

WAC 391-55-365 Advisory opinion. For bargaining units eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(14), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 41.56.516, 41.80.200, 41.80.310, 47.64.300, or 74.39A.270 (2)(c), during negotiations for a successor agreement if a dispute arises concerning the scope of what is eligible to be bargained (i.e., mandatory or nonmandatory subjects of bargaining), either party may request an advisory opinion from the executive director through the following process:

(1) During the course of negotiations or mediation, upon receipt of any proposal that one party believes may constitute a nonmandatory subject of bargaining, the receiving party must put the other party on notice of the belief that the proposal submitted is nonmandatory.

(2) A cooling-off period must be invoked during which both parties must discuss the alleged nonmandatory proposal(s) in at least one subsequent bargaining or mediation session.

(3) If, after the cooling-off period, the offering party does not withdraw or modify the proposal(s) to eliminate any nonmandatory elements, either party may request an advisory opinion from the executive director. The request must be filed with the agency and served on all parties as required by WAC 391-08-120.

(4) With any request for an advisory opinion, the requesting party shall include only the following documentation and written materials:

(a) A copy of the proposal(s) alleged to be nonmandatory;

(b) A certification from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling-off period was invoked;

(c) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(d) A copy of any legal material supporting the alleged nonmandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(5) Within five business days of receipt of service of the request for an advisory opinion, the other party may file a response, which may include only the following documentation and written materials:

(a) A response from the party's chief negotiator that objections to the alleged nonmandatory proposal(s) were raised during bilateral negotiations or mediation and that the cooling off period was invoked;

(b) A brief statement (not exceeding five pages, double-spaced, 12-point type) detailing the reasons why the party believes the proposal(s) to be mandatory or nonmandatory;

(c) A copy of any legal material supporting the alleged mandatory nature of the proposal(s), including statutory or regulatory provisions, case decisions, or related legal materials.

(6) Upon filing of the materials outlined in subsections (4) and (5) of this section, the executive director shall review all materials and notify the parties if an advisory opinion will be issued. If the executive director determines it appropriate to issue an advisory opinion, it must be issued within 30 days of the filing of all materials outlined above. If the executive director determines it is not appropriate to issue an advisory opinion, the executive director shall notify the parties in writing.

(7) An advisory opinion is not a final agency decision and is not subject to appeal under WAC 391-45-350. Advisory opinions are not

binding upon the agency and do not constitute evidence of an unfair labor practice in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-55-365, filed 11/16/22, effective 1/1/23.]