

Title 316 WAC

MARINE EMPLOYEE COMMISSION

Chapter 316-07 Rules of procedure.

Reviser's note: See Title 391 Public Employment Relations Commission. Chapter 15, Laws of 1983 recreates the Marine Employees' Commission 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 316-07 WAC RULES OF PROCEDURE

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Reviser's note: See Title 391 Public Employment Relations Commission. Chapter 15, Laws of 1983 recreates the Marine Employees' Commission 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 316-07-010 General application. The rules of practice and procedure before the marine employee commission are for general application to proceedings and hearings before the commission. [Rule 1.1, filed 3/24/60.]

WAC 316-07-020 Special rules. Special rules may in the future be adopted applying to particular proceedings, and in case such special rules are inconsistent with

these general rules, the special rules shall govern. [Rule 1.2, filed 3/24/60.]

WAC 316-07-030 Modifications and exceptions. These rules and regulations are subject to such changes, modifications and additions as the commission from time to time may prescribe, and such exceptions as may be just and reasonable in individual cases as determined by the commission. [Rule 1.3, filed 3/24/60.]

WAC 316-07-040 Address for communications—Time of official receipt. All written communications and documents should be addressed to "Chairman Robert Lundgaard, Marine Employee Commission, Room 207, Securities Building, Olympia, Washington 98501" and not to individual members of the commission. All communications and documents are deemed to be officially received only when delivered at the office of the chairman. [Order 2, § 316-07-040, filed 3/14/74; Rule 2.1, filed 3/24/60.]

WAC 316-07-050 Office hours. The office of the chairman of the commission is open on each business day between the hours of 9:00 a.m. and 5:00 p.m., except Saturday. [Rule 2.2, filed 3/24/60.]

WAC 316-07-060 Computation of time. The time within which an act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a holiday or Sunday, and then it is excluded. [Rule 2.3, filed 3/24/60.]

WAC 316-07-070 Definitions. (1) "Washington toll bridge authority" and "authority" shall mean the Washington toll bridge authority or the Washington state ferries operated by the director of highways.

(2) "Marine employee commission" and "commission" shall mean the marine employee commission of this state.

(3) "Washington state ferries" or "ferry" shall mean any Puget Sound ferry, ferry system and wharves and terminals operated or constructed by the authority or the director of highways.

(4) "Employee" or "individual" shall mean any person employed aboard any Puget Sound ferry, wharf, or terminal operated or constructed under the authority of the authority or the director of highways.

(5) "Person" or "party" when used in these rules may include a corporation, partnership, labor union, association, the authority, or any public officer or agency.

(6) "Parties to proceedings" before the commission shall be styled petitioners, respondents or interveners, according to the relationship of the parties thereto.

(7) "Petitioner." A person who files a notice of labor dispute with the commission shall be styled "petitioner." In any proceeding which the commission brings on its own motion, it shall be styled "petitioner."

(8) "Respondent." A person against whom any notice of labor dispute is filed shall be styled "respondent."

(9) "Representative" when used in these rules may mean an attorney, a counsel or other person authorized to represent a party to a proceeding before the commission.

(10) "Labor dispute" shall mean a bona fide labor dispute concerning either an employer, employee, labor union, or any other person arising in the operations of the Washington state ferries, or which shall be the subject of a notice of labor dispute, formal or informal, to the commission. To be bona fide, the parties to the labor dispute must have negotiated concerning the same and reach a stalemate making adjudication of the labor dispute necessary. The commission will refuse to consider trivial or frivolous notices of labor disputes as true labor disputes and may demand proof before acceptance of a notice for formal or informal disposal of bona fide efforts on the part of the parties at settlement. [Rules 3.1 through 3.10, filed 3/24/60.]

WAC 316-07-080 Informal procedure. (1) **Informal notice.** An informal notice to the commission concerning a labor dispute may be given by letter or other writing. Matters thus presented may be taken up by the commission with the parties affected, by correspondence or otherwise, in an endeavor to bring about an adjustment of the subject matter of the notice without formal hearing or order. Informal procedure will be used wherever practicable.

(2) **Informal notices—Contents.** No form of informal notice is prescribed, but in substance the letter or other writing should contain all facts essential to a disposition of the matter, including the dates of acts or omissions complained against. Proceedings instituted by informal notice shall be without prejudice to the right of any party or the commission to file a formal notice. Since informal notices are not in themselves a basis of formal action, all parties desiring a formal order of the commission should file a formal notice. Informal procedure is designed to facilitate the amicable adjustment of disputes, and no mandatory or prohibitory order may be issued in an informal proceeding, unless the parties interested stipulate in writing that an order may be entered in such proceeding. [Rules 4.1 and 4.2, filed 3/24/60.]

WAC 316-07-090 Formal procedure. (1) **Formal notices.** Formal notices are those notices of labor disputes filed in accordance with RCW 47.64.040, and may be required by the commission in cases which indicate to the discretion of the commission that informal procedures would be ineffectual or inadequate.

(2) **Verification.** A formal notice of labor dispute shall be verified by the petitioner in the manner prescribed for verification of the pleadings in the superior court of Washington.

(3) **Defective notice.** Upon the filing of any notice, it will be inspected by the commission and if found to be defective or insufficient, it may be returned to the party filing it for correction.

(4) **Liberal construction.** All notices shall be liberally construed with a view to effect justice between the parties, and the commission will, at every stage of any proceeding, disregard errors or defects in the notice or proceeding which do not affect the substantial rights of the parties.

(5) **Amendments.** The commission may allow amendments to the notice or other relevant documents at any time upon such terms as may be lawful and just, provided that such amendments do not adversely affect the interest of persons who are not parties to the proceeding.

(6) **Consolidation of proceedings.** Two or more proceedings where the facts or principles of law are related may be consolidated and heard together.

(7) **Formal notice—Contents.** Formal notice as to any acts or omissions by any person, or for the redress of alleged grievances, must be in writing setting forth clearly and concisely the labor dispute and ground of complaint with a statement of the acts or things done or omitted to be done by any person, if required. Facts constituting such acts or omissions, should be stated, together with the dates on which the acts or omissions occurred. The name of any person complained against must be stated in full, and the address of the person filing the same, together with the name and address of his attorney, if any, must appear upon the notice. [Rules 5.1 through 5.7, filed 3/24/60.]

WAC 316-07-100 Filing and service. (1) **Filing of formal notices.** Formal notices shall be typewritten, mimeographed or printed, and the original and two legible copies shall be filed with the commission, together with one legible copy for service by the commission on each of the other parties to the cause.

(2) **Service by commission.** All notices, findings of fact, opinions and orders required to be served by the commission may be served in person or by mail and service thereof by mail shall be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States mail. [Rules 6.1 and 6.2, filed 3/24/60.]

WAC 316-07-110 Intervention. (1) **Intervention.** Any person, other than the original parties to the proceedings, who shall desire to appear and participate in any proceeding before the commission, may move in writing for leave to intervene in the proceeding prior to, or at the time it is called for hearing; or may make an oral motion for leave to intervene at the time of the hearing. No such motion shall be filed or made after the proceeding is under way, except for good cause shown. The motion to intervene must disclose the name and address of the party intervening; the name and address of his attorney, if any; his interest in the proceeding; and his position in regard to the matter in controversy.

(2) **Disposition of motions to intervene.** Motions to intervene shall be considered first at all hearings, or may

be set for prior hearing, and an opportunity shall be afforded the original parties to be heard thereon. If it appears, after such consideration, that the motion discloses an interest in the subject matter of the hearing, or that participation by the moving party is in the public interest, the commission shall grant the same, which may be done by oral order at the time of the hearing. Thereafter such person shall become a party to the proceeding and shall be known as an "intervener," with the same right to produce witnesses and of cross-examination as other parties to the proceeding. Whenever it appears, during the course of a proceeding, that an intervener has no substantial interest in the proceeding the commission may dismiss him from the proceeding. [Rules 7.1 and 7.2, filed 3/24/60.]

WAC 316-07-120 Appearances. (1) **General.** Parties shall enter their appearances at the beginning of any formal hearing by giving their names and addresses in writing to the reporter who will include the same in the minutes of the hearing. Appearance may be made on behalf of any party by his attorney or other authorized representative, and thereupon all future orders may be served upon such attorney or representative, and such service shall be considered valid service for all purposes upon the party represented. The presiding officer conducting the hearing may, in addition, require appearances to be stated orally, so that the identity and interest of all parties present will be known to those at the hearing.

(2) **Answers and replies.** An answer in writing or a reply in writing to an answer may be required by the commission and opportunity to file same will be given on timely request. The same number of copies shall be required as is required for a petition. The commission shall fix the time allowable for filing an answer or reply which, unless otherwise fixed, shall be twenty days. [Order 2, § 316-07-120, filed 3/14/74; Rules 8.1 and 8.2, filed 3/24/60.]

WAC 316-07-130 Prehearing conferences. (1) **General.** Before any formal proceeding, the commission may, by written notice, request all interested parties to attend a prehearing conference for the purpose of determining the feasibility of settlement, or of formulating the issues in the proceeding and to determine other matters to aid in its disposition. The commission or a commissioner designated by the commission, shall preside at such conference, to consider:

- (a) Simplification of the issues;
- (b) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (c) Limitations on the number and consolidation of the examination of witnesses;
- (d) The procedure at the hearing;
- (e) The distribution of written affidavits, testimony and exhibits to the parties prior to the hearing; and
- (f) Such other matters as may aid in the disposition of the proceeding, or settlement thereof.

(2) **Notice as to simplified issues.** Following the prehearing conference a proposed order, reciting the action

taken at the conference, any amendments allowed, and the agreements made by the parties concerning all of the matters considered, shall be submitted to the parties or other authorized representatives, for approval. Unless the order is objected to within five days or a lesser time in the discretion of the commission after being received, it shall be deemed to be approved. This order shall limit the issues to be heard at the hearing to those not disposed of by admissions or agreements of the parties and will control the subsequent course of the proceeding unless modified at the hearing to prevent manifest injustice.

(3) **Recessing hearing for conference.** In any proceeding the presiding officer may, in his discretion, call the parties together for a conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purpose of subsection (1) above. The presiding officer shall state on the record the results of such conference. [Rules 9.1 through 9.3, filed 3/24/60.]

WAC 316-07-140 Voluntary settlement. Parties to the proceeding may, with the approval of the commission, enter into a voluntary settlement of the subject matter of the notice prior or subsequent to a formal hearing; and in furtherance of a voluntary settlement, the commission may, in its discretion, invite the parties to confer with it. Such conferences shall be informal and without prejudice to the rights of the parties, and no statement, admission or offer of settlement made at such informal conference shall be admissible in evidence in any formal hearing before the commission. [Rule 10.1, filed 3/24/60.]

WAC 316-07-150 Subpoenas. Subpoenas shall as nearly as practicable follow the form required in superior courts. Subpoenas may be issued by any commissioner and witnesses are required to comply therewith. Parties desiring subpoenas should prepare them for issuance, send them to the commission for signature and upon their return have the same served at their expense. The commission shall be responsible only for paying the witness fees of witnesses subpoenaed by it, and each subpoena shall bear the name of the party responsible for paying the witness fees. [Rule 11.1, filed 3/24/60.]

WAC 316-07-160 Depositions. Any party to a proceeding may request the commission to take by deposition the testimony of any witness. The commission may take the testimony of any witness by deposition and for that purpose the attendance of witnesses and the production of documents, papers and accounts may be enforced in the same manner as in the case of hearing before the commission: *Provided*, That all costs incidental thereto shall be paid by the party desiring such deposition. [Rule 12.1, filed 3/24/60.]

WAC 316-07-170 Hearings. (1) **General.** The time and place of holding formal hearings will be set by the commission and notice thereof served upon all parties at least ten days in advance of the hearing date, unless the

commission finds that an emergency exists requiring the hearing to be held upon less notice. An effort will be made to set all formal hearings sufficiently in advance so that all parties will have a reasonable time to prepare their cases, and so that continuances will be reduced to a minimum.

(2) **Dismissals.** At the time and place set for hearing, if petitioner fails to appear, the commission may recess said hearing for a further period to be set by the presiding officer to enable said petitioner to attend upon said hearing, but if at the time set for the resumption of the hearing said petitioner is not present or represented, the commission may dismiss the petition. [Rules 13.1 and 13.2, filed 3/24/60.]

WAC 316-07-180 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the commission of said desire, stating in detail the reasons why such continuance is necessary. The commission in passing upon a request for a continuance shall consider whether such request was promptly made. For good cause shown, the commission may grant such a continuance. The commission may at any time order a continuance upon its own motion. During a hearing, if it appears in the public interest that further testimony or argument should be received, a commissioner may in his discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing. [Rule 14.1, filed 3/24/60.]

WAC 316-07-190 Stipulation as to facts. The parties to any proceeding before the commission may, by stipulation in writing filed with the commission or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties thereto and may be regarded and used by the commission as evidence at the hearing. It is desirable that the facts be thus agreed upon whenever practicable. The commission may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties. [Rule 15.1, filed 3/24/60.]

WAC 316-07-200 Conduct at hearings. All parties to hearings, their representatives and spectators shall conduct themselves in a respectful and ethical manner. Demonstrations of any kind at hearings shall not be permitted. If any person does not conform to this rule, the commission may decline to permit such person to appear in a representative capacity or take part in proceedings before the commission. Smoking shall not be permitted at formal hearings of the commission while in session: *Provided*, That the presiding officer may relax this provision. [Rule 16.1, filed 3/24/60.]

WAC 316-07-210 Testimony under oath. All testimony to be considered by the commission in formal hearings, except matters noticed officially or entered by

stipulation, shall be sworn testimony. Before taking the witness stand each person shall swear (or affirm) that the testimony he is about to give in the hearing before the commission shall be the truth, the whole truth and nothing but the truth. [Rule 16.2, filed 3/24/60.]

WAC 316-07-220 Order of procedure. (1) **General.** Evidence will ordinarily be received in the following order:

(a) Upon investigation on motion of the commission: (i) Commission's staff, (ii) respondent and (iii) rebuttal by commission's staff.

(b) Upon formal notices of labor dispute: (i) Petitioner, (ii) respondent, (iii) commission's staff and (iv) rebuttal.

(2) **Modification of procedure.** The order of presentation above prescribed shall be followed, except where the presiding officer may otherwise direct. In hearings of several proceedings upon a consolidated record, the presiding officer shall designate who shall open or close. Interveners shall follow the party in whose behalf the intervention is made. If the intervention is not in support of either original party, the presiding officer shall designate at what stage such interveners shall be heard. [Rules 17.1 and 17.2, filed 3/24/60.]

WAC 316-07-230 Rules of evidence—Admissibility criteria. All relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard to its necessity, availability and trustworthiness. [Rule 18.1, filed 3/24/60.]

WAC 316-07-240 Rules of evidence—Official notice. In addition to matters concerning which courts of this state take judicial notice, the commission will take official notice of the following matters: Rules, regulations, administrative rulings and orders of the commission, the Washington toll bridge authority, the Washington department of highways, and other governmental agencies. In addition, the commission may, in its discretion, upon being requested by all parties to the proceeding so to do, take official notice of the results of its own inspection of the conditions involved. [Rule 18.2, filed 3/24/60.]

WAC 316-07-250 Rules of evidence—Exhibits and documentary evidence. (1) **Designation of part of document as evidence.** When relevant and material matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same must plainly designate the matter so offered. If other matter is in such volume as would necessarily encumber the record, such book, paper or document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the party offering the same to all other parties or

their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper or document, and to offer in evidence in like manner other portions thereof if found to be material and relevant.

(2) **Official records.** An official rule, report, order, record or other document, prepared and issued by any governmental authority, when admissible for any purpose may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody thereof, or his deputy, and accompanied by a certificate that such officer has the custody, made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. In cases where such official records, otherwise admissible, are contained in the official publications are in general circulation and readily accessible to all parties, they may be introduced by reference: *Provided, However,* That proper and definite reference to the record in question is made by the party offering the same.

(3) **Commission's files.** Papers and documents on file with the commission, if otherwise admissible, and whether or not the commission has authority to take official notice of the same under WAC 316-07-240, may be introduced by reference to number, date or by any other method of identification satisfactory to the presiding officer. If only a portion of any such paper or document is offered in evidence, the part so offered shall be clearly designated.

(4) **Records in other proceedings.** In case any portion of the record in any other proceeding is admissible for any purpose and is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless—

(a) The party offering the same agrees to supply such copies later at his own expense, if and when required by the commission; and

(b) The portion is specified with particularity in such manner as to be readily identified; and

(c) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference; and

(d) The presiding officer directs such incorporation.

(5) **Copies of exhibits to opposing party.** When specially prepared exhibits of a documentary character are offered in evidence, copies must be furnished to opposing parties, four to the presiding officer, and one to the reporter, unless the presiding officer otherwise directs. Whenever practicable, the parties should interchange copies of exhibits before, or at the commencement of the hearing. [Order 2, § 316-07-250, filed 3/14/74; Rules 19.1 through 19.5, filed 3/24/60.]

WAC 316-07-260 Briefs. Briefs may be filed in any proceeding before the commission by any interested party, and shall be filed by any party to the proceeding upon the request of the commission, and within such time as shall be directed by the commission. The commission may require the filing of all briefs within three days after the close of the hearing if it considers the

proceeding to be such that an order should issue promptly; and in the case of matters requiring an immediate decision, may require the parties, or their counsel, to present their arguments and authority orally at the close of the hearing, instead of by written brief. Briefs should set out the leading facts and conclusion which the evidence tends to prove, and point out the particular evidence relied upon to support such conclusion. Three copies of each brief shall be filed with the commission and copies thereof shall be served on all parties to the case, or their counsel, and proof of such service furnished to the commission. [Rule 20.1, filed 3/24/60.]

WAC 316-07-270 Reconsideration. Application for reconsideration by a party to the proceeding shall be made by a written and signed petition stating specifically the grounds thereof. All petitions for reconsideration shall be filed with the chairman within thirty days after the service of the final decision of the commission. Copies of the petition shall be served upon all parties of record. [Order 2, § 316-07-270, filed 3/14/74; Rule 21.1, filed 3/24/60.]

WAC 316-07-280 No discussion of proceeding until decision. The commission declares its policy to be that after the filing of a petition in a contested formal proceeding and prior to the issuance of an order thereon, no parties to the proceeding, or their counsel, shall discuss the merits of such matter or proceeding with the commissioners, unless reasonable notice is given to all parties who have appeared therein, to enable such parties to be present at the conference. When, after filing of a petition and prior to the issuance of an order thereon, letters are directed to the commission, or any member of its staff, regarding a formal proceeding, copies of such letters shall be mailed to all parties of record and proof of such service furnished to the commission. [Rule 22.1, filed 3/24/60.]

WAC 316-07-290 Administrative rulings. Upon the motion of any interested person subject to its jurisdiction, or upon its own motion, the commission may, when it appears to be in the public interest, make and issue administrative rulings when necessary to terminate a controversy or to remove a substantial uncertainty as to the application of statutes or rules of the commission. [Rule 23.1, filed 3/24/60.]

WAC 316-07-300 Compliance with orders—Notification to commission. When an order has been issued by the commission any party named therein, who is, by such order, required to do or refrain from doing any act or thing, shall notify the commission on or before the date upon which compliance with such order is required, whether or not there has been compliance with said order. [Rule 24.1, filed 3/24/60.]