

Chapter 316-25 WAC

MARINE EMPLOYEES' REPRESENTATION CASE RULES

WAC

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WAC 316-25-001 Scope—Contents—Other rules.

This chapter directs proceedings before the marine employees' commission on petitions for investigation of questions concerning representation of Washington state ferry system employees. 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 316-25 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 316-25-070;

(b) WAC 10-08-211, which is replaced by WAC 316-25-390, 316-25-590, 316-25-630, and 316-25-670; and

(c) WAC 10-08-230, which is replaced by WAC 316-25-005, 316-25-150, 316-25-220, 316-25-230, 316-25-250, and 316-25-270.

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

(3) Chapter 316-35 WAC, which lists rules relating to proceedings on petitions for clarification of an existing ferry system employees' bargaining unit.

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

(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.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-001, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-001, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-001, filed 3/20/84.]

WAC 316-25-010 Petition for investigation of a question concerning representation of employees—Who may file. A petition for investigation of a question concerning representation of employees, from now on called a "petition," may be filed by any employee of the Washington state ferry system, group of employees, employee organization, department of transportation, or their agents.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-010, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-010, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-010, filed 3/20/84.]

WAC 316-25-030 Petition—Time for filing. In order to be timely filed:

(1) Where there is a valid written and signed collective bargaining agreement in effect covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition may be filed during the period not more than ninety nor less than sixty days prior to the expiration date of the collective bargaining agreement, or after the expiration date of the collective bargaining agreement.

(2) Where a certification has been issued by the commission covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition may be filed not less than twelve months following the date of the certification.

(3) Where neither subsections (1) nor (2) of this section are applicable, a petition may be filed at any time.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-030, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-030, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-030, filed 3/20/84.]

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WAC 316-25-050 Petition form—Number of copies—Filing—Service. Each petition must be prepared on a form furnished by the commission and filed at the commission's Olympia office. The party filing the petition must serve a copy on the department and on each employee organization named in the petition as having an interest in the proceedings.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-050, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-050, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-050, filed 3/20/84.]

WAC 316-25-070 Petition contents. Each petition must contain:

(1) The name and address of the department and the name, address and telephone number of the department's principal representative in matters concerning relationships between the department and its ferry system employees.

(2) A description of the bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions, and the approximate number of employees in such bargaining unit.

(3) The names and, if known, the addresses and telephone numbers of the principal representatives of any organizations which may claim to represent any of the employees in the bargaining unit which the petitioner claims to be appropriate.

(4) A statement that: (a) The department declines, after having been requested to do so, to recognize the petitioner as the exclusive representative of the employees in the bargaining unit which the petitioner claims to be appropriate, or (b) the employees in the bargaining unit which the petitioner claims to be appropriate wish to change their exclusive bargaining representative, or (c) the employees in the bargaining unit do not wish to be represented by an employee organization.

(5) Any other relevant facts.

(6) The name, address and affiliation, if any, of the petitioner and the name, address and telephone number of the principal representative, if any, of the petitioner.

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

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-070, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-070, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-070, filed 3/20/84.]

WAC 316-25-090 Contents of petition filed by department. Each petition filed by the department must contain all of the information required by WAC 316-25-070, except for that required by WAC 316-25-070(4), and must conform to the following additional requirements:

(1) Each petition filed by the department shall contain a statement that the department has been presented with a demand by an organization seeking recognition as the exclusive representative of the employees in the bargaining unit described in the petition.

(2) WAC 316-25-110 is not applicable to such petitions.

(3) Where the status of an incumbent exclusive bargaining representative is questioned, the department must attach such affidavits and any other available documentation to

demonstrate the existence of a good faith doubt concerning the representation of its employees. To constitute a basis for a good faith doubt under this subsection, signature documents provided to the department by employees must be in a form which would qualify as supporting evidence under WAC 316-25-110 if filed by the employees directly with the commission.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-090, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-090, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-090, filed 3/20/84.]

WAC 316-25-110 Supporting evidence. The original petition must be accompanied by a showing of interest indicating that the petitioner has the support of not less than thirty percent of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest must be timely filed under the same standards applicable to the petition, and must consist of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. These authorization cards are not valid unless signed and dated during the one hundred eighty-day period before the filing of the petition or the filing of such evidence with the commission, whichever is later.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-110, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-110, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-110, filed 3/20/84.]

WAC 316-25-130 List of employees. The department must submit a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition to the commission. After administrative determination that the petition is supported by a sufficient showing of interest, the department will, on request, provide a copy of the list of names and addresses to the petitioner. After granting of a motion for intervention, the department will, on request, provide a copy of the list of names and addresses to the intervenor.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-130, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-130, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-130, filed 3/20/84.]

WAC 316-25-140 Notice to employees. The department must post copies of a notice, created and supplied by the commission, advising of the existence of proceedings under this chapter, in conspicuous places on its premises where notices to affected employees are usually posted.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-140, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-140, filed 12/20/89, effective 1/20/90.]

WAC 316-25-150 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner under such conditions as the commission may impose.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-150, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-150, filed 3/20/84.]

WAC 316-25-170 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 before the filing of the petition may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, is 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 will be considered if made after the close of the hearing on the petition or more than seven days after the filing and posting of an election agreement or cross-check agreement.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-170, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-170, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-170, filed 3/20/84.]

WAC 316-25-190 Intervention—By organization other than incumbent. An organization not covered by WAC 316-25-170 may, by motion, intervene in proceedings under this chapter and, upon granting of its motion for intervention, is entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election. The motion for intervention must be supported by a showing of interest indicating that the intervenor has the support of not less than ten percent of the employees in the bargaining unit which the petitioner claims to be appropriate or of not less than thirty percent of the employees in whatever different bargaining unit the intervenor claims to be appropriate. The showing of interest must consist of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Authorization cards are not valid unless signed and dated during the one hundred eighty-day period preceding the filing of such evidence with the commission. The showing of interest shall be made confidentially to the commission at or before the time the motion for intervention is made: Provided, however, That a motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the commission may impose to avoid undue delay of the proceedings. No motion for intervention will be considered if made after the close of the hearing on the petition or more than seven days after the filing and posting of an election agreement or cross-check agreement.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-190, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-190, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-190, filed 3/20/84.]

WAC 316-25-210 Showing of interest confidential. 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 commission and may not be litigated at any hearing. The commission shall not disclose the identities of employees whose authorization cards or letters are filed in support of a petition or motion for intervention. 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

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commission will not honor any attempt to withdraw or diminish a showing of interest.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-210, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-210, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-210, filed 3/20/84.]

WAC 316-25-220 Prehearing conferences. The commission may conduct prehearing conferences with the parties to discuss all contested issues of law and fact which may arise in representation cases. The parties are encouraged to reach binding stipulations on all issues during the prehearing conference. These stipulations are to be embodied in election agreements, cross-check agreements, and/or supplemental agreements provided for in this chapter.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-220, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-220, filed 12/20/89, effective 1/20/90.]

WAC 316-25-230 Election agreements. Where the department and all other parties agree on a representation election, they may file an election agreement with the commission. The election agreement must contain:

(1) The name and address of the department and the name, address and telephone number of its principal representative.

(2) The names and addresses of all other parties participating in the election agreement and the names, addresses and telephone numbers of their principal representatives.

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

(4) A statement by all parties that: (a) No organization is known which is or may be entitled to intervene as an incumbent representative, or (b) the incumbent representative is a party to the election agreement, or (c) the incumbent representative has abandoned the unit as evidenced by documentation attached to the election agreement.

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

(6) A list, attached to the election agreement as an appendix, containing the names of the employees eligible to vote in the election and the eligibility cutoff date for the election is to be used solely for activities related to the election. If the parties request that the election be conducted by mail ballot, the list will include the last known address of each of the employees eligible to vote. If no eligibility cutoff date is specified by the parties, the eligibility cutoff date will be the date on which the election agreement is filed.

(7) The suggestions of the parties as to the location, the day or days of the week and the time or times of day for the conduct of the election, or that the election be conducted by mail ballot.

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

The original and one copy of the election agreement must be filed at the commission's Olympia office, and copies, with employee addressees removed, must be posted by the department in conspicuous places on the department's premises where notices to affected employees are usually posted. The election agreement will remain posted for at least seven days after it is filed with the commission (ten days after it is deposited in the United States mail addressed to the commission).

After the filing of an election agreement conforming to the foregoing requirements and seeking an election in an appropriate bargaining unit, the commission representative(s) will proceed to conduct an election. Objections to the election by a party to the election agreement will be limited to matters relating to specific conduct affecting the results of the election.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-230, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-230, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-230, filed 3/20/84.]

WAC 316-25-250 Cross-check agreements. If only one organization is seeking certification as the representative of unrepresented employees, the department and the organization may file a cross-check agreement with the commission. The cross-check agreement must contain:

- (1) The name and address of the department and the name, address and telephone number of its principal representative.
- (2) The name and address of the organization and the name, address and telephone number of its principal representative.
- (3) The description of the bargaining unit agreed to be appropriate, specifying inclusions and exclusions and the number of employees in such unit.
- (4) 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 commission is requested to conduct and certify the results of a cross-check of individually signed and dated authorization cards or membership records submitted by the organization against the employment records of the department.
- (5) A list, attached to the cross-check agreement as an appendix, containing the names of the employees in the bargaining unit.
- (6) The suggestions of the parties as to the time and place where the records to be cross-checked can be made available to the commission.
- (7) The agreement of the parties to be bound by the results of the cross-check.
- (8) The signatures and, if any, the titles of the representatives of the parties.

The original and one copy of the cross-check agreement must be filed at the commission's Olympia office, and copies must be posted by the department in conspicuous places on the department's premises where notices to affected employees are usually posted. The cross-check agreement must remain posted for at least seven days after it is filed with the

commission (ten days after it is deposited in the United States mail addressed to the commission).

After a cross-check agreement including the above requirements and seeking a cross-check in an appropriate bargaining unit is filed, the commission will proceed with the cross-check of records. The cross-check may be conducted at any time following the execution of a cross-check agreement; but no certification will be issued until seven days have passed after following the filing and posting of the cross-check agreement. Where a motion for intervention is timely filed and granted, no certification will be issued on the basis of the cross-check.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-250, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-250, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-250, filed 3/20/84.]

WAC 316-25-270 Supplemental agreements. Where the parties are able to agree generally on the matters to be set forth in an election agreement under WAC 316-25-230 or a cross-check agreement under WAC 316-25-250, but are unable to agree on limited issues concerning the definition of the bargaining unit or employee eligibility, they may expedite the determination of the question concerning representation while reserving their disagreement for subsequent determination by filing a supplemental agreement under this rule together with an agreement under WAC 316-25-230 or 316-25-250. The supplemental agreement must contain:

- (1) The names of all parties to the election agreement or cross-check agreement and the case number of the proceedings.
- (2) Identification of the employees or classifications as to which a dispute exists, together with the identification of the position taken by each party on the dispute.
- (3) A statement by all parties requesting that employees affected by the supplemental agreement be permitted to vote by challenged ballot or be challenged for purposes of a cross-check, subject to a subsequent determination of the dispute; and that the certification of the results of the election or cross-check not be withheld pending the determination of the dispute unless the challenges are sufficient in number to affect the outcome.
- (4) The signatures and, if any, the titles, of the representatives of the parties.

The original and one copy of the supplemental agreement must be filed with the commission together with the agreement filed under WAC 316-25-230 or 316-25-250, and must be posted with such agreement.

After a supplemental agreement is filed, the commission will determine the question concerning representation. If there are enough challenges to affect the outcome, they will be determined before issuing certification. Otherwise, a conditional certification will be issued which will be amended on final disposition of the issues framed in the supplemental agreement.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-270, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-270, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-270, filed 3/20/84.]

WAC 316-25-290 Notice of hearing. After a petition has been filed, if it appears to the commission that there is reasonable cause to believe that a question concerning representation exists, a notice will be issued scheduling a hearing at a fixed time and place and it will be served on the department and on all organizations listed in the petition and on any organization having intervened. The commission will furnish the department with copies of such notice, and the department must post them in conspicuous places on its premises where notices to affected employees are usually posted. Any such notice of hearing may be amended or withdrawn at any time before the close of the hearing.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-290, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-290, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-290, filed 3/20/84.]

WAC 316-25-310 Hearings—Who shall conduct. Hearings may be conducted by the commission or by a member of the commission assigned as a hearing officer. The commission or another commissioner may be substituted for the hearing officer previously presiding at any time.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-310, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-310, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-310, filed 3/20/84.]

WAC 316-25-330 Authority of hearing officer. The hearing officer shall have authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule on objections to evidence and offers of proof, receive relevant evidence and 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; and
- (8) To take any other action authorized by these rules.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-116, § 316-25-330, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-330, filed 3/20/84.]

WAC 316-25-350 Hearings—Nature and scope. Hearings are public and limited to matters concerning the determination of the existence of a question concerning representation, the appropriate bargaining unit and questions of eligibility. It is the duty of the hearing officer to inquire fully into all matters in issue and to obtain a clear and complete factual record on which the commission may discharge its duties under chapter 47.64 RCW and these rules.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-350, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-350, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-350, filed 3/20/84.]

WAC 316-25-370 Blocking charges—Suspension of proceedings—Request to proceed. (1) Where representa-

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tion proceedings have been commenced under this chapter and:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 316-45 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; the commission may suspend the representation proceedings under this chapter pending the resolution of the unfair labor practice case.

(2) The complainant(s) in the unfair labor practice case may file a request to proceed, in writing, with the commission. The request to proceed must identify, by case number, the representation proceedings for which it is made, must request that those representation proceedings be continued notwithstanding the pending unfair labor practice case, and must acknowledge that the commission will not entertain objections based on conduct alleged in the unfair labor practice case. On the filing of a request to proceed conforming to the foregoing requirements the commission will resume the processing of the representation petition and will summarily dismiss any objections filed in conflict with the request to proceed.

(3) Where a complaint charging unfair labor practices is filed after the filing of an election agreement or issuance of a direction of election, the commission will proceed with the determination of the question concerning representation, subject to the right of any party to file objections as provided in WAC 316-25-590.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-370, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-370, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-370, filed 3/20/84.]

WAC 316-25-390 Proceedings before a hearing officer. The hearing officer may proceed on the record, after submission of briefs or after hearing, as may be appropriate. The hearing officer determines whether a question concerning representation exists, and issues a direction of election, dismisses the petition or makes other disposition of the matter. The actions are subject to review by the commission only as follows:

(1) Except for rulings as to whether the department is subject to the jurisdiction of the commission, a direction of election and any accompanying rulings are not subject to review by the commission except upon objections timely filed under WAC 316-25-590.

(2) An order of dismissal is subject to review by the commission on its own motion or at the request of any party made within twenty days following the date of the order. Briefs or written arguments must be submitted as provided in WAC 316-25-650. Unless the matter is transferred to the commission for review, an order of dismissal issued by the hearing officer has the same force and effect as if issued by the commission.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-390, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-390, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-390, filed 3/20/84.]

WAC 316-25-410 Cross-check of records. If a cross-check of records is to be conducted to determine a question concerning representation, the organization will submit to the commission original individual cards or letters signed and dated by employees in the bargaining unit not more than ninety days prior to the filing of the petition and indicating that such employees authorize the named organization to represent them for the purposes of collective bargaining, or will submit to the commission membership records maintained by the organization as a part of its business records containing the names of employees and indicating those employees currently members in good standing. The department will make available original employment records maintained as a part of its business records containing the names and signatures of the employees in the bargaining unit available to the commission. Before starting the cross-check, the organization may file a request that the question concerning representation be determined by a representation election and such requests will be honored. Where the organization files a disclaimer after the start of the cross-check, the cross-check will be terminated and the organization cannot seek to be certified in the bargaining unit for a period of at least one year afterward. All cross-checks will be by actual comparison of records submitted by the parties. The commission will not disclose the names of employees giving representation authorization in favor of or appearing on the membership rolls of the organization. After records have been compared, the commission officer conducting the cross-check will prepare and 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 34.05.230. 04-20-083, § 316-25-410, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-410, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-410, filed 3/20/84.]

WAC 316-25-430 Notice of election. When an election is to be conducted, the commission will furnish the department with appropriate notices, and the department must post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice must contain:

- (1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.
- (2) The date(s), hours and polling place(s) for the election.
- (3) The cutoff date, if any, or other criteria to be applied in establishing eligibility to vote in the election.
- (4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.

Notices of the election must be posted for at least seven days prior to the opening of the polls. When computing the period, the day of posting is counted, but the day on which the polls are opened is not counted. The reproduction of any document purporting to suggest, either directly or indirectly, that the commission endorses a particular choice may constitute grounds for setting aside an election on properly filed objections.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-430, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-430, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-430, filed 3/20/84.]

WAC 316-25-450 Disclaimers. An organization may file a disclaimer and have its name removed from the ballot. If a disclaimer is filed after the issuance of a notice of election, the organization filing the disclaimer cannot seek to be certified in that bargaining unit for a period of at least one year thereafter.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-450, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-450, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-450, filed 3/20/84.]

WAC 316-25-470 Electioneering. (1) The department and employee organizations are prohibited from making election speeches on the department's time to massed assemblies of employees within twenty-four hours before the scheduled time for the opening of the polls for an election conducted under "in person" voting procedures, or within the time period beginning with the issuance of ballots to employees for an election conducted under "mail ballot" voting procedures and ending with the tally of ballots.

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

Violations of this rule will be grounds for setting aside an election on properly filed objections.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-470, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-470, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-470, filed 3/20/84.]

WAC 316-25-490 Election procedures—Balloting. All elections must be by secret ballot. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. Absentee balloting will not be allowed. Each party may be represented by observers of its own choosing, subject to such limitations as the commission may prescribe. However, no management official having authority over bargaining unit employees nor any officer or paid employee of an organization will serve as observer.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-490, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-490, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-490, filed 3/20/84.]

WAC 316-25-510 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 will be denied the right to cast a challenged ballot. The election officer will not have authority to resolve challenges at the polls, and the ballot of the challenged voter will be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of the voter. The ballot will 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 will be resolved. If the challenged ballots are insufficient in number to affect the results of the election, they will be impounded and no ruling will be made thereon. If the challenged ballots are sufficient in number to affect the results of the election, the election officer will, after the close of the polls, determine the position of each party as to each challenged ballot and will include such information in his report. If challenges raise material questions of fact which cannot be resolved without a hearing, a hearing notice will be issued and served on each of the parties. The rules relating to the conduct of hearings on petitions will govern hearings on challenges, except that the scope of the hearing will be limited to matters relevant to the disposition of the challenged ballots. An assigned commissioner has authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the commission as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the commissioner are sufficient in number to affect the results of the election, the matter will be transferred to the commission for its determination under the provisions of WAC 316-25-670.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-510, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-510, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-510, filed 3/20/84.]

WAC 316-25-530 Votes needed to determine election. (1) Unit determination elections will be decided by a majority of those eligible to vote in the election.

(2) Representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote will result in a certification of no representative.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-530, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-530, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-530, filed 3/20/84.]

WAC 316-25-550 Tally sheet. After the polls are closed, the election officer will 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 will be issued and furnished to the parties. The tally will indicate whether the results of the election were conclusive or inconclusive.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-550, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-550, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-550, filed 3/20/84.]

WAC 316-25-570 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 runoff election will be held providing for selection between the two choices receiving the largest numbers of valid ballots cast in

(10/5/04)

the inconclusive election. Any organization which would be excluded from a runoff 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 runoff election, the department or decertification petitioner may file objections to specific conduct affecting the results of the inconclusive election. Such objections will be resolved before the runoff election is conducted. All runoff elections will be determined as provided in WAC 316-25-530.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-570, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-570, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-570, filed 3/20/84.]

WAC 316-25-590 Filing and service of objections. Within seven days after the tally has been served under WAC 316-25-410 or under WAC 316-25-550, any party may file objections with the commission. Objections may consist of:

(1) Designation of specific conduct improperly affecting the results of the election, by violation of these rules, by the use of deceptive campaign practices improperly involving the commission and its processes, by the use of forged documents, or by coercion or intimidation of or threat of reprisal or promise of reward to eligible voters; and/or

(2) Designation of one or more previous rulings or directions in the matter which the objecting party desires to have reviewed by the commission.

Objections must contain, in separate numbered paragraphs, statements of the specific conduct, if any, alleged to have improperly affected the results of the election and, in separate numbered paragraphs, the specific rulings or directions, if any, which the party filing the objections desires to have reviewed. The original copy of the objections must be filed at the commission's Olympia office, and the party filing the objections must serve a copy on each of the other parties to the proceedings. Objections must be timely filed, whether or not challenged ballots are sufficient in number to affect the results of the election.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-590, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-590, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-590, filed 3/20/84.]

WAC 316-25-610 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 runoff election is to be held, the election officer will certify the results of the proceedings, with the same force and effect as if issued by the commission. The proceedings will then be closed.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-610, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-610, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-610, filed 3/20/84.]

WAC 316-25-630 Procedure where objections are filed. (1) Objections to conduct improperly affecting the

results of an election will be referred to a commissioner for investigation. If the objections raise material questions of fact which cannot be resolved without a hearing, a hearing notice before the commission will be issued and served on each of the parties. Hearings on objections to conduct affecting the results of an election may be consolidated with hearings on challenged ballots in the same proceeding. The rules relating to the conduct of hearings on petitions will govern hearings on objections, except that the scope of the hearing shall be limited to matters relevant to the disposition of the objections.

(2) Objections to prior rulings and/or directions in the matter shall be referred directly to the commission.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-630, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-630, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-630, filed 3/20/84.]

WAC 316-25-650 Briefs and written arguments on objections. All parties are entitled to submit briefs or written arguments for consideration by the commission. The briefs or written arguments of all parties are due simultaneously, as follows:

(1) The deadline for the filing of briefs or written arguments is fourteen days following the latter of:

(a) The close of an investigation under WAC 316-25-630(1);

(b) The issuance of a transcript of a hearing held under WAC 316-25-630(1); or

(c) The filing of objections under WAC 316-25-590(2).

(2) 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 before the previously established deadline.

The original brief or written argument must be filed with the commission's Olympia office and a copy must be served on each of the other parties. If a party presents an issue which requires study of a statute, rule, regulation, or finding of fact, the party should set out the material portions of the text verbatim or include them by facsimile copy in the text or in an appendix to the brief.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-650, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-650, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-650, filed 3/20/84.]

WAC 316-25-670 Commission action on objections. In all cases where objections have been filed, the entire record in the proceedings will be transferred to the commission. The commission may request the parties to appear before it to make oral argument as to certain of the issues or all of the issues in the matter. The commission will determine the objections and any challenged ballots referred to the commission pursuant to WAC 316-25-510, and will issue appropriate orders.

[Statutory Authority: RCW 34.05.230. 04-20-083, § 316-25-670, filed 10/5/04, effective 11/5/04. Statutory Authority: RCW 47.64.280 and 34.05.-220. 90-01-116, § 316-25-670, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-670, filed 3/20/84.]