

# Chapter 316-65 WAC

## MARINE EMPLOYEES' GRIEVANCE ARBITRATION RULES

### **WAC**

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### **DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

316-65-090	Grievance arbitration—Designation of panel of arbitrators. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-090, filed 3/20/84.] Repealed by 90-01-119, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280 and 34.05.220.
316-65-110	Grievance arbitration—Conduct of proceedings. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-110, filed 3/20/84.] Repealed by 90-01-119, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280 and 34.05.220.
316-65-130	Grievance arbitration—Award. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-130, filed 3/20/84.] Repealed by 90-01-119, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280 and 34.05.220.
316-65-500	Grievance arbitration—Exclusive procedures. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-500, filed 3/20/84.] Repealed by 90-01-119, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280 and 34.05.220.

### **WAC 316-65-001 Scope—Contents—Other rules.**

This chapter governs proceedings before the marine employees' commission relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement. The provisions of this chapter should be read in conjunction with the provisions of:

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

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 316-65-050;

(b) WAC 10-08-211, which is supplanted by WAC 316-65-550 and 316-65-555; and

(c) WAC 10-08-230, which is supplanted by WAC 316-65-515.

(6/20/02)

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

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

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

(5) Chapter 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system.

(6) Chapter 316-55 WAC, which contains rules relating to the resolution of impasses occurring in ferry system collective bargaining.

(7) Chapter 316-75 WAC, which contains rules relating to 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 contains rules relating to surveys of compensation, benefits, and conditions of employment required by chapter 47.64 RCW.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-001, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-001, filed 3/20/84.]

**WAC 316-65-005 Grievance defined.** "Grievance" means a formal statement alleging injury, injustice, or violation of rights granted by rule, statute, collective bargaining agreement, or past practice: Provided, That any grievance involving alleged violations of rights protected by chapter 47.64 RCW may also be termed "unfair labor practices" and may also be filed and processed under chapter 316-45 WAC: And Provided Further, That when the commission is requested to provide grievance arbitration in a dispute where there is an unfair labor practice issue brought, which in the judgment of the commission raises the same or a closely related subject, and it would further the economy and efficiency of operations, the commission may consolidate such issues for hearing and decision.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-65-005, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 92-22-044, § 316-65-005, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-005, filed 12/20/89, effective 1/20/90.]

**WAC 316-65-010 Grievance—Who may file.** A statement of grievance may be filed by the department of transportation, an exclusive representative of employees or their agents, an employee, or by the parties jointly, pursuant to RCW 47.64.150.

[Statutory Authority: RCW 47.64.280. 92-22-044, § 316-65-010, filed 10/27/92, effective 11/27/92. Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-010, filed 12/20/89, effective 1/20/90. Stat-

[Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-010, filed 3/20/84.]

**WAC 316-65-020 Grievances—Arbitration request—Limitations.** Unless another purpose is stated by the party filing a statement of grievance, it shall be construed as a request for grievance arbitration by the commission in accordance with RCW 47.64.150. The commission shall consider such a request for arbitration valid only after any applicable dispute remedies in the pertinent collective bargaining agreement have been exhausted, and within the time limits specified in such agreement. If the collective bargaining agreement does not contain a remedial procedure for disputes, or upon showing good cause for not exhausting prearbitration remedies, a party may file the original request for arbitration directly with the commission. Unless otherwise specified in the agreement, a request for grievance arbitration must be filed not more than ninety days after the party filing such grievance knew or should have known of the alleged injury, injustice, or violation.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-020, filed 12/20/89, effective 1/20/90.]

**WAC 316-65-030 Grievance arbitration—Filing—Service.** Each grievance arbitration request shall be on a form furnished by the commission or shall be prepared by the party or parties filing the request in conformance with WAC 316-65-050. The original request shall be filed with the commission at its Olympia office. If the request is not filed jointly, the party filing the request shall serve a copy on the other party (respondent) to the collective bargaining agreement under which the dispute arises in accordance with WAC 316-02-150.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-030, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-030, filed 3/20/84.]

**WAC 316-65-050 Grievance arbitration—Contents of request.** Each grievance arbitration request shall contain:

(1) The name, address and telephone number of the department and the name, address and telephone number of the marine division's principal representative for the purposes of collective bargaining.

(2) The name, address and telephone number of the exclusive employee representative and the name, address and telephone number of its principal representative.

(3) Identification of the request as: (a) A request for appointment of an arbitrator; (b) a request for arbitration of a grievance dispute arising under chapter 47.64 RCW; or (c) a request for the submission of a list of names from the dispute resolution panel created by WAC 316-55-110.

(4) A clear and concise statement of the facts constituting the alleged injury, injustice or violation, including names, dates, places and participants in the occurrence(s), and the number of employees affected thereby.

(5) A statement that the remedial processes of the pertinent collective bargaining agreement have been utilized and exhausted, or a statement of cause as to the reason(s) why such processes were not utilized.

(6) The agreement of the requesting party, or the parties jointly, that the arbitrator's decision on the grievance shall not

change or amend the terms, conditions, or applications of the collective bargaining agreement.

(7) The agreement of the requesting party, or the parties jointly, that the arbitration award shall be final and binding upon the parties.

(8) The signature(s) and, if any, title(s) of the representative(s) of the requesting party (parties).

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-050, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-050, filed 3/20/84.]

**WAC 316-65-060 Amendment of grievance.** A grievance may be amended by the grievant(s) at any time prior to or during any prehearing conference.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-060, filed 12/20/89, effective 1/20/90.]

**WAC 316-65-070 Grievance arbitration—Designation of arbitrator.** Upon the filing of an arbitration request, the commission shall acknowledge receipt of such request, with a copy to respondent(s), notifying him or her of the case number assigned to the grievance and the designation of the arbitrator, who may be the commission or one of the commissioners.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-070, filed 12/20/89, effective 1/20/90.]

**WAC 316-65-080 Grievance arbitration—Notice of hearing.** Not later than thirty days after receipt of an arbitration request and not less than seven days before the hearing, the arbitrator shall serve written notice of hearing to the grievant with a copy to the respondent(s) and to the representative(s) and/or counsel of each. The notice of hearing shall contain:

(1) The name(s) and address(es) of the person(s) who filed the grievance, and his/her/their representative(s) or counsel and their title(s), if known, addresses and telephone numbers;

(2) The name(s) and address(es), of the respondent(s) named in the grievance, and his/her/their representative(s) or counsel and their title(s), if known, and their address(es) and telephone number(s);

(3) The name(s) and address(es) of any other person(s) to whom notice is being given and, if known, the names and addresses of their representatives;

(4) The official commission case number for the proceeding;

(5) The name, title, mailing address, and telephone number of the arbitrator who shall be the presiding officer;

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

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

(8) A reference to the particular sections of the statutes and rules involved;

(9) A short and plain statement of the matter asserted by the commission;

(10) A statement that the arbitrator will take official notice of the collective bargaining agreement, if any, in effect at the time of the alleged injury, injustice, or violation;

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

(12) A statement that a party who fails to attend or participate in the hearing or other stage of the arbitration may be held in default.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-080, filed 12/20/89, effective 1/20/90.]

#### **WAC 316-65-150 Grievance arbitration—Expenses.**

Each party shall pay the expenses of presenting its own case and the expenses and fees of its member, if any, of an arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expenses of an arbitrator selected by the parties from a panel designated by the commission and any costs for recording and/or transcription of proceedings to be used by the parties shall be paid by the parties under the terms of their collective bargaining agreement or such other arrangements as they may agree upon. The commission shall pay the salary and traveling expenses of a commissioner assigned as a grievance arbitrator.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-150, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-150, filed 3/20/84.]

**WAC 316-65-510 Intervention and consolidation of grievances.** (1) Motion for intervention: Any person, not a party, who desires to appear and participate in any proceeding before the commission may make a written motion for intervention prior to the hearing or make an oral motion for intervention at the outset of the hearing. No such motion shall be filed or made after the hearing of evidence has commenced, except for good cause shown. The motion for intervention must state the name and address of the moving party; the name, address and telephone number of its principal representative, if any; the party's interest in the proceedings; and the party's position in regard to the labor dispute.

(2) Disposition of motion for intervention: Motions for intervention shall be considered first at all hearings, or may be set for prior hearing. An opportunity shall be afforded the original parties to be heard thereon. If it appears that the motion discloses an interest in the labor dispute or that participation by the moving party is in the public interest, the commission shall grant the motion. Thereafter, the moving party shall be a party to the proceedings with the same right to produce and cross-examine witnesses as the other parties. If it appears during the course of proceedings that an intervenor has no substantial interest therein, the commission may dismiss such intervenor.

(3) On its own motion or at the motion of any party, the commission may consolidate proceedings on two or more notices where the facts or principles of law are related.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-510, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-510, filed 3/20/84.]

**WAC 316-65-515 Conduct of grievance arbitration proceedings.** (1) Prehearing conferences and hearings may be conducted by the commission or by a member of the com-

mission assigned as arbitrator. At any time, an arbitrator may be substituted for the arbitrator previously presiding.

(2) The arbitrator shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises. All such arbitrators shall maintain compliance with the current "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" adopted by the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service: Provided, however, That arbitration matters processed under this chapter shall be filed in the public files of the commission and shall not be accorded the privacy required by such code: And provided further, That if any statute or commission rule conflicts with aforesaid "code," the statute or rule shall prevail.

(3) The arbitrator shall have the authority:

- (a) To administer oaths and affirmations;
- (b) To issue subpoenas;

(c) To rule on objections to evidence and offers of proof, receive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;

(d) To question witnesses;

(e) To regulate the time, place and course of the hearing;

(f) To dispose of procedural requests or other similar matters;

(g) To hold conferences for the settlement, simplification or adjustment of issues in accordance with WAC 316-02-210 and 316-02-220;

(h) To make and issue an arbitration award on the matters in dispute, subject to the right of any party to petition for review of such award by the commission in accordance with WAC 316-65-550; and

(j) To take any other action authorized by these rules.

(4) Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection thereto in writing, shall be deemed to have waived its right to object.

[Statutory Authority: RCW 34.05.230. 01-01-124, § 316-65-515, filed 12/19/00, effective 1/19/01. Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-515, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-515, filed 3/20/84.]

**WAC 316-65-525 Grievance hearing waiver.** The parties may waive oral hearing by written agreement.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-525, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-525, filed 3/20/84.]

**WAC 316-65-530 Order of proceedings and evidence.** The order of presentation at the hearing shall be as agreed by the parties or as determined by the arbitrator. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. The arbitrator may make, and take official notice of the results of, its own inspection of the conditions involved. Two copies of each documentary exhibit shall be filed with the arbitrator and copies shall be provided to the other parties.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-530, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-530, filed 3/20/84.]

**WAC 316-65-535 Arbitration in the absence of a party.** The arbitrator may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Except for good cause shown, the failure of a party to appear shall constitute grounds for dismissal of its claim or granting of relief against it, as may be appropriate.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-535, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-535, filed 3/20/84.]

**WAC 316-65-538 Withdrawal of grievance.** A grievance may be withdrawn by the grievant(s) at any time prior to the close of hearing under WAC 316-65-540 under such conditions as the commission or assigned commissioner may impose.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-538, filed 12/20/89, effective 1/20/90.]

**WAC 316-65-540 Closing of hearing.** The hearing shall be deemed closed after the parties have completed presenting their testimony and/or exhibits and have filed briefs within agreed time limits. The arbitrator may direct the filing of briefs when it deems such filing warranted by the nature of the proceedings or of particular issues therein.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-540, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-540, filed 3/20/84.]

**WAC 316-65-545 Grievance arbitration decision.** After the close of the hearing and the filing of all briefs, the arbitrator shall issue an arbitration award on the matters in dispute and shall cause a copy thereof to be served on each of the parties. If the arbitrator is a single commissioner, he/she may issue a proposed award, subject to commission review under WAC 316-65-550; or he/she may transfer the entire record to the commission for a final decision under WAC 316-65-555.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-545, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-545, filed 3/20/84.]

**WAC 316-65-550 Petition for review of commissioner decision.** The commissioner's proposed award shall be subject to review by the commission on its own motion, or on the petition of any party, made within twenty days following the date of the proposed award issued by the commissioner. The petition for review shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on each of the other parties to the proceeding. Such petition for review shall contain, in separate numbered paragraphs, statements of the specific orders or rulings on which the party filing the petition seeks review by the commission. A petition for review shall have attached to it any appeal brief or written argument which the party filing the petition for review desires to have considered by the commission. Other parties to the proceeding shall have ten days following the date on which they are served with a copy of such petition for review and accompanying brief or written argument to file a responsive brief or written argument. The commission may, for good cause, grant any party an extension of the time for filing of its brief or written argument. In

the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the commissioner's proposed order, the arbitration award of the arbitrator shall automatically become final and binding.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-550, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-550, filed 3/20/84.]

**WAC 316-65-555 Commission action.** On its own motion, or on the filing of a petition for review, the entire record in the proceeding shall be transferred to the commission, and thereafter all motions and arguments shall be directed to the commission. The commission may request the parties to appear before it to make oral arguments as to certain of the issues or all of the issues in the matter. The commission shall, on the basis of the entire record and any briefs or arguments submitted to it on review, issue the final and binding arbitration award on the matter.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-555, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-555, filed 3/20/84.]

**WAC 316-65-560 Grievance arbitration remedies.** If upon the preponderance of evidence the arbitrator or commission shall conclude that any person named in the complaint has committed acts or is committing acts which have resulted in injury, injustice, or violation of rights granted by rule, statute or collective bargaining agreement, then the arbitrator or commission shall state its findings of fact and conclusions of law and cause to be served on such person a remedial order requiring him or her to cease and desist from such acts and to take such affirmative and corrective action as necessary to restore grievant's rights and 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 shall apply:

(1) Employee(s) reinstated to employment with back pay shall 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 shall 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 department shall provide evidence to the commission that such amount has been repaid to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due shall be 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 47.64.280 and 34.05.220. 90-01-119, § 316-65-560, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-560, filed 3/20/84.]

**WAC 316-65-600 Other law.** Nothing in chapter 316-65 WAC is intended to diminish the constitutional rights of any person or to limit or modify additional requirements

imposed by statute, including the Administrative Procedure Act.

[Statutory Authority: RCW 47.64.280 and 34.05.220. 90-01-119, § 316-65-600, filed 12/20/89, effective 1/20/90.]