

Title 391 WAC

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Chapter 391-08 WAC

RULES OF PRACTICE AND PROCEDURE-- PUBLIC EMPLOYMENT RELATIONS COMMISSION

WAC

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WAC 391-08-001 Application and scope of chapter 391-08 WAC. Chapter 391-08 WAC has been added to the Washington Administrative Code by the Public Employment Relations Commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 14, 20 and 35, chapter 296, Laws of 1975 1st ex. sess. (RCW 28B.52.080, 41.56.040, and 47.64.040); and section 3, chapter 5, Laws of 1975, 2d ex. sess. (RCW 41.58.050), to promulgate comprehensive and uniform rules for practice and procedure before the agency. The provisions of chapter 1-08 WAC shall not be applicable to proceedings before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

(2) Chapter 391-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing bargaining unit.

(3) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

(4) Chapter 391-55 WAC, which contains rules relating to the resolution of impasses occurring in collective bargaining.

(5) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

(6) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative.

In the event of a conflict between general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

WAC 391-08-003 Policy--Construction--Waiver.

The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the agency, and nothing in any rule shall be construed to prevent the Commission and its authorized agents from using their best efforts to adjust any labor dispute. The Commission and its authorized agents may waive any requirement of the rules unless a party shows that it would be prejudiced by such a waiver. [Order 77-1, § 391-08-003, filed 1/27/77.]

WAC 391-08-007 Definitions. As used in Title 391 WAC:

(1) "Agency" means the Public Employment Relations Commission, its officers and agents;

(2) "Commission" means the Public Employment Relations Commission;

(3) "Executive director" means the officer of that title appointed by the commission pursuant to RCW 41.58.015(2);

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-045 (Order 80-4), § 391-08-007, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-007, filed 1/27/77.]

WAC 391-08-010 Appearance and practice before agency--Who may appear. No person may appear in a representative capacity before the agency or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law;

(3) A bona fide officer, employee or other authorized representative of: (a) any employer subject to the jurisdiction of the agency, or (b) any labor or employee organization. [Order 77-1, § 391-08-010, filed 1/27/77.]

WAC 391-08-020 Appearance and practice before agency--Standards of conduct. Misconduct at any hearing conducted by the commission or a member of its staff shall be ground for summary exclusion from the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the commission after due notice and hearing. [Order 77-1, § 391-08-020, filed 1/27/77.]

WAC 391-08-030 Appearance and practice before agency--Appearance by former employee of agency or former member of attorney general's staff. No former member of the commission, former employee of the agency or former member of the attorney general's staff shall, at any time after severing his employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his employment with the agency. [Order 77-1, § 391-08-030, filed 1/27/77.]

WAC 391-08-040 Appearance and practice before agency--Former employee as witness. Except upon the express written consent of the commission, no former member of the commission, former employee of the agency or former member of the attorney general's staff shall, at any time after severing his employment with the agency or with the attorney general, appear as a witness on behalf of any party in connection with any case or proceeding which was pending before the agency during the time of his employment with the agency. [Order 77-1, § 391-08-040, filed 1/27/77.]

WAC 391-08-100 Service of process--Computation of time. In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. [Order 77-1, § 391-08-100, filed 1/27/77.]

WAC 391-08-103 Service of process--Additional time after service by mail. Whenever a party has the right or is required to do some act within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served on him by mail or by telegraph, 3 days shall be added to the prescribed period. [Order 77-1, § 391-08-103, filed 1/27/77.]

WAC 391-08-105 Service of process--Extension of time. The commission or its authorized agent may, by agreement of the parties or for good cause shown, extend any time limit prescribed or allowed by the rules of the agency. Any motion to extend any time limit shall, except for good cause shown, be made before the expiration of such time limit. [Order 77-1, § 391-08-105, filed 1/27/77.]

WAC 391-08-110 Service of process--By whom served. The agency shall cause to be served all orders, notices and other formal papers issued by it, together with any other papers which it is required by law or rule to serve. Every other paper shall be served by the party filing it. [Order 77-1, § 391-08-110, filed 1/27/77.]

WAC 391-08-120 Service of process--Upon whom served. All formal papers served by the agency or by any party shall be served upon all counsel then of record and upon all parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact. Except as specifically provided elsewhere in these rules, copies of all correspondence directed to the agency or by the agency in connection with any matter pending before the agency shall be furnished to all counsel of record and to all parties not represented by counsel. [Order 77-1, § 391-08-120, filed 1/27/77.]

WAC 391-08-130 Service of process--Method of service. Service of papers shall be made personally or, unless otherwise provide by law, by first-class, registered, or certified mail; or by telegraph. [Order 77-1, § 391-08-130, filed 1/27/77.]

WAC 391-08-140 Service of process--Completion of service on parties. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid. [Order 77-1, § 391-08-140, filed 1/27/77.]

WAC 391-08-150 Service of process--Filing with agency. Papers required to be filed with the agency shall be deemed filed upon actual receipt by the agency during its regular office hours at the place specified for such filing: *Provided, however,* That such service shall be deemed to be incomplete if the party making the filing should subsequently fail, when requested to do so by the agency, to provide proof of service upon other parties required to be served. [Order 77-1, § 391-08-150, filed 1/27/77.]

WAC 391-08-160 Service of process--Opportunity for hearing. All hearings in contested cases shall be public. Any party to a contested case shall have the right to appear at such hearing in person, by counsel, or by other representative; and to call, examine and cross-examine witnesses; and to introduce into the record documentary

or other evidence. [Order 77-1, § 391-08-160, filed 1/27/77.]

WAC 391-08-170 Service of process--Notice of hearing. In any contested case, all parties shall be served with a notice within the statutory time as required by the particular statute governing the proceeding involved. In the absence of a statutory requirement, notice shall be given twenty days before the date set for hearing. All notices of hearing shall state the time and place of the hearing, and shall clearly identify the proceeding or the issues involved. [Order 77-1, § 391-08-170, filed 1/27/77.]

WAC 391-08-180 Service of process--Continuances. Immediately upon receipt of notice of a hearing, or as soon thereafter as circumstances necessitating a continuance come to its knowledge, any party desiring a continuance shall notify all other parties prior to filing a request for continuance with the agency. All continuance requests shall be filed in writing and shall specify, in detail, the reasons why the continuance is necessary, the position of all other parties concerning the requested continuance and suggested alternative dates for rescheduling. In passing upon a request for continuance, the agency shall consider whether the request was promptly and timely made. For good cause shown, the agency or its designated hearing officer or examiner may grant a continuance and may at any time order a continuance on its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing 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. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-045 (Order 80-4), § 391-08-180, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-180, filed 1/27/77.]

WAC 391-08-200 Definition of issues--Before hearing. In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that/the hearing officer or examiner may proceed promptly to conduct the hearing on relevant and material matter only. [Order 77-1, § 391-08-200, filed 1/27/77.]

WAC 391-08-210 Definition of issues--Prehearing conference authorized. In any proceeding, the agency or its designated hearing officer or examiner, upon its or his own motion or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

- (1) The simplification of issues;
- (2) The necessity of amendments to the pleadings;

(3) The possibility of obtaining stipulations, admissions of facts and of documents;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the proceeding. [Order 77-1, § 391-08-210, filed 1/27/77.]

WAC 391-08-220 Definition of issues--Record of action taken during prehearing conference. The agency or its designated hearing officer or examiner shall make an order or statement which recites the action taken at any prehearing conference, the amendments allowed to the pleadings, and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. [Order 77-1, § 391-08-220, filed 1/27/77.]

WAC 391-08-300 Subpoenas--Form. Every subpoena shall state the name of the agency as: State of Washington, Public Employment Relations Commission; shall state the title of the proceeding, if any; shall show on its face the name and address of the party at whose request the subpoena was issued; and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place. [Order 77-1, § 391-08-300, filed 1/27/77.]

WAC 391-08-310 Subpoenas--Issuance to parties. Subpoenas requiring the attendance and testimony of witnesses or the production of evidence shall be issued *ex parte* to any party to a contested case: *Provided, however,* That no subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the agency staff in any proceeding before the agency. The commission or its hearing officer or examiner shall issue subpoenas upon the application of counsel or other representative authorized to practice before the agency, and may condition the issuance of subpoenas to parties not so represented upon a showing of general relevance and reasonable scope of the testimony or evidence sought. Attorneys may act under the authority conferred by RCW 34.04.105(2)(a). [Order 77-1, § 391-08-310, filed 1/27/77.]

WAC 391-08-320 Subpoenas--Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law. [Order 77-1, § 391-08-320, filed 1/27/77.]

WAC 391-08-330 Subpoenas--Fees. Witnesses summoned before the agency shall be paid by the party

at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. [Order 77-1, § 391-08-330, filed 1/27/77.]

WAC 391-08-340 Subpoenas--Proof of service. The person serving the subpoena may make proof of service by filing the subpoena and the required return, affidavit, or acknowledgement of service with the agency or the officer before whom the witness is required to testify or produce evidence. If service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service. [Order 77-1, § 391-08-340, filed 1/27/77.]

WAC 391-08-350 Subpoenas--Quashing. Any motion to quash a subpoena is directed within 5 days after the date of service of the subpoena upon him and, in any event, shall be made at or before the time specified in the subpoena for compliance. The person making such motion shall give notice of the motion to the party to whom the subpoena was issued. The commission, hearing officer or examiner may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions. [Order 77-1, § 391-08-350, filed 1/27/77.]

WAC 391-08-360 Subpoenas--Enforcement. Upon application and for good cause shown, and upon proof of service of the subpoena involved if such proof was not previously provided pursuant to WAC 391-08-340, the agency will seek judicial enforcement of subpoenas which have not been quashed or may authorize a party to seek enforcement. [Order 77-1, § 391-08-360, filed 1/27/77.]

WAC 391-08-370 Subpoenas--Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing. [Order 77-1, § 391-08-370, filed 1/27/77.]

WAC 391-08-400 Evidence--Examination of witnesses. Witnesses in any hearing in a contested case shall be examined orally, under oath or affirmation, and shall be subject to cross-examination. [Order 77-1, § 391-08-400, filed 1/27/77.]

WAC 391-08-410 Evidence--Application of rules of evidence. Subject to the other provisions of these rules, the officer conducting the hearing shall admit all competent and relevant evidence of probative value. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in the superior courts of the state of Washington. [Order 77-1, § 391-08-410, filed 1/27/77.]

WAC 391-08-420 Evidence--Objections and rulings. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. No such objection shall be deemed waived by further participation in the hearing. [Order 77-1, § 391-08-420, filed 1/27/77.]

WAC 391-08-450 Evidence--Stipulations and admissions of record. The evidence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, or oral argument, or, is made in a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record may, at any time prior to final decision, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or examiner of the agency that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding. [Order 77-1, § 391-08-450, filed 1/27/77.]

WAC 391-08-460 Evidence--Submission of documentary evidence. Documentary evidence shall be submitted in duplicate. It shall also be the responsibility of the party submitting documentary evidence to provide a copy thereof to each of the other parties to the proceeding not already having a copy. Upon failure of a party to comply with this rule within five days after the close of the hearing, the agency shall, upon request, make all necessary copies at a reasonable monetary charge to the party offering the document. [Order 77-1, § 391-08-460, filed 1/27/77.]

WAC 391-08-470 Evidence--Excerpts from documentary evidence. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing officer or examiner and to the other parties. In the absence of a request for and a

showing of cause for the admission of the entire document in evidence, only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding. [Order 77-1, § 391-08-470, filed 1/27/77.]

WAC 391-08-490 Evidence--Refusal of witness to answer. The refusal of a witness at any hearing in a contested case to answer any question which has been ruled to be proper shall, in the discretion of the hearing officer or examiner, be ground for striking all testimony previously given by such witness on related matter. [Order 77-1, § 391-08-490, filed 1/27/77.]

WAC 391-08-500 Declaratory rulings authorized. As prescribed by RCW 34.04.080 any interested person may petition the agency for a declaratory ruling. The agency shall consider the petition and within a reasonable time the agency shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for an oral hearing or the submission of written evidence upon the matter, give reasonable notification to the person of the time and place for such hearing or submission of the issues involved, and, within a reasonable time, the agency shall:
 - (a) Issue a binding declaratory ruling; or
 - (b) Issue a nonbinding declaratory ruling; or
 - (c) Notify the person that no declaratory ruling is to be issued. [Order 77-1, § 391-08-500, filed 1/27/77.]

WAC 391-08-510 Declaratory rulings--Petition. Any person petitioning the agency for a declaratory ruling pursuant to RCW 34.04.080 and WAC 391-08-500 shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the Public Employment Relations Commission". On the left side of page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for a Declaratory Ruling". Opposite the foregoing caption shall appear the word "Petition".

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state the name of the other party to any collective bargaining relationship from which the issue or issues to be ruled upon arises. The third paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and three legible copies plus one copy for service on each party the petitioner seeks to have bound by any declaratory ruling shall be filed with the agency. Petitions shall be on white paper, 8 1/2" x 13" in size. [Order 77-1, § 391-08-510, filed 1/27/77.]

WAC 391-08-600 Agency decisions in contested cases--Form and content. Every decision and final order shall:

- (1) Be correctly captioned as to name of agency and name of proceeding;
- (2) Designate all parties and counsel to the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Be accompanied by appropriate numbered findings of fact and conclusions of law;
- (5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;
- (6) Wherever practical, the conclusions and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same. [Order 77-1, § 391-08-600, filed 1/27/77.]

WAC 391-08-610 Agency decisions in contested cases--Service. Every final order issued by the agency shall be served on each party or upon the agency designated by the party or by law to receive service of such papers; and a copy shall be furnished to any counsel or person appearing for a party in a representative capacity. [Order 77-1, § 391-08-610, filed 1/27/77.]

WAC 391-08-800 Agency records--Public access. The agency will maintain for public inspection: (1) an index to all proceedings filed with and processed by the agency; (2) a docket for each proceeding filed with and processed by the agency showing the actions taken on and the final resolution of each such proceeding; (3) a schedule of hearing dates assigned in particular cases; and (4) the files for all proceedings, including all documents filed with the agency in the particular case, except materials held in confidence as provided in WAC 391-08-810. [Order 77-1, § 391-08-800, filed 1/27/77.]

WAC 391-08-810 Agency records--Confidentiality. The agency, in order to protect the privacy of individual employees and in order to respect the confidential nature of the mediation process, shall not permit the disclosure to any person of (1) evidence filed as a showing of interest in support of a representation petition or motion for intervention, or (2) notes and memoranda made by any member of the commission or its staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute. [Order 77-1, § 391-08-810, filed 1/27/77.]

WAC 391-08-820 Agency offices. The agency maintains its principal office in the city of Olympia, Washington at 603 Evergreen Plaza, 711 Capitol Way,

Olympia, Washington 98504. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-045 (Order 80-4), § 391-08-820, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-820, filed 1/27/77.]

WAC 391-08-900 Petitions for rule making--Who may petition. Any interested person may petition the agency requesting the promulgation, amendment, or repeal of any rule. [Order 77-1, § 391-08-900, filed 1/27/77.]

WAC 391-08-910 Petitions for rule making--Form. Any interested person petitioning the agency requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the Public Employment Relations Commission." On the left side of the page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of Rule (or Rules)." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and three legible copies of the petition shall be filed with the agency. Petitions shall be on white paper, 8 1/2" x 13" in size. [Order 77-1, § 391-08-910, filed 1/27/77.]

WAC 391-08-920 Petitions for rule making--Agency must consider. All petitions shall be considered by the agency and the agency may, at its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule. [Order 77-1, § 391-08-920, filed 1/27/77.]

WAC 391-08-930 Petitions for rule making--Notice of disposition. The agency shall notify the petitioning party within a reasonable time of the disposition, if

any, of the petition. [Order 77-1, § 391-08-930, filed 1/27/77.]

Chapter 391-21 WAC COLLECTIVE BARGAINING RULES--PUBLIC EMPLOYMENT

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 391-21-740 | Uniformed personnel—Initiation of fact-finding. [Order 77-8, § 391-21-740, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050. |
| 391-21-742 | Uniformed personnel—Selection of fact-finder. [Order 77-8, § 391-21-742, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050. |
| 391-21-744 | Uniformed personnel—Fact-finding recommendations. [Order 77-8, § 391-21-744, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050. |
| 391-21-746 | Uniformed personnel—Expenses of fact-finding. [Order 77-8, § 391-21-746, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050. |
| 391-21-748 | Uniformed personnel—Parties' responsibility after fact-finding. [Order 77-8, § 391-21-748, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050. |
| 391-21-750 | Uniformed personnel—Interest arbitration. [Order 77-8, § 391-21-750, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed |

- 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-752 Uniformed personnel—Appointment of partisan arbitrators. [Order 77-8, § 391-21-752, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-754 Uniformed personnel—Selection of arbitrators. [Order 77-8, § 391-21-754, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-756 Uniformed personnel—Conduct of interest arbitration proceedings. [Order 77-8, § 391-21-756, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-758 Impasse resolution—Interest arbitration award. [Order 77-8, § 391-21-758, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.
- 391-21-760 Uniformed personnel—Expenses of arbitration. [Order 77-8, § 391-21-760, filed 12/29/77, effective 2/1/78.] Repealed by 80-04-073 (Order 80-2), filed 3/28/80. Statutory Authority: RCW 41.56.090 and 41.58.050.

WAC 391-21-001 Scope—Contents—Other rules.

This chapter governs specific proceedings under chapter 41.56 RCW and other statutes relating to collective bargaining between public employers and their employees. The chapter contains:

- (1) Procedures for representation cases, beginning at WAC 391-21-100.
- (2) Procedures for clarification of existing bargaining units, beginning at WAC 391-21-300.
- (3) Procedures for unfair labor practice cases, beginning at WAC 391-21-500.
- (4) Procedures for impasse resolution, beginning at WAC 391-21-700.
- (5) Procedures for arbitration of disputes arising from interpretation or application of a collective bargaining agreement, beginning at WAC 391-21-800.
- (6) Procedures for determination of disputes concerning payments as an alternative to payment of dues under a union security provision, beginning at WAC 391-21-900.

The provisions of this chapter should be read in conjunction with the provisions of chapter 391-08 WAC, which contains general rules applicable to all types of proceedings before the public employment relations commission. [Order 77-8, § 391-21-001, filed 12/29/77, effective 2/1/78.]

WAC 391-21-003 Application to port districts.

Portions of this chapter govern specific proceedings under chapter 53.18 RCW and other statutes relating to collective bargaining between port districts and their employees. The portions of this chapter applicable to port districts are:

- (1) Procedures for representation cases, contained in WAC 391-21-100 through WAC 391-21-142.
- (2) Procedures for clarification of existing bargaining units, contained in WAC 391-21-300 through WAC 391-21-322.

(3) Procedures for impasse resolution, contained in WAC 391-21-700 through WAC 391-21-708.

(4) Procedures for arbitration of disputes arising from interpretation or application of a collective bargaining agreement, contained in WAC 391-21-800 through WAC 391-21-814. [Statutory Authority: RCW 41.58.050 and 53.18.030. 79-03-015 (Order 79-1), § 391-21-003, filed 2/16/79.]

WAC 391-21-100 Petition for investigation of a question concerning representation of employees—Who may file. A petition for investigation of a question concerning representation of employees, hereinafter referred to as a "petition," may be filed pursuant to RCW 41.56.050 by any employee, group of employees, employee organization, public employer or their agents. [Order 77-8, § 391-21-100, filed 12/29/77, effective 2/1/78.]

WAC 391-21-102 Petition form—Number of copies—Filing—Service. Each petition shall be prepared on a form furnished by the commission. The original petition and three copies thereof shall be filed with the agency at its Olympia office. The party filing the petition shall also serve a copy thereof on the employer and on each employee organization named in the petition as having an interest in the proceedings. [Order 77-8, § 391-21-102, filed 12/29/77, effective 2/1/78.]

WAC 391-21-104 Contents of petition. Each petition shall contain:

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

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

(3) The names, and if known, the addresses and telephone numbers of the principal representatives of any employee 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 employer 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 designation of an 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 title, if any, of the petitioner or its representative. [Order 77-8, § 391-21-104, filed 12/29/77, effective 2/1/78.]

WAC 391-21-105 Contents of petition filed by employer. Each petition filed by a public employer shall contain all of the same information required by WAC 391-21-104 except for that required by WAC 391-21-104(4); and in lieu thereof, each petition filed by a public employer shall contain a statement that the public employer has been presented with a demand by an employee organization seeking recognition as the representative of employees in the bargaining unit described in the petition. WAC 391-21-106 shall not be applicable to such petitions; and in lieu thereof, the employer shall attach such documentation as may be available to it to demonstrate the existence of a good faith doubt concerning the representation of its employees. [Order 77-8, § 391-21-105, filed 12/29/77, effective 2/1/78.]

WAC 391-21-106 Supporting evidence. The original copy of the petition filed with the agency shall 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 during the ninety day period preceding the filing of such evidence with the agency. [Order 77-8, § 391-21-106, filed 12/29/77, effective 2/1/78.]

WAC 391-21-107 List of employees. The employer shall submit to the commission a list containing the names and addresses of all of the employees in the bargaining unit described in the petition. Following administrative determination that the petition is supported by a sufficient showing of interest, the employer shall, upon request, provide a copy of the list of employee names and addresses to the petitioner. Following granting of a motion for intervention, the employer shall, upon request, provide a copy of the list of employee names and addresses to the intervenor. [Order 77-8, § 391-21-107, filed 12/29/77, effective 2/1/78.]

WAC 391-21-108 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner under such conditions as the executive director or the commission may impose. [Order 77-8, § 391-21-108, filed 12/29/77, effective 2/1/78.]

WAC 391-21-110 Intervention--By incumbent representative. An employee organization which demonstrates to the agency that it has been the exclusive representative in all or any part of the bargaining unit involved in proceedings initiated by a petition during the year preceding the filing of the petition with the agency may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election conducted by the agency in such proceedings. No motion for intervention shall be considered under this section if made

after the close of the hearing in the matter or more than seven days after the filing of a consent agreement. [Order 77-8, § 391-21-110, filed 12/29/77, effective 2/1/78.]

WAC 391-21-112 Intervention--By organization other than incumbent. An employee organization not covered by WAC 391-21-110 may, by motion, intervene in proceedings initiated by a petition and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election conducted by the agency in such proceedings. Such motion for intervention shall 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 a different bargaining unit which 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 during the ninety day period preceding the filing of such evidence with the agency. The showing of interest shall be made, ex parte, to the agency 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 agency may impose to avoid undue delay of the proceedings. No motion for intervention shall be considered under this section if made after the close of the hearing in the matter or more than seven days after the filing of a consent agreement. [Order 77-8, § 391-21-112, filed 12/29/77, effective 2/1/78.]

WAC 391-21-113 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 agency and may not be litigated at any hearing. In order 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 agency will not honor any attempt to withdraw or diminish a showing of interest. [Order 77-8, § 391-21-113, filed 12/29/77, effective 2/1/78.]

WAC 391-21-114 Consent elections. Where an employer and one or more employee organizations agree on a representation election, they may, either simultaneously with or subsequent to the filing of a petition, file a consent election agreement with the executive director. Such consent election agreement shall contain:

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

(2) The names and addresses of all employee organizations participating in the consent 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; subject to approval of the agency.

(4) A statement by all parties that: (a) No employee 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 consent election agreement, or (c) the incumbent representative has abandoned the unit as evidenced by written memoranda or other documentation attached to the consent election agreement.

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

(6) A list, attached to the consent election agreement as an appendix, containing the names of the employees eligible to vote in the election, and the eligibility cut off date for the election. If the parties request that the election be conducted by mail ballot, the list provided under this subsection shall also include the last known address of each of the employees eligible to vote in the election. If no eligibility cut off date is provided by the parties, the eligibility cut off date shall be established as the date on which the consent election agreement is filed.

(7) The suggestions of the parties as to the day or days of the week and the time or times of the day during which the election should be conducted and the place agreed upon for the conduct of the election; or the agreement of the parties that the election be conducted by mail ballot.

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

The original and one copy of the consent election agreement shall be filed with the commission at its Olympia office, and copies thereof shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The consent election agreement shall be posted on the date it is filed with the agency and shall remain posted for at least seven days thereafter. Upon the filing of a consent election agreement conforming to the foregoing requirements, the executive director shall proceed with the conduct of an election. Objections to the election by a party to the consent election agreement shall be limited to matters relating to specific conduct affecting the results of the election. [Order 77-8, § 391-21-114, filed 12/29/77, effective 2/1/78.]

WAC 391-21-115 Consent cross-checks. Where only one organization is seeking certification as the representative of unrepresented employees, the employer and the organization may, either simultaneously with or subsequent to the filing of a petition, file a consent cross-check agreement with the executive director. Such consent agreement shall contain:

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

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

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

(4) A statement by both parties that no other employee organization is known which claims to represent any of the employees in the bargaining unit; that the parties are in agreement that a question concerning representation exists; that a hearing be waived; and that the agency is requested to proceed with the conduct of a cross-check of individually signed and dated authorization cards or membership records submitted by the employee organization against the employment records of the employer and the certification of the results.

(5) A list, attached to the consent cross-check agreement as an appendix, containing the names of the employees in the bargaining unit.

(6) The suggestions of the parties as to time and place where the records to be cross-checked can be made available to the commission for the conduct of the cross-check.

(7) The agreement of the parties to be bound by the results of the cross-check conducted by the commission.

(8) The signature and titles, if any, of the representatives of the parties.

The original and one copy of the consent cross-check agreement shall be filed with the commission at its Olympia office, and copies thereof shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The consent cross-check agreement shall be posted on the date it is filed with the agency and shall remain posted for at least seven days thereafter. Upon the filing of a consent cross-check agreement conforming to the foregoing requirements, the executive director shall proceed with the conduct of the cross-check of records. The cross-check may be conducted at any time following the filing of a consent cross-check agreement, but no certification shall be issued until a period of seven days has elapsed following the filing and posting of the consent cross-check agreement. Where a motion for intervention is timely filed and granted, no certification shall be issued on the basis of the cross-check. [Order 77-8, § 391-21-115, filed 12/29/77, effective 2/1/78.]

WAC 391-21-116 Notice of hearing. After a petition has been filed, and if it appears to the executive director that there is reasonable cause to believe that a question concerning representation of employees may exist, there shall be issued and served on the employer and on any employee organization listed in the petition as claiming to represent any of the employees in the bargaining unit and on any employee organization having theretofore intervened in the proceedings, a notice of hearing before a hearing officer at a time and place

fixed therein. The agency shall furnish the employer with copies of such notice for posting in conspicuous places on its premises where notices to affected employees are usually posted, and the employer shall post same. Any such notice may be amended or withdrawn before the close of the hearing. [Order 77-8, § 391-21-116, filed 12/29/77, effective 2/1/78.]

WAC 391-21-118 Hearings--Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Order 77-8, § 391-21-118, filed 12/29/77, effective 2/1/78.]

WAC 391-21-120 Authority of hearing officer. The hearing officer shall have the authority, subject to these rules and under the authority of the commission:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold, during the course of the proceedings, conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized under these rules. [Order 77-8, § 391-21-120, filed 12/29/77, effective 2/1/78.]

WAC 391-21-122 Hearings--Nature and scope. Hearings shall be public and shall be limited to matters concerning the determination of the existence of a question concerning representation of employees and questions of eligibility. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a full and complete factual record upon which the commission or the executive director may discharge their duties under the pertinent statutes and these rules. [Order 77-8, § 391-21-122, filed 12/29/77, effective 2/1/78.]

WAC 391-21-124 Proceedings before the executive director. The executive director shall determine whether a question concerning representation of employees exists, and shall issue a direction of election, issue a direction of cross-check, dismiss the petition or make other disposition of the matter. Where a hearing has been held, the executive director may proceed forthwith upon the record, after submission of briefs, or after further hearing as may be appropriate. Such actions shall be subject to a petition for review only as follows:

(1) An order of dismissal is a final order which shall be 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. Unless the matter is transferred to the commission for review, an order of dismissal issued by the executive director shall have the same force and effect as if issued by the commission.

(2) A direction of election is an order wherein the conduct of an election is ordered and rulings may be made on other issues in dispute and, except for rulings as to whether the employer is subject to the jurisdiction of the commission, the direction of election and any accompanying rulings shall not be subject to review by the commission until after the conduct of the election and the issuance of a tally sheet.

(3) A direction of cross-check is an order wherein the conduct of a cross-check is ordered and rulings may be made on other issues in dispute and, except for rulings as to whether the employer is subject to the jurisdiction of the commission, the direction of cross-check shall not be subject to review by the commission until after the conduct of the cross-check and the issuance of a tally sheet. [Order 77-8, § 391-21-124, filed 12/29/77, effective 2/1/78.]

WAC 391-21-125 Cross-check of records. Where only one organization is seeking certification as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that such organization has been authorized by a substantial majority of the employees to act as their representative for the purposes of collective bargaining, and the executive director finds that the conduct of an election would unnecessarily and unduly delay the determination of the question concerning representation with little likelihood of altering the outcome, then the question concerning representation may be resolved by the conduct of a cross-check of records. Where a cross-check of records is to be conducted, the employee organization shall submit to the agency 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 with the agency and indicating that such employees authorize the employee organization to represent them for the purposes of collective bargaining, or shall submit to the agency membership records maintained by the employee organization as a part of its business records containing the names of employees and indicating those employees currently members in good standing. The employer shall make available to the agency original employment records maintained by the employer as a part of its business records containing the names and signatures of the employees in the bargaining unit. The employee organization may file a disclaimer or a request that the question concerning representation be determined by a representation election: *Provided, however,* That if such a disclaimer or request for election is filed after the commencement of the cross-check of records, the cross-check shall be terminated and the organization shall not seek to be certified in the bargaining unit for a period of at least one year thereafter. All

cross-checks conducted under the supervision of the agency shall be by actual comparison of records submitted by the parties. The agency shall not disclose the names of employees giving representation authorization in favor of or appearing on the membership rolls of the employee organization. Upon the conclusion of the comparison of records, the agency officer conducting the cross-check shall prepare and cause to be furnished 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. [Order 77-8, § 391-21-125, filed 12/29/77, effective 2/1/78.]

WAC 391-21-126 Notice of election. In any proceeding in which an election is to be held, the agency shall furnish the employer with appropriate notices for posting in conspicuous places on the employer's premises where notices to affected employees are usually posted, and the employer shall promptly post same. Such notice shall contain:

- (1) The description of the bargaining unit in which the election is to be conducted.
- (2) The date(s), hours and polling place(s) for the election.
- (3) The cut-off 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. The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed. [Order 77-8, § 391-21-126, filed 12/29/77, effective 2/1/78.]

WAC 391-21-128 Election procedures--Disclaimers--Balloting. Notices of the election shall be posted for at least seven days prior to the opening of the polls. In computing such period, the day of posting may be counted, but the day on which the polls are opened shall not be counted. An employee organization may file a disclaimer and, upon approval thereof by the executive director, have its name removed from the ballot: *Provided, however,* That if such a disclaimer is filed, the organization filing same shall not seek to be certified in that bargaining unit for a period of at least one year thereafter. All elections conducted under the supervision of the agency shall be by secret ballot. The agency may conduct elections by mail ballot when it appears that an election by "in person" procedures would result in undue delay, or would effectively deprive some eligible employees of their opportunity to vote. If mail balloting is used, the notice required by these rules shall be mailed to each eligible voter and no less than ten days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots. Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe: *Provided, however,* That no management official having authority over bargaining unit employers nor any officer or paid employee of an

employee organization shall serve as observer. [Order 77-8, § 391-21-128, filed 12/29/77, effective 2/1/78.]

WAC 391-21-130 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. The election officer shall not have authority to resolve challenges at the polls, and the ballot of the challenged voter shall be placed in a sealed envelope identifying the voter and the party challenging the eligibility of the voter. The ballot shall not be opened and counted 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 shall be resolved thereby. If the challenged ballots are insufficient in number to affect the results of the election, they shall be impounded and no ruling shall be made thereon unless the proceeding results in the issuance of a certification of representatives and a specific written request for a ruling is made by the employer or by the exclusive representative so certified. If the challenged ballots are sufficient in number to affect the results of the election, the election officer shall, after the close of the polls, ascertain the position of each party as to each challenged ballot and shall include such information in his report. If challenges raise questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties, a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-21-140. [Order 77-8, § 391-21-130, filed 12/29/77, effective 2/1/78.]

WAC 391-21-132 Tally of ballots. Upon the conclusion of the election, the election officer shall prepare and cause to be furnished to 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 shall be issued and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive. [Order 77-8, § 391-21-132, filed 12/29/77, effective 2/1/78.]

WAC 391-21-134 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 valid ballots of a majority of the eligible employees, a run-off election shall be held providing for a selection between the two choices receiving the largest number of

valid ballots cast in the inconclusive election. Any employee organization to be excluded from a run-off election or, where the choice of "no representative" is to be excluded from a run-off election, the employer, may, within five days after the tally of the inconclusive election has been furnished, file objections to specific conduct affecting the results of the inconclusive election; and such objections shall be resolved prior to the conduct of a run-off election. [Order 77-8, § 391-21-134, filed 12/29/77, effective 2/1/78.]

WAC 391-21-136 Filing and service of objections.

Within five days after the tally has been furnished to it, any party may file with the commission an original and three copies of objections and shall also serve a copy thereof on each of the other parties to the proceeding. Objections may consist of:

(1) Designation of specific conduct improperly affecting the results of the representation election by coercion or intimidation of, or substantial misrepresentation of material fact, or threat of reprisal or promise of reward to eligible voters, and or

(2) Designation of an interlocutory ruling or direction which the objecting party desires to have reviewed by the commission.

Objections shall 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 interlocutory orders, if any, of which the party filing the objections seeks review by the commission. Objections must be timely filed, whether or not challenged ballots are sufficient in number to affect the results of the election. [Order 77-8, § 391-21-136, filed 12/29/77, effective 2/1/78.]

WAC 391-21-137 Filing and service of cross-objections. Where objections have been timely filed under WAC 391-21-136, any party who has not previously filed objections may, within five days following the last date on which objections may be filed, file cross-objections. Such cross-objections shall be filed and served in the same manner as objections filed under WAC 391-21-136. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. 78-07-014 (Order 78-3), § 391-21-137, filed 6/15/78.]

WAC 391-21-138 Procedure where no objections are filed. If no objections are filed within the time set forth above, and if the challenged ballots are insufficient in number to affect the results of the election and if no run-off election is to be held, the executive director shall forthwith issue to the parties a certification of the results of the proceedings, including a certification of representatives where appropriate, with the same force and effect as if issued by the commission. The proceedings will thereupon be closed. [Order 77-8, § 391-21-138, filed 12/29/77, effective 2/1/78.]

WAC 391-21-140 Procedure where objections are filed. (1) Objections to conduct improperly affecting the

results of an election shall be referred to the executive director for investigation. If the objections raise questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. 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 hearing on petitions shall 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 seeking review of prior rulings in the matter shall be referred directly to the commission.

(3) All parties shall be entitled to submit briefs or written arguments for consideration by the commission. The briefs or written arguments of all parties shall be due simultaneously. The deadline for the filing of briefs or written arguments shall be fourteen days following the later of: (a) The close of the investigation under (1), above; (b) the issuance of a transcript of a hearing held under (1) above; or (c) the filing of objections under (2), above. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy thereof shall also be served on each of the other parties. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. In all cases where objections have been filed, the executive director shall transfer the entire record in the proceeding, including the results of any investigation or hearing on objections to conduct affecting the results of the election, to the commission. The commission may request the parties to appear before it and make oral argument as to certain of the issues or all of the issues in the matter. [Order 77-8, § 391-21-140, filed 12/29/77, effective 2/1/78.]

WAC 391-21-142 Commission action. The commission shall proceed to determine the objections, or challenges and objections as the case may be, either sustaining or overruling them, and:

(1) If the commission should sustain objections to a ruling or interlocutory order, it may direct that a new election be held in the same or a different bargaining unit, reverse or modify eligibility rulings previously made, dismiss the petition or make other disposition of the matter.

(2) If the commission should direct that challenged ballots affecting the results of the election referred to the commission by the executive director pursuant to WAC 391-21-130 be opened and counted, such ballots shall be opened and counted and a revised tally of ballots shall be issued and furnished to the parties, together with a certification of the results of the election and a certification of representatives, where appropriate.

(3) If the commission should overrule the objections, it shall forthwith issue to the parties a certification of the results of the election, including a certification of representatives, where appropriate. [Order 77-8, § 391-21-142, filed 12/29/77, effective 2/1/78.]

WAC 391-21-300 Petition for clarification of an existing bargaining unit--Who may file. A petition for clarification of an existing bargaining unit, in the absence of a question concerning representation, may be filed by the employer, the exclusive representative or their agents, or by the parties jointly. [Order 77-8, § 391-21-300, filed 12/29/77, effective 2/1/78.]

WAC 391-21-302 Petition form--Number of copies--Filing--Service. Each petition for clarification of an existing bargaining unit shall be prepared on a form furnished by the commission or shall be prepared by the party or parties filing same on 8-1/2" x 13" paper in conformance with WAC 391-21-304. The original petition and three copies thereof shall be filed with the agency at its Olympia office. If the petition is filed other than as a jointly filed petition, the party filing the petition shall also serve a copy thereof on the other party to the collective bargaining relationship in the bargaining unit in which the disagreement arises. [Order 77-8, § 391-21-302, filed 12/29/77, effective 2/1/78.]

WAC 391-21-304 Contents of petition. Each petition for clarification of an existing bargaining unit shall contain:

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

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

(3) The description of the existing bargaining unit, specifying inclusions and exclusions and the number of employees in such bargaining unit.

(4) Identification of the proceeding in which any certification of representatives was issued or the date of the recognition agreement, and the history of any modifications of the bargaining unit subsequent thereto.

(5) A description of the proposed clarification, including the position(s), classification(s) or group(s) in issue, the number of employees in each such position, classification or group, the present bargaining unit inclusion or exclusion status of each such position, classification or group and the party proposing that the present status be changed.

(6) The names and addresses of any other employee organizations who claim to represent any employees affected by the proposed clarification(s) and brief description(s) of the contracts, if any, covering such employees.

(7) A statement of the reasons for the proposed clarification.

(8) Any other relevant facts.

(9) The signature(s) and title(s), if any, of the representative(s) of the petitioner(s). [Order 77-8, § 391-21-304, filed 12/29/77, effective 2/1/78.]

WAC 391-21-306 Amendment and withdrawal. Any petition may be amended or withdrawn by the

petitioner(s) under such conditions as the executive director or the commission may impose. [Order 77-8, § 391-21-306, filed 12/29/77, effective 2/1/78.]

WAC 391-21-308 Notice of hearing. After a petition for clarification of an existing bargaining unit has been filed, and if it appears to the executive director that a disagreement exists which might appropriately be the subject of an order clarifying an existing bargaining unit, there shall be issued and served on the employer and on the exclusive representative a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing. [Order 77-8, § 391-21-308, filed 12/29/77, effective 2/1/78.]

WAC 391-21-310 Consolidation of proceedings. In the event a proceeding is pending which was initiated by a petition for clarification of an existing bargaining unit at the same time as another proceeding is pending before the agency involving all or any part of the same bargaining unit and which was initiated by a petition for investigation of a question concerning representation of employees filed pursuant to WAC 391-21-100, the proceedings shall be consolidated and all issues concerning the description of the bargaining unit shall be resolved in the consolidated proceedings. [Order 77-8, § 391-21-310, filed 12/29/77, effective 2/1/78.]

WAC 391-21-312 Hearings--Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Order 77-8, § 391-21-312, filed 12/29/77, effective 2/1/78.]

WAC 391-21-314 Authority of hearing officer. The hearing officer shall have the authority, subject to these rules and under the authority of the commission:

(1) To administer oaths and affirmations;

(2) To issue subpoenas in the name of the commission;

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

(4) To question witnesses;

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

(6) To dispose of procedural requests or other procedural matters;

(7) To hold, during the course of the proceedings, conferences for the settlement, simplification or adjustment of issues; and

(8) To take any other action authorized under these rules. [Order 77-8, § 391-21-314, filed 12/29/77, effective 2/1/78.]

WAC 391-21-316 Hearings--Nature and scope. Hearings shall be public and shall be limited to matters

concerning the determination of the petition for clarification of an existing bargaining unit. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a full and complete factual record upon which the commission or the executive director may discharge their duties under the pertinent statutes and these rules. [Order 77-8, § 391-21-316, filed 12/29/77, effective 2/1/78.]

WAC 391-21-318 Proceedings before the executive director. After the close of the hearing, the executive director may proceed forthwith upon the record, after submission of briefs or after further hearing, as may be appropriate, to determine the status of each position, classification or group over which there is a disagreement and to issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter. [Order 77-8, § 391-21-318, filed 12/29/77, effective 2/1/78.]

WAC 391-21-320 Proceedings before the commission—Petition for review. The final order of the executive director shall be 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 issued by the executive director. The original petition for review and three copies thereof shall be filed with the commission at its Olympia office and the party filing the petition shall also serve a copy thereof on the other party to the proceeding. The petition for review shall identify the positions, classifications or groups on which review is sought. Any party to the proceeding may, within fourteen days following the filing of the petition for review, file with the commission any briefs or written arguments which it desires to have considered by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy thereof shall be served upon the other party. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. The commission may request the parties to appear before it and make oral argument as to certain of the issues or all of the issues in the matter. [Order 77-8, § 391-21-320, filed 12/29/77, effective 2/1/78.]

WAC 391-21-321 Filing and service of cross-petition for review. Where a petition for review has been timely filed under WAC 391-21-320, any party who has not previously filed a petition for review may, within seven days following the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadline for the submission of briefs or written arguments shall be extended by seven days. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. 78-07-014 (Order 78-3), § 391-21-321, filed 6/15/78.]

WAC 391-21-322 Commission action. The executive director shall certify the entire record in the proceeding to the commission. The commission shall proceed to review the entire record, together with such briefs or written arguments as may have been filed on review, and shall determine the status of each position, classification or group covered by the petition for review, and shall issue appropriate orders. [Order 77-8, § 391-21-322, filed 12/29/77, effective 2/1/78.]

WAC 391-21-500 Complaint charging unfair labor practices—Who may file. A complaint charging that any person has engaged in or is engaging in unfair labor practice, hereinafter referred to as a "complaint" may be filed by any employee, group of employees, employee organization, employer or their agents. [Order 77-8, § 391-21-500, filed 12/29/77, effective 2/1/78.]

WAC 391-21-502 Form of charges—Number of copies—Filing—Service. Charges shall be in writing, in the form of a proposed complaint of unfair labor practices. The original charge and three copies thereof shall be filed with the agency at its Olympia office. The party filing the charge shall also serve a copy thereof on each party named therein as a respondent. [Order 77-8, § 391-21-502, filed 12/29/77, effective 2/1/78.]

WAC 391-21-504 Contents of complaint charging unfair labor practices. Each complaint shall contain, in separate numbered paragraphs:

(1) The name and address of the party filing the charge, hereinafter referred to as the complainant, and the name, address and telephone number of its attorney or principal representative.

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

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

(4) A listing of the sections of the RCW alleged to have been violated.

(5) A statement of the relief sought by the complainant.

(6) The signature and title, if any, of the person filing the charge. [Order 77-8, § 391-21-504, filed 12/29/77, effective 2/1/78.]

WAC 391-21-506 Amendment. Any charge or complaint may be amended upon motion made by the complainant to the executive director or the examiner prior to the transfer of the case to the commission. [Order 77-8, § 391-21-506, filed 12/29/77, effective 2/1/78.]

WAC 391-21-508 Withdrawal. Any charge or complaint may be withdrawn by the complainant under such conditions as the executive director or the commission

may impose. [Order 77-8, § 391-21-508, filed 12/29/77, effective 2/1/78.]

WAC 391-21-510 Initial processing by executive director. After a charge is filed, the executive director shall review the charge to determine whether the facts as alleged may constitute an unfair labor practice within the meaning of RCW 41.56.140 or 41.56.150. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, the executive director shall issue and cause to be served on all parties an order of dismissal containing the reasons therefor; otherwise, the executive director shall cause the contents of the charge to be issued and served as a complaint of unfair labor practices, shall assign the matter to an examiner and shall notify the parties of such assignment. An order of dismissal issued pursuant to this section shall be subject to a petition for review as provided in WAC 391-21-534. [Order 77-8, § 391-21-510, filed 12/29/77, effective 2/1/78.]

WAC 391-21-512 Examiner--Who may act. The examiner may be a member of the agency staff or any other individual designated by the commission or executive director as an examiner. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding. [Order 77-8, § 391-21-512, filed 12/29/77, effective 2/1/78.]

WAC 391-21-514 Authority of examiner. The examiner shall have the authority, subject to these rules and under the authority of the commission:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place, and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold, during the course of the proceedings, conferences for the settlement, simplification or adjustment of issues;
- (8) To make and issue findings of fact, conclusions of law and orders;
- (9) To take any other action authorized under these rules. [Order 77-8, § 391-21-514, filed 12/29/77, effective 2/1/78.]

WAC 391-21-516 Notice of hearing. The examiner shall issue and cause to be served on the parties a notice of hearing at a time and place specified therein. The notice of hearing shall specify the date for the filing of an answer, which shall be five days after service of the complaint. Any such notice of hearing may be amended or withdrawn before the close of the hearing. [Order 77-8, § 391-21-516, filed 12/29/77, effective 2/1/78.]

WAC 391-21-518 Answer--Filing and service. The respondent(s) shall, on or before the date specified therefor in the notice of hearing, file with the examiner the original and three copies of its answer to the complaint, and shall serve a copy thereof upon the complainant. [Order 77-8, § 391-21-518, filed 12/29/77, effective 2/1/78.]

WAC 391-21-520 Answer--Contents and effect of failure to answer. An answer filed by a respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. The failure of a respondent to file an answer or the failure to specifically deny or explain in the answer a fact alleged in the complaint shall, except for good cause shown, be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of the respondent of a hearing as to the facts so admitted. [Order 77-8, § 391-21-520, filed 12/29/77, effective 2/1/78.]

WAC 391-21-522 Amendment of answer. The respondent may amend its answer at any time prior to the hearing. During the hearing or subsequent thereto, it may amend its answer in any case where the complaint has been amended, within such period as may be fixed by the examiner or the commission. Whether or not the complaint has been amended, the answer may, in the discretion of the examiner or the commission, be amended upon motion under such terms and within such period as may be fixed by the examiner or the commission. [Order 77-8, § 391-21-522, filed 12/29/77, effective 2/1/78.]

WAC 391-21-524 Motion to make complaint more definite and certain. If a complaint is alleged by a respondent to be so indefinite as to hamper the respondent in the preparation of its answer to the complaint, such respondent may, on or before the date specified for the filing of an answer, file a motion with the examiner requesting an order directing the complainant to make the complaint more definite and certain by the filing of a statement supplying specified information. Such motion shall be served on the complainant and on any other parties by the respondent filing same. The filing of such motion will extend the time during which the respondent must file and serve an answer until such date as the executive director or examiner may set. [Order 77-8, § 391-21-524, filed 12/29/77, effective 2/1/78.]

WAC 391-21-526 Hearings--Nature and scope. Hearings shall be public and shall be adversary in nature, limited to matters concerning the unfair labor practices alleged in the complaint. The complainant shall prosecute its own complaint and shall have the burden of proof. It shall be the duty of the examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice so as to obtain a clear, full and complete factual record on which the examiner and commission may discharge

their duties under these rules: *Provided, however,* That such duty of the examiner shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant with respect to the prosecution of the complaint or of the respondent with respect to the presentation of its defense. [Order 77-8, § 391-21-526, filed 12/29/77, effective 2/1/78.]

WAC 391-21-528 Briefs and proposed findings.

Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of fact, conclusions of law and order, or both, at such time as may be fixed by the examiner. The examiner may direct the filing of briefs when he deems such filing warranted by the nature of the proceeding or of particular issues therein. [Order 77-8, § 391-21-528, filed 12/29/77, effective 2/1/78.]

WAC 391-21-530 Examiner decision. After the close of the hearing and the filing of all briefs, the examiner shall prepare, file and serve his decision. Such decision shall contain the examiner's findings of fact, conclusion of law and order. The examiner shall file the original of his decision with the commission and shall cause a copy thereof to be served upon each of the parties. [Order 77-8, § 391-21-530, filed 12/29/77, effective 2/1/78.]

WAC 391-21-532 Withdrawal or modification of examiner decision. The examiner may, on his own motion, set aside, modify, change or reverse any findings of fact, conclusions of law or order at any time within twenty days following the issuance thereof, if any mistake is discovered therein or upon grounds of newly discovered evidence: *Provided, however,* That this section shall be inoperative after the filing of a petition for review with the commission. [Order 77-8, § 391-21-532, filed 12/29/77, effective 2/1/78.]

WAC 391-21-534 Petition for review of examiner decision. Within twenty days following the date of the issuance of the examiner's findings of fact, conclusions of law and order, any party may file with the commission a petition for review of all or any part of the examiner's findings of fact, conclusions of law and order or to any other part of the record or proceedings, including rulings upon all motions or objections. The original and three copies of the petition for review shall be filed with the commission and the party filing the petition shall also serve a copy thereof on each of the other parties to the proceeding. Such petition for review shall contain, in separate numbered paragraphs, statements of the specific findings, conclusions, orders or rulings on which the party filing the petition seeks review by the commission. A petition for review shall have attached to it any brief or written argument which the party filing the petition for review desires to have considered by the commission in its determination of the matter. Other parties to the proceeding shall have fourteen 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 request the parties to appear before it and make oral argument as to certain of the issues or all of the issues in the matter. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. [Order 77-8, § 391-21-534, filed 12/29/77, effective 2/1/78.]

WAC 391-21-535 Filing and service of cross-petition for review. Where a petition for review has been timely filed under WAC 391-21-534, any party who has not previously filed a petition for review may, within seven days following the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadlines for the submission of briefs or written arguments shall each be extended by seven days. [Statutory Authority: RCW 41.56.090 and 41.58.500 [41.58.050]. 78-07-014 (Order 78-3), § 391-21-535, filed 6/15/78.]

WAC 391-21-536 Commission action. Upon its own motion, or upon the filing of a petition for review, the commission shall cause the entire record in the proceeding to be transferred to it, and thereafter all motions and arguments shall be directed to the commission. The commission shall, on the basis of the record and any briefs or arguments submitted to it on review, affirm, modify or reverse the decision of the examiner or may remand the case to the examiner with instructions for further hearing. In the event no timely petition for review is filed as provided in WAC 391-21-534 and no action is taken by the commission upon its own motion to transfer the case to the commission within thirty days following the issuance of the examiner's findings of fact, conclusions of law and order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission. [Order 77-8, § 391-21-536, filed 12/29/77, effective 2/1/78.]

WAC 391-21-550 Collective bargaining--Policy. It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject. [Order 77-8, § 391-21-550, filed 12/29/77, effective 2/1/78.]

WAC 391-21-556 Unfair labor practice remedies. If an unfair labor practice is found to have been committed, the commission or its examiner shall remedy the effects of such unfair labor practice by issuing an order as provided in RCW 41.56.160. In calculating back pay orders, the following shall apply:

(1) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings such employee may have received during the period of the violation, calculated on a quarterly basis.

(2) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee may have received during the period of the violation, and the employer 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. [Order 77-8, § 391-21-556, filed 12/29/77, effective 2/1/78.]

WAC 391-21-700 Resolution of impasses--Request for mediation. A request for mediation may be made in writing or by telephone, but shall be confirmed in writing if made by telephone. The party or parties requesting mediation shall provide the following information to the agency:

(1) The name and address of the employer and the name, address and telephone number of the employer's principal representative in the negotiations;

(2) The name and address of the employee organization and the name, address and telephone number of the employee organization's principal representative in the negotiations;

(3) The name and address of the association or other organization, if any, filing the request on behalf of the employer or exclusive representative seeking mediation;

(4) A clear and concise statement of the disputed issues and the parties' positions in relation thereto;

(5) A description of the size and composition of the bargaining unit involved;

(6) The expiration date of any collective bargaining agreement then in effect or recently expired;

(7) Any other relevant information; and

(8) The name, signature, and capacity of each officer, attorney, or other individual acting for the filing party or parties. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-700, filed 3/28/80; Order 77-8, § 391-21-700, filed 12/29/77, effective 2/1/78.]

WAC 391-21-702 Impasse resolution--Determination whether assistance is needed. Upon filing of a request for mediation, the executive director shall appoint a mediator from the list of qualified persons maintained by the commission for that purpose. If the parties have

stipulated the names of one or more persons who are acceptable to both parties as mediator, then the executive director shall consider their desires. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-702, filed 3/28/80; Order 77-8, § 391-21-702, filed 12/29/77, effective 2/1/78.]

WAC 391-21-706 Impasse resolution--Function of mediator. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such steps as the mediator deems appropriate in order to aid the parties in voluntarily resolving their differences and effecting an agreement. [Order 77-8, § 391-21-706, filed 12/29/77, effective 2/1/78.]

WAC 391-21-708 Impasse resolution--Confidential nature of function. Information disclosed by the parties to the mediator in confidence during the course of mediation shall not be divulged by the mediator. Mediation meetings shall be of an executive, private or nonpublic nature. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-708, filed 3/28/80; Order 77-8, § 391-21-708, filed 12/29/77, effective 2/1/78.]

WAC 391-21-712 Impasse resolution--Dispute resolution panel. The commission shall establish and maintain a panel of qualified individuals, and shall make a list of members of that panel available to parties for their use in selecting a neutral chairman for an arbitration panel, grievance arbitrators, fact-finders and ad hoc interest arbitrators. Any person may apply for membership on the panel and, upon acceptance by the agency, shall be placed under contract pursuant to RCW 39.29.010. Only persons listed on the panel will be compensated by the agency as a neutral chairman pursuant to RCW 41.56.450 and WAC 391-21-737. Parties desiring to employ a neutral chairman not listed on the commission's panel shall do so as provided in RCW 41.56.450 and at their own expense. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-712, filed 3/28/80; Order 77-8, § 391-21-712, filed 12/29/77, effective 2/1/78.]

WAC 391-21-716 Impasse resolution--Disclosure. Prior to accepting the appointment, or as soon thereafter as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity in a dispute resolution proceeding under the jurisdiction of the commission shall disclose to the parties and to the executive director any circumstances likely to create an appearance of bias or which might disqualify him or her from serving in the impartial capacity. Employment of the person or any member of his or her immediate family by any party shall be disqualifying. Each party to the proceeding shall immediately notify the executive director and the appointee or selectee whether it is willing to waive disqualification. If either party declines to waive the disqualification, the appointment shall be vacated. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-716,

filed 3/28/80; Order 77-8, § 391-21-716, filed 12/29/77, effective 2/1/78.]

WAC 391-21-718 Impasse resolution--Vacancies. If any person serving in an impartial capacity in dispute resolution proceedings under the jurisdiction of the commission should resign, die, withdraw, refuse or be unable to serve, or should be or become disqualified to perform the duties of the office, the executive director shall declare the office vacant. The vacancy shall be filled as provided in these rules. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-718, filed 3/28/80; Order 77-8, § 391-21-718, filed 12/29/77, effective 2/1/78.]

WAC 391-21-719 Uniformed personnel--Interest arbitration. If a dispute involving uniformed personnel has not been settled after a reasonable period of mediation and the mediator is of the opinion that his or her further efforts will not result in an agreement, the mediator shall notify the parties of intent to recommend that the remaining issues in dispute be submitted to arbitration. If the dispute remains unresolved, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator and any statements of position filed by the parties as to the existence of an impasse warranting arbitration. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, written notice shall be given to both parties. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-719, filed 3/28/80.]

WAC 391-21-720 Uniformed personnel--Appointment of partisan arbitrators. Within five days following the issuance of the notice by the executive director, each party shall name one person who is available and willing to serve as its member of the arbitration panel, and shall notify the opposite party and the executive director of the name, address and telephone number of the person so designated. The members so appointed shall proceed as provided in RCW 41.56.450. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-720, filed 3/28/80; Order 77-8, § 391-21-720, filed 12/29/77, effective 2/1/78.]

WAC 391-21-721 Uniformed personnel--Selection of impartial arbitrator. (1) If the appointed members are able to reach agreement on the selection of a neutral chairman, they shall obtain a commitment from that person to serve, and shall notify the executive director of the identity of the neutral chairman so selected.

(2) If the appointed members agree to have the commission appoint a neutral chairman, they shall file with the executive director a written joint request. The parties and the appointed members are not entitled to influence the designation of an arbitrator under this subsection and shall not, either in writing or by other communication, attempt to indicate any preference for or against

any person as the neutral chairman to be appointed by the commission. Upon the filing of a request in proper form in compliance with this subsection, the executive director shall appoint a neutral chairman from the dispute resolution panel.

(3) If the appointed members desire to select a neutral chairman from a panel of arbitrators, they shall attempt to agree as to which of the agencies designated in RCW 41.56.450 will supply the list of arbitrators from which the neutral chairman will be selected. If the appointed members are unable to agree within five days following their first meeting as to which agency is to supply the list of arbitrators, either of them may apply to the executive director for a list of available neutral chairmen other than agency staff members and the neutral chairman shall be selected from the commission's dispute resolution panel. If the choice of agency has been agreed, either party or the parties jointly shall proceed forthwith to request a panel of five arbitrators, specifying "for interest arbitration proceedings under RCW 41.56.450." The selection of the impartial arbitrator shall be made pursuant to the rules of the agency supplying the list of arbitrators and the parties shall notify the executive director of the identity of the arbitrator so selected. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-721, filed 3/28/80.]

WAC 391-21-722 Uniformed personnel--List of issues for arbitration. At least five days before the date of the hearing, each party shall submit to the members of the panel and to the other party a written list of the issues it intends to submit to arbitration. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-722, filed 3/28/80; Order 77-8, § 391-21-722, filed 12/29/77, effective 2/1/78.]

WAC 391-21-723 Uniformed personnel--Hearing. For good cause shown, the neutral chairman may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-723, filed 3/28/80.]

WAC 391-21-724 Uniformed personnel--Order of proceedings and evidence. The neutral chairman shall be the judge of the relevancy of the evidence. 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. Each documentary exhibit shall be filed with the neutral chairman and copies shall be provided to the appointed members and to the other parties. The exhibits shall be retained by the neutral chairman until an agreement has been signed or until any judicial review proceedings have been concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairman. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-724, filed 3/28/80; Order 77-8, § 391-21-724, filed 12/29/77, effective 2/1/78.]

WAC 391-21-726 Uniformed personnel--Proceedings in the absence of a party. The neutral chairman may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute shall not be made solely on the default of a party, and the neutral chairman shall require the participating party to submit such evidence as may be required for making of the findings of fact and determining the issues. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-726, filed 3/28/80; Order 77-8, § 391-21-726, filed 12/29/77, effective 2/1/78.]

WAC 391-21-728 Uniformed personnel--Closing of the hearings. The neutral chairman shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and filing of brief within agreed time limits. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-728, filed 3/28/80; Order 77-8, § 391-21-728, filed 12/29/77, effective 2/1/78.]

WAC 391-21-733 Uniformed personnel--Conduct of interest arbitration proceedings. Proceedings shall be conducted as provided in WAC 391-21-716 through 391-21-737. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-733, filed 3/28/80.]

WAC 391-21-734 Uniformed personnel--Interpretation and application of rules. The neutral chairman shall interpret and apply these rules insofar as they relate to the powers and duties of the neutral chairman. 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 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-734, filed 3/28/80; Order 77-8, § 391-21-734, filed 12/29/77, effective 2/1/78.]

WAC 391-21-735 Uniformed personnel--Interest arbitration award. The determination of the neutral chairman shall be controlling, and shall not require concurrence, but may be accompanied by the concurring and/or dissenting opinions of the appointed members. Such determinations shall not be subject to review by the commission. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-735, filed 3/28/80.]

WAC 391-21-737 Uniformed personnel--Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairman appointed pursuant to WAC 391-21-721(1) or (3), along

with any costs for lists of arbitrators and for recording of the proceedings, shall be shared equally between the parties. The fees and traveling expense of a neutral chairman appointed by the commission pursuant to WAC 391-21-721(2), along with the costs of tapes for a tape recording of the proceedings but not a transcription thereof or the services of a court reporter, shall be paid by the commission. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-737, filed 3/28/80.]

WAC 391-21-738 Uniformed personnel--Central filing of agreements. The parties to collective bargaining agreements entered into as a result of collective bargaining pursuant to RCW 41.56.440 or 41.56.450 shall file with the executive director two complete copies of their agreement. [Statutory Authority: RCW 41.56.090 and 41.58.050. 80-04-073 (Order 80-2), § 391-21-738, filed 3/28/80; Order 77-8, § 391-21-738, filed 12/29/77, effective 2/1/78.]

WAC 391-21-800 Grievance arbitration--Who may file. A request for appointment of an arbitrator to hear and determine issues arising out of the interpretation or application of a collective bargaining agreement may be filed by the employer, the exclusive representative or their agents or by the parties jointly. [Order 77-8, § 391-21-800, filed 12/29/77, effective 2/1/78.]

WAC 391-21-802 Grievance arbitration--Filing--Service. Each request for appointment of a grievance arbitrator shall be on a form furnished by the commission or shall be prepared by the party or parties filing same in conformance with WAC 391-21-804. The original request shall be filed with the agency at its Olympia office. If the request is filed other than as a joint request, the party filing the request shall also serve a copy thereof on the other party to the collective bargaining agreement under which the dispute arises. [Order 77-8, § 391-21-802, filed 12/29/77, effective 2/1/78.]

WAC 391-21-804 Grievance arbitration--Contents of request. Each request for appointment of a grievance arbitrator shall contain:

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

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

(3) Identification of the request as: (a) A request for appointment of a member of the agency staff as arbitrator; or (b) a request for the submission of a list of arbitrators from which the parties might select an arbitrator.

(4) A description of the grievances or issues to be submitted to arbitration and the number of employees affected thereby.

(5) The agreement of the requesting party, or the parties jointly, that there will be no strike or lockout on any matter submitted to arbitration.

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

(7) The signature(s) and title(s), if any, of the representative(s) of the requesting party (parties). [Order 77-8, § 391-21-804, filed 12/29/77, effective 2/1/78.]

WAC 391-21-806 Grievance arbitration—Appointment of staff arbitrator. Upon the filing of a request by one party for the appointment of a member of the agency staff as grievance arbitrator, the executive director shall determine whether the other party to the collective bargaining agreement concurs in the appointment of a member of the agency staff as arbitrator. In the absence of concurrence, the executive director shall notify the requesting party of the lack of concurrence and shall take no further action. Upon concurrence of the party other than the party filing the request, or upon the filing of a joint request, the executive director shall assign a member of the agency staff as grievance arbitrator. The parties shall not be entitled or permitted to select a grievance arbitrator from a list of agency staff members submitted by the agency, but may jointly express a preference for appointment of a particular individual as their arbitrator. In making such assignments, the executive director shall consider the nature of the issues, the availability of the members of the agency staff and the expressed desires of the parties. The parties shall not have a right of rejection, and rejection of an arbitrator by either party shall be deemed to be a withdrawal of concurrence, following which the executive director shall take no further action in the matter. [Order 77-8, § 391-21-806, filed 12/29/77, effective 2/1/78.]

WAC 391-21-808 Grievance arbitration—Submission of arbitration panel. Upon the filing of a request for a list of arbitrators, the executive director shall provide the parties with a list of names drawn from the panel of neutrals maintained by the commission pursuant to WAC 391-21-712. The executive director shall provide the number of names requested by the party or parties filing the request, but in the absence of specification of a particular number shall provide the names of five arbitrators. Upon the filing of a joint request for submission of a second panel, the executive director shall comply with such request but shall not comply with additional requests for grievance arbitration panels involving the same matter. [Order 77-8, § 391-21-808, filed 12/29/77, effective 2/1/78.]

WAC 391-21-810 Grievance arbitration—Conduct of proceedings. The arbitrator assigned or selected 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 "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 in effect on

December 1, 1977: *Provided, however,* That arbitration matters handled by members of the agency staff shall be filed in the public files of the agency and shall not be accorded the privacy required by such code. The services of a member of the commission staff as arbitrator shall be subject to interruption for reassignment of such staff member to other functions of the agency having a higher priority. [Order 77-8, § 391-21-810, filed 12/29/77, effective 2/1/78.]

WAC 391-21-812 Grievance arbitration—Award. Any arbitrator assigned from the commission staff or selected by the parties from a panel designated by the commission shall, after submission of the arbitration award to the parties, file a copy thereof with the executive director. [Order 77-8, § 391-21-812, filed 12/29/77, effective 2/1/78.]

WAC 391-21-814 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 such witnesses. 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 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 staff member assigned as a grievance arbitrator, but no other expenses of the proceedings. [Order 77-8, § 391-21-814, filed 12/29/77, effective 2/1/78.]

WAC 391-21-900 Union security provisions. Any employee who, on the basis of bona fide religious tenets or teachings of a church or religious body of which such employee is a member, objects to the payment of dues to the exclusive representative under a union security agreement contained in a collective bargaining agreement made and entered into pursuant to the provisions of chapter 41.56 RCW shall notify the exclusive representative of such objection and shall, at the same time, notify the exclusive representative of the identity and address of one or more nonreligious charity or other charitable organizations to which such employee is prepared to make alternative payments in lieu of the payments required by said union security provision. Upon the agreement of the employee and the exclusive representative thereon, the employee shall make such payments and shall furnish written proof to the exclusive representative that such payments have been made. Upon a disagreement between the employee and the exclusive representative as to the eligibility of such employee to make alternative payments or as to the identity of the organization which is to receive such payments, either the employee or the exclusive representative may request from the commission a ruling thereon by filing with the commission at its Olympia office an original and three copies of a petition for declaratory ruling in the format specified in WAC 391-08-510 and by also

serving a copy thereof on the other party to the dispute and on the employer. Such petitions shall be referred to the executive director for investigation. If the petition raises questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties to the dispute and on the employer a notice of hearing before a hearing officer. The rules relating to the conduct of hearings and proceedings on petitions for clarification of an existing bargaining unit shall govern proceedings on objections to payments under a union security provision, except that the scope of the hearing shall be limited to matters relating to the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments: *Provided, however,* That the commission may create and, from time to time, modify a listing of organizations eligible to receive payments as an alternative to payments under a union security provision contained in a collective bargaining agreement and no employee, employer or exclusive representative shall have the right to petition for review of a designation made by the executive director from such listing. [Order 77-8, § 391-21-900, filed 12/29/77, effective 2/1/78.]

Chapter 391-25 WAC REPRESENTATION CASE RULES

WAC

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WAC 391-25-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission on petitions for investigation of questions concerning representation of employees. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

(2) Chapter 391-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing bargaining unit.

(3) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

(4) Chapter 391-55 WAC, which contains rules relating to resolution of impasses occurring in collective bargaining.

(5) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

(6) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-001, filed 9/30/80, effective 11/1/80.]

WAC 391-25-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (marine employees) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-002, filed 9/30/80, effective 11/1/80.]

WAC 391-25-010 Petition for investigation of a question concerning representation of employees--Who may file. A petition for investigation of a question concerning representation of employees, hereinafter referred to as a "petition," may be filed by any employee, group of employees, employee organization, employer or their agents. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-010, filed 9/30/80, effective 11/1/80.]

WAC 391-25-012 Special provision--Educational employees. A petition may be filed under chapter 41.59 RCW only by an employee organization or its agents (RCW 41.59.070(1)), or by employees, one of whom shall be designated as agent (RCW 41.59.070(4)). [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-012, filed 9/30/80, effective 11/1/80.]

WAC 391-25-030 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 must 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 thereof.

(2) Where a certification has been issued by the agency covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition must 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-030, filed 9/30/80, effective 11/1/80.]

WAC 391-25-050 Petition form--Number of copies--Filing--Service. Each petition shall be prepared on a form furnished by the commission or on a facsimile thereof. The original and three copies of the petition shall be filed with the agency at its Olympia office. The party filing the petition shall serve a copy on the employer and on each employee organization named in the

petition as having an interest in the proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-050, filed 9/30/80, effective 11/1/80.]

WAC 391-25-070 Contents of petition. Each petition shall contain:

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

(2) A description of the bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions, and, if known, 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 employer 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-070, filed 9/30/80, effective 11/1/80.]

WAC 391-25-090 Contents of petition filed by employer. Each petition filed by an employer shall contain all of the information required by WAC 391-25-070, except for that required by WAC 391-25-070(4). Each petition filed by an employer shall contain a statement that the employer 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. WAC 391-25-110 shall not be applicable to such petitions. Where the status of an incumbent exclusive bargaining representative is questioned, the employer shall attach such affidavits and other documentation as may be available to it to demonstrate the existence of a good faith doubt concerning the representation of its employees. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-090, filed 9/30/80, effective 11/1/80.]

WAC 391-25-092 Special provision--Educational employees. WAC 391-25-090 is inapplicable to petitions

filed under chapter 41.59 RCW. See WAC 391-25-012. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-092, filed 9/30/80, effective 11/1/80.]

WAC 391-25-130 List of employees. The employer shall submit to the commission a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition. Following administrative determination that the petition is supported by a sufficient showing of interest, the employer shall, upon request, provide a copy of the list of names and addresses to the petitioner. Following granting of a motion for intervention, the employer shall, upon request, provide a copy of the list of names and addresses to the intervenor. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-130, filed 9/30/80, effective 11/1/80.]

WAC 391-25-150 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner under such conditions as the executive director or the commission may impose. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-150, filed 9/30/80, effective 11/1/80.]

WAC 391-25-170 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 preceding the filing of the petition may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be 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 shall 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-170, filed 9/30/80, effective 11/1/80.]

WAC 391-25-210 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 agency and may not be litigated at any hearing. The agency shall not disclose the identities of employees whose authorization cards or letters are filed in support of a petition or motion for intervention. In order 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 agency shall not honor any attempt to withdraw or diminish a showing of interest. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-210, filed 9/30/80, effective 11/1/80.]

WAC 391-25-230 Election agreements. Where an employer and all other parties agree on a representation election, they may file an election agreement with the executive director. Such election agreement shall contain:

(1) The name and address of the employer 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 agency 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 cut off date for the election. If the parties request that the election be conducted by mail ballot, the list shall include the last known address of each of the employees eligible to vote. If no eligibility cut off date is specified by the parties, the eligibility cut off date shall 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 shall be filed with the agency at its Olympia office, and copies shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The election agreement shall remain posted for at least seven days after it is filed with the agency (ten days after it is deposited in the United States mail addressed to the agency).

Upon the filing of an election agreement conforming to the foregoing requirements and seeking an election in an appropriate bargaining unit, the executive director shall proceed to conduct an election. Objections to the election by a party to the election agreement shall be limited to matters relating to specific conduct affecting the results of the election. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-230, filed 9/30/80, effective 11/1/80.]

WAC 391-25-250 Cross-check agreements. Where only one organization is seeking certification as the representative of unrepresented employees, the employer and the organization may file a cross-check agreement with the executive director. Such cross-check agreement shall contain:

(1) The name and address of the employer 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 agency 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 employer.

(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 agency.

(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 shall be filed with the agency at its Olympia office, and copies thereof shall be posted by the employer in conspicuous places on the employer's premises where notices to affected employees are usually posted. The cross-check agreement shall remain posted for at least seven days after it is filed with the agency (ten days after it is deposited in the United States mail addressed to the agency).

Upon the filing of a cross-check agreement conforming to the foregoing requirements and seeking a cross-check in an appropriate bargaining unit, the executive director shall 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 shall be issued until seven days have elapsed following the filing and posting of the cross-check agreement. Where a motion for intervention is timely filed and granted, no certification shall be issued on the basis of the cross-check. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-250, filed 9/30/80, effective 11/1/80.]

WAC 391-25-252 Special provision—Educational employees. WAC 391-25-250 is inapplicable to petitions filed under chapter 41.59 RCW. [Statutory Authority:

RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-252, filed 9/30/80, effective 11/1/80.]

WAC 391-25-253 Special provision—Academic employees. WAC 391-25-250 is inapplicable to petitions filed under chapter 28B.52 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-253, filed 9/30/80, effective 11/1/80.]

WAC 391-25-270 Supplemental agreements. Where the parties are able to agree generally on the matters to be set forth in an election agreement under WAC 391-25-230 or a cross-check agreement under WAC 391-25-250, 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 391-25-230 or 391-25-250. Such supplemental agreement shall 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 shall be filed with the agency together with the agreement filed under WAC 391-25-230 or 391-25-250, and shall be posted with such agreement.

Upon the filing of a supplemental agreement, the executive director shall proceed with the determination of the question concerning representation. If the challenges are sufficient in number to affect the outcome, they shall be determined prior to the issuance of a certification. Otherwise, a conditional certification shall be issued which shall be amended upon final disposition of the issues framed in the supplemental agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-270, filed 9/30/80, effective 11/1/80.]

WAC 391-25-290 Notice of hearing. After a petition has been filed, if it appears to the executive director that there is reasonable cause to believe that a question concerning representation exists, there shall be issued and served on the employer and on all organizations

listed in the petition and on any organization having theretofore intervened, a notice of hearing before a hearing officer at a time and place fixed therein. The agency shall furnish the employer with copies of such notice, and the employer shall 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 before the close of the hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-290, filed 9/30/80, effective 11/1/80.]

WAC 391-25-299 Special provision--Private sector employees. The commission lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. The executive director shall not proceed in such matters unless an agreement is filed under WAC 391-25-230 or 391-25-250. WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW except for hearings and issues submitted under WAC 391-25-270. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-299, filed 9/30/80, effective 11/1/80.]

WAC 391-25-310 Hearings--Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-310, filed 9/30/80, effective 11/1/80.]

WAC 391-25-330 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-330, filed 9/30/80, effective 11/1/80.]

WAC 391-25-350 Hearings--Nature and scope. Hearings shall be public and shall be limited to matters

concerning the determination of the existence of a question concerning representation, the appropriate bargaining unit and questions of eligibility. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a clear and complete factual record upon which the commission and the executive director may discharge their duties under the pertinent statutes and these rules. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-350, filed 9/30/80, effective 11/1/80.]

WAC 391-25-370 Blocking charges--Suspension of proceedings--Request to proceed. (1) Where representation proceedings have been commenced under this chapter and:

- (a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 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 executive director 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 executive director. Such request to proceed shall identify, by case number, the representation proceedings for which it is made, shall request that those representation proceedings be continued notwithstanding the pending unfair labor practice case, and shall acknowledge that the commission will not entertain objections based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed conforming to the foregoing requirements the executive director shall resume the processing of the representation petition and shall 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 executive director shall proceed with the determination of the question concerning representation, subject to the right of any party to file objections as provided in WAC 391-25-590. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-370, filed 9/30/80, effective 11/1/80.]

WAC 391-25-390 Proceedings before the executive director. The executive director may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter. Such actions shall be subject to review by the commission only as follows:

- (1) Except for rulings as to whether the employer is subject to the jurisdiction of the commission, a direction of election and any accompanying rulings shall not be

subject to review by the commission except upon objections timely filed under WAC 391-25-590.

(2) An order of dismissal shall be 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 shall be submitted as provided in WAC 391-25-650. Unless the matter is transferred to the commission for review, an order of dismissal issued by the executive director shall have the same force and effect as if issued by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-390, filed 9/30/80, effective 11/1/80.]

WAC 391-25-391 Special provision--Public employees. Where only one organization is seeking certification as the representative of unrepresented employees, and the showing of interest submitted in support of the petition indicates that such organization has been authorized by a substantial majority of the employees to act as their representative for the purposes of collective bargaining, and the executive director finds that the conduct of an election would unnecessarily and unduly delay the determination of the question concerning representation with little likelihood of altering the outcome, the executive director may issue a direction of cross-check. The direction of cross-check and any accompanying rulings shall not be subject to review by the commission except upon objections timely filed under WAC 391-25-590. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-391, filed 9/30/80, effective 11/1/80.]

WAC 391-25-410 Cross-check of records. Where a cross-check of records is to be conducted to determine a question concerning representation, the organization shall submit to the agency 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 shall submit to the agency 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 employer shall make available to the agency original employment records maintained as a part of its business records containing the names and signatures of the employees in the bargaining unit. Prior to the commencement of the cross-check, the organization may file a request that the question concerning representation be determined by a representation election and such requests shall be honored. Where the organization files a disclaimer or a request for election after the commencement of the cross-check, the cross-check shall be terminated and the organization shall not seek to be certified in the bargaining unit for a period of at least one year thereafter. All cross-checks shall be by actual comparison of records submitted by the parties. The agency shall not disclose

the names of employees giving representation authorization in favor of or appearing on the membership rolls of the organization. Upon the conclusion of the comparison of records, the agency officer conducting the cross-check shall 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-410, filed 9/30/80, effective 11/1/80.]

WAC 391-25-412 Special provision--Educational employees. WAC 391-25-410 is inapplicable to petitions filed under chapter 41.59 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-412, filed 9/30/80, effective 11/1/80.]

WAC 391-25-413 Special provision--Academic employees. WAC 391-25-410 is inapplicable to petitions filed under chapter 28B.52 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-413, filed 9/30/80, effective 11/1/80.]

WAC 391-25-430 Notice of election. When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall 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 cut-off 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 shall be posted for at least seven days prior to the opening of the polls. In computing such period, the day of posting shall be counted, but the day on which the polls are opened shall not be counted. The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-430, filed 9/30/80, effective 11/1/80.]

WAC 391-25-450 Disclaimers. An organization may file a disclaimer and have its name removed from the ballot: *Provided, however,* That if such a disclaimer is filed after the issuance of a notice of election, the organization filing the disclaimer shall not seek to be certified in that bargaining unit for a period of at least one year thereafter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-

046 (Order 80-5), § 391-25-450, filed 9/30/80, effective 11/1/80.]

WAC 391-25-470 Electioneering. (1) Employers and organizations are prohibited from making election speeches on the employer's time to massed assemblies of employees within twenty-four hours before the scheduled time for the opening of the polls.

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

Violations of this rule shall be grounds for setting aside an election upon objections properly filed. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-470, filed 9/30/80, effective 11/1/80.]

WAC 391-25-490 Election procedures--Balloting. All elections shall be by secret ballot. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. Absentee balloting shall not be allowed. The agency may conduct elections by mail ballot when it appears that an election by "in person" procedures would result in undue delay, or would effectively deprive some eligible employees of their opportunity to vote. If mail balloting is used, the notice required by these rules shall be mailed to each eligible voter and no less than ten days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots. Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe: *Provided, however,* That no management official having authority over bargaining unit employees nor any officer or paid employee of an organization shall serve as observer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-490, filed 9/30/80, effective 11/1/80.]

WAC 391-25-510 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 shall be denied the right to cast a challenged ballot. The election officer shall not have authority to resolve challenges at the polls, and the ballot of the challenged voter shall be placed in a sealed envelope identifying the voter and the observer or election officer challenging the eligibility of the voter. The ballot shall 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 shall thereby be resolved. If the challenged ballots are insufficient in number to affect the results of the election, they shall be impounded and no ruling shall be made thereon. If the challenged ballots are sufficient in number to affect the results of the election, the election officer shall, after the close of the polls, ascertain the position of each party as to each challenged ballot and shall include such information in his report. If challenges raise material questions of fact which cannot be resolved without a

hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the provisions of WAC 391-25-670. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-510, filed 9/30/80, effective 11/1/80.]

WAC 391-25-530 Votes needed to determine election. (1) Unit determination elections shall 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 shall result in a certification of no representative. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-530, filed 9/30/80, effective 11/1/80.]

WAC 391-25-531 Special provision--Public employees. Where there are three or more choices on the ballot, representation elections shall be decided by a majority of those eligible to vote in the election. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-531, filed 9/30/80, effective 11/1/80.]

WAC 391-25-550 Tally sheet. Upon closing the polls, the election officer shall 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 shall be issued and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-550, filed 9/30/80, effective 11/1/80.]

WAC 391-25-570 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 run-off election shall be held providing for selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any organization to be excluded from a run-off 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 run-off election, the employer or decertification petitioner may file objections to specific conduct affecting the results of the inconclusive election. Such objections shall be resolved prior to the conduct of a run-off election. All run-off elections shall be determined as provided in WAC 391-25-530. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-570, filed 9/30/80, effective 11/1/80.]

WAC 391-25-590 Filing and service of objections. Within seven days after the tally has been served under WAC 391-25-410 or under WAC 391-25-550, 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 shall 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 and three copies of the objections shall be filed with the commission at its Olympia office, and the party filing the objections shall 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-590, filed 9/30/80, effective 11/1/80.]

WAC 391-25-610 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 run-off election is to be held, the executive director shall forthwith certify the results of the proceedings, with the same force and effect as if issued by the commission. The proceedings will thereupon be closed. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-610, filed 9/30/80, effective 11/1/80.]

WAC 391-25-630 Procedure where objections are filed. (1) Objections to conduct improperly affecting the results of an election shall be referred to the executive director for investigation. If the objections raise material questions of fact which cannot be resolved without a

hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. 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 shall 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-630, filed 9/30/80, effective 11/1/80.]

WAC 391-25-650 Briefs and written arguments on objections. All parties shall be entitled to submit briefs or written arguments for consideration by the commission. The briefs or written arguments of all parties shall be due simultaneously, as follows:

(1) The deadline for the filing of briefs or written arguments shall be fourteen days following the later of:

(a) The close of an investigation under WAC 391-25-630(1);

(b) The issuance of a transcript of a hearing held under WAC 391-25-630(1); or

(c) The filing of objections under WAC 391-25-590(2).

(2) The commission, the executive director or the designee of the executive director 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 prior to the deadline previously established.

The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served on each of the other parties. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-650, filed 9/30/80, effective 11/1/80.]

WAC 391-25-670 Commission action on objections. In all cases where objections have been filed, the entire record in the proceedings shall 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 shall determine the objections and any challenged ballots referred to the commission pursuant to WAC 391-25-510, and shall issue appropriate orders. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-046 (Order 80-5), § 391-25-670, filed 9/30/80, effective 11/1/80.]

Chapter 391-30 WAC COLLECTIVE BARGAINING RULES-- EDUCATIONAL EMPLOYMENT

WAC

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WAC 391-30-001 Scope—Contents—Other rules.

This chapter governs specific proceedings under chapter 288, Laws of 1975 (1st ex. sess.), chapter 41.59 RCW, and other statutes relating to collective bargaining between school district and their certificated employees. This chapter contains:

- (1) Procedures for representation cases, beginning at WAC 391-30-100.
- (2) Procedures for clarification of existing bargaining units, beginning at WAC 391-30-300.
- (3) Procedures for unfair labor practice cases, beginning at WAC 391-30-500.
- (4) Procedures for impasse resolution, beginning at WAC 391-30-700.
- (5) Procedures for determination of disputes concerning payments as an alternative to payment of dues under a union security provision, beginning at WAC 391-30-900.

The provisions of this chapter should be read in conjunction with the provisions of chapter 391-08 WAC, which contains general rules applicable to all types of proceedings before the public employment relations commission. [Order 77-6, § 391-30-001, filed 11/9/77.]

WAC 391-30-100 Petition for investigation of a question concerning representation of employees—Who may file. A petition for investigation of a question concerning representation of employees, hereinafter referred to as a "petition," may be filed pursuant to RCW 41.59.070(1) by any employee organization or its agents. A petition for decertification of an employee organization as exclusive bargaining representative in a collective bargaining unit may be filed pursuant to RCW 41.59.070(4) by employees, one of whom shall be designated as agent. [Order 77-6, § 391-30-100, filed 11/9/77.]

WAC 391-30-102 Petition form—Number of copies—Filing—Service. Each petition shall be prepared on a form furnished by the commission. The original petition and 3 copies thereof shall be filed with the agency at its Olympia office. The party filing the petition shall cause a copy thereof to be served upon the employer and upon each employee organization named in the petition

as having an interest in the proceedings. [Order 77-6, § 391-30-102, filed 11/9/77.]

WAC 391-30-104 Contents of petition. Each petition shall contain:

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

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

(3) The names, and if known, the addresses and telephone numbers of the principal representatives of any employee 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 employer 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 designation of an 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 title, if any, of the petitioner or its representative. [Order 77-6, § 391-30-104, filed 11/9/77.]

WAC 391-30-106 Supporting evidence. The original petition filed with the agency shall be accompanied by a showing of interest indicating that the petitioner has the support of not less than 30 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 during the 90-day period preceding the filing of such evidence with the agency. [Order 77-6, § 391-30-106, filed 11/9/77.]

WAC 391-30-108 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner under such conditions as the executive director or the commission may impose. [Order 77-6, § 391-30-108, filed 11/9/77.]

WAC 391-30-110 Intervention--By incumbent representative. An employee organization which demonstrates to the agency that it has been the exclusive representative in all or any part of the bargaining unit

involved in proceedings initiated by a petition during the year preceding the filing of the petition with the agency may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election conducted by the agency in such proceedings. No motion for intervention shall be considered under this section if made after the close of the hearing in the matter or more than 7 days after the filing of a consent election agreement. [Order 77-6, § 391-30-110, filed 11/9/77.]

WAC 391-30-112 Intervention--By organization other than incumbent. An employee organization not covered by WAC 391-30-110 may, by motion, intervene in proceedings initiated by a petition and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election conducted by the agency in such proceedings. Such motion for intervention shall be supported by a showing of interest indicating that the intervenor has the support of not less than 10 percent of the employees in the bargaining unit which the petitioner claims to be appropriate or of not less than 30 percent of the employees in a different bargaining unit which 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 during the 90-day period preceding the filing of such evidence with the agency. The showing of interest shall be made, *ex parte*, to the agency 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 agency may impose to avoid undue delay of the proceedings. No motion for intervention shall be considered under this section if made after the close of the hearing in the matter or more than 7 days after the filing of a consent election agreement. [Order 77-6, § 391-30-112, filed 11/9/77.]

WAC 391-30-113 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 agency and may not be litigated at any hearing. In order 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 agency will not honor any attempt to withdraw or diminish a showing of interest. [Order 77-6, § 391-30-113, filed 11/9/77.]

WAC 391-30-114 Consent elections. Where an employer and one or more employee organizations agree on a representation election, they may, either simultaneously with or subsequent to the filing of a petition, file a consent election agreement with the executive director. Such consent election agreement shall contain:

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

(2) The names and addresses of all employee organizations participating in the consent 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 employee 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 consent election agreement, or (c) the incumbent representative has abandoned the unit as evidenced by written memoranda or other documentation attached to the consent election agreement.

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

(6) A list, attached to the consent election agreement as an appendix, containing the names of the employees eligible to vote in the election, and the eligibility cut off date for the election. If the parties request that the election be conducted by mail ballot, the list provided under this subsection shall also include the last known address of each of the employees eligible to vote in the election. If no eligibility cut off date is provided by the parties, the eligibility cut off date shall be established as the date on which the consent election agreement is filed.

(7) The suggestions of the parties as to the day or days of the week and the time or times of the day during which the election should be conducted and the place agreed upon for the conduct of the election; or the agreement of the parties that the election be conducted by mail ballot.

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

The original and one copy of the consent election agreement shall be filed with the commission at its Olympia office, and copies thereof shall be posted by the employer in conspicuous places on the employer's premises where notices to employees are usually posted. The consent election agreement shall be posted on the date it is filed with the agency and shall remain posted for at least 7 days thereafter. Upon the filing of a consent election agreement conforming to the foregoing requirements, the executive director shall proceed with the conduct of an election. Objections to the election by a party to the consent election agreement shall be limited to matters relating to specific conduct affecting the results of the election. [Order 77-6, § 391-30-114, filed 11/9/77.]

WAC 391-30-116 Notice of hearing. After a petition has been filed, and if it appears to the executive director that there is reasonable cause to believe that a question concerning representation of employees may exist, there shall be issued and served on the employer and on any employee organizations listed in the petition as claiming to represent any of the employees in the bargaining unit and on any employee organization having theretofore intervened in the proceedings, a notice of hearing before a hearing officer at a time and place fixed therein. The agency shall furnish the employer with copies of such notice for posting in conspicuous places on its premises where notices to employees are usually posted, and the employer shall post same. Any such notice may be amended or withdrawn before the close of the hearing. [Order 77-6, § 391-30-116, filed 11/9/77.]

WAC 391-30-118 Hearings--Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Order 77-6, § 391-30-118, filed 11/9/77.]

WAC 391-30-120 Authority of hearing officer. The hearing officer shall have the authority, subject to these rules and under the authority of the commission:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold, during the course of the proceedings, conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized under these rules. [Order 77-6, § 391-30-120, filed 11/9/77.]

WAC 391-30-122 Hearings--Nature and scope. Hearings shall be public and shall be limited to matters concerning the determination of the existence of a question concerning representation of employees and questions of eligibility. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a full and complete factual record upon which the commission or the executive director may discharge their duties under the pertinent statutes and these rules. [Order 77-6, § 391-30-122, filed 11/9/77.]

WAC 391-30-124 Proceedings before the executive director. The executive director shall determine whether a question concerning representation of employees exists,

and shall issue a direction of election, dismiss the petition or make other disposition of the matter. Where a hearing has been held, the executive director may proceed forthwith upon the record, after submission of briefs, or after further hearing as may be appropriate. Such action shall be subject to a petition for review only as follows:

(1) An order of dismissal is a final order which shall be 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. Unless the matter is transferred to the commission for review, an order of dismissal issued by the executive director shall have the same force and effect as if issued by the commission.

(2) A direction of election is an interlocutory order wherein the conduct of an election is ordered and rulings may be made on other issues in dispute and, except for rulings as to whether the employer is subject to the jurisdiction of the commission, the direction of election and any accompanying rulings shall not be subject to review by the commission until after the conduct of the election and the issuance of a tally sheet. [Order 77-6, § 391-30-124, filed 11/9/77.]

WAC 391-30-126 Notice of election. In any proceeding in which an election is to be held, the agency shall furnish the employer with appropriate notices for posting in conspicuous places on the employer's premises where notices to employees are usually posted, and the employer shall promptly post same. Such notice shall contain:

(1) The description of the bargaining unit in which the election is to be conducted.

(2) The date(s), hours and polling place(s) for the election.

(3) The cut-off 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. The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed. [Order 77-6, § 391-30-126, filed 11/9/77.]

WAC 391-30-128 Election procedures--Disclaimers--Balloting. Notices of the election shall be posted for at least 7 days prior to the opening of the polls. In computing such period, the day of posting may be counted, but the day on which the polls are opened shall not be counted. An employee organization may file a disclaimer and, upon approval thereof by the executive director, have its name removed from the ballot: *Provided, however,* That if such a disclaimer is filed, the organization filing same shall not seek to be certified in that bargaining unit for a period of at least one year thereafter. All elections conducted under the supervision of the agency shall be by secret ballot. The agency may conduct elections by mail ballot when it appears that an election by "in person" procedures would result in undue delay, or would effectively deprive some eligible employees of

their opportunity to vote. If mail balloting is used, the notice required by these rules shall be mailed to each eligible voter and no less than 10 calendar days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots. Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe: *Provided, however,* That no person excluded as aligned with the management nor any officer or paid employee of an employee organization shall serve as observer. [Order 77-6, § 391-30-128, filed 11/9/77.]

WAC 391-30-130 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. The election officer shall not have authority to resolve challenges at the polls, and the ballot of the challenged voter shall be placed in a sealed envelope identifying the voter and the party challenging the eligibility of the voter. The ballot shall not be opened and counted 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 shall be resolved thereby. If the challenged ballots are insufficient in number to affect the results of the election, they shall be impounded and no ruling shall be made thereon unless the proceeding results in the issuance of a certification of representatives and a specific written request for a ruling is made by the employer or by the exclusive representative so certified. If the challenged ballots are sufficient in number to affect the results of the election, the election officer shall, after the close of the polls, ascertain the position of each party as to each challenged ballot and shall include such information in his report. If challenges raise questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties, a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter shall be transferred to the commission for its determination under the procedures of WAC 391-30-140. [Order 77-6, § 391-30-130, filed 11/9/77.]

WAC 391-30-132 Tally of ballots. Upon the conclusion of the election, the election officer shall prepare and cause to be furnished to 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 shall be issued and furnished to the parties.

The tally shall indicate whether the results of the election were conclusive or inconclusive. [Order 77-6, § 391-30-132, filed 11/9/77.]

WAC 391-30-134 Procedure following inconclusive election. In any election in which there are more than two choices on the ballot, if none of the choices receives a majority of the valid ballots cast, a run-off election shall be held providing for a selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any employee organization to be excluded from a run-off election or, where the choice of "no representative" is to be excluded from a run-off election, the employer, may, within five days after the tally of the inconclusive election has been furnished, file objections to specific conduct affecting the results of the inconclusive election; and such objections shall be resolved prior to the conduct of a run-off election. [Order 77-6, § 391-30-134, filed 11/9/77.]

WAC 391-30-136 Filing and service of objections to election. Within five days after the tally of ballots has been furnished to it, any party may file with the commission an original and three copies of objections to the election and shall serve a copy thereof on each of the other parties to the proceeding. Objections to the election may consist of:

(1) Designation of specific conduct improperly affecting the results of the representation election by coercion or intimidation of, or substantial misrepresentation of material fact, or threat of reprisal or promise of reward to eligible voters, and/or

(2) Designation of an interlocutory ruling or direction of election which the objecting party desires to have reviewed by the commission.

Objections shall 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 interlocutory orders, if any, of which the party filing the objections seeks review by the commission. Objections must be timely filed, whether or not challenged ballots are sufficient in number to affect the results of the election. [Order 77-6, § 391-30-136, filed 11/9/77.]

WAC 391-30-137 Filing and service of cross-objections. Where objections have been timely filed under WAC 391-30-136, any party who has not previously filed objections may, within five days following the last date on which objections may be filed, file cross-objections. Such cross-objections shall be filed and served in the same manner as objections filed under WAC 391-30-136. [Statutory Authority: RCW 41.58.050 and 41.59.110. 78-07-013 (Order 78-4), § 391-30-137, filed 6/15/78.]

WAC 391-30-138 Procedure where no objections are filed. If no objections are filed within the time set forth above, and if the challenged ballots are insufficient in number to affect the results of the election and if no

run-off election is to be held, the executive director shall forthwith issue to the parties a certification of the results of the election, including a certification of representatives where appropriate, with the same force and effect as if issued by the commission. The proceedings will thereupon be closed. [Order 77-6, § 391-30-138, filed 11/9/77.]

WAC 391-30-140 Procedure where objections to election are filed. (1) Objections to conduct improperly affecting the results of an election shall be referred to the executive director for investigation. If the objections raise questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. 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 shall 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 seeking review of prior rulings in the matter shall be referred directly to the commission.

(3) All parties shall be entitled to submit briefs or written arguments for consideration by the commission. The briefs or written arguments of all parties shall be due simultaneously. The deadline for the filing of briefs or written arguments shall be fourteen days following the later of: (a) the close of the investigation under (1), above; (b) the issuance of a transcript of a hearing held under (1) above or (c) the filing of objections under (2), above. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy thereof shall be served on each of the other parties. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. In all cases where objections have been filed, the executive director shall transfer the entire record in the proceeding, including the results of any investigation or hearing on objections to conduct affecting the results of the election, to the commission. The commission may request the parties to appear before it and make oral argument as to certain of the issues or all of the issues in the matter. [Order 77-6, § 391-30-140, filed 11/9/77.]

WAC 391-30-142 Commission action. The commission shall proceed to determine the objections, or challenges and objections as the case may be, either sustaining or overruling them, and:

(1) If the commission should sustain objections to a ruling or interlocutory order, it may direct that a new election be held in the same or a different bargaining unit, reverse or modify eligibility rulings previously made, dismiss the petition or make other disposition of the matter.

(2) If the commission should direct that challenged ballots affecting the results of the election referred to the commission by the executive director pursuant to

WAC 391-30-130 be opened and counted, such ballots shall be opened and counted and a revised tally of ballots shall be issued and furnished to the parties, together with a certification of the results of the election and a certification of representatives, where appropriate.

(3) If the commission should overrule the objections, it shall forthwith issue to the parties a certification of the results of the election, including a certification of representatives, where appropriate. [Order 77-6, § 391-30-142, filed 11/9/77.]

WAC 391-30-300 Petition for clarification of an existing bargaining unit—Who may file. A petition for clarification of an existing bargaining unit, in the absence of a question concerning representation, may be filed by the employer, the exclusive representative or their agents, or by the parties jointly. [Order 77-6, § 391-30-300, filed 11/9/77.]

WAC 391-30-302 Petition form—Number of copies—Filing—Service. Each petition for clarification of an existing bargaining unit shall be prepared on a form furnished by the commission or shall be prepared by the party or parties filing same on 8-1/2" x 13" paper in conformance with WAC 391-30-304. The original petition and three copies thereof shall be filed with the agency at its Olympia office. If the petition is filed other than as a jointly filed petition, the party filing the petition shall cause a copy thereof to be served upon the other party to the collective bargaining relationship in the bargaining unit in which the disagreement arises. [Order 77-6, § 391-30-302, filed 11/9/77.]

WAC 391-30-304 Contents of petition. Each petition for clarification of an existing bargaining unit shall contain:

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

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

(3) The description of the existing bargaining unit, specifying inclusions and exclusions and the number of employees in such bargaining unit.

(4) Identification of the proceeding in which any certification of representatives was issued or the date of the recognition agreement, and the history of any modifications of the bargaining unit subsequent thereto.

(5) A description of the proposed clarification, including the position(s), classification(s) or group(s) in issue, the number of employees in each such position, classification or group, the present bargaining unit inclusion or exclusion status of each such position, classification or group and the party proposing that the present status be changed.

(6) The names and addresses of any other employee organizations who claim to represent any employees affected by the proposed clarification(s) and brief

description(s) of the contracts, if any, covering such employees.

(7) A statement of the reasons for the proposed clarification.

(8) Any other relevant facts.

(9) The signature(s) and title(s), if any, of the representative(s) of the petitioner(s). [Order 77-6, § 391-30-304, filed 11/9/77.]

WAC 391-30-306 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner(s) under such conditions as the executive director or the commission may impose. [Order 77-6, § 391-30-306, filed 11/9/77.]

WAC 391-30-308 Notice of hearing. After a petition for clarification of an existing bargaining unit has been filed, and if it appears to the executive director that a disagreement exists which might appropriately be the subject of an order clarifying an existing bargaining unit, there shall be issued and served on the employer and on the exclusive representative a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing. [Order 77-6, § 391-30-308, filed 11/9/77.]

WAC 391-30-310 Consolidation of proceedings. In the event a proceeding is pending which was initiated by a petition for clarification of an existing bargaining unit at the same time as another proceeding is pending before the agency involving all or any part of the same bargaining unit and which was initiated by a petition for investigation of a question concerning representation of employees filed pursuant to WAC 391-30-100, the proceedings shall be consolidated and all issued concerning the description of the bargaining unit shall be resolved in the consolidated proceedings. [Order 77-6, § 391-30-310, filed 11/9/77.]

WAC 391-30-312 Hearings—Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Order 77-6, § 391-30-312, filed 11/9/77.]

WAC 391-30-314 Authority of hearing officer. The hearing officer shall have the authority, subject to these rules and under the authority of the commission:

(1) To administer oaths and affirmations;

(2) To issue subpoenas in the name of the commission;

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

(4) To question witnesses;

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

(6) To dispose of procedural requests or other procedural matters;

(7) To hold, during the course of the proceedings, conferences for the settlement, simplification or adjustment of issues; and

(8) To take any other action authorized under these rules. [Order 77-6, § 391-30-314, filed 11/9/77.]

WAC 391-30-316 Hearings--Nature and scope. Hearings shall be public and shall be limited to matters concerning the determination of the petition for clarification of an existing bargaining unit. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a full and complete factual record upon which the commission or the executive director may discharge their duties under the pertinent statutes and these rules. [Order 77-6, § 391-30-316, filed 11/9/77.]

WAC 391-30-318 Proceedings before the executive director. After the close of the hearing, the executive director may proceed forthwith upon the record, after submission of briefs or after further hearing, as may be appropriate, to determine the status of each position, classification or group over which there is a disagreement and to issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter. [Order 77-6, § 391-30-318, filed 11/9/77.]

WAC 391-30-320 Proceedings before the commission--Petition for review. The final order of the executive director shall be 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 issued by the executive director. The original petition for review and three copies thereof shall be filed with the commission at its Olympia office and the party filing the petition shall cause a copy thereof to be served upon the other party to the proceeding. The petition for review shall identify the positions, classifications or groups on which review is sought. Any party to the proceeding may, within fourteen days following the filing of the petition for review, file with the commission any briefs or written arguments which it desires to have considered by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy thereof shall be served upon the other party. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. The commission may request the parties to appear before it and make oral argument as to certain of the issues or all of the issues in the matter. [Order 77-6, § 391-30-320, filed 11/9/77.]

WAC 391-30-321 Filing and service of cross-petition for review. Where a petition for review has been timely filed under WAC 391-30-320, any party who has not previously filed a petition for review may, within seven days following the last date on which a petition for review may be filed, file a cross-petition for review.

Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadline for the submission of briefs or written arguments shall be extended by seven days. [Statutory Authority: RCW 41.58.050 and 41.59.110. 78-07-013 (Order 78-4), § 391-30-321, filed 6/15/78.]

WAC 391-30-322 Commission action. The executive director shall certify the entire record in the proceeding to the commission. The commission shall proceed to review the entire record, together with such briefs or written arguments as may have been filed on review, and shall determine the status of each position, classification or group covered by the petition for review, and shall issue appropriate orders. [Order 77-6, § 391-30-322, filed 11/9/77.]

WAC 391-30-500 Complaint charging unfair labor practices--Who may file. A complaint charging that any person has engaged in or is engaging in unfair labor practice, hereinafter referred to as a "complaint" may be filed by any employee, group of employees, employee organization, employer or their agents. [Order 77-6, § 391-30-500, filed 11/9/77.]

WAC 391-30-502 Complaint form--Number of copies--Filing--Service. Each complaint shall be in writing. The original complaint and 3 copies thereof shall be filed with the agency at its Olympia office. The party filing the complaint shall cause a copy thereof to be served upon each party named therein as a respondent. [Order 77-6, § 391-30-502, filed 11/9/77.]

WAC 391-30-504 Contents of complaint charging unfair labor practices. Each complaint shall contain, in separate numbered paragraphs:

(1) The name and address of the party filing the complaint, hereinafter referred to as the complainant, and the name, address and telephone number of its attorney or principal representative.

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

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

(4) A listing of the sections of the RCW alleged to have been violated.

(5) A statement of the relief sought by the complainant.

(6) The signature and title, if any, of the person filing the complaint. [Order 77-6, § 391-30-504, filed 11/9/77.]

WAC 391-30-506 Amendment. Any such complaint may be amended upon motion made by the complainant to the executive director or the examiner prior to the

transfer of the case to the commission, or to the commission after the transfer of the case to the commission. [Order 77-6, § 391-30-506, filed 11/9/77.]

WAC 391-30-508 Withdrawal. Any complaint may be withdrawn by the complainant under such conditions as the executive director or the commission may impose. [Order 77-6, § 391-30-508, filed 11/9/77.]

WAC 391-30-510 Initial processing by executive director. After a complaint is filed, the executive director shall review the complaint to determine whether the facts as alleged may constitute an unfair labor practice within the meaning of RCW 41.59.140. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, the executive director shall issue and cause to be served on all parties an order of dismissal containing the reasons therefor; otherwise, the executive director shall assign the matter to an examiner and shall notify the parties of such assignment. An order of dismissal issued pursuant to this section shall be subject to a petition for review as provided in WAC 391-30-534. [Order 77-6, § 391-30-510, filed 11/9/77.]

WAC 391-30-512 Examiner—Who may act. The examiner may be a member of the agency staff or any other individual designated by the commission or executive director as an examiner. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding. [Order 77-6, § 391-30-512, filed 11/9/77.]

WAC 391-30-514 Authority of examiner. The examiner shall have the authority, subject to these rules and under the authority of the commission:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place, and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold, during the course of the proceedings, conferences for the settlement, simplification or adjustment of issues;
- (8) To make and issue findings of fact, conclusions of law and orders;
- (9) To take any other action authorized under these rules. [Order 77-6, § 391-30-514, filed 11/9/77.]

WAC 391-30-516 Notice of hearing. The examiner shall issue and cause to be served on the parties a notice of hearing at a time and place specified therein. The notice of hearing shall specify the date for the filing of an answer, which shall be not less than ten days prior to the date set for hearing. Any such notice of hearing may be

amended or withdrawn before the close of the hearing. [Order 77-6, § 391-30-516, filed 11/9/77.]

WAC 391-30-518 Answer—Filing and service. The respondent(s) shall, on or before the date specified therefor in the notice of hearing, file with the examiner the original and 3 copies of its answer to the complaint, and shall serve a copy thereof upon the complainant. [Order 77-6, § 391-30-518, filed 11/9/77.]

WAC 391-30-520 Answer—Contents and effect of failure to answer. An answer filed by a respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. The failure of a respondent to file an answer or the failure to specifically deny or explain in the answer a fact alleged in the complaint shall, except for good cause shown, be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of the respondent of a hearing as to the facts so admitted. [Order 77-6, § 391-30-520, filed 11/9/77.]

WAC 391-30-522 Amendment of answer. The respondent may amend its answer at any time prior to the hearing. During the hearing or subsequent thereto, it may amend its answer in any case where the complaint has been amended, within such period as may be fixed by the examiner or the commission. Whether or not the complaint has been amended, the answer may, in the discretion of the examiner or the commission, be amended upon motion under such terms and within such period as may be fixed by the examiner or the commission. [Order 77-6, § 391-30-522, filed 11/9/77.]

WAC 391-30-524 Motion to make complaint more definite and certain. If a complaint is alleged by a respondent to be so indefinite as to hamper the respondent in the preparation of its answer to the complaint, such respondent may, on or before the date specified for the filing of an answer, file a motion with the examiner requesting an order directing the complainant to make the complaint more definite and certain by the filing of a statement supplying specified information. Such motion shall be served on the complainant and on any other parties by the respondent filing same. The filing of such motion will extend the time during which the respondent must file and serve an answer until such date as the executive director or examiner may set. [Order 77-6, § 391-30-524, filed 11/9/77.]

WAC 391-30-526 Hearings—Nature and scope. Hearings shall be public and shall be adversary in nature, limited to matters concerning the unfair labor practices alleged in the complaint. The complainant shall prosecute its own complaint and shall have the burden of proof. It shall be the duty of the examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice so as to obtain a clear, full and complete factual record

on which the examiner and commission may discharge their duties under these rules: *Provided, however,* That such duty of the examiner shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant with respect to the prosecution of the complaint or of the respondent with respect to the presentation of its defense. [Order 77-6, § 391-30-526, filed 11/9/77.]

WAC 391-30-528 Briefs and proposed findings. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of fact, conclusions of law and order, or both, at such time as may be fixed by the examiner. The examiner may direct the filing of briefs when he deems such filing warranted by the nature of the proceeding or of particular issues therein. [Order 77-6, § 391-30-528, filed 11/9/77.]

WAC 391-30-530 Examiner decision. After the close of the hearing and the filing of all briefs, the examiner shall prepare, file and serve his decision. Such decision shall contain the examiner's findings of fact, conclusion of law and order. The examiner shall file the original of his decision with the commission and shall cause a copy thereof to be served upon each of the parties. [Order 77-6, § 391-30-530, filed 11/9/77.]

WAC 391-30-532 Withdrawal or modification of examiner decision. The examiner may, on his own motion, set aside, modify, change or reverse any findings of fact, conclusions of law or order at any time within 20 days following the issuance thereof, if any mistake is discovered therein or upon grounds of newly discovered evidence: *Provided, however,* That this section shall be inoperative after the filing of a petition for review with the commission. [Order 77-6, § 391-30-532, filed 11/9/77.]

WAC 391-30-534 Petition for review of examiner decision. Within 20 days following the date of the issuance of the examiner's findings of fact, conclusions of law and order, any party may file with the commission a petition for review of all or any part of the examiner's findings of fact, conclusions of law and order or to any other part of the record or proceedings, including rulings upon all motions or objections. The original and 3 copies of the petition for review shall be filed with the commission and a copy thereof shall be served upon each of the other parties to the proceeding. Such petition for review shall contain, in separate numbered paragraphs, statements of the specific findings, conclusions, orders or rulings on which the party filing the petition seeks review by the commission. A petition for review shall have attached to it any brief or written argument which the party filing the petition for review desires to have considered by the commission in its determination of the matter. Other parties to the proceeding shall have fourteen 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 request the parties to appear before it and make oral argument as to certain of the issues or all of the issues in the matter. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. [Order 77-6, § 391-30-534, filed 11/9/77.]

WAC 391-30-535 Filing and service of cross-petition for review. Where a petition for review has been timely filed under WAC 391-30-534, any party who has not previously filed a petition for review may, within seven days following the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadlines for the submission of briefs or written arguments shall each be extended by seven days. [Statutory Authority: RCW 41.58.050 and 41.59.110. 78-07-013 (Order 78-4), § 391-30-535, filed 6/15/78.]

WAC 391-30-536 Commission action. Upon its own motion, or upon the filing of a petition for review, the commission shall cause the entire record in the proceeding to be transferred to it, and thereafter all motions and arguments shall be directed to the commission. The commission shall, on the basis of the record and any briefs or arguments submitted to it on review, affirm, modify or reverse the decision of the examiner or may remand the case to the examiner with instructions for further hearing. In the event no timely petition for review is filed as provided in WAC 391-30-534 and no action is taken by the commission upon its own motion to transfer the case to the commission within 30 days following the issuance of the examiner's findings of fact, conclusions of law and order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission. [Order 77-6, § 391-30-536, filed 11/9/77.]

WAC 391-30-550 Collective bargaining--Policy. It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject. [Order 77-6, § 391-30-550, filed 11/9/77.]

WAC 391-30-552 Collective bargaining procedure. The obligation to bargain in good faith imposed upon an employer and the exclusive representative of its employees, respectively, by RCW 41.59.020(2) and 41.59.140(1)(e) or 41.59.140(2)(c) includes:

(1) The obligation to submit, as to each subject for bargaining advanced by the party, a written statement of the language proposed for incorporation in or deletion from the collective bargaining agreement between the parties, together with a written or oral explanation or justification of such proposals.

(2) The obligation to submit, as to each subject for bargaining advanced by the other party, at least one written response thereto, together with a written or oral explanation of such response: *Provided, however,* That a party which asserts in a written response that a subject for bargaining advanced by the other party is not a mandatory subject for collective bargaining may thereafter refuse to make further proposals as to such subject or subjects for bargaining.

(3) The obligation to receive proposals from the other party as to all subjects for bargaining in dispute between the parties and, until a legal impasse has been reached, to refrain from demanding the removal of any such subject from the bargaining table on the basis that it is not a mandatory subject for collective bargaining.

(4) The obligation to exhaust the mediation and fact finding procedure established pursuant to RCW 41.59.120 before implementing all or any part of a final offer in negotiations, except as provided in RCW 41.59.930. [Order 77-6, § 391-30-552, filed 11/9/77.]

WAC 391-30-554 Determination of disputes as to scope of bargaining. Fact finders appointed pursuant to chapter 41.59 RCW and these rules shall treat any subject on which one party has taken a position that the subject is not a mandatory subject for collective bargaining in accordance with WAC 391-30-726, and shall rule only on the reasonability of the proposal advanced in the context of the whole of the negotiations between the parties. If, following the completion of mediation and fact finding procedures, a dispute remains between the parties as to whether a subject or proposal in dispute between them is a mandatory subject for collective bargaining, then they shall be deemed to be at a legal impasse and:

(1) The party advancing the proposal or proposals in question may charge the other party with a violation of RCW 41.59.140(1)(e) or 41.59.140(2)(c) for having then or theretofore refused to engage in collective bargaining with respect to such subject or subjects; or

(2) The party asserting that a proposal or proposals advanced by the other party are not mandatory subjects for collective bargaining may charge such other party with a violation of RCW 41.59.140(1)(e) or 41.59.140(2)(c) for continuing to advance proposals on a subject which is not a mandatory subject for collective bargaining after having reached a legal impasse in negotiations. [Order 77-6, § 391-30-554, filed 11/9/77.]

WAC 391-30-556 Unfair labor practice remedies. If an unfair labor practice is found to have been committed, the commission or its examiner shall remedy the effects of such unfair labor practice by issuing an order as provided in RCW 41.59.150. In calculating back pay orders, the following shall apply:

(1) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings such employee may have received during the period of the violation, calculated on a quarterly basis.

(2) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee may have received during the period of the violation, and the employer 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. [Order 77-6, § 391-30-556, filed 11/9/77.]

WAC 391-30-560 Motion for temporary relief. Any complainant in an unfair labor practice proceeding under this chapter may file a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions shall be processed as provided in this section.

(1) The complainant shall, at the time its complaint is filed pursuant to WAC 391-30-502 or as soon thereafter as facts giving rise to the request for temporary relief become known, provide written notice to the executive director of its intent to make a motion for temporary relief and shall, at the same time, serve a copy of such notice upon each of the other parties to the proceedings.

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the executive director shall expedite the processing of the matter under WAC 391-30-510.

(3) After the determination of the executive director pursuant to WAC 391-30-510, any complainant desiring temporary relief may file with the executive director a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies in support of such motion, and shall serve a copy of such motion and affidavits on all other parties to the proceeding. The other parties shall have seven calendar days thereafter to serve and file counter-affidavits.

(4) Upon the filing of the motion for temporary relief, the executive director shall forward all affidavits to the commission to determine whether an injunction pendente lite should be sought. In making such determination, the commission shall adhere to the following policy:

"The name and authority of the public employment relations commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 391-30-500, *et seq.*, unless it appears that

one or more of the allegations in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo be preserved pending the completion of administrative proceedings."

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction *pendente lite*.

(b) Whenever temporary relief has been procured, the complaint which has been the basis for such temporary relief shall be heard expeditiously and the case shall be given priority over all other cases except cases of like character.

(c) If the commission concludes that temporary relief should not be sought prior to the conclusion of administrative proceedings in the matter, the executive director shall provide written notice thereof to all parties. Such determination shall not bar renewal of the request for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist. [Order 77-6, § 391-30-560, filed 11/9/77.]

WAC 391-30-700 Resolution of impasses--Request for mediation. If, following bilateral collective bargaining negotiations, a party or the parties jointly feel that their sincere efforts towards reaching a collective bargaining agreement will not produce that result or resolve their differences, either party or the parties jointly may declare that an impasse exists and may request from the commission assistance for the settlement of such dispute through mediation. A request for mediation may be made in writing or by telephone, but shall be confirmed in writing if made by telephone. The party or parties requesting mediation shall provide the following information to the agency:

(a) The name and address of the employer and the name, address and telephone number of the employer's principal representative in the negotiations.

(b) The name and address of the employee organization and the name, address and telephone number of the employee organization's principal representative in the negotiations;

(c) The name and address of the association or other organization, if any, filing the request on behalf of the employer or exclusive representative seeking mediation;

(d) A declaration that an impasse has been reached in collective bargaining;

(e) A clear and concise statement of the disputed issues and the parties' positions in relation thereto;

(f) A description of the size and composition of the bargaining unit involved;

(g) The expiration date of any collective bargaining agreement then in effect or recently expired;

(h) Any other relevant information; and

(i) The name, signature, and capacity of each officer, attorney, or other individual acting for the filing party or parties. [Order 77-6, § 391-30-700, filed 11/9/77.]

WAC 391-30-702 Impasse resolution--Determination whether assistance is needed. Upon filing of a unilateral request for mediation, the executive director shall determine the position of the party other than the party making the request, and shall determine whether the assistance of the agency is needed. In making such determination the executive director shall determine whether the parties have heard and heeded the proposals of one another and whether the intervention of the agency will have a beneficial impact on the negotiating process. Prior to making such determination, the executive director or a member of the agency staff acting on his behalf may make an on-site investigation and may ask the parties to engage in conciliation under the general authority of the commission under RCW 41.58.020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator from the list of qualified persons maintained by the commission for that purpose. If the parties have filed a stipulation listing the names of one or more persons who are acceptable to both parties as mediator, then the executive director shall, consistent with the availability of such individual, attempt to conform to the express desires of the parties. [Order 77-6, § 391-30-702, filed 11/9/77.]

WAC 391-30-704 Impasse resolution--Submission of written proposals. Parties requesting the mediation services of the agency are encouraged, and all parties requesting the fact finding services of the agency are required to file with the agency, for delivery to the assigned mediator and/or fact finder, copies of their latest written proposals made pursuant to WAC 391-30-552(1) and (2) on each issue in dispute between the parties, together with a written statement detailing the impact which the proposed language has on the wages, hours, and terms and conditions of employment of employees in the bargaining unit and/or on the educational and organization policies of the school district. Each party shall file its written proposals and statements with the agency within 5 days following the date of the written notice provided for in WAC 391-30-710 and, if it has not previously done so, serve a copy thereof on the other party to the negotiations. [Order 77-6, § 391-30-704, filed 11/9/77.]

WAC 391-30-706 Impasse resolution--Function of mediator. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such steps as the mediator deems appropriate in order to aid the parties in resolving their differences and effecting a mutually acceptable agreement. [Order 77-6, § 391-30-706, filed 11/9/77.]

WAC 391-30-708 Impasse resolution--Confidential nature of function. Any information disclosed by the parties to the mediator in confidence during the course

of mediation proceedings shall not be divulged unless such disclosure is approved by the party which originated the confidential disclosure to the mediator. Mediation meetings shall be of an executive, private or nonpublic nature except if otherwise mutually agreed by the parties or their representatives. [Order 77-6, § 391-30-708, filed 11/9/77.]

WAC 391-30-710 Impasse resolution--Fact finding. If the dispute has not been settled after ten days of mediation, either party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party. The parties may, by mutual agreement made at any time prior to the appointment of a fact finder, extend the period for mediation or place in the hands of the mediator the determination of when the mediation process has been exhausted so as to warrant the initiation of fact finding. [Order 77-6, § 391-30-710, filed 11/9/77.]

WAC 391-30-712 Impasse resolution--Fact finding panel. The commission shall establish and maintain a panel of individuals available for selection or appointment as fact finders and shall make a listing of the members of that panel available to parties engaged in fact-finding proceedings for their use in selecting a fact finder. Any qualified neutral who is not an employee of the agency may apply for membership on the panel and, upon acceptance by the agency, shall be placed under contract pursuant to RCW 39.29.010. No person not listed on the panel shall be compensated by the agency as a fact finder, and parties desiring to employ the services of a fact finder not listed on the commission's panel shall do so under their own procedures and at their own expense. [Order 77-6, § 391-30-712, filed 11/9/77.]

WAC 391-30-714 Impasse resolution--Selection of fact finder. Within five days following the receipt of a listing of the members of the agency's fact finding panel, the parties shall meet and attempt to select a person as fact finder. If the parties are able to reach agreement on the selection of a fact finder they shall seek to obtain a commitment from that person to serve as fact finder, and if such commitment is obtained shall notify the agency of that fact. If the parties are unable to agree upon a fact finder mutually acceptable and willing to serve, they shall notify the executive director, who shall designate a fact finder from the commission's panel. Parties may, by mutual consent, designate the mediator who handled the case as their fact finder. [Order 77-6, § 391-30-714, filed 11/9/77.]

WAC 391-30-716 Impasse resolution--Disclosure by fact finder. Prior to accepting the appointment, or as soon thereafter as information giving rise to a problem of appearance of fairness becomes known to the fact finder, the fact finder shall disclose to the parties and to the executive director any circumstances likely to create a presumption of bias or which might disqualify the person selected or appointed as an impartial fact finder. Each party to the proceeding shall immediately notify

the executive director and the fact finder whether it is willing to waive presumptive disqualification. If either party declines to waive the presumptive disqualification, the appointment of the fact finder shall be vacated and the vacancy thus created shall be filled in the same manner as that governing the making of an original appointment. [Order 77-6, § 391-30-716, filed 11/9/77.]

WAC 391-30-718 Impasse resolution--Vacancies as fact finder. If any fact finder should resign, die, withdraw, refuse or be unable to serve, or if disqualified to perform the duties of the office, the commission shall, upon proof satisfactory to it, declare the office vacant. Vacancies shall be filled in the same manner as that governing the making of the original appointment. [Order 77-6, § 391-30-718, filed 11/9/77.]

WAC 391-30-720 Impasse resolution--List of issues for fact finding. At least seven days before the date of the fact finding hearing, each party shall submit to the fact finder and to the other party a written list of the issues it intends to submit to fact finding. [Order 77-6, § 391-30-720, filed 11/9/77.]

WAC 391-30-722 Impasse resolution--Fact finding hearing. The fact finder shall fix the time and place of each hearing. Any party may be represented by counsel or by other authorized representative. The fact finding hearing shall be open to the public unless otherwise mutually agreed to by the parties. The fact finder, for good cause shown, may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may provide, by written agreement, for the waiver of oral hearing. [Order 77-6, § 391-30-722, filed 11/9/77.]

WAC 391-30-724 Impasse resolution--Order of fact finding proceedings and evidence. The order of presentation at the hearing shall be as mutually agreed between the parties or as determined by the fact finder. The parties may offer such evidence as they desire and shall produce such additional evidence as the fact finder may deem necessary to an understanding and determination of the dispute. The fact finder shall be the judge of the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of all of the parties, except where any of the parties is absent in default or has waived his right to be present. Each exhibit introduced by a party shall be filed with the fact finder and a copy shall be provided to the other party. The exhibits filed with the fact finder shall be retained by the fact finder unless the parties otherwise agree, or unless the fact finder otherwise permits. [Order 77-6, § 391-30-724, filed 11/9/77.]

WAC 391-30-726 Impasse resolution--Fact finding in the absence of a party. The fact finder may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and recommendations shall not be made solely on the default of a party, and the fact finder shall require

the other party to submit such evidence as he may require for the making of findings of fact and recommendations. [Order 77-6, § 391-30-726, filed 11/9/77.]

WAC 391-30-728 Impasse resolution--Closing of fact finding hearings. The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits. If the fact finder allows the filing of post-hearing briefs or other documents, the hearing shall be deemed closed as of the final date set by the fact finder for the filing of such briefs or other documents. The hearings may be reopened by the fact finder on his or her own motion, or on the motion of either party for good cause shown, at any time before the findings of fact and recommendations are made; but if the reopening of the hearing would prevent the making of the findings of fact and recommendations within the specific time provided by law, the matter may not be reopened, unless both parties agree upon an extension of such time limit. [Order 77-6, § 391-30-728, filed 11/9/77.]

WAC 391-30-730 Impasse resolution--Findings of fact and recommendations. Not more than 30 days from the date of his or her appointment, the fact finder shall make written findings of fact and recommendations for resolution of the dispute and shall serve such findings and recommendations upon the parties and upon the commission. The findings of fact and recommendations shall be in writing and shall be signed by the fact finder. [Order 77-6, § 391-30-730, filed 11/9/77.]

WAC 391-30-732 Impasse resolution--Expenses of fact finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing such witnesses. The fees and traveling expense of a fact finder selected from the commission panel shall be paid by the commission. [Order 77-6, § 391-30-732, filed 11/9/77.]

WAC 391-30-734 Impasse resolution--Interpretation and application of fact finding rules. The fact finder shall interpret and apply these rules insofar as they relate to the powers and duties of the fact finder. Any party who proceeds with fact finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived its right to object. [Order 77-6, § 391-30-734, filed 11/9/77.]

WAC 391-30-736 Impasse resolution--Parties' responsibility after fact finding. Not more than five working days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder. If the recommendations of the fact finder are rejected by one or both parties and the further bilateral efforts of the parties do not result in an agreement between them, either party may request the agency to provide further assistance pursuant to chapter 41.58

RCW and, upon the concurrence of the other party, the executive director shall assign a mediator to the case for further mediation. [Order 77-6, § 391-30-736, filed 11/9/77.]

WAC 391-30-738 Impasse resolution--Central filing of agreements. The parties to each collective bargaining agreement made and entered into as a result of collective bargaining pursuant to chapter 41.59 RCW shall, regardless of any prior intervention by the agency or lack thereof, file with the executive director 2 complete copies of their agreement for retention in the files of the agency and research purposes. [Order 77-6, § 391-30-738, filed 11/9/77.]

WAC 391-30-900 Union security provisions. Any employee who, on the basis of bona fide religious tenets or teachings of a church or religious body of which such employee is a member, objects to the payment of dues to the exclusive representative under a union security agreement contained in a collective bargaining agreement made and entered into pursuant to the provisions of chapter 41.59 RCW shall notify the exclusive representative of such objection and shall, at the same time, notify the exclusive representative of the identity and address of one or more nonreligious charity or other charitable organizations to which such employee is prepared to make alternative payments in lieu of the payments required by said union security provision. Upon the agreement of the employee and the exclusive representative thereof, the employee shall make such payments and shall furnish written proof to the exclusive representative that such payments have been made. Upon a disagreement between the employee and the exclusive representative as to the eligibility of such employee to make alternative payments or as to the identity of the organization which is to receive such payments, either the employee or the exclusive representative may request from the commission a ruling thereon by filing with the commission at its Olympia office an original and three copies of a petition for declaratory ruling in the format specified in WAC 391-08-510 and by serving a copy thereof on the other party to the dispute and on the employer. The employer shall withhold and retain the amount of dues pending the resolution of the dispute. Such petitions shall be referred to the executive director for investigation. If the petition raises questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties to the dispute and on the employer a notice of hearing before a hearing officer. The rules relating to the conduct of hearings and proceedings on petitions for clarification of an existing bargaining unit shall govern proceedings on objections to payments under a union security provision, except that the scope of the hearing shall be limited to matters relating to the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments: *Provided, however,* That the commission may create and, from time to time, modify a listing of organizations

eligible to receive payments as an alternative to payments under a union security provision contained in a collective bargaining agreement and no employee, employer or exclusive representative shall have the right to petition for review of a designation made by the executive director from such listing. [Order 77-6, § 391-30-900, filed 11/9/77.]

Chapter 391-35 WAC UNIT CLARIFICATION CASE RULES

WAC

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| 391-35-001 | Scope—Contents—Other rules. |
| 391-35-002 | Sequence and numbering of rules—Special provisions. |
| 391-35-010 | Petition for clarification of an existing bargaining unit—Who may file. |
| 391-35-030 | Petition form—Number of copies—Filing—Service. |
| 391-35-050 | Contents of petition. |
| 391-35-070 | Amendment and withdrawal. |
| 391-35-090 | Notice of hearing. |
| 391-35-099 | Special provision—Private sector employees. |
| 391-35-110 | Consolidation of proceedings. |
| 391-35-130 | Hearings—Who shall conduct. |
| 391-35-150 | Authority of hearing officer. |
| 391-35-170 | Hearings—Nature and scope. |
| 391-35-190 | Proceedings before the executive director. |
| 391-35-210 | Proceedings before the commission—Petition for review. |
| 391-35-230 | Filing and service of cross-petition for review. |
| 391-35-250 | Commission action. |

WAC 391-35-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission on petitions for clarification of existing bargaining units. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

(2) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

(3) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

(4) Chapter 391-55 WAC, which contains rules relating to resolution of impasses occurring in collective bargaining.

(5) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

(6) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-001, filed 9/30/80, effective 11/1/80.]

WAC 391-35-002 Sequence and numbering of rules—Special provisions. This chapter of the

Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (marine employees) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-002, filed 9/30/80, effective 11/1/80.]

WAC 391-35-010 Petition for clarification of an existing bargaining unit—Who may file. In the absence of a question concerning representation, a petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative or their agents, or by the parties jointly. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-010, filed 9/30/80, effective 11/1/80.]

WAC 391-35-030 Petition form—Number of copies—Filing—Service. Each petition for clarification of an existing bargaining unit shall be prepared on a form furnished by the commission or shall be prepared in conformance with WAC 391-35-050. The original and three copies of the petition shall be filed with the agency at its Olympia office. If the petition is filed other than as a jointly filed petition, the party filing the petition shall serve a copy on the other party to the collective bargaining relationship in which the disagreement arises. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-030, filed 9/30/80, effective 11/1/80.]

WAC 391-35-050 Contents of petition. Each petition for clarification of an existing bargaining unit shall contain:

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

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

(3) The description of the existing bargaining unit, specifying inclusions and exclusions and the number of employees in such bargaining unit.

(4) Identification of the proceeding in which any certification of representatives was issued or the date of the recognition agreement, and the history of any modifications of the bargaining unit subsequent thereto.

(5) A description of the proposed clarification, including the position(s), classification(s) or group(s) in issue, the number of employees in each such position, classification or group, the present bargaining unit inclusion or exclusion status of each such position, classification or group and identification of the party proposing that the present status be changed.

(6) The names and addresses of any other employee organizations claiming to represent any employees affected by the proposed clarification(s), and brief description(s) of the contracts, if any, covering such employees.

(7) A statement of the reasons for the proposed clarification.

(8) Any other relevant facts.

(9) The signature(s) and, if any, the title(s) of the representative(s) of the petitioner(s). [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-050, filed 9/30/80, effective 11/1/80.]

WAC 391-35-070 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner(s) under such conditions as the executive director or the commission may impose. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-070, filed 9/30/80, effective 11/1/80.]

WAC 391-35-090 Notice of hearing. After a petition for clarification of an existing bargaining unit has been filed, if it appears to the executive director that a disagreement exists which might appropriately be the subject of an order clarifying an existing bargaining unit, there shall be issued and served on the employer and on the exclusive representative a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-090, filed 9/30/80, effective 11/1/80.]

WAC 391-35-099 Special provision—Private sector employees. The commission lacks authority to proceed in unit clarification proceedings under chapter 49.08 RCW

absent the agreement of all parties. The executive director shall not proceed in such matters unless a written agreement is filed by the parties to submit their dispute for arbitration by the commission under chapter 49.08 RCW and these rules. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-099, filed 9/30/80, effective 11/1/80.]

WAC 391-35-110 Consolidation of proceedings. If a proceeding initiated by a petition for clarification under WAC 391-35-010 is pending at the same time as a proceeding involving all or any part of the same bargaining unit initiated by a petition for investigation of a question concerning representation filed pursuant to WAC 391-25-010, the proceedings shall be consolidated and all issues concerning the description of the bargaining unit shall be resolved in the consolidated proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-110, filed 9/30/80, effective 11/1/80.]

WAC 391-35-130 Hearings—Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-130, filed 9/30/80, effective 11/1/80.]

WAC 391-35-150 Authority of hearing officer. The hearing officer shall have the authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence, and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other procedural 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-150, filed 9/30/80, effective 11/1/80.]

WAC 391-35-170 Hearings—Nature and scope. Hearings shall be public and shall be limited to matters concerning the determination of the petition for clarification of an existing bargaining unit. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a full and complete factual record

upon which the commission or the executive director may discharge their duties under the pertinent statutes and these rules. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-170, filed 9/30/80, effective 11/1/80.]

WAC 391-35-190 Proceedings before the executive director. The executive director may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine the status of each position, classification or group of employees over which there is a disagreement and issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-190, filed 9/30/80, effective 11/1/80.]

WAC 391-35-210 Proceedings before the commission—Petition for review. The final order of the executive director shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days after the date of the order. The original and three copies of 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 any other parties. The petition for review shall identify the actions or rulings claimed to be in error. Any party to the proceeding may, within fourteen days after the filing of the petition for review, file briefs or written arguments for consideration by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served on the other party. The commission, the executive director or the designee of the executive director 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 prior to the deadline previously established. 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. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-210, filed 9/30/80, effective 11/1/80.]

WAC 391-35-230 Filing and service of cross-petition for review. Where a petition for review has been timely filed under WAC 391-35-210, any party who has not previously filed a petition for review may, within seven days after the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadline for the submission of briefs or written arguments shall be extended by seven days. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-230, filed 9/30/80, effective 11/1/80.]

WAC 391-35-250 Commission action. The executive director shall transfer the entire record in the proceeding to the commission. The commission shall determine the status of each position, classification or group covered by the petition for review, and shall issue appropriate orders. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-047 (Order 80-6), § 391-35-250, filed 9/30/80, effective 11/1/80.]

Chapter 391-45 WAC

UNFAIR LABOR PRACTICE CASE RULES

WAC

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| 391-45-430 | Motion for temporary relief. |
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WAC 391-45-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission on complaints charging unfair labor practices. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

(2) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

(3) Chapter 391-35 WAC, which contains rules relating to petitions for clarification of existing bargaining units.

(4) Chapter 391-55 WAC, which contains rules relating to resolution of impasses occurring in collective bargaining.

(5) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of

the interpretation or application of a collective bargaining agreement.

(6) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-001, filed 9/30/80, effective 11/1/80.]

WAC 391-45-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (marine employees) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-002, filed 9/30/80, effective 11/1/80.]

WAC 391-45-010 Complaint charging unfair labor practices—Who may file. A complaint charging that any person has engaged in or is engaging in an unfair labor practice, hereinafter referred to as a "complaint" may be filed by any employee, group of employees, employee organization, employer or their agents. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-010, filed 9/30/80, effective 11/1/80.]

WAC 391-45-013 Special provision—Academic employees. The provisions of chapter 391-45 WAC are inapplicable to community colleges under chapter 28B.52 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048

(Order 80-7), § 391-45-013, filed 9/30/80, effective 11/1/80.]

WAC 391-45-019 Special provision—Private sector employees. The provisions of chapter 391-45 WAC are inapplicable to private sector collective bargaining under chapter 49.08 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-019, filed 9/30/80, effective 11/1/80.]

WAC 391-45-030 Form—Number of copies—Filing—Service. Charges shall be in writing, in the form of a complaint of unfair labor practices. The original and three copies shall be filed with the agency at its Olympia office. The party filing the complaint shall serve a copy on each party named as a respondent. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-030, filed 9/30/80, effective 11/1/80.]

WAC 391-45-050 Contents of complaint charging unfair labor practices. Each complaint shall contain, in separate numbered paragraphs:

(1) The name and address of the party filing the complaint, hereinafter referred to as the complainant, and the name, address and telephone number of its principal representative.

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

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

(4) A listing of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

(5) A statement of the relief sought by the complainant.

(6) The signature and, if any, the title of the person filing the complaint. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-050, filed 9/30/80, effective 11/1/80.]

WAC 391-45-070 Amendment. Any complaint may be amended upon motion made by the complainant to the executive director or the examiner prior to the transfer of the case to the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-070, filed 9/30/80, effective 11/1/80.]

WAC 391-45-090 Withdrawal. Any complaint may be withdrawn by the complainant under such conditions as the executive director or the commission may impose. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-090, filed 9/30/80, effective 11/1/80.]

WAC 391-45-110 Initial processing by executive director. The executive director shall determine whether the facts as alleged may constitute an unfair labor practice within the meaning of the applicable statute. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, the executive director shall issue and cause to be served on all parties an order of dismissal containing the reasons therefor; otherwise, the executive director shall cause the contents of the charge to be issued and served as a complaint of unfair labor practices, shall assign the matter to an examiner and shall notify the parties of such assignment. An order of dismissal issued pursuant to this section shall be subject to a petition for review as provided in WAC 391-45-350. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]

WAC 391-45-130 Examiner--Who may act. The examiner may be a member of the agency staff or any other individual designated by the commission or executive director. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-130, filed 9/30/80, effective 11/1/80.]

WAC 391-45-150 Authority of examiner. The examiner shall have the authority:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place, and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues;
- (8) To make and issue findings of fact, conclusions of law and orders;
- (9) To take any other action authorized by these rules. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-150, filed 9/30/80, effective 11/1/80.]

WAC 391-45-170 Notice of hearing. The examiner shall issue and cause to be served on the parties a notice of hearing at a time and place specified therein. Attached to the notice of hearing shall be a copy of the complaint as approved by the executive director under WAC 391-45-110. The notice of hearing shall specify the date for the filing of an answer, which shall be not less than ten days prior to the date set for hearing. Any such notice of hearing may be amended or withdrawn before the close of the hearing. [Statutory Authority:

RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-170, filed 9/30/80, effective 11/1/80.]

WAC 391-45-171 Special provision--Public employees. In proceedings under chapter 41.56 RCW, the date for the filing of an answer shall be five days after service of the complaint. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-171, filed 9/30/80, effective 11/1/80.]

WAC 391-45-190 Answer--Filing and service. The respondent(s) shall, on or before the date specified therefor in the notice of hearing, file with the examiner the original and three copies of its answer to the complaint, and shall serve a copy on the complainant. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-190, filed 9/30/80, effective 11/1/80.]

WAC 391-45-210 Answer--Contents and effect of failure to answer. An answer filed by a respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. The failure of a respondent to file an answer or the failure to specifically deny or explain in the answer a fact alleged in the complaint shall, except for good cause shown, be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of the respondent of a hearing as to the facts so admitted. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-210, filed 9/30/80, effective 11/1/80.]

WAC 391-45-230 Amendment of answer. The respondent may amend its answer at any time prior to the hearing. During the hearing or subsequent thereto, it may amend its answer in any case where the complaint has been amended, within such period as may be fixed by the examiner or the commission. Whether or not the complaint has been amended, the answer may, in the discretion of the examiner or the commission, be amended upon motion under such terms and within such period as may be fixed by the examiner or the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-230, filed 9/30/80, effective 11/1/80.]

WAC 391-45-250 Motion to make complaint more definite and certain. If a complaint is alleged by a respondent to be so indefinite as to hamper the respondent in the preparation of its answer, such respondent may, on or before the date specified for the filing of an answer, file a motion requesting an order directing that the complaint be made more definite and certain. Such motion shall be filed with the examiner and served by the

moving party on the complainant and on any other parties. The filing of such motion will extend the time during which the respondent must file and serve an answer until such date as the executive director or examiner may set. The examiner may require the complainant to file and serve a statement supplying information necessary to make the complaint definite and certain. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-250, filed 9/30/80, effective 11/1/80.]

WAC 391-45-270 Hearings—Nature and scope. Hearings shall be public and shall be adversary in nature, limited to matters concerning the unfair labor practices alleged in the complaint. The complainant shall prosecute its own complaint and shall have the burden of proof. It shall be the duty of the examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice so as to obtain a clear and complete factual record on which the examiner and commission may discharge their duties under these rules: *Provided, however,* That such duty of the examiner shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant with respect to the prosecution of its complaint or of the respondent with respect to the presentation of its defense. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-270, filed 9/30/80, effective 11/1/80.]

WAC 391-45-290 Briefs and proposed findings. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of fact, conclusions of law and order, or both, at such time as may be fixed by the examiner. The examiner may direct the filing of briefs when he or she deems such filing warranted by the nature of the proceeding or of particular issues therein. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-290, filed 9/30/80, effective 11/1/80.]

WAC 391-45-310 Examiner decision. After the close of the hearing and the filing of all briefs, the examiner shall make a decision containing findings of fact, conclusions of law and order. The examiner shall file the original decision with the commission and shall cause a copy thereof to be served on each of the parties. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]

WAC 391-45-330 Withdrawal or modification of examiner decision. On the examiner's own motion or on the motion of any party, the examiner may set aside, modify, change or reverse any findings of fact, conclusions of law or order at any time within twenty days following the issuance thereof, if any mistake is discovered therein or upon grounds of newly discovered evidence which could not with reasonable diligence have been

discovered and produced at the hearing: *Provided, however,* That this section shall be inoperative after the filing of a petition for review with the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-330, filed 9/30/80, effective 11/1/80.]

WAC 391-45-350 Petition for review of examiner decision. The examiner's findings of fact, conclusions of law and order shall be 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 issued by the examiner. The original and three copies of 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 findings, conclusions, 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 fourteen 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, the executive director or his designee 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 examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-350, filed 9/30/80, effective 11/1/80.]

WAC 391-45-370 Filing and service of cross-petition for review. Where a petition for review has been timely filed under WAC 391-45-350, any party who has not previously filed a petition for review may, within seven days after the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadlines for the submission of briefs or written arguments shall be extended by seven days. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-370, filed 9/30/80, effective 11/1/80.]

WAC 391-45-390 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 record and any briefs or arguments submitted to it on review, determine the matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-390, filed 9/30/80, effective 11/1/80.]

WAC 391-45-410 Unfair labor practice remedies. If an unfair labor practice is found to have been committed, the commission or its examiner shall issue a remedial order. In calculating back pay orders, the following shall apply:

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

(2) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee may have received during the period of the violation, and the employer 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-410, filed 9/30/80, effective 11/1/80.]

WAC 391-45-430 Motion for temporary relief. In addition to the remedies available under WAC 391-45-410, any complainant in an unfair labor practice proceeding may file a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions shall be processed as provided in this section.

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

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the executive director shall expedite the processing of the matter under WAC 391-45-110.

(3) After the determination of the executive director that the complaint states a cause of action, any complainant desiring temporary relief may file with the executive director a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies, and shall serve a copy of

such motion and affidavits on all other parties to the proceedings. The other parties shall have seven calendar days thereafter to file and serve counter-affidavits.

(4) The executive director shall forward all such motions and affidavits to the commission, which shall determine whether an injunction pendente lite should be sought. In making such determination, the commission shall adhere to the following policy:

"The name and authority of the public employment relations commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 391-45-010, et seq., unless it appears that one or more of the allegations in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo be preserved pending the completion of administrative proceedings."

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction pendente lite.

(b) Whenever temporary relief has been procured, the complaint which has been the basis for such temporary relief shall be heard expeditiously and the case shall be given priority over all other cases except cases of like character.

(c) If the commission concludes that temporary relief should not be sought prior to the conclusion of administrative proceedings in the matter, such determination shall not bar renewal of the request for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-430, filed 9/30/80, effective 11/1/80.]

WAC 391-45-431 Special provision--Public employees. WAC 391-45-430 is inapplicable to complaints filed under chapter 41.56 RCW. Provision for judicial relief is made by RCW 41.56.190. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-431, filed 9/30/80, effective 11/1/80.]

WAC 391-45-550 Collective bargaining--Policy. It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is

mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject. [Statutory Authority: RCW 28B.52.080, 41.56-.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-048 (Order 80-7), § 391-45-550, filed 9/30/80, effective 11/1/80.]

Chapter 391-50 WAC COLLECTIVE BARGAINING RULES-- COMMUNITY COLLEGES

WAC

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WAC 391-50-001 Scope--Contents--Other rules.

This chapter governs specific proceedings under chapter 28B.52 RCW relating to negotiations between community college districts and their academic employees. This chapter contains:

- (1) Procedures for representation cases, beginning at WAC 391-50-100.
- (2) Procedures for clarification of existing bargaining units, beginning at WAC 391-50-300.
- (3) Procedures for impasse resolution, beginning at WAC 391-50-700.

The provisions of this chapter should be read in conjunction with the provisions of chapter 391-08 WAC, which contains general rules applicable to all types of proceedings before the public employment relations commission. [Order 77-6, § 391-50-001, filed 11/9/77.]

WAC 391-50-100 Petition for investigation of question concerning representation of employees--Who may file--Timeliness. A petition for investigation of a question concerning representation of employees, hereinafter referred to as a "petition," may be timely filed by any employee, group of employees, employee organization, community college district or their agents. In order to be timely filed:

- (1) Where there is a valid collective bargaining agreement in effect, a petition must be filed during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement.
- (2) Where a secret ballot election has been held pursuant to chapter 28B.52 RCW or these rules, a petition must be filed not less than twelve months following the date of the last such previous election.

- (3) Where neither (1) nor (2) are applicable, a petition may be filed at any time. [Order 77-6, § 391-50-100, filed 11/9/77.]

WAC 391-50-102 Petition form--Number of copies--Filing--Service. Each petition shall be prepared on a form furnished by the commission. The original petition and three copies thereof shall be filed with the agency at its Olympia office. The party filing the petition shall cause a copy thereof to be served upon the employer and upon each employee organization named in the petition as having an interest in the proceedings. [Order 77-6, § 391-50-102, filed 11/9/77.]

WAC 391-50-104 Contents of petition. Each petition shall contain:

- (1) The name and address of the employer and, if known, the name, address and telephone number of the

employer's principal representative in matters concerning relationships between the employer and its employees.

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

(3) The names, and if known, the addresses and telephone numbers of the principal representatives of any employee 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 employer 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 designation of an 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 title, if any, of the petitioner or its representative. [Order 77-6, § 391-50-104, filed 11/9/77.]

WAC 391-50-105 Contents of petition filed by employer. Each petition filed by a community college district shall contain all of the same information required by WAC 391-50-104 except for that required by WAC 391-50-104(4); and in lieu thereof, each petition filed by a community college district shall contain a statement that the community college district has been presented with a demand by an employee organization seeking recognition as a representative of employees in the bargaining unit described in the petition. WAC 391-50-106 shall not be applicable to such petitions; and in lieu thereof the employer shall attach such documentation as may be available to it to demonstrate the existence of a good faith doubt concerning the representation of its employees. [Order 77-6, § 391-50-105, filed 11/9/77.]

WAC 391-50-106 Supporting evidence. The original petition filed with the agency shall be accompanied by a showing of interest indicating that the petitioner has the support of not less than 30 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 during the 90-day period preceding the filing of such evidence with the agency. [Order 77-6, § 391-50-106, filed 11/9/77.]

WAC 391-50-108 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner under such conditions as the executive director or the commission may impose. [Order 77-6, § 391-50-108, filed 11/9/77.]

WAC 391-50-110 Intervention--By incumbent representative. An employee organization which demonstrates to the agency that it has been the exclusive representative in all or any part of the bargaining unit involved in proceedings initiated by a petition during the year preceding the filing of the petition with the agency may, by motion, intervene in the proceedings and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election conducted by the agency in such proceedings. No motion for intervention shall be considered under this section if made after the close of the hearing in the matter or more than 7 days after the filing of a consent election agreement. [Order 77-6, § 391-50-110, filed 11/9/77.]

WAC 391-50-112 Intervention--By organization other than incumbent. An employee organization not covered by WAC 391-50-110 may, by motion, intervene in proceedings initiated by a petition and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and to have its name listed as a choice on the ballot in any election conducted by the agency in such proceedings. Such motion for intervention shall be supported by a showing of interest indicating that the intervenor has the support of not less than 10 percent of the employees in the bargaining unit which the petitioner claims to be appropriate or of not less than 30 percent of the employees in a different bargaining unit which 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 during the 90-day period preceding the filing of such evidence with the agency. The showing of interest shall be made, ex parte, to the agency 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 agency may impose to avoid undue delay of the proceedings. No motion for intervention shall be considered under this section if made after the close of the hearing in the matter or more than 7 days after the filing of a consent election agreement. [Order 77-6, § 391-50-112, filed 11/9/77.]

WAC 391-50-113 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 agency and may not be litigated at any hearing. In order 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

agency will not honor any attempt to withdraw or diminish a showing of interest. [Order 77-6, § 391-50-113, filed 11/9/77.]

WAC 391-50-114 Consent elections. Where an employer and one or more employee organizations agree on a representation election, they may, either simultaneous with or subsequent to the filing of a petition, file a consent election agreement with the executive director. Such consent election agreement shall contain:

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

(2) The names and addresses of all employee organizations participating in the consent 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 employee 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 consent election agreement, or (c) the incumbent representative has abandoned the unit as evidenced by written memoranda or other documentation attached to the consent election agreement.

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

(6) A list, attached to the consent election agreement as an appendix, containing the names of the employees eligible to vote in the election, and the eligibility cut-off date for the election. If the parties request that the election be conducted by mail ballot, the list provided under this subsection shall also include the last known address of each of the employees eligible to vote in the election. If no eligibility cut-off date is provided by the parties, the eligibility cut-off date shall be established as the date on which the consent election agreement is filed.

(7) The suggestions of the parties as to the day or days of the week and the time or times of the day during which the election should be conducted and the place agreed upon for the conduct of the election; or the agreement of the parties that the election be conducted by mail ballot.

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

The original and one copy of the consent election agreement shall be filed with the commission at its Olympia office, and copies thereof shall be posted by the employer in conspicuous places on the employer's premises where notices to employees are usually posted. The consent election agreement shall be posted on the date it is filed with the agency and shall remain posted for at least 7 days thereafter. Upon the filing of a consent

election agreement conforming to the foregoing requirements, the executive director shall proceed with the conduct of an election. Objections to the election by a party to the consent election agreement shall be limited to matters relating to specific conduct affecting the results of the election. [Order 77-6, § 391-50-114, filed 11/9/77.]

WAC 391-50-116 Notice of hearing. After a petition has been filed, and if it appears to the executive director that there is reasonable cause to believe that a question concerning representation of employees may exist, there shall be issued and served on the employer and on any employee organizations listed in the petition as claiming to represent any of the employees in the bargaining unit and on any employee organization having theretofore intervened in the proceedings, a notice of hearing before a hearing officer at a time and place fixed therein. The agency shall furnish the employer with copies of such notice for posting in conspicuous places on its premises where notices to employees are usually posted, and the employer shall post same. Any such notice may be amended or withdrawn before the close of the hearing. [Order 77-6, § 391-50-116, filed 11/9/77.]

WAC 391-50-118 Hearings—Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Order 77-6, § 391-50-118, filed 11/9/77.]

WAC 391-50-120 Authority of hearing officer. The hearing officer shall have the authority, subject to these rules and under the authority of the commission:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold, during the course of the proceedings, conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized under these rules. [Order 77-6, § 391-50-120, filed 11/9/77.]

WAC 391-50-122 Hearings—Nature and scope. Hearings shall be public and shall be limited to matters concerning the determination of the existence of a question concerning representation of employees and questions of eligibility. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to

obtain a full and complete factual record upon which the commission or the executive director may discharge their duties under the pertinent statutes and these rules. [Order 77-6, § 391-50-122, filed 11/9/77.]

WAC 391-50-124 Proceedings before the executive director. The executive director shall determine whether a question concerning representation of employees exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter. Where a hearing has been held, the executive director may proceed forthwith upon the record, after submission of briefs, or after further hearing as may be appropriate. Such actions shall be subject to a petition for review only as follows:

(1) An order of dismissal is a final order which shall be 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. Unless the matter is transferred to the commission for review, an order of dismissal issued by the executive director shall have the same force and effect as if issued by the commission.

(2) A direction of election is an interlocutory order wherein the conduct of an election is ordered and rulings may be made on other issues in dispute and, except for rulings as to whether the employer is subject to the jurisdiction of the commission, the direction of election and any accompanying rulings shall not be subject to review by the commission until after the conduct of the election and the issuance of a tally sheet. [Order 77-6, § 391-50-124, filed 11/9/77.]

WAC 391-50-126 Notice of election. In any proceeding in which an election is to be held, the agency shall furnish the employer with appropriate notices for posting in conspicuous places on the employer's premises where notices to employees are usually posted, and the employer shall promptly post same. Such notice shall contain:

(1) The description of the bargaining unit in which the election is to be conducted.

(2) The date(s), hours and polling place(s) for the election.

(3) The cut-off 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. The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed. [Order 77-6, § 391-50-126, filed 11/9/77.]

WAC 391-50-128 Election procedures--Disclaimers--Balloting. Notices of the election shall be posted for at least 7 days prior to the opening of the polls. In computing such period, the day of posting may be counted, but the day on which the polls are opened shall not be counted. An employee organization may file a disclaimer and, upon approval thereof by the executive director,

have its name removed from the ballot: *Provided, however,* That if such a disclaimer is filed, the organization filing same shall not seek to be certified in that bargaining unit for a period of at least one year thereafter. All elections conducted under the supervision of the agency shall be by secret ballot. The agency may conduct elections by mail ballot when it appears that an election by "in person" procedures would result in undue delay, or would effectively deprive some eligible employees of their opportunity to vote. If mail balloting is used, the notice required by these rules shall be mailed to each eligible voter and no less than 10 calendar days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots. Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe: *Provided, however,* That no person excluded as aligned with the management nor any officer or paid employee of an employee organization shall serve as observer. [Order 77-6, § 391-50-128, filed 11/9/77.]

WAC 391-50-130 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. The election officer shall not have authority to resolve challenges at the polls, and the ballot of the challenged voter shall be placed in a sealed envelope identifying the voter and the party challenging the eligibility of the voter. The ballot shall not be opened and counted 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 shall be resolved thereby. If the challenged ballots are insufficient in number to affect the results of the election, they shall be impounded and no ruling shall be made thereon unless the proceeding results in the issuance of a certification of representatives and a specific written request for a ruling is made by the employer or by the exclusive representative so certified. If the challenged ballots are sufficient in number to affect the results of the election, the election officer shall, after the close of the polls, ascertain the position of each party as to each challenged ballot and shall include such information in his report. If challenges raise questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties, a notice of hearing before a hearing officer. The rules relating to the conduct of hearings on petitions shall govern hearings on challenges, except that the scope of the hearing shall be limited to matters relevant to the disposition of the challenged ballots. The executive director shall have authority to rule on all challenges except those made by a party to preserve an objection to a ruling previously made by the executive director as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the executive director are sufficient in number to affect the results of the election, the matter

shall be transferred to the commission for its determination under the procedures of WAC 391-50-140. [Order 77-6, § 391-50-130, filed 11/9/77.]

WAC 391-50-132 Tally of ballots. Upon the conclusion of the election, the election officer shall prepare and cause to be furnished to 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 shall be issued and furnished to the parties. The tally shall indicate whether the results of the election were conclusive or inconclusive. [Order 77-6, § 391-50-132, filed 11/9/77.]

WAC 391-50-134 Procedure following inconclusive election. In any election in which there are more than two choices on the ballot, if none of the choices receive a majority of the valid ballots cast, a run-off election shall be held providing for a selection between the two choices receiving the largest numbers of valid ballots cast in the inconclusive election. Any employee organization to be excluded from a run-off election or, where the choice of "no representative" is to be excluded from a run-off election, the employer, may, within five days after the tally of the inconclusive election has been furnished, file objections to specific conduct affecting the results of the inconclusive election; and such objections shall be resolved prior to the conduct of a run-off election. [Order 77-6, § 391-50-134, filed 11/9/77.]

WAC 391-50-136 Filing and service of objections to election. Within five days after the tally of ballots has been furnished to it, any party may file with the commission an original and three copies of objections to the election and shall serve a copy thereof on each of the other parties to the proceeding. Objections to the election may consist of:

(1) Designation of specific conduct improperly affecting the results of the representation election by coercion or intimidation of, or substantial misrepresentation of material fact, or threat of reprisal or promise of reward to eligible voters, and/or

(2) Designation of an interlocutory ruling or direction of election which the objecting party desires to have reviewed by the commission.

Objections shall 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 interlocutory orders, if any, of which the party filing the objections seeks review by the commission. Objections shall be timely filed, whether or not challenged ballots are sufficient in number to affect the results of the election. [Order 77-6, § 391-50-136, filed 11/9/77.]

WAC 391-50-137 Filing and service of cross-objections. Where objections have been timely filed under WAC 391-50-136, any party who has not previously

filed objections may, within five days following the last date on which objections may be filed, file cross-objections. Such cross-objections shall be filed and served in the same manner as objections filed under WAC 391-50-136. [Statutory Authority: RCW 28B.52.080 and 41.58.050. 78-07-012 (Order 78-5), § 391-50-137, filed 6/15/78.]

WAC 391-50-138 Procedure where no objections are filed. If no objections are filed within the time set forth above, and if the challenged ballots are insufficient in number to affect the results of the election and if no run-off election is to be held, the executive director shall forthwith issue to the parties a certification of the results of the election, including a certification of representatives where appropriate, with the same force and effect as if issued by the commission. The proceedings will thereupon be closed. [Order 77-6, § 391-50-138, filed 11/9/77.]

WAC 391-50-140 Procedure where objections to election are filed. (1) Objections to conduct affecting the results of an election shall be referred to the executive director for investigation. If the objections raise questions of fact which cannot be resolved without a hearing, there shall be issued and served on each of the parties a notice of hearing before a hearing officer. 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 shall 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 seeking review of prior rulings in the matter shall be referred directly to the commission.

(3) All parties shall be entitled to submit briefs or written arguments for consideration by the commission. The briefs or written arguments of all parties shall be due simultaneously. The deadline for the filing of briefs or written arguments shall be 14 days following the later of: (a) the close of the investigation under (1) above; (b) the issuance of a transcript of a hearing held under (1) above, or (c) the filing of objections under (2), above. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy thereof shall be served on each of the other parties. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. In all cases where objections have been filed, the executive director shall transfer the entire record in the proceeding, including the results of any investigation or hearing on objections to conduct affecting the results of the election, to the commission. The commission may request the parties to appear before it and make oral argument as to certain of the issues or all of the issues in the matter. [Order 77-6, § 391-50-140, filed 11/9/77.]

WAC 391-50-142 Commission action. The commission shall proceed to determine the objections, or challenges and objections as the case may be, either sustaining or overruling them, and:

(1) If the commission should sustain objections to a ruling or interlocutory order, it may direct that a new election be held in the same or a different bargaining unit, reverse or modify eligibility rulings previously made, dismiss the petition or make other disposition of the matter.

(2) If the commission should direct that challenged ballots affecting the results of the election referred to the commission by the executive director pursuant to WAC 391-50-130 be opened and counted, such ballots shall be opened and counted and a revised tally of ballots shall be issued and furnished to the parties, together with a certification of the results of the election and a certification of representatives, where appropriate.

(3) If the commission should overrule the objections, it shall forthwith issue to the parties a certification of the results of the election, including a certification of representatives, where appropriate. [Order 77-6, § 391-50-142, filed 11/9/77.]

WAC 391-50-300 Petition for clarification of an existing bargaining unit--Who may file. A petition for clarification of an existing bargaining unit, in the absence of a question concerning representation, may be filed by the employer, the exclusive representative or their agents, or by the parties jointly. [Order 77-6, § 391-50-300, filed 11/9/77.]

WAC 391-50-302 Petition form--Number of copies--Filing--Service. Each petition for clarification of an existing bargaining unit shall be prepared on a form furnished by the commission or shall be prepared by the party or parties filing same on 8-1/2" x 13" paper in conformance with WAC 391-50-304. The original petition and three copies thereof shall be filed with the agency at its Olympia office. If the petition is filed other than as a jointly filed petition, the party filing the petition shall cause a copy thereof to be served upon the other party to the collective bargaining relationship in the bargaining unit in which the disagreement arises. [Order 77-6, § 391-50-302, filed 11/9/77.]

WAC 391-50-304 Contents of petition. Each petition for clarification of an existing bargaining unit shall contain:

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

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

(3) The description of the existing bargaining unit, specifying inclusions and exclusions and the number of employees in such bargaining unit.

(4) Identification of the proceeding in which any certification of representatives was issued or the date of the

recognition agreement, and the history of any modifications of the bargaining unit subsequent thereto.

(5) A description of the proposed clarification, including the position(s), classification(s) or group(s) in issue, the number of employees in each such position, classification or group, the present bargaining unit inclusion or exclusion status of each such position, classification or group and the party proposing that the present status be changed.

(6) The names and addresses of any other employee organizations who claim to represent any employees affected by the proposed clarification(s), and brief description(s) of the contracts, if any, covering such employees.

(7) A statement of the reasons for the proposed clarification.

(8) Any other relevant facts.

(9) The signature(s) and title(s), if any, of the representative(s) of the petitioner(s). [Order 77-6, § 391-50-304, filed 11/9/77.]

WAC 391-50-306 Amendment and withdrawal. Any petition may be amended or withdrawn by the petitioner(s) under such exclusive representative or the two of them jointly may file a petition for clarification of an existing bargaining unit. [Order 77-6, § 391-50-306, filed 11/9/77.]

WAC 391-50-308 Notice of hearing. After a petition for clarification of an existing bargaining unit has been filed, and if it appears to the executive director that a disagreement exists which might appropriately be the subject of an order clarifying an existing bargaining unit, there shall be issued and served on the employer and on the exclusive representative a notice of hearing before a hearing officer at a time and place fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing. [Order 77-6, § 391-50-308, filed 11/9/77.]

WAC 391-50-310 Consolidation of proceedings. In the event a proceeding is pending which was initiated by a petition for clarification of an existing bargaining unit at the same time as another proceeding is pending before the agency involving all or any part of the same bargaining unit and which was initiated by a petition for investigation of a question concerning representation of employees filed pursuant to WAC 391-50-100, the proceedings shall be consolidated and all issues concerning the description of the bargaining unit shall be resolved in the consolidated proceedings. [Order 77-6, § 391-50-310, filed 11/9/77.]

WAC 391-50-312 Hearings--Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Order 77-6, § 391-50-312, filed 11/9/77.]

WAC 391-50-314 Authority of hearing officer. The hearing officer shall have the authority, subject to these rules and under the authority of the commission:

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule upon objections to evidence and offers of proof, receive relevant evidence, and to exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other procedural matters;
- (7) To hold, during the course of the proceedings, conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized under these rules. [Order 77-6, § 391-50-314, filed 11/9/77.]

WAC 391-50-316 Hearings--Nature and scope. Hearings shall be public and shall be limited to matters concerning the determination of the petition for clarification or an existing bargaining unit. It shall be the duty of the hearing officer to inquire fully into all matters in issue and to obtain a full and complete factual record upon which the commission or the executive director may discharge their duties under the pertinent statutes and these rules. [Order 77-6, § 391-50-316, filed 11/9/77.]

WAC 391-50-318 Proceedings before the executive director. After the close of the hearing, the executive director may proceed forthwith upon the record, after submission of briefs or after further hearing, as may be appropriate, to determine the status of each position, classification or group over which there is a disagreement and to issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter. [Order 77-6, § 391-50-318, filed 11/9/77.]

WAC 391-50-320 Proceedings before the commission--Petition for review. The final order of the executive director shall be 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 issued by the executive director. The original petition for review and three copies thereof shall be filed with the commission at its Olympia office and the party filing the petition shall cause a copy thereof to be served upon the other party to the proceeding. The petition for review shall identify the positions, classifications or groups on which review is sought. Any party to the proceeding may within 14 days following the filing of the petition for review, file with the commission any briefs or written arguments which it desires to have considered by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy thereof shall be served upon the other party. The commission, the executive director or his designee may, for good cause, grant

any party an extension of the time for filing of its brief or written argument. The commission may request the parties to appear before it and make oral argument as to certain of the issues or all of the issues in the matter. [Order 77-6, § 391-50-320, filed 11/9/77.]

WAC 391-50-321 Filing and service of cross-petition for review. Where a petition for review has been timely filed under WAC 391-50-320, any party who has not previously filed a petition for review may, within seven days following the last date on which a petition for review may be filed, file a cross-petition for review. Such cross-petition for review shall be filed and served in the same manner as a petition for review. Upon the filing of a cross-petition for review, the deadline for the submission of briefs or written arguments shall be extended by seven days. [Statutory Authority: RCW 28B-.52.080 and 41.58.050. 78-07-012 (Order 78-5), § 391-50-321, filed 6/15/78.]

WAC 391-50-322 Commission action. The executive director shall certify the entire record in the proceeding to the commission. The commission shall proceed to review the entire record, together with such briefs or written arguments as may have been filed on review, and shall determine the status of each position, classification or group covered by the petition for review, and shall issue appropriate orders. [Order 77-6, § 391-50-322, filed 11/9/77.]

WAC 391-50-700 Resolution of impasses--Request for mediation. If, following bilateral collective bargaining negotiations, a party or the parties jointly feel that their sincere efforts towards reaching a collective bargaining agreement will not produce that result or resolve their differences, either party or the parties jointly may request from the commission assistance for the settlement of such dispute through mediation. A request for mediation may be made in writing or by telephone, but shall be confirmed in writing if made by telephone. The party or parties requesting mediation shall provide the following information to the agency:

(a) The name and address of the employer and the name, address and telephone number of the employer's principal representative in the negotiations.

(b) The name and address of the employee organization and the name, address and telephone number of the employee organization's principal representative in the negotiations.

(c) The name and address of the association or other organization, if any, filing the request on behalf of the employer or exclusive representative seeking mediation;

(d) A declaration that an impasse has been reached in collective bargaining;

(e) A clear and concise statement of the disputed issues and the parties' positions in relation thereto;

(f) A description of the size and composition of the bargaining unit involved;

(g) The expiration date of any collective bargaining agreement then in effect or recently expired;

(h) Any other relevant information; and

(i) The name, signature and capacity of each officer, attorney, or other individual acting for the filing party or parties. [Order 77-6, § 391-50-700, filed 11/9/77.]

WAC 391-50-702 Impasse resolution--Determination whether assistance is needed. Upon the filing of a unilateral request for mediation, the executive director shall determine the position of the party other than the party making the request. If both parties concur in the need for mediation and it appears that the assistance of the agency is needed, the executive director shall appoint a mediator from the list of qualified persons maintained by the commission for that purpose. If the parties have filed a stipulation listing the names of one or more persons who are acceptable to both parties as mediator, then the executive director shall, consistent with the availability of such individual, attempt to conform to the express desires of the parties. [Order 77-6, § 391-50-702, filed 11/9/77.]

WAC 391-50-706 Impasse resolution--Function of mediator. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such steps as the mediator deems appropriate in order to aid the parties in resolving their differences and effecting a mutually acceptable agreement. [Order 77-6, § 391-50-706, filed 11/9/77.]

WAC 391-50-708 Impasse resolution--Confidential nature of function. Any information disclosed by the parties to the mediator in confidence during the course of mediation proceedings shall not be divulged unless such disclosure is approved by the party which originated the confidential disclosure to the mediator. Mediation meetings shall be of an executive, private or nonpublic nature except if otherwise mutually agreed by the parties or their representatives. [Order 77-6, § 391-50-708, filed 11/9/77.]

WAC 391-50-710 Impasse resolution--Fact finding. If the dispute has not been settled after mediation, either party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party. [Order 77-6, § 391-50-710, filed 11/9/77.]

WAC 391-50-712 Impasse resolution--Factfinding panel. The commission shall establish and maintain a panel of individuals available for selection or appointment as factfinders, and shall make a listing of members of that panel available to parties engaged in factfinding proceedings for their use in selecting a factfinder. [Order 77-6, § 391-50-712, filed 11/9/77.]

WAC 391-50-714 Impasse resolution--Selection of fact finder. Upon receipt of a unilateral request for fact-finding, the executive director shall determine the position of the party other than the party making the request. If both parties concur in the initiation of fact-finding, the executive director shall furnish the parties a listing of members of the agency's fact finding panel; and the parties shall meet and attempt to select a person

as fact finder. If the parties are able to reach agreement on the selection of a fact finder they shall seek to obtain a commitment from that person to serve as fact finder, and if such commitment is obtained shall notify the agency of that fact. If the parties are unable to agree upon a fact finder who is acceptable and willing to serve, they may request the executive director to designate a fact finder from the commission's panel. [Order 77-6, § 391-50-714, filed 11/9/77.]

WAC 391-50-716 Impasse resolution--Disclosure by fact finder. Prior to accepting the appointment, or as soon thereafter as information giving rise to a problem of appearance of fairness becomes known to the fact finder, the fact finder shall disclose to the parties and to the executive director any circumstances likely to create a presumption of bias or which might disqualify the person selected or appointed as an impartial fact finder. Each party to the proceeding shall immediately notify the executive director and the fact finder whether it is willing to waive presumptive disqualification. If either party declines to waive the presumptive disqualification, the appointment of the fact finder shall be vacated and the vacancy thus created shall be filled in the same manner as that governing the making of an original appointment. [Order 77-6, § 391-50-716, filed 11/9/77.]

WAC 391-50-718 Impasse resolution--Vacancies as fact finder. If any fact finder should resign, die, withdraw, refuse or be unable to serve, or if disqualified to perform the duties of the office, the commission shall, upon proof satisfactory to it, declare the office vacant. Vacancies shall be filled in the same manner as that governing the making of the original appointment. [Order 77-6, § 391-50-718, filed 11/9/77.]

WAC 391-50-720 Impasse resolution--List of issues for fact finding. At least seven days before the date of the fact finding hearing, each party shall submit to the fact finder and to the other party a written list of the issues it intends to submit to fact finding. [Order 77-6, § 391-50-720, filed 11/9/77.]

WAC 391-50-722 Impasse resolution--Fact finding hearing. The fact finder shall fix the time and place of each hearing. Any party may be represented by counsel or by other authorized representative. The fact finding hearing shall be open to the public unless otherwise agreed to by the parties. The fact finder, for good cause shown, may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may provide, by written agreement, for the waiver of oral hearing. [Order 77-6, § 391-50-722, filed 11/9/77.]

WAC 391-50-724 Impasse resolution--Order of fact finding proceedings and evidence. The order of presentation at the hearing shall be as mutually agreed between the parties or as determined by the fact finder. The parties may offer such evidence as they desire and shall produce such additional evidence as the fact finder

may deem necessary to an understanding and determination of the dispute. The fact finder shall be the judge of the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of all of the parties, except where any of the parties is absent in default or has waived his right to be present. Each exhibit introduced by a party shall be filed with the fact finder and a copy shall be provided to the other party. The exhibits filed with the fact finder shall be retained by the fact finder unless the parties otherwise agree, or unless the fact finder otherwise permits. [Order 77-6, § 391-50-724, filed 11/9/77.]

WAC 391-50-728 Impasse resolution--Closing of fact finding hearings. The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits. If the fact finder allows the filing of posthearing briefs or other documents, the hearing shall be deemed closed as of the final date set by the fact finder for the filing of such briefs or other documents. The hearings may be reopened by the fact finder on his or her own motion, or on the motion of either party for good cause shown, at any time before the findings of fact and recommendations are made. [Order 77-6, § 391-50-728, filed 11/9/77.]

WAC 391-50-730 Impasse resolution--Findings of fact and recommendations. The fact finder shall make written findings of fact and recommendations for resolution of the dispute and shall serve such findings and recommendations upon the parties and upon the commission. The findings of fact and recommendations shall be in writing and shall be signed by the fact finder. [Order 77-6, § 391-50-730, filed 11/9/77.]

WAC 391-50-732 Impasse resolution--Expenses of fact findings. Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing such witnesses. The fees and traveling expense of a fact finder shall be divided equally between the parties. [Order 77-6, § 391-50-732, filed 11/9/77.]

WAC 391-50-734 Impasse resolution--Interpretation and application of fact finding rules. The fact finder shall interpret and apply these rules insofar as they relate to the powers and duties of the fact finder. Any party who proceeds with fact finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived its right to object. [Order 77-6, § 391-50-734, filed 11/9/77.]

Chapter 391-55 WAC

IMPASSE RESOLUTION RULES

WAC

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WAC 391-55-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations commission relating to the resolution of impasses occurring in collective bargaining. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

(2) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

(3) Chapter 391-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing bargaining unit.

(4) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

(5) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement.

(6) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-001, filed 9/30/80, effective 11/1/80.]

WAC 391-55-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. Special provisions required for conformity with a particular statute are set forth in separate rules numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees), are set forth in WAC sections numbered one digit greater than the general rule on that subject matter and in a subchapter of rules beginning with WAC 391-55-200.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter and in a subchapter of rules beginning with WAC 391-55-300.

(3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter and in a subchapter of rules beginning with WAC 391-55-400.

(4) Special provisions relating to chapter 47.64 RCW (marine employees) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter and in a subchapter of rules beginning

with WAC 391-55-500. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-002, filed 9/30/80, effective 11/1/80.]

WAC 391-55-010 Resolution of impasses—Request for mediation. A request for mediation may be made in writing or by telephone, but shall be confirmed in writing if made by telephone. The party or parties requesting mediation shall provide the following information to the agency:

(1) The name and address of the employer and the name, address and telephone number of the employer's principal representative in the negotiations;

(2) The name and address of the employee organization and the name, address and telephone number of the employee organization's principal representative in the negotiations;

(3) The name and address of the association or other organization, if any, filing the request on behalf of the employer or exclusive representative seeking mediation;

(4) A clear and concise statement of the disputed issues and the parties' positions in relation thereto;

(5) A description of the size and composition of the bargaining unit involved;

(6) The expiration date of any collective bargaining agreement then in effect or recently expired;

(7) Any other relevant information; and

(8) The name, signature, and capacity of each officer, attorney, or other individual acting for the filing party or parties. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-010, filed 9/30/80, effective 11/1/80.]

WAC 391-55-030 Impasse resolution—Assignment of mediator. Upon filing of a request for mediation, the executive director shall appoint a mediator from the list of qualified persons maintained by the commission for that purpose. If the parties have stipulated the names of one or more persons who are acceptable to both parties as mediator, then the executive director shall consider their desires. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-030, filed 9/30/80, effective 11/1/80.]

WAC 391-55-032 Special provision—Educational employees. Upon filing of a unilateral request for mediation, the executive director shall determine the position of the party other than the party making the request, and shall determine whether the assistance of the agency is needed. In making such determination the executive director shall determine whether the parties have exchanged and considered the proposals of one another and whether the intervention of the agency will have a beneficial impact on the negotiating process. Prior to making such determination, the executive director or a member of the agency staff may make an on-site investigation and may engage in conciliation under the general authority of the commission under RCW

41.58.020(1). If it appears that the assistance of the agency is needed, the executive director shall appoint a mediator from the list of qualified persons maintained by the commission for that purpose. If the parties have stipulated the names of one or more persons who are acceptable to both parties as mediator, then the executive director shall consider their desires. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-032, filed 9/30/80, effective 11/1/80.]

WAC 391-55-033 Special provision--Academic employees. Upon the filing of a unilateral request for mediation, the executive director shall determine the position of the party other than the party making the request. If both parties concur in the need for mediation, the executive director shall appoint a mediator from the list of qualified persons maintained by the commission for that purpose. If the parties have stipulated the names of one or more persons who are acceptable to both parties as mediator, then the executive director shall consider their desires. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-033, filed 9/30/80, effective 11/1/80.]

WAC 391-55-050 Impasse resolution--Submission of written proposals. Parties requesting the mediation services of the agency are encouraged to file with the assigned mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-050, filed 9/30/80, effective 11/1/80.]

WAC 391-55-070 Impasse resolution--Function of mediator. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such steps as the mediator deems appropriate in order to aid the parties in voluntarily resolving their differences and effecting an agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-070, filed 9/30/80, effective 11/1/80.]

WAC 391-55-090 Impasse resolution--Confidential nature of function. Information disclosed by the parties to the mediator in confidence during the course of mediation shall not be divulged by the mediator. Mediation meetings shall be of an executive, private or nonpublic nature. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-090, filed 9/30/80, effective 11/1/80.]

WAC 391-55-110 Impasse resolution--Dispute resolution panel. The commission shall establish and maintain a panel of qualified individuals and shall make a list of members of that panel available to parties for their use in selecting a neutral chairman for an arbitration

panel, a grievance arbitrator, a fact-finder or an ad hoc interest arbitrator. Any person may apply for membership on the panel and, upon acceptance by the agency, shall be placed under contract pursuant to RCW 39.29-.010. Only persons listed on the panel will be compensated by the agency as a neutral chairman under RCW 41.56.450 or as a fact-finder under RCW 41.59.120. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-110, filed 9/30/80, effective 11/1/80.]

WAC 391-55-130 Impasse resolution--Disclosure. Prior to accepting the appointment, or as soon thereafter as information giving rise to a problem of appearance of fairness becomes known, a person serving in an impartial capacity in a dispute resolution proceeding under the jurisdiction of the commission shall disclose to the parties and to the executive director any circumstances likely to create an appearance of bias or which might disqualify him or her from serving in the impartial capacity. Employment of the person or any member of his or her immediate family by any party shall be disqualifying. Each party to the proceeding shall immediately notify the executive director and the appointee or selectee whether it is willing to waive disqualification. If either party declines to waive the disqualification, the appointment shall be vacated. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-130, filed 9/30/80, effective 11/1/80.]

WAC 391-55-150 Impasse resolution--Vacancies. If any person serving in an impartial capacity in dispute resolution proceedings under the jurisdiction of the commission should resign, die, withdraw, refuse or be unable to serve, or should be or become disqualified to perform the duties of the office, the executive director shall declare the office vacant. The vacancy shall be filled as provided in these rules. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-150, filed 9/30/80, effective 11/1/80.]

WAC 391-55-200 Uniformed personnel--Interest arbitration. If a dispute involving uniformed personnel within the meaning of RCW 41.56.030(6) has not been settled after a reasonable period of mediation and the mediator is of the opinion that his or her further efforts will not result in an agreement, the mediator shall notify the parties of intent to recommend that the remaining issues in dispute be submitted to arbitration. If the dispute remains unresolved, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator and any statements of position filed by the parties as to the existence of an impasse warranting arbitration. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, written notice shall be given to both parties. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110,

and 47.64.040. 80-14-049 (Order 80-8), § 391-55-200, filed 9/30/80, effective 11/1/80.]

WAC 391-55-205 Uniformed personnel--Appointment of partisan arbitrators. Within five days following the issuance of the notice by the executive director, each party shall name one person who is available and willing to serve as its member of the arbitration panel, and shall notify the opposite party and the executive director of the name, address and telephone number of the person so designated. The members so appointed shall proceed as provided in RCW 41.56.450. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-205, filed 9/30/80, effective 11/1/80.]

WAC 391-55-210 Uniformed personnel--Selection of impartial arbitrator. (1) If the appointed members agree on the selection of a neutral chairman, they shall obtain a commitment to serve, and shall notify the executive director of the identity of the neutral chairman so selected.

(2) If the appointed members agree to have the commission appoint a neutral chairman, they shall file with the executive director a written joint request. The parties and the appointed members are not entitled to influence the designation of an arbitrator under this subsection and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairman to be appointed by the commission. Upon the filing of a request in compliance with this subsection, the executive director shall appoint a neutral chairman from the dispute resolution panel.

(3) If the appointed members desire to select a neutral chairman from a panel of arbitrators, they shall attempt to agree as to which of the agencies designated in RCW 41.56.450 will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall proceed forthwith to request a panel of five arbitrators. If the appointed members are unable to agree within five days following their first meeting as to which agency is to supply the list of arbitrators, either of them may apply to the executive director for a list of five available neutral chairmen other than agency staff members and the neutral chairman shall be selected from the commission's dispute resolution panel. All request for panels under this subsection shall specify: "For interest arbitration proceedings under RCW 41.56.450." The selection of the impartial arbitrator shall be made pursuant to the rules of the agency supplying the list of arbitrators, and the parties shall notify the executive director of the identity of the arbitrator so selected. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-210, filed 9/30/80, effective 11/1/80.]

WAC 391-55-215 Uniformed personnel--Conduct of interest arbitration proceedings. Proceedings shall be conducted as provided in WAC 391-55-200 through

391-55-260. The neutral chairman shall interpret and apply these rules insofar as they relate to the powers and duties of the neutral chairman. 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-215, filed 9/30/80, effective 11/1/80.]

WAC 391-55-220 Uniformed personnel--Submission of proposals for arbitration. At least seven days before the date of the hearing, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties shall not be entitled to submit issues which were not among the issues before the mediator under WAC 391-55-070 and before the executive director under WAC 391-55-200. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-220, filed 9/30/80, effective 11/1/80.]

WAC 391-55-225 Uniformed personnel--Hearing. The arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties. For good cause shown, the neutral chairman may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-225, filed 9/30/80, effective 11/1/80.]

WAC 391-55-230 Uniformed personnel--Order of proceedings and evidence. The order of presentation at the hearing shall be as agreed by the parties or as determined by the neutral chairman. The neutral chairman shall be the judge of the relevancy of the evidence. 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. Each documentary exhibit shall be filed with the neutral chairman and copies shall be provided to the appointed members and to the other parties. The exhibits shall be retained by the neutral chairman until an agreement has been signed or until any judicial review proceedings have been concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairman. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-230, filed 9/30/80, effective 11/1/80.]

WAC 391-55-235 Uniformed personnel--Arbitration in the absence of a party. The neutral chairman may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of the issues in dispute shall not be made solely on the default of a

party, and the neutral chairman shall require the participating party to submit such evidence as may be required for making of the findings of fact and determining the issues. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-235, filed 9/30/80, effective 11/1/80.]

WAC 391-55-240 Uniformed personnel--Closing of arbitration hearings. The neutral chairman shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and filing of briefs within agreed time limits. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-240, filed 9/30/80, effective 11/1/80.]

WAC 391-55-245 Uniformed personnel--Interest arbitration award. The determination of the neutral chairman shall be controlling, and shall not require concurrence, but may be accompanied by the concurring and/or dissenting opinions of the appointed members. Such determinations shall not be subject to review by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-245, filed 9/30/80, effective 11/1/80.]

WAC 391-55-255 Uniformed personnel--Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairman appointed pursuant to WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for recording of the proceedings, shall be shared equally between the parties. The fees and traveling expense of a neutral chairman appointed by the commission pursuant to WAC 391-55-210(2), along with the costs of tapes for a tape recording of the proceedings but not a transcription thereof or the services of a court reporter, shall be paid by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-255, filed 9/30/80, effective 11/1/80.]

WAC 391-55-260 Uniformed personnel--Central filing of agreements. The parties to collective bargaining agreements entered into as a result of collective bargaining pursuant to RCW 41.56.440 or 41.56.450 shall file with the executive director two complete copies of their agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-260, filed 9/30/80, effective 11/1/80.]

WAC 391-55-300 Educational employees--Fact-finding. If a dispute involving educational employees within the meaning of RCW 41.59.020(4) has not been

settled after ten days of mediation, either party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party. The parties may, by agreement made at any time prior to the appointment of a fact finder, extend the period for mediation or place in the hands of the mediator the determination of when mediation has been exhausted so as to warrant the initiation of fact-finding. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-300, filed 9/30/80, effective 11/1/80.]

WAC 391-55-310 Educational employees--Selection of fact finder. Upon the filing of a timely request for fact-finding, the executive director shall furnish the parties a list of five members of the dispute resolution panel. Within seven days following receipt of the list, the parties shall meet to attempt to select a fact finder. The parties may agree to designate the mediator as fact finder. If the parties agree on a fact finder, they shall obtain a commitment to serve and shall notify the executive director of the identity of the fact finder so selected. If the parties are unable to agree on a fact finder, they shall notify the executive director, who shall designate a fact finder from the dispute resolution panel. The parties are not entitled to influence the designation of a fact finder and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-310, filed 9/30/80, effective 11/1/80.]

WAC 391-55-315 Educational employees--Conduct of fact-finding proceedings. Proceedings shall be conducted as provided in WAC 391-55-300 through 391-55-360. The fact finder shall interpret and apply these rules insofar as they relate to the powers and duties of the fact finder. Any party who proceeds with fact-finding 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-315, filed 9/30/80, effective 11/1/80.]

WAC 391-55-320 Educational employees--Submission of proposals for fact-finding. At least seven days before the date of the hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-320, filed 9/30/80, effective 11/1/80.]

WAC 391-55-325 Educational employees--Fact-finding hearing. The fact finder shall establish a date, time and place for a hearing. The fact-finding hearing shall be open to the public unless otherwise agreed by

the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-325, filed 9/30/80, effective 11/1/80.]

WAC 391-55-330 Educational employees--Order of proceedings and evidence. The order of presentation at the hearing shall be as agreed by the parties or as determined by the fact finder. The fact finder shall be the judge of the relevancy of the evidence. 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. Each documentary exhibit shall be filed with the fact finder and copies shall be provided to the other parties. The exhibits shall be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-330, filed 9/30/80, effective 11/1/80.]

WAC 391-55-340 Educational employees--Closing of fact-finding hearings. The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and filing of briefs within agreed time limits. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-340, filed 9/30/80, effective 11/1/80.]

WAC 391-55-350 Educational employees--Responsibility of parties after fact-finding. Not more than seven days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder. If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may request mediation pursuant to chapter 41.58 RCW and, upon the concurrence of the other party, the executive director shall assign a mediator. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-350, filed 9/30/80, effective 11/1/80.]

WAC 391-55-355 Educational employees--Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a fact finder selected from the commission panel shall be paid by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-355, filed 9/30/80, effective 11/1/80.]

WAC 391-55-360 Educational employees--Central filing of agreements. The parties to collective bargaining

agreements entered into as a result of collective bargaining pursuant to chapter 41.59 RCW shall file with the executive director two complete copies of their agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-360, filed 9/30/80, effective 11/1/80.]

WAC 391-55-400 Academic employees--Fact-finding. If a dispute involving academic employees within the meaning of RCW 28B.52.020 has not been settled after a reasonable period of mediation, either party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-400, filed 9/30/80, effective 11/1/80.]

WAC 391-55-410 Academic employees--Selection of fact finder. Upon receipt of a unilateral request for fact-finding, the executive director shall determine the position of the party other than the party making the request. If both parties concur in the initiation of fact-finding, the executive director shall furnish the parties a list of five members of the dispute resolution panel. The parties shall meet to attempt to select a fact finder. If the parties agree on a fact finder, they shall obtain a commitment to serve and shall notify the executive director of the identity of the fact finder so selected. If the parties are unable to agree on a fact finder, they shall notify the executive director, who shall designate a fact finder from the dispute resolution panel. The parties are not entitled to influence the designation of a fact finder and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-410, filed 9/30/80, effective 11/1/80.]

WAC 391-55-415 Academic employees--Conduct of fact-finding proceedings. Proceedings shall be conducted as provided in WAC 391-55-400 through 391-55-455. The fact finder shall interpret and apply these rules insofar as they relate to the powers and duties of the fact finder. Any party who proceeds with fact-finding 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-415, filed 9/30/80, effective 11/1/80.]

WAC 391-55-420 Academic employees--Submission of proposals for fact-finding. At least seven days before the date of the hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding.

[Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-420, filed 9/30/80, effective 11/1/80.]

WAC 391-55-425 Academic employees--Fact-finding hearing. The fact finder shall establish a date, time and place for a hearing. The fact-finding hearing shall be open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-425, filed 9/30/80, effective 11/1/80.]

WAC 391-55-430 Academic employees--Order of proceedings and evidence. The order of presentation at the hearing shall be as agreed by the parties or as determined by the fact finder. The fact finder shall be the judge of the relevancy of the evidence. 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. Each documentary exhibit shall be filed with the fact finder and copies shall be provided to the other parties. The exhibits shall be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-430, filed 9/30/80, effective 11/1/80.]

WAC 391-55-435 Academic employees--Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and recommendations shall not be made solely on the default of a party, and the fact finder shall require the participating party to submit such evidence as may be required for making of the findings of fact and recommendations. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-435, filed 9/30/80, effective 11/1/80.]

WAC 391-55-440 Academic employees--Closing of fact-finding hearings. The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and filing of briefs within agreed time limits. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-440, filed 9/30/80, effective 11/1/80.]

WAC 391-55-445 Academic employees--Findings of fact and recommendations. The findings of fact and recommendations of the fact finder shall not be subject to review by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and

47.64.040. 80-14-049 (Order 80-8), § 391-55-445, filed 9/30/80, effective 11/1/80.]

WAC 391-55-450 Academic employees--Responsibility of parties after fact-finding. Not more than seven days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder. If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may request mediation pursuant to chapter 41.58 RCW and, upon the concurrence of the other party, the executive director shall assign a mediator. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-450, filed 9/30/80, effective 11/1/80.]

WAC 391-55-455 Academic employees--Expenses of fact-finding. Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a fact finder selected from the commission panel shall be paid by the commission. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-455, filed 9/30/80, effective 11/1/80.]

WAC 391-55-500 Marine employees--Interest arbitration. If a dispute is claimed concerning the future terms and conditions of employment of employees within the meaning of RCW 47.64.010(4), hereinafter referred to as "marine employees", any employee, employee's representative or the employer of such marine employee(s) may request arbitration of the dispute by the commission by giving written notice. Such notice shall contain:

- (1) The name and address of the employer and the name, address and telephone number of the employer's principal representative in the negotiations;
- (2) The name and address of the employee or employee organization party to the labor dispute and the name, address and telephone number of that party's principal representative in the negotiations;
- (3) The name and address of the association or other organization, if any, filing the request on behalf of the employee, employee organization or employer seeking arbitration;
- (4) A clear and concise statement of the disputed issues and the parties' positions in relation thereto;
- (5) A description of the size and composition of the bargaining unit involved;
- (6) The expiration date of any collective bargaining agreement then in effect or recently expired;
- (7) Any other relevant information;
- (8) A request that the commission assert jurisdiction and make a final and binding determination of the dispute pursuant to RCW 47.64.040; and
- (9) The name, signature and capacity of each officer, attorney or other representative acting for the filing party or parties.

The original and three copies of the notice shall be filed with the commission at its Olympia office. The party filing the notice shall serve a copy on each of the other parties to the labor dispute. Amendments to notices shall be filed and served in the same manner as the original notice in the proceeding. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-500, filed 9/30/80, effective 11/1/80.]

WAC 391-55-505 Marine employees--Referral for mediation. If a notice is filed pursuant to WAC 391-55-500 in a dispute which has not been submitted for mediation pursuant to WAC 391-55-010 or at a time when mediation has been commenced but has not been exhausted, the commission or the executive director may require the parties to engage in mediation or continue in mediation until such time as the mediator is of the opinion that his or her further efforts will not result in an agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-505, filed 9/30/80, effective 11/1/80.]

WAC 391-55-510 Marine employees--Intervention and consolidation of proceedings. (1) Motion for intervention: Any person, not a party, who desires to appear and participate in any proceeding before the commission under this subchapter 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 agency 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 agency may consolidate proceedings on two or more notices where the facts or principles of law are related. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-510, filed 9/30/80, effective 11/1/80.]

WAC 391-55-515 Marine employees--Conduct of interest arbitration proceedings. Hearings may be conducted by the commission, by the executive director, by

a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. A 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. 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-515, filed 9/30/80, effective 11/1/80.]

WAC 391-55-520 Marine employees--Submission of issues for arbitration. At least seven days before the date of the hearing, unless a shorter period is allowed by the agency for good cause shown, each party shall submit to the agency and to the other party written proposals on all of the issues it intends to submit to arbitration. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-520, filed 9/30/80, effective 11/1/80.]

WAC 391-55-525 Marine employees--Hearing. The agency shall establish a date, time and place for a hearing and shall provide reasonable notice thereof to the parties. Where it appears to the commission or executive director that an emergency exists warranting consideration of interim relief, a hearing may be scheduled for that purpose on less notice than that provided by WAC 391-08-170. For good cause shown, the agency may adjourn the hearing upon the request of a party or upon its own initiative. The parties may waive oral hearing by written agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-525, filed 9/30/80, effective 11/1/80.]

WAC 391-55-530 Marine employees--Order of proceedings and evidence. The order of presentation at the hearing shall be as agreed by the parties or as determined by the agency. 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 agency may make, and take official notice of the results of, its own inspection of the conditions involved. Each documentary

exhibit shall be filed with the agency and copies shall be provided to the other parties. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-530, filed 9/30/80, effective 11/1/80.]

WAC 391-55-535 Marine employees—Arbitration in the absence of a party. The agency may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Findings of fact and the determination of issues in dispute shall not be made solely on the default of a party, and the agency shall require the participating party to submit such evidence as may be required for making of the findings of fact and determining the issues. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-535, filed 9/30/80, effective 11/1/80.]

WAC 391-55-540 Marine employees—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 agency 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-540, filed 9/30/80, effective 11/1/80.]

WAC 391-55-545 Marine employees—Interest arbitration award. The hearing officer shall cause the entire record in the proceeding to be transferred 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 record and any briefs or arguments submitted to it, determine the matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-545, filed 9/30/80, effective 11/1/80.]

WAC 391-55-560 Marine employees—Central filing of agreements. The parties to collective bargaining agreements entered into as a result of collective bargaining pursuant to chapter 47.64 RCW shall file with the executive director two complete copies of their agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-049 (Order 80-8), § 391-55-560, filed 9/30/80, effective 11/1/80.]

Chapter 391-65 WAC GRIEVANCE ARBITRATION RULES

WAC

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WAC 391-65-001 Scope—Contents—Other rules. This chapter governs proceedings before the public employment relations 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 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

(2) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

(3) Chapter 391-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing bargaining unit.

(4) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

(5) Chapter 391-55 WAC, which contains rules relating to the resolution of impasses occurring in collective bargaining.

(6) Chapter 391-95 WAC, which contains rules relating to determination of union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-001, filed 9/30/80, effective 11/1/80.]

WAC 391-65-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity

with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (professional negotiations—academic faculties of community college districts) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (marine employees) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter, and in a subchapter of rules beginning with WAC 391-65-500.

(5) Special provisions relating to chapter 49.08 RCW (private sector employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-002, filed 9/30/80, effective 11/1/80.]

WAC 391-65-010 Grievance arbitration—Who may file. Where there is an agreement to arbitrate, a request for appointment of an arbitrator to hear and determine issues arising out of the interpretation or application of a collective bargaining agreement may be filed by the employer, the exclusive representative or their agents or by the parties jointly. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-010, filed 9/30/80, effective 11/1/80.]

WAC 391-65-030 Grievance arbitration—Filing—Service. Each request for appointment of a grievance arbitrator 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 391-65-050. The original request shall be filed with the agency at its Olympia office. If the request is not filed jointly, the party filing the request shall serve a copy on the other party to the collective bargaining agreement under which the dispute arises. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-030, filed 9/30/80, effective 11/1/80.]

WAC 391-65-050 Grievance arbitration—Contents of request. Each request for appointment of a grievance arbitrator shall contain:

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

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

(3) Identification of the request as: (a) A request for appointment of a member of the agency staff as 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 391-55-110.

(4) A description of the grievances or issues to be submitted to arbitration and the number of employees affected thereby.

(5) The agreement of the requesting party, or the parties jointly, that there will be no strike or lockout on any matter submitted to arbitration.

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

(7) The signature(s) and, if any, title(s) of the representative(s) of the requesting party (parties). [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-050, filed 9/30/80, effective 11/1/80.]

WAC 391-65-070 Grievance arbitration—Appointment of staff arbitrator. The parties shall not be permitted to select a grievance arbitrator from a list of agency staff members, or to exercise a right of rejection on appointments made by the executive director; but may jointly express a preference for appointment of a particular staff member as their arbitrator, and the executive director shall consider their desires. Upon the filing of a request by one party for the appointment of a member of the agency staff as grievance arbitrator, the executive director shall determine whether the other party to the collective bargaining agreement concurs in the appointment of a staff arbitrator. Upon concurrence or upon the filing of a joint request, the executive director shall assign a member of the agency staff as grievance arbitrator. In the absence of concurrence, the executive director shall notify the requesting party of the lack of concurrence and shall take no further action. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-070, filed 9/30/80, effective 11/1/80.]

WAC 391-65-072 Special provision—Educational employees. The agency does not appoint members of the agency staff as arbitrators in grievance arbitration proceedings under chapter 41.59 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-072, filed 9/30/80, effective 11/1/80.]

WAC 391-65-073 Special provision—Academic employees. The agency does not appoint members of the agency staff as arbitrators in grievance arbitration proceedings under chapter 28B.52 RCW. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-073, filed 9/30/80, effective 11/1/80.]

WAC 391-65-074 Special provisions--Marine employees. The provisions of WAC 391-65-070 shall not be applicable to grievance disputes arising under chapter 47.64 RCW. All disputes concerning interpretation or application of a collective bargaining agreement negotiated pursuant to chapter 47.64 RCW shall be processed under special provisions beginning with WAC 391-65-500. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-074, filed 9/30/80, effective 11/1/80.]

WAC 391-65-090 Grievance arbitration--Designation of panel of arbitrators. Upon the filing of a request for a panel of arbitrators, the executive director shall furnish the parties a list of names selected from the dispute resolution panel. The list shall contain five names unless a different number is specifically requested by the parties or is specified in their collective bargaining agreement. The executive director shall furnish, whenever available, biographical information, including background, qualifications and experience, on each of the arbitrators on the list supplied to the parties. If one or more of those named is unavailable to accept appointment as arbitrator or must be disqualified, a substitute name will be provided upon the joint request of the parties. If all of those named are rejected by the parties, a second list will be provided upon the joint request of the parties. All contacts and arrangements between the parties and an arbitrator selected under this rule will be the responsibility of the parties. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-090, filed 9/30/80, effective 11/1/80.]

WAC 391-65-094 Special provision--Marine employees. The provisions of WAC 391-65-090 shall not be applicable to grievance disputes arising under chapter 47.64 RCW. All disputes concerning interpretation or application of a collective bargaining agreement negotiated pursuant to chapter 47.64 RCW shall be processed under special provisions beginning with WAC 391-65-500. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-094, filed 9/30/80, effective 11/1/80.]

WAC 391-65-110 Grievance arbitration--Conduct of proceedings. The arbitrator assigned or selected 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 "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 in effect on December 1, 1977: *Provided, however,* That arbitration matters handled by members of the agency staff shall be filed in the public files of the agency and shall not be accorded the privacy required by such code. The services of a member of the commission staff as arbitrator shall be subject to interruption for reassignment of such staff

member to other functions of the agency having a higher priority. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-110, filed 9/30/80, effective 11/1/80.]

WAC 391-65-130 Grievance arbitration--Award. Any arbitrator assigned or selected under this chapter shall, after submission of the arbitration award to the parties, file a copy with the executive director. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-130, filed 9/30/80, effective 11/1/80.]

WAC 391-65-150 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 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 staff member assigned as a grievance arbitrator, but no other expenses of the proceedings. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-150, filed 9/30/80, effective 11/1/80.]

WAC 391-65-500 Marine employees--Grievance arbitration. Upon the filing of a request pursuant to WAC 391-65-050 for arbitration of a dispute concerning interpretation or application of a collective bargaining agreement negotiated pursuant to chapter 47.64 RCW, the procedures of WAC 391-65-500, *et seq.* shall be the exclusive procedures for the determination of such dispute. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-500, filed 9/30/80, effective 11/1/80.]

WAC 391-65-510 Marine employees--Intervention and consolidation of proceedings. (1) Motion for intervention: Any person, not a party, who desires to appear and participate in any proceeding before the commission under this subchapter 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 agency 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 agency may consolidate proceedings on two or more notices where the facts or principles of law are related. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-510, filed 9/30/80, effective 11/1/80.]

WAC 391-65-515 Marine employees—Conduct of grievance arbitration proceedings. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as examiner. At any time, an examiner may be substituted for the examiner previously presiding. An examiner 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;
- (8) 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; and
- (9) To take any other action authorized by these rules. 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-515, filed 9/30/80, effective 11/1/80.]

WAC 391-65-525 Marine employees—Hearing. The agency shall establish a date, time and place for a hearing and shall provide reasonable notice thereof to the parties. Where it appears to the commission, executive director, or examiner that an emergency exists warranting consideration of interim relief, a hearing may be scheduled for that purpose on less notice than that provided by WAC 391-08-170. For good cause shown, the agency may adjourn the hearing upon the request of a

party or upon its own initiative. The parties may waive oral hearing by written agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-525, filed 9/30/80, effective 11/1/80.]

WAC 391-65-530 Marine employees—Order of proceedings and evidence. The order of presentation at the hearing shall be as agreed by the parties or as determined by the agency. 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 agency may make, and take official notice of the results of, its own inspection of the conditions involved. Each documentary exhibit shall be filed with the agency and copies shall be provided to the other parties. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-530, filed 9/30/80, effective 11/1/80.]

WAC 391-65-535 Marine employees—Arbitration in the absence of a party. The agency 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-535, filed 9/30/80, effective 11/1/80.]

WAC 391-65-540 Marine employees—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 agency 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-540, filed 9/30/80, effective 11/1/80.]

WAC 391-65-545 Marine employees—Examiner decision. After the close of the hearing and the filing of all briefs, the examiner shall issue an arbitration award on the matters in dispute. The examiner shall file the original decision with the commission and shall cause a copy thereof to be served on each of the parties. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-545, filed 9/30/80, effective 11/1/80.]

WAC 391-65-550 Marine employees—Petition for review of examiner decision. The examiner's award shall be 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 award issued by the examiner. The original and three copies of 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 fourteen 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, the executive director or his designee 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 examiner's final order, the arbitration award of the examiner shall automatically become final and binding. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-550, filed 9/30/80, effective 11/1/80.]

WAC 391-65-555 Marine employees--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 record and any briefs or arguments submitted to it on review, issue the final and binding arbitration award on the matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-555, filed 9/30/80, effective 11/1/80.]

WAC 391-65-560 Marine employees--Grievance arbitration remedies. If a violation of a collective bargaining agreement is found to have been committed, the commission or its examiner shall issue a remedial order. In calculating back pay orders, the following shall apply:

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

(2) Individuals reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee may have received during the period of the violation, and the employer 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

28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-050 (Order 80-9), § 391-65-560, filed 9/30/80, effective 11/1/80.]

Chapter 391-70 WAC COLLECTIVE BARGAINING RULES--MARINE EMPLOYEES

WAC

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WAC 391-70-010 Scope--Contents--Other rules. This chapter governs specific proceedings under chapter 47.64 RCW and other statutes relating to collective bargaining between the state of Washington and its marine employees. The provisions of this chapter should be read in conjunction with the provisions of chapter 391-08 WAC, which contains general rules applicable to all types of proceedings before the public employment relations commission. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-010, filed 12/14/78.]

WAC 391-70-020 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. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-020, filed 12/14/78.]

WAC 391-70-030 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. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-030, filed 12/14/78.]

WAC 391-70-040 Address for communications. All written communications and documents should be addressed to "Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504" and not to individual members of the commission. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-040, filed 12/14/78.]

WAC 391-70-050 Office hours. The office of the commission is open on each business day between the hours of 8:00 a.m. and 5:00 p.m., except Saturday. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-050, filed 12/14/78.]

WAC 391-70-070 Definitions. (1) "Public employment relations commission" and "commission" mean the public employment relations commission of this state or its authorized agents.

(2) "Person" or "party" includes an individual, corporation, partnership, labor union, association, the Washington toll bridge authority, or any public officer or agency.

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

(a) "Petitioner" means a person who files a notice of labor dispute with the commission.

(b) "Respondent" means a person who is identified in a notice of labor dispute as the party to the dispute other than the petitioner.

(c) "Intervenor" means a person having an interest in the disposition of a labor dispute and who moves for intervention pursuant to WAC 391-70-110.

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-070, filed 12/14/78.]

WAC 391-70-080 Informal procedure. (1) Informal notice: An informal notice to the commission concerning a labor dispute may be given by letter or other writing. 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 of and the names, addresses and telephone numbers of the principal representatives of all parties.

(2) Commission action: Informal procedure will be used wherever practicable. Upon the filing of an informal notice, the executive director shall appoint a mediator from the list of qualified persons maintained by the commission for that purpose. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such other steps as the mediator deems appropriate in order to aid the parties in voluntarily resolving their differences and effecting an agreement. No mandatory or prohibitory order may be issued in an informal proceeding unless the parties stipulate in writing that such an order may be entered.

(3) Transfer to formal proceedings: Proceedings instituted by informal notice shall be without prejudice to

the right of any party to file a formal notice. Any party desiring a formal order of the commission should file a formal notice pursuant to WAC 391-70-090. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-080, filed 12/14/78.]

WAC 391-70-090 Formal procedure. (1) Formal notice: Any notice of a labor dispute filed in accordance with RCW 47.64.040 to obtain a formal ruling of the commission shall be deemed a formal notice. A formal notice may be required by the commission in any case.

(2) Contents of formal notice:

(a) The name and address of the party giving notice and the name, address and telephone number of its principal representative.

(b) The name and address of each other party to the labor dispute and the name(s), address(es) and telephone number(s) of its(their) principal representative(s).

(c) A brief and concise statement of the facts and circumstances of the labor dispute and the relief sought.

(d) Any other relevant information.

(e) The name, signature and capacity of each officer, attorney or other representative acting for the filing party or parties.

(3) Liberal construction: All notices shall be liberally construed to effect justice between the parties. The commission will, at every stage of any proceeding, disregard errors or defects in the notice or proceedings which do not affect the substantial rights of the parties.

(4) Amendments: The commission may allow amendments to the notice or other relevant documents at any time upon such terms as may be just.

(5) Consolidation of proceedings: Two or more proceedings in which the facts or principles of law are related may be consolidated and heard together. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-090, filed 12/14/78.]

WAC 391-70-105 Formal notices--Number of copies--Filing--Service. Formal notices shall be typewritten, mimeographed or printed. The original and three copies thereof shall be filed with the commission at its Olympia office. The party filing the notice shall cause a copy thereof to be served on each of the other parties to the labor dispute. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-105, filed 12/14/78.]

WAC 391-70-110 Intervention. (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 motions 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 proceeding and shall be known as an "intervenor", with the same right to produce and cross-examine witnesses as the other parties. If it appears during the course of a proceeding that an intervenor has no substantial interest therein, the commission may dismiss such intervenor. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-110, filed 12/14/78.]

WAC 391-70-120 Appearances. (1) General: Parties shall enter their appearances at the beginning of any formal hearing by giving their names and addresses to the commission and the reporter shall include them in the minutes of the hearing.

(2) Answers and replies: An answer in writing or a reply in writing to an answer may be required by the commission or made voluntarily by any party. Answers and replies shall be filed and served as is required for formal notices under WAC 391-70-105. The commission shall fix the time allowable for filing an answer or reply. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-120, filed 12/14/78.]

WAC 391-70-140 Voluntary settlement. Parties to a labor dispute may, with the approval of the commission, enter into a voluntary settlement of the dispute at any time prior to the issuance of a final order by the commission. 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. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-140, filed 12/14/78.]

WAC 391-70-170 Hearings. (1) General: The time and place of holding 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 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) Who shall conduct: Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a

hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding.

(3) Dismissals: If the petitioner fails to appear at the time and place set for hearing, the commission may dismiss the notice or may recess the hearing to a time to be set by the hearing officer to enable the petitioner to attend. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-170, filed 12/14/78.]

WAC 391-70-220 Order of procedure. (1) Presentation of evidence: Evidence will ordinarily be received in the following order:

- (a) petitioner,
- (b) respondent,
- (c) commission's staff, and
- (d) rebuttal.

Where an intervenor takes a position in support of the position of one of the original parties, the intervenor's evidence shall follow that of the supported party. If the intervention is not in support of either original party, the hearing officer shall designate the order of presentation of evidence by that intervenor.

(2) Modification of procedure: The order of presentation prescribed above shall be followed, except where the hearing officer may otherwise direct. In hearings of several proceedings upon a consolidated record, the hearing officer shall designate who shall open or close. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-220, filed 12/14/78.]

WAC 391-70-245 Inspection of conditions. In addition to any other evidence, the commission may take official notice of the results of its own inspection of the conditions involved. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-245, filed 12/14/78.]

WAC 391-70-260 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. The commission may require the filing of all briefs within such time as may be reasonable, before or after any hearing, or may direct that oral argument be made at the close of the hearing in lieu of briefs. The original and three copies of each brief shall be filed with the commission and copies thereof shall be served on all other parties to the proceeding. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-260, filed 12/14/78.]

WAC 391-70-300 Compliance with orders—Notification to commission. When an order has been issued by the commission, any party named therein who is required by such order to do or refrain from doing any act or thing may be required to notify the commission on or before the date specified in such order for compliance as

to what actions have been taken to comply with the order. [Statutory Authority: RCW 41.58.050 and 47.64.040. 79-01-016 (Order 78-8), § 391-70-300, filed 12/14/78.]

Chapter 391-95 WAC UNION SECURITY DISPUTE RULES

WAC

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| 391-95-030 | Union security—Assertion of right of nonassociation. |
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WAC 391-95-001 Scope—Contents—Other rules.

This chapter governs proceedings before the public employment relations commission relating to union security disputes arising between employees and employee organizations certified or recognized as their bargaining representative. The provisions of this chapter should be read in conjunction with the provisions of:

(1) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission.

(2) Chapter 391-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of employees.

(3) Chapter 391-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing bargaining unit.

(4) Chapter 391-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices.

(5) Chapter 391-55 WAC, which contains rules relating to the resolution of impasses occurring in collective bargaining.

(6) Chapter 391-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-001, filed 9/30/80, effective 11/1/80.]

WAC 391-95-010 Union Security—Obligation of exclusive bargaining representative. An exclusive bargaining representative which desires to enforce a union security provision contained in a collective bargaining

agreement negotiated under the provisions of chapter 41.56 or 41.59 RCW shall provide each affected employee with a copy of the collective bargaining agreement containing the union security provision and shall specifically advise each employee of his or her obligation under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-010, filed 9/30/80, effective 11/1/80.]

WAC 391-95-030 Union security—Assertion of right of nonassociation. An employee who, pursuant to RCW 41.56.122(1) or 41.59.100, asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall notify the exclusive bargaining representative, in writing, of the claim of a right of nonassociation and shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-030, filed 9/30/80, effective 11/1/80.]

WAC 391-95-050 Union security—Response by exclusive bargaining representative. Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-030, the exclusive bargaining representative shall respond to the employee, in writing, both as to the eligibility of the employee to make alternative payments and as to the charitable organization(s) suggested by the employee. If a dispute exists concerning whether the employee is within a class of employees obligated under the terms of the union security provision, all such matters of contractual interpretation shall be resolved under such procedures as may be available for unit clarification or resolution of disputes concerning the interpretation or application of the collective bargaining agreement. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-050, filed 9/30/80, effective 11/1/80.]

WAC 391-95-070 Union security—Filing of dispute with commission. In the event of a disagreement between an employee and his or her exclusive bargaining representative as to the eligibility of such employee to make alternative payments or as to the organization which is to receive such payments, either the employee or the exclusive bargaining representative may file with the commission a petition for a declaratory ruling on the union security obligations of the affected employee. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-070, filed 9/30/80, effective 11/1/80.]

WAC 391-95-090 Union security--Petition form--Number of copies--Filing--Service. Each petition for declaratory ruling on union security obligations shall be prepared in conformance with WAC 391-95-110. The original and three copies of the petition shall be filed with the commission at its Olympia office and the party filing the petition shall serve a copy on the other party to the dispute and on the employer. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-090, filed 9/30/80, effective 11/1/80.]

WAC 391-95-110 Union security--Contents of petition. Each petition shall be headed "In the matter of the petition of (name of petitioning party) for a declaratory ruling concerning the union security obligations of (name of affected employee) under a collective bargaining agreement between (name of employer) and (name of exclusive bargaining representative)," and shall contain:

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

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

(3) The name, address and telephone number of the affected employee and the name, address and telephone number of his or her representative.

(4) Statements, in additional numbered paragraphs, of the matters in dispute.

(5) A copy, attached to the petition as an exhibit, of the union security provision under which the dispute arises.

(6) Any other relevant facts.

(7) The signature(s) and, if any, the title(s) of the representative(s) of the petitioner(s). [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-110, filed 9/30/80, effective 11/1/80.]

WAC 391-95-150 Union security--Investigation. The matter shall be referred to a member of the agency staff, who shall conduct an investigation and such conferences as may be necessary to determine the relative positions of the parties and the facts and authorities relied upon by them, and shall issue a report in conformance with WAC 391-08-220. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-150, filed 9/30/80, effective 11/1/80.]

WAC 391-95-170 Union security--Notice of hearing. If the petition raises material questions of fact which cannot be resolved without a hearing and summary disposition under WAC 391-08-230 is not appropriate, there shall be issued and served on each of the parties to the dispute and on the employer a notice of hearing before a hearing officer at a time and place

fixed therein. Any such notice may be amended or withdrawn prior to the close of the hearing. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-170, filed 9/30/80, effective 11/1/80.]

WAC 391-95-190 Union security--Hearings--Who shall conduct. Hearings may be conducted by the commission, by the executive director, by a member of the agency staff or by any other individual designated by the commission or executive director as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-190, filed 9/30/80, effective 11/1/80.]

WAC 391-95-210 Authority of hearing officer. The hearing officer shall have the authority:

(1) To administer oaths and affirmations;

(2) To issue subpoenas in the name of the commission;

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

(4) To question witnesses;

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

(6) To dispose of procedural requests or other procedural 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 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-210, filed 9/30/80, effective 11/1/80.]

WAC 391-95-230 Hearings--Nature and scope. Hearings shall be public and shall be limited to matters concerning the determination of the eligibility of the employee to make alternative payments and the designation of an organization to receive such alternative payments. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-230, filed 9/30/80, effective 11/1/80.]

WAC 391-95-250 Proceedings before the executive director. After the close of the hearing, the executive director may proceed forthwith upon the record, after submission of briefs or after further hearing, as may be appropriate, to determine the matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-250, filed 9/30/80, effective 11/1/80.]

WAC 391-95-270 Proceedings before the commission--Petition for review. The final order of the executive director shall be 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 issued by the executive director. The original and three copies of 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 the other party to the proceeding and on the employer. The petition for review shall identify the actions or rulings claimed to be in error. Any party to the proceeding may, within fourteen days after the initiation of review, file briefs or written arguments for consideration by the commission. The original and three copies of any brief or written argument shall be filed with the commission at its Olympia office and a copy shall be served upon the other party. The commission, the executive director or the designee of the executive director 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 prior to the deadline previously established. 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. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-270, filed 9/30/80, effective 11/1/80.]

WAC 391-95-290 Commission action. The executive director shall transfer the entire record in the proceeding to the commission. The commission shall determine the matter. [Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110, and 47.64.040. 80-14-051 (Order 80-10), § 391-95-290, filed 9/30/80, effective 11/1/80.]