com

Stephen G. Pieroni, SBN 1015275
Wisconsin Education Association Council
PO Box 8003
Madison, WI 53708-8003
pieronis@weac.org

cc: Defendant Scott Walker (by USPS)
Peter Davis (by email - PeterG.Davis@Wisconsin.gov)

James R. Scott
Chairman
Rodney G. Pasch
Commissioner



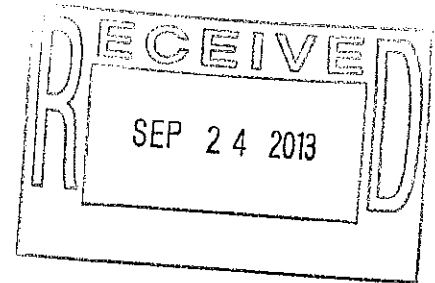
Mailing Address
4868 High Crossing Blvd.
Madison, WI 53704-7403
Telephone: (608) 243-2424
Fax: (608) 243-2433

Writer's direct line: (608) 243-2431
E-mail: James.Scott@wisconsin.gov

**State of Wisconsin
Wisconsin Employment Relations Commission**

September 23, 2013

Mr. Timothy E. Hawks
Hawks Quindel, S.C.
222 East Erie Street, Suite 210
P.O. Box 442
Milwaukee, WI 53201-0442

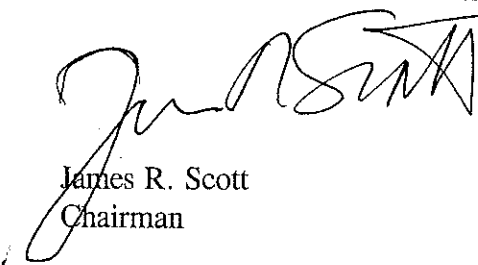


Dear Mr. Hawks:

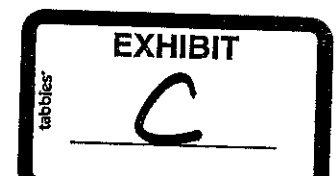
As you may be aware, over four hundred unions have filed requests that we conduct recertification elections. We do not believe that we are in contempt of any court order by proceeding with those election requests.

Very truly yours,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION


James R. Scott
Chairman

JRS/dmc



STATE OF WISCONSIN

CIRCUIT COURT
Branch 10

DANE COUNTY

Madison Teachers, Inc. *et al.*,
Plaintiffs,

v.

Case No. 11CV3774

Scott Walker, *et al.*,
Defendants.

**AFFIDAVIT OF LESTER A. PINES IN SUPPORT OF MOTION TO HOLD
DEFENDANTS JAMES R. SCOTT AND RODNEY G. PASCH
IN CONTEMPT OF COURT AND FOR REMEDIAL SANCTIONS**

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Lester A. Pines, being first duly sworn on oath, deposes and says:

1. I am an attorney representing one of the Movants, aggrieved party Kenosha Education Association (KEA).
2. Attached hereto and incorporated herein by reference as Exhibit 1 is a true and correct copy of an article that ran in the Wisconsin State Journal on September 18, 2013 in which Peter Davis, the Chief Legal Counsel of the Wisconsin Employment Relations Commission is referenced and quoted.
3. Attached hereto and incorporated herein by reference as Exhibit 2 is a true and correct copy of correspondence between Peter Davis and various individuals

regarding the decertification of the Kenosha Education Association pursuant to ECR 70.03(7).

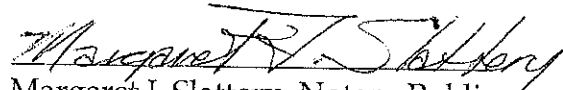
4. Attached hereto and incorporated herein by reference as Exhibit 3 is a true and correct copy of a Legislative Council analysis of and the text of ECR 70 *et seq.*

Dated this 24thth day of September, 2013.



Lester A. Pines

Subscribed and sworn to before
me this 24th day of September, 2013.



Margaret J. Slattery, Notary Public

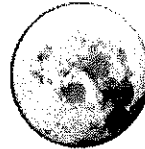
Dane County, Wisconsin

My commission expires: 8/16/15



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WISCONSIN
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UNIONS | ACT 10

Both sides claim win in Act 10 ruling; state vows to continue requiring union elections

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September 18, 2013 11:00 am • MATTHEW DeFOUR and ED TRELEVEN Wisconsin State Journal

(14) Comments



(1) More Photos

A Dane County judge's ruling Tuesday did little to settle the question of whether the state can require public employee unions to hold annual elections.



Circuit Judge Juan Colas wrote that his ruling in September 2012 on the law known as Act 10 applies not only to unions that were plaintiffs in the lawsuit before him but requires that the state not enforce the unconstitutional provisions against anyone.

"The question here is not whether other courts or non-parties are bound by this court's ruling," Colas wrote. "It is whether defendants are bound by it. Plainly they are, as all parties to a lawsuit are, and in a case in which the statute was found facially unconstitutional they may not enforce it under any circumstances."

However, Colas' decision Tuesday denied a request from the plaintiffs in the original lawsuit, Madison Teachers Inc. and Public Employees Local 61, located in Milwaukee, to bar the state from forcing other local government unions to hold annual elections.

Colas found that neither union had been irreparably harmed by the state's decision to implement the law with other unions.

Peter Davis, general counsel for the Wisconsin Employment Relations Commission, said the ruling means the state can continue to process certification elections for other unions.

"If you get to the bottom line, he denies the request that we be enjoined from proceeding," Davis said.

But Lester Pines, the lawyer for the plaintiffs, said Davis' interpretation was "completely wrong." He said Colas' three-page decision made clear that his September 2012 decision should prevent the state from proceeding with certification elections for all unions.

"The judge said, 'That's what my decision means,'" Pines said. "The WERC is saying, 'We don't care.' That kind of arrogance and lawlessness is emblematic of the Walker administration."

Davis said Pines was "doing what lawyers do: making the best of a bad situation."

Dana Brueck, a spokeswoman for the state Department of Justice, which is defending the restrictions on the Walker administration's behalf, said in an email that the agency was "pleased" with Colas' decision Tuesday.

Tom Evenson, spokesman for Gov. Scott Walker, said that of the eight challenges to Act 10, the state has won six while two are still undecided.

"We are confident Act 10 will be upheld in all remaining cases," he said.

Colas' September 2012 ruling — which applied to municipal and school unions but not state employee unions — has been appealed to the state Supreme Court. In the ruling, he said sections of the law violate the state and U.S. constitutional guarantees of free speech and freedom of association.

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Lester Pines

From: Lester Pines
Sent: Monday, September 16, 2013 5:49 PM
To: 'Davis, Peter G - WERC'; Kiriaki, Joe
Cc: erosales@kUSD.edu; ptezlaf@kUSD.edu; dvillabo@kUSD.edu; Sheronda Glass; Osborn, Rebecca Ferber
Subject: RE: Kenosha Schools Request for Notice

Peter,

I represent the KEA and want to note the following. The commissioners do not make the law. They are supposed to follow the law. They were parties to a lawsuit in which the decertification provisions were declared unconstitutional. Yet they are now enforcing those provisions in direct contradiction of the court's declaratory judgment. Such behavior by officials who have sworn to defend and uphold the Wisconsin and United States Constitutions is unprecedented.

Lester

Lester A. Pines
Cullen Weston Pines & Bach LLP
122 West Washington Ave., Suite 900
Madison, WI 53703
pines@cwpb.com
Office- (608) 251-0101
Fax- (608) 251-2883
www.cwpb.com

-----Original Message-----

From: Davis, Peter G - WERC [mailto:PeterG.Davis@wisconsin.gov]
Sent: Monday, September 16, 2013 5:41 PM
To: Kiriaki, Joe
Cc: erosales@kUSD.edu; ptezlaf@kUSD.edu; dvillabo@kUSD.edu; Sheronda Glass; Lester Pines; Osborn, Rebecca Ferber
Subject: RE: Kenosha Schools Request for Notice

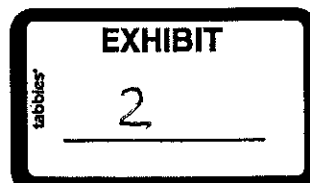
I have advised all who have inquired that per WERC administrative rules, the absence of a timely filed petition=loss of status as the collective bargaining representative as of 4:31pm August 30. Many of those inquiries have been telephonic but I'll check my emails and if I find any such inquiries I'll send them to you.

I agree that the District can, if it wishes, confer with the KEA (and with any other entities/individuals) about any matters. I'll note the obvious caveat=the WERC commissioners make the law=not me.

Peter Davis
Chief Legal Counsel
WERC

-----Original Message-----

From: Kiriaki, Joe [mailto:KiriakiJ@weac.org]



Sent: Monday, September 16, 2013 5:19 PM

To: Davis, Peter G - WERC

Cc: erosales@kUSD.edu; ptezla@kUSD.edu; dvillabo@kUSD.edu; Sheronda Glass; Lester Pines; Osborn, Rebecca Ferber

Subject: Re: Kenosha Schools Request for Notice

Dear Mr. Davis:

KEA will provide a response by September 23, 2013 as requested in your email below.

As you are probably aware, the KEA has been receiving media attention related to its decision not to file a petition for recertification. Some media outlets have indicated that they received confirmation from the WERC that the KEA is decertified. Please confirm whether the WERC has been contacted by the media for comment. If so, and in the event that any such communications were in writing, the KEA hereby requests copies.

Further, it is the position of the KEA that regardless of whether the KEA is the certified bargaining representative, the KEA and District may lawfully meet and confer on any subjects they desire and that doing so does not violate Act 10. Please confirm whether you agree.

Thank you!

Joe Kiriaki

Joseph A. Kiriaki
Executive Director

Kenosha Education Association
5610 - 55th Street
Kenosha, WI 53144
Phone - 262-654-2127 ext. 17
Fax - 262-654-1757
Email - KiriakiJ@weac.org<mailto:KiriakiJ@weac.org>

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On Sep 9, 2013, at 1:42 PM, "Davis, Peter G - WERC"
<PeterG.Davis@wisconsin.gov<mailto:PeterG.Davis@wisconsin.gov>> wrote:

As indicated in the September 6, 2013 email from Ms. Glass (see below), pursuant to ERC 70.03 (7)(c), the Kenosha Unified School District has asked for a notice from the WERC confirming the consequences of your unions' decision not to file a petition for annual certification on or before August 30, 2013. Pursuant to that same administrative rule provision, WERC hereby provide you with an opportunity to file any response you wish to make to the District's request. Please file any response on or before September 23, 2013.

Peter Davis
WERC

From: Sheronda Glass [mailto:sglass@kUSD.edu]
Sent: Friday, September 06, 2013 8:54 AM
To: Davis, Peter G - WERC
Subject: Letter

Good Morning Mr. Davis:

Thank you for taking the time to speak with me on Wednesday regarding the union recertification process. Please consider this email a formal request for written notification from the WERC informing us that the Kenosha Education Association, SEIU and Local 2383 did not file petitions for recertification and will no longer be recognized as the agent of record here in Kenosha.

If you have any questions, please do not hesitate to contact me. Again, thank you.

Sheronda Glass
Executive Director, Business Services
sglass@kUSD.edu<mailto:sglass@kUSD.edu> | P: 262-359-6172 | F: 262-359-6055

Maximizing the Brilliance of Children

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The state had argued that the limitations imposed by Colas' ruling applied only to the plaintiffs in the case. Colas wrote that the state argued that "it is of no concern" to the plaintiffs if the state enforces the unconstitutional provisions against others who are not plaintiffs.

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Just last week the Kenosha Education Association became the latest teachers union not to seek recertification after it let a deadline pass. Christina Brey, spokeswoman for the Wisconsin Education Association Council, said "the majority of our affiliates in the state aren't seeking recertification," noting that Act 10 limits union collective bargaining to base wage increases, which are tied to inflation.

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Pines said he expects he will file a new lawsuit on behalf of the Kenosha teachers union, which he also represents.

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"There will be consequences to these (WERC) commissioners ignoring this order," Pines said.

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"We'll look at what our options are, but in the meantime we're not going to allow a union we represent to be decertified. They don't get to ignore the law, and that's what they're saying they're going to do."

W
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Contact Matthew DeFour at mdefour@madison.com or 608-252-6144. Contact Ed Treleven at etreleven@madison.com or 608-252-6134. The Associated Press contributed to this report.

BII
big

Tags Act 10, Collective Bargaining, Scott Walker, Juan Colas, Wisconsin Employment Relations Commission, Lester Pines, Peter Davis, Werc, Wisconsin Education Association Council, Madison Teachers Inc., 2011 Wisconsin Act 10, Walker Administration

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How many Democrats
will challenge Scott
Walker in 2014?

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EmR1310**ORDER OF THE WISCONSIN EMPLOYMENT RELATIONS
COMMISSION**

The statement of scope for this rule, SS 045-13, was approved by the Governor on April 19, 2013, published in Register 689, on May 14, 2013, and approved by the Wisconsin Employment Relations Commission on June 3, 2013.

This emergency rule was approved by the Governor July 3, 2013

The Wisconsin Employment Relations Commission hereby creates ERC 70, 71 and 80 relating to annual certification elections.

Statement of Emergency

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so that the Wisconsin Employment Relations Commission can meet its obligation to conduct annual certification elections as required by ss. 111.70(4)(d) 3.b. and 111.83(3)(b), Stats.

**Analysis Prepared By the Wisconsin Employment Relations
Commission****Statutes Interpreted.**

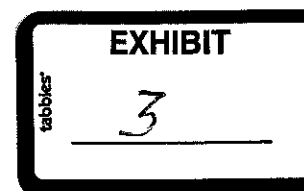
These emergency administrative rules interpret ss. 111.70(4)(d)3.b. and 111.83(3)(b), Stats.

Statutory Authority

Sections 111.71, 111.94, 227.11 and 227.24, Stats.

Explanation of Agency Authority

The Municipal Employment Relations Act and the State Employment Labor Relations Act both require that the Commission adopt administrative rules to regulate various proceedings. In addition, Secs. 111.70(4)(d) 3.b. and 111.83(3)(b), Stats. require that the Commission assess a fee for the each annual certification election and the fee level must be established by administrative rule.



Related Statute or Rule

None.

Rule Summary

By these emergency rules, the Wisconsin Employment Relations Commission creates chs. ERC 70-71 and 80 concerning the cost, timing and procedures for any requested annual certification elections required by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 to determine whether a bargaining unit of general (i.e., non-public safety and non-transit) employees in the municipal or state sector that is represented by a labor organization for collective bargaining with the employer involved shall continue to be represented by that organization or by another organization or shall not be so represented.

These emergency rules do not require the retroactive conduct of elections that would have been conducted on or before December 1, 2012 and May 1, 2013 but for a March 2012 federal court order enjoining such elections under the State Employment Labor Relations Act and the Commission's related March 2012 determination to suspend the conduct of such elections under the Municipal Employment Relations Act until the federal court litigation was concluded.

These emergency rules are not applicable to the plaintiffs in Case 11CV3744 unless and until the Circuit Court's decision is no longer in effect.

Under these emergency rules, a labor organization continues to represent employees (and thus is eligible to file a certification election petition under these rules) unless that organization lost an initial annual certification election conducted by the Commission or was required to but failed to file a petition for an annual certification election prior to March 2012.

2011 Wisconsin Act 32 requires that the Commission charge a fee for conducting any requested election. These rules require that the labor organization or organizations requesting the election should pay the fee and that the following fee structure applies.

\$200	1-100 eligible voters
\$350	101-250 eligible voters
\$500	201-500 eligible voters
\$750	501-1000 eligible voters
\$1500	1001-3000 eligible voters
\$2000	over 3000 eligible voters

Under these rules, the timing of requested elections is as follows:

--no later than December 1 for units of all general state employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 80)-unions wishing to continue as the

collective bargaining representative must file an election petition and applicable fee on or before August 30;

-- no later than December 1 for units of general municipal school district employees who, as of August 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 70)-unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before August 30;

-- no later than May 1 for units of general municipal employees who, as of January 30, are not covered by a collective bargaining agreement or are covered by a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 71)-unions wishing to continue as the collective bargaining representative must file an election petition and applicable fee on or before January 30.

Under these rules, if a union does not timely file an election petition and fee, the union loses its status as the collective bargaining representative as of the filing deadline.

In each of the new chapters, the first section, Section ERC xx.01, describes the general policy and purpose of chapter.

Section ERC xx.02, include definitions of terms as used in the chapter and defines the scope of application of the chapter as is outlined above.

Sections ERC xx.03(1) limit the right to file a petition to the existing representative and other any labor organization interested in representing the bargaining unit. No provision is made for petitions by employees or by the employer because decertification automatically results if no timely petition is filed by a labor organization.

Sections ERC xx.03(5) provide that no showing of interest is required to support a petition filed by the existing exclusive representative of the bargaining unit, but that a petition filed by another organization must be supported by a 30% showing of interest. The practice and procedure for submission and determination of the showing of interest is made parallel to that in existing s. ERC 11.05 (2), which generally involve a commission determination as to the sufficiency of the showing of interest in the context of the employee personnel data provided by the employer, without providing a copy of the showing of interest to any party other than the party that submitted it.

Sections ERC xx.03(7) specify the time by which a petition must be filed and the consequences that follow from no timely petition being filed by any labor organization. Sections ERC xx.03 (7) (c) each provide that the commission will issue a notice equivalent to a decertification upon the request of any interested party or any affected employee.

Sections ERC xx.04 provide the procedures and consequences of a withdrawal of a petition. Each provides that if withdrawal of a petition leaves no pending timely petition, the consequences are the same as if the existing representative filed the only timely petition, an election was conducted, and no representative achieved the support of 51% of the eligible voters.

Sections ERC xx.05 describe the obligation of the employer and petitioning union(s) to provide the Commission with lists of proposed eligible voters and related information.

Sections ERC xx.06 provide for commission issuance of a direction of election or other dispositional order without an intervening hearing to resolve possible disputes concerning voter eligibility or other matters. In cases where the commission is directing an election, the direction shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by the petitioner or any other interested party, shall be allowed to complete and submit a ballot, subject to the right of any interested party to challenge the eligibility of the voter during post-balloting procedures.

Sections ERC xx.07 provide that all elections are to be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission, with the commission determining on a case by case basis whether the secret balloting shall be conducted on-site, by mail or automated telephone system. Each chapter also contains provisions generally paralleling those in s. ERC 11.09, regarding notice of election, observers, challenge of voters, and count and tally of ballots.

Sections ERC xx.07 (6) provide that if more than one proposed representative appears on the ballot and if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on receipt of a timely request of any party, may conduct a runoff election as provided in ss. 111.70 (4) (d) 4. or 111.83 (4), Stats.

Sections ERC xx.08 and xx.09 provide procedures concerning the commission's certification of results of election and the filing and service of objections to election.

Sections ERC xx.10 provide procedures for commission action on challenges or objections, including the conduct of a hearing if one is needed.

Sections ERC xx.11 list the consequences of no representative achieving support of 51% of the eligible voters in the election. Those consequences are that the commission will issue a certification of the results of the election decertifying the existing representative, and providing that for 12 months from the date of decertification the affected employees shall be nonrepresented and shall not be included in any substantially similar bargaining unit.

Sections ERC xx.12 outline the procedures by which any person aggrieved by a final order of the commission may file and have processed a petition for rehearing.

Summary of, and comparison with, existing or proposed federal regulations.

None

Comparison of proposed rules with rules promulgated by adjacent state labor relations agencies

Not applicable. A review of the following adjacent state rules reveals none providing procedures for certification elections conducted on an annual or other regularly periodic basis.

<p>AGENCY Name and Source of Rules:</p> <p>Minnesota Bureau of Mediation Services</p> <p>Minnesota Rules, Chapter 5505 - Private Rules 5505.0100 Definitions. 5505.0200 Purpose, Construction, And Waiver. 5505.0300 Request For Investigation. 5505.0400 Required Information. 5505.0500 Notice Of Hearing And Investigation. 5505.0600 Hearings. 5505.0700 Examination Of Witnesses. 5505.0800 Subpoenas. 5505.0900 Determination Of Representative. 5505.1000 Election Procedure. 5505.1100 Challenge Of Voter. 5505.1200 Consent Election. 5505.1300 Certification Order. 5505.1400 Objections To Certification. 5505.1500 Reconsideration Within One Year. Chapter 5510 - Public Rules Representation Matters And Fair Share Fee Challenges; Proceedings Before The Commissioner Negotiation, Mediation, Impasse Certification, Arbitration, And Intent To Strike Notice Grievance Procedure Chapter 520 LMC - Grant Rules Chapter 5530 - Arbitration Roster Rules 5530.0100 Application. 5530.0200 Policy. 5530.0300 Definitions. 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>Michigan Public Employment Relations Commission</p> <p>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</p>

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

Iowa Public Employment Relations Board

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

Illinois Labor Relations Board

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

Illinois Educational Labor Relations Board

Title 80: Public Officials and Employees
 Subtitle C: Labor Relations
 Chapter III: Illinois Educational Labor Relations Board
 Part 1100 General Procedures
 Part 1105 Hearing Procedures
 Part 1110 Representation Proceedings
 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

Summary of factual data

Not applicable.

Initial Regulatory Flexibility Analysis

The emergency rules have no impact on small business.

Fiscal Estimate

Because the filing fees applicable to the annual certification elections are paid by the labor organizations seeking the elections, the emergency rules have no fiscal impact on any public or private sector employer or on the State of Wisconsin.

Agency Contact Person

Peter G. Davis
Chief Legal Counsel
PeterG.Davis@wisconsin.gov
(608) 266-2993

CHAPTER ERC70 ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL SCHOOL DISTRICT EMPLOYEES WHO, AS OF AUGUST 30 ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011

ERC 70.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than December 1, to determine whether collective bargaining representation shall continue for represented municipal sector general school district employees who, as of August 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before August 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while

providing for an orderly and fair procedure after the ballots have been cast for resolving outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues. Once a timely petition has been filed, an existing representative's exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.

ERC 70.02 Scope (1) BARGAINING UNITS COVERED. This chapter applies only to bargaining units of general municipal employees as defined in s. 111.70 (1) (fm), Stats., who, as of August 30, are all of the following:

- (a) School district employees.
- (b) Represented by an exclusive representative.
- (c) Not subject to a collective bargaining agreement or subject to a collective bargaining agreement entered into on or after June 29, 2011.

(2) BARGAINING UNITS NOT COVERED. This chapter does not apply to bargaining units of employees who, as of August 30, are any of the following:

- (a) Public safety employees defined in s. 111.70 (1) (mm), Stats.
- (b) Transit employees defined in s. 111.70 (1)(p), Stats.
- (c) Nonschool district employees.

ERC 70.03 Petition for election (1) WHO MAY FILE. A petition for an annual election to determine whether a represented municipal sector general school district employee collective bargaining unit shall continue to be represented by an exclusive representative may be filed by the exclusive representative of a bargaining unit to which this chapter applies or by any other labor organization interested in representing the bargaining unit.

(2) FORM. 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 or representative filing the petition.. A petition is not filed unless it is accompanied by the applicable fee established by s.ERC 70.03 (4), contains the required signature or signature facsimile and 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. If a showing of interest in support of the petition is required by sub.

(3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SERVICE ON MUNICIPAL EMPLOYER. At the same time the labor organization files a petition for election with the commission, it shall electronically serve a copy of the petition on the municipal employer of the employees the labor organization currently represents or wishes to represent.

(4) FEE SCHEDULE. For a bargaining unit of 1-100 eligible voters, the petitioning labor organization shall pay the commission a fee of \$200. For a bargaining unit of 101-250 eligible voters, the petitioning labor organization shall pay the commission a fee of \$350. For a bargaining unit of 251-500 eligible voters, the petitioning labor organization shall pay the commission a fee of \$500. For a bargaining unit of 501-1000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$750. For a bargaining unit of 1001-3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$1500. For a bargaining unit of more than 3000 eligible voters, the petitioning labor organization shall pay the commission a fee of \$2000. The fee shall be transmitted to the commission by physical delivery or mail. If more than one labor organization files an election petition, each labor organization shall pay its proportionate share of the fee. If the number of eligible voters determined by the commission differs from the number asserted in the petition and results in a change in the applicable fee amount, the petitioning labor organization(s) shall pay the additional fee to the commission or receive a refund, as appropriate.

(5) SHOWING OF INTEREST. No showing of interest is required in support of a petition by the existing representative. A 30% showing of interest is required in support of a petition by any other interested labor organization, regardless of whether any other petition has been filed. Practice and procedure for submission and determination of the showing of interest shall be as set forth in s. ERC 11.05 (2).

- (6) 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 municipal 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 bargaining unit involved, specifying inclusions and exclusions, as well as the approximate number of personnel in the unit.
- (d) A description of the status of the most recent collective bargaining agreement.
- (e) The names and addresses of any known labor organizations who either currently represent or claim to represent any of the personnel in the claimed appropriate collective bargaining unit.
- (f) A brief statement including the following:
1. Whether the petitioner is currently the exclusive collective bargaining representative for the bargaining unit.
 2. That the petitioner wishes to represent the bargaining unit.
 3. That the petitioner requests that the commission conduct an annual certification election to determine whether the bargaining unit shall be represented by the petitioner for purposes of collective bargaining with the municipal employer.
- (g) A statement that the petitioner has served a copy of the petition on the municipal employer.
- (h) Any other relevant facts.
- (7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE. (a) *Time for filing.* To be timely, a petition must be filed on or before August 30.
- (b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:
1. If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30. If a collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.
 2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following the applicable date in sub.
- (b). 1.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any other interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice will be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

ERC 70.04 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. If the sole pending petition is withdrawn after the petition filing deadline set forth in s. ERC 70.03 (7) (a), then the consequences and notice of consequences of withdrawal of the petition shall be as set forth in ss. ERC 70.03 (7) (b) and (c) but with the date of dismissal of the withdrawn petition applying in place of the date specified in s. ERC 70.03(7)(a).

ERC 70.05 Action following filing of petition. (1) FURNISHING OF PERSONNEL DATA BY MUNICIPAL EMPLOYER. Within 10 days of its receipt of the petition pursuant to s. ERC 70.03, the municipal employer shall furnish to the commission in an electronically sortable format an alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period in which the first timely petition was filed or another date specified by the commission. If the commission so directs, the list shall also include the employees' mailing addresses including zip code and the employee's work unit and location. The commission shall designate the number of copies of the paper form list to be provided. If the commission so directs, the municipal employer shall, within the same time period, submit two sets of mailing labels including the employee's name and mailing address, suitable for use in a mail ballot procedure. At the same time the municipal employer furnishes the commission with personnel data, the municipal employer shall furnish the petitioning labor organization with an electronically sortable

alphabetical list of the names of the personnel provided to the commission. The period of time for furnishing the personnel data may be extended by the commission for good cause shown.

(2) RESPONSE TO PERSONNEL DATA. Within 10 days of receipt of the personnel data from the municipal employer, the petitioner shall electronically provide the commission and the municipal employer with an alphabetical list of the names of personnel that should be added to or deleted from the municipal employer's personnel list.

ERC 70.06 Direction of election or other dispositional order. As soon as possible after receipt and service of the personnel data, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. The date shall be a date specified by the commission in the pay period in which the first timely petition was filed under this chapter regarding the bargaining unit, or another date specified by the commission. The direction of election shall provide that all individuals on the list provided by the municipal employer and on the list, if any, provided by a petitioning labor organization shall be allowed to vote, subject to the right the municipal employer and any petitioning labor organization to challenge the eligibility of the voter.

ERC 70.07 Elections. **(1) NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT.** All elections shall be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission. The commission shall determine on a case by case basis whether the secret balloting shall be conducted on-site or by mail or by other means determined by the commission to be fair and reliable. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) NOTICE OF ELECTION. The municipal employer shall post notices to personnel concerning the election at times, locations and in a form specified by the commission.

(3) OBSERVERS. Any interested party may be represented by observers at on-site election

locations and at locations at which vote counts are conducted. Observers shall be selected in

accordance with limitations, if any, established by the commission.

(4) CHALLENGE OF VOTERS. (a) *Who may challenge; nature of challenge.* Any party,

observer or commission agent conducting the election may challenge, for good cause, the

eligibility of any person to vote in the election. The ballots of challenged voters shall be

impounded or otherwise segregated without being opened or counted.

(5) COUNT AND TALLY OF BALLOTS. Upon the conclusion of the election, the physical

ballots, if any, shall be counted in the presence of the parties or their observers, and the

commission agent conducting the election shall furnish a tally of ballots to the parties.

(6) INCONCLUSIVE ELECTIONS. When more than one proposed representative appears on

the ballot, if at least 51% of the eligible voters favor representation but no single representative

receives the votes of at least 51% of the eligible voters, the commission, on request of any party,

may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff

election shall be made within 30 days from the date of the certification of the results of the

election.

ERC 70.08 Certification of results of election. If challenged ballots are insufficient in number

to affect the results, and no runoff election is needed, and no timely objections are filed under s.

ERC 70.09, the commission shall issue to the parties a certification of the results of the election.

ERC 70.09 Objections to election. **(1) FILING; FORM; COPIES.** Within 8 days after receiving the

tally of ballots, any party may file with the commission objections to the conduct of the election

or conduct affecting the results of the election. 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 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 70.10 Commission action on challenges or objections. (1) HEARING. If ballot challenges may affect the election outcome or if objections 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 challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) AFTER HEARING. As soon as possible after submission of the case, the commission

shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots

shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be

held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 70.11 Consequences of failure to achieve support of 51% of those eligible to vote in

the annual certification election. If no representative is ultimately supported by at least 51% of

the employees eligible to vote, the commission will issue a certification of the results of the

election including a notice of the following:

(1) If no collective bargaining agreement is in effect, the existing representative shall no

longer be entitled to exclusive representative status for purposes of collective bargaining as of

the date of the commission's certification of results. If a collective bargaining agreement is in

effect, the existing representative shall no longer be entitled to exclusive representative status for

purposes of collective bargaining as of the expiration of the agreement.

(2) The employees in the bargaining unit shall not be included in a substantially similar

collective bargaining unit for at least a period of one year following the applicable date specified

in sub. (1).

ERC 70.12 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.

CHAPTER ERC 71
ANNUAL CERTIFICATION ELECTIONS FOR REPRESENTED MUNICIPAL SECTOR GENERAL NONSCHOOL DISTRICT EMPLOYEES WHO, AS OF JANUARY 30, ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT OR ARE SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR AFTER JUNE 29, 2011

ERC 71.01 Policy. This chapter implements the portion of s. 111.70 (4) (d) 3. b., Stats., requiring the commission to conduct an annual election, no later than May 1, to determine whether collective bargaining representation shall continue for represented municipal sector general nonschool district employees who, as of January 30, are not subject to a collective bargaining agreement or are subject to a collective bargaining agreement entered into on or after June 29, 2011. The existing exclusive representative of such employees that wishes to continue said representation, or any other labor organization interested in representing such employees must file a petition on or before January 30 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner or another petitioning labor organization. If no timely petition is filed, the result is the same as if only the existing representative filed a timely petition and the election resulted in decertification of the existing representative. The procedures in this chapter are intended to expedite the processing of a petition so that the ballots are cast as soon as possible following the filing of the petition, while