

# Chapter 316-45 WAC

## UNFAIR LABOR PRACTICE CASE RULES

**WAC**

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**WAC 316-45-001 Scope—Contents—Other rules.**

This chapter directs proceedings before the marine employees' commission on complaints charging unfair labor practices. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains rules adopted by the chief administrative law judge outlining the conduct of adjudicative proceedings under chapter 316-45 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 316-45-050;

(b) WAC 10-08-211, which is replaced by WAC 316-45-350 and 316-45-370; and

(c) WAC 10-08-230, which is replaced by WAC 316-45-070, 316-45-090, and 316-45-260.

(2) Chapter 316-02 WAC, which lists rules of practice and procedure which 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 316-35 WAC, which lists rules about petitions for clarification of existing ferry system employees' bargaining units.

(5) Chapter 316-55 WAC, which lists rules about resolution of impasses occurring in ferry system collective bargaining.

(6) 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.

(7) 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.

(8) Chapter 316-85 WAC, which lists rules about surveys of compensation, benefits and conditions of employment required by chapter 47.64 RCW.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-001, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-001, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-001, filed 3/20/84.]

**WAC 316-45-003 Unfair labor practices—Defined.**

(1) It is an unfair labor practice for ferry system management or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by chapter 47.64 RCW;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: Provided, That subject to rules made by the commission pursuant to RCW 47.64.130 and 47.64.280 an employer is not prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160: Provided, That nothing prohibits ferry system management from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because the employee has filed charges or given testimony concerning subjects covered by chapter 47.64 RCW;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter: Provided, That this paragraph does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, when it is the representative of employees subject to RCW 47.64.170.

(3) The rights guaranteed by chapter 47.64 RCW include:

(a) The right of self-organization, including the right to form, join, or assist a labor organization;

(b) The right to bargain collectively through a representative freely chosen by the employees themselves;

(c) The right to engage in other concerted activities for collective bargaining or for mutual aid or protection; and

(d) The right to refrain from concerted activity. The right to refrain from concerted activities is limited to the extent that lawful union security agreements may be enforced.

(4) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, will not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-003, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280. 92-22-044, § 316-45-003, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-003, filed 12/20/89, effective 1/20/90.]

**WAC 316-45-010 Complaint charging unfair labor practices—Who may file.** A complaint charging that any person has taken part in or is taking part in an unfair labor practice, from now on called a "complaint," may be filed by any employee, group of employees, employee organization, the department of transportation, or their agents.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-010, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-010, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-010, filed 3/20/84.]

**WAC 316-45-020 Unfair labor practice complaint—Time limitations.** (1) A complaint charging an unfair labor practice may not be filed later than one hundred eighty calendar days after the party filing the complaint knew or should have known of the event, activity, or practice alleged to be a violation of RCW 47.64.130, or the regulations implementing that statute. For the purpose of computing timeliness, each event, activity, or practice in an alleged series of events, activities or practices will be construed as separate, provided that only those events, activities or practices occurring within the one hundred eighty days before the filing of the complaint may be remedied by the commission.

(2) Where an alleged violation of RCW 47.64.130, or the regulations implementing that statute, is also alleged to be a violation of a collective bargaining agreement and the matter is being actively pursued through the grievance and arbitration procedure of the collective bargaining agreement, the commission may hold the unfair labor practice in abeyance pending the outcome of the grievance and arbitration procedure. If the commission then determines that the grievance and arbitration procedure has satisfactorily resolved the entire matter or any portion of it, the commission may defer to that decision and dismiss the entire unfair labor practice complaint or that portion of it that has been resolved to the

satisfaction of the commission. Otherwise, the commission will resume processing the unfair labor practice complaint or any portion of it that has not been resolved to the satisfaction of the commission.

(3) The limitation period specified in subsection (1) of this section may be tolled where the charging party did not have actual or constructive knowledge of the alleged unfair labor practice. In the case where the respondent has engaged in fraudulent concealment and/or deception as to its unlawful conduct, the commission may determine the limitation tolled, both as to the filing of the complaint and as to the remedy.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-020, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280. 92-22-044, § 316-45-020, filed 10/27/92, effective 11/27/92.]

**WAC 316-45-030 Complaint—Number of copies—Filing—Service.** Charges must be in writing, on a complaint of unfair labor practices form. The original copy of the complaint must be filed with the commission at its Olympia office. The party filing the complaint must also serve a copy on each party named as a respondent.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-030, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-030, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-030, filed 3/20/84.]

**WAC 316-45-050 Contents of complaint charging unfair labor practices.** Each complaint must contain, in separate numbered paragraphs:

(1) The name and address of the party filing the complaint, from now on called the complainant, and the name, address and telephone number of its principal representative.

(2) The name(s) and address(es) of the person(s) charged with engaging in, or having engaged in, unfair labor practices, from now on called the respondent(s), and, if known, the names, addresses and telephone numbers of the principal representatives of the respondent(s).

(3) Clear and concise statements of the facts about the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(4) A listing of the subsections of RCW 47.64.130 and/or WAC 316-45-003 alleged to have been violated, along with a statement of which alleged facts provide evidence of that alleged violation of the identified subsections.

(5) A statement of the remedy wanted by the complainant.

(6) The signature and, if any, the title of the person filing the complaint.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-050, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-050, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-050, filed 3/20/84.]

**WAC 316-45-070 Amendment.** Any complaint may be amended upon motion made by the complainant.

[Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-070, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-070, filed 3/20/84.]

**WAC 316-45-090 Withdrawal.** Any complaint may be withdrawn by the complainant under such conditions as the commission may impose.

[Statutory Authority: RCW 47.64.280 and 34.05.250. 90-01-118, § 316-45-090, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-090, filed 3/20/84.]

**WAC 316-45-110 Initial processing of complaint.** The commission or an assigned commissioner will determine whether the facts as alleged may constitute an unfair labor practice within the meaning of RCW 47.64.130 and WAC 316-45-003. If it is determined that the alleged facts do not, as a matter of law, constitute a violation, the commission or commissioner will issue and will serve on all parties an order of dismissal explaining the reasons for the dismissal; otherwise, the commission or commissioner will have the contents of the charge issued and served as a complaint of unfair labor practices. An order of dismissal issued in accordance with this section by an examiner other than the commission will be subject to a petition for review as provided in WAC 316-45-350.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-110, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-110, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.260 and chapter 47.64 RCW. 88-10-019 (Order 88-1), § 316-45-110, filed 4/29/88. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-110, filed 3/20/84.]

**WAC 316-45-130 Examiner—Who may act.** The examiner may be the commission or a member of the commission designated by the commission. After notifying all parties, an examiner may be substituted for the examiner previously presiding.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-130, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-130, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-130, filed 3/20/84.]

**WAC 316-45-150 Authority of examiner.** The examiner has 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 similar matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues;
- (8) To make and issue findings of fact, conclusions of law and orders;
- (9) To take any other action authorized by these rules.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-150, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-150, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-150, filed 3/20/84.]

**WAC 316-45-170 Notice of hearing.** WAC 316-02-170 aside, at least twenty days before a hearing, the examiner

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will issue and serve on the parties a notice of hearing at a specific time and place. A copy of the complaint (as approved under WAC 316-45-100) will be attached to the notice of hearing. The notice of hearing will specify the date for the filing of an answer, which must be not less than ten days before the date set for hearing. Notices of hearing may be amended or withdrawn before the close of the hearing.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-170, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-170, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-170, filed 3/20/84.]

**WAC 316-45-190 Answer—Filing and service.** Before or on the date specified in the hearing notice, each respondent will file the original copy of its answer to the complaint with the commission, and serve a copy on the complainant.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-190, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-190, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-190, filed 3/20/84.]

**WAC 316-45-210 Answer—Contents and effect of failure to answer.** An answer filed by a respondent must specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent will state so, with that statement operating as a denial. If a respondent fails to file an answer, or fails to specifically deny or explain in the answer a fact alleged in the complaint (except for good cause shown), the respondent will be deemed to have admitted the facts true as alleged in the complaint. The respondent will be deemed to have waived a hearing as to the admitted facts.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-210, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-210, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-210, filed 3/20/84.]

**WAC 316-45-230 Amendment of answer.** The respondent may amend its answer at any time prior to the hearing. During or after the hearing, the answer may be amended under such terms as are set by the examiner.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-230, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-230, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-230, filed 3/20/84.]

**WAC 316-45-250 Motion to make complaint more definite and certain.** If a complaint is alleged by a respondent to be so indefinite as to hamper the respondent in the preparation of its answer, such respondent may, on or before the date specified for the filing of an answer, file a motion requesting an order directing that the complaint be made more definite and certain. The motion will be filed with the examiner and served by the respondent on the complainant and on any other parties. The filing of this motion extends the time during which the respondent must file and serve an answer until the date the commission or examiner sets. The commission or examiner may require the complainant to file

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and serve a statement supplying information necessary to make the complaint definite and certain.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-250, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-250, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-250, filed 3/20/84.]

#### **WAC 316-45-270 Hearings—Nature and scope.**

Hearings will be public and are adversary in nature. Hearings are limited to matters concerning the unfair labor practices alleged in the complaint. The complainant will prosecute its own complaint and has the burden of proof. It is the examiner's duty to ask about the full facts of whether the respondent has taken part or is taking part in an unfair labor practice, to obtain a clear and complete factual record on which the examiner and commission may fulfill their duties under these rules. The examiner's duty will not be seen as authorizing or requiring the examiner to prosecute the complainant's complaint or present the respondent's defense.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-270, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-270, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-270, filed 3/20/84.]

**WAC 316-45-290 Briefs and proposed findings.** Any party is entitled to file a brief or proposed findings of fact, conclusions of law and order, or both, at such time as may be fixed by the examiner, if requested before the close of the hearing. The commission or examiner may require the filing of briefs when he or she considers filing necessary due to the nature of the proceeding or of its particular issues. The original copy of a brief or proposed findings, conclusion and order is filed with the commission and a copy must be served on all other parties.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-290, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-290, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-290, filed 3/20/84.]

#### **WAC 316-45-310 Unfair labor practice—Decision.**

After the hearing is over and all briefs are filed, the examiner makes a decision containing findings of fact, conclusions of law and order. If the examiner is a single member of the commission, he/she files the original decision with the commission and serves a copy on the parties. Any party may file a petition for review with the commission. If the full commission is the examiner, the decision and order are entered and served on all parties and the commission decision is final and binding upon the parties in accordance with RCW 47.64.280.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-310, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-310, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-310, filed 3/20/84.]

**WAC 316-45-330 Withdrawal or modification of examiner decision.** On the examiner's own motion or on the motion of any party, the examiner may set aside, modify, change or reverse any findings of fact, conclusions of law or order at any time within twenty days after issuing the deci-

sion, if any mistake is discovered or on grounds of newly discovered evidence which could not with reasonable care have been discovered and produced at the hearing. This section does not apply after the filing of a petition for review with the commission.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-330, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-330, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-330, filed 3/20/84.]

#### **WAC 316-45-350 Petition for review of examiner decision.**

The examiner's findings of fact, conclusions of law and order are open to review by the commission on its own motion, or at the request of any party made within twenty days after the order's date of issue by the examiner. The original petition for review is to be filed with the commission at its Olympia office, and the party filing the petition must serve a copy on each of the other parties to the proceeding. A petition for review must contain, in separate numbered paragraphs, statements of the specific findings, conclusions, orders or rulings on which the party filing the petition seeks review by the commission. A petition for review must have attached to it any appeal brief or written argument which the party filing the petition for review wants the commission to consider. Other parties to the proceeding will have fourteen days after the date on which they are served with a copy of the petition for review and accompanying brief or written argument to file a responsive brief or written argument. The commission or its appointee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. If no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner will automatically become the findings of fact, conclusions of law and order of the commission and will have the same force and effect as if issued by the commission.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-350, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-350, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-350, filed 3/20/84.]

#### **WAC 316-45-370 Filing and service of cross-petition for review.**

Where a petition for review has been timely filed under WAC 316-45-350, 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 will be filed and served in the same way as a petition for review. Deadlines for the submission of briefs or written arguments are extended by seven days when a cross-petition for review has been filed.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-370, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-370, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-370, filed 3/20/84.]

**WAC 316-45-390 Commission action.** On its own motion, or on the filing of a petition for review, the entire record in the proceeding is transferred to the commission, and

from then on all motions and arguments are directed to the commission. The commission may request the parties appear before it to make oral arguments about certain issues or all of the issues in the matter. The commission will, on the basis of the record and any briefs or arguments submitted to it on review, determine the matter.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-390, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-390, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-390, filed 3/20/84.]

**WAC 316-45-410 Unfair labor practice remedies.** If upon the preponderance of evidence the commission or examiner will conclude that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the examiner or commissioner will state its findings of fact and cause to be served on such person an order requiring him or her to cease and desist from such unfair labor practice and to take such affirmative and corrective action as necessary to effectuate the policies of RCW 47.64.005 and 47.64.006, including but not limited to reinstatement of employees with or without back pay. In calculating back pay orders, the following will apply:

(1) Employee(s) reinstated to employment with back pay will have deducted from any amount due an amount equal to any earnings such employee(s) may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Employee(s) reinstated to employment with back pay will have deducted from any amount due an amount equal to any unemployment compensation benefits such employee(s) may have received during the period of the violation, and the employer will provide evidence to the commission that such amount has been repaid to the Washington state department of employment security as credit to the benefit record of the employee(s).

(3) The commission has the discretion to make money amounts 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.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-410, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-410, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-410, filed 3/20/84.]

**WAC 316-45-430 Motion for temporary relief.** In addition to the remedies available under WAC 316-45-410, any complainant in an unfair labor practice proceeding may file a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions will be processed as provided in this section.

(1) The complainant will, at the time its complaint is filed or as soon thereafter as facts giving rise to the request for temporary relief become known, provide written notice to the commission of its intent to make a motion for temporary relief and will, at the same time, serve a copy of such notice on each of the other parties to the proceedings.

(2) When a notice of intent to make a motion for temporary relief is filed, the commission will expedite the processing of the matter under WAC 316-45-110.

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(3) After the commission determines that the complaint states a cause of action, any complainant wanting temporary relief may file with the commission a motion for temporary relief together with affidavits about the risk of irreparable harm and the adequacy of legal remedies, and serve a copy of the motion and affidavits on all other parties to the proceedings. The other parties will have seven calendar days afterward to file and serve counter-affidavits.

(4) The commission determines whether an injunction pendente lite should be sought. When making that determination, the commission adheres to the following policy:

"The name and authority of the marine employees' commission will not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 316-45-010, 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 commission with the assistance of the attorney general, will petition the superior court of Thurston County or the county 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 obtained, the complaint which was the basis for such temporary relief will be heard expeditiously and the case given priority over all other cases except cases of like character.

(c) If the commission decides that temporary relief should not be sought before the conclusion of administrative proceedings in the matter, that determination does not bar renewal of the request for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-430, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-430, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-430, filed 3/20/84.]

**WAC 316-45-550 Collective bargaining—Mandatory subjects.** The determination of whether a particular subject is mandatory or nonmandatory is a question of law and fact to be determined by the commission. The issue is not subject to waiver by the parties by their action or inaction. It is the commission's policy that a party taking part in collective bargaining with respect to any particular issue does not and cannot confer the status of a mandatory subject on a non-mandatory subject.

[Statutory Authority: RCW 34.05.230. 03-12-074, § 316-45-550, filed 6/3/03, effective 7/4/03. Statutory Authority: RCW 47.64.280 and 34.05.-250. 90-01-118, § 316-45-550, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.260 and chapter 47.64 RCW. 88-10-019 (Order 88-1), § 316-45-550, filed 4/29/88. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-550, filed 3/20/84.]