

Chapter 316-35 WAC

MARINE EMPLOYEES' UNIT CLARIFICATION CASE RULES

WAC

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WAC 316-35-001 Scope—Contents—Other rules.

This chapter directs proceedings before the marine employees' commission on petitions for clarification of existing bargaining units. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC which lists rules adopted by the chief administrative law judge governing the conduct of adjudicative proceedings under chapter 316-35 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 316-35-050;

(b) WAC 10-08-211, which is replaced by WAC 316-35-210 and 316-35-230; and

(c) WAC 10-08-230, which is replaced by WAC 316-35-070 and 316-35-160.

(2) Chapter 316-02 WAC, which lists rules of practice and procedure that apply to all types of proceedings before the marine employees' commission.

(3) Chapter 316-25 WAC, which lists rules about proceedings on petitions for investigation of questions concerning representation of ferry system employees.

(4) Chapter 316-45 WAC, which lists rules about proceedings on complaints charging unfair lab or practices in the Washington state ferry system.

(5) Chapter 316-65 WAC, which lists rules about arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(6) Chapter 316-75 WAC, which lists rules about determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-001, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-001, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-001, filed 3/20/84.]

(10/5/04)

WAC 316-35-010 Petition for clarification of an existing bargaining unit—Who may file. A petition for clarification of an existing bargaining unit(s) may be filed by the department of transportation, (an) exclusive representative(s) of ferry system employees or its/their agents, or by the parties jointly.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-010, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-010, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-010, filed 3/20/84.]

WAC 316-35-030 Petition form—Number of copies—Filing—Service. Each completed original petition for clarification of (an) existing bargaining unit(s) furnished by the commission, must be filed at the commission's Olympia office. If the petition is filed other than as a jointly filed petition, the party filing the petition must also serve a copy on the other party to the collective bargaining relationship in which the disagreement arises.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-030, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-030, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-030, filed 3/20/84.]

WAC 316-35-050 Petition contents. Each petition for clarification of (an) existing bargaining unit(s) must contain:

(1) The name and address of the department and the name and title, if known, address and telephone number of the person designated by the department as the official representative for adjudicatory proceedings under chapter 47.64 RCW.

(2) The name(s), address(es) and affiliation(s), if any, of the exclusive representative(s), and the name(s), address(es) and telephone number(s) of its/their principal representative(s).

(3) The description of the existing bargaining unit, specifying inclusions and exclusions and the number of employees in such bargaining unit(s).

(4) Identification of the proceeding in which any certification of representatives was issued or the date of the recognition agreement(s), and the history of any subsequent modifications of the bargaining unit(s).

(5) A description of the proposed clarification, including 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 such position, classification or group, and identification of the party proposing that the present status be changed.

(6) The 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 collective bargaining agreement(s), if any, covering such employees.

(7) A statement of the reasons for the proposed clarification.

(8) Any other relevant facts.

(9) The signature(s) and the title(s), if any, of the petitioner(s) and/or his/their representative(s) and his/their title(s).

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-050, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-050, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-050, filed 3/20/84.]

WAC 316-35-070 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner(s) under such conditions as the commission may impose.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-070, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-070, filed 3/20/84.]

WAC 316-35-090 Notice of hearing. After a petition for clarification of an existing bargaining unit has been filed, if it appears to the commission that a disagreement exists which might appropriately be the subject of an order clarifying an existing bargaining unit, a hearing notice will be issued and served on the employer and on the exclusive representative. The hearing notice will contain:

(1) The name(s), address(es) and telephone number(s) of the person(s) who filed the petition, and their representative(s) or counsel and their title(s), if known, and their address(es) and telephone number(s);

(2) The name(s), address(es) and telephone number(s) of the exclusive bargaining unit(s) which the petitioner(s) want(s) clarified, and its/their principal representative(s) and titles, if known, and their addresses and telephone numbers;

(3) The name, title, address, and telephone number of the person designated by the department as the official recipient of notices involving adjudicatory proceedings under chapter 47.64 RCW;

(4) The official case number for the proceeding;

(5) The name, mailing address, and telephone number of the commissioner who is to be the presiding officer in the hearing;

(6) A statement of the time, place, and nature of the hearing;

(7) A statement of the legal authority under which the hearing is to be held;

(8) A reference to the particular sections of the statute(s) and/or rule(s) involved;

(9) A short and plain statement of the matter to be heard, as asserted by the commission;

(10) A listing of the organizations and/or persons to whom copies of the notice are being provided;

(11) A statement that the commission(er) will take official notice of the applicable collective bargaining agreement(s), if any, in effect at the time of the petition;

(12) Notice of other specific evidence known by the commission(er) to be required, and which party will be required to submit such evidence; and

(13) A statement that a party who fails to attend or participate, personally or by agent or counsel, in the hearing or other stage of the proceeding may be held in default.

Any such notice may be amended or withdrawn prior to the close of the hearing.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-090, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-090, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-090, filed 3/20/84.]

WAC 316-35-110 Consolidation of proceedings. If a proceeding initiated by a petition for unit clarification under WAC 316-35-010 is pending at the same time as another petition involving all or any part of the same bargaining units and/or a petition for investigation of a question concerning representation filed pursuant to WAC 316-25-010 is/are filed, the proceedings will be consolidated and all issues concerning the description of the bargaining units will be resolved in the consolidated proceedings.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-110, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-110, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-110, filed 3/20/84.]

WAC 316-35-130 Hearings—Who shall conduct. Hearings may be conducted by the commission or by a member of the commission designated by the commission as a hearing officer. A hearing officer may be substituted for the hearing officer previously presiding at any time.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-130, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-130, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-130, filed 3/20/84.]

WAC 316-35-150 Authority of hearing officer. The hearing officer shall have the authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence, and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other procedural matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized by these rules.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-117, § 316-35-150, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-150, filed 3/20/84.]

WAC 316-35-160 Prehearing conferences. The commission may conduct prehearing conferences to discuss all contested issues of law and fact which may arise in unit clarification cases with the parties. The parties are encouraged to reach binding stipulations on all issues during the prehearing conference. These stipulations are to be embodied in proposed commission unit clarification orders, amendments to

collective bargaining agreement security clauses, or other appropriate agreements.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-160, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-160, filed 12/20/89, effective 1/20/90.]

WAC 316-35-170 Hearings—Nature and scope.

Hearings will be public and are limited to matters concerning the determination of the petition for clarification of an existing bargaining unit unless the proceeding has been consolidated with another petition in accordance with WAC 316-35-110. It is the hearing officer's duty to obtain a clear and complete factual record on which the commission may fulfill its duties under chapter 47.64 RCW and these rules.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-170, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-170, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-170, filed 3/20/84.]

WAC 316-35-190 Proceedings before a hearing officer. An assigned commissioner may proceed on the record, after submission of briefs or after hearing, as may be appropriate. The hearing officer determines the status of each position, classification or group of employees over which there is a disagreement and issues an order clarifying bargaining unit, dismissing the petition or making other disposition of the matter.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-190, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-190, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-190, filed 3/20/84.]

WAC 316-35-210 Proceedings before the commission—Petition for review. The final order of an assigned commissioner is subject to review by the commission on its own motion, or at the request of any party made within twenty days after the date of the order. The original petition for review must be filed at the commission's Olympia office and the party filing the petition must serve a copy on the department and on any other parties. The petition for review must identify the actions or rulings claimed to be in error. Any party to the proceeding may, within fourteen days after the filing of the petition for review, file briefs or written arguments for consideration by the commission. The original brief or written argument must be filed at the commission's Olympia office and a copy must be served on the other party. The commission or assigned commissioner may, for good cause, grant any party an extension of the time for filing of its brief or written argument where a request for additional time is made prior to the deadline previously established. The commission may request the parties appear before it to make oral arguments about certain issues or all of the issues in the matter.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-210, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-210, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-210, filed 3/20/84.]

(10/5/04)

WAC 316-35-230 Filing and service of cross-petition for review. If a petition for review has been timely filed under WAC 316-35-210, a party who has not previously filed a petition for review may, within seven days after the last date on which a petition for review may be filed, file a cross-petition for review. The cross-petition for review must be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadline for the submission of briefs or written arguments shall be extended by seven days.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-230, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-230, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-230, filed 3/20/84.]

WAC 316-35-250 Commission action. The assigned commissioner will transfer the entire record in the proceeding to the commission. The commission will determine the status of each position, classification or group covered by the petition for review, and will enter appropriate orders, which are final and binding upon the parties in accordance with RCW 47.64.280.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-35-250, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-117, § 316-35-250, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-250, filed 3/20/84.]