

# Title 391 WAC

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

**Chapters**

- 391-08**      **Rules of practice and procedure—Public employment relations commission.**
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**DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE**

**Chapter 391-21  
COLLECTIVE BARGAINING RULES—  
PUBLIC EMPLOYMENT**

- 391-21-001      Scope—Contents—Other rules. [Order 77-8, § 391-21-001, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-003      Application to port districts. [Statutory Authority: RCW 41.58.050 and 53.18.030. WSR 79-03-015 (Order 79-1), § 391-21-003, filed 2/16/79.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-100      Petition for investigation of a question concerning representation of employees—Who may file. [Order 77-8, § 391-21-100, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-102      Petition form—Number of copies—Filing—Service. [Order 77-8, § 391-21-102, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-104      Contents of petition. [Order 77-8, § 391-21-104, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-105      Contents of petition filed by employer. [Order 77-8, § 391-21-105, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-106      Supporting evidence. [Order 77-8, § 391-21-106, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-107      List of employees. [Order 77-8, § 391-21-107, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-108      Amendment and withdrawal. [Order 77-8, § 391-21-108, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-110      Intervention—By incumbent representative. [Order 77-8, § 391-21-110, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-112      Intervention—By organization other than incumbent. [Order 77-8, § 391-21-112, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-113      Showing of interest confidential. [Order 77-8, § 391-21-113, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-114      Consent elections. [Order 77-8, § 391-21-114, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.

- 391-21-115      Consent cross-checks. [Order 77-8, § 391-21-115, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-116      Notice of hearing. [Order 77-8, § 391-21-116, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-118      Hearings—Who shall conduct. [Order 77-8, § 391-21-118, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-120      Authority of hearing officer. [Order 77-8, § 391-21-120, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-122      Hearings—Nature and scope. [Order 77-8, § 391-21-122, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-124      Proceedings before the executive director. [Order 77-8, § 391-21-124, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-125      Cross-check of records. [Order 77-8, § 391-21-125, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-126      Notice of election. [Order 77-8, § 391-21-126, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-128      Election procedures—Disclaimers—Balloting. [Order 77-8, § 391-21-128, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-130      Challenged ballots. [Order 77-8, § 391-21-130, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-132      Tally of ballots. [Order 77-8, § 391-21-132, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-134      Procedure following inconclusive election. [Order 77-8, § 391-21-134, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-136      Filing and service of objections. [Order 77-8, § 391-21-136, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-137      Filing and service of cross-objections. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. WSR 78-07-014 (Order 78-3), § 391-21-137, filed 6/15/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-138      Procedure where no objections are filed. [Order 77-8, § 391-21-138, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-140      Procedure where objections are filed. [Order 77-8, § 391-21-140, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-142      Commission action. [Order 77-8, § 391-21-142, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
- 391-21-300      Petition for clarification of an existing bargaining unit—Who may file. [Order 77-8, § 391-21-300, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.

391-21-302	Petition form—Number of copies—Filing—Service. [Order 77-8, § 391-21-302, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-516	Notice of hearing. [Order 77-8, § 391-21-516, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-304	Contents of petition. [Order 77-8, § 391-21-304, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-518	Answer—Filing and service. [Order 77-8, § 391-21-518, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-306	Amendment and withdrawal. [Order 77-8, § 391-21-306, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-520	Answer—Contents and effect of failure to answer. [Order 77-8, § 391-21-520, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-308	Notice of hearing. [Order 77-8, § 391-21-308, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-522	Amendment of answer. [Order 77-8, § 391-21-522, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-310	Consolidation of proceedings. [Order 77-8, § 391-21-310, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-524	Motion to make complaint more definite and certain. [Order 77-8, § 391-21-524, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-312	Hearings—Who shall conduct. [Order 77-8, § 391-21-312, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-526	Hearings—Nature and scope. [Order 77-8, § 391-21-526, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-314	Authority of hearing officer. [Order 77-8, § 391-21-314, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-528	Briefs and proposed findings. [Order 77-8, § 391-21-528, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-316	Hearings—Nature and scope. [Order 77-8, § 391-21-316, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-530	Examiner decision. [Order 77-8, § 391-21-530, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-318	Proceedings before the executive director. [Order 77-8, § 391-21-318, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-532	Withdrawal or modification of examiner decision. [Order 77-8, § 391-21-532, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-320	Proceedings before the commission—Petition for review. [Order 77-8, § 391-21-320, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-534	Petition for review of examiner decision. [Order 77-8, § 391-21-534, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-321	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. WSR 78-07-014 (Order 78-3), § 391-21-321, filed 6/15/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-535	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. WSR 78-07-014 (Order 78-3), § 391-21-535, filed 6/15/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-322	Commission action. [Order 77-8, § 391-21-322, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-536	Commission action. [Order 77-8, § 391-21-536, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-500	Complaint charging unfair labor practices—Who may file. [Order 77-8, § 391-21-500, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-550	Collective bargaining—Policy. [Order 77-8, § 391-21-550, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-502	Form of charges—Number of copies—Filing—Service. [Order 77-8, § 391-21-502, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-556	Unfair labor practice remedies. [Order 77-8, § 391-21-556, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-504	Contents of complaint charging unfair labor practices. [Order 77-8, § 391-21-504, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-700	Resolution of impasses—Request for mediation. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-700, filed 3/28/80; Order 77-8, § 391-21-700, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-506	Amendment. [Order 77-8, § 391-21-506, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-702	Impasse resolution—Determination whether assistance is needed. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-702, filed 3/28/80; Order 77-8, § 391-21-702, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-508	Withdrawal. [Order 77-8, § 391-21-508, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-706	Impasse resolution—Function of mediator. [Order 77-8, § 391-21-706, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-510	Initial processing by executive director. [Order 77-8, § 391-21-510, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-708	Impasse resolution—Confidential nature of function. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-708, filed 3/28/80; Order 77-8, § 391-21-708, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-512	Examiner—Who may act. [Order 77-8, § 391-21-512, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-712	Impasse resolution—Dispute resolution panel. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR
391-21-514	Authority of examiner. [Order 77-8, § 391-21-514, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		

	80-04-073 (Order 80-2), § 391-21-712, filed 3/28/80; Order 77-8, § 391-21-712, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		80-04-073 (Order 80-2), § 391-21-737, filed 3/28/80.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-716	Impasse resolution—Disclosure. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-716, filed 3/28/80; Order 77-8, § 391-21-716, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-738	Uniformed personnel—Central filing of agreements. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-738, filed 3/28/80; Order 77-8, § 391-21-738, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-718	Impasse resolution—Vacancies. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-718, filed 3/28/80; Order 77-8, § 391-21-718, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-740	Uniformed personnel—Initiation of fact finding. [Order 77-8, § 391-21-740, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-719	Uniformed personnel—Interest arbitration. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-719, filed 3/28/80.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-742	Uniformed personnel—Selection of fact finder. [Order 77-8, § 391-21-742, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-720	Uniformed personnel—Appointment of partisan arbitrators. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-720, filed 3/28/80; Order 77-8, § 391-21-720, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-744	Uniformed personnel—Fact finding recommendations. [Order 77-8, § 391-21-744, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-721	Uniformed personnel—Selection of impartial arbitrator. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-721, filed 3/28/80.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-746	Uniformed personnel—Expenses of fact finding. [Order 77-8, § 391-21-746, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-722	Uniformed personnel—List of issues for arbitration. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-722, filed 3/28/80; Order 77-8, § 391-21-722, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-748	Uniformed personnel—Parties' responsibility after fact finding. [Order 77-8, § 391-21-748, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-723	Uniformed personnel—Hearing. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-723, filed 3/28/80.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-750	Uniformed personnel—Interest arbitration. [Order 77-8, § 391-21-750, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-724	Uniformed personnel—Order of proceedings and evidence. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-724, filed 3/28/80; Order 77-8, § 391-21-724, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-752	Uniformed personnel—Appointment of partisan arbitrators. [Order 77-8, § 391-21-752, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-726	Uniformed personnel—Proceedings in the absence of a party. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-726, filed 3/28/80; Order 77-8, § 391-21-726, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-754	Uniformed personnel—Selection of arbitrators. [Order 77-8, § 391-21-754, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-728	Uniformed personnel—Closing of the hearings. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-728, filed 3/28/80; Order 77-8, § 391-21-728, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-756	Uniformed personnel—Conduct of interest arbitration proceedings. [Order 77-8, § 391-21-756, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-733	Uniformed personnel—Conduct of interest arbitration proceedings. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-733, filed 3/28/80.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-758	Impasse arbitration—Interest arbitration award. [Order 77-8, § 391-21-758, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-734	Uniformed personnel—Interpretation and application of rules. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-734, filed 3/28/80; Order 77-8, § 391-21-734, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-760	Uniformed personnel—Expenses of arbitration. [Order 77-8, § 391-21-760, filed 12/29/77, effective 2/1/78.] Repealed by WSR 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
391-21-735	Uniformed personnel—Interest arbitration award. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-735, filed 3/28/80.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-800	Grievance arbitration—Who may file. [Order 77-8, § 391-21-800, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-737	Uniformed personnel—Expenses of arbitration. [Statutory Authority: RCW 41.56.090 and 41.58.050. WSR 80-04-073 (Order 80-2), § 391-21-737, filed 3/28/80.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-21-802	Grievance arbitration—Filing—Service. [Order 77-8, § 391-21-802, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-21-804	Grievance arbitration—Contents of request. [Order 77-8, § 391-21-804, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-21-806	Grievance arbitration—Appointment of staff arbitrator. [Order 77-8, § 391-21-806, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-21-808	Grievance arbitration—Submission of arbitration panel. [Order 77-8, § 391-21-808, filed 12/29/77, effective

	2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		
391-21-810	Grievance arbitration—Conduct of proceedings. [Order 77-8, § 391-21-810, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-130	Challenged ballots. [Order 77-6, § 391-30-130, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-812	Grievance arbitration—Award. [Order 77-8, § 391-21-812, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-132	Tally of ballots. [Order 77-6, § 391-30-132, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-814	Grievance arbitration—Expenses. [Order 77-8, § 391-21-814, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-134	Procedure following inconclusive election. [Order 77-6, § 391-30-134, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-21-900	Union security provisions. [Order 77-8, § 391-21-900, filed 12/29/77, effective 2/1/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-136	Filing and service of objections to election. [Order 77-6, § 391-30-136, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
		391-30-137	Filing and service of cross-objections. [Statutory Authority: RCW 41.58.050 and 41.59.110. WSR 78-07-013 (Order 78-4), § 391-30-137, filed 6/15/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
	<b>Chapter 391-30</b>		
	<b>COLLECTIVE BARGAINING RULES—</b>		
	<b>EDUCATIONAL EMPLOYMENT</b>		
391-30-001	Scope—Contents—Other rules. [Order 77-6, § 391-30-001, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-138	Procedure where no objections are filed. [Order 77-6, § 391-30-138, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-100	Petition for investigation of a question concerning representation of employees—Who may file. [Order 77-6, § 391-30-100, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-140	Procedure where objections to election are filed. [Order 77-6, § 391-30-140, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-102	Petition form—Number of copies—Filing—Service. [Order 77-6, § 391-30-102, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-142	Commission action. [Order 77-6, § 391-30-142, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-104	Contents of petition. [Order 77-6, § 391-30-104, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-300	Petition for clarification of an existing bargaining unit—Who may file. [Order 77-6, § 391-30-300, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-106	Supporting evidence. [Order 77-6, § 391-30-106, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-302	Petition form—Number of copies—Filing—Service. [Order 77-6, § 391-30-302, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-108	Amendment and withdrawal. [Order 77-6, § 391-30-108, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-304	Contents of petition. [Order 77-6, § 391-30-304, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-110	Intervention—By incumbent representative. [Order 77-6, § 391-30-110, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-306	Amendment and withdrawal. [Order 77-6, § 391-30-306, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-112	Intervention—By organization other than incumbent. [Order 77-6, § 391-30-112, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-308	Notice of hearing. [Order 77-6, § 391-30-308, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-113	Showing of interest confidential. [Order 77-6, § 391-30-113, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-310	Consolidation of proceedings. [Order 77-6, § 391-30-310, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-114	Consent elections. [Order 77-6, § 391-30-114, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-312	Hearings—Who shall conduct. [Order 77-6, § 391-30-312, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-116	Notice of hearing. [Order 77-6, § 391-30-116, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-314	Authority of hearing officer. [Order 77-6, § 391-30-314, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-118	Hearings—Who shall conduct. [Order 77-6, § 391-30-118, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-316	Hearings—Nature and scope. [Order 77-6, § 391-30-316, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-120	Authority of hearing officer. [Order 77-6, § 391-30-120, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-318	Proceedings before the executive director. [Order 77-6, § 391-30-318, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-122	Hearings—Nature and scope. [Order 77-6, § 391-30-122, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-320	Proceedings before the commission—Petition for review. [Order 77-6, § 391-30-320, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-124	Proceedings before the executive director. [Order 77-6, § 391-30-124, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-321	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050 and 41.59.110. WSR 78-07-013 (Order 78-4), § 391-30-321, filed 6/15/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-126	Notice of election. [Order 77-6, § 391-30-126, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-322	Commission action. [Order 77-6, § 391-30-322, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-128	Election procedures—Disclaimers—Balloting. [Order 77-6, § 391-30-128, filed 11/9/77.] Repealed by WSR	391-30-500	Complaint charging unfair labor practices—Who may file. [Order 77-6, § 391-30-500, filed 11/9/77.]

	Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-556	Unfair labor practice remedies. [Order 77-6, § 391-30-556, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-502	Complaint form—Number of copies—Filing—Service. [Order 77-6, § 391-30-502, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-560	Motion for temporary relief. [Order 77-6, § 391-30-560, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-504	Contents of complaint charging unfair labor practices. [Order 77-6, § 391-30-504, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-700	Resolution of impasses—Request for mediation. [Order 77-6, § 391-30-700, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-506	Amendment. [Order 77-6, § 391-30-506, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-702	Impasse resolution—Determination whether assistance is needed. [Order 77-6, § 391-30-702, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-508	Withdrawal. [Order 77-6, § 391-30-508, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-704	Impasse resolution—Submission of written proposals. [Order 77-6, § 391-30-704, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-510	Initial processing by executive director. [Order 77-6, § 391-30-510, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-706	Impasse resolution—Function of mediator. [Order 77-6, § 391-30-706, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-512	Examiner—Who may act. [Order 77-6, § 391-30-512, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-708	Impasse resolution—Confidential nature of function. [Order 77-6, § 391-30-708, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-514	Authority of examiner. [Order 77-6, § 391-30-514, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-710	Impasse resolution—Fact finding. [Order 77-6, § 391-30-710, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-516	Notice of hearing. [Order 77-6, § 391-30-516, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-712	Impasse resolution—Fact finding panel. [Order 77-6, § 391-30-712, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-518	Answer—Filing and service. [Order 77-6, § 391-30-518, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-714	Impasse resolution—Selection of fact finder. [Order 77-6, § 391-30-714, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-520	Answer—Contents and effect of failure to answer. [Order 77-6, § 391-30-520, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-716	Impasse resolution—Disclosure by fact finder. [Order 77-6, § 391-30-716, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-522	Amendment of answer. [Order 77-6, § 391-30-522, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-718	Impasse resolution—Vacancies as fact finder. [Order 77-6, § 391-30-718, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-524	Motion to make complaint more definite and certain. [Order 77-6, § 391-30-524, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-720	Impasse resolution—List of issues for fact finding. [Order 77-6, § 391-30-720, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-526	Hearings—Nature and scope. [Order 77-6, § 391-30-526, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-722	Impasse resolution—Fact finding hearing. [Order 77-6, § 391-30-722, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-528	Briefs and proposed findings. [Order 77-6, § 391-30-528, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-724	Impasse resolution—Order of fact finding proceedings and evidence. [Order 77-6, § 391-30-724, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-530	Examiner decision. [Order 77-6, § 391-30-530, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-726	Impasse resolution—Fact finding in the absence of a party. [Order 77-6, § 391-30-726, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-532	Withdrawal or modification of examiner decision. [Order 77-6, § 391-30-532, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-728	Impasse resolution—Closing of fact finding hearings. [Order 77-6, § 391-30-728, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-534	Petition for review of examiner decision. [Order 77-6, § 391-30-534, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-730	Impasse resolution—Findings of fact and recommendations. [Order 77-6, § 391-30-730, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-535	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050 and 41.59.110. WSR 78-07-013 (Order 78-4), § 391-30-535, filed 6/15/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-732	Impasse resolution—Expenses of fact finding. [Order 77-6, § 391-30-732, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-536	Commission action. [Order 77-6, § 391-30-536, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-734	Impasse resolution—Interpretation and application of fact finding rules. [Order 77-6, § 391-30-734, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-550	Collective bargaining—Policy. [Order 77-6, § 391-30-550, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-30-736	Impasse resolution—Parties' responsibility after fact finding. [Order 77-6, § 391-30-736, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-552	Collective bargaining procedure. [Order 77-6, § 391-30-552, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		
391-30-554	Determination of disputes as to scope of bargaining. [Order 77-6, § 391-30-554, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		

391-30-738	Impasse resolution—Central filing of agreements. [Order 77-6, § 391-30-738, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-134	Procedure following inconclusive election. [Order 77-6, § 391-50-134, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-30-900	Union security provisions. [Order 77-6, § 391-30-900, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-136	Filing and service of objections to election. [Order 77-6, § 391-50-136, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
<b>Chapter 391-50</b>			
<b>COLLECTIVE BARGAINING RULES—</b>			
<b>COMMUNITY COLLEGES</b>			
391-50-001	Scope—Contents—Other rules. [Order 77-6, § 391-50-001, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-137	Filing and service of cross-objections. [Statutory Authority: RCW 28B.52.080 and 41.58.050. WSR 78-07-012 (Order 78-5), § 391-50-137, filed 6/15/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-100	Petition for investigation of question concerning representation of employees—Who may file—Timeliness. [Order 77-6, § 391-50-100, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-138	Procedure where no objections are filed. [Order 77-6, § 391-50-138, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-102	Petition form—Number of copies—Filing—Service. [Order 77-6, § 391-50-102, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-140	Procedure where objections to election are filed. [Order 77-6, § 391-50-140, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-104	Contents of petition. [Order 77-6, § 391-50-104, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-142	Commission action. [Order 77-6, § 391-50-142, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-105	Contents of petition filed by employer. [Order 77-6, § 391-50-105, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-300	Petition for clarification of an existing bargaining unit—Who may file. [Order 77-6, § 391-50-300, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-106	Supporting evidence. [Order 77-6, § 391-50-106, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-302	Petition form—Number of copies—Filing—Service. [Order 77-6, § 391-50-302, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-108	Amendment and withdrawal. [Order 77-6, § 391-50-108, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-304	Contents of petition. [Order 77-6, § 391-50-304, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-110	Intervention—By incumbent representative. [Order 77-6, § 391-50-110, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-306	Amendment and withdrawal. [Order 77-6, § 391-50-306, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-112	Intervention—By organization other than incumbent. [Order 77-6, § 391-50-112, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-308	Notice of hearing. [Order 77-6, § 391-50-308, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-113	Showing of interest confidential. [Order 77-6, § 391-50-113, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-310	Consolidation of proceedings. [Order 77-6, § 391-50-310, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-114	Consent elections. [Order 77-6, § 391-50-114, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-312	Hearings—Who shall conduct. [Order 77-6, § 391-50-312, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-116	Notice of hearing. [Order 77-6, § 391-50-116, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-314	Authority of hearing officer. [Order 77-6, § 391-50-314, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-118	Hearings—Who shall conduct. [Order 77-6, § 391-50-118, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-316	Hearings—Nature and scope. [Order 77-6, § 391-50-316, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-120	Authority of hearing officer. [Order 77-6, § 391-50-120, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-318	Proceedings before the executive director. [Order 77-6, § 391-50-318, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-122	Hearings—Nature and scope. [Order 77-6, § 391-50-122, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-320	Proceedings before the commission—Petition for review. [Order 77-6, § 391-50-320, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-124	Proceedings before the executive director. [Order 77-6, § 391-50-124, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-321	Filing and service of cross-petition for review. [Statutory Authority: RCW 28B.52.080 and 41.58.050. WSR 78-07-012 (Order 78-5), § 391-50-321, filed 6/15/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-126	Notice of election. [Order 77-6, § 391-50-126, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-322	Commission action. [Order 77-6, § 391-50-322, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-128	Election procedures—Disclaimers—Balloting. [Order 77-6, § 391-50-128, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-700	Resolution of impasses—Request for mediation. [Order 77-6, § 391-50-700, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-130	Challenged ballots. [Order 77-6, § 391-50-130, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-702	Impasse resolution—Determination whether assistance is needed. [Order 77-6, § 391-50-702, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-132	Tally of ballots. [Order 77-6, § 391-50-132, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-50-706	Impasse resolution—Function of mediator. [Order 77-6, § 391-50-706, filed 11/9/77.] Repealed by WSR 81-15-

	022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-070	Definitions. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-070, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.-050.
391-50-708	Impasse resolution—Confidential nature of function. [Order 77-6, § 391-50-708, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-080	Informal procedure. [Statutory Authority: RCW 41.58.-050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-080, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-710	Impasse resolution—Fact finding. [Order 77-6, § 391-50-710, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-090	Formal procedure. [Statutory Authority: RCW 41.58.-050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-090, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-712	Impasse resolution—Fact finding panel. [Order 77-6, § 391-50-712, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-105	Formal notices—Number of copies—Filing—Service. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-105, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-714	Impasse resolution—Selection of fact finder. [Order 77-6, § 391-50-714, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-110	Intervention. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-110, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.-050.
391-50-716	Impasse resolution—Disclosure by fact finder. [Order 77-6, § 391-50-716, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-120	Appearances. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-120, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.-050.
391-50-718	Impasse resolution—Vacancies as fact finder. [Order 77-6, § 391-50-718, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-140	Voluntary settlement. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-140, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-720	Impasse resolution—List of issues for fact finding. [Order 77-6, § 391-50-720, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-170	Hearings. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-170, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.-050.
391-50-722	Impasse resolution—Fact finding hearing. [Order 77-6, § 391-50-722, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-220	Order of procedure. [Statutory Authority: RCW 41.58.-050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-220, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-724	Impasse resolution—Order of fact finding proceedings and evidence. [Order 77-6, § 391-50-724, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-245	Inspection of conditions. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-245, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-728	Impasse resolution—Closing of fact finding hearings. [Order 77-6, § 391-50-728, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-260	Briefs. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-260, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.-050.
391-50-730	Impasse resolution—Findings of fact and recommendations. [Order 77-6, § 391-50-730, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.	391-70-300	Compliance with orders—Notification to commission. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-300, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.
391-50-732	Impasse resolution—Expenses of fact findings. [Order 77-6, § 391-50-732, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		
391-50-734	Impasse resolution—Interpretation and application of fact finding rules. [Order 77-6, § 391-50-734, filed 11/9/77.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		
<b>Chapter 391-70</b>			
<b>COLLECTIVE BARGAINING RULES—</b>			
<b>MARINE EMPLOYEES</b>			
391-70-010	Scope—Contents—Other rules. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-010, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		
391-70-020	Special rules. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-020, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.-050.		
391-70-030	Modifications and exceptions. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-030, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		
391-70-040	Address for communications. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-040, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.050.		
391-70-050	Office hours. [Statutory Authority: RCW 41.58.050 and 47.64.040. WSR 79-01-016 (Order 78-8), § 391-70-050, filed 12/14/78.] Repealed by WSR 81-15-022 (Order 81-02), filed 7/10/81. Statutory Authority: RCW 41.58.-050.		

**Reviser's note:** Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.





# Chapter 391-08 WAC

## RULES OF PRACTICE AND PROCEDURE—PUBLIC EMPLOYMENT RELATIONS COMMISSION

### WAC

<p>391-08-001 391-08-003 391-08-007 391-08-010 391-08-020 391-08-030 391-08-040 391-08-100 391-08-120 391-08-180 391-08-190 391-08-300 391-08-310 391-08-315 391-08-520 391-08-610 391-08-630 391-08-640 391-08-650 391-08-670 391-08-800 391-08-810 391-08-820 391-08-830 391-08-840 391-08-850 391-08-860 391-08-870 391-08-880</p>	<p>Application and scope of chapter 391-08 WAC. Policy—Construction—Waiver. Definitions. Appearance and practice before agency—Who may appear—Notice of appearance. Appearance and practice before agency—Standards of conduct. Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff. Appearance and practice before agency—Former employee as witness. Computation of time. Filing and service of papers. Continuances. Prefiling of collective bargaining agreements. Subpoenas—Discovery. Subpoenas—Form—Issuance to parties. Interpreters. Declaratory orders. Agency decisions—Service. Agency structure—Substitution for executive director. Adjudicative proceedings—Appeals. Case docketing and numbering. Decision numbering—Citation of cases—Indexing of decisions. Agency records—Public records officer—Contact information. Agency records—Confidentiality. Agency offices. Agency records—Availability—Organization—Requests. Processing of public records requests. Processing of public records—Electronic records. Exemptions to public records. Costs for providing public records. Review of denial of public records.</p>	<p>391-08-160 391-08-170 391-08-200 391-08-210 391-08-220 391-08-230</p>	<p>031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Service of process—Opportunity for hearing. [Order 77-1, § 391-08-160, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59-110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. Service of process—Notice of hearing. [Order 77-1, § 391-08-170, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Definition of issues—Before hearing. [Order 77-1, § 391-08-200, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. Definition of issues—Prehearing conference. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-210, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-210, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. Definition of issues—Record of action taken during prehearing conference. [Order 77-1, § 391-08-220, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Summary judgment. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-230, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-08-230, filed 1/6/81.] Repealed by WSR 00-14-048, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. Subpoenas—Service. [Order 77-1, § 391-08-320, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Subpoenas—Fees. [Order 77-1, § 391-08-330, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Subpoenas—Proof of service. [Order 77-1, § 391-08-340, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Subpoenas—Quashing. [Order 77-1, § 391-08-350, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Subpoenas—Enforcement. [Order 77-1, § 391-08-360, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-</p>
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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

<p>391-08-103 391-08-105 391-08-110 391-08-130 391-08-140 391-08-150</p>	<p>Service of process—Additional time after service by mail. [Order 77-1, § 391-08-103, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Service of process—Extension of time. [Order 77-1, § 391-08-105, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Service of process—By whom served. [Order 77-1, § 391-08-110, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. Service of process—Method of service. [Order 77-1, § 391-08-130, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Service of process—Completion of service on parties. [Order 77-1, § 391-08-140, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Service of process—Filing with agency. [Order 77-1, § 391-08-150, filed 1/27/77.] Repealed by WSR 83-24-</p>	<p>391-08-320 391-08-330 391-08-340 391-08-350 391-08-360</p>	<p>031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Service of process—Opportunity for hearing. [Order 77-1, § 391-08-160, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59-110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. Service of process—Notice of hearing. [Order 77-1, § 391-08-170, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Definition of issues—Before hearing. [Order 77-1, § 391-08-200, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. Definition of issues—Prehearing conference. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-210, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-210, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. Definition of issues—Record of action taken during prehearing conference. [Order 77-1, § 391-08-220, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Summary judgment. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-230, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-08-230, filed 1/6/81.] Repealed by WSR 00-14-048, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. Subpoenas—Service. [Order 77-1, § 391-08-320, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Subpoenas—Fees. [Order 77-1, § 391-08-330, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Subpoenas—Proof of service. [Order 77-1, § 391-08-340, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Subpoenas—Quashing. [Order 77-1, § 391-08-350, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. Subpoenas—Enforcement. [Order 77-1, § 391-08-360, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-</p>
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- 01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-370 Subpoenas—Geographical scope. [Order 77-1, § 391-08-370, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-400 Evidence—Examination of witnesses. [Order 77-1, § 391-08-400, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-410 Evidence—Application of rules of evidence. [Order 77-1, § 391-08-410, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-420 Evidence—Objections and rulings. [Order 77-1, § 391-08-420, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-450 Evidence—Stipulations and admissions of record. [Order 77-1, § 391-08-450, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-460 Evidence—Submission of documentary evidence. [Order 77-1, § 391-08-460, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-470 Evidence—Excerpts from documentary evidence. [Order 77-1, § 391-08-470, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-490 Evidence—Refusal of witness to answer. [Order 77-1, § 391-08-490, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-08-500 Declaratory rulings authorized. [Order 77-1, § 391-08-500, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-510 Declaratory rulings—Petition. [Order 77-1, § 391-08-510, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-600 Agency decisions—Form and content. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-600, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-600, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 35.05.461 [34.05.461], 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150.
- 391-08-900 Petitions for rule making—Who may petition. [Order 77-1, § 391-08-900, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-910 Petitions for rule making—Form. [Order 77-1, § 391-08-910, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-920 Petitions for rule making—Agency must consider. [Order 77-1, § 391-08-920, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.
- 391-08-930 Petitions for rule making—Notice of disposition. [Order 77-1, § 391-08-930, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

**Reviser's note:** Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

**WAC 391-08-001 Application and scope of chapter 391-08 WAC.** Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.-340); section 15, chapter 356, Laws of 2002 (RCW 41.76.-060); section 7, chapter 6, Laws of 2010 (RCW 49.39.060); and section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess., to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and

(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-001, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, and 49.39.060. WSR 10-20-172, § 391-08-001, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-08-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

**WAC 391-08-003 Policy—Construction—Waiver.**

The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the agency, and nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to adjust any labor dispute. The commission and its authorized agents may waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.58.005(1). WSR 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

**WAC 391-08-007 Definitions.** As used in Title 391 WAC:

(1) "Agency" means the public employment relations commission, its officers and agents;

(2) "Commission" means the public employment relations commission;

(3) "Executive director" means the officer of that title appointed by the commission pursuant to RCW 41.58.015(2);

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(5) "Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.

(2/15/12)

(6) "Presiding officer" means an agency official(s), examiner, hearing officer or other person authorized to act on behalf of the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-007, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-007, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-007, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-007, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-007, filed 1/27/77.]

**WAC 391-08-010 Appearance and practice before agency—Who may appear—Notice of appearance.** (1) No person may appear in a representative capacity before the agency other than the following:

(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(b) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law;

(c) A bona fide officer, employee or other authorized representative of: (i) Any employer subject to the jurisdiction of the agency, (ii) any labor or employee organization, or (iii) individual.

(2) Except where the information is already listed in the agency's docket records for the particular case, a person appearing in a representative capacity shall file and serve a notice of appearance listing the representative's name, address, telephone number, fax number, and e-mail address.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-08-010, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-010, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-010, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-010, filed 1/27/77.]

**WAC 391-08-020 Appearance and practice before agency—Standards of conduct.** Misconduct at any hearing conducted by the commission or a member of its staff shall be ground for summary exclusion from the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the commission after due notice and hearing.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-020, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-020, filed 1/27/77.]

**WAC 391-08-030 Appearance and practice before agency—Appearance by former employee of agency or former member of attorney general's staff.** No former member of the commission, former employee of the agency or former member of the attorney general's staff assigned to represent the agency shall, at any time after severing his or

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her employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his or her employment with the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-030, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-030, filed 1/27/77.]

**WAC 391-08-040 Appearance and practice before agency—Former employee as witness.** Except upon the express written consent of the commission, no former member of the commission, former employee of the agency or former member of the attorney general's staff assigned to represent the agency shall, at any time after severing his or her employment with the agency or with the attorney general, appear as a witness on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his or her employment with the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-040, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-040, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-040, filed 1/27/77.]

**WAC 391-08-100 Computation of time.** In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-100, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-100, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-100, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-100, filed 1/27/77.]

### **WAC 391-08-120 Filing and service of papers.**

#### FILING OF PAPERS WITH THE AGENCY

(1) Papers to be filed with the agency shall be filed at the commission's Olympia office. The executive director shall post, and from time to time revise as appropriate, a list containing the street and mailing addresses for filing by actual delivery of papers, the telephone number for filing by electronic telefacsimile transmission (fax), and the electronic mail (e-mail) address and software supported by the agency for filing by e-mail attachment.

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(2) Papers may be filed by any of the following methods:

(a) FILING BY ACTUAL DELIVERY of papers to the agency (including filings delivered by United States mail) shall be subject to the following limitations:

(i) Only the original paper(s) shall be filed. No additional copies of papers are required.

(ii) The case number(s) shall be indicated on the front page of each document filed, except for petitions and complaints being filed to initiate proceedings before the agency.

(iii) Filing shall occur only upon actual receipt of the original paper by the agency during office hours.

(iv) Papers delivered to or left at the agency office after the close of business will be deemed to be filed on the next business day the office is open.

(b) FILING BY FAX shall be subject to the following limitations:

(i) Parties shall only transmit one copy of the paper, accompanied by a cover sheet or form identifying the party filing the paper, the total number of pages in the fax transmission, and the name, address, telephone number and fax number of the person sending the fax.

(ii) The original paper filed by fax shall be mailed to the commission's Olympia office on the same day the fax is transmitted.

(iii) The case number(s) shall be indicated on the front page of each document filed by fax, except for petitions and complaints being filed to initiate proceedings before the agency.

(iv) Filing by fax shall occur only when a complete legible copy of the paper is received by the agency. If a fax is not received in legible form, it will be treated as if it had never been filed. A party attempting to file a paper by fax bears the risk that the paper will not be timely or legibly received, regardless of the cause.

(v) If receipt of a fax transmission commences after office hours, the paper will be deemed filed on the next business day the office is open.

(vi) Fax shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.

(c) FILING BY E-MAIL ATTACHMENT shall be subject to the following limitations:

(i) Parties shall only transmit one copy of the paper, as an attachment to an e-mail message identifying the party filing the paper, the total number of pages in the attachment, the software used to prepare the attachment, and the name, address, telephone number and e-mail address of the person sending the e-mail message.

(ii) The original paper filed by e-mail attachment shall be mailed to the commission's Olympia office on the same day the e-mail message and attachment are transmitted.

(iii) The case number(s) shall be indicated on the front page of each document filed by e-mail attachment, except for petitions and complaints being filed to initiate proceedings before the agency.

(iv) Filing by e-mail attachment shall occur only when a complete legible copy of the paper is received by the agency. If an e-mail attachment is not received in legible form, or cannot be opened with software on the list promulgated by the executive director under this section, it will be treated as if it had never been filed. A party attempting to file a paper by e-

mail attachment bears the risk that the paper will not be timely or legibly received, regardless of the cause.

(v) If an e-mail transmission is received by the agency after office hours, the paper will be deemed filed on the next business day the office is open.

(vi) E-mail shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.

#### SERVICE ON OTHER PARTIES

(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be completed no later than the day of filing, by one of the following methods:

(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;

(b) Service may be made by first class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(d) Service may be made by fax, and shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

(e) Service may be made by e-mail attachment, and shall be regarded as completed upon transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

#### PROOF OF SERVICE

(4) On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.

(2/15/12)

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (19). WSR 00-14-048, § 391-08-120, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-120, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (18). WSR 96-07-105, § 391-08-120, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-120, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-053 (Order 88-01), § 391-08-120, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-120, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-120, filed 1/27/77.]

**WAC 391-08-180 Continuances.** (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance shall state whether or not all other parties agree to the continuance.

If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-180, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-180, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-180, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-180, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-180, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-180, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-180, filed 1/27/77.]

**WAC 391-08-190 Prefiling of collective bargaining agreements.** The agency shall make available a procedure for parties to proceedings before the agency to prefile collective bargaining agreements with the agency in accordance with this section, and to thereafter incorporate prefiled contracts into other filings, by reference. The prefiled copy will then take the place of filing copies otherwise required by rules in Title 391 WAC.

(1) An employer and/or exclusive bargaining representative who request prefiling of their collective bargaining agreement under this section may file a written request with the agency.

(a) The requesting party or parties shall use the form prescribed by the executive director.

(b) The requesting party or parties shall attach or enclose a complete electronic copy of the collective bargaining agreement (in Adobe Acrobat, WordPerfect, or Microsoft Word format).

(c) The requesting party or parties shall attach photocopies of certain pages of the original collective bargaining agreement, as follows:

(i) The front cover or first page(s) showing the names of the parties and the identification of the bargaining unit(s) covered;

(ii) The page(s) containing the effective date and termination dates of the collective bargaining agreement; and

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(iii) The page(s) containing the signatures of the parties' representatives.

(2) Upon the filing of a request conforming to subsection (1) of this section, the agency shall put the prefiled collective bargaining agreement into an electronic data base.

(a) The collective bargaining agreements contained in the electronic data base shall be open to public inspection and copying.

(b) The agency shall issue the parties a confirmation code unique to that collective bargaining agreement.

(3) After issuance of a confirmation code under subsection (2)(b) of this section, the parties are authorized to incorporate that prefiled collective bargaining agreement into any paper subsequently filed with the agency under Title 391 WAC, by referring to the confirmation code in the subsequent document.

(4) The authorization in subsection (3) of this section shall terminate on the expiration date originally stated in the prefiled collective bargaining agreement.

(5) Any amendments to the original agreement may be filed and incorporated into the original filing under subsection (1) of this section. If either party declines to profile an amendment to a collective bargaining agreement under this rule, a copy of any amendment must be included in any subsequent case filed with the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-190, filed 1/31/08, effective 4/1/08.]

**WAC 391-08-300 Subpoenas—Discovery.** The power of subpoena shall be limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency.

Pursuant to the authority delegated to the agency by RCW 34.05.446(2), other forms of discovery shall not be available in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.446. WSR 98-14-112, § 391-08-300, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-300, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-300, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-300, filed 1/27/77.]

**WAC 391-08-310 Subpoenas—Form—Issuance to parties.** (1) Every subpoena shall:

(a) State the name of the agency as: State of Washington, public employment relations commission;

(b) State the title of the proceeding and case number; and

(c) Identify the party causing issuance of the subpoena.

(2) Every subpoena shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing, except no subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the agency staff in any proceeding before the agency.

(3) Subpoenas may be issued by the commission or its presiding officer:

(a) On the request of counsel or other representative authorized to practice before the agency; or

(b) On the request of a party not represented by counsel or other representative authorized to practice before the agency, but may then be conditioned upon a showing of general relevance and reasonable scope of the testimony or evidence sought.

(4) Subpoenas may be issued by attorneys under the authority conferred upon them by RCW 34.05.446(1).

(5) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy of the subpoena, or by leaving a copy of the subpoena at the place of his or her abode. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(6) The party which issues or requests issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

(a) Witness fees, mileage, and allowances for meals and lodging shall be at the rates and terms allowed by the superior court for Thurston County.

(b) Witnesses shall be entitled to payment in advance for their fees for one day's attendance, together with mileage for traveling to and returning from the place where they are required to attend, if their demand for payment is made to the officer or person serving the subpoena at the time of service.

(7) The presiding officer, upon motion made at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable or oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(8) Subpoenas shall be enforced as provided in RCW 34.05.588(1).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.40.010, 5.56.010 and 34.05.446. WSR 00-14-048, § 391-08-310, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-08-310, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-08-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-310, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-310, filed 1/27/77.]

**WAC 391-08-315 Interpreters.** (1) For all adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC), the provisions of WAC 10-08-150 as now or hereafter amended shall apply.

(2) For all cases that are not adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-55 and 391-65 WAC), the provisions of WAC 10-08-150 as now or hereafter amended shall apply, except that all interpreter fees and expenses shall be paid by the party which requests the participation of an impaired person as

defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.42.120 and 2.43.030. WSR 98-14-112, § 391-08-315, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100, 41.59.150 and chapter 2.42 RCW. WSR 90-06-070, § 391-08-315, filed 3/7/90, effective 4/7/90.]

**WAC 391-08-520 Declaratory orders.** Any person may petition the commission for a declaratory order, under RCW 34.05.240, with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order shall generally adhere to the following form:

(a) At the top of the page shall appear the wording "Before the Public Employment Relations Commission," a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order," and the title "Petition."

(b) The body of the petition shall set out, in numbered paragraphs:

(i) The name and address of the petitioner and the name and address, if any, of the representative appearing on behalf of the petitioner.

(ii) The name(s) and address(es) of any other party which the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s) and address(es) of their representatives, if known.

(iii) The rule(s), order(s) or statute(s) from which the controversy arises.

(iv) The facts which the petitioner wishes the commission to consider in issuing a declaratory order.

(v) The issues which the petitioner wishes the commission to address in its order.

(vi) The relief requested by the petitioner.

(vii) The reasons on which the petitioner relies to show that: Uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(c) The petition shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on other parties named in the petition as required by WAC 391-08-120 (3) and (4).

(2) Within fifteen days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person he or she deems desirable. The notice shall establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(2/15/12)

(3) The petition and any responses from parties shall be forwarded to the commission for consideration. The commission shall not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within thirty days after receipt of the petition, do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set a reasonable time and place for a hearing to be held within ninety days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission, or submission of written argument upon the matter if the material facts are not in dispute. The commission shall give seven days or more advance written notice to the petitioner and other persons who have been given notice of the petition pursuant to subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) The commission may extend the time limits of subsection (4)(b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, including setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for such action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order shall be in writing, and shall be served upon all parties identified in subsection (2) of this section. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(9) A declaratory order has the same status as any other order entered in an adjudicative proceeding conducted by the commission.

(10) In the event a declaratory order is filed involving the application of the provisions of chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-520, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240. WSR 98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]

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**WAC 391-08-610 Agency decisions—Service.** Every final order issued by the agency shall be served on each party or upon the agency designated by the party or by law to receive service of such papers; and a copy shall be furnished to any counsel or person appearing for a party in a representative capacity.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-610, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-610, filed 1/27/77.]

**WAC 391-08-630 Agency structure—Substitution for executive director.** (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full-time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The commission's professional staff is appointed pursuant to RCW 41.58.015(3). A "multifunctional" staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution services provided by the agency. Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may also delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.

(5) In the event the executive director is disqualified from participation in a decision, the most senior (in terms of length of service with this agency) dispute resolution manager authorized to act as the designee of the executive director to make preliminary rulings on unfair labor practice cases under WAC 391-45-110, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director. Thereafter, this authority passes to the other dispute resolution managers in agency seniority order.

(6) The marine employees' commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to and consistent with section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-630, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.58.010 and [41.58].-015. WSR 03-03-064, § 391-08-630, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.58.010 and 41.58.015. WSR 98-14-112, § 391-08-630, filed 7/1/98, effective 8/1/98; WSR 90-06-070, § 391-08-630, filed 3/7/90, effective 4/7/90. Statu-

tory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-08-630, filed 9/16/85.]

**WAC 391-08-640 Adjudicative proceedings—Appeals.** Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.

(1) The parties shall have the right to appeal to the commission, as follows:

(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.

(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.

(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.

(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.

(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.

(2) For cases decided under chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.

(3) The commission will only consider amicus (friend of the forum) briefs filed in conformity with this subsection.

(a) The person or organization desiring to file an amicus brief must:

(i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;

(ii) Limit any amicus brief to particular issues on appeal;

(iii) Limit any legal analysis to arguments that differ from those advanced by the parties;

(iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;

(v) Limit any amicus brief to twenty-five pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within fourteen days following filing and service of the briefs of the parties, and serve copies of any such brief on each of the original parties in the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for such extension.



(c) The original parties to the case may, within fourteen days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not thereby acquire any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not thereby become a party to the case for purposes of any further proceedings or appeal.

(4) The commission may, on its own motion, review any order which is subject to appeal under subsection (1) of this section, by giving written notice to all parties within thirty days following the issuance of the order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-08-640, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-640, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.464. WSR 98-14-112, § 391-08-640, filed 7/1/98, effective 8/1/98.]

#### **WAC 391-08-650 Case docketing and numbering.**

The agency maintains a computerized case docketing system which is used to track and manage all requests for the dispute resolution service provided by the agency.

(1) Each case processed by the agency is identified by a unique number consisting of four components.

(a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.

(b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:

"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.

"C" indicates a unit clarification proceeding under chapter 391-35 WAC.

"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.

"E" indicates a representation proceeding under chapter 391-25 WAC.

"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.

"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.

"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.

"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.

"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of

nonassociation by employees subject to union security obligations.

"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.

"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 WAC.

"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.

(c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed.

(d) The fourth component, consisting of a five-digit number, indicates the sequential number of the case within the type of dispute identified in the second component, since the agency commenced operations on January 1, 1976.

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization or labor organization are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-650, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.220. WSR 96-07-105, § 391-08-650, filed 3/20/96, effective 4/20/96.]

#### **WAC 391-08-670 Decision numbering—Citation of cases—Indexing of decisions.**

(1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of two or three components, as follows:

(a) The first component, consisting of a number, indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency commenced operations on January 1, 1976.

(b) The second component (where appropriate) consisting of an alphabetic code in ascending alphabetical order, indicates the second and subsequent decisions issued in the case to which the numerical component was originally assigned.

(c) The third component, consisting of a four-letter alphabetic code, indicates the statute under which the decision was issued:

"CCOL" indicates cases decided under chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges).

"EDUC" indicates cases decided under chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" indicates cases decided under chapter 41.76 RCW (faculty at public four-year institutions of higher education).

"MRNE" indicates cases decided under chapter 47.64 RCW, relating to the Washington state ferries system.

"PECB" indicates cases decided under chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" indicates cases decided exclusively under chapter 53.18 RCW (Employment Relations—Collective Bargaining and Arbitration), relating to port districts.

"PRIV" indicates cases decided under chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" indicates cases decided under RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act).

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency shall conform to the formats specified in this section:

**GENERAL RULE:** Citations shall list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in parenthesis).

**Examples:** *City of Roe*, Decision 1234 (PECB, 1992)  
*City of Roe*, Decision 1234-A (PECB, 1993)  
*City of Roe*, Decision 1234-B (PECB, 1994)

**EXCEPTION:** For decisions in which an employee organization or labor organization was named as the respondent in an unfair labor practice case, the citation shall list the name of the union (in parenthesis) following the name of the employer.

**Example:** *City of Roe (Doe Union)*, Decision 2345 (PECB, 1995)

(3) The agency encourages the publication and indexing of its decisions by private firms, but does not contribute financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.

(4) To satisfy the requirements of RCW 42.17.260(5), the agency publishes its decisions, together with a search engine, on its web site at: "www.perc.wa.gov".

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-670, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 34.05.220. WSR 03-11-029, § 391-08-670, filed 5/15/03, effective 6/15/03; WSR 03-03-064, § 391-08-670, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. WSR 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; WSR 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

**WAC 391-08-800 Agency records—Public records officer—Contact information.** (1) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request should contact the public records officer of the agency:

David I. Gedrose  
Public Records Officer, Public Employment Relations  
Commission  
P.O. Box 40919  
360-570-7322  
David.Gedrose@perc.wa.gov

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Information is also available at the agency's web site at [www.perc.wa.gov](http://www.perc.wa.gov).

(2) The public records officer will oversee compliance with the act but another staff member may process the request. Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-800, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.220 and 34.05.476. WSR 98-14-112, § 391-08-800, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08, 53.18 and 42.17 RCW. WSR 90-06-070, § 391-08-800, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-800, filed 1/27/77.]

**WAC 391-08-810 Agency records—Confidentiality.** The agency shall preserve the confidentiality of certain records, as follows:

(1) In order to protect the privacy of individual employees, the agency shall not permit the disclosure to any person of evidence furnished as a showing of interest in support of a representation petition or motion for intervention.

(2) In order to respect the confidential nature of mediation, the agency shall not permit the disclosure of notes and memoranda made by any member of the commission or its staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010. WSR 99-14-060, § 391-08-810, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-810, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010. WSR 90-06-070, § 391-08-810, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-810, filed 1/27/77.]

**WAC 391-08-820 Agency offices.** (1) The agency maintains its principal office in the city of Olympia, Washington.

(a) The street address of the Olympia office is:

Public Employment Relations Commission  
112 Henry Street N.E., Suite 300  
Olympia, Washington 98504-0919.

(b) The mailing address of the Olympia office is:

Public Employment Relations Commission  
P.O. Box 40919  
Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

Public Employment Relations Commission  
Suite 201  
9757 Juanita Drive NE  
Kirkland, Washington 98034.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-820, filed 1/31/08, effective 2/15/12]

(2/15/12)

time 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-820, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-820, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-820, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-820, filed 1/27/77.]

**WAC 391-08-830 Agency records—Availability—Organization—Requests.** (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the Olympia office of the agency.

(2) Organization of records. The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take agency records from its offices without the permission of the public records officer or his or her designee. A variety of records is available on the agency web site at [www.perc.wa.gov](http://www.perc.wa.gov). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(3) Making a request for public records:

(a) Any person wishing to inspect or copy public records of the agency should make the request by letter, fax, or e-mail addressed to the public records officer and including the following information:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any e-mail address;
- (iv) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or make a deposit. Pursuant to WAC 391-08-860 standard photocopies will be provided at fifteen cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-830, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-840 Processing of public records requests.** (1) Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(2) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(3) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(4) Inspection of records.

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the agency's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(5) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(6) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that manner. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(7) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate

that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(8) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the agency has closed the request.

(9) Later discovered documents. If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-840, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-850 Processing of public records—Electronic records.** (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to data bases. With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The agency may charge a fee consistent with RCW 43.105.280 for such customized access.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-850, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-860 Exemptions to public records.**

[Statutory Authority: [RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060.] WSR 10-20-172, § 391-08-860, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-870 Costs for providing public records.**

(1) There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for twenty-five cents per page.

(2) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The agency will not charge sales tax when it makes copies of public records.

(3) The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no

charge for e-mailing electronic records to a requestor, unless another cost applies.

(4) The agency may also charge actual costs of mailing, including the cost of the shipping container.

(5) Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-870, filed 10/6/10, effective 11/6/10.]

**WAC 391-08-880 Review of denial of public records.**

(1) Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as agency and the requestor mutually agree to.

(3) If the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under the procedure set forth under WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of such request regardless of any internal administrative appeal.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-880, filed 10/6/10, effective 11/6/10.]

# Chapter 391-25 WAC

## REPRESENTATION CASE RULES

### WAC

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 391-25-650 Briefs and written arguments on objections.  
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 391-25-670 Commission action on objections and appeals.  
 391-25-674 Special provision—Marine employees.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-25-011 Special provision—Optional coverage of classified employees of institutions of higher education under chapter 41.56 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.56.201. WSR 03-03-064, § 391-25-011, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.201. WSR 96-07-105, § 391-25-011, filed 3/20/96, effective 4/20/96.] Repealed by WSR 03-11-029, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 41.56.201.

391-25-076 Special provision—State civil service employees. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-076, filed 1/14/03, effective 2/14/03.] Repealed by WSR 08-04-059, filed 1/31/08, effective 4/1/08.

391-25-216 Special provision—State civil service employees. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-216, filed 1/14/03, effective 2/14/03.] Repealed by WSR 03-11-029, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060.

391-25-330 Authority of hearing officer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-330, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-032 (Order 83-02), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-25-397 Special provision—State employees. [Statutory Authority: RCW 41.58.050, 41.80.080. WSR 08-04-058, § 391-25-397, filed 1/31/08, effective 4/1/08.] Repealed by WSR 08-11-125, filed 5/21/08, effective 6/21/08.

**Reviser's note:** Chapter 15, Laws of 1983 re-creates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

### WAC 391-25-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on petitions for investigation of questions concerning representation of employees under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070 and 391-25-090;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, and 391-25-670; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, and 391-25-250.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-001, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-072, § 391-25-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

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(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-25-002, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-002, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-072, § 391-25-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-032 (Order 83-02), § 391-25-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-010 Petition for investigation of a question concerning representation of employees—Who may file.** A petition for investigation of a question concerning representation of employees may be filed by any employee, group of employees, employee organization, employer, or their agents.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-010, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-012 Special provision—Educational employees.** A petition may be filed under chapter 41.59 RCW only by an employee organization or its agents (RCW 41.59.070(1)), or by employees, one of whom shall be designated as agent (RCW 41.59.070(4)).

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.59.070 (1) and (4). WSR 90-06-072, § 391-25-012, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-012, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-030 Petition—Time for filing.** (1) A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.

(a) To constitute a valid collective bargaining agreement for purposes of this subsection:

(2/15/12)

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, and signed by the parties' representatives;

(iii) The agreement must contain a fixed expiration date not less than ninety days after it was signed; and

(iv) The agreement will only operate as a bar for the first three years after its effective date.

(b) An agreement to extend or replace a collective bargaining agreement shall not bar a petition filed in the "window" period of the previous agreement.

(c) A "protected" period is in effect during the sixty days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative during that period will bar a petition under this chapter. If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative shall be given a sixty-day protected period commencing on the date the withdrawal or dismissal is final.

(d) A certification of issues for interest arbitration issued under WAC 391-55-200 serves as a valid agreement under subsection (1)(a) of this rule.

(2) A "certification bar" exists where a certification has been issued by the agency, so that a petition involving the same bargaining unit or any subdivision of that bargaining unit will only be timely if it is filed:

(a) More than twelve months following the date of the certification of an exclusive bargaining representative; or

(b) More than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.

(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time.

(4) Neither a certification bar nor a contract bar in an underlying existing bargaining unit will preclude petitions filed under WAC 391-25-440 from being processed at any time subject to the limitations stated in that rule.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-030, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-030, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080. WSR 96-07-105, § 391-25-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-032 Special provision—Educational employees.** Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than ninety nor less than

(2/15/12)

sixty days prior to the third anniversary date of the agreement or any renewals or extensions thereof as long as such renewals and extensions do not exceed three years.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.59.070(3). WSR 03-03-064, § 391-25-032, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-034 Special provision—Marine employees.** For marine employees:

(1) The "window" period specified in WAC 391-25-030(1) shall be computed as not more than one hundred twenty nor less than ninety days prior to the stated expiration date of the collective bargaining agreement.

(2) The "protected" period specified in WAC 391-25-030 (1)(c) shall be computed as ninety days.

(3) The duration of any collective bargaining agreement negotiated under chapter 47.64 RCW shall not exceed one fiscal biennium.

[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-25-034, filed 2/15/12, effective 3/17/12.]

**WAC 391-25-036 Special provision—State civil service employees.** For state civil service employees:

(1) The "window" period specified in WAC 391-25-030(1) shall be computed as not more than one hundred twenty nor less than ninety days prior to the stated expiration date of the collective bargaining agreement.

(2) The "protected" period specified in WAC 391-25-030 (1)(c) shall be computed as ninety days.

(3) The duration of any collective bargaining agreement negotiated under chapter 41.80 RCW shall not exceed one fiscal biennium.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.80.001 and [41.80].080. WSR 03-03-064, § 391-25-036, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-037 Special provision—Higher education faculty.** If there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement; provided that in the event a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for more than three years, then a question concerning representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date or any subsequent anniversary date of the agreement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.020(2). WSR 03-03-064, § 391-25-037, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-050 Petition in writing—Number of copies—Filing—Service.** Each petition for investigation of a question concerning representation shall be in writing, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The party filing the petition shall serve a copy of the petition (excluding any showing of interest) on the employer and on each employee organization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

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[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-050, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-050, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-050, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-051 Special provision—Individual providers of home care under RCW 74.39A.270 and 74.39A.300—Family child care providers under RCW 41.56.208—Adult family home providers under RCW 41.56.029—Language access providers under RCW 41.56.510.** (1) This rule consolidates special rules applicable to:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300, which extend the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.-270.

(b) Family child care providers under RCW 41.56.028, which extends coverage of chapter 41.56 RCW to "child care providers" defined as persons who:

(i) Provide regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours;

(ii) Receive child care subsidies; and

(iii) Are either licensed by the state under RCW 74.15.-030 or are exempt from licensing under chapter 74.15 RCW.

(c) Adult family home providers under RCW 41.56.029, which extends coverage of chapter 41.56 RCW to "adult family home providers" who are persons defined as a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(d) Language access providers under RCW 41.56.510, which extends coverage of chapter 41.56 RCW to "language access providers" who are persons defined as any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department of social and health services.

(2) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by RCW 74.39A.270 and 74.39A.300, to require a ten percent showing of interest for either a petitioner or an intervenor.

(3) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by RCW

74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.-510.

(4) A party wishing to participate as an intervenor in representation proceedings governed by this rule must file a motion to intervene no later than ten days following receipt of the petition for investigation of a question concerning representation.

(5) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028; or

(c) Adult family home providers under RCW 41.56.029; or

(d) Language access providers under RCW 41.56.510.

(6) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028; or

(c) Adult family home providers under RCW 41.56.029; or

(d) Language access providers under RCW 41.56.510.

(7) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(8) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(9) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(10) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(11) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(12) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.

(13) Any representation election for the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to providers may describe the collective bargaining rights established by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510 and agreements reached by a petitioning union and the employer concerning the election process;



(b) The notice and ballot materials supplied to providers shall be set forth in English and any other language the agency deems reasonably necessary to conduct a fair election;

(c) The ballot materials supplied to providers shall include a card return-addressed to the commission, by which providers eligible voters can individually request notice and ballot materials in languages other than those received. Upon receipt of such a request card, the agency shall promptly supply notice and ballot materials to the eligible voter in the requested language.

(d) At least twenty-one days shall be provided between the date on which ballot materials are mailed to providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in WAC 391-25-140 through 391-25-470 shall be interpreted in light of subsection (3) of this section.

(14) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56-510.

[Statutory Authority: RCW 41.56.060, 41.56.090, and 41.58.050. WSR 10-20-172, § 391-25-051, filed 10/6/10, effective 11/6/10; WSR 08-04-058, § 391-25-051, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 74.39A.240 and [74.39A].270. WSR 03-03-064, § 391-25-051, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-070 Contents of petition.** Each petition for investigation of a question concerning representation shall contain, in separate numbered paragraphs:

(1) The name, address, and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(2) The name, address, telephone number, fax number, and e-mail address of the petitioner, and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(3) The name, address, and telephone number of any organization which currently represents the employees involved and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(4) An indication that:

(a) There has never been a collective bargaining agreement covering the employees involved; or

(b) A copy of the current (or most recent) collective bargaining agreement is attached.

(5) Identification of:

(a) The employer's principal business;

(b) The employer department or division involved;

(c) A description of the bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions; and

(d) The number of employees in the bargaining unit.

(6) A statement that:

(a) The petitioner claims to represent a majority of the employees involved, and requests certification as exclusive bargaining representative of the bargaining unit; or

(b) The employees in the bargaining unit desire to change their exclusive bargaining representative, and to designate the petitioner as their exclusive bargaining representative; or

(c) The employees in the bargaining unit no longer desire to be represented by any employee organization; or

(d) The employer has been presented with one or more demands for recognition, and requests a determination by the commission; or

(e) The employer has a good faith belief that a majority of employees no longer desire representation by the incumbent exclusive bargaining representative.

(7) Any other relevant facts.

(8) The name, signature and, if any, title of the petitioner or its representative, and the date of the signature.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-070, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, [41.56].070, 41.59.070 and [41.59].080. WSR 96-07-105, § 391-25-070, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 90-06-072, § 391-25-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-090 Petition filed by employer. (1)**

Where an employer has been presented with one or more demands for recognition of an exclusive bargaining representative of previously unrepresented employees, it may obtain a determination of the question concerning representation by filing a petition under WAC 391-25-070. Instead of a showing of interest under WAC 391-25-110, the employer shall attach copies of any written demand(s) for recognition or other correspondence pertaining to the claimed question concerning representation.

(2) Where an employer disputes the majority status of the incumbent exclusive bargaining representative of its employees, it shall obtain a determination of the question concerning representation by filing a petition under WAC 391-25-070.

(a) Instead of a showing of interest under WAC 391-25-110, the employer shall attach affidavits and other documentation as may be available to it to demonstrate the existence of a good faith belief that a majority of its employees in an existing bargaining unit no longer desire to be represented by their incumbent exclusive bargaining representative.

(b) Unsolicited signature documents provided to the employer by employees and filed by the employer in support of a petition under this subsection must be in a form which would qualify under WAC 391-25-110 if filed by the employees directly with the commission, and shall be treated as confidential under WAC 391-25-110.

(3) A petition under this section shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The employer shall serve a copy of the petition (excluding any showing of interest) on each employee orga-

nization named in the petition as having an interest in the proceedings, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.050, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-090, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.413, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-090, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-090, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-090, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-092 Special provision—Educational employees.** WAC 391-25-090 is inapplicable to petitions filed under chapter 41.59 RCW. See WAC 391-25-012.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.59.070 (1) and (4). WSR 90-06-072, § 391-25-092, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-092, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-096 Special provision—State civil service employees.** (1) WAC 391-25-090 is inapplicable to bargaining units of state civil service employees.

(2) Where an employer claims that an employee organization previously certified as the exclusive bargaining representative of state civil service employees has become defunct or has abandoned representation of a bargaining unit, it may file a petition under WAC 391-25-070 to obtain a determination as to whether the employee organization continues to represent the bargaining unit. Instead of a showing of interest under WAC 391-25-110, the employer shall attach affidavits and other documentation as may be available to it to demonstrate the existence of a good faith belief that the employee organization has become defunct or has abandoned representation of the bargaining unit. The documentation provided under this section shall not include signature documents provided to the employer by employees.

(3) An employee organization named in a petition filed under this section shall be given a reasonable opportunity to respond and rebut the allegations in the petition. Ongoing activity as exclusive bargaining representative may be demonstrated by evidence showing that the employee organization has been holding meetings of its members, collecting dues, electing or appointing officers and representatives for the purposes of dealing with the employer, processing grievances, negotiating collective bargaining agreements, or similar activities for and on behalf of employees in the bargaining unit.

(4) If it is determined that the employee organization is defunct or has abandoned its responsibilities for and on behalf of the employees in the bargaining unit, the executive director shall vacate the certification of the employee organization as exclusive bargaining representative. An order issued by the executive director shall be subject to appeal under WAC 391-25-660.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.070(2). WSR 03-03-064, § 391-25-096, filed 1/14/03, effective 2/14/03.]

[Ch. 391-25 WAC p. 6]

**WAC 391-25-110 Supporting evidence—Showing of interest confidential.** (1) A petition filed by employees or an employee organization shall be accompanied by a showing of interest indicating that the petitioner has the support of thirty percent or more of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest shall be furnished under the same timeliness standards applicable to the petition, and shall consist of original or legible copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Authorization cards or letters shall not be valid unless signed and dated during the one-year period preceding the filing of the petition.

(2) The agency shall not disclose the identities of employees whose authorization cards or letters are furnished to the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

(c) In order to preserve the confidentiality of the showing of interest and the right of employees freely to express their views on the selection of a bargaining representative, the agency shall not honor any attempt to withdraw any authorization submitted for purposes of this section.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-110, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-110, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-110, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-25-110, filed 1/6/81.]

**WAC 391-25-130 List of employees.** Within ten days following a request by the agency, the employer shall submit to the agency a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition. Following administrative determination that the petition is supported by a sufficient showing of interest, the agency shall furnish a copy of the list of names and addresses to the petitioner. Following granting of a motion for intervention, the agency shall furnish a copy of the list of names and addresses to the intervenor.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-130, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-136 Special provision—State civil service employees.** In addition to the information required by WAC 391-25-130, lists of state civil service employees provided in proceedings under RCW 41.06.340 and/or chapter

41.80 RCW shall also contain the job classification and work location of each employee. The employer shall send a copy of the list (excluding employee addresses) to all other parties in the case, at the same time as the list is sent to the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.080. WSR 03-03-064, § 391-25-136, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-137 Special provision—Higher education faculty.** In addition to the information required by WAC 391-25-130, lists of higher education faculty provided in proceedings under chapter 41.76 RCW shall also contain the job classification and work location of each employee.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-137, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-140 Notice to employees—Limitations on employer actions.** (1) The employer shall post a copy of the petition and a notice, in the form specified by the commission, to inform employees of the existence of proceedings under this chapter. The agency shall furnish the employer with copies of the petition and notice, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The petition and notice shall remain posted until a certification or interim certification is issued in the proceeding.

(2) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

(3) The employer shall not express or otherwise indicate any preference between competing organizations, where two or more employee organizations are seeking to represent its employees.

(4) Where a petition filed under this chapter involves employees who are represented for the purposes of collective bargaining, the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition. The employer and incumbent union may proceed with negotiations covering employees not affected by the petition, and shall resume negotiations on a successor agreement covering the affected employees after the question concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

(5) When an order of dismissal issued under WAC 391-25-390 (1)(a) is served upon the parties, the obligations to maintain the status quo under subsection (2) of this section and suspend negotiations with the incumbent exclusive bargaining representative under subsection (4) of this section are lifted.

(a) If a party to the proceeding files a timely notice of appeal of the order of dismissal, then the obligations under subsections (2) and (4) of this section shall be reinstated once the parties to the proceeding are served the notice of appeal. Those obligations shall remain in effect until a final order is issued by the commission under WAC 391-25-670, unless governed by (b) of this subsection.

(2/15/12)

(b) Where a timely filed notice of appeal reinstates the obligation to maintain the status quo or suspend bargaining, any party to the proceeding may petition the commission to stay either of those obligations where the petitioning party demonstrates a need for a change in terms and conditions of employment due to circumstances that are beyond that party's control, or where the failure to resume bargaining would substantially harm the petitioned-for employees and leave them without an adequate administrative remedy. A petition filed under this subsection shall be accompanied by affidavits and evidence.

(c) Following the receipt of a petition under (b) of this subsection, the due date for any counter-affidavits from other parties is seven days following the date on which that party is served with the petition.

(d) The executive director shall forward all petitions and affidavits to the commission, who shall determine whether to stay the obligations under subsections (2) and (4) of this section at the next regularly scheduled commission meeting.

(e) If the commission uses its authority under (b) of this subsection, any party seeking review of the commission's decision shall seek relief through the courts.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-140, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.050. WSR 01-14-009, § 391-25-140, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-140, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.050. WSR 90-06-072, § 391-25-140, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-140, filed 5/31/88.]

**WAC 391-25-150 Amendment and withdrawal.** A petition may be amended or withdrawn by the petitioner at any time prior to the issuance of a notice of election and the mailing of the ballots, or under such conditions as the executive director or the commission may impose.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-150, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. WSR 90-06-072, § 391-25-150, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-150, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-170 Intervention—By incumbent representative.** An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year preceding the filing of the petition may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election. No motion for intervention shall be considered if made:

- (1) After the close of the hearing on the petition;
- (2) More than seven days after the filing and posting of an election agreement or cross-check agreement; or
- (3) More than seven days after the posting of an investigation statement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. WSR 96-07-105, § 391-25-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.-

080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-170, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-190 Intervention—By organization other than incumbent.** (1) An organization not covered by WAC 391-25-170 may, by motion, intervene in proceedings under this chapter and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election. The motion for intervention shall be supported by a showing of interest indicating that the intervenor has the support of ten percent or more of the employees in the bargaining unit which the petitioner claims to be appropriate. A showing of interest filed in support of a motion for intervention shall be subject to the requirements and confidentiality protections of WAC 391-25-110. A motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the agency may impose to avoid undue delay of the proceedings.

(2) No motion for intervention shall be considered if made:

- (a) After the close of the hearing on the petition;
- (b) More than seven days after the filing and posting of an election agreement or cross-check agreement; or
- (c) More than seven days after the posting of an investigation statement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-190, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-190, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-190, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-25-190, filed 1/6/81.]

**WAC 391-25-197 Special provision—Higher education faculty.** The description of bargaining unit requirement of WAC 391-25-190 is limited to a single unit per employer under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). WSR 03-03-064, § 391-25-197, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-210 Bargaining unit configurations.** (1) In proceedings on a petition for "decertification" under WAC 391-25-070 (6)(c) or 391-25-090(2), the parties shall not be permitted to remove positions from or add positions to the existing bargaining unit;

(2) An organization which files a motion for intervention under WAC 391-25-190 shall not be permitted to seek a bargaining unit configuration different than proposed by the original petitioner.

(3) If petitions filed by two or more organizations under this chapter are pending before the agency at the same time and involve any or all of the same employees, the timeliness of the respective petitions and the sufficiency of the respective showings of interest shall be determined separately and the proceedings shall be consolidated for resolution of all

issues concerning the description(s) of the bargaining unit(s). A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a cross-check in another proceeding under WAC 391-25-410 shall be dismissed as untimely.

(4) A party to proceedings under this chapter shall not be permitted to propose more than one bargaining unit configuration for the same employee or employees, except where a merger of bargaining units is proposed under WAC 391-25-420.

(5) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-210, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.070, 41.59.070, and 41.80.080. WSR 03-11-029, § 391-25-210, filed 5/15/03, effective 6/15/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-210, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-210, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-210, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-217 Special provision—Higher education faculty.** (1) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single unit per employer under chapter 41.76 RCW.

(2) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the employer-wide bargaining units under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). WSR 03-03-064, § 391-25-217, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-220 Investigation conferences.** (1) The agency routinely conducts conferences with the parties, to investigate a representation petition according to a checklist provided to the parties.

(a) The issues which may properly arise in representation cases include:

- (i) The identification of the parties;
- (ii) The jurisdiction of the commission;
- (iii) The qualification of the petitioner and any intervenor(s) for certification as exclusive bargaining representative;
- (iv) The existence of a question concerning representation;
- (v) The timeliness of the petition;
- (vi) The existence of blocking charges under WAC 391-25-370;
- (vii) The propriety of the petitioned-for bargaining unit;
- (viii) The list of employees eligible to vote or be considered in determining a question concerning representation, and cut-off date for eligibility; and
- (ix) The method and arrangements for determining a question concerning representation.

(b) The investigation conference may be conducted by telephone conference call, or in-person by agency staff;

(c) The parties are encouraged to reach binding stipulations on all issues during the course of the investigation conference.

(2) The stipulations made by the parties during an investigation conference may be set forth in an investigation statement issued in lieu of an election agreement or cross-check agreement.

(a) Immediately upon receipt of an investigation statement, the employer shall post it in conspicuous places on its premises where notices to affected employees are usually posted, and it shall remain posted for at least seven days.

(b) An investigation statement shall be binding on the parties unless written objections are filed and served as required by WAC 391-08-120 within ten days following issuance of the statement.

(3) When it appears that all conditions precedent to an election or cross-check are met, the executive director or designee shall determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute. The agency shall proceed with the determination of the question concerning representation. Objections by parties named in the investigation statement shall be limited to matters relating to specific conduct affecting the results of an election.

(4) The parties may set forth stipulations in election agreements or cross-check agreements under this chapter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431. WSR 01-14-009, § 391-25-220, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-220, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073 and 41.56.040. WSR 90-06-072, § 391-25-220, filed 3/7/90, effective 4/7/90.]

**WAC 391-25-229 Special provision—Symphony musicians.** In addition to the information required by WAC 391-25-220, an employer of symphony musicians who are seeking to be represented for the purposes of collective bargaining must, upon request, provide the executive director with financial information that establishes the agency's jurisdiction over the employer.

[Statutory Authority: RCW 41.58.050 and 49.39.060. WSR 10-20-172, § 391-25-229, filed 10/6/10, effective 11/6/10.]

**WAC 391-25-230 Election agreements.** Where an employer and all other parties agree on a representation election, they may enter into an election agreement.

(1) An election agreement shall include:

(a) The name, address, and telephone number of the employer and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The names, addresses, and telephone numbers of all other parties participating in the election agreement and the names, addresses, telephone numbers, fax numbers, and e-mail addresses of their principal representatives;

(c) A description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions, and the number of employees in the unit;

(d) A statement by the parties that no organization is known which is or may be entitled to intervene as an incum-

bent representative, or the incumbent representative is a party to the election agreement, or the incumbent representative has abandoned the unit as evidenced by documentation attached to the election agreement;

(e) A statement that no other organization is known which claims to represent any of the employees in the bargaining unit; that the parties agree that a question concerning representation exists; that a hearing is waived; and that the agency is requested to proceed to conduct an election and certify the results;

(f) A list containing the names of the employees eligible to vote in the election and the eligibility cut-off date for the election. If the election is to be conducted by mail ballot, the list shall include the last known address of each of the employees eligible to vote. If no eligibility cut-off date is specified by the parties, the eligibility cut-off date shall be the date on which the election agreement is filed;

(g) The suggestions of the parties as to the arrangements for conducting the election; and

(h) The names, signatures and, if any, titles of all parties or their representatives, and the date of the signatures.

(2) An election agreement shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The election agreement shall remain posted for at least seven days after it is filed with the agency.

(3) Upon the filing of an election agreement, the executive director or designee shall determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute, and whether other conditions precedent to an election are met. The agency shall proceed to conduct an election, if appropriate, or shall notify the parties of the reasons for rejection of the election agreement.

(4) Objections to the election by a party to the election agreement shall be limited to matters relating to specific conduct affecting the results of the election.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-230, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-230, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-230, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 90-06-072, § 391-25-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-046 (Order 80-5), § 391-25-230, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-250 Cross-check agreements.** Where only one organization is seeking certification as the representative of unrepresented employees, and the employer and organization desire an expedited certification in lieu of a voluntary recognition, they may enter into a cross-check agreement.

(1) A cross-check agreement shall include:

(a) The name, address, and telephone number of the employer and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The name, address, and telephone number of the organization and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(c) A description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions, and the number of employees in the unit;

(d) A statement by the parties that no other organization is known which claims to represent any of the employees in the bargaining unit; that the parties agree that a question concerning representation exists; that a hearing is waived; and that the agency is requested to conduct and certify the results of a cross-check of individually signed and dated authorization cards or letters submitted by the organization against the employment records of the employer;

(e) A list containing the names of the employees in the bargaining unit;

(f) The suggestions of the parties as to the arrangements for conducting the cross-check;

(g) The agreement of the parties to be bound by the results of the cross-check; and

(h) The names, signatures and, if any, titles of all parties or their representatives, and the date of the signatures.

(2) A cross-check agreement shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The cross-check agreement shall remain posted for at least seven days after it is filed with the agency.

(3) Upon the filing of a cross-check agreement, the executive director or designee shall determine whether the proposed bargaining unit is, on its face, an appropriate bargaining unit under the applicable statute, and whether other conditions precedent to a cross-check are met. The agency shall proceed with the cross-check of records, if appropriate, or shall notify the parties of the reasons for rejection of the cross-check agreement. The cross-check may be conducted at any time following the execution of a cross-check agreement; but no certification shall be issued until seven days have elapsed following the filing and posting of the cross-check agreement. Where a motion for intervention is timely filed and granted, no certification shall be issued on the basis of the cross-check.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-250, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-250, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-250, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.56.070. WSR 90-06-072, § 391-25-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-250, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-252 Special provision—Educational employees.** WAC 391-25-250 is inapplicable to petitions filed under chapter 41.59 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.59.070 (1) and (4). WSR 90-06-072, § 391-25-252, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.-

050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-252, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-253 Special provision—Academic employees.** WAC 391-25-250 is inapplicable to petitions filed under chapter 28B.52 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 28B.52.030. WSR 90-06-072, § 391-25-253, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-253, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-270 Interim certification—Supplemental proceedings.** Where the matters at issue in a proceeding under this chapter are limited to the eligibility of particular individuals or classifications for inclusion in the bargaining unit, the executive director or designee may expedite the determination of the question concerning representation while reserving the eligibility issues for subsequent determination.

(1) The agency shall conduct an election or cross-check, as may be appropriate.

(a) The individuals whose eligibility is disputed shall be permitted to vote by challenged ballot in an election.

(b) The individuals whose eligibility is disputed shall be listed as challenged in a cross-check, and any authorizations signed by those individuals shall not be tallied.

(2) After a tally is issued under WAC 391-25-550:

(a) If the challenges are sufficient in number to affect the outcome, they shall be determined under subsection (3) of this section, prior to the issuance of a certification.

(b) If an organization is entitled to certification regardless of the reserved eligibility issues, a certification shall be issued, but the case shall remain open for supplemental proceedings under subsection (3) of this section. The employer and the exclusive bargaining representative shall have the duty to bargain, under the applicable statute, after a certification is issued under (b) of this subsection.

(c) If a certification of "no representation" is appropriate regardless of the reserved eligibility issues, a certification shall be issued and no supplemental proceedings shall be conducted.

(3) All eligibility issues reserved for subsequent determination under this section shall be resolved under WAC 391-25-290, 391-25-310, 391-25-350 and 391-25-390, without regard to whether the individuals cast challenged ballots.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-270, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 00-14-048, § 391-25-270, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-270, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 90-06-072, § 391-25-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-270, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-290 Notice of hearing.** If it appears to the executive director or designee that a question concerning representation may exist, a hearing officer shall issue a notice of hearing and have it served on the parties. Attached to the

notice of hearing shall be a copy of the investigation statement issued under WAC 391-25-220. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-290, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-290, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-290, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-299 Special provision—Private sector and other employees.** Except for symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW, the commission lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW, except for hearings and issues submitted by stipulation of all parties to the proceeding.

[Statutory Authority: RCW 41.58.050 and 49.39.060. WSR 10-20-172, § 391-25-299, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-299, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. WSR 90-06-072, § 391-25-299, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-299, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-310 Hearings—Who shall conduct.** Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-072, § 391-25-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-310, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-350 Hearings—Reopening of hearing—Briefs.** (1) Hearings shall be public, except where a protective order is issued under WAC 10-08-200(7), and shall be limited to matters concerning the determination of a question concerning representation.

(a) The parties shall be responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties, to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

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(3) The hearing officer may allow or direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing officer grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 34.05.437, 41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 01-14-009, § 391-25-350, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-25-350, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-350, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-350, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.-080 and 53.18.015. WSR 90-06-072, § 391-25-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-350, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed.** (1) The executive director may suspend the processing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings, where:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 WAC; and

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) Such unfair labor practice could improperly affect the outcome of a representation election.

(2) The complainant(s) in the unfair labor practice case may file and serve, as required by WAC 391-08-120, a written request to proceed with the executive director. The request to proceed shall specify the case number of the representation proceeding, shall request that the representation petition be processed notwithstanding the pending unfair labor practice case, and shall waive the right to file objections under WAC 391-25-590 (1)(a) based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed under this subsection, the executive director may resume the processing of the representation petition and shall summarily dismiss any objections filed in conflict with the request to proceed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-370, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-25-370, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-370, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-370, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and

41.59.070. WSR 90-06-072, § 391-25-370, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-370, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-390 Proceedings before the executive director.** (1) The executive director may proceed upon the record, after submission of briefs or after hearing, as may be appropriate.

(a) The executive director shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter.

(b) Unless otherwise provided in a direction of election, the cut-off date for eligibility to vote in an election shall be the date of issuance of the direction of election.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3) A direction of election and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election.

(4)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or hearing officer must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or hearing officer will be accepted by the commission only:

(i) If the executive director or his or her designee has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or hearing officer has committed probable error and the decision of the executive director, his or her designee, or hearing officer substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double spaced, excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing officer's decision or the issues pertaining to that decision.

(5) Unless appealed to the commission under WAC 391-25-660, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-390, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060, 41.56.070, 41.56.080, 41.59.070, 41.59.080 and 41.59.090. WSR 01-14-009, § 391-25-390, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050,

41.56.060, 41.56.070, 41.59.070 and 41.59.080. WSR 98-14-112, § 391-25-390, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-390, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-390, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-25-390, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-390, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-391 Special provision—Public employees.** (1) Where only one organization is seeking certification as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that the organization has been authorized by in excess of seventy percent of the employees to act as their representative for the purposes of collective bargaining, the executive director may issue a direction of cross-check.

(2) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.060. WSR 98-14-112, § 391-25-391, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-391, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.060. WSR 90-06-072, § 391-25-391, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-391, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-396 Special provision—State civil service employees.** (1) In addition to the cross-check of records permitted by WAC 391-25-391 and the procedures under WAC 391-25-410, where only one organization is seeking certification as the representative of unrepresented employees covered by chapters 41.06 and 41.80 RCW, the executive director may issue a direction of cross-check utilizing the procedures outlined in WAC 391-25-410 if the showing of interest submitted in support of the petition indicates that the petitioning organization has been authorized by a majority of the employees to act as their representative for the purposes of collective bargaining, provided:

The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

(a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;

(b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

(c) A statement that the showing of interest may be used for purposes of a cross-check election under this rule;

(d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

(e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for pur-



poses of cross-check of records. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

(2) An authorization card that fails to comply with subsection (1) of this section shall be invalid for purposes of initiating a cross-check of records under this rule.

(3) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

[Statutory Authority: RCW 41.58.05 [41.58.05], 41.80.080. WSR 08-11-125, § 391-25-396, filed 5/21/08, effective 6/21/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-396, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-399 Special provision—Symphony musicians.** WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW.

[Statutory Authority: RCW 41.58.050 and 49.39.060. WSR 10-20-172, § 391-25-399, filed 10/6/10, effective 11/6/10.]

**WAC 391-25-410 Cross-check of records.** (1) Where a cross-check of records is to be conducted to determine a question concerning representation, the organization shall furnish to the agency original or legible copies of individual authorization cards or letters signed and dated by employees in the bargaining unit no more than ninety days prior to the filing of the petition. Authorization documents shall indicate that the employees authorize the named organization to represent them for the purposes of collective bargaining.

(2) The agency shall honor a valid revocation of authorization contained in an individual card or letter signed by the employee and furnished to the agency by the employee. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

(3) The employer shall make available to the agency original or legible copies of employment records maintained as a part of its business records containing the names and signatures of the employees in the bargaining unit.

(4) Prior to the commencement of the cross-check, the organization may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election. Any such requests shall be honored.

(5) Where the organization files a disclaimer or a request for election after the commencement of the cross-check, the cross-check shall be terminated and the organization shall not seek to be certified in the bargaining unit for a period of at least one year.

(6) All cross-checks shall be by actual comparison of records furnished by the parties. The agency shall not disclose the names of employees giving representation authorization in favor of the organization. Upon the conclusion of

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the comparison of records, the agency shall furnish to the parties a tally sheet containing the number of employees in the bargaining unit, the number of employee records examined and the number of employee records counted as valid evidence of representation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060. WSR 01-14-009, § 391-25-410, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-410, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-410, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.060. WSR 90-06-072, § 391-25-410, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-410, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-412 Special provision—Educational employees.** WAC 391-25-410 is inapplicable to petitions filed under chapter 41.59 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.59.070. WSR 90-06-072, § 391-25-412, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-412, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-413 Special provision—Academic employees.** WAC 391-25-410 is inapplicable to petitions filed under chapter 28B.52 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 28B.52.030. WSR 90-06-072, § 391-25-413, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-413, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-416 Special provision—State civil service employees.** As to state civil service employees, authorization documents signed and dated by employees in the bargaining unit no more than six months prior to the filing of the petition shall be honored for purposes of WAC 391-25-410.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-416, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-420 Unit determination elections.** Employees shall not be subjected to examination or cross-examination concerning their views on the configuration of bargaining units. A unit determination election shall be the exclusive method to determine the "desire" of the employees involved.

(1) Where the executive director determines that either of two or more bargaining unit configurations proposed by petitioning or intervening organizations could be appropriate under other criteria, a unit determination election shall be conducted.

(2) Where an organization desires to merge two or more historically separate bargaining units, it may request a unit determination election under this section.

(a) The organization shall file a petition under WAC 391-25-070, indicating under "other relevant facts" that it is seeking a merger of two or more existing bargaining units.

(b) The showing of interest shall indicate support for the merger of units, and shall be evaluated separately in each of the historical bargaining units.

(c) The proposed merged unit must be an appropriate unit under the applicable statute.

(i) If the propriety of the merged bargaining unit is disputed, the executive director shall make a determination following a hearing.

(ii) If the propriety of the merged bargaining unit is stipulated, the executive director or designee shall determine whether the proposed unit is, on its face, an appropriate bargaining unit under the applicable statute.

(d) If the merged unit is found to be appropriate, the agency shall conduct a unit determination election in each of the bargaining units proposed for merger.

(i) If the merger is rejected in any of the historical units, the petition shall be dismissed.

(ii) If the merger is approved in all of the historical units and no motion for intervention has been granted, the executive director shall issue a certification designating the petitioning organization as exclusive bargaining representative of the merged bargaining unit.

(iii) If a motion for intervention has been granted under WAC 391-25-170 or 391-25-190, the agency shall conduct a representation election prior to the issuance of a certification.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060. WSR 01-14-009, § 391-25-420, filed 6/22/01, effective 8/1/01.]

**WAC 391-25-426 Special provision—State civil service employees.** An employee organization that represents two or more bargaining units of state civil service employees may obtain a merger of those units by filing a petition under WAC 391-25-420 (2)(a). If the merged unit is found to be appropriate under WAC 391-25-420 (2)(c)(i) and (ii), the employee organization shall be certified as exclusive bargaining representative without need for unit determination elections.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 41.80.070(3). WSR 03-11-029, § 391-25-426, filed 5/15/03, effective 6/15/03.]

**WAC 391-25-427 Special provision—Higher education faculty.** The unit determination election procedures in WAC 391-25-420 are inapplicable to the employer-wide bargaining units under chapter 41.76 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005(11). WSR 03-03-064, § 391-25-427, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-430 Notice of election.** When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:

(1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.

(2) The deadline for return of mail ballots or the date(s), hours and polling place(s) for an on-site election.

(3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election, including that the eligible employees are limited to those who continue to be employed within the bargaining unit when they cast a ballot in an on-site election or at the deadline for return of mail ballots.

(4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.

[Ch. 391-25 WAC p. 14]

Notices of the election shall be posted for at least seven days, and shall remain posted until a tally of ballots has been issued. The day of posting shall be counted, but the day on which the polls are opened for an on-site election shall not be counted.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-430, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-430, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-430, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-430, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-430, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-436 Special provision—State civil service employees.** (1) While a notice of election is posted under WAC 391-25-430, employees in the bargaining unit or proposed bargaining unit have the right to conduct campaigning activities in the public areas or in the nonworking areas of the employer's premises, during nonworking time of the campaigner and employees being solicited, as long as they do not disrupt operations. However, if employees are permitted to discuss nonwork subjects or solicit other employees in work areas, the employer cannot discriminatorily regulate employee discussions or solicitations.

(2) Nonemployees have the right to engage in campaigning activities in the employer's public areas consistent with the reasonable use of those areas. Where there are no public areas in an employer's workplace, reasonable comparable access must be granted.

(3) Employer rules and policies may expand these rights. Employer rules and policies must be nondiscriminatory.

[Statutory Authority: RCW 41.58.050, 41.80.080. WSR 08-15-032, § 391-25-436, filed 7/9/08, effective 8/9/08.]

**WAC 391-25-440 Election for inclusion of unrepresented employees.** (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit, which it already represents, under this chapter and the relevant statute, the organization may petition for a self-determination election to ascertain the employees' desire to be included in its existing bargaining unit.

(2) In order to invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least thirty percent or more of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under WAC 391-25-070 that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that the petitioning organization seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the appropriate statute.

(2/15/12)

(i) If the propriety of the proposed resulting unit is disputed, the executive director or his or her designee shall make a determination following a hearing.

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or his or her designee shall determine whether the proposed unit is, on its face, an appropriate unit under the applicable statute.

(3) Any notice to employees required to be posted under WAC 391-25-140 shall affirmatively indicate that the petitioning organization seeks to merge the petitioned-for employees into an existing bargaining unit of employees represented by that organization through a self-determination election.

(4) If the resulting bargaining unit is determined to be appropriate, the agency shall conduct a self-determination election under this chapter for the petitioned-for employees to ascertain whether they desire to become part of the existing unit.

(a) Only the petitioned-for employees are eligible to vote in a self-determination election.

(b) Cross-check procedures under WAC 391-25-391 and 391-25-396 are applicable to this section.

(c) In such an election, if a majority of the eligible employees voting in the election vote for inclusion, they are deemed to have indicated their desire both to become part of the existing unit and to be represented by the petitioner. If a majority of voters vote against inclusion in the existing unit, they are considered as indicating a desire to remain unrepresented.

(5)(a) Should another organization seek to intervene in a proceeding filed under this section, it must demonstrate both:

(i) That it has support from at least thirty percent of the employees subject to the original petition; and

(ii) That if the same group of employees were added to an appropriate unit that it already represents under this chapter and the appropriate statute, the resulting unit would be an appropriate unit.

(b) If either (a)(i) or (ii) of this subsection are not established, the request for intervention will be denied, and the petition processed in accordance with this section.

(c) In the event the requirement of both (a)(i) and (ii) of this subsection are met, the election shall be for representation by the petitioner as part of the larger unit proposed by the petitioner, or representation by the intervener as part of the larger unit proposed by the intervener, or no representation.

(6) In the event a petition for representation of the same employees sought to be added to a larger unit by the petitioner under this section is filed pursuant to WAC 391-25-010 or 391-25-012, along with the requisite thirty percent showing of interest, and the petitioned-for unit is appropriate under the applicable statute, then the self-determination election petition filed under this section shall be dismissed. If either of those requirements is not met, the petition filed pursuant to WAC 391-25-010 or 391-25-012 will be dismissed and the original self-determination election petition processed in accordance with this section.

(7) The existence of a valid collective bargaining agreement does not preclude the processing of a petition filed under this rule.

(8) Petitions filed under this rule do not raise a question concerning representation for the existing appropriate bargaining unit.

(a) The issuance of a certification for the existing appropriate bargaining within the previous twelve months will not bar the filing and processing of a petition under this rule.

(b) The alteration of the composition of the existing appropriate bargaining unit as a result of an amended certification issued under this rule does not affect the certification bar of the existing unit; nor does it create a new certification bar as described in WAC 391-25-030(2).

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-440, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070. WSR 08-17-119, § 391-25-440, filed 8/20/08, effective 9/20/08.]

**WAC 391-25-450 Disclaimers.** Prior to the issuance of a notice of election and the mailing of the ballots, an organization may disclaim a bargaining unit and have its name removed from the ballot by written notice filed and served as required by WAC 391-08-120. The organization filing a disclaimer shall not seek to be certified in the bargaining unit, or subdivision thereof, for a period of at least six months.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-25-450, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-450, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-25-450, filed 7/1/98, effective 8/1/98; WSR 90-06-072, § 391-25-450, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-450, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-470 Mail ballot election procedures—Electioneering—Objectionable conduct.** The executive director shall have discretion to conduct elections by mail ballot procedures designed to preserve the secrecy of employee voting. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. A notice and ballot materials shall be mailed by the agency to each eligible voter, and no less than fourteen days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots.

(1) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the commission and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Conduct in violation of WAC 391-25-140 is prohibited.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occurring at a time which prevents others from effectively responding; and

(iv) Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period beginning on the scheduled date for the issuance of ballots to employees and continuing through the tally of ballots. Other electioneering allowed under (a) through (f) of this subsection is permitted during that period.

(2) Each party may be represented by observers of its own choosing at the tally of ballots. Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.

(3) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 01-14-009, § 391-25-470, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-470, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. WSR 90-06-072, § 391-25-470, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-054 (Order 88-02), § 391-25-470, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-470, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-476 Special provision—State civil service employees.** The requirement in WAC 391-25-470(2) that lists of voters be surrendered shall not apply to elections concerning state civil service employees covered by chapter 41.06 RCW. Upon request, the agency shall provide the parties involved in the election with the names of employees who voted.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-25-476, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-490 On-site election procedures—Electioneering—Objectionable conduct.** The executive director shall have discretion to conduct an election by on-site balloting procedures designed to preserve the secrecy of employee voting, if the circumstances of a particular case indicate that an on-site election would be more efficient or appropriate than a mail ballot election. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. Absentee balloting shall not be allowed.

(1) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots.

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the commission and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Conduct in violation of WAC 391-25-140 is prohibited.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occurring at a time which prevents others from effectively responding; and

(iv) Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period beginning twenty-four hours before the scheduled time for the opening of the polls and continuing through the tally of ballots. Other electioneering allowed under (a) through (f) of this subsection is permitted during that period.

(h) There shall be no electioneering at or about the polling place during the hours of voting.

(2) Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe. During the hours of voting, no management official having authority over bargaining unit employees nor any officer or paid employee of an organization shall serve as observer. Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.

(3) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 01-14-009, § 391-25-490, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-490, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. WSR 90-06-072, § 391-25-490, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-490, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-496 Special provision—State civil service employees.** If the executive director conducts an election involving state civil service employees by on-site balloting procedures, absentee ballots shall be allowed as prescribed in this section.

(1) Upon the request of an individual employee, the agency shall provide a notice and absentee ballot to the individual employee.

(2) To be counted, the absentee ballot must be received at the Olympia office of the commission:

(a) Directly from the employee or from the employee via the United States Postal Service; and

(b) Prior to the close of business on the last day the polls are open for the on-site election.

(3) Whenever absentee ballots are issued, the tally of ballots shall be delayed for one or more days after the last day on which the polls are open for the on-site election, and shall

then be conducted in the commission's Olympia office in a manner which preserves the secrecy of the absentee ballots.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.080. WSR 03-03-064, § 391-25-496, filed 1/14/03, effective 2/14/03.]

**WAC 391-25-510 Challenged ballots.** Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in the election. No person shall be denied the right to cast a challenged ballot. The election officer shall not have authority to resolve challenges, and the ballot of the challenged voter shall be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of the voter. The ballot shall not be opened until the challenge is resolved. Any party may withdraw a challenge previously made and, unless the eligibility of the voter is challenged by another party or by the election officer, the challenge shall be resolved. If the challenged ballots are insufficient in number to affect the results of the election, they shall be impounded and no ruling shall be made. If the challenged ballots are sufficient in number to affect the results of the election, the election officer shall ascertain the position of each party as to each challenged ballot and shall include the information in his or her report. If challenges raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-25-670.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 01-14-009, § 391-25-510, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-25-510, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.040. WSR 90-06-072, § 391-25-510, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-510, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-530 Votes needed to determine election.** (1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.

(2) Unless governed by WAC 391-25-531, representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-25-530, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-530, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-530, filed 9/30/80, effective 11/1/80.]

(2/15/12)

**WAC 391-25-531 Special provision—Public employees.** Where there are three or more choices on the ballot, representation elections for employees covered by chapter 41.56 RCW shall be decided by a majority of those eligible to vote in the election.

[Statutory Authority: RCW 41.56.060, 41.56.090, and 41.58.050. WSR 10-20-172, § 391-25-531, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.070. WSR 90-06-072, § 391-25-531, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-531, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-550 Tally sheet.** The election officer shall prepare and furnish to each of the parties a tally of the votes cast on unchallenged ballots and the number of challenged ballots. After the subsequent resolution of challenged ballots affecting the results of the election, a revised tally shall be issued and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 96-07-105, § 391-25-550, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-550, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-570 Procedure following inconclusive election.** In any election in which there are more than two choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a run-off election shall be held providing for selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any organization to be excluded from a run-off election may file objections to specific conduct affecting the results of the inconclusive election. Where the choice of "no representative" is to be excluded from a run-off election, the employer or decertification petitioner may file objections to specific conduct affecting the results of the inconclusive election. Such objections shall be resolved prior to the conduct of a run-off election. All run-off elections shall be determined as provided in WAC 391-25-530.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-570, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-570, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-590 Filing and service of objections to improper conduct and interim orders.** The due date for objections is seven days after the tally has been served under WAC 391-25-410 or under 391-25-550, regardless of whether challenged ballots are sufficient in number to affect the results of the election. The time period for objections cannot be extended.

(1) Objections by the petitioner, the employer or any intervenor shall set forth, in separate numbered paragraphs:

(a) The specific conduct which the party filing the objection claims has improperly affected the results of the election; and/or

(b) The direction of election, direction of cross-check or other interim rulings which the objecting party desires to appeal to the commission.

(2) Objections by individual employees are limited to conduct or procedures which prevented them from casting a ballot.

(3) Any objections shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and the party filing the objections shall serve a copy on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.030, 41.56.060 and 41.59.070. WSR 00-14-048, § 391-25-590, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-590, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-25-590, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-590, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-590, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-610 Procedure where no objections are filed.** If no objections are filed within the time set forth above, and if any challenged ballots are insufficient in number to affect the determination of the question concerning representation, and if no run-off election is to be held, the executive director shall issue a certification having the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.080 and 41.59.090. WSR 01-14-009, § 391-25-610, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-610, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-630 Procedure where conduct objections are filed.** Where objections allege improper conduct under WAC 391-25-590 (1)(a) or (2), other parties may be requested to respond to the objections within a period of time established by the agency. The period shall be seven days or more.

(1) If the objections and any responses indicate there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law, the commission may issue a summary judgment in the matter.

(2) If the objections and any responses raise material questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer.

(a) Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding.

(b) The rules relating to hearings on petitions shall govern hearings on objections, except that the scope of the hearing shall be limited to matters relevant to the disposition of the objections.

(3) The objections, any responses, and the record made at any hearing on the objections shall be referred to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 98-14-112, § 391-25-630, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.-

090, 41.56.040 and 41.59.110. WSR 90-06-072, § 391-25-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-630, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-650 Briefs and written arguments on objections.** (1) The due date for any appeal brief which the party filing an objection desires to have considered by the commission shall be fourteen days following the later of:

(a) The issuance of a transcript of a hearing held under WAC 391-25-630(2); or

(b) The filing of objections under WAC 391-25-590 (1)(b).

Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(2) The due date for any responsive brief which other parties desire to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(3) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the objections; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-650, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.070 and 41.59.070. WSR 01-14-009, § 391-25-650, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-25-650, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-650, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070 and 41.59.070. WSR 90-06-072, § 391-25-650, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-25-650, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-650, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-660 Appeals from orders and jurisdictional rulings.** An order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-25-660, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. WSR 00-14-048, § 391-25-660, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-660, filed 7/1/98, effective 8/1/98.]

**WAC 391-25-670 Commission action on objections and appeals.** If there are objections under WAC 391-25-590 or an order is appealed under WAC 391-25-660, the entire record in the proceedings shall be transmitted to the commission members. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall determine the

objections or appeal and any challenged ballots referred to the commission pursuant to WAC 391-25-510, and shall issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.070 and 41.59.070. WSR 00-14-048, § 391-25-670, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-25-670, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.070. WSR 90-06-072, § 391-25-670, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-046 (Order 80-5), § 391-25-670, filed 9/30/80, effective 11/1/80.]

**WAC 391-25-674 Special provision—Marine employees.** If there are objections under WAC 391-25-590 or an order is appealed under WAC 391-25-660 involving employees covered by chapter 47.64 RCW, the marine employees' commission shall act in place of the commission, and the entire record in the proceedings shall be transmitted to the marine employees' commission members. The marine employees' commission may request the parties to appear before it to make oral arguments as to any or all of the issues in the matter. The marine employees' commission shall determine the objections or appeal and any challenged ballots referred to the marine employees' commission pursuant to WAC 391-25-510, and shall issue appropriate orders.

[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-25-674, filed 2/15/12, effective 3/17/12.]





# Chapter 391-35 WAC

## UNIT CLARIFICATION CASE RULES

### WAC

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391-35-347	Special provision—Higher education faculty.
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391-35-356	Special provision—State civil service employees.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-35-080	Prehearing conferences. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.431. WSR 96-07-105, § 391-35-080, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.-073 and 41.56.040. WSR 90-06-073, § 391-35-080, filed 3/7/90, effective 4/7/90.] Repealed by WSR 01-14-009, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050.
391-35-150	Authority of hearing officer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-150, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-033 (Order 83-03), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
391-35-230	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.-050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-230, filed 9/30/80, effective 11/1/80.] Repealed by WSR 98-14-112, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.-090, 41.59.110 and 41.58.050.

**Reviser's note:** Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the

administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

### WAC 391-35-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on petitions for clarification of existing bargaining units under all chapters of the Revised Code of Washington (RCW) administered by the commission and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-35-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-35-210 and 391-35-250; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-35-070.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-35-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-35-001, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.-080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with num-

bers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-35-002, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 10-20-172, § 391-35-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-35-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-35-002, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-033 (Order 83-03), § 391-35-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-010 Petition for clarification of an existing bargaining unit—Who may file.** A petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative, or their agents, or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 96-07-105, § 391-35-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-010, filed 9/30/80, effective 11/1/80.]

### WAC 391-35-020 Time for filing petition—Limitations on results of proceedings.

#### TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) Disputes concerning positions which have been newly created by an employer.

(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.

(c) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate.

(d) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration.

(e) Disputes under WAC 391-35-320 concerning status as a confidential employee.

(f) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

(a) The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.

(b) Except as provided under subsection (2)(a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.

#### LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

(a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; or

(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.

(5) Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:

(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.

(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.

(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

(6) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-020, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-020, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-020, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.-080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-020, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-061 (Order 88-03), § 391-35-020, filed 5/31/88.]

**WAC 391-35-026 Special provision—State civil service employees.** In addition to the circumstances described in WAC 391-35-020, bargaining units of state civil service employees may be modified under this section until RCW 41.80.050 and 41.80.080 take effect on July 1, 2004.

(1) Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "divided" into separate units of supervisors and nonsupervisory employees under this section.

(a) A petition to have an existing unit divided may be filed by the exclusive bargaining representative, by the employer, or by those parties jointly.

(b) The separation of bargaining units shall be implemented on or before July 1, 2004.

(2) Bargaining units of state civil service employees in existence on June 13, 2002, shall be subject to being "perfected" under this section.

(a) A petition to have an existing bargaining unit perfected may be filed by the exclusive bargaining representative, or by the employer and exclusive bargaining representative jointly.

(b) All of the unit determination criteria set forth in RCW 41.80.070 shall be applicable to proceedings under this section. The history of bargaining in a unit configuration that is fragmentary and/or was based on narrower considerations shall not preclude creation of a "perfected" bargaining unit as to which a community of interests is demonstrated with regard to:

(i) The duties, skills and working conditions of all positions or classifications to be included in the "perfected" bargaining unit; and

(ii) The extent of organization and avoidance of unnecessary fragmentation shall be implemented to avoid stranding of other positions or classifications in units so small as to prejudice their statutory bargaining rights; and

(iii) The required separation of supervisors and non-supervisory employees is implemented based on the delegations of authority then in existence; and

(iv) Two or more existing bargaining units can be merged through the procedure set forth in this section; and

(2/15/12)

(v) The exclusive bargaining representative demonstrates that it has majority support among any employees to be accreted to the bargaining unit(s) being "perfected."

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-35-026, filed 1/14/03, effective 2/14/03.]

**WAC 391-35-030 Petition in writing—Number of copies—Filing—Service.** Each petition for clarification of an existing bargaining unit shall be in writing, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). If the petition is filed other than as a jointly filed petition, the party filing the petition shall serve a copy on the other party to the collective bargaining relationship in which the disagreement arises, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-030, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-030, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-35-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.-050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-050 Contents of petition.** Each petition for clarification of an existing bargaining unit shall contain, in separate numbered paragraphs:

(1) Information identifying the parties and their relationships, including:

(a) The name, address, and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The name, address, telephone number, fax number, and e-mail address of the exclusive representative, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(c) The employer's principal business;

(d) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or

(ii) A copy of the current (or most recent) collective bargaining agreement is attached;

(e) The status of negotiations between the parties, indicating that:

(i) The parties' contract is closed; or

(ii) The parties are currently in contract negotiations;

(f) The description of the existing bargaining unit, specifying inclusions and exclusions;

(g) The number of employees in the bargaining unit; and

(h) The history of the bargaining unit, including at least the approximate date of its creation.

(2) Identification of the position(s), classification(s) or group(s) at issue, the number of employees in each position, classification or group, the present bargaining unit inclusion or exclusion status of each position, classification or group, identification of the party proposing that the present status be changed, and the reason for the proposed change.

(3) Identification of other interested organizations, including names and addresses of any other employee organizations claiming to represent any employees affected by the

proposed clarification(s), and brief description(s) of the contracts, if any, covering such employees.

(4) Any other relevant facts.

(5) The name, signature(s) and, if any, title(s) of the representative(s) of the petitioner(s), and the date of the signature.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-050, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-070 Amendment and withdrawal.** Any petition may be amended or withdrawn by the petitioner(s) under such conditions as the executive director or the commission may impose.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-085 Amendment of certification.** A party may file a petition to amend an existing certification, and the executive director may amend the certification, provided that the purpose of the amendment is to reflect changed circumstances such as the name of a labor organization or the name of an employer, and the bargaining unit is not affected by the change and there is no question concerning representation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.100, 41.76.060, 41.80.070. WSR 08-15-032, § 391-35-085, filed 7/9/08, effective 8/9/08.]

**WAC 391-35-090 Notice of hearing.** If it appears to the executive director or designee that a disagreement exists which could be the basis for issuing an order clarifying the bargaining unit or units, a hearing officer shall issue a notice of hearing and have it served on the parties. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.434. WSR 01-14-009, § 391-35-090, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-099 Special provision—Private sector and other employees.** The commission lacks authority to proceed in unit clarification proceedings under chapter 49.08 RCW absent the agreement of all parties. The executive director shall not proceed in such matters unless a written agreement is filed by the parties to submit their dispute for arbitration by the commission under chapter 49.08 RCW and these rules.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-35-099, filed 6/22/01, effective 8/1/01. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapter 49.08 RCW. WSR 90-06-073, § 391-35-099, filed 3/7/90, effective 4/7/90.]

Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-099, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-110 Coordination of proceedings.** (1) If a petition for clarification under this chapter is pending at the same time as a petition under chapter 391-25 WAC involving all or any part of the same bargaining unit, the proceedings under this chapter shall be suspended, and all issues concerning the description of the bargaining unit shall be resolved in the proceedings under chapter 391-25 WAC.

(2) A unit clarification proceeding may control or be controlled by an unfair labor practice proceeding. If a petition for clarification under this chapter is pending at the same time as a complaint under chapter 391-45 WAC involving all or any part of the same bargaining unit, the executive director or designee shall have discretion to withhold processing of one of the related proceedings pending the outcome of the other related proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.070. WSR 01-14-009, § 391-35-110, filed 6/22/01, effective 8/1/01; WSR 96-07-105, § 391-35-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-073, § 391-35-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-130 Hearings—Who shall conduct.** Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.56.070, 41.59.070, 41.59.080 and 53.18.015. WSR 90-06-073, § 391-35-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-170 Hearings—Reopening of hearing—Briefs.** (1) Hearings shall be public, except where a protective order is issued under WAC 10-08-200(7), and shall be limited to matters concerning the clarification of the existing bargaining unit.

(a) The parties shall be responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties, to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may allow or direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as

required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing officer grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the administrative hearing, and the hearing officer has the authority to orally grant such a motion at such time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-170, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-170, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-35-170, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-170, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-35-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060, 41.59.080 and 53.18.015. WSR 90-06-073, § 391-35-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-170, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-190 Proceedings before the executive director.** (1) The executive director may proceed upon the record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine the status of each position, classification or group of employees over which there is a disagreement and issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or hearing officer must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or hearing officer will be accepted by the commission only:

(i) If the executive director, his or her designee, or hearing officer has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director or his or her designee has committed probable error and the decision of the executive director, his or her designee, or hearing officer substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing officer's decision or the issues pertaining to that decision.

(4) Unless appealed to the commission under WAC 391-35-210, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070. WSR 08-04-058, § 391-35-190, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-190, filed 6/22/01, effective 8/1/01; WSR 98-14-112, § 391-35-190, filed 7/1/98, effective 8/1/98; WSR 90-06-073, § 391-35-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-35-190, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-190, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-210 Appeals.** An order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: RCW 41.56.060, 41.56.090, 41.58.050. WSR 08-04-059, § 391-35-210, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. WSR 00-14-048, § 391-35-210, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-210, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-35-210, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-210, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-250 Commission action on appeals.** If an order is appealed under WAC 391-35-210, the entire record in the proceedings shall be transmitted to the commission members. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall determine the status of each position, classification or group covered by the appeal, and shall issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.464, 41.56.060 and 41.59.080. WSR 00-14-048, § 391-35-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-35-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 41.56.060 and 41.59.080. WSR 90-06-073, § 391-35-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-047 (Order 80-6), § 391-35-250, filed 9/30/80, effective 11/1/80.]

**WAC 391-35-254 Special provision—Marine employees.** If an order is appealed under WAC 391-35-210 involving employees covered by chapter 47.64 RCW, the marine employees' commission shall act in place of the commission, and the entire record in the proceedings shall be transmitted to the marine employees' commission members. The marine employees' commission may request the parties to appear before it to make oral arguments as to any or all of the issues in the matter. The marine employees' commission shall determine the status of each position, classification or group covered by the appeal, and shall issue appropriate orders.

[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-35-254, filed 2/15/12, effective 3/17/12.]

**WAC 391-35-300 School district employees.** A collective bargaining relationship cannot lawfully be maintained under the Educational Employment Relations Act, chapter

41.59 RCW, with respect to school district jobs for which a professional education certificate is not required by chapter 28A.410 RCW, as implemented through rules adopted by the state board of education and the office of the superintendent of public instruction, or by established practice or written policy of the employing school district. Any collective bargaining rights of employees performing school district jobs not requiring a professional education certificate are regulated by the Public Employees' Collective Bargaining Act, chapter 41.56 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.59.010 and [41.59].020. WSR 96-07-105, § 391-35-300, filed 3/20/96, effective 4/20/96.]

**WAC 391-35-301 Higher education employees.** A bargaining unit of higher education employees under RCW 41.56.021 shall not include any employees eligible for collective bargaining rights under RCW 41.56.022, 41.56.024, or 41.56.203, chapter 28B.52, 41.76, or 41.80 RCW. Employees whose eligibility for collective bargaining is covered by chapter 28B.52, 41.76, or 41.80 RCW are exempt from the provisions of RCW 41.56.021.

[Statutory Authority: RCW 41.56.060, 41.56.090, 41.58.050. WSR 08-04-058, § 391-35-301, filed 1/31/08, effective 4/1/08.]

**WAC 391-35-310 Employees eligible for interest arbitration.** Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.430. WSR 96-07-105, § 391-35-310, filed 3/20/96, effective 4/20/96.]

**WAC 391-35-320 Exclusion of confidential employees.** Confidential employees excluded from all collective bargaining rights shall be limited to:

(1) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(2) Any person who assists and acts in a confidential capacity to such person.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.030(2) and 41.59.020 (4)(c)(i) and (ii). WSR 01-14-009, § 391-35-320, filed 6/22/01, effective 8/1/01.]

**WAC 391-35-326 Special provision—State civil service employees.** Confidential exclusions for state civil service employees shall be determined under RCW 41.80.005 (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.80.005(4). WSR 03-03-064, § 391-35-326, filed 1/14/03, effective 2/14/03.]

**WAC 391-35-327 Special provision—Higher education faculty.** Confidential exclusions for higher education faculty employees shall be determined under RCW 41.76.005 (5) and (10).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005 (5) and (10). WSR 03-03-064, § 391-35-327, filed 1/14/03, effective 2/14/03.]

**WAC 391-35-330 One-person bargaining unit inappropriate.** A bargaining unit cannot be considered appropriate if it includes only one employee.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-330, filed 6/22/01, effective 8/1/01.]

**WAC 391-35-340 Unit placement of supervisors—Bargaining rights of supervisors.** (1) It shall be presumptively appropriate to exclude persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") from bargaining units containing their rank-and-file subordinates, in order to avoid a potential for conflicts of interest which would otherwise exist in a combined bargaining unit.

(2) It shall be presumptively appropriate to include persons who exercise authority on behalf of the employer over subordinate employees (usually termed "supervisors") in separate bargaining units for the purposes of collective bargaining.

(3) The presumptions set forth in this section shall be subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-340, filed 6/22/01, effective 8/1/01.]

**WAC 391-35-342 Special provision—Educational employees.** Supervisors, principals and assistant principals acquire collective bargaining rights under chapter 41.59 RCW only by means of an election conducted under RCW 41.59.080.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.59.080. WSR 01-14-009, § 391-35-342, filed 6/22/01, effective 8/1/01.]

**WAC 391-35-343 Special provision—Academic employees.** Administrators acquire collective bargaining rights under chapter 28B.52 RCW only by means of an election conducted under RCW 28B.52.020(3).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.020(3). WSR 01-14-009, § 391-35-343, filed 6/22/01, effective 8/1/01.]

**WAC 391-35-344 Special provision—Marine employees.** The captains of a Washington state ferry vessel, also known as the master of a vessel or the commanding officer, are "supervisors," and shall be placed in a separate bargaining unit in accordance with section 8, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess. and WAC 391-35-340.

[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-35-344, filed 2/15/12, effective 3/17/12.]

**WAC 391-35-346 Special provision—State civil service employees.** Supervisor exclusions for state civil service employees shall be determined under RCW 41.80.005(13) and 41.80.070(1).

(2/15/12)

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.80.005(13) and [41.80].070(1). WSR 03-03-064, § 391-35-346, filed 1/14/03, effective 2/14/03.]

**WAC 391-35-347 Special provision—Higher education faculty.** Administrator exclusions for higher education faculty employees shall be determined under RCW 41.76.005 (5) and (9).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.76.005 (5) and (9). WSR 03-03-064, § 391-35-347, filed 1/14/03, effective 2/14/03.]

**WAC 391-35-350 Unit placement of regular part-time employees—Exclusion of casual and temporary employees.** (1) It shall be presumptively appropriate to include regular part-time employees in the same bargaining unit with full-time employees performing similar work, in order to avoid a potential for conflicting work jurisdiction claims which would otherwise exist in separate units. Employees who, during the previous twelve months, have worked more than one-sixth of the time normally worked by full-time employees, and who remain available for work on the same basis, shall be presumed to be regular part-time employees. For employees of school districts and educational institutions, the term "time normally worked by full-time employees" shall be based on the number of days in the normal academic year.

(2) It shall be presumptively appropriate to exclude casual and temporary employees from bargaining units.

(a) Casual employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to have had a series of separate and terminated employment relationships, so that they lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

(b) Temporary employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.

(3) The presumptions set forth in this section shall be subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.060 and 41.59.080. WSR 01-14-009, § 391-35-350, filed 6/22/01, effective 8/1/01.]

**WAC 391-35-356 Special provision—State civil service employees.** (1) For employees covered by chapter 41.06 RCW who work less than full-time, it shall be presumptively appropriate to include those employees in the same bargaining unit with full-time employees performing similar work.

(2) The presumption set forth in this section is intended to avoid excessive fragmentation and a potential for conflicting work jurisdiction claims which would otherwise exist in separate units of full-time and less than full-time employees.

(3) The presumption set forth in this section shall be subject to modification by adjudication.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.80.005(6) and [41.80].070(1). WSR 03-03-064, § 391-35-356, filed 1/14/03, effective 2/14/03.]





# Chapter 391-45 WAC

## UNFAIR LABOR PRACTICE CASE RULES

### WAC

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 391-45-550 Collective bargaining—Policy.  
 391-45-552 Special provision—Educational employees.

391-45-370 Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-370, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-370, filed 9/30/80, effective 11/1/80.] Repealed by WSR 98-14-112, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.  
 391-45-431 Special provision—Public employees. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.56.190. WSR 90-06-074, § 391-45-431, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-431, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.160.

**Reviser's note:** Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

### WAC 391-45-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on complaints charging unfair labor practices under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-45-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-45-350 and 391-45-390; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-45-070, 391-45-090, and 391-45-260.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-45-013 Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-013, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-056 (Order 88-05), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.  
 391-45-056 Special provision—State civil service employees. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-45-056, filed 1/14/03, effective 2/14/03.] Repealed by WSR 08-04-059, filed 1/31/08, effective 4/1/08.  
 391-45-150 Authority of examiner. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-150, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-034 (Order 83-04), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.  
 391-45-171 Special provision—Public employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-171, filed 9/30/80, effective 11/1/80.] Repealed by WSR 86-11-054 (Order 86-01), filed 5/20/86. Statutory Authority: RCW 34.04.033 [34.04.022], 41.58.050, 41.56.090 and 41.59.110.  
 391-45-230 Amendment of answer. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-230, filed 9/30/80, effective 11/1/80.] Repealed by WSR 00-14-048, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-45-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-45-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-45-001, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. WSR 90-06-074, § 391-45-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (Private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 12-05-066, § 391-45-002, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 10-20-172, § 391-45-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-45-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-45-002, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-45-002, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52,

41.56, 41.58, 41.59 and 53.18 RCW. WSR 90-06-074, § 391-45-002, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-034 (Order 83-04), § 391-45-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-010 Complaint charging unfair labor practices—Who may file.** A complaint charging that a person has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.040, 41.58.040, 41.59.060 and 53.18.015. WSR 00-14-048, § 391-45-010, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-019 Special provision—Private sector employees.** The provisions of chapter 391-45 WAC are inapplicable to private sector collective bargaining under chapter 49.08 RCW.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 49.08.020. WSR 90-06-074, § 391-45-019, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-019, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-030 Complaint in writing—Number of copies—Filing—Service.** Each complaint charging unfair labor practices shall be in writing, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The party filing the complaint shall serve a copy on each party named as a respondent, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-030, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-030, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-050 Contents of complaint.** Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(1) Information identifying the parties and (if known) their representatives, including:

(a) The name, address and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The name, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (respondent), and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

(c) The name, address, telephone number, fax number, and e-mail address of the party filing the complaint (complainant), and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(3) A statement of the remedy sought by the complainant.

(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.

(5) Information concerning the parties' relationships, including:

- (a) The employer's principal business;
  - (b) Identification of the employer department or division in which the dispute arises;
  - (c) The parties' contractual relationship, indicating that:
    - (i) The parties have never had a contract; or
    - (ii) A copy of the current (or most recent) collective bargaining agreement is attached;
  - (d) The status of related grievance proceedings between the parties, indicating that:
    - (i) No grievance has been filed on the dispute involved; or
    - (ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or
    - (iii) An arbitration award has been issued on a related grievance;
  - (e) A description of the bargaining unit involved, specifying inclusions and exclusions; and
  - (f) The number of employees in the bargaining unit.
- (6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.413, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-050, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-070 Amendment.** (1) A complaint may be amended upon motion made by the complainant, if:

- (a) The proposed amendment only involves the same parties as the original complaint;
- (b) The proposed amendment is timely under any statutory limitation as to new facts;
- (c) The subject matter of the proposed amendment is germane to the subject matter of the complaint as originally filed or previously amended; and
- (d) Granting the amendment will not cause undue delay of the proceedings.

(2) Motions to amend complaints shall be subject to the following limitations:

- (a) Prior to the appointment of an examiner, amendment shall be freely allowed upon motion to the agency official responsible for making preliminary rulings under WAC 391-45-110;
- (b) After the appointment of an examiner but prior to the opening of an evidentiary hearing, amendment may be allowed upon motion to the examiner and subject to due process requirements;
- (c) After the opening of an evidentiary hearing, amendment may only be allowed to conform the pleadings to evi-

dence received without objection, upon motion made prior to the close of the evidentiary hearing.

(3) Where a motion for amendment is denied, the proposed amendment shall be processed as a separate case.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.140, 41.56.150, 41.56.170, 41.59.140 and 53.18.015. WSR 00-14-048, § 391-45-070, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-090 Withdrawal.** (1) A complaint may be withdrawn by the complainant, by a written request filed before issuance of a decision by an examiner.

(2) A withdrawal "without prejudice" shall not vary any statutory time limitation for filing of unfair labor practice complaints, unless the parties file a written agreement for a different arrangement prior to the expiration of the applicable statutory period.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. WSR 00-14-048, § 391-45-090, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-110 Deficiency notice—Preliminary ruling—Deferral to arbitration.** The executive director or a designated staff member shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice shall be issued and served on all parties, identifying the defects and specifying a due date for the filing and service of an amended complaint. If the defects are not cured within twenty-one days, an order shall be issued and served, dismissing the defective allegation(s) and stating the reasons for that action. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection shall be the final order of the agency on the defective allegation(s), with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a preliminary ruling summarizing the allegation(s) shall be issued and served on all parties.

(a) A preliminary ruling forwarding a case for further proceedings is an interim order which may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310.

(b) The preliminary ruling limits the causes of action before an examiner and the commission. A complainant who claims that the preliminary ruling failed to address one or more causes of action it sought to advance in the complaint must, prior to the issuance of a notice of hearing, seek clarification from the person that issued the preliminary ruling.

(c) The preliminary ruling shall establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute reso-

lution procedures, but shall retain jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered where:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings shall be considered binding, except where:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 28B.52.073, 34.05.419, 41.56.140, 41.56.150 and 41.59.140. WSR 00-14-048, § 391-45-110, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-110, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. WSR 90-06-074, § 391-45-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-130 Examiner—Who may act.** The executive director or a designated staff member shall assign an examiner to conduct further proceedings in the matter, and shall notify the parties of that assignment. The examiner may be a member of the agency staff or any other individual designated by the commission or executive director. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-130, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.56.170 and 53.18.015. WSR 90-06-074, § 391-45-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-170 Notice of hearing.** The examiner shall issue a notice of hearing and have it served on the parties. Attached to the notice of hearing shall be a copy of the preliminary ruling issued under WAC 391-45-110. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.434, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-170, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-170, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.-

080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.-015. WSR 90-06-074, § 391-45-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-170, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-190 Answer—Filing and service.** An answer to a complaint charging unfair labor practices shall be in writing. The respondent shall file its answer as required by WAC 391-08-120(1), and shall serve a copy on the complainant, as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-190, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-190, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-190, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.-080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-190, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-210 Answer—Contents—Amendment—Effect of failure to answer.** (1) An answer filed by a respondent shall specifically admit, deny or explain each fact alleged in the portions of a complaint found to state a cause of action under WAC 391-45-110. A statement by a respondent that it is without knowledge of an alleged fact, shall operate as a denial. An answer shall assert any affirmative defenses that are claimed to exist.

(2) Counterclaims by a respondent against a complainant shall be filed and processed as separate cases, subject to procedures for consolidation of proceedings.

(3) Motions to amend answers shall be acted upon by the examiner, subject to the following limitations:

(a) Amendment shall be allowed whenever a motion to amend the complaint has been granted;

(b) Amendment may be allowed prior to the opening of an evidentiary hearing, subject to due process requirements;

(c) After the opening of an evidentiary hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made prior to the close of the evidentiary hearing.

(4) If a respondent fails to file a timely answer or fails to specifically deny or explain a fact alleged in the complaint, the facts alleged in the complaint shall be deemed to be admitted as true, and the respondent shall be deemed to have waived its right to a hearing as to the facts so admitted. A motion for acceptance of an answer after its due date shall only be granted for good cause.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 00-14-048, § 391-45-210, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-210, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-210, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-250 Motion to make complaint more definite and detailed.** The examiner may direct that the complaint be made more definite and detailed, upon motion of the respondent, if the examiner is satisfied that the complaint is so indefinite as to hamper the respondent in the preparation of its answer.

(1) The respondent shall file its motion on or before the date specified for the filing of an answer. The motion shall be filed and served as required by WAC 391-08-120.

(2) The filing of a motion under this section shall extend the due date for the respondent's answer until a date set by the examiner.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-250, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-250, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-260 Settlement conference.** Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference concerning substantive issues may be held under WAC 10-08-200(15).

(1) A separate case number shall be assigned, and all files and papers for the settlement conference shall be kept separate from the files and papers for the unfair labor practice proceeding.

(2) A commission staff member other than the assigned examiner shall be assigned to explore settlement between the parties on the substantive issues.

(3) Any settlement conference shall be held in advance of the scheduled hearing date on the underlying unfair labor practice proceedings.

(4) During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute. Participation in a settlement conference is voluntary and nothing in this rule prohibits parties from exploring settlement on their own. Refusal by a party to participate in a settlement conference shall not prejudice that party in any manner. Conversations had and offers made in a settlement conference shall not be admissible in evidence at a hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-260, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.431, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-260, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-260, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.-080, 41.56.090, 41.59.110, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-260, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-056 (Order 88-05), § 391-45-260, filed 5/31/88.]

**WAC 391-45-270 Hearings—Reopening of hearing.**

(1) Hearings shall be public, except where a protective order is issued under WAC 10-08-200(7), and shall be limited to the portions of a complaint found to state a cause of action under WAC 391-45-110.

(a) The complainant shall be responsible for the presentation of its case, and shall have the burden of proof.

(b) The respondent shall be responsible for the presentation of its defense, and shall have the burden of proof as to any affirmative defenses.

(c) The examiner's authority under WAC 10-08-200 (8) and (9) shall not be construed as authorizing or requiring the

examiner to undertake the responsibilities of the complainant or respondent under this subsection.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-45-270, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-45-270, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.170, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-270, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-290 Briefs.** (1) Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The examiner may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the examiner. Any brief shall be filed with the examiner as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(2) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The hearing examiner grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing examiner at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-290, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.437, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-290, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-290, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-290, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-290, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-310 Examiner decisions.** (1)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or a hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director, his or her designee, or a hearing examiner, within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or a hearing examiner will be accepted by the commission only:

(i) If the executive director, his or her designee, or a hearing examiner has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or a hearing examiner has committed probable error and the decision of the interlocutory decision of the hearing examiner

substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or a hearing examiner has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a preliminary ruling by the executive director or his or her designee or a hearing examiner under WAC 391-45-110; or

(ii) Application of the six-month statute of limitations;

(iii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.

(d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(2) After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 10-20-172, § 391-45-310, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-330 Withdrawal or modification of examiner decision.** The examiner may set aside, modify, change or reverse any findings of fact, conclusions of law or order, if any mistake is discovered in the decision.

(1) Action may be taken under this section on the examiner's own motion, or on a written motion filed and served by any party as required by WAC 391-08-120.

(2) Action may only be taken under this section within ten days following issuance of the decision.

(3) This section shall be inoperative after the filing of an appeal to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-45-330, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-330, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-330, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-330, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-330, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-350 Appeals.** An order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex issues raised by the appeal; and

(b) The commission grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-350, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-350, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and

53.18.015. WSR 90-06-074, § 391-45-350, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-45-350, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-350, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-390 Commission action on appeals.** If an order is appealed under WAC 391-45-350, the entire record in the proceedings shall be transmitted to the commission members. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the record and any briefs or arguments submitted to it, determine the appeal, and shall issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 34.05.464, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-390, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-390, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-390, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-048 (Order 80-7), § 391-45-390, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-394 Special provision—Marine employees.** If an order is appealed under WAC 391-45-350 involving employees covered by chapter 47.64 RCW, the marine employees' commission shall act in place of the commission, and the entire record in the proceedings shall be transmitted to the marine employees' commission members. The marine employees' commission may request the parties to appear before it to make oral arguments as to any or all of the issues in the matter. The marine employees' commission shall determine the status of each position, classification or group covered by the appeal, and shall issue appropriate orders.

[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-45-394, filed 2/15/12, effective 3/17/12.]

**WAC 391-45-410 Unfair labor practice remedies—Back pay.** If an unfair labor practice is found to have been committed, the commission or examiner shall issue a remedial order. In calculating back pay orders, the following shall apply:

(1) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings the employee may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits the employee may have received during the period of the violation, and the employer shall provide evidence to the commission that the deducted amount has been repaid to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment.

(2/15/12)

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.160, 41.59.150 and 53.18.015. WSR 00-14-048, § 391-45-410, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-410, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-410, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-430 Motion for temporary relief.** In addition to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may make a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions shall be processed as provided in this section.

(1) When the complaint is filed, or as soon thereafter as facts giving rise to the request for temporary relief become known, the complainant shall file written notice of its intent to make a motion for temporary relief with the executive director as required by WAC 391-08-120(1), and shall serve a copy of the notice on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4).

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the processing of the matter shall be expedited under WAC 391-45-110.

(3) After a determination that the complaint states a cause of action under WAC 391-45-110, the complainant may file and serve, as required by WAC 391-08-120, a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies.

(4) If there is a motion for temporary relief, the due date for counter-affidavits from other parties is seven days following the date on which that party is served with a motion for temporary relief. The counter-affidavits shall be filed and served as required by WAC 391-08-120.

(5) The executive director shall forward all motions and affidavits to the commission, which shall determine whether an injunction pendente lite should be sought. In making its determination, the commission shall adhere to the following policy:

"The name and authority of the public employment relations commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 391-45-010, et seq., unless it appears that one or more of the allegations in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo be preserved pending the completion of administrative proceedings."

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction pendente lite.

(b) Whenever temporary relief has been procured, the complaint which has been the basis for the temporary relief shall be heard expeditiously and the case shall be given priority over all other cases except cases of like character.

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(c) A determination by the commission that temporary relief should not be sought at a particular time shall not bar renewal of the motion for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.160(3) and 41.59.150. WSR 00-14-048, § 391-45-430, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-430, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073 and 41.59.150. WSR 90-06-074, § 391-45-430, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-430, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-550 Collective bargaining—Policy.** It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to a particular issue does not and cannot confer the status of a mandatory subject on a nonmandatory subject.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.073, 41.56.030(4), 41.59.020(2) and 53.18.015. WSR 00-14-048, § 391-45-550, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-550, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-550, filed 9/30/80, effective 11/1/80.]

**WAC 391-45-552 Special provision—Educational employees.** The obligation to bargain in good faith imposed upon an employer and the exclusive representative of its employees, respectively, by RCW 41.59.020(2) and 41.59.140 (1)(e) or (2)(c) includes:

(1) The obligation to submit, as to each subject for bargaining advanced by the party, a written statement of the language proposed for incorporation in or deletion from the collective bargaining agreement between the parties, together with a written or oral explanation or justification of the proposals.

(2) The obligation to submit, as to each subject for bargaining advanced by the other party, at least one written response, together with a written or oral explanation of the response. However, a party which asserts in a written response that a subject for bargaining advanced by the other party is not a mandatory subject for collective bargaining may thereafter refuse to make further proposals as to the subject or subjects for bargaining.

(3) The obligation to receive proposals from the other party as to all subjects for bargaining in dispute between the parties and, until a legal impasse has been reached, to refrain from demanding the removal of the subject from the bargaining table on the basis that it is not a mandatory subject for collective bargaining.

(4) The obligation to exhaust the mediation and fact finding procedure established pursuant to RCW 41.59.120 before

implementing all or any part of a final offer in negotiations, except as provided in RCW 41.59.930.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 00-14-048, § 391-45-552, filed 6/30/00, effective 8/1/00; WSR 90-06-074, § 391-45-552, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-45-552, filed 1/6/81.]



# Chapter 391-55 WAC

## IMPASSE RESOLUTION CASE RULES

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-55-033 Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-033, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-055 (Order 88-08), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.  
 391-55-260 Uniformed personnel—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-260, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

391-55-360 Educational employees—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-360, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.  
 391-55-400 State patrol personnel—Fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-400, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-400, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.  
 391-55-410 State patrol personnel—Selection of fact finder. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-410, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-410, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.  
 391-55-415 State patrol personnel—Conduct of fact finding proceedings. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-415, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-415, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.  
 391-55-420 State patrol personnel—Submission of proposals for fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-420, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-420, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.  
 391-55-425 State patrol personnel—Fact finding hearing. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-425, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-425, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.  
 391-55-430 State patrol personnel—Order of proceedings and evidence. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-430, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-430, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.  
 391-55-435 State patrol personnel—Fact finding in the absence of a party. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-435, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-435, filed 9/30/80, effective 11/1/80.] Repealed by WSR

- 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-440 State patrol personnel—Closing of fact finding hearings. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-440, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-440, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-445 State patrol personnel—Findings of fact and recommendations. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-445, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-445, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-450 State patrol personnel—Responsibility of parties after fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-450, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-450, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-455 State patrol personnel—Expenses of fact finding. [Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-455, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-455, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-455, filed 9/30/80, effective 11/1/80.] Repealed by WSR 96-07-105, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.
- 391-55-500 Marine employees—Interest arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-500, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-505 Marine employees—Referral for mediation. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-505, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-055 (Order 88-08), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.
- 391-55-510 Marine employees—Intervention and consolidation of proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-510, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-515 Marine employees—Conduct of interest arbitration proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-515, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-520 Marine employees—Submission of issues for arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-520, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-525 Marine employees—Hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-525, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-530 Marine employees—Order of proceedings and evidence. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-530, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-535 Marine employees—Arbitration in the absence of a party. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-535, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-540 Marine employees—Closing of hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-540, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-545 Marine employees—Interest arbitration award. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-545, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.
- 391-55-560 Marine employees—Central filing of agreements. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-560, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-035 (Order 83-05), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

**Reviser's note:** Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

### **WAC 391-55-001 Scope—Contents—Other rules.**

This chapter governs proceedings before the public employment relations commission relating to the resolution of impasses occurring in collective bargaining under all chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with the provisions of:

- (1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.
- (2) Chapter 391-25 WAC, which regulates representation proceedings.
- (3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.
- (4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.
- (5) Chapter 391-65 WAC, which regulates grievance arbitration proceedings.

(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-55-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-55-001, filed 6/22/01, effective 8/1/01; WSR 99-14-060, § 391-55-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

Special provisions relating to bargaining units eligible for interest arbitration are set forth beginning with WAC 391-55-200.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter. Special provisions relating to fact finding are set forth beginning with WAC 391-55-300.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.56.065 [41.58.065], 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 12-05-066, § 391-55-002, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 10-20-172, § 391-55-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-55-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.-090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-002, filed 7/1/99,

(2/15/12)

effective 8/1/99; WSR 96-07-105, § 391-55-002, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-002, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-010 Impasses in contract negotiations—Request for mediation—Service.** A request for mediation may be made in writing, by electronic telefacsimile transmission, or by telephone, but shall be confirmed in writing if made by telephone. The original request shall be submitted to the commission's Olympia office, as required by WAC 391-08-120(2). If the request is not submitted jointly, the party submitting the request shall serve a copy, as required by WAC 391-08-120 (3) and (4), on the other party to the dispute. The party or parties requesting mediation shall provide the following information to the agency:

(1) The name, address and telephone number of the employer and the name, address and telephone number of its principal representative.

(2) The name, address and telephone number of the employee organization and the name, address and telephone number of its principal representative.

(3) The employer's principal business.

(4) The parties' contractual relationship, indicating that:

(a) The parties' have never had a contract; or

(b) A copy of the current or most recent applicable collective bargaining agreement is attached.

(5) A description of the bargaining unit involved, specifying inclusions and exclusions.

(6) The number of employees in the bargaining unit.

(7) The history of the bargaining unit, including at least the approximate date of its creation.

(8) The history of the current negotiations, including at least the number of meetings held, the date of the first meeting and whether both parties concur in the request for mediation.

(9) Identification of the issues in dispute and the parties' positions on those issues.

(10) The name(s), signature(s) and, if any, title(s) of the representative(s) of the requesting party (parties), and the date(s) of the signature(s).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060 and 41.56.100. WSR 99-14-060, § 391-55-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.-110, 41.58.050, 28B.52.060, 34.05.413 and 41.56.100. WSR 96-07-105, § 391-55-010, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-020 Grievance mediation—Request for grievance mediation—Service.** A request for appointment of a grievance mediator may be made in writing or by electronic telefacsimile transmission. The original request shall be submitted to the commission's Olympia office, as required by WAC 391-08-120(2). If the request is not submitted jointly, the party submitting the request shall serve a copy, as required by WAC 391-08-120 (3) and (4), on the other party to the collective bargaining agreement under which the dis-

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pute arises. The party or parties requesting grievance mediation shall provide the following information to the agency:

(1) Information identifying the parties to the dispute, including:

(a) The name, address and telephone number of the employer and the name, address and telephone number of its principal representative;

(b) The name, address and telephone number of the employee organization and the name, address and telephone number of its principal representative;

(c) The employer's principal business;

(d) A copy of the current or most recent applicable collective bargaining agreement;

(e) A description of the bargaining unit involved, specifying inclusions and exclusions;

(f) The number of employees in the bargaining unit;

(g) The agreement of the party or parties making the request that any unresolved issues shall be submitted to an arbitrator for a final and binding decision; and

(h) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to grievance mediation.

(2) Identification of the grievance to be resolved in grievance mediation.

(3) Designation of the request as:

(a) A request for appointment of a member of the agency staff as grievance mediator; or

(b) A request for the submission of a list containing a specified number of names from the dispute resolution panel created by WAC 391-55-110.

(4) The name(s), signature(s) and, if any, title(s) of the representative(s) of the requesting party (parties), and the date(s) of the signature(s).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.-050. WSR 99-14-060, § 391-55-020, filed 7/1/99, effective 8/1/99.]

**WAC 391-55-030 Assignment of mediator.** (1) Upon submission of a request under WAC 391-55-010 or 391-55-020 (3)(a), a member of the agency staff shall be assigned as mediator. If the parties have stipulated to the names of one or more persons who are acceptable to both parties as mediator, their request shall be considered in making the assignment.

(2) Upon submission of a request for a list under WAC 391-55-020 (3)(b), names shall be referred and a grievance mediator shall be selected under WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-55-030, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-032 Special provision—Educational employees.** Upon submission of a unilateral request for mediation, the executive director shall consider the position of the party other than the party making the request, and shall evaluate whether the parties have exchanged and considered the proposals of one another and whether the intervention of the agency will have a beneficial impact on the negotiating process. Prior to making this determination, the executive director or a member of the agency staff may make an on-site investigation and may engage in conciliation under the gen-

eral authority conferred on the commission by RCW 41.58.-020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.-050. WSR 99-14-060, § 391-55-032, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-049 (Order 80-8), § 391-55-032, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-050 Submission of written proposals.**

Parties requesting the mediation services of the agency are encouraged to submit to the assigned mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.-050. WSR 99-14-060, § 391-55-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-049 (Order 80-8), § 391-55-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-070 Function of mediator.** The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.030, 41.80.090. WSR 08-04-059, § 391-55-070, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-071 Special provision—State patrol personnel.** In the case of mediation involving officers of the Washington state patrol appointed under RCW 43.43.020, the mediator shall not consider any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

[Statutory Authority: RCW 41.58.050, 41.56.090. WSR 08-11-125, § 391-55-071, filed 5/21/08, effective 6/21/08. Statutory Authority: RCW 28B.52.-080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-071, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.58.-050, 41.56.090 and 41.59.110. WSR 88-12-055 (Order 88-08), § 391-55-071, filed 5/31/88.]

**WAC 391-55-0715 Special provision—Public employees.** In cases involving mediation conducted under RCW 28A.657.050, the mediator shall ensure that:

(1) Representatives from all bargaining units affected by the state board of education required action plan are provided an opportunity to participate in a single mediation with the employer; and

(2) The scope of the mediation is limited to those terms and conditions of employment that are impacted by the state board of education required action plan.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.-110. WSR 10-20-172, § 391-55-0715, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-072 Special provision—Educational employees.** In cases involving mediation conducted under RCW 28A.657.050, the mediator shall ensure that:

(1) Representatives from all bargaining units affected by the action plan are provided an opportunity to participate in a single mediation with the employer; and

(2) The scope of the mediation is limited to those terms and conditions of employment that are impacted by the state board of education required action plan.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-072, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-090 Confidential nature of mediation.** Mediation meetings shall not be open to the public. Confidential information acquired by a mediator shall not be disclosed to others outside of the mediation process for any purpose, and a mediator shall not give testimony about the mediation in any legal or administrative proceeding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 5.60.072. WSR 99-14-060, § 391-55-090, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-110 Dispute resolution panel—Membership.** The commission shall establish and maintain a panel of individuals qualified to serve in an impartial capacity in the resolution of labor disputes.

(1) Applicants for membership on the dispute resolution panel shall demonstrate minimum background and experience equal to the minimum qualifications for the working level positions on the professional staff of the commission:

(a) A master's degree in labor relations, personnel management or industrial relations or closely allied field, or a law degree; and

(b) At least three years of experience in collective bargaining with major work assignments in negotiations, contract administration or related work as a union or management representative, mediator, arbitrator or educator in the above areas; and

(c) Additional qualifying experience shall substitute, year for year, for education.

(2) Applicants for membership on the dispute resolution panel shall furnish letters of recommendation supporting their acceptability as an impartial from:

(a) At least one management representative; and

(b) At least one union representative; and

(c) At least one impartial arbitrator, mediator or labor relations administrative agency official.

(d) All letters of recommendation submitted under subsections (a) through (c) of this section shall be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter of recommendation.

(3) Applicants who desire to be referred for interest arbitration proceedings shall demonstrate their experience as an impartial in at least five grievance arbitration, fact finding or interest arbitration cases, by submitting copies of arbitration

awards which can be provided, upon request, to parties selecting an interest arbitrator.

(4) Applicants for membership on the dispute resolution panel shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications and affiliations. All information submitted shall be subject to administrative verification.

(5) Applications of persons appearing to be qualified for membership on the panel shall be forwarded to the commission for consideration and action. The commission shall review each application submitted to it, together with the supporting letters of recommendation, and shall notify the applicant of the determination made.

(6) Whenever it appears to the commission that an applicant or member of the dispute resolution panel has failed or refused to comply with applicable statutes, rules and ethical standards, the application shall be rejected or the member shall be removed from the dispute resolution panel. A member shall also be removed from the panel if he or she has:

(a) Ceased accepting appointments as an impartial in the resolution of labor disputes; or

(b) Failed to keep the agency informed of their current address and telephone number.

(7) Persons referred from the dispute resolution panel shall be impartial. No active member of the dispute resolution panel may serve in any capacity as an advocate or representative for either labor or management in labor relations matters. Any member of the panel who intends to engage in advocacy work shall notify the executive director and shall be placed on inactive status while their advocacy work continues.

(8) Upon appointment to the dispute resolution panel by the commission, the panel member may be placed under contract pursuant to chapter 39.29 RCW. Only persons listed on the panel shall be compensated by the agency under a personal service contract.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, and 49.39.060. WSR 10-20-172, § 391-55-110, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-55-110, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-110, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-120 Dispute resolution panel—Referral and selection procedures.** (1) All referrals from the dispute resolution panel shall be by random selection among the panel members eligible for the type of proceeding involved, subject to the following:

(a) If the parties do not specify the number of names requested, the agency shall supply seven names.

(b) Where the parties request a specific number of names, the agency shall supply the number requested plus two additional names for use as alternates to reduce the potential need for second lists, or for use as agreed by the parties.

(c) The agency shall furnish biographical information, including background, qualifications and experience, on each of the arbitrators on the list supplied to the parties.

(d) The agency shall supply the parties with a second list, upon submission of their joint written request.

(2) The parties may use any method agreed upon for selecting an impartial from the list provided by the agency. In the absence of agreement on any other method, they shall alternately strike names from the list, with the order of striking determined by lot.

(3) All contacts and arrangements between the parties and a selected dispute resolution panel member are the responsibility of the parties. The fees and travel expenses of the dispute resolution panel member shall be paid by the parties under applicable rules or as agreed by the parties.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.-050. WSR 99-14-060, § 391-55-120, filed 7/1/99, effective 8/1/99.]

**WAC 391-55-130 Disclosure.** Prior to accepting the appointment, or as soon as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity in a dispute resolution proceeding under the jurisdiction of the commission shall disclose to the parties and to the executive director any circumstances likely to create an appearance of bias or which might disqualify him or her from serving in the impartial capacity. Employment of the person or any member of his or her immediate family by any party shall be disqualifying. Each party to the proceeding shall immediately notify the executive director and the appointee or selectee whether it is willing to waive disqualification. If either party declines to waive the disqualification, the appointment shall be vacated.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.-050. WSR 99-14-060, § 391-55-130, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-049 (Order 80-8), § 391-55-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-150 Vacancies.** If any person serving in an impartial capacity in dispute resolution proceedings under the jurisdiction of the commission should resign, die, withdraw, refuse or be unable to serve, or should be or become disqualified to perform the duties of the office, the executive director shall declare the office vacant. The vacancy shall be filled in the same manner as an original appointment.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.-050. WSR 99-14-060, § 391-55-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-049 (Order 80-8), § 391-55-150, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-200 Interest arbitration—Certification of issues.** (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(7), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 47.64.300, or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if

any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

[Statutory Authority: RCW 41.56.090, 41.58.050, 41.58.065, 47.64.300, and 74.39A.270. WSR 12-05-066, § 391-55-200, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 41.56.090, 41.58.050, and 74.39A.270. WSR 10-20-172, § 391-55-200, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.56.450, [41.56].475, [41.56].492 and 74.39A.270. WSR 03-03-064, § 391-55-200, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450, 41.56.475 and 41.56.492. WSR 99-14-060, § 391-55-200, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.56.450 and [41.56].492. WSR 96-07-105, § 391-55-200, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.-050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-201 Special provision—Certification of issues—Public employees.** (1) If a dispute involving negotiations conducted under RCW 28A.657.050 and WAC 391-55-0715 have not been settled by May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located.

(2) The executive director shall review the lists of issues submitted by the parties, including any list of issues submitted under WAC 391-55-072.

(a) The executive director shall exclude from certification any issues that have not been mediated.

(b) The executive director shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" to the superior court.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.-110. WSR 10-20-172, § 391-55-201, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-202 Special provision—Certification of issues—Educational employees.** (1) If a dispute involving negotiations conducted under RCW 28A.657.050 and WAC 391-55-072 have not been settled by May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located.

(2) The executive director shall review the lists of issues submitted by the parties, including any list of issues submitted under WAC 391-55-0715.

(a) The executive director shall exclude from certification any issues that have not been mediated.

(b) The executive director shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" to the superior court.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-202, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-205 Interest arbitration—Appointment of partisan arbitrators.** Within seven days following the issuance of a certification of issues for interest arbitration under WAC 391-55-200, each party shall name one person who is available and willing to serve as its member of the arbitration panel, and shall notify the opposite party and the executive director of the name, address and telephone number of the partisan arbitrator. The partisan arbitrators shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairperson of the arbitration panel.

(1) The use of partisan arbitrators shall be deemed waived if neither party has notified the executive director of its appointee within fourteen days following the issuance of a certification of issues for interest arbitration, and the parties' principal representatives shall then select the neutral chairperson.

(2) A party which has designated a partisan arbitrator may substitute another person as its partisan arbitrator, upon notice to the other party and the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-205, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-205, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-205, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-205, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-210 Interest arbitration—Selection of neutral chairperson.** (1) If the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve, and shall notify the executive director of the identity of the chairperson.

(2) If the parties agree to have the commission appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the commission. Upon the submission of a request in compliance with this subsection, the executive

(2/15/12)

director shall appoint a neutral chairperson from the commission staff.

(3) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the commission, the Federal Mediation and Conciliation Service or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall proceed forthwith to request a panel of at least five arbitrators specifying: "For interest arbitration proceedings under RCW 41.56.450." Referrals and selection from the commission's dispute resolution panel shall be as provided in WAC 391-55-120. Referrals and selection from other panels shall be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(4) If the parties have not notified the executive director of their selection of a neutral chairperson within twenty-eight days after certification of issues under WAC 391-55-200, the parties shall be deemed to have waived the procedures in subsections (1) through (3) of this section. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson shall be selected as provided in WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-210, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-210, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-210, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-210, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-215 Interest arbitration—Conduct of proceedings—Waiver of objections.** Proceedings shall be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-215, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-215, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-215, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-220 Interest arbitration—Submission of proposals for arbitration.** At least fourteen days before the date of the hearing, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties shall not be entitled to submit issues which were not among the issues certified under WAC 391-55-200.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-220, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-220, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-220, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-225 Interest arbitration—Prehearing conference—Hearing.** (1) The neutral chairperson may, upon his or her own motion or upon request of a party, convene a prehearing conference or conferences.

(a) The purpose or purposes of a prehearing conference include to consider:

- (i) Simplification of issues;
- (ii) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
- (iii) Limitations on the number and consolidation of the examination of witnesses;
- (iv) Procedural matters;
- (v) Distribution of written testimony and exhibits to the parties prior to the hearing; and
- (vi) Such other matters as may aid in the disposition or settlement of the case.

(b) Prehearing conferences may be held by telephone conference call or at a time and place specified by the neutral chairperson.

(c) Following a prehearing conference, the neutral chairperson shall issue an order reciting the action taken at the conference, and the agreements made by the parties concerning all of the matters considered. If no objection is filed within ten days after the date that the order is mailed, it shall control the subsequent course of the case unless modified for good cause by subsequent order.

(2) The arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice to the parties. For good cause shown, the neutral chairperson may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

(a) A tape recording of the hearing shall be taken and shall be the official record of the hearing, unless the parties agree to take a transcript. If the parties do not agree to take a transcript and share in its cost, a party may take a transcript at its own expense. If a copy of the transcript is provided to the neutral chairperson, all parties shall have access to a copy.

(b) The statutory prohibition against a partisan arbitrator presenting the case for a party shall not preclude another member of the same organization or firm from presenting the case at the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-225, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-225, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-225, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-230 Interest arbitration—Order of proceedings and evidence.** The order of presentation at the hearing shall be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the neutral chairperson and copies shall be provided to the partisan arbitrators and to the other parties. The exhibits shall be retained by the neutral chairperson until an agreement has been signed or until any judicial review proceedings have been concluded, after

which they may be disposed of as agreed by the parties or as ordered by the neutral chairperson. The neutral chairperson has authority to administer oaths, to require the attendance of witnesses, and to require the production of documents that he or she may deem to be material.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-230, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-230, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-235 Interest arbitration—Arbitration in the absence of a party.** The neutral chairperson may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute shall not be made solely on the default of a party, and the neutral chairperson shall require the participating party to submit evidence as may be required for making of the findings of fact and determining the issues.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-235, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-235, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-235, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-240 Interest arbitration—Closing of arbitration hearings.** The neutral chairperson shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-240, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-240, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-240, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-245 Interest arbitration—Award.** The rulings and determination of the neutral chairperson shall be controlling, and shall not require concurrence, but may be accompanied by the concurring and/or dissenting opinions of the partisan arbitrators. The rulings and determinations shall not be subject to appeal to the commission, but the neutral chairperson shall submit a copy of the award to the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-245, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-55-245, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-245, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-245, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-255 Interest arbitration—Expenses of arbitration.** Each party shall pay the expenses of presenting its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairperson appointed under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a recording of the proceedings, shall be shared equally between



the parties. The fees and traveling expense of a neutral chairperson appointed under WAC 391-55-210(2), along with the costs of tapes for a tape recording of the proceedings but not a transcription or the services of a court reporter, shall be paid by the commission.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-255, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-255, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-255, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-265 Interest arbitration—Suspension of arbitration pending outcome of unfair labor practice proceedings.** (1) The executive director shall suspend the certification of some or all issues under WAC 391-55-200, as follows:

(a) A party which claims that a proposal being advanced to interest arbitration is not a mandatory subject of collective bargaining must communicate its concerns to the other party during bilateral negotiations and/or mediation. If the party advancing the proposal does not withdraw the proposal or modify it to eliminate the claimed illegality, the objecting party must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings.

(b) A party which claims that the other party to negotiations subject to interest arbitration has violated the "collective bargaining" obligations imposed by RCW 41.56.030(4) must file and process a complaint charging unfair labor practices under chapter 391-45 WAC prior to the conclusion of the interest arbitration proceedings.

(c) If a preliminary ruling is issued under WAC 391-45-110 that an unfair practice violation could be found on a complaint filed under (a) or (b) of this subsection, a final ruling on the unfair labor practice complaint shall be made before any determination is made in interest arbitration on the disputed issue or issues.

(2) Issues suspended under subsection (1) of this section shall be acted upon after the conclusion of the unfair labor practice proceedings, as follows:

(a) If it is concluded that the suspended issue or issues was/were unlawfully advanced or affected by unlawful conduct, the issue or issues shall be stricken from the certification under WAC 391-55-200, and the party advancing the proposal shall only be permitted to advance such modified proposals as are in compliance with the remedial order in the unfair labor practice proceedings.

(b) If it is concluded that the suspended issue or issues was/were lawfully advanced, the suspension under this section shall be terminated and the issue or issues shall be remanded to the interest arbitration panel for ruling on the merits.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.450. WSR 99-14-060, § 391-55-265, filed 7/1/99, effective 8/1/99.]

**WAC 391-55-300 Fact-finding.** If a dispute has not been settled after bilateral negotiations and mediation, either party may request the appointment of a fact finder by giving

(2/15/12)

written notice to the commission, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW, a period of ten days of mediation must have elapsed. The parties may, by agreement made at any time prior to the appointment of a fact finder, extend the period for mediation or place in the hands of the mediator the determination of when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding shall be initiated if resolution is not reached through mediation by one hundred days beyond the expiration date of a contract previously negotiated under that chapter or one hundred days from the initiation of mediation if no such contract exists.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-300, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-302 Special provision—Educational employees.** WAC 391-55-310 through 391-55-355 are not applicable to negotiations between educational employees and employers conducted under RCW 28A.657.050.

[Statutory Authority: RCW 28A.657.050, 41.56.090, 41.58.050, and 41.59.110. WSR 10-20-172, § 391-55-302, filed 10/6/10, effective 11/6/10.]

**WAC 391-55-310 Selection of fact finder.** (1) Upon the submission of a timely request for fact-finding, the executive director shall furnish a list of members of the dispute resolution panel, and the parties shall meet within seven days following receipt of the list, to attempt to select a fact finder. Names shall be referred and any fact finder shall be selected under WAC 391-55-120.

(a) The parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and shall notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder, they shall notify the executive director.

(d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder.

(a) For disputes under chapter 41.59 RCW, the fact finder shall be a member of the commission staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the commission.

(b) For disputes under chapter 41.80 RCW, the fact finder may be a member of the commission staff or may be a member of the dispute resolution panel established in WAC 391-55-120.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR

99-14-060, § 391-55-310, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-310, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-315 Conduct of fact-finding proceedings—Waiver of objections.** Proceedings shall be conducted as provided in WAC 391-55-300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party who proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-315, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-315, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-55-315, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-320 Submission of proposals for fact-finding.** At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties shall not be entitled to submit issues which were not among the issues mediated under WAC 391-55-070.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-320, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-320, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-325 Fact-finding hearing.** The fact finder shall establish a date, time and place for a hearing. The fact-finding hearing shall be open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-325, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-330 Order of proceedings and evidence.** The order of presentation at the fact-finding hearing shall be as agreed by the parties or as determined by the fact finder. The fact finder shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the fact finder and copies shall be provided to the other parties. The exhibits shall be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-330, filed 1/31/08, effective 4/1/08. Statutory Authority:

[Ch. 391-55 WAC p. 10]

RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-330, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-335 Fact-finding in the absence of a party.** The fact finder may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations shall not be made solely on the default of a party, and the fact finder shall require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-335, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-335, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-335, filed 1/6/81.]

**WAC 391-55-340 Closing of fact-finding hearings.** The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-340, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 99-14-060, § 391-55-340, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-345 Findings of fact and recommendations.** Within thirty days after his or her appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder shall not be subject to appeal to the commission. Fact finders shall rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties, and shall not rule on whether a subject or proposal in dispute is a mandatory subject for collective bargaining.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-345, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 98-14-112, § 391-55-345, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-55-345, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-55-345, filed 1/6/81.]

**WAC 391-55-350 Responsibility of parties after fact-finding.** The parties are entitled to consider the fact finder's recommendations privately, before they are made public.

(1) For cases under chapter 41.59 RCW, within five days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within ten working days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ask the agency to provide further mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-350, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.59.120. WSR 00-14-048, § 391-55-350, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-55-350, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

**WAC 391-55-355 Expenses of fact-finding.** Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing them. The fees and expenses of a fact finder shall be paid as follows:

(1) A fact finder appointed by the commission from the commission staff under WAC 391-55-310 (2)(a) shall be paid by the commission.

(2) A fact finder selected from the dispute resolution panel or some other source shall be paid by the parties, in equal shares.

[Statutory Authority: RCW 41.58.050, 41.59.110, 41.80.090. WSR 08-04-059, § 391-55-355, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-035 (Order 83-05), § 391-55-355, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]



# Chapter 391-65 WAC

## GRIEVANCE ARBITRATION RULES

**WAC**

- 391-65-001 Scope—Contents—Other rules.
- 391-65-002 Sequence and numbering of rules—Special provisions.
- 391-65-010 Grievance arbitration—Who may submit.
- 391-65-030 Grievance arbitration—Request for grievance arbitration—Service.
- 391-65-050 Grievance arbitration—Contents of request.
- 391-65-070 Grievance arbitration—Appointment of staff arbitrator.
- 391-65-075 Special provision—Marine employees.
- 391-65-090 Grievance arbitration—Designation of panel of arbitrators.
- 391-65-110 Grievance arbitration—Conduct of proceedings.
- 391-65-130 Grievance arbitration—Award.
- 391-65-150 Grievance arbitration—Expenses.

filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-65-530 Marine employees—Order of proceedings and evidence. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-530, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-65-535 Marine employees—Arbitration in the absence of a party. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-535, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

391-65-072 Special provision—Educational employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-072, filed 9/30/80, effective 11/1/80.] Repealed by WSR 15-06-003, filed 2/19/15, effective 3/22/15. Statutory Authority: RCW 41.58.050, 41.59.110, 28B.52.080.

391-65-540 Marine employees—Closing of hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-540, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-65-073 Special provision—Academic employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-073, filed 9/30/80, effective 11/1/80.] Repealed by WSR 15-06-003, filed 2/19/15, effective 3/22/15. Statutory Authority: RCW 41.58.050, 41.59.110, 28B.52.080.

391-65-545 Marine employees—Examiner decision. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-545, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-65-074 Special provisions—Marine employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-074, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-057 (Order 88-09), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.

391-65-550 Marine employees—Petition for review of examiner decision. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-550, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-65-094 Special provision—Marine employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-094, filed 9/30/80, effective 11/1/80.] Repealed by WSR 88-12-057 (Order 88-09), filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110.

391-65-555 Marine employees—Commission action. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-555, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-65-500 Marine employees—Grievance arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-500, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-65-560 Marine employees—Grievance arbitration remedies. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-560, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-65-510 Marine employees—Intervention and consolidation of proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-510, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

**Reviser's note:** Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

391-65-515 Marine employees—Conduct of grievance arbitration proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-515, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-036 (Order 83-06), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

**WAC 391-65-001 Scope—Contents—Other rules.**  
This chapter governs proceedings before the public employment relations commission relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement under all chapters of the

391-65-525 Marine employees—Hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-525,

Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-65-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-65-001, filed 6/22/01, effective 8/1/01; WSR 99-14-060, § 391-65-001, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.130, and 49.39.060. WSR 12-05-066, § 391-65-002, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.130, and 49.39.060. WSR 10-20-172, § 391-65-002, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-65-002, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 99-14-060, § 391-65-002, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52-080. WSR 83-24-036 (Order 83-06), § 391-65-002, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-002, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-010 Grievance arbitration—Who may submit.** Where there is an agreement to arbitrate, a request for appointment of an arbitrator to hear and determine issues arising out of the interpretation or application of a collective bargaining agreement may be submitted by the employer, the exclusive representative or their agents or by the parties jointly.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-010, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-030 Grievance arbitration—Request for grievance arbitration—Service.** A request for appointment of a grievance arbitrator may be made in writing or by electronic telefacsimile transmission. The request shall be on a form furnished by the commission or prepared by the party or parties submitting the request in conformance with WAC 391-65-050. The original request shall be submitted to the commission's Olympia office, as required by WAC 391-08-120(2). If the request is not submitted jointly the party submitting the request shall serve a copy, as required by WAC 391-08-120 (3) and (4), on the other party to the collective bargaining agreement under which the dispute arises.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-030, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.50.413 and 41.56.125. WSR 96-07-105, § 391-65-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-050 Grievance arbitration—Contents of request.** Each request for appointment of a grievance arbitrator shall contain:

(1) Information identifying the parties to the dispute, including:

(a) The name, address and telephone number of the employer and the name, address and telephone number of its principal representative;

(b) The name, address and telephone number of the employee organization and the name, address and telephone number of its principal representative;

- (c) The employer's principal business;
  - (d) A copy of the current or most recent applicable collective bargaining agreement;
  - (e) A description of the bargaining unit involved, specifying inclusions and exclusions;
  - (f) The number of employees in the bargaining unit;
  - (g) The agreement of the party or parties making the request to accept the decision of the arbitrator as final and binding; and
- (h) The agreement of the party or parties making the request that there shall be no strike or lockout on the matters submitted to arbitration.

(2) Identification of the grievance to be resolved in arbitration.

(3) Designation of the request as:

(a) A request for appointment of a member of the agency staff as arbitrator; or

(b) A request for the submission of a list containing a specified number of names from the dispute resolution panel created by WAC 391-55-110.

(4) The name(s), signature(s) and, if any, title(s) of the representative(s) of the requesting party (parties), and the date(s) of the signature(s).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-050, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.413 and 41.56.125. WSR 96-07-105, § 391-65-050, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-057 (Order 88-09), § 391-65-050, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-070 Grievance arbitration—Appointment of staff arbitrator.** Upon concurrence of the parties or upon the submission of a joint request, a member of the agency staff shall be assigned as grievance arbitrator. The parties shall not be permitted to select a grievance arbitrator from a list of agency staff members, or to exercise a right of rejection on appointments made under this section; but may jointly express a preference for appointment of one or more staff members as their arbitrator, and their request shall be considered in making the assignment. Upon the submission of a request by one party for the appointment of a member of the agency staff as grievance arbitrator, the agency shall determine whether the other party to the collective bargaining agreement concurs in the appointment of a staff arbitrator. In the absence of concurrence, the agency shall notify the requesting party of the lack of concurrence and shall close the case if concurrence is not provided within a reasonable time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 00-14-048, § 391-65-070, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-65-070, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-075 Special provision—Marine employees.** Grievance arbitration cases filed under chapter 47.64 RCW shall be mediated by agency staff under chapter 391-55 WAC. Absent settlement, the grievance arbitration proceeding may be conducted by the marine employees' commission in a manner consistent with this chapter.

(2/19/15)

[Statutory Authority: RCW 41.58.050 and 41.58.065. WSR 12-05-066, § 391-65-075, filed 2/15/12, effective 3/17/12.]

**WAC 391-65-090 Grievance arbitration—Designation of panel of arbitrators.** Upon the request of a party, the agency shall furnish a list of members of the dispute resolution panel. Names shall be referred and an arbitrator shall be selected under WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-090, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-110 Grievance arbitration—Conduct of proceedings.** The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff shall be kept in the public files of the agency.

(2) Except as provided in subsections (1) and (2) of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

(3) Rulings, actions, and decisions issued by staff arbitrators under this chapter shall not be subject to appeal to the commission or the marine employees' commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.130, and 49.39.060. WSR 12-05-066, § 391-65-110, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-65-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060 and 41.56.125. WSR 03-03-064, § 391-65-110, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-110, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-65-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-130 Grievance arbitration—Award.** Any arbitrator assigned or selected under this chapter for a dispute involving public employees shall, after sending the arbitration award to the parties, submit a copy to the executive director.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-130, filed 7/1/99, effective 8/1/99; WSR 96-07-105, § 391-65-130, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-130, filed 9/30/80, effective 11/1/80.]

**WAC 391-65-150 Grievance arbitration—Expenses.** Each party shall pay the expenses of presenting its own case and the expenses and fees of its member, if any, of an arbitration panel. The expenses of witnesses shall be paid by the party producing them. The commission shall pay the salary and expenses of a staff member assigned under WAC 391-65-070, but the commission shall not pay any costs for recording and/or transcription of proceedings, or any other expenses of the proceedings. The parties shall pay the fees

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and expenses of a dispute resolution panel member selected under WAC 391-65-090, as provided in WAC 391-55-120.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-65-150, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 41.56.125. WSR 99-14-060, § 391-65-150, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-050 (Order 80-9), § 391-65-150, filed 9/30/80, effective 11/1/80.]



# Chapter 391-95 WAC

## NONASSOCIATION CASE RULES

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

391-95-210	Authority of hearing officer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-210, filed 9/30/80, effective 11/1/80.] Repealed by WSR 83-24-037 (Order 83-07), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.-050, 41.56.090, 41.59.110 and 28B.52.080.
391-95-280	Filing and service of cross-petition for review. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.-090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-280, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.-050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-037 (Order 83-07), § 391-95-280, filed 12/1/83, effective 1/1/84.] Repealed by WSR 98-14-112, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050.

**Reviser's note:** Chapter 15, Laws of 1983 recreates the marine employees' commission, Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

**WAC 391-95-001 Scope—Contents—Other rules.** This chapter governs proceedings before the public employment relations commission on disputes concerning the right of nonassociation under the union security provisions of certain chapters of the Revised Code of Washington (RCW) administered by the commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-95-270 and 391-95-290; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-95-170.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(5) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(6) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(7) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.110, 41.06.340, 41.76.060. WSR 03-03-064, § 391-95-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-95-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-95-001, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-95-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59 and 53.18 RCW. WSR 90-06-075, § 391-95-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-001, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective bargaining—Academic personnel in community

colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(7) Special provisions relating to chapter 49.39 RCW (Symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

[Statutory Authority: RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-95-002, filed 2/15/12, effective 3/17/12.]

#### **WAC 391-95-010 Notice of union security obligation.**

(1) With respect to union security obligations contained within a collective bargaining agreement negotiated under chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW, this commission's jurisdiction is limited to resolving disputes regarding an employee's right to assert nonassociation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.100. WSR 08-04-058, § 391-95-010, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 28B.52.045, 41.56.122, 41.59.100, 41.76.045 and 41.80.100. WSR 03-03-064, § 391-95-010, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-010, filed 6/30/00, effective 8/1/00; WSR 90-06-075, § 391-95-010, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-058 (Order 88-10), § 391-95-010, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-010, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-030 Assertion of right of nonassociation.** An employee who desires to assert a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall provide written notice of that claim to the exclusive bargaining representative.

An employee asserting the right of nonassociation under RCW 28B.52.045, 41.56.113, 41.56.122, 41.59.100, or 41.76.045 shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060. WSR 08-04-058, § 391-95-030, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-030, filed 6/30/00, effective 8/1/00; WSR 90-06-075, § 391-95-030, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-058 (Order 88-10), § 391-95-030, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and

47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-030, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-036 Special provision—State civil service employees.** An employee who desires to assert a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall provide written notice of that claim to the exclusive bargaining representative.

An employee asserting the right of nonassociation under RCW 41.80.100 may provide the exclusive bargaining representative with his or her choice to receive funds paid under the union security provision, if such a list is published by the exclusive bargaining representative.

[Statutory Authority: RCW 41.58.050, 41.80.100. WSR 08-04-058, § 391-95-036, filed 1/31/08, effective 4/1/08.]

**WAC 391-95-050 Response by exclusive bargaining representative.** Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-030, the exclusive bargaining representative shall provide a written response to the employee, setting forth the position of the exclusive bargaining representative on the matter.

(1) For employees who desire to assert the right of nonassociation under RCW 28B.52.045, 41.56.113, 41.56.122, 41.59.100, or 41.76.045, the response of the exclusive bargaining representative shall address:

(a) The eligibility of the employee to make alternative payments; and

(b) The acceptance or rejection of the charitable organization(s) suggested by the employee under WAC 391-95-030.

(2) The requirements of this section are procedural only, and shall not be a basis to void or negate obligations under the union security provisions of a collective bargaining agreement.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060. WSR 08-04-058, § 391-95-050, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-050, filed 6/30/00, effective 8/1/00; WSR 90-06-075, § 391-95-050, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-050, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-056 Special provision—State civil service employees—Response of exclusive bargaining representative.** Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-036, the exclusive bargaining representative shall provide a written response to the employee, setting forth the position of the exclusive bargaining representative on the matter.

(1) For employees asserting the right of nonassociation under RCW 41.80.100, the response of the exclusive bargaining representative shall address:

(a) The eligibility of the employee to make alternative payments; and either

(b) If designated by the employee under WAC 391-95-036, acceptance or rejection of the program or charitable organization designated by an employee under WAC 391-95-036; or

(2) If the employee fails to designate a program of the exclusive bargaining representative that would be in harmony with the employees' individual conscience under WAC 391-95-036, the employee organization shall provide a list of designated program(s) of the employee organization to receive funds paid under the nonassociation provision to the employee.

(3) Within sixty days after being presented with a list under this subsection, the employee asserting a right of nonassociation shall provide the employee organization with written notice of his or her designation of the purpose or purposes on that list, if any, that are in harmony with his or her individual conscience. If the employee fails to timely designate a program, the labor organization may choose a program from the list, provided that the list clearly informs the employee of this consequence. The employee may subsequently choose a different program.

(4) The requirements of this section are procedural only, and shall not be a basis to void or negate obligations under the union security provisions of a collective bargaining agreement.

[Statutory Authority: RCW 41.58.050, 41.80.100. WSR 08-04-058, § 391-95-056, filed 1/31/08, effective 4/1/08.]

**WAC 391-95-070 Disputes resolved by commission.**

(1) Either the employee or the exclusive bargaining representative may file a petition to obtain a ruling from the commission if:

(a) The exclusive bargaining representative disputes the eligibility of the employee to assert the right of nonassociation; or

(b) The exclusive bargaining representative disputes the charity or charitable organization which the employee desires to be the recipient of alternative payments; or

(c) The exclusive bargaining representative fails to make a timely response under WAC 391-95-050; or

(d) The employee claiming nonassociation fails to name a charity or charitable organization to receive alternative payments.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of the collective bargaining agreement containing the union security provision shall not be a subject of proceedings under this chapter.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060. WSR 08-04-058, § 391-95-070, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-070, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-95-070, filed 7/1/98, effective 8/1/98; WSR 90-06-075, § 391-95-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-070, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-076 Special provision—State civil service employees—Disputes resolved by commission.** (1) Either the employee or the exclusive bargaining representative may file a petition to obtain a ruling from the commission if:

(2/15/12)

(a) The exclusive bargaining representative disputes the eligibility of the employee to assert the right of nonassociation; or

(b) The exclusive bargaining representative disputes the program of the employee organization which the employee desires to be the recipient of alternative payments; or

(c) The exclusive bargaining representative fails to make a timely response under WAC 391-95-056; or

(d) The employee claiming nonassociation fails to name a program of the employee organization to receive alternative payments.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of the collective bargaining agreement containing the union security provision shall not be a subject of proceedings under this chapter.

[Statutory Authority: RCW 41.58.050, 41.80.100. WSR 08-04-058, § 391-95-076, filed 1/31/08, effective 4/1/08.]

**WAC 391-95-090 Petition in writing—Number of copies—Filing—Service.** Each petition for a ruling on a nonassociation claim shall be in writing, and shall be filed at the commission's Olympia office as required by WAC 391-08-120(1). The party filing the petition shall serve a copy on the other party to the dispute and on the employer as required by WAC 391-08-120 (3) and (4).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.413, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-090, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-95-090, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-95-090, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-090, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.-080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-090, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-110 Contents of petition.** Each petition for a ruling on a nonassociation claim shall contain, in separate numbered paragraphs:

(1) Information identifying the parties and (if known) their representatives, including:

(a) The name, address and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The name, address and telephone number of the employee organization, and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

(c) The name, address, telephone number, fax number, and e-mail address of the employee who has asserted a right of nonassociation, and the name, address, telephone number, fax number, and e-mail address of his or her representative.

(2) Indicate the matters in dispute as including:

(a) The eligibility of the employee to assert a right of nonassociation; and/or

(b) The designation of the charity to receive the alternative payments.

(3) Indicate whether the petition is filed on behalf of:

(a) The employee; or

(b) The employee organization.

(4) The name, signature and, if any, title of the person filing the petition, and the date of the signature.

(5) Information concerning the parties' relationships, including:

(a) The employer's principal business;

(b) A copy of the current (or most recent) collective bargaining agreement; and

(c) A description of the bargaining unit involved, specifying inclusions and exclusions.

(6) Indicate whether the claimed right of nonassociation is based upon:

(a) Personal religious beliefs; or

(b) Upon the teachings of a church or religious body identified in the petition, including the name, address, telephone number, fax number, and e-mail address of its contact person.

(7) The name(s) of the charity or charities to which the petitioner proposes to make alternative payments, including the name(s), address(es), telephone number(s), fax number(s), and e-mail address(es) of its/their contact person(s).

(8) Indicate whether disputed funds are being held in escrow by the employer.

(9) Any other relevant facts.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.413, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-110, filed 6/30/00, effective 8/1/00; WSR 96-07-105, § 391-95-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-110, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-130 Escrow of disputed funds.** Funds at issue in a nonassociation proceeding under this chapter shall be kept separate while the case remains pending before the commission. Upon being served with a copy of a petition filed under WAC 391-95-070 concerning employees asserting the right of nonassociation under RCW 28B.52.045, 41.56.113, 41.56.122, 41.59.100, or 41.76.045, the employer shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Funds held in escrow shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations. This section shall be applicable to employees covered by chapter 41.56 RCW only upon the employee submitting to the employer a signed authorization for the deduction and escrow of disputed funds.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060. WSR 08-04-058, § 391-95-130, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-130, filed 6/30/00, effective 8/1/00; WSR 90-06-075, § 391-95-130, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-95-130, filed 1/6/81.]

**WAC 391-95-136 Special provision—State civil service employees—Escrow of funds.** Funds at issue in a non-association proceeding under this chapter shall be kept in

escrow while the case remains pending before the commission.

(1) Upon being served with a copy of a petition filed under WAC 391-95-076 concerning an employee asserting the right of nonassociation under RCW 41.80.100, the employee organization shall preserve the status quo by holding the disputed funds in a separate account, and shall not request the discharge or other action against the affected employee based on the employee's union security obligations, until the proceedings under this chapter are concluded.

(2) While the nonassociation proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations.

[Statutory Authority: RCW 41.58.050, 41.80.100. WSR 08-04-058, § 391-95-136, filed 1/31/08, effective 4/1/08.]

**WAC 391-95-150 Deficiency notice—Preliminary ruling.** The executive director or a designated staff member shall determine whether the facts alleged in the petition may constitute a basis for assertion of a right of nonassociation within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a basis for assertion of a right of nonassociation, a deficiency notice shall be issued and served on all parties, identifying the defects and specifying a due date for the filing and service of an amended petition. If the defects are not cured in a timely manner, an order shall be issued and served, dismissing the defective allegation(s) and stating the reasons for that action. Unless appealed to the commission under WAC 391-95-270, an order of dismissal issued under this subsection shall be the final order of the agency on the defective allegation(s), with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for nonassociation proceedings before the commission, a preliminary ruling summarizing the allegation(s) shall be issued and served on all parties.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.419, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-150, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-95-150, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-150, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-95-150, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-150, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-170 Notice of hearing.** The examiner shall issue a notice of hearing and have it served on the employee and the exclusive bargaining representative. Attached to the notice of hearing shall be a copy of the preliminary ruling issued under WAC 391-95-150. A notice of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.434, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-170, filed 6/30/00, effective 8/1/00. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.431, [34.05.]434, 41.56.122 and 41.59.100. WSR 96-07-105, § 391-95-170, filed 3/20/96,

effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-170, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-95-170, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-170, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-190 Examiner—Who may act.** The executive director or a designated staff member shall assign an examiner to conduct further proceedings in the matter, and shall notify the parties of that assignment. The examiner may be a member of the agency staff or any other individual designated by the commission or executive director. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-190, filed 6/30/00, effective 8/1/00; WSR 90-06-075, § 391-95-190, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-95-190, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-190, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-220 Settlement conference.** Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference concerning substantive issues may be held under WAC 10-08-200(15).

(1) A separate case number shall be assigned, and all files and papers for the settlement conference shall be kept separate from the files and papers for the nonassociation proceeding.

(2) A commission staff member other than the assigned examiner shall be assigned to mediate between the parties on the substantive issues.

(3) Any settlement conference shall be held in advance of the scheduled hearing date on the underlying nonassociation proceedings.

(4) During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the nonassociation dispute. Participation in a settlement conference is voluntary and refusal by a party to participate in a settlement shall not prejudice that party in any manner. Conversations had and offers made in a settlement mediation shall not be admissible in evidence at a hearing.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-95-220, filed 1/31/08, effective 4/1/08.]

**WAC 391-95-230 Hearings—Reopening of hearing—Briefs.** (1) Hearings shall be public and shall be limited to the portions of a petition found to state a cause of action under WAC 391-95-150.

(2) The employee has the burden to make a factual showing, through testimony of witnesses and/or documentary evidence, of the legitimacy of his or her beliefs, as follows:

(a) In cases where the claim of a right of nonassociation is based on the teachings of a church or religious body, the claimant employee shall demonstrate:

(i) His or her bona fide religious objection to union membership; and

(ii) That the objection is based on a bona fide religious teaching of a church or religious body; and

(iii) That the claimant employee is a member of such church or religious body.

(b) In cases where the claim of a right of nonassociation is based on personally held religious beliefs, the claimant employee shall demonstrate:

(i) His or her bona fide religious objection to union membership; and

(ii) That the religious nature of the objection is genuine and in good faith.

(3) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(4) Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The examiner may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the examiner. Any brief shall be filed with the examiner as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(5) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing examiner grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing examiner at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060. WSR 08-04-058, § 391-95-230, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.437, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-230, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-95-230, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-95-230, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-230, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-058 (Order 88-10), § 391-95-230, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-230, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-250 Examiner decision.** (1)(a) A party seeking review by the commission of an interlocutory decision of the hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the hearing examiner will be accepted by the commission only:

(i) If the executive director, his or her designee, or hearing examiner has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or hearing examiner has committed probable error and the decision of the interlocutory decision of the hearing examiner substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing examiner has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The issuance of a preliminary ruling by the executive director, his or her designee, or a hearing examiner under WAC 391-95-150; or

(ii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.

(d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(2) After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-95-270, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060. WSR 08-04-058, § 391-95-250, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-250, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-95-250, filed 7/1/98, effective 8/1/98; WSR 90-06-075, § 391-95-250, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-95-250, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-250, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-260 Withdrawal or modification of examiner decision.** The examiner may set aside, modify, change, or reverse any findings of fact, conclusions of law or order, if any mistake is discovered in the decision.

(1) Action may be taken under this section on the examiner's own motion, or on a written motion filed and served by any party as required by WAC 391-08-120.

(2) Action may only be taken under this section within ten days following issuance of the decision.

(3) This section shall be inoperative after the filing of an appeal to the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-95-260, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-95-260, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-95-260, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-260, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-95-260, filed 9/16/85.]

**WAC 391-95-270 Appeals.** An order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief to address novel and/or complex legal or factual issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-95-270, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.464, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-270, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-95-270, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-95-270, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.-

080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-270, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-95-270, filed 9/16/85. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.-040. WSR 80-14-051 (Order 80-10), § 391-95-270, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-290 Commission action on appeals.** If an order is appealed under WAC 391-95-270, the entire record in the proceedings shall be transmitted to the commission members. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the record and any briefs or arguments submitted to it, determine the appeal, and shall issue appropriate orders.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 34.05.464, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-290, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-95-290, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. WSR 90-06-075, § 391-95-290, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-051 (Order 80-10), § 391-95-290, filed 9/30/80, effective 11/1/80.]

**WAC 391-95-310 Implementation.** (1) Where alternative payments in lieu of payments under a union security agreement have been agreed upon by the parties or ordered by the commission:

(a) The employer shall release any funds (together with accumulated interest) held in escrow under WAC 391-95-130 to the designated charitable organization; and

(b) The employee shall thereafter make payments and shall furnish written proof to the exclusive bargaining representative that such payments have been made to the designated charitable organization.

(2) Where the employee is found ineligible to make alternative payments:

(a) The employer shall release any funds (together with accumulated interest) held in escrow under WAC 391-95-130 to the exclusive bargaining representative; and

(b) The employer and the exclusive bargaining representative shall allow the affected employee a grace period of not less than thirty days following the agreement or final order of the commission to correct any arrearages.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.045, 41.56.122 and 41.59.100. WSR 00-14-048, § 391-95-310, filed 6/30/00, effective 8/1/00; WSR 90-06-075, § 391-95-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034 (Order 81-01), § 391-95-310, filed 1/6/81.]

