

prize shall be retained in the state lottery account for further use as prizes, pursuant to RCW 67.70.190.

(4) Roll-over feature.

(a) If no player selects all six winning numbers for any given drawing, the jackpot accumulated for that drawing will be added to the jackpot accumulation for the next drawing. This process is repeated until the jackpot is won.

(b) If no player selects five of the six winning numbers for any given drawing, the second prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(c) If no player selects four of the six winning numbers for any given drawing, the third prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(d) If no player selects three of the six winning numbers for any given drawing, the fourth prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(5) Prize payments will be made in accordance with WAC 315-30-030(6), provided, fourth prize winning tickets submitted to the lottery for payment will receive \$1.00 in lieu of a free ticket.

(a) Each prize that has a cash value of \$500,000 or more shall be paid in twenty equal annual payments.

(b) Each prize that has a cash value from \$250,000 up to but not including \$500,000 shall be paid in ten equal annual payments.

(c) Each prize that has a cash value of less than \$250,000 shall be paid in a single payment.

(d) For prizes paid over a period of years, the lottery will make the first annual payment. The remaining payments will be paid in the form designated by the director. [Statutory Authority: RCW 67.70.040, 85-22-057 (Order 81), § 315-32-040, filed 11/5/85; 85-13-015 (Order 75), § 315-32-040, filed 6/10/85; 84-21-013 (Order 66), § 315-32-040, filed 10/5/84; 84-17-018 (Order 61), § 315-32-040, filed 8/3/84.]

**WAC 315-32-050 Ticket purchases.** (1) Lotto tickets may be purchased between 6:00 a.m. and 11:00 p.m., Sunday through Friday and from 6:00 a.m. to the time established under WAC 315-30-040(2) on Saturdays, provided that on-line retailers shall sell tickets only during their normal business hours.

(2) Lotto tickets may be purchased only from a lottery retailer authorized by the director to sell on-line tickets.

(3) Lotto tickets shall on the front of the ticket contain the player's selection of numbers, amount, game grids played, drawing date, and validation and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information and signature area, and the ticket serial number.

(4) Lotto tickets may be purchased for the next drawing only. [Statutory Authority: RCW 67.70.040.

85-22-057 (Order 81), § 315-32-050, filed 11/5/85; 84-17-018 (Order 61), § 315-32-050, filed 8/3/84.]

**WAC 315-32-060 Drawings.** (1) A Lotto drawing shall be held each week on Saturday evening, except that the director may change the drawing schedule if Saturday is a holiday.

(2) The drawing will be conducted by lottery officials.

(3) Each drawing shall determine, at random, six winning numbers with the aid of mechanical drawing equipment which shall be tested before and after that drawing. Any drawn numbers shall not be declared winning numbers until the drawing is certified by the lottery. The winning numbers shall be used in determining all Lotto winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(4) The drawing shall not be invalidated based on the liability of the lottery. [Statutory Authority: RCW 67.70.040, 85-22-057 (Order 81), § 315-32-060, filed 11/5/85; 84-17-018 (Order 61), § 315-32-060, filed 8/3/84.]

## Title 316 WAC

### MARINE EMPLOYEES' COMMISSION

#### Chapters

316-02	Rules of practice and procedure—Marine employees' commission.
316-07	Rules of procedure.
316-25	Marine employees' representation case rules.
316-35	Marine employees' unit clarification case rules.
316-45	Unfair labor practice case rules.
316-55	Marine employees' impasse resolution rules.
316-65	Marine employees' grievance arbitration rules.
316-75	Marine employees' union security dispute rules.

**Reviser's note:** See Title 391 Public Employment Relations Commission. Chapter 15, Laws of 1983 re-creates the Marine Employees' Commission and transfers the authority for the administration of chapter 47.64 RCW to that agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.

#### Chapter 316-02 WAC

### RULES OF PRACTICE AND PROCEDURE— MARINE EMPLOYEES' COMMISSION

#### WAC

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316-02-003	Policy—Construction—Waiver.
316-02-007	Definitions.
316-02-010	Appearance and practice before commission—Who may appear.
316-02-020	Appearance and practice before commission—Standards of conduct.
316-02-030	Appearance and practice before commission—Appearance by former employee of commission or former member of attorney general's staff.

- 316-02-040 Appearance and practice before commission—Former employee as witness.
- 316-02-100 Service of process—Computation of time.
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- 316-02-120 Service of process—Upon whom served.
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- 316-02-340 Subpoenas—Proof of service.
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- 316-02-820 Commission offices.
- 316-02-900 Petitions for rule making—Who may petition.
- 316-02-910 Petitions for rule making—Form.
- 316-02-920 Petitions for rule making—Commission must consider.
- 316-02-930 Petitions for rule making—Notice of disposition.

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

- 316-02-130 Service of process—Method of service. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-130, filed 3/20/84.] Repealed by 85-21-059 (Order 85-2), filed 10/16/85. Statutory Authority: RCW 47.64.260.
- 316-02-140 Service of process—Completion of service on parties. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-140, filed 3/20/84.] Repealed by 85-21-059 (Order 85-2), filed 10/16/85. Statutory Authority: RCW 47.64.260.

**WAC 316-02-001 Application and scope of chapter 316-02 WAC.** Chapter 316-02 WAC has been added to the Washington Administrative Code by the marine employees' commission pursuant to the authority of section 19, chapter 15, Laws of 1983 (RCW 47.64....) and chapter 34.04 RCW, to promulgate comprehensive and uniform rules for practice and procedure 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 316-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of ferry system employees.

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

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

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

(5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-001, filed 3/20/84.]

**WAC 316-02-003 Policy—Construction—Waiver.** The policy of the state being primarily to promote peace in labor relations in the Washington state ferry system, 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 marine employees' commission 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-003, filed 3/20/84.]

**WAC 316-02-007 Definitions.** As used in Title 316 WAC, unless the context otherwise requires, the definitions in this section shall apply.

(1) "Arbitration" means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this chapter.

(2) "Arbitrator" means either a single arbitrator or a panel of three arbitrators.

(3) "Collective bargaining representative" means the persons designated by the secretary of transportation and employee organizations to be the exclusive representatives during collective bargaining negotiations.

(4) "Commission" means the marine employees' commission created by chapter 15, Laws of 1983.

(5) "Department of transportation" or "department" means the department as defined in RCW 47.01.021.

(6) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(7) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(8) "Ferry system management" means those management personnel of the marine transportation division of the department of transportation who have been vested with the day-to-day management responsibilities of the Washington state ferry system by the transportation commission and who are not members of a collective bargaining unit represented by a ferry employee organization.

(9) "Lockout" means the refusal of ferry system management to furnish work to ferry employees in an effort to get ferry employ organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage, as defined in subsection (10) of this section, shall not be considered a lockout.

(10) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her wilful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike.

(11) "Transportation commission" means the commission as defined in RCW 47.01.021. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-007, filed 3/20/84.]

**WAC 316-02-010 Appearance and practice before commission--Who may appear.** No person may appear in a representative capacity before the marine employees' commission 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) The department of transportation, or (b) any labor or employee organization recognized, or seeking recognition, in accordance with chapter 316-25 WAC;

(4) Other persons, including but not limited to bona fide representatives of ferry users, may make presentations to the marine employees' commission following written request approved by a majority of the commission: *Provided*, That only persons qualified under subsections (1), (2), and (3) of this section may take part in representation cases, unit clarifications, unfair labor practice cases, impasse resolutions, grievance handling, union security disputes, or any other technical matters involving labor relations. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-010, filed 3/20/84.]

**WAC 316-02-020 Appearance and practice before commission--Standards of conduct.** Misconduct at any hearing conducted by the commission or its designee 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 316-02-010, shall be ground for suspension or disbarment by the commission after due notice and hearing. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-020, filed 3/20/84.]

**WAC 316-02-030 Appearance and practice before commission--Appearance by former employee of commission or former member of attorney general's staff.** No former member of the marine employees' commission, former employee of the commission or former member of the attorney general's staff shall, at any time after severing his employment with the commission 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 commission during the time of his employment with the commission. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-030, filed 3/20/84.]

**WAC 316-02-040 Appearance and practice before commission--Former employee as witness.** Except upon the express written consent of the marine employees' commission, no former member of the commission, or former member of the attorney general's staff shall, at any time after severing his employment with the commission 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 commission during the time of his employment with the commission. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-040, filed 3/20/84.]

**WAC 316-02-100 Service of process--Computation of time.** Unless otherwise provided in chapter 47.64 RCW, in computing any period of time prescribed by notice, the prescribed period of time shall commence on

the date of receipt of such notice. In computing any other period of time allowed by chapter 47.64 RCW or other 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. [Statutory Authority: RCW 47.64.260. 85-21-059 (Order 85-2), § 316-02-100, filed 10/16/85. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-100, filed 3/20/84.]

**WAC 316-02-103 Service of process—Additional time after service by mail.** Unless a party is required to do some act upon a date specified in a notice or other paper served upon him, 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, 3 days shall be added to the prescribed period. [Statutory Authority: RCW 47.64.260. 85-21-059 (Order 85-2), § 316-02-103, filed 10/16/85. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-103, filed 3/20/84.]

**WAC 316-02-105 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 commission. Any motion to extend any time limit shall, except for good cause shown, be made before the expiration of such time limit. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-105, filed 3/20/84.]

**WAC 316-02-110 Service of process—By whom served.** The commission 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-110, filed 3/20/84.]

**WAC 316-02-120 Service of process—Upon whom served.** All formal papers served by the commission 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 commission or by the commission in connection with any matter pending before the commission shall be furnished to all counsel of record and to all parties not represented

by counsel. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-120, filed 3/20/84.]

**WAC 316-02-130 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 316-02-135 Service of process—Method and completion of service on parties.** Unless otherwise provided in chapter 47.64 RCW, any notice or other paper required under this chapter shall be in writing. Service thereof is sufficient if mailed by restricted certified mail, return receipt requested, addressed to the last known addresses of the parties. Refusal of restricted certified mail by any party shall be considered service. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice. [Statutory Authority: RCW 47.64.260. 85-21-059 (Order 85-2), § 316-02-135, filed 10/16/85.]

**WAC 316-02-140 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 316-02-150 Service of process—Filing with commission.** Papers required to be filed with the commission shall be deemed filed upon actual receipt by the commission 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 commission, to provide proof of service upon other parties required to be served. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-150, filed 3/20/84.]

**WAC 316-02-160 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-160, filed 3/20/84.]

**WAC 316-02-170 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-170, filed 3/20/84.]

**WAC 316-02-180 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 commission. 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 commission shall consider whether the request was promptly and timely made. For good cause shown, the commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-180, filed 3/20/84.]

**WAC 316-02-200 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-200, filed 3/20/84.]

**WAC 316-02-210 Definition of issues--Prehearing conference authorized.** In any proceeding, the commission 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-210, filed 3/20/84.]

**WAC 316-02-220 Definition of issues--Record of action taken during prehearing conference.** The commission 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-220, filed 3/20/84.]

**WAC 316-02-230 Summary judgment.** A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed with the commission and served on all other parties to the proceeding. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-230, filed 3/20/84.]

**WAC 316-02-300 Subpoenas--Form.** Every subpoena shall state the name of the commission as: State of Washington, marine employees' 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-300, filed 3/20/84.]

**WAC 316-02-310 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 commission staff in any proceeding before the commission. The commission or its hearing officer or examiner shall issue subpoenas upon the application of counsel or other representative authorized to practice before the commission, 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). [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-310, filed 3/20/84.]

**WAC 316-02-320 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-320, filed 3/20/84.]

**WAC 316-02-330 Subpoenas--Fees.** Witnesses summoned before the commission 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. [Statutory Authority: RCW

47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-330, filed 3/20/84.]

**WAC 316-02-340 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-340, filed 3/20/84.]

**WAC 316-02-350 Subpoenas--Quashing.** Any motion to quash a subpoena is directed within five 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-350, filed 3/20/84.]

**WAC 316-02-360 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 316-02-340, the commission will seek judicial enforcement of subpoenas which have not been quashed or may authorize a party to seek enforcement. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-360, filed 3/20/84.]

**WAC 316-02-370 Subpoenas--Geographical scope.** Attendance of witnesses and production of evidence may be required from any place in the state of Washington, at any designated place of hearing. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-370, filed 3/20/84.]

**WAC 316-02-400 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-400, filed 3/20/84.]

**WAC 316-02-410 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-410, filed 3/20/84.]

**WAC 316-02-420 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-420, filed 3/20/84.]

**WAC 316-02-450 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-450, filed 3/20/84.]

**WAC 316-02-460 Evidence--Submission of documentary evidence.** Documentary evidence shall be submitted in duplicate. It shall 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 commission shall, upon request, make all necessary copies at a reasonable monetary charge to the party offering the document. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-460, filed 3/20/84.]

**WAC 316-02-470 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. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-02-470, filed 3/20/84.]

**WAC 316-02-490 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. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-02-490, filed 3/20/84.]

**WAC 316-02-500 Declaratory rulings authorized.** As prescribed by RCW 34.04.080 any interested person may petition the commission for a declaratory ruling. The commission shall consider the petition and within a reasonable time the commission 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 issued involved, and, within a reasonable time, the commission 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. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-02-500, filed 3/20/84.]

**WAC 316-02-510 Declaratory rulings—Petition.** Any person petitioning the commission for a declaratory ruling pursuant to RCW 34.04.080 and WAC 316-02-500 shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the marine employees' 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 commission. Petitions shall be on white paper, 8 1/2" x 13" in size. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-02-510, filed 3/20/84.]

**WAC 316-02-600 Commission decisions in contested cases—Form and content.** Every decision and final order shall:

- (1) Be correctly captioned as to name of commission 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. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-02-600, filed 3/20/84.]

**WAC 316-02-610 Commission decisions in contested cases—Service.** Every final order issued by the commission shall be served on each party or upon the person or organization 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. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-02-610, filed 3/20/84.]

**WAC 316-02-800 Commission records—Public access.** The commission will maintain for public inspection: (1) An index to all proceedings filed with and processed by the commission; (2) a docket for each proceeding filed with and processed by the commission 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 commission in the

particular case, except materials held in confidence as provided in WAC 316-02-810. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-800, filed 3/20/84.]

**WAC 316-02-810 Commission records--Confidentiality.** The commission, 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. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-810, filed 3/20/84.]

**WAC 316-02-820 Commission offices.** The commission maintains its principal office in the city of Olympia, Washington at ----- Olympia, Washington 98504. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-820, filed 3/20/84.]

**WAC 316-02-900 Petitions for rule making--Who may petition.** Any interested person may petition the commission requesting the promulgation, amendment, or repeal of any rule. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-900, filed 3/20/84.]

**WAC 316-02-910 Petitions for rule making--Form.** Any interested person petitioning the commission 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 marine employees' 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 commission 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 commission. Petitions shall be on white paper, 8 1/2" x 13" in size. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-910, filed 3/20/84.]

**WAC 316-02-920 Petitions for rule making--Commission must consider.** All petitions shall be considered by the commission and the commission may, at its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-920, filed 3/20/84.]

**WAC 316-02-930 Petitions for rule making--Notice of disposition.** The commission shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-930, filed 3/20/84.]

**Chapter 316-07 WAC  
RULES OF PROCEDURE**

WAC  
316-07-010 through 316-07-300 Repealed.

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

- 316-07-010 General application. [Rule 1.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-020 Special rules. [Rule 1.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-030 Modifications and exceptions. [Rule 1.3, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-040 Address for communications--Time of official receipt. [Order 2, § 316-07-040, filed 3/14/74; Rule 2.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-050 Office hours. [Rule 2.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-060 Computation of time. [Rule 2.3, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-070 Definitions. [Rules 3.1 through 3.10, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-080 Informal procedure. [Rules 4.1 and 4.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-090 Formal procedure. [Rules 5.1 through 5.7, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.



- 316-07-100 Filing and service. [Rules 6.1 and 6.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-110 Intervention. [Rules 7.1 and 7.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-120 Appearances. [Order 2, § 316-07-120, filed 3/14/74; Rules 8.1 and 8.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-130 Prehearing conferences. [Rules 9.1 through 9.3, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-140 Voluntary settlement. [Rule 10.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-150 Subpoenas. [Rule 11.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-160 Depositions. [Rule 12.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-170 Hearings. [Rules 13.1 and 13.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-180 Continuances. [Rule 14.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-190 Stipulation as to facts. [Rule 15.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-200 Conduct at hearings. [Rule 16.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-210 Testimony under oath. [Rule 16.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-220 Order of procedure. [Rules 17.1 and 17.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-230 Rules of evidence—Admissibility criteria. [Rule 18.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-240 Rules of evidence—Official notice. [Rule 18.2, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-250 Rules of evidence—Exhibits and documentary evidence. [Order 2, § 316-07-250, filed 3/14/74; Rules 19.1 through 19.5, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-260 Briefs. [Rule 20.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-270 Reconsideration. [Order 2, § 316-07-270, filed 3/14/74; Rule 21.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-280 No discussion of proceeding until decision. [Rule 22.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-290 Administrative rulings. [Rule 23.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.
- 316-07-300 Compliance with orders—Notification to commission. [Rule 24.1, filed 3/24/60.] Repealed by 84-07-038 (Resolution No. 84-02), filed 3/20/84. Statutory Authority: RCW 47.64.280.

**WAC 316-07-010 through 316-07-300 Repealed.**  
See Disposition Table at beginning of this chapter.

## Chapter 316-25 WAC

## MARINE EMPLOYEES' REPRESENTATION CASE RULES

## WAC

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- 316-25-070 Contents of petition.
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- 316-25-570 Procedure following inconclusive election.
- 316-25-590 Filing and service of objections.
- 316-25-610 Procedure where no objections are filed.
- 316-25-630 Procedure where objections are filed.
- 316-25-650 Briefs and written arguments on objections.
- 316-25-670 Commission action on objections.

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

This chapter governs proceedings before the marine employees' commission on petitions for investigation of questions concerning representation of Washington state ferry system employees. The provisions of this chapter should be read in conjunction with the provisions of:

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

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

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

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

(5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising

between ferry system employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-001, filed 3/20/84.]

**WAC 316-25-010 Petition for investigation of a question concerning representation of employees--Who may file.** A petition for investigation of a question concerning representation of employees, hereinafter referred to as a "petition," may be filed by any employee of the Washington state ferry system, group of employees, employee organization, department of transportation, or their agents. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-010, filed 3/20/84.]

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

(1) Where there is a valid written and signed collective bargaining agreement in effect covering an appropriate bargaining unit which includes any or all of the employees to be affected by the petition, a petition 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 commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-030, filed 3/20/84.]

**WAC 316-25-050 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 commission at its Olympia office. The party filing the petition shall serve a copy on the department and on each employee organization named in the petition as having an interest in the proceedings. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-050, filed 3/20/84.]

**WAC 316-25-070 Contents of petition.** Each petition shall contain:

(1) The name and address of the department and the name, address and telephone number of the department's principal representative in matters concerning relationships between the department and its 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 department declines, after having been requested to do so, to recognize the petitioner as the exclusive representative of the employees in the bargaining unit which the petitioner claims to be appropriate, or (b) the employees in the bargaining unit which the petitioner claims to be appropriate wish to change their exclusive bargaining representative, or (c) the employees in the bargaining unit do not wish to be represented by an employee organization.

(5) Any other relevant facts.

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

(7) The signature and, if any, the title of the petitioner or its representative. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-070, filed 3/20/84.]

**WAC 316-25-090 Contents of petition filed by department.** Each petition filed by the department shall contain all of the information required by WAC 316-25-070, except for that required by WAC 316-25-070(4). Each petition filed by the department shall contain a statement that the department has been presented with a demand by an organization seeking recognition as the exclusive representative of the employees in the bargaining unit described in the petition. WAC 316-25-110 shall not be applicable to such petitions. Where the status of an incumbent exclusive bargaining representative is questioned, the department 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-090, filed 3/20/84.]

**WAC 316-25-110 Supporting evidence.** The original petition 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 commission. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-110, filed 3/20/84.]

**WAC 316-25-130 List of employees.** The department 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 department shall, upon request, provide a copy of the list of names and addresses to the petitioner. Following granting of a motion for intervention, the department

shall, upon request, provide a copy of the list of names and addresses to the intervenor. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-130, filed 3/20/84.]

**WAC 316-25-150 Amendment and withdrawal.** Any petition may be amended or withdrawn by the petitioner under such conditions as the commission may impose. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-150, filed 3/20/84.]

**WAC 316-25-170 Intervention--By incumbent representative.** An organization which demonstrates that it has been the exclusive representative of all or any part of the bargaining unit involved in proceedings under this chapter during the year 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-170, filed 3/20/84.]

**WAC 316-25-190 Intervention--By organization other than incumbent.** An organization not covered by WAC 316-25-170 may, by motion, intervene in proceedings under this chapter and, upon granting of its motion for intervention, shall be entitled to participate in the proceedings and have its name listed as a choice on the ballot in any election. The 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 whatever different bargaining unit the intervenor claims to be appropriate. The showing of interest must consist of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate during the ninety-day period preceding the filing of such evidence with the commission. The showing of interest shall be made confidentially to the commission at or before the time the motion for intervention is made: *Provided, however,* That a motion for intervention may be granted conditionally subject to the subsequent furnishing of a showing of interest under such conditions as the commission may impose to avoid undue delay of the proceedings. No motion for intervention 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-190, filed 3/20/84.]

**WAC 316-25-210 Showing of interest confidential.** The question of whether a showing of interest requirement for a petition or for intervention has been satisfied

is a matter for administrative determination by the commission and may not be litigated at any hearing. The commission shall not disclose the identities of employees whose authorization cards or letters are filed in support of a petition or motion for intervention. 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 commission shall not honor any attempt to withdraw or diminish a showing of interest. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-210, filed 3/20/84.]

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

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

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

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

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

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

(6) A list, attached to the election agreement as an appendix, containing the names of the employees eligible to vote in the election and the eligibility 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 commission at its Olympia office, and copies shall be posted by the department in conspicuous places on the department'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 commission (ten days after it is deposited in the United States mail addressed to the commission).

Upon the filing of an election agreement conforming to the foregoing requirements and seeking an election in an appropriate bargaining unit, the commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-230, filed 3/20/84.]

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

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

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

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

(4) A statement by the parties that no other organization is known which claims to represent any of the employees in the bargaining unit; that the parties agree that a question concerning representation exists; that a hearing is waived; and that the commission is requested to conduct and certify the results of a cross-check of individually signed and dated authorization cards or membership records submitted by the organization against the employment records of the department.

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

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

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

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

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

Upon the filing of a cross-check agreement conforming to the foregoing requirements and seeking a cross-check in an appropriate bargaining unit, the commission

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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-250, filed 3/20/84.]

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

Upon the filing of a supplemental agreement, the commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-270, filed 3/20/84.]

**WAC 316-25-290 Notice of hearing.** After a petition has been filed, if it appears to the commission that there is reasonable cause to believe that a question concerning representation exists, there shall be issued and served on the department 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 commission shall furnish the department with copies of such notice, and the department 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-290, filed 3/20/84.]

**WAC 316-25-310 Hearings--Who shall conduct.** Hearings may be conducted by the commission, by a member of the commission or by any other individual designated by the commission as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-310, filed 3/20/84.]

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

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the commission;
- (3) To rule on objections to evidence and offers of proof, receive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To regulate the time, place and course of the hearing;
- (6) To dispose of procedural requests or other similar matters;
- (7) To hold conferences for the settlement, simplification or adjustment of issues; and
- (8) To take any other action authorized by these rules. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-330, filed 3/20/84.]

**WAC 316-25-350 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 may discharge its duties under the pertinent statutes and these rules. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-350, filed 3/20/84.]

**WAC 316-25-370 Blocking charges--Suspension of proceedings--Request to proceed.** (1) Where representation proceedings have been commenced under this chapter and:

- (a) A complaint charging unfair labor practices is filed under the provisions of chapter 316-45 WAC; and
- (b) It appears that the facts as alleged may constitute an unfair labor practice; and
- (c) Such unfair labor practice could improperly affect the outcome of a representation election; the commission

may suspend the representation proceedings under this chapter pending the resolution of the unfair labor practice case.

(2) The complainant(s) in the unfair labor practice case may file a request to proceed, in writing, with the commission. 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 commission 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 commission shall proceed with the determination of the question concerning representation, subject to the right of any party to file objections as provided in WAC 316-25-590. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-370, filed 3/20/84.]

**WAC 316-25-390 Proceedings before a hearing officer.** The hearing officer may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate. The hearing officer 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 department 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 316-25-590.

(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 316-25-650. Unless the matter is transferred to the commission for review, an order of dismissal issued by the hearing officer shall have the same force and effect as if issued by the commission. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-390, filed 3/20/84.]

**WAC 316-25-410 Cross-check of records.** Where a cross-check of records is to be conducted to determine a question concerning representation, the organization shall submit to the commission original individual cards or letters signed and dated by employees in the bargaining unit not more than ninety days prior to the filing of the petition and indicating that such employees authorize the named organization to represent them for the purposes of collective bargaining, or shall submit to the commission membership records maintained by the organization as a part of its business records containing

the names of employees and indicating those employees currently members in good standing. The department shall make available to the commission 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 commission 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 commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-410, filed 3/20/84.]

**WAC 316-25-430 Notice of election.** When an election is to be conducted, the commission shall furnish the department with appropriate notices, and the department 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 commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-430, filed 3/20/84.]

**WAC 316-25-450 Disclaimers.** An organization may file a disclaimer and have its name removed from the ballot: *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 47.64.280.

84-07-037 (Resolution No. 84-01), § 316-25-450, filed 3/20/84.]

**WAC 316-25-470 Electioneering.** (1) The department and employee organizations are prohibited from making election speeches on the department's time to massed assemblies of employees within twenty-four hours before the scheduled time for the opening of the polls.

(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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-470, filed 3/20/84.]

**WAC 316-25-490 Election procedures—Balloting.** All elections 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. Each party may be represented by observers of its own choosing, subject to such limitations as the commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-490, filed 3/20/84.]

**WAC 316-25-510 Challenged ballots.** Any observer or the election officer may challenge, for good cause, the eligibility of any person seeking to cast a ballot in the election. No person 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 the commission or 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 hearing officer 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 commission as to the eligibility of the challenged voter. If challenges of a type excepted from the authority of the hearing officer 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 316-25-670. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-510, filed 3/20/84.]

**WAC 316-25-530 Votes needed to determine election.** (1) Unit determination elections 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-530, filed 3/20/84.]

**WAC 316-25-550 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-550, filed 3/20/84.]

**WAC 316-25-570 Procedure following inconclusive election.** In any election in which there are more than two choices on the ballot, if none of the choices receives the number of votes necessary to determine the election, a 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 department 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 316-25-530. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-570, filed 3/20/84.]

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

(1) Designation of specific conduct improperly affecting the results of the election, by violation of these rules, by the use of deceptive campaign practices improperly involving the commission and its processes, by the use of forged documents, or by coercion or intimidation of or

threat of reprisal or promise of reward to eligible voters; and/or

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

Objections 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-590, filed 3/20/84.]

**WAC 316-25-610 Procedure where no objections are filed.** If no objections are filed within the time set forth above, and if any challenged ballots are insufficient in number to affect the determination of the question concerning representation, and if no run-off election is to be held, the election officer 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-610, filed 3/20/84.]

**WAC 316-25-630 Procedure where objections are filed.** (1) Objections to conduct improperly affecting the results of an election may be referred to a hearing officer 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 said 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-630, filed 3/20/84.]

**WAC 316-25-650 Briefs and written arguments on objections.** All parties 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 316-25-630(1);

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

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

(2) The commission or its designee 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-650, filed 3/20/84.]

#### **WAC 316-25-670 Commission action on objections.**

In all cases where objections have been filed, the entire record in the proceedings 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 316-25-510, and shall issue appropriate orders. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-25-670, filed 3/20/84.]

### **Chapter 316-35 WAC**

#### **MARINE EMPLOYEES' UNIT CLARIFICATION CASE RULES**

##### **WAC**

316-35-001	Scope—Contents—Other rules.
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316-35-190	Proceedings before a hearing officer.
316-35-210	Proceedings before the commission—Petition for review.
316-35-230	Filing and service of cross-petition for review.
316-35-250	Commission action.

#### **WAC 316-35-001 Scope—Contents—Other rules.**

This chapter governs proceedings before the marine employees' 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 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.

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

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

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

(5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-001, filed 3/20/84.]

**WAC 316-35-010 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 department of transportation, an exclusive representative or its agents, or by the parties jointly. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-010, filed 3/20/84.]

**WAC 316-35-030 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 316-35-050. 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-030, filed 3/20/84.]

**WAC 316-35-050 Contents of petition.** Each petition for clarification of an existing bargaining unit shall contain:

(1) The name and address of the department and the name, address and telephone number of the department'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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-050, filed 3/20/84.]

**WAC 316-35-070 Amendment and withdrawal.** Any petition may be amended or withdrawn by the petitioner(s) under such conditions as the commission may impose. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-070, filed 3/20/84.]

**WAC 316-35-090 Notice of hearing.** After a petition for clarification of an existing bargaining unit has been filed, if it appears to the commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-090, filed 3/20/84.]

**WAC 316-35-110 Consolidation of proceedings.** If a proceeding initiated by a petition for clarification under WAC 316-35-010 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 316-25-010, 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-110, filed 3/20/84.]

**WAC 316-35-130 Hearings--Who shall conduct.** Hearings may be conducted by the commission, by a member of the commission, or by any other individual designated by the commission as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-130, filed 3/20/84.]

**WAC 316-35-150 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-150, filed 3/20/84.]

**WAC 316-35-170 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 may discharge its duties under the pertinent statutes and these rules. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-170, filed 3/20/84.]

**WAC 316-35-190 Proceedings before a hearing officer.** The hearing officer may proceed forthwith upon the record, after submission of briefs or after hearing, as may be appropriate. The hearing officer 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-190, filed 3/20/84.]

**WAC 316-35-210 Proceedings before the commission--Petition for review.** The final order of the hearing officer 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 or a designee of the commission 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 47.64.280. 84-

07-037 (Resolution No. 84-01), § 316-35-210, filed 3/20/84.]

**WAC 316-35-230 Filing and service of cross-petition for review.** Where a petition for review has been timely filed under WAC 316-35-210, 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-230, filed 3/20/84.]

**WAC 316-35-250 Commission action.** The hearing officer 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-35-250, filed 3/20/84.]

**Chapter 316-45 WAC  
UNFAIR LABOR PRACTICE CASE RULES**

WAC	
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**WAC 316-45-001 Scope—Contents—Other rules.** This chapter governs proceedings before the marine employees' commission on complaints charging unfair labor practices. The provisions of this chapter should be read in conjunction with the provisions of:

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

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

(3) Chapter 316-35 WAC, which contains rules relating to petitions for clarification of existing ferry system employees' bargaining units.

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

(5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-001, filed 3/20/84.]

**WAC 316-45-010 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, the department of transportation, or their agents. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-010, filed 3/20/84.]

**WAC 316-45-030 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 commission at its Olympia office. The party filing the complaint shall serve a copy on each party named as a respondent. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-030, filed 3/20/84.]

**WAC 316-45-050 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 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-050, filed 3/20/84.]

**WAC 316-45-070 Amendment.** Any complaint may be amended upon motion made by the complainant. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-070, filed 3/20/84.]

**WAC 316-45-090 Withdrawal.** Any complaint may be withdrawn by the complainant under such conditions as the commission may impose. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-090, filed 3/20/84.]

**WAC 316-45-110 Initial processing of complaint.** The commission or its designee shall determine whether the facts as alleged may constitute an unfair labor practice within the meaning of section 4, chapter 15, Laws of 1983 (RCW \_\_\_\_\_). If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, the commission or designee shall issue and cause to be served on all parties an order of dismissal containing the reasons therefor; otherwise, the commission or designee 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 316-45-350. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-110, filed 3/20/84.]

**WAC 316-45-130 Examiner--Who may act.** The examiner may be a member of the commission or any other individual designated by the commission. Upon notice to all parties, an examiner may be substituted for the examiner previously presiding. [Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-130, filed 3/20/84.]

**WAC 316-45-150 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 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-150, filed 3/20/84.]

**WAC 316-45-170 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 under WAC 316-45-110. 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 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-170, filed 3/20/84.]

**WAC 316-45-190 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 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-190, filed 3/20/84.]

**WAC 316-45-210 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 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-210, filed 3/20/84.]

**WAC 316-45-230 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 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-45-230, filed 3/20/84.]

**WAC 316-45-250 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 commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-250, filed 3/20/84.]

**WAC 316-45-270 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-270, filed 3/20/84.]

**WAC 316-45-290 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-290, filed 3/20/84.]

**WAC 316-45-310 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-310, filed 3/20/84.]

**WAC 316-45-330 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-330, filed 3/20/84.]

**WAC 316-45-350 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 or its 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-350, filed 3/20/84.]

**WAC 316-45-370 Filing and service of cross-petition for review.** Where a petition for review has been timely filed under WAC 316-45-350, 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-370, filed 3/20/84.]

**WAC 316-45-390 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-390, filed 3/20/84.]

**WAC 316-45-410 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) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings such employee(s) may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee(s) may have received during the period of the violation, and the employer shall provide evidence to the commission that such amount has been repaid to the Washington state department of employment security as credit to the benefit record of the employee(s).

(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-410, filed 3/20/84.]

**WAC 316-45-430 Motion for temporary relief.** In addition to the remedies available under WAC 316-45-410, 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 commission or its designee 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 commission or its designee shall expedite the processing of the matter under WAC 316-45-110.

(3) After the determination of the commission or designee that the complaint states a cause of action, any complainant desiring temporary relief may file with the commission or designee 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 designee 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 marine employees' commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 316-45-010, 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 commission or its designee with the assistance of the attorney general, shall petition the superior court of Thurston county or the county 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-430, filed 3/20/84.]

**WAC 316-45-550 Collective bargaining--Policy.** It is the policy of the commission to promote bilateral collective bargaining negotiations between the department and the exclusive representatives of its employees in accordance with sections 1 and 4, chapter 15, Laws of 1983 (RCW \_\_\_\_\_). 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-45-550, filed 3/20/84.]

**Chapter 316-55 WAC**  
**MARINE EMPLOYEES' IMPASSE RESOLUTION**  
**RULES**

**WAC**

316-55-001	Scope—Contents—Other rules.
316-55-010	Resolution of impasses—Request for mediation.
316-55-020	Mediation request—Information required.
316-55-030	Impasse resolution—Appointment of mediator.
316-55-050	Impasse resolution—Submission of written proposals.
316-55-070	Impasse resolution—Function of mediator.
316-55-090	Impasse resolution—Confidential nature of function.
316-55-110	Impasse resolution—Dispute resolution panel.
316-55-130	Impasse resolution—Disclosure.
316-55-150	Impasse resolution—Vacancies.
316-55-160	Fact-finding.
316-55-170	Waiver of mediation and fact-finding.
316-55-500	Binding arbitration.
316-55-505	Final offer.
316-55-510	Single arbitrator.
316-55-515	Arbitration panel.
316-55-520	Intervention and consolidation of proceedings.
316-55-525	Conduct of interest arbitration.
316-55-600	Central filing of agreements.

**WAC 316-55-001 Scope—Contents—Other rules.**

This chapter governs proceedings before the marine employees' 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 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.

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

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

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

(5) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-001, filed 3/20/84.]

**WAC 316-55-010 Resolution of impasses—Request for mediation.** In the absence of an impasse agreement between parties, or the failure of either party to utilize the procedures of such impasse agreement by August 1st in each odd-numbered year, either party may make a request in writing to the marine employees' commission for mediation. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-010, filed 3/20/84.]

**WAC 316-55-020 Mediation request—Information required.** The party or parties requesting mediation shall provide the following information to the commission:

(1) The name and address of the department and the name, address and telephone number of the department'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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-020, filed 3/20/84.]

**WAC 316-55-030 Impasse resolution—Appointment of mediator.** Upon the filing of a request for mediation, the commission shall appoint a mediator from the list of qualified, impartial, and disinterested 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 commission shall consider their desires. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-030, filed 3/20/84.]

**WAC 316-55-050 Impasse resolution—Submission of written proposals.** Parties requesting the mediation services of the commission are encouraged to file with the appointed mediator, in advance of scheduled meetings, copies of their latest written proposals on each issue in dispute. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-050, filed 3/20/84.]

**WAC 316-55-070 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. The mediator shall not compel the parties to agree. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-070, filed 3/20/84.]

**WAC 316-55-090 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-090, filed 3/20/84.]

**WAC 316-55-110 Impasse resolution--Dispute resolution panel.** The commission shall establish and maintain a panel of qualified persons 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 commission, shall be placed under contract pursuant to RCW 39.29.010. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-110, filed 3/20/84.]

**WAC 316-55-130 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 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 commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-130, filed 3/20/84.]

**WAC 316-55-150 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 commission or its designee shall declare the office vacant. The vacancy shall be filled as provided in these rules. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-150, filed 3/20/84.]

**WAC 316-55-160 Fact-finding.** Prior to collective bargaining, the commission shall conduct a salary survey comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of private sector employees within the state and Washington state employees doing directly comparable work, giving consideration to factors peculiar to the area and the classifications involved. The commission shall make such other findings of fact as the parties may request during bargaining or impasse. The obtained salary survey data shall be a public document. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-160, filed 3/20/84.]

**WAC 316-55-170 Waiver of mediation and fact-finding.** By mutual agreement, the parties may waive

mediation and fact-finding and proceed with binding arbitration. Such waiver shall be in writing and signed by the representatives of the parties. If the parties waive mediation or fact-finding, impasse resolution shall be continued as provided in WAC 316-55-500 et seq. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-170, filed 3/20/84.]

**WAC 316-55-500 Binding arbitration.** If impasse persists fourteen days after the mediator has been appointed, or beyond any other date mutually agreed to by the parties, all impasse items shall be submitted to arbitration by giving written notice. Such notice shall contain:

(1) The name and address of the department and the name, address and telephone number of the department'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 organization, if any, filing the request on behalf of the employee, employee organization or department 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; and

(8) 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-500, filed 3/20/84.]

**WAC 316-55-505 Final offer.** In addition to the information required in WAC 316-55-500, within four days of arbitration request, a final offer on the impasse items shall be submitted to the commission or its designee, with proof of service of a copy to the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by an arbitrator or panel of arbitrators. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-505, filed 3/20/84.]

**WAC 316-55-510 Single arbitrator.** The two parties may agree to submit their dispute to a single arbitrator. The full costs of arbitration under this procedure shall be shared equally by the parties to the dispute.

[Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-510, filed 3/20/84.]

**WAC 316-55-515 Arbitration panel.** If the parties cannot agree on an arbitrator within four days, a panel consisting of three members shall be appointed in the following manner:

(1) One member shall be appointed by the secretary of transportation;

(2) One member shall be appointed by the ferry employee organization;

(3) One member shall be appointed mutually by the members appointed by the secretary of transportation and the employee organization. The last member appointed shall be the chairman of the panel of arbitrators;

(4) If the third member has not been selected within four days of notification as provided in subsection (3) of this section, a list of seven arbitrators shall be submitted to the parties by the marine employees' commission. The two arbitrators selected by ferry system management and the ferry employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the commission. The second arbitrator and the first arbitrator shall alternately remove one additional name until only one name remains. The person whose name remains shall become the chairman of the panel of arbitrators and shall call a meeting within thirty days, or at such time mutually agreed to by the parties, at a location designated by him or her. In lieu of a list of seven nominees for the third member being submitted by the marine employees' commission, the parties may mutually agree to have either the Federal Mediation and Conciliation Service or the American Arbitration Association submit a list of seven nominees.

(5) Ferry system management and the employee organization shall each pay the fees and expenses incurred by the arbitrator each selected. The fee and expenses of the chairman of the panel shall be shared equally by each party.

(6) If a vacancy occurs on the panel of arbitrators, the selection for replacement of that member shall be in the same manner and within the same time limits as the original member was chosen.

(7) No final award may be made by the panel until three arbitrators have been chosen. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-515, filed 3/20/84.]

**WAC 316-55-520 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 commission shall grant the motion. Thereafter, the moving party shall be a party to the proceedings with the same right to produce and cross-examine witnesses as the other parties. If it appears during the course of proceedings that an intervenor has no substantial interest therein, the commission may dismiss such intervenor.

(3) On its own motion or at the motion of any party, the commission may consolidate proceedings on two or more notices where the facts or principles of law are related. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-520, filed 3/20/84.]

**WAC 316-55-525 Conduct of interest arbitration.**

(1) The submission of the impasse items to the arbitrators shall be limited to those issues upon which the parties have not reached agreement. With respect to each such item, the arbitration panel award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board on each impasse item.

(2) The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in section 15, chapter 15, Laws of 1983.

(3) From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

(4) The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

(a) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

(b) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of private sector employees within the state and Washington state employees doing directly comparable work, giving consideration to factors peculiar to the area and the classifications involved;

(c) The interests and welfare of the public, the ability of the ferry system to finance economic adjustments, and the effect of the adjustments on the normal standard of services;

(d) The right of the legislature to appropriate and to limit funds for the conduct of the ferry system; and

(e) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature.



(5) The chairman of the panel of arbitrators may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such powers to other members of the panel of arbitrators. The chairman of the panel of arbitrators may petition the superior court in Thurston county, or any county in which any hearing is held, to enforce the order of the chairman compelling the attendance of witnesses and the production of records.

(6) A majority of the panel of arbitrators shall within thirty days after its first meeting select the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.

(7) The selections by the panel of arbitrators and items agreed upon by the ferry system management and the employee organization shall be deemed to be the collective bargaining agreement between the parties.

(8) The determination of the panel of arbitrators shall be by majority vote and shall be final and binding, subject to sections 9 and 10, chapter 15, Laws of 1983. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision.

(9) Two copies of the final award, including the written explanation required by subsection (8) of this section shall be filed with the commission. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-525, filed 3/20/84.]

**WAC 316-55-600 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 commission two complete copies of their agreement. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-55-600, filed 3/20/84.]

### Chapter 316-65 WAC MARINE EMPLOYEES' GRIEVANCE ARBITRATION RULES

#### WAC

316-65-001	Scope—Contents—Other rules.
316-65-010	Grievance arbitration—Who may file.
316-65-030	Grievance arbitration—Filing—Service.
316-65-050	Grievance arbitration—Contents of request.
316-65-090	Grievance arbitration—Designation of panel of arbitrators.
316-65-110	Grievance arbitration—Conduct of proceedings.
316-65-130	Grievance arbitration—Award.
316-65-150	Grievance arbitration—Expenses.
316-65-500	Grievance arbitration—Exclusive procedures.
316-65-510	Intervention and consolidation of proceedings.
316-65-515	Conduct of grievance arbitration proceedings.
316-65-525	Grievance hearing.
316-65-530	Order of proceedings and evidence.
316-65-535	Arbitration in the absence of a party.
316-65-540	Closing of hearing.
316-65-545	Examiner decision.
316-65-550	Petition for review of examiner decision.
316-65-555	Commission action.
316-65-560	Grievance arbitration remedies.

**WAC 316-65-001 Scope—Contents—Other rules.** This chapter governs proceedings before the marine employees' commission relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement. The provisions of this chapter should be read in conjunction with the provisions of:

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

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

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

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

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

(6) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-001, filed 3/20/84.]

**WAC 316-65-010 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 department of transportation, an exclusive representative of employees or their agents, an employee, or by the parties jointly: *Provided*, That invoking arbitration shall be only with the approval of the employee organization, in accordance with chapter 47.64 RCW. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-010, filed 3/20/84.]

**WAC 316-65-030 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 316-65-050. The original request shall be filed with the commission at its Olympia office. If the request is not filed jointly, the party filing the request shall serve a copy on the other party to the collective bargaining agreement under which the dispute arises. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-030, filed 3/20/84.]

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

(1) The name, address and telephone number of the department and the name, address and telephone number of the department'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 an arbitrator; (b) a request for arbitration of a grievance dispute arising under chapter 47.64 RCW; or (c) a request for the submission of a list of names from the dispute resolution panel created by WAC 316-55-110.

(4) A 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 the arbitrator's decision on the grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement.

(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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-050, filed 3/20/84.]

**WAC 316-65-090 Grievance arbitration--Designation of panel of arbitrators.** Upon the filing of a request for a panel of arbitrators, the commission 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 commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-090, filed 3/20/84.]

**WAC 316-65-110 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 the commission or its designee(s) shall be filed in the public files of the commission and shall not be accorded the privacy required by such code. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-110, filed 3/20/84.]

**WAC 316-65-130 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 commission. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-130, filed 3/20/84.]

**WAC 316-65-150 Grievance arbitration--Expenses.** Each party shall pay the expenses of presenting its own case and the expenses and fees of its member, if any, of an arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expenses of an arbitrator selected by the parties from a panel designated by the commission and any costs for recording and/or transcription of proceedings shall be paid by the parties under the terms of their collective bargaining agreement or such other arrangements as they may agree upon. The commission shall pay the salary and traveling expenses of a commissioner or other designee assigned as a grievance arbitrator, but shall pay no other expenses of the proceedings. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-150, filed 3/20/84.]

**WAC 316-65-500 Grievance arbitration--Exclusive procedures.** Upon the filing of a request pursuant to WAC 316-65-050 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 316-65-500, *et seq.* shall be the exclusive procedures for the determination of such dispute. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-500, filed 3/20/84.]

**WAC 316-65-510 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 commission shall grant the motion. Thereafter, the moving party shall be a party to the proceedings with the same right to produce and cross-examine witnesses as the other parties. If it appears during the course of proceedings that an intervenor has no substantial interest therein, the commission may dismiss such intervenor.

(3) On its own motion or at the motion of any party, the commission may consolidate proceedings on two or more notices where the facts or principles of law are related. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-510, filed 3/20/84.]

**WAC 316-65-515 Conduct of grievance arbitration proceedings.** Hearings may be conducted by the commission, by a member of the commission, or by any other person designated by the commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-515, filed 3/20/84.]

**WAC 316-65-525 Grievance hearing.** The commission or its designated examiner 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 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 316-02-170. For good cause shown, the commission or examiner 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 47.64.280. 84-07-

037 (Resolution No. 84-01), § 316-65-525, filed 3/20/84.]

**WAC 316-65-530 Order of proceedings and evidence.** The order of presentation at the hearing shall be as agreed by the parties or as determined by the 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 commission or examiner 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 commission and copies shall be provided to the other parties. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-530, filed 3/20/84.]

**WAC 316-65-535 Arbitration in the absence of a party.** The commission or examiner may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Except for good cause shown, the failure of a party to appear shall constitute grounds for dismissal of its claim or granting of relief against it, as may be appropriate. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-535, filed 3/20/84.]

**WAC 316-65-540 Closing of hearing.** The hearing shall be deemed closed after the parties have completed presenting their testimony and/or exhibits and have filed briefs within agreed time limits. The commission or examiner may direct the filing of briefs when it deems such filing warranted by the nature of the proceedings or of particular issues therein. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-540, filed 3/20/84.]

**WAC 316-65-545 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-545, filed 3/20/84.]

**WAC 316-65-550 Petition for review of 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 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-550, filed 3/20/84.]

**WAC 316-65-555 Commission action.** On its own motion, or on the filing of a petition for review, the entire record in the proceeding shall be transferred to the commission, and thereafter all motions and arguments shall be directed to the commission. The commission may request the parties to appear before it to make oral arguments as to certain of the issues or all of the issues in the matter. The commission shall, on the basis of the record and any briefs or arguments submitted to it on review, issue the final and binding arbitration award on the matter. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-555, filed 3/20/84.]

**WAC 316-65-560 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) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings such employee(s) may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee(s) may have received during the period of the violation, and the department shall provide evidence to the commission that such amount has been repaid to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-65-560, filed 3/20/84.]

## Chapter 316-75 WAC MARINE EMPLOYEES' UNION SECURITY DISPUTE RULES

### WAC

316-75-001	Scope—Contents—Other rules.
316-75-010	Union security—Obligation of exclusive bargaining representative.
316-75-030	Union security—Assertion of right of nonassociation.
316-75-050	Union security—Response by exclusive bargaining representative.
316-75-070	Union security—Filing of dispute with commission.
316-75-090	Union security—Petition form—Number of copies—Filing—Service.
316-75-110	Union security—Contents of petition.
316-75-130	Union security—Escrow of disputed funds by department.
316-75-150	Union security—Investigation.
316-75-170	Union security—Notice of hearing.
316-75-190	Union security—Hearings—Who shall conduct.
316-75-210	Authority of hearing officer.
316-75-230	Hearings—Nature and scope.
316-75-250	Proceedings before the hearing officer.
316-75-270	Proceedings before the commission—Petition for review.
316-75-290	Commission action.
316-75-310	Implementation.

### WAC 316-75-001 Scope—Contents—Other rules.

This chapter governs proceedings before the marine employees' 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 316-02 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the marine employees' commission.

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

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

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

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

(6) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-001, filed 3/20/84.]

**WAC 316-75-010 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 47.64 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-010, filed 3/20/84.]

**WAC 316-75-030 Union security--Assertion of right of nonassociation.** An employee who, pursuant to RCW 47.64...., 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-030, filed 3/20/84.]

**WAC 316-75-050 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 316-75-030, 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-050, filed 3/20/84.]

**WAC 316-75-070 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-070, filed 3/20/84.]

**WAC 316-75-090 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 316-75-110. 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-090, filed 3/20/84.]

**WAC 316-75-110 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 department and the name, address and telephone number of the department'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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-110, filed 3/20/84.]

**WAC 316-75-130 Union security--Escrow of disputed funds by department.** Upon being served with a copy of a petition filed under WAC 316-75-070, the department shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Said funds shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the department shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-130, filed 3/20/84.]

**WAC 316-75-150 Union security--Investigation.** The commission shall refer the petition under dispute to one of its members or other designee, 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 316-02-220. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-150, filed 3/20/84.]

**WAC 316-75-170 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 316-02-230 is not appropriate, there shall be issued and served on each of the parties to the dispute and on the department 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-170, filed 3/20/84.]

**WAC 316-75-190 Union security--Hearings--Who shall conduct.** Hearings may be conducted by the commission or by any other person designated by the commission as a hearing officer. At any time, a hearing officer may be substituted for the hearing officer previously presiding. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-190, filed 3/20/84.]

**WAC 316-75-210 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-210, filed 3/20/84.]

**WAC 316-75-230 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-230, filed 3/20/84.]

**WAC 316-75-250 Proceedings before the hearing officer.** After the close of the hearing, the hearing officer 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-250, filed 3/20/84.]

**WAC 316-75-270 Proceedings before the commission--Petition for review.** The final order of the hearing officer 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 hearing officer. 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 or the designee of the commission 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 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-270, filed 3/20/84.]

**WAC 316-75-290 Commission action.** The hearing officer shall transfer the entire record in the proceeding to the commission. The commission shall determine the matter. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-290, filed 3/20/84.]

**WAC 316-75-310 Implementation.** Where alternative payments in lieu of payments under a union security agreement have been agreed upon by the parties or ordered by the commission, the department shall release any funds (together with accumulated interest) held in escrow under WAC 316-75-130 to the designated charitable organization and the employee shall thereafter make payments and shall furnish written proof to the exclusive bargaining representative that such payments have been made to the designated charitable organization. Where the employee is found ineligible to make alternative payments, the department shall release any funds (together with accumulated interest) held in escrow to the exclusive bargaining representative and shall enforce the union security provision according to its terms. The department and the exclusive bargaining representative shall allow the affected employee a grace period of not less than thirty days following the agreement or final order of the commission to correct any arrearages. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-75-310, filed 3/20/84.]

## Title 326 WAC

### MINORITY AND WOMEN'S BUSINESS ENTERPRISES, OFFICE OF

#### Chapters

326-02 General provisions.